

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

In the Matter of)	
)	
Technology Transitions)	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
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
Numbering Policies for Modern Communications)	WC Docket No. 13-97
)	
)	

COMMENTS OF THE UTILITIES TELECOM COUNCIL

Pursuant to Section 1.405 of the Commission’s Rules, the Utilities Telecom Council (“UTC”) hereby files its comments in response to the Commission’s Further Notice of Proposed Rulemaking in the above-referenced proceeding.¹ At the outset, UTC would like to thank the Commission for inviting interested parties to file expressions of interest to provide broadband to rural unserved areas around the country. UTC would also like to thank the Commission for reducing barriers to entry for utilities and other interested stakeholders to provide broadband services to rural unserved areas. The landmark provisions of the Report and Order will promote broadband access and competition in unserved and underserved areas, and will ensure that rural Americans are not left behind, as networks transition to new technologies and IP-based platforms.²

¹ *Technology Transitions*, et al., GN Docket No. 13-5 et al., 79 Fed. Reg. 11366, 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 (rel. Jan. 31, 2014) (hereinafter “Report and Order” and “Further NPRM”).

² See Report and Order at ¶88 (observing that the poverty gap between metro and nonmetro areas had widened from

Of the over 1000 total expressions of interest that were filed on the record, electric utilities and their partners have submitted over 200 expressions of interest on the record, which request approximately \$3.8 billion in CAF support towards a total estimated investment of over \$4.38 billion for rural broadband deployments across thirty-five states. Moreover, these expressions of interest submitted by utilities generally propose to provide broadband services that exceed the minimum benchmark of 4 megabits per second download and 1 megabit per second upload speeds to millions of customers, including in many cases, anchor institutions and business and residential customers in tribal areas. UTC believes that the widespread interest of utilities on the record amply demonstrates to the Commission “what providers would be willing to offer what type of service in price cap areas in the event that a current incumbent ETC chooses not to participate in Connect America Phase II.”³

I. Introduction and Background

Founded in 1948, UTC is the international trade association for the telecommunications and information technology interests of electric, gas and water utilities, pipeline companies and other critical infrastructure industries. UTC’s members include large investor-owned utilities that may serve millions of customers across multiple states, as well as smaller rural electric cooperative utilities and municipal utilities that may serve only a few thousand customers in remote areas and isolated communities across the country. All of these members own, manage and control extensive communications networks that they use to support their core energy and water services and in many cases to provide commercial communications to areas that are unserved and underserved by broadband.

Last year, UTC created the Rural Broadband Council to support the growing number of utilities that are interested or are actively providing commercial broadband services to their customers. Since then, UTC and the RBC have worked with the FCC to promote opportunities to access federal funds for

2.4 percentage points in 2011 to 3.2 percentage points in 2012, such that 17.7 percent of the population, or about 8.5 million people, living in nonmetropolitan (nonmetro) areas were poor as compared to a poverty rate of 14.5 percent in metro areas.) *See also Id.* at ¶89 (observing that these circumstances are exacerbated in Tribal areas, such that the percentage of individual Americans living in Tribal areas that lack broadband access is five times the national average, and in rural areas, eight times the national average.)

³ *Id.* at ¶92.

utilities and other critical infrastructure industries to provide broadband services to rural America. UTC and the RBC have been active participants throughout this proceeding, filing comments and meeting with the Commission on numerous occasions. UTC and the RBC appreciate the support that the Commission has provided to utilities, culminating in the current rural broadband experiments that are the subject of the Further Notice of Proposed Rulemaking, and which support was more recently reinforced by Chairman Wheeler's strong statement in support of municipal broadband, including broadband by municipal utilities.⁴ Therefore, UTC is pleased to provide the following comments in response to the Further NPRM.⁵

II. Budget for Rural Broadband Experiments

In the Further NPRM, the Commission invites comment on its proposal to fund rural broadband experiments out of unallocated funds from the Connect America Fund.⁶ Specifically, the Commission proposes that “a limited amount of these unallocated funds be made available for experiments in any part of the country, whether served by an incumbent price cap carrier or rate-of-return carrier.”⁷ Furthermore, the Commission asks whether it should “make available \$50 or \$100 million or some other amount in total support for experiments... [or whether it should] allocate a lesser or greater amount?”⁸ In addition, it asks whether it should “specifically allocate a separate amount for non-recurring support to be awarded on a competitive basis, in addition to recurring support, or merely a total amount that can be used in a variety of ways, depending on the applications received?”⁹ Finally, it asks whether it should “allocate a portion

⁴ Statement by FCC Chairman Tom Wheeler on the FCC's Open Internet Rules, February 19, 2014 at <http://www.fcc.gov/document/statement-fcc-chairman-tom-wheeler-fccs-open-internet-rules> (last visited on Mar. 31, 2014).

⁵ Further NPRM at ¶¶202-230.

⁶ *Id.* at ¶203 (explaining that CAF funds have accumulated in the reserve account and that a limited amount of funding could be awarded for experiments in 2014 from the reserve account without exceeding the overall \$4.5 billion annual budget for the Connect America Fund).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

of the funds for Phase II experiments in price cap areas, and a separate amount for areas outside of price cap territories?”¹⁰

UTC believes that the Commission should allocate sufficient funds from CAF to provide to support the rural broadband experiments that are likely to be proposed, based upon the expressions of interest that were submitted on the record in this proceeding. While not all of these expressions of interest may lead to the submission of formal proposal for rural broadband experiments, the number of expressions of interest and the amount of funding requested therein is likely to exceed the \$50-100 million that the Commission has suggested to allocate. While the Commission “intend[s] to provide funding for experiments to extend modern networks in rural, high-cost areas *without increasing the overall size of the universal service fund*,” UTC urges the Commission to find creative ways to increase the budget for the rural broadband experiments, so that more funding is made available than \$50-100 million. For example, the Commission could draw funds from other programs within the universal service fund in addition to the Connect America Fund. In addition, the Commission could make separate funds available for projects that propose up-front non-recurring support, rather than for ongoing recurring support.

III. Selective Criteria for Rural Broadband Experiments

In its Further NPRM, the Commission seeks comment on potential selective factors and asks commenters to address how it might implement these selective factors as part of its objective process for selecting experiments.¹¹ In that regard, the Commission proposes that cost effectiveness should be the primary criteria in evaluating which applications to select for the experiment.¹² It also proposes that a second potential selective criteria is the extent to which the applicant proposes to build robust, scalable

¹⁰ *Id.*

¹¹ *Id.* at ¶212.

¹² *Id.* at ¶213.

networks¹³ It also proposes that a third potential criteria could be the extent to which applicants propose innovative strategies to leverage non-Federal governmental sources of funding, such as State, local, or Tribal government funding.¹⁴ Finally, it proposes that a fourth potential criteria could be whether applicants propose to offer high-capacity connectivity to Tribal lands.¹⁵ Overall, when evaluating proposals using these selective criteria, the Commission asks whether the scoring system should include subjective consideration of the financial and technical qualifications of the applicant to provide the Commission with additional flexibility to deviate from the scoring system in order to achieve diversity of projects, both in terms of geography and types of technologies.¹⁶

As described more fully below, UTC supports the selection criteria that were proposed by the Commission as part of the NPRM. Specifically, UTC agrees that proposals should be cost effective, robust, scalable, and leverage other funding. Utilities are already located in the rural communities that they propose to serve, and are uniquely positioned to provide the kind of cost-effective, robust and scalable networks that Americans in rural areas expect and deserve. A cursory review of the expressions of interest that were filed on the record will show that utilities are planning to offer multimegabit broadband services using networks that are robust and scalable. Moreover, by leveraging their extensive infrastructure and other resources, utilities can also provide services that are cost effective and affordable. Finally, utilities are committed to providing broadband to the customers in their service areas, and they are technically, financially and operationally qualified to do so.

UTC believes that the weighting of the selection criteria is important, because cost-effectiveness must be measured against the speeds that are being offered. In that regard, UTC supports giving greater weight to proposals that would provide services that exceed the minimum broadband speeds of four

¹³ *Id.* at ¶214.

¹⁴ *Id.* at ¶215.

¹⁵ *Id.* at ¶216.

¹⁶ *Id.* at ¶217.

megabits per second download and one megabit per second upload (4 mbps/1 mbps), as defined under the existing CAF rules. UTC believes that providing broadband services that exceed 4 mbps/1 mbps download and upload speeds is necessary to meet customer expectations and promote economic growth in rural America. As such, it is important that the Commission's selection criteria consider both the speeds of service, as well as the cost of deployment, and that greater weight be placed on proposals that exceed the minimum broadband speeds when the Commission makes its determination of CAF funding for the rural broadband experiments. To the extent that proposals would provide services to anchor institutions, such as schools and libraries, as well as serving tribal areas, the Commission should also give substantial weight for those criteria, as well.

In order to apply these criteria, the Commission also asks for comment on what information it may be useful to include in the formal proposals for rural broadband experiments.¹⁷ UTC supports the following information requirements to be included in proposals:

- the number of proposed residential and small business locations to be served within eligible census blocks in the relevant census tract;
- the number of health care providers, schools and libraries that are physically located within the eligible census blocks;
- whether the proposal includes the provision of service on Tribal lands and, if so, identification of the Tribal lands to be served;
- the planned service offerings that would be offered to residential and small businesses, and such anchor institutions, with details regarding the proposed speeds, latencies, usage allowance (if any), and pricing of such offerings;
- whether the services offered to residential consumers would be sufficiently robust to utilize advanced educational and health care applications; when such services would be available to consumers, businesses and such anchor institutions (the planned deployment schedule);
- whether the infrastructure can be upgraded later to offer greater throughput (i.e., speeds) and more capacity for each user at a given price point;
- how network speeds and other characteristics can be measured; whether any discounted services would be offered to specific populations, such as low-income households or customers on Tribal lands;
- proposed strategies for demand aggregation;
- proposed strategies for addressing barriers to adoption_(e.g., whether the applicant proposes to offer digital literacy training or equipment to subscribers);
- whether and how other service providers can use the facilities constructed;

¹⁷ *Id.* at ¶219.

- availability and cost of backhaul and other assets required for project success;
- whether constraints in middle-mile connectivity may limit the services offered;
- whether the applicant plans to rely in part on financing from non-federal governmental institutions (e.g., State, regional, Tribal, or local funding; State universal service fund; private foundations);
- whether the applicant expects to have access to resources that will contribute to project success, such as in-kind contributions, access to cell towers, poles and rights of way, expedited permitting, or existing authorizations;
- information regarding the proposed network to be deployed and the technologies to be utilized (e.g., wireline, fixed wireless, or mobile wireless);
- how the applicant proposes to offer voice telephony service to customers at rates reasonably comparable to rates charged for similar services in urban areas; and
- the amount of Connect America support requested (total and per location) and the time period over which funding would be provided.

UTC agrees with the Commission that this information will be useful for it to make evaluations of the proposals for rural broadband experiments. Several of these information requirements are particularly relevant to utilities. As explained above, utilities are already located in areas that are currently unserved by broadband, and they have access to extensive infrastructure (e.g. towers, poles and rights of way), as well as backhaul facilities which are necessary to provide broadband and could contribute to the success of the deployment. In addition, many utilities are looking to partner with other service providers in order to provide a suite of services, including voice, video and data services. In many cases, utilities are interested in providing broadband to their communities, because no one else will; and they are very open to partnering with others so that they can use the facilities that are constructed. As such, UTC agrees with the Commission that the proposed information requirements will be useful for evaluating the proposals for rural broadband experiments.

IV. Additional Considerations for Rural Broadband Experiments

In addition to the selection criteria and the information for the proposals as described herein, UTC also submits that the Commission should take into account the following additional considerations, as well. Specifically, the Commission should allow proposals for areas that are unserved and that are

partially served.¹⁸ In that regard, the Commission should allow for proposals to serve areas that are currently served with slower, more expensive services using older, legacy networks. The Commission should not let these slower, more expensive and outdated services stand in the way of the overriding goal of making robust, affordable and scalable broadband services available to rural areas. Otherwise, rural America could be left behind – contrary to the Commission’s fundamental goal in conducting these rural experiments. In this regard, UTC believes that the Commission could consider challenges to a partially served area that is proposed to be served by a rural broadband experiment, but that the Commission should only consider such challenges after an award is made, which would reduce the administrative burden for the Commission to consider these challenges.¹⁹

The Commission should also consider the extent to which the rural broadband experiments will advance other national policy goals. For example, the deployment of broadband may have synergistic effects in other areas, such as cybersecurity and smart grid. This is closely related to the selective criteria for leveraging other sources of funding. So, the Commission should consider the extent to which federally funded projects in one area, such as smart grid, could be advanced through the rural broadband experiments. Thus, proposals for rural broadband experiments that would advance other national policy goals would be weighted to a greater extent in the Commission’s evaluation. This would not only make more effective use of other sources of funding, but it would also make more effective use of those funds to advance multiple policy goals.

As stated above, UTC believes that the Commission should give substantial weight for proposals that would provide broadband to anchor institutions, such as schools, libraries and health care providers, as well as to residential customers and anchor institutions on tribal areas.²⁰ To the extent that proposals

¹⁸ *See Id.* at ¶221 (seeking comment on allowing applicants for funding awarded through this rural broadband experiment to propose to serve partially-served census blocks.)

¹⁹ *See Id.* (stating that “it could be valuable to examine on a limited scale, in the Phase II experiment, whether the administrative difficulties of entertaining challenges to the eligibility of partially served census blocks could be mitigated by doing such challenges only if a partially served census block is tentatively awarded funding (rather than in advance of selection)”).

²⁰ *See Id.* at ¶222 (requesting comment on placing conditions on participation, such as offering service to residents

are awarded based on their proposal to provide services to anchor institutions and tribal areas, it would be appropriate for Commission to condition the award of funding on their actual service to those anchor institutions and tribal areas. However, the Commission should refrain from imposing such requirements generally, particularly if the proposal is not in an area that has anchor institutions or is a tribal area.

UTC applauds the Commission for allowing proposals to be submitted and considered for support prior to receiving certification as an “Eligible Telecommunications Carrier” (ETC). UTC has previously requested similar regulatory relief from the Commission, and UTC believes that this will encourage utilities to submit a proposal to provide broadband to unserved areas in its service territory.²¹ As UTC previously explained, the time and expense of obtaining ETC status can be significant and daunting for a utility, particularly given the uncertainty of whether CAF funding will be awarded.²² Instead, by allowing proposals to obtain ETC status after an award is granted, the Commission will eliminate uncertainty and delays. In that regard, UTC supports the adoption of Federal rules that would “deem granted” a request for ETC status, if a State fails to act on an ETC application from a selected participant within a specified period of time, such as 60 days.²³

and anchor institutions on Tribal lands.)

²¹ Letter from Brett Kilbourne, Deputy General Counsel, Utilities Telecom Council to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, filed Dec. 9, 2013. *See also* Statement of the Utilities Telecom Council in WC Docket No. 10-90, filed Sept. 11, 2013.

²² *Id.* at 2.

²³ *See Id.* (asking if the Commission should adopt a presumption that if a State fails to act on an ETC application from a selected participant within a specified period of time, such as 60 days, the State lacks jurisdiction over the applicant, and the Commission will address the ETC application pursuant to section 214(e)(6))

V. CONCLUSION

THEREFORE, UTC thanks the Commission for the opportunity to provide its comments in response to the NPRM regarding the rural broadband experiments. The Commission has taken an important first step towards promoting rural broadband access and competition by inviting utilities and other non-traditional entities to propose rural broadband experiments in unserved and underserved areas. Utilities are uniquely positioned, qualified, and committed to providing broadband to the communities that they currently serve with essential electric, gas and water services.

Utilities see access to robust, affordable and scalable services as essential to the continued economic growth and social well-being of these communities. Thus, utilities are ready to provide broadband to those communities. As such, UTC commends the Commission for reducing regulatory barriers that would otherwise discourage utilities from providing broadband, and for providing them with the opportunity in this proceeding to access federal funding through the Connect America Fund to provide rural broadband experiments in unserved and underserved areas.

Respectfully,

A handwritten signature in cursive script that reads "Brett Kilbourne".

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