itta
The voice of mid-size communications companies

November 19, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication: WC Docket No. 10-90

Dear Ms. Dortch:

On November 17, 2015, Bob DeBroux of TDS Telecom, Trey Judy of Hargray Communications, Greg Lunsford of Comporium, Ken Pfister of Great Plains Communications, Wendy Fast of the Consolidated Companies, Cheryl Parrino of Parrino Strategic Consulting Group, and Micah Caldwell and the undersigned of ITTA met with Carol Mattey, Suzanne Yelen, Katie King, and Steve Rosenberg of the Wireline Competition Bureau to discuss matters in the above-captioned proceeding.

The discussion focused on elements of proposed universal service reform for the rate-of-return (RoR) industry. ITTA stated its ongoing support for the Commission's efforts to reform current RoR USF support mechanisms consistent with oft-stated Commission goals. We expressed confidence that remaining open issues can be resolved in concert with industry such that the Commission can move forward expeditiously to adopt the reforms being contemplated for all RoR carriers. We discussed elements of the proposed voluntary model-based universal service support plan as well as reforms to current RoR USF support mechanisms under consideration by the Commission.

Non-Model USF Support Mechanisms

We urged the Commission, utilizing a bifurcated approach, to allocate costs between the old and new mechanisms based on gross plant. We pointed out that the net plant approach assumes that maintenance expenses decline as assets depreciate. The opposite is true however. Maintenance costs increase as plant ages and is more fully depreciated. Moreover, the net plant approach would impact company behavior in a manner that is not consistent with the Commission's goal of using universal service resources efficiently. Companies would be incentivized to invest more in outside plant and less in electronics that would extend the reach of broadband facilities. Relatedly, companies with antiquated circuit switching equipment would be faced with deciding whether to purchase less expensive, more efficient soft switches and have their support reduced or continue to use their existing switching equipment and pay more in maintenance costs. Thus, using net rather than gross plant

1101 Vermont Avenue NW, Suite 501 • Washington, DC 20005 • **tel** 202.898.1519 • **fax** 202.898.1589 • www.itta.us

would provide incentives that contravene the Commission's stated goal to bring broadband to as many currently unserved locations as possible under its limited budget.

With respect to phasing out of existing support mechanisms (i.e. HCLS, ICLS) over a fixed time period, we urged the Commission to adopt a flexible approach. RoR companies vary widely in their investment cycles, with some having just completed upgrades and others at various points in that process. A one-size-fits-all approach might be simpler to administer but it would unfairly penalize companies that have made more recent investments in their networks. ITTA suggests that, in connection with utilizing a gross plant allocation method, the Commission consider application of an appropriate "trigger" for each company to fully transition to the new mechanism.

Should the Commission decide to move forward with its proposal to eliminate support in study areas where there is 75% "overlap" by an unsubsidized competitor, ITTA urges the Commission to apply the 75% standard on a geographic (i.e. coverage), rather than location, basis.[1] Many of the study areas at issue are sparsely populated overall, but have population "pockets" within the study area in which many consumers reside. We pointed out that should the Commission decide to decrease support for competitive areas based on model-derived allocation of costs, it would be mandating the use of the model for some companies that do not believe it is accurate enough for this purpose. We further indicated, however, that to the extent the Commission moves forward with removing support from areas deemed competitive based on the 75% competitive overlap standard, it could use the model to establish a safe-harbor support reduction level while allowing companies the opportunity to demonstrate that a different level of support is appropriate.

We also discussed the importance of a challenge process to ensure that census blocks are eliminated from support only after there is verified evidence that unsubsidized competition is present throughout the census block. The mechanics of the challenge process utilized by the Commission in the recently completed "100% competitive overlap" proceeding are sound and that process can be employed to administer a 75% overlap standard so long as the FCC Form 477 data utilized to develop a preliminary list of ineligible study areas has first been fully "scrubbed" by the Commission.[2]

Finally, we discussed how the mechanism the Commission would employ to ensure that total funding does not exceed the RoR budget cap would work. The way this proposed mechanism is currently structured it would have the effect of raising the benchmark that determines which companies will get support and the level of that support. In fact, it would operate similarly to the way that the HCLS mechanism determined which companies received HCLS support and how much they got prior to the Commission's December 2014 order.[3] We urged the Commission to take into account

---

[1] Furthermore, to the extent the Commission moves forward with this proposal, it should only remove competitive support for costs recovered under the new mechanism.

[2] The Commission also may want to consider the adoption of financial penalties for false certifications by unsubsidized competitors, as has previously been proposed for the model-based plan.

[3] *See In re Connect America Fund, et al.*, WC Docket No. 10-90, Report and Order, FCC 14-190 (rel. Dec. 18, 2014) ("*December 2014 Order*").

the impacts of recreating the same unfortunate "race to the top" and "cliff effect" as did HCLS prior to the changes adopted in the Commission's December 2014 order.[4]

Model-Based Plan

We addressed the speed requirement that would apply to companies participating in the model-based plan. We suggested that the best way to implement a 25/3 Mbps speed standard – should the Commission decide to adopt it – would be by requiring participating companies to meet the requirement for a set percentage of fully-funded eligible locations by study area by the end of the 10-year term of the plan. Further, we urged the Commission to take into account a company's density in setting the percentage requirement. Specifically, we proposed that companies with density of more than 10 locations per square mile be required to build out at the 25/3 Mbps speed by the end of the 10-year term to 75% of all fully funded eligible locations in a study area and companies with density of 10 or less locations per square mile be required to build out at the 25/3 Mbps speed by the end of the 10-year term to 50% of all fully funded eligible locations in a study area.

We discussed how the build-out obligations for companies participating in the model-based plan would be set and discussed whether and how the current broadband build-out level of a participating company should be taken into account in determining participation in the plan. We discussed the consistency of that approach with the Commission's goal to use limited USF support dollars to bring broadband to the greatest number of currently unserved consumers in RoR areas. We understand that FCC Form 477 data could be used to identify where Fiber-to-the-Premises (FTTP) or cable modem technology is present. ITTA believes it would be helpful to the process if the Commission were to make available an illustrative run showing the impacts on model support where support is not provided in census blocks currently served by FTTP or cable modem technology.[5]

We also discussed the need for companies participating in the model-based plan to be afforded the same type of flexibility in meeting their deployment obligations as was granted price cap companies under the CAF II program.[6] Price cap companies were granted the flexibility to address differences between the cost model and the actual number of locations in a given area as well as a variety of unforeseen factors that could cause significant changes as a network is actually being deployed or the time needed to deploy a planned route.[7] RoR companies, at a minimum, require the

[4] The cliff is caused by the fact that the funding produced by the mechanism is capped and the method of enforcing the cap is to raise the cost-per-loop that a company has to experience to qualify for support. This, in turn, produces a race to the top, whereby companies invest more year over year relative to other companies in order to continue to receive support. If a company does not raise the level of its investments enough, it falls off the cliff and loses support.

[5] Further, it would be helpful if the Commission were to provide a "posted data set" reflecting this model run.

[6] *December 2014 Order* at ¶¶ 38-39.

[7] *Id*. at ¶ 38.

same degree of flexibility, particularly in light of the fact that the cost model that will be utilized was developed primarily for use with price cap companies.

Finally, we pointed out that the best way to address concerns regarding potential double recovery and administrative complexities would be to require companies opting to participate in the model-based plan to comply with the Commission's price cap rules for their special access services.[8]

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

Genevieve Morelli

Genevieve Morelli
President

cc: Carol Mattey
Suzanne Yelen
Katie King
Steve Rosenberg

[8] ITTA continues to advocate that ROR companies participating in the model-based plan remain on the intercarrier compensation transition plan in effect for RoR companies.