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
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

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I. INTRODUCTION AND SUMMARY

The National Rural Electric Cooperative Association ("NRECA")[1] hereby respectfully submits these reply comments in response to comments filed in the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking in the above-captioned dockets.[2] NRECA's members rely on a mix of wireline and wireless telecommunications

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1 NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million people in 47 states or approximately 12 percent of electric customers. Rural electric cooperative infrastructure covers 72% of the land mass of the United States. NRECA's members include approximately 65 Generation and Transmission cooperatives and 840 Distribution Cooperatives. Rural electric cooperatives were formed to provide safe, reliable electric service to their owner-members at the lowest reasonable cost. Rural electric cooperatives are dedicated to improving the communities in which they serve. Management and staff of rural electric cooperatives are active in rural economic development efforts.

2 *Connect America Fund*, WC Docket No. 10-90 *et seq*, 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, 2014) ("*FNPRM*").

services to support and maintain their rural electric distribution systems, including broadband and smart grid applications, and to support their commitment to spur economic development in the communities they serve.

Commenters welcomed the Commission's efforts to explore additional approaches in targeting Connect America Fund Phase II ("Phase II") support so that recipients can deploy broadband into locations which are currently unserved or underserved. Providing support pursuant to the Phase II competitive bidding process[3] will bring needed investment in broadband-capable infrastructure to unserved and underserved areas. However, to realize such investment, the Commission should adopt the position advocated by many commenters that the areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's statewide commitment. Commenters recognize the benefits that will be provided to unserved locations through the competitive bidding process.

NRECA supports the views of commenters that the five year Phase II model-based support to price-cap carriers should not be lengthened if the Commission requires 10/1 Mbps service, except for insular locations such as those in Alaska that have unique buildout challenges. Also supported is the position that a slight 5 percent reduction in the percentage of locations that are required to be served, along with a corresponding reduction in support, is appropriate so long as the Commission balances the flexibility of network design with the potential for cherry-picking. However, requests for substitution should be granted on a waiver basis.

Finally, commenters support NRECA's position that a multi-round competitive bidding auction is required and support the Commission's proposal to increase the speed benchmark to

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The reply comments represent the views of NRECA but not necessarily the views of any particular member of NRECA.

[3] *FNPRM* at para 35.

10/1 Mbps or higher in price cap territories.

II. THE RECORD IN THIS PROCEEDING SUPPORTS REMOVAL OF AREAS FOR WHICH A RURAL BROADBAND EXPERIMENT FORMAL PROPOSAL IS SUBMITTED FROM A PRICE CAP CARRIER'S STATEWIDE COMMITMENT

NRECA's arguments that the areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's statewide commitment were supported by many commenters. As stated by BARC Electric Cooperative:

> Providing a right of first refusal for state-level support to price cap carriers (the "ROFR") will inevitably lead to the same outcomes that we find today – vast swaths of rural America unserved and underserved by price cap carriers that are unwilling to upgrade and invest in their rural networks.[4]

In addition, concerns the Commission may have about avoiding consumer disruption as a basis for justifying providing price-cap LECs the right of first refusal will become moot, at least in areas for which a rural broadband experiment formal proposal is submitted, because, as correctly pointed out by the American Cable Association, formal proposals evidence a firm commitment to serve in an area at higher speeds that the LEC would be required using no more support than would be provided to the LEC.[5]

This observation was also recognized by the Commission – that a submission of a formal proposal will provide strong evidence that entities are willing to invest in broadband network infrastructure in a high-cost area for an amount less than or equal to the amount of model-based support that would have been provided to a price-cap carrier through the state-level commitment process for that area.[6] Opening up price cap areas to competition from entities proposing to provide rural broadband experiments actually benefits consumers by promoting network

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[4] BARC Electric Cooperative ("BARC"), p. 3.

[5] American Cable Association ("ACA"), p. 17.

[6] *FNPRM* at 220.

deployment "to all locations across an entire area, not just to the edge of the incumbent's network."[7]

A few price cap carriers oppose having to give up their right of first refusal. USTA, for example, alleges that an applicant for a formal proposal would want to compete in the competitive bidding process and accordingly, would submit proposals that it never intended to honor or somehow insert elements in its proposal to guarantee that it would never get selected.[8] Given the complexity, rigor and expense of preparing a formal application, there is no practical reason to believe that such gamesmanship will exist. Furthermore, assuming the truth of USTA's allegation, the applicant that did not receive a broadband experiment award, the price-cap carrier, and any other competitor would then compete for Phase II support based on the terms and conditions required by the Commission for the honor of providing 21st century broadband service to locations unserved by any other provider to date.

USTA also asserts that some of the initial expressions of interest may have sought more funding than provided by the CAM model-based support.[9] Assuming that USTA is correct, there is no evidence that a formal application would not be more accurate than the initial expressions of interest. Moreover, there is no credible evidence that consumers living in areas covered by formal proposals would be denied an opportunity to have broadband as part of CAF Phase II for the foreseeable future as USTA would have the Commission believe.[10] NRECA's members and other commenters[11] fully intend to participate in the competitive bidding process if their formal

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[7] Utilities Telecom Council ("UTC"), p. 6.

[8] United States Telecom Association ("USTA"), p. 29.

[9] USTA, pp. 29-30.

[10] USTA, p. 29.

[11] See ACA, p. 18 (Even where the applicant does not receive award, the application

proposals turn out not being selected for an award. Furthermore, if for some reason other applicants decide not to participate in the competitive bidding process, a price-cap carrier could certainly then successfully obtain Phase II support itself for broadband deployments through the competitive bidding process. According to ACA, "there is all gain and no real loss from removing areas included in [rural broadband experiment] applications from the state-level commitment."[12] NRECA agrees.

AT&T similarly asserts a gamesman argument whereby some entities would file a formal proposal to keep a CAF II-funded competitor out of their areas even though they do not intend to participate in the competitive bidding process while others would seek to remove census blocks they deem "desirable" from the state-level commitment.[13] These concerns are assuaged by the fact that the area would still be subject to competitive bidding, with or without the participation of the application for broadband experiment funding. Moreover, if the areas are "desirable," then presumably a service provider would be willing to compete for funding below the amount that is offered by model-based support which in turn leads to more efficient use of scarce CAF support than provided under a state-level commitment for that particular census block. According to UTC, opening up the price cap areas to competition "would promote the rapid deployment of networks to all locations across an entire area, not just to the edge of the incumbent's network, which has been the prevailing practice by the price cap carriers that have accepted CAF Phase I support."[14]

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strongly indicates that the applicant will participate to receive support for the same areas in the Phase II competitive bidding process.).

12 ACA p. 18.

13 AT&T, p 51.

14 UTC, p. 6.

For the reasons stated above, commenters are correct that areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's statewide commitment. NRECA believes that it would be fairly straightforward for the Commission to make the determination that taking such action meets its obligations to ensure deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans as identified in section 706 of the Telecommunications Act of 1996.[15]

III. THE FIVE YEAR PHASE II MODEL-BASED SUPPORT TO PRICE CAP CARRIERS SHOULD NOT BE LENGTHENED

NRECA supports the views of commenters that the five year Phase II model-based support to price-cap carriers should not be lengthened if the Commission requires 10/1 Mbps service, except for insular locations such as those in Alaska that face unique build out challenges.[16] According to the ACA "no cogent public interest rationale" exists for the Commission to provide a longer term for Phase II model-based support to price cap carriers making a state-level commitment if the Commission increases the speed benchmark to 10 Mbps.[17] NRECA agrees. If a price cap carrier believes that it needs more time, then it has the option of participating in the competitive bidding process which provides support for 10 years.[18] Moreover, according to UTC, based on the Commission's own data, there is not a dramatic

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[15] Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996), as amended by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008), is now codified in Title 47, Chapter 12 of the United States Code. *See* 47 U.S.C. § 1302.

[16] ACA, pp. 24-5.

[17] ACA, p.4. Indeed, as ACA points out, price cap carriers have been on notice for years that they would have to provide 4/1 Mbps and 6/1.5 Mbps. See ACA p. 6.

[18] *FNPRM* at para. 37. After that five-year CAF Phase II period, however, the FCC anticipated distributing all support through a competitive bidding process.

increase in the number of locations that would be eligible or unserved when comparing the 10/1 baseline to the 4/1 benchmark.[19]

Some commenters, such as USTA, CenturyLink, ITTA, Windstream, AT&T and others,[20] believe that 7 to 10 years is required for broadband network deployments if the Commission decides to require 10/1 Mbps service. NRECA believes that price cap carrier extensions of fiber is distinguishable from new network deployments built from scratch and as such, it is reasonable to only provide 5 years as opposed to 10 years for build outs contemplated by the competitive bidding process. Price cap carriers can leverage their current facilities that can be upgraded or extended while winners of competitive bids would more likely be staring from square one, thus requiring a relatively longer term of support to enable financial feasibility. However, USTA asserts that this view, which it believes the Commission also holds, has no basis and is "discriminatory." As basis for this assertion, USTA points to the existence of facilities of potential competitive bidders such as the handful of rural electric cooperatives that, according to USTA, have "trumpeted" that their fiber facilities could be adapted to provide broadband.[21] With more than 4.7 million price cap locations in census blocks subject to the offer of model-based Phase II funding with 3.7 million identified as unserved, there is virtually no credibility to USTA's assertions.[22]

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19 UTC, pp. 12-13. Although AT&T asserts that 8 years is needed because it is likely that technologies and network design are substantially different as between a 4/1 and a 10/1 system. See AT&T, p. 44.

20 See *e.g.*, the Idaho Public Utilities Commission, p. 2 (7-10 years is reasonable).

21 USTA at 6 (also alleging that cable companies could extend their facilities and towers may exist for wireless deployments).

22 *Wireline Competition Bureau Releases Connect America Cost Model Illustrative Results Using Higher Speed Benchmark*, Public Notice, DA 14-833 June 17, 2014, attachments 1-2 ("*High Speed Public Notice*"). Price cap carriers also serve approximately 154 million locations. See, CAFII – CAM 4.1.1 – Report Version 8.0 (June, 2014).

NRECA believes that it is fairly self-evident that price cap carriers have significant network capabilities, copper loops, central offices, FTTH, fiber-to-the-node networks and middle-mile facilities in place that can be leveraged to provide supported Phase II services to unserved locations.[23] Most rural electric cooperatives and other potential competitors that seek a chance to provide needed broadband to unserved locations do not yet have nearly the same network capabilities. Indeed, it would be discriminatory if the Commission did not provide relatively less time for price cap carriers to make new network deployments if they elect state-wide support then those entities participating in the competitive bidding process. Moreover, the price cap carriers are not prevented from foregoing state-wide support in order to participate in the competitive bidding process where presumably they could potentially receive ten years of support. Perhaps the better question for the Commission to investigate is whether price cap carriers participating in the competitive bidding process should receive a full ten years of scarce Phase II support given their existing significant network capabilities.

IV. THE RECORD IN THE PROCEEDING SUPPORTS LIMITED FLEXIBILITY IN DEPLOYMENT OBLIGATIONS

A. Deployment to 95% of Locations is Appropriate

Like NRECA, many commenters support a slight 5 percent reduction in the percentage of locations that are required to be supported along with a corresponding reduction in support. However, in allowing any slight reduction the Commission should balance the flexibility of network design with the potential for cherry-picking. For example, according to ACA, price cap LEC would receive a windfall if it opted out from serving the high cost locations and should not

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23 NRECA suggests that for carriers selecting locations for deploying a fiber-to-the-node network, that the carrier locate the fiber nodes in areas that can handle increased future minimum speeds.

"cherry pick" the attractive areas.[24] UTC similarly argues that the standard should be set to 95% or higher to avoid cherry-picking.[25] However, NRECA disagrees with the ACA that participants in the competitive biding process should not have any flexibility in deployments because they will adjust their bids and the objectivity of the selection process will be reduced.[26] NRECA believes that on balance, a bidder should be able to make a slight adjustment in serving unserved locations where, for example, network design or topography requires such flexibility.[27]

Most price cap carriers, however, seek to only serve 90% of locations and also seek authority to simply be subject to straight-line support reductions as opposed to any reduced funding based on the support the model attributes to serving each location.[28] CenturyTel goes even further, suggesting that its 90% reduction could simply be avoided by serving substituted locations[29] and AT&T wants to cut out 10% of locations from broadband service so that it can manage its cost better – in other words, so that a carrier can neglect to serve pockets within eligible census bocks were a provider's actual costs are higher than predicted by the cost model.[30]

NRECA believes that the Commission should allow price cap carriers to build to at least 95% of the total number of eligible locations in the state – as opposed to 90% of the locations

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24 ACA, pp. 12-13.

25 UTC, p. 20.

26 ACA, p. 13.

27 Idaho Public Utilities Commission, pp. 2-3 (Given the terrain challenges and sparse customer density in rural Idaho with only 19.5 persons per square mile, it is unreasonable to serve an entire census block in such locations. Instead, a goal of 95% is more reasonable).

28 USTA, pp. 13-15; Windstream, p. 5-6.

29 CenturyLink, p. 14, fn. 20.

30 AT&T, p. 45.

proposed by some commenters. Because there are more than 4.7 million price cap locations in census blocks subject to model-based phase II funding,[31] a 90% deployment rule could result in whole census blocks and more than 470,000 locations never being served so that, according to AT&T, a price cap provider can manage its costs better. Finally, NRECA agrees with AT&T's suggestion that if a provider fails to meet its commitments to serve a certain percentage of its locations, then the Commission should consider imposing an additional 5% penalty.[32]

B. Limited Substitution of Unserved Locations Within Partially Served Census Blocks for Locations Within Funded Census Blocks is Appropriate

Like NRECA, many commenters support the flexibility to substitute a certain percentage of unserved locations within partially served census blocks for locations within funded census blocks. Such flexibility could enable more efficient network deployment and bring service to unserved consumers in those partially served census blocks. However, NRECA believes that such substitutability should not be permitted for purposes of cream-skimming or other anti-competitive reason. The existence of a unique geographic service footprint[33] or other purpose should be demonstrated before the Commission allows the substitution.

Furthermore, NRECA agrees with commenters arguing that requests for substitution should be on a waiver basis.[34] Price cap carriers will likely substitute expensive unserved locations for relatively less expensive locations in other areas.[35] This type of opportunistic

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31 *High Speed Public Notice*, attachment 1.

32 AT&T, p. 47.

33 Electric cooperatives are located in diverse locations where their electric generation, transmission and distribution lines are located to serve their members and the communities in which their members live. As such, their service areas may cover a portion of a partially served census block where there are unserved locations.

34 UTC, p. 20.

35 UTC, p. 20.

behavior seems likely based on the prior actions taken by price cap carriers in Phase I where a relatively high percentage of locations were accepted for $500/location support as compared to the $775/location support.[36] Perhaps the Commission should require the identification of the cost differences between the substituted locations before allowing CAF Phase II recipients to serve locations in partially served census blocks.

NRECA believes that the ACA is correct in pointing out that “unless the Commission requires the LECs to choose to serve locations of the same cost, which the current model is not set up to address, and the existing infrastructure in both locations are the same, the price cap LEC would be expected to receive a windfall.”[37] Accordingly, NRECA also suggests that the Commission consider requiring service to at least 80-85% of all locations within the relevant census block before substitutions should be allowed absent geographic or other demonstrated network design issues requiring such substitutions.[38] Alternatively, NRECA suggests that the FCC may consider limiting support in the substituted census blocks based upon similarity of the density of customers among unserved locations within partially served census blocks and the locations within funded census blocks.

V. THE RECORD IN THIS PROCEEDING SUPPORTS MULTI-ROUND COMPETITIVE BIDDING

Most commenters addressing the Commission’s proposed competitive bidding process support NRECA’s position that a multi-round competitive bidding auction is required.[39] The

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36 See, UTC, fn. 55.

37 ACA, fn. 30.

38 See, General Communication, Inc., p. 11 (CAF Phase II ILECs should not be able to substitute unserved customers in a partially served census block for a wholly unserved census block – support should be used for truly unserved areas rather than those that could easily built out without support).

39 Wireless Internet Service Providers Association, p. 11; ITTA, p. 24; UTC, p. 25.

more information a bidder has about the market in a location, the higher the quality of its bidding which in turn leads to better long-term realized projects that will benefit consumers. NRECA opposes positions advocated by some commenters that funds should be allocated to the lowest per-unit bids that meet the Commission's broadband performance standards[40] or those objecting to award preferences where a service "substantially exceeds" the Commission's minimum standards as unreasonably favoring some technologies over others.[41] As BARC put it best "[w]hen deciding between two competing organizations, speed matters."[42]

Bidding preferences should be provided to incentivize bidders to deploy networks that are robust and that can exceed the minimum speed thresholds to meet future consumer demand and to maximize the use of Phase II support. Moreover, there is no tangible evidence that bidding credits for offering service substantially exceeding the Commission's standards would be unnecessarily complex and delay access to broadband in rural America.[43] Finally, while NRECA agrees with FTTH that the Commission could provide a preference for all fiber networks given the inherent positive externalities such as the scalability that fiber offers, NRECA opposes FTTH's suggestion that Commission adopt a single-tier, single category competitive bidding process whereby only those bidders who propose to deploy all-fiber networks should be able to participate in initial competitive bidding process.[44] The bidding process should allow different types of technologies meeting the Commission's Phase II standards to participate in the competitive bidding process.

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40 Competitive Carriers Association ("CCA"), p. 21.

41 CCA, p. 22; ITTA, p. 23.

42 BARC, p. 3.

43 USTA, pp. 31-32.

44 Fiber to the Home Council Americas ("FTTH"), pp. 7-8.

VI. COMMENTERS AGREE THAT A 10/1 MBPS STANDARD IS APPROPRIATE

The overwhelming majority of commenters, like NRECA, support the Commission's proposal to increase the speed benchmark to 10/1 Mbps or higher[45] in price cap territories excepting comments that rely on middle-mile facilities served by microwave or satellite backhaul.[46] As noted by the American Farm Bureau Federation, according to the U.S. Small Business Administration, 48 percent of rural small businesses are not satisfied with the speed of their Internet connection.[47]

Under the current CAM, increasing the speed benchmark to 10/1 Mbps results in more supported locations at the expense of about 250,000 locations which exceed the lowered Extremely High Cost Threshold. According to commenters, the CAM may need to be adjusted to account for higher revenue inputs associated with increasing the speed benchmark to 10 Mbps by adjusting upwards that the Funding Benchmark of $52.50.[48] NRECA supports this adjustment but also believes that any such increase should be conditioned on also increasing the Extremely High Cost Threshold since the total Phase II support amount is based on a fixed budget.[49] In this way, relatively more very high cost locations will be eligible for support while at the same time, total Phase II support remains fixed.

45 UTC, pp. 9-11 (also strongly encouraging the Commission to set the standard at 25/5 Mbps).

46 General Communication, Inc., pp. 15-16.

47 American Farm Bureau Federation, p. 2.

48 ACA, pp. 7-9; Rural Independent Competitive Alliance, p. 2.

49 Presumably, increasing the Funding Benchmark would reduce the number of relatively low-cost locations supported by CAF which in turn would be offset by increasing the number of relatively high-cost locations supported.

VII. CONCLUSION

Like NRECA, commenters believe that the areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's statewide commitment in order to realize the benefits that will be provided to unserved locations through the competitive bidding process. NRECA also supports the views of commenters that the five year Phase II model-based support to price-cap carriers should not be lengthened if the Commission requires 10/1 Mbps, that a slight 5 percent reduction in the percentage of locations that are required to be supported is appropriate so long as the Commission balances the flexibility of network design with the potential for cherry-picking, and that requests for substitution should be on a waiver basis.

Finally, commenters support NRECA's position that a multi-round competitive bidding auction is required and support the Commission's proposal to increase the speed benchmark to 10/1 Mbps or higher in price cap territories.

Respectfully submitted,

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