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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

The Rural Independent Competitive Alliance ("RICA") files its comments on the Further Notice of Proposed Rulemaking in this proceeding with respect to rules for implementation of Rural Broadband Experiments.[1] RICA is a national association of rural Competitive Local Exchange Carriers ("CLECs") affiliated with rural ILECs that have brought universal services and advanced network connectivity to high-speed broadband to rural areas that were unserved and under-served by their incumbent LEC.

I Introduction and Summary

RICA has actively participated in the major Commission proceedings over the last fourteen years with respect to Universal Service and Intercarrier Compensation, as well as other issues. Rural CLECs have demonstrated their commitment to deployment of broadband service

[1] Report and Order and Further Notice of Proposed Rulemaking, WC Doc. No. 10-90, FCC 14-5, released January 14, 2014, 79 Fed. Reg. 11327, Feb. 28, 2014. ("Order" or "FNPRM").

in areas where incumbents would not.[2] Despite the rural CLECs' demonstrated ability to bring broadband services to areas neglected by the large ILECs, the Commission's Transformation Order[3] adopted rules that effectively preclude most further or additional expansion into high cost rural ILEC territories by excluding rural CLECs from CAF Phase I support, by giving the Price Cap carriers a Right of First Refusal for five years for CAF Phase II support, and by eliminating intercarrier compensation revenues necessary for financial feasibility.[4]

RICA members therefore appreciate the modest apparent change of course represented by the Order and FNPRM which may lead to at least a possibility that some rural CLECs will be able to demonstrate their ability to provide broadband service in high cost rural areas with an appropriate amount of support. Under the *Transformation Order*, the Commission had effectively foreclosed even consideration of the possibility that a rural CLEC could provide service more economically and efficiently than the incumbent Price Cap carrier. Several RICA members and/or their parent ILECs have filed Expressions of Interest to utilize USF support to provide high speed broadband connectivity to unserved areas.[5]

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[2] *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to Be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2),* Report and Order, 21 FCC Rcd 11506 (2006), para. 12 ("Mid-Rivers serves between 85 and 93 percent of the access lines in the Terry exchange….The Mid-Rivers facilities in Terry appear to be technically superior to those of Qwest. Mid-Rivers also appears to provide maintenance and repair operations that are located much closer…."); *Petition of South Slope Cooperative Telephone Company For an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act Declaring that South Slope Cooperative Telephone Company Shall Be Treated as an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon,* Notice of Proposed Rulemaking, 23 FCC Rcd 15046 (2008).

[3] *Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*Transformation Order")*

[4] RICA is a petitioner in the proceeding before the 10th Circuit Court of Appeals seeking reversal of the *Transformation Order*, *In re FCC 11-190,* 11-9900 (10th Cir.).

[5] *See,* Rural Broadband Experiment Expressions of Interest, Doc 326292A1, released March 27, 2014.

For the "experiments" proposed to have any realistic expectation of demonstrating the feasibility of successful provision of service, several revisions to the stated approach are required. First, limiting support to that determined by the model developed for Price Cap carriers will reduce the value of the "experiments." Because the as yet unfinished model was designed for use by Price Cap carriers, it is likely to incorrectly predict the cost of building and operating "robust, scalable" networks by small entities in many high cost rural areas. The Commission should be open to proposals that do not depend on the model both because it will be more likely to receive proposals to serve higher cost areas, and because evaluation of those proposals would provide the Commission with one means of validating its model.[6]

Second, because the preparation of a realistic and detailed proposal will be quite expensive and the maximum suggested "budget" of $100 million for the experiments is so small in comparison to the evident demand, a large number of applicants will end up with nothing to show for their expenditure. Third, the proposal to limit support to a one-time payment or at most 10 years of recurring payments fails to recognize that in order to provide reasonably comparable services and rates to consumers in high cost to serve areas, providers require not only one-time or 10 year installment support for initial capital expenses, but ongoing support for operating expenses. Operating expenses in rural areas are often higher than in urban areas for a number of reasons related to the weather, terrain and population density.

The proposal also fails to recognize that because technology is changing rapidly and the Commission may increase the performance requirements during that period, substantial additional capital requirements will exist. Finally, the Order and NPRM fail to recognize that much of the information sought to be learned has already been determined by RUS and, to a

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[6] Models can only be validated by comparing the model's predictions with a representative sample of actual results.

lesser extent, NTIA. The consideration of the final rules should, at minimum, consider the benefits of coordination with the RUS implementation of broadband telecommunications services provisions of the Agricultural Act of 2014.[7]

II COMMENTS ON OBJECTIVES OF EXPERIMENTS

In the Order the Commission explained that the purpose of the experiments to be funded by currently unallocated CAF funds is to provide information relevant to four sets of interrelated questions.[8] The following comments on the four sets of questions provide context for RICA's response to the FNPRM.

1. *Is the assumption valid that some areas cannot be served with high-capacity fiber-based services without some level of governmental support? Are non-incumbent providers interested in deploying high-speed IP-based networks with assistance from the CAF?*

The assumption that support is required in some areas has been well documented over many years and doesn't need further experimentation. It is well documented that in low-density, high cost areas, subscriber revenues at rates that are reasonably comparable to urban rates do not produce sufficient revenue to recover the operating expenses and a reasonable return on investment. RICA has also explained over many years that its members are interested in utilizing an "edge-out" strategy to respond to the unmet demands of Price Cap company subscribers for voice and broadband services comparable to those available in urban areas. The absence of any, much less sufficient, Universal Service Support in most such areas has greatly limited the ability of rural CLECs to meet such demand.

2. *What are the characteristics of areas where wireless service can be offered at reasonably comparable rate with characteristics that residential customers would find to be an acceptable substitute for fiber-based broadband service?*

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[7] Agriculture Act of 2014, P.L. 113-79, Secs. 6104, 6105 (revising existing broadband loan program, creating Rural Gigabit Network Pilot Program. *See,* Statement of Commissioner O'Rielly, March 6, 2014.

[8] Order, para. 94.

Many RICA members have deployed wireless services to provide both fixed and mobile services. While only wireless can provide mobility, it is generally used as a substitute for fiber-based services where financial or topographical circumstances make fiber financially unfeasible. Ultimately, demand for services such as streaming video will exceed the capacity of wireless systems. Nevertheless, some fixed wireless deployments may be able to deliver robust connectivity in very rural areas with low population density and proposals using such technology should, therefore, be eligible, to support. Ultimately, the cost of deploying such services on a truly universal basis may not be any more financially feasible than a fiber deployment, especially in areas lacking existing tower site and backhaul facilities that can be leveraged.

3. *How does participation of anchor institutions affect the business case for next generation networks?*

In the areas served by rural telephone companies, including RICA members, large volume users are usually non-existent, with the exception of schools, libraries, medical facilities, and local government. Often these institutions are centrally located in the service area. Not only does their demand increase the feasibility of serving a wider area, but by utilizing advanced communications services to increase their own efficiency, these institutions enhance the economic welfare of the entire area, enabling residential customers to be better able to afford service. Rural providers thus have every incentive to meet the demands of anchor institutions, and neither experiment nor coercion is required.

While community anchor institutions are important to viability the not every small town and/or census tract has one or more and that fact should not reduce the merits of the application. Nor does the presence of an anchor institution automatically make a project feasible. Finally,

the lack of such institutions increases the need for the area residents to have high speed access at home where, for example, they can't go into town and visit the library.

4. *How can non-federal governmental bodies contribute?*

A few states have universal service funds that might improve the business case for deployment, however this support is not widely available. Local government permitting and right of way procedures can significantly affect the costs and speed of deployment. In addition, there are multiple public entities in rural states that require an increasing level of broadband connectivity for public safety communications, rural healthcare, education and research, and other public purposes. The Commission's rules should encourage leveraging the networks and operational resources available from existing providers, and working with providers to build new facilities where they are needed, rather than building and attempting to operate their own separate networks. Building multiple broadband networks in rural high cost areas will result in all of the networks being insufficient and unsustainable. All Federal and state government funding mechanisms available to these public entities should be structured to encourage and require such public/private network partnerships.

III RESPONSE TO SPECIC QUESTIONS IN THE FNPRM

1. *How much support should be available?* (para 204)

The level of interest already expressed indicates that as a minimum, all of the available funds should be included in the "budget" for the experiments. Networks designed to be "robust and scalable" do not have the lowest initial cost to meet minimum performance requirements. Even scalable networks will require substantial additional capital investments to meet changing technology and demand as well as potential increases in the Commission's performance standards.

2. *Should rural ILECs have a Right of First Refusal?* (Para. 208)

RICA opposed giving Price Cap carriers a RoFR prior to the *Transformation Order*, and has asked the 10th Circuit to reverse the Commission's decision. The relevant facts and circumstances of in Rate of Return service areas are materially different, however, and RICA takes no position on this proposal. The material differences are that rural rate of return carriers generally provide excellent modern service and Section 214(e)(5) limits, at least initially, the ability of any competitor to obtain ETC status in a portion of the study area of a rural telephone company. 6 As RICA has repeatedly explained, a financially successful competitive operation to serve all subscribers in a rural area is only possible where a substantial majority of subscribers are so dissatisfied with the level of service their incumbent provides that a competitor offering better service can quickly gain very substantial market share.[9]

That situation has rarely occurred in the rural areas served by small rate of return carriers for a number of reasons, chief among them is that being locally owned and controlled their focus is on serving their communities with the best service financially feasible, and not on their quarterly earnings reports to Wall Street. In addition, their service is superior to large companies' as a result of the technical and financial guidance provided by the Rural Utilities Service.

3. *Should cost effectiveness be the primary criterion for evaluation of proposals?* (para. 213)
Should the second evaluation criterion be whether the proposal is for a "robust, scalable" network that will be able to offer an evolving level of service? (para. 214)

While multiple criteria are needed to evaluate and compare proposals, it is really not possible to establish one or the other as first or controlling. All relevant questions should be

[9] *See, e.g.,* RICA Comments, WC Doc. 05-337, June 2, 2008 at 4.

considered, but, as Einstein pointed out, the most important aspect of solving a problem is asking the right questions. Thus, if cost per subscriber or some similar measure is defined as the controlling factor, the Commission will not learn from the experiments how best to serve more difficult high cost areas and the citizens in the more difficult to serve areas will remain without high-speed broadband. If lowest initial cost is a controlling factor a perverse incentive to design without robustness or scalability will be created because those characteristics impose additional capital cost. Therefore, even when considering cost effectiveness as one of several criteria, such consideration should not equate proposals with materially different performance, robustness or scalability through a simple cost per subscriber metric.

Robustness and scalability are highly relevant criteria. Consistent with the statement above, nothing will be learned about the economics of service to high cost rural areas by providing funding for facilities that barely meet current performance standards at the time they are turned on, but quickly fail or become obsolete. Not only is nothing useful learned other than how not to fund rural facilities, but the funds will be wasted and much more required to eventually replace such minimalist facilities.

3. *Should leverage of non-federal funds be an evaluation criterion?* (para. 215)

The concept that applicants leveraging other funds make more available to others makes sense on its face, and is the reason RICA urges the Commission to coordinate with the RUS. However, because the Order and FNPRM apparently contemplate that a small, finite amount of funding will be available in what will be, in effect, a nationwide competition, applicants with superior proposals but, have no access to non-federal funds will be at significant disadvantage.

6. *Service to Tribal Lands as evaluation criterion?* (para. 216)

As with the consideration of the use of non-federal funds, the objective is commendable, however providers seeking to expand broadband service through "edge-out" of their existing facilities should not be penalized in evaluation where there are no Tribal Lands in the proximity of their service area.

7. *How should technical and financial qualifications be evaluated?* (para. 217)

The Rural Utilities Service performs such evaluations every day and has been for over 60 years. The Commission should consult with RUS and adopt its criteria as appropriate. Although new entrants should not be discouraged, the Commission should recognize that entities with demonstrated technical ability, financial soundness and experience serving the area may be more likely to successfully implement proposals that are funded.

8. *Should geographical and technological diversity be considered in addition to evaluation scores?* (para. 217)

Geography is relevant to selecting proposals for experiments to the extent that applicants propose to demonstrate their ability to serve areas with more difficult terrain and/or demographic factors, but superior applicants should not be rejected merely because their proposal is in the same region of the country as another selectee. If applicants are not to be judged on their own merits, entities will be discouraged from investing the resources in preparing applications.

9. *Should applicants be required to offer discount to low-income subscribers, those on Tribal Lands, etc.* (para. 222)

Applicants should be encouraged to maximize acceptance rates in their proposals through appropriate discounts consistent with existing programs, however the amount of support made available should recognize and adjust for the resulting reductions in subscriber revenues.

10. *Should state failure to act on ETC applications in 60 days create a presumption the state lacks jurisdiction?* (para. 222)

No, the concept of jurisdiction embodied in Section 214(e)(6) is based on federal and state statutes and is not subject to being overridden by Commission rule. Should the Commission attempt to deprive a state of jurisdiction it plainly has been given by its legislature, the inevitable result would be extended and expensive litigation that would in turn delay or deny potential service improvements.

III CONCLUSIONS AND RECOMMENDATIONS

RICA recommended early in Doc. 10-90 that the Commission adopt a comparative process for allocating universal service funds in areas where there were multiple applicants, and therefore supports experiments by the Commission in the use of such methodology. In addition to parties' comments, the Commission should look carefully at the experience of RUS and NTIA is awarding ARRA grants for broadband, and the practices of RUS in providing its other available funding, including the new program authorized by the 2014 Farm Bill. Properly constructed, such experiments can be expected to demonstrate that competitive small entities are both capable and motivated to provide high-speed broadband service in rural areas where appropriate support is available.

Respectfully submitted

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