

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)
ETC Annual Reports and Certifications) WC Docket No. 14-58
)
Developing a Unified Intercarrier Compensation Regime) CC Docket No. 01-92)

**REPLY COMMENTS OF
WTA – ADVOCATES FOR RURAL BROADBAND
ON
FURTHER NOTICE OF PROPOSED RULEMAKING**

WTA-Advocates for Rural Broadband (“WTA”) hereby submits its reply comments with respect to the Commission’s Further Notice of Proposed Rulemaking¹ (“*FNPRM*”) in the referenced proceeding. These comments are filed in accordance with the schedule established in 81 *Fed. Reg.* 21511 (April 12, 2016).

A. Predominant WTA Concern

WTA reiterates that its paramount concern in this further rulemaking is the effectiveness of proposed new rules and policies in encouraging the deployment of high quality, affordable and reasonably comparable broadband networks and services to rural areas and in enabling the increased adoption and use of broadband services by rural residents. WTA recognizes that efficient use of Universal Service Fund (“USF”) dollars is also a significant goal, particularly in a time of limited resources, fixed Rate of Return Path budgets, and potential Rule 54.1310(d) and

¹ *In the Matter of Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 and 14-58 and CC Docket No. 01-92, FCC 16-33, released March 30, 2016 (“*USF Order*”).

Rule 54.901(f) support reductions that disrupt and diminish predictability. However, effective deployment and adoption must take precedence both at the present time and particularly in the longer run where broadband is the key to economic development and participation in regional, national and global societies.

WTA notes that the Commission already has in place devices like the existing corporate operations expense caps and the new operating expenses limitation that promote efficiency on an aggregate, industry-wide basis. WTA does not, in principle, oppose reasonable and prudent guidelines and ranges for certain types of operating expenses. However, specific limits on certain expenses are very difficult to develop and implement equitably for hundreds of high-cost support recipients of varying sizes that operate under very different conditions and circumstances. Across-the-board prohibitions and disallowances are also problematic because certain expenses listed in the *FNPRM* have proven effective for many companies as ways to promote and market their broadband services, while other listed expenses help companies to increase their service quality and reduce their overall operating expenses by improving employee morale and minimizing turnover.

WTA urges the Commission not to overemphasize further reductions of high-cost support, but rather to focus upon the effectiveness of expenditures and support in promoting and achieving increased broadband deployment and adoption in rural areas. It also stresses that any new rules prohibiting or limiting the inclusion of specified expenses in revenue requirements or high-cost support calculations should be implemented and enforced on a prospective basis only.

B. Tribal Support

WTA members serve Tribal areas, and agree that steps need to be taken to address the lack of broadband infrastructure in some Tribal areas. They agree with the National Tribal Telecommunications Association (“NTTA”) that it is very difficult and expensive to construct, maintain and operate broadband networks in all rural areas, and recognize that service in Tribal areas is further complicated and rendered more costly by Tribal sovereignty, allotments, cultural clearances, archaeological resource protection, and Tribal hiring requirements.

WTA agrees with NTTA that the Commission should take targeted steps to preserve and advance broadband availability for Native Americans. Of course, the “devil is in the details” and there remain many difficult implementation questions such as the type of broadband support mechanism to be used, the carriers and areas eligible to participate, and the size and source of the budget for the program.

WTA concurs with the “Tribal Broadband Factor” concept proposed by NTTA. A mechanism that increases high-cost support in eligible areas by a specific percentage constitutes a reasonable and effectively targeted way to promote increased broadband deployment and affordability in Tribal areas.

However, WTA has concerns about the potential use of “Tribal lands” as the standard for designating the areas eligible for support with respect to the contemplated Tribal mechanism. WTA understands “Tribal lands” to be a broad term that includes any land or interest in land owned by a tribe or tribes. Such an expansive term is likely to lead to disputes and litigation regarding the eligibility of various carriers and areas, as well as to complicate the task of estimating the amount of potential additional support involved and establishing a reasonable and realistic budget for the proposed mechanism.

WTA suggests that the Commission and NTIA consider limiting eligibility, at least initially, to “Federal Indian reservations” rather than Tribal lands. WTA believes that the identity, number, location and boundaries of “Federal Indian reservations” are readily ascertainable. Hence, both the Commission and the industry can readily determine the specific areas that are potentially eligible to participate in the Tribal mechanism.

Given the clarity of Reservation boundaries, WTA proposes that all Reservation areas be eligible to participate in the “Tribal Broadband Factor” mechanism, and believes that there then would be no need to calculate or argue about whether the percentage of a carrier’s service area comprised of “Tribal lands” exceeds a selected level for determining eligibility. Rather, eligible telecommunications carriers (“ETCs”) that serve all or part of a “Federal Indian reservation” – whether such ETCs are owned in whole, in part, or not at all by the Tribe or Tribes living on the reservation – would have the option whether or not to participate in the Tribal mechanism. Those ETCs that opt to participate would be required to use the additional “Tribal Broadband Factor” support solely to deploy, maintain and operate broadband facilities on the Reservation.²

Finally, WTA proposes that a separate and specific budget be set for the Tribal mechanism, and that it not result in further reduction of the Rate of Return Path budget that has become the “residual” budget forced to bear the burdens of budget control.

If the standard for eligibility is “Federal Indian reservations” or a comparably definitive and limited alternative, a reasonably accurate budget should be able to be estimated for the Tribal mechanism. WTA suggests that one possible way to ensure that the Tribal mechanism stays

² WTA does not believe that there is accurate data available regarding the actual costs of constructing and operating broadband networks on the various Federal Indian reservations. Therefore, WTA does not find it reasonable or equitable to establish build-out requirements with respect to the contemplated Tribal mechanism. Rather, a requirement that all of the additional “Tribal Broadband Factor” support received by a participating ETC be used to construct and operate broadband facilities on the relevant Reservation appears to be the most effective way of ensuring that the program improves broadband service and adoption on Reservations.

within its budget would be to provide that the specific percentage multiplier for the “Tribal Broadband Factor” be reduced, if necessary, for all participating ETCs and Reservations in order to eliminate excess demands upon the Tribal mechanism in particular years. This is not an ideal solution because it undermines the predictability of the additional Tribal support. However, there does not appear to be a better solution for obtaining at least some additional Tribal support during the present time of increasing USF support needs and limited USF resources.

WTA supports NTTA’s efforts to have the proposed new Tribal mechanism funded from the CAF Reserve. However, WTA understands from Footnote 130 of the *USF Order* that the Commission may be limiting or phasing out the CAF Reserve. If that is the case, WTA supports a separately funded Tribal mechanism, but opposes any direct or indirect funding of a Tribal mechanism from the remaining budget for the Rate of Return Path.

WTA is concerned that budget for the Rate of Return Path is already insufficient to support the existing obligations and new build-out requirements of the carriers remaining on the Path. WTA notes that the Rate of Return Path includes not only companies that elected to remain on it, but also companies that the Commission precluded from electing Model-based support due to their current build-out status and companies whose calculated Model-based support was so inaccurate and punitive that they had no viable option other than to remain on the Rate of Return Path. WTA further notes that the Rate of Return Path appears to be the “unloved step-child” of high-cost mechanisms in that it is the residual mechanism that is forced to bear the support reductions necessary to get down to the Commission’s applicable \$2.0 billion annual budget for high-cost support. In addition to the Rule 54.1310(d) and Rule 54.901(f) “haircuts,”

the Rule 54.311(e) glide path provisions³ reduce the Rate of Return Path budget in order to relieve potential budgetary pressures elsewhere.

WTA members and other rural carriers are facing increasing demands for higher broadband speeds and new broadband services, while facing higher costs, scarce capital and limited high-cost support. They recognize the needs of Tribal areas, but cannot afford to support the proposed Tribal mechanism if it would further reduce the already insufficient and potentially unpredictable Rate of Return Path budget.

Therefore, WTA conditionally supports a carefully defined and reasonably budgeted new Tribal mechanism as long as such program does not directly or indirectly reduce the already inadequate Rate of Return Path budget.

Respectfully submitted,
WTA – Advocates for Rural Broadband

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³ See *USF Order*, par. 69 and n. 141.