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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 09-197
	)	
Petition of USTelecom for Forbearance Under 47 U.S.C. §160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks	)	WC Docket No. 14-192

COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

On December 11, 2014, the Commission adopted an Order in its Connect America Fund (CAF) proceeding that, among other things, granted limited relief to Eligible Telecommunications Carriers (ETCs) by forbearing from enforcing ETC voice obligations in areas where price cap carriers are not eligible to receive CAF Phase II support (i.e., low-cost census blocks, census blocks where an unsubsidized competitor offers both qualifying voice and broadband, and census blocks where another provider is awarded CAF Phase II support).[1] While a step in the right direction, this action still leaves price cap carriers with continuing ETC obligations and designations that are not appropriately matched to support. This is true

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[1] *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance Under 47 U.S.C. §160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, WC Docket Nos. 10-90 et al., Report and Order 29 FCC Rcd 15644 (Dec. 11, 2014) (*December 2014 CAF Order*).

regardless of whether they have accepted or declined the Commission's recent offers of CAF Phase II support, and whether that support will be based on the cost model or CAF Phase I frozen support levels. Additionally, the Commission inappropriately continues to mandate Lifeline participation by price cap carriers throughout their incumbent service territories.

On July 23, 2015 the Wireline Competition Bureau (Bureau) issued a Public Notice seeking to refresh the record on issues related to ETC obligations to ensure that ETC obligations and funding are "appropriately matched."[2] The Public Notice contained a list of census blocks where price cap carriers continue to have ETC obligations. This list should not be interpreted as requiring price cap carriers to offer voice service or otherwise meet ETC obligations in areas that they do not serve (and, consequently, neither have network nor the authority to offer service). The Commission has recognized that there likely are some issues with the list of census blocks because the Connect America Cost Model uses GeoResults data, "which in some instances may be inaccurate, which in turn may result in the inaccurate assignment of certain locations to a particular price cap territory."[3] These issues include: (1) some of the census blocks have been assigned to the wrong price cap carrier; (2) other census blocks may actually be served by a rate-of-return carrier; (3) census blocks may be partially served by more than one carrier (of either type); and (4) census blocks are located in unserved areas, including areas where carriers are not currently authorized to provide service.

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[2] *Wireline Competition Bureau Releases List of Census Blocks Where Price Cap Carriers Still Have Federal High-Cost Voice Obligations & Seeks to Refresh the Record on Pending Issues Regarding Eligible Telecommunications Carrier Designations and Obligations*, Public Notice, 30 FCC Rcd 7417, ¶ 4 (2015) (quoting *Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, ¶ 1089 (2011) ("*USF/ICC Transformation FNPRM*")).

[3] *See December 2014 CAF Order* at ¶ 38. The Commission delegated to the Bureau the authority to resolve these kinds of issues. *Id*. at n.88.

USTelecom submits that the Bureau should clarify that ETC obligations only extend to those parts of census blocks that are actually served by the price cap carriers identified as having ETC obligations. With respect to CAF Phase II broadband obligations, the individual price cap companies that have accepted funding may notify the Bureau of situations where their broadband obligations should be modified to account for the first two categories of issues.[4]

In light of the recent shifts in funding to CAF Phase II support, the Commission should continue its ETC reform efforts and grant the relief requested in the pending USTelecom Petition and by USTelecom members in the pending rulemakings cited by the Bureau in the Public Notice, eliminating ETC service obligations and designations where a price cap carrier receives no high-cost support and de-linking Lifeline from ETC designations.[5] Fundamentally, ETC status should be an election that companies make based on an evaluation of the obligations and the support being offered rather than a mandated status based on historical roles. The current approach interferes with the overall goals of the CAF Phase II program and section 254 and is at odds with competitive realities and the need for continuing increases in broadband infrastructure.[6] Even with the forbearance granted in the *December 2014 CAF Order*, USTelecom members still will have continuing unfunded ETC obligations in high-cost areas where they declined CAF Phase II state-level commitments and in very high cost census blocks located outside of the area covered by the CAF Phase II state-level commitment. As AT&T detailed in its Reply Comments to the USTelecom Petition, it is extraordinarily costly to

[4] The third category—partially served census blocks—is resolved through the Commission's approach of measuring locations on a state-wide basis, rather than in each individual census block, as the Commission noted last December. *Id*.

[5] *See, e.g.,* United States Telecom Association, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks,* WC Docket No. 14-192 (Oct. 6, 2014) ("*USTelecom Petition*").

[6] *See id.*

continue providing voice service in these areas,[7] and requiring price cap carriers to continue to provide voice service as an ETC without appropriately matched support is fundamentally at odds with section 254.

It is also important that the Commission match price cap carriers' ETC designations with their high-cost funding because doing so would ensure that states could not use the ETC designation to impose state-specific unfunded obligations on price cap carriers that would interfere with the CAF Phase II program goals and competitive realities. USTelecom asks that the Commission grant price cap carriers relief from both the ETC obligations and designations in unfunded areas and allow companies to voluntarily elect ETC status and obligations in return for explicit support that is appropriately matched to obligations.

USTelecom has offered a straightforward proposal for allocating support to these areas that are currently unfunded that carriers could voluntarily choose to accept.[8] USTelecom has proposed that the Commission allocate frozen support, which is currently allocated on a holding company basis, to high-cost census blocks that do not have a competitive broadband presence. This allocation should be in proportion to the amount of support that the census block is estimated to need according to the Connect America Cost Model. For ease of reference, USTelecom is including a copy of this proposal as an attachment to these comments.

In addition to being at odds with the Commission's statutory obligations under section 254 of the Act, imposing unfunded obligations only on price cap carriers also is inconsistent with the goals of the CAF Phase II program, the need for broadband investment and competitive

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[7] *See Comments of AT&T In the Matter of Connect America Fund, Universal Service Reform Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime,* WC Docket Nos. 10-90, 10-208, 14-58, 07-135, 01-92 (Aug. 8, 2014) at 13-15.

[8] *See Ex Parte Letter* from Jonathan Banks, USTelecom, to Marlene Dortch, FCC, Docket No. 10-90 (April 3, 2015).

realities.[9] As demonstrated in the USTelecom Petition, total incumbent local exchange carrier (ILEC) residential lines have fallen by two-thirds since 2000 and ILECs now serve less than one-third of all households, which increasingly opt for alternative service providers such as cable, VoIP, and wireless.[10] With competition increasing and broadband investment a key national goal, continuing to impose ETC obligations and designations on price cap carriers that are not matched to their high-cost funding is not in the public interest.

Finally, USTelecom also asserts that carriers should be relieved automatically from Lifeline obligations in such areas where there is at least one other Lifeline provider as opposed to having to go through the section 214(e)(4) relinquishment process on a state-by-state basis. That process has no deadline on state commission action on ETC relinquishment notices. Participation in the Lifeline program should be voluntary. In the *December 2014 CAF Order*, the Commission explained that price cap carriers were "effectively transformed" into "Lifeline-only" ETCs in those census blocks.[11] However, Lifeline cannot – and has never been intended to – replace the high-cost program in supporting the provision, maintenance, and upgrading of all the network facilities necessary to offer service throughout a community to qualifying and non-qualifying customers alike. Furthermore, since 2008 there has been widespread market entry of other Lifeline providers, which makes it unnecessary to mandate service area-wide Lifeline obligations for price cap carriers, thereby making the maintenance of these requirements unnecessary.

Accordingly, the Bureau should clarify that the list of census blocks with ETC obligations only applies to those parts of the census blocks that are actually served by the

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[9] *See USF/ICC Transformation FNPRM* at ¶ 1089.

[10] *See USTelecom Petition* at 63.

[11] *December 2014 CAF Order* at ¶ 70.

identified carrier. As promptly as feasible, the Commission should grant the USTelecom Petition and its members' requests made in pending rulemaking proceedings by forbearing from section 214(e) obligations in all remaining geographic areas where a price cap carrier does not receive federal high-cost support, as well as relieving price cap carriers of both ETC designations in areas where they do not receive any high-cost support and mandatory participation in the Lifeline program. At the same time, the Commission should reallocate frozen support in the manner that USTelecom has proposed to enable carriers to voluntarily elect ETC status and receive the funding necessary to continue providing voice service where they currently have unfunded mandates.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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September 9, 2015

CAF Frozen Support Allocation Proposal

When price-cap ILECs decide whether or not to accept CAF II statewide offers of support and ETC forbearance takes effect, the FCC should reallocate Frozen Support. Frozen Support shall be reallocated on a holding company basis to support the ongoing provision of voice service in high cost census blocks without any competitive providers of broadband. Frozen Support will not be disbursed, however, in any census block for which CAF II funding is disbursed. The amount of Frozen Support initially allocated to each potentially eligible census block (which shall not be disbursed if there is a CAF II recipient for that block) shall be calculated according to the formula,

$$f(x) = \left(\frac{s(x)}{T}\right) * FS$$

where:

f = Frozen Support initially allocated after CAF II competitive bidding to a high-cost, unserved census block (*x*). Such support shall be disbursed however only if that census block does not receive any CAF II funding.

x = a census block potentially eligible for Frozen Support. Such a census block shall:

- have CAM estimated cost above the CAM high-cost benchmark; and
- not be "served" by a competitor offering at least 10 Mbps/1 Mbps.

FS = annualized holding company Frozen Support as of January 1, 2015.

s = annual CAM estimated support for a high-cost, unserved census block (*x*).

T = the sum of CAM estimated support associated with all census blocks served by the same ILEC holding company that are potentially eligible for Frozen Support, which may be expressed as, $\sum_{x_n}^{x_1} s\,(x)$.

n = the total number of census blocks in the service area of a price-cap holding company potentially eligible for Frozen Support. Another way of describing this set is that it includes all:

- census blocks included in statewide offers of support (including those in non-contiguous states and territories);
- high-cost, unserved census blocks excluded from statewide offers of support because of qualifying, but unfunded Rural Broadband Experiment applications;
- high-cost, unserved census blocks that are excluded from statewide offers of support because they are "served" at 3 Mbps/768 kbps, and then are made available for CAF II competitive bidding because they are not "served" by a competitor offering at least 10 Mbps/1 Mbps; and
- high-cost, unserved census blocks that fall above the CAM extremely-high-cost benchmark (which are available for CAF II competitive bidding without associated CAF II funding).