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Commission should take as it continues to implement the *CAF Order* reforms in price cap territories and hopefully end the perpetual cycle of funding incumbent price cap LECs to the exclusion of other broadband providers.

The Commission's reforms to the portion of the program for areas served by rate-of-return LECs have so far proven much less significant. In these areas the incumbent LECs continue to receive essentially all of the funding made available by the program and many of the reforms adopted in 2011 to curb abuses in the program already have been reversed by the Commission.³ Moreover, at this point the Commission has not even proposed, let alone established, a path for awarding support in these areas in a competitively-neutral manner that allows non-incumbent LECs an opportunity to participate and awards support to the most efficient provider, rather than to the incumbent LEC by default. The best that consumers paying into the fund and competitors can hope for is that the Commission will finally implement the policy it adopted in the *CAF Order* to remove subsidies from areas that are fully served by competitive providers.

The *Further Notice* seeks comment on a number of proposals for moving forward with new reforms in rate-of-return territories. NCTA strongly encourages the Commission to adopt its proposals to immediately limit legacy support in areas served by competitors and perform a biennial review to identify areas where support can be eliminated due to the presence of competition. In considering long-term reform proposals, the Commission should take care to stay within the budget established for this portion of the program and ensure that any reforms do not perpetuate the current approach of providing funding in areas where private capital has been invested in the deployment of broadband networks.

³ *Further Notice* at ¶ 109 (reinstating Safety Net Additive support), ¶ 131 (eliminating benchmarks).

I. ANY NEW MECHANISM FOR RATE-OF-RETURN LECS SHOULD MAINTAIN THE EXISTING BUDGET AND LIMIT SUPPORT IN AREAS SERVED BY COMPETITORS

A. Support Should Be Limited In Areas Served By Competitors

The *Further Notice* includes a variety of proposals for short-term reform of existing rules and long-term adoption of new rules for the high-cost support program in areas served by rate-of-return LECs. NCTA strongly supports two of the Commission's proposals for short-term reforms. First, the Commission should adopt its proposed rule that no new investment should be recovered through High Cost Loop Support (HCLS) or Interstate Common Line Support (ICLS) in areas served by competitors.⁴ As noted in the *Further Notice*, price cap carriers operate pursuant to a similar requirement with respect to legacy support. The process suggested by the Commission for enforcing this requirement – requiring LECs to post deployment plans on their websites and giving competitors 90 days to demonstrate that they serve the area in question – is a start. But this requirement alone does not give other providers sufficient notice and unduly favors the LEC requesting funding. The Commission should also require LECs to file a notice in the Commission's Electronic Comment Filing System (ECFS) to alert other providers that a new deployment plan has been posted, giving the link to the notice on the LEC's website and information about the geographic area at issue (e.g., census blocks and zip codes). The 90-day period should start once this ECFS filing has been made.

The Commission also should adopt its proposal to perform a biennial review to identify areas with 100 percent competitive coverage.⁵ The Commission first decided to eliminate support in these areas in the 2011 *CAF Order* and it has finally codified a rule that would

⁴ *Id.* at ¶¶ 263-65.

⁵ *Id.* at ¶ 266.

implement this decision.⁶ Given that the Commission now is fully responsible for collecting broadband deployment data through the Form 477 process, it makes sense to use that data to periodically identify areas where support should be eliminated due to a 100% overlap in coverage by competitors.

As part of that process, NCTA suggests that the Commission take the additional step of identifying all study areas with competitive coverage exceeding a threshold level, e.g., 80 percent. While the Commission only has adopted rules eliminating support in areas with a 100 percent competitive overlap, there is no reason that the public should not have information regarding other areas where the Commission is directing significant funding to areas largely served by competitors. For example, as NCTA has demonstrated previously, the Commission is providing over \$20 million annually to EATEL to provide service in a portion of Louisiana where Cox offers service to 97 percent of the population.⁷ Consistent reporting of such information could prove very useful in fine tuning the high-cost program in the future and ensuring that public funds are spent more efficiently.

Beyond these immediate reforms, the Commission should incorporate the principle that subsidies should not be used to overbuild existing networks into any new long-term funding mechanism as well. Perhaps not surprisingly, the proposals advanced by organizations representing rural LECs fail to properly account for the presence of competitors. For example, as the *Further Notice* recognizes,⁸ and as NCTA has explained previously,⁹ NTCA's proposal for a stand-alone broadband funding mechanism fails to account for the existence of privately

⁶ *CAF Order*, 26 FCC Rcd at 17766-68, ¶¶ 280-84; *Further Notice* at ¶ 54.

⁷ Opposition of the National Cable & Telecommunications Association to Petition for Stay, WC Docket No. 10-90 (filed June 1, 2012) at 2-3.

⁸ *Further Notice* at ¶ 274.

⁹ Comments of NCTA, WC Docket No. 10-90 (filed June 17-2013) at 5.

funded networks at all. A LEC's support under this proposal would be the same whether a competitor offers service to 99 percent of customers in the area or only 1 percent. There is no basis under which the Commission could find this to be a rational broadband policy.

The proposal submitted by ITTA for rural LECs to voluntarily transition to model-based CAF support raises similar concerns. Although the details of the proposal are not entirely clear, it appears that rural LECs would be given the option to receive 10 years of model-based support even in areas served by competitors.¹⁰ If the Commission is going to permit rural LECs to move to model-based CAF support voluntarily, it must limit that support to census blocks that are not already served by competitors, just as it has done in price cap territories.

The *Further Notice* also solicits comment on the possibility of providing support for middle mile facilities. As NCTA has explained previously, competitive providers serving rural areas face exactly the same middle mile costs as incumbent LECs.¹¹ Consequently, there is no basis for providing such support only to incumbent LECs. If the Commission provides support for middle mile facilities, NCTA agrees that it should be limited to tribal areas as proposed in the *Further Notice* and made available to providers on a competitively-neutral basis.¹²

B. Any New Support Mechanisms Should Not Increase the Budget For Rural LECs

In addition to better targeting of support, the *CAF Order* also made clear that one of the Commission's priorities in modernizing the high-cost support program was to establish a firm budget.¹³ Specifically, with respect to rural LECs, the Commission established an annual budget

¹⁰ *Further Notice* at ¶ 280.

¹¹ Comments of NCTA, WC Docket No. 10-90 (filed Jan. 18, 2012) at 6.

¹² *Further Notice* at ¶ 300.

¹³ *CAF Order*, 26 FCC Red at 17710-12, ¶¶ 123-26.

of \$2 billion.¹⁴ As the Commission considers long-term reforms to the program for rural LECs, it should hold firm to the \$2 billion budget established in the *CAF Order*. As might be expected, both the NTCA proposal and the ITTA proposal raise concerns in this regard. As the Commission itself noted in the *Further Notice*, the NTCA proposal seems to anticipate distributing more than \$2 billion per year in high-cost support.¹⁵ The *Further Notice* raises similar concerns about the effect of the ITTA proposal because of the risk that a voluntary transition to model-based support only would attract rural LECs that anticipate receiving more support than they would with the legacy regime.¹⁶ The Commission should not adopt either proposal without first taking steps to ensure that any changes will not cause the program to exceed its budget.¹⁷

II. THE COMMISSION SHOULD TAKE ALL STEPS NECESSARY TO AVOID OVERBUILDING EXISTING NETWORKS IN PRICE CAP AREAS

The Commission has made solid progress on moving forward with Phase II of the CAF, but the *Further Notice* identifies a number of additional issues that must be addressed if that progress is going to continue. Most of these issues go to the logistics of determining whether an area is served or not. Because the Commission has granted the price cap LECs an exclusive right to make a statewide commitment, it must take special care not to permit inefficient overbuilding by including areas where companies already have invested private capital in providing broadband service to consumers. Such concerns are less significant in a competitive bidding

¹⁴ *Id.* at 17711-12, ¶ 126.

¹⁵ *Further Notice* at ¶ 273.

¹⁶ *Id.* at ¶ 289.

¹⁷ The Commission also should provide more explanation regarding the reserve from which it suggests it might be able to fund a program supporting the provision of stand-alone broadband service. *Id.* at ¶ 269. As Commissioner O’Rielly has explained, the Commission generally should collect the support it needs and return any extra to consumers, not over-collect and use any excess to support new subsidy mechanisms. *Id.*, Statement of Commissioner Michael O’Rielly Approving in Part and Concurring in Part.

regime so long as any entity with an existing network has the opportunity to participate in the bidding for support, an opportunity that competitive providers have been denied in the initial stage of CAF Phase II.

A. The Commission Should Not Allow CAF Phase II Funding To Be Used In Partially Served Census Blocks

The *Further Notice* solicits comment on a proposal to allow price cap LECs to substitute locations in unserved census blocks where they have elected to take funding with different locations in “partially served” census blocks.¹⁸ The Commission twice has rejected proposals to award LECs funding to serve partially served census blocks and it should reject this proposal as well.

As the Commission found previously, there is no way to identify unserved areas within served census blocks without a burdensome challenge process because the Commission does not collect data below the census block level.¹⁹ The proposal in the *Further Notice* raises precisely the same concerns. Labeling this proposal as “flexibility” to shift funds already awarded rather than “eligibility” for awarding funds is a distinction without any meaning. Granting the proposal will lead to inefficiency and waste unless there is a process in place by which competitors will be informed of the areas where incumbent LECs plan to use the money at the street level and given the opportunity to show that the area already is served, but implementing such a process will create staggering burdens for companies and the Commission staff.

¹⁸ *Id.* at ¶¶ 162-72.

¹⁹ *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (rel. Jul. 14, 2014) at ¶ 16 (“As NCTA notes, allowing entities to bid on partially-served census blocks would likely substantially increase the challenge of administering the experiments, given the lack of a reliable source of data on broadband availability below the census block level.”); *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7220, ¶ 22 (WCB 2013) (“Conducting a sub-block challenge process on millions of blocks would pose significant burdens on both potential unsubsidized competitors as well as Bureau staff. We conclude that the administrative burden of constructing and carrying out a sub-census block challenge process far outweighs any marginal benefit from such a process.”).

Although the *Further Notice* suggests that it is not reversing the Bureau's prior decision not to allow funding in partially served census blocks and therefore there is no need for a challenge process, it does seek comment on a process by which incumbent LECs would identify areas where they might be interested in using funding as part of the annual reporting process and competitors would then have 90 days to object.²⁰ The administrative burdens of such a process are even greater than the existing challenge process, where the Bureau at least has provided a single list of eligible census blocks as a starting point for the challenge process. In contrast, the proposal in the *Further Notice* would require parties to scour the annual reports filed by incumbent LECs for some indication that the LEC might be interested in using funds in areas identified as served and then would require competitors to submit evidence of service. Moreover, the proposal does not even require the LECs to provide this information at a sufficient level of detail for the Commission or other providers to know the specific location and number of homes the LEC plans to serve.

The potential for incumbent LECs to abuse this system is significant. There is zero cost to an incumbent LEC to including in its annual reports a large list of served census blocks where it is considering potential deployment of broadband using CAF funding, but doing so guarantees that the LEC's competitors will be forced to bear the burden of finding this information in the annual report and demonstrating that they serve each of the census blocks. Imposing a process with such a lopsided allocation of burdens is particularly inappropriate given the overwhelming advantage the incumbent LECs already possess by virtue of the exclusive statewide commitment. Moreover, nowhere does the *Further Notice* explain why this tremendously burdensome

²⁰ *Further Notice* at ¶¶ 169, 171.

exercise, which the Commission twice has declined to authorize, would be justified given that there are still so many census blocks that are completely unserved.

B. The Commission Should Not Provide CAF Phase II Support In Areas That Are Served By A Competitor

In addition to the proposal to offer funding for partially served census blocks, the *Further Notice* raises a number of other issues that, if not handled properly, could result in price cap LECs receiving funding in areas where competitors already have invested private capital to provide broadband service. As explained below, the Commission should take any steps necessary to avoid such a result.

First, the Commission should consider the presence of all technologies in determining eligible areas.²¹ The Commission's approach in Phase I, where it categorically excluded mobile wireless and satellite broadband providers from being considered unsubsidized competitors,²² was guaranteed to result in price cap LECs receiving support in areas where another provider offers qualifying service. The Commission now acknowledges 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."²³ It is long past time for the Commission to incorporate this principle of technological neutrality into its approach to determining whether an area should be eligible for high-cost support.

In addition, as NCTA has explained on numerous occasions, it also is long past time for the Commission to grant the petition for reconsideration that WISPA filed over two years ago and exclude areas where customers have access to qualifying broadband and voice services but

²¹ *Id.* at ¶ 155.

²² *CAF Order*, 26 FCC Rcd at 17701-02, ¶ 104.

²³ *Further Notice* at ¶ 154.

not from a single provider.²⁴ There is no rational basis for providing support to the incumbent LEC in these areas. It would be inexcusable for the Commission not to address this petition *before* making decisions about eligibility for CAF Phase II.

Second, the Commission should include competitors that received CETC funding in determining eligible areas.²⁵ While the Commission previously focused on the presence of unsubsidized competitors as the basis for excluding an area from receiving CAF support, the same policy considerations apply with respect to areas served by a competitive provider that is receiving CETC support. As the Commission recognizes, providing support in these areas “would mean those support dollars would not be available to deploy broadband-capable infrastructure in areas that truly lack broadband.”²⁶ Arguments made by the incumbent LECs that CETCs will leave the market once their support is fully eliminated are based on pure speculation and ignore the fact that, once a network is built, continuing to provide service is the only plausible way for a provider to earn a return on that investment.

Third, the Commission should cease providing legacy support in areas served by competitors, including legacy voice support in areas service by mobile wireless carriers. The *Further Notice* specifically asks whether the Commission should continue providing legacy voice support in areas where no provider has elected to receive CAF Phase II broadband support.²⁷ While it seems clear that such areas will need additional support to encourage the deployment of broadband facilities (e.g., through the Remote Areas Fund), perpetuating legacy

²⁴ See, e.g., Comments of NCTA, WC Docket No. 13-5 (filed Mar. 31, 2014) at 3 n.6.

²⁵ *Further Notice* at ¶¶ 174-78.

²⁶ *Id.* at ¶ 176.

²⁷ *Id.* at ¶¶ 189-194.

voice support will not achieve that goal. The only reason to continue providing legacy voice support in those areas is if there are no other providers of voice service.

CONCLUSION

The Commission should continue moving forward with its efforts to reform the high-cost program. As it has previously, the Commission should ensure such reforms maintain a strict budget for all elements of the high-cost program and that funding is distributed only in areas where competitors have not already invested private capital to deploy broadband facilities.

Respectfully submitted,

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