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FILED/ACCEPTED

JUN 17 2013

Federal Communications Commission
Office of the Secretary

June 17, 2013

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: WC Docket No. 10-90: Submission of Redacted Version of the "Comments of the Nebraska Rural Independent Companies in Response to May 16, 2013 Public Notice," Pursuant to Third Supplemental Protective Order, DA 12-1995, Released December 11, 2012

Dear Ms. Dortch:

Pursuant to the Third Supplemental Protective Order, WC Docket No. 10-90, DA 12-1995, released December 11, 2012, attached for filing are two copies of the redacted version of the Highly Confidential Version of the "Comments of the Nebraska Rural Independent Companies in Response to May 16, 2013 Public Notice" that has been filed today with the Commission.

Please contact the undersigned should you have any questions.

Respectfully submitted,

Thomas J. Moorman

Thomas J. Moorman

Attachments

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REDACTED – FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
Connect America	)	
	)	
Wireline Competition Bureau Seeks Comments on Options to Promote Rural Broadband in Rate-of-Return Areas.	)))	WC Docket No. 10-90

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO MAY 16, 2013 PUBLIC NOTICE

Dated: June 17, 2013

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REDACTED – FOR PUBLIC INSPECTION

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SUMMARY

In these comments, the Nebraska Rural Independent Companies ("NRIC") respond to the Public Notice released on May 16, 2013 by the Wireline Competition Bureau (the "Bureau") requesting comment on options that would provide smaller rate-of-return ("RoR") incumbent local exchange carriers ("ILECs") the option of *voluntary* participation in Connect America Fund Phase II ("CAF-II") model for its Universal Service Fund ("USF") disbursements and/or the *option* of a smaller RoR ILEC to convert to Price Cap ("PC") regulation. In addition, the Public Notice seeks comment on several aspects of a proposal made by the various rural carrier associations regarding changes to the existing USF recovery framework for standalone broadband service.

In these comments, NRIC demonstrates that the Federal Communications Commission ("Commission" or the "FCC") needs to provide the following specific guidance and modifications to the proposals in order to make the options outlined in the Public Notice meaningful with respect the *voluntary election* to seek CAF-II model USF disbursements and/or to opt in to PC regulation. Such guidance would reflect the factual differences, already recognized by the Commission, between smaller RoR ILECs and the larger PC ILECs, and allow smaller ILECs the ability to make as informed decision as possible with respect to any options that the Commission provides in these two areas.

With respect to CAF-II model, in particular, NRIC demonstrates the need to establish appropriate benchmarks and "extremely high-cost" thresholds used to calculate distributions of CAF-II model support and to lengthen the term during which CAF-II model support will be available. In the absence of properly establishing such criterion, a large portion of the U.S. population may be left without comparable broadband and potentially no voice service and could

improperly skew support to lower-cost, already-served areas. Budget-driven parameters should be avoided. Rather, any selection of the combination of benchmarks and high-cost thresholds should maximize the number of customers served.

In particular, determining the "extremely high-cost" or "alternative technology" thresholds that are used in determining eligibility for CAF-II model support need to reflect the operations of smaller RoR carriers which, generally, have a far greater proportion of their customer locations in very rural (and thus high-cost) areas than do PC carriers. The criteria also need to reconcile the vast differences in the costs to serve PC carriers' subscribers compared to the costs to serve RoR carriers' subscribers, and with the fact that many end user locations that would otherwise meet the Alternate Technology Threshold ("ATT") may already have access to terrestrial-based broadband service. NRIC urges the Commission to establish clearly articulated policies in order to achieve a maximum amount of *comparable* broadband deployment in highest-cost areas, rather than thresholds created to meet an arbitrary budget limitation or other reasons. And, for smaller RoR carriers, in particular, NRIC demonstrates the need for the Commission to: (1) investigate and ultimately set different cost benchmarks and ATTs for RoR and PC carriers in recognition of the vast differences between these carrier segments; (2) minimize the number of customers relegated to substandard service from an alternative technology and to not direct support to lower-cost customers, the benchmark must be set at a significantly higher level than currently being discussed; (3) avoid excluding those census blocks in RoR carriers' service areas that are already served with broadband from receiving CAF-II model support; (4) find that no more than *0.2 percent per RoR study area of <u>currently unserved</u> terrestrial broadband customers* should be impacted by the ATT and thus forced to substandard service under the Rate Affordability Fund; and (5) in developing the "extremely high-cost" threshold, ensure that the remaining federal USF support to a RoR carrier is sufficient so that voice service remains available in these highest-cost areas.

NRIC also demonstrates the need for the Commission to consider critical policy and operational issues. First, for RoR carriers the Commission should adopt an assumption of a Brownfield build because of the significant investments have already been made and it would be wasteful policy to ignore this existing investment. Second, earnings should be monitored such as how the Nebraska Public Service Commission has done under the Nebraska Universal Service Model. Third, if the Commission were to make optional model-based support available to RoR carriers, the impacts on the overall RoR budget must be evaluated including the impact of smaller RoR carriers exiting the NECA pools and no longer receiving HCLS or ICLS support. Fourth, in recognition of the differences between PC carriers and RoR carriers, funding periods for smaller RoR carriers need to be longer than the 5 years established for PC carriers. Fifth, while NRIC is not opposed to some level of build-out requirements for RoR carriers that may opt in to model-based support, such a requirement should take into account the array of very real differences between RoR and PC carriers and apply service obligations accordingly.

With respect to RoR carriers that may consider opting into PC regulations, NRIC requests that the Commission provide its guidance on the types of waivers it would consider granting such carriers. Two rules in particular, Sections 54.909 and 59.717, should be made applicable to any such RoR carrier rather than comparable PC regulations because of the reliance on intermarried compensation revenue that the typical smaller RoR carrier has had.

Finally, NRIC believes that data is needed on the impacts of the rural association proposal for standalone broadband lines. NRIC supports providing USF for broadband connections regardless of whether the subscriber has chosen to subscribe to a RoR carrier's voice offering provided through use of a broadband connection (*i.e.*, stand-alone broadband). Nonetheless, if the Commission were to provide support for stand-alone broadband provided by RoR carriers and given the annual fixed budget for RoR study areas, there may be a financial shift among RoR carriers caused by a change in the relative distribution between HCLS and ICLS. 47 C.F.R. §36.604 The "technical fixes" to the Commission's Rules to make USF support available for stand-alone broadband service in addition to those lines that support both voice and broadband have yet to be proposed and need to be evaluated publicly to determine their appropriateness. NRIC would, however, be opposed to any plan that moves support away from the higher-cost service areas. At the same time, given that the Commission is now asking RoR carriers to build broadband capable plant, and that customers are increasingly requesting broadband-only lines, NRIC supports efforts to adjust the HCLS cap to be based on the change in the Consumer Price Index and the change in connections (access lines plus broadband-only lines.)

REDACTED – FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
Connect America	)	
	)	WC Docket No. 10-90
Wireline Competition Bureau Seeks Comments on Options to Promote Rural Broadband in Rate-of-Return Areas.	)	

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO MAY 16, 2013 PUBLIC NOTICE

The Nebraska Rural Independent Companies ("NRIC") appreciate the opportunity to provide comments in response to the Public Notice released on May 16, 2013 by the Wireline Competition Bureau (the "Bureau").[1] In the Public Notice, the Bureau seeks comment on options that would provide "additional incentives to efficiently advance broadband deployment"[2] within the areas served by smaller rate-of-return ("RoR") incumbent local exchange carriers ("ILECs"), a class of carriers that includes the NRIC member companies. Specifically, the Bureau seeks comment on facilitating a smaller RoR ILEC's *voluntary* participation in Connect America Fund Phase II ("CAF-II") model for its Universal Service Fund ("USF") disbursements and the steps the Commission could take to facilitate the *option* of a smaller RoR ILEC converting to Price Cap ("PC") regulation. Separate and apart from these issues, the Bureau also

[1] *See Wireline Competition Bureau Seeks Comment on Options to Promote Rural Broadband in Rate-of-Return Areas*, Public Notice, WC Docket No. 10-90, DA 13-1112, released May 16, 2013 ("Public Notice").

[2] Public Notice at ¶1.

seeks comment on several aspects of a proposal made by the various rural carrier associations[3] regarding changes to the existing USF recovery framework to make support available for network infrastructure that provides standalone broadband service.

For the reasons stated herein, NRIC respectfully submits that the Federal Communications Commission ("Commission" or the "FCC") should provide specific guidance on and modifications to the proposals that would afford smaller RoR ILECs the *option* of CAF-II model USF disbursements as well as the *option* of electing to convert to PC regulation. The requested guidance and modifications are necessary so that the factual differences, already recognized by the Commission, between smaller RoR ILECs and the larger PC ILECs are reflected in actions arising from the Public Notice. The requested guidance and modifications are also necessary so that as informed decision as possible can be made by a smaller RoR ILEC in that it appears, as of now, that any one of these elections is a one-time decision. So too, the ability to receive USF recovery for standalone broadband loops would, in NRIC's view, promote the continued deployment of broadband in the service areas of smaller RoR ILECs and provide for additional consumer options while permitting the proper level of recovery from the USF for such loops.

I. Action On The Public Notice Must Be Taken In a Manner Consistent With Commission-Recognized Factual Differences Between The Operations Of Smaller RoR ILECs And The Larger PC ILECs.

NRIC recognizes that, if done properly, the resolution of the issues being addressed in the Public Notice may present a potential future opportunity to create "additional incentives to

[3] *See id.* at ¶1, n.1.

efficiently advance broadband deployment"[4] with a path by which a smaller RoR ILEC could *voluntarily* elect to have its USF disbursements determined by the CAF-II model,[5]and/or the long-standing *optional* conversion from RoR regulation to PC regulation that to date no small carriers have exercised.[6] To make these options viable, however, NRIC respectfully submits that action in either of these areas must reflect the factual differences between the operations of smaller RoR ILECs as compared to those of larger PC ILECs. These differences have already been recognized by the Commission, and those factual differences have not, in NRIC's view, changed. In fact, if anything the differences are greater today as PC carriers comparatively derive much more of their revenues than do RoR carriers from special access and other sources.

For example, as the FCC indicated in 1997 when properly establishing the optionality of PC regulation for smaller RoR ILECs, the challenge of establishing a uniform PC productivity offset percentage was "underscore[d]" by the "difficulty of discerning a uniform pattern of small and mid-size LEC productivity" since, based on the record before it, "the foundations of productivity vary from company to company, and since the variation in terms of size, resource base, and geography among independents is so wide. . . ."[7] Likewise, the FCC has recognized that smaller RoR ILECs "generally have higher operating and equipment costs than [PC] carriers due to lower subscriber density, smaller exchanges, and limited economies of scale. RoR carriers also rely more heavily on revenues from interstate access charges and universal service

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[4] *Id.* at ¶1.

[5] *See id.* at ¶8.

[6] *See id.* at ¶10.

[7] *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order,* CC Docket No. 87-313, 5 FCC Rcd 6786, 6800 (¶116).

support."[8] And, in the context of investment in their networks, the Commission has acknowledged that smaller RoR ILECs typically have "lumpy investment" cycles.[9] Thus, it is not surprising that the FCC recognized that "[a]lthough they serve less than five percent of access lines in the U.S., smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve."[10] The facts surrounding the NRIC member companies' operations confirm that these Commission observations remain valid.

Moreover, based on these facts, the challenges of serving *only* rural, less densely populated areas such as the typical smaller RoR ILEC service area[11] increases the importance and necessity of providing the smaller RoR ILEC a meaningful opportunity to make as informed a decision as possible with respect to any proposed path to CAF-II model USF support and/or PC regulation. Based on NRIC's understanding of the Bureau's proposal, it appears that either of these elections would be, at least for now, a one-time election. Thus, the impact of selecting either of the two options would need to be fully evaluated and that any such decision would be as informed as possible.

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[8] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166,* CC Docket Nos. 00-256, 96-45, 98-77 and 98-166, 16 FCC Rcd 19613 (2001) at ¶4 (footnote omitted).

[9] *Id.* at ¶86.

[10] *In the Matter of Connect America Fund, et al.. Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., FCC 11-161, released November 18, 2011 ("*USF/ICC Transformation Order*"), *appeal pending*, at ¶26.

[11] It is also noteworthy that among RoR carriers, there exist significant differences in density across the nation.

Any decision-making process that would provide the *options* being addressed in the Public Notice cannot and should not, in NRIC's view, be made in a vacuum. The factual differences between smaller RoR ILECs and larger PC ILECs must be recognized in this process.

Accordingly, NRIC respectfully submits that in any action arising from the Public Notice, the Commission should adopt more tailored CAF-II model inputs for smaller RoR ILECs as well as provide a more predictable path by which PC-focused regulations would be applied to smaller RoR ILECs. With respect to the *option* of election PC regulation in particular, it is apparent that specific requests for converting to PC regulation will need to include waiver requests; the Commission has already said that it will continue to rely on the "waiver process" for "future conversions from [RoR] regulation to [PC] regulation. . ."[12] Thus, the Commission should make clear its inclination as to what waivers of PC regulations it grant, while, at the same time, indicating that any such discussion would not preclude other waiver requests using the existing FCC "good cause" waiver standard.[13]

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[12] *In the Matter of SureWest Telephone Petition for Conversion from Rate-of-Return to Price Cap Regulation and for Limited Waiver Relief, Order*, WC Docket No. 13-71, DA 13-1253, released May 31, 2013 at ¶10 *citing USF/ICC Transformation Order* at ¶814.

[13] The Commission has explained this "good cause" standard as follows:

> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

NRIC respectfully submits that the requested FCC guidance is entirely reasonable.

II. Proper Model Inputs That Accurately Target Support To Truly High-Cost Areas Should Be The Goal Of The CAF-II Model Exercise, Both For PC Areas And Possible RoR Carriers Voluntary Electing Such Support.

As the Bureau seeks to promote broadband deployment in RoR carriers' service areas, NRIC strongly encourages that it establishes appropriate benchmarks and "extremely high-cost" thresholds used to calculate distributions of CAF-II model support and to lengthen the term during which CAF-II model support will be available. NRIC makes these recommendations not only for possible RoR carriers' voluntary support, but also for the Bureau's current deliberations on Connect America Cost Model ("CAM") benchmarks and high-cost thresholds of support for PC carriers. Absent adoption by the Bureau of the following recommendations, it is unlikely there would be a meaningful incentive for RoR carriers to voluntarily convert to the CAF-II model support, let alone take the likely risk that the most-recently published benchmarks and high-cost thresholds currently under consideration would create losses in USF support. Moreover, in the absence of the suggested modifications, NRIC is properly concerned that a large portion of the U.S. population will be left with less than comparable broadband and potentially no voice service. Further, NRIC is deeply concerned about any future precedent for RoR areas that would result from PC benchmarks and thresholds improperly being skewed to direct support to lower-cost, already-served areas.[14]

In the Matter of Connect America Fund et al., Order, WC Docket No. 10-90 et al., DA 12-2016, released December 20, 2012 at n. 9.

[14] *See, e.g.*, the American Cable Association recent comments on the inappropriateness of recently proposed benchmarks and alternate technology threshold, posted to the WCB Cost Model Virtual Workshop in WC Docket No. 10-09 in June 12, 2013. http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012-support-thresholds.

A. To Achieve Proper Results, Benchmarks And Thresholds Should Be Set Based Primarily On Policy-Based Objectives, And Secondarily On Budgets.

The areas to which CAF-II support is offered to PC carriers and the number of unserved subscribers that ultimately receive broadband will be largely dependent on the CAF-II model parameters, such as the benchmark and the "extremely high-cost" threshold level, established by the Bureau. The Bureau has initially proposed to determine support for RoR carriers using the same model parameters as will be used to determine PC carrier support amounts.[15] While a number of different benchmark and high-cost threshold combinations could meet the current budget, that budget should not be the driver of the decision. Setting aside the need to reconcile a "budget-driven" USF model with the sufficiency requirement of the Communications Act of 1934, as amended (the "Act"),[16] significant policy decisions are required to select the right combination of benchmarks and high-cost thresholds in an effort to maximize the number of customers served and that support is not provided to low-cost areas where a business case can be made to provide broadband over time without support.

To date, it appears that the selection of the threshold used to designate an area as "extremely high-cost" and therefore ineligible for CAF-II model support was derived from outcome determinative selection of amounts developed solely to meet the PC carriers' annual support budget,[17] an approach that was initially set forth by PC carriers in the ABC Plan. NRIC

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[15] *See* Public Notice at ¶13.

[16] *See, e.g.*, 47 U.S.C. §254(b)(5).

[17] *See Wireline Competition Bureau Request for Comment on Model Design and Data Inputs for Phase II of the Connect America Fund*, Public Notice, WC Docket Nos. 10-90 and 05-337, released June 8, 2012, (the "*Model Design Notice*") at ¶68. There, the Commission stated that it anticipated that less—and possibly much less—than one percent of all U.S. residences are likely to fall above the "extremely high-cost" threshold in the final cost model. Likewise, the National

member companies and RoR carriers generally have a far greater proportion of their customer locations in very rural (and thus high-cost) areas than do PC carriers. Therefore, this "extremely high-cost" threshold or "alternative technology" threshold ("ATT") would deprive many subscribers of RoR carriers of the opportunity to receive the type of broadband technology that the Commission continues to promote, and in some rural areas could deprive subscribers of having access to reasonable voice service. Whatever threshold level the Commission ultimately establishes for RoR carriers' areas when a RoR carrier opts for such model-based recovery, any such threshold must be rationally reconciled with the vast differences in the costs to serve PC carriers' subscribers compared to the costs to serve RoR carriers' subscribers, and with the fact that many end user locations that would otherwise meet the ATT already have access to terrestrial-based broadband service. At a minimum, in the case of RoR carriers, NRIC respectfully submits that the Commission should establish the thresholds based on clearly articulated policies that achieve a maximum amount of *comparable* broadband deployment in highest-cost areas, rather than thresholds created to meet an arbitrary budget limitation or other reasons.[18]

Broadband Plan "("NPB") recommended that the Commission should consider alternative technology, such as satellite, for approximately 250,000 housing units, representing less than two-tenths of 1% of all housing units. *See* Connecting America: The National Broadband Plan (released March 16, 2010) at 138 and 150.

[18] NRIC respectfully submits that, should support benchmarks and ATTs be set at artificially low levels, the Commission would also need to reconcile, both factually and from a public policy and legal basis, those levels with: (1) whether such levels would provide CAF-II model support to low-cost areas already served by some other provider; (2) the interests of other providers that may want to participate in any auction of CAF-II model support for areas that the particular larger PC carrier has elected not to commit to serve; and (3) the effects of not ensuring that CAF-II model disbursements are used to deploy broadband into higher cost-to-serve areas of that PC carrier.

NRIC's analysis of the results of CAM Version 3.1.3 performed at various funding thresholds and at the ATT contemplated for current PC carriers reveals that a large percentage of subscribers served by NRIC member companies would be over the ATT.[19] A range of [redacted] to [redacted] percent of subscribers served by NRIC member companies would be considered extremely high cost at these threshold levels (see attached Exhibit A). This result stands in stark contrast to the less than one percent of "extremely high-cost" subscribers the Commission anticipated for PC carrier areas in the *Model Design Notice* or the 250,000 customers nationwide, or 0.2 percent, that the NBP proposed would be served through an alternative technology.[20] This result is also inconsistent with the Commission's previous determination that only a small number of extremely high-cost census blocks should receive funding from the Remote Areas Fund ("RAF") rather than receive CAF-II model support.[21]

The Commission has determined that areas where the costs to serve are above the ATT should be served by alternative technologies, such as satellite.[22] NRIC submits that establishing an "extremely high-cost" threshold which would in effect relegate approximately [redacted] to [redacted] percent of the NRIC member companies' subscribers to alternative technologies flies in the face

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[19] The range was calculated using a support benchmark of $80 and an alternative technology threshold of $256 and a support benchmark of $45 and an alternative technology threshold of $195.

[20] *See* NPB at 150.

[21] *See USF/ICC Transformation Order* at ¶167.

[22] *Id.* Of course, any such service provider that receives USF would need to be designated as an Eligible Telecommunications Carrier ("ETC") (*see* 47 U.S.C. §214(e)) and provide such services as a telecommunications carrier/common carrier as required by Section in order to be eligible to receive any USF disbursements. *See* 47 U.S.C. §254(e).

of the comparability standard articulated in Section 254(b)(3) of the Act.[23] Accordingly, the Bureau must adjust the thresholds in areas served by RoR carriers to be consistent with the requirements of Section 254(b)(3) and minimize the number of subscribers that will be above the high-cost threshold.

Although the results for all NRIC member companies taken together are alarming, individual carrier outcomes are even more extreme. One Nebraska carrier would have more than [redacted] percent of its customers above the ATT based on the prior CAM release, even though the carrier already provides 4/1 Mbps broadband service to 81 percent of its subscribers.[24] Such extraordinary impacts would seriously harm RoR carriers and their customers not only in Nebraska, but in other rural, high-cost areas of the country, and thus must not be allowed to proceed without major modification.

B. Evaluation Of The PC Carriers' Results Shows That Support Is Provided In Areas In Which Support Is Unnecessary.

NRIC evaluation of recent Commission CAM releases has found that the above stated concerns – steering support away from high-cost areas and toward low-cost areas – indeed appear to actually be occurring. The following chart, Chart 1, shows the level of PC support for the states of Delaware, Massachusetts and New Jersey calculated from the most recent CAM information released by the Commission:

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[23] Section 254(b)(3) specifies, among other things, that consumers in all regions of the Nation, including those in rural and high cost areas, "should have access to advanced telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas. . . ." 47 U.S.C. §254(b)(3).

[24] *Id.*

Chart 1

Under these model parameters, the PC carriers realize significant increases in their funding as compared with current levels of support in these low-cost states with high population densities.[25] Under these model parameters even the District of Columbia also receives support, albeit a small amount.[26] There is no current high cost support for the District of Columbia, which is appropriate given that it is an urban area with a population density of 9,856 per square miles.[27] Moreover, each of these areas was shown in the OBI Technical Paper #1 as having 96 to 100 percent availability of terrestrial-based broadband networks capable of meeting the National Broadband Target.[28] (This paper was issued in 2009, and it is certain that broadband availability and speeds have increased significantly since then.) Using the model parameters recently specified directs support to low-cost or marginally-high cost areas that should not receive support because customer revenues are sufficient to entice companies to build broadband-capable networks without universal service funding.[29]

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[25] The population densities of Delaware, Massachusetts, and New Jersey are 460, 839 and 1,195, respectively. Quick Facts from the US Census. http://quickfacts.census.gov/qfd/states/11000.html.

[26] Under the CAM, the District of Columbia would receive between $108,670 and $128,646 per year depending on the model parameters.

[27] Quick Facts from the US Census. http://quickfacts.census.gov/qfd/states/11000.html.

[28] OBI Technical Paper #1, Exhibit 2-B. Availability of Broadband Networks Capable of Meeting the National Broadband Target, page 18.

[29] Areas that currently have broadband-capable facilities may still need support if the revenue streams from customers do not create a business case for investment. For example, in rural Nebraska some areas have broadband-capable plant, but do not have a sufficient population base to support the operating expenses or capital recovery of this plant. In this case, universal service support is necessary.

Because the overall budget level has been specified, the establishment of a benchmark level determines by default the level of the ATT. Setting a benchmark level at too low a level will over compensate PC carriers and will force too many high-cost customers to an alternative technology. The following table, Table 1, shows that depending on the particular model parameters, between [redacted] and [redacted] percent of PC carriers' customers *eligible for support* would be served with an alternative technology.

Table 1. Price Cap Customers over the Alternative Technology Threshold

Report Reference Number	Cost of Money	Benchmark	ATT	Locations Eligible for Support	Locations over ATT	% of Locations over ATT
A	B	C	D	E	F	G=F/(E+F)
1.2	8%	$40.00	$89	6,054,215		[redacted]
2.2	8%	$50.00	$135	4,467,049		[redacted]
3.2	9%	$40.00	$78	6,415,649		[redacted]
4.2	9%	$50.00	$114	4,803,807		[redacted]

Based on the above, NRIC respectfully submits that the Commission should reevaluate its model parameters, direct funding to more costly areas and relegate fewer high-cost customers to an alternative technology.

C. If A Model Is Applied To RoR Carriers, Even On An Optional Basis, Several Modifications Must Be Made.

NRIC understands the Bureau is inquiring about conditions that should pertain to RoR carriers that may wish to elect to receive model-based support. However, in light of the

Commission's predisposition toward models and creating incentives for carriers to convert to PC regulation,[30] NRIC is concerned that the *optionality* of electing model-based support may be supplanted with a mandatory use of the CAM or some version of a model for RoR carrier USF disbursements. Further, given the effect that optional selection of model support by some RoR carriers would have on existing RoR mechanisms, the Commission must undertake the development of a record in order to rationally evaluate, understand and ultimately decide the impacts of the CAM on all RoR carriers and consumers served by those carriers. Finally, since universal service policy is required by law to ensure the availability of affordable and comparable services to all customers,[31] thresholds must not be set that result in large numbers of rural consumers being forced to only satellite-based broadband service that must be demonstrated to meet the Commission's "4/1" service provisioning requirements as well as the requirement of Section 214 and 254 of the Act, in addition to a demonstration of voice service.

NRIC submits that if model support were to be applied to RoR carriers, several modifications need to be made. First, at a minimum, the Commission must investigate and ultimately set different cost benchmarks and ATTs for RoR and PC carriers in recognition of the vast differences between these carrier segments.

Second, to minimize the number of customers relegated to substandard service from an alternative technology and to not direct support to lower-cost customers, the benchmark must be set at a significantly higher level than currently being discussed. The Bureau, through its virtual workshop, has recently sought comment on a funding benchmark in the range of $40 to $50 and

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[30] *See, e.g., In the Matter of Connect America Fund, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking,* WC Docket No. 10-90, *et al.*, FCC 11-13, released February 9, 2011 at ¶448.

[31] 47 U.S.C. §§254(b)(1), 254(b)(3).

an ATT between $145 and $155 per location passed.[32] The benchmark level should be a surrogate for the funding available from alternative sources, such as charges paid by customers. As the NBP indicated, high-cost support should be provided where no business case exists for providing service absent such funding.[33] While the benchmark is technically a cost benchmark to which a candidate area's per unit cost is compared to determine where funding is required, it is reasonable to set the benchmark at a level equal to or above the revenues from available sources.[34]

Reasonable ranges for customer charges are based on an average revenue per unit ("ARPU"). Telecommunications ARPUs were estimated in the OBI Technical Paper #1 that accompanied the NBP:[35] the voice ARPU was $33.46 per month, data ARPUs ranged from $36.00 to $44.00 per month, video ARPUs ranged from $50.00 to $80.00 per month, and bundle ARPUs ranged from $95.57 to $130.00 per month. Also in this OBI Technical Paper, the Commission predicted that the total ARPU per customer would remain relatively constant over time. Given these ARPU amounts, it is questionable as to what basis exists for a benchmark in the range of $40 to $50 per month. Carriers will attempt to sell customers bundles consisting of combinations of voice, data and video so the amount of customer revenue would likely be well above $40 to $50. Given the Commission's desire to promote efficient use of universal service

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[32] *See,* Wireline Competition Bureau Model Virtual Workshop 2012 Support Thresholds, released May 17, 2013, http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012-support-thresholds (link current as of June 11, 2013).

[33] National Broadband Plan, Chapter 8, Recommendation 8.2, p.145.

[34] Locations with a cost-per-demand unit below the target benchmark are excluded from the support calculation, and the value of the target benchmark is deducted from the support amount for locations with cost per demand unit above the target benchmark.

[35] OBI Technical Paper #1, Chapter 3, p. 50, Exhibit 3-V.

funding and considering that it has established budget limits, NRIC respectfully suggests that it is reasonable to select a benchmark at a significantly higher level. To do otherwise will over-compensate carriers because they receive CAF-II model support based on a specific benchmark, which means that USF support would be provided for the difference between the benchmark and total cost. The carrier would then collect customer revenues approximating the ARPU, up to $130 per customer (according to OBI Technical Paper #1). Thus, if the benchmark were to be established at $50 per customer and the amount collected from customers is $130 per customer, there would be double recovery of the difference between the charges to the customer and the benchmark, or $80 per customer.

Third, NRIC urges that the Bureau not exclude those census blocks in RoR carriers' service areas that are already served with broadband from receiving CAF-II model support.[36] Depending on the level at which the "extremely high-cost" threshold is set, USF support may not be available from CAF-II to a significant number of NRIC member carriers' and RoR carriers' subscribers nationwide that already are served with broadband because the cost to serve these customers exceeds the "extremely high-cost" threshold.

Fourth, consistent with the NBP, NRIC recommends that the Commission should set a limit that no more than *0.2 percent per RoR study area of* *currently unserved* *terrestrial broadband customers* may be impacted by the ATT and thus forced to substandard service under the RAF. This modification is necessary because some RoR carriers may serve significant numbers of customers whose cost to serve is above the ATT. These carriers would only receive

[36] Since the primary policy objective in PC carriers' areas is to extend broadband to the widespread unserved locations, there is little risk that the "extremely high-cost" threshold will cause an area currently receiving voice or broadband service to lose that service. However, this situation is not the case for customers of RoR carriers.

minimal model-based support even though the carrier serves a high-cost area—the type of area for which universal service support is meant to fund.

In areas where RoR have already made investments to serve customers with both voice and broadband, NRIC respectfully suggests that the Commission exercise great caution to avoid elimination or reduction of support for existing services and thus strand significant amounts of legitimately incurred capital investment. Such a result would not provide sufficient or predictable support as required by law.

Finally, in developing the "extremely high-cost" threshold, the Commission also must ensure that the remaining federal USF support to a RoR carrier is sufficient so that voice service remains available in these highest-cost areas. Thus, USF support targeted to existing highest-cost customers should not be eliminated through model-determined funding, even if the model does not direct support for broadband to these customers. Rather, NRIC urges that the Commission establish a "safe harbor" support level for voice-only for these highest-cost locations and that a portion of the USF budget be set aside to accomplish this assurance.

III. Critical Policy And Operational Issues Must Be Addressed Before The Commission Determines Whether And How To Make Model-Based Support Available To RoR Carriers.

Numerous critical policy and operational issues are raised by the possibility of making model-based CAF-II support available to RoR carriers. NRIC has been closely tracking and participating in the CAF Model docket,[37] and is concerned that inadequate attention has been

[37] *See USF/ICC Transformation Order* at ¶23. Including Version3.1.3, the Bureau has now released six versions of the model to date. *See Wireline Competition Bureau Announces Availability of Version One of the Connect America Fund Phase II Cost Model*, Public Notice, WC Docket Nos. 10-90 and 05-337, 27 FCC Rcd 15356 (2012); *Wireline Competition Bureau Announces Availability of Version Two of the Connect America Fund Phase II Cost Model*, Public Notice, WC Docket No. 10-90, 28 FCC Rcd 280 (2013); *Wireline Competition Bureau*

given to potential impacts of any model on RoR carriers and their customers. These issues must be addressed in order that RoR carriers can make a fully informed decision whether to accept model-based support so that rural consumers are not harmed and RoR carriers have a full understanding of the financial impacts of a voluntary election for CAF-II model-based support. Further, given that certain assumptions used in the adoption of a the CAF-II model for PC carriers will set precedents and have negative impacts on areas served by RoR carriers, those assumptions also must be tested and their impacts on RoR areas fully understood prior to adoption of the CAF-II model even for PC areas.

A. Greenfield-Based Model Assumptions For PC Carriers Should Not Be Assumed To Be Appropriate To Areas Served By RoR Carriers.

One model parameter already decided by the Commission is the determination of costs based on a Greenfield build.[38] While this assumption may be appropriate for PC carriers that have not built out to their higher cost customers outside of towns and cities, this assumption is inappropriate for RoR carriers that have made substantial progress in deploying broadband. For RoR carriers, an assumption of a Brownfield build is more appropriate because significant investments have already been made and it would be wasteful policy to ignore this existing investment. The record developed thus far relating to the CAM clearly focused on PC carrier

Announces Availability of Version Three of the Connect America Fund Phase II Cost Model, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 2316 (2013); *Wireline Competition Bureau Announces Availability of Version 3.1 of the Connect America Fund Phase II Cost Model*, Public Notice, WC Docket No. 10-90, 28 FCC Rcd 5707 (2013); *Wireline Competition Bureau Announces Availability of Version 3.1.2 of the Connect America Fund Phase II Cost Model and Adds Additional Discussion Topics to Connect America Cost Model Virtual Workshop*, Public Notice, WC Docket No. 10-90, DA 13-1136, released May 17, 2013; *Wireline Competition Bureau Announces Availability of Version 3.1.3 of the Connect America Fund Phase II Cost Model*, Public Notice, WC Docket No. 10-90, DA 13-1340, released June 7, 2013.

[38] *See*, *In the Matter of Connect America Fund, et al., Report and Order*, WC Docket No. 10-90, and 05-377, DA 13-807, released April 22, 2013 at ¶19.

areas; it is uncertain the level to which RoR carriers monitored the proceeding, let alone participated in it. Accordingly, NRIC urges the Commission to review model parameters on Greenfield versus Brownfield for RoR areas before it proceeds with even optional model-based support.

B. The Commission Should Investigate A Methodology For Monitoring A RoR Carrier's Earnings Should The Carrier Opt For Model-Based Support.

NRIC respectfully submits that the selection of a fixed amount of model-based support for a RoR carrier's basis to receive federal USF introduces numerous complications. Perhaps chief among these complications is how RoR regulation itself is maintained and how RoR carriers' regulated earnings are monitored. Currently, RoR carriers' costs are submitted (or if a carrier is under average schedule, a formula for costs is utilized) to USAC. These costs establish the amounts of federal USF that RoR carriers receive annually subject to an authorized rate of return limitation (currently 11.25 percent, and under review by the Commission in a pending proceeding[39]). The Commission has implemented caps on High Cost Loop Support ("HCLS") costs[40] and is phasing down Local Switching Support through CAF.[41] However, CAF-II model support for PC carriers is not subject to limitations or reductions.[42]

As a result of NRIC's independent analysis of the CAF results, CAM could create substantially different support amounts for RoR carriers than those carriers currently receive under RoR mechanisms. However, the "de-tethering" of model support from actual costs

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[39] *See Wireline Competition Bureau Seeks Comment on Rate of Return Prescription Staff Report*, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, DA-13-1110, released May 16, 2013.

[40] *See USF/ICC Transformation Order* at ¶¶27, 133, 196, 203, 217 and 220.

[41] *Id.* at ¶¶27, 133, 228 and 257.

[42] *Id.* at ¶171.

incurred by carriers should be addressed by the Commission so that some carriers do not receive USF support that may result in significant over-recovery. Of course, if a RoR carrier were to convert to PC regulation, earnings are not monitored so over-recovery is not an issue, but the need for USF-related monitoring of earnings still exists to avoid the situation where there may be "more-than" sufficient USF being disbursed to an ETC.

NRIC respectfully submits that, to address earnings issues, the Commission should consider the methodology that has been used by the Nebraska Public Service Commission (the "Nebraska Commission") for many years to determine model-based high-cost support and to ensure accountability and earnings oversight for all qualifying carriers (both those regulated under PC regulation and RoR in the interstate jurisdiction). The Nebraska Commission has implemented an annual cost and revenue reporting requirement that is efficient, predictable and effective in distributing support. Exhibit B attached to these Comments provides a description of the Nebraska Universal Service Fund ("NUSF") program and the cost/revenue reporting requirement used in connection with the model that determines NUSF High Cost Program support. [43]

C. The Impacts On Existing RoR Support Mechanisms For Carriers That Do Not Elect To Receive Model Support Must Be Addressed So That Those Mechanisms Are Sustainable.

If the Commission were to make optional model-based support available to RoR carriers, it would have major impacts on existing RoR mechanisms as well as the distribution of the

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[43] While PC companies no longer perform cost studies, such studies are not necessary to complete the NUSF earnings form. In fact, CenturyLink, Frontier and Windstream all complete such forms to draw funds from the NUSF.

overall RoR budget not to exceed $2 billion. These impacts need to be explored, understood and addressed from a public policy and legal standpoint before any opt-in decision is finalized.

Support amounts determined by the CAM for RoR carriers could apparently be based upon previous model specifications already decided upon by the Bureau for PC carriers[44] and model inputs yet to be determined.[45] Heretofore, the Bureau has largely focused CAM decisions on PC areas in connection with distribution of CAF-II model support. However, CAM also creates support determinations for RoR carriers' census blocks, so any interested party can monitor CAM impacts, as NRIC has done over the past months. Obviously, support amounts determined by CAM will differ from existing RoR distributions from HCLS, Interstate Common Line Support ("ICLS") and the RoR CAF. As such, an incentive is created for some RoR carriers to consider model-based support as it would result in an increase in support. Conversely, for other carriers whose support would be less under the CAM, there is a disincentive to accept model-based support, and rather remain under existing RoR mechanisms. Given the budget cap on overall RoR support, this potential intermingling of model-based and existing support methodologies would necessarily impact HCLS and ICLS and raise issues regarding the predictability of the recovery from these programs.

HCLS support is distributed to RoR carriers whose loop costs exceed the national average loop cost. Loop costs have been found by the Commission to be the most important factor in the overall cost of service by local exchange carriers both for voice and broadband services.[46] While NRIC has determined that the CAM recognizes the importance of loop costs,

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[44] *See*, Public Notice at ¶¶10-13.

[45] *Id.*

[46] *See USF/ICC Transformation Order* at Appendix H.

the record developed thus far was not focused on RoR carrier-served areas but rather PC carrier-served areas. A greater portion of RoR carriers' customers are high cost, often very high cost as in the case of NRIC member companies, and loop costs are undoubtedly higher overall than those of PC carriers.

RoR carriers that would opt in for model support thus will exit the NECA pools and no longer receive HCLS or ICLS support. It is reasonable to assume that such carriers would no longer calculate or report their costs as there would be no need to do so for determination of their support since these carriers would operate under model-based support. In this event, based on the RoR companies electing model support, funding available under the RoR budget would be reduced.

Accordingly, NRIC respectfully requests that the Commission address *now* how these results will be compatible with the Act's directives that universal service support shall be sufficient and predictable.[47] The effect of RoR carriers' elections to receive model-based support on those RoR carriers that elect to continue to receive HCLS and ICLS must be fully understood before any model-based option is implemented.

[47] *See* 47 U.S.C. §§254(b)(5); *see also* 47 U.S.C. §§254(d).

D. Model-Based CAF Support To "Opting-In" RoR Carriers Needs To Be Ongoing, Not Limited To Only Five Years.

USF support is essential to the existence of RoR carriers. This situation is in contrast to PC carriers, which despite serving some high-cost customers have much larger numbers of customers overall, and generally serve less costly areas and benefit from averaging of costs between low- and high-cost areas. In PC carriers' areas, therefore, one-time funding or funding for a period of five years may be sufficient. However, the Commission has long recognized the differences between PC and RoR carriers by adopting different regulations for both,[48] and in this instance has delegated to the Bureau the authority to develop the CAM and establish support thresholds for PC carriers.[49] The Commission states that CAF-II model support will be offered to PC carriers for a five-year period in exchange for a commitment to offer a specific level of service. At the end of those five years, the Commission states it expects to distribute all CAF support in PC areas "pursuant to a market-based mechanism."[50]

It is unclear what the Commission means by "market-based mechanism," but in any event it is apparent that after this initial five-year period there could be a material change to the manner and possibly the amount of model-based support for PC carriers. Such a time limitation should not be applied to RoR carriers or the entire concept of an election to receive model-based support will surely fail.[51] Federal universal service support cannot be assumed to be a temporary

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[48] *See* Section I, *infra*.

[49] *See* Public Notice at ¶¶ 10-13; *see also Wireline Competition Bureau Announces Availability of Version One of the Connect America Fund Phase II Cost Model*, Public Notice, WC Docket Nos. 10-90, 05-337, 27 FCC Rcd 15356 (2012).

[50] Public Notice at ¶ 9; *see also id.* at ¶17; *see also USF/ICC Transformation Order* at ¶127.

[51] In fact, NRIC questions the appropriateness of limiting PC carrier CAF-II disbursements to only five years if the Commission is truly interested in incenting RoR carriers in creating

mechanism for most RoR carriers. For RoR carriers that serve very high-cost areas like the NRIC member companies, USF support is a necessary and increasingly critical component of recovering the unavoidable costs of providing telecommunications and broadband services in the nation's most-rural areas. As the NBP stated, universal service should "include initial support to cover the capital costs of building new networks in areas that are unserved today, as well as ongoing support for the operation of newly built networks in areas where revenues will be insufficient to cover ongoing costs."[52] If model-based CAF for RoR carriers is implemented, support must be maintained on an ongoing basis so that RoR carriers have the opportunity to recoup their investments and provide service for years to come. Limiting availability of support to an arbitrary period of time such as five years will deter consideration of the model-based experiment by RoR carriers.

E. Broadband Build-Out Requirements For RoR Carriers Accepting Model-Based CAF Must Be Clearly Defined Prior To Adoption Of The CAM.

Another requirement of PC carriers that accept support under the CAF-II mechanism is acceptance of a statewide build-out requirement to customers located in census blocks identified by the model as being more costly to serve than can be supported through end user revenues alone, but not extremely costly and thus served by alternative technologies.[53] Meanwhile, RoR carriers are not currently required to provide broadband service to all customers in a study area under the existing RoR mechanisms, but must make the service available upon reasonable

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incentives for ROR carriers to seek PC regulation. The costs that companies incur to construct and operate ongoing broadband services in high-cost areas do not cease to exist after five years, nor is the debt that may be incurred paid off in such a brief period.

[52] NBP at 139.

[53] *See* Public Notice at 5 n. 24.

request.[54] This significant difference in the build-out requirements needs to be reconciled between the two types of regulation should optional model-based support be reasonably made available for RoR carriers. NRIC is not opposed to some level of build-out requirements for RoR carriers that may opt in to model-based support. But such requirements should take into account the array of very real differences between RoR and PC carriers and apply service obligations accordingly.

The Public Notice raises a question whether RoR carriers with multiple study areas within a state should be permitted to elect support on a study area basis.[55] NRIC believes that at a minimum RoR election of model-based support should be at a study area level. However, for RoR carriers that operate only a single study area in a state, it should not be assumed that the same service requirements for a PC carrier are applicable to an opting-in RoR carrier. PC carriers have the advantage of averaging their costs across an entire study area that includes many low-cost areas,[56] as well as in many instances being able to spread and manage costs across numerous states. A RoR carrier that operates only one study area in a state does not have such an advantage.[57] Thus, the circumstances differ vastly between the two types of carriers. In addition, the development of the CAM to date has focused on PC carriers and the areas they

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[54] *See USF/ICC Transformation Order* at ¶¶ 26, 79, 86, 103 and 206.

[55] *See* Public Notice at ¶16.

[56] In Nebraska, PC carriers serve what are by far the state's two largest cities (Omaha and Lincoln), as well as all cities in the state with populations above 6,000. The largest city in Nebraska served by a RoR carrier is Aurora, population 4,196 (*See,* http://www.city-data.com/city/Nebraska.html.

[57] For example, Great Plains Communications (an NRIC member company) operates one study area and serves more than 14,000 square miles and its average access line density is approximately 1.6 lines per square mile. The largest community that the company serves is Imperial, population 1,760.

serve, not RoR areas. Obviously, the accuracy of model inputs and assumptions for RoR carrier served areas needs to be assured before parties are confident that the results are reasonable. As NRIC has stated earlier, one important area of model development that must be differentiated between PC carriers and RoR carriers is application of the ATT. There are very likely other components of the model that also need to be differentiated between the types of regulation.

IV. RoR Carriers Considering CAF-II Model Support Or PC Regulation Should Be Permitted To Remain Subject To Sections 54.909 And 59.717 Of The Commission's Rules.

The Bureau also seeks comment on alternatives to PC regulation and whether RoR carriers that may opt for model support should otherwise remain RoR-regulated.[58] First and foremost, to create the appropriate incentives for RoR carriers to consider PC regulation as an alternative, NRIC respectfully submits that the Commission must adopt a universal service funding model that provides sufficient and predictable support to small RoR carriers as has been discussed in the previous sections of these comments. RoR carriers have a long history of providing service to all customers upon reasonable request, and the adoption of universal service policies which do not provide support to significant numbers of customers served by RoR carriers does not create the universal service funding stability needed for rural companies to elect PC regulation.

Likewise, the Commission should ensure that the revenue stream associated with intercarrier compensation ("ICC") available to a RoR carrier is not truncated should that carrier voluntarily elect PC regulation. ICC revenues have been, and continue to be, a critical requirement for RoR carriers' ability to deploy networks that provide voice and broadband

[58] *See* Public Notice at ¶19.

services. In an ex parte filing, NRIC recently emphasized the criticality of maintaining CAF support for switched access ICC through rates and CAF.[59] The filing pointed out that at the time of implementation of the *USF/ICC Transformation Order*, ICC was a larger portion of RoR carriers' revenues (greater than 25%) than it was for PC carriers (less than 10%).[60] Reliance on ICC revenues remains a necessity for RoR carriers regardless of whether federal USF support is model-derived or based on actual costs. Thus, the Commission should allow RoR carriers electing PC regulation to continue to remain subject to section 51.909 and 51.917 of the Commission's Rules.[61]

In the *USF/ICC Transformation Order*, the Commission adopted a policy which recognized that RoR carriers generally have higher access costs and rates and thus should be given a longer transition period. Thus, RoR carriers were given a nine-year period in order to transition rates to a bill-and-keep framework while PC carriers were given a six-year period. The Commission found that such an approach should moderate potential adverse effects of a carrier moving too quickly from the existing ICC regimes.[62]

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[59] On June 5, 2013, NRIC members met with Commissioner Pai and Nicholas Degani, Commissioner Rosenworcel and Priscilla Delgado Argeris, Rebekah Goodheart of Acting Chairwoman Clyburn's office and Travis Litman of the WCB on behalf of the entire NRIC group to discuss concerns regarding universal service funding and contributions. *See* Ex Parte Letter from Cheryl Parrino, Parrino Strategic Consulting Group, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, 06-122, and CC Docket No. 01-92, dated June 6, 2013 and Attachment at 10 (Impacts of Uncertain Universal Service Support on Extremely Rural Areas). http://apps.fcc.gov/ecfs/document/view?id=7022421903 (link current as of June 10, 2013).

[60] NRIC notes that, in the past, switched ICC revenues represented as much as 50% of some RoR carriers' regulated revenues.

[61] *See* 47 C.F.R. §§51.909, 51.917.

[62] *See USF/ICC Transformation Order* at ¶801.

The choice by a RoR carrier to enter PC regulation, or opt for model-based USF support, should not change the starting point from which such carrier is transitioning its access rates. Section 51.917 requires rate-of-return carriers to reduce eligible recovery amounts five percent (5%) annually whereas the PC-regulated companies are required to make a ten percent (10%) annual reduction. In 1990, the Commission recognized that small RoR carriers should not be required to enter PC regulation. The Commission was concerned about the ability of both mid-sized and small RoR carriers to meet the same high productivity standards as the Bell Operating Companies,[63] and thus made PC regulation optional for such carriers. The same concerns which the Commission recognized in 1990 are relevant today. Small RoR carriers do not have the same opportunity for efficiency gains as do larger companies. Lack of efficiency gain opportunities does not mean, however, that smaller RoR carriers are inefficient. Rather, lack of efficiency gain opportunities result from the lower economics of scale and scope, as well from the areas of the country that RoR carriers typically serve, which tend to be higher cost and lower density than PC service areas. The Commission recognized this fact in the CAF-ICC order, stating ". . . smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve."[64] Allowing small RoR carriers that elect PC regulation or to opt into model-based USF disbursements to remain subject to 51.917 is consistent with past Commission's findings.

Permitting RoR carriers that voluntarily elect PC regulation to remain subject to Sections 51.909 and 51.917 also does not reduce the benefits of PC regulation. The efficiency benefits that accrue from the services in the CMT (Common Line, Marketing and Transport

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[63] *See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, CC Docket No. 87-313, 5 FCC Rcd 6799 (1990).

[64] *See USF/ICC Transformation Order* at ¶26.

Interconnection Charge) and special access baskets remain unchanged under this proposal. Further, RoR and PC carriers' respective terminating ICC transition paths ultimately yields the same rate levels, and allowing a RoR carrier that voluntarily enters PC regulation to stay on the nine-year transition path is appropriate due to the importance of ICC revenues to a RoR carrier in meeting its universal service commitments. Moreover, RoR carriers typically have higher access rates and receive more of their revenues from ICC. Thus, a longer transitional period is required to meet the goal of moderating the potential adverse effects on consumers and carriers of moving too quickly from the existing ICC regimes.[65]

V. Data is Needed On The Impacts Of The Rural Association Proposal For Standalone Broadband Lines.

The Bureau seeks targeted comment on several aspects of a proposal made by the rural carrier associations regarding changes to the existing framework set forth in the Commission's rules to make support available for network infrastructure that provides stand-alone broadband service in addition to providing support to those lines that support both voice and broadband. Since the Commission requires recipients to use their USF support in a manner consistent with achieving universal availability of voice and broadband,[66] NRIC supports providing USF for broadband connections regardless of whether the subscriber has chosen to subscribe to a RoR carrier's voice offering provided through use of a broadband connection (*i.e.*, stand-alone broadband). As long as the broadband connection supports voice applications and the subscriber is offered voice service, the RoR carrier should not be denied support based on the subscriber's choice not to subscribe to the RoR voice service offering. NRIC submits that providing support

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[65] *See id.* at ¶801.

[66] *See* id. at ¶205.

for broadband connections regardless of a consumer's choice to subscribe for voice service is therefore fully consistent with the Commission's policy of achieving universal *availability* of voice and broadband.

Nevertheless, NRIC realizes that if the Commission were to provide support for stand-alone broadband provided by RoR carriers, given the annual fixed budget for RoR study areas, there may be a financial shift among RoR carriers caused by a change in the relative distribution between HCLS and ICLS as well as a potential shift in funding among recipients of HCLS and ICLS. The "technical fixes" to the Commission's Rules to make USF support available for stand-alone broadband service in addition to those lines that support both voice and broadband have yet to be proposed. As such, beyond stating that those RoR carriers with relatively more stand-alone broadband lines will likely see more support than those RoR carriers with relatively fewer stand-alone broadband lines, NRIC is not now able to comment on either the near-term or long-term impacts to HCLS and ICLS in conjunction with overall limits on support, and will not be able to do so until and unless a proposal is presented for public comment and the impacts upon RoR carriers can be fully evaluated. Nonetheless, NRIC would be opposed to any plan that moves support away from the higher-cost service areas.

Accordingly, before the Commission approves the rural carrier associations' plan, the Commission should ask the rural associations to evaluate the cost of the plan relative to the RoR budget. If the rural carrier associations' plan exceeds the RoR budget, the Commission should ask the rural associations to analyze and make public how various costs per loop groups would fare under the plan given the constraint on the RoR budget.

NRIC also observes that a significant problem with HCLS is that each year the cap on the fund is adjusted based on the change in the Consumer Price Index ("CPI") and the change in access lines.[67] This adjustment is implemented through changing of the National Average Cost per Loop. Through this process, those carriers with lower values of cost per loop experience reductions in their HCLS or elimination of their HCLS altogether. Given that the Commission is now asking RoR carriers to build broadband-capable plant, and that customers are increasingly requesting broadband-only lines, NRIC supports efforts to adjust the HCLS cap to be based on the change in the CPI and the change in connections (access lines plus broadband-only lines.)

VI. Conclusion.

The Bureau's Public Notice raises a significant number of interesting and challenging issues and prospects for the creation of additional options for RoR carriers regarding model-based USF disbursement and/or the election to PC regulation. For the reasons stated herein, NRIC respectfully submits that the Commission must provide additional guidance in these areas in order to allow RoR companies a meaningful opportunity to evaluate and address which, if any, of these options should be pursued. In providing this guidance, NRIC respectfully requests that the Commission make the changes requested herein to the existing CAF II model and to provide the guidance on the waivers of certain PC regulations that it would be inclined to grant.

Likewise, NRIC supports the concept of providing USF support for broadband only lines and investment. More details and critical analysis of any specifics regarding how this would occur and the impact of such action is required and must be undertaken. With that said, however, the objective being pursued is proper.

Accordingly, for all of the reasons stated herein, NRIC respectfully requests that action on the matters raised in the Public Notice be taken a manner consistent with these comments.

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[67] *See* 47 C.F.R. §36.604.

REDACTED – FOR PUBLIC INSPECTION

Date: June 17, 2013.

Respectfully submitted,

Nebraska Rural Independent Companies

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REDACTED – FOR PUBLIC INSPECTION

EXHIBIT A

[See Attached]

EXHIBIT A

Sample of Results from CAM version 3.1.3

Results for	Companies Affected	Budget	Benchmark	Alt. Tech. Threshold (ATT)	Customers Eligible for Support	Customers over ATT	% of Total Customers over ATT
United States	Price Cap	Unlimited	None	None	[redacted]		
		PC Budget	$ 100	[redacted]			
		RoR Budget	$ 100				
		None Established	$ 80	$ 256			
		None Established	$ 45	$ 195			
United States	Rate of Return	Unlimited	None	None	[redacted]		
		PC Budget	$ 100	[redacted]			
		RoR Budget	$ 100				
		None Established	$ 80	$ 256			
		None Established	$ 45	$ 195			
Nebraska	Price Cap	Unlimited	None	None	[redacted]		
		PC Budget	$ 100	[redacted]			

		RoR Budget	$ 100		[redacted]	
		None Established	$ 80		$ 256	[redacted]
		None Established	$ 45		$ 195	[redacted]
Nebraska	Rate of Return	Unlimited		None	None	[redacted]
		PC Budget	$ 100		[redacted]	
		RoR Budget	$ 100		[redacted]	
		None Established	$ 80		$ 256	[redacted]
		None Established	$ 45		$ 195	[redacted]
Nebraska	NRIC	RoR Unlimited		None	None	[redacted]
		PC Budget	$ 100		[redacted]	
		RoR Budget	$ 100		[redacted]	
		None Established	$ 80		$ 256	[redacted]
		None Established	$ 45		$ 195	[redacted]

BUDGETS DEFINED

Unlimited: Calculates the total number of subscribers not served by an unsubsidized cable provider regardless of any benchmark or ATT.

PC budget: Assumed to be $1.75 Billion.
ATT was determined based on $100 benchmark and the predetermined budget.

RoR budget: Assumed to be $1.7 Billion.
ATT was determined based on $100 benchmark and the predetermined budget.
PC and RoR budgets were calculated assuming the FCC will subtract all CAF ICC dollars from the original budget amounts.

None Established: Uses previously proposed benchmarks and ATTs with no budget constraints.
The $80 benchmark and $256 ATT were proposed by the ABC Coalition.
The $45 benchmark and $195 ATT are based on a proposal of the Wireline Competition Bureau on the Connect America Cost Model Virtual Workshop topic "Support Thresholds."

Census blocks served by cable carriers were excluded (true),
while census blocks served by wireless carriers were not (false).

REDACTED – FOR PUBLIC INSPECTION

EXHIBIT B

[See Attached]

Summary of the Nebraska Universal Service Fund High-Cost Program

The Nebraska Universal Service Fund (NUSF), established in 1999, is program that as modified in 2005 targets and distributes high-cost support for capital expenditures and expenses that carriers incur to deploy and operate broadband-capable networks in the most-rural areas of the state.

Following authorization by the Nebraska Legislature in 1997, the Nebraska Public Service Commission (NPSC) adopted in 1999 a policy to rebalance intrastate access and local service rates to eliminate implicit subsidies and thereby facilitate competition among local service providers, and simultaneously established the NUSF to compensate carriers for revenue reductions due to the substantial reductions in cost-based access rates the Commission's policy would require. From 1999 through 2004, the basis of NUSF support provided to each eligible carrier was the projected net revenue loss as a result of reducing its state access rates while also raising its local service rates to uniform benchmark rates – $17.50 per month for residential service; $27.50[1] per month for business service. This rate-rebalancing, revenue-neutral high cost support mechanism was intended to be an interim program, and in 2001 the NPSC opened a formal proceeding to develop a permanent distribution methodology.

The design of the permanent new NUSF distribution mechanism, called the "Support Allocation Methodology" (SAM) was completed in 2004 and implemented in January 2005. Under the SAM, each qualifying carrier's annual NUSF support is determined through a multi-step process and depends on several factors – including household density in out-of-town service areas, per-line access revenue, earnings on net investment during a prior year, and level of NUSF support at the end of the interim program.

At the core of the SAM are mathematical models of the costs and revenues attributable to the local loop. Each carrier's loop cost is modeled separately for the in-town and out-of-town portions of each of its exchanges,[2] according to an exponential function of household density that approximates the relationship between loop cost and household density indicated by the Benchmark Cost Proxy Model (BCPM).[3] At the low end, modeled loop costs for Nebraska's cities and towns range from as low as a penny per month to about $20 per month. Modeled loop costs for out-of-town areas range from

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[1] These rates do not include the federal subscriber line charge.

[2] The entire state is divided into 1,632 Support Areas, of two kinds: In-Town and Out-of-Town. In-Town Support Areas are defined as "cities, villages, or unincorporated [census block] areas with 20 or more households and densities greater than 42 households per square mile." Out-of-Town Support Areas are defined as those areas within an exchange that are not included in any In-Town Support Area.

[3] The following formula is used to calculate monthly Loop Cost within each Support Area "i", as an exponential function of the household density within that Support Area:

$$(\text{Loop Cost})_i = \alpha e^{-\beta * \text{HouseholdDensity}_i}$$

where:

- $\alpha = 604.74$ and $\beta = 0.51197$ for $\text{HouseHoldDensity} \leq 4.5$,
- $\alpha = 80.939$ and $\beta = 0.040666$ for $4.5 < \text{HouseHoldDensity} \leq 34$,
- $\alpha = 20.487$ and $\beta = 0.00026585$ for $34 < \text{HouseHoldDensity}$;
- $\text{HouseholdDensity}_i$ = household density in Support Area "i";
- e = the base of the natural logarithms (approx. 2.71828).
-

about \$40 per month in areas characterized by suburban acreages and small farms to more than \$500 per month in Nebraska's ranch country, where a single household is found on average every three to five square miles. Modeled loop revenue includes contributions from the uniform local service rate benchmark (now increased to \$19.95 for residential lines in rural areas), the federal subscriber line charge, per-line intrastate access revenue and digital subscriber line service.[4] Modeled revenue ranges from \$25 per month for Nebraska's two non-rural carriers (Qwest and Windstream) that have lower intrastate access rates to more than \$75 per month for one rural carrier with fewer than 600 access lines. Modeled monthly revenue for most rural carriers is between \$30 and \$45.

It is important to note that the NUSF is not sufficiently sized to fund all support that the SAM identifies is required to deploy and maintain facilities to all high-cost areas of the state. NUSF support amounts are determined annually by allocating a fixed fund size that is based on a surcharge of 6.95 percent of all intrastate telecommunications revenues earned by Nebraska telecommunications service providers. The surcharge was established at the onset of the NUSF in 1999 to replace on a revenue-neutral basis the support all carriers had received previously. The NPSC sets the NUSF surcharge each year and has maintained it at 6.95 percent for all years but one.

Allocations are made in proportion to the amount by which each carrier's modeled loop cost exceeds its modeled loop revenue.[5] Annual NUSF high-cost funding rose to \$71 million in 2004 and has declined under the permanent methodology to approximately \$62 million in 2007 and less than \$50 million in 2010. This funding decrease is because the amount of assessable intrastate telecommunications revenues has declined, and the NPSC

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[4] Monthly loop revenue is deducted from monthly Loop Cost to determine monthly Nominal Loop Support. Loop Revenue (per month) is calculated for company "j" according to the following formula:

$$\text{Loop Revenue}_j = \text{SAM-BM}_j = [(\text{Residential Benchmark})*(86\%)+\text{Adder-Adjustments}_j]*[1.15]$$

where:

- SAM-BM_j stands for "Support Allocation Methodology Benchmark" for company "j";
- 86% is used because BCPM shows that loop cost is 86% of the total cost of local service, averaged across all of Nebraska (the other portions being switching and transport);
- 1.15 represents the number of loops, or access lines, per household;
- "$\text{Adder-Adjustments}_j$" is the sum of the following three terms for company "j":
  - SLC $\text{Adder-Adjustment}_j$: Company-specific amount (most are \$6.50);
  - DSL Adder-Adjustment: \$1.60 for all companies;
  - Access $\text{Adder-Adjustment}_j$: Company-specific amount.
  -

[5] $\text{Nominal Area Support}_{ij} = (\text{Loop Cost}_i - \text{Loop Revenue}_j) \times \text{Number of Households}_i$

- If "$\text{Loop Cost}_i - \text{Loop Revenue}_j$" is less than zero, $\text{Nominal Loop Support}_{ij}$ is set to zero.

Nominal Area Support is then normalized against the annual Model Fund Size to produce an annual Support Area Allocation amount for each Support Area,

$$\text{Support Area Allocation}_i = \text{Nominal Area Support}_i \,/\, \Sigma_i (\text{Nominal Area Support}_i) \times \text{Model Fund Size}$$

has not wanted to further burden Nebraska consumers who pay both the federal USF and the NUSF surcharges.

The baseline NUSF support amounts determined by the cost and revenue modeling are subject to an earnings cap and are reduced by a "rural benchmark" adjustment mechanism. The earnings cap ensures that no carrier receives NUSF support that would cause its return on net plant investment to exceed 12 percent. The rural benchmark adjustment reflects the Commission's policy determination that a $2 per month difference between urban and rural residential local service rates is consistent with the statutory goal of "reasonably comparable" rates in urban and rural areas. Thus, carriers' NUSF is reduced by $2 per month for each out-of-town customer.

The permanent NUSF also has recognized the need for a transition for the initial years of its implementation. In the first four years of the SAM (2005-2009), transitional mechanisms were implemented to "soften" the impact of dramatically reduced NUSF support calculated by providing NUSF support via the SAM-calculated amounts to those carriers that would otherwise experience severe reductions in support.

Recognizing that the purpose of high cost universal service support is not to artificially create competition in markets in which it is economically unsustainable, the NPSC has adopted a rebuttable presumption that funding should support a single network, and that NUSF support to competitive carriers should be limited to those that lease unbundled network element loops from non-rural incumbents at cost-based prices. Nevertheless, the Commission has articulated a procedure by which facilities-based competitors can challenge this presumption by demonstrating how the public interest would be served by supporting more than one network in a given area.

NUSF-eligible carriers include two non-rural carriers that together serve about two-thirds of Nebraska's access lines, nearly 35 rural companies, most of which serve a few hundred to a few thousand lines each, and a small number of competitive carriers that lease loops from the non-rural carriers.