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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

REPLY COMMENTS OF THE UTILITIES TELECOM COUNCIL

Pursuant to Section 1.405 of the Commission's Rules, the Utilities Telecom Council ("UTC") hereby files its reply comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) released on November 19, 2012.[1] UTC provides these reply comments in order to promote the ability of its members to provide broadband services to their customers in unserved and underserved areas of the country.

Access to the Connect America Fund will enable utilities and other CII to provide broadband services cost effectively to their customers in unserved and underserved areas of the country. However, utilities and other critical infrastructure industries (CII) are not price cap carriers or rate-of-return affiliates, and thus they are not eligible for access to CAF funding. In addition, the cost of providing broadband service to their customers is likely to exceed the CAF limit of $775 per customer served. They would more likely need $2400 to $2500 per location if a fiber solution is used in some of their service territories. Thus, in order to promote the ability of UTC's members to provide broadband services to their customers in unserved and underserved areas, the FCC should allow any entity to access CAF; and it should increase the limit for funding in unserved areas. If the Commission expands eligibility to include any entity in Phase I, it should allocate the remaining $185 million towards Phase I in 2013. Otherwise, it

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[1] *Connect America Fund*, WC Docket No. 10-90 et al., Further Notice of Proposed Rulemaking, FCC 12-138 (rel. Nov. 19, 2012) (FNPRM).

should allocate the remaining $185 million to Phase II, where there might be some chance that other providers besides price cap carriers might be able to access it.

I. Introduction

UTC is the international trade association for the telecommunications and information technology interests of electric, gas and water utilities and other critical infrastructure industries (CII). Established in 1948, its members include all kinds of utilities, including large investor-owned utilities that serve millions of customers across multi-state service territories, as well as smaller rural cooperatively-organized and municipal utilities that may serve only a few thousand customers in remote service territories and insular communities. UTC's members all own, manage or control extensive communications networks and associated infrastructure, which they use to support the safe, reliable and secure delivery of essential energy and water services to the public at large. These communications networks and associated infrastructure are capable of supporting commercial services, as well as private internal communications. They also extend into areas that are unserved or underserved by broadband.

In the FNPRM, the Commission proposes two fundamental alternatives to either 1) roll over the remaining $185 million in 2012 Connect America Phase I funding into any future rounds of Connect America Phase I funding; or 2) add these funds to the budget for Phase II.[2] Under the first option, the Commission also proposes to revise the Phase I rules to expand the definition of eligible areas, adopt a process to update to the National Broadband Map, and alter the metric used to measure buildout. [3] Specifically, the Commission proposes to expand the definition of unserved location to include locations that, while having some access to high-speed

[2] To provide time to implement this, the FCC also waived the existing December 15, 2012 deadline for the Wireline Competition Bureau (Bureau) to announce Phase I funding allocations for 2013. *Id*.

[3] FNPRM at ¶3.

broadband, do not have service meeting the Connect America goal of 4 Mbps downstream and 1 Mbps upstream.[4] With regard to buildout metrics, it also considers several proposals to distribute the next round of Phase I funding, including tying funding to the construction of second-mile fiber, tying funding to the estimated costs of deployment in an area, and maintaining the $775 per location metric.[5]

In addition to the two fundamental alternatives proposed, the Commission proposes to strengthen oversight and transparency of Phase I incremental support. Specifically, the Commission proposes to require price cap carriers to provide, as part of their two and three-year benchmark certifications, "geocoded latitude and longitude location information, along with census block and wire center information, for each location the carrier intends to count toward its deployment requirement." [6] In addition, the Commission asks whether it should grant or deny the requests for confidentiality that carriers have made regarding location data in their Connect America Phase I incremental support elections and if so, for how long.[7]

UTC supports the Commission's efforts to promote broadband through the CAF. However, the evidence on the record indicates that the interim funding mechanism in Phase I has not been altogether successful towards the goal of deploying broadband to unserved areas. Less than 40% of the $300 million in funds that were made available for broadband have actually

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[4] FNPRM at ¶11. Note that actually the Commission would designate an area as unserved by broadband with speeds of 4 Mbps downstream and 1 Mbps upstream if it is shown on the National Broadband Map as unserved by fixed terrestrial broadband with an advertised speed of at least 3 Mbps downstream and 768 kbps upstream, because 3 Mbps/768 kbps is the best data currently available on the National Broadband Map for determining whether an area is served by 4 Mbps/1 Mbps.

[5] FNPRM at ¶17.

[6] FNPRM at ¶47. The Commission also proposes to permit (but not require) price cap carriers to make a supplemental filing providing updated deployment plans at any time in order to report that it intends to deploy to areas other than those identified in the carrier's initial acceptance.

[7] FNPRM at ¶48.

been accepted by price cap carriers, leaving the remaining $185 available to either be rolled over to Phase I in 2013 or to Phase II, as proposed in the FNPRM.[8] The record shows that incumbent price cap carriers have been stringing along communities that need broadband, only to ultimately decline to offer broadband to those communities.[9] There are also serious questions about the accuracy of the national broadband map, because service providers may report that certain census blocks are served, when they are in fact unserved.[10]

The Commission can and must do better, and the problem centers on the fact that the CAF grants a *de facto* monopoly to incumbent price cap carriers. Unfortunately, the proposal in the FNPRM to expand the definition of unserved areas to include those areas that currently do not receive 4 Mbps upstream and 1 mbps downstream broadband services from unsubsidized providers will only reward price cap carriers by enabling them to receive funding for areas that they already serve with slower speeds, thus draining available funds that could be used to serve areas where no broadband is available at all. Instead, the Commission should continue to set the threshold to areas that do not currently receive 768 kbps/200 kbps service from unsubsidized providers, and it should increase the cap for funding beyond $775 per location to match the real-

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[8] FNPRM at ¶2.

[9] *See e.g.* Comments of the Southeast Association of Telecommunications Officers and Advisors in GN Docket No. 09-10 at 5 (filed Jan. 28, 2013)(hereinafter "Comments of SEATOA")("In North Carolina economically depressed eastern region, it has led to disappointed communities, such as Halifax County, which was listed on Centurylink's original Notice of Acceptance, only later to be told by the Company that they will no longer be deploying broadband to the County. Likewise, Rockingham County and Nash Counties were encouraged to offer matching funds to Centurylink to inspire it to deploy broadband service in the unserved parts of its service areas, only later to learn by chance that Centurylink could have and did list some of their broadband unserved areas as census blocks to be (potentially) served with CAF funds.")

[10] *Id.* at 2 (stating that [i]It is a well-known fact that the NTIA broadband mapping data is deficit in part because the agency permits the carrier who is submitting the broadband data to the state mapping authority, to classify any census block as "served" if the carrier believes it can hypothetically serve at least one household in the census block within 7 to 10 business days.2 As such, unserved areas are being classified as served.") *See also* Comments of Comments of the United States Telecom Association, the Independent Telephone & Telecommunications Alliance, and the ABC Coalition in GN Docket No. 10-90 at 16-17 (filed Jan. 28, 2013)(claiming that WISPs and CATV providers have overstated their coverage, resulting in census blocks that are designated as served when they should be unserved.)

world reality of the costs for serving those areas, particularly with fiber. Moreover, the Commission should smash the monopoly strange-hold that price cap carriers currently enjoy over access to CAF, and make eligible *any* entity, whether it is public, private or non-profit. This will promote competition and innovative new services to areas that do not currently have access to broadband. For all of these reasons, UTC is pleased to provide the following reply comments in response to the FNPRM and the comments that were submitted on the record.

II. The Commission Should Make Any Entity Eligible for CAF and, if it does, Roll Over the $185 million from 2012 into 2013 CAF Phase I.

A. Expanding Eligibility

Utilities and other critical infrastructure industries (CII) are uniquely positioned to provide broadband services to unserved areas. As explained above, many cooperatively-organized utilities and municipal utilities serve rural areas and isolated communities, and investor-owned utilities have large portions of their service territories that are rural, as well. In recognition of the fact that municipal utilities and municipal entities generally promote broadband in unserved areas, the National Broadband Plan recommended that "Congress should make clear that state, regional and local governments can build broadband networks."[11] Similarly, as the Rural Broadband Report recognized, "[m]any rural cooperatives are deploying broadband to rural areas through collaborative efforts and by obtaining federal or state funding support."[12]

However, these utilities are unable to access CAF, which is limited to price cap carriers and rate-of-return affiliates. This restriction unnecessarily and unfairly prevents utilities from

[11] *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, Recommendation 8.19 at 153, visited at http://www.broadband.gov/plan/8-availability/#r8-19.

[12] Acting Chairman Michael J. Copps, "Bringing Broadband to Rural America: Report on a Rural Broadband Strategy," at ¶118 (2009), visited at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf.

accessing CAF to provide broadband to the customers that are in their service territory. This wastes valuable resources. It also denies customers access to broadband that could be otherwise made available to them.

In order to promote broadband deployment, the Commission should expand eligibility for CAF to include any entity – public or private or non-profit. This will unleash the resources that are available from utilities that already are located in unserved areas. In turn, this will create incentives for incumbent service providers to upgrade their networks to compete with utilities that begin to offer service in "unserved areas". That will drive further deployment, as well as improved services to those underserved areas. It will also create competitive forces that should drive down deployment costs.

Even though the FNPRM did not raise this issue, numerous comments were filed in support of expanding eligibility beyond price cap carriers.[13] As a policy matter, these comments reflect the frustration that exists with the refusal of price cap carriers to serve unserved areas, even when CAF is offered to them. As NATOA rhetorically asked, "[i]f additional providers had been eligible, would $185 million dollars been left on the table during the initial allotment of

[13] Comments of the National Association of Telecommunications Officers and Advisors in GN Docket No. 10-90 at 3 (filed Jan. 28, 2013)("Comments of NATOA)(stating "we encourage the Commission to examine what steps should be taken to increase the funding eligibility of additional service operators, including municipal networks and public-private partnerships, to provide broadband services to unserved areas of our country."); Comments of the National Cable and Telecommunications Association at 4-5 (stating that the Commission should "allow any provider willing and able to meet the requirements of receiving incremental CAF Phase I support to bid on the areas and number of unserved locations to which they will provide broadband."); Comments of the Southeast Association of Telecommunications Officers and Advisors in GN Docket No. 09-10 at 6 (filed Jan. 28, 2013)(hereinafter "Comments of SEATOA")(stating that "[i]t is SEATOA's position **that any entity**, public or private, or nonprofit, who wants to serve these unserved broadband regions should be allowed to apply for CAF funds, especially when we have now seen numerous price-cap carriers turn their backs on this no-interest federal funding," *emphasis in original*.); Comments of ViaSat, Inc. in GN Docket No. 09-10 at 6-7 (filed Jan. 28, 2013)(stating that "the Commission instead should seize this opportunity to make needed CAF support available to <u>all qualified service providers</u> through a competitive, technologically-neutral, and transparent mechanism," *emphasis added*.)

Phase I funding?"[14] Moreover, expanding eligibility to include any entity would be consistent with the Commission's own policy pronouncements in its National Broadband Plan:

> *The eligibility criteria for obtaining support from CAF should be company- and technology agnostic so long as the service provided meets the specifications set by the FCC.* Support should be available to both incumbent and competitive telephone companies (whether classified today as "rural" or "non-rural"), fixed and mobile wireless providers, satellite providers and other broadband providers, consistent with statutory requirements. Any broadband provider that can meet or exceed the specifications set by the FCC should be eligible to receive support.[15]

B. Rolling Over the Remaining $185 Million to Phase I Round 2

In the FNPRM, the Commission proposes to "combine the remaining $185 million in 2012 Phase I incremental support with whatever funding is made available for Phase I in 2013, employing any revised rules we adopt in response to this FNPRM."[16] If the Commission does expand eligibility under Phase I to include any entity – not just price cap carriers – UTC would support rolling the remaining $185 million into Phase I in 2013.[17] That would put funding to work as quickly as possible, given that Phase II is expected to take additional time and the benchmarks for deployment in Phase II would be longer. The additional funds would also help propel deployment, as well. Moreover, if any entity were eligible to access these funds, there is a better chance that the funds would be used effectively to provide high quality broadband at affordable prices to unserved areas. This would be particularly true for utilities, because they could leverage the resources that they have, including the fact that they already provide utility

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[14] Comments of NATOA at 3.

[15] *Connecting America: The National Broadband Plan*, GN Docket No. 09-51 at 145, visited at http://download.broadband.gov/plan/national-broadband-plan-chapter-8-availability.pdf (emphasis in original).

[16] FNPRM at ¶36.

[17] As explained more fully in Section III below, the Commission should also substantially increase the support metric, which is currently $775 per location. UTC believes that increasing the metric is so important that it would be better to roll over the additional $185 million to Phase II, if the Commission does not also increase the $775 per location metric in Phase I to approximately $2400-2500 per location. Otherwise, cooperative members may not be able to afford to deploy broadband to their unserved areas as part of Phase I.

services to many remote and unserved areas. This would enable them to reduce costs and improve the quality of the broadband services they would offer.

Conversely, if the FCC does not expand eligibility, it should not roll over the funding to Phase I in 2013. It would make little sense to give back the money that price cap carriers returned in 2012 under the same rules as before. That would be a zero-sum gain in which carriers would presumably decline the funding again. Nor should the Commission lower the bar by making it easier for the price cap carriers to deploy in unserved areas by redefining unserved areas as areas that can't get 4 Mbps upstream and 1 Mbps downstream. All that would likely do would allow the price cap carriers to continue to bypass those areas that can't even get 768/200 kbps. Nor can the Commission reasonably predict that lowering the bar would necessarily lead to greater broadband deployment in areas that can't get by 4 mbps/1mbps. The Commission should recall that it was the price cap carriers who originally proposed that unserved areas should be defined as 768/200 kbps; and the Commission should not take it on faith that price cap carriers will be any more likely to use the funds for areas that are unserved by 4 mbps/1mbps the next time around. Even if the price cap carriers did accept the funds, it would be a hollow victory for the Commission if CAF was used merely to consolidate existing service territories that currently have access to broadband, rather than expand services to areas that can't get access to 768/200 kbps.

As NCTA succinctly put it, "universal service support is meant to benefit consumers, not incumbent LECs."[18] Giving the money back to price cap carriers that declined the money before

[18] Comments of the National Cable & Telecommunications Association in GN Docket No. 10-90 at 6 (filed Jan. 28, 2013)(adding that, "If consumers in a certain area lack basic broadband, then the Commission should design a support distribution mechanism that has a better chance of providing those consumers with service. The Commission should not abandon these consumers because they happen to live in an area served by an incumbent LEC that chooses not to accept funding, and then compound this mistake by redistributing that support to incumbent LECs in other areas.")(hereinafter "Comments of NCTA")

only benefits ILECs not consumers. The Commission should only roll over the remaining $185 million if it will actually be used to deploy services to consumers that are not currently served by broadband speeds of at least 768/200 kbps. The surest way to achieve that goal is to expand eligibility to include any entity, not just price cap carriers. As several comments noted, the Commission has implemented a similar model in the context of the mobility fund, which has been successful thus far.[19] Meanwhile, comments that argue for "harmonization" of Phase I rules either in round 2 or in Phase II are nothing more than transparent attempts to maintain the status quo regime that benefits price cap carriers and not consumers.[20] Thus, experience with CAF Phase I and the Mobility Fund demonstrates that the Commission should break from the status quo and expand eligibility to include any entity, and if does so, it should also add the remaining $185 million from Phase I 2012 to Phase I round 2 in 2013 in order to put that money to work as fast as possible.

III. The Commission Should Increase the $775 per Location Metric for Funding Unserved Areas.

The Commission invites comment on whether it should modify the $775 per location metric. It notes that "carriers that accepted funds in the first round of Phase I incremental support likely will use those funds to build to the lower-cost locations in their territories, leaving generally higher-cost locations remaining, which would raise the average cost to connect to a

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[19] *See e.g.* Comments of NCTA at 5 (stating "[t]he Commission already has a template for such a competitive bidding mechanism. In 2012 the Commission disbursed Mobility Fund Phase I support through a competitive bidding process open to all eligible providers. In contrast to 2012 incremental CAF Phase I support, of which only 38 percent of the available $300 million was claimed by incumbent LECs, virtually all of the $300 million in Mobility Fund Phase I support was claimed by providers and will be used to deploy mobile voice and broadband service to unserved areas.")

[20] See e.g. Comments of the United States Telecom Association, the Independent Telephone & Telecommunications Alliance, and the ABC Coalition in GN Docket No. 10-90 at 14 (filed Jan. 28, 2013).
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location in the next round of funding and militate in favor of using a figure higher than $775."[21] UTC agrees that the price cap carriers have probably already cream-skimmed the lower cost areas and that the $775 metric should be increased in round 2.[22] The $775 per location metric was unreasonably low to begin with and needed to be increased anyway.

UTC suggests that the metric should be increased to $2400-2500 per location, which is more in line with the real-world realities of providing service in areas that are currently unserved by even 768/200 kbps. Support must be "specific, sufficient and predictable,"[23] and by all accounts on the record, the $775 per location metric is none of that. It has been at once described as arbitrary,[24] and too low in some areas and too high in others.[25] One thing is certain though: "[m]aintaining the $775 per unserved location metric will ensure only one thing – NOT all Americans will have access to robust, affordable broadband."[26] Based on information submitted by cooperatively organized members of UTC, the $775 metric must be substantially increased in order to serve customers in their unserved areas.[27]

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[21] FNPRM at ¶35.

[22] The Commission counterbalances this likely increase in costs with the possibility that costs might decrease if the definition of unserved area includes areas that do not have access to 4/1 mbps service, which should be cheaper to serve in general. However, UTC opposes watering down the definition of an unserved area to include an area that does not have access to 4/1 service. In any event, as UTC explains more fully herein, the cost of providing services to areas that currently do not have 768/200 kbps service is likely much greater than $775.
[23] 47 U.S.C. §254(b)(5).

[24] Letter to FCC Chairman Julius Genachowski from Tom Stanton, Chairman and Chief Executive Officer of Adtran at 2 (filed Mar. 28, 2012)("The $775 per unserved location figure, indeed, is largely arbitrary and not an adequate representation of costs in many areas requiring support.")

[25] Comments of the American Cable Association in GN Docket No. 10-90 at 6-7 (filed Jan. 28, 2013)(analyzing the cost model and determining that some price cap LECs the $775 per location metric would be sufficient to provide 768/200 kbps service, "but for others for several other price cap LECs, ACA determined they appear to have an insufficient number of lower cost locations that are not served with broadband service at speeds of 768/200 kbps.")

[26] Comments of Sandwich Isles Communications in GN Docket No. 10-90 at 5 (filed Jan. 28, 2013).

[27] *See also* Comments of the National Rural Electric Cooperative Association (NRECA) at 3 ("NRECA believes that a one-time support payment of $775 per unserved location may not be sufficient to incentivize broadband buildout to less-densely populated areas.")

As a policy matter, not only would this provide increased broadband availability, but it could also promote access to high quality, affordable service in these areas. While UTC understands that the Commission must control the escalating cost of providing universal service, including broadband under CAF, it should consider the public interest in providing access to broadband service that exceeds the minimum benchmark of 768/200 kbps. From that standpoint, the Commission should increase the metric from $775 per location currently to an estimated metric of $2400-2500 per location. UTC believes that this is such an important issue that it would suggest that the Commission roll over the remaining $185 million to Phase II, if it does not also increase the metric to $2400-2500 per location as part of Phase I. Otherwise, cooperative utilities may not be able to afford to deploy broadband to their unserved areas, if the support metric is not substantially increased for Phase I.

IV. If the Commission Does Not Expand Eligibility to Include Any Entity in Phase I, it Should Shift the remaining $185 million from 2012 Phase I to CAF Phase II.

As discussed above, UTC would prefer that funding be made available to utilities and other entities that are not currently eligible as ETCs as part of Phase I; but if the Commission does not expand eligibility in Phase I, UTC would support rolling over the remaining $185 million from 2012 Phase I and allocating it to Phase II. This would provide some chance that these funds might be made available to utilities, when the Commission develops rules for long-term support as part of Phase II.

In no event would UTC support returning the unused funds from Phase I (either in round 1 or round 2) to ILECs. As discussed above, that would reward price cap carriers for failing to accept funding that was available, and it would deny consumers access to broadband that they desperately need. Similarly, UTC opposes returning the unused funds to the universal service fund as an offset. That would represent a rounding error relative to the overall costs of USF and would serve no useful purpose.

Ultimately, if eligibility isn't expanded to include utilities and other entities that are not price cap carriers, the fundamental proposals posed by the Commission with regard to allocating the funds in Phase I or Phase II will be moot. Without expanding eligibility, price cap carriers will lack competitive pressures that will incent them to deploy quality, affordable broadband in unserved areas. The Commission will be forced to rely on regulatory oversight to constrain abuse, which will divert resources away from broadband deployment, and which ultimately may prove ineffective in determining which census blocks are unserved and which are served. Similarly, regulatory oversight may be difficult to implement and ineffective with regard to discouraging redundant subsidies for the same projects that are funded by Phase I and Phase II CAF.

CONCLUSION

For all of these reasons, UTC urges the Commission to expand eligibility so that any entity would be able to access CAF for broadband deployment in unserved areas under Phase I incremental support or under Phase II long term support. If the Commission expands eligibility in Phase I, the Commission should make the remaining $185 million available to Phase I eligible entities in Round 2. However, if the Commission does not expand eligibility in Phase I, the remaining $185 million should be rolled over to Phase II and added to the long term support for broadband deployment. The Commission should also substantially increase the support metric from its current $775 per location level to approximately $2400-2500 per location. It should increase the metric for purposes of Phase I, and if it doesn't do so, the Commission should roll over the remaining $185 million to Phase II and increase the metric to $2400-2500 as part of Phase II.

Respectfully submitted,

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