Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Notice of Proposed Rulemaking ("NPRM")[2] issued on May 19, 2017 by the Federal Communications Commission ("Commission") in the above-captioned proceeding. The NPRM seeks comment on the High Cost Universal Service Fund ("USF") voice service "rate floor," specifically inquiring as to whether this provision fails to promote its intended purpose and therefore should be eliminated, or whether amendments to the methodology underlying the rate floor are in order.

The Commission should eliminate the voice service "rate floor."[3] As discussed below, the rate floor as adopted in 2011 is unnecessary to achieve the purpose underlying its adoption and imposes an unnecessary burden on rural rate-of-return regulated carriers ("RLECs") as well

[1] NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

[2] *Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking and Order, FCC 17-61 (rel. May 19, 2017) ("NPRM" or "Order").

[3] Like the NPRM, all references herein to the "rate floor" refer to the "national average of local rates plus state regulated fees" and the "phased-in approach to implement the increase in the rate at which carriers lose universal service support." *See* NPRM, ¶ 1, fn. 2.

as those tasked with administering the provision. It also interferes with the historical role of state commissions in regulating telephone exchange service.

Should the Commission nonetheless determine that the rate floor must be retained, certain modifications to the methodology underlying the provision are essential to make it a more reasonable measure and ensure that it comports with the "reasonable comparability" directive found at Section 254(b)(3)[4] of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"). Amending the underlying methodology to utilize a two standard deviation approach to calculation of the floor (just as is the case with the voice and broadband reasonable comparability benchmark) would produce adherence to this bedrock universal service principle. The Commission should also reduce the frequency with which the rate floor is calculated to mitigate its burden on consumers, small carriers, and state commissions.

II. THE COMMISSION SHOULD ELIMINATE THE VOICE SERVICE RATE FLOOR, AS IT FAILS TO PROMOTE ITS INTENDED PURPOSE, IMPOSES SIGNIFICANT ADMINISTRATIVE BURDENS ON RLECS AND STATE COMMISSIONS, AND INTERFERES WITH STATE COMMISSIONS' HISTORICAL RATEMAKING ROLE.

The Commission's 2011 adoption of the voice service rate floor provision at issue herein was based in substantial part on the agency's belief at that time that artificially low end-user rates for voice service placed an undue burden on the USF and the ratepayers that contribute towards

[4] 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services 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.").

the Fund.[5] However, as the NPRM acknowledges, High Cost Loop Support ("HCLS") funding reductions flowing from non-compliance with the rate floor do not accrue back to ratepayers; such support is redistributed to other carriers by operation of the Commission's rules, and thus there is no additional "subsidy" burden to be placed upon American ratepayers by virtue of eliminating the rate floor.[6]

At the same time as the rate floor is based on a flawed premise, it also has several other negative consequences that should cause the Commission to reconsider its future utility. For one, it runs counter to the historical role that state commissions have generally exercised in regulating rates for telephone exchange service. State regulators are the policymakers most familiar with the local market conditions in which voice service providers operate and with the economic conditions of states and the costs of providing local service that providers incur, all of which may factor into carriers' end-user rates. Notably, state commissions typically do not annually conduct rate cases, recognizing the benefits of setting local rates at a stable place for a period of years. Perhaps most importantly, Congress saw fit to extend principles of federalism to the Communications Act by retaining states' authority over telephone exchange rates,[7] and thus elimination of the rate floor would respect that congressional directive.

In 2011, the Commission believed that it was inequitable for consumers across the country to subsidize artificially low voice rates "significantly lower" than the national average.[8]

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5 *Connect America Fund* et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("USF/ICC Transformation Order"), ¶¶ 234-247.

6 NPRM, ¶ 12.

7 *See Id.*, ¶ 11.

8 *USF/ICC Transformation Order*, ¶ 237. In adopting the rule, the Commission relied on data submitted into the record for over 600 companies indicating that 60 percent had local residential rates

The asserted equity concern underlying the adoption of the rule has largely been superceded by events occurring in the intervening six years. The rule on its face does not apply to companies that no longer receive HCLS. In addition, many of the RLECs that still receive HCLS have attempted to avoid the harsh consequences of the rule by raising their rates.[9]

Moreover, to the extent that the Commission was concerned in 2011 that artificially low rates were not consistent with the goals of Section 254(b) as enacted by Congress, the rate floor has swung the pendulum too far in the other direction. Pursuant to the rate floor, rates are currently set at $18 and, until temporarily suspended pending review of the rate floor, were set to increase to $20 on July 1, 2017. With rates of $13.78 for the same service in the nation's capital,[10] the rate floor does not aim for "reasonable comparability" but rather penalizes carriers and rural consumers on a strict and unreasonable penny-for-penny basis to the extent their rates are lower than the average urban rates across America.

The rate floor also has deleterious effects on companies and their relationship with their customer bases. More specifically, the provision requires RLECs to expend limited internal resources to notify customers of impending rate increases and to seek permission from their state commission for such increases. At a time when these small businesses are dedicating substantial

below the then-national average in 2008, and more than one hundred companies had rates well below the average. *Id.*, ¶ 236.

9 The inequities of the rate floor rule are further exacerbated by the fact that millions of rural consumers obtaining services on networks supported by other USF/Connect America Fund ("CAF") programs are not subjected to the same artificial, regulator-driven upward pressure on local voice rates. All programs should be on equal footing, with states put back in the primary position of determining what local voice rates are reasonable, appropriate, and affordable for their consumers, irrespective of how federal USF/CAF support might be provided to the underlying carrier.

10 NPRM, Statement of FCC Chairman Ajit Pai ("In 2016, the average rate for basic phone service in Washington, DC was $13.78 a month. But since July 1 of last year, federal law has mandated that rural telephone companies charge their customers at least $18 per month for the same service.").

capital and internal staff resources towards meeting buildout obligations attached to the receipt of high cost support,[11] and are doing so with limited resources,[12] every dollar spent and hour of staff time spent on compliance with the rate floor has a very real impact. Even worse, all of this effort is in pursuit of compliance with a provision that thus far has produced yearly rate increases, something that causes substantial consumer confusion and frustration. Finally, the need for annual adjustments in rates has placed an unnecessary burden on state commissions.

Because it does not even achieve its stated purpose of reducing burdens on the USF and ratepayers as noted above, and the rule has largely eradicated the artificially low rates that motivated the adoption of the rule, the Commission should eliminate the voice services rate floor.

III. SHOULD THE COMMISSION NONETHELESS DETERMINE THAT RETENTION OF THE RATE FLOOR IS NECESSARY DESPITE ITS MANY DRAWBACKS, IT MUST ADOPT CERTAIN METHODOLOGY CHANGES TO COMPORT WITH THE "REASONABLE COMPARABILITY" REQUIREMENT OF SECTION 254(b)(3) OF THE ACT; ADDITIONAL CHANGES ARE ALSO NECESSARY TO REDUCE THE ADMINISTRATIVE BURDEN OF THE RULE.

As noted above, the voice service rate floor fails to achieve the goals that spurred its adoption and has several other drawbacks that should cause the Commission to strongly reconsider its continued utility. Should the Commission determine that the rate floor must be retained in some form, certain modifications to the methodology underlying the provision, as well as the frequency with which it is calculated, are necessary to mitigate the burdens of compliance and comport with statute.

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[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, FCC 16-33 (rel. Mar. 30, 2016) ("*Rate-of-Return Reform Order*"), ¶¶ 29-59 & 156-180.

[12] *See* Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, et al. (fil. May 25, 2016), pp. 2-9.

As the NPRM indicates,[13] consumer groups and carriers providing service to rural areas have raised concerns with respect to the effect of the rate floor on rural consumers and on the affordability of voice service in certain rural areas.[14] In addition, one cannot help but question whether the methodology underlying a rate floor currently set at $18 and approaching $23 must be reconsidered[15] when rates for the same service are substantially lower in many urban areas.[16] Indeed, it would seem that the Communications Act would demand such a reconsideration of the methodology; as the Commission itself noted when referencing Section 254(b)(3) when adopting the rate floor "it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly higher than in urban areas."[17] As it stands today, the rate floor – in particular as driven by the methodology underlying the provision – is not the best way to advance the objectives of Section 254(b)(3).

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13 NPRM, ¶ 8.

14 *See, e.g.*, Comments of the Concerned Rural ILECs, WC Docket No. 10-90, et al., (fil. Aug. 8, 2014), p. 14 ("Regardless of the FCC's action to limit the impact of the local rate floor in 2014, regular annual increases will continue to have negative impacts on rural consumers, many of which already struggle with the cost of basic local phone service. As rates increase, these customers may drop off the network altogether, including competitive alternatives such as wireless and VoIP, which poses significant public safety issues."); Ex Parte letter from David Dengel, CEO, Copper Valley Telephone Cooperative, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (fil. Apr. 16, 2016), p. 1 ("The rate floor assumes that what's affordable in our country's largest cities must be affordable in our small towns."); *Ex Parte* letter from Jodie Griffin, Public Knowledge, et al. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (fil. Apr. 15, 2014), p. 1; *Ex Parte l*etter from David Certner, Legislative Counsel and Legislative Policy Director, AARP, to Marlene H. Dortch, Secretary, FCC (fil. Apr. 15, 2014), p. 2.

15 NPRM, ¶ 5 ("Thus, although using data from the most recent survey would result in setting a rate floor at $22.49, the minimum rate ILECs are currently required to charge for local telephone services to avoid losing universal service support is $18.").

16 *See* footnote 10, *supra*.

17 *USF/ICC Transformation Order*, ¶ 235 (emphasis in the original).

NTCA therefore proposes that the Commission determine the reasonable comparability of rates on the basis of two standard deviations, rather than the arithmetic average currently used. Data from the Commission's "Urban Rate Survey Data & Resources" page finds that using two standard deviations would produce a rate floor of $13.66.[18] Taking into account experience with implementation of the original rule, and changes in the marketplace that have occurred in the intervening years, it is apparent that the use of two standard deviations is a preferable methodology to advancing the original purpose of the rule, if those concerns remain present today. When the Commission adopted the rule, it did not foresee the dramatic rise in urban rates that have occurred since 2008, and therefore did not anticipate the administrative burdens of a steadily increasing rate floor.

In addition, use of the two standard deviation approach would not require the Commission to "reconsider [its] broader determination that it is inappropriate for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average."[19] It would, rather, simply ensure this determination does not produce significantly *higher* rates, an outcome both counter to statute and the original purpose of the rule. The use of two standard deviations is also the simplest change to the methodology, as the use of a localized rate survey would inject additional complication into the rule without a promise of increased accuracy. When it adopted the rule, the Commission expressed concern about local rates for rural consumers being "significantly

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[18] Urban Rate Survey Data & Resources, Federal Communications Commission, available at: https://www.fcc.gov/general/urban-rate-survey-data-resources.

[19] Connect America Fund, WC Docket No. 10-90, et al., Third Order on Reconsideration, 27 FCC Rcd. 5622 (2012) ¶ 23.

lower" than the national urban average;[20] setting the rate floor at two standard deviations below the urban average is a far better way to identify rates that are "significantly" lower, while avoiding unnecessary rate increases for rural consumers that pay close to the average. Finally, this method of establishing the voice service rate floor would be symmetrical with the approach used by the Commission for setting the "reasonable comparability" benchmark for voice and broadband services.[21]

In addition to bringing the rate floor in line with statute, NTCA also urges the Commission to take certain steps to reduce the administrative burden associated with the provision. Updating the rate floor every five years would go a long way towards not only limiting the burden on RLECs of implementing rate changes on an annual basis, it would also spare consumers yearly rate increases. Making adjustments to the rate floor on this basis would also lessen burdens on state commissions and be more consistent with the typical practice of states to wait several years before revisiting local rates once rate changes have been implemented.

IV. CONCLUSION

For all of the reasons discussed above, the Commission should eliminate the voice services rate floor. Should the Commission determine that the rate floor must be retained, certain modifications to the methodology underlying the provision, as well as the frequency with which it is calculated, are necessary to mitigate the burden and better comport with statute.

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20 *USF/ICC Transformation Order*, ¶ 237.

21 *See* 2017 Urban Rate Survey, Broadband Survey Methodology – Fixed Broadband Service Analysis, p. 7 (stating that "the reasonable comparability benchmark is the estimated average monthly rate plus twice the standard deviation of rates for terrestrial fixed broadband service plans with download speeds of 10 Mbps or greater, upload speeds of 1 Mbps or greater, and usage allowance of 100 GB or greater."), available at: https://www.fcc.gov/general/urban-rate-survey-data-resources

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