

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

January 18, 2012

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EXECUTIVE SUMMARY

In the *CAF Order*, the Commission took preliminary steps to implement long-overdue reform of the high-cost support program. NCTA applauds the Commission's decision to establish a strict budget for this program, which is an important step in protecting consumers and bringing efficiency to the program. Unfortunately, the Commission generally chose not to make use of market-based mechanisms to distribute funding and instead it is providing incumbent local exchange carriers (LECs) with exclusive or preferred access to virtually all high-cost support. Accordingly, in addressing the questions raised in the Further Notice of Proposed Rulemaking (Further Notice), the Commission must take great care to ensure that any support provided to those carriers is appropriately sized and targeted to areas not served by competitive providers and that appropriate mechanisms are established to improve accountability by all recipients. In these comments, NCTA addresses three sets of issues:

1. Targeting Support in Areas Served By Rate of Return Carriers. In areas served by rate of return (ROR) carriers, the Commission must ensure that support is appropriately targeted to areas not served by competitors, rather than subsidizing areas where the marketplace already is working to deliver broadband to consumers. If the Commission provides ROR carriers with support for broadband costs, e.g., middle mile transport costs, it must limit that recovery only to costs attributable to areas or customers not served by an unsubsidized competitor. To the extent legacy support mechanisms will be retained for an extended period of time, the Commission must re-prescribe the rate of return and develop a process for reassessing the amount of legacy support provided in areas where there has been a significant level of competitive entry.
2. Competitive Bidding in Areas Served By Price Cap Carriers. In price cap areas, the Commission must develop a bidding process that facilitates bidding by all interested parties and provides no artificial advantages to incumbent LECs beyond the advantages already

provided by the *CAF Order*. The Commission can do this by streamlining the process for designating Eligible Telecommunications Carriers (ETCs) so that it does not operate as an artificial barrier to participation in competitive bidding and by making support available on the basis of a neutral geographic area, such as census blocks, rather than incumbent LEC-specific study areas or wire centers. In addition, in areas where funding is provided to the incumbent LEC in Phase I or pursuant to a statewide commitment in Phase II, competitive bidding may be insufficient to promote competition and constrain support levels and additional steps may be needed.

3. Accountability of All High-Cost Support Recipients. The Commission also must take steps to improve accountability of all recipients. In particular, the Commission should ensure that the public has complete and timely access to information regarding where, and how much, support is distributed, as well as how that money was spent and what recipients were able to accomplish with it. The Commission also should improve its monitoring of state regulation (or deregulation) of incumbent LEC services so that it can better correlate the diminishing burdens state law imposes on incumbent LECs with the significant benefits that have been provided to these carriers under the new federal regime.

The proposals advanced by NCTA in these comments are all intended to ensure that high-cost support is distributed in an efficient manner. Such an approach is essential if the Commission is to keep the program operating in a manner that preserves and promotes competition and that stays within the budget established in the *CAF Order*.

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**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA)¹ hereby submits its comments in response to Sections XVII.A-K of the Report and Order and Further Notice of Proposed Rulemaking in the above-referenced proceedings.² The high-cost support mechanisms adopted in the *CAF Order* generally forego the use of market-based mechanisms and provide

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over \$185 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

² *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*CAF Order*).

incumbent local exchange carriers (LECs) with exclusive or preferred access to virtually all high-cost support. Accordingly, in addressing the questions raised in the Further Notice of Proposed Rulemaking (Further Notice), the Commission must take great care to ensure that any support provided to those carriers is appropriately sized and targeted to areas not served by competitive providers and that appropriate mechanisms are established to improve accountability by all recipients.

INTRODUCTION

In the *CAF Order*, the Commission took preliminary steps to implement long-overdue reform of the high-cost support mechanism. The Commission took a number of important steps that had been advocated by NCTA, including establishing a firm budget for the program and beginning to target support only to those areas not already served by unsubsidized providers.

Although these are significant improvements over the legacy regime, in a number of critical ways the *CAF Order* falls short of what is needed to bring the program into the modern broadband era and eliminate the inefficiencies and abuses of the legacy program. In particular, while the *CAF Order* targets support to areas not served by competitors in price cap areas, support to rate of return (ROR) carriers continues to be provided without regard to the presence of unsubsidized providers serving the same areas. The *CAF Order* also fails to use competitive bidding (or any other market-based mechanism) in a timely and meaningful manner to ensure that the Commission and consumers are getting the most broadband “bang for the buck.”

By establishing a regime in which incumbent LECs have exclusive or preferential access to virtually all of the support, the Commission violated its own longstanding competitive neutrality principle,³ missed a golden opportunity to introduce market-based mechanisms and

³ *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (1997).

created a situation that is ripe for inefficient distribution of support. Given the decision to forego competition as a way to potentially increase broadband deployment and constrain the need for funding, the Commission needs to be especially diligent to ensure that broadband money is spent appropriately.⁴

In these comments, NCTA explains how this diligence should be incorporated in the Commission's resolution of three sets of issues identified in the Further Notice. Specifically, in areas served by ROR carriers, the Commission must ensure that any new broadband support, as well as any legacy support mechanisms that will be retained for an extended period of time, is appropriately targeted to areas not served by competitors, rather than subsidizing areas where the marketplace already is working to deliver broadband to consumers. In price cap areas, the Commission must take steps to develop a distribution process that facilitates participation by all interested parties, including establishing a competitively neutral bidding process and streamlining the process for designating Eligible Telecommunications Carriers (ETCs). Finally, the Commission also must take steps to improve the accountability of all recipients by ensuring that the public has complete and timely access to information regarding where, and how much, support is distributed and what recipients are accomplishing with that support. The Commission must also develop a better understanding of the burdens (or lack thereof) that state regulation imposes on incumbent LEC services.

I. SUPPORT FOR RATE OF RETURN CARRIERS MUST BE TARGETED TO AREAS WHERE IT IS NECESSARY

NCTA appreciates the Commission's decision to adopt a policy in which support will not be provided in areas that competitive providers are willing to serve without

⁴ In implementing the recommendations contained in these comments, NCTA encourages the Commission to ensure that the unique costs and challenges of providing broadband in Alaska are adequately addressed in its continuing efforts to reform the universal service high-cost support mechanisms.

subsidy.⁵ Unfortunately, the Commission took only the smallest of steps in the *CAF Order* to actually achieve that policy goal in areas served by ROR carriers, i.e., eventually phasing out support in areas with 100 percent competitive overlap.

In considering the questions raised in the Further Notice as to whether, and how, to bring ROR carriers within the Connect America Fund (CAF) program, the Commission should take additional steps to ensure that companies that have invested private capital to provide broadband in rural America are not penalized by being forced to compete against an incumbent LEC that is receiving more support than is warranted or necessary to accomplish the Commission's universal service goals. Effectively targeting support to the areas not served by competitive providers will be critical to ensuring that the Commission is able to keep the ROR carrier portion of the high-cost program within the \$2 billion budget established in the *CAF Order* and eventually produce savings that can be used to reduce the contribution burden on consumers.

A. Only Broadband Investment and Expenses Attributable to Non-Competitive Areas Should Be Eligible for High-Cost Support

The Commission seeks comment on a proposal submitted by the Rural Associations to distribute CAF support for broadband in areas served by ROR carriers.⁶ The proposal would enable ROR carriers to recover new broadband-related costs and increase the portion of costs assigned to the interstate jurisdiction.⁷ As the Commission recognizes, the proposal is premised on a larger budget than the one adopted in the *CAF Order*.⁸ For the reasons stated below, a larger budget is unnecessary if the Commission adopts a policy of limiting support to areas not already served by an unsubsidized competitor.

⁵ *CAF Order* at ¶ 1032; Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, et al (filed Oct. 5, 2011) (Rural Association Plan).

⁶ *CAF Order* at ¶ 1033.

⁷ *Id.* at ¶ 1033.

⁸ *Id.* at ¶ 1034.

In continuing its reform efforts, the most important step the Commission could take is to ensure that funding from the CAF is not distributed to areas where a competitor or competitors are providing a substantially similar (or better) service without subsidy.⁹ The Rural Association Plan does not meet this test. Under the Rural Association Plan, ROR carriers would receive support for broadband-capable plant in areas where competitors have deployed similar plant without subsidy; they would receive support for switching equipment in areas where competitors have deployed switches without subsidy; and they would receive support for middle mile transport costs in areas where their competitors would receive no support for similar expenses. The lopsided regime proposed by the Rural Associations is inherently unfair and anticompetitive and should not be adopted without significant changes.

In creating a new regime to support broadband deployment, the Commission must not repeat the mistakes of the past. As suggested in the *CAF Order*, the Commission can achieve the policy goal of targeting support by adopting a simple and straightforward rule specifying that only costs associated with providing broadband in areas with no unsubsidized competitor will be deemed eligible for CAF support.¹⁰ Using the familiar “donut and hole” analogy, the Commission should make clear that, on a prospective basis, only the investment in facilities that are built in, or used for, the non-competitive “donut” will be covered by the CAF mechanism and

⁹ As a necessary corollary to this policy, the Commission also must ensure that incumbent LECs that receive high-cost support are not able to prevent competitive entry into their service areas by refusing to interconnect with competitors under sections 251(a), (b), and (c) of the Communications Act or by invoking the rural exemption of section 251(f). As the Commission has recognized, “[w]ithout interconnection for voice service, a broadband provider, which may partner with a competitive telecommunications carrier to offer a voice-video-Internet bundle, or ‘triple-play’ services, is unable to capture voice revenues that may be necessary to make broadband entry economically viable.” *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, WC Docket No. 10-143, Declaratory Ruling, 26 FCC Rcd 8259, 8266, ¶ 13 (2011).

¹⁰ *CAF Order* at ¶ 1038. Competitive ETCs that will be losing support as a result of the *CAF Order* should be considered “unsubsidized competitors” for purposes of this analysis. In addition, as noted in pending petitions for reconsideration, wireless and satellite providers that meet the relevant criteria should also be considered unsubsidized competitors. See *Petition for Reconsideration of ViaSat* (filed Dec. 29, 2011); *Petition for Partial Reconsideration of the Wireless Internet Service Provider Association* (filed Dec. 29, 2011).

that investment in facilities built in, or used for, the competitive “hole” will be excluded. New loop plant, for example, only will be covered if it is in the donut, not the hole. New transport and switching equipment, which typically would benefit customers in both the donut and the hole, would have to be allocated between the two areas.

The same principle should apply with respect to broadband-related expenses, such as middle mile transport services. Only the portion of those expenses that is attributable to customers in the non-competitive donut should be eligible for high-cost support.¹¹ Applying this principle to new broadband investment and expenses at the start of any new program, before carriers develop any unwarranted expectations, is crucial to effectively transitioning to a broadband-based regime for ROR carriers. Adopting this principle also is critical to ensuring that such a regime incorporates the principle of competitive neutrality because cable operators and other competitive rural broadband providers must incur the same middle mile costs as incumbent LECs, but have no opportunity to receive subsidies under the new high-cost support regime.¹²

The effect of this proposal is to ensure that those areas that are the hardest to serve and least likely to attract investment should receive the highest levels of CAF support, while areas that already are well served by broadband should receive the least broadband support. For example, as discussed in the *CAF Order*, the Commission staff has identified 37 study areas where competitors serve 95 percent or more of the households in the study area and an additional

¹¹ In addition to the competitive concerns raised by the fact that such costs are only subsidized for incumbent LECs and not their competitors, NCTA also is concerned because the Commission has no evidentiary basis for assessing the reasonableness of some of the broadband costs the rural LECs are proposing that the program subsidize, particularly costs for services, like middle mile transport, purchased from other carriers.

¹² Indeed, from a competitive neutrality perspective, the new regime in areas served by ROR carriers is much worse than the legacy regime, which at least provided wireline competitors a theoretical opportunity to receive the same support as the incumbents with whom they were competing. Under the new regime, funding in these areas will be provided exclusively to the incumbent LEC for an indefinite period of time.

51 study areas where there is a competitive overlap of at least 80 percent.¹³ These study areas likely would receive little or no CAF funding under NCTA's proposal. Limiting CAF support in areas that are well served would make available more funding for areas where cable operators and others have not invested.

Limiting new CAF support to areas with no unsubsidized competitor, as described above, avoids some of the administrative challenges associated with targeting legacy support. Because it applies only to new investment and new expenses, the proposal does not require the Commission to conduct an *ex post* determination of how much of the existing network is attributable to competitive versus non-competitive areas. Rather, it only requires categorization of new investment and expenses, a burden that falls well within the bounds of accountability that the Commission has identified as a cornerstone of any broadband support mechanism.

B. Legacy Support Should Be Appropriately Sized and Targeted

NCTA applauds the Commission's decision to eliminate legacy support for ROR carriers in study areas where competitors serve 100 percent of the supported area without subsidy, as well as its decision to seek comment on a process for reducing support in areas with a significant competitive overlap.¹⁴ Developing a process for reducing legacy support in areas with a significant competitive overlap is more challenging than implementing reforms to govern future investments, but it is essential if the Commission anticipates a slower, more gradual phase out of legacy support mechanisms for ROR carriers.

As the *CAF Order* recognizes, there are two key elements of such a process: (1) identifying the level of competitive overlap; and (2) allocating costs between the competitive and noncompetitive portions of the study area. NCTA agrees with the Commission that the data

¹³ *CAF Order* at ¶ 1065.

¹⁴ *Id.* at ¶¶ 281-84, 1061-77.

collected by state mapping entities pursuant to the State Broadband Initiative (SBI) administered by NTIA is the best starting point for determining the level of competitive overlap.¹⁵ While the Commission correctly has noted that there are flaws in the SBI data, it is the most comprehensive source of publicly available data regarding broadband deployment in America. Both incumbent LECs and competitors should, however, be given the opportunity to show that the data overstates or understates the level of existing broadband deployment.¹⁶

Allocating costs between competitive and non-competitive portions of a study area without requiring the carrier to prepare a cost study should not be an insurmountable challenge, particularly after the Commission adopts a cost model. As noted in the *CAF Order*, NCTA previously suggested that the Commission reduce support when the level of legacy support exceeds the amount of support estimated by the cost model by 10 percent or more.¹⁷

Alternatively, a model could be used to estimate the percentage of network cost in a particular study area that is attributable to serving the customers that are served by a competitive provider and reduce the amount of support accordingly. While ROR carriers have raised concerns about the ability of a cost model to precisely identify the costs of serving rural study areas, using a model to determine the relative cost of serving competitive versus noncompetitive portions of a study area should not raise the same concerns. As with deployment data, these cost estimates should serve as presumptions that can be rebutted by competitors or incumbents.

¹⁵ *Id.* at ¶ 1062. The *CAF Order* solicits comment on the proper role for state commissions in this process. *Id.* at ¶ 1072. NCTA believes that state mapping entities, which are responsible for collecting and publishing broadband deployment data, can play a valuable role in the process of identifying competitive and noncompetitive areas. Conversely, a state public utility commission that is not the designated mapping entity and which has no jurisdiction over broadband services should have no role in the process.

¹⁶ Thus, the petition for reconsideration filed by the Independent Telephone and Telecommunications Alliance (ITTA) on this issue does not go far enough in that it appears to seek a right of rebuttal only for incumbent LECs and not for competitors. *See* Petition for Reconsideration of the Independent Telephone and Telecommunications Alliance (filed Dec. 29, 2011) at 5-6.

¹⁷ *CAF Order* at ¶ 1076, citing Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed Aug. 24, 2011) at 12.

To implement this policy, the Commission should initiate a proceeding on an annual basis in which it: (1) identifies study areas that, according to the SBI data, meet the 75 percent threshold; and (2) proposes a new level of high-cost support based on one of the mechanisms suggested in the previous paragraph. Those companies, as well as any other interested parties, would be given an opportunity to rebut both the level of competitive deployment and the new high-cost support figure. Once a company has had its support level reduced as a result of this process, it would not be subject to review for another three years.

In addition, as long as the Commission retains a ROR regime, it must move forward with re-prescribing the rate of return. ROR carriers themselves have conceded that a return of 10 percent would be adequate,¹⁸ and the Commission made a preliminary finding in the *CAF Order* that a rate no higher than 9 percent would be warranted.¹⁹ Given the drastic reductions in interest rates since the Commission prescribed the 11.25 percent rate of return,²⁰ even that preliminary finding may prove too generous.

II. THE COMMISSION SHOULD ESTABLISH A MEANINGFUL COMPETITIVE BIDDING PROCESS FOR PRICE CAP AREAS AND SUPPLEMENT THAT PROCESS AS NECESSARY TO CONSTRAIN SUPPORT LEVELS

A. The Preferences Provided to Incumbent LECs Diminish the Benefits of a Market-Driven Competitive Bidding Process

Although the Commission stated in the *2011 USF-ICC FNPRM* that it intended to adopt market-driven policies in reforming universal service high-cost support, it revised this principle in the *CAF Order* to eliminate the term “market-driven” and instead include only “incentive-

¹⁸ Letter from Walter J. McCormick, USTelecom, to Chairman Julius Genachowski, Commissioner Michael Copps, Commissioner Robert McDowell, and Commissioner Mignon Clyburn, WC Docket No. 10-90 (filed July 29, 2011).

¹⁹ *CAF Order* at ¶ 1057.

²⁰ *Id.* at ¶ 1046.

based” reforms.²¹ This change in principle is reflected in the policies adopted by the Commission, which provide substantial preferences to incumbent LECs in receiving high-cost support and limited use of market-based mechanisms. The only remnant of the Commission’s former commitment to market-driven policies is in the potential competitive bidding in areas where price cap incumbent LECs do not exercise their right of first refusal to receive CAF Phase II support, or after the incumbent LEC has received CAF Phase II support for five years.²² However, the Commission has set up a system that provides exclusive support to price cap incumbent LECs prior to any competitive bidding, and this significantly limits the effectiveness of any potential future competitive bidding in constraining demand on the high-cost support program.

For example, the Commission provides price cap incumbent LECs exclusive access to CAF Phase I support to construct facilities in unserved areas. Not only is the Phase I mechanism harmful in its own right,²³ but it also will skew the distribution of future support by limiting the potential pool of participants in an auction. It is unreasonable to expect that any competitor will be able to succeed in a bidding process against an incumbent that was paid \$775 a line to build facilities that almost surely cost less than that amount.²⁴ Similarly, it is unlikely that competitive bidding will be as effective as it could be in any area where a price cap incumbent LEC exercises

²¹ *Compare Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4560-61, ¶ 10 (2011) (*2011 USF-ICC FNPRM*) (identifying the fourth principle guiding reform as “Market-Driven Policies”) with *CAF Order*, FCC 11-161 at ¶ 11 (identifying the fourth principle guiding reform as “Incentive-Based Policies”).

²² The Commission did not adopt any form of market-driven mechanisms for fixed broadband CAF support in areas served by ROR incumbent LECs.

²³ The Phase I mechanism is guaranteed to overcompensate incumbent LECs, and therefore waste limited funds, because it is based on the predicted cost of the highest-cost wire centers, yet price cap incumbent LECs will be able to use this support to build to the lowest-cost wire centers. *CAF Order*, FCC 11-161 at ¶ 145. Moreover, to the extent this excess funding is used to compete in areas served by unsubsidized competitors, it undermines the Commission’s policy goal of targeting support only to those areas where it is needed.

²⁴ *Id.*

its right of first refusal to receive exclusive CAF Phase II support to build broadband throughout its study areas within a state for five years.

While competitive providers would be at some disadvantage in any bidding process because of the historical benefits incumbent LECs have received, that disadvantage likely will be insurmountable in areas where the incumbent now receives explicit (and exclusive) support to build and expand its broadband network through the Phase I mechanism or a Phase II statewide commitment. It is for these reasons that NCTA advocated against the provision of support exclusively to incumbent LECs and in favor of immediate implementation of an effective market-based competitive bidding distribution mechanism.²⁵

At least one pending petition for reconsideration has asked the Commission to revisit these decisions and NCTA is fully supportive of that position.²⁶ But if the Commission retains its anticompetitive Phase I and Phase II distribution mechanisms, it should consider additional steps to supplement competitive bidding in areas where a price cap LEC receives support pursuant to the Phase I mechanism or a statewide commitment in Phase II. For example, if the incumbent continues to receive support after the initial five-year award, the Commission could consider making that support portable to a competitive provider when a supported customer switches providers. While making support portable to competitors after an initial period of exclusivity would not diminish the huge advantage provided to incumbent LECs under the *CAF Order*, over time such a policy might at least create the potential for customers in those areas to have alternatives to the incumbent LEC.

²⁵ See, e.g., Letter from Steven F. Morris and Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed Oct. 21, 2011) (proposing competitive bidding on a county-wide basis).

²⁶ Petition for Reconsideration of ViaSat at 4-7.

B. The Bidding Process Must Give All Broadband Providers a Meaningful Opportunity to Participate

Even if the Commission retains the preferential funding mechanisms for incumbent LECs, which NCTA does not endorse, it must make sure that, where a price cap incumbent LEC does not exercise its right of first refusal, all interested parties are able to participate in a competitive bidding process. To maximize the number of participants in any bidding process, the Commission should award support on a competitively and technologically neutral basis, such as by census blocks, rather than by geographic areas specific to incumbent LECs, such as study areas. The Commission should also give participants in the competitive bidding process the flexibility to submit “package bids,” which include a combination of census blocks. Winning bids should be determined based on the lowest cost per unserved household.

The Commission also should ensure that the ETC designation process is not a barrier to participation from otherwise qualified broadband providers. To do this, the Commission should reform the ETC designation process as NCTA proposed previously.²⁷ First, the Commission should make clear that ETCs may partner with broadband providers to offer supported services, similar to the manner in which some cable operators provide VoIP service through arrangements with a third-party provider. Such partner arrangements would allow non-carrier broadband providers partnering with ETCs to compete for subsidies to provide broadband service to consumers in high-cost areas. The Commission could define the “own facilities” requirement in section 214(e)(1)(A) of the Act to encompass this scenario, or, alternatively, the Commission could forbear from the own facilities requirement.²⁸

²⁷ Letter from Steven F. Morris and Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (Oct. 21, 2011) (NCTA October 21st ETC *Ex Parte* Letter).

²⁸ *Id.* at 2-3; 47 U.S.C. §§ 214(e)(1)(A), 160(a).

Second, as NCTA previously recommended, the Commission should streamline the ETC designation process to expedite the deployment of broadband services to high-cost areas.²⁹ The Commission should adopt rules limiting the designating entity to consider the following criteria with respect to the provision of broadband support: 1) the ETC will be able to provide the supported voice and broadband services, either directly or through arrangements with other providers, throughout the relevant area; 2) the ETC commits to comply with applicable obligations regarding the provision of 911 service, emergency preparedness and network outages; 3) the ETC commits to comply with any applicable consumer protection requirements; and 4) the ETC offers voice service on a stand-alone basis. The Commission should also ensure that ETC designation requests are addressed in a timely manner by adopting a requirement that such requests be deemed granted within 30 days of their filing unless the relevant designating entity finds that the ETC has not demonstrated compliance with the criteria within that timeframe.³⁰

Providing ETCs and broadband providers with the ability to partner to provide service, as well as streamlining the ETC designation process, will help to increase the likelihood that multiple entities will participate in a competitive bidding process, where such a bidding process is available. This in turn will ensure that high-cost support is awarded to the most efficient providers and will reduce the amount of support needed to serve these areas.

III. THE COMMISSION MUST ADOPT IMPROVED ACCOUNTABILITY MEASURES

While a significant level of oversight always is warranted when an agency is providing billions of dollars in government subsidies, the need for strong oversight is particularly urgent in

²⁹ NCTA October 21st ETC *Ex Parte* Letter at 3-4.

³⁰ The Commission also should streamline the ETC designation process for carriers that are only seeking Lifeline support by eliminating unnecessary requirements, e.g., study area redefinition requirements.

connection with the new high-cost support regime because the Commission has decided to cling to an incumbent LEC-centric regime that neither incorporates the competitive benefits of a procurement model, nor the due diligence associated with a grant process. As compared to other programs that include such features, such as the Broadband Technology Opportunities Program administered by NTIA, the Commission is taking a significant step backward in terms of accountability. Unless the Commission steps up its oversight, this new high-cost support regime is no less ripe for waste, fraud and abuse than the old one.

One policy that will improve accountability is to ensure that all elements of the high-cost support distribution mechanism are open to public review and scrutiny, e.g., by creating a Connect America Fund dashboard on the Commission’s website. The Commission should ensure that the public has complete and timely access to information regarding where, and how much, support is distributed and what recipients are accomplishing with that support. For example, the process by which price cap LECs identify areas where they will receive Phase I support must be public so that competitors can ensure that the areas are not currently being served by an unsubsidized competitor and the public can monitor compliance by the support recipients in their use of public funding. As the Commission recognized in the *CAF Order*, providing the public with access to this data will enable the public to play an important “watchdog” role and “ensure that recipients of support receive funding that is sufficient but not excessive.”³¹

Another step the Commission should take is to require recipients of high-cost support to report on the costs associated with any new deployment of facilities. For example, while the money distributed to price cap LECs under the Phase I mechanism does not depend on the costs

³¹ *CAF Order* at ¶ 602.

they actually incur, data on the actual cost of deploying those networks could be highly relevant in ensuring that the Phase II mechanism and any future CAF mechanism for ROR carriers are sized appropriately.

The Commission also should improve its monitoring of state regulation of incumbent LECs. The *CAF Order* is premised on the notion that these carriers bear extraordinary regulatory burdens at the state level, including significant rate regulation, that preclude them from responding to new high-cost support and intercarrier compensation rules in the same way that competitors do.³² There seems to be little support in the record for this view, however, and NCTA believes the Commission has overstated the effect of state regulation on incumbent LECs. In reality, given the prevalence of double play and triple play bundles, these state regulatory obligations often have minimal effect on the rates customers pay or the ability of the incumbent LECs to compete in the marketplace. As an example, while incumbent LECs often point to their carrier of last resort obligations, these obligations are at best ill-defined and any buildout obligation typically is mitigated by line extension charges.³³ The Commission should document the status of state regulation more thoroughly than it has in the past and it should eliminate the preferential treatment of incumbent LECs in the high-cost support regime where they no longer face meaningful constraints on their ability to compete.

³² See, e.g., *CAF Order* at ¶ 175 (incumbent LECs should have preferential access to CAF funding because they “generally continue to have carrier of last resort obligations for voice services.”); *id.* at ¶ 862 (incumbent LECs should have exclusive access to CAF recovery mechanism because they “have limited control over the areas or customers that they serve” and are “limited in their ability to increase rates to their local telephone service customers as a whole to offset reduced implicit subsidies.”).

³³ Indeed, the Commission should clarify that support levels will be reduced in situations where a CAF recipient recovers construction costs through line extension charges. Carriers should not be able to recover the same costs from customers and from the CAF.

CONCLUSION

The *CAF Order* improved the high-cost support regime in some ways, but in other ways it created a situation ripe for continued inefficiency and abuse. Accordingly, as explained in these comments, the Commission should take additional steps to ensure that support for ROR carriers is targeted to areas with no unsubsidized competitors, that competitive bidding and ETC designation procedures facilitate, rather than hinder, participation by competitive providers, and that accountability is improved in all aspects of the high-cost support program.

Respectfully submitted,

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