

**Before the
Federal Communications Commission
Washington, D.C. 20544**

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

**REPLY COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments in response to the Commission’s (or FCC’s) Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (collectively “*FNPRM*”), that was originally released on June 10, 2014, and published in the Federal Register on July 9, 2014.¹

The Pa. PUC appreciates the opportunity to file these Reply Comments. As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter that is pending before it. Moreover, these Pa. PUC Reply Comments could change in response to later events, including various ex parte filings with the Commission, the review of other submitted initial and reply comments, and/or other legal or regulatory developments at the state or federal level. Finally, the Pa. PUC’s participation in this proceeding is without prejudice to any subsequent appellate litigation involving the FCC’s *USF/ICC Transformation Order*.²

¹ *In re Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, (FCC, Rel. June 10, 2014), Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, 79 Fed. Reg. 39196 (July 9, 2014).

² *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, (FCC, Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011), and subsequent Reconsideration and Clarification rulings (collectively *USF/ICC Transformation Order*), *aff’d In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), U.S. App. LEXIS 9637, 9633, *reh’g petitions denied*.

The Pa. PUC focuses its Reply Comments on the proposed changes to the process designating eligible telecommunications carriers (ETCs). The Pa. PUC Reply Comments also address certain of the FCC proposals involving the Connect America Fund Phase II (*CAF II*) mechanism.

A. State Jurisdiction Over The ETC Designation Process And FCC Proposals

In the Report and Order part of its NPRM, the FCC concluded that “potential applicants in the [CAF] Phase II competitive bidding process need not be ETCs at the time they initially *apply* for funding at the Commission,” that the Commission “should permit entities to obtain ETC designation *after* the announcement of winning bidders for the offer of Phase II Connect America funding,” which” the FCC believes “will encourage greater participation in the competitive process by a wider range of entities.” But, according to the FCC, “ETC status must be confirmed before funding awarded through the competitive process is disbursed.”³

In its *FNPRM*, the Commission also has proposed the creation of “a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of Connect America Fund Phase II competitive bidding or Remote Areas Fund if it [the state] fails to initiate a proceeding on that petition within 60 days of receiving it.” The Commission has also sought “comment on whether” the FCC “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.” Under this proposal “a carrier may file for ETC designation with the Commission and point to the lack of state action within the prescribed time period as evidence that the petitioner is not subject to the jurisdiction of a state commission.”⁴

As the California Public Utilities Commission (CPUC) correctly observes, Section 214(e), 47 U.S.C. 214(e), “gives states primary responsibility for ETC designation.”⁵ The Pa. PUC exercises jurisdiction over the designation of telecommunications carriers, including

³ *FNPRM*, ¶ 43, at 14-15 (emphasis in the original, citation omitted); *see also* CPUC Comments, at 2.

⁴ *FNPRM*, ¶ 182, at 62-63. The Commission “would expect carriers taking this path to certify that the requisite period has in fact passed without appropriate state action, as part of their ETC designation petitions [to the FCC].” *Id.*, n. 363, at 63. *See also* CPUC Comments, at 3-4.

⁵ Comments of the California Public Utilities Commission and the People of the State of California, WC Docket No. 10-90 *et al.*, August 8, 2014, at 1-2 (CPUC Comments, citation omitted).

wireless carriers,⁶ as ETCs. The Pa. PUC shares a similar concern to the CPUC that the use of these rebuttable presumptions could lead directly or indirectly to the Commission's federal preemption of the ETC designation process. Such an outcome does not seem consistent with the jurisdictional mandate in Section 214(e).

The Pa. PUC shares many of the material concerns about these FCC proposals that were expressed in the CPUC Comments. The Pa. PUC agrees the FCC needs to better define what "entities" or "providers" are expected to qualify for ETC designation status and *CAF II* support funding.⁷ The CPUC correctly points out that the states and their respective state utility commissions exercise their respective authority for designating *telecommunications carriers* as ETCs in strict accordance with the explicit statutory mandate of Section 214(e)(2), 47 U.S.C. 214(e)(2), that addresses such designation for *common carriers*.⁸ The Pa. PUC entertains ETC designation petitions by entities that are customarily engaged in telecommunications carrier (or common carrier) operations, and provide telecommunications services (or common carrier services). Wireline incumbent local exchange carriers (ILECs) with ETC designations that operate under Pa. PUC regulatory jurisdiction also have carrier of last resort (COLR) obligations for their respective study areas.

Thus, as the CPUC Comments correctly point out, the Pa. PUC and other state utility commissions will be faced with a legal and regulatory quandary if they are to decide ETC designation petitions or applications by "entities" or "providers" that do not necessarily or easily fit the definition of a telecommunications carrier or common carrier under Section 214(e). For example, would a national or regional discount or grocery store chain without any prior expertise in providing telecommunications services/managing telecommunications assets qualify for a newly sought ETC designation from a state utility commission, while simultaneously attempting

⁶ See generally *Petition of Airvoice Wireless, LLC for Limited Designation as an Eligible Telecommunications Carrier*, Docket No. P-2013-2379431, Pa. PUC Order entered July 9, 2014.

⁷ CPUC Comments, at 4, citing *FNPRM* ¶¶ 5, 11.

⁸ Section 214(e)(2) states: "DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS. — A State commission shall upon its own motion or upon request designate a *common carrier* that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission." 47 U.S.C. § 214(e)(2) (emphasis added). The term "telecommunications carrier" and "common carrier" have the same meaning for the Pa. PUC and many other state commissions in numerous regulatory matters including ETC designations.

to acquire such expertise and assets, and asking the FCC at the same time for *CAF II* support under the competitive bidding process? The CPUC Comments recommend the alternative “that the FCC include in its evaluation of CAF Phase II bids, an ETC review of the bidder to ensure that the bidder can be designated as an ETC,” that this “concurrent review would save time,” and “would expedite construction and deployment of facilities by eliminating a two-step consecutive review that first evaluates the bid and then evaluates whether the selected bidder qualifies to be an ETC under § 214(e).”⁹ The CPUC Comments further suggest that this proposed alternative would avoid the FCC’s 90-day trigger rebuttable presumption.¹⁰ The Pa. PUC supports this proposed alternative.

Nevertheless, the Pa. PUC observes that the final determination of ETC designations for petitioning telecommunications carriers rests with it and other similarly situated state utility commissions under Section 214(e). Such determinations are inherently connected with the preservation and enhancement of the evolving universal service concept both under federal and independent state law.¹¹ Consequently, these Pa. PUC determinations cannot be reached in haste and without sufficient evidentiary basis. The contrary result not only will undermine legitimate Pa. PUC goals under independent state law regarding the preservation and enhancement of the evolving universal service concept, but it can also lead to serious instances of fraud and abuse of the limited CAF funding support resources. Such a result cannot be countenanced by the Pa. PUC — Pennsylvania is consistently a net contributor State to the federal USF mechanism — and cannot be sustained by the Commission.

Furthermore, the Pa. PUC plays an inherent role under both the federal Telecommunications Act of 1996 (TA-96), relevant Pennsylvania statutory law, and applicable federal and State regulations, in ensuring the reliable and safe operation of common carrier telecommunications network facilities and provided services. The Pa. PUC also ensures that services provided by

⁹ CPUC Comments, at 5.

¹⁰ CPUC Comments, at 5-6.

¹¹ *See generally* 66 Pa. C.S. § 3011(2) (Pennsylvania General Assembly declaration of policy involving the maintenance of universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas, by ILECs with incentive alternative regulation and network modernization mechanisms and plans). *See also* Comments of the Rural Associations, WC Docket No. 10-90 *et al.*, August 8, 2014, at 61-63.

carriers under its jurisdiction are safe, reliable, and of adequate quality, e.g., provision of reliable access to 911/E911 public safety services. Thus, the Pa. PUC has an inherent State interest in ensuring that carriers seeking ETC designation fulfill certain facility and service parameters, especially when such an ETC designation will provide an entitlement to scarce CAF Phase II support funding resources.

Therefore, in addition to the CPUC Comments recommendation, the Commission should devise a consultative mechanism in collaboration with the states for the mutual and timely resolution of a state determination that a particular telecommunications carrier, “provider,” or “entity” cannot receive an ETC designation when the preliminary FCC assessment for *CAF II* bidding purposes has indicated that such a designation may be attainable. Such a consultative approach would reduce regulatory uncertainty and avoid costly and unnecessary appellate litigation by resolving claims that the potential and outright use of federal preemption is not consistent with the specific jurisdictional mandate of Section 214(e).

The Pa. PUC agrees with the CPUC Comments and opposes the FCC’s proposed rebuttable presumptions on the potential exercise of Commission jurisdiction where such presumptions relate to the sixty (60) and ninety (90) day time frames respectively for a state to initiate and finalize actions on ETC designation petitions.¹² As previously mentioned, it does not appear that the Commission possesses the requisite statutory authority to engage in the adoption and implementation of such rebuttable presumptions. FCC timelines effectively rewrite federal law by substituting agency interpretations in place of legislative intent. Moreover, Congress never imposed timeline or presumption mandates on state actions in Section 214, likely in recognition of the complex issues and relatively long procedural process the states needed to comply with that mandate. Congress’ recognition of the complex nature of state determinations is entirely consistent with the experience of the Pa. PUC as well.

Because the Pa. PUC and a number of other state commissions actively exercise their Section 214(e)(2) jurisdiction and authority in adjudicating ETC designation petitions or

¹² CPUC Comments, at 6.

applications from both wireline and wireless carriers, the FCC cannot invoke Section 214(e)(6) to supplant the state jurisdictional authority that is clearly and unambiguously prescribed by Section 214 of TA-96.¹³ Similarly, whether the Pa. PUC or another state has “jurisdiction over a relevant type of technology”¹⁴ is totally immaterial for the purpose of exercising appropriate jurisdiction under Section 214(e) for ETC designation purposes because the relevant statutory terminology of “common carrier” and “telecommunications carrier” is totally “technology neutral.”¹⁵ Thus, the Commission’s proposed adoption of the rebuttable presumptions in question and their potential application to the Pa. PUC and a number of other state utility commissions cannot be properly based on Section 214(e)(6).

Moreover, the language in Section 214(e)(6) is entirely consistent with the Pa. PUC’s primary jurisdictional view on the role of the states over ETC designations. The first provision in that section authorizing the Commission to act upon request to make ETC designations that are not subject to state jurisdictions limits Commission designation to “a common carrier providing telephone exchange service or exchange access” as opposed to some other generic entities like carriers, providers, or companies. The Section 214(e)(6)’s limitation to common carrier is reiterated in Section 214(e)(1), which limits ETC designation to “a common carrier designated as an ETC under paragraph 2, 3, or 6.” This common carrier limitation is subsequently reiterated in the Section 214(e)(2)’s provision, which requires a state commission to act “on its own motion or upon request [to] designate a common carrier” as an ETC. Every provision addressing ETC designation in Section 214(e) is limited to common carriers. Attempts to expand that specific limitation to include “providers” or “other entities” designated by the state or even the FCC is not advisable and likely *ultra vires*.

¹³ The Commission itself has acknowledged that “[u]nder section 214 of the Act, the states *possess primary authority* for designating ETCs and setting their ‘service area[s],’ although the Commission *may* step in to the *extent* state commissions *lack jurisdiction*.” *USF/ICC Transformation Order*, ¶ 1090, *slip op.* at 399, 26 FCC Rcd 17663, 18062 (emphasis added, footnote omitted). *See also* Further Comments of the Pennsylvania Public Utility Commission and Accompanying Legal Memorandum, WC Docket No. 10-90 *et al.*, August 24, 2011, at 20 (Pa. PUC “ABC Plan” Comments); Comments by State Members of the Federal State Joint Board on Universal Service, WC Docket No. 10-90 *et al.*, May 2, 2011, at 86-89, 135-137 (State Plan).

¹⁴ *FNPRM*, ¶ 183, at 63.

¹⁵ *FNPRM*, ¶ 183, at 63. The Pa. PUC discloses that it does not exercise intrastate regulatory jurisdiction over the operations and services of wireless carriers.

Furthermore, since these rebuttable presumption proposals indicate a major but insufficiently explained shift from the FCC's own pronouncements in the *USF/ICC Transformation Order* that explicitly recognize the primary authority of the states in ETC designation matters, they cannot be sustained under relevant premises of the federal Administrative Procedures Act.

In addition, as the CPUC Comments validly explain, the Commission's proposed timeframe rebuttable presumptions are unworkable because of purely operational reasons at the state level, and the CPUC properly emphasizes that the "test of jurisdiction should not be based on the amount of time an agency takes to process and ETC designation petition."¹⁶ The concerns expressed by the CPUC Comments on how state utility commissions operate in adjudicating ETC designation petitions or applications are equally relevant for the Pa. PUC as well. The Pa. PUC must accord appropriate due process to ETC designation petitions and provide opportunity for comment through publication in the *Pennsylvania Bulletin*, which in Pennsylvania constitutes formal legal notice of a petition. Pa. PUC staff often work cooperatively with petitioners for ETC designation, especially when such petitions involve the provision of Lifeline services to the public. Thus, if an original ETC designation petition does not sufficiently address specific and material aspects that are necessary under federal and applicable Pennsylvania law, delays in the processing of such petitions inevitably ensue. Such delays are not conclusively resolved until the petitioner submits an amended petition or properly supplements the original filing. Under such circumstances, the Pa. PUC and other state commissions — that diligently carry out the work of an unfunded federal mandate¹⁷ — should not have to bear the additional but unnecessary administrative cost under the Commission's contemplated rebuttable presumptions where the "burden of proof" for the exercise of primary jurisdiction shifts even though a state commission is acting in good faith and following its usual process to adjudicate a petition.

The Pa. PUC and other state utility commissions have a strong interest in preserving and enhancing the evolving concept of universal service both under federal and applicable state law. The Pa. PUC primary jurisdiction and responsibility for adjudicating ETC designation petitions

¹⁶ CPUC Comments, at 6-7.

¹⁷ CPUC Comments, at 7.

is inextricably linked with the preservation and enhancement of the evolving universal service concept. The Pa. PUC respectfully suggests that the FCC should cooperatively work with the states in addressing these matters without resorting to direct or indirect federal preemption that is statutorily unsustainable and inadvisable.

If, despite these concerns, the FCC adopts the rebuttable presumptions, the FCC must set a more realistic timeline for conclusion of a state proceeding under Section 214 that better reflects the states' experience. A successful bidder must be required to inform the states of their successful bid to provide supported service and in what study area (either in whole or in part), the state commission could then be expected to initiate a proceeding no less than 90 days after the successful bidder provides notice and conclude that proceeding no more than 9 months or 270 days after initiation of the proceeding. This alternative suggestion is based on the 9-month period under current Pa. PUC law for rate cases under our Public Utility Code. ETC designations under the new rules can be as complex as a rate case, since money and support are involved. The Pa. PUC also proposes a longer time frame because it gives the Commission, the states, the successful bidder, and the currently supported common carrier the time needed to examine and address the ramifications of severing the supported study area into portions that may get *CAF II* support from those that may not in a balanced and comprehensive manner.

Such a timeline, moreover, must expressly allow the states to petition to waive or extend the timeline for good cause shown. The states' waiver petitions should contain a rebuttable presumption of validity and be granted, absent an opponent showing by a preponderance of the evidence that no waiver or extension is appropriate. Finally, the petition for waiver or extension must also extend the time-period before the successful bidder will receive *CAF II* support.

B. High-Cost Support And ETC Requirements

The FCC seeks "comment on whether ETCs should be deemed to only have a federal high-cost obligation for the geographic areas for which they receive support," and whether this reading comports "with the statutory language in section 214 — which specifies that ETCs 'shall, throughout the service area for which the designation is received — offer the services that

are supported by Federal universal service support mechanisms under section 254(c).”¹⁸ The Commission has further stated that “under such a statutory interpretation, if an incumbent LEC [local exchange carrier] ETC no longer were receiving any form of high-cost support, it would effectively become a Lifeline-only ETC throughout its service territory with the continuing obligation to provide service to Lifeline customers, subject to existing ETC relinquishment procedures.”¹⁹ The Pa. PUC notes that the Commission’s alternative statutory interpretation seems peculiar, when considering that the ETC designation of ILECs is exclusively based on the receipt of high-cost universal service support for its overall service area. The Pa. PUC further notes that it does not support relieving an ILEC of traditional high-cost service and facilities-related obligations in a certain geographic area within its service territory simply because the ILEC is not receiving *CAF II* support to deploy broadband in that geographic area.

The Pa. PUC agrees with the CPUC Comments that the Commission’s *FNPRM* does not contain the requisite clarity on “which specific ETC obligations would an incumbent LEC be relieved under the above FCC interpretation of the statute.”²⁰ ETC designations for ILECs serving Pennsylvania consumers are still within Pa. PUC jurisdiction under Section 214(e), and such designations cover a range of telecommunications services and facilities that are consistent with the statutory mandate in Section 254(c)(1), relevant FCC directives, and applicable State law. Thus, the services provided by an ILEC with an ETC designation go beyond the provision of just Lifeline services to end-user consumers.

Also, ILEC ETC designations have been granted and periodically renewed without regard to whether a particular ILEC in question is a recipient of federal high-cost universal service support for particular geographic locales within the ILEC’s overall service area that is defined by the Pa. PUC. For example, certain federal price cap ILECs with ETC designations have served and are serving major metropolitan areas within Pennsylvania without the receipt of or qualification for any significant amounts of federal high-cost support for time periods predating the *USF/ICC Transformation Order*. At no time these ILECs have raised the issue of partially

¹⁸ *FNPRM*, ¶ 197, at 67 (citations omitted).

¹⁹ *FNPRM*, ¶ 197, at 67 (citations omitted).

²⁰ CPUC Comments, at 10.

abandoning or modifying the geographic coverage of their ETC designations before the Pa. PUC. And, any ILEC operating in Pennsylvania that wishes to change the geographic boundaries of its individual ETC designation is free to file an appropriate petition with the Pa. PUC with relevant and specific proposals that can address relevant federal law, e.g., Section 214(e)(4), 47 U.S.C. § 214(e)(4), and applicable state requirements. This is particularly applicable when and where an ILEC with a pre-existing ETC designation may *voluntarily decline* the receipt of CAF Phase II support despite its qualification for the receipt of such funds both within Pennsylvania or another state.

The Pa. PUC has previously commented that it is inadvisable for the Commission to follow certain proposals involving the use of FCC forbearance in the ETC designation process in an attempt to change the clear and independent statutory role of the Pa. PUC and other state utility commissions.²¹ Such proposals run contrary to both the letter and the spirit of cooperative federalism that is embodied in the unambiguous statutory language of Section 214(e), and the Commission correctly avoided their adoption with its *USF/ICC Transformation Order*.²²

It must also be understood that the maintenance of carrier of last resort (COLR) obligations has largely paralleled the ETC designations for ILECs and is a major contributing factor for the preservation of the evolving universal service concept. The Pa. PUC is concerned that the Commission's statutory interpretation — coupled with the aforementioned lack of specificity as to what obligations would be relieved — will undermine the specific statutory universal service-related goals of Sections 214(e)(3) and 254(c)(1), 47 U.S.C. §§ 214(e)(3) and 254(c)(1), and will have detrimental effects for the maintenance and enhancement of the evolving universal service concept.

The Commission must exercise the appropriate degree of care when entertaining invitations to alter statutory interpretations that can negatively affect the preservation of

²¹ Pa. PUC “ABC Plan” Comments, WC Docket No. 10-90 *et al.*, August 26, 2011, at 20; *see also* USTelecom ex parte submission, WC Docket No. 10-90 *et al.*, March 14, 2014 (referenced in the *FNPRM* in n. 388, at 67).

²²For example, some common carriers received, and continue to receive, Interstate Access Support from the existing High Cost Fund while other common carriers received, and continue to receive, Local Switching Support from the same High Cost Fund.

universal service for end-user consumers. For example, the FCC adoption of proposals to sever the ETC's current supported study area, which continues in force under independent state and federal law until modified, from the financial support that will be provided under *CAF II*, may also violate the "reasonably comparable" mandate in Section 254. The mandate to provide comparable service at comparable rates between urban and rural America, for example, may not be limited to the discrete geographic areas within a currently supported area where a successful *CAF II* bidder now wants to serve in exchange for support. Thus, reductions or elimination of support in discrete geographic portions of the existing supported study area where an ILEC no longer wants to serve does not appear to comport with applicable federal law, including Sections 214 and 254.

C. Service Obligations For CAF II

The Pa. PUC recognizes that changes in legal, regulatory or technological views of what constitutes interstate telecommunications may result in a threshold minimum broadband service that exceeds any already deployed under state law at considerable cost.²³ The Pa. PUC reiterates that supported telecommunications networks now subject to a broadband service requirement be supported from federal funds, including those instances where the new standard exceeds the state standard. The Pa. PUC also reiterates that federal support for a common carrier that has met a lower state-supported broadband network standard should remain available to upgrade those networks, now that those networks may be "underserved" based upon the federal standard. The Pa. PUC urges the FCC to prioritize support to underserved telecommunications networks and areas where a lower broadband standard has been met because of their lower incremental cost to upgrade that network.

The Pa. PUC agrees with commenters that 10 Mbps "down" and 1 Mbps "up" is an appropriate network capacity standard.²⁴ An increase to 10/1 would help ensure that broadband service delivered, in whole or in part from *CAF II* support, is commensurate with consumer

²³ Pennsylvania's Chapter 30 law set a lower threshold definition for broadband service in high-cost rural areas at 1.5 Mbps upstream and .128 Mbps downstream. Pennsylvania's carriers, with the exception of one carrier who will attain ubiquitous availability as of the end of 2014, attained that standard. This is a considerable achievement, given that many rural carriers met that standard in 2008. Furthermore, end-users of Pennsylvania Chapter 30 ILECs with incentive alternative regulation and network modernization plans have partially financed this statutorily mandated broadband deployment through almost automatic and periodic intrastate revenue and rate increases since 2006.

²⁴ See, e.g., USTA Comments, at 5; CenturyLink Comments, at 10; Frontier Comments, at 2.

wants and needs. A 10/1 standard would also help ensure that services delivered on account of *CAF II* support are reasonably comparable to the services enjoyed by consumers in urban areas.²⁵ From a support recipient perspective, a 10/1 standard appears feasible, and the Pa. PUC agrees that the standard should remain constant throughout the term of the service obligation. This would provide support recipients with certainty regarding what is expected when receiving *CAF II* support.²⁶

The Pa. PUC also recognizes the need to ensure that *CAF II* support is reasonably aligned with *CAF II* obligations without imposing excessive additional contribution obligations on jurisdictions that are already net contributors to the current federal fund. Therefore, if the Commission adopts a 10/1 standard, the Pa. PUC supports the following changes to the *CAF II* support criteria:

- Increasing the funding and build-out period to 10 years, which appears necessary to stimulate sufficient interest in receiving support to provide 10/1 service in eligible areas.²⁷ Also, a 10-year build-out period is consistent with the time period provided for successful bidders in auctions that will occur when an ETC common carrier in a currently supported study area declines support. Equality of the time period to attain deployment compliance makes it far less likely that a currently supported common carrier will refuse *CAF II* support, thereby resulting in an auction.
- Providing flexibility to build-out to less than 100% (but at least 90%) of the specified number of eligible service locations with a commensurate reduction in support.²⁸ This would help accommodate significant increases in actual deployment costs that occur, based on the difference between the modeled deployment and actual network deployment.²⁹ Those residual service locations and any other extremely high-cost locations that are not covered under *CAF II* should be covered by the Remote Areas Fund (RAF), which the Pa. PUC concedes could put significant pressure on the ability to retain the current RAF funding limits;
- Making support available in partially-served census blocks that a competitor either does not serve or could serve but will not commit to serve. This should result in higher levels of deployment with *CAF II* funding by providing the ability to reach more locations in

²⁵ See *FNPRM*, ¶ 10, at 4

²⁶ *USTA Comments*, at 2-3.

²⁷ *CenturyLink Comments*, at 21.

²⁸ Providing such flexibility is consistent with the Pa. PUC's past position that a census block should be ineligible to receive federal support only when an unsubsidized competitor serves 100% of that area.

²⁹ *CenturyLink Comments*, at 14, 17.

aggregate and by helping avoid deployments that are uneconomic and a highly inefficient use of *CAF II* support;³⁰

- Applying the same 10/1 standard when determining whether a census block is competitively served and hence, ineligible for support. This is consistent with the Pa. PUC's earlier view that any area should be 100% served before support is withdrawn and will help ensure that there is an "across the board" network capacity standard for both areas that are served by an unsubsidized provider and for supported areas;³¹

The Pa. PUC supports the Commission's ongoing efforts to promote the deployment of broadband services in rural and high-cost areas and to make broadband access more ubiquitous in the United States. These changes supported by the Pa. PUC, as explained above, serve these universal service goals by promoting incumbent carrier deployment of a robust and scalable broadband-capable network to the largest number of households at the minimum cost in Pennsylvania and in other states. The changes would also reasonably align *CAF II* support with *CAF II* obligations, which should help maximize the impact of *CAF II* on broadband deployment. Therefore, the Pa. PUC supports increasing the network capacity standard, while also providing ILEC support recipients with sufficient flexibility to meet their deployment obligations and an equal deployment mandate timeline.

The Pa. PUC appreciates the opportunity provided by the Commission for the submission of these Reply Comments.

Respectfully Submitted On Behalf Of,
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³⁰ *Id.*, at 19.

³¹ *Id.*, at 12.