



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC

Mike O'Rielly
Commissioner

April 3, 2018

The Honorable Pat Roberts
U.S. Senate
109 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Roberts:

I am responding to your October 31, 2017 letter, joined by 38 colleagues, urging the Federal Communications Commission (FCC or Commission) to take action to ensure that the high-cost universal service program provides sufficient and predictable support for broadband for rural consumers. I appreciate your interest in this important matter.

Over the past year, I have pressed the Commission to provide clarity on the budget – by initiating a budget review, as well as by disbursing an appropriate and balanced amount of funding from our reserves. I am pleased to report that the Commission has begun that task, enabling this response to your letter.

As you may know, on March 30, 2018, the Commission released an item refining its rules for the high-cost universal service program for rate-of-return providers. Critically, it provides additional near-term funding for legacy providers within the program. The item also seeks comment on the overall budget for the high-cost program going forward, including for legacy carriers, as well as for providers that receive model-based (ACAM) support. I supported these decisions in full, as you can see from my attached statement on the item.

Given the significance of this proceeding to continued broadband deployment in rural America, I anticipate that the Commission will receive a robust record on the budget and the additional reforms proposed in the item. I look forward to reviewing the comments and continuing to engage with rate-of-return carriers and their associations to help ensure that the high-cost program is as effective as possible in supporting broadband connectivity to rural communities.

Please do feel free to contact me if I may be of any assistance in the future on this matter or any other before the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "m O'Rielly".

Michael O'Rielly

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

Through this item, the Commission seeks to refine the reforms adopted in the 2016 Rate-of-Return Reform Order. For the past several years, I have worked intensively and collaboratively with rate-of-return providers and their associations to understand and address the unique challenges of serving rural America in order to bring greater broadband access to consumers. While I committed to promptly address any legitimate issues that arose after the order was released – and this item closes out all remaining “punch list” tasks – I have wanted to be cautious about upending the stability provided by the prior order, which was and continues to be broadly supported by the affected industry associations. My primary concern is ensuring that providers are able to remain focused on building out broadband to connect the unserved Americans in their communities.

Since the release of the order, the constraint on deployment has not been our rules but rather the amount of available funding. As is the case with all of our high-cost programs, there is simply more demand than dollars to pay for it. Therefore, during the past year, I have pressed the Commission to provide clarity on the budget – by initiating the budget review called for in the 2011 USF/ICC Transformation Order, as well as by disbursing an appropriate and balanced amount of funding from our reserves. In this item, we begin that task by seeking comment on the rate-of-return funding (both for legacy and ACAM carriers) and providing near-term funding for legacy providers.

As the Commission begins to consider longer-term solutions, I will remain focused on maximizing broadband deployment in rural America while minimizing the burdens on hardworking Americans that pay extra fees on their phone bills to support the universal service fund. Moreover, I view high-cost as the foundational universal service program. Without the underlying network infrastructure, the other universal service discount programs will be less effective. That is why I have consistently urged the Commission to set a topline budget for the entire federal universal service fund as is done with the high-cost program (and reexamined in this item) and, if necessary, make some hard choices about the relative sizes of each of its programs.

With respect to other reforms discussed in this item, I am pleased to see the measured approach. While I would have gone even further to aid “parent trapped” companies and been clearer that the use of the model remains entirely voluntary, I appreciate that changes were made at my behest and that the item largely improves upon the prior reforms. Although there are specific ideas in the further notice portion that cause me more than pause, I am willing to advance this item as a whole.

In particular, I am fairly skeptical of removing capital and operating expense limits. These limits, which act as *minor* guardrails, are not intended to recoup funding but rather are designed to prevent companies from egregiously exceeding industry norms. Moreover, these parameters, like the pre-existing \$250 per-line per-month cap that also serves as a basic check on spending, have helped bring to light potentially problematic expenditures. Indeed, the Commission’s review of companies that sought a waiver of the \$250 cap helped us formulate the list of impermissible expenses that the Commission adopts today.

On that note, I appreciate that the item provides clarity regarding expenses that may not be recovered through universal service funding or included in a company’s rate base. While most providers dare not tread into the murky waters of questionable expenses, the occasional revelations of funding being spent on personal mansions, fancy boats, lavish parties, and country club memberships, rather than deploying broadband, undermine the public trust. Moreover, with the industry seeking additional funding for broadband, it is critical to clear up any lingering confusion or concerns and ensure that each dollar is being used for the intended purposes. Resolving this issue is something I spent a good deal of time

working on with Commissioner Clyburn and affected industry. Never let it be said that I am unwilling to address potential waste, fraud, and abuse within the high-cost program. With this task finally accomplished, we can move on to other ways to make the program more efficient.

To that end, I am also gratified that the item now seeks comment on incorporating means-testing within the high-cost program, another idea that Commissioner Clyburn and I have advocated for some time. In the grand scale, means-testing is one method to allocate subsidies to only those recipients who truly need assistance. It is commonly used in federal government programs to establish or scale eligibility for benefits, including for Medicare, Medicaid, and SNAP. Economists have advocated means-testing the high-cost program for more than 15 years. Moreover, the Commission previously sought comment on applying it to the Remote Areas Fund (RAF). Additionally, it is not uncommon for private sector companies to offer discounts for lower income individuals who cannot otherwise bear the full cost of service — another form of means-testing. Amazon, for instance, discounts the cost of its Prime service for Medicaid recipients.

I cannot understand the resistance in some quarters to this concept. With scarce universal service funding at stake, it defies logic that the Commission would continue to use ratepayer dollars to subsidize service to ultra-wealthy individuals who happen to live or vacation in more rural parts of America. Why should lower income Americans help foot the bill for communications service to other consumers who clearly have the wherewithal to pay full freight?

To be clear, I bear no animosity towards successful individuals. In fact, I applaud what they have been able to accomplish financially. But, this is a matter of better targeting our limited funding to places and people that need it most. Each dollar spent subsidizing service unnecessarily is a dollar that is not being used to help bring broadband to unserved Americans. Therefore, it is imperative to seek comment on the concept, as the Commission just did in the recent Rural Healthcare item.

The main critique of means-testing is that it could be administratively burdensome to implement. While means-testing could take a variety of forms, as Commission Clyburn and I discussed in our joint blog post on the subject, I believe that a notification approach would not be unduly complicated.¹ Periodically, providers could notify customers that, under FCC rules, consumers with an annual adjusted gross income above a certain threshold, perhaps as high as \$1 or \$10 million to start, are required to bear the full, unsubsidized cost of service, and must notify the provider if they are above the threshold. When a customer notifies the provider, the provider can then determine a reasonable allocation of costs for the location in question in order to bill the customer appropriately. The provider would also notify the Commission or USAC so that any necessary support adjustments could be made. If other high-cost unserved locations exist within the provider's service area but lack funding, such support could potentially be shifted to those locations. Otherwise, the support could be made available for other unserved locations within the program. This proposal deserves serious debate and consideration, even if it requires some time to develop an implementing structure.

Overall, I thank the Chairman and staff for working with me and including my requested edits. I also appreciate and welcome my ongoing dialog with rate-of-return carriers and their associations to help ensure that our program is as effective as possible in supporting broadband connectivity to the rural communities that they have the privilege to serve. I vote to approve.

¹ See Commissioner Michael O'Rielly and Commissioner Mignon Clyburn, *Would Means-Testing Bring More Efficiencies to the High-Cost Program?* (May 31, 2017), <https://www.fcc.gov/news-events/blog/2017/05/31/would-means-testing-bring-more-efficiencies-high-cost-program>.