

**Before the
Federal Communications Commission
Washington, DC 20554**

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 an 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

REPLY COMMENTS OF THE SATELLITE BROADBAND PROVIDERS

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ViaSat, Inc., DISH Network L.L.C., EchoStar Technologies L.L.C., and Hughes Network Systems, LLC (collectively, the “Satellite Broadband Providers”) submit these reply comments in response to the Commission’s *Further Notice of Proposed Rulemaking* (“*FNPRM*”) on universal service issues.¹

I. INTRODUCTION AND SUMMARY

In response to the *FNPRM* in this proceeding, the Satellite Broadband Providers urged the Commission to take decisive action to establish a Remote Areas Fund (“RAF”) on an expedited basis, and to structure the RAF as a portable consumer subsidy. The record in this proceeding supports this approach to the RAF, and more specifically suggests that:

¹ *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*CAF Order*” or “*FNPRM*”).

- (i) The Commission should structure the RAF to incorporate both interim and longer-term components, to balance the need for expedited support in remote areas with the desire to engage in a deliberative process to design a RAF that will be efficient and effective over time;
- (ii) The Commission should use outputs from the incumbent local exchange carrier (“ILEC”) cost model as a starting point in identifying “remote areas,” but should modify these outputs using a consultative process in order to ensure that “remote area” boundaries rationally reflect technical and business realities, as well as the objectives of the RAF;
- (iii) The Commission should ensure that RAF support captures *all* relevant costs, in order to incent satellite and other service providers to devote capacity and other resources to serving remote areas;
- (iv) The Commission should *not* relax the performance requirements applicable to RAF support recipients, as satellite providers are fully capable of meeting the generally applicable requirements—often more effectively and at lower cost than terrestrial providers; and
- (v) The Commission should facilitate broad and inclusive consumer eligibility to participate in the RAF, consistent with the fact that the RAF would be a *high-cost* (and not a *low-income*) support mechanism.

In addition, the record reflects the need for strong accountability measures to supplement the Commission’s enforcement authority—which in and of itself is unlikely to provide appropriate incentives to ILECs or compel them to internalize the full costs of their decision to make a “statewide commitment” and receive preferential CAF support. The record also reflects strong support for the use of competitive reverse-auctions to distribute support in rate-of-return areas, and in areas where an ILEC has declined support. Finally, the record supports the need to streamline the ETC designation process—including by creating a process to designate “nationwide” providers at the federal level.

II. THE RECORD SUPPORTS THE CREATION OF THE RAF ON AN EXPEDITED BASIS

A. The Satellite Broadband Providers Continue to Support the Commission's Proposal to Structure the RAF as a Portable Consumer Subsidy

The Satellite Broadband Providers continue to support the Commission's proposal to structure the RAF as a portable consumer subsidy. More specifically, the Satellite Broadband Providers agree with the Public Interest Commenters that the Commission "should structure the Remote Areas Fund in a way that opens support to all providers that are able to serve remote areas in a cost-effective manner and with a service that is comparable to that provided in [CAF] supported areas."² Competition among RAF providers will lead to lower prices and superior service offerings for consumers. The record in this proceeding certainly supports such an approach.³

Some parties—mainly, Alaskan service providers and regulators—claim that a portable consumer subsidy would not provide appropriate incentives for infrastructure build-out in remote areas. The Satellite Broadband Providers believe, however, that a properly structured portable consumer subsidy *would* provide service providers with incentives to deploy infrastructure to serve Alaska and elsewhere. As explained below, the RAF need only be structured to define "remote areas" in a rational manner and capture all relevant costs. If necessary, Alaska could be treated as a special case.

Indeed, the potential alternatives to the portable consumer subsidy would be far more problematic. Because of the way the CAF has been structured, it no longer makes sense to use auctions for the RAF. Namely, the CAF has been structured in a way that diverts the lion's

² Public Interest Commenters Comments at 2.

³ *See, e.g.*, AT&T Comments at 36; Public Interest Commenters Comments at 2-3; WISPA Comments at 9-10; USA Coalition Comments at 30.

share of support to inefficient incumbents, with no guarantee that more efficient service providers will ever be able to compete for that support on equal footing.⁴ This creates a problem, in that employing a reverse-auction approach for the RAF would obligate a “winning” bidder to provide service in discrete “remote areas,” while precluding that bidder from seeking or obtaining support in adjacent “non-remote” areas.

As previously has been explained, satellite providers can justify the enormous capital costs of deploying a satellite, or even pointing a satellite beam at a particular area, only if they expect to serve a critical mass of customers in targeted areas. If satellite providers were permitted to participate fully in the CAF through inclusive reverse auctions, they would be able to achieve this critical mass as a supported service provider serving relatively large, contiguous geographic areas. In contrast, the RAF would allow satellite providers to obtain support only in small, non-contiguous geographic areas, while being forced to compete with subsidized providers in immediately adjacent areas. Consequently, satellite providers would not necessarily be able to achieve the scale that would justify the capital expenditures necessary to serve any given remote area.

Simply stated, satellite providers would be unlikely to devote an entire satellite beam to cover an area with relatively low population density, where most of that area is served by one or more subsidized competitors, simply to receive limited subsidies in those “remote areas” the incumbent is not required to serve. On the other hand, a portable consumer subsidy could defray the costs of providing service to households in “remote areas” that are within

⁴ As the Commission knows, the Satellite Broadband Providers consistently have supported the use of reverse auctions as the most efficient and effective means of extending quality broadband service to “unserved” households through a *unified* CAF mechanism, in which all parts of the country are treated similarly, such that a service provider could bid for support across a contiguous service area that makes sense in light of its particular network architecture.

existing or otherwise planned satellite coverage areas. Significantly, the “portable” nature of the subsidy also would encourage the growth of sustainable competition in remote areas.

The competitive proposal evaluation approach also would be inherently problematic. Any such evaluation would require either a highly subjective evaluation of the qualitative aspects of a proposal, or the highly subjective definition of “objective” standards or weighting criteria. Moreover, any such evaluation would invite the harmful politicization of the support distribution process. Accordingly, the Satellite Broadband Providers urge the Commission to structure the RAF as a portable consumer subsidy.

B. The Commission Should Implement a RAF with Interim and Longer-Term Components

The Satellite Broadband Providers recognize that the RAF will be successful only if it is structured carefully and correctly, particularly with respect to the definition of “remote areas” and the scope of supported costs. Simply put, it will take time and effort to tackle these issues in a comprehensive manner. Unfortunately, this delay has the potential to derail the implementation of the RAF before it even starts.

As an initial matter, the Satellite Broadband Providers reiterate their view that consumers in remote areas are those *most* in need of high-cost support, and those that should benefit first from such support given the “reasonable comparability” standard set forth in Section 254(b)(3) of the Act.⁵ For this reason, the Satellite Broadband Providers echo the sentiments of the Massachusetts Department of Telecommunications and Cable, which has expressed concern that consumers would be harmed by delays in the implementation of the RAF.⁶ For this reason, the RAF should be implemented *now*—at least in interim form—and not years from now after an

⁵ 47 U.S.C. § 254(b)(3).

⁶ *See, e.g.*, Massachusetts Department of Telecommunications and Cable Comments at 8-9.

ILEC cost model has been finalized, and after price cap ILECs have received support in relatively low-cost areas.

Furthermore, the Commission should recognize that any delay in making RAF support available could call into question the ability of satellite providers to serve “remote areas” with existing capacity. As the Commission has observed, *existing* satellite broadband capacity—just like existing wireline or wireless capacity—is limited. Heavy demand exists for this capacity from non-residential users—including for aeronautical and enterprise applications. The economics of the satellite industry are such that satellite providers cannot afford to set aside capacity for *future* consumer use and let that capacity lie fallow in the near term; they must dedicate capacity to revenue-generating uses as quickly as possible.

The Commission can and should take steps in the near term to ensure that consumers in remote areas do not continue to suffer from the absence of affordable broadband service during this interim period. Thus, the Satellite Broadband Providers propose to structure the RAF to incorporate an interim support mechanism, which is discussed in greater detail below.⁷ Following the successful implementation of this initial phase of the RAF, the Commission could begin the process of implementing a comprehensive framework for the longer-term RAF. Since the interim framework already would be in place by this point, the Commission would be under significantly less time pressure than if it moved to implement a long-term structure directly, and would be able to ensure that all relevant issues and considerations are taken into account.

Among other things, this phased approach to the implementation of the RAF would allow the Commission to examine how best to structure the portable consumer subsidy in

⁷ See *infra* Section II.C. (identifying RAF areas), II.D. (defining RAF support amounts).

the longer term so as to provide appropriate incentives for service providers—including satellite providers—to commit additional capacity to remote areas. This approach would best serve the interests of consumers, the Commission, and service providers. More specifically:

- **Consumers** would gain access to critical broadband services on an expedited basis, consistent with the objective of the National Broadband Plan.
- **The Commission** would avoid the need to develop or implement complex auction rules that simply will not be effective in remote areas, or subjective RFP evaluation criteria—but still would be able to take its time in implementing a longer-term RAF solution.⁸
- **Service providers** would benefit from regulatory certainty and a rationalized long-term structure for the RAF, while still being able to justify near-term commitments of capacity to remote areas.

Below, the Satellite Broadband Providers elaborate on their proposal with respect to the interim and long-term RAF mechanisms.

C. The Record Demonstrates that the RAF, and by Extension the CAF, Will Succeed Only if the Commission Defines “Remote Areas” Carefully

The record supports the use of outputs from the ILEC forward-looking cost model to identify customers to be served through the RAF (*i.e.*, areas that cannot be served economically by ILECs). For example, AT&T “supports the Commission’s decision to establish a Remote Areas Fund, designed to support broadband deployment in the highest-cost areas in the country” and “also support[s] using a forward-looking cost model to identify such areas.”⁹ In

⁸ Recent experience has shown that the Commission is unlikely to be able to implement a reverse-auction mechanism within the available timeframe. Tellingly, the Commission has observed the auctions are sufficiently complex that they could not be implemented for the main CAF without causing undue delay. This is the principal justification provided by the Commission in support of granting what are essentially ROFRs to ILECs, rather than implement a competitive funding mechanism. Thus, it is questionable that a suitable reverse-auction mechanism could be implemented quickly for the RAF given the concerns already expressed by the Commission in the context of the RAF, and considering the potential for legal challenges.

⁹ AT&T Comments at 36; *see also* CenturyLink Comments at 12.

addition, the Consumer Advocates appear to support the use of a cost model to develop a consistent set of targets for the RAF.¹⁰

As the Commission recognized in the *FNPRM*, though, it could be some time before the ILEC cost model is finalized—and some time after that before remote areas are identified using the model and the RAF is fully implemented. Accordingly, the Commission should identify eligible areas for an interim RAF in the near term. The Satellite Broadband Providers continue to support the use of National Broadband Map (NBM) data as part of an initial “rough cut” at identifying remote areas for purposes of the initial phase of the RAF. NBM data on unserved residences and businesses can be combined with commercially available data about the location and dispersion of such residences and businesses to identify the least-dense unserved areas for eligibility for the interim RAF. While NBM data is highly imperfect, such data at least would allow the Commission to provide some level of support to remote areas in the near term. On this point, the Satellite Broadband Providers agree with the Consumer Advocates that “[i]t would be unfortunate to lose the entire year of 2012 while awaiting the outcome of a likely prolonged and much-debated evaluation of a theoretical broadband cost model.”¹¹ At the same time, the Satellite Broadband Providers reiterate that NBM data would not account for “bypassed” households or ensure that such households receive service—and that the Commission should: (i) provide a mechanism through which bypassed households could self-identify; and (ii) allow service providers to aggregate and submit data identifying households they believe to be “bypassed” by other service providers.¹²

¹⁰ Consumer Advocates Comments at 100.

¹¹ Consumer Advocates Comments at 94.

¹² Although providers often claim to serve a given area in its entirety, inevitably some individual households within that area do not receive service. These “bypassed”

Once the interim RAF is up and running, the Commission can begin work on defining the eligible areas for the longer-term RAF. As noted above, the first source of data for these areas will be the ILEC cost model. The Commission should recognize, however, that reliance on the results of the ILEC cost model alone would be problematic, for a number of reasons. As an initial matter, the model would not necessarily address the problem of “bypassed” households—requiring, at a minimum, the continued availability of the supplemental mechanisms discussed above in connection to the use of NBM data. Moreover, the model would not account for the impact that defining “remote area” boundaries based on ILEC costs could have on the business case for competitors with different cost structures to serve those areas.

In particular, the model would not reflect that defining “remote areas” narrowly, based solely on *ILEC* costs, could undermine incentives for potential service providers to serve those areas given *their* network architecture, economies of scale, and other technical and business considerations. For example, restricting the universe of customers that may be served through the RAF would leave open the possibility that the number of these customers could be so small, or their locations so dispersed, that it would not be economically viable for a provider to devote limited resources and capacity to serving them. At the same time, this approach could increase unnecessarily the per-household subsidy required to sustain service to those household that are served.

The Commission should account for these economic realities in defining the boundaries of the “remote areas” that will benefit from RAF support. The RAF also must

households are everywhere; unserved and underserved pockets exist throughout America, even in and around areas that are considered to be densely populated. This reality is reflected in the geographic dispersion of subscribers to prior-generation satellite broadband services, many of which are located within “served” areas even though prior-generation satellite broadband service offerings were viewed as services of last resort.

recognize the economic realities of satellite broadband service, as discussed above.¹³ The Commission thus should act to optimize the number and location of RAF-eligible customers, and establish a support amount based on these costs. The Satellite Broadband Providers propose that the Commission adopt the following process to do so:

- **First**, the Commission’s Wireline Competition Bureau (“WCB”) should make a “first cut” at identifying “remote areas” to be served through the RAF, based on the price-cap cost model outputs. More specifically, the WCB would identify “extremely high-cost” customer locations based on the wireline cost model, consistent with the *CAF Order*.¹⁴
- **Second**, the WCB and the International Bureau (“IB”)¹⁵ should engage with service providers and other stakeholders (*e.g.*, through a series of workshops) to assess whether and how the “remote areas” boundaries suggested by the model should be adjusted to better realize the policy goals of the RAF. For instance, parties engaged in such consultations could study whether it would make sense to enlarge the boundaries of certain “remote areas” in order to optimize the extent to which there is a business case for the provision of satellite service in remote and adjacent areas—recognizing, for example, that it may be uneconomic for a satellite provider to direct a spot beam at a remote area if support only will be available for serving a smattering of the customers in the coverage area of the beam (the “Swiss cheese problem”).
- **Third**, WCB and IB could use the results of the consultative process to propose revised “remote area” boundaries, which would be implemented absent compelling reason for further adjustments.
- **Fourth**, WCB and IB could use the results of the consultative process to define “RAF-adjacent” service areas that would lie outside of a “remote area” but would be served by any of the various types of network infrastructure deployed to serve a “remote area.” For example, in the satellite context a “RAF-adjacent” service area could include the entire area covered by a spot beam—except for any “remote areas” contained therein. Pending deployment of ILEC broadband facilities in these “RAF-adjacent” areas, consumers would be permitted to purchase satellite voice and broadband services, which would be subsidized under the RAF. This would ensure that consumers are not forced to live without

¹³ See *supra* Section II.A.

¹⁴ *CAF Order* ¶ 167.

¹⁵ IB staff should be included in the consultation because of their extensive knowledge of satellite technologies.

broadband pending deployment of wireline facilities where satellite service is available.

In this manner, the Commission could rationalize such boundaries, and ensure that they better serve the policy objectives that underlie the RAF and the CAF generally.

D. The Record Demonstrates that the RAF, and by Extension the CAF, Will Succeed Only if the Commission Ensures that the Subsidy Amount Captures All Relevant Costs

The record reflects the importance of setting the RAF subsidy at an appropriate level that incents service providers to offer service in remote areas. The Satellite Broadband Providers believe that the RAF will be effective *only* if the subsidy is set at a level that accounts for *all* relevant costs faced by service providers serving remote areas. Notably, in the longer term the consultative process discussed above could be used to calculate an appropriate per-household subsidy amount using a rigorous methodology.

Pending completion of that process, the Commission can and should specify an interim subsidy amount at a level intended to offset all of the costs associated with providing satellite service to the end user (including network capital costs, subscriber acquisition costs, subscriber equipment costs, etc.). In establishing this interim amount, the Commission should consider data that already is contained in the public record. For example, the Commission should consider the paper by Dr. Charles Jackson attached to ViaSat's initial comments in this proceeding, which quantifies many of the satellite network costs that can be associated with monthly service a per-household basis.¹⁶ The Satellite Broadband Providers commit to working with the Commission to determine the correct RAF subsidy amount, and expect to come forward with a specific proposal for an interim subsidy amount in the near term.

¹⁶ See Dr. Charles L. Jackson, *Satellite Service Can Help to Effectively Close the Broadband Gap* (Apr. 18, 2011), attached as Exhibit A to Comments of ViaSat, Inc., WC Docket No. 10-90 (Apr. 18, 2011) ("ViaSat Comments").

Above all else, the portable subsidy amount should *not* simply be based on the difference between the retail price of a “basic” satellite voice-broadband service and an appropriate reference price for “reasonably comparable” service in urban areas, as proposed by the *FNPRM*.¹⁷ This proposal places undue focus on satellite service *rates* instead of satellite service *costs*. Moreover, it unjustifiably treats satellite broadband providers differently than ILECs—which receive support based on their costs, not their rates. This approach also does not account for the fact that satellite providers could provide better than “basic” service (*e.g.*, service with a higher volume limit than under the basic package) if subsidized accordingly.

In the longer term, the Commission should use the consultative approach discussed above to solicit and evaluate information about the full range of costs faced by satellite and other providers likely to serve remote areas. For example, in the satellite context these costs might include: (i) a share of the capital costs incurred to construct and maintain the satellite and ground components of that network; (ii) the cost of purchasing and installing a satellite antenna, modem, and other equipment at the end-user location;¹⁸ (iii) other costs associated with subscriber acquisition and service initiation; and (iv) the costs associated with devoting satellite capacity to a “remote area” and foregoing lucrative opportunities elsewhere.

¹⁷ *FNPRM* ¶¶ 1265-71.

¹⁸ End-user equipment, including satellite antennas and modems, would best be viewed as components of the satellite network, such that the costs of that equipment should be factored into the overall costs of providing monthly service on a per-subscriber basis for purposes of computing the interim subsidy amount. This approach would recognize fundamental differences between the architecture of satellite and terrestrial networks. For example, whereas terrestrial network costs may be associated with physical facilities connecting a wire center or switch with a customer location, satellite networks typically have no infrastructure between the satellite and the end-user location. Consequently, the infrastructure costs associated with the user downlink are heavily concentrated in end-user equipment—to a far greater extent than in the wireline case.

This consultative process also should be used by the Commission to gain a better understanding of the dynamics of business models likely to play out in remote areas. In the satellite context, for instance, it is important that the Commission recognize: (i) that satellite and beam “fill rates” historically are much lower in rural areas, such that devoting capacity to those areas results in higher per-subscriber network costs in those areas, even though satellite providers may offer regional or nationwide pricing; and (ii) that the costs of providing a stand-alone voice service may converge with those of providing an integrated voice and broadband service, since VoIP typically would be provided as an “over-the-top” application using the same end-user equipment as a customer receiving integrated service, and a similar share of the capital costs of the satellite network.¹⁹

E. The Record Demonstrates that Relaxed Performance Requirements Are Unnecessary in Connection with the RAF

The *FNPRM* seeks comment on what public interest obligations and performance requirements should apply to service providers receiving RAF support.²⁰ The *FNPRM* assumes that “remote areas” are likely to be served with different technologies than other areas, such that it will be necessary to “tailor broadband performance requirements to the economic and technical characteristics of networks likely to exist in those remote areas.”²¹ More specifically, the *FNPRM* proposes “to modestly relax the broadband performance obligations for fixed voice and broadband providers,” including “next-generation satellite broadband . . . which may be significantly less costly to deploy in these remote areas.”²²

¹⁹ See *FNPRM* ¶ 1265.

²⁰ *Id.* ¶¶ 1239-1244.

²¹ *Id.* ¶ 1240.

²² *Id.*

A number of parties take this as a cue to launch misinformed attacks on the ability of satellite providers to extend quality broadband service in remote areas. Simply stated, these criticisms are backward-looking appraisals of prior-generation networks, rather than current appraisals of present-generation satellite services. Satellite providers have invested billions of dollars of private capital to develop state-of-the-art broadband networks that are designed to overcome the capacity limitations of legacy satellite networks, and are optimized to provide a broadband experience on par with many terrestrial solutions. These efforts are now bearing fruit with the recent launch of the ViaSat-1 satellite and the forthcoming launch of Hughes' EchoStar XVII/Jupiter satellite, which are driving a quantum shift in the speed and quality of satellite broadband service, while simultaneously increasing available capacity and ultimately allowing satellite broadband providers to serve millions of additional customers.

Those who have seen current-generation satellite broadband technology in action—including Commission staff—have been impressed with its capabilities. Both ViaSat and Hughes have recently conducted highly successful demonstrations of their current technologies at the Commission,²³ and in the process have reshaped perceptions of what satellite broadband is and can be. In particular, ViaSat and Hughes demonstrated that current technologies support an excellent user experience for the most popular broadband applications, while also providing a high-quality, high-speed VoIP service that is on par with terrestrial wireless solutions. The record also demonstrates that current-generation satellite broadband

²³ See *Advisory: Panelists Announced for April 27 Workshop on Modernizing Universal Service for Broadband* (Apr. 22, 2011) (announcing public demonstrations of satellite broadband service by ViaSat).

services (as well as future hybrid offerings) support real-time services (*e.g.*, VoIP) and provide a quality end-user experience.²⁴

In short, satellite broadband providers are able to meet any truly technology-neutral performance requirements that apply to terrestrial providers under the *CAF Order*. Thus, there is no need to “modestly relax” any such requirements in the case of “remote areas.” The Satellite Broadband Providers stand ready to answer their critics in the only way that matters—by demonstrating that they can meet the same salient and technology-neutral performance requirements as terrestrial technologies.²⁵

F. The Record Demonstrates that the RAF Should Facilitate Broad And Inclusive Participation by Consumers

The *FNPRM* asks whether the Commission should employ means testing to restrict consumer eligibility to participate in the RAF, or limit such eligibility to “new” customers (itself a form of means testing, since the Commission reasons, incorrectly, that existing customers necessarily can afford service). In their initial comments in response to the *FNPRM*, the Satellite Broadband Providers demonstrated that means testing in connection with the RAF would be inconsistent with the principles of universal service and the requirements of Section 254(b)(3) of the Act. The Satellite Broadband Providers also explained that it would

²⁴ See, *e.g.*, ViaSat Comments at 32 (discussing potential use of: (i) geostationary orbit satellite mesh networking systems—*e.g.*, one satellite hop systems; (ii) hybrid satellite/terrestrial solutions; and (iii) low-latency satellite solutions, such as the use of a LEO or MEO satellite link).

²⁵ See Public Interest Commenters Comments at 5 (urging the Commission to “include threshold service requirements for providers seeking fund support, and these requirements should be reasonably comparable to those imposed on providers serving consumers in non-remote areas.”); Consumer Advocates Comments at 103 (“With regard to broadband speed requirements, capacity, and pricing, Consumer Advocates do not see any reason why support for RAF services should be held to a different standard than is the case with non-RAF areas.”).

make little sense to employ means testing in remote areas, but not other high-cost areas, given that remote areas are those *most* in need of support.

Those few commenters that support the use of means testing in remote areas provide no valid justification for that position. For example, the Public Utilities Commission of Ohio (PUCO) appears to favor means testing because the RAF would be superficially similar to the Lifeline program, in that both could be characterized as “voucher” programs in a rough sense.²⁶ Yet, there also are important differences between the programs. Most importantly, the RAF would be a *high-cost*, and not a *low-income*, support mechanism—such that the Commission must ensure that *rates* in all areas of the country are “reasonably comparable” independent of the *income* or *wealth* of consumers.²⁷ PUCO also asserts that means testing could be used to “direct support to those who truly need it.”²⁸ Yet, PUCO ignores that the households served by the RAF are in the highest-cost areas of the country—and as such are, by definition, those that “truly need” support.

In short, the analysis presented by the Satellite Broadband Providers in their initial comments stands; there simply is no justification for restricting consumer eligibility to participate in the RAF as proposed in the *FNPRM*.

III. THE RECORD DEMONSTRATES THE NEED FOR STRONG ACCOUNTABILITY MEASURES IN THE CAF

In their initial comments in response to the *FNPRM*, the Satellite Broadband Providers explained that strong accountability measures are critical to ensure that ILECs

²⁶ Public Utilities Commission of Ohio Comments at 13.

²⁷ *See Federal-State Joint Board on Universal Service; Access Charge Reform, Seventh Report and Order and Thirteenth Order on Reconsideration, 14 FCC Rcd 8078, at ¶ 39 (1999)* (“The principle of ensuring reasonably comparable rates, set forth in section 254(b)(3), does not specify an income component.”).

²⁸ Public Utilities Commission of Ohio Comments at 13.

evaluating whether to make a “statewide commitment” and receive preferential CAF support internalize the full costs of that decision. Yet, certain parties—primarily ILEC interests—claim that such measures are unnecessary, and that existing mechanisms (*e.g.*, rules enforcement) are sufficient to provide appropriate incentives to ILECs.

The Commission should view such arguments with skepticism, as support recipients—and particularly ILECs—have an obvious interest in avoiding accountability. While the Satellite Broadband Providers support the Commission’s tireless efforts to enforce its rules, such efforts are unlikely to create the proper incentives in the CAF context.

- **First**, it is not clear that an ILEC that elects to receive support but fails to use that support effectively necessarily would have broken any rules or otherwise subjected itself to meaningful enforcement. Notably, the Commission’s recourse where a licensee fails to meet a construction milestone is to cancel the underlying authorization—not to fine the licensee.
- **Second**, the threat of *potential* enforcement, and the penalties that *could* result, are unlikely to deter at least some ILECs from making a “statewide commitment” and risking potential enforcement. Notably, such ILECs largely would be gambling with the house’s money, and excluding potential (unsubsidized) competition in the meantime.
- **Third**, enforcement might not be effective given evidentiary and burden-of-proof issues. It would be particularly difficult to prove that a support recipient is guilty of malfeasance as opposed to inefficiency or a flawed business plan. While holding recipients to a “strict liability” standard could force recipients to internalize the costs associated with their “statewide commitments,” it is unclear whether this approach would be consistent with the Commission’s enforcement authority, which subjects only “willful” conduct to enforcement action.²⁹
- **Fourth**, the enforcement process would be subject to excessive politicization, which could preclude the Commission from effectively acting in certain cases.
- **Fifth**, the enforcement process would be ineffective against a recipient that already has squandered its support and, as such, effectively is judgment proof. In contrast, requiring an up-front surety would facilitate the Commission’s ability to recover at least a portion of the value of such support if necessary.

²⁹ See 47 U.S.C. §§ 501-504.

- *Sixth*, the enforcement process places significant burdens on the Commission, whereas the accountability measures proposed by the Satellite Broadband Providers shift some of these burdens onto support recipients, where they belong.

In light of these concerns, the Satellite Broadband Providers continue to believe that the Commission should adopt strong accountability measures to supplement its existing authority. This is particularly true given the failure of those opposing such measures to establish that they would be unduly burdensome. The vast majority of such criticism is directed at the Commission's proposal to require CAF recipients to obtain letters of credit (LOCs). As an initial matter, the Satellite Broadband Providers note that there are less costly alternative to LOCs that the Commission could consider. For instance, performance bonds could be less costly to obtain than LOCs, but still would provide strong accountability.³⁰ As such, even if the Commission abandons the use of LOCs, it should not ignore the deeper need for strong accountability.

Moreover, the costs associated with obtaining LOCs would pale next to the competitive and financial benefits that ILECs would receive under the CAF. In light of these benefits, it is only fair and appropriate for the Commission to shift *some* of the burden associated with program administration onto ILECs. And, If ILECs do not wish to assume burdens, there are plenty of competitive providers that would be willing to do so; an ILEC need only decline support.

IV. THE RECORD SUPPORTS THE USE OF COMPETITIVE REVERSE AUCTIONS TO DISTRIBUTE SUPPORT IN CAF PHASE II AND RATE-OF-RETURN AREAS

In their initial comments in response to the *FNPRM*, the Satellite Broadband Providers reiterated their support for the use of reverse auctions in connection with the general CAF. The Satellite Broadband Providers also endorsed a robust auction proposal coauthored by

³⁰ See WISPA Comments at 15-16.

Dr. Paul Milgrom—a leading economist and the foremost expert on auction design—which already is in the record of this proceeding.³¹

Other commenters generally support this approach, although some have presented their own proposals with respect to specific elements of auction structure. Most notably, the American Cable Association (ACA) has submitted an auction proposal that could provide a useful framework for discussion.³² The Satellite Broadband Providers note that the ACA proposal is broadly consistent with that of Dr. Milgrom, except that the Milgrom proposal would auction support areas on a smaller census block (and not census tract) basis. The Satellite Broadband Providers continue to support the use of census blocks to allow service providers greater flexibility in structuring their bids (and service areas), while allowing the Commission to allocate support on a more granular and cost-efficient basis.

The ACA proposal also suggests that the Commission should conduct a post-auction inquiry into whether bidding in a given auction was “fully competitive,” and distribute support only after such a determination has been made.³³ While the Satellite Broadband Providers believe that the Commission should act to prevent waste, fraud, and abuse, they also oppose procedural hurdles that will serve only to delay the effective use of support in the vast majority of cases. The mere fact that there is some “variance” between auction results in different census tracts does not necessarily indicate that the auction is not competitive—and forcing bidders to rebut such a presumption would be counterproductive. The Commission already has anti-collusion rules in place, and should adapt these rules for the CAF.

³¹ See Paul Milgrom and Assaf Eilat, *The CAF Auction: Design Proposal* (Jul. 26, 2011), attached to Letter from John P. Janka, Counsel for ViaSat, Inc., to Marlene H. Dortch, WC Docket No. 10-90 (filed Jul. 29, 2011).

³² American Cable Association Comments at 11.

³³ *Id.* at 12.

Moreover, by definition “unserved” areas are less than “fully competitive,” such that an auction for support in such areas might not benefit from the level of robust competition that might be present if the auction were held for an urban area. Even so, the Commission can rely on reserve prices and anti-collusion rules to ensure that the results of the auction are at least as efficient as the results of the ILEC cost model. This approach would be the most efficient and effective way to conduct reverse auctions quickly and responsibly.

V. THE RECORD SUPPORTS THE DESIGNATION OF “NATIONWIDE” ETCs AT THE FEDERAL LEVEL

The *FNPRM* seeks comment on the Commission’s authority to designate satellite or other providers as ETCs pursuant to Section 214(e)(6) of the Act.³⁴ The Satellite Broadband Providers have established, repeatedly, that the Commission not only has the authority to designate “nationwide” providers as ETCs at the federal level, but should use that authority to advance the objectives of universal service. Among other things, such designation by the Commission would avoid the need for “nationwide” providers to obtain ETC designations in every state they serve—a particularly onerous process that limits the ability of new entrants to compete against less efficient incumbents. Federal designation of satellite providers under Section 214(e)(6) is particularly appropriate. While states have a clear role to play with respect to the designation of terrestrial providers, they simply should not have a role with respect to the designation of “nationwide” satellite providers, as satellite services simply are “not subject to the jurisdiction of a State commission.”³⁵

³⁴ *FNPRM* ¶ 1235; 47 U.S.C. § 214(e)(6).

³⁵ 47 U.S.C. § 214(e)(6).

VI. CONCLUSION

For the foregoing reasons, the Satellite Broadband Providers urge the Commission to take action consistent with these reply comments and their earlier comments in response to the *FNPRM*.

Respectfully submitted,

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