Advocates for Rural Broadband

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Filed Via ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

WTA – Advocates for Rural Broadband ("WTA") files this letter to comment upon the draft rules relating to a voluntary model-based universal service support plan for rate-of-return companies that was filed in this proceeding on December 4, 2015, by ITTA – the Voice of Mid-Size Communications Companies ("ITTA") and USTelecom. These draft rules are found in Sections 54.311 and 54.313(l) of the submitted rules.

WTA is a national trade association representing more than 280 small rural local exchange carriers ("RLECs") that offer voice and broadband services in rural areas of the country that are among those most difficult and expensive to serve. As a representative of a significant number of the RLECs that may elect voluntary, model-based support under the Alternative Connect America Cost Model ("A-CAM"), WTA has a direct and substantial interest in the proposed rules.

WTA's comments regarding the draft rules are as follows:

Overall, WTA notes that many of the dates in the draft rules appear to assume a December 2015 Commission order and a July 1, 2016 effective date for the rules. In order for all rate-of-return carriers to have the opportunity to make a reasonable and informed choice between the model-based path and the rate-of-return path, both alternative paths must be adopted in the same order and implemented at the same time. Given that the December 2015 target date for a Commission order has already slipped and that a July 1, 2016 effective date is becoming increasingly impracticable, many of the dates set forth in the draft rules will need to be modified.

Section 54.311(a): WTA has no proposed changes.

Section 54.311(b): WTA has no proposed changes.

Section 54.311(c): WTA proposes that the third sentence be modified and that an additional sentence be added after it as follows:

> Carriers with a statewide density of between 10 or fewer locations per square mile and more than 5 locations per square mile shall be required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 50% of all fully funded eligible locations in a study area by the end of the ten year period. Carriers with a statewide density of 5 or fewer locations per square mile shall be required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 25% of all fully funded eligible locations in a study area by the end of the ten year period.

Explanation: WTA has many members that serve remote and rugged areas having densities of 5 or fewer locations per square mile. Whereas WTA members want to deploy as much broadband as possible to as many customers as possible, the rules should recognize that there are many areas, particularly in the rural West, with very low densities where 25/3 service will be very expensive to deploy. The proposed additional "5 or fewer locations per square mile" density and deployment category will make the A-CAM public service obligations more reasonable and realistic in the many very low density rural areas, and will thereby encourage more small RLECs to consider the model-based support option.

WTA also proposes: (a) that the last phrase of Section 54.311(c) be changed to read: "or if no such benchmark is published, then no more than 133% of the non-promotional prices charged for a comparable fixed wireline service by the largest price cap carrier in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support"; and (b) that the following sentence be added: "This provision shall not apply to a carrier if the combination of the maximum permitted monthly service price that this provision would allow the carrier to charge to its customers, plus the total monthly high-cost support per line distributed to the customer, do not at least equal the carrier's per line per month costs of providing the service to its customers."

Explanation: Higher-cost RLECs want to charge "reasonably comparable" rates, and should receive model-based support sufficient to enable them to do so. However, if their actual construction and operating costs significantly exceed those predicted by the model, they may not receive enough model-based support to enable them to charge the very same rates as their lower-cost urban counterparts. The proposed 133% standard is intended to keep RLEC broadband rates reasonably comparable with those in urban areas without requiring them to be equivalent. However, given that the Commission cannot and should not force carriers to provide service at a loss, the final sentence exempts carriers from the rule if their capped monthly charges plus their per-line model-based support does not allow them to recover their costs.

Section 54.311(d): WTA has no proposed changes.

Section 54.311(e): WTA does not support the second paragraph, as written, because: (1) continuing support in Year 11 and thereafter at the same levels as during the initial 10-year period may not be necessary if the applicable build-out obligations have been met during the first ten years; and (2) if the same levels of CAF Reserve are not being provided during the extended period, continuing model-based support at the same levels will put an additional strain on the overall Rate-of-Return budget to the detriment of those carriers that did not elect model-based support. This potential problem can and should be addressed and avoided during the proposed Year 8 review. However, in the event that it is not, WTA proposes that the second paragraph be modified at the end to read: "provided that the same annual amount of CAF Reserve is allocated to fund the continuing model-based support after Year 10, and/or that any such continuing model-based support after Year 10 does not operate in conjunction with overall high-cost support budgets to cause a decrease in the total high-cost support distributed to those Rate-of-Return carriers that did not elect model-based support.

Section 54.311(f): WTA has no proposed changes.

Section 54.311(g): WTA has no proposed changes.

Section 54.311(h): WTA cannot support the application of the proposed 10 percent per year build-out milestones to small RLECs (described as those serving 10.000 or fewer locations in a state) because they do not correspond with the way that small RLECs deploy and extend their networks. For example, a 5,000 line RLEC that is 60 percent built out at 10/1(and hence needs to extend broadband to 2,000 more locations) cannot economically build out to 200 new locations each year. Rather, the most efficient way for it to proceed is to construct to all 2,000 new locations during one or two construction seasons, thereby minimizing its costs of negotiating and entering into multiple construction and financing arrangements and bringing construction equipment and crews to its service area only once or twice. Given the timing and complexities of financing approvals, equipment supplies and costs, and contractor availability, the project may be done during Years 1 and 2, Years 5 and 6, or Years 8 and 9. If the construction could be accomplished during Years 1 and 2, the RLEC would be in compliance with the proposed milestones, but if the RLEC could not make the necessary arrangements until Years 5 and 6, or Years 8 and 9, it would be in violation of the draft rule.

WTA would revise Section 54.311(h) as follows to keep the draft build-out milestones for larger companies, but to modify the approach to better fit the circumstances of smaller RLECs:

> (h) *Build-out Obligations*. The company-specific build-out obligation, as identified by public notice issued pursuant to §54.311(g), will be phased-in over time. Compliance shall be determined based on the total number of fully funded eligible locations in a state. Companies that are within five percent (5%) of the requisite number of locations for any given period will be deemed to be in compliance.
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> (i) *Companies Having More Than 10,000 Locations Within A State.* The number of fully funded eligible locations that are capable of actual speeds of at least 10 Mbps downstream/1 Mbps upstream, as defined in §54.311(c), will be subject to the following intermediate milestones: From 2017 through 2020, no milestone is required but each

company must report annually on the status of its build-out based upon the number of supported locations reached during that period; by July 1, 2021, fifty percent (50%) of the locations must meet that standard; by July 1, 2022, sixty percent (60%) of the locations must meet that standard; by July 1, 2023, seventy percent (70%) of the locations must meet that standard; by July 1, 2024, eighty percent (80%) of the locations must meet that standard; by July 1, 2025, ninety percent (90%) of the locations must meet that standard; by July 1, 2026, one hundred percent (100%) of company build-out requirement must be completed. Such reports and milestones shall be in accordance with §54.313(l).

(ii) *Companies Having 10,000 Or Fewer Locations Within A State.* The number of fully funded eligible locations that are capable of actual speeds of at least 10 Mbps downstream/1 Mbps upstream, as defined in §54.311(c), will be subject to the following build-out and reporting requirements. By July 1, 2026, one hundred percent (100%) of company build-out requirement must be completed. Until such build-out is completed, each company must report to the Commission on or before October 1 of each year: (a) the number of supported locations reached during the previous July 1 – to - June 30 period; (b) its plan for reaching compliance with its build-out obligation by the end of Year 10; and (c) the steps that it has taken during the previous July 1 – to - June 30 period to implement such plan, including the progress of negotiations to obtain financing, equipment and construction services.

(iii) In addition, as required by subsection (c) above, by July 1, 2026, carriers with a statewide density of more than 10 locations per square mile must meet a standard of at least 25 Mbps downstream/3 Mbps upstream for seventy-five percent (75%) of locations in the study area; carriers with a statewide density of between 10 or fewer locations per square mile and more than 5 locations per square mile must meet a standard of at least 25 Mbps downstream/3 Mbps upstream for fifty percent (50%) of locations in a study area; and carriers with a statewide density of 5 or fewer locations per square mile must meet a standard of at least 25 Mbps downstream/3 Mbps upstream for twenty-five percent (25%) of locations in a study area

Section 54.311(i): WTA has no proposed changes other than to note that subsections (1) through (iv) apply to companies having more than 10,000 locations within a state, whereas subsection (v) applies to all companies.

Section 54.311(j): WTA has no proposed changes.

Section 54.311(k): WTA proposes that the following subsection be added:

(iv) The amounts of Existing Support reduced according to the schedules set forth in subsections (i), (ii) and (iii) shall be reallocated to the mechanisms of the alternative rate-of-return path and shall be used to reduce the amounts of support reductions that would otherwise be imposed upon companies electing the rate-of-return path by budget control mechanisms in order to stay within applicable high-cost program budgets.

Explanation: Companies that elect model-based support that is greater than their Existing Support effectively get to keep all of their Existing Support for the entire 10-year or longer period without it being subject to any "haircuts" to stay within applicable budgets. Companies that elect the Section 54.311(k) glide path voluntarily choose to give up some of their Existing Support in order to enjoy the certainty of model-based support. Meanwhile, companies that elect to remain on the rate-of-return path are the only group subject to reductions in support for budget control purposes if total model-based support, rate-of-return support and CAF-ICC support exceeds the applicable high-cost program budget. Allowing reductions of Existing Support to be used to reduce the "haircuts" imposed upon rate-of-return carriers will not only be equitable, but will encourage investment by reducing the uncertainty and volatility of budget control mechanisms.

Section 54.313(l): WTA proposes the following changes:

> Subsections (1) and (2) should be designated as applying to "*Companies Having More Than 10,000 Locations Within A State"*
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> New Subsection (3): *Companies Having 10,000 Or Fewer Locations Within A State.* Until its build-out obligations in Section 54.311(h) are completed, each company must report to the Commission on or before October 1 of each year: (a) the number of supported locations reached during the previous July 1–to-June 30 period; (b) its plan for reaching compliance with its build-out obligation by the end of Year 10; and (c) the steps that it has taken during the previous July 1–to-June 30 period to implement such plan, including the progress of negotiations to obtain financing, equipment and construction services.

Explanation: The new subsection (3) is consistent with the fact that smaller RLECs can and will complete their build-out obligations more efficiently and economically over one or two construction seasons rather than incrementally over the full ten years. They should be required to report on their progress until they complete their build-out obligation. Also, for smaller companies, a December 31 reporting date comes when they are short-staffed during the holiday season, and poses a danger that it will be inadvertently missed due to year-end vacations, distractions and obligations. An October 1 filing date provides sufficient time to report on the period ending June 30, and is much less likely to be inadvertently overlooked.

Respectfully submitted,
WTA-Advocates for Rural Broadband

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