

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Technology Transitions Policy Task Force	)	GN Docket No. 13-5
	)	
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition	)	GN Docket No. 12-353
	)	
Connect America Fund	)	WC Docket No. 10-90

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

The National Cable & Telecommunications Association (NCTA) supports the Commission’s decision to provide funding for experiments that will bring broadband to rural areas lacking Internet access service that delivers 3 Mbps downstream and 768 kbps upstream. As explained in these comments, such a program should incorporate many of the key principles established by the Commission in connection with the Connect America Fund (CAF) – cost effectiveness, competitive and technological neutrality, and no overbuilding. These experiments only can be considered a success if they efficiently deliver new service to areas that do not have broadband today.

**INTRODUCTION**

In the *IP Transition Order and Further Notice*, the Commission took a number of steps that are intended to “kickstart the process for a diverse set of experiments and data collection initiatives that will allow the Commission and the public to evaluate how customers are affected by the historic technology transitions that are transforming our nation’s voice communications

services.”<sup>1</sup> Among these efforts, the Commission adopted a program to “test how tailored economic incentives can advance the deployment of next generation networks, both wireline and wireless, in rural, high-cost areas of the country, including Tribal lands.”<sup>2</sup> The Commission solicits comment on a variety of issues related to these rural broadband experiments, including the budget for this program and the selection criteria.

NCTA has long supported the notion of moving to a more competitively neutral regime for distributing high-cost support and we appreciate the Commission’s decision to expand the universe of potential recipients of this support beyond the incumbent local exchange carriers (LECs) that currently receive virtually all of the high-cost support distributed by the Commission. Indeed, over a year ago we proposed that the Commission adopt a similar program to the one adopted in the *IP Transition Order and Further Notice* in lieu of continuing CAF Phase I as a program available exclusively to incumbent LECs.<sup>3</sup> The overwhelming interest that already has been expressed for these rural broadband experiments confirms that cable operators and many other types of companies stand ready to provide service in these areas if appropriate funding is made available.<sup>4</sup> The Commission would have been well served had it adopted a

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<sup>1</sup> *Technology Transitions*, GN Docket No. 13-5, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, FCC 14-5 (rel. Jan. 31, 2014) (*IP Transition Order and Further Notice*) at ¶ 1.

<sup>2</sup> *Id.* at ¶ 92.

<sup>3</sup> Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 (Jan. 28, 2013) at 4-5 (“[T]he Commission should offer incremental CAF Phase I support to providers other than the incumbent LECs. To do this, 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.”).

<sup>4</sup> *See, e.g.*, Letter from Barry J. Ohlson, Cox Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 7, 2014); Letter from Alex Hoehn-Saric, Charter Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 14, 2014); Letter from Michael J. Zarilli, Suddenlink Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 14, 2014); Letter from Thomas J. Larsen, Mediacom Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 7, 2014).

competitively neutral program sooner, rather than providing incumbent LECs with exclusive access to CAF Phase I support and a right of first refusal for CAF Phase II support.

In developing this program, the Commission should not stray from the core objectives it established for the CAF program. Specifically, the Commission's primary focus should be to find a cost-effective way to bring broadband to areas of the country where it is not currently available. Under no circumstance should subsidies be provided to any area where broadband service is already being provided. The Commission also should follow through on its policy of distributing support in a competitively neutral manner by rejecting proposals from rural LECs for preferential treatment as to funding for experiments. If the Commission follows these principles, these rural broadband experiments should be successful in expanding broadband availability.

**I. A STRICT PROHIBITION ON OVERBUILDING SHOULD BE ADOPTED**

In the *CAF Order*, the Commission established a clear policy that CAF support would not be made available in areas where an unsubsidized provider already is offering broadband services.<sup>5</sup> To date the Commission has implemented this policy only in price cap areas. Specifically, it has awarded CAF support only in census blocks that are not served by an unsubsidized provider.<sup>6</sup>

In the *IP Transition Order and Further Notice*, the Commission seeks comment on two potential departures from this policy. Specifically, it asks whether a "specific numerical measure should be used to determine whether the extent of competitive overlap is de minimis" and

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<sup>5</sup> *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17229, ¶170 (2011) (*CAF Order*).

<sup>6</sup> As NCTA has explained previously, the Commission should grant the petition filed by WISPA seeking reconsideration of the definition of unsubsidized provider. *See* Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed Feb. 9, 2012) at 17-18. The Commission's current approach of only counting an entity as an unsubsidized provider if it provides both broadband and voice service (as opposed to considering whether customers in the relevant area are able to receive both services) is irrational and will result in more support than necessary being offered to incumbent LECs.

whether it should provide funding for experiments that “propose to serve partially-served census blocks, which are not eligible for the offer of model-based support to price cap carriers.”<sup>7</sup>

NCTA encourages the Commission to establish a strict prohibition against providing funding in areas where broadband service already is deployed. Anything other than a strict prohibition on overbuilding substantially increases the challenges of administering this program and distributing money in a timely fashion because there is no reliable source of data on broadband availability below the census block level. The Commission’s experience in CAF Phase I demonstrates that the National Broadband Map, which shows availability at the census block level, is accurate in most cases and that its use as the starting point for determining whether an area is served is wholly appropriate.<sup>8</sup> But if funding is awarded for areas smaller than census blocks, the map could not be used as a starting point and the Commission likely would be compelled to engage in a time-consuming challenge process for every single project that does not cover an entirely unserved census block. With respect to these experiments, it would be far more efficient for the Commission to retain its focus on bringing service to those census blocks that have no service whatsoever rather than engaging in such a complex process.

If the FCC does make any exceptions to a strict prohibition on overbuilding, they should be extremely narrowly tailored and include clear guidance regarding the evidentiary burdens that would be borne by applicants. For example, as it did in CAF Phase I, the Commission might consider providing funding to partially-served census blocks in cases where the applicant is the only entity providing service in that census block and it seeks funding for the portion of the

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<sup>7</sup> *IP Transition Order and Further Notice* at ¶¶ 219, 221.

<sup>8</sup> *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order, DA 14-32 (rel. Jan. 10, 2014) (rejecting majority of incumbent LEC challenges to areas designated as served). The CAF Phase I process also illustrates the importance of having a challenge process to resolve disputes regarding the extent of broadband deployment. NCTA supports the Commission’s proposal to incorporate such a process into the selection of these rural broadband experiments.

block that it does not serve.<sup>9</sup> In this narrow context, supporting service to only a portion of a census block is administratively feasible because the Commission still would be able to rely on the National Broadband Map (which would be used to demonstrate the absence of any other provider) as the starting point for determining whether the area qualifies for support. The Commission would, however, have to develop evidentiary requirements, such as certifications from potential customers or a list of specific locations, to ensure that the provider seeking funding is accurately reporting the number of unserved locations in that census block.

## **II. THE COMMISSION SHOULD EXPLORE ADDITIONAL WAYS TO PROVIDE FLEXIBILITY IN THE ETC DESIGNATION PROCESS**

As NCTA has explained previously, the requirement to obtain designation as an Eligible Telecommunications Carrier has the potential to operate as a barrier to competitive entry in rural areas.<sup>10</sup> Accordingly, NCTA strongly supports the Commission's decision to allow multiple parties to collaborate on projects and to permit the ETC designation process to take place after funding is awarded.<sup>11</sup>

The Commission also should consider additional steps to ensure that the ETC designation process does not become a barrier to entry for companies that are willing and able to bring broadband to unserved areas. For example, the Commission should consider clarifying the scope of issues that states may permissibly consider during the ETC designation process. NCTA previously proposed that the designating entity be limited to consideration of a limited number of questions with respect to the provision of broadband support, such as:

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<sup>9</sup> *Connect America Fund*, WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, 4651, ¶ 9 (2012).

<sup>10</sup> Letter from Steven F. Morris and Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Oct. 21, 2011) (NCTA ETC Letter).

<sup>11</sup> *IP Transition Order and Further Notice* at ¶¶ 117-22.

- 1) Will the ETC be able to provide the supported voice and broadband services, either directly or through arrangements with other providers, throughout the relevant area;
- 2) Will the ETC commit to comply with applicable obligations regarding the provision of 911 service, emergency preparedness and network outages; and
- 3) Will the ETC commit to comply with any applicable consumer protection requirements?<sup>12</sup>

For similar reasons, the Commission should consider establishing a shot clock for state decisions on any request for ETC status arising out of a rural broadband experiment. A shot clock would ensure that state commissions do not delay the achievement of federal objectives that are supported by federal funding. NCTA previously proposed a 30-day period for review by state regulatory commissions,<sup>13</sup> which should be sufficient given the narrow scope of review that is warranted in the context of these rural broadband experiments.

The Commission also should forbear from the requirement that an ETC provide service throughout the service area of the incumbent LEC. As noted in the *IP Transition Order and Further Notice*, the Commission previously granted forbearance from this requirement in connection with Phase I of the Mobility Fund.<sup>14</sup> Forbearance is warranted here because the Commission has established a specific geographic metric for these experiments (census blocks

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<sup>12</sup> NCTA ETC Letter at 3.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *IP Transition Order and Further Notice* at ¶ 133.

rather than study areas) and because grant of support to a competitive ETC for an experiment will not have any effect on the amount of support received by the incumbent LEC.<sup>15</sup>

### **III. THERE SHOULD BE NO PREFERENCES FOR RLECs**

As a result of the changes adopted in the *CAF Order*, the distribution of high-cost support in areas served by rural LECs currently is less competitively neutral than it had been before reform. Previously, Competitive Eligible Telecommunications Carriers (CETCs) could receive support in areas served by rural LECs. The current regime, however, phases out support to CETCs and only allows the incumbent rural LEC to receive support.<sup>16</sup>

Given that the current rules provide support exclusively to rural LECs, there is no basis whatsoever for giving these same companies preferential treatment in the context of the rural broadband experiments. In particular, the Commission should reject the proposals advanced by NTCA to provide rural LECs with a preferential window for filing applications and an opportunity to match proposals submitted by any other party.<sup>17</sup> As suggested by the Commission, the additional time and complexity that NTCA's proposals would add to the process of distributing this support should be a significant concern.<sup>18</sup> More importantly, in light of the overwhelming level of interest among providers that are not incumbent LECs, there simply is no basis for providing rural LECs with additional advantages above and beyond their exclusive access to all legacy support in their service areas.

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<sup>15</sup> *Id.* at ¶¶ 135, 209.

<sup>16</sup> *CAF Order*, 26 FCC Rcd at 17830, ¶ 513 (phasing out support to CETCs over five years).

<sup>17</sup> *IP Transition Order and Further Notice* at ¶ 207.

<sup>18</sup> *Id.*

#### IV. THE SELECTION CRITERIA SHOULD EMPHASIZE COST EFFECTIVENESS

The *IP Transition Order and Further Notice* solicits comment on how the Commission should select the proposed experiments that will receive funding.<sup>19</sup> Given the Commission's interest in distributing this funding before it offers price cap carriers a right of first refusal for CAF Phase II support, the selection process should be simple both for applicants and the Commission.

NCTA agrees with the Commission's proposal that "cost effectiveness should be the primary consideration in evaluating which applications to select for the experiment."<sup>20</sup> Specifically, NCTA suggests that the primary factor involved in selecting projects should be the subsidized cost-per-unserved location. Millions of Americans still do not have access to broadband and the Commission should prioritize those projects that will reduce that number in the most cost effective manner possible.<sup>21</sup> Using subsidized cost-per-unserved location as the primary metric will encourage applicants to seek only what they absolutely need and to be aggressive about using private capital or alternative sources of government funding. The Commission could give additional weight to proposals that include the delivery of broadband to schools and other community anchor institutions that currently are unserved.

The Commission asks about a variety of additional factors, such as "the extent to which the applicant proposes to build robust, scalable networks."<sup>22</sup> The Commission must recognize

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<sup>19</sup> *Id.* at ¶¶ 211-18.

<sup>20</sup> *Id.* at ¶ 213. The Commission should consider the basic financial and technical qualifications of all applicants to ensure that proposed projects are economically and technically feasible and sustainable.

<sup>21</sup> In August 2012, in the Eighth Broadband Progress Report, the Commission reported that 19 million Americans did not have access to terrestrial broadband service. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, GN Docket No. 11-121, Eighth Broadband Progress Report. 27 FCC Rcd 10342, 10344, ¶ 1 (2012). It is unclear where that figure stands today because the Commission has yet to issue the Ninth Broadband Progress Report, notwithstanding a congressional deadline to do so by February 2013.

<sup>22</sup> *Id.* at ¶ 214.

that there may be tradeoffs involved in prioritizing applications based on the broadband speed they would deliver. While there seems to be significant interest in experiments that involve deployment of fiber, the Commission staff previously found that fiber has the “highest lifetime cost” of any technology for an unserved area.<sup>23</sup> Consequently, providing funding for a fiber project rather than a wireless project in the same area generally will require a larger subsidy, thereby reducing the support that will be available for other areas.<sup>24</sup>

Another factor identified by the Commission is whether an applicant will be able to “leverage non-federal government sources of funding” for its project. If the Commission relies on cost-effectiveness as its primary consideration, there is no need to explicitly consider additional funding sources because the availability of such funding should reduce the need for federal support and thereby reduce the subsidized cost-per-unserved location. If the Commission does explicitly consider additional funding sources, it should look only at state and local funding, not additional federal funding sources. In particular, the Commission should not give any preference based on the fact that a company has received loans from the Rural Utilities Service. Such loans are not “additional” funding because they typically depend on other subsidies, particularly federal high-cost support, to be paid back.

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<sup>23</sup> *The Broadband Availability Gap*, OBI Technical Paper No. 1 at 94 (April 2010).

<sup>24</sup> As noted previously, however, the primary selection criterion should be cost effectiveness, not what type of technology an applicant proposes to deploy. Thus, even if it is the most expensive technology to deploy, a fiber network may require a smaller subsidy than other technologies if the operator is able to obtain other sources of funding.

## **CONCLUSION**

The strong initial reaction to the Commission's offer of support for rural broadband experiments confirms NCTA's position that competitively and technologically neutral support mechanisms are far superior to programs that provide preferential or exclusive access to incumbent LECs. The Commission should follow through with this program expeditiously, but should do so in a manner that efficiently directs support to areas that have no broadband service.

Respectfully submitted,

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