Before the
Federal Communications Commission
Washington, DC 20554

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

COMMENTS
OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these Comments in response to the Further Notice of Proposed Rulemaking[2] in the above-captioned proceeding. In the FNRPM, the Federal Communications Commission (the "Commission") sought comment on whether to allocate additional high-cost funding for distribution via the Alternative Connect America Cost Model ("A-CAM"). In these comments, NTCA also renews its request for consideration of and action upon its Petition for Reconsideration in the above-captioned proceeding with respect to the sufficiency of universal service fund ("USF") support for those RLECs that did not elect A-CAM distribution.[3]

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[1] NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA's service provider members are full service rural local exchange carriers ("RLECs") and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

[2] *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking (rel. Dec. 20, 2016) ("A-CAM Order" or "FNPRM," as applicable).

[3] Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, *et al.* (filed May 25, 2016) ("NTCA Petition"), at 2-9.

I. THE COMMISSION SHOULD FULLY FUND ITS COST MODEL AS DESIGNED TO COMPORT WITH APPLICABLE LAW AND TO ACHIEVE THE INTENDED PURPOSES OF BROADBAND DEPLOYMENT.

In Section 254(b)(5) of the Communications Act, as amended (the "Act"), Congress required that universal service fund ("USF") mechanisms such as A-CAM be "specific, predictable and sufficient."[4] For those firms that voluntarily elected to receive USF support via A-CAM, given the purpose for which A-CAM was designed, "sufficiency" should be defined as the amount of support that the model has indicated is necessary to deploy broadband-capable networks in the relevant areas. In the face of significant demand for model-based support, the Commission thankfully allocated an additional $50 million per year for distribution via A-CAM.[5] Still, due to artificial budget constraints in the face of such demand for model-based support, this additional $50 million was not enough to close entirely the "budget shortfall" and provide "sufficient" support.

The Commission was therefore compelled to reduce the final A-CAM offers notwithstanding the infusion of additional funds, thereby reducing as well the level of broadband-capable network deployment in the areas in question. Because of this "budget shortfall," tens of thousands of locations nationwide fell from being "fully funded" to "capped" (or from higher speeds to lower speeds within those categories), resulting in the delivery of much lower speeds – or perhaps no broadband at all – to those locations. More specifically, it appears that over 35,000 locations will *not* receive 25/3 Mbps broadband due to the insufficient budget, while another 36,000 locations that would have received 10/1 Mbps broadband will not due to the shortfall. On the other hand, nearly 25,000 more locations will receive 4/1 broadband than under the original

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4 47 U.S.C. § 254(b)(5).

5 A-CAM Order, at ¶ 6.

model offer that would have provided them with higher speeds, and another 47,000 locations will now only see any broadband at all if their request for service turns out to be "reasonable" in light of USF support received and the revenues that might be anticipated from the customer.[6]

From a broad public policy perspective and a more discrete consumer perspective, a USF budget that results in fewer locations receiving lesser broadband (or perhaps no broadband at all) as compared to what the Commission's own cost model indicates should be achieved cannot be considered "sufficient." Moreover, while the "budget control" adopted to squeeze model offers within the available budget was perhaps the best choice among several imperfect options,[7] the varying impact of the "budget control" as applied by the Commission to what each carrier should receive on a per-location basis is problematic too. This budget control results in some consumers receiving either lesser (or no) broadband or perhaps paying higher rates not because of any cost characteristic of the area they serve as identified by the model, but rather simply because the budget control happened to "hit" their service provider differently than another provider on a per-location basis based upon what each provider had done previously in deploying services to *other* locations.

Fortunately, the Commission recognized and understood such concerns even as it sought to ensure timely resolution of A-CAM elections and initial distribution of support via the model. Specifically, the Commission teed up via the FNPRM the prospect of providing additional funding to A-CAM electors – and the benefits of doing so be both immediate and automatic. In particular, the Commission wisely specified (and NTCA expressly supported on the record) a condition that if full funding should become available by December 31, 2017, those RLECs that had elected A-

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6 *Connect America Fund*, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. June 10, 2014), at ¶¶ 63-67.

7 A-CAM Order, at ¶ 8.

CAM support would be required to "live up to" the original offer.[8] As noted above, this condition, once triggered, would result in at least 71,000 more locations being "fully funded," with approximately 47,000 fewer locations consigned to awaiting broadband only if their request is "reasonable." Of note, however, is the fact that this prudent condition is only triggered if full funding is made available – that is, if the Commission provides $110 million more in annual support for distribution via the A-CAM.

To be clear, a lesser amount of support would undoubtedly be welcomed by many A-CAM electors, and so the Commission should not decline to provide additional support in the amount of less than full funding for A-CAM if that is all that can be made available. But the benefits of providing less than full funding for the A-CAM model are less clear, as there is no explicit pre-existing condition to accept such funds; instead, each RLEC would need to re-assess whether and to what degree they can modify deployment plans based upon the current A-CAM offers to accept those additional funds. For this reason and to ensure that A-CAM support comports with the requirements of Section 254(b)(5), NTCA urges the Commission in the first instance to provide full funding of the A-CAM, although even some amount of lesser incremental funding would undoubtedly be welcomed by many (if not all) A-CAM electors – and in either case, the benefits will flow clearly and unmistakably in the form of more locations to which better broadband has been deployed as a result of the additional support.

[8] *Id*. at ¶ 12; *see also Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 9, 2016) (recommending "carriers that would receive full funding at the level of their initial model offers should be obligated to accept such support and meet the relevant buildout obligations over the remainder of the term of that support").

II. THE BUDGET SHORTFALLS IN THE NON-MODEL USF MECHANISMS MUST ALSO BE ADDRESSED IF THE OBJECTIVES OF REFORM ARE TO BE REALIZED FOR *ALL* CONSUMERS IN RLEC-SERVED AREAS.

Although the immediate FNPRM is focused on the question of providing additional USF resources for distribution via the A-CAM, the separate but related – and equally important – question of how to ensure distribution of sufficient support via non-model USF mechanisms remains pending in the form of the NTCA Petition. This question too should be addressed by the Commission, as it has just as significant implications for rural consumers and presents the same fundamental legal concerns about whether the mechanisms comport with the statutory mandate for sufficient USF support.

The past several years of debate over whether and how to reform RLEC USF distribution mechanisms in a comprehensive, broadband-focused manner was prompted by overwhelming bipartisan interest from Congress. In May 2014, a total of 133 members of Congress signed letters to then-Chairman Tom Wheeler expressing concern about the inability of consumers in RLEC areas to procure standalone broadband services; the Senate letter urged an update of USF rules so that RLEC consumers could "have the same fundamental choices among reasonably comparable services at reasonably comparable rates" as those living in urban or other rural areas.[9] A year later, when the this issue remained pending before the Commission, 176 members of Congress wrote again to Chairman Wheeler to express concern that the price of standalone broadband remained out of reach for most RLEC consumers. The 2015 letter from 61 Senators noted specifically that "[n]o new models or sweeping changes are needed" and urged the Commission to "expeditiously make careful, targeted updates to the existing USF mechanisms so that consumers in areas served

[9] *See*, *e.g.*, Letter from Sens. John Thune, Amy Klobuchar, and 42 Senators to Chairman Tom Wheeler (dated May 6, 2014) (available at: https://www.thune.senate.gov/public/index.cfm/2014/5/thune-klobuchar-lead-letter-to-fcc-on-rural-broadband).

by smaller rural carriers can make the choice to obtain robust broadband services at affordable rates without being compelled to purchase other services."[10]

All five commissioners expressed strong interest in tackling this issue in the wake of these letters, and the Commission ultimately established a new mechanism that would in theory provide support to RLEC consumers where they chose to discontinue purchasing plain old telephone services and opted instead to procure only standalone broadband services.[11] As the NTCA Petition explained in the wake of the March 2016 Order, even if NTCA might have structured the reform differently, it was grateful for the Commission's efforts to address this concern and provide consumers with some hope for the prospect of buying broadband-only connections in the future. Unfortunately, as the NTCA Petition also observed, the budget control mechanism adopted as part of the March 2016 Order threatened to undermine, if not eviscerate, the anticipated benefits of the reform as long sought by Congress and consumers alike. In particular, NTCA noted that the budget control mechanism would result in consumer broadband-only rates that would *not* be "reasonably comparable" to prices in urban areas contrary to Section 254(b)(3) of the Act, thus rendering USF support clearly insufficient contrary to Section 254(b)(5) of the Act.[12]

At the time of filing its Petition, based upon the only detailed evidence available at the time – filings that were actually made at the request of the Wireline Competition Bureau prior to the issuance of the March 2016 Order – NTCA estimated that rural consumer rates for standalone broadband under the reformed USF mechanism would range from nearly $15 to $50 per month or

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10 *See, e.g.,* Letter from Sens. John Thune, Amy Klobuchar, and 59 Senators to Chairman Tom Wheeler (dated May 12, 2015) (available at: https://www.thune.senate.gov/public/index.cfm/2015/5/thune-leads-bipartisan-letter-calling-on-fcc-to-modernize-support-for-rural-broadband-services).

11 *Connect America Fund, et al.,* WC Docket No. 10-90, *et al.,* Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016) ("*Rate-of-Return Reform Order*").

12 NTCA Petition at 2-3.

more higher than what the Commission had defined as a "reasonably comparable" broadband retail rate.[13] Thus, while the reform might have taken important *mechanical* steps to support standalone broadband, the *practical* effect of reform was likely to mean little, if anything, for the vast majority of rural consumers because the budget control would continue to render retail prices far higher than anything that an urban consumer would expect to pay for a comparable service. Put another way, NTCA submitted that, while much effort may have gone into rebuilding "the engine" of non-model USF reforms, the ongoing lack of "gasoline in that engine" (in the form of sufficient budget resources) risks rendering its operation inefficient at best and utterly ineffective at worst.

Developments in subsequent months have only reinforced this concern. As an initial matter, just a few days before the initial A-CAM election window closed, the Commission published the "budget control" on non-model USF support for the first half of 2017.[14] This release indicated that, those RLECs that could not or would not elect the model would face an average 9 percent reduction in their USF support. As NTCA noted in its Petition, this reduction would translate *directly* into higher rates for consumers, as the effects of this substantial budget control mechanism would need to be added atop the regulated broadband transmission loop rates and then paired with the other costs of delivering retail broadband services (such as second mile and middle costs, imputation of Access Recovery Charges, and nonregulated Internet costs). And this assertion has been proven true in the form of the Consumer Broadband-Only Loop ("CBOL") rates that carriers are now forced to apply and/or impute for purposes of USF support.[15] Indeed, even

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13 *Id*. at 6.

14 *Wireline Competition Bureau Announces Availability of Budget Control Mechanism Calculations for Rate-of-Return Carriers for the Period from January 1, 2017 through June 30, 2017*, WC Docket No. 10-90, Public Notice (rel. Oct. 25, 2016).

15 *See* National Exchange Carrier Association, Tariff F.C.C. No. 5, at § 17.9.

where some of the "published" or tariffed CBOL rates may appear lower, this is merely because the costs are being imputed – as the Commission is well aware, the actual costs of the budget control mechanism and its implications for the actual effective CBOL rate of each carrier can be much larger than shown in such rate lists.[16] Indeed, based just upon the published CBOL rates of some firms and not even taking into account the potentially significant effects of imputation on "burying" the 9 percent budget control effect, many RLECs face the prospect of continuing to charge rural consumers standalone broadband rates *far above* the approximately $75 "reasonable comparability benchmark," never mind the much lower actual urban average retail broadband rate.

Moreover, with model elections now complete, it is possible to make some projections regarding the trends and effects of the budget control beyond the first half of 2017 and moving into subsequent years. Future period budget controls are likely to be driven by a combination of several factors, including: (1) net growth or decline in investments and expenses among the collected group of non-model RLECs; and (2) net growth or decline in Connect America Fund-Intercarrier Compensation ("CAF-ICC") support for model companies that may or may not provide "flow back" dollars for the non-model budget; and (3) the rate of growth (or decline) in customer demand for broadband-only connections.[17] Although projecting these factors (and other relevant factors) for future periods can be difficult, taking into account A-CAM and Alaska Plan elections and the effects of CAF-ICC distributions, <u>current industry estimates indicate that for the entirety of 2017, the budget shortfall will be over $140 million</u>, translating to an effective budget control that will cut USF support by 10.3% for each non-model RLEC this year.

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16 *See* 47 C.F.R. § 54.901(a)(2).

17 *See*, *e.g.*, *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Nov. 14, 2016), at 3.

In subsequent years, the level of this budget control will of course change as the factors noted above do, but if growth rates in USF equal just 10-year inflationary averages, current projections indicate that the budget control would hover at or around 10 percent for the next decade – with the annual shortfalls ranging between $140 million and just over $160 million per year. And if growth assumptions are higher (such as those used in Appendix E of the Commission's March 2016 Order in developing buildout obligations[18]), it is possible that the budget control could increase to over 20 percent by the end of the next 10 years, with the annual shortfall exceeding $260 million on average over that period and growing to $360 million in the last year.[19] If a 9% budget control mechanism is already translating into rural consumers continuing to pay tens of dollars (or even hundreds of dollars) more per month than urban consumers for standalone broadband, the potential doubling of that budget control mechanism will render the effects of the March 2016 standalone broadband reform utterly moot – contrary to the statutory requirements of Section 254, in defiance of the congressional wishes captured in the 2014 and 2105 letters, and to the detriment of the millions of rural Americans served by non-model RLECs.

NTCA would welcome the chance to explore these estimates in more detail with the Commission and to discuss the assumptions that have gone into them; NTCA would be delighted to the extent that conversations with the Commission were to reveal that the budget control will not have the severely negative effects on USF support and that consumer broadband rates will in

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18 *Rate-of-Return Reform Order*, at Appendix E.

19 NTCA further observes that the inclusion of an inflationary factor in the non-model high-cost USF budget, just as has been applied to other USF programs, would assist substantially in addressing such concerns, especially over time. *See Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Feb, 3, 2017), at 1-2. Indeed, industry estimates indicate that under even more aggressive USF growth projections, a mere inflationary factor comparable to what other USF programs have would somewhat mute the negative impact of the budget control mechanism in early years (bringing it down from above 10% to 8%) and toward the end of a 10-year period could effectively eliminate the negative effects of the budget control on USF support and consumer broadband rates.

fact be reasonably comparable due to the reforms. But since May 2016 when the NTCA Petition was filed, each new release of data related to implementation of the reforms has only reaffirmed that the budget control mechanism is undermining, if not defeating, the goal of reform – ensuring that rural consumers can make a choice between reasonably comparable voice or broadband services at reasonably comparable rates as previously articulated by Congress and mandated by law. It is also important to note that the reduced cash flows from budget-cut USF support will undermine additional deployment in addition to harming service affordability, as RLECs will need to factor support reductions into future planning efforts and scale back investments, both as they hold off in early years to see how the budget control many change from year-to-year and then in the longer run as they design network builds to accommodate forecasted budget cuts.

For this reason and for the reasons set forth in the NTCA Petition, the Commission should address the non-model budget shortfall at the same time it addresses the A-CAM funding shortfall. The millions of consumers served by the 400-plus A-CAM electors and the 600-plus non-model RLECs each need such relief if the goal of universal service is to be achieved and if the reforms adopted in March 2016 are to have their intended effect throughout the most rural parts of America.

Respectfully submitted,

NTCA THE RURAL BROADBAND ASSOCIATION

By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President –
Industry Affairs & Business Development
4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
mromano@ntca.org
703-351-2000 (Tel)

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