

DEPARTMENT OF PUBLIC SERVICE REGULATION BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MONTANA

IN THE MATTER OF the Investigation into) REGULATORY DIVISION
Improving Transparency, Fostering Accountability,)
and Maintaining Quality Services for High Cost) DOCKET NO. N2017.10.82
Support and Lifeline Services in Montana.)

COMMENTS OF THE MONTANA TELECOMMUNICATIONS ASSOCIATION

Introduction

The Montana Telecommunications Association (MTA) is pleased to have the opportunity to respond to the Montana Public Service Commission's (Commission) investigation into programs supported by the federal universal service fund (FUSF).

MTA represents nearly all of Montana's rural telecommunications providers, all of whom are fully invested in delivering the most advanced telecommunications services to their consumers. These companies employ nearly 1,000 Montanans throughout rural Montana, serving 70% of the state's geography, or 120,000 square miles.

MTA members operate in some of the most challenging and expensive-to-serve, sparsely populated areas in the United States. Deploying advanced telecommunications infrastructure in rural Montana is an expensive proposition. As explained in MTA's Broadband Report (www.BroadbandMT.com), it costs about \$33,000 to deploy a mile of fiber in Montana. While deploying a mile of fiber costs more in Seattle, for example, the cost *per customer-served* with fiber in Seattle is \$18. In Montana, it's \$10,000.

Yet, MTA member companies leverage their ratepayers' and wholesale customers' revenues, loans and support from the FUSF, among other capital sources, to invest approximately \$100 million every year in deploying and maintaining Montana's broadband infrastructure. Since 2011, MTA members have invested over \$250 million in fiber infrastructure alone. Nearly every

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school served by MTA members has a fiber connection, fulfilling a commitment made by MTA members in 2016. MTA members are doubling available bandwidth to their customers every 12-18 months.

The Universal Service Mission

Section 1 of the of the Communications Act of 1934 as amended (“the Act”) calls for the “rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges [to be made] available, so far as possible, to all of the people of the United States” to meet the national defense, public safety, commerce and other purposes set forth in the Act.¹ Sec. 254 of the Act provides that all Americans, no matter where they live, have access to reasonably comparable telecommunications services, including advanced services like broadband, at reasonably comparable rates.²

These federal statutory goals are accomplished through the establishment of a federal universal service fund (FUSF). The FUSF is further “subdivided” into four programs, including the high cost program, the schools and libraries program (commonly referred to as “E-Rate”), the rural health care program, and the low income program, otherwise called the lifeline program. It is important to note further that universal service support is not a taxpayer-funded appropriation. Rather, universal service is funded by a user fee collected from consumers of “interstate telecommunications services.”³

¹ 47 USC Sec. 151

² 47 USC Sec. 254

³ While the total volume of communications traffic continuously is increasing, “interstate telecommunications services” as defined in the Act is shrinking. Services like Face Time, Google Voice, Skype and other technologies do not contribute to universal service. Moreover, network utilization today is driven by Internet behemoths like Google, Amazon, Facebook, Netflix and other “edge” providers—none of whom contribute to the cost of deploying today’s broadband infrastructure on which these companies depend to reach their consumers. Thus, the user fee assessed for FUSF is shrinking while demand is increasing.

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The four universal service programs are closely linked, with the high cost program being the foundation on which the other programs depend, especially in rural areas. The rural health care program, the schools and libraries program and the lifeline program all rely on a robust, advanced telecommunications infrastructure which is supported in part by investments made possible through the high cost program. That is, schools, libraries, rural health care providers and low-income consumers alike rely on services and infrastructure funded in part by the high cost program.

For example, schools and libraries increasingly utilize broadband services to enhance educational opportunities, to access information in real time from around the world, to offer the availability of teachers and subjects remotely through distance learning, etc. Similarly, rural health care providers are able to realize efficiencies and improve customer experience through the use of electronic medical records. And rural health care providers use broadband connectivity to provide telemedicine services to their rural patients, often without the need for patients to leave their homes, improving care and saving time and money for providers and patients alike. Given Montana's rapidly aging population, telemedicine will play an even more important role in keeping our rural communities healthy and productive.

Illustrating the widespread utility and benefit of broadband communications, the U.S. Senate recently held a hearing on the "Internet of Things (IoT)." As Sen. Roger Wicker (R-MS), Chairman of the Communications Subcommittee of the Senate Committee on Commerce, Science and Technology, said at the hearing on November 7, 2017, "As IoT technologies become smarter and increasingly sophisticated, they will require seamless and reliable Internet connectivity to achieve the promised health, safety, and economic benefits." Wicker said it was "vitally important" for the FCC to ensure that the USF program provide "adequate and predictable support to help preserve and expand broadband in rural and underserved communities."

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The President emphasized the urgent need to increase support for universal broadband deployment on January 8 in an address to the National Farm Bureau Federation. An Executive Order released in conjunction with the President's address states the following national policy:

Americans need access to reliable, affordable broadband internet service to succeed in today's information-driven, global economy. Currently, too many American citizens and businesses still lack access to this basic tool of modern economic connectivity. This problem is particularly acute in rural America, and it hinders the ability of rural American communities to increase economic prosperity; attract new businesses; enhance job growth; extend the reach of affordable, high-quality healthcare; enrich student learning with digital tools; and facilitate access to the digital marketplace.

It shall therefore be the policy of the executive branch to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity in rural America, including rural homes, farms, small businesses, manufacturing and production sites, tribal communities, transportation systems, and healthcare and education facilities.⁴

A related Presidential Memorandum states that "Lowering the costs of broadband deployment to rural areas can strengthen the business case for broadband facilities deployment and therefore amplify investments in broadband infrastructure."⁵

Secretary of Agriculture, Sonny Perdue, released a Report to the President on January 8, 2018, declaring "e-connectivity for Rural America" a top priority.

In today's information-driven global economy, e-connectivity is not simply an amenity—it has become essential. E-connectivity...is more than just connecting households, schools, and healthcare centers to each other as well as the rest of the world through high-speed internet. It is also a tool that enables increased productivity for farms, factories, forests, mining and small businesses. E-connectivity is fundamental for economic development, innovation, advancements in technology, workforce readiness, and an improved quality of life. Reliable and affordable high-speed internet connectivity will transform rural America as a key catalyst for prosperity.⁶

⁴ STREAMLINING AND EXPEDITING REQUESTS TO LOCATE BROADBAND FACILITIES IN RURAL AMERICA. EXECUTIVE ORDER. The White House. January 8 2018.

⁵ MEMORANDUM FOR THE SECRETARY OF THE INTERIOR. The White House. Office of the Press Secretary. January 8, 2018.

⁶ Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity. Secretary Sonny Perdue, Chair. January 8, 2018.
<https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf>

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A study by the Hudson Institute found that “Rural broadband supported over \$100 billion in e-commerce in 2015. The largest share was in manufacturing, where a majority of transactions now involve electronic data exchange over broadband networks. Nearly \$10 billion involved retail sales...”⁷

In short, MTA believes it is necessary to emphasize to the Commission in the above and foregoing comments, that there is a compelling argument to be made for why we have a federal policy of universal service. Ubiquitous access to affordable telecommunications services has been federal policy since 1934, and has been codified in federal statute since 1996. And for good reason. In fact, universal service is instrumental in ensuring that rural America continues to play a constructive role in our nation’s economy. That’s why in 1996 a coalition of Republican and Democratic Senators, including Montana’s Sen. Conrad Burns, formed the “Farm Team” to codify our federal universal service statute. It remains as critical to rural Montana today as ever.

Commission Notice

Companies are certified as eligible to receive federal funding by state agencies, such as the Commission, based on various guidelines. The Commission has concerns that the guidelines and conditions currently in place to certify companies to receive federal funding are not as effective as possible. This concern is reinforced by the fact that ETC Program funding in Montana is significant, totaling over \$100 million this year alone. Accordingly, the Commission is requesting initial comments from interested parties on the issues below.

MTA Comment: MTA members annually certify to the Commission that they have and will continue to use FUSF support for the purposes for which it is intended. That is, they use FUSF, among other sources of capital, to deploy advanced telecommunications facilities and services to as many rural Montana business and residential consumers as they can. The proof is in the pudding. MTA member companies have deployed well over 25,000 miles of fiber optic facilities in rural Montana. Every construction season

⁷ Kuttner. “The Economic Impact of Rural Broadband.” Hudson Institute. April 20, 2016.

bears witness to MTA member company crews plowing more fiber to remote residences and communities throughout the state. Nearly 30% of their customers already have fiber to the premise.

The Commission's Notice implies that the Commission has concerns about federal support for broadband investment because "over \$100 million this year alone" has been dedicated to supporting broadband deployment. The implication is that the Commission should limit—not promote—support for broadband deployment. If anything, federal support for investment in advanced telecommunications services in rural America is insufficient. For example, while declaring that download speed of 25 Mbps and upload speed of 3 Mbps (25x3) is "table stakes," the FCC has imposed a high cost budget that does not meet its own standard. The ACAM model, for instance, provides funding for 10x1 in limited circumstances, and 25x3 in even more limited circumstances. 4x1 is a general default, and there are provisions that allow ETCs to waive even the minimum threshold. Rate of return ETCs weren't even allowed to adopt the ACAM model if they were largely serving their areas with 10x1—not 25x3—service.

In short, while declaring that 25x3 should be the standard definition of broadband for purposes of closing the digital divide, the high cost fund rarely supports deployment of 25x3 broadband speeds. And even at the speeds of 10x1, 4x1 or less, the high cost program is underfunded, causing a reduction in current FUSF support for both ACAM model adopters and broadband loop support (BLS) ETCs alike. If it really is a national goal to close the digital divide, then high cost support needs to be expanded—not reduced as the Commission implies.

Indeed, most observers consider even 25x3 as only the current standard for broadband speeds. The Internet of Things (IoT), driverless cars and trucks, increasing use of bandwidth-intensive video such as virtual reality, artificial intelligence and other applications will substantially increase demand for bandwidth, requiring continued

investment in ubiquitous broadband infrastructure like the fiber networks that Montana's rural telecom providers are deploying.

The FCC, Congress,⁸ state legislatures, governors and public service commissioners among others, Democrat or Republican or Independent, overwhelmingly believe that investment in broadband infrastructure is an essential component of sound economic policy. In December, 2017, a number of state governors and public service commissions wrote to the FCC urging full and immediate funding for USF ACAM support.⁹

MTA will not belabor the benefits of broadband availability and adoption. Suffice it to say that a robust broadband infrastructure expands economic opportunity and enriches nearly every aspect of our lives, from education, health care, business vitality, community connectivity, emergency services, agriculture, entertainment, and so on. The principle of universal service—reasonably comparable service at reasonably comparable (i.e., affordable) rates—is as valid today as ever.

In a rural state like ours, broadband connectivity is even more critical to the state's economic sustainability. For example, according to the 2017 Montana Economic Development Report, 68% of Montana's manufacturers are in rural counties. Montana ranks #1 in the nation for its rate of growth of manufacturing GDP. Outdoor recreation is the second largest sector in Montana's economy accounting for \$7.1 billion in

⁸ In addition to 2014 and 2015 bipartisan Congressional letters to the FCC expressing concerns about shortcomings in the high-cost USF program: (1) in May 2017, nearly 160 Members of Congress wrote to the FCC, expressing concern about the lack of sufficient resources in USF; and (2) in October 2017, nearly 75 Members of Congress asked the FCC to take certain immediate steps to address the budget shortfalls.

⁹ See for example, Arizona Corporation Commission, December 18, 2017; Minnesota Office of Broadband Development, Alabama Public Service Commission, December 19, 2017; Michigan Public Service Commission, December 20, 2017; New Hampshire Public Utilities Commission December 28, 2017; *inter alia*.

consumer spending and 71,000 direct Montana jobs. Montana has 115,000 small businesses—more than one small business for every ten citizens. There are 27,400 farms and ranches in Montana accounting for \$4.3 billion in production in 2016. Much, if not most of this vibrant economic activity occurs in rural Montana where connectivity to advanced telecommunications services is critical.

To demonstrate the value of universal service in providing affordable advanced communications services to Montana’s rural citizens and communities, MTA asked its members to estimate what rates might look like without FUSF support. Notwithstanding the fact that such rates would not satisfy the federal statutory principle of universal service (i.e., specific, predictable and sufficient support to ensure reasonably comparable services at reasonably comparable, affordable rates), unsupported rates likely would increase by between 100% and 500% or more depending on the cost characteristics of the company and service area. The price of a voice/broadband bundle would jump to \$180 or more, depending on company.¹⁰ Rate increases of this magnitude, if allowed, would likely be unsustainable for most of Montana residential, commercial and government consumers, whether urban or rural.¹¹

Telecom providers likely would lose customers and revenues, which would lead to reduced investment, or even higher rates as companies seek to recover their costs of investment from fewer customers. Telecommunications services would become a

¹⁰ Note: such rates would violate FCC rules. “Under the Commission’s rules, each ETC...must certify... that pricing of its basic residential voice services is no more than \$45.38.” Broadband rates are subject to a “reasonable comparability broadband benchmark” which varies depending on speed and capacity. The maximum 2018 US rate is \$94.36 for 25x5 with a 250 GB allowance. (footnotes omitted). FCC. DA 17-1093. November 8, 2017. MTA notes a company could forego universal service support and thereby circumvent rate caps. Such a decision would result in unaffordable rates which would likely make continuing business operations—and therefore access to broadband infrastructure and services—unsustainable.

¹¹ The Commission on its own motion, the Montana Consumer Counsel or subscribers would likely petition for review and approval of a rate increase of such magnitude proposed by a small telecommunications provider. 69-3-903 MCA.

prerogative available only to those wealthy enough to afford them. Businesses that might be able to afford such rates would pass them along to consumers, if possible. Obviously, food prices would be affected. Rural goods and services would become uncompetitive with cheaper similar products produced in urban centers. Distance learning and telemedicine would become expensive luxuries, if they were available. Rural manufacturers and small businesses would find it hard to obtain raw materials or sell their products and services via the Internet. E-government services would not be available at these rates. There is hardly a facet of Montana's rural economy that would not be negatively affected by inaccessible or unaffordable telecommunications services.

Given the significance of a fully funded universal service program, and Montana's rural telecommunications providers' demonstrated commitment to investing in advanced communications infrastructure throughout rural Montana, MTA does not share the Commission's concern that \$100 million in FUSF (which includes high cost, schools and libraries, rural health care and low-income programs) is somehow too much. Nor, as discussed below, do we believe that current guidelines are ineffective.

If anything, the Commission should be working with industry to help close the broadband gap rather than questioning the amount of federal universal service support received in Montana. In this regard, the FCC announced on January 16, 2018 that it was proposing to increase high cost USF support by \$500 million to help close the digital divide. We welcome the Commission's support for the FCC's initiative.

Federal Communications Commission Chairman Ajit Pai today shared with his fellow commissioners an order to promote more high-speed broadband deployment in rural areas. If adopted, it would provide over \$500 million in additional funding for cooperatives and small rural carriers. The order would also put in place strong new rules to prevent abuse of the high-cost program. Finally, the order proposes several reforms to the FCC's high-cost program to improve its effectiveness and efficiency in promoting rural broadband deployment, including the use of a Tribal Broadband Factor to enable better access on Tribal lands.

Chairman Pai offered the following statement: “Closing the digital divide is the FCC’s top priority. A key way to reach this goal in rural America is updating the FCC’s high-cost universal service program to encourage cooperatives and other small, rural carriers to build more online infrastructure. We need more deployment in sparsely populated rural areas if we’re going to extend digital opportunity to all Americans. But I’ve heard from community leaders, Congress, and carriers that insufficient, unpredictable funding has kept them from reaching this goal. With the \$500 million in new funding provided by this order, we’ll boost broadband deployment in rural America and put our high-cost system on a more efficient path, helping to ensure that every American can benefit from the digital revolution.”¹²

1. What opportunities exist for the Commission to more appropriately oversee ETC Services in Montana, as allowed by 45 U.S.C. § 254(f)? The Commission invites comments on the following issues related to ETC Services:

MTA Comment: The Commission has already determined that it can fulfill its ETC recertification oversight role more appropriately in a “non-burdensome” way by inviting ETCs to participate in a roundtable discussion or informal briefing.¹³ The first of such briefings was conducted on August 31, 2017, in an information session attended by all five commissioners. To all present, it was a productive and effective way of performing the Commission’s appropriate oversight responsibilities.

If the Commission finds that an ETC has failed to comply with the intent and letter of the law, it can launch an investigation as it did when it found CenturyLink failed to deliver even basic voice telephone service—let alone broadband service—to Montana consumers.

MTA believes the Commission’s oversight is most appropriately exercised in such an *ex post* regulatory manner. The Commission’s CenturyLink investigation is a case in point. It was initiated after the Commission received a number of consumer complaints.

¹² https://apps.fcc.gov/edocs_public/attachmatch/DOC-348723A1.pdf

¹³ In the Matter of ETC Certification. N2016.4.37. Montana Public Service Commission Work Session. September 27, 2016.

- *Should additional procedures be required for the annual re-certification of existing ETCs or certification of new ETCs, in addition to those that already exist in Mont. Admin. R. 38.5.3201-3230?*

MTA Comment: First, the *designation* of new ETCs requires a diligent scrutiny of the qualifications of an applicant seeking ETC designation, as spelled out in MAR 38.5.3201, ff. For example, the Commission added additional criteria to consider when reviewing applications for designation of pre-paid wireless Lifeline-only ETCs. Namely, the Commission determined that the Commission should consider “whether or not an ETC that does not own network facilities in the state meets the public interest requirements for designation as an ETC.”¹⁴

Second, annual *recertification* should be subject to a “light touch” review that ensures that an ETC is performing as attested, using FUSF support for the purposes for which it was intended. Additional procedures are unnecessary. In other words, the Commission should exercise its oversight obligations for recertification of ETCs in an *ex post* regulatory manner.

The FCC recently applied *ex post* regulation to its treatment of the Internet in its Restoring Internet Freedom Order, adopted on December 14, 2017.¹⁵ [Reason.com](#) described the FCC’s regulatory approach in the following post.

The debate has never been over "regulation" vs. "no regulation" of ISPs. Rather, it's a question of whether it is more appropriate for an oversight body to observe market activities and intervene when foul play is suspected, called “ex post” regulation, or whether a beefed-up precautionary regulator should preemptively prohibit new service innovations until private bodies can prove them to be in the public interest, known as “ex ante regulation.”¹⁶

¹⁴ In the Matter of Budget Prepay Application for Designation as a Wireless ETC. D2010.10.110. Notice of Commission Action, Notice of Additional Issues. June 27, 2013.

¹⁵ In the Matter of Restoring Internet Freedom. Declaratory Ruling, Report and Order and Order. FCC 17-166. January 4, 2018.

¹⁶ Andrea O’Sullivan. “No, The FCC Isn’t Overturning Net Neutrality.” Reason.com. December 5, 2017.

The Commission could consider additional procedures if an ETC fails to demonstrate good faith compliance with the goals of universal service. There is precedent for this approach from the Commission's investigation into CenturyLink's failure to comply with existing service quality rules.¹⁷ In this case, the rules worked. The Commission focused its time and taxpayer dollars where they mattered, and did not waste private or public resources by imposing additional burdens on small companies that: 1) invest in their networks and consumers; and 2) have small staff and limited financial resources that need not be diverted to *ex ante* regulatory compliance premised on a concern that \$100 million of FUSF support is provided in Montana.

In other words, MTA members are doing right by their customers; neither they nor taxpayers should be required to divert scarce resources to comply with additional procedures imposed by the Commission—particularly when such procedures are not premised on a fact-based determination of wrongdoing. That is, the Commission does not need to impose additional regulatory burdens on telecom providers in a heavy-handed *ex ante* fashion. As noted above, the Commission embraced such a non-burdensome approach when it decided to invite a limited number of small ETCs to present to the Commission their use of universal service funds.¹⁸ That process should be allowed to work.

- *Do the minimum additional requirements in Mont. Admin. R. 38.5.3209 ensure ETC Program funding is appropriately spent?*

MTA Comment: Yes. To receive FUSF support, ETCs must conduct detailed analyses of their intrastate and interstate expenses.¹⁹ *Intrastate* expenses are ineligible for consideration for FUSF support. *Interstate* expenses are further allocated among regulated and non-regulated activity. Only regulated interstate expenses are eligible for

¹⁷ In the Matter of CenturyLink QC's Service Quality etc. D2014.11.91.

¹⁸ Op cit. In the Matter of ETC Certification. September 27, 2016.

¹⁹ 47 CFR Part 32. Uniform System of Accounts for Telecommunications Companies.

consideration for FUSF support. Further, regulated expenses are then subdivided between capital and operating expense, both of which are subject to federal limits.²⁰ At the end of this process, ETCs submit revenue requirements to the National Exchange Carriers Association (NECA) which determines individual ETC support levels. This process ensures that only eligible expenses are supported by FUSF.²¹

ETCs' revenue requirements, as well as their collection of universal service contributions from ratepayers and their receipt and distribution of universal service support are subject to audit by internal auditors, as well as audits from NECA and the Universal Service Administrative Company (USAC). In other words, the calculation and distribution of universal service funds are subject to multiple layers of transparency, accountability and oversight designed to ensure that FUSF funds are properly allocated.

Moreover, Montana's administrative rules include additional requirements, as the question states. MAR 38.5.3209 requires that Montana's ETCs: 1) offer supported services as required by federal rules; 2) advertise the availability and rates of such services; 3) provide reasonably comparable services at reasonably comparable rates to customers upon request; 4) satisfy consumer protection and service quality; 5) offer a local usage plan that is comparable to the incumbent's plan; and 6) demonstrate that their ETC designation is in the public interest.

Montana's rural ETCs not only meet the federal cost allocation standards discussed above, and the additional requirements of MAR 38.5.3209, they also submit over 200 reports and compliance filings annually, ranging from emergency service/911 accuracy,

²⁰ See for example, In the Matter of Connect America Fund, etc. WC Docket No. 10-90, etc. Rate or Return Reform Order, Capital Investment Allowance. Order on Reconsideration. FCC 17-36. April 21, 2017.

²¹ ETCs adopting ACAM model support no longer need to file such detailed revenue requirements procedure for high cost support; however, they continue to file detailed cost studies for interstate special access services.

to hearing aid compatibility, to extensive broadband deployment reporting in Form 477, for example. MTA is attaching to these comments a list of the myriad financial and compliance filings that its member companies must produce each year. In fact, in recognition of the sheer volume of reporting requirements imposed on telecommunications companies, the U.S. Senate unanimously passed legislation designed to relieve burdensome, redundant filings

In short, federal and state rules ensure that universal service funding is transparent, accountable and appropriately spent.

- *Should the Commission request certain existing ETCs to certify or demonstrate the manner in which customers in a designated service area have access to service? Mont. Admin. R. 38.5.3216(1).*

MTA Comment: Montana ETCs that elected ACAM model support must file geo-coded location-specific build out compliance data with USAC. USAC will audit compliance with the build out commitments for which ACAM ETCs receive support. Rate of return ETCs receiving broadband loop support (essentially high cost support) will continue to file federal Form 477 compliance data which demonstrate buildout, availability and adoption of supported services. The Commission would simply be duplicating current reporting requirements and imposing additional, redundant, unnecessary burdens on Montana's small rural telecom providers to get essentially the same information that is already collected and publicly available.

- *The Commission's rules provide that a public interest standard will apply to ETC proceedings, citing to a wide number of factors that should be considered. Mont. Admin. R. 38.5.3210. Are all of these factors appropriate to consider? Should any be eliminated or clarified? Should any be added?*

MTA Comment: The public interest factors enumerated in MAR 38.5.3210 are broad indeed. The only factor no longer relevant perhaps is MAR 38.5.3210(3)(f) which includes the obsolete consideration of whether an ETC provides "equal access to interexchange carriers." However, the rule already provides that "[a] determination of

public interest will generally include a consideration and balancing of all relevant factors.” (MAR 38.5.3210(4). Since equal access to interexchange carriers is no longer relevant, the Commission need not consider it, nor amend its rules.

On the other hand, of particular interest to MTA is the “broadband factor” (MAR 38.5.3210(3)(e). This public interest factor is more “relevant” than ever. It affirms the Commission’s commitment to its determination that ETC designation and certification is in the public interest when the ETC’s “technology platform is compatible with broadband and other advanced service offerings and facilitates availability of advanced telecommunications and information services in the areas served.”

- *Should evidentiary hearings be required to justify recertification of ETCs whose total revenue is comprised substantially from ETC Program funds? If so, what threshold percentage should trigger the hearing?*

MTA Comment: As noted above, federal statute and rules governing universal service provide that all Americans, no matter where they live, should have access to reasonably comparable services at reasonably comparable rates. To do this, the Telecommunications Act of 1996 established the universal service program under Sec. 254. FUSF support must be specific, predictable and sufficient.²² There is nothing in federal law or rule that suggests that any ETC can be determined to be ineligible for federal support just because the support is considered “substantial” or just because the support exceeds an arbitrary percentage of an ETC’s overall revenue. Any attempt by the Commission to deny recertification on such grounds would contradict the intent and letter of federal law.

- *Applications for new ETCs have traditionally not attracted robust intervention, and the submissions are rarely challenged. Previously, when the Commission has had concerns about an applicant, it has appointed its Staff as a party. In the Matter of Budget Mobile’s Application for Limited Designation as a Non-Rural Wireless Eligible Telecommunications Carrier, Docket D2012.10.110. Should the Commission appoint its own staff as a party from the outset of every proceeding for a new ETC?*

²² 47 USC Sec. 254(5).

MTA Comment: The Commission occasionally has bifurcated staff roles in the past. Such a decision is the Commission's to make.

- *The Commission has previously required disclosure of certain financial information, such as executive compensation, which was recently reversed by the Montana Supreme Court. S. Mont. Tel. Co. v. Mont. PSC, 2017 MT 123, 387 Mont. 415, 395 P.3d 473. Should the Commission adopt a rule to require disclosure of similar information, including executive compensation, as a requirement for ETCs? Should the Commission limit the rule only to public utilities who are also ETCs?*

MTA Comment: MTA submits that there is no need to revisit this matter. Any new rule requiring disclosure of personal financial information would violate the Montana Constitutional right to privacy and would disclose individual company trade secrets.

As noted above, ETCs file and comply with a variety of disclosures as well as other measures to ensure appropriate use of FUSF support, including caps on both CAPEX and OPEX (e.g., compensation). Moreover, FUSF comprises only a portion of ETCs' revenues. Executive compensation is allocated among the various regulated and non-regulated activities of a telecom provider. A blanket disclosure requirement would be misleading and inaccurate, besides being beyond the Commission's authority

The Commission's and taxpayers' resources would be spent more efficiently on *ex post* oversight of ETC adherence to the purposes for which FUSF is intended. MTA members consistently demonstrate their commitment to delivery of advanced telecommunications services to their consumers.

- *Are there any other administrative regulations in Mont. Admin. R. 38.5.3201- 3230 that should be eliminated or modified because they are antiquated?*

MTA Comment: MTA sees no need to go to the trouble and expense of a rulemaking to eliminate or modify any outdated rules. Granted, there are some rules that are showing their age. However, the Commission can forbear whenever it feels it needs to.

2. What opportunities exist for reforms to Montana law to improve ETC Services in Montana, as allowed by 45 U.S.C. § 254(f)? The Commission is interested in statutory reforms that might be proposed to the Energy and Telecommunications Interim Committee or during the 2019 Montana Legislative Session. The Commission seeks comment on the following issues:

MTA Comment: The Governor’s Mainstreet Project enlisted private sector executives to help identify issues and propose recommendations designed to enhance Montana’s economic development in a variety of “key industry networks” (KINs). The Interconnectivity and Telecommunications (Broadband) KIN was led by MTA member company CEO Bill Squires and Vision Net CEO Rob Ferris. The KIN identified several recommendations including a properly designed public/private community broadband grant program, removal of barriers to broadband deployment and creation of a broadband advisory task force. MTA is pleased to see that the Governor’s Office of Economic Development has completed the “planning phase” of the Mainstreet Project and is moving into the “implementation phase which seeks to take the recommendations of the [KINs] and execute them through rule changes, the removal of regulations, new focuses for state agencies and legislative action.”²³ We look forward to working with the Governor’s Chief Development Officer and the Commission to implement these recommendations.

There are several other reforms to Montana law, beyond the KIN’s recommendations, that can improve the prospect for deployment of broadband infrastructure and services in rural Montana. The Commission could survey a variety of broadband deployment incentive programs adopted by states across the country, including grant programs, state universal service programs, property tax relief for broadband deployment, cabinet level offices of broadband deployment, etc.

MTA would be pleased to work with the Commission to explore state broadband deployment incentive initiatives, any one of which could form the basis of a

²³ Op cit.. 2017 Economic Development Report. P.8.

recommendation(s) by the Commission to the 2019 Legislature. Among other references, the National Conference of State Legislatures (ncsl.org) lists recent state broadband legislative initiatives. The Tax Foundation's Center for State Tax Policy (taxfoundation.org/center/state-tax-policy) includes a survey of state tax laws. And the National Regulatory Research Institute (nrri.org) has compiled a report on state universal service programs adopted by more than half of the states in the US.²⁴

To illustrate what some states are doing to promote broadband, MTA cites the following sampling of state initiatives. Maine established the ConnectME Authority about 10 years ago. It collects about \$1 million annually to be used for grants to provide broadband in unserved areas of the state. New York has a \$500 million broadband program to bring 100 mbps service to unserved areas. The program allows 25 mbps buildout in the highest cost areas. Generally, a 50% match is required from private providers participating in the program. The Nebraska Broadband Pilot Program provides "specific and targeted broadband support to unserved and underserved areas to close the broadband availability gap. Nebraska is one of only four states in the nation with a universal service program to fund broadband deployment," according to the state's web site.²⁵ Iowa provides a 10-year property tax abatement for investment in new broadband (25x3) property. Minnesota's Border-to-Border Development Grant Program funds the expansion of broadband service to areas of Minnesota that are unserved or underserved."²⁶

- *Should the Commission be permitted to waive its duty to certify ETC utilities, as found in Mont. Code Ann. § 69-3-840, and instead allow the FCC to assume jurisdiction for certification?*

²⁴ <http://anmta.org/wp-content/uploads/2015/10/UsfStateFundsUpdate0515NRR15-05-State-USF.pdf>

²⁵ http://www.psc.nebraska.gov/ntips/ntips_nusf_broadband_pilot.html

²⁶ <https://mn.gov/deed/programs-services/broadband/grant-program/>

MTA Comment: Given the recent introspection at the Commission in trying to determine how and whether it can or should implement—let alone promote—universal service obligations, as demonstrated by its reluctance even to recertify ETCs, MTA has considered whether the Commission is the proper venue to confer the responsibility of implementing universal service. The Commission’s erratic behavior has caused unpredictability in both public policy and investment circles. Regulatory uncertainty directly curtails the ability of businesses to make investment decisions.

Ideally, we would prefer to have a Commission that embraces broadband deployment and supports the companies that are striving to dedicate their life blood to deploying broadband communications to the benefit of the communities they serve. Rather than serving as an adversary seeking to impose costly, unnecessary *ex ante* regulatory burdens on the very companies that are proving every day that they do right by their customers, the Commission could play a far more productive, effective and ultimately successful role as an ally of Montana’s small broadband providers who are enabling economic development in rural Montana.

- *Should Montana repeal its Universal Service Fund statutes found in Mont. Code Ann. §§ 69-3-841 through -845, that establish authority to create a complementary Montana Universal Service Fund, but which has not been funded nor created since the statutes were enacted in 1997? In the alternative, should the statute be amended to modernize the language authorizing the state USF and, if so, how?*

MTA Comment: No. MTA has been reluctant in the past to endorse a state universal fund (SUSF) at least in part because we anticipated opposition from the Commission, among others. We were reticent to spend the financial and political capital on an initiative that we feared would be dead on arrival.

Nonetheless, over half the states in the nation have SUSFs.²⁷ *A properly structured Montana universal service fund could play a constructive role in speeding and spreading the deployment of enhanced broadband services delivered by Montana’s rural telecom providers.*

Should the Commission be interested in working with MTA to explore design options for a state universal service fund, MTA would be happy to participate in such a collaboration.

3. What opportunities exist for reforming Federal policy, either by statute or regulation, to improve ETC Services in Montana? The Commission seeks comment on the following issues:

- *Do ETC Program subsidies, by reducing incentives to innovate and economize, actually inhibit effective buildout of rural, insular, or high-cost areas, in contrast to the stated ETC principles in 47 U.S.C. § 254(b)?*

MTA Comment: MTA disagrees with the premise of this question. The rate of innovation in the telecommunications sector has been extraordinary by any measure. The adoption of industry collaborations, substantial on-going investments in productivity enhancements and the development and implementation of operational cost efficiencies have been nothing short of remarkable. Federal support, if anything, has provided significant financial certainty necessary to enable the rapid infusion of new innovative technologies and services that otherwise would not have been brought to market.

In 1996, when the universal service program was codified, there were essentially two kinds of telecommunications service providers: telephone companies and cable companies. Digital technology was just taking off. The Internet was nascent; far from the dominant force it is today. “Broadband” meant 28.8 kbps fax machines or “You’ve got mail!” on a dial-up modem. Mobile wireless technology still involved analog bag

²⁷ Sherry Lichtenberg. State Universal Service Funds, 2014. National Regulatory Research Institute. Report 15-05. June, 2015.

phones. Digital wireless was in its infancy. The smartphone revolution that started with the iPhone was nearly a decade away from introduction. In fact, the mobile broadband market would not exist if it were not for the broadband infrastructure—supported in part by universal service—that carries all mobile broadband traffic. It's practically inconceivable to grasp the pace of innovation that has taken place in just the past two decades since Sec. 254(b) was enacted in the Telecommunications Act of 1996.

MTA members themselves have implemented a host of cost saving efficiencies in their network operations. For example, they pass through to their customers the diminishing cost of bandwidth, which itself is a function of increasing demand for bandwidth, investment in broadband infrastructure and rapid adoption of efficiencies in light wave technology. They continue to invest in hardware and software to deliver more broadband to more people more cost effectively. Consumers today have access to more bandwidth at similar or even lower rates than they had only months ago.

A visit to MTA's annual trade show, the Showcase, illustrates the wide variety of new and innovative products and services available to telecom providers. Every year new products are introduced to make it easier, faster and more efficient to deploy, maintain and operate broadband infrastructure.

Today, consumers have a wide choice of telecommunications platforms with which to communicate. Face Time, Google Voice, Skype, and a host of other voice, data and video communications are provided by companies that didn't even exist in 1996—and they all provide competitive, innovative alternatives for retail communications.

Broadband "edge" providers like Google, Netflix, Amazon, Twitter, *et al.*, and their communications platforms, owe their very existence to the robust telecommunications

infrastructure built by companies like MTA's members, and supported in part by the federal universal service program.²⁸

Contrary to the question's assertion that universal service somehow thwarts innovation, the fact is that universal service has fueled innovation and the rapid infusion of cost-effective broadband solutions for America's consumers, especially those in rural, high cost areas.

- *What objective evidence exists that subsidies, as opposed to paying the true marginal cost of services, are actually necessary for consumers to subscribe in high cost areas? On average, what would the additional customer cost amount to?*

MTA Comment: Verizon Wireless in October simply pulled the plug on around 800 high cost rural consumers in Montana who cost the company too much to serve (notwithstanding service contracts).²⁹ They since recanted their decision under political—not market—pressure, but only temporarily. Verizon effectively demonstrated that unsubsidized rates are unsustainable, even for a company of Verizon's size.

Similarly, in the Commission's investigation into CenturyLink's failure to meet Commission service quality rules, CenturyLink noted that serving its customers in the Missouri River canyon was uneconomic. Ultimately CenturyLink accepted settlement with the Commission whereby it agreed to accept universal service support to invest in its Missouri River facilities.

²⁸ While these edge providers drive demand for ever more bandwidth, ironically, they do not contribute to the cost of building and maintaining the nation's broadband infrastructure. If they did, the cost of building and maintaining the network that they rely upon to reach their consumers would be shared by those who materially drive the costs of building the infrastructure. And rates charged to end users conceivably could be reduced substantially, thereby providing additional capital with which to invest further in broadband infrastructure while reducing pressure on the universal service fund.

²⁹ David Erickson. "Plan Wasn't So Unlimited: Verizon Terminates 100s of Rural Montanans' Contracts." Missoulian. Sept. 14, 2017.

Separately, CenturyLink informed the FCC that it would need additional support “to ensure continuity of voice service to extremely high-cost and other unfunded locations in the territories [where it had] accepted the offers of model-based support.”³⁰ In other words, CenturyLink indicated it would not be able to provide even voice service—let alone broadband—if it were not specifically funded with USF support. In these cases, consumers appear to be unwilling or unable to raise sufficient resources to fund an alternative telecommunications provider—i.e., to pay the true marginal cost of obtaining telecommunications service and the provider is unwilling or unable to provide service without specific support.

As noted above, the cost of unsubsidized service in rural Montana would increase by an average of more than 100% to as much as \$200 a month depending on various cost factors. It is difficult to predict accurately when customers would cease to purchase telecommunications services. However, it is reasonable to assume that doubling rates (at a minimum) would lead consumers to reduce or eliminate their consumption. This loss of revenues in turn would add pressure to raise rates, causing a negative consumption and investment cycle.

We do know that key anchor institutions like health care providers, schools and libraries, government entities and the like have limited budgets. (So do consumers.) These institutions can ill afford increased costs for services they purchase, even at the supported rates that FUSF provides. As with any input, these institutions would have to determine whether they could afford dramatically increased rates for telecommunications service and sacrifice some other operating expense. Would a school hire fewer teachers or close an athletic program to keep its broadband

³⁰ Notice of Ex Parte Presentations—Frontier Communications and CenturyLink—CAF Phase II Unfunded Areas (WC Docket No. 10-90). L. Charles Keller. Wilkinson/Barker/Knauer, LLP. February 23, 2016.

connection? Would a rural health care clinic reduce hours or find savings somewhere else to keep its telemedicine program?

To further enhance telecommunications services in rural Montana, MTA member companies also have formed Vision Net, a company that provides wholesale internet access, 24/7 network operations management and supervision, access transport services and a variety of other cost effective managed services for its member/shareholders.³¹ In addition to managed Internet access services, Vision Net also manages, in partnership with CenturyLink, Montana's 911 emergency communications network. If subscriber rates were allowed to rise to their true marginal costs, as the question asks, and if emergency providers were unable to afford service at the resulting rates, then the question becomes whether consumers in many rural areas of Montana would be able to dial 911 in an emergency.

Of course, the question is purely hypothetical. The Commission lacks any authority to withhold FUSF support from ETCs.³² As we state above, federal statute provides specific, predictable and sufficient universal service support to ensure that all Americans, including rural Montanans, have access to reasonably comparable telecommunications services, including advanced services, at reasonably comparable rates. Should the Commission decide to decertify ETCs just so that Montanans would have to pay the true marginal cost of service, consumers would be faced with rates that are not reasonably comparable to the rest of the nation; and it is doubtful that reasonably comparable services would even be available. Besides being responsible for disastrous consequences for Montana's economy and Montanans quality of living, the Commission would find itself in violation of federal statute.

³¹ This is an example of industry collaboratives mentioned above, demonstrating cost-effective solutions adopted by MTA member companies.

³² See 47 USC Sec. 253(a), 47 USC Sec. 254(f).

- *Later this month, the FCC is scheduled to vote to issue notices which would seek comment on ending a national designation program for certain ETCs, requiring facilities-based service as a prerequisite to the receipt of Lifeline, propose a budget cap for the Lifeline program, and collaborating with States on verification of Lifeline eligibility, among other things. Should the Commission submit comments to the FCC regarding these proposals for reform? Fourth Report and Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, Consolidated Docket Nos. 17-287, 11-12, 09-147 (FCC Oct. 26, 2017).*

MTA Comment: The Commission is free to submit comments on the FCC's Lifeline Reform Notice of Proposed Rulemaking.

- *Are there market-based alternatives, or technologies other than fiber-based broadband, that more effectively accomplish the goals of ETC Programs as stated in 47 U.S.C. § 254(b)?*

MTA Comment: There are several technologies other than fiber, that are capable of delivering broadband services to consumers. MTA members use many of these alternatives for delivering broadband services today to their customers. None of these alternatives, however, is more effective than fiber-based broadband. Fiber is reliable, cost-effective, durable and scalable—capable of delivering practically unlimited bandwidth speeds at whatever amount the consumer demands. No other technology matches these qualities.

That said, other broadband delivery technologies may have relative advantages and disadvantages, and may be suitable in some situations. For example, one deployment model uses a fiber-based “core” network that takes fiber to distribution points on the edge of the network, from which copper or fixed wireless last mile connections could be deployed. In very remote areas, with accommodating topography, wireless connections may be an option to cost-effective delivery of high bandwidth to end users.

Mobile wireless service offers limited broadband options, too; but few would consider such service an effective alternative to fiber-based broadband because of its limited bandwidth speeds, and limited spectrum availability. Rather, as the FCC's Fact Sheet on

its 2018 Broadband Deployment Report asserts, mobile wireless service is a compliment to wired service.³³ And then, there's the fact that all wireless service in fact depends on wired infrastructure connectivity. The wireless component of wireless service typically comprises the short connection between a consumer's wireless device and the nearest tower. From that point, the communication is carried on a wired (i.e., fiber) backhaul network infrastructure.

Satellite service is widely considered a last resort option. It's expensive, not terribly reliable and subject to usage caps.

Microsoft's Airband initiative is receiving considerable attention lately—primarily because of Microsoft's aggressive marketing. This technology has yet to be proven to be commercially viable, even in limited conditions.

This is not to say that some other technology on the drawing board won't prove to be more effective than today's known technologies. Today, however, fiber-based broadband remains the national standard for cost effective broadband technology.

- *Should ETC Program funds be expended based on a priority of higher cost areas over lower cost areas?*

MTA Comment: Notwithstanding the Commission's lack of authority to alter the federal universal service program the high cost program already directs support to high cost areas over lower cost areas. Traditionally, high cost support was available only to areas where the average cost per subscriber exceeded 135% of the national average cost.

³³ Fact Sheet on Draft 2018 Broadband Deployment Report. *Mobile services are not full substitutes for fixed services—there are salient differences between the two technologies. Both fixed and mobile services can enable access to information, entertainment, and employment options, but there are salient differences between the two. Beyond the most obvious distinction that mobile services permit user mobility, there are clear variations in consumer preferences and demands for fixed and mobile services.* January 18, 2018.

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Under recent universal service reforms, ACAM model support is directed specifically to unserved locations which invariably are higher cost underserved locations. Similarly, recipients of BLS support must report the specific unserved (high cost) locations to which they deploy supported network infrastructure.

We note however, that the question implies whether it is possible to deploy network facilities only to some subset of consumers for whom the cost of connection would be even higher than the cost of serving the remaining consumers on the network.

Ironically, it could be even more expensive to build a network that serves only a small segment of consumers—the highest cost ones—rather than a network that maximizes its utility over the largest number of consumers feasible.

Conclusion

The federal universal service program works. It is not broken as the Commission implies. MTA can think of no better way for the Commission to honor its solemn duty to consumer welfare than to support the goals of universal service.

MTA members fully comply with both the letter and spirit of the law. They are guilty of no malfeasance, infraction, consumer opprobrium or violation of the public interest that warrants burdensome, *ex ante* regulatory intervention by the Commission.

While the President, Congress, the FCC and many states are intent on closing the digital divide and promoting access to affordable broadband services, the Montana Public Service Commission appears to embrace an opposite tack, questioning whether we even need universal service. MTA is baffled by the Commission's apparent enmity toward rural ETCs and the progress they are making in deploying broadband services that demonstrably benefit

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Montana's rural consumers.³⁴ The Commission's antipathy toward universal service creates regulatory uncertainty which in turn makes business planning more risky and leads to an unstable investment climate—precisely when other state and federal policymakers are working to create a business climate that promotes broadband investment.

MTA hopes the Commission will consider the negative economic effect of its lack of support for universal service across the state of Montana, particularly in rural areas. For many Montana communities, broadband infrastructure and services supported in part by universal service directly contribute to job growth and economic development in rural Montana.

MTA hopes the Commission can adopt a positive attitude toward universal service. We welcome the opportunity to work with the Commission in a constructive collaboration to facilitate faster ubiquitous broadband deployment in rural Montana.

Respectfully submitted,

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³⁴ Montana's consumers contribute \$30 million each year in universal service assessments. Universal Service Monitoring Report, 2016.
https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf

