

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF MIDWEST ENERGY COOPERATIVE

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I. Introduction.

Midwest Energy Cooperative (“Midwest”) files its Reply Comments in this proceeding pursuant to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) on June 10, 2014 seeking comment on additional mechanisms to fulfill the Commission’s mission to ensure that all consumers “have access to ... advanced telecommunications and information services.”¹ Midwest appreciates the Commission’s commitment to deploying advanced telecommunications services to all Americans and to not leave anyone behind the evolving digital economy.²

Midwest is an electric cooperative serving more than 35,000 members in Southern Michigan, Northern Indiana and Ohio. Many rural electric cooperatives filed comments in this docket and Midwest stands with them in urging the Commission to open the high cost funding to a competitive process in price cap areas.³ The more potential competitors

¹ See *Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (June 10, 2014) (“*Omnibus Order*”) at para. 1 (quoting 47 U.S.C. § 254(b)(3)).

² See *Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Statement of Commissioner Mignon L. Clyburn, FCC 14-98 (July 14, 2014) (“...we will not leave behind those Americans who today find themselves on the wrong side of the digital divide.”).

³ See *Comments of the Utilities Telecom Council, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports & Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*UTC Comments*”); *Comments of the National Rural Electric Cooperative Association, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports & Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier*

willing to shoulder part of the burden, especially those closely connected to their communities, the better the opportunity to fulfill the public policy goals of the Commission.⁴ No commenter disputed the essential role broadband plays in American life and the modern economy.⁵ All carriers understand how critical broadband is to the education and health of our communities.⁶ Broadband plays a vital role in agricultural production.⁷ The Commission faces a generational opportunity to bridge the existing

Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*NRECA Comments*”); *Comments of BARC Electric Cooperative, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports & Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 5, 2014) (“*BARC Comments*”).

⁴ 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 an 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, FCC 11-161 (Nov. 18, 2011) (“*Transformation Order*”) at para. 51 (“All Americans in all parts of the nation, including those in rural, insular, and high-cost areas, should have access to affordable modern communications networks capable of supporting the necessary applications that empower them to learn, work, create, and innovate.”).

⁵ See, e.g., *UTC Comments* at 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.’)(quoting *Transformation Order* at para. 2).

⁶ See, e.g., *NRECA Comments* at 1-2 (“NRECA also believes that ‘[a]ll Americans should have access to broadband that is capable of enabling the kinds of key applications [that drive broadband adoption]...including education (e.g., distance/online learning), health care (e.g., remote health monitoring) and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas).’”)(quoting *Transformation Order* at para. 87).

⁷ See *Comments of the American Farm Bureau Federation, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports & Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*American Farm Bureau Federation*

digital divide between urban and rural areas.⁸ Midwest stands ready, with other rural electric cooperatives, to build the necessary fiber to the home network infrastructure to bring robust broadband to our members.

II. Rural Electric Cooperatives Can Transform Broadband Deployment in Rural America.

Rural electric cooperatives and the trade associations who serve them all drew the same parallel as Midwest between the infrastructure needs of the electric network in the 1930s and the infrastructure needs of the broadband network today.⁹ “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.”¹⁰ To maximize the opportunity to extend broadband into rural America, Midwest urges the Commission to adopt the most inclusive approach possible.

Comments”) at 1 (“Precision agriculture relies on broadband services so farmers and ranchers can manage efficient, economical and environmentally conscious business.”).

⁸ See *Comments of Midwest Energy Cooperative, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports & Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*Midwest Comments*”) at 12-13 (“This is a once in a generation opportunity to deploy broadband in rural communities who deserve to be full participants in our modern economy. Midwest appreciates the efforts of the FCC to create an inclusive environment where all eligible providers have an opportunity to compete for support in offering creative solutions and to close the gap between broadband available in urban and rural areas.”).

⁹ See, e.g., *NRECA Comments* at 3 (“Today’s digital divide shares many attributes with the ‘electricity divide’ that existed in the 1930s where nine out of 10 rural homes were without electric service.”); see also *American Farm Bureau Federation Comments* at 1-2 (“Access to broadband service in rural America today is the equivalent to access to electricity in rural America in the 1930s, not universally accessible.”).

¹⁰ *UTC Comments* at 4.

Rural electric coops agree that increasing broadband speeds in rural areas is vital to expanding the modern economy. Most electric cooperative commenters agreed with Midwest that fiber networks are most likely to bring the higher broadband speeds contemplated by the Commission.¹¹ Midwest concurs with NRECA that demand for higher speed “already exists in communities served by NRECA members.”¹² Bringing higher speeds presents little challenge in communities served by fiber.¹³ Rural electric cooperatives are prepared to deploy that fiber rather than depend on aging legacy infrastructure. Midwest agrees wholeheartedly with UTC that it “makes little sense for the Commission to continue to subsidize outmoded technologies through CAF.”¹⁴ Midwest believes this is particularly true in rural price cap areas where carriers have shown little interest in investing in upgrading the last mile infrastructure.

Midwest cautions the Commission from establishing long-term speed goals. Demand for broadband is only increasing, but it is difficult to know what the appropriate benchmark might be in 2024. Midwest believes a minimum speed should be established in the short term. Midwest supports the minimum broadband speed advocated by UTC: 25/5 Mbps.¹⁵ However, Midwest believes the Commission could use this benchmark to differentiate competing bids as effectively as imposing it on a blanket basis. Midwest

¹¹ *NRECA Comments* at 7-8.

¹² *NRECA Comments* at 7-8.

¹³ *UTC Comments* at 11-12.

¹⁴ *UTC Comments* at 12.

¹⁵ *UTC Comments* at 11 (“Therefore, UTC strongly encourages the Commission to consider setting the minimum broadband speed at 25/5 Mbps.”).

believes that the Commission should maintain flexibility to reassess and increase minimum broadband speeds as demand and fiber networks finally merge in rural communities. The Commission embraced this approach in the rural broadband experiments.¹⁶ Rewarding investment in next generation networks is an effective mechanism to reach the same outcome as establishing an arbitrary benchmark that may or may not serve the public interest.¹⁷

III. The Commission Should Embrace Competition and Exclude Census Blocks Subject to a Rural Broadband Experiment from the Price Cap Offer of Support.

Midwest could not agree more with BARC Electric Cooperative (“BARC”) that “[c]ompetition is the foundation of U.S. economic policy.”¹⁸ The Commission has long embraced competition as a policy goal.¹⁹ The opportunity to continue that long tradition and bring robust broadband to rural areas currently unserved and underserved by price cap carriers should not be squandered. Midwest urges the Commission to exclude from

¹⁶ See, generally, *Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (July 14, 2014) (“*Rural Broadband Experiment Order*”).

¹⁷ *NRECA Comments* at 8 (“However, NRECA wishes to point out that the Commission should neither set an artificially low speed standard today nor impose a flash-cut obligation in the future to accommodate changing technology and potential customer demand. To do so would likely create more investment risk on the very entities that are contemplating whether they today should seek to provide broadband services in unserved and underserved locations.”).

¹⁸ *BARC Comments* at 2.

¹⁹ See *Transformation Order* at para. 66 (The Commission is required to “take immediate action to accelerate deployment of [advanced telecommunications capability] by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”).

the price cap carrier statewide offer of cost model support any census block subject to a rural broadband experiment application, successful or not.²⁰

The Expressions of Interest filed this year demonstrate that there is significant demand to serve rural areas.²¹ Rural electric cooperatives, like Midwest, are uniquely positioned to extend their existing utility business to include telecommunications. Many commenters support the exclusion of census blocks subject to rural broadband experiments from the relevant price cap carrier's right of first refusal.²²

Midwest concurs with NRECA and UTC that evidence of a competitive environment should trigger a competitive process for model-based support.²³ “By removing the right of first refusal, innovative technology solutions and greater efficiency in the use of universal service resources will be promoted because relatively higher

²⁰ *Midwest Comments* at 12-13 (“Midwest appreciates the efforts of the FCC to create an inclusive environment where all eligible providers have an opportunity to compete for support in offering creative solutions and to close the gap between broadband available in urban and rural areas.”).

²¹ See Jonathan Chambers, *Notes from the Sandbox: The Rural Broadband Experiment*, (Mar. 11, 2014), available at <http://www.fcc.gov/blog/notes-sandbox-rural-broadband-experiment> (“To date, we have received nearly 1,000 expressions of interest from all parts of the country and more are being filed every day.”).

²² See *NRECA Comments* at 14 (“NRECA strongly believes that the areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's state-level commitment.”); *UTC Comments* at 6 (“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.”); *BARC Comments* at 3 (“By removing competitive areas from the ROFR, the Commission has a tremendous opportunity to administer a competitive process that provides funding support to the most robust, scalable and long-term networks that maximize the use of CAF.”).

²³ See *NRECA Comments* at 14 (“NRECA strongly believes that the areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's state-level commitment.”); *UTC Comments* at 6 (“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.”).

upstream and downstream speeds may be provided than would have existed under the right of refusal regime.”²⁴ Exempting competitive areas is consistent with Commission policy and desire to maximize the benefit of the federal investment in a community.²⁵ Midwest agrees with UTC that this issue is the most critical facing the Commission.²⁶ Encouraging fiber investment in rural areas is time sensitive. Midwest urges the Commission to seize this opportunity to build fiber networks. Price cap carriers have shown little desire or incentive to use the high cost support to invest in fiber-to-the-home networks. Other providers, especially well established utilities, are willing to combine the same federal high cost support with private investment to build the next generation infrastructure needed for full participation in the modern economy.²⁷

Midwest disagrees with CenturyLink and USTA that only winning proposals should be excluded from the statewide offer of model based support.²⁸ The available

²⁴ *NRECA Comments* at 14.

²⁵ The Commission has articulated its desire to support robust broadband as fully as possible without increasing the CAF budget. *Omnibus Order* at para. 18 (“Through these coordinated actions, we expect to create incentives for both existing and new providers to extend robust, scalable next-generation voice and broadband networks that provide high-quality performance, whether through fiber, wireless, or other technology, as deep into high-cost areas as is feasible given the existing Connect America budget.”).

²⁶ *UTC Comments* at 6 (“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.”).

²⁷ *NRECA Comments* at 4 (“Electric cooperatives have the resources, customer relationships, the expertise, and the commitment to provide broadband where no other providers have deployed such services to date.”).

²⁸ *See Comments of CenturyLink, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“CenturyLink Comments”)* at fn. 18 (“Areas that are selected for rural

funding for the experiments is too small to award more than a small fraction of the applications.²⁹ “The Commission should not disqualify any areas from eligibility for the statewide election in CAF Phase II based on a mere proposal in the rural broadband experiments process.”³⁰ The position asserted by USTA is a self-serving attempt to maximize support in price cap areas and foreclose potential competition for high cost support. To classify applications for the rural broadband experiments as “mere proposals” ignores the substantial work that must be undertaken by an applicant.³¹ USTA’s assertion also ignores the potential penalties that applicants face if they win support and cannot or do not fulfill the obligations.³² USTA infers that there will be a great deal of

broadband experiments should be removed from CAF II eligible areas and from price-cap carriers’ state-level commitments, as it is inefficient to fund the same areas twice.”); *Comments of the United States Telecom Association, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*USTA Comments*”) at 29 (“The Commission should not disqualify any areas from eligibility for the statewide election in CAF Phase II based on a mere proposal in the rural broadband experiments process. Only selected projects should block out areas from such eligibility and only if the experiments are selected prior to the statewide election.”).

²⁹ *Rural Broadband Experiment Order* at para. 10 (“Although many parties claim that we should maximize the number of experiments that get funding and advocate adoption of a budget that exceeds the \$100 million we adopt today, we note that the Commission’s goal is not to fund as many experiments as possible, but rather to advance implementation of the Connect America Fund.”).

³⁰ *USTA Comments* at 29.

³¹ See *Rural Broadband Experiment Order* at paras. 45-50 (Requiring bidders to identify, amongst other information, all census blocks to be served, any agreements/joint bidding arrangements, ownership interests, any Tribal census blocks to be served, the category of service they will provide, their background and qualifications to provide the service, a description of the proposed project, and the technology to be used.).

³² See *Rural Broadband Experiment Order* at paras. 92-93 (“If a recipient begins receiving support, and the Bureau subsequently determines that it fails to meet the terms and conditions of its experiment, the Bureau will issue a letter evidencing the default, and USAC will

gamesmanship if rural broadband experiment applications are used to exclude census blocks from the price cap carrier's offer of state-wide support.³³ Given the timing of applications and the Commission's determination of whether or not to exclude census blocks contained in the experiment applications, USTA's concern about gamesmanship is very misplaced.³⁴ Midwest believes that the Commission should disregard the arguments made by USTA and move forward with its proposal to exclude all applications.

It is unlikely this type of rural telecommunications infrastructure investment will be available again in the next ten or twenty years.³⁵ Rural America simply cannot wait for a second chance to join the digital age.³⁶ Population in rural areas is declining as

begin withholding support. For the first six months that the entity is not in compliance, USAC will withhold five percent of the entity's total monthly support. For the next six months that the entity is not in compliance, USAC will withhold 25 percent of the entity's total monthly support... If at the end of this year period, the entity is still not in compliance, the Bureau will issue a letter to that effect, and USAC will draw on the entity's LOC for the recovery of all support that has been authorized.").

³³ *USTA Comments* at 29 ("Disqualifying areas from the statewide commitment process based on applications for broadband experiment funding opens up a tremendous opportunity for gaming.")

³⁴ The Applications are due on October 14. Reply Comments are due on September 8. It is highly unlikely that the Commission will reach a conclusion in the 36 days between.

³⁵ See Andrew Feinberg, *FCC bolsters fund for Internet in rural areas*, The Hill (Apr. 25, 2012), available at <http://thehill.com/policy/technology/223771-fcc-bolsters-fund-to-bring-internet-to-rural-areas> ("The Connect America Fund was created last October when the commission voted unanimously for what Chairman Julius Genachowski called a "once-in-a-generation reform" of the Universal Service Fund to help connect all Americans with high speed Internet by the close of the decade.").

³⁶ Rural Michigan is already suffering and cannot afford to wait any longer. See Lennard G. Kruger and Angele A. Gilroy, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, Congressional Research Service (July 17, 2013), available at <http://fas.org/sgp/crs/misc/RL30719.pdf>. In Michigan, 0.8% of the urban population lacks access to 4Mbps download/1 Mbps upload broadband internet, while 22.4% of the rural population lacks access. *Id.* at 5.

economic opportunity wanes without robust broadband.³⁷ “Farmers or ranchers relying on dial-up are not better off than the 33 percent of farmers and ranchers with no Internet access.”³⁸ Midwest urges the Commission to live up to the rhetoric of universal service.³⁹ Midwest’s members should not be stranded on the wrong side of the digital divide based on historic policy. This is the time to break the mold and bring a fresh perspective to investing in price cap rural areas with a competing utility.

IV. Conclusion.

Rural electric cooperatives revolutionized life in rural America by building critical infrastructure to deliver electricity. Today, rural electric cooperatives stand ready to again build the infrastructure that will revolutionize life in rural America. Yesterday was electricity, today it is broadband. The Commission should act boldly to take advantage of the opportunity to leverage the federal support it will direct to rural areas over the next ten years. Rural electric cooperatives, like Midwest, stand ready to compete to combine federal support and private investment to build the fiber to the home networks that price cap carriers have been unwilling or unable to provide.

³⁷ See Lorin Kusmin, *Rural America at a Glance, 2013 Edition*, Economic Research Service, United States Department of Agriculture (Nov. 2013), available at http://www.ers.usda.gov/publications/eb-economic-brief/eb24.aspx#.U9ff9_lV8F at 1 (“The stagnation in nonmetro job growth overlaps with the first recorded period of nonmetro population loss, between 2010 and 2012, which was driven by a decrease in net migration to rural areas.”); see also *American Farm Bureau Federation Comments* at 2-3.

³⁸ See *American Farm Bureau Federation Comments* at 2.

³⁹ *Transformation Order* at para. 51 (“All Americans in all parts of the nation, including those in rural, insular, and high-cost areas, should have access to affordable modern communications networks capable of supporting the necessary applications that empower them to learn, work, create, and innovate.”).

Respectfully submitted on this 8th day, September 2014.

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