Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Connect America Fund	)	**WC Docket No. 10-90**
	)	
ETC Annual Reports and Certifications	)	**WC Docket No. 14-58**
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	**WC Docket No. 07-135**
	)	
Developing a Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**

COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking seeking comment on establishing a budget that will allow for robust broadband deployment in high-cost areas served by rate-of-return companies, as well as on additional reforms to increase broadband deployment to unserved and underserved consumers while promoting the efficient use of limited resources.[1]

I. INTRODUCTION AND SUMMARY

In Section 276 of the Telecommunications Act of 1996, Congress enunciated the national policy of encouraging the deployment of advanced telecommunications capability *to all Americans*.[2] In 2009, Congress reiterated that the national broadband plan it directed the

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[1] *Connect America Fund et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (*2018 Rate-of-Return Order and/or Budget NPRM*).

[2] *See* 47 U.S.C. § 1302 (codifying, within Title 47 of the United States Code, Section 706 of the Telecommunications Act of 1996 (1996 Act)).

Commission to develop was to ensure that "all people of the United States" have access to broadband capability.[3] It has been over 22 years since broadband deployment to "all Americans" was a goal enshrined in law, and over nine years since Congress reiterated the policy that no person of the United States should be stranded on the wrong side of the digital divide.

In the National Broadband Plan, the Commission established as the "National Broadband Availability Target" that "[e]very household and business location in America should have access to affordable broadband service."[4] In the first address of his chairmanship, Chairman Pai twice invoked the goal: "[O]ne of this agency's top priorities [is] bringing broadband to all Americans. . . . We must work to bring the benefits of the digital age to all Americans."[5] Reflecting on this address, Chairman Pai later elaborated:

> Since my first day as Chairman of the FCC, I've said repeatedly that my number one priority is closing the digital divide and bringing the benefits of the Internet age to all Americans.
>
> The FCC's founding statute charges my agency with making communications services, "available, so far as possible, to all the people of the United States." Communications for all—which in 2017 means Broadband for All—is the main reason my agency exists.
>
> That's what the law says. But here's what I believe: Every American who wants to participate in our digital economy should be able to do so. Access to online opportunity shouldn't depend on who you are or where you're from.[6]

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[3] American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, § (6001)(k)(2)(D), 123 Stat. 115, 516 (2009).

[4] FCC, Connecting America: The National Broadband Plan at 135 (Mar. 17, 2010), https://www.fcc.gov/general/national-broadband-plan (National Broadband Plan).

[5] Ajit Pai, Chairman, Fed. Communications Comm'n, Remarks to Federal Communications Commission 1-2 (Jan. 24, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-343184A1.pdf.

[6] Ajit Pai, Chairman, Fed. Communications Comm'n, Remarks at "Broadband for All" Seminar 2 (June 26, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-345512A1.pdf. *See also, e.g.*, Statement of Ajit Pai, Chairman, Fed. Communications Comm'n, Hearing on the Fiscal Year 2019 Funding Request and Budget Justification for the Federal Communications Commission and the Federal Trade Commission: Before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. Senate 1 (May 17, 2018), https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0517/DOC-350761A1.pdf

(continued…)

Nevertheless, it is no secret that the goal of achieving broadband deployment throughout rural America remains a challenge. Overall, over one-quarter of rural Americans lack access to the Commission's advanced telecommunications capability benchmark of 25 Mbps downstream/3 Mbps upstream (25/3 Mbps).[7] More specifically, in areas served by rate-of-return carriers, over one-third of housing units lack access to 25/3 Mbps.[8]

As Chairman Pai has acknowledged, "time is not on the side of rural Americans."[9] In the 21st century, broadband access is patently critical to economic, educational, civic, and social well-being. Broadband has unleashed new capabilities in delivering health care, educating children and adults, promoting public safety, and managing other industries, such as agriculture and energy. It has enabled and will continue to enable the birth of entire new industries, in the

(Continued from previous page)
(emphasis added) ("the FCC will continue to focus on expanding high-speed broadband access throughout the United States and bringing what I call 'digital opportunity' to *every* American"); Ajit Pai, Chairman, Fed. Communications Comm'n, Remarks at the Symposium on "The Future of Speech Online" 3 (Sept. 15, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0915/DOC-346747A1.pdf (emphasis added) ("the FCC's central mission under my chairmanship . . . [is] extending digital opportunity to *every* American").

[7] *See, e.g.*, Letter from Chairman Ajit Pai, FCC, to Senator Jerry Moran (July 18, 2017) (characterizing the fact that over one-quarter of rural Americans lack access to fixed high-speed broadband at home as "unacceptable," and stating that "all Americans should have the opportunity to participate in the digital economy—that's why bridging the digital divide is the FCC's top priority"); Letter from Chairman Ajit Pai, FCC, to Congressman Sam Graves (July 18, 2017) ("my highest priority [is] making sure every American who wants Internet access can get it . . . [but] if you live in rural America, there's a better than 1-in-4 chance that you lack access to fixed high-speed broadband at home . . . . The bottom line is this: Rural Americans deserve the same digital access as those living in more urban areas.").

[8] *See 2018 Rate-of-Return Order* at 2, para. 1.

[9] Letter from Chairman Ajit Pai, FCC, to Senator Roy Blount (June 16, 2017) ("The business case for stand-alone broadband [previously] didn't exist for some rural telephone companies . . . . I wish I could tell you that the FCC has fixed this problem. But as your letter rightly points out, we have not. . . . [T]ime is not on the side of rural Americans.").

process creating new jobs. It facilitates the vast sharing of knowledge and has spawned a "sharing economy." It fosters connections among family and communities.[10]

All of these benefits of broadband, however, are only available to those who have access. As the Commission recently observed, "as important as these benefits are in America's cities, they can be even more important in America's more remote small towns, rural, and insular areas. Rural Americans deserve to reap the benefits of the internet and participate in the 21st century society—not run the risk of falling yet further behind."[11] The Commission thus recognized that, by improving access to broadband, it can help provide individuals living in rural America with the same opportunities that those in urban areas enjoy.[12]

In fact, the first two sentences of the *2018 Rate-of-Return Order* contain the Commission's avowal that the federal universal service fund (USF), via its high-cost support program, *must* promote broadband access in rural America:

> Universal service can—and must—play a critical role in helping to bridge the digital divide to ensure that rural America is not left behind as broadband services are deployed. The directive articulated by the Commission in 2011 remains as true today as it did then: "The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access."[13]

Not only is the deployment of broadband to unserved and underserved areas, fostered by high-cost support, essential to bringing the benefits of 21st century connectivity to Americans living in rural areas, it also is fundamental to the Commission's ability to leverage its other universal service programs to connect schools and libraries and rural health care facilities, and to make

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[10] *See 2018 Rate-of-Return Order* at 3, para. 2.

[11] *Id.*

[12] *See id.*

[13] *Id.* at 2, para. 1 (citing *Connect America Fund et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17668, para. 5 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014)).

affordable broadband available to low-income Americans living in high-cost areas. In this regard, high-cost support is the foundational USF program from which the other USF programs pivot.[14] As such, in order for all four USF programs to accrue to the benefit of the Americans they are designed for, it is absolutely essential that the Commission adequately fund high-cost support to promote deployment of broadband to unserved and underserved rural areas.

ITTA's membership is composed of rate-of-return carriers that elected to receive model-based support via the A-CAM program (A-CAM carriers) and rate-of-return carriers receiving high-cost support based on legacy mechanisms (legacy carriers), as well as price cap carriers. ITTA played a leading role in devising the model-based support mechanism for rate-of-return carriers as well as in proposing and promoting changes to legacy rate-of-return support mechanisms. ITTA is gratified that, in the *2018 Rate-of-Return Order*, the Commission provided a desperately needed infusion of funds to eliminate the effect of the budget control mechanism on legacy carriers for the current budget year.[15] However, ITTA remains disappointed that, notwithstanding acknowledging in the *2018 Rate-of-Return Order* the

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[14] *See, e.g.*, Press Release, VA-NF/SGVHS, FCC Chairman Visits Lecanto CBOC for Demonstration of VA Telehealth Capabilities (May 7, 2018), https://www.northflorida.va.gov/NORTHFLORIDA/pressreleases/FCC_Chairman_Visits_Lecanto_CBOC.pdf (describing Chairman Pai's visit to the Veterans Administration's Lecanto, FL community based outpatient clinic) ("According to Pai, visiting Lecanto and gaining an understanding of both the successes associated with marrying telehealth technology to broadband access as well as the challenges associated with delivery helps him more easily convey to the public, government and industry the value of commitment to invest more heavily into rural areas.") *See also, e.g., High Cost Universal Service Support; Federal-State Joint Board on Universal Service; Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4087, para. 27 (2010) ("[W]hile the basic purpose of high-cost support is to ensure that telephone service is not prohibitively expensive for consumers in rural, insular, and high-cost areas, some consumers in those areas will still need additional assistance due to their low household income. Low-income support, provided through the Lifeline and Link-up programs, supplements high-cost support in those circumstances to remove the additional affordability barriers . . . .").

[15] *See 2018 Rate-of-Return Order* at 35-36, paras. 77-82.

significant consumer benefits of the A-CAM program and the widespread political support for an increase in A-CAM program funding to $200/month per eligible location,[16] the Commission merely provided additional funding up to $146.10 per month per eligible location for carriers participating in the plan, rather than the "full" $200 per month per eligible location that was amply warranted.[17]

With the six-year high-cost program budget established in the *USF/ICC Transformation Order* now expired,[18] the instant NPRM presents the Commission with the opportunity to adjust its high-cost program budget both for A-CAM carriers and legacy carriers to render both of these mechanisms successes and to take concrete, significant steps towards realizing the policy goal dictated by Congress of broadband deployment to all Americans. Simply stated, the need for adequate funding for all rate-of-return carriers is paramount; carriers on both paths are hindered from achieving their full deployment and service potential due to a lack thereof. Although the Commission in the *2018 Rate-of-Return Order* eliminated the effect of the budget control mechanism on legacy carriers for the current budget year, doing so was a stopgap measure that does not address the lack of specific and predictable high-cost support for legacy carriers after the current budget year concludes at the end of June 2018.[19] Moreover, when the Commission

[16] *See id.* at 31, para. 67 & nn.223-24.

[17] *See Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC 3087, 3107, para. 52 (2016) (*Rate-of-Return Reform Order*) ("Even though the locations at or above the funding cap are not 'fully funded' with model support, carriers will receive a significant amount of funding – specifically, $200 per month for each of the capped locations – which will permit them to maintain existing voice service and expand broadband in these highest-cost areas to a defined number of locations").

[18] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 123.

[19] *See 2018 Rate-of-Return Order and Budget NPRM* at 3, para. 3 ("we seek to offer greater certainty and predictability to rate-of-return carriers").

did not fund the A-CAM program at up to $200 per location, it stranded tens of thousands of rural consumers who otherwise would have received service as a result of such funding.

If the Commission wishes to achieve success in implementing the deployment policy goal established by Congress and affirmed time and time again by the Commission over the past decade, the time is now to support its sentiments with dollars and cents. Indeed, in the *2018 Rate-of-Return Order and Budget NPRM* the Commission professes to endorse this objective: "It is time to close [the urban-rural deployment] gap and ensure that all of those living in rural America have the high-speed broadband they need to participate fully in the digital economy."[20]

To help effectuate this objective, the Commission must fully fund the legacy mechanism and provide A-CAM program carriers with funding up to $200/month per eligible location.[21] While both mechanisms merit such funding, they should each be evaluated based on their own bona fides via separate budgets. Such funding of their separate budgets will, in reality, have a minimal impact on consumers' bills.

Moreover, because the other three USF programs rely on the extension of high-speed networks with the assistance of high-cost program support, the public interest benefits of such funding of the A-CAM and legacy mechanisms will multiply beyond the already considerable value accrued from deploying broadband to currently unserved and underserved rural locations.[22] Similarly, to enhance the specificity and predictability of each mechanism's budget, the Commission also should address the variable Connect America Fund intercarrier compensation (CAF ICC) budget separately from the two mechanisms' budgets.

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[20] *Id.* at 2-3, para. 1.

[21] As noted elsewhere herein, $200/month per eligible location is not "full funding" of the A-CAM program. *See, e.g., infra* Sec. II.C.2.

[22] Consistent with other USF programs, the legacy budget should be subject to annual index-based increases so that the mechanisms are not diluted by the loss of real dollars due to inflation.

In order to create additional incentives to bring broadband to the areas that need it most,[23] once the Commission has provided current A-CAM participants with $200/month per eligible location and fully funded the legacy mechanisms, it should render a second A-CAM offer.[24] This second offer should be open to all rate-of-return carriers, i.e., those who would receive more support from model-based mechanisms as compared to legacy mechanisms, as well as those who would receive less. Doing so would promote the Commission's avowed interest in facilitating more carriers moving towards incentive-based regulation.[25]

In light of the success of the original A-CAM offer, in almost all respects the second offer should mirror the terms and procedures applicable to the initial A-CAM offer. However, in order to promote deployment to the hardest-to-reach unserved or underserved areas of a carrier's service territory, which will ensure that these locations do not get left behind, the Commission also should open the second A-CAM offer to carriers serving census blocks where there's already some fiber deployment in part of the census block, in addition to carriers having deployed 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) to at least 90 percent of their eligible locations.

The Commission should also adopt additional measures to stabilize legacy mechanisms. In a further effort to provide much needed specificity and predictability to legacy mechanisms, the Commission should provide legacy carriers a threshold level of support that is not subject to the budget control mechanism. ITTA urges that this threshold be established at 80 percent of a

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[23] *See id.* at 3, para. 3.

[24] However, the Commission should not initiate a second A-CAM offer until it has fully funded the legacy mechanisms and provided current A-CAM participants with $200/month per eligible location.

[25] *See, e.g., Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Notice of Proposed Rulemaking, FCC 18-46, at 2-5, paras. 1-6 (Apr. 18, 2018) (*Model-Based Rate-of-Return Carrier Business Data Services NPRM*) (proposing, *inter alia*, to allow A-CAM carriers to voluntarily migrate their lower-speed business data services offerings to incentive regulation).

carrier's unconstrained support claims over the preceding three years, beginning with claims for 2017. The Commission also should eliminate its current limitation on per-location capital expenditures by legacy carriers using high-cost support. Adopting such measures would provide a reasonable predicate to the Commission creating additional incentives for legacy carrier broadband deployment through revised deployment obligations.

II. THE COMMISSION SHOULD FULLY FUND SEPARATE BUDGETS FOR A-CAM PROGRAM AND LEGACY SUPPORT MECHANISMS

A. The Commission Should Establish Separate A-CAM and Legacy Support Budgets

The *Budget NPRM* seeks comment on whether the Commission should establish a separate budget for legacy mechanisms.[26] ITTA believes that the Commission should designate separate budgets for the A-CAM program and legacy mechanisms. The Commission previously acknowledged that difficulties could be presented when funding two separate mechanisms from one budget, when it sought comment in the *April 2014 Connect America FNPRM* on the impact of adopting the A-CAM mechanism on the overall budget for rate-of-return areas and whether adoption of the A-CAM plan "would have the effect of squeezing the budget available for carriers that do not opt into the plan."[27] In contrast, having separate budgets will enable proponents of the two support mechanisms to focus on how best to efficiently maximize broadband deployment under each paradigm. Both programs are meritorious in promoting and sustaining broadband deployment in high-cost rural areas, and therefore each should be afforded a budget analysis on its own bona fides without regard to the other. Similarly, maintaining separate budgets will allow the Commission in future budget cycles to establish the budget for

[26] *See Budget NPRM* at 45, para. 109.

[27] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3111, para. 60 n.131 (citing *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7143, para. 289 (2014) (*April 2014 Connect America FNPRM*)).

each support mechanism on its own merits rather than involving the proponents of one support mechanism in the other's budgetary considerations.

B. The Commission Should Evaluate Sums Required for CAF ICC Support Separate from the Budgets for the A-CAM Program and Legacy Mechanisms

Currently, the Commission allocates rate-of-return carrier support by subtracting from the overall rate-of-return high-cost budget the funding requirements for the A-CAM program, Alaska Plan, and CAF ICC support, with the remainder allocated towards legacy mechanisms.[28] CAF ICC amounts paid to carriers under both the A-CAM and legacy mechanisms vary annually.[29] Because ITTA advocates that the Commission adopt separate budgets for the A-CAM and legacy mechanisms, budgeting for CAF ICC would no longer be simply a matter of subtracting CAF ICC from a single rate-of-return budget.[30] In light of this, ITTA urges that the Commission administer CAF ICC outside of the two "high cost" budgets. The Commission should still collect via USF contribution mechanisms sufficient amounts to cover projected CAF ICC funding requirements, but distribute CAF ICC funding as appropriate without regard to the separate budgets applicable to the A-CAM and legacy mechanisms.

In this regard, the Commission could conceptualize rate-of-return carrier CAF ICC funding as an exogenous support adjustment. This would be consistent with the Commission's treatment of exogenous cost adjustments in the price cap context, which are designed to prevent a carrier's revenue loss due to factors outside the carrier's control that are not already accounted

[28] *See Budget NPRM* at 43-44, para. 105; *see also Rate-of-Return Reform Order*, 31 FCC Rcd at 3143-44, para. 149.

[29] *See, e.g., Rate-of-Return Reform Order*, 31 FCC Rcd at 3144, 3161-62, paras. 149, 199-204.

[30] *Contra Budget NPRM* at 45, para. 110 (seeking comment on whether the amount of support available for legacy mechanisms should continue to be calculated by subtracting A-CAM, Alaska Plan, and CAF ICC support from a single rate-of-return budget).

for in the revenues it accrues via rates.[31] It would also be consistent with the underlying purpose of CAF ICC support "to mitigate the impact of reduced ICC revenues on carriers and to facilitate continued investment in broadband infrastructure while providing greater certainty and predictability going forward."[32] Maintaining specific and predictable separate budgets for the A-CAM and legacy mechanisms will facilitate continued investment in broadband deployment, which would be compromised by subjecting those budgets to the vagaries of a recovery mechanism that is intended to mitigate the impact of reduced ICC revenues.

C. In Order to Promote Congress' Goal of Broadband for All Americans, the Commission Must "Fully Fund" the Legacy Mechanisms and the Current A-CAM Program

As discussed above, Congress dictated in the 1996 Act, and the Commission has consistently reaffirmed, that the national broadband policy goal is deployment to all Americans. An infrastructure investment of many tens of billions of dollars will be required in order to realize this goal. However, substantial steps towards meeting this objective can be taken through a modest percentage of that sum, with minimal impacts on consumers' bills. These steps may be achieved through fully funding the legacy mechanisms and funding the A-CAM program at $200/month per eligible location, and maintaining the legacy mechanisms budget through annual inflationary adjustments. As matters of a statutory directive as well as sound policy, the Commission must do so.

1. Full Funding for Legacy Mechanisms

In initiating its rate-of-return budget review in the *Budget NPRM*, the Commission appropriately hearkened back to the requirements in Section 254 of the Communications Act of

[31] *See, e.g., Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, 3599-3600, Appx. B, Productivity-Based X-Factor and Catch-Up Adjustments for Price Cap Business Data Services, para. 3 & n.7 (2017).

[32] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3161, para. 199.

1934, as amended (the Act), that universal service support be "predictable and sufficient . . . to preserve and advance universal services."[33] Unfortunately, application of the budget control mechanism has had precisely the opposite effect on legacy carriers. During this budget year, legacy carriers suffered on average a 13 percent reduction in support, with large variations between states and carriers.[34] In eliminating the effect of the budget control mechanism for the current budget year, the Commission found that "such large and variable reductions in support have made support not sufficiently 'predictable' for affected rate-of-return carriers to engage in the long-term planning for the high-speed broadband deployment needed in rural America."[35] For the next budget year, this reduction will escalate to over 15 percent, prompting Chairman Pai to similarly observe that, contrary to the Act's requirements of "predictable and sufficient" support, the budget control mechanism "has created constant uncertainty for small, rural carriers, endangering their ability to make long-term investment decisions to bring high-speed broadband to the millions of Americans who still lack it."[36] In the *2018 Rate-of-Return Order*, the Commission also endorsed the claim that support reductions due to the budget control

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[33] *2018 Rate-of-Return Order and/or Budget NPRM* at 45, para. 109 (citing 47 U.S.C. § 254(b)(5), which also requires that support be "specific").

[34] *See id.* at 35, para. 78.

[35] *Id.* at 36, para. 81; *see also id.* at paras. 80-81 (agreeing with, *inter alia*, ITTA's concerns regarding the insufficiency of the budget (citing Comments of ITTA, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 2 (Aug. 15, 2016)).

[36] Press Release, FCC, Statement of Chairman Ajit Pai on Projected USF Budget Cuts for Small, Rural Carriers (May 1, 2018), https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0501/DOC-350513A1.pdf; *see also* Letter from 130 Members of U.S. House of Representatives to Chairman Ajit Pai, FCC, at 1 (May 15, 2018) (130 House of Representatives Members Letter) (asserting the "fact" that high-cost support "has been and remains insufficient" and that "[t]his persistent insufficiency is affecting the ability of smaller rural broadband providers to effectively deliver broadband services in the most rural areas of America").

mechanism "endanger legacy carriers' ability to offer service at reasonably comparable rates,"[37] which contravenes Section 254(b)(3) of the Act.[38]

It is therefore indubitable that the Commission must, pursuant to the statute's requirements as well as sound policy, take decisive action to address the effects of the budget control mechanism beyond the current budget year. This proceeding, where the Commission is taking a fresh look at the high-cost budget for rate-of-return carriers, presents the Commission the opportunity to do so. Specifically, going forward the Commission must fund the legacy mechanisms such that there is no reduction due to the budget control mechanism. In the *2018 Rate-of-Return Order*, the Commission adopted numerous reforms to ensure that high-cost support is used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended pursuant to Section 254(e) of the Act.[39] Buttressed by these measures, which will help to ensure that legacy carrier support is spent efficiently on extension and maintenance of broadband networks in unserved and underserved areas, the Commission must allocate sufficient funding to legacy carriers such that the budget control mechanism is not triggered.

Notably, fully funding the legacy mechanisms would lead to a minimal impact on ratepayers. Using the approximate $180 million dollar impact of implementation of the budget control mechanism during the current budget year as a proxy,[40] it is estimated that fully funding

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[37] *2018 Rate-of-Return Order* at 35-36, para. 79.

[38] *See* 47 U.S.C. § 254(b)(3) (requiring that consumers in rural, insular, and high-cost areas have access to telecommunications and advanced telecommunications and information services "that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas").

[39] *See 2018 Rate-of-Return Order and Budget NPRM* at 5-22, Sec. III.A.1. (citing 47 U.S.C. § 254(e)).

[40] *See id.* at 35, para. 78.

the legacy mechanisms would add a mere six cents to the average monthly USF contribution for a residential household.[41]

In the *Budget NPRM*, the Commission proposes, after setting a new initial budget, to increase that budget for inflation going forward. The Commission also proposes to use GDP-CPI for the inflationary factor.[42] ITTA supports both proposals.

As the Commission suggests, adjusting the legacy budget for inflation would allow carriers an opportunity to recover increases in the costs of network inputs.[43] Increasing the budget to account for inflation recognizes the actuality that without such an adjustment, the *real* dollars allocated for broadband via the legacy program budget decrease. The Commission has acted upon this reality in other USF contexts, and implementing inflationary adjustments would put the legacy budget on par with other USF programs that are afforded the opportunity to maintain their budgets through such increases.[44] In fact, the Commission previously adjusted the annual funding cap for the high-cost loop support (HCLS) mechanism based on an inflationary factor.[45]

In addition, using GDP-CPI as the inflationary factor not only would be administratively efficient,[46] it also would be consistent with its usage by the Commission in numerous other

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[41] *See id.* at 46, para. 112 (seeking comment on the benefits of an increased budget relative to the effect on ratepayers).

[42] *See id.* at 46-47, paras. 114-15.

[43] *See id.* at 46, para. 114.

[44] *See, e.g., Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, Sixth Report and Order, 25 FCC Rcd 18762, 18780-83, paras. 35-40 (2010) (*E-rate Sixth Report and Order*) (adopting an inflationary adjustment for the E-rate budget). In adopting this adjustment, the Commission found that "[i]ndexing the cap to inflation will ensure that the program maintains its current purchasing power in today's dollars without significantly increasing the fund and raising the contribution factor." *Id.* at 18781, para. 36.

[45] *See id.* at 18782, para. 39.

[46] *See 2018 Rate-of-Return Order and Budget NPRM* at 46, para. 115; *see also id.* at 37, para. 85.

contexts. In the *2018 Rate-of-Return Order* itself, the Commission reconsidered how the operating expense limitation is calculated to add GDP-CPI as an adjustment factor.[47] The Commission also has used GDP-CPI in its HCLS calculations,[48] and uses GDP-CPI as the E-rate inflation factor.[49]

Finally, the Commission should take cognizance that conversion of consumers to consumer broadband-only loops (CBOLs) will have an impact on funding requirements as costs increasingly shift to the interstate jurisdiction. Therefore, the Commission should consider also adopting a broadband transition factor to address the future funding demands resulting from the continuing migration of consumers to CBOLs.[50]

2. Further Funding for Current A-CAM Participants

The Commission must fund the A-CAM mechanism at $200/month per eligible location for carriers that accepted the original A-CAM offer, as revised.[51] There is ample justification for the Commission to allocate sufficient additional funding for existing A-CAM plan participants so

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[47] *See id.* at 37, para. 85.

[48] *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3130, para. 110 n.236.

[49] *See E-rate Sixth Report and Order*, 25 FCC Rcd at 18782, para. 39.

[50] While the Commission did recognize in the *Rate-of-Return Reform Order* that a migration of end users to CBOLs could lead to an increase in CAF ICC support, the Commission addressed that potential unintended increase by requiring that rate-of-return carriers impute an amount equal to the Access Recovery Charge (ARC) they assess on voice/broadband lines to their supported CBOLs. *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3161-62, para. 203; *see also Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Second Order on Reconsideration and Clarification, FCC 18-13, at 5-6, paras. 14-18 (Feb. 16, 2018) (adjusting the ARC imputation calculation so that the total ARC revenues and imputation for the current tariff period will not exceed a pre-*Rate-of-Return Reform Order* baseline as a result of CBOL imputation). In any event, CAF ICC support is designed to offset lost revenues as a result of ICC reform. In contrast, the proposed broadband transition factor would be intended to address increased USF funding demands resulting from the migration of consumers to CBOLs.

[51] *See Budget NPRM* at 45, 53, paras. 110, 142-43 (seeking comment on whether the Commission should fund the original A-CAM offer for all existing A-CAM providers using a $200 per-location funding cap).

that they receive up to $200 per month per eligible location. It is important to note that an increase in funding to a cap of $200/month is not "full funding" for current A-CAM plan recipients, as many of these companies serve locations where model costs are well above this level, and A-CAM companies will not be able to serve all eligible locations at that funding level.[52] Thus, true "full funding" would require many more universal service dollars than those currently under consideration in the *Budget NPRM*. However, raising the funding cap to $200/month per eligible location will allow A-CAM companies to bring broadband to many thousands of additional rural consumers.

The *Rate-of-Return Reform Order* initiated the A-CAM program, a voluntary path for rate-of-return carriers to elect to receive model-based support via the A-CAM in exchange for a commitment to extend broadband service to a defined number of eligible locations. There, the Commission recognized that while $200 per month per eligible location was not "full funding" and would not extend broadband to every unserved or underserved location in eligible census blocks, that amount properly balanced budget limitations with providing a "significant amount of funding" that would enable carriers "to maintain existing voice service and expand broadband in these highest-cost areas to a defined number of locations."[53] The linchpin of the A-CAM mechanism is a *quid pro quo* of specific and predictable high-cost support in return for specific and predictable broadband deployment obligations.

While seeking comment on what additional deployment commitments may be appropriate if the Commission authorizes additional support for currently authorized A-CAM

[52] Moreover, many of the locations that will be funded will be at 10/1 Mbps or 4 Mbps downstream/1 Mbps upstream, which in many cases is not comparable to service provided in urban areas.

[53] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3107, para. 52; *see also, e.g., id.* at 3098-99, 3100, 3104, paras. 26, 29, 42.

recipients,[54] the *Budget NPRM* appears to answer the question by stating that if the Commission were to move forward with a $200/month per eligible location offer, carriers accepting it would be subject to the original deployment obligations.[55] ITTA endorses that stipulation, as it did for well over a year leading up to adoption of the *2018 Rate-of-Return Order and Budget NPRM*.[56] Thus, as the Commission recognizes, increasing A-CAM support will lead to a significant corresponding increase in broadband deployment to unserved and underserved consumers across rural America.[57] ITTA estimates that funding currently authorized A-CAM recipients at up to $200/month per eligible location will result in broadband deployment of at least 10/1 Mbps to approximately 40,000 additional unserved or underserved locations.[58]

Moreover, importantly, increasing the A-CAM budget to $200/month per eligible location would have a de minimis impact on consumers who pay into the USF program. An additional estimated $66.6 million in annual support over the 10 years of the program would be needed if all current A-CAM companies were to accept an offer of increased funding up to $200/month per eligible location.[59] Should the Commission have made such a determination last

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[54] *See Budget NPRM* at 53, para. 142.

[55] *See id.* at para. 143.

[56] *See, e.g.*, ITTA Comments, WC Docket No. 10-90, at 3 (Feb. 13, 2017) (ITTA *A-CAM Budget FNPRM* Comments). In the order in which the Commission allocated an additional $50 million to the A-CAM budget and revised the original A-CAM offers, the Commission conditioned the revised offer of A-CAM support upon a requirement that carriers electing the revised offer agree to meet the terms of the original offer if the Commission fully funded the original offers in 2017. *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775, 13775, para. 2 (2016) (*A-CAM Budget Order and FNPRM*).

[57] *See 2018 Rate-of-Return Order and Budget NPRM* at 53, para. 143.

[58] *See id.* at 46, para. 113 (asking commenters to quantify how much additional broadband deployment could occur with any budget increase).

[59] *See id.* at 53, para. 143.

year, the average monthly contribution for a residential household would have increased from $2.68 to $2.70 – a mere two cents.[60]

Increasing A-CAM support also will lead to other efficiencies. For instance, the actual deployment return will outweigh the incremental investment, insofar as build-out to A-CAM funded locations will actually lead collaterally to increased speeds for underserved and other locations that are passed in the course of build-out to funded locations, *without such collateral deployment costing the USF an additional penny*.[61] Furthermore, as discussed above,[62] because high-cost support is the foundational USF program from which the other USF programs pivot, insofar as it funds the extension of high-speed networks, the deployment that increased A-CAM funding will lead to is a predicate to the fulfillment of other universal service goals, such as closure of the "homework gap."

Hewing to the statutory directive of specific and predictable support combined with measurable deployment obligations and efficiencies abounding as described, the benefits of increasing funding to existing A-CAM plan participants are manifest. As the Commission recounts, there is "ample support" in the record for doing so,[63] with over five dozen members of Congress and state government officials, as well as scores of carriers, having endorsed sufficient A-CAM funding in the record of this proceeding.[64] Furthermore, with such funding, "these

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[60] *See* Comments of the Nebraska A-CAM Companies, WC Docket Nos. 10-90, 14-58, 07-135; CC Docket No. 01-92, at 8-9 (filed May 25, 2018); *see also supra* note 41.

[61] *See* ITTA *A-CAM Budget FNPRM* Comments at 4.

[62] *See supra* at 4-5.

[63] *2018 Rate-of-Return Order* at 31, para. 67.

[64] Recently, nearly 200 members of Congress lamented the effects of not funding the A-CAM plan at up to $200/month per eligible location, as well as legacy mechanisms. *See* Letter from 63 U.S. Senators to Chairman Ajit Pai, FCC, at 1 (May 15, 2018) ("The FCC's cost model for smaller operators electing model-based USF support is not yet funded at the designed levels" of $200 per location); 130 House of Representatives Members Letter at 1 ("the FCC's cost model for smaller operators is still not funded at the levels as designed").

parties have made clear the economic, educational, and healthcare benefits that will directly follow."[65] The *Budget NPRM* also acknowledges that "[p]roviding full funding for the original A-CAM recipients would accelerate broadband deployment in those rural areas for which rate-of-return carriers accepted the first A-CAM offer."[66] Notably, since the Commission recognized that the demand for subscription to the A-CAM plan exceeded the initial budget it set forth, *not a single entity has opposed sufficient funding for the A-CAM plan*.[67]

Twice the Commission has seen fit to incrementally increase the current A-CAM budget.[68] Both times, while recognizing the clear public interest benefits of the A-CAM program, it cited budgetary limitations in declining to go further.[69] In this proceeding, the Commission is taking a fresh look at the high-cost budget for rate-of-return carriers. Evaluating the A-CAM program budget separately on its own merits, as the Commission should, there no longer is any credible justification for failing to fund the current A-CAM recipients at up to $200/month per eligible location. This proceeding presents the Commission the opportunity to allocate the A-CAM program funding that it already should have by now.

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[65] *2018 Rate-of-Return Order and Budget NPRM* at 31, para. 67.

[66] *Id.* at 53, para. 143.

[67] *See, e.g., A-CAM Budget Order and FNPRM*, 31 FCC Rcd at 13780, para. 19 ("commenters responding to the [Wireline Competition] Bureau's *A-CAM Election Results Public Notice* uniformly support increasing the A-CAM budget . . . For instance, USTelecom, ITTA, WTA and NTCA argue that the Commission should fully fund A-CAM.").

[68] *See id.* at 13775, para. 2; *2018 Rate-of-Return Order* at 31-32, paras. 66-67.

[69] *See A-CAM Budget Order and FNPRM*, 31 FCC Rcd at 13778, para. 8; *2018 Rate-of-Return Order* at 31, para. 66 (increasing support up tp $146.10 per location to all carriers that accepted the revised A-CAM offers "will result in additional broadband deployment, while balancing budgetary constraints pending the outcome of this proceeding").

III. ASSUMING CURRENT A-CAM CARRIERS ARE FUNDED AT $200/LOCATION AND THE LEGACY MECHANISM IS FULLY FUNDED, THE COMMISSION SHOULD EXTEND A SECOND A-CAM OFFER

As discussed above, the Commission must fully fund the legacy mechanism budget and separately provide current A-CAM plan carriers with up to $200/month per eligible location. After doing so, the Commission should extend a new model offer to all legacy rate-of-return carriers, i.e., those for whom model-based support would result in less funding than legacy support as well as those for whom model-based support would yield greater funding.

A. The Success of the Original A-CAM Offer Militates Towards the Commission Extending a Second A-CAM Offer with Largely the Same Parameters as the Original One

The Commission has professed that adoption of the A-CAM mechanism has been a monumental success.[70] The public interest benefits discussed above that militate towards funding the original A-CAM recipients at up to $200/month apply with equal force to a prospective second offer. Moreover, the overall subscription level of the original offer, as revised – 217 rate-of-return carriers agreed to accept model-based support, corresponding to 262 separate offers[71] – and especially the dozens of carriers that accepted such support notwithstanding seeing reductions in support relative to legacy mechanisms, is testament to the merit of the policies underlying the offering of model-based support for broadband deployment in rural America. As the Commission recognizes, "[e]xpanding the number of carriers receiving A-CAM support will advance the Commission's longstanding objective to provide high-cost

[70] *See 2018 Rate-of-Return Order* at 53, para. 144 (Commission encouraged by the response to the first A-CAM offer); *A-CAM Budget Order and FNPRM*, 31 FCC Rcd at 13775, 13776, paras. 1, 5 (citing the "significant demand" for and "considerable interest by rate-of-return companies in electing" A-CAM support).

[71] *See 2018 Rate-of-Return Order and Budget NPRM* at 30, paras. 63-64.

support based on forward-looking, efficient costs to help spur additional broadband deployment in rural areas."[72]

The Commission generally proposes to use the same A-CAM and parameters for the second offer as it did for the original offer.[73] ITTA supports this proposal. ITTA also emphasizes that, with a couple of exceptions explained below that are designed to promote broadband deployment to the hardest-to-reach unserved or underserved areas of a carrier's service territory, which will ensure that these locations do not remain stuck on the wrong side of the digital divide, the second A-CAM offer should mirror the original one. With the success of the original offer, the Commission need not – and should not – digress from the paradigm that rendered the original A-CAM offer a win-win policy.

B. The Second Model Offer Should be Open to All Legacy Carriers Once Funding for Legacy Mechanisms and the Existing A-CAM Program Has Been Addressed

The *Budget NPRM* proposes to extend a new model offer to glide path carriers, i.e., those carriers willing to accept lower support amounts as compared to legacy mechanisms in exchange for increased certainty of funding.[74] It also seeks comment on whether to extend a new model offer to all legacy carriers, not just glide path carriers, and, if so, proposes to use the same processes, obligations, and criteria that it proposes for glide path carriers.[75] Again under the rubric of "don't mess with success," ITTA urges the Commission to extend a second A-CAM offer to all legacy carriers.[76] Doing so will maximize the response to the second offer. In turn,

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[72] *Id.* at 54, para. 144.

[73] *See id.* at 47, 54, paras. 117, 144.

[74] *See id.* at 45, 47, paras. 110, 117.

[75] *See id.* at 53-54, para. 144.

[76] And, again, the Commission should extend such an offer once it has fully addressed the budgets both for legacy mechanisms and the existing A-CAM program.

promoting a second model offer is consistent with the Commission's efforts to encourage rate-of-return carriers to move to incentive regulation.[77]

C. The Budget for the Second A-CAM Offer Should Reflect Its Parity of Treatment with the Original Offer

Above, ITTA advocates for why the Commission must fund the original A-CAM offer at up to $200/month per eligible location. The Commission should allocate the same per-location level of funding for the second offer.[78] This would be consistent with the general principle of parity with the original A-CAM offer that ITTA believes should undergird the second offer in order to yield comparable public interest benefits.[79]

The *Budget NPRM* proposes to base transition payments for glide path carriers accepting the second offer on the difference between model support and legacy support, and phase down transition payments over longer periods of time where that difference is greater.[80] ITTA supports this proposal, as it would function identically to how transition payments were allocated for glide path carriers accepting the original offer.[81] As part of this identical functioning, ITTA also specifies that, as with the original offer, funding that frees up as second offer transition

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[77] *See, e.g., Model-Based Rate-of-Return Carrier Business Data Services NPRM* at 2-5, paras. 1-6; *see also Rate-of-Return Reform Order*, 31 FCC Rcd at 3097, para. 21 ("Effectively, the carries that choose to take the voluntary path to the model are electing incentive regulation for common line offerings.").

[78] *See Budget NPRM* at 45, 54, paras. 110, 145 (seeking comment on whether the Commission should fully fund a new model offer); *contra id.* at 48, para. 122 (proposing to cap the total amount of support available for the second offer at $146.10 per location). The predicate for the *Budget NPRM*'s proposal to cap second offer support at $146.10 per location is that such a cap is consistent with the funding cap the Commission adopted in the *2018 Rate-of-Return Order* for the original A-CAM electors. *See id.* Funding a $200 per location cap, as ITTA urges the Commission must, would remove this predicate.

[79] In conjunction with extending the second offer to all legacy carriers and funding it at up to $200/month per eligible location, the Commission will need to recalibrate the A-CAM budget based on the number and characteristics of carriers that come into the A-CAM plan via accepting the second offer.

[80] *See id.* at 50, para. 129.

[81] *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3115-16, paras. 72-75.

payments decline over time should remain within the A-CAM program budget,[82] since maintaining such funding within the A-CAM budget would be consistent with establishing separate budgets for the A-CAM and legacy mechanisms, as discussed above.

D. The Commission Should Adopt a Few Differences from the Original A-CAM Offer that Will Fund Broadband Deployment in the Hardest-to-Reach Areas

As discussed above, ITTA emphasizes that the particulars of the second model offer should track closely to the original offer so as not to disturb the paradigm that rendered the original offer successful. There is, however, one set of exceptions to that parity principle that ITTA urges. The Commission proposes a few ways in which it would either increase the model-based support or open second offer eligibility to entities that were not eligible to participate in the original A-CAM plan. ITTA supports these proposals.

1. Tribal Broadband Factor

The *Budget NPRM* proposes to adjust the second A-CAM offer by incorporating a Tribal Broadband Factor into the model.[83] The challenges of deploying broadband to rural, Tribal communities are well-documented, and the intent of the Tribal Broadband Factor is to adjust the A-CAM to reflect these unique challenges and spur further broadband deployment to such communities.[84] The Tribal Broadband Factor would also operate in a way so as to efficiently target support to carriers based on their level of deployment to Tribal lands.[85] Adopting a Tribal Broadband Factor would be consistent with the Commission's recent action to allow rate-of-return carriers serving Tribal communities to recover higher levels of operational expenses from the USF, in recognition of the unique and particularly challenging circumstances that make it

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[82] *But see Budget NPRM* at 45, para. 110 (seeking comment on whether such freed up funding should then be made available to legacy carriers).

[83] *See id.* at 47, para. 120.

[84] *See id.* at 47-48, para. 120.

[85] *See id.* at 48, para. 120.

more expensive to serve such communities.[86] Not only is it therefore equitable, well-considered policy, it is the right thing to do, as "[n]owhere in America is the digital divide as stark as it is on Tribal lands."[87]

2. Census Blocks That Contain FTTP or Cable

The *Budget NPRM* proposes to include as eligible for the second offer census blocks where an incumbent or its affiliate is providing 10/1 Mbps or better broadband using either fiber to the premises (FTTP) or cable technologies.[88] ITTA supports this proposal. As the *Budget NPRM* recounts, the Commission excluded these census blocks from the original A-CAM offer to focus the limited A-CAM budget on those carriers most likely to use A-CAM funding to build new networks.[89] The prospective second offer, however, presents a different calculus. With the Commission reviewing how much high-cost support funding is necessary and appropriate, it can now factor in model-based support in these census blocks in formulating its funding requirements.

For this same reason, and consistent with suggesting that the second offer be extended to all legacy carriers, ITTA opposes the proposal to limit to glide path carriers eligibility to include census blocks where there is FTTP or cable to glide path carriers.[90] Part of the *Budget NPRM*'s rationale for expanding eligibility to such census blocks for glide path carriers is to "create an additional incentive for legacy providers to consider shifting to model-based support."[91] As indicated above, the Commission is expending efforts in other contexts to encourage rate-of-

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[86] *See generally Connect America Fund*, Report and Order, FCC 18-37 (Apr. 5, 2018).

[87] Letter from Chairman Ajit Pai, FCC, to Congressman Ben Ray Luján (Apr. 24, 2018).

[88] *See Budget NPRM* at 48, para. 121.

[89] *See id.* (citing *Rate-of-Return Reform Order*, 31 FCC Rcd at 3109, para. 56).

[90] *See id.*

[91] *Id.*

return carriers to move to incentive regulation.[92] Promoting acceptance of a second model offer furthers those efforts, regardless of whether it is by a glide path carrier or a carrier that would receive more A-CAM than legacy support.

While the Commission declined in the *Rate-of-Return Reform Order* to deem such census blocks as eligible to participate in the original A-CAM plan, the Commission did recognize that "these deployed census blocks require ongoing funding both to maintain existing service and in some cases to repay loans incurred to complete network deployments."[93] Consistent with the acknowledgement that A-CAM support also can promote broadband deployment by helping carriers to recoup capital expenditures that exceeded their working capital, and could then free up funds for new deployment, upgrades to existing deployment, or maintenance of existing networks,[94] ITTA urges the Commission to allow locations served by original A-CAM participants in census blocks that would otherwise have been eligible for the second offer to count towards original A-CAM participants' overall deployment obligations attendant to the original offer. Such allowance is congruent with the principle enunciated above of parity between the two offers, and would mitigate the inequity inherent in permitting census blocks with FTTP or cable deployment to receive support from the second A-CAM offer but not the original one.

3. Carriers Having Deployed 10/1 Mbps to at Least 90 Percent of Their Eligible Locations

The *Budget NPRM* contemplates *not* excluding from the second A-CAM offer any carrier that had deployed 10/1 Mbps broadband to 90 percent or more of its eligible locations within a

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[92] *See supra* at 21-22.

[93] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3109, para. 56. "Our decision to exclude from support calculations this subset of census blocks in no way indicates a belief that once networks are deployed, they no longer require support."

[94] *See Budget NPRM* at 48, para. 121.

state.[95] ITTA supports including such carriers within the ambit of the second offer. In the *Rate-of-Return Reform Order*, the Commission excluded such carriers from the original A-CAM offer in order to maximize limited funding towards those areas with less deployment.[96] Like with census blocks where there is already FTTP or cable, however, the prospective second offer presents a different calculus, as the Commission can now factor in such carriers in the course of determining the overall level of high-cost support that is appropriate. And also as with census blocks where there is already FTTP or cable, and for the same reasons, ITTA opposes the *Budget NPRM*'s proposal to limit such eligibility to glide path carriers.[97]

Aside from creating an opportunity for legacy providers to consider shifting to model-based support, the *Budget NPRM* also identifies as a benefit of its contemplated position that declining to exclude 90 percent buildout carriers may also increase their deployment "of even higher speed service."[98] This is indeed a benefit, but what the *Budget NPRM* does not mention is that such support should also provide such carriers the means to voluntarily extend their broadband networks to all of their unserved eligible locations, thus helping to fulfill the statutory directive of broadband deployment to all Americans. In fact, this is a further rationale to include such carriers who would receive more A-CAM support than legacy support, because chances are great that they have fallen short of 100 percent deployment due to the costliness of deploying to that hardest-to-reach final up to 10 percent of eligible locations.

With all that said, ITTA is cognizant of the Commission's prior expressed concerns with respect to such carriers that they have less "significant work to do to extend broadband to unserved consumers," and that some companies might be tempted to elect A-CAM support

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[95] *See id.* at 49, para. 127.

[96] *See id.* (citing *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 66).

[97] *See id.*

[98] *Id.*

merely to lock in existing support amounts.[99] To ameliorate any such concerns, ITTA suggests that the Commission consider imposing more stringent buildout obligations on such carriers, as A-CAM support for them should be designed to propel them past the full deployment goal line. For instance, the Commission could condition the acceptance of the second offer by such carriers on them no longer having any "reasonable request" locations.

E. The Commission Should Apply the Same Obligations and Transition Mechanisms to the Second A-CAM Offer as It Did to the Original Offer

The *Budget NPRM* proposes to require the same performance and deployment obligations for the second A-CAM offer as the Commission requires for existing A-CAM recipients.[100] Consistent with the principle emphasized above of parity between the two offers, ITTA supports this proposal.[101] In this regard, ITTA specifically opposes any modification to the broadband speed obligations.[102]

F. The Commission Should Align the Second A-CAM Offer Term of Support with the Term of the Original Offer

The *Budget NPRM* proposes to align the new model offer's term of support with the 10-year term of the original A-CAM offer.[103] Specifically, current A-CAM support recipients began receiving support at the beginning of 2017, so if the Commission extends a second A-CAM offer in 2018, the *Budget NPRM* seeks comment on providing a nine-year term of support that will

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[99] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 66

[100] *See Budget NPRM* at 50-52, paras. 131-36.

[101] The limited exception would be the more stringent deployment obligations that ITTA suggests with respect to 90 percent buildout carriers.

[102] *But see id.* at 51, para. 133 (seeking comment on whether the Commission should modify the broadband speed obligations "in any way"). As discussed in the previous section, ITTA would support a limited exception with respect to carriers having deployed 10/1 Mbps to at least 90 percent of their eligible locations.

[103] *See id.* at 49-50, para. 128.

expire at the end of 2026, with support beginning retroactive to the beginning of 2018.[104] ITTA supports the Commission's proposal to align the two offers' terms of support. ITTA also supports the *Budget NPRM*'s proposal to meet the same deployment milestones as required for existing A-CAM recipients, adjusted as appropriate for the term of support.[105] These measures will facilitate administrative simplicity when the time comes for the Commission to address next steps following expiration of the terms of A-CAM support.

IV. THE COMMISSION SHOULD ADOPT ADDITIONAL MODIFICATIONS RELATED TO THE LEGACY SUPPORT MECHANISM

A. The Commission Should Modify the Budget Control Mechanism

As advocated above, going forward the Commission must fund the legacy mechanisms such that there is no reduction due to the budget control mechanism.[106] In other words, the budget control mechanism should have little to no effect if there is a sufficient legacy budget. Moreover, the actions that the Commission took in the *2018 Rate-of-Return Order* related to eligible expenses should go far towards addressing the Commission's expressed concerns about legacy carriers' efficient operations.[107] Nevertheless, to the extent the budget control mechanism remains in play, the Commission should make modifications to it. Any modifications that the Commission makes to the budget control mechanism should be rendered effective retroactive to July 1, 2018, the beginning of the 2018-2019 budget year.[108]

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[104] *See id.* at 50, para. 128.

[105] *See id.* at 51, para. 135.

[106] *See supra* Sec. II.C.1.

[107] *See id.* at 55, para. 149; *see also supra* Sec. II.C.1.

[108] *See id.* at n.363 (stating that the Commission will consider making retroactive to July 1, 2018 any changes it adopts relative to the legacy carrier budget as well as to the budget control mechanism).

1. The Budget Control Mechanism Should Employ Only a Pro Rata Reduction

The *Budget NPRM* proposes to modify the budget control mechanism to use only a pro rata reduction applied as necessary and no longer include a per-line reduction aspect.[109] The Commission's experience thus far with per-line reductions has been that they have "led to larger and more unpredictable swings in support than might otherwise be expected . . . [such that] using only a pro rata reduction may be a more predictable and equitable way to reduce support amounts because all carriers' support is reduced by the same percentage."[110] For the reasons espoused in the *Budget NPRM*, ITTA supports its proposal. Using only a pro rata reduction would level the playing field, and not advantage or disadvantage any carrier on the basis of its size as measured by line count. To illustrate the point, including a per-line reduction element, one ITTA member suffered an additional support curtailment of nearly 75 percent during implementation of the budget control mechanism during the current budget year as compared to only applying a pro rata reduction.

2. The Commission Should Afford Legacy Carriers a Threshold Level of Support Not Subject to a Budget Cap

The *Budget NPRM* also proposes to provide legacy providers a threshold level of annual support that would not be subject to a budget cap.[111] ITTA supports this proposal. One of the drawbacks of the budget control mechanism is the lack of fiscal predictability it inflicts upon legacy carriers. As suggested by the *Budget NPRM*,[112] establishing a level of uncapped support may restore some of the support predictability that is required by Section 254 of the Act.

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[109] *See id.* at para. 150.

[110] *Id.*

[111] *See id.* at para. 151.

[112] *See id.*

The *Budget NPRM* presents various options for establishing the threshold level of annual support.[113] ITTA urges the Commission to set the uncapped threshold at a specified fraction of each carrier's recent claims amounts.[114]

As to the particulars, ITTA believes that an 80 percent fraction is warranted.[115] This percentage appropriately balances the budget adherence aims of the budget control mechanism[116] with the enhanced predictability aims underlying the *Budget NPRM*'s proposal. However, rather than the base against which the 80 percent fraction is applied being each legacy carrier's unconstrained 2016 or 2017 claims amount,[117] ITTA advocates that such base cover the average of each carrier's unconstrained claims amounts over the preceding three years, beginning with claims amounts for 2017.[118] The base should commence with claims amounts for 2017 because that was the first full year when legacy carriers could receive Connect America Fund Broadband Loop Support and HCLS. Moreover, calibrating the base to a three-year average rather than just one year's claims helps to smooth out any expense anomalies – either high or low – that could occur in any given year.

With respect to this option for establishing a threshold level of annual support that would not be subject to a budget cap, the *Budget NPRM* seeks comment on whether the amount yielded

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[113] *See id.* at 55-56, paras. 152-54.

[114] *See id.* at 55, para. 153.

[115] *See id.* (seeking comment on a 70 percent fraction, and also whether the fraction should be higher or lower).

[116] *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3091-92, para. 6.

[117] *See Budget NPRM* at 55, para. 153.

[118] To illustrate, for the budget year beginning July 1, 2018, the base would be a carrier's unconstrained 2017 claims amount. For the budget year beginning July 1, 2019, the base would be the average of a carrier's unconstrained 2017 and 2018 claims amounts. For the budget year beginning July 1, 2020, the base would be the average of a carrier's unconstrained 2017, 2018, and 2019 claims amounts. And for the budget year beginning July 1, 2021, the base would be the average of a carrier's unconstrained 2018, 2019, and 2020 claims amounts.

from applying a specified fraction to a claims amounts base should be adjusted to reflect line loss where applicable.[119] ITTA believes that it should not. While ITTA understands the Commission's concerns that not making such an adjustment could lead to a legacy carrier being guaranteed a fixed amount to serve a decreasing number of lines,[120] the reality is that usually line loss results from a customer migrating to a competitor. Where this occurs, it also generally follows that the carrier's remaining lines are those that are more costly to serve. As a result, the chances of a carrier enjoying a constructive windfall are slim because the incremental diminution of the carrier's costs is relatively low. Furthermore, the successive year's averaging of claims amounts will reflect any line losses in a given year.

B. The Commission Should Eliminate Limitations on Legacy Carrier Capital Expenditures

The *Budget NPRM* seeks comment on whether the current limitations on capital and operating expenditures "are successfully curbing unnecessary expenditures and incentivizing prudent investments or instead creating unnecessary burdens or deterring efficient investments."[121] ITTA believes that the capital expenditure limitations should be eliminated.[122]

While not necessarily deterring prudent investments, these limitations also are not necessarily serving their purported purpose of incentivizing efficient investments. The capital expenditure limitations include per location/per project spending caps when deploying broadband service utilizing terrestrial wireline technology.[123] Because most capital investment

[119] *See id.* at 55-56, para. 153.

[120] *See id.*

[121] *Id.* at 60, para. 167.

[122] *See id.* at 61, para. 168 (seeking comment on whether the Commission should eliminate the capital investment allowance entirely).

[123] *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3152, para. 172 n.387; 47 CFR § 54.303(f). In an order on reconsideration, the Commission eliminated an inadvertent "kill switch" embedded in Section 54.303(f) that would have denied all support to a project that exceeded the

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already is on a multi-location basis and thereby imbued with concomitant built-in efficiencies, the per-location spending caps hardly figure in influencing carrier investment behavior.

However, the capital expenditure limitations are creating unnecessary burdens. They are fraught with significant recordkeeping requirements and are quite difficult to administer. For example, as the *Budget NPRM* notes, for NECA to calculate the capital investment allowance, legacy carriers must track every capital expenditure and the number of locations affected.[124] Not only are these burdens undue in their own right, they also exceed the benefits of the limitations because there are few, if any, discernible benefits. As such, eliminating the capital expenditure limitations will fulfill the Commission's goal in this proceeding of adopting further reforms that will simplify administrative processes.[125] The Commission should do so.

C. With Adoption of an Uncapped Threshold Level of Support, Revised Legacy Carrier Buildout Obligations are Reasonable

If the Commission adopts a reasonable threshold level of annual support that would not be subject to a budget cap, determined by an 80 percent fraction applied to the average of each carrier's unconstrained claims amounts over the preceding three years, ITTA does not object to the Commission enhancing legacy carriers' broadband deployment obligations.[126] It is reasonable for the Commission to expect greater buildout certainty in exchange for greater funding certainty. In revising the deployment obligations, the Commission also should clarify that locations served by a parent company's subsidiaries count towards meeting any deployment obligations. It would also be reasonable for the Commission to caveat that clarification in some

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spending caps, in favor of a denial of support only for the amount the caps were exceeded. *See Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Order on Reconsideration, 32 FCC Rcd 3258 (2017). The spending caps, however, currently remain intact.

[124] *See Budget NPRM* at 60, para. 167.

[125] *See id.*

[126] *See id.* at 56, para. 155.

manner, for instance, to apply in only locations served within the state where the support is targeted.

D. The Commission Should Decline to Use an Auction Mechanism to Award Support Where There is Significant Competitive Overlap

The *Budget NPRM* seeks comment on using an auction mechanism to award support in areas where there is significant competitive overlap, in lieu of the current challenge process to determine whether a study area is 100 percent overlapped.[127] ITTA opposes this suggestion. While there is compelling justification to increase budgets to foster deployment to unserved or underserved areas, even where such areas constitute less than 10 percent of a carrier's eligible locations,[128] a fundamental concept that has served the high-cost program extremely well is not to fund any overbuilding. This instant idea on which the *Budget NPRM* seeks comment has the potential to contravene that bedrock principle. In addition, potential modifications to the process whereby the Commission identifies areas of substantial competitive overlap that do not merit high-cost support in light of such overlap remain pending in other contexts. The Commission should address modifications to the competitive overlap process there rather than implementing this auction mechanism suggestion.

V. CONCLUSION

In this proceeding, the Commission is taking a fresh look at the legacy and A-CAM carrier budgets. Fiscal restraint is good policy. But it is no more so than fulfilling the statutory directive to facilitate the deployment of broadband to all Americans and maintaining such deployment using sufficient, specific, and predictable support. In this regard, the Commission must fully fund the legacy mechanism and provide up to $200/month per eligible location to A-CAM plan participants. After doing so, the Commission should further promote efficient

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[127] *See id.* at 59, para. 162.

[128] *See supra* Sec. III.D.3.

deployment by extending a second A-CAM offer. The Commission also should bolster the legacy mechanism by adopting a threshold level of support not subject to the budget control mechanism, in return for which revised buildout obligations for legacy carriers would be reasonable. Taken together, these combined measures will represent considerable strides towards removing the digital divide on which far too many rural Americans find themselves on the wrong side.

Respectfully submitted,

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