

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance (“RICA”) files its comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in the above referenced proceedings, released June 10, 2014, FCC 14-54. RICA is a national association of rural competitive local exchange carriers (“CLECs”) affiliated with incumbent local exchange carriers (“ILECs”). RICA has participated extensively in these proceedings over many years.

RICA urges the Commission to adopt rules benefiting rural consumers of voice and broadband services by facilitating the ability of CLECs to offer competitive broadband services in rural Price Cap territories where CAF support is necessary to provide reasonably comparable service at reasonably comparable rates. The 10th Circuit rejected RICA’s argument that the Commission’s decision in the *Transformation Order*¹ to give Price Cap carriers a monopoly on

¹ Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (“*Transformation Order*”); *aff’d In Re: FCC 11-161*, 753 F.3d 105 (10th Cir. 2014).

eligibility of CAF II support for five years was unlawful. RICA does not here pursue that issue further, but will focus on advocating for competitively neutral rules in areas where the Price Cap carrier does not accept the required statewide commitment and on rules applicable if it does.²

I Comments on Selected Issues Raised in NPRM

A. Increase the performance obligation to 10 Mbps downstream.

RICA agrees that 10/1 Mbps service is necessary for broadband provided in rural areas to be considered “reasonably comparable” to urban service.³ The Act also provides, however, that support should be “sufficient.”⁴ Given the apparent intention of the Commission to set the “reserve” price for areas where the Price Cap carrier declines support at the support levels of the CAF II Model,⁵ RICA has serious concerns that support will be insufficient in some areas to support that performance level or even the current level. First, the Model was apparently constructed to develop a proxy for costs of providing service at the 4/1 level, while 10/1 service in some cases may have materially more cost to construct. Second, as RICA has often commented, no model can predict the costs of smaller discrete areas with the degree of accuracy required to establish “sufficient” support (i.e. neither too little nor too much).⁶ Thus, before being used to set a reserve price, the model must both be adjusted to account for any additional expense related to any increasing performance requirement (and budget caps adjusted) and be validated as accurate for the particular area(s) in question.

² See, *Transformation Order*, para. 171; 47 C.F.R. 54.310(b).

³ 47 U.S.C. 254(b)(3). Given Verizon’s recent announcement that it’s FIOS broadband service will be symmetrical, the Commission will need to examine in the future whether substantial increases in upstream speed will be necessary to maintain rural-urban reasonable comparability. See, FNPRM para. 138.

⁴ 47 U.S.C. 254(b)(5).

⁵ FNPRM para. 227.

⁶ RICA Comments, Doc. No. 10-90, July 12, 2010, p. 18. *Alenco Communications v. FCC*, 201 F.3d 608 (5th Cir. 2000).

B. *The Five Year Term for Connect America Phase II should not be extended*

RICA opposes the proposal in the NPRM (para. 148) to allow recipients of CAF II model-based support to be able to extend their support for an additional two years. The Commission justified the monopoly grant of Universal Service Support to Price Cap carriers in part on the basis that it was a temporary measure. The 10th Circuit agreed, despite RICA's argument that in the fast changing world of telecommunications a 5 year monopoly would effectively preclude future competitive provision of service to high cost areas.⁷ Further extension of that monopoly on eligibility for support would undermine that rationale and in any event would reduce even further the possibility of competitive provision of service in high cost rural areas.

C. *Price Cap carriers should not be able to deploy to less than their total area.*

The FNPRM asks (para 165) whether in exchange for a proportionate reduction in funding Price Cap carriers should be able to deploy to less than 100% of the locations in the funded area. RICA opposes this proposal as not in the interests of Price Cap subscribers and a further degradation of any possibility of future facilities based competition. In short, such a rule would be a license to cherry pick their service areas to serve only the lower cost, higher density areas, contrary to the very objectives of the program.

D. *Sub-census block challenges should not be allowed.*

RICA agrees with the Commission's conclusion that sub-census block challenges should not be allowed. (para. 169) The administrative complexity and the risk of abuse are too great.

E. *Subsidized and unsubsidized areas with service meeting current requirements should be excluded from support.*

The Commission is correct (paras. 174,178) to revisit the requirement that for an area to

⁷ *In Re: FCC 11-161*, No. 11-9900 (10th Cir. May 23, 2014) slip op. p. 118.

be excluded from the area for which a Price Cap carrier will receive support that it be “unsubsidized.” There is no reason why a Price Cap carrier should qualify for CAF II support in an area where a rural CLEC provides facilities based service meeting the current requirements because of the happenstance that the CLEC receives USF support under the prior Identical Support rule. RICA noted in reply comments filed in response to a petition for reconsideration of the *Transformation Order* that the use of “unsubsidized” as a qualification has never been logical in this context.⁸ While those comments were in the context of Price Cap carrier’s obligations for the use of frozen support, the same reasoning should apply to any instance where support would be provided to compete with existing service meeting the Commission’s requirements. With regard to the later, this approach should be followed whether or not the downstream benchmark is increased to 10 Mbps.

E. *Only those Price Cap areas fully meeting the existing requirements and subject to a binding commitment to offer service to all locations should be excluded from areas subject to competitive bidding.*

The principle that scarce CAF funds not be used to overbuild existing adequate service necessarily applies in both directions, but Price Cap carriers must not be allowed to both avoid state level commitments and exclude potential competitors from possible support in areas that have existing adequate service throughout but are not subject to any meaningful obligation to continue such service for at least five years. RICA thus supports the proposal in paragraph 177 of the FNPRN.

F. *Areas for which a formal experiment proposal is filed should not be excluded from a Price Cap carrier’s statewide commitment until the Commission accepts or rejects the proposal.*

Areas for which the Commission agrees to provide support under the Experiments program could conditionally be excluded from a Price Cap carrier’s state-level commitment

⁸ RICA Reply Comments, WC Doc. No. 10-90, et al., Feb. 2, 2012.

obligation, but such exclusion should not become permanent until such time as there is reasonable assurance that service is actually being provided. The Commission's intention is apparently to coordinate the timing of the CAF II commitments and the filing and acceptance of formal Experiment proposals. However, given the substantial risk that the two programs' schedules will not mesh combined with the risk that accepted proposals may nevertheless not successfully commence service, Price Cap carriers should accept the risk that their commitment obligation may eventually include the Experiment areas. At the same time, no entity is likely to file a formal Experiment proposal for an area included in a state-wide commitment already accepted by a Price Cap carrier. Thus the filing of formal proposals should suspend, but not eliminate the obligation.

With respect to the question of what performance should be required from an Experiment to remove the area from the obligation of the Price Cap carrier (para. 221), the performance and other obligations should be equal to or exceed that of the Price Cap carrier's obligation.

- G. *At a minimum, auction participants should be allowed to show that the Connect America Cost Model should not be the basis for the reserve price for a given area.*

The FNPRM proposes to use the CAF II model support levels as the reserve price for competitive bidding in areas where the Price Cap carrier has declined the state-wide commitment. (para. 227) As RICA has repeatedly explained, a large carrier may find that model based support is sufficient to support service over a large number of exchanges because the individual errors in the model average out.⁹ However, for smaller entities considering bidding on individual geographic areas, the model's cost prediction and thus support allowance may be so far off that a bid at or below the reserve price would not be financially feasible. In such

⁹ RICA Comments, WC Doc. 10-90, Jul 12, 2010, p. 18.

instances, the residents and businesses in the area will not get broadband service from either the Price Cap carrier or a competitor. Therefore, where the support needed to provide broadband service to a specific area meeting the Commission's requirements and prices reasonably comparable to urban prices can be shown to exceed the support established by the CAF model, carriers should be permitted to bid at that support level.

H. *The total for accepted bids should not be limited to amounts remaining after the state-level election process.*

The FNPRM proposes (para. 229) that the total of support for accepted competitive bids will not exceed the amount left over after the Price Cap carriers have elected whether or not to accept a state-wide commitment using model based support. RICA recognizes that this approach is consistent with the Commission's prior conclusions regarding budgeting of Universal Service Support, but those conclusions are fundamentally inconsistent with the statutory terms and the purpose of the 1996 Act. The Commission's approach to whether or not support will be sufficient is driven by its decision not to increase the contribution burden on interstate voice service end-users and by the implicit assumption that the total amount of support proposed by the CAF II model is sufficient (within the meaning of Sec. 254(b)(5)) to ensure service will be provided throughout the territory of Price Cap ILECs. Continued adherence to these erroneous conclusions will necessarily result in a lack of broadband service in many rural areas, contrary to the objectives of the Act.

The *Transformation Order's* shift of the focus of universal service support from voice to broadband necessarily required corresponding revisions in the current contribution rules, but the

Commission has so far failed to take the necessary steps.¹⁰ As then Commissioner Copps stated succinctly:

There is inherent inequity in a system that funds the deployment of broadband off of assessments on interstate telephony. Once we ensure that double, triple and quadruple play services that benefit from Universal Service bear their fair share, we will not be subject to the unnecessary financial constraints that our current approach imposes.¹¹

Commissioner McDowell agreed, stating:

Equally important is the need to reform the contribution methodology, or how we are going to pay for all of this?¹²

The Commission has made major changes in the way Universal Service Support is distributed; it should now recognize the reality that ubiquitous broadband deployment cannot be achieved by funding based solely on the declining revenues of interstate end-user voice customers. There is no legitimate reason to use the “budget” as the excuse for refusing to provide sufficient support for service in areas the Price Cap carriers decline to serve when the Commission has yet to reform the contribution side of the account. It is time to recognize that broadband subscribers should be contributing to support broadband deployment.

I. Priority should be given to bids to serve areas with the most need as measured by levels of existing service, not to those that most exceed the Commission’s service standards.¹³

A fundamental flaw in the approach of the NPRM is the value judgment that priority should be given to bids proposing service that substantially exceeds the Commission’s service

¹⁰ The Commission today made public an Order requesting the Federal-State Joint Board on Universal Service to provide recommendations by April 7, 2015 on how the contribution methodology should be modified. FCC 14-116, released Aug. 7, 2014. It thus appears any final action is at least a year away.

¹¹ *Transformation Order* at p. 750 (Statement of Comm’r Copps).

¹² *Transformation Order* at p. 753 (Statement of Comm’r McDowell).

¹³ RICA recognizes that even with a broader base, there will still be a limit on how much contribution revenue can be obtained and that any distribution mechanism must include some recognition of this limit.

standards. (paras. 231,233) All things being equally this approach might be reasonable, but all things are not equal. Some areas today have no high speed internet access at all, others have only DSL.¹⁴ Bringing those areas up to the existing service standards is a more important public interest objective than getting to even higher speeds in others. Improving the experience of subscribers that already have the ability to interact with most websites and receiving streaming video provides less public benefit than bringing that capacity to those subscribers that do not have it today. Bids for unserved and severely underserved areas should, of course, utilize network designs that are scalable, but most fiber based systems can be expected to be so engineered.

RICA and others have long criticized using auctions to award universal service support on the basis that auction winners are the entities that bid too much (i.e. too little support) and therefore must cut corners on facilities and services in a way that both disserves consumers and ultimately leads to higher long term cost. The *Transformation Order* nevertheless chose to conduct auctions of the support for areas where the Price Cap ILEC did not make a state wide commitment.¹⁵

That choice having been made, the FNPRM now asks (para 233) how to avoid competition for the minimally acceptable level of service. The answer must be that the minimal service level must be comprehensively defined to ensure that service is at a level that is reasonably comparable to urban service. The short answer to the question how to “determine who is awarded support?” is to make the process resemble more closely the competitive bidding

¹⁴ One recent estimate stated 32% of broadband subscribers nationwide connected through DSL, Edwards, *The Cable Guy*, TIME, Aug. 4, 2014, p.36, 38.

¹⁵ *Transformation Order* at para. 179. Auctions are also contemplated at the end of the commitment term. *Id.* at para. 178.

process used by industry and government where an RFP specifies what is to be provided, responses are carefully evaluated, and performance monitored.¹⁶

At the same time, the aggregate cost of providing that level of service to the largest possible number of locations must be within the amount of funds made available by a reasonable contribution assessment applied to a base reformed to include users of broadband service.

J. *Phase down of identical support for wireline CETCs should be suspended until either a Price Cap carrier that has accepted a statewide commitment or a winning bidder commences service to the CETC's area.*

Some RICA member CETCs are currently receiving phased down identical support for service in Price Cap territories. These areas necessarily are ones where if the Price Cap carrier had met the communications demands of the populace, no CETC could have taken sufficient market share to make overbuilding feasible. RICA opposed the Identical Support rule from the beginning because it did not accurately reflect the cost of service to rural areas. RICA proposed an alternative that would reflect the actual costs of service. The *Transformation Order* chose to provide the Price Cap carriers that agreed to serve their entire study areas exclusive access to universal service support, expected this new support to begin in 2013, and began a five year phase out of identical support to CETCs in 2012. It is now probable however, that the new support will not flow until at least 2015. In the meantime competitive carriers cannot commence new projects in rural areas that require support to be feasible, while at the same time support for existing service has been drastically reduced with no alternatives available. In these circumstances the phase down of the identical support for providers of fixed broadband services

¹⁶ See, RICA Comments, WC Doc. 10-90, Apr. 11, 2011, p. 16: (“A process more resembling a competitive procurement in which the various applicants can compete on the basis of relevant factors such as a demonstrated commitment to the area, demonstrated competence in providing quality service, and a credible business plan could serve to benefit the public.”).

should be suspended until service becomes available to the subscribers from an alternative provider, either the Price Cap ILEC or the winning bidder where the ILEC declines the statewide commitment.

III CONCLUSION

In the foregoing comments, RICA urges the Commission to adopt rules implementing the next phase of the Connect America Fund that are both competitively neutral and likely to result in the deployment of broadband services in Price Cap service areas where they would not otherwise be available.

Respectfully submitted

Rural Independent Competitive Alliance

By/ David Cosson
Its Attorney

5151 Wisconsin Ave., N.W.
Suite 313
Washington, D.C. 20016
202 333 5275

August 8, 2014