

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

In the Matter of )  
 )  
Inquiry Concerning Deployment of Advanced ) GN Docket No. 18-238  
Telecommunications Capabilities to All )  
Americans in a Reasonable and Timely )  
Fashion )

**COMMENTS OF  
USTELECOM – THE BROADBAND ASSOCIATION**

**I. INTRODUCTION AND SUMMARY**

USTelecom — The Broadband Association (USTelecom)<sup>1</sup> submits these comments in response to the Federal Communications Commission’s (Commission or FCC) Notice of Inquiry (*Notice*) to affirm that “advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”<sup>2</sup> These comments build upon USTelecom’s previous submission in response to the Commission’s analysis required by RAY BAUM’s ACT of 2018, which are incorporated by reference.<sup>3</sup>

The principle findings of the USTelecom RAY BAUM Comments support the fact that

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

<sup>2</sup> *Inquiry Concerning Deployment of Advance Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, WC Docket No. 18-238, Fourteenth Broadband Deployment Notice of Inquiry, FCC 18-119 at para. 1 (Aug. 9, 2018).

<sup>3</sup> USTelecom Comments, GN Docket No. 18-231 (Aug. 17, 2018). These Comments also included two exhibits (A and B) that are also incorporated by reference and which provide the technical and statistical basis of our findings. For this filing, USTelecom relied upon an analysis of FCC broadband availability data for year-end 2016. On September 10, 2018, the Commission released updated broadband availability data for mid-2017. *See* FCC, Fixed Broadband Deployment Data from FCC Form 477 at <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> (last visited September 17, 2018). Given the proximity of the data release and the due date for comments in this proceeding, USTelecom has not yet updated its analysis.

Americans are benefitting from robust broadband deployment. First, fixed broadband infrastructure is widely deployed: 96 percent of households have at least one wired broadband option; 98 percent if fixed wireless is included; and nearly the entire country if satellite is included. Second, higher speeds are routinely deployed through upgrade cycles.<sup>4</sup> Third, new technologies and players from outside the industry emerge to challenge existing technologies and providers.<sup>5</sup>

Investment in broadband is growing due in part to measures the Commission has taken to set a light-touch regulatory framework, ease burdens on infrastructure deployment, and promote rural broadband. USTelecom members have, with the Commission's assistance via the Connect America Fund and universal service, played a key role in helping to bridge the digital divide in rural American as well.

While broadband deployment is undoubtedly advancing, there is still more that the Commission can do to ensure it continues apace. In particular, the Commission can continue to consider how it can increase targeted funding to rural broadband initiatives and avoid subsidized overbuilding, remove remaining barriers to investment—particularly with pole attachments—and incent additional investment via a level regulatory playing field.

## **II. THE PACE OF BROADBAND INVESTMENT IS GROWING AND DEPLOYMENT IS STRONG**

### **A. The Commission is Creating an Environment Primed for Broadband Investment**

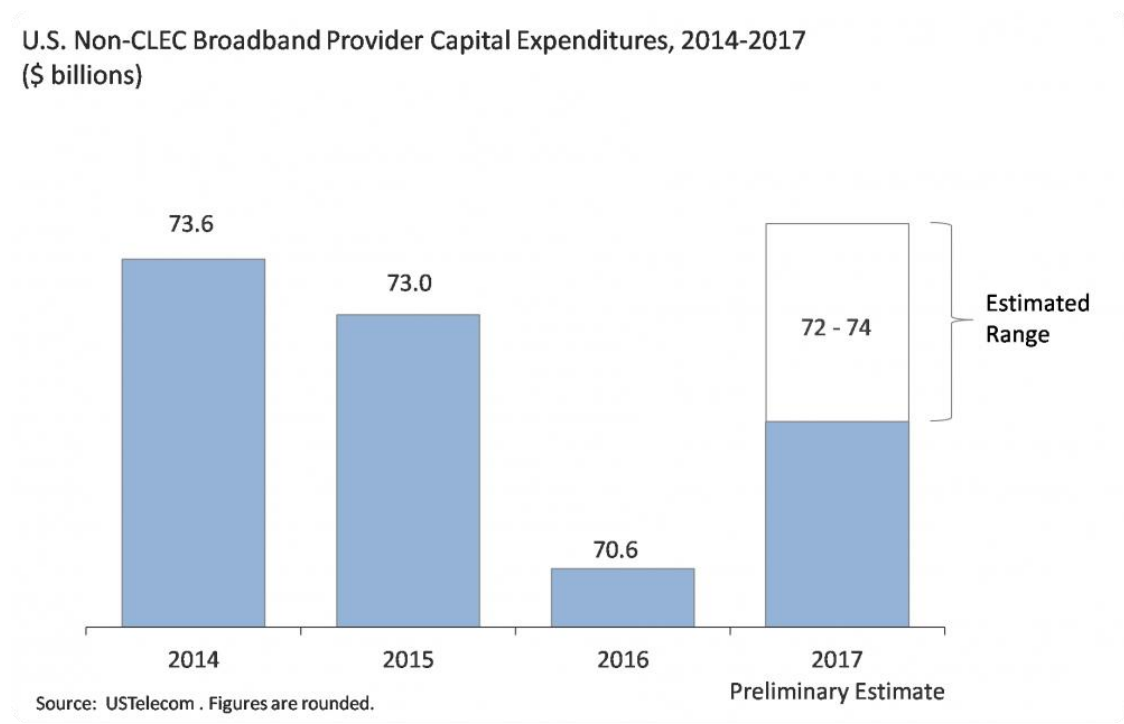
As the Commission's pro-consumer policy incentives for broadband innovation and investment continue to take root, the two-year decline in private capital investment in U.S.

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<sup>4</sup> See e.g., *id.*, Exhibit A at 17.

<sup>5</sup> See e.g., Microsoft Airband Initiative (<https://www.microsoft.com/en-us/airband>) (visited September 17, 2018) and Facebook's Terragraph initiative (<https://www.nextgov.com/analytics-data/2018/02/facebook-continues-its-rural-broadband-quest/146242/>) (visited September 17, 2018).

broadband infrastructure from 2014 to 2016 appears to be in the rearview mirror, according to a preliminary USTelecom analysis of the 2017 capital expenditures of wireline, wireless, and cable broadband service providers.<sup>6</sup> U.S. broadband companies<sup>7</sup> have invested between \$72 and \$74 billion in network infrastructure in 2017, compared to \$70.6 billion in 2016, showing at least an increase of nearly \$1.5 billion.



While there are many factors that affect these figures—from the overall health of the economy to intense and rising competition—the increase in investment synchs directly with the timing of the Commission’s direction to restore broadband policy to a constructive, nimble and pro-consumer framework via the Restoring Internet Freedom proceeding.<sup>8</sup> This capex recovery

<sup>6</sup> USTelecom expects to publish final broadband provider capital expenditures for 2017 this year.

<sup>7</sup> USTelecom excluded independent competitive local providers and fiber providers because we have not finalized data for non-reporting private companies. The companies included here represent the vast majority of U.S. broadband capex.

<sup>8</sup> *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2018) (Restoring Internet Freedom Order). The FCC formally initiated the Restoring Internet Freedom proceeding in May 2017,

in 2017 also coincides with the FCC's shift in emphasis towards consistent, modern policies that seek to remove barriers to broadband deployment and streamline next generation services.

Notably, since 2017, the Commission has:

- Returned Internet governance to the light-touch Title I framework under which it had thrived for nearly two decades;<sup>9</sup>
- Taken multiple steps to streamline processes that will allow carriers to migrate from legacy networks to next generation technologies and services,<sup>10</sup> and removed outdated and unnecessary regulatory accounting rules to allow providers to focus attention on deployment.<sup>11</sup>
- Recognized the presence of competition and innovation in the business data services market and eliminated market-distorting regulations that inhibited investment in broadband.<sup>12</sup>
- Reformed archaic pole attachment rules that will allow for market rate parity and help to spur broadband deployment.<sup>13</sup>
- Provided approximately \$500 million in additional funding to assist rate-of-return carriers in expanding broadband deployment in rural America and sought public input on the future steps we should take so that these carriers have sufficient resources to build out broadband.<sup>14</sup>
- Fostered competitive parity in rural services by granting USTelecom's petition and forbearing from applying Universal Service Fund contribution requirements to rural carriers' broadband Internet transmission services.<sup>15</sup>

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though the FCC put the draft item out for public notice three weeks prior to the vote on the Notice of Proposed Rulemaking. *See Restoring Internet Freedom*, Notice of Proposed Rulemaking, 32 FCC Rcd 4434 (2017); FCC, FCC Announces Tentative Agenda for May Open Meeting, <https://www.fcc.gov/document/fcc-announces-tentative-agenda-may-open-meeting-4> (last visited Sept. 17, 2018).

<sup>9</sup> *See generally* Restoring Internet Freedom Order.

<sup>10</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Further Notice of Proposed Rulemaking and Declaratory Ruling, 32 FCC Rcd 11128, 1137-94 (2017) (2017 Accelerating Wireline Broadband Deployment Order); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, FCC 18-74 (June 8, 2018).

<sup>11</sup> *Comprehensive Review of the Part 32 Uniform System of Accounts; Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, 32 FCC Rcd 1735 (2017).

<sup>12</sup> *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459 (2017).

<sup>13</sup> 2017 Accelerating Wireline Broadband Deployment Order, 32 FCC Rcd at 11131-37; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Report and Order, Declaratory Ruling, FCC 18-111 (Aug. 3, 2018) (2018 Pole Attachment Order).

<sup>14</sup> *Connect America Fund et al.*, WC Docket 10-90 et al., Report and Order, Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (CAF Rural Funding Order and NPRM).

<sup>15</sup> *Petition of NTCA—The Rural Broadband Association and the United States Telecom Association for Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Broadband Internet Access*

- Completed the CAF Phase II auction that will provide broadband to over 700,000 locations in the coming years.<sup>16</sup>

All of these steps were individually significant but in concert have contributed to a regulatory environment primed for broadband investment, to the ultimate benefit of the American people.

### **B. Rural America Has Benefitted from USTelecom Member Broadband Deployment**

USTelecom members have been a key part of the increased deployment of broadband generally, but this is particularly true for rural America. The primary program fueling rural broadband deployment today is the FCC's Connect America Fund (CAF). This program has devoted billions of dollars to fund broadband deployment to millions of Americans since its inception in 2011,<sup>17</sup> and USTelecom members have answered the call every step of the way.

In March 2018, for the first time, CAF Phase II price cap participants (who are virtually all USTelecom members) reported geolocation information on over 1.4 *million* high-cost and rural locations that are supported by the Connect America Fund. By this program's end in 2020 or 2021, the CAF will have supported broadband to over 3.6 *million* locations.<sup>18</sup> While the minimum speed for this program is 10 Mbps down/1 Mbps up, which the Commission has noted is sufficient to enable two high definition video streams,<sup>19</sup> many locations will receive significantly greater speeds due to network design. Meanwhile, rate-of-return carriers are continually deploying broadband throughout rural America in accordance with their

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*Transmission Services*, WC Docket No. 17-206, Order, FCC 18-75 (June 8, 2018).

<sup>16</sup> *Connect America Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced, FCC Form 683 Due October 15, 2018*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 18-887 (WCB, WTB Aug. 28, 2018) (CAF II Auction Results PN).

<sup>17</sup> See FCC, Connect America Fund, <https://www.fcc.gov/general/connect-america-fund-caf> (last visited Sept. 17, 2018).

<sup>18</sup> See FCC, Connect America Fund Phase II Funding by Carrier, State and County, <https://www.fcc.gov/document/connect-america-fund-phase-ii-funding-carrier-state-and-county> (last visited Sept. 17, 2018).

<sup>19</sup> See *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15649, para. 16 (2014).

obligations,<sup>20</sup> and also reporting their deployments on a geocoded basis to allow the Commission to track their progress.<sup>21</sup> The Commission should take full account of the significant investment and life-altering changes the CAF has brought to rural Americans when evaluating deployment progress over the past year.

### **III. THE COMMISSION'S WORK IS NOT COMPLETE: THERE ARE ADDITIONAL STEPS IT CAN TAKE TO ENSURE THE DEPLOYMENT OF BROADBAND TO ALL AMERICANS**

#### **A. The Commission Should Continue to Fund Deployment in Rural America and Prevent Overbuilding**

As noted above, the Commission is to be commended for dedicating an additional \$500 million towards rural broadband for rate of return carriers, but more direct funding is required to tackle the digital divide. The Commission is currently also considering how to alter its budget in the future to further fund rural broadband deployment, and requested comment on further reforms to establish a budget that will allow for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to the Universal Service Fund places on ratepayers. USTelecom supports fully-funding both the current rate of return mechanism and the A-CAM, and other measures that provide stability and stimulate broadband deployment in rural areas in order to close the digital divide.<sup>22</sup> The Commission should act expeditiously to address this lingering budget issue that is impeding broadband investment.

Preventing government-funded overbuilding of other government broadband projects is also a critical task to ensure the most responsible use of scarce funding and enable the most Americans to receive broadband. While the Commission has generally done a good job of

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<sup>20</sup> See *id.* at § 54.308 (defining broadband public interest obligations of rate of return providers).

<sup>21</sup> See 47 C.F.R. 54.313(e)(1), (f)(1); 54.316(a) (outlining different geolocation requirements for different CAF programs, including the rural rate of return carriers).

<sup>22</sup> See USTelecom Comments, WC Docket Nos. 07-135, 10-90, 14-58, CC Docket No. 01-92 (filed May 25, 2018) (describing USTelecom's full proposal for how to appropriately fund broadband deployment in rate-of-return areas).

preventing overbuilding in its own programs, it must coordinate with other agencies charged with broadband deployment to ensure they are aware of the work that the Commission is already doing. In particular, RUS has received a \$600 million allocation for a broadband deployment pilot program.<sup>23</sup> Congress directed RUS to avoid overbuilding but it can only do so through ample coordination with the Commission, which has a unique vantage on the existing Connect America Fund programs, including the recently completed CAF II auction. Overbuilding is inefficient because the benefits of connecting unserved locations are greater than those of establishing a second connection. In addition, by splitting a small potential subscriber base among additional firms, no firm may be able to obtain sufficient revenues to keep its rural network operational. Therefore, preventing overbuilding is a critical function for the Commission in order to maintain the viability of the broadband deployed through the CAF program.

**B. The Commission Should Consider How to Remove Further Broadband Investment Barriers that Result from Pole Attachment Rates Outside of the FCC’s Section 224 Authority**

The Commission has taken significant steps to reform archaic pole attachment rules yet USTelecom members still report substantial difficulties in accessing poles, ducts, conduits, and rights-of-way owned by entities that are not subject to section 224, such as municipalities and electric cooperatives.<sup>24</sup> Section 224 does not apply in such instances, and this exclusion from federal law has unfortunately enabled electric cooperatives to increasingly charge excessive pole attachment rates when ILECs and other broadband providers seek to attach to an electric cooperative’s poles or conduit.

The Commission recently recognized that “[n]ow, more than ever, access to this vital

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<sup>23</sup> Rural Util. Serv., U.S. Dep’t Agric., Notice of Inquiry and Request for Comments, 83 Fed. Reg. 35609 (July 27, 2018).

<sup>24</sup> See 47 U.S.C. § 224(a)(1).

infrastructure [utility poles] must be swift, predictable, safe, and affordable, so that broadband providers can continue to enter new markets and deploy facilities that support high-speed broadband.”<sup>25</sup> The economics of a carrier’s deployment in an area served by a cooperative are no different than in areas where an investor-owned utility or a local exchange carrier own the poles. While the unreasonable rates charged by electric cooperatives have long been an issue for broadband providers, the problem has recently become increasingly acute. In particular, despite federal policies promoting broadband deployment, recent actions by the Tennessee Valley Authority (TVA) are undermining these important federal policy goals. The TVA’s recent actions are particularly ironic given it is a federally owned corporation in the United States created by congressional charter.<sup>26</sup>

TVA is impeding broadband deployment through its decision to adopt a board resolution that substantially increased its pole attachment rates.<sup>27</sup> The rates adopted by the TVA Board of Directors are several times those that are federally regulated, and TVA requires all of its participating cooperatives to charge these rates. TVA’s action increases pole attachment rates to an average of \$30/pole, involve more than 150 rural electric cooperatives covering seven states,<sup>28</sup>

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<sup>25</sup> 2018 Pole Attachment Order at para. 1.

<sup>26</sup> See TVA website, *About TVA* (available at: <https://www.tva.gov/About-TVA>) (last visited September 17, 2018) (noting that the TVA is a “corporate agency of the United States.”); see also, GAO Report, *Tennessee Valley Authority, Full Consideration of Energy Efficiency and Better Capital Expenditures Planning Are Needed*, GAO 12-107 (Oct. 2011) (noting that the TVA is a “federally owned electric utility”) (available at: <http://www.gao.gov/assets/590/586006.pdf>).

<sup>27</sup> TVA Board Resolution (available at: [https://www.tva.gov/file\\_source/TVA/Site%20Content/About%20TVA/Guidelines%20and%20Reports/tva\\_determination\\_on\\_regulation\\_of\\_pole\\_attachments.pdf](https://www.tva.gov/file_source/TVA/Site%20Content/About%20TVA/Guidelines%20and%20Reports/tva_determination_on_regulation_of_pole_attachments.pdf)) (last visited September 17, 2018) (*TVA Board Resolution*).

<sup>28</sup> See TVA Website, *TVPPA Membership* (available at: <http://www.tvppa.com/membership/member-directory/regular-members/>) (last visited September 17, 2018); see also TVA Website (available at: [https://www.tva.gov/file\\_source/TVA/Site%20Content/Energy/tva\\_lpc\\_map.pdf](https://www.tva.gov/file_source/TVA/Site%20Content/Energy/tva_lpc_map.pdf)) (identifying the TVA cooperative members’ service territories covering seven states: Kentucky, Tennessee, Mississippi, Alabama, Georgia, Virginia, and North Carolina) (last visited September 17, 2018).



and will impact more than 9 million consumers.<sup>29</sup> TVA-related co-ops have already approached several USTelecom member companies seeking to renegotiate existing agreements. These actions by the TVA will have a broad and negative impact on millions of consumers across multiple states. Moreover, the TVA's changes to its rate structure will apply not only to ILECs, but also to smaller cable and wireless providers serving rural areas.

The disparate rates that cooperatives charge USTelecom members to attach to their poles has become a competitive issue as well. In the recent CAF II Auction, rural electric cooperatives won \$225 million in support for broadband deployment<sup>30</sup>—the exact business of USTelecom members—yet they are allowed to discourage investment in their areas by setting uncompetitive pole attachment rates.

USTelecom strongly encourages the Commission to coordinate with appropriate federal agency stakeholders and legislative committees holding TVA oversight. More broadly, USTelecom urges the Commission to explore how its authority under section 253 of the Act can be used to regulate access to municipally-owned poles when the actions of the municipality are deemed to be prohibiting or effectively prohibiting the provision of telecommunications service.<sup>31</sup>

### **C. The Commission Should Grant USTelecom's Petition to Forbear from Section 251(c) Unbundling and Resale Requirements.**

One additional way that the Commission could spur broadband deployment is to ensure a level competitive playing field by granting USTelecom's petition to forbear from Section 251(c) unbundling and resale requirements and related obligations.<sup>32</sup> These obsolete obligations,

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<sup>29</sup> See TVA Website, *About TVA* (available at: <https://www.tva.gov/About-TVA>) (last visited September 17, 2018).

<sup>30</sup> See CAF II Auction Results PN.

<sup>31</sup> For further discussion on anti-competitive pole attachment rates charged by parties outside of the FCC's § 224 authority see Comments of USTelecom, WC Docket 17-84, at 11-17 (filed June 15, 2017).

<sup>32</sup> Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018).

enacted 22 years ago, were crafted for a world that bears little resemblance to today’s competitive marketplace. USTelecom has explained that these provisions “are not necessary to protect consumers or competition”<sup>33</sup> and, in fact, “such regulatory disparities undermine consumer welfare by distorting competition.”<sup>34</sup> Granting the petition would benefit broadband deployment because “forbearance will heighten competition by promoting the deployment of fiber networks and next-generation services that customers increasingly demand and require. This is true in both retail and wholesale markets.”<sup>35</sup> Accordingly, we urge the Commission to grant the petition expeditiously.

#### IV. CONCLUSION

USTelecom applauds the Commission’s efforts to date to jumpstart broadband deployment—they are working and American broadband deployment has been reinvigorated. Yet, as described, there is much work to be done before we have fully bridged the digital divide. USTelecom members stand ready to work with the Commission to continue advancing broadband deployment across the United States.

Respectfully submitted,

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<sup>33</sup> *Id.* at 1-2.

<sup>34</sup> *Id.* at 22.

<sup>35</sup> *Id.* at 31.