

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
NTCA and USTelecom Petition for Forbearance from) WC Docket No. 17-206
USF Contribution Requirements)

COMMENTS OF WTA – ADVOCATES FOR RURAL BROADBAND

WTA – Advocates for Rural Broadband (“WTA”) hereby submits its comments in support of the joint petition pursuant to Section 10 of the Communications Act of 1934, as amended (“the Act”), by NTCA – The Rural Broadband Association (“NTCA”) and the United States Telecom Association (“USTelecom”) for temporary Commission forbearance from application of Universal Service Fund (“USF”) contribution requirements to broadband Internet access transmission services provided by rural local exchange carriers (“RLECs”), whether tariffed or offered on a de-tariffed basis.

WTA – Advocates for Rural Broadband

WTA is a national trade association representing approximately 340 rural telecommunications providers that offer voice, broadband and video-related services in Rural America. WTA members are generally small rate of return carriers that serve some of the most rugged, remote and/or sparsely populated areas of the United States. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. WTA members are providers of last resort to many areas and communities that are both very difficult and very expensive to serve.

WTA and its members are vigorous supporters of USF programs, and its members qualify for and receive support from high-cost and other USF mechanisms. Approximately forty

percent (40%) of WTA's members are included among the 207 companies that elected to receive federal high-cost USF support for the next ten years pursuant to the Alternative Connect America Cost Model ("ACAM") Path.¹ With the exception of several Alaska Plan companies, the rest of WTA's members have elected (or in many cases have been forced by circumstances or eligibility limitations) to remain on the alternative Rate of Return ("RoR") Path.

WTA Supports USF Programs and USF Contributions Reform

WTA has been a long and consistent supporter of past and present high-cost support mechanisms and other USF programs. It has also been a long and active proponent of USF contributions reform.

Since USF programs were initiated in the mid-1980s, WTA's RLEC members have relied upon high-cost support as one of the principal revenue streams that allowed them to bring state-of-the-art quality and affordable voice and data telecommunications services to their rural customers. During recent years, WTA members have become even more reliant upon high-cost support as they have deployed and upgraded higher and higher capacity broadband facilities and services further and further into their rural networks. WTA members are grateful for the service improvements that USF mechanisms have enabled them to achieve in the past, and are currently working hard to plan and implement the broadband build-out obligations that they are required to satisfy in conjunction with their present and future ACAM Path and RoR Path support.

WTA members have long made USF contributions with respect to their interstate services, including subscriber line charges ("SLCs"), interstate long distance toll charges and

¹ See Public Notice (*Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More Than \$51 Million Annually in Alternative Connect America Cost Model Support And Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*), WC Docket No. 10-90, DA 16-1422, released December 20, 2016; and Public Notice (*Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*), WC Docket No. 10-90, DA 17-99, released January 24, 2017.

broadband Internet access transmission service charges. However, they have become increasingly concerned that it is no longer equitable or sustainable to support a public network that is increasingly becoming a public broadband network via a contribution base that consists substantially of declining interstate and international long distance voice toll revenues. WTA understands the political difficulties, but believes that the only viable and practicable long-term solution is to look to broadband Internet access services and edge providers for some of the USF contributions necessary to support the deployment and upgrade of the broadband facilities essential to achieve a nationwide public broadband network.

The Requested Temporary Forbearance Should Be Granted

WTA agrees with NTCA and USTelecom that the Commission should temporarily forbear from the application and enforcement of the USF contribution requirements of Section 254(d) of the Act and Section 54.706 of its Rules with respect to tariffed and non-tariffed RLEC-provided broadband Internet access transmission services. Such temporary forbearance should last until such time as the Commission completes a USF contribution reform proceeding that determines whether any or all broadband Internet access services must contribute to the federal USF program.

At the present time, the Title II broadband Internet access transmission services provided by some RLECs are the only broadband Internet access services required to make federal USF contributions. Given that the federal USF contribution factor has risen to approximately 17 percent and is likely to increase further, rural customers purchasing broadband Internet access services that incorporate these transmission services pay additional federal USF pass-through charges of more than \$7.00 per month (and considerably more where USF budget control mechanisms require higher broadband transmission service rates). In stark contrast, the 2002

Cable Modem Order classified cable modem broadband services as information services, and did not require them to make USF contributions.² In fact, even when the 2015 *Title II Order* classified retail broadband Internet access services as Title II telecommunications services, the Commission granted limited forbearance from federal USF contribution requirements to such services while comprehensive USF contribution reform was pending.³ The only broadband Internet access-related services that had been required to make federal USF contributions (and that have been largely forced by economic circumstances to pass these contributions through to customers) are the RLEC-provided broadband Internet access transmission services that were addressed in the Commission's 2002 *WBIAS Order*.⁴

WTA agrees with NTCA and USTelecom that the detariffing and private carriage relief offered in the Commission's 2016 *Rate-of-Return Reform Order* does not alleviate the competitive disadvantage suffered by RLEC broadband transmission services, particularly those of RoR Path RLECs.⁵ Rather, the workings and impacts of various existing Commission Rules in Parts 64 and 65, as well as in Parts 32, 36, 54 and 69, create uncertainties, complexities and potential revenue losses that render detariffing and private carriage relief a likely source of disruptions that can impair the finances, operations and broadband investment plans of RoR Path companies.

² *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities et al.*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff'd*, *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967 (2005).

³ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5836-37 (2015).

⁴ *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005).

⁵ *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016).

WTA further agrees with NTCA and USTelecom that temporary forbearance constitutes the most effective and efficient way to level the broadband Internet access playing field.

Temporary forbearance would satisfy all three of the Section 10(a) criteria as follows:

(1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with [a] telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.

First, forbearance would eliminate the current situation wherein RLEC-provided broadband Internet access transmission services (particularly those provided by RoR Path companies) are the only broadband Internet access services required to make federal USF contributions. With cable modem services, competitive local exchange carriers (“CLECs”), fixed wireless Internet service providers (“WISPs”) and price cap carriers presently not subject to USF contribution obligations due to information service classifications or existing forbearance rulings (and with ACAM Path carriers able to take advantage of the *Rate-of-Return Reform Order*’s detariffing and private carriage relief without impact upon their specified 10-year ACAM support levels), RoR Path carriers are the only broadband Internet access industry participants with no viable alternative but to make federal USF contributions. The end result is that the rural customers of Internet service providers (“ISPs”) that incorporate the broadband Internet access transmission services of RoR Path carriers are forced to bear the cost of these federal USF contributions – either as pass-through line item charges or as part of higher retail Internet access service rates – while all other Internet access service customers do not. Enforcement of the current USF contribution requirements of Section 254(d) of the Act and Section 54.706 of its Rules with respect to RLEC-provided broadband Internet access transmission services produces this unreasonable and discriminatory anomaly, while the requested temporary forbearance relief will eliminate it.

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers.

No consumer of broadband Internet access service would be harmed or disadvantaged by the proposed temporary forbearance. In fact, rural consumers subscribing to Internet access services that incorporate the broadband Internet access transmission services of RoR Path carriers will benefit from no longer being the only broadband Internet access service customers required to pay the additional \$7.00 or more of monthly service charges or pass-throughs needed to recover the costs of USF contributions.

(3) Forbearance from applying such provision or regulation is in the public interest.

In the 2015 *Title II Order, supra*, the Commission found that with respect to every type of Internet access service -- other than those using RLEC broadband Internet access transmission services -- there is no need to collect, directly or indirectly, federal USF contributions on broadband Internet access services pending further consideration of comprehensive USF contribution reform. There is no perceptible public interest reason why certain rural broadband Internet access service customers should bear the costs of federal USF contributions while urban customers and most other rural customers do not. Equivalent treatment of all customers clearly serves the public interest.

Conclusion

WTA supports and urges the Commission to grant the petition of NTCA and USTelecom for temporary forbearance from the application and enforcement of the USF contribution requirements of Section 254(d) of the Act and Section 54.706 of its Rules with respect to tariffed and non-tariffed RLEC-provided broadband Internet access transmission services. Such forbearance would put an end to the anomaly whereby some rural Internet access service customers bear the cost of substantial federal USF contributions on broadband transmission

services while urban and most rural Internet access service customers do not. The requested temporary forbearance should last until such time as the Commission completes a USF contribution reform proceeding that determines whether any or all broadband Internet access services are required to contribute to the federal USF program.

Respectfully submitted,
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