Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
	)	
	)	

COMMENTS OF
ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES

ITTA – The Voice of Mid-Size Communications Companies ("ITTA") hereby submits its comments in response to certain issues raised in the March 30, 2016 *Further Notice of Proposed Rulemaking* ("*FNPRM*") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[1]

I. EXCLUSION OF CERTAIN EXPENSES AND INVESTMENTS SHOULD BE PROSPECTIVE-ONLY AND ALLOW FOR FLEXIBILITY

In the *FNPRM*, the Commission notes that it has not comprehensively reviewed the reasonableness of its existing rules regarding permissible investments and expenses for local exchange carriers since passage of the 1996 Telecommunications Act.[2] It further notes that market and regulatory conditions have changed substantially since that time.[3] Thus, the Commission proposes to reevaluate the ability of rate-of-return carriers to include certain types of expenses and investment in their revenue requirement and high-cost support calculations as

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[1] *USF Reform Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, WC Docket No. 14-58 and CC Docket No. 01-92 (rel. Mar. 30, 2016) ("*FNPRM*").

[2] *FNPRM* at ¶ 327.

[3] *Id.*

well as the appropriate standard to apply for determining whether some or all of those expenditures should be included.[4]

ITTA believes that it is reasonable for the Commission to periodically review its rules and regulations and make adjustments as regulatory and market conditions change and supports the general approach outlined in the *FNPRM.* However, ITTA maintains that certain principles should apply to any rule changes adopted in response to the *FNPRM*. First, any rule changes adopted by the Commission that would exclude certain expenses or investments from a rate-of-return carrier's rate base and revenue requirement for universal service fund ("USF") or ratemaking purposes should be prospective only. The Commission should not consider applying any of these changes retroactively. Although the questions and policy issues raised regarding permissible expenses and investments are important to maintaining the overall integrity of the universal service program and the preservation of limited universal service funds, they do not rise to the level that the Commission should make an exception to its normal practice of implementing rule changes exclusively on a going-forward basis. Moreover, a prospective-only standard should apply not only to changes adopted in response to the *FNPRM*. It also should apply to the "list of expenditures" identified as not being recoverable through universal service support in the Commission's Oct. 19, 2015 *Public Notice*.[5]

Second, a general reasonableness and materiality standard should apply to any rule changes adopted by the Commission. Clear guidance and explicit rules regarding which expenses and investments will be excluded for ratemaking and universal service purposes are important so that carriers can properly manage their business expenditures and investments.

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[4] *Id. at* ¶¶ 339-344.

[5] *Universal Service High-Cost Support Must Be Used for Its Intended Purpose*, Public Notice, WC Docket No. 10-90, WC Docket No. 14-58 (rel. Oct. 19, 2015) at 2.

Although bright lines make it easier for the Commission, auditors and carriers to know what should be included and excluded, bright lines are not always appropriate or reasonable. For example, the *FNPRM* proposes to exclude from a carrier's interstate revenue requirement "corporate aircraft, watercraft, and other motor vehicles designed for off-road use" unless they are necessary to access inhabited portions of the study area that not reachable by travelling on roads.[6] While this proposal appears reasonable, it may not be so in all circumstances. As the Commission has noted on numerous occasions, there is great diversity amongst rate-of-return carriers and for some carriers watercraft or airplanes may be the most economic and efficient way to reach certain areas of their service territory. Moreover, rural carriers frequently deploy transport equipment such as microwave transmitters in unpopulated areas at the highest possible elevation.

Carriers should have the flexibility to demonstrate that specific expenditures and investments, although generally not appropriate, are reasonable and efficient in their particular circumstances. Moreover, the Commission should establish a materiality standard for use in audit and enforcement situations. If a carrier has inadvertently neglected to exclude a particular expense and the overall impact of failing to exclude the item is immaterial, the carrier should not be subject to penalties or enforcement action. It would not be a wise or efficient use of Commission or Universal Service Administrative Company ("USAC") resources to enforce the rule in those circumstances.

The Commission proposes that any expenses and investments (other than those excluded due to limits on total operating expenditures) that are excluded from universal service support

[6] *FNPRM* at ¶ 342.

should also be excluded from a carrier's interstate revenue requirement.[7] ITTA agrees with this proposal. It is both reasonable and practical since it eliminates the burden on carriers of keeping separate sets of books for ratemaking and universal service support calculations. It bears noting, however, this proposal would have little effect on carriers that choose to participate in the model-based support plan, since model-based universal service support is not dependent on actual costs and instead is based on the average monthly forward-looking economic costs of maintaining a modern and efficient network.[8] ITTA understands, however, that if the Commission decides to apply these exclusions to the interstate revenue requirement, the special access rates for those rate-of-return carriers that elect model-based support would be impacted.

II. ADOPTION OF CLEAR, EXPLICIT RULES IS THE BEST MEANS TO ENSURE COMPLIANCE

The *FNPRM* also seeks comment on the most effective way to ensure compliance with the proposed rules; specifically, whether carriers should be required to certify that they have not included any prohibited expenses in their cost submissions used to calculate high-cost support.[9] ITTA believes that the best way to ensure compliance is not for the Commission to impose new certification requirements, but rather to adopt rules that are clear and explicit. As the Commission itself acknowledges, most rate-of-return carriers today properly record their costs and seek support only for the intended purposes,[10] even though current rules are arguably too vague and general. Amending the current rules to more clearly spell out the circumstances under which expenses and investments should be excluded is all that is necessary. This is especially true given that mechanisms for enforcement of the Commission's ratemaking and USF rules are

[7] *Id*. at ¶ 341.

[8] *See USF Reform Order*, WC Docket No. 10-90, WC Docket No. 14-58 and CC Docket No. 01-92 (rel. Mar, 30, 2016) at ¶ 59.

[9] *FNPRM* at ¶ 360.

[10] *Id*. at ¶ 330.

already in place. Moreover, adoption of a new, unnecessary certification requirement would impose an additional administrative burden on smaller companies with limited resources.

III. ETC ANNUAL REPORTING REQUIREMENTS SHOULD BE ELIMINATED

The *FNPRM* seeks comment on a proposal to eliminate five sets of ETC annual reporting requirements relating to service quality.[11] ITTA supports Commission efforts to eliminate unnecessary paperwork and to streamline its regulations wherever possible. Specifically, ITTA endorses elimination of the five sets of reporting requirements identified in the *FNPRM*.[12] These five reports are no longer necessary as the information they contain is either collected on other forms or the Commission has established new reporting requirements that will provide better information, as in the case of broadband deployment. ITTA also supports an ongoing review of whether to streamline and eliminate other requirements that are no longer necessary given action by the Commission or current market conditions. Reporting requirements are costly and impose significant burdens on small carriers. To the extent that reports are no longer used or useful they should be eliminated so that carriers can deploy their limited resources to better serve their customers.

Respectfully submitted,

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[11] *Id*. at ¶ 388.

[12] *Id*.