

**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 & 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 UTILITIES TELECOM COUNCIL

Pursuant to Section 1.405 of the Commission’s Rules, the Utilities Telecom Council (“UTC”) hereby files its reply comments in response to the Commission’s Further Notice of Proposed Rulemaking in the above-referenced proceeding.¹ The Commission can promote rural broadband access by opening up unserved areas to competitive bidding from a wide variety of entities, including many utilities, who file proposals for rural broadband experiments, and by raising the minimum speeds for broadband to at least ten megabits per second download and one megabit per second upload (10/1 Mbps). Conversely, the Commission should not exclude areas that are served by subsidized providers or extend funding for model-based support to ten years, which would only serve to protect incumbents from competition. For the same reasons, the Commission should not permit swapping of locations that are served in one area to meet a

¹ Connect America Fund, *Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 (rel. June 10, 2014)(hereinafter “FNPRM”).

requirement to serve locations in another area. This would enable price cap carriers to game the system in order to thwart new entrants from providing service to those unserved areas. Finally, the Commission should adopt its proposals for the competitive bidding process, including preferences for proposals that substantially exceed the minimum broadband speeds and that have the support of the local communities to be served.

I. The Commission Should Open Up Price Cap Areas to Competitive Bids Where Formal Proposals for Rural Broadband Experiments Are Filed.

The comments filed on the record broadly support the Commission’s proposal to exclude areas from the offer of model-based support where there is a proposal to provide a rural broadband experiment. These comments generally agree that the Commission should open these areas to competitive bidding as part of the CAF Phase II process, because it would promote competition and better services in those unserved areas.

As Midwest Energy Cooperative observed, the significant number of expressions of interest for rural broadband experiments that were filed with the Commission “overwhelming and strongly signaled an untapped resource for broadband deployment.”² Moreover, as BARC Electric Cooperative explained, “[c]ompetition is the foundation of U.S. economic policy [and] [f]ailing to foster competition inevitably results in consumers paying more for poorer quality products and services, and having fewer choices.”³ In addition, as the National Rural Electric Cooperative Association (NRECA) stated, “innovative technology solutions and greater efficiency in the use of universal service resources will be promoted because relatively higher upstream and downstream speeds may be provided than would have existed under the right of

² Comments of Midwest Energy Cooperative in WC Docket No. 10-90 at 12 (filed Aug. 8, 2014)(hereinafter “Comments of Midwest”).

³ Comments of BARC Electric Cooperative in WC Docket No. 10-90 at 2 (filed Aug. 8, 2014, *citing*, *Standard Oil v. FTC*, 340 US 231, 248 (1951)).

first refusal regime where speeds as low as 4/1 Mbps might be provided.”⁴ Finally, UTC agrees with NRECA that ultimately removing these areas from the right of first refusal regime for price cap carriers would also result in greater deployment of broadband, because price cap carriers that accepted Phase I CAF have generally tended to deploy to underserved rather than to unserved areas.⁵

Incumbent price cap carriers and their organizations are opposed to competition. They claim that the Commission’s proposal “opens up a tremendous opportunity for gaming” and argue that “it is illogical and contrary to the interests of rural consumers to deny an area eligibility for broadband funding under the CAF Phase II statewide commitment process based on a rural broadband experiment proposal.”⁶ Alternatively, they attempt to limit competition by arguing that the Commission should exclude areas covered by rural broadband experiment proposals from CAF II eligibility only when the Commission awards funding to those applicants.⁷

UTC opposes these comments. First, it is entirely logical to open up these areas to competition. As Chairman Wheeler recently observed “meaningful competition for high-speed wired broadband is lacking and Americans need more competitive choices for faster and better

⁴ Comments of the National Rural Electric Cooperative Association in WC Docket No. 10-90 at 14 (filed Aug. 8, 2014)(concluding that competition from rural broadband experiments would “have the likely effect of resulting in greater deployment of broadband to unserved and underserved areas than would be the case under the current Connect America framework which may allow for a right of first refusal in those areas.”)(hereinafter “Comments of NRECA”).

⁵See Comments of UTC in WC Docket No. 10-90 at 20-21 (stating that “[p]rice cap carriers are only providing services at the fringes of their existing networks in and around towns and densely populated areas” which “is evident by the relatively high percentage of locations in Phase I where price cap carriers accepted CAF to provide service to underserved (i.e. \$500/location), rather than unserved areas (i.e. \$775/location).”).

⁶ Comments of United States Telecom Association in WC Docket No. 10-90 at 30 (filed Aug. 8, 2014)(hereinafter “Comments of US Telecom”). *See also* Comments of the ITTA in WC Docket No. 10-90 at 21 (emphasizing that “areas that are selected for rural broadband experiments should be ineligible for CAF Phase II support and should be replaced with other areas that will receive comparable funding.”)

⁷ Comments of AT&T Services in WC Docket No. 10-90 at 50 (filed Aug. 8, 2014).

Internet connections, both to take advantage of today's new services, and to incentivize the development of tomorrow's innovations."⁸ UTC agrees with Chairman Wheeler that "competition drives deployment and network innovation," and that the Commission's challenge is to keep that competition alive and growing.⁹ Consistent with the Chairman's views, the Commission can promote broadband competition by removing areas from the right of first refusal regime where a proposal to conduct a rural broadband experiment has been filed.

Second, the price cap carriers' arguments that the Commission's proposal could lead to gamesmanship and that the Commission should only remove areas where there are winning rural broadband experiments are unavailing and transparent attempts to thwart competition. Gamesmanship is not an issue here, because ultimately the formal proposals for rural broadband experiments won't be selected in the competitive bidding process if they don't meet the Commission's criteria or if they are beaten by a better bid. There is no gaming here, unless by gaming the price cap carriers mean competition. Instead, the Commission's proposal simply provides an opportunity for them to access additional funding that is available under CAF Phase II. That's what the price cap carriers are fighting here. Hence, their argument that the Commission should only remove those areas where there are winning rural broadband experiments is purely designed to prevent rural broadband experiments from accessing CAF Phase II funding. Price cap carriers are glad to concede losing a few census blocks, if it means they can stave off competition in the remainder of the country where they would continue to have a right of first refusal.

The simple fact is that the Commission has proposed to limit funding for rural broadband

⁸ Remarks of Chairman Tom Wheeler, "The Facts and Future of Broadband Competition" at 1 (Sept. 4, 2014), visited at <http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition>.

⁹ *Id.* at 3.

experiments, such that there would only be \$100 million budgeted nationwide and no one entity could receive more than \$20 million – over a ten year period. By comparison, the Commission has budgeted \$1.8 billion annually for ten years under CAF Phase II. As a practical matter, there will be likely many deserving proposals for rural broadband experiments that are not selected because of the limits on available funding under the Rural Broadband Experiments program. It makes no sense to foreclose consideration of these deserving proposals from consideration under CAF Phase II. Moreover, competition from these proposals is likely to promote better service at lower prices, as Chairman Wheeler and other comments point out. Therefore, the Commission should adopt its proposal to remove the right of first refusal and to open up unserved areas to competitive bidding where there are formal proposals for rural broadband experiments.

II. The Commission Should Increase the Minimum Broadband Speeds to At Least 10/1 Mbps.

The record also overwhelmingly supports increasing the minimum broadband speeds to at least 10/1 Mbps. Even the incumbent price cap and rate of return carriers support an increase of 10/1 Mbps – albeit with conditions. Only WISPA opposes the proposed increase; everyone else supports at least 10/1 Mbps. Given the overwhelming support for increasing the minimum speeds to 10/1 Mbps, the Commission should adopt this proposal. Moreover, UTC supports using this benchmark for determining whether an area is eligible for funding as being “served” by an unsubsidized competitor (based upon an unsubsidized provider providing 10/1 Mbps speeds), as well as for determining whether an entity is eligible to receive CAF Phase II funding (based on its offer to accept model-based support or to bid on serving an unserved area). Areas that are currently not served by 10/1 Mbps should not be held back by incumbent providers that refuse to upgrade their systems; instead, they should be able access 10/1 Mbps services from competitors that are able to serve those areas using CAF Phase II funding.

As Chairman Wheeler observed, “Congress has instructed [the Commission] that all Americans should have access to robust broadband services, no matter where they live.” The fundamental question being asked by the Commission now is “if all consumers, even in the most rural regions, should have greater access to better broadband.”¹⁰ The answer to that is a resounding, “yes”. As NRECA succinctly put it, “there is a need for federal assistance to achieve parity between the ‘haves’ located in urban areas and the ‘have-nots’ located in more rural areas.”¹¹ Consumers in rural areas should enjoy access to broadband that is reasonably comparable in terms of speed and price to what is available in urban areas. Accordingly, UTC continues to support increasing broadband speeds to at least 10/1 Mbps, and it continues to encourage the Commission to consider setting the minimum broadband speed at 25/5 Mbps in order to promote truly robust, affordable and reliable broadband services to rural America.¹²

As noted above, price cap carriers offer conditional support for increasing the minimum speeds for broadband. They claim that the cost of these increased speeds is significant and that they need certainty in order to justify the investments that they would have to make if the minimum speeds were increased to 10/1 Mbps. First, they want a ten-year term on model-based support and extended build-out requirements as part of their statewide commitment. Second, they want “certainty” (i.e. a guarantee) that minimum required speeds will not “evolve” (i.e. further increase) over time. They also want to be able to offer these speeds to less than 100 percent of the customers in a given area, and they want to be able to swap out locations that are

¹⁰ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, Notice of Inquiry, GN Dkt. No. 14-126, FCC 14-113, (statement of Chairman Thomas E. Wheeler)(rel. Aug. 5, 2014).

¹¹ Comments of NRECA at 3.

¹² See Comments of UTC at 11 (stating that “UTC strongly encourages the Commission to consider setting the minimum broadband speed at 25/5 Mbps.”)

served in one area with locations in another area that is only partially served in order to meet their deployment obligations. Finally, they want the 10/1 Mbps speeds to serve as the benchmark for determining whether an area is eligible for funding based on whether it is “served” by an unsubsidized provider.¹³

While UTC agrees with the last of these conditions, it urges the Commission to reject the rest. At the outset, UTC reiterates that the additional costs are marginal to deploy a fiber optic line capable of providing 10 Mbps instead of 4 Mbps speeds.¹⁴ That said, the Commission should not provide model-based support for a full ten-year term nor extend the build-out requirements, because it would prevent competition and slow the deployment of broadband in those areas. In addition, it would also mean that it would effectively preclude these areas from getting 10/1 Mbps service for over a decade, if the Commission also gives into the price cap carriers’ demand that the Commission not further increase the speeds beyond 10/1 Mbps throughout the course of the funding period. If the Commission also gives in to their other demands, not all of the customers in these areas will ever even get 10/1 Mbps because the price cap carriers won’t be required to deploy to 100 percent of an area and/or they will be able to swap out locations in served areas for unserved locations in partially served areas in order to meet their deployment obligations. Therefore, UTC urges the Commission to reject these

¹³ See e.g. Comments of CenturyLink in WC Docket No. 10-90 at 10-20 (filed Aug. 8, 2014)(emphasizing that “[t]he Commission should establish a 10/1 broadband speed requirement for all aspects of the CAF II initial funding periods;” that “deployment obligations should be relaxed such that carriers will meet those obligations so long as they deploy the requisite broadband service to at least 90 percent of the total number of CAF II eligible locations in an area;” and that “the Commission should adopt a ten-year deployment period for the statewide commitment and commit to providing full funding for the entire period.”); and Comments of ITTA at 3 (stating that “should the Commission adopt speed requirements for CAF Phase II, other parameters must be modified,” including increasing the term of model-based funding to ten years; and flexibility for CAF Phase II recipients to serve fewer than 100 percent of locations in eligible census blocks and to meet their deployment obligations by substituting locations in eligible census blocks with unserved locations in partially-served census blocks as circumstances warrant.”)

¹⁴ See Comments of UTC at 12 (explaining that “[t]he majority of the cost of a broadband network is in labor costs associated with deploying it,” and that “[a]dding additional fibers to the line only represents a very small increase in the deployment costs as a percentage of the overall costs of construction.”)

conditions and simply adopt a 10/1 Mbps definition of broadband – period, stop, no conditions.

III. The Commission Should Not Exclude from Eligibility Areas That Are Served by Subsidized Provider, Nor Should It Allow Price Cap Carriers Broad Flexibility to Avoid Their Deployment Obligations.

UTC reiterates that the Commission should not revise its definition of an eligible area to include areas that are served by subsidized providers, thereby excluding them from eligibility if they are served by a subsidized provider. Nor should it establish a rule that would permit carriers to serve only 90 percent of a census block or that would that allow carriers to meet their deployment obligations by swapping out locations in one area for another. To be sure, there may be instances where flexibility should be permitted where circumstances warrant, but the Commission should be wary against flexibility becoming the rule rather than the exception, thus leaving rural America unserved by truly robust, affordable and reliable broadband.

The Commission's proposal to exclude areas served by subsidized providers would effectively negate any competition from occurring in areas where price cap carriers claim to offer service, including areas which may have only one location served in the entire area. In turn, this would keep those price cap areas from receiving the benefits of better service at lower prices. Although this proposal was based on concerns against overbuilding and inefficient use of scarce funds, UTC believes that it would be far worse to exclude areas served by subsidized providers who only provide marginal or prohibitively expensive service, and who may only serve a handful of locations in those areas. Moreover, as the Commission itself recognized, excluding such areas could make it more difficult to serve nearby areas that are unserved, thereby creating a domino effect of preventing other areas from being served by competitors.¹⁵ For all of these reasons, the comments on the record overwhelmingly oppose this proposal, and UTC urges the Commission

¹⁵ See *FNPRM* at 176.

to not adopt it.¹⁶

Similarly, the Commission would invite gamesmanship by allowing price cap carriers to only serve 90 percent of the locations in a census block or to swap out served locations in one census block to meet their deployment obligations in another partially served census block. UTC is concerned that price cap carriers would bypass unserved locations in a given census block in order to serve only locations near towns and densely populated areas, if the Commission were to adopt a rule allowing less than 100 percent coverage and allowing swapping of locations to meet deployment obligations. This would frustrate the fundamental purpose of CAF: to ensure that all Americans have access to robust, affordable and reliable broadband services. To the extent that the Commission does allow such flexibility, it should do so on an ad hoc basis. In any event, providers should not be allowed to meet their deployment obligations unless they provide service to at least 95 percent of the locations in an area, not 90 percent as price cap carriers request in their comments.¹⁷ Similarly, any swapping of locations in order to meet deployment obligations should be permitted on a waiver basis, and the Commission should carefully review the requests to prevent abuse. Otherwise, providers are likely to simply swap out expensive locations for inexpensive ones. In that regard, UTC agrees with the comments of the American Cable

¹⁶ Comments of BARC Electric Cooperative at 7 (stating “[b]y excluding all price cap areas where service is provided, the Commission would effectively dampen the deployment of the very networks it should be promoting, instead favoring older and soon-to-be obsolete technologies.”); Comments of Midwest Energy Cooperative at 10 (stating that “Midwest believes where the incumbent hasn’t deployed broadband in rural areas or indicated a willingness to serve, the mere existence of a price cap carrier should not preclude other ETCs from receiving funding for broadband.”); and Comments of NRECA at 11 (stating “[b]y excluding census blocks that are served by subsidized providers, price cap carriers will be under no pressure to improve service to those areas and to expand coverage to unserved locations.”)

¹⁷ See e.g. Comments of AT&T at 45 (stating “AT&T . . . recommends that the Commission lower the minimum [number of locations served in an area] to 90 percent.”); Comments of CenturyLink at 17 (stating that “The Commission should allow carriers to meet their deployment obligations so long as they build to at least 90 percent of the total number of eligible locations in the state.”); Comments of ITTA at 13 (stating “CAF Phase II recipients should be allowed to serve up to 10 percent fewer locations with an accompanying straight-line reduction in support.”); and Comments of US Telecom at 13 (stating “CAF Phase II recipients should be permitted to specify that they are willing to deploy to at least 90 percent of the locations in their funded areas, with associated straight-line support reductions”).

Association (ACA) 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.”¹⁸

IV. The Commission Should Adopt a Competitive Bidding Process With Preferences for Proposals That Substantially Exceed the Minimum Broadband Speeds and That Have Local Community Support.

UTC reiterates its support for a competitive bidding process that promotes access to robust, affordable and reliable broadband services in unserved areas. In that regard, the record supports the Commission’s proposals for a multi-round competitive bidding process. In addition, it also supports the Commission’s proposal for a preference for bids that substantially exceed the minimum broadband speeds set by the Commission and which also account for the input from local communities in terms of their preference of broadband service providers.

As Midwest Energy Cooperative explained in its comments, “giving funding priority to next generation networks capable of delivering high speed broadband serves the public interest and gives Rural areas the best chance of catching up to the technology that most Americans take for granted.”¹⁹ Similarly, as BARC Electric Cooperative explained in its comments, the Commission should include local community input into the selection process, because electric cooperative utilities “are not just another profit-seeking corporation [but instead] are an extension of the very people to which the FCC seeks to deliver broadband service.”²⁰ UTC agrees that these customers also own the electric cooperative, and “they ought to be given the choice in who provides their broadband service and what type of service that should be.”²¹ This

¹⁸ Comments of the American Cable Association in WC Docket No. 10-90 at fn 30 (filed Aug. 8, 2014).

¹⁹ Comments of Midwest Energy Cooperative at 15.

²⁰ Comments of BARC Electric Cooperative at 4.

²¹ *Id.*

endorsement could take the form of a simple survey of communities in the proposed service area, or as NRECA suggests, “a letter of support by such an affected community could be part of any bidding package for the competitive bidding process.”²²

²² Comments of NRECA at 17 (also stating that “the Commission should incorporate into its auction design consideration of the expressed preferences of the affected community for service of a particular type or quality.”)

CONCLUSION

In conclusion, UTC appreciates the opportunity to provide these reply comments in response to the Commission's FNPRM. The Commission should open up price cap areas to competitive bids from proposals to provide rural broadband experiments in those areas, and it should not exclude areas from eligibility for CAF competitive bids if they are served by a subsidized competitor. It should adopt increased minimum broadband speeds of at least 10 Mbps/1 Mbps if not 25/5 Mbps to serve these areas, and it should reject comments by price cap carriers seeking a ten-year term of funding or relief from their coverage requirements and their corresponding build-out obligations. Finally, the Commission should adopt a reverse auction process that promotes opportunities for new entrants to provide more robust, affordable and reliable services to these areas.

Respectfully submitted,

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