BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits its comments in response to the May 16, 2013 Public Notice ("*Notice*") issued by the Federal Communications Commission ("Commission") in the above-referenced proceeding.[1] In the *Notice*, the Commission seeks comment on several proposals that it believes could help promote rural broadband deployment in areas served by rate-of-return carriers. The first proposal would make high-cost universal service support available for network infrastructure that provides standalone broadband service. This and other proposals on which the Commission seeks comment in the *Notice* aim to create a pathway to model-based support for rate-of-return carriers.

ITTA supports the Commission's efforts to promote the availability of modern voice and broadband-capable networks in rural areas served by rate-of-return carriers, and thus supports the availability of Universal Service Fund ("USF") support for broadband lines in rate-of-return areas where consumers choose not to purchase voice service from the eligible telecommunications carrier ("ETC"). ITTA believes that providing support for standalone

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[1] Public Notice, "Wireline Competition Bureau Seeks Comment on Options to Promote Rural Broadband in Rate-of-Return Areas," DA 13-1112 (rel. May 16, 2013) ("*Notice*").

broadband provided by rate-of-return carriers could provide those carriers with additional incentives to advance broadband deployment. This approach is consistent with the Commission's objective to shift the focus of its USF programs from the support of "plain old telephone service" ("POTS") to the deployment of broadband-capable networks that enable advanced communications services and more choice for consumers throughout the United States.

With respect to the Commission's proposals to promote rate-of-return carriers' voluntary participation in model-based support under Connect America Fund ("CAF") Phase II, including through voluntary conversion to price cap regulation, ITTA offers several suggestions for the Commission to consider that may incentivize rate-of-return carriers to pursue this path. At this time, rate-of-return carriers may be reluctant to opt for model-based support through conversion to price cap regulation or other means given the uncertainty of how doing so would impact their business. Adopting appropriate incentives, such as by providing a reasonable transition period and enabling such carriers to continue to recover intercarrier compensation ("ICC") pursuant to the framework adopted in the *USF/ICC Transformation Order*, could provide rate-of-return carriers with the certainty and stability they require, thereby furthering the Commission's goal of promoting new broadband deployment in rural rate-of-return areas.

I. THE COMMISSION SHOULD MAKE USF SUPPORT AVAILABLE FOR STANDALONE BROADBAND SERVICE

The Commission's primary objective in implementing the Connect America Fund was to advance broadband deployment and availability to all Americans, particularly in rural areas that lack such access today.[2] Allowing rate-of-return carriers to receive high-cost support for standalone broadband loops could further advance this goal.

Today, rate-of-return carriers are not eligible to receive High-Cost Loop Support ("HCLS") and Interstate Common Line Support ("ICLS") for broadband-capable loops if their end user customers do not purchase POTS. Rather, the costs associated with a standalone broadband loop are treated as jurisdictionally interstate and tariffed as special access services for which no universal support mechanism applies. The inability to receive universal service support for those lines results in significantly higher rates for consumers who purchase standalone broadband service in comparison to those who pay for broadband and voice service bundled together.[3]

As NTCA and others have pointed out, "denying the availability of USF support and increasing broadband rates based solely upon a rural customer's choice to purchase only broadband significantly inhibits a consumer's freedom of choice" and runs counter to the Commission's objectives "to reorient the USF for a broadband-capable world."[4] The reforms adopted in the *USF/ICC Transformation Order* recognized and embraced this shift to IP-based services by enabling support for "voice telephony service" provided by any technology.[5]

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[2] *See In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al*., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 5 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

[3] *Notice* at ¶ 3.

[4] Letter from Michael R. Romano, National Telecommunications Cooperative Association, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90, *et al*. (filed Jan. 28, 2013), at 2. ("January 28 *Ex Parte*").

[5] *USF/ICC Transformation Order* at ¶ 77-81.

Unfortunately, under the Commission's current rules, rate-of-return carriers can only receive USF support for a broadband-capable loop if they actually sell POTS.[6] If the Commission seeks to promote the evolution of IP-based services, however, "there is simply no reason whatsoever that consumers should still be compelled to take POTS to obtain broadband at rates that are affordable and reasonably comparable to those available in urban areas."[7]

Modifying the rules to allow rate-of-return carriers to receive USF support for standalone broadband service would help correct the disparity in costs for subscribers who prefer this option and ensure that "consumers in rural areas… have the same choices as those in urban areas with respect to their communications services."[8] Thus, ITTA urges the Commission to consider technical fixes to its rules that would permit USF cost recovery even where a consumer declines to take an offer of voice telephony and instead elects only to take broadband service from an ETC. For purposes of simplicity, however, any rule changes the Commission adopts should be minimal. Otherwise, the Commission runs the risk of introducing unnecessary and counterproductive uncertainty and complexity when "simple" rules changes would "fulfill the express and plainly stated intent of the Commission's reform order."[9]

Providing USF support for standalone broadband would serve the public interest and "promote both broadband adoption as well as competition in voice services, by permitting customers to choose from among POTS, over-the-top VoIP, or even 'cutting the cord' altogether on fixed voice service with the assurance that such a choice would not have an adverse effect on their ability to procure broadband at an affordable rate. In short, providing support for loops that

[6] *See* 47 C.F.R. §§ 36.621 and 54.901.

[7] January 28 *Ex Parte* at 2.

[8] *Id.* at 3.

[9] *Id*.

are used to provide standalone broadband services would promote and accelerate the ongoing IP evolution."[10]

II. THE COMMISSION SHOULD ADOPT APPROPRIATE INCENTIVES TO PROMOTE A VOLUNTARY PATHWAY TO MODEL-BASED SUPPORT FOR RATE-OF-RETURN CARRIERS

The Commission suggests facilitating a path for rate-of-return carriers to opt in to CAF Phase II, including through conversion to price cap regulation, and seeks comment on creating a more explicit voluntary pathway to model-based support.[11] ITTA is supportive of proposals to facilitate rate-of-return carriers' voluntary participation in CAF Phase II model-based support, including through conversion of rate-of-return areas to price cap regulation or other alternatives. However, there are a number of questions regarding the CAF Phase II framework that may make rate-of-return carriers reluctant to move in that direction at this time.

First, critical details of the CAF Phase II program for price cap carriers have not been finalized and the program has not been implemented. Importantly, it is unclear whether the cost model the Commission is developing would be appropriate for rate-of-return carriers. For example, the model may be unsuitable for rate-of-return study areas whose boundaries are typically much larger, and population density much lower, than study areas typically served by price cap carriers. Nor is it clear whether the benchmarks and caps associated with the model make sense when applied to rate-of-return carriers. It may also be difficult for rate-of-return carriers to make a business case for participating in CAF Phase II when faced with the prospect of losing existing USF support and replacing it with CAF support that may entail burdensome and costly service and other obligations they may be unable to undertake.

[10] *Id*.

[11] *Notice* at ¶ 8.

In order for the Commission to facilitate a voluntary pathway to model-based support for rate-of-return carriers, it must formulate a framework that would incentivize rate-of-return carriers to choose that path. ITTA outlines below several steps the Commission should consider that may make that choice more appealing.

First, the Commission should allow any rate-of-return carriers who accept model-based support through conversion to price cap status or other means to do so pursuant to a measured transition period that provides stability and predictability. The Commission understands the problems that can arise with a drastic shift from one regulatory scheme or compensation mechanism to another and the benefits that a reasonable transition period can provide. In the *USF/ICC Transformation Order*, the Commission adopted a multi-year transition path for both price cap and rate-of-return carriers with respect to reductions in ICC rates, concluding that "this transition will help minimize disruption to consumers and service providers by giving parties time, certainty, and stability as they adjust to an IP world and a new compensation regime."[12]

The Commission sought to ensure that the transition away from existing ICC rates would facilitate carriers' movement to IP-based networks, so it carefully considered the correct approach, "including the sequencing and timing of rate reductions that would allow carriers to plan appropriately."[13] The Commission also was sensitive to the fact that "rate-of-return carriers should be given longer to reduce their rates than price cap carriers because the costs and rates of rate-of-return carriers generally are significantly higher than those of price cap carriers."[14]

The shift to model-based support for rate-of-return carriers raises many of the same concerns regarding consumer disruption and the need for such carriers to have sufficient time to

[12] *USF/ICC Transformation Order* at ¶ 798.
[13] *Id.* at ¶ 799.
[14] *Id*.

implement the changes that would be necessary under this new regulatory framework. Thus, the Commission should adopt a measured transition path that provides stability, certainty, and adequate time for rate-of-return carriers who opt to participate in CAF Phase II on a voluntary basis.

Indeed, the need for certainty and predictability should compel the Commission to allow rate-of-return carriers who opt for model-based support, including through price cap conversion, to continue to utilize the intercarrier compensation transition path established for rate-of-return carriers in the *USF/ICC Transformation Order*. As noted above, the Commission recognized that reductions in ICC rates, which will be particularly dramatic in the case of rate-of-return carriers, represent a fundamental shift in the way carriers are compensated for the exchange of voice traffic. Accordingly, it adopted a nine-year transition path to account for the unique circumstances rate-of-return carriers face. To avoid the potential for further disruptions to carriers and consumers, the public interest dictates that such carriers be able to continue along this path so that they have time to make plans and appropriate adjustments, particularly if they are going to take on the added complexity of converting to price cap regulation as they transition to model-based support.

An additional incentive that may promote rate-of-return carriers' voluntary participation in CAF Phase II would be for the Commission to allow such carriers to remain in the NECA pool for special access, common line, and switched access services. Filing special access tariffs requires an extensive amount of work, time, and expertise. The same is true for ICC transition tariffs, including true-up adjustments to annual filings. The option for rate-of-return carriers to rely on NECA for their tariff filings can be hugely beneficial for such carriers and can reduce the strain on their internal resources. In addition, carriers who participate in the NECA tariff have protection from unexpected changes in future demand, as the pool can average out such changes. Thus, allowing rate-of-return carriers the option to utilize NECA's tariffing expertise and the benefit of pooling operations when they elect model-based support could be helpful in further minimizing any risk, uncertainty, or demand on internal resources should they pursue this path.

Finally, the Commission must ensure that any service obligations associated with the acceptance of CAF Phase II support by rate-of-return carriers are reasonable and take into account the unique characteristics of such carriers so as not to discourage them from opting into model-based support. Under the existing framework, price cap carriers receiving support pursuant to CAF Phase II will be subject to specific service obligations, including buildout benchmarks and adherence to certain broadband performance metrics. They also are subject to extensive reporting and certification requirements to demonstrate compliance with those obligations. While ITTA supports the notion that recipients of USF and CAF support must be held accountable for how they spend such funding, the Commission must ensure that any service and reporting obligations it adopts in connection with rate-of-return carriers' receipt of model-based support are properly calibrated to account for their particular circumstances and characteristics.

III. CONCLUSION

ITTA supports simple rule changes that would allow rate-of-return carriers to receive USF support for standalone broadband service. Such changes would promote the IP transition, be consistent with the Commission's goals of facilitating new broadband deployment in rural areas, and ensure that rural rate-of-return consumers are able to obtain broadband at rates that are affordable and reasonably comparable to those available in urban areas.

ITTA also believes that the Commission could facilitate rate-of-return carriers' voluntary participation in CAF Phase II, including through conversion to price cap regulation or other means, by adopting appropriate incentives that would provide the time, stability, and certainty necessary for rate-of-return carriers who opt to convert to price cap regulation or receive model-based support. Such incentives would include adopting a reasonable transition period in connection with receiving model-based support and/or converting to price cap regulation, allowing rate-of-return carriers to continue to implement ICC rate reductions pursuant to the timeline adopted in the *USF/ICC Transformation Order*, and ensuring that any service and reporting obligations tied to receipt of model-based support do not discourage rate-of-return carrier participation in CAF Phase II.

Respectfully submitted,

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June 17, 2013