**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

In the Matter of )

Rural Digital Opportunity Fund ) WC Docket No. 19-126

)

Connect America Fund ) WC Docket No. 10-90

**JOINT REPLY COMMENTS OF THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION,**

**THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE,**

**AND PENNSYLVANIA THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Pennsylvania Public Utility Commission (Pa. PUC), the Pennsylvania Office of Consumer Advocate[[1]](#footnote-1) (Pa. OCA) and the Pennsylvania Office of Small Business Advocate[[2]](#footnote-2) (Pa. OSBA) (hereinafter collectively referred to as “PA Joint Commenters”) file these Joint Reply Comments with the Federal Communications Commission (Commission) addressing the initial comments filed in response to the Rural Digital Opportunity Fund (RUDOF) Notice of Proposed Rulemaking (*NPRM*) in the above-captioned docket.[[3]](#footnote-3)

These reply comments should not be construed as binding on the PA Joint Commenters in any present or future matter before the Pa. PUC or the Commission. Moreover, the PA Joint Commenters’ positions set forth in these comments could change in response to later events, including *Ex Parte* filings, legal proceedings, or other regulatory developments at the state or federal level. Lastly, the reply comments may build upon and incorporate by reference prior filings submitted in the above-captioned dockets.

**I. INTRODUCTION AND SUMMARY**

The Commission established the Connect America Fund (CAF) as the new framework for providing ongoing federal high-cost support to deploy broadband in areas served by price cap carriers.[[4]](#footnote-4) The CAF is a multi-phase initiative that used a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and competitive bidding mechanism to provide federal high-cost support to deploy broadband.[[5]](#footnote-5) The proposed RUDOF auction is the latest phase of the CAF. It will disburse federal high-cost support in an amount totaling at least $20.4 billion over 10 years to areas that lack 25/3 Mbps broadband access services using a two-phase reverse auction framework.

As an initial matter, the PA Joint Commenters note that many of the initial comments supported or did not oppose the Commission’s proposal regarding the eligibility of census blocks in Phase I of the RUDOF. The PA Joint Commenters, however, maintain their position that with the RUDOF, the Commission should prioritize only census blocks that have less than 10/1 Mbps service in Phase I. That said, any other remaining unserved areas, particularly those census blocks below the $52.50 benchmark, must be considered in Phase II of the auction so that the Phase I auction proceeds apace.

In their initial comments, the incumbent price cap carriers propose that the Commission streamline or entirely eliminate all legacy federal and state regulatory eligible telecommunications carrier (ETC) obligations in areas where they no longer receive any federal high-cost funding. The PA Joint Commenters disagree with that position and assert that incumbent price cap carriers who no longer receive high-cost support in various census blocks as a result of the RUDOF auction should not be automatically relieved of all federal legacy obligations in those census blocks for the following reasons.

First, the Commission should not streamline or eliminate the Section 214 discontinuance process in census blocks where a RUDOF winning bidder replaces an incumbent price cap carrier as the federal high-cost recipient. Second, the Commission should not eliminate the Lifeline obligation of an incumbent price cap carrier which no longer receives high-cost support as a result of the RUDOF auction. Third, the Commission should not forbear from requiring a provider to be designated as an ETC to receive RUDOF support.

Additionally, incumbent price cap carriers have a carrier of last resort (COLR) obligation in Pennsylvania under independent state law. State COLR responsibilities of incumbent price cap carriers do not end as the result of the loss of federal high-cost support in an area. The Commission also should not eliminate the requirement that a high-cost recipient under the RUDOF offer standalone voice service. Any RUDOF support recipient that offers Voice-over-Internet Protocol (VoIP) over its broadband network on a standalone basis must also continue to offer standalone voice service at the reasonably comparable rate for voice services.

In these replies, the PA Joint Commenters submit that the final auction rules should account for the fact that a potential bidder has received additional state resources for areas where it has bid for RUDOF support. The PA Joint Commenters also assert that the Commission should adopt and implement its proposal regarding federal-state partnerships. Additionally, the Commission should consider the positions offered regarding adjusting the reserve price for census blocks that lack 10/1 Mbps broadband service to incentivize bids in wholly unserved areas.

In sum, the Commission should not adopt proposals that relieve incumbents of existing state or federal obligations, such as ETC and COLR, or that infringe on existing state authority. Such action is not supported by law or on this record, and it is not in the public interest. The PA Joint Commenters appreciate the opportunity to file these Joint Reply Comments.

**II. DISCUSSION**

**A.** **The Commission Should Prioritize Only Those Census Blocks Where There Is No Access To At Least 10/1 Mbps Broadband Service For Phase I Of The RUDOF**

The Joint Commenters generally oppose comments that either support or do not oppose the Commission’s proposal regarding the eligibility under Phase I of the RUDOF of census blocks that already have or will receive under the CAF II auction service at 10/1 Mbps. In the *NPRM*, the Commission proposes that seven categories of census blocks should be eligible for competitive bids in Phase I.[[6]](#footnote-6) The Commission’s proposal puts census blocks that already have or will have 10/1 Mbps service on the same priority level as areas with no service at all. The PA Joint Commenters maintain their position that classifying an area served by 10/1 Mbps as “wholly unserved” results in an inefficient use of limited federal support and does not close the digital divide.

As the WTA – Advocates for Rural Broadband **(**WTA) states in its comments, “there are very significant differences between an area that is ‘wholly unserved’ because it has no high-speed broadband network or service or customers whatsoever, and one that has an existing broadband network that is presently providing 10/1 Mbps services to existing customers.”[[7]](#footnote-7) In fact, these areas have already received high-cost support funding over the last six years from CAF Phase II. The Utilities Technology Council (UTC) also favors prioritizing support to areas that entirely lack 10/1 Mbps.[[8]](#footnote-8) The PA Joint Commenters agree. Areas that currently lack 10/1 Mbps service should be prioritized as follows: RUDOF Phase I should focus solely on high-cost census blocks: (1) lacking 10/1 Mbps but are scattered and dispersed throughout the incumbent price cap carrier’s service territory and (2) lacking 10/1 Mbps that are adjacent to census blocks having access to 10/1 Mbps.

Additionally, as an alternative way to prioritize wholly unserved areas if the Commission decides to include 10/1 Mbps areas in Phase I of the RUDOF Auction, the Joint Commenters do not oppose the recommendations by GeoLinks and UTC that the Commission establish a higher reserve price and/or additional bidding credits for areas lacking 10/1. Geolinks notes that higher reserve prices or credits may allow auction participants to craft bids in a way that make economic sense.[[9]](#footnote-9) UTC suggests that increasing the reserve price by 10% would give bidders a sufficiently greater incentive to bid for support for those areas.[[10]](#footnote-10) The PA Joint Commenters request the Commission to consider these suggestions for census blocks lacking 10/1 Mbps.

Also, as a further means to facilitate broadband deployment to wholly unserved areas, the PA Joint Commenters support those comments urging the Commission to weigh broadband speed bids in such a way so as to encourage the use of scarce resources to deploy baseline broadband to more areas instead of using those resources to provide faster speeds to fewer locations. This weighting is appropriate because of the high fixed cost to deploy an initial network capable of providing broadband to unserved areas as well as the costs associated with the continued delivery of adequate and reliable voice.

Furthermore, the PA Joint Commenters oppose any pro rata reduction in support if fewer locations in a supported area are shown to exist compared to those originally projected in Phase I. A winning bidder should not be penalized because the Commission utilized imprecise broadband deployment data to determine the number of eligible locations in census blocks in the first place. Moreover, a reduction in the number of supported locations to be served in a given area does not necessarily yield a concomitant decrease in a winning bidder’s costs to deploy in that area. Simply put, these measures help ensure that the focus of RUDOF Phase I is where it should be — truly unserved areas that are without 10/1 Mbps service broadband today.

**B. The Commission Should Clarify That Incumbent Price Cap Carriers Who No Longer Receive Federal High-Cost Support As A Result Of The RUDOF Auction Are Not Automatically Relieved Of All Other Legacy Federal Obligations**

In Pennsylvania, even after the completion of Auction 903, incumbent price cap carriers remain the current federal high-cost ETC recipients in a vast majority of the CAF-eligible census blocks that would be a part of the RUDOF auction.[[11]](#footnote-11) However, after the conclusion of the RUDOF auction, the winning bidders may replace these incumbent price cap carriers as the federal high-cost ETC recipients in various census blocks throughout the incumbents’ service territories. For this reason, incumbent price cap carriers assert that the Commission cannot require or expect them to continue to provide voice or broadband in those areas.

The PA Joint Commenters acknowledge that in the *December 2014 Connect America Order*, the Commission found that limited forbearance from the federal high-cost ETC voice service obligations[[12]](#footnote-12) was warranted in discrete geographic areas.[[13]](#footnote-13) The Commission was addressing whether and how it should relieve incumbent price cap carriers of their Section 214 ETC obligations in areas where no longer would receive federal high-cost support. In particular, the Commission stated:

…we now conclude that it is in the public interest to forbear, pursuant to section 10 of the Communications Act of 1934, as amended (the Act) from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas: “(1) census blocks that are determined to be low­cost, (2) all census blocks served by an unsubsidized competitor, as defined in the Commission’s rules, offering voice and broadband at speeds of 10/1 Mbps to all eligible locations, and (3) census blocks where a subsidized competitor – i.e., another ETC – is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations.[[14]](#footnote-14)

Thus, incumbent price cap carriers would no longer have the federal high-cost obligation to provide voice service in a census block in their service territories where the winning bidder is receiving RUDOF support.[[15]](#footnote-15)

Nevertheless, incumbent price cap carriers who have been relieved of their statutory obligation to provide voice service where the winning bidder in the RUDOF auction is receiving the federal high-cost support in the census block, should not be automatically relieved of other federal legacy obligations in those census blocks. First, the Commission should not streamline or eliminate the Section 214 discontinuance process in census blocks where a RUDOF winning bidder replaces an incumbent price cap carrier as the federal high-cost ETC recipient. That process remains relevant, post-RUDOF, to ensure that consumers have access to adequate and reliable standalone voice services or a reasonable and comparable alternative. Second, the Commission should not eliminate the Lifeline obligation of an incumbent price cap carrier that no longer receives high-cost support in various census blocks as a result of the RUDOF auction. Rather, these carriers should be deemed Lifeline-only ETCs in these census blocks. Lastly, the Commission should not forbear from the requirement that a provider be designated as an ETC to receive RUDOF support. Such forbearance is not in the public interest.

**1**. **The Commission Should Reject the Proposal to Streamline or Eliminate the Section 214 Discontinuance Process Simply Because a Competitive ETC Is Now Receiving Federal High-Cost Support in a Census Block**

In their initial comments, CenturyLink, Frontier, Windstream, ITTA, NTCA, USTelecom and Alaska Communications assert that once a winning bidder has become authorized to receive RUDOF support and they cease receiving federal high-cost support in a census block, federal legacy ETC voice obligations no longer apply or govern them in these specific census blocks.[[16]](#footnote-16) Windstream also suggests that the Commission should forbear altogether from the Section 214 notification process or, at a minimum, allow for discontinuance on 30 days’ notice.[[17]](#footnote-17) Similarly, Frontier suggests the Section 214 process be streamlined.[[18]](#footnote-18) Nevertheless, the Commission should not streamline or eliminate the Section 214 discontinue process and grant blanket discontinuance to incumbent price cap carriers simply because a new CETC has replaced them as the federal high-cost support recipient in the census block.

Section 214 of the Act Communications Act of 1934, as amended, (the Act) states when and how carriers can extend, change, and discontinue the services they offer with direct oversight by the Commission.[[19]](#footnote-19) One of the purposes of the Section 214 discontinuance process is to ensure that consumers living in an area do not lose access to adequate and reliable voice telephony services without access to a reasonable alternative. Accordingly, the Section 214 discontinuance rules allow the Commission to minimize harm to customers and to satisfy its obligation under the Act to ensure that a discontinuance of service is in the public interest.

The Joint Commenters note that the Commission has taken steps to streamline the treatment of applications to discontinue legacy voice services when the discontinuing carrier is in the midst of a technology transition.[[20]](#footnote-20) A technology transition means that the discontinuing carrier is seeking to discontinue a legacy TDM-based voice service as part of a transition to a newer technology, such as VoIP, wireless, or some other advanced service. However, that is not the case here. Incumbent price cap carriers are seeking to discontinue voice service only because they no longer receive federal high-cost support in an area. Thus, their Section 214 discontinuance application is not entitled to streamlining or elimination.

The Section 214 discontinuance also helps ensure that affected customers or other end users are able to receive adequate and reliable standalone voice service or a reasonable alternative. To the extent that a RUDOF winning bidder is unable to offer ubiquitous voice and broadband service throughout all awarded census blocks immediately following the close of the auction, the Commission should require the relevant price cap carriers to continue offering adequate and reliable, standalone voice telephony services and broadband access services in those areas because there would be no reasonable alternatives.

With no reasonable alternative, price cap carriers who are no longer receiving federal high-cost support should remain obligated to maintain existing voice services to a given community, or part of a community, unless and until they receive authority under Section 214(a) of the Act[[21]](#footnote-21) to discontinue that service. The PA Joint Commenters acknowledge this position may necessitate the Commission’s comprehensively addressing the transition support issue raised by the parties, as stated below.

Moreover, much like other states, the Commonwealth of Pennsylvania has its own statutory service abandonment and discontinuance process. Under the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 101-3316, a jurisdictional public utility is required to file an application with the Pa. PUC requesting approval to abandon, in whole or in part, any jurisdictional utility service.[[22]](#footnote-22) Thus, regardless of the status of the federal discontinuance process, a jurisdictional public utility in Pennsylvania is still required to comply with Pennsylvania’s statutory discontinuance of service and abandonment process.

The Commission’s forbearance from the relevant requirements of section 214(e)(1)(A) in the *December 2014 Connect America Order* did not preempt the Pa. PUC’s statutory authority requiring prior state approval to abandon or discontinue service, in whole or part.[[23]](#footnote-23) Accordingly, a Pennsylvania incumbent price cap carrier that seeks to discontinue or abandon voice telecommunications service in a census block where it is no longer the federal high-cost ETC recipient must also first file an application with, and receive approval from, the Pa. PUC.

**2.** **An ETC That Is Not Receiving Federal High-Cost Support Should Continue to Satisfy Its Lifeline Obligations As An ETC**

Windstream asserts that the loss of federal high-cost support in a census block should eliminate its state-issued ETC designation and all related federal and state regulatory obligations as an ETC.[[24]](#footnote-24) The PA Joint Commenters disagree.

Pursuant to Section 214(e)(2) of the Act,[[25]](#footnote-25) Congress has given state commissions the primary responsibility for granting ETC designations.[[26]](#footnote-26) In Pennsylvania, all incumbent price cap carriers have been designated as federal high-cost ETCs in their respective service territories under applicable federal statutory criteria and other relevant

federal and Pennsylvania law.[[27]](#footnote-27) Under federal and state law, federal high-cost ETC recipients are also statutorily obligated to provide Lifeline service pursuant to the Lifeline program rules to all qualifying low-income consumers throughout their designated areas.[[28]](#footnote-28) Likewise, when the Commission designates a carrier as a federal high-cost ETC, the carrier also is required to provide Lifeline service.[[29]](#footnote-29)

As it was required for Auction 903 winning bidders, the Commission is also requiring RUDOF winning bidders that have not already received an ETC designation to obtain one prior to being authorized to receive RUDOF support.[[30]](#footnote-30) As a result of obtaining their federal high-cost ETC designation, winning bidders in the RUDOF will be required to provide Lifeline services throughout the census block where they had been designated as an ETC.[[31]](#footnote-31)

Pursuant to the *December 2014 Connect America Order*, the Commission de-linked the Lifeline ETC obligation from the receipt of federal high-cost support. The Commission refused to eliminate the Lifeline obligation for the incumbent price cap carriers that were permitted the limited forbearance in the three specific types of census blocks.[[32]](#footnote-32) The Commission determined they must continue to satisfy all Lifeline ETC obligations even if they no longer receive high-cost support as a result of a competitive bidding process.[[33]](#footnote-33)

Consequently, the PA Joint Commenters note that in some instances where an Auction 903 winner had requested and obtained designation as an ETC in more areas than the eligible census blocks for which it has been awarded support,[[34]](#footnote-34) the Commission previously determined the winning bidder would be a Lifeline-only ETC for those areas where it received no funding support from Auction 903.[[35]](#footnote-35) Likewise, incumbent price cap carriers that no longer will receive federal high-cost support as an ETC due to the presence of the RUDOF support recipient should be deemed Lifeline-only ETCs in those census blocks.

The Commission’s decision to de-link the federal high-cost ETC voice obligation from the obligation to continue to provide Lifeline as an ETC ensures that there are sufficient Lifeline providers so that Lifeline-eligible consumers can avail themselves of this needed support mechanism, whether through the incumbent ETC or the new CETC. The Lifeline obligation does not cease because of the loss of federal high-cost support. Thus, even though the incumbent price cap carrier would not receive high-cost support in certain areas where it has obtained an ETC designation, its Lifeline obligation still applies so that this service continues to be offered in the census block from all ETCs.

The Pa. PUC has designated carriers as Lifeline-only ETCs under federal and state law.[[36]](#footnote-36) The Pa. PUC also has designated as ETCs Auction 903 support recipients not already so designated in furtherance of the Commission’s policies to preserve voice and, now, facilitate the delivery of broadband service to unserved areas. Of note, the Pa. PUC has imposed additional Lifeline obligations under state law on Lifeline-only ETCs, and the Pa. Joint Commenters submit that the statute and state law supports the states right to impose reasonable additional obligations on such issues as quality of service, network reliability, public safety, and resolution of consumer complaints. Thus, incumbent price cap carriers that no longer receive federal high-cost support in a census block after the announcement of the winners in the RUDOF auction must continue to satisfy all Lifeline ETC obligations even if they no longer receive high-cost support as a result of a competitive bidding process.

If a price cap carrier seeks relief from its federal and state Lifeline ETC obligation, it must seek relinquishment of its ETC designation from the state commission that granted the designation. The only exception is when the state cannot or will not make the designation under federal law. Windstream requests that the Commission expedite the ETC relinquishment proceedings once a CETC has been authorized to receive RUDOF support.[[37]](#footnote-37) The Nebraska Public Service Commission (NPSC) asserts in its comments that state commissions must first give their consent before an incumbent price cap carrier is permitted to relinquish its ETC designation.[[38]](#footnote-38) The PA Joint Commenters agree with this position.

Any Pennsylvania incumbent price cap carrier that is seeking relinquishment of its ETC designation must first receive approval from the Pa. PUC. The PA Joint Commenters recommend that the Commission adopt the NPSC’s suggestion and make it clear that the states continue to be the “gatekeeper” of the federal high-cost ETC designations and any subsequent relinquishment.[[39]](#footnote-39)

To obtain a relinquishment of its ETC designation, an incumbent price cap carrier must demonstrate that the affected area for which it is seeking relinquishment will continue to be served by at least one other ETC providing adequate and reliable voice and broadband services that meet the Commission’s requirements throughout the funded area; otherwise it retains this regulatory designation.[[40]](#footnote-40) Thus, until an incumbent price cap carrier files to relinquish its ETC status, and the state approves the filing, it remains subject to its state-granted ETC designation and all related federal and state law obligations.

**3.** **It Is Not in the Public Interest to Grant Forbearance from the ETC Designation Requirement for Winning Bidders of the RUDOF**

NCTA and PDI go further and suggest that the Commission forbear from the requirement that a provider be designated as an ETC to receive RUDOF support.[[41]](#footnote-41) However, Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support.”[[42]](#footnote-42) The Pa. Joint Commenters note that this condition applied to Auction 903 winning bidders, and the Commission should affirm that before support is disbursed to a RUDOF winning bidder, it must have received an ETC designation. Consequently, the Commission should clarify that it is statutorily-bound to disburse federal high-cost support only to entities that have been designated as ETCs.

Additionally, it is not in the public interest to grant forbearance from the ETC designation statutory requirement. Before billions of federal high-cost support funding is potentially transitioned from an incumbent recipient with federal ETC-related voice service obligations to a non-incumbent winning bidder in an effort to accelerate the deployment of broadband service in unserved and underserved areas, the Commission should ensure that its decision to connect more Americans to broadband does not have any unintended consequences for these same consumers, including unintended consequences regarding access to adequate and reliable voice service and pre-existing broadband access services. If this transition occurs, a RUDOF winning auction bidder most likely will become the only provider of voice and broadband service in the supported area – a circumstance that arose precisely because there was no business case to offer reliable voice and broadband service in that area prior to the Phase I auction. Thus, the RUDOF winning bidder should be required to certify upfront that it is able to offer adequate and reliable voice service over its own facilities or a combination of its own facilities and resale of another carrier’s service before receiving federal high-cost support and potentially displacing the incumbent federal high-cost ETC.[[43]](#footnote-43)

The ETC designation process also helps ensure that a winning bidder is technically and financially qualified to provide voice service on the first day it is awarded publicly-funded support. The Commission has opened the proposed RUDOF auction to carriers relying on high-latency technologies, such as satellite providers, to offer both voice and broadband service. Because satellite providers offer a high-latency service, they are required to meet a two-part standard for the latency of both their voice and broadband services.[[44]](#footnote-44) Given the concerns regarding whether these types of carriers can consistently demonstrate that they can provide adequate, quality, reliable voice service meeting the applicable standard, they should be required to demonstrate, through the ETC designation process, that they meet the requisite and necessary performance standards upfront before they receive any federal high-cost support.[[45]](#footnote-45)

The Pa. Joint Commenters further note that some comments urge the Commission to require a demonstration of an ability to meet applicable technical and financial commitments, including network design, upfront in a Short Form application prior to the Phase I auction as opposed to waiting until completion of the Phase I auction in the Long Form application. This warrants serious consideration because neither the Commission nor the states should wait until after an auction has been completed to learn that a winning bidder may not be able to meet the obligation to offer reliable voice and broadband service.

Section 160(a) of the Act[[46]](#footnote-46) requires that the Commission forbear from applying any regulation or any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in the statute are satisfied. Here, as the above discussion demonstrates, it would not be in the public interest to forbear from the requirement that a provider be designated as an ETC to receive RUDOF support. Thus, these statutory forbearance standards are not satisfied here.

Furthermore, granting forbearance would essentially preempt the states’ authority over ETC designations, which is an approach that the Commission has not previously supported. The PA Joint Commenters note the Commission expressly chose to preempt states from exercising authority to designate Lifeline-only broadband ETCs for the purpose of receiving Lifeline reimbursement for providing broadband Internet access service to low-income consumers.[[47]](#footnote-47) The states challenged this decision on the grounds that Section 214(e)(2) gives primary responsibility to the states to designate providers as eligible to participate in the Lifeline program.

The Commission ultimately rethought this decision and acknowledged that it was inconsistent with the role contemplated for the states in Section 214 of the Act as they continue to retain the primary authority to designate high-cost ETCs and Lifeline-only ETCs.[[48]](#footnote-48) Accordingly, the Commission should clarify that the responsibility for the ETC designations belongs to the states, not the Commission, and that only winning bidders that are or become designated ETCs may receive support from the RUDOF. Therefore, the Commission should reject NCTA’s and PDI’s proposals to forbear from the requirement that a provider be designated as an ETC to receive RUDOF support.

**C. Incumbent Price Cap Carriers Should Not Be Relieved Of Their Independent State Carrier Of Last Resort Obligations In Areas Where They Are No Longer The Federal High-Cost Support Recipient**

Frontier, Windstream and other commenters have stated that incumbent price cap carriers should be relieved of state COLR obligations in those areas where they are no longer the federal high-cost support recipient.[[49]](#footnote-49) To the contrary, the Joint Commenters assert that the Commission should put incumbent ETCs on notice that it will not preempt or move to eliminate independent state COLR obligations. The PA Joint Commenters further note that the Commission clarified that its *December 2014 Connect America Order* regarding the federal high-cost voice obligation does not disturb or impact existing state COLR obligations on incumbent price cap carriers.[[50]](#footnote-50)

Incumbent price cap carriers in Pennsylvania have a COLR obligation under state law.[[51]](#footnote-51) This state COLR obligation continues to exist, is separate and distinct from any federal ETC obligation, and is independent from the incumbent price cap carriers’ receipt of federal high-cost support. Accordingly, a state COLR obligation will continue to govern incumbent price cap carriers in those areas where federal high-cost funding support has been transitioned from them and awarded to CETCs.

Moreover, incumbent price cap carriers in Pennsylvania also receive state universal service and other support under existing state law on an annual basis to support a network that can provide reliable voice and broadband service. Pennsylvania established an intrastate Universal Service Fund (Pa. USF) in 1999 as a result of intrastate restructuring of local, access, and toll rates. The Pa. USF was designed to encourage competition by rebalancing local, access, and toll rates for the ultimate benefit of end-users while still supporting affordable, ubiquitous rural local voice service rates.[[52]](#footnote-52)

During the 2004-2016 time period the Pa. USF distributed a total of $437.29 million. In light of this dynamic in Pennsylvania, Frontier and Windstream cannot credibly assert that state COLR obligations should be nullified or invalidated simply because they may no longer be receiving federal high-cost support. The Commission should expressly indicate that independent state COLR responsibilities do not end as the result of the loss of federal high-cost funding, and no action in this proceeding preempts existing state COLR obligations or precludes states without a current COLR obligation from imposing one.

**D. The Commission Should Fully Address Transitional Support Issues That May Arise In Census Blocks During the Transition Period From The Receipt of Disaggregated Legacy Support And CAF Phase II Model-Based Support To Rural Digital Opportunity Fund Support**

The PA Joint Commenters note that there will be a gap in funding for incumbent price cap carriers that currently are receiving CAF Phase II model-based support but either will not have a winning bid in the RUDOF auction or have chosen not to bid. Notwithstanding our position above, the PA Joint Commenters do not oppose the Commission’s proposal that it may provide an optional seventh year of transitional support of CAF model-base support to incumbent price cap carriers at least through the end of calendar year 2021.

In the event that a price cap carrier either does not win in the RUDOF, or chooses not to bid on such support, its term of Phase II support will be completed at the end of 2020. The PA Joint Commenters note even if a new entrant is authorized to begin receiving Phase III support in 2020, there will be a certain amount of time before that new provider will be able to deploy its network and begin offering service. In that instance, the PA Joint Commenters are not opposed to the Commission providing another year of CAF Phase II support to the incumbent provider through the end of 2021. This transitional support will ensure that there is an appropriate transition from the incumbent to new ETCs. Further, the PA Joint Commenters recommend that the Commission comprehensively address the transition support issue after 2021 as raised by the incumbent price cap carriers.

**E. The Commission Should Reject The Proposal To Eliminate The Requirement That High-Cost Recipients Offer Standalone Voice Service**

WISPA, Space X, GeoLinks and PDI assert that the Commission should eliminate the existing requirement that high-cost recipients must offer standalone voice service.[[53]](#footnote-53) These commenters opine that given the relative development of broadband and voice services, and the overall impact of this new program, the time has come for the Commission to move past the requirement for a standalone voice service.

In particular, WISPA states that more and more consumers have “cut the cord” and voice subscriptions are increasingly migrating from switched access to VoIP which, by definition, requires a broadband connection. WISPA concludes that so long as voice is offered along with broadband service and meets the functional “voice-grade” requirements of Section 54.101, the statutory obligation has been satisfied. Likewise, Space X states that the standalone voice requirement is no longer useful for nearly all consumers, as Americans no longer choose to buy standalone voice. Space X further states that developments in technology now mean that consumers would be better served without such a requirement because when given the option, consumers do not choose standalone voice. Rather, consumers choose broadband and add a VoIP component.

The Joint Commenters disagree with this proposal to eliminate the standalone voice requirement and note that to date, so has the Commission. The Commission adopted the standalone voice requirement in 2011.[[54]](#footnote-54) In 2014, the Commission reiterated that “high-cost recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets our requirements.”[[55]](#footnote-55)

The PA Joint Commenters note that in 2018 the Commission was asked to eliminate the standalone voice requirement for broadband service providers who receive federal high-cost support. In its *2018* *Order on Reconsideration*, the Commission rejected this proposal. The Commission was not persuaded by the argument that because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service.[[56]](#footnote-56) As further support for maintaining a standalone voice requirement, the Commission noted that the winning bidder of federal high-cost support may be the only ETC offering voice in that area if the incumbent ETC is permitted to relinquish its ETC designation and discontinue voice service.[[57]](#footnote-57)

The PA Joint Commenters request the Commission to affirm its past findings in this proceeding regarding the elimination of the standalone voice requirement. RUDOF support recipients should be required to offer standalone voice service, as some consumers may not want to have to subscribe to broadband service just to obtain voice-grade access service. Moreover, as noted by the Commission, a winning bidder of federal high-cost support may be the only voice service option in that area if the incumbent ETC is permitted to discontinue voice service in the area.

Consequently, at a minimum, a winning bidder must be required to provide adequate and reliable standalone voice service to ensure that voice quality is not sacrificed to provide broadband service. A different result will sacrifice voice quality to provide broadband service in high-cost rural areas while, in urban areas, there is no such sacrifice. That result, in turn, may violate the Section 254 mandate that there be comparable rates for comparable service in rural versus urban areas.

The PA Joint Commenters note that a broadband provider may satisfy its standalone voice obligation by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor, but a provider cannot simply rely on the availability of over-the-top voice options.[[58]](#footnote-58) To do so, a winning bidder must demonstrate that it will provide a network-based solution that will continue to provide reliable voice service. The Commission should not accept the unsupported notion that the costs of requiring standalone voice far outweigh its benefits. Rather, it should direct that potential RUDOF applicants must offer adequate and reliable standalone voice service at the reasonably comparable rate for voice services already provided in urban areas.

**F.** **The Final Rules Of The RUDOF Should Take Into Account That A Potential Bidder Has Received Additional State Resources Associated With the Areas For Which It Has Placed Competitive Bids**

In their initial comments, NCTA and Verizon suggest that the Commission exclude from the RUDOF auction any census block where a winning bidder is also receiving other additional funding support.[[59]](#footnote-59) Conversely, the California Public Utility Commission (CPUC) recommends that the final rules of the RUDOF auction include an option for states to pursue a federal-state partnering approach, similar to the one previously authorized for the state of New York in the CAF II auction.[[60]](#footnote-60) It asserts that allowing states to directly leverage federal funding like New York will support the development of new and upgraded broadband networks where they are most needed across rural America.[[61]](#footnote-61)

Similarly, United States Cellular Corporation (U.S. Cellular) recommends that the Commission consider rewarding states that provide their own funding to help accelerate and deploy broadband infrastructure and networks in unserved underserved communities within their borders.[[62]](#footnote-62) The PA Joint Commenters agree with these proposed recommendations.

When the Commission was finalizing the rules for Auction 903, it declined to adopt state-based preferences for declined states in the auction.[[63]](#footnote-63) The Commission also denied a subsequent petition from Pennsylvania to modify the Auction 903 formula by applying a negative weight to any competitive bid for a census block where the bidder had been awarded additional state resources for that area.[[64]](#footnote-64) If no additional resources were provided by the state, the factor would be zero.[[65]](#footnote-65) Thus, the bidder benefitted only to the extent that Pennsylvania had contributed additional state resources associated with broadband deployment.

The Commission ultimately declined to reconsider the Auction 903 formula or waive the auction rules as requested by Pennsylvania.[[66]](#footnote-66) Nevertheless, the Commission stated that competitive bidders might be more attracted to declined areas, and may have a higher likelihood of winning such areas, if a state has made available additional complementary funding support. That way, bidders could leverage state support to reduce the amount of CAF support they were requesting, therefore making their bids more cost-effective when compared to other bidders nationwide.

Since the denial of its Auction 903 modification request, Pennsylvania has actively disbursed state funding to accelerate the deployment of broadband to unserved areas within the state. For example, in 2018, the Governor of Pennsylvania launched the Pennsylvania Office of Broadband Initiatives to coordinate efforts to provide high-speed Internet access to all Pennsylvanians, including funding, especially in rural unserved areas. The PA Office of Broadband Initiatives oversees a broadband investment and incentive program that has made available $35 million in financial assistance to private providers that submitted competitive bids for service areas within Pennsylvania in Auction 903. See the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Awardee** | **Pennsylvania Award** | **Number of Units Served** | **Pennsylvania Counties Served** |
| Tri-County Rural Electric Cooperative, Inc. | $15,651,726 | 7,015 | Potter, Tioga, Lycoming, Bradford |
| Armstrong Telephone Company | $1,289,291 | 2,182 | Crawford, Erie, Mercer |
| Velocity.Net | $112,198 | 39 | Erie |

Independent of the state universal service funding separately provided to incumbent providers of local voice service or other state laws addressing the delivery of voice and broadband service, the Pennsylvania state broadband funds were awarded to carriers that were winning bidders in Auction 903. This complementary state funding including support in approved rates along with Auction 903 support will help to provide high-speed internet access to unserved households and businesses in these Pennsylvania counties.

Because state funding coupled with additional federal funding will help ensure that areas that need broadband deployment receive it in a cost-effective manner, the PA Joint Commenters disagree with NCTA’s and Verizon’s suggestion that the Commission exclude from the RUDOF auction any census block where a winning bidder is also receiving other additional funding support.

The Joint Commenters also agree with the CPUC’s recommendation that the Commission should begin to address the affordability of broadband service by incentivizing providers that are participating in the RUDOF to offer low-income broadband plans.[[67]](#footnote-67) The Commission must balance the statutory principles of universal service with affordability and begin to take into consideration this issue as it moves forward to close the digital divide in high-cost areas served by federal high-cost support recipients.

The Commission could codify a requirement that conditions the receipt of RUDOF high-cost support for winning bidders on the implementation and require a certification that affordable broadband plans are available. The Joint Commenters note that recipients of federal high-cost support are already required to submit a broadband reasonable comparability rate certification with their annual Section 54.313 report (Commission Form 481).[[68]](#footnote-68) With the proposed certification, support recipients would now also certify that have included affordable broadband plans. This certification will ensure that the Commission can monitor high-cost recipients’ compliance.

**G. Subscribership Information Should Be Required**

To help assess the effectiveness of low-income broadband plans, the Pa. Joint Commenters support requiring a recipient of federal support to report subscribership information. This Phase I auction will provide support to one winning bidder in a supported area. While that winning bidder could be an incumbent, the successful bidder also could be a nonincumbent. Either one could be the only provider of supported voice and broadband service in the foreseeable future. Moreover, business plays a critical role in economic development in rural areas, while residential consumers face increasing need for broadband for employment, education, and public health purposes. Such needs warrant more detailed pricing and access information.

Therefore, the Pa. Joint Commenters support requiring that RUDOF winning bidders provide subscribership information, including price points and the services consumers receive for that price along with subscribership information for low-income offerings. Reporting should apply to services provided to both business and residential consumers. And reports filed with the Commission should also be filed with the state commissions and their respective consumer advocates or business advocates.

**H. The Commission Should Not Include Census Blocks That Are Below The Current High-Cost Benchmark In Phase I of The RUDOF Auction**

ITTA urges the Commission to include census blocks that are lower cost than the

current high-cost threshold benchmark of $52.50 per location per month in the RUDOF. The PA Joint Commenters agree with NTCA that the Commission should not expand the universe of eligible census blocks for the RUDOF to include lower-cost areas even if they appear wholly unserved.[[69]](#footnote-69)

As noted by NTCA, the Commission has not fully examined the merits and impacts of such a proposal. NTCA notes that the inclusion of relatively lower-cost, and potentially more urbanized census blocks would change the emphasis and scope of the Commission primary goal and prerogative for the CAF. [[70]](#footnote-70) The PA Joint Commenters agree with NTCA that adopting this proposal may change the parameters of the RUDOF to the “Semi-Rural Digital Opportunity Fund.” Including these types of census blocks in the RUDOF could absorb significant amounts of resources and could have a detrimental effect on areas that are much more sparsely populated and where there truly is no business case for investment and broadband infrastructure deployment. Accordingly, the Commission should reject inclusion of those census blocks below the $52.50 benchmark in Phase I and the PA Joint Commenters propose, instead, that it address any other remaining unserved areas having no access to 10/1 Mbps broadband service, particularly those census blocks below the $52.50 benchmark, in Phase II of the auction so that the Phase I auction proceeds apace.

**III. CONCLUSION**

With this RUDOF proposal, the Commission is taking another significant step to accelerate the deployment of networks capable of providing both voice and broadband service in our most rural communities. In its effort to accelerate 21st century broadband service in rural communities across this country, it is imperative that the Commission ensure that areas lacking 10/1 Mbps service will be prioritized. Additionally, the Commission should consider the positions offered regarding adjusting the reserve price for census blocks that lack 10/1 Mbps broadband service to incentivize bids in wholly unserved areas. Concomitantly, the Commission also should not adopt any proposal that will exacerbate the rural digital divide and detrimentally impact the ability of rural residential and business consumers in census blocks having no access to 10/1 Mbps broadband service today from being prioritized and getting such service before upgrades in areas having 10/1 Mbps or census blocks that can be characterized as “suburban-rural” in demographic terms.

Additionally, the Commission should not adopt any positions that relieve incumbents of other legacy federal statutory obligations including their federal and state Lifeline ETC obligations, but rather, clarify that all incumbent legacy obligations continue despite the loss of federal high-cost support funding. Further, the Commission should again state that neither its *December 2014 Connect America Order* nor the loss of federal high-cost support negatively impacts existing state authority, including COLR obligations or consumers’ rights to continue to receive adequate, reliable and affordable voice service and broadband service.

Furthermore, the Commission should adopt and implement any proposal that encourages federal-state partnerships and should modify the final auction rules so that a competitive bid from a potential bidder who has received additional state resources for areas where it has bid for RUDOF support is favored in the competitive bidding process.

The PA Joint Commenters appreciate this opportunity to file these Joint Reply Comments.

Respectfully submitted,

|  |  |
| --- | --- |
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Dated: October 21, 2019

1. The Pa. OCA is an independent state office administratively within the Pennsylvania Office of Attorney General. The Pa. OCA is empowered by Pennsylvania statute to represent the interests of consumers before the Pa. PUC and similar federal regulatory agencies and before state and federal courts. 71 P.S. §§ 309–01, *et seq*. [↑](#footnote-ref-1)
2. The Pa. OSBA is an independent state agency administratively situated within the Pennsylvania Department of Community and Economic Development. The Pa. OSBA is empowered by Pennsylvania statute to represent the interests of small business consumers before the Pa. PUC and corresponding state and federal regulatory agencies and before state and federal courts. 73 P.S. §§ 399.41, *et seq*. [↑](#footnote-ref-2)
3. *In the Matter of Rural Digital Opportunity Fund et al.*, Notice of Proposed Rulemaking, and Notice of Inquiry, Docket Nos. 19-126 *et al.* (rel. August 2, 2019) (*NPRM*). [↑](#footnote-ref-3)
4. *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, 17667, para. 1 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). [↑](#footnote-ref-4)
5. *Id.* at 17725, para. 156. [↑](#footnote-ref-5)
6. *NPRM* at 46. [↑](#footnote-ref-6)
7. WTA Comments at 3. [↑](#footnote-ref-7)
8. UTC Comments at 16. [↑](#footnote-ref-8)
9. Geolinks Comments at 2. [↑](#footnote-ref-9)
10. UTC Comments at 16. [↑](#footnote-ref-10)
11. Some incumbent price cap carriers receive disaggregated legacy high-cost support in census block areas where Rural Digital Opportunity Fund support will be awarded. Other price cap carriers receive CAF Phase II model-based support in areas where Rural Digital Opportunity Fund support will be awarded. [↑](#footnote-ref-11)
12. 47 U.S.C. § 214(e)(1)(A). [↑](#footnote-ref-12)
13. *Connect America Fund et al., Report and Order, 29 FCC Rcd 15644,* 15663-71, paras. 50-70 *(2014) (December 2014 Connect America Order).* [↑](#footnote-ref-13)
14. *Id.* at 15663-64, para. 51 (footnotes omitted); *see also* 47 C.F.R. § 54.201(d)(3). [↑](#footnote-ref-14)
15. *December 2014 Connect America Order,* 29 FCC Rcd at 15663-64, para. 51. [↑](#footnote-ref-15)
16. CenturyLink Comments at 5-7; Windstream Comments at 23-26; ITTA Comments at 30-32; NTCA Comments at 34-35; USTelecom Comments at 25-29; and Alaska Communications at 7-9. [↑](#footnote-ref-16)
17. Windstream Comments at 25. [↑](#footnote-ref-17)
18. Frontier Comments at 19-20. [↑](#footnote-ref-18)
19. 47 U.S.C. § 214; *see also* 47 C.F.R. § 63.71. [↑](#footnote-ref-19)
20. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 (2017) (*Wireline Infrastructure Order* or *Wireline Infrastructure Further Notice*). [↑](#footnote-ref-20)
21. 47 U.S.C. § 214 (a). [↑](#footnote-ref-21)
22. *See* 66 Pa. C.S. § 1102(a)(2); *see also* Appendix A. [↑](#footnote-ref-22)
23. In such instances, a carrier with an ETC designation must still go through the relinquishment process and point to the new CAF II CETC and/or Lifeline-only ETCs as providing sufficient and reasonable alternative services to allow the price cap ETC to relinquish all obligations in those particular census blocks covered by the forbearance grant. In such cases, the Commission would address interstate service and the Pa. PUC would address intrastate services based on the facts. [↑](#footnote-ref-23)
24. In the census blocks where the incumbent ETC has been granted forbearance by the Commission, it

    remains subject to other Title II requirements that ensure that voice telephony rates remain just and

    reasonable and not unjustly or unreasonably discriminatory. Price cap carriers also continue to be subject

    to Sections 201 and 202 of the Act, which place nondiscrimination obligations on common carriers. [↑](#footnote-ref-24)
25. 47 U.S.C. § 214(e)(2). [↑](#footnote-ref-25)
26. 47 U.S.C. § 214(e)(2); *see Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*). [↑](#footnote-ref-26)
27. *See* *Federal-State Joint Board on Universal Service,* Report and Order, 12 FCC Rcd 877 (1997); *See Matter of Federal-State Joint Board on Universal Service*, First Report and Order, 20 FCC Rcd 6371 (*First Universal Service Report and Order* or *2005 ETC Order*); *Final Policy Statement on Commonwealth of Pennsylvania Guidelines for Designation and Annual Recertification as an Eligible Telecommunications Carrier (ETC) for Purposes of Federal Universal Service Support* at Docket No.

    M-2010-2164741 (Order entered August 2, 2010) (*ETC Guidelines Order*) [↑](#footnote-ref-27)
28. 47 C.F.R. §§ 54.202(a)(1)(i), 54.101(d); *Lifeline and Link Up Reform and Modernization et al*., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3974, 4074-75, paras. 35, 311-12 (2016)*; see also* 47 C.F.R. §§ 54.101(d), 54.405(a); 47 C.F.R. Subpart E. [↑](#footnote-ref-28)
29. 47 U.S.C. § 214(e)(6). [↑](#footnote-ref-29)
30. NPRM at 90. [↑](#footnote-ref-30)
31. *See* 47 C.F.R. §§ 54.101(d), 54.405(a); 47 C.F.R. Subpart E. [↑](#footnote-ref-31)
32. *December 2014 Connect America Order,* 29 FCC Rcd at 15671, para. 70. [↑](#footnote-ref-32)
33. *Id*. [↑](#footnote-ref-33)
34. Pursuant to the rules of the CAF, Auction 903 support recipients are only provided high-cost support in the census blocks for which they had winning bids *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6006, para. 159 (2016) (*Phase II Auction Order*). [↑](#footnote-ref-34)
35. *See generally* *In the Matter of Telecommunications Carriers Eligible for Universal Service Support Connect America Fund*,34 FCC Rcd 1966(2019). [↑](#footnote-ref-35)
36. *Lifeline and Link Up Reform and Modernization, et al*., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*2012* *Lifeline Reform Order* or *Lifeline FNPRM*); *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818 (2015) (*2015 Lifeline FNPRM*); *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4038, para. 211 (2016) (*2016 Lifeline Order*); *Lifeline and Link Up Reform and Modernization, et al*., Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 Rcd 10475 (2017) (*2017 Lifeline NPRM and NOI*) (collectively *Lifeline Reform Orders*); 47 C.F.R. §§ 54.101, *et seq.; In Re: Lifeline and Link-up Programs*, Docket No. M-0051871 (Order entered May 23, 2005) (*PA Lifeline Order*)*.* ETCs are further ordered to report to the Pa. PUC annual changes in Pennsylvania Lifeline enrollment. *Re: Section 3015(f) Review Regarding Lifeline Tracking Report, Accident Report, and Services Outage Report*, 100 Pa. P.U.C. 553 (Dec. 30, 2005) (*Tracking Report Order*)*.*  [↑](#footnote-ref-36)
37. Windstream Comments at 25-26. [↑](#footnote-ref-37)
38. NPSC Comments at 6. [↑](#footnote-ref-38)
39. *Id.* [↑](#footnote-ref-39)
40. Consistent with section 254(b) of the Communications Act of 1934, as amended, the Commission emphasized that ETCs must offer voice telephony services at rates that are reasonably comparable to urban rates. In the *December 2014 Connect America Order*, the Commission adopted a similar reasonable comparability rate certification requirement for broadband performance obligations. *See December 2014 Connect America Order*, 29 FCC Rcd at 15686-87, para. 120. [↑](#footnote-ref-40)
41. NCTA Comments at 6-7; PDI Comments at 2. [↑](#footnote-ref-41)
42. 47 U.S.C. § 254(e). [↑](#footnote-ref-42)
43. 47 U.S.C. § 214(e)(1)(A) [↑](#footnote-ref-43)
44. *CAF Phase II Auction Order*, 31 FCC Rcd at 5960-61, para. 30. [↑](#footnote-ref-44)
45. The Joint Commenters note that the Commission recently refined the requirements for MOS testing and allow for substantially equivalent testing methodologies. *See Connect America Fund, et al.*, WC Docket No. 10-90, Order on Reconsideration, (Order rel. September 12, 2019). [↑](#footnote-ref-45)
46. 47 U.S.C. § 160(a). This Section provides in pertinent part the Commission shall forbear from applying such provision or regulation if the Commission determines that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. [↑](#footnote-ref-46)
47. *See Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4052, para. 249 (2016) (*2016 Lifeline Modernization Order*). [↑](#footnote-ref-47)
48. *See Lifeline and Link Up Reform and Modernization et al.*, Fourth Report and Order, Order On Reconsideration, Memorandum Opinion and Order, Notice Of Proposed Rulemaking, and Notice Of Inquiry, 32 FCC Rcd 10475,10495-96 paras. 54-58 (2017). [↑](#footnote-ref-48)
49. Frontier Comments at 20-21; Windstream Comments at 25-26; USTelecom Comments at 26. [↑](#footnote-ref-49)
50. *December 2014 Connect America Order,* 29 FCC Rcd at 15664, para. 51. [↑](#footnote-ref-50)
51. This obligation is rooted in Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. *Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services*, Docket Nos. P­2014-2446303 and P-2014-2446304 (Order entered March 4, 2015) at 7. [↑](#footnote-ref-51)
52. On September 30, 1999, the Pa. PUC issued an Order at Docket Nos. P-00991648 and P-00991649 (commonly referred to as the *Global Order)*, as amended by the Order entered November 5, 1999, *aff’d sub nom.,* *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000). *See also Rulemaking Re:* *Establishing Universal Service Fund Regulations at 52 Pa. Code §§ 63.141-63.151,* Docket No. L-00000148 (Order entered January 1, 2000). [↑](#footnote-ref-52)
53. WISPA Comments at v, 10-11; Space X Comments at 3-6; GeoLinks Comments at 8; and PDI Comments at 2. [↑](#footnote-ref-53)
54. *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 80; *see also* 47 C.F.R. § 54.101(b). [↑](#footnote-ref-54)
55. *December 2014 Connect America Order*, 29 FCC Rcd at 156887, para. 120 (footnote omitted). [↑](#footnote-ref-55)
56. *See Connect America Fund et al*., WC Docket Nos. 10-90, 14-58, 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1387-88, para. 20 (2018) (2018 Order on Reconsideration). [↑](#footnote-ref-56)
57. *Id.* [↑](#footnote-ref-57)
58. *See* *Connect America Fund*, 28 FCC Rcd 7211, 7224, n. 21 (*Phase II Challenge Process Order*) (explaining that a broadband provider would be considered to be providing voice service if it did so through an affiliated competitive local exchange company or “through a managed voice solution obtained from a third party vendor … , so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers”). [↑](#footnote-ref-58)
59. NCTA Comments at 4; Verizon Comments at 8-9. [↑](#footnote-ref-59)
60. CPUC Comments at 5-7. [↑](#footnote-ref-60)
61. *Id.* [↑](#footnote-ref-61)
62. U.S. Cellular Comments at 3-5. [↑](#footnote-ref-62)
63. *Connect America Fund et al.*, Report and Order and Order of Reconsideration 32 FCC Rcd 1624, 1641-44, paras. 43-50 (2017) (*Phase II Auction FNPRM Order).*  [↑](#footnote-ref-63)
64. *See April 19,2017 Joint Petition for Reconsideration, Modification and Waiver of the Pennsylvania Public Utility Commission and Pennsylvania Department of Community and Economic Development* requesting the Commission to waive the Auction 903 rules “by adding a negative weight” to the Commission’s formula for bids in census blocks where Verizon PA and Verizon North had declined 2015 CAF Phase II model-based support in Pennsylvania “to reflect additional resources brought to the auction” by Pennsylvania. [↑](#footnote-ref-64)
65. *Id*. [↑](#footnote-ref-65)
66. *Connect America Fund et al.*, Report and Order and Order of Reconsideration 32 FCC Rcd 1380, 1408-15, paras. 71-83 (2018). [↑](#footnote-ref-66)
67. CPUC Comments at 4-5. [↑](#footnote-ref-67)
68. 47 U.S.C. § 54.313(a)(3). [↑](#footnote-ref-68)
69. NTCA Comments at 33. [↑](#footnote-ref-69)
70. As a threshold point, the PA Joint Commenters note the apparent distribution of locations lacking access to 10/1 Mbps broadband service. As we understand, the RUDOF NPRM (*see* para. 49 and fn. 90), the distribution of unserved (i.e., lacking 10/1 broadband) are as follows:

    Low Cost (<$52.50 per month):  3.4 million locations

    High Cost (between $198.60 and $52.50):  235,000 locations

    Extremely High Cost: 25,000 locations

    In other words, roughly 93% of the locations that remain without basic broadband service are in areas the CAF Cost Model claimed were of sufficiently low cost that they were expected to attract entry without support. Whatever the reason, including the possible consequence of an inaccurate cost model, there is a need to conduct a critical examination on this issue. Therefore, the PA Joint Commenters believe that the Commission must examine the root cause of this market failure and make sure that its upcoming auction rules appropriately include these areas that appear to be the single largest category of locations that cannot yet participate in the information economy that is emerging. [↑](#footnote-ref-70)