

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

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

REPORT AND ORDER

Adopted: April 12, 2019

Released: April 15, 2019

By the Commission: Chairman Pai and Commissioners O’Rielly, Carr, Rosenworcel, and Starks issuing separate statements.

I. INTRODUCTION

1. In 2011, the Commission adopted a rule aimed at limiting universal service support received by rural carriers whose rates are below a set minimum rate.¹ This requirement is known as the “rate floor.”² 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 (Fund).³ Intended to guard against artificial subsidization of rural end user rates significantly below the national urban average, the practical effect of this rule has been to increase the telephone rates of rural subscribers, who are often older Americans on fixed incomes, lower-income Americans, and individuals living on Tribal lands. These Americans are some of those least able to afford the needless rate increases caused by the rate floor. In 2017, after several years of experience with it, we froze increases in the rate floor for two years to give us an opportunity to “revisit it to ensure our policies continue to further our statutory obligation to ensure “[q]uality services . . . available at just, reasonable, and affordable rates.”⁴

2. After a thorough review of the record evidence, we now eliminate the rate floor and, following a one-year period of monitoring residential retail rates, eliminate the accompanying reporting obligations after July 1, 2020. Doing so ends the de facto federal mandate to needlessly increase telephone service rates for many rural Americans above those carriers would otherwise assess, and avoids a further increase from \$18 to \$26.98 on July 1, 2019—an increase that would have reduced the affordability of telephone service for rural Americans, including the elderly, low-income individuals, veterans, and their families. As a result, we ensure that rural consumers continue to receive quality services at just, reasonable, and affordable rates, while also ensuring that rural carriers continue to receive the predictable and sufficient universal service support needed to serve high-cost areas.

¹ 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).

² 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.

³ 47 CFR § 54.318(b).

⁴ See *Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 4509, 4509, para. 1 (2017) (*Rate Floor NPRM/Rate Floor Order*) (quoting 47 U.S.C. § 254(b)(1)).

II. BACKGROUND

3. The Communications Act 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.”⁵ As part of fulfilling the universal service mandate, the high-cost program provides support to carriers that offer voice and broadband services in unserved and underserved areas of the country.⁶

4. 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.⁷ 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.”⁸ Pointing to section 254(b) of the Communications Act, 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 (LECs) receiving high cost support were offering artificially low voice rates for their customers, at levels significantly below the national average and what would be reasonable to recoup from end users rather than USF ratepayers—but did not attempt to reconcile how differing state laws and policies affected these local rates.⁹ In response to this observation, the Commission adopted a national rate floor for carriers receiving high cost support.¹⁰

5. The rate floor requires that any incumbent LEC recipient of high-cost loop support whose rate for local service plus state regulated fees is below the rate floor will 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.”¹¹ 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, 2014.¹²

6. The Commission delegated authority to the Wireline Competition Bureau (WCB) and the Wireless Telecommunications Bureau to determine the rate floor by conducting an annual survey for

⁵ 47 U.S.C. § 254(b).

⁶ 47 CFR Part 54, subpart M.

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 1.

⁸ *Id.* at 17668, para. 5.

⁹ *Id.* at 17750, para. 235.

¹⁰ *Id.* at 17751, paras. 237-38.

¹¹ 47 CFR § 54.318(b). Support reductions based on the rate floor offset high-cost loop support as well as 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). Connect America Phase I frozen support is in the process of being phased down. *See Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 19-8, para. 12 (Feb. 15, 2019). Once frozen support is eliminated, only rate-of-return carriers receiving legacy support carriers will be subject to the rate floor.

¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 239.

voice services in urban areas.¹³ 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 incumbent LECs in urban areas was \$20.46.¹⁴ Soon thereafter, the Commission waived the rule 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.¹⁵ In 2017, the Commission further froze the rate floor at \$18 for two years, until July 1, 2019.¹⁶

7. The Commission also sought comment in 2017 on whether it should eliminate the rate floor (and accompanying reporting obligations) or change its methodology.¹⁷ Recognizing that the rate floor may have outlived its usefulness, the Commission asked for comments on the costs and benefits of the rule and whether it was continuing to meet its intended purpose.¹⁸

8. In December 2018, WCB announced that the rate floor calculated using its current methodology would be \$26.98 for 2019.¹⁹ Accordingly, unless the Commission takes action prior to July 1, 2019, carriers subject to the rate floor must increase the monthly rates they charge rural Americans to at least \$26.98—a nearly \$9 or 49.9% increase—or risk losing the universal service support they depend on to deploy broadband infrastructure in the farthest reaches of our country.

III. DISCUSSION

9. We find that the rate floor, which leverages our universal service support to penalize lower prices for rural Americans who may least be able to afford such increases, is not justified as a matter of policy. To the extent the rate floor ever served a public purpose, we find that purpose long since carried out. We agree with the diverse coalition including stakeholders like the AARP, the National Consumer Law Center, the National Tribal Telecommunications Association, and small, medium, and large rural telephone companies that the rate floor is inconsistent with the direction of the Communications Act to advance universal service while ensuring that rates are just, reasonable, and affordable.²⁰ Accordingly, and based on an extensive and near-unanimous record, we eliminate the rate floor.²¹

¹³ *Id.* at 17694, 17755, paras. 85, 246.

¹⁴ *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).

¹⁵ *See 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, 29 FCC Rcd 7051, at 7078-79, paras. 79-80 (2014).

¹⁶ Specifically, the Commission froze the rate at which carriers lose universal service support at \$18. *Rate Floor Order*, 32 FCC Rcd at 4514-15, para. 14-16.

¹⁷ *Rate Floor NPRM*, 32 FCC Rcd at 4511-14, paras. 6-11.

¹⁸ *Id.* at 4513, 4514, paras. 11, 13.

¹⁹ *Wireline Competition Bureau Announces Results of 2019 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, DA 18-1280 (WCB 2018).

²⁰ *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 (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 (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

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10. *First*, we find that the rate floor creates a perverse incentive for carriers to raise local rates, harming consumers in rural areas and making telephone service less affordable. 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.”²² These price increases negatively affect rural consumers and “could lead to some customers losing affordable access to basic service entirely.”²³ We find the rate floor raises rates for—and has a particularly deleterious effect on—older Americans on fixed incomes,²⁴ subscribers in Tribal areas,²⁵ low-income consumers, and seasonal customers making traditional voice service less affordable,²⁶ often for consumers who need the service most.²⁷ Indeed, the record suggests that low rates often served “legitimate purposes [with] substantial public interest and safety benefits” at stake, for example, emergency phones, seasonal lines, or basic service for elderly or low-income consumers.²⁸ Low rates for such service ensure that phone service and access to 911 service is available in the event of an emergency for customers that may not be able to afford telephone service at higher rates. There may be other reasons that market rates in rural areas could be below the national average urban rate. For example, prices may be higher for local urban rates because “urban customers have access to much more populous local calling areas than rural customers.”²⁹ In addition, local urban rates are not uniform, so many urban consumers are paying rates below the national urban rate average.³⁰

11. *Second*, we find that the rate floor places unnecessary regulatory burdens on state commissions and rural telephone companies.³¹ For example, rural carriers must “expend limited internal resources to notify customers of impending rate increases and . . . seek permission from their state commission for such increases.”³² Moreover, a rate floor requires burdensome proceedings for rural incumbent LECs and state commissions related to rate increases and other compliance measures such as customer notifications and reporting obligations.³³ The record reflects that rate increases caused by the rate floor burden both carriers and state commissions “where rate cases or other notices or applications are required to be prepared, filed and litigated,” often on an expedited basis “where urban rate survey

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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 (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).

²¹ See Comments of WTA – Advocates for Rural Broadband, WC Docket No. 10-90, at 3-7 (July 10, 2017) (WTA Comments); Comments of NTCA–The Rural Broadband Association, WC Docket No. 10-90, at 2-5 (July 10, 2017) (NTCA Comments); Comments of USTelecom, WC Docket No. 10-90, at 4 (July 10, 2017) (USTelecom Comments); Comments of the Pennsylvania Public Utility Commission, WC Docket No. 10-90, at 5 (July 10, 2017) (Pa PUC Comments); Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90, at 3 (July 10, 2017) (GRTI Comments); Comments of Oregon Telecommunications Association and the Washington Independent Telecommunications Association, WC Docket No. 10-90, at 2-7 (July 10, 2017) (OTA and WITA Comments); Comments of the State Independent Telephone Association of Kansas, WC Docket No. 10-90, at 4-5 (July 10, 2017) (SITA of Kansas Comments).

²² *USF/ICC Transformation Order*, 26 FCC Rcd at 17680, para. 17.

²³ 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”).

²⁴ AARP Letter at 2.

²⁵ NTTA Comments at 6.

²⁶ GRTI Comments at 1; OTA and WITA Comments at 5.

completion and results are delayed”³⁴ In other words, the rate floor creates needless state and federal regulatory compliance costs—wasting resources that could be better put to improving quality of service and closing the digital divide.

12. *Third*, we find that the rate floor is a particularly ineffective means of conserving scarce federal funds. Unlike other mechanisms to control expenditures, such as the cost model for A-CAM carriers (which targets higher spending to higher-cost areas and limits spending available in lower cost areas) or the budget control mechanism for rate-of-return carriers (which limits total spending and creates incentives for carriers to control costs),³⁵ the rate floor neither targets spending in an efficient manner nor creates incentives for carriers to control costs. Instead, it simply rewards carriers that artificially inflate prices, regardless of whether they invest efficiently or control their costs. And any purported savings from the rate floor have dissipated in recent years with the advent of the rate-of-return budget control mechanism—that’s because savings from the rate floor is redistributed to other rate-of-return carriers through increased headroom in the budget, with no overall savings to the Fund.³⁶

13. *Fourth*, to the extent that the rate floor was trying to solve the problem of “artificially low” rates, we find that it has outlived its usefulness. As a preliminary matter, the record does not support the notion that rates for voice service are artificially low.³⁷ But in any case, as a result of the rate floor, the monthly recurring rate has risen and is now \$18 in many rural areas,³⁸ and “ultra-low voice service rates are becoming relatively rare.”³⁹ What is more, these rates are substantially higher than the Commission expected in 2011. At the time, the Commission anticipated that by July 2014 the rate floor would be “close to the sum of \$15.62 plus state regulated fees”—or \$16.80 in inflation adjusted terms.⁴⁰

14. *Fifth*, changes to the Fund’s support mechanisms for rural carriers since the rate floor’s adoption have largely eliminated any potential impact rates would have on the universal service support mechanisms. For example, the Commission has imposed concrete broadband buildout obligations on all legacy carriers,⁴¹ eliminated the support disparity between voice-only and broadband-only lines,⁴² and

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²⁷ WTA Comments at 6.

²⁸ *Id.* at 4.

²⁹ *Id.* at 8; *see also* Pa PUC Comments at 8; USTelecom Comments at 2.

³⁰ NTCA Comments at 6.

³¹ *See* USTelecom Comments at 5.

³² NTCA Comments at 4.

³³ *See* NTCA Comments at 4-5; WTA Comments at 6; Pa PUC Comments at 9; USTelecom Comments at 5.

³⁴ WTA Comments at 6; *see also* Pa PUC Comments at 8 (“[R]ural LECs would, of course, still be required to file and seek Pa. PUC approval for any local rate changes under” state law).

³⁵ *See Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Inter-carrier Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3096-3117, 3144-45, paras. 20-794, 150-153 (2016) (*2016 Rate-of-Return Reform Order*).

³⁶ *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd 3094-3117, paras. 17-19; *Rate Floor NPRM*, 32 FCC Rcd at 4513, para. 12.

³⁷ *See* WTA Comments at 4.

³⁸ OTA and WITA Comments at 3-4.

³⁹ WTA Comments at 4.

⁴⁰ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17753, para. 243.

created incentives for legacy carriers to move from rate-of-return regulation to incentive regulation.⁴³ Each of these changes reorients our high-cost system from one tied to carriers' historic costs and revenues from telephone services toward one where funding is tied to the fulfillment of certain broadband deployment obligations. And it is accordingly no surprise that the number of carriers potentially subject to the rate floor has rapidly diminished: Of the 940 study areas that were once potentially subject to the rate floor, only 654 are still subject to it.⁴⁴

15. In short, we find that the costs of either increased rates or reduced support (and therefore reduced deployment) ultimately borne by rural consumers outweigh any putative benefits to the Fund. The record in this proceeding overwhelmingly supports elimination of the rate floor rule;⁴⁵ commenters agree that the rule imposes significant costs with little benefit.⁴⁶ And we agree with one commenter that, in essence, "the rate floor penalizes rural customers without any real benefit to the overall size of the fund."⁴⁷ Accordingly, we eliminate the rate floor rule and its accompanying reporting obligation.

16. We disagree with the only commenter that supports maintaining the rate floor.⁴⁸ Although NCTA argues that eliminating the rate floor would skew competition and increase subsidies at the expense of consumers,⁴⁹ we find the opposite to be true. Rural carriers receiving high-cost loop support can only recover their operating costs and investments where they face high per-line costs of providing service.⁵⁰ Commission rules already require carriers to use subsidies to offset demonstrated high costs—not to subsidize below-market rates. Rather, the rate floor itself skews competition by artificially inflating the prices that certain carriers may charge—requiring a carrier to charge above-market rates in a town, for example, for fear of losing its support in the surrounding countryside.⁵¹ Without the rate floor, prices in competitive areas can freely adjust to competitive levels. And the rate floor is a double penalty for consumers since carriers can maintain their subsidies so long as they also

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⁴¹ See *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176, paras. 31-69, 101-112 (Dec. 13, 2018) (*December 2018 Rate-of-Return Reform Order*).

⁴² *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3119, para. 86.

⁴³ See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-3117, paras. 17-19; *December 2018 Rate-of-Return Reform Order*, FCC 18-176, at paras. 31-69, 101-112. In the *2016 Rate-of-Return Reform Order*, the Commission exempted those legacy carriers who were 80% or more deployed with 10/1 Mbps from defined deployment obligations. *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3152, para. 173.

⁴⁴ See HC01- High Cost Support Projected by State by Study Area - 2Q2019.xlsx XLSX, <https://www.usac.org/about/tools/fcc/filings/2019/q2.aspx> (last visited Apr. 15, 2019).

⁴⁵ See WTA Comments at 3-7; NTCA Comments at 2-5; USTelecom Comments at 4; Pa PUC Comments at 5; GRTI Comments at 3; OTA and WITA Comments at 2-7; SITA of Kansas Comments at 4-5.

⁴⁶ See, e.g., WTA Comments at 3-4; USTelecom Comments at 4.

⁴⁷ See USTelecom Comments at 4; see also WTA Comments at 1, 6. We note that the Commission also sought comment on whether it should modify the rate floor methodology and/or make it administratively less burdensome. *Rate Floor NPRM*, 32 FCC Rcd at 4513, 5414, paras. 10, 13; see also ITTA Comments at 2-3 (suggesting the Commission consider disaggregation of single national rate floor and supporting a rate floor one standard deviation below the average urban rate); WTA Comments at 2, 7-8 (if the rate floor is maintained, it should be a single nationwide rate computed at two standard deviations below the national average); NTCA Comments at 2, 7 (if the rate floor is maintained, it should be set at two standard deviations below the national urban average); SITA of

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charge consumers higher rates.⁵²

17. Finally, we eliminate the reporting obligations associated with the rate floor after July 1, 2020, thereafter relieving carriers of the obligation to report residential local service rates. Although we do not expect that carriers will begin charging artificially low rates as a result of the elimination of the rate floor, maintaining this reporting obligation for one year will allow the Commission to monitor any unexpected and significant changes in residential local services rates reported by carriers in their July 1, 2019 and 2020 annual filings.

IV. PROCEDURAL MATTERS

18. *Regulatory Flexibility Act.*—The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” In the Report and Order, we are eliminating a rule and its accompanying reporting obligation. Accordingly, we certify that the rule changes adopted herein will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.⁵³ In addition, the Commission will send a copy of the Report and Order to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order (or summaries thereof) will also be published in the Federal Register.⁵⁴

19. *Paperwork Reduction Act.*—This document eliminates a reporting requirement and contains no new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The document, by eliminating a reporting requirement, reduces any burdens on small entities.

20. *Congressional Review Act.*—The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

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Kansas Comments at 5 (if the rate floor is maintained, it should be set at two standard deviations below the national urban average). Because we determine that the rule is unnecessary and its administrative costs outweigh any benefits, we find that any modification to the rate floor is not in the public interest.

⁴⁸ *See* Comments of NCTA – The Internet & Television Association, WC Docket No. 10-90, at 3 (July 10, 2017) (NCTA Comments).

⁴⁹ *Id.*

⁵⁰ *See December 2018 Rate-of-Return Reform Order*, FCC 18-176, at para. 9.

⁵¹ Any price reductions because the rate floor has been eliminated will result in additional funds for consumers so there will be no net loss.

⁵² NCTA asks that we consider “phasing out support for wireline voice services in some areas.” *See* NCTA Comments at 5. We note that this issue is unrelated to the rate floor and was not raised in the *Rate Floor NPRM*. In the *December 2018 Rate-of-Return Reform Order*, the Commission adopted of competitive auctions in legacy areas nearly entirely overlapped by unsubsidized competitors. *See December 2018 Rate-of-Return Reform Order* at paras. 136-46.

⁵³ 5 U.S.C. § 801(a)(1)(A).

⁵⁴ *See id.* § 604(b).

V. ORDERING CLAUSES

21. 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 Report and Order IS ADOPTED.

22. IT IS FURTHER ORDERED that Part 54, of the Commission's rules, 47 CFR Parts 54, IS AMENDED as set forth in the Appendix.

23. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE 30 days after the date of publication in the *Federal Register*.

24. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

25. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 54 of Title 47 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

2. Amend § 54.313(h) as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

- (h) In their annual reporting due by July 1, 2019 and July 1, 2020, all incumbent local exchange carrier recipients of high-cost support must report all of their rates for residential local service for all portions of their service area, as well as state regulated fees, to the extent the sum of those rates and fees are below \$18, and the number of lines for each rate specified. Carriers shall report lines and rates in effect as of June 1. For purposes of this subsection, state regulated fees shall be limited to state subscriber line charges, state universal service fees and mandatory extended area service charges.

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3. Section 54.318 is removed and reserved.

**STATEMENT OF
CHAIRMAN AJIT PAI**

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

During the Obama Administration, the FCC created the “rate floor,” a regulatory catch-22 in which rural phone companies have to choose between raising rates for local telephone service or losing their universal service support. What was the result? The rate floor arbitrarily raised prices paid by rural consumers. It effectively mandated higher rates for those who can least afford them, like low-income seniors, veterans, and those living on Tribal lands. And notably, the rate floor didn’t provide any benefit to the Universal Service Fund.

When I became Chairman, I was determined to reexamine this perverse policy. I’m never a big fan of the government setting prices, but it’s especially problematic for those in Washington, DC to be setting artificially inflated prices for consumers. So in 2017, we put in place a two-year freeze of the rate floor. (If we hadn’t done that, many rural Americans’ local telephone rates would have gone up by almost 50%—from \$18 a month to \$27 for the rest of 2019.) And we asked the public whether we should eliminate the rate floor altogether.

The feedback we got overwhelmingly favors consigning the rate floor to the ash heap of history. The AARP, National Consumer Law Center, National Tribal Telecommunications Association, and many other groups agree that the rate floor unnecessarily harms rural Americans. So today, at long last, we get rid of it.

This *Order* is a big win for rural Americans, and I would like to thank all those who worked on it: Allison Baker, Jesse Jachman, Sue McNeil, Kris Monteith, and Suzanne Yelen from the Wireline Competition Bureau; Terry Cavanaugh, Jim Eisner, Craig Stroup, and Emily Talaga from the Office of Economics and Analytics; and Rick Mallen and Linda Oliver from the Office of General Counsel.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

I emphatically believe that one of our primary obligations as Commissioners is to serve as trustees of the Universal Service Fund (USF) and protect ratepayers' hard-earned contributions to the best of our ability. It's why I have repeatedly championed reforms to our high cost program to improve accountability. It's why I have fought wasteful overbuilding, both within the USF and across the federal government. It's why I am leading an effort to establish an upper limit on USF spending. It's why I have consistently and vociferously opposed any attempt to impose USF fees on broadband Internet access. And, it's why I have supported the concept of a rate floor to guard against abuse of scarce USF dollars.

I have taken these positions out of principle, not because they are the most popular, represent the path of least resistance, or conform to the political whim of the day. In the case of the item at hand, it would, of course, be convenient to rail against the rate floor and then scream, "look at me!" while wrapping myself in a proverbial cape as a superhero of "rural America." Beyond the fact that such showmanship is obviously not my style, dismissing our rate floor policy in a reductive and simplistic manner is unbecoming of our role as regulators. This issue implicates serious policy considerations and requires a much more thoughtful approach.

At the outset, I completely agree that the current rate floor is flawed and problematic. The particular formula was established before I arrived at the Commission, and I've heard nothing but complaints ever since. Specifically, it's been claimed that the scheduled 2019 rate increase would be unduly jarring and burdensome for certain rural telephone providers and subscribers and wouldn't be justified under our statutory mandate. I fully accept these arguments. Coupled with the fact that the rate floor's significance has become limited due to the fading stature of standalone telephone service and rate-of-return carriers' increasing shift to incentive regulation, a change in policy is clearly warranted.

However, the problem with abolishing the rate floor altogether is that we leave the USF open to the same type of abusive practices that spurred the Commission to adopt the policy in the first place. Specifically, prior to the 2011 *Transformation Order*, certain carriers maintained significantly and artificially low end-user rates while relying on USF ratepayers, rather than their own subscribers, to recoup an appropriate level of costs. In other words, poor families living in urban areas were on the hook to subsidize rural rates that were often outrageously below what they themselves paid for service, regardless of the means or income of the recipient rural subscribers. This use of scarce USF dollars was completely unfair and inappropriate then, and we would be foolish to allow it to be repeated.

As a result, I sought to include *some* protective mechanism to prevent abuses going forward. My first step was to request a very minimal amount that carriers must charge their customers to avoid a reduction in high cost loop support. I suggested that we could even set the threshold at *half* the current frozen rate or perhaps even lower. In response, I was told that the record could not justify establishing such a minimum, which was perplexing since the Commission has done far more with far less.

Since that request was off the table, I turned to ensuring that at the very least, we don't create a glaring blind spot with respect to monitoring our change in policy. Thus, I requested that instead of immediately ending all reporting obligations associated with the rate floor, we extend reporting for an additional year to ensure that the Commission has some visibility into carriers' rates following our action today. While experts on this matter don't expect the change in policy to have much impact on rural telephone rates, with this very minimal requirement there will at least be some accountability to ensure that the ill that the rate floor sought to address will not return. I thank the Chairman for his willingness to work with me on this issue.

To further guarantee protection of USF ratepayers, I also sought a commitment from the Chairman to introduce basic means-testing reforms to the high cost program. As I have stated in the past,

I fundamentally disagree with our current monolithic approach that treats all individuals within a geographic area as having the same means. Just like urban America features individuals of all different incomes, rural America is not universally poor, and many rural Americans are in fact very wealthy. While I applaud their success, it makes no sense to allocate scarce USF dollars to those individuals who are more than able to pay full freight. Why should we be in the business of subsidizing telephone service to a billionaire's fourth home or ranch, especially when the USF fee is regressive and therefore disparately burdens low-income consumers? The federal government tailors subsidies to a consumer's means in numerous subsidy programs, including Medicare, and the USF should be no exception. That is why, along with former Commissioner Clyburn, I'm initiating a conversation to incorporate means-testing into the high cost program.¹ I appreciate the Chairman's willingness and promise to work with me to initiate appropriate reforms while not imposing excessive burdens on rural providers.

In the end, I am comfortable voting to eliminate the rate floor while preserving a minimal reporting requirement to guard against new mischief. Every recipient of high cost loop support should be on notice that their actions going forward will likely determine whether the Commission will need to revisit the issue in the future. I urge everyone to do the right thing. And, to further protect hardworking USF ratepayers, I look forward to our next steps in establishing means-testing in the high cost program.

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 3048-49, para. 166 (2018); *see also* 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>.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

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

Americans around the country want better, faster, and cheaper communications services. And by getting the government out of the way, the FCC's policies have been helping to deliver those results. Internet speeds in the U.S. are up by 40 percent, more fiber broadband was built last year than any other year in history, and prices for communications services are down.

But in one case, FCC rules are pushing the market in the wrong direction—they are keeping prices artificially high. The rate floor requirement, which the Commission adopted in 2011, requires rural carriers who receive universal service support to charge rates above a minimum set by the FCC or risk seeing their support reduced. For the last two years, the rate floor has been frozen at \$18.00, but, without further action, FCC rules will increase that rate by more than \$8.00 on July 1st. At that time, when Americans are settling in to celebrate another Independence Day, it would be quite jarring to learn that Washington decided, in effect, to increase their phone bills by nearly 50 percent. It's a price hike that would have a big impact in small towns and communities across the country. In fact, we're already seeing it. In Georgia alone, carriers who chose to charge prices below the rate floor lost nearly \$450,000 in universal service support last year.

So today, we eliminate a rule that has effectively required providers to keep their rates artificially high. I am glad we are taking this step to help encourage access to affordable communications services across the country.

Thank you to the staff of the Wireline Competition Bureau for your work on this item. It has my support.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

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

Today, we eliminate the universal service “rate floor.” I support this outcome, because it will blunt the impact of a sudden price increase for voice service in rural communities.

But for a moment, let me leave aside the rate floor and discuss the ceiling that has been proposed for universal service. Before this agency is a rulemaking that would cap all our universal service efforts. It flies in the face of this agency’s high-minded rhetoric about bridging the digital divide. That’s because it threatens to cut off broadband in rural areas, limit-high speed internet access in rural classrooms, shorten the reach of telehealth, and foreclose opportunity for those who need it most. It proposes unleashing a fight for support between connecting kids in schools and hooking up hospitals for telemedicine. I hope that this agency changes course. We have a statutory duty to support universal service. That is why we take this action on the rate floor today, and it is why the ceiling that has been proposed is unacceptable.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

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

One of the Commission's most important responsibilities is closing the digital divide – I am laser-focused on this work. The Commission's Universal Service program is our best tool to ensure that everybody everywhere has access to quality affordable broadband. But we must also be mindful that many Americans rely on voice service, which the Universal Service fund also supports. In fact, during a recent visit to my hometown of Kansas City, a resident approached me at the end of an event and spoke passionately about the importance of traditional voice telephone service to elderly local citizens.

The rate floor that today's order eliminates was adopted in 2011 to ensure fair allocation of Universal Service voice support. It prevented voice service providers receiving support from the Universal Service High-Cost fund from gaming the system by charging unrealistically low rates and depending too heavily on Universal Service to pay their costs. The rate floor was an important part of the changes to Universal Service the FCC adopted in 2011, and I'm glad to see that today's order now acknowledges its origin and role. But, the Universal Service fund has undergone major changes since then and it's not clear to me that the rate floor still serves enough of a purpose that it should remain on the books and require some voice service providers to either raise their rates sharply this summer or have their Universal Service support reduced.

I'm also glad that today's order now includes a rate reporting requirement, so we can see whether voice service providers adopt artificially low rates in response to elimination of the rate floor. I will be watching to make sure that voice service providers do not take advantage of the Universal Service fund after the rate floor is gone. We owe it to people, schools, libraries, hospitals, and clinics on the wrong side of the digital divide to make sure that every Universal Service dollar is used to get quality affordable broadband to as many people and places as possible.

I appreciate the hard work that went into preparing this order, and I thank the staff of the Wireline Competition Bureau.