

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

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

NOTICE OF PROPOSED RULEMAKING AND ORDER

Adopted: May 18, 2017

Released: May 19, 2017

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairman Pai and Commissioner O’Rielly issuing separate statements, Commissioner
Clyburn dissenting and issuing a separate statement.

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I. INTRODUCTION

1. In 2011, the Commission adopted a rule intended to ensure that consumers across the
country are not subsidizing the cost of voice service to rural customers whose rates are below a set
minimum rate.<sup>1</sup> This requirement is known as the “rate floor.”<sup>2</sup> If a carrier chooses to charge its
customers less than the rate floor amount for voice service, the difference between the amount charged
and the rate floor is deducted from the amount of support that carrier receives through the Universal
Service Fund (USF).<sup>3</sup> Since July 1, 2016, this minimum amount has been \$18, and the Commission
previously scheduled increases to \$20 on July 1, 2017 and \$22 on July 1, 2018.<sup>4</sup> After several years of

<sup>1</sup> See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed
Rulemaking, 26 FCC Rcd 17663, 17749-56, paras. 234-47 (2011) (USF/ICC Transformation Order), aff’d sub nom
In re FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

<sup>2</sup> The rate floor is the national average of local rates plus state regulated fees. See id. at 17751, para. 238. As noted
below, the Commission adopted a phased-in approach to implement the increase in the rate at which carriers lose
universal service support. For convenience, we refer to both the rate floor and the phased-in increases as the “rate
floor,” herein.

<sup>3</sup> 47 CFR § 54.318(b).

<sup>4</sup> See 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, 7079, para. 80
(2014) (April 2014 Order); Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed
Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage

(continued....)

experience with it, we now revisit it to ensure our policies continue to further our statutory obligation to ensure “[q]uality services . . . available at just, reasonable, and affordable rates.”<sup>5</sup> We accordingly seek comment on whether we should make any changes to the current methodology or eliminate the rate floor and its accompanying reporting obligation.<sup>6</sup> In addition, pending review of the record that develops in this proceeding, we freeze the rate floor at \$18 for two years unless or until we take further actions in this proceeding.<sup>7</sup>

## II. BACKGROUND

2. Universal service is a foundational principle of the Communications Act of 1934 (Communications Act) and core to the mission of the Federal Communications Commission.<sup>8</sup> Section 254(b) of the Communications Act, as amended by the Telecommunications Act of 1996, directs the Commission to base policies for the preservation and advancement of universal service on several principles, including that “[q]uality services shall be available at just, reasonable, and affordable rates”; that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation”; and that “[c]onsumers 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 . . . 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.”<sup>9</sup> As part of fulfilling the universal service mandate, the universal service high-cost program provides support to carriers that offer voice and broadband services in unserved and underserved areas of the country.<sup>10</sup>

3. In 2011, the Commission adopted the *USF/ICC Transformation Order* with the goal of comprehensively reforming and modernizing the high cost support program to maintain voice service and to extend high cost support to the provision of broadband-capable infrastructure.<sup>11</sup> The Commission determined that its focus should be on “costly-to-serve communities where even with our actions to lower barriers to investment nationwide, private sector economics still do not add up.”<sup>12</sup> Pointing to section 254(b), the Commission considered whether consumers in rural areas paid reasonably comparable rates to those in urban areas and found that some incumbent local exchange carriers (ILECs) receiving high cost support were providing lower cost voice services to their customers—but did not attempt to reconcile how

(Continued from previous page) \_\_\_\_\_

*Allowance for ETCs Subject to Broadband Public Interest Obligations*, WC Docket No. 10-90, Public Notice, DA 17-167, 1 (WCB Feb. 14, 2017) (WCB 2017 Public Notice).

<sup>5</sup> See 47 U.S.C. § 254(b)(1).

<sup>6</sup> 47 CFR § 54.318(b) (reducing High Cost Loop Support (HCLS) or frozen support for carriers whose voice rates for residential local service plus state regulated fees are below the specified local urban rate floor on a dollar-for-dollar basis); 47 CFR § 54.313(h) (requiring filing of voice rate data for ILECs receiving HCLS or frozen support).

<sup>7</sup> Specifically, we are freezing the rate at which carriers lose universal service support at \$18. The Wireline Competition Bureau (WCB) will continue to calculate the national average of local rates plus state regulated fees as required by the *USF/ICC Transformation Order* until the Commission takes further action.

<sup>8</sup> 47 U.S.C. § 151 (“For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination . . . a rapid, efficient, Nation-wide . . . communication service with adequate facilities at reasonable charges . . . there is created a commission to be known as the ‘Federal Communications Commission . . .’”).

<sup>9</sup> 47 U.S.C. § 254(b).

<sup>10</sup> 47 CFR Part 54, subpart M.

<sup>11</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 1

<sup>12</sup> *Id.* at 17668, para. 5.

differing state laws and policies affected these local rates.<sup>13</sup> In response to this observation, the Commission adopted a national rate floor for carriers receiving high cost support.<sup>14</sup>

4. The rate floor requires that any ILEC recipient of high-cost loop support whose rate for local service plus state regulated fees is below the rate floor shall have its “high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.”<sup>15</sup> The Commission concluded that the rate floor would be phased in over several years: \$10 beginning July 1, 2012, \$14 beginning July 1, 2013, and then the average urban rate, as determined from data in the urban rates survey, beginning July 1, 2014.<sup>16</sup>

5. To implement this requirement, the Commission delegated authority to WCB and the Wireless Telecommunications Bureau to determine the rate floor by conducting an annual survey for voice services in urban areas.<sup>17</sup> On March 20, 2014, WCB announced the results of the first voice rate survey, which showed that the average local end-user rate plus state regulated fees of the surveyed ILECs in urban areas was \$20.46.<sup>18</sup> Soon thereafter, the Commission waived section 54.318(b) in order to adopt a phased-in approach to raising the rate floor by \$2/month increments every year until the phase-in rate reached the figure calculated by the urban rate survey.<sup>19</sup> 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.<sup>20</sup>

### III. DISCUSSION

6. We seek comment on whether we should change the current methodology or eliminate the rate floor and its accompanying reporting obligation.<sup>21</sup>

7. In adopting the rate floor, the Commission determined that it is “inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability.”<sup>22</sup> The Commission further stated that “[d]oing so places an undue burden on the Fund and consumers that pay into it” and expressed the view that it would not be equitable “for consumers

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<sup>13</sup> *Id.* at 17750, para. 235.

<sup>14</sup> *Id.* at 17751, paras. 237-38.

<sup>15</sup> 47 CFR § 54.318(b). Support reductions based on the rate floor also offset Connect America Phase I frozen support to the extent that the recipient’s Phase I frozen support replaced high-cost loop support and high-cost model support. *See Connect America Fund*, WC Docket No. 10-90 *et al.*, Order, 27 FCC Rcd 605, 606, para. 3 (WCB & WTB 2012) (*USF/ICC Clarification Order*).

<sup>16</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 239.

<sup>17</sup> *Id.* at 17694, 17755, paras. 85, 246.

<sup>18</sup> *Wireline Competition Bureau Announces Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time To Comply with New Rate Floor*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 2967 (WCB 2014).

<sup>19</sup> *See April 2014 Order*, 29 FCC Rcd at 7078-79, paras. 79-80. WCB dismissed petitions for reconsideration related to the rate floor discussion in the *April 2014 Order* filed by National Exchange Carrier Association, NTCA — The Rural Broadband Association, the Eastern Rural Telecom Association, and WTA — Advocates for Rural Broadband, and the United States Telecom Association. *See Connect America Fund, et al.*, Order, 29 FCC Rcd 16152 (WCB 2014).

<sup>20</sup> WCB 2017 Public Notice at 1.

<sup>21</sup> *See* 47 CFR §§ 54.313(h), 54.318.

<sup>22</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 237.

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.”<sup>23</sup>

8. On the other hand, stakeholders ranging from the AARP to the National Tribal Telecommunications Association, from the National Consumer Law Center to small, medium, and large rural telephone companies, have raised concerns that the rate floor is inconsistent with the direction of section 254(b) of the Communications Act to advance universal service in rural, insular, and high cost areas of the country while ensuring that rates are just, reasonable, and affordable.<sup>24</sup> These parties have argued that the rule makes basic voice service in rural areas less affordable, does not make voice service available at reasonably comparable rates to urban areas, and does not further the Commission’s objective to “minimize the universal service contribution burden on consumers and businesses.”<sup>25</sup> In that same vein, no one disputes that the rate floor has increased rates for voice service in rural areas, despite the Commission’s goal to “preserve and advance universal availability of voice service.”<sup>26</sup> Some parties have also asserted that price increases negatively affect rural consumers and “could lead to some customers losing affordable access to basic service entirely.”<sup>27</sup> Others have noted that the increases caused by the rate floor rule could have a particularly deleterious effect on older Americans on fixed incomes<sup>28</sup> and customers in Tribal areas.<sup>29</sup>

9. In addition, some parties have raised concerns about the use of a single, national rate floor. Some have argued that incomes are often lower in rural areas and the rate floor incorrectly “assumes that what’s affordable in our country’s largest cities must be affordable in our small towns.”<sup>30</sup> Others have suggested that the Commission should consider “whether more localized survey data would better serve the goal of ensuring reasonably comparable service at reasonably comparable rates, and what

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<sup>23</sup> *Id.*

<sup>24</sup> *See, e.g.*, Comments of the Concerned Rural ILECs, WC Docket No. 10-90, et al., at 14 (Aug. 8, 2014) (Concerned Rural ILECs Comments); Letter from Jodie Griffin, Public Knowledge, Olivia Wein, National Consumer Law Center, Amalia Deloney, Center for Media Justice, Todd O’Boyle, Common Cause, Edyael Casaperalta, Center for Rural Strategies, and the Rural Broadband Policy Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Apr. 15, 2014) (Public Knowledge, et al. Letter); Letter from David Certner, Legislative Counsel and Legislative Policy Director, AARP, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Apr. 15, 2014) (AARP Letter); Comments of the National Tribal Telecommunications Association, GN Docket No. 14-25, at 6 (Mar. 31, 2014) (NTTA Comments); Reply Comments by NTCA – The Rural Broadband Association, et al., WC Docket No. 10-90, at 7 (Mar. 31, 2014) (NTCA Reply Comments); Letter From David Dengel, CEO, Copper Valley Telephone Cooperative, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 1 (filed Apr. 16, 2016) (Copper Valley Letter); Reply Comments of Frontier Communications, WC Docket No. 10-90, at 3 (Mar. 31, 2014) (Frontier Reply Comments); Reply Comments of ITTA and USTelecom, WC Docket No. 10-90, at 5-6 (Mar. 31, 2014) (ITTA and USTelecom Reply Comments).

<sup>25</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 57.

<sup>26</sup> *Id.* at 17680, para. 17.

<sup>27</sup> Public Knowledge, et al. Letter at 1. *See also* Concerned Rural ILECs Comments at 14 (“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”).

<sup>28</sup> AARP Letter at 2.

<sup>29</sup> NTTA Comments at 6.

<sup>30</sup> Copper Valley Letter at 2.

flexibility the states need to serve users under the particular circumstances of each state.”<sup>31</sup> We observe that nothing in the statute requires adoption of a single, national rate floor.<sup>32</sup>

10. Accordingly, we seek comment on whether changes to the current methodology are needed to address these concerns. If so, what changes should be made? Should the Commission allow carriers to charge a rate that is one standard deviation below the average urban rate?<sup>33</sup> Should we replace the single, national rate floor with state or regional rate floors? Are there other ideas we should consider? Alternatively, should we eliminate the rate floor altogether?

11. As part of our consideration of possible changes to the methodology or elimination of the rate floor, we seek comment on the intersection of the rate floor with state ratemaking and state universal service funds. We also note that states have historically regulated rates for local telephone service.<sup>34</sup> Indeed, the Communications Act makes clear that “nothing in this [Act] shall be construed to apply, or to give the Commission jurisdiction,” over rates for “telephone exchange service,” i.e., local service.<sup>35</sup> States have historically relied on a variety of regulating methods (including the use of state universal service funds) to ensure just and reasonable rates for that service—and those methods already by law must not “rely on or burden Federal universal service support mechanisms.”<sup>36</sup> We seek comment on these arguments. We also seek comment on the Tenth Circuit’s suggestion that “the FCC ‘remains obligated to create some inducement . . . for the states to assist in implementing the goals of universal service,’ i.e., in this case to ensure that rural rates are not artificially low.”<sup>37</sup>

12. More generally, we seek comment on whether the rate floor is meeting the intended purposes. One party has argued that “an increase in the local rate floor does not impact payment into the Universal Service Fund or the budget of the fund, but it does affect consumer choice, penalizes incumbent wireline providers and ultimately broadband deployment.”<sup>38</sup> On the other hand, we note that the Commission last year adopted a budget control mechanism for carriers within the legacy rate-of-return system, including those receiving high-cost loop support.<sup>39</sup> As such, any funding reductions from the rate floor are generally redistributed to other carriers to mitigate the impact of the budget control mechanism, not returned to ratepayers as contributions relief. We note that the rate floor both reduces total HCLS support and reduces the budget impact on all rate-of-return carriers for HCLS and Connect America Fund-Broadband Loop Support (CAF-BLS).<sup>40</sup> Specifically, based on the data used to calculate the recently published rate-of-return budget control mechanism, we estimate that the rate floor effectively reduced total HCLS by 1.3 percent and effectively increased CAF-BLS by 0.9 percent. We seek comment on the impact of this redistribution on broadband deployment, both with respect to carriers

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<sup>31</sup> Public Knowledge, et al. Letter at 2.

<sup>32</sup> See 47 U.S.C. § 254(b)(3); *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 55 (adopting reasonable comparability as a performance goal).

<sup>33</sup> See, e.g., Letter from Michael Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 2 (filed Nov. 2, 2015).

<sup>34</sup> See Reply Comments of Hot Springs Telephone Company and Ronan Telephone Company, WC Docket No. 10-90, 1-2 (Mar. 31, 2014); see also 47 U.S.C. § 152(b).

<sup>35</sup> 47 U.S.C. § 221(b).

<sup>36</sup> 47 U.S.C. § 254(f).

<sup>37</sup> See *In re FCC 11-161*, 753 F.3d at 1068 (quoting *Qwest Corp. v. FCC*, 258 F.3d 1191, 1204 (10th Cir. 2001)).

<sup>38</sup> Frontier Reply Comments at 2-3 (Mar. 31, 2014).

<sup>39</sup> *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, 31 FCC Rcd 3087, 3144-45, paras. 150-53 (2016).

<sup>40</sup> 47 CFR § 54.901(f), 54.1310(d).

receiving higher total USF support and those impacted directly by the rate floor and thus receiving lower total USF support. We also seek comment on these arguments generally.

13. Finally, we seek comment on ways to reduce ongoing administrative and compliance costs on rural telephone companies, state commissions, the Commission, the National Exchange Carrier Association, and the Universal Service Administrative Company. Each year, federal staff must calculate a new rate floor, which rural telephone companies must then seek permission from their state commissions to implement, with oversight by several entities to ensure that rural rates are sufficiently high and universal service payments are appropriately withheld. ILECs subject to the rate floor must complete yet another form specifying each of the carrier's rates that fall below the rate floor and the number of lines for each rate specified.<sup>41</sup> Stakeholders have previously detailed impediments to implementation in a number of states<sup>42</sup> and have explained that carriers require time after a rate floor increase to pursue and implement rate increases.<sup>43</sup> We seek comment on these arguments and whether modifying or eliminating the rate floor and the accompanying reporting obligations would reduce the complexity of the high-cost program and minimize the associated administrative and compliance costs that have stemmed from implementation of the rate floor. Alternatively, we seek comment on whether updating the rate floor on a biennial or triennial basis would accomplish similar goals while decreasing administrative burdens. More generally, we seek comment on the costs and benefits of the rate floor, and specifically on a cost-benefit analysis of the rule.

#### IV. ORDER

14. Pending our review of the record that develops in this proceeding, we modify on our own motion the waiver of further increases to the rate floor that the Commission previously issued, freezing the monthly rate floor at \$18. Pursuant to the modified temporary waiver, carriers will not be subject to any support reductions for any rate that is at least \$18.<sup>44</sup> This temporary freeze will remain in effect in order to prevent the further increases that would otherwise take place on July 1, 2017, and July 1, 2018, unless or until the Commission takes further action in this proceeding.<sup>45</sup>

15. The Commission's rules may be waived for good cause shown.<sup>46</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>47</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.<sup>48</sup> Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>49</sup>

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<sup>41</sup> See 47 CFR § 54.313(h); Instructions for Completing 54.313 / 54.422 Data Collection Form at 7, and Rate Floor Data Collection Report and Certification, available at <http://usac.org/hc/tools/forms.aspx>.

<sup>42</sup> ERTA, ITTA, NECA, NTCA, USTelecom and WTA Petition for Extension of Time at 3 n. 12, WC Docket No. 10-90 (Mar. 11, 2014).

<sup>43</sup> ITTA and USTelecom Reply Comments at 4-5.

<sup>44</sup> See *April 2014 Order*, 29 FCC Rcd at 7079, para. 80.

<sup>45</sup> Should the freeze expire in two years because no further action is taken, the current methodology would be used to calculate the appropriate rate floor at that time, i.e. the rate determined by the Urban Rate Survey.

<sup>46</sup> 47 CFR § 1.3.

<sup>47</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>48</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>49</sup> *Northeast Cellular*, 897 F.2d at 1166.

16. Without our action today, the rate floor would increase to \$20 on July 1, 2017.<sup>50</sup> If the rate floor increases, carriers would likely increase some rates to consumers as well to avoid deductions from their USF support, and such rates once increased are unlikely to be reduced in the future, even if we modify or eliminate the rule. We are concerned that such an increase would have a significant impact on consumers, particularly in rural areas, and that such harm would be irreversible even if the Commission were to conclude that the rate floor should be eliminated. In the meantime, as discussed above, today's freeze will not affect the overall burden on contributors or the size of the Fund, and we expect its impact on the distribution of funds to be minimal.<sup>51</sup> Given our intended goal of further evaluating the rate floor, we believe that temporarily freezing the rate floor at its current level rather than allowing it to increase in 2017 and 2018 in these unique circumstances serves both the public interest and the purpose of the rule by ensuring against unduly low rates for subsidized consumers. Accordingly, we find that good cause exists to waive application of section 54.318(b) to the extent reported rates are at least \$18 until July 1, 2019.

## V. PROCEDURAL MATTERS

### A. Paperwork Reduction Act Analysis

17. This document proposes modified information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Initial Regulatory Flexibility Analysis (IRFA) in Appendix A.

### B. Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this document. The analysis is found in Appendix A. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the Notice of Proposed Rulemaking, and must have a separate and distinct heading designating them as responses to the IRFA. The Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking and Order including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

### C. Ex Parte Presentations

19. *Permit-But-Disclose*. The proceeding this Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.<sup>52</sup> Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or

<sup>50</sup> April 2014 Order, 29 FCC Rcd at 7079, para. 80.

<sup>51</sup> See *supra* para. 12.

<sup>52</sup> 47 CFR §§ 1.1200 *et seq.*

her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

#### **D. Filing Requirements**

20. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>53</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>54</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

21. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

22. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

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<sup>53</sup> 47 CFR §§ 1.415, 1.419.

<sup>54</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).



23. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400, or Suzanne Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, Suzanne.Yelen@fcc.gov, (202) 418-7400.

## VI. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 201, 219, 220 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 219, 220, 254, this Notice of Proposed Rulemaking and Order IS ADOPTED.

25. IT IS FURTHER ORDERED, that the waiver of section 54.318(b) of the Commission's rules issued in the *April 2014 Order* is MODIFIED to the extent described herein.

26. IT IS FURTHER ORDERED, that this Order IS EFFECTIVE upon release pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103.

27. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order and Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Initial Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> we have prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. We will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In the NPRM, we seek comment on whether to modify or eliminate two rules: sections 54.313(h) and 54.318 of the Commission's rules. We are seeking comment on whether we should modify or eliminate section 54.318, the rate floor rule, to better advance section 254 of the Commission's Act and the goals of the Commission's universal service reforms. Section 54.313(h) requires carriers to report on the number lines it serves with rates that fall below the rate floor. If we modify or eliminate the rate floor rule, there may be no need to for carriers report on rates that fall below the rate floor.

**B. Legal Basis**

3. The legal basis for any action that may be taken pursuant to this NPRM and Order is contained in sections 201, 219, 220 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 219, 220 and 254.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act (SBA).<sup>6</sup> A small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>7</sup>

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> See 5 U.S.C. § 603(b)(3).

<sup>5</sup> See 5 U.S.C. § 601(6).

<sup>6</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>7</sup> See 15 U.S.C. § 632.

5. *Small Businesses.* A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 28.8 million small businesses, according to the SBA.<sup>8</sup> Affected small entities as defined by industry are as follows.

6. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>9</sup> According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>10</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>11</sup> Consequently, we estimate that most providers of incumbent local exchange service are small businesses that may be affected by rules proposed pursuant to the NPRM.

7. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>12</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>13</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. This NPRM seeks comment on changes to the Commission’s rules, which, if adopted, will result in reduced information collection and reporting requirements for incumbent LECs.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

9. In this NPRM, we seek public comment on modifying or eliminating sections 54.313(h) and 54.318 of the Commission’s rules. Because our actions here will likely result in reduced regulatory burdens, we conclude that the changes on which we seek comment will not result in any additional recordkeeping requirements for small entities.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

10. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements

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<sup>8</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (last visited May 18, 2017).

<sup>9</sup> See 13 CFR § 121.201, NAICS code 517110.

<sup>10</sup> Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, tbl. 5.3 (Sept. 2010).

<sup>11</sup> See *id.*

<sup>12</sup> 5 U.S.C. § 601(3).

<sup>13</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); see also 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>14</sup>

11. The changes to the Commission’s rules upon which we seek comment in this NPRM would likely result in reduced regulatory burdens for incumbent LECs by modifying or eliminating compliance and reporting requirements.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

12. None.

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<sup>14</sup> 5 U.S.C. § 603(c)(1)–(c)(4).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90.

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.

Why? It relates to federal subsidies, or high-cost universal service support, that the FCC directs to these companies. In 2011, ostensibly concerned that certain rural carriers were over-subsidized, the FCC required these companies to charge artificially higher minimum rates—on penalty of losing federal funding. This is called the “rate floor.” As I said, the rate floor today is \$18. It’s scheduled to climb to \$20 this July and \$22 next July.

This is an especially hard hit on the consumers who can least afford it. That’s because rural Americans make less money than their urban counterparts. For example, the median household income in Washington, DC is over \$75,000. The median household income in Lyon County, Kansas, which I visited last October, is under \$41,000—less than 55% of the capital’s tally. Mandating higher rates under these circumstances contravenes section 254(b) of the Act, which requires the FCC to ensure “[q]uality services . . . available at just, reasonable, and affordable rates.”

Notably, the rate floor imposes higher costs on rural consumers without any corresponding federal benefit. It hasn’t saved federal taxpayers much money. That’s because companies can avoid losing support by just raising their rates. And it won’t save taxpayers money going forward. That’s because now any subsidies that are lost by one provider are just redistributed to others.

It’s time to give the rate floor a hard look. That’s why I’m pleased that under this *Notice*, we’ll explore whether to fix or eliminate this broken policy. I’m also glad that we will freeze the rate floor at \$18 to prevent the impending 11% price hike that rural consumers would otherwise face a few weeks from now.

It’s unfortunate we couldn’t get a unanimous vote. Having had success working together to address waste, fraud, and abuse in the high-cost program last year,<sup>1</sup> we had been working together now in good faith to address the problems with our rate-of-return rules. On March 13, 2017, for example, Commissioner Clyburn said, “I would support fixing our rules regarding the per-location cap on the capital investment allowance.”<sup>2</sup> Only 34 days later, at our most recent open meeting, we adopted this fix to the capex limitation. We worked together to put consumers first. In that same speech, Commissioner Clyburn said, “I would support hitting the ‘pause’ button on rate floor increases.” So we teed up an item doing just that. And for the past two weeks, we accommodated every single edit the Commissioner asked for on this item. But now, 62 days after calling for a stay of the rate floor, my colleague is voting against a stay of the rate floor. To be sure, that is consistent with the 2011 vote to mandate higher prices for rural consumers. But it isn’t consistent with putting consumers first.

As always, I’m grateful to the staff for their excellent work on this matter—specifically, the Wireline Competition Bureau’s Lisa Hone, Jesse Jachman, Alex Minard, Kris Monteith, and Suzanne Yelen. Your work has helped lower-income consumers spend their hard-earned dollars on their families instead of on their phone bills.

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<sup>1</sup> Sandwich Isles Communications, Inc. Joint Statement of Commissioners Mignon Clyburn and Ajit Pai on December 5, 2016, <https://go.usa.gov/xNkTZ> (last visited May 19, 2017).

<sup>2</sup> Remarks of FCC Commissioner Mignon L. Clyburn, 2017 WTA Spring Meeting (Mar. 13, 2017), *available at* <http://bit.ly/2pULqf1> (last visited May 19, 2017).

**DISSENTING STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Connect America Fund*, WC Docket No. 10-90.

Imagine being asked: Would you rather pay \$5 per month, or \$20 per month, for the exact same voice service plan? If there is really no difference, and if the offers were truly identical, you would opt for the cheaper service plan, right? But if this scenario is only made possible by your carrier's ability to shift the true cost of service onto other carriers, in other words, through everyone else's contributions to the universal service fund, then I must regrettably inform you that we have a real public policy problem.

This is the exact scenario, the Commission addressed a few years ago while we were in the process of reforming our universal service and intercarrier compensation mechanisms. Some rate-of-return carriers were charging their customers extremely low voice service rates and recovering the rest of their revenue requirement from intercarrier compensation and the universal service fund. This resulted in shifting the cost of service from the people who were actually receiving the service onto other ratepayers nationwide, including those who are least able to afford it.

The Commission addressed this issue by adopting a requirement that carriers must recover a certain portion of the ultimate cost of service from their end-user customers rather than from other ratepayers. This was known as the rate floor, and it was pegged to the average urban cost of service for voice. Carriers could charge less than this amount but they would be unable to recover the difference from the universal service fund.

Over two months ago, I made a public commitment fix some outstanding, unforeseen issues that resulted from our efforts at rate-of-return reform. This package of actions included a fix for the capital investment allowance, pausing and finding a new path forward on the rate floor, and dealing with waste, fraud, and abuse in the high-cost program. I have also spoken out in the past, you may have noted, about means-testing the high-cost fund. In an ideal world, we would have dealt with all outstanding rate-of-return issues at the same time, in part because many of these issues are neither difficult nor novel, but they all have an impact not only on rate-of-return carriers, but on ratepayers nationally.

Admittedly, just last month, we fixed one of the issues that I considered part of the package, on a stand-alone basis. I let my misgivings about addressing that issue on an a la carte basis go, and supported that item, because I believed it was good policy. It got something done sooner rather than later, but I continued to hold out hope that the next steps would address those issues left outstanding. I made it clear then, as I do now, that dealing in tandem with the rate floor and with waste, fraud, and abuse, were key.

Déjà vu. Now we are considering a second item, the pausing and fixing of the rate floor, and surprise, it comes before us for consideration on a stand-alone basis. My repeated calls for addressing waste, fraud, and abuse in the high-cost program: ignored; any hope of addressing these concerns in a balanced, comprehensive package: smashed; and the freeing up of additional money to mitigate the budget control mechanism which would have been the result of a more efficient process: not happening. So I respectfully dissent.

Aggressively going after waste, fraud, and abuse in our universal service programs only seems to happen when one program is being discussed, and that is Lifeline. Addressing blatant abuses in the high-cost program? No mention here, even though every dollar that is wasted in the high-cost fund means one less dollar to support rural broadband networks. That is not fair, equitable, nor consistent, when it comes to policymaking.

The American public should not be guaranteeing a return on "investments" for personal travel and expenses, entertainment, alcohol, artwork, corporate jets, corporate boats, and the mortgages of company employees. This is common sense, it is good stewardship, and many in the industry generally support this kind of clarity, so it is unbelievable to me that when a clear opportunity presents itself, we fail to take any action.

Commissioner O’Rielly and I have spoken about ways, we can work to improve the service consumers get in rate-of-return study areas, and I remain hopeful, that these discussions will bear fruit.

Many thanks are due to the staff of the Wireline Competition Bureau for their work on this item. If I am counting right, you have had substantial involvement in at least eight or nine meeting items over the past four months. I know the work has been hard and the hours are long—and while I have occasionally disagreed with what you have been asked to draft—I sincerely appreciate your professionalism and dedication to public service.

**STATEMENT OF  
COMMISSIONER MICHAEL P. O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90.

Compared to the circulated version seeking to eliminate the rate floor, as it has come to be known, the document we consider today contains vital fixes and revisions that are the only reason I can now support it. During the new freeze period, I will work in good faith with my colleagues to find other ways to accomplish the same goals but if that cannot be achieved then the existing rate floor will be restarted. This structure is intended to provide sufficient impetus to explore and develop more precise means to get to the same outcome.

Make no mistake, I support the rate floor concept and I'm puzzled why everyone else doesn't. Contrary to all of the misinformation, the policy is built on a solid premise: the Commission – as the steward of the contributions made by those that pay into the universal service fund (USF) – expects a certain level of company revenue to be recouped from its own subscribers prior to receiving subsidies. In other words, there is a basic level of fairness expected before consumers throughout the nation contribute to cover the lower rates offered in the more rural parts of America. The obligation in the law to promote reasonably comparable rates to rural communities was meant to ensure that the cost of service in rural America was not too *high*. The rate floor originated when the Commission was presented with particular and demonstrable evidence of a number of rural companies charging far, far *below* reasonable rates to subscribers, but seeking full reimbursement of their costs from scarce federal USF dollars.

To be clear, the policy *does not* mandate higher rural telephone rates and the Commission is not engaging in rate regulation. Companies are fully free to charge lower rates; the Commission – or more accurately the hard-working citizens throughout our country – just won't contribute to keep rates artificially low. If rural telephone companies want to charge their consumers \$1 per month, they most certainly can, but subsidies won't be provided for the delta between the consumer rates and the set rate floor, which is based on the average of rates in non-rural America. Are their better ways to calculate the rate floor? Probably, and I will happily explore those with all interested parties, but if anyone thinks that this is a backdoor way to end the policy with my support, forget it.

Additionally, we should not ignore that setting a more generous rate floor will have an impact on the rates for standalone broadband. To be more specific, because we have a cap on the high-cost budget, each dollar spent to keep the rate floor artificially low is one less dollar available to bring down the consumer rate for broadband services in rate-of-return areas. This very issue came up in our last Senate Committee oversight hearing. As it presently stands, it is a zero sum game and the prognosis for additional high-cost funding seems difficult. And do not count me among those who will ever support imposing USF contributions on broadband; this is a non-starter for me.

Let's also accept this stone cold reality: rural does not necessarily mean poor. There are plenty of rich, middle class, and poor people throughout all rural America. Our job at the Commission is to ensure that those who face higher costs – *and can't afford them* – are still able to access communications services. This means we shouldn't subsidize the telephone or broadband rates for very wealthy people, no matter where they live. If God has bestowed an American with high levels of material wealth then we ought to expect that person to pay for services themselves, instead of forcing potentially poor and middle-income individuals elsewhere to provide subsidies. While overall incomes can be lower in some rural communities compared to the nation as a whole, so can the cost of daily necessities.

For this reason, I reject the theory that we must or should subsidize everyone who happens to live in a particular area no matter their income. That's a waste of resources, and it's why the federal government means-tests the majority of other federal programs, certainly the biggest and most expensive ones like Medicare. For instance, if a person receiving Medicare makes more than a certain income per year they pay higher Part B monthly rates. If we can means-test Medicare, why not the FCC's high-cost program? There is no reason why anyone who earned more than \$1 million last year shouldn't pay the



full cost of their telephone or broadband service. Towards that end, I have worked with Commissioner Clyburn on draft NPRM text to take the first steps on this project. We intend to put this out for consideration shortly. I firmly agree that it may take a bit of time to get all of the pieces to work – and I have no intent of adding layers upon layers of burdens on communications companies or disrupting parts of the program that have already been adopted – but moving in this direction is the right thing to do.

At the same time, examining ways to alter the existing rate floor does not mean that there aren't other adjustments needed to the rate of return regime. While we instituted major reforms during the last Commission, that the industry still fully supports, there are a number of so-called "punchlist" items, or small technical fixes, that are appropriate. For example, there seems to be general support at the Commission and relevant associations that ratepayers shouldn't have to pay more to cover the cost of some company officials' golf club memberships. I am disappointed that we couldn't get them all done as part of this package, as they seem like reasonable and common sense steps to ensure that dollars are spent on actual broadband deployment. But, I do appreciate the Chairman's commitment to work in good faith to accomplish these items, one way or another, in the very near future.