

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Connect America Fund

WC Docket No. 10-90

**FURTHER NOTICE OF PROPOSED RULEMAKING
COMMENTS OF THE AMERICAN CABLE ASSOCIATION**



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The American Cable Association (“ACA”) submits comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in the above referenced docket.¹ ACA’s comments are focused solely on issues concerning the Connect America Fund (“CAF”) Phase II program for providing support for broadband and voice services in high-cost areas served by price cap local exchange carriers (“LECs”).² These issues pertain to the award of support to the price cap

¹ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, (rel. June 10, 2104) (“Report and Order/FNPRM” also “Report and Order”).

² ACA’s comments should not be interpreted in any way to apply to issues raised in the FNPRM about the provision of support in areas served by rate of return LECs. These smaller incumbent LECs are situated much differently than price cap LECs, and the Commission needs to account for the materially different conditions under which they operate.

LECs based on the Connect America Cost Model (“CAM”) (“model-based” support) and the award of support pursuant to competitive bidding.

I. INTRODUCTION AND SUMMARY

For the Phase II program, the Commission adopted a two-pronged approach: first, provide the price cap LECs an opportunity to elect a state-level commitment to receive support in eligible census blocks based on the CAM, and then, where a LEC refuses the election, award support via competitive bidding to an Eligible Telecommunications Carrier (“ETC”). Because the first prong of this approach was not competitively neutral, ACA was, and remains, concerned it could lead to the inefficient provision of support. Accordingly, ACA has endeavored over the past 30 months to play a constructive role in the development of the CAM along with seeking to ensure that support is not provided in areas and to locations served by unsubsidized competitors.

In the FNPRM, the Commission inquires whether price cap LECs receiving model-based support should have the five-year term extended should the speed benchmark increase to 10 Mbps. In its discussion herein, ACA not only demonstrates that there is no reason to increase either the duration of, or funding for, the program when speeds increase, but, because price cap LECs would be expected to receive additional revenues as a result of offering broadband with higher speeds, the Commission should re-run the CAM with new revenue inputs and adjust the target benchmark to ensure support is provided most efficiently. Also, in regard to model-based support, ACA demonstrates in these comments that, should the Commission permit price cap LECs receiving model-based support to eliminate locations from being served or substitute other locations, it will almost certainly produce a windfall for these LECs and undermine the Commission’s intent to prevent “cherry-picking.” The Commission thus should reject any such proposals.

The FNPRM also raises a number of issues concerning the competitive bidding process. Here, ACA shares the Commission’s desire to maximize the number of bidders so that support is awarded most efficiently. It supports the measures adopted by the Commission in the Report and Order for this process, including providing support for ten years for winning bidders,³ permitting price cap LECs to participate in the process,⁴ and allowing applicants in the bidding process to not be ETCs at the time they initially apply.⁵ In response to the open issues on the competitive bidding process in the FNPRM, ACA submits the Commission should: adopt its proposal establishing a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation if it fails to initiate a proceeding on a petition for ETC status within 60 days of receipt of a petition; adopt its proposal to sunset ETC designations of recipients of Phase II support awarded by competitive bidding after the funding term has expired and all deployment and public interest obligations have been met; treat an application for support in the rural broadband experiments (“RBE”) program as sufficient indication of potential competitive entry and remove areas in an application from a price cap LEC’s state-level commitment; and, employ the competitive bidding paradigm adopted for the RBE program, which achieves the aim of selecting the best applicants in a straightforward and objective manner.

II. PUBLIC INTEREST OBLIGATIONS — EVOLVING SPEED OBLIGATIONS

In the FNPRM, the Commission proposes to increase the minimum downstream broadband speed that recipients of support need to provide from 4 Mbps to 10 Mbps and seeks

³ See Report and Order/FNPRM, ¶ 35.

⁴ See *id.*, ¶ 37.

⁵ See *id.*, ¶ 43.

comment on raising the upstream speed above 1 Mbps.⁶ It bases this proposal on the evolution of broadband performance in the market, where all urban customers today have access to 10 Mbps service.⁷ In proposing this increase, the Commission notes it is “primarily focusing on the minimum standard for new deployments of broadband-capable infrastructure” and it does “not intend to suggest that ETCs must deliver such speeds immediately upon adoption of a new rule.”⁸ It then inquires whether, if this change were adopted, the Phase II program should be modified by providing a longer term for Phase II model-based support than the current five-year term.⁹ From ACA’s perspective, assuming the Commission increases the speed to 10 Mbps, there is no cogent public interest rationale for the Commission to alter its rules for awarding Phase II model-based support to price cap LECs making a state-level commitment by increasing the duration of the program beyond five years or by making any other modification that would effectively increase the amount of funding provided during the five-year period. As discussed below, the Commission has structured the CAM to accommodate increased speeds without any need to increase the duration of the program or amount of support. Further, ACA contends that given the program’s model-based structure, the Commission should re-run the CAM with new revenue inputs and adjust the target benchmark to factor in the higher revenues the price cap LECs are likely to receive as a result of providing 10 Mbps service, which will ensure that the limited funding is used more efficiently.

⁶ See *id.*, ¶ 138.

⁷ See *id.*, ¶ 141.

⁸ See *id.*, ¶ 142.

⁹ See *id.*, ¶ 148.

To understand why price cap LECs receiving model-based support require no additional time or funding to deploy broadband with speeds above 4/1 Mbps, it is essential to examine how the Wireline Competition Bureau (“Bureau”) structured the CAM. In using a greenfield, fiber to the home network design and technology, the CAM is effectively a “future-proof” model that accounts for the cost of and provides support for any increase in broadband transmission speed. Accordingly, it does not matter whether the benchmark speed is 4/1 Mbps, 10/1 Mbps, or even 1 Gbps/200 Mbps¹⁰ – under the CAM, the cost of the network and broadband service is the same, as is the aggregate amount of support required. All that changes are the locations where support is provided (and the amount of support that each price cap LEC might receive) since different locations may be unserved under the new, higher speed benchmark — and, most importantly, all the deployments to these locations can occur within the five-year duration of the model-based program.

The Bureau in its recent release of CAM “Illustrative Results” using a 10/1 Mbps benchmark amply demonstrates this point.¹¹ Assuming the Phase II budget remains as is, with a 4/1 Mbps benchmark, 4.25 million locations would be eligible for support of which 2.7 million are unserved (by 3 Mbps/768 kbps service); with a 10/1 Mbps benchmark, 4.7 million locations would be eligible for support of which 3.6 million are unserved (by 10 Mbps/768 kbps service).¹²

¹⁰ The CAM’s fiber to the home model does not provision for the capability for every passed location on the network to be connected and use the full capacity of the network at 1 Gbps/200 Mbps. But using a typical network engineering assumption of 20:1 (that is, at any given time only 1/20th of the network’s full capacity will be utilized by end users), the CAM provides enough capacity to enable gigabit download speeds.

¹¹ *Wireline Competition Bureau Releases Connect America Cost Model Illustrative Results Using Higher Speed Benchmark*, WC Docket No. 10-90, Public Notice, DA 14-833 (rel. June 17, 2014) (“Bureau Illustrative Results”).

¹² *Id.* at 2.

Thus, at the higher speed benchmark, more locations are supported and more unserved locations receive service during the five-year term. The only locations that are eliminated from being eligible for support are those very high-cost locations – in this instance, approximately 250,000 locations – just below the high-cost threshold.¹³ This type of policy trade-off is inherent in the Phase II program, especially with model-based support, since it operates with a fixed budget.¹⁴

Of course, the Phase II program always contemplated that the price cap LECs would need to serve a number of locations with broadband at speeds of 6/1.5 Mbps by the end of the five-year period.¹⁵ The Commission was to determine this amount, and one would presume it would be accomplished similar to the determination of eligible locations in the “Bureau Illustrative Results.” The price cap LECs were thus on notice that their “speed” obligations would increase within the five-year term of the program. For these reasons alone, no additional time or support is needed when speeds increase from 4/1 Mbps.

¹³ *Id.* See also Letter and attachment from Jeffrey Lanning, Vice President – Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al.* (Mar. 31, 2014). In this *ex parte* filing, CenturyLink raised concerns that model-based support based on a 4/1 Mbps requirement would be inadequate because, among other things, so many “extremely high-cost and uneconomic” locations would be eligible for support. From the “Bureau Illustrative Results,” it can be surmised that CenturyLink and the price cap LECs are in fact better off by having a higher-speed requirement. It makes approximately 500,000 lower cost locations eligible for support while eliminating approximately 250,000 very high cost, but below the threshold, locations. The high-cost threshold is lowered from \$207.81 to \$172.51, which is similar to the threshold in earlier versions of the CAM (CAM 3.1.2 and CAM 3.2). These lower cost locations are most likely in more dense and more closely clustered areas, which are more attractive to serve.

¹⁴ ACA believes the pending challenge process to determine locations eligible for model-based support should continue and be used to produce a final list of eligible locations, pursuant to which the price cap LECs would make their state-level elections. Should the Commission determine that afterward the potentially eligible locations may change because the speed requirement increases to 10 Mbps, it should undertake a new challenge process for additional locations that are potentially eligible.

¹⁵ See Report and Order/FNPRM, ¶ 147.

In fact, ACA submits that the "Bureau Illustrative Results" provide too much support for the number of locations served because the retail price charged by the price cap LECs for 10/1 Mbps service is materially greater than for 4/1 Mbps service. Consequently, the Commission needs to re-run the CAM with new revenue inputs and adjust the target benchmark to account for the higher expected revenues with the increase in speed.

The amount of support provided by the current version of the CAM is based on a price for, and ensuing revenues from, 4/1 Mbps broadband service. However, the current market price for providing a 10/1 Mbps service is significantly higher — as demonstrated both by the Bureau and the price cap LECs. For instance, in the Bureau's recent report discussing possible methodologies for establishing reasonably comparable rates, it found (using its preferred linear regression model) the average monthly rate for 10/1 Mbps service was over \$6 (or 13 percent) higher than the rate for 4/1 Mbps service.¹⁶ As for the price cap LECs, a report they submitted to the Commission last September showed in general that they increase their standard, non-promotional prices significantly as broadband speeds increase.¹⁷

ACA also conducted an analysis of price cap LECs' pricing for 10/1 Mbps broadband service and unlimited voice service in eligible areas to determine an appropriate average revenue

¹⁶ See "Possible Methodologies for Establishing Reasonably Comparable Broadband Rates for Fixed Services," Wireline Competition Bureau Staff Report, at 9 (June 30, 2014), attached to Wireline Competition Bureau Announces Posting of Broadband Data from Urban Rate Survey and Seeks Comment on Calculation of Reasonable Comparability Benchmark for Broadband Services, WC Docket No. 10-90, Public Notice, DA 14-944 (rel. June 30, 2014).

¹⁷ See Letter and Attachment from Robert Mayer, Vice President, Industry and State Affairs, US Telecom, to Ms. Marlene H. Dortch, WC Docket No. 10-90 *et al.* (Sept. 3, 2013).

per user (“ARPU”) for the CAM.¹⁸ This analysis demonstrates that the ARPU should increase from \$75 in the current version of the CAM to approximately \$81. Using the Commission’s adopted take-rate of 70 percent would raise the target benchmark from \$52.50 to \$57, while

¹⁸ ACA’s analysis employs a methodology it used in a filing last year. *See* American Cable Association *Ex Parte* Filing in the Virtual Workshop in Response to the Public Notice (DA 13-1136) on the Connect America Cost Model, WC Docket No. 10-90 (June 12, 2013).

Price cap carriers largely offer uniform national pricing for DSL broadband and voice services. The presence, or lack thereof, of a competitive provider in a given territory does not typically affect this pricing. Therefore, non-promotional pricing for DSL broadband and voice from any area where 10/1 Mbps broadband or greater is available provides useful benchmarks upon which to base the ARPU threshold. Given the unequal distribution of CAF-eligible locations across different operators’ service areas, the simplest and most equitable way to average these ARPUs is to weight the ARPUs by each price cap carriers’ share of total CAF-eligible locations. Additionally, while advertised non-promotional pricing for 10/1 Mbps broadband and voice service is a reasonable proxy for ARPU, it does not capture the entire ARPU for customers subscribing to both 10/1 Mbps broadband and voice services. In the case of packages that do not include unlimited calling, some subscribers will incur additional voice usage charges. So any analysis based on pricing benchmarks will inevitably be conservative.

For this analysis, ACA first determined the mix of CAF-eligible locations located within each price cap carriers’ territory using the latest version of the CAM. ACA then researched the lowest non-promotional, non-contract price advertised for broadband that had speeds at or near 10 Mbps downstream and 1 Mbps upstream and voice packages with unlimited local and long-distance minutes, if available. In the cases where pre-packaged bundled offers meeting those requirements were cheaper than a la carte pairings, ACA used those prices as benchmarks. The output of ACA’s research is below:

ILEC	Max Speed	Eligible Locations	10/1 Double-Play ARPU
AT&T	6/0.768	6,237,191	\$95.00
Cincinnati Bell	5/0.768	17,921	\$67.99
CenturyLink	10/0.768	4,389,877	\$67.00
Consolidated	10/1	71,109	\$80.95
Fairpoint	15/1	308,298	\$80.18
Frontier	12/1	2,284,076	\$75.97
Verizon	7/0.3	1,571,927	\$54.99
Windstream	3/unspecified	1,422,656	\$94.98
Totals/Averages		17,324,008	\$80.56

using ACA's recommended take-rate of 80 percent would raise the target benchmark to \$65. In sum, ACA submits the Bureau needs to re-run the CAM and raise the target benchmark to reflect these increased prices if it increases the speed benchmark to 10 Mbps since it would lead to a more efficient distribution of support during the five-year term.

Finally, in examining the issue of whether more time or funding should be given to the price cap LECs receiving model-based support when speeds increase, it is important to remember that in adopting the Phase II program the Commission concluded that it "should ultimately rely on market-based mechanisms...to ensure the most efficient and effective use of public resources" but included model-based support as a "transition" to competitive bidding to avoid customer disruption and get broadband to substantial numbers of unserved locations as quickly as possible.¹⁹ The short-term CAF Phase I program and the five-year model-based Phase II program have and will achieve this transitional goal, but the Commission should not lose sight of the fact that, if the model-based program is extended beyond five years, the public will be denied the greater benefits of a market-based mechanism.

III. FLEXIBILITY IN MEETING DEPLOYMENT OBLIGATIONS

The Commission seeks comments on two proposals to provide recipients of Phase II support with increased flexibility in meeting their deployment obligations. First, the Commission asks whether it should permit recipients of either model-based support or support obtained through competitive bidding to deploy to less than 100 percent of locations in their

¹⁹ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17727, ¶ 165 (2011), *pets. for review denied sub nom.*, FCC 11-161, ---F.3d ---, 2014 WL 2142106 (10th Cir. May 23, 2104) ("*USF/ICC Transformation Order*").

funded areas and receive less support.²⁰ ACA believes the Commission should reject this proposal for any recipient of Phase II support. The Commission’s second proposal is to permit “Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks.”²¹ This proposal too should be rejected.

The Commission’s first proposal to permit a limited reduction in the number of locations served raises significant concerns when used by recipients of model-based support because the output of the CAM is an aggregate amount of support per census block without any indication of support per location.²² Consequently, should the Commission adopt its proposal, price cap LECs would have an incentive to “opt out” of serving the highest cost locations and receive a windfall. The Commission indicates that it could adopt a methodology to address this concern,²³ but, while the CAM analyzes costs at a granular level, the required calculations to determine the cost for each of the 130 million locations are highly complex, not necessarily transparent, and are not guaranteed to produce precise results.²⁴

²⁰ See Report and Order/FNPRM, ¶ 165.

²¹ See *id.*, ¶ 167.

²² The Cost to Serve Module of the CAM estimates costs at the census block level, providing a total cost for the census block and average cost per location. The Support Module then uses user-defined upper and lower thresholds (called the target benchmark and alternative technology cutoff, respectively) to include or exclude census blocks based on the average cost per location. For example, if the target benchmark (lower threshold) is set to \$60, and the average cost per location in a particular census block is \$45, that census block will be excluded. In sum, the CAM as currently designed does not provide as an output a unique cost profile for every location.

²³ See Report and Order/FNPRM, ¶ 166.

²⁴ Even if Commission adopts the proper methodology, any change in the process and need to run the CAM would result in additional regulatory proceedings and likely a delay in the start of the model-based support program.

To elaborate, the most significant driver of cost in the CAM, and all network models, is the distance between locations the model intends to serve. The greater the distance between the locations, the more outside plant that is required to be built to serve one location. Proposals to exclude the highest-cost locations in the model could, for instance, assume that eliminating funded locations farthest from other locations will effectively remove the highest-cost locations. But remoteness is not the only factor affecting the cost to serve a particular location. Outside plant type (aerial vs. trenched (buried) vs. underground conduit) and topography can have a significant effect on the per-foot build-out costs. Additionally, one cannot remove locations without affecting the cost profile of other locations. In some cases, removing locations will lower the cost profile of nearby locations; in other cases, removing locations will raise the cost profile of nearby locations. The interconnected nature of the components of the CAM means that every time you remove “high-cost” locations, you change the cost profile of thousands or millions of other locations, requiring you to re-evaluate what defines “high-cost.” This effect is due to the fact that many costs in the model are shared among locations. Removing some locations, therefore, can and is likely to affect the cost profile of other nearby locations.²⁵

²⁵ The following are examples of how removing locations can affect the cost profile of nearby locations (based on CAM Methodology Version 4.1.1):

- For the fiber-to-the-home network topology being used by CAM, all locations must be within 5,000 feet of the fiber splitter, which is the last upstream point on the network before the end user location. Removing one or more higher-cost locations in a splitter’s service cluster may allow the splitter to be moved closer to the central office, reducing the fiber build-out costs between the splitter and the central office. This would reduce the costs shared by other locations within the splitter’s service cluster.
- Every fiber strand coming off the splitter is designed to serve 32 end user locations. Removing one high-cost location served by the splitter will incrementally raise the cost of the splitter shared by other locations in the splitter’s service cluster. The same logic holds true for other elements of the network further upstream, such as the optical line termination (OLT), feeder fiber,

An alternative to trying to factor in all these complexities is to exclude locations based solely on unshared costs, that is, only costs associated with the last mile build-out from the fiber splitter to the location. But this would not fully capture all the costs associated with the highest-cost locations and would leave some inefficiently scoped elements of the network in place. For example, removing the highest-cost locations based solely on last-mile build-out costs would leave inefficiently dimensioned fiber splitters located further from the central office than they need to be. There also may be in some cases too many splitters where reduced demand and distances could have allowed for splitter consolidation. Thus, it is extremely doubtful the Commission can adopt a precise methodology for determining the cost per location, and any proposal to permit support recipients to remove locations in eligible census blocks would lead to gaming and a windfall and to inefficient or wasteful use of CAF support.

In addition for price cap LECs receiving model-based support, the proposal would undermine the state-level commitment framework, even if it is limited, for instance, to 5 percent of locations (over 200,000 locations). In the *USF/ICC Transformation Order*, the Commission specifically opted for this framework so a price cap LEC could not “cherry pick” the most

(*cont.*) central office, and middle mile fiber costs, although the impact of removing one location becomes increasingly diluted the further upstream in the network you go.

- Because the model does not require that the fiber splitter be used to 100 percent capacity, there may be some cases where removing a few high-cost locations may allow the model to consolidate two splitters into one, as long as every remaining location is within 5,000 feet of the splitter. This would in turn lower the cost for the remaining locations. Consolidation of network elements further upstream is also possible, although unlikely.
- One factor in determining what level of network and general and administrative operations and expenses to apply to a census block is density. Removing high-cost locations will reduce the density of a particular census block, which could in some cases raise the operations expenses applied to the remaining locations in the census block.

attractive areas within its service territory, leaving the least desirable areas for a competitive process.”²⁶ Moreover, even where a price cap LEC rejects a state-level commitment, it is not shut out from receiving support; it can still participate in the competitive bidding process.²⁷ Finally, despite the Bureau’s efforts to make the cost model as accurate as possible, it will not, as the Commission just stated in regard to the competitive bidding process, “involve vigorous competition that will drive down support amounts to efficient levels.”²⁸ Accordingly, the Commission should not provide greater incentive for a price cap LEC to elect an even less efficient outcome.

As for participants in the competitive bidding process, there are two reasons not to provide greater flexibility in deployments. First, participants in the competitive process will adjust their service areas and bids to meet requirements established by the Commission. That is, if they know they need to serve 100 percent of locations, they will participate accordingly. Second, the competitive bidding selection process needs to be as objective as possible, both to encourage providers to participate and to ensure the integrity of the program. Adding flexibility for winners would reduce that objectivity, especially since the Commission will not be able to accurately determine the amount by which support should be reduced.

As for the Commission’s second proposal permitting support recipients to substitute unserved locations within partially served census blocks for locations within funded census blocks, it should be rejected for a number of reasons. First, since the Commission continues to

²⁶ See *USF/ICC Transformation Order*, ¶ 173.

²⁷ See Report and Order/FNPRM, ¶ 37.

²⁸ See *id.* n. 65.

stand by its decision not to provide support in partially served census blocks,²⁹ the proposal, by allowing post-award changes for model-based recipients, would, as discussed above, enable price cap LECs to reject serving higher-cost locations and substitute lower-cost ones. Additionally, it would permit “cherry picking” by these LECs and undermine the state-level commitment framework. Again, the Commission should prefer support to be awarded by the more efficient competitive bidding process rather than that outcome. Further, any substitution process would be inordinately complex as the Commission seeks to limit the number of substitutions, undertake a challenge process for the new locations, and ensure the recipient does not receive more support than appropriate (assuming that is even possible).³⁰ Moreover, while a challenge process may be potentially equitable for competitive providers as a whole, the Commission should recognize that it will impose substantial, tangible burdens on smaller providers. This is especially the case where individual price cap LECs and other recipients opt to swap out locations at different times, potentially resulting in a continuous series of challenge processes which a small competitor must monitor and then expend resources to respond. Finally, the benefits of the proposal are speculative as there is no evidence that the proposal would result in more effective network deployment. As for the competitive bidding process, the proposal is not necessary for the same reasons as discussed above.

²⁹ *See id.*, ¶ 169.

³⁰ Even if the Commission requires a price cap LEC to provide service to another eligible location on a one-to-one basis for each location it is electing not to serve, unless the Commission requires the LEC to choose to serve locations of the same cost, which the current model is not set up to assess, and the existing infrastructure in both locations is the same, the price cap LEC would be expected to receive a windfall.

IV. ETC DESIGNATION

ACA appreciates the Commission's effort to streamline the ETC designation process to facilitate participation by cable operators and other competitors in Phase II competitive bidding.³¹ In the FNPRM, the Commission seeks to build upon its decision to permit entities to become ETCs after being selected for the offer of funding. First, it seeks to hold selectees accountable by proposing to adopt a 30-day limit for a winning entity to seek to become an ETC. Second, to ensure the process is not delayed, it proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation if it fails to initiate a proceeding on a petition for ETC status within 60 days of receipt of a petition.³² Both proposals are reasonable, providing the proper incentives for selectees and state commissions to proceed responsibly. ACA also believes it would be in the best interests of the Phase II program for the Commission to adopt a deadline for a state commission to issue a decision on a petition, and, to that end, it supports the concept of a rebuttable presumption that a petitioner is not subject to the state commission's jurisdiction if the state commission does not issue a decision within 90 days of initiating a proceeding.³³ This framework properly balances the interests of the Commission to bring broadband to unserved areas, state commissions to pursue their traditional role and ensure providers in their states are properly qualified, and selectees to have their petitions reviewed in a reasonable time.

³¹ See *id.*, ¶ 43 (“After consideration of the record, we conclude that potential applicants in the Phase II competitive bidding process need not be ETCs at the time they initially *apply* for funding at the Commission.”).

³² See *id.*, ¶¶ 181-182.

³³ See *id.*, ¶ 182.

Finally, ACA supports the Commission’s proposal to sunset ETC designations of recipients of Phase II support awarded by competitive bidding after the funding term has expired and all deployment and public interest obligations have been met.³⁴ ACA agrees with WISPA that this would encourage participation in the competitive bidding process, which furthers the Commission’s interest in seeing support distributed most efficiently. In addition, the Commission has the ability to address post-sunset concerns that rates are not reasonable or that low-income consumers do not have access to Lifeline service. To that end, ACA suggests that the Commission ask a recipient of support to report in the “10th year” on its plans after the funding period, including whether it intends to continue service, what it expects to charge for voice and broadband, and whether it will provide Lifeline service.

V. INTERPLAY BETWEEN RURAL BROADBAND EXPERIMENTS AND OFFER OF MODEL-BASED SUPPORT

Earlier this year, the Commission received more than 1,000 expressions of interest in its RBE program, which seeks to determine whether higher-speed broadband service can be delivered to high-cost areas more efficiently. This past month, it built on this outpouring of interest by adopting rules and a budget for the program, with \$100 million of recurring support to be awarded for a 10 year period.³⁵ The two types of experiments that comprise 90 percent of the spending for the program seek to demonstrate that with no more support than provided in the CAM, consumers in eligible areas served by price cap LECs can and will receive much higher-

³⁴ See *id.*, ¶ 184.

³⁵ See *In the Matter of the Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (July 14, 2014) (“Rural Broadband Experiments Order”).

speed broadband service.³⁶ ACA applauds the Commission for establishing this forward-looking program and especially for adopting an objective, relatively streamlined, and rigorous process to award support. Applications for support, which are due on October 14, 2014, will demonstrate a serious commitment to achieve the Commission’s worthwhile objectives of bringing higher-speed broadband to rural areas for less.

In the FNPRM, the Commission inquires whether an application for support in the RBE program is sufficient indication of potential competitive entry that rural areas included in an application should be removed from a price cap LEC’s state-level commitment (but not from the competitive bidding process should the applicant not receive RBE support).³⁷ To answer this question, it is important to examine the Commission’s intent in awarding the price cap LECs a right of first refusal to Phase II support. In the *USF/ICC Transformation Order*, the Commission clearly favored use of competitive bidding to award support since it was more efficient and effective. However, “to avoid consumer disruption,” it gave the price cap LECs the right of first refusal.³⁸

ACA submits the RBE process should surmount any concern by the Commission about harms to consumers. Because the Commission imposes stringent conditions for applicants in the RBE process, an application represents a firm commitment to provide service in an area. Moreover, it represents a commitment to provide significantly better broadband service than a price cap LEC would provide under the model-based regime, and it would achieve that end by using no more than – and most likely much less than – the amount of support to be provided to

³⁶ See *id.*, ¶ 24.

³⁷ See Report and Order/FNPRM, ¶ 220.

³⁸ See *USF/ICC Transformation Order*, ¶ 165.

the price cap LEC. In addition, should the applicant not receive RBE support, the application still should be viewed as a strong indication that the applicant will participate to receive support for the same areas in the Phase II competitive bidding process.³⁹ In other words, there is all gain and no real loss from removing areas included in RBE applications from the state-level commitment.

VI. PHASE II COMPETITIVE BIDDING PROCESS

In the FNRPM, the Commission focuses on the mechanics of the competitive bidding process and proposes a series of measures, including setting reserve prices based on the CAM, permitting bids that package geographic areas, using a multi-round auction, and favoring bids that propose service exceeding the current public interest obligations.⁴⁰ ACA submits that the Commission does not have to “re-invent the wheel” in developing the Phase II competitive bidding mechanics. Rather, it should employ the competitive bidding paradigm⁴¹ adopted for the RBE program, which in general achieves the aim of selecting the best applicants in a straightforward and truly objective manner. The RBE paradigm uses the CAM to establish reserve prices, permits applicants to aggregate census blocks in a bid, uses a single-round sealed bid approach, and selects recipients in a nationwide competition based solely on cost-

³⁹ Of course, if no entity files an RBE application for a particular area, that area remains part of eligible census blocks for which the price cap LEC can opt, as part of the state-level commitment, to receive model-based support. In addition, should an RBE applicant not participate subsequently in the Phase II competitive bidding process and if for that particular area no one bids to serve it, the Commission has alternatives. For instance, it could give the relevant price cap LEC the option to serve that particular area using model-based support.

⁴⁰ See Report and Order/FNPRM, ¶¶ 226-231.

⁴¹ ACA continues to evaluate all aspects of the RBE’s competitive bidding mechanism and may suggest changes that encourage additional participation consistent with ensuring accountability for the receipt of support.

effectiveness per location.⁴² ACA recommends the Commission adopt this paradigm, and, to address its concern that the network should be sufficiently robust for the entire 10 year duration of the program, the Commission can establish those benchmarks upfront.

Respectfully submitted,



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⁴² See Rural Broadband Experiments Order, ¶¶ 32-38, 45-50.