

**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 & 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 UTILITIES TELECOM COUNCIL

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SUMMARY

The Commission has proposed a bold vision for the Connect America Fund in which all locations in unserved areas would receive broadband services that are truly robust, affordable and reliable. In order to realize that vision, the Commission should open up price cap areas to competitive bids from proposals to provide rural broadband experiments in those areas, and it should not exclude areas from eligibility for CAF competitive bids if they are served by a subsidized competitor. It should adopt a reverse auction process that promotes opportunities for new entrants to provide services that substantially exceed the standards set by the Commission and rewards them for accelerating deployment in those areas. Finally, it should adopt increased minimum broadband speeds of at least 10 Mbps/1 Mbps if not 25/5 Mbps to serve these areas, as well as additional performance requirements as proposed by the Commission for latency and usage allowances. This vision for broadband access to all Americans should be made available to all locations in unserved areas, and the Commission should not allow providers to avoid their service obligations by providing slower speed services, substituting locations in one area for another or by serving only a substantially small percentage of the locations in an unserved area.

Utilities are ready to support the Commission's bold vision for rural broadband access. Competition from utilities – including rural electric cooperatives – will promote rural broadband access because utilities have extensive resources that can be leveraged to provide broadband services, utilities already are located in rural areas and are committed to providing service across their entire service areas, and they design, construct and maintain communications networks to remain reliable, secure and resilient even when commercial communications networks are damaged and inoperable after hurricanes and other emergencies. Utilities have filed more than

200 expressions of interest to provide rural broadband experiments with the Commission, and many of these expressions of interest propose to offer the kind of high-speed fiber-optic services that would well exceed the minimum speeds required under the Commission's rules for broadband.

The Commission should provide utilities with access to CAF Phase II funding to provide broadband in price cap areas. The Commission should rely on competition from utilities to promote broadband access, and it should not grant price cap carriers a right-of-first refusal to access to CAF Phase II funding. It would be a wasted opportunity if utilities that submitted proposals to provide rural broadband experiments were unable to compete with price cap carriers to serve these areas because price cap carriers have a right-of-first refusal. Utilities can change the landscape for broadband access and alter the Commission's fundamental assumption when it established CAF that price cap carriers were the only alternative to providing broadband to unserved areas. Therefore, UTC strongly supports the Commission's proposal to open up price cap areas to competitive bids where there are proposals for rural broadband experiments.

In addition, UTC supports the Commission's proposal to increase the minimum broadband speeds, as well as to adopt other performance standards that will improve the quality of rural broadband access in order to meet the statutory principle of providing reasonably comparable services in rural areas. In that regard, UTC supports adopting service obligations that keep pace with evolving standards for broadband in the future. The Commission can bring that future to reality now by providing priority for competitive bids that substantially exceed the standards that the Commission adopts for basic services. Rural America needs access to robust, affordable and reliable broadband to promote economic development, improve health and education, and ensure that it is not left behind in the digital age. Therefore, the Commission

should award support through competitive bidding to proposals that offer faster speeds and should take into account the preference of local communities when selecting a winning bid. In addition, it should reward recipients of CAF Phase II support by providing incentives for them to deploy broadband networks faster, and it should also ensure that the process for recipients to obtain ETC designation is expedited, as well.

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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 UTC supports the Commission’s proposals that would open up the Connect America Fund (CAF) Phase II process to competitive bidding by a wide variety of eligible entities and would raise the bar for rural broadband by increasing the minimum download speeds to 10 megabits per second (Mbps), as well as structure the reverse auctions to prioritize proposals that would provide higher speeds and to account for the preference of local communities for the winning bidder to provide service to their communities. UTC also supports the Commission’s proposal to accelerate the ETC process after an award of CAF Phase II is issued to an entity to serve an unserved area.

¹ Connect America Fund, *Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 (rel. June 10, 2014)(hereinafter “FNPRM”).

I. Introduction

The Commission broke from the status quo when it established the Connect America Fund. It recognized that “[n]etworks that provide only voice services ... are no longer adequate for the country’s communication needs.”² The Commission saw that, “[f]ixed and mobile broadband have become crucial to our nation’s economic growth, global competitiveness, and civic life,” and that “too many Americans today do not have access to modern networks that support broadband.”³ As such, the Commission concluded that, “[t]he universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access—in addition to basic voice service—where they live, work, and travel.”⁴ Hence, the Commission expanded the Universal Service Fund (USF) and created the CAF to promote access to broadband services in addition to telecommunications services.

Now the Commission stands at another threshold as it implements the process for CAF Phase II, and UTC submits that the challenge is the same, but the objectives have changed. Instead of just providing minimal broadband speeds of 4/1 Mbps, the Commission is proposing to increase the minimum broadband speeds to 10/1 Mbps. Moreover, it is proposing to open up areas to competitive bidding, rather than to give price cap carriers an automatic right of first refusal to take the funding that is available to serve an area. Finally, it is proposing to adopt criteria for the reverse auctions that would provide incentives for service providers to offer

² See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund; 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, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663 at ¶2 (2011) (hereinafter “*USF/ICC Transformation Order*”); *pets. for review pending sub nom.* In re: FCC11-161, No. 11-9900 (10th Cir. argued Nov. 19, 2013).

³ *Id.* at ¶¶3-4.

⁴ *Id.* at ¶5.

significantly higher speeds and it is considering a selection process that would give local communities a say over which provider is selected in the auction. These three proposals serve as the foundation for a bold vision of what the CAF could be going forward.

UTC supports these proposals in order to promote the deployment of affordable, robust and reliable broadband services to rural America. UTC believes that opening up areas to competition and breaking away from monopoly control of access to CAF will advance the Commission's goals of broadband access – not just to basic services but to services that are affordable, robust and reliable.⁵

Competition from utilities – including rural electric cooperatives – will promote rural broadband access because utilities have extensive resources that can be leveraged to provide broadband services, utilities already are located in rural areas and are committed to providing service across their entire service areas, and they design, construct and maintain communications networks to remain reliable, secure and resilient even when commercial communications networks are damaged and inoperable after hurricanes and other emergencies.⁶ Utilities can

⁵ See “Four Years of Broadband Growth”, White House Office of Science and Technology Policy & The National Economic Council at 3-4 (June 2013) *visited at* http://www.whitehouse.gov/sites/default/files/broadband_report_final.pdf. (hereinafter “White House Report”) (recognizing that “many markets are subject to at most limited competition among broadband providers” and acknowledging that “the country is rapidly reaching the point at which baseline broadband evaluations should increase, and might instead begin at 10 Mbps downstream.”). See also *Id.* at n. 3 (stating “[w]hile we believe 10 Mbps downstream is an increasingly “basic” speed, setting a 10 Mbps baseline for future evaluations does not imply that such speeds will fully meet all or even most Americans’ needs. As upward evolution in broadband speeds continues, however, reaching that figure at affordable prices should be a low-end standard.”)

⁶ Utilities deploy broadband networks need to deploy broadband networks to support their own private internal communications for the safe, reliable and secure delivery of essential electric, gas and water services. Owing to the critical nature of the essential services that they support, these communications networks have extended back-up power, redundant and diverse routing capabilities, and extremely low latencies. The Commission has recognized the reliability of these networks in the aftermath of hurricane Katrina, as well as other natural disasters. See *e.g.* Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the Federal Communications Commission, at 12-13 (June 12, 2006) (Katrina Panel Report). See also, In the Matter of Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119, WC Docket No. 06-63, Order, 22 FCC Rcd 10541, 10542 ¶ 4 (2007) (Katrina Panel Order). And see In the Matter of Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119, WC Docket No. 06-63, Order

change the landscape for broadband access and alter the Commission’s fundamental assumption when it established CAF that price cap carriers were the only alternative to providing broadband to unserved areas. Utilities are ready to support broadband access and are driven by customer demand for broadband and by their own need to deploy broadband networks to support their own private internal communications needs for smart grid and other applications.

Although progress has been made in promoting broadband deployment, the Commission has found that approximately 19 million Americans—6 percent of the population—still lack access to fixed broadband service at threshold speeds. In rural areas, nearly one-fourth of the population —14.5 million people—lack access to this service. In tribal areas, nearly one-third of the population lacks access. Even in areas where broadband is available, approximately 100 million Americans still do not subscribe.⁷ Thus, the White House has concluded that “[o]ngoing efforts are needed to ensure that all Americans have access to affordable and reliable high-speed access – and that the infrastructure exists to support increases in consumer and business demand for higher speeds.”⁸

Therefore, UTC urges the Commission to build on its vision for CAF and adopt its proposals to increase the minimum communications speeds for broadband and to open price cap

on Reconsideration, 22 FCC Rcd 18013, 18035, App. B (2007) (stating that “[t]he Katrina Panel Report noted that electric utility networks had a high rate of survivability following Hurricane Katrina due, in part, to the fact that they were built with significant onsite backup power supplies (batteries and generators).”

⁷ See, e.g., Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 11-121, *Eighth Broadband Progress Report*, 27 FCC Rcd 10342, 10344, para. 3 (2012) (*2012 Eighth Broadband Progress Report*).

⁸ White House Report at 4. See also *Id.* at 10-11 (“Of great concern is also the disparity between urban and rural access, as well as uneven distribution of high-speed access across certain underserved geographies. Today, while almost 100 percent of urban residents have access to download speeds of at least 6 Mbps, only about 82 percent of residents in rural communities can access those speeds. The disparity is even more pronounced at higher speeds: almost 88 percent of urban residents have access to speeds of 25 Mbps, but less than half that percentage, about 41 percent, have access to those speeds in rural communities. Of course not all users require those higher speeds, and satellite and terrestrial wireless technologies continue to deliver promising improvements.”)

areas to competition from utilities and other entities, as well as to prioritize proposals to provide significantly higher speed services and allow communities to express their choice for service providers that would be selected by the Commission as part of the process for reverse auctions. In addition, UTC generally supports the Commission's other proposals for additional performance requirements and incentives to accelerate the deployment of broadband networks to unserved areas, as more fully described below. UTC also supports the Commission's proposal to accelerate the ETC process after an award of CAF Phase II is issued to an entity to serve an unserved area. Conversely, UTC does not support proposals that would continue to protect price cap carriers from competition, including by treating an area as ineligible for funding if it is served by a subsidized provider.

II. The Commission Should Open Price Cap Areas to Competitive Bids Where There Are Proposals to Provide Rural Broadband Experiments.

In recognition that there were over 1000 expressions of interest that were filed in response to the Commission's invitation for rural broadband experiments, the Commission is asking for comment in the FNPRM on whether such an indication of potential competitive entry through a formal proposal for an area should be grounds for removing that area from a carrier's state-level commitment (i.e., the carrier would not receive model-based support for that area and would have no obligation to meet the broadband performance obligations in that area).⁹ Moreover, the Commission asks what conditions (*e.g.* annualized instead of one-time upfront support) should apply to these rural broadband experiments in order to remove a geographic area from a price cap carrier's state-level commitment.¹⁰ In addition, the Commission asks how this

⁹ *Id.* at ¶220. See also *See Technology Transitions et al.*, GN Docket No. 13-15 et al., Order et al., 29 FCC Rcd 1433, 1463-79, ¶¶ 86-136 (2014) (hereinafter "*Rural Broadband Experiments FNPRM*") (inviting expressions of interest to participate in rural broadband experiments).

¹⁰ *Id.* at ¶221.

would be conducted from an administrative standpoint.¹¹ Specifically, the Commission is asking if it should cover all areas that are not funded through the rural broadband experiment program. Also, it is asking what other criteria should apply to the rural broadband experiment, in order for it to remove an area from a carrier's state level commitment. Finally, for those rural broadband experiments that propose to serve both price cap and rate of return areas, the FCC is asking whether the proposal should be required to indicate that the applicant will proceed if only funded in the price cap portion of the proposed service area, in order to be sufficient to remove an area from the price cap carrier state-level commitment.¹²

Of all of the proposals in the FNPRM, UTC believes that this is the most important and it fully supports opening up price cap areas to competition from entities that propose to provide rural broadband experiments. This would benefit consumers by breaking the stranglehold that price cap carriers have over CAF support under their right-of-first-refusal to accept model-based support as part of the statewide commitment process. It would open up these areas to competition from entities, such as utilities, that are uniquely positioned to provide robust, affordable and reliable broadband services. In turn, that would promote the rapid deployment of networks to all locations across an entire area, not just to the edge of the incumbent's network which has been the prevailing practice by the price cap carriers that have accepted s CAF Phase I support.

As such, the Commission should adopt this proposal so that all rural broadband experiments that did not succeed in obtaining access to the \$100 million in that program would be able to compete with price cap carriers to access the \$18 billion that is available under CAF

¹¹ *Id.* at ¶222.

¹² *Id.*

Phase II. Given that there were over 1000 expressions of interest filed to provide rural broadband experiments (including over 200 EOIs by utilities), it is very likely that the number of formal proposals to provide rural broadband experiments will exceed the \$100 million that is likely to be available under that program. As such, CAF Phase II represents an opportunity for these proposals to access sufficient funding to serve unserved areas with robust, affordable broadband services.

UTC believes that it would be reasonable for the amount of one-time support requested by proposals for rural broadband experiments to be annualized over a ten-year period in order to provide an apples-to-apples basis for comparison to model-based support.¹³ Similarly, it would be reasonable for the Commission to require the proposal to indicate a willingness to receive the amount of one-time support requested over a multi-year period, such as five or ten years.¹⁴ These are relatively minor conditions for the Commission to adopt compared with other factors the Commission should consider before concluding a formal application is sufficiently meritorious to remove an area from a carrier's state-level commitment. UTC believes that the Commission should focus on whether the proposals would offer more robust, affordable and reliable services to those areas that are eligible for model-based support by the price cap carriers. UTC is confident that these proposals will substantially exceed the performance benchmarks established by the Commission and which the price cap carriers will struggle to meet. As such, the Commission should consider the totality of these factors in addition to the proposed condition that proposals accept annualized instead of one-time upfront funding.

From an administrative perspective, the Commission should go about removing an area

¹³ *Id.* at ¶221.

¹⁴ *Id.*

from a carrier's state-level commitment by taking off the table at the outset those areas that are proposed to be served by rural broadband experiments.¹⁵ It should then permit an opportunity for the entity that filed the proposal for the rural broadband experiment to revise its proposal as necessary for the Commission to consider it as a competitive bid to serve the area. This is a relatively simple matter from an administrative perspective. More complex is the situation where a formal rural broadband experiment proposal covers an area that is served in part by a rate-of-return carrier and in part by a price cap carrier.¹⁶ UTC would support requiring the proposal to indicate that the applicant will proceed if only funded in the price cap portion of the proposed service area, as a condition for removing an area from the price cap carrier state-level commitment.

No doubt, price cap carriers will object to opening up price cap areas to competition from new entrants, and they will threaten to discontinue services in areas where rural broadband experiments are awarded CAF Phase II funding. So be it; the new entrants will provide better service at lower cost anyway. However, UTC believes that competition from new entrants such as utilities should have the practical effect of encouraging price cap carriers to compete to provide better service at lower costs in those areas. Ultimately, what matters is that consumers in unserved areas will benefit – not whether the price cap carriers are affected.

III. The Commission Should Increase the Minimum Speeds for Broadband.

The Commission proposes to revise its current broadband performance obligations to require minimum speeds of 10 Mbps downstream to ensure that the services delivered using Connect America funds are reasonably comparable to the services enjoyed by consumers in

¹⁵ See *Id.* at ¶222 (requesting comment on how the Commission should implement the removal of an area, from an administrative perspective, including the criteria that should be used and how it would be handled in areas that are partially served by rate-of-return carriers.)

¹⁶ *Id.*

urban areas of the country.¹⁷ The Commission invites comment on this proposal as well as related issues. Specifically, the Commission asks whether it should also increase upload speeds, as well as the costs-benefits of increasing the minimum upload and download speeds.¹⁸ In that regard, it asks whether the benefits gained by consumers in having access to higher speeds would outweigh the increased cost of deploying a more robust network.¹⁹ It also asks what impact this would have on participation in the Phase II competitive bidding process and the Commission's ability to preserve and advance universal service in areas where a price cap carrier declines model-based support.²⁰ Finally, the Commission asks whether it is reasonable to assume that the same number of residents would be served in Phase II at speeds of 10 Mbps/1 Mbps as would be served at 4 Mbps/1 Mbps; and it asks whether it should extend the term of model-based support for price cap carriers that agree to provide 10 Mbps/1 Mbps speeds.²¹

UTC supports the Commission's proposal to increase the minimum broadband download speeds to 10 Mbps. UTC believes that the current speeds of 4 Mbps do not provide service that is "reasonably comparable to those services provided in urban areas."²² According to the latest data as of December 31, 2013 from the National Broadband Map, 89 percent of Americans have

¹⁷ FNPRM at ¶¶10, 138-148.

¹⁸ *Id.* at ¶146.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² 47 U.S.C. §254(b)(3) (establishing that one of the principles for universal service shall be that "[c]onsumers in all regions of the Nation... should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, *that are reasonably comparable to those services provided in urban areas* and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.")

access to fixed wireline broadband access services offering 6 Mbps downstream, which indicates that customer expectations for broadband have increased generally. Moreover, the National Broadband Map shows a digital divide in the difference between the speeds available in urban and rural areas, which begins to depart significantly above 10 Mbps downstream and 3 Mbps up.²³ As such, UTC believes that we have “reach[ed] the point at which baseline broadband evaluations should increase, and [should] instead begin at 10 Mbps downstream,” and that “this evolving baseline reflects a growing need for increased bandwidth as more Americans use the Internet for work and to build career skills.”²⁴

While UTC supports the Commission’s proposal to increase the minimum speeds to 10/1 Mbps, UTC suggests that it should aim higher and increase its broadband speeds even further. If the Commission truly wants to provide broadband that provide reasonably comparable service today and for tomorrow, it would be appropriate to set the benchmark at 25/5 Mbps. This would enable the applications that would truly stimulate the economy, education, health and safety in rural areas. These speeds would enable small businesses to be run from home, farmers to implement precision agriculture technologies, and individuals to develop job skills for positions with opportunities for growth and higher income. They would also enable students to attend class remotely in these rural areas, which would further open up opportunities for advanced degrees and higher level studies. Finally, the opportunities for better health care through

²³ See “Broadband Statistics Report: Broadband Availability in Urban vs. Rural Areas” <http://www.broadbandmap.gov/download/Broadband%20Availability%20in%20Rural%20vs%20Urban%20Areas.pdf>. Whereas the data show that almost 100% of urban areas and 90% of rural areas are capable of receiving downstream speeds of 10 mbps, the difference between the speeds available in urban and rural areas widens significantly above 10 mbps. For example, while more than 90% of urban areas receive speeds of 25 mbps downstream, only 50% of rural areas are capable of receiving 25 mbps down. Similarly, while 90% of urban areas receive speeds of 6 mbps upstream, only about 40% of rural areas receive 6 mbps up.

²⁴ White House Report at 3. See also White House Report at n. 3 (adding that while “we believe 10 Mbps downstream is an increasingly “basic” speed, setting a 10 Mbps baseline for future evaluations does not imply that such speeds will fully meet all or even most Americans’ needs.”)

telemedicine and remote monitoring of patients are keyed by higher speeds. These are all compelling reasons for the Commission to further increase the speeds, not just for download but for upload as well. Therefore, UTC strongly encourages the Commission to consider setting the minimum broadband speed at 25/5 Mbps.

UTC believes that the benefits of increasing the minimum speeds for broadband would outweigh the cost of deploying networks capable of providing higher speeds. As the White House observed in its Report, significant challenges remain in terms of adoption, speed and price, even though progress has been made in terms of broadband access. Adoption rates in rural areas lag behind urban areas,²⁵ and affordability and speeds were cited as some of the biggest reasons why customers declined to subscribe to broadband where it was available.²⁶ If the Commission increased the baseline for broadband, customer adoption may increase, because customers may derive more value from enhanced applications and business services that are enabled over higher speed networks, particularly to the extent that these higher speed services are offered at prices that are affordable. Higher speeds also enable greater opportunities for educational applications, which are particularly important for improving job skills.²⁷ Particularly in rural areas -- where job growth has been flat since 2011, the number of high-poverty counties has increased by 30%, almost 27% of children live below the poverty line, and overall population has declined for the first time in our nation's history -- the stakes have never been

²⁵ White House Report, Figure 4 "Percentage of Broadband Adoption by Demographic Group" at 9 (showing that according to data from NTIA and ESA, broadband adoption in urban areas was 72% while only 58% in rural areas), *citing* National Telecommunications and Information Administration & Economics and Statistics Administration, "Exploring the Digital Nation: America's Emerging Online Experience." June 2013. Available at <http://www.ntia.doc.gov/report/2013/exploring-digital-nation-americas-emerging-online-experience>.

²⁶ White House Report, at 9-11.

²⁷ White House Report at 3 (stating that "[t]his evolving baseline [10 mbps downstream broadband speeds] reflects a growing need for increased bandwidth as more Americans use the Internet for work and to build career skills.")

higher and the potential benefits cannot be overstated.²⁸

While the benefits are high, the incremental costs of deploying higher speed networks are marginal. The majority of the cost of a broadband network is in labor costs associated with deploying it. Adding additional fibers to the line only represents a very small increase in the deployment costs as a percentage of the overall costs of construction. If a provider is deploying new infrastructure to provide broadband service -- as is the case with many of the utilities that filed expressions of interest to conduct rural broadband experiments -- it is actually cost-effective to deploy higher speed networks in order to be able to meet future capacity demands. This would in turn lead to more affordable prices for more robust services over new networks. Conversely for incumbents, increasing the baseline speeds may properly incent incumbent providers to replace their slower speed legacy technologies with fiber that would meet the new baseline speeds and provide additional capacity to meet future demands. It makes little sense for the Commission to continue to subsidize outmoded technologies through CAF, because it would only widen the digital divide between urban and rural areas, contrary to the fundamental principle of universal service that the services and prices should be reasonably comparable. Therefore as a policy matter and as a practical matter, the additional incremental costs of deploying more robust networks are clearly outweighed by the potential benefits for rural America and for the growth of these networks.

The Bureau has released a Public Notice providing the Connect America Cost Model sample results using the higher speed benchmark, which shows under the 10/1 Mbps baseline that 4.7 million locations would be eligible for the offer of model-based support, of which 3.6

²⁸ Remarks of John Padalino, Administrator, Rural Utilities Service, USDA during the FCC's Rural Broadband Workshop (Mar. 19, 2014). Available at <http://www.fcc.gov/events/rural-broadband-workshop>.

million are unserved by 10 Mbps/768 kbps.²⁹ According to the Public Notice, currently under the 4/1 Mbps benchmark, 4.25 million locations would be eligible for the Connect America Phase II offer of model-based support, of which 2.7 million are unserved by 3Mbps downstream and 768 kbps upstream (3 Mbps/768 kbps). This is not a dramatic increase in the number of locations that would be eligible or that would be unserved under the new benchmark. As such, the increase in the baseline broadband speeds should not have a dramatic impact on the ability of incumbent price cap carriers to provide service and to access CAF for these services. At the same time, if price cap carriers choose not to provide 10/1 Mbps service to these areas, utilities and other entities could submit competitive bids to serve these areas. UTC is confident that utilities would be able to deploy networks that would meet the 10/1 Mbps baseline speeds, including in those areas where price cap carriers opt-out from model-based support. Therefore, it is reasonable to assume that approximately the same number of residents would be served in Phase II at speeds of 10 Mbps/1 Mbps as would be served at 4 Mbps/1 Mbps.³⁰ The Commission need not provide any additional incentives, such as longer term support, to encourage price cap carriers to offer 10 Mbps/1 Mbps speeds.³¹

IV. The Commission Should Adopt its Proposed Latency and Usage Standards.

The Commission proposes to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model based support in the state-level commitment process to ETCs that will receive support through a

²⁹ See Wireline Competition Bureau Releases Connect America Cost Model Illustrative Results Using Higher Speed Benchmark, Public Notice, DA 14-833 (rel. June 17, 2014) Available at <http://www.fcc.gov/document/connect-america-cost-model-sample-results-using-higher-speed-benchmark>.

³⁰ FNPRM at ¶146 (asking “Is it reasonable to assume that the same number of residents would be served in Phase II at speeds of 10 Mbps/1 Mbps as would be served at 4 Mbps/1 Mbps?”).

³¹ *Id.* at ¶148 (inviting comment on whether the Commission should provide price cap carriers with “a longer term for Connect America Phase II model-based support than the five-year term it adopted in the *USF/ICC Transformation Order*.”)

competitive bidding process.³² Under this proposal, all providers would be required to offer at least one plan with a minimum usage allowance of 100 GB, and any recipient of support through the competitive bidding process would be required to provide a roundtrip provider network latency of 100 ms or less. The Commission is also proposing to allow ETCs that are awarded support in the competitive bidding process to be free to offer an array of services, including those not meeting the proposed performance requirements, so long as at least one offering meets all the necessary metrics.³³

UTC supports these proposals, which are reasonable and appropriate in order to provide customers in rural unserved areas with reasonably comparable services as are available in urban areas. UTC does not object to the 100 GB minimum usage allowance standard, and it believes that utilities will not adopt such limits in their service plans as a general matter. UTC also expects that utilities will deploy networks that will provide roundtrip network latency of 100 ms or less, because such latency standards are necessary to support voice, and utilities need to be able to support smart grid applications over their networks which will require even lower roundtrip latencies. Finally, UTC supports the Commission's proposal to provide flexibility so that ETC's that are awarded support in the competitive bidding process may satisfy their performance requirements by offering at least one package that meets all of the necessary metrics. This should provide utilities with the flexibility they may need to tailor their service offerings, as necessary.

V. The Commission Should Adopt a Technology Neutral Approach and Ensure That Unserved Areas Receive Robust, Affordable Broadband Services.

The Commission proposes to allow providers to use any technology as long as the

³² *Id.* at ¶149.

³³ *Id.* at ¶151.

provider satisfies its Phase II requirements for speed, latency, usage allowance, and pricing. Specifically, the Commission contemplates wireless and satellite service providers in this regard, and it emphasizes that “wireless providers are free, and indeed encouraged, to participate in Connect America Phase II, and fixed wireless already is an option for the delivery of service in Phase II under the framework established by the Commission in the *USF/ICC Transformation Order*.”³⁴

UTC does not object to this proposal, and supports a technology neutral approach. However, UTC is concerned as a practical matter that awarding support for wireless and satellite providers may draw funds away from terrestrial technologies that are better able to meet future demand for capacity and quality broadband services. To be sure, there are rural areas that are extremely high-cost which may be cost-effectively served using wireless and satellite. But, high cost areas that can be cost-effectively served using terrestrial technologies should be served by terrestrial technologies, because such services provide additional capacity, low latency and other capabilities and attributes such as reliability that wireless and satellite do not.³⁵ It would be unfortunate if CAF support for wireless and satellite prevented terrestrial wireline technologies from taking root in those areas that could be cost effectively served by such technologies.³⁶ The Commission should remain steadfast in its goal to promote access to broadband services that are

³⁴ *Id.* at ¶154, citing (adding that “[w]hat is important from the consumer’s perspective is the quality of the user experience and the price of the service offering, not the specific technology used to deliver service.”)

³⁵ As the Commission recognizes in the FNPRM, “mobile service can have a far greater variation in service quality as compared to fixed services, with service quality not only changing based on location within a tower’s footprint, but also even whether the service is being used indoors rather than outdoors.” FNPRM at ¶156.

³⁶ As the Commission also recognizes in the FNPRM, the impact on businesses and anchor institutions could be significantly detrimental if the Commission were to exclude from eligibility for Phase II support those areas that are served by mobile or satellite providers that meet the Phase II standards. Business and anchor institutions may require services that exceed those that are available by wireless or satellite alone, but would be unable to access terrestrial wireline networks if the areas are considered served by broadband via wireless or satellite and hence ineligible for CAF support.

reasonably comparable in price and quality to urban areas. Rural America shouldn't find itself with wireless and satellite as its only options.³⁷

VI. The Commission Should Adjust Phase II Obligations to Meet Evolving Standards in the Future.

The Commission asks whether it should adjust the Phase II obligations for the later years of the ten-year term of support that is provided for winning bidders in reverse auctions.³⁸ Specifically, it asks whether it should require providers to meet a set benchmark at the end years of the term of support, or alternatively whether it should require recipients of such support to provide an evolving level of service over the funding period based on trends in consumer usage.³⁹

UTC believes that the Commission should reserve the right to require providers to meet evolving standards for performance that may change over time; but it would be premature to attempt to set such a benchmark at this time. Instead, UTC believes that to the extent that any evolving standards are applied they should be based on consumer usage, as demonstrated by FCC Form 477 data.⁴⁰ Therefore, the Commission should review the performance standards going forward and determine whether they should be adjusted based on changing customer usage, as necessary.

³⁷ For the same reasons, UTC does not believe that the Commission should exclude from eligibility for funding any area that is served by a competitor that meets the Commission's current standards for the offer of model-based support to price cap carriers, again presuming that the same service and pricing standards are met, regardless of technology. While there may very well be areas that receive wireless or satellite services that meet the CAF performance standards, the Commission should allow providers using terrestrial technologies to competitively bid to serve those areas, which will provide consumers with the ability to obtain more robust and reliable services in those areas.

³⁸ FNPRM at ¶157.

³⁹ *Id.* at ¶158.

⁴⁰ *Id.*

VII. The Commission Need Not Adopt Specific Requirements for Connections to Schools, Libraries, and Health Care Providers at This Time.

The Commission also proposes to follow up from its expectation in the *USF/ICC Transformation Order* that ETCs should offer broadband at speeds greater than 4 Mbps/1 Mbps to community anchor institutions in rural and high-cost areas; and it invites comment on this issue with specific reference to institutions and the charges, terms, and conditions of service provided to those institutions.⁴¹ UTC also expects that providers would provide service at speeds greater than 4 Mbps/1 Mbps to community anchor institutions in rural and high cost areas. However, the type of anchor institutions and the charges, terms and conditions provided to them may be too variable depending on the area and the surrounding circumstances to set baseline requirements. Moreover, UTC believes that providers will inherently want to serve anchor institutions in unserved areas, because they provide the opportunity to improve the economics of serving residential and business customers in the surrounding areas. Therefore, UTC suggests that the Commission should refrain from adopting set standards for anchor institutions at this time, and address it later when more data is available and the need for support for anchor institutions is better understood.

VIII. The Commission Should Provide Incentives for Faster Deployment.

The Commission proposes to accelerate the distribution of support for providers that exceed the benchmarks for deployment.⁴² Specifically, the Commission invites comment on whether to pay out all or some fraction of the remaining support to price cap carriers the complete construction prior to the end of the five-year term of model-based support, and it asks how a similar proposal could be implemented for ETCs awarded support through a competitive

⁴¹ *Id.* at ¶159.

⁴² CAF Phase II recipients of model-based support are required to deploy to 85% of the customers in an area within three years and 100% within five years.

bidding process.⁴³ Moreover, it asks how the Commission could structure the accelerated payout, and it proposes that if the Commission did adopt such a system, accelerated payment would not be made until USAC has validated the completion of network deployment.⁴⁴

UTC supports the Commission's proposal to accelerate the distribution of support as an incentive to encourage providers to deploy their networks quickly. UTC expects that utilities would avail themselves of this opportunity, if it was made available to them as well as to price cap carriers, as part of the competitive bidding process. In response to the Rural Broadband Experiments FNPRM, utilities filed comments that generally supported the idea of providing one-time upfront payments for CAF, instead of incremental support.⁴⁵ Similarly, it is likely that utilities would support accelerated distribution of support for accelerated deployment of networks, as proposed in the present FNPRM. Payments could be structured proportionate to the amount that the provider has exceeded the benchmark. So for example, if a provider has met its initial benchmark of 85% in two years instead of three, it would then be entitled to receive in year two the amount of support it would have received in year three. Similarly, if a provider deploys to 100% of its customers in the area, it should be distributed 100% of the support at that time. Finally, UTC supports the Commission's proposal that USAC validates the completion of the network deployment, but suggests that the Commission monitor the process to ensure that USAC provides timely processing of validation requests.

⁴³ FNPRM at ¶161.

⁴⁴ *Id.*

⁴⁵ See e.g. Expression of Interest of Habersham EMC in WC Docket No. 10-90 at 3 (filed Mar. 7, 2014)(stating that "Habersham EMC views this need for supplementary funding as a one-time capital expenditure and does not foresee a need for ongoing subsidies from the FCC."); Expression of Interest of Midwest Energy Cooperative in WC Docket No. 10-90 at 5 (filed Feb. 24, 2014)(stating that "these numbers will be in the form of a one-time capital expenditure. We are not seeking an ongoing subsidy from the FCC."); and Expression of Interest of Shelby Electric Cooperative in WC Docket No. 10-90 at 3 (filed Mar. 7, 2014).

IX. The Commission Should Limit Flexibility for Providers to Meet Their Deployment Obligations In Order to Prevent Abuse and Promote Broadband Access.

The Commission makes two separate proposals designed to provide providers with flexibility to meet their deployment obligations. First, it seeks comment on permitting Phase II recipients (both price cap carriers accepting the state-level commitment and winners in a competitive bidding process) to specify they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions to the extent they elect to deploy to less than 100 percent of funded locations.⁴⁶ Second, the Commission seeks comment on allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks, such that they would have the option to deploy to some number of unserved locations within partially served census blocks in lieu of deploying to a number of locations in otherwise eligible census blocks.⁴⁷

UTC is concerned that the Commission's first proposal would lead to cherry-picking, particularly if there is no minimum percentage of customers that a provider must commit to serve in a given area. In that regard, the Commission has asked whether 95 percent would serve as a sufficient minimum percentage of customers that a provider would need to commit to serve under this proposal.⁴⁸ UTC submits that this could serve as a reasonable minimum percentage commitment. However, UTC believes this flexibility is not something that utilities would need, and that they would instead generally commit to serve all of the locations in the entire area.⁴⁹

⁴⁶ FNPRM at ¶165.

⁴⁷ *Id.* at ¶167.

⁴⁸ *Id.* at ¶165.

⁴⁹ Utilities may need such flexibility to bid on an area that is only partially covered by its electric, gas or water service territory. However, utilities are generally committed to providing service to all of the locations in their service territories.

Therefore, if the Commission adopts a rule providing flexibility, UTC recommends that the Commission set the minimum percentage of locations served at 95% or higher in order to discourage cherry-picking by price cap carriers and it recommends that funding should be reduced proportionate to the percentage of locations that are actually served in a given area.⁵⁰

Similarly, UTC is concerned that the Commission's second proposal could also be abused by incumbent price cap carriers in an attempt to keep out competition. For example, a price cap carrier could claim that an entire area should be deemed ineligible for purposes of CAF to the extent that the price cap carrier serves a small fraction of locations in that area that it claims as "substitutes" for unserved locations in an adjacent area. Similarly, UTC agrees with the Commission's concern that price cap carriers would likely substitute expensive unserved locations for cheap locations in other areas. While this "approach could enable more effective network deployment and bring service to unserved consumers in those partially served census blocks," UTC submits that the costs in terms of administering such an approach would outweigh the potential benefits generally.⁵¹ As such, UTC suggests that the Commission consider requests for substitution on a waiver basis, rather than providing a rule that would open the floodgates to this practice.

X. The Commission Should Not Exclude Areas Served by Subsidized Providers from Eligibility for Phase II Support.

In an effort to contain costs, the Commission is reexamining whether a competitor should

⁵⁰ *Id.* at ¶166 (proposing that "one way to reduce support would be in direct proportion to the number of locations left unserved within a given state.") UTC notes that the Commission's proposal to reduce support in proportion to the number of locations left unserved across an entire state may actually result in gamesmanship by the price cap carriers that would reward them for skipping the most expensive locations. However, if the amount of support was reduced in proportion to the percentage of the number of locations served relative to the total amount of funding that was made available in a given area (i.e. instead of the entire state), the reduction would more likely accurately reflect the costs avoided.

⁵¹ *Id.* at ¶168 (requesting comment on the costs and benefits of the approach of allowing providers to substitute unserved locations in partially served areas.)

be “unsubsidized” to exclude a service area from receiving high-cost support, including Connect America support; and it proposes to exclude from the offer of model-based support any census block that is served by a facilities-based terrestrial competitor offering fixed residential voice and broadband services that meet the Commission’s service requirements.⁵² In addition, the Commission also seeks comment on whether it should exclude from the Phase II competitive bidding process any area that is served by a price cap carrier that offers fixed residential voice and broadband meeting the Commission’s requirements, such that Phase II funds would only be available in a competitive bidding process for any area lacking 10 Mbps/1 Mbps. In that regard, the Commission expressed concerns that if a price cap carrier declined model-based support that a competitor could bid to serve an area and overbuild the price cap carrier’s network.⁵³ It also seeks comment on whether it should exclude from Phase II support only those areas where the current provider certifies that it is able and willing to continue providing terrestrial fixed residential voice and broadband services meeting the Commission’s requirements for a specified period of time, such as five years.⁵⁴

Instead of being concerned by possible overbuilding by competitors, the Commission should be welcoming the entry of competitors that seek to offer services in areas where price cap carriers decline model-based support. Moreover, the Commission should not be further protecting price cap carriers from competition by removing those areas from eligibility that are currently served by subsidized providers in addition to those areas that are currently served by unsubsidized providers. Price cap carriers are only providing services at the fringes of their

⁵² *Id.* at ¶174.

⁵³ *Id.* at ¶175 (adding that the Commission is “skeptical that this is an efficient use of the budget for Phase II.”)

⁵⁴ *Id.* at ¶177.

existing networks in and around towns and densely populated areas.⁵⁵ There are large parts of rural areas surrounding these clusters of populated areas that have no service and will not likely get any service from price cap carriers for the foreseeable future.⁵⁶ However, these unserved areas could be served by utilities, if the areas are eligible for CAF support.

Taking these areas off the table by declaring them ineligible because even a small portion of the area is served by a subsidized competitor would leave the remainder of the unserved customers in those areas in regulatory limbo for eternity. The Commission should not be concerned about overbuilding in areas where price cap carriers already have networks; instead it should be concerned about building networks out to customers in those unserved areas that are beyond the fringes of the price cap carriers' networks. As such, UTC strongly urges the Commission against this proposal to exclude areas that are currently served by subsidized providers that meet the minimum speeds for broadband.

In addition, UTC believes that the Commission should not rely on carrier self-certification as a safeguard to prevent carriers from abusing their monopoly control over an area to reduce voice and broadband services in that area. Instead, the Commission should rely on competition from new entrants, such as utilities to constrain abuse. This will also incent subsidized providers to improve services in those areas. Finally, this will be administratively

⁵⁵ This is evident by the relatively high percentage of locations in Phase I where price cap carriers accepted CAF to provide service to underserved (i.e. \$500/location), rather than unserved areas (i.e. \$775/location). *See e.g.* Letter from Eric N. Einhorn, Senior Vice President, Government Affairs and Strategy, Windstream to Marlene H. Dortch, Secretary, FCC at 1 (filed Aug. 20, 2013)(stating that it would use CAF to serve “18,855 locations that are currently unserved by fixed, terrestrial Internet access with minimum speeds of 768 kbps downstream and 200 kbps upstream, and 198,783 locations that lack 3 Mbps/768 kbps Internet access” – 10 times as many underserved location as unserved locations). See also Connect America Fund interactive map at <http://www.fcc.gov/maps/connect-america-fund-phase-i-round-two>.

⁵⁶ *See* slides 6-7 from the presentation by Steve Rosenberg, Chief Data Officer, Wireline Competition Bureau, FCC during the FCC's Rural Broadband Workshop (Mar. 19, 2014)(illustrating the significantly higher number of unserved locations there are in rural areas that do not include MSAs or Census Designated Places (CDPs) (i.e. clusters of towns). Available at <http://transition.fcc.gov/presentations/03192014/Steve-Rosenberg.pptx>.

efficient compared with overseeing carrier compliance with their certifications.

XI. The Commission Should Adopt its Proposals to Accelerate the ETC Designation Process After CAF is Awarded.

In its Order, the Commission allowed entities to obtain ETC certification after being selected for the offer of Phase II Connect America funding; and in its FNPRM it proposes rules for that process.⁵⁷ Specifically, it proposes to adopt a requirement that a winning bidder must submit an application to become an ETC within 30 days of public notice that it is the winning bidder for the offer of support in those areas where it has not already been designated an ETC. It also proposes that an applicant for Phase II support that fails to submit such an application within 30 days would be deemed in default and therefore subject to default payments. Finally, the Commission proposes to require winning bidders to submit proof to the Commission that they have filed the requisite ETC designation application within the required timeframe to the extent filed with a state commission.

The Commission is also proposing a process for the states to follow, as well. Specifically, the Commission proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of Connect America Phase II competitive bidding or Remote Areas Fund if it fails to initiate a proceeding on that petition within 60 days of receiving it. In addition, the Commission is also seeking comment on whether it should adopt a similar rebuttable presumption if a state commission fails to decide a petition within a certain period of time, such as 90 days of initiating a proceeding on it. If the Commission adopted this proposal, the entity could file for ETC designation with the Commission and point to the lack of state action within the prescribed time

⁵⁷ FNPRM at ¶¶179-185.

period as evidence that the petitioner is not subject to the jurisdiction of a state commission.⁵⁸

UTC supports the timetables proposed for both winning bidders to file for ETC certification with the state and for states to act on those requests for ETC certification. NARUC recently passed a resolution in support of utility access to CAF, and UTC expects that the states will certify utilities as ETC's in a timely manner, if the Commission offers them the award of CAF support through the competitive bidding process. The Commission's approach recognizes primary state jurisdiction over ETC certification, and encourages the states to process requests in a timely manner. UTC appreciates the Commission does not preempt a state's designation authority under section 214(e)(2) but instead is intended to be consistent with the framework of the Communications Act, while ensuring that applications will not remain pending before state commissions for an undefined period of time while carriers wait for an affirmative statement that there is no state jurisdiction.⁵⁹ UTC also agrees with the proposal to sunset ETC obligations after the funding term has expired and the entity has fulfilled its build-out and public interest obligations.⁶⁰

XII. The Commission Should Adopt a Phase II Competitive Bidding Process That Promotes Robust, Affordable and Reliable Broadband Services in Unserved Areas and That Considers Community Preference of Providers.

The Commission proposes a series of rules for the reverse auctions. Specifically, it proposes that the Commission adopt reserve prices based on the Connect America Cost Model so that the reserve price for a given geographic area in the competitive bidding (i.e., census tract or census block) equals the amount of support the model would have calculated for that same

⁵⁸ *Id.* at ¶¶179-182.

⁵⁹ *Id.* at ¶183.

⁶⁰ *Id.* at ¶184.

geographic unit in the state-level election process.⁶¹ It further proposes that bidders may bid for a package of geographic areas, either census blocks or census tracts; and that the total of all bids accepted nationwide be no greater than the total Connect America Phase II budget that remains after the state-level election process.⁶² In addition, the Commission proposes that the competitive bidding process use a multi-round auction so that competitive bidders have the opportunity to reevaluate their bids in light of the actions of others. It also proposes that the competitive bidding process be implemented in a way that first identifies those provisionally winning bids that propose service that substantially exceeds the Commission's service standards, for an amount per location equal to or less than the model-determined amount of support for the relevant geographic areas.⁶³

UTC supports the proposal to set reserve prices for the reverse auction based upon the amount of support that is made available for a census block or census tract. UTC also supports the proposal to allow bidders to bid for a package of geographic areas (either census blocks or tracts), and that the total accepted may not exceed the total CAF Phase II budget that is available after the state-level election process. UTC also supports the use of a multi-round auction, and agrees that it will provide bidders with a better opportunity to strategically reevaluate their bids in response to bids from others. Finally, and importantly, UTC supports the proposal to implement the bidding process so as to identify provisionally winning bids that propose to substantially exceed the Commission's standards. All of these proposals should have the practical effect of maintaining the budget for CAF, encouraging competition from a variety of entities and

⁶¹ *Id.* at ¶227.

⁶² *Id.* at ¶¶228-229.

⁶³ *Id.* at ¶231.

deployment of broadband networks that are robust, affordable and reliable.

Specifically, using reserve prices for blocks or tracts based on the amount of funding available for locations within the blocks and tracts will ensure that the overall budget for CAF is maintained. Similarly, the proposal to limit the total of all accepted bids nationwide to the amount that is remaining after the state level election process will ensure that the overall CAF budget is maintained, as well. In addition, allowing bidders to bid for a package of geographic areas should help to ensure that whole geographic areas are served and that bidders are not left to serve only the highest cost areas. Likewise, using a multi-round auction will enable bidders to adjust their bids so that they are serving contiguous areas to the extent that they are outbid in a certain area by someone else. Finally, the public interest in robust, affordable and reliable networks will be served by the Commission's proposal to identify the preliminary winning bid based upon proposals that substantially exceed the Commission's standards while staying within the per location amount that is made available by the cost model. In that regard, UTC suggests that the Commission define "substantially exceeds" based upon speed, usage allowances, and latency, which are the primary criteria that will influence the performance of the network.⁶⁴

UTC emphasizes that one of the main goals of the CAF Phase II competitive bidding process should be to attract proposals that are not just low cost, but which also provide service that is reasonably comparable in quality to those in urban areas. In short, the reverse auction should not simply select the lowest bid, but it should also consider the speeds and other capabilities that are proposed, as well. In that regard, UTC supports the concept of incorporating into the auction design consideration of the expressed preferences of the affected community for

⁶⁴ UTC suggests that speeds that substantially exceed the Commission's standards should be set to meet or exceed 25 mbps/5 mbps upstream and down. Usage allowances should be set at 500 GB and latency should be set below 50 ms roundtrip. As long as providers can meet these criteria in any combination of its proposed offerings, they should be considered to "substantially exceed" the Commission's standards for purposes of the Commission's proposed bidding process.

service of a particular type or quality.⁶⁵ This could take the form of a simple survey of communities in the proposed service area, or it could be a formal endorsement from a government authority, as well. In this way, the Commission will help to bring services with “an evolving level of broadband service to consumers, businesses, and anchor institutions in rural America.”⁶⁶

XIII. The Commission Should Implement Rules for Accountability and Oversight That Ensure Substantial Compliance with Service Obligations.

The Commission seeks comment on codifying a broadband reasonable comparability certification requirement for all ETCs receiving Connect America support, as well as modifying support if a provider is late in satisfying its reporting requirements or its service obligations for voice or broadband.⁶⁷ In terms of meeting the certification requirement, the Commission proposes that providers would only need to certify that one plan meets the reasonable comparability benchmark specified annually by the Bureau.⁶⁸ In addition, the Commission proposes to require price cap carriers that accept the state-level commitment and recipients of the Phase II competitive bidding process to submit their first certification with the first annual report they are required to submit after accepting support, and then each year with their annual report thereafter.⁶⁹

In terms of modifying the support for late-filed reports, the Commission has proposed that carriers that file their annual report under Section 54.313(j) one week late, should have their

⁶⁵ See *Id.* at ¶231 (inviting comment on how the Commission “might incorporate into our auction design consideration of the expressed preferences of the affected community for service of a particular type or quality,” and what form that expressed preference should take.)

⁶⁶ *Id.* at ¶233.

⁶⁷ *Id.* at ¶313.

⁶⁸ *Id.* at ¶314.

⁶⁹ *Id.* at ¶315.

support reduced commensurately by seven days and that carriers that file later than one week after the annual reports are due have their support reduced on a pro-rata daily basis equivalent to the period of noncompliance.⁷⁰ Similar reductions would apply for failure to timely submit annual certifications, under Section 54.314(d) of the Commission's rules.⁷¹ Finally, the Commission proposes to provide a one-time grace period for ETCs that miss the filing deadline by only a few days,⁷² and it proposes to eliminate the current practice of permitting waivers for non-compliance.⁷³

UTC supports the Commission's proposal to modify support for failure to timely file annual reports and certifications, under Section 54.313(j) and Section 54.314(d) of the Commission's rules. However, the Commission should remain mindful that there will be many new entities that will be unfamiliar with these reporting requirements. Accordingly, UTC supports the Commission's proposal to provide a one-time grace period for entities that fail to meet the filing deadlines within a few days. In addition, UTC urges the Commission to extend the grace period and to continue to permit waivers to be filed for non-compliance where entities fail to timely file for longer than a few days. It would not serve the public interest to significantly reduce funding to an entity that is simply unfamiliar with the rules or that inadvertently fails to file a report on time. Such strict application of the rule could disproportionately impact new entities compared to incumbents, thereby thwarting competition for rural broadband service. Moreover, it would put form over substance if the new entity is actually in substantial compliance with its service obligations.

⁷⁰ *Id.* at ¶319.

⁷¹ *Id.* at ¶320.

⁷² *Id.* at ¶321.

⁷³ *Id.* at ¶325.

In terms of reducing support for non-compliance with service obligations, the Commission is considering various options. One alternative would be to give providers an opportunity to improve performance prior to withholding support in certain circumstances.⁷⁴ Another alternative would be to adopt quickly-increasing support reductions to heighten provider incentives to meet performance standards.⁷⁵

Instead of letting providers have an opportunity to improve performance prior to withholding support, UTC supports the option of imposing reductions in funding for non-compliance with service obligations. This would discourage price cap carriers from overpromising and under-delivering services to rural areas. Not only does this practice deprive rural Americans from the service that they deserve, but it also enables price cap carriers to thwart competition in those areas that could be served by utilities and other new entrants that would otherwise have access to CAF support if it weren't monopolized by the price cap carriers. As such, UTC would support reducing support to the provider on a percentage basis, as illustrated by the Commission in the FNPRM.⁷⁶

⁷⁴ *Id.* at ¶328.

⁷⁵ *Id.* at ¶329.

⁷⁶ *See Id.* at ¶329 (stating that “[f]or example, if there were an audit finding or other determination that a provider failed to meet performance measurements for a certain number of months consecutively (such as two months) or a certain number of months during a one-year period (such as three months), the provider could lose five percent of its funding for each of the next six months. If performance levels were not being met after six months, the provider would lose 25 percent of its funding for each of the next six months.)

CONCLUSION

In conclusion, UTC appreciates the opportunity to provide these comments in response to the Commission's FNPRM. The Commission should open up price cap areas to competitive bids from proposals to provide rural broadband experiments in those areas, and it should not exclude areas from eligibility for CAF competitive bids if they are served by a subsidized competitor. It should adopt a reverse auction process that promotes opportunities for new entrants to provide more robust, affordable and reliable services to these areas. Finally, it should adopt increased minimum broadband speeds of at least 10 Mbps/1 Mbps if not 25/5 Mbps to serve these areas, as well as additional performance requirements proposed in the FNPRM.

Respectfully submitted,

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