USTELECOM
THE BROADBAND ASSOCIATION

September 18, 2014

ERRATUM

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWA325
Washington, DC 20554

Re: ***ERRATUM*: *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)

Dear Ms. Dortch:

On August 8, 2014, USTelecom filed comments in the above-captioned proceeding. This Erratum amends the comments to delete language inadvertently included.

The final paragraph on page 19, continuing onto page 20, and associated footnotes are corrected to read as follows:

Congress created the ETC designation in the Telecommunications Act of 1996, tying ETC status (and the obligations that go with it) to the receipt of federal universal service support. A company must be designated as an ETC in order to receive federal universal service support and – in exchange – the company must "offer the services that are supported by Federal universal service support mechanisms" throughout the service areas for which it is designated as an ETC.[31] Thus, by statute, ETC obligations are matched to universal service support – one depends on the other. The Commission therefore is right to examine what happens to those ETC obligations when the corresponding universal service support goes away.

Attached are the corrected Comments of the United States Telecom Association.

Sincerely,

David Cohen
Vice President, Policy

[31] 47 U.S.C. §§ 214(e)(1), 254.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
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Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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August 8, 2014

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EXECUTIVE SUMMARY

USTelecom supports an efficient and effective universal service high-cost program for price cap carriers, rate-of-return carriers, and carriers located in insular areas that elect frozen support. Each has different public policy implications and each should be funded within their respective budget limits adopted in the USF/ICC Transformation Order. The Commission needs to promptly move forward to finalize universal service high-cost mechanisms for both price cap and rate-of-return carriers.

For price cap carriers, the implementation of Connect America Fund (CAF) Phase II has been significantly delayed and rate-of-return carriers are still awaiting development of a broadband-oriented CAF. Similarly, rate-of-return carriers, finally freed from the unpredictable constraints of the Quantile Regression Analysis, but with a new broadband obligation, have a pent up demand for new investment, but remain concerned about predictable cost recovery because of the absence of a CAF attuned to their needs.

USTelecom supports the increase in the broadband speed standard from 4/1 Mbps to 10/1 Mbps for CAF Phase II conditioned on concurrent changes being made to the other terms of the statewide offer. Ten years is the appropriate term of support and buildout period for all CAF Phase II support recipients. To ensure the attraction of investment, the broadband performance standards adopted for CAF Phase II, including broadband speed, should not vary or "evolve" during the period support is provided.

Carriers should continue to be permitted to use any technology that meets the service and pricing standards. But the Commission should continue to require that CAF Phase II recipients deploy networks capable of providing "broadband service that is reasonably comparable to *terrestrial fixed* broadband service in urban America." Prior to selecting winners in the CAF Phase II competitive bidding process, the Commission should verify through independent testing that the proposed technologies used by bidders are fully capable of meeting the established performance requirements in all the locations covered by the bid. This principle should also apply to the verification of coverage by unsubsidized broadband providers in areas served by rate-of-return companies. The Commission should continue to limit the definition of unsubsidized competitor to terrestrial fixed providers.

The expectation in the USF/ICC Transformation Order that ETCs would offer broadband at speeds greater than 4/Mbps/1Mbps to community anchor institutions in rural and high-cost areas and that they would provide such offerings "at rates that are reasonable comparable to comparable offering to community anchor institutions in urban areas" is not unreasonable in the aggregate. However, this expectation should not lead to an obligation in the context of the CAF Phase II program.

10 Mbps should be the new standard for determining the presence of an unsubsidized competitor. Changing the benchmark will greatly increase the number of consumers served through CAF Phase II. If the Commission believes that 10 Mbps is the minimum speed necessary for rural America then it must act to ensure that all high-cost areas within the CAF price benchmarks have the ability to receive such speeds.

USTelecom does not agree that as a general matter, areas where a price cap carrier already offers voice and broadband service meeting the requisite standards should uniformly be excluded from receiving support under the competitive bidding mechanism. Prior to the initiation of the competitive bidding process, the price cap carrier serving the area eligible for bidding should be required to state which portions of the area have 10 Mbps downstream service. It should then have the opportunity to state in which areas it can continue to provide such service absent support, which would result in those areas being excluded from the bidding process.

It serves the Commission's universal service goals to promote flexibility in meeting deployment obligations. The Commission should adopt its proposals to increase such flexibility both by permitting deployment to less than 100 percent of funded locations and by permitting substitution of locations in partially-served census blocks for locations in unserved census blocks. 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. CAF Phase II recipients should also be permitted to substitute unserved locations within partially served census blocks for locations within funded census blocks. Although the use of census blocks was reasonably adopted as an administrable method of determining served and unserved areas, people living and working in unserved locations within "served" census blocks should not be penalized due to this structure.

USTelecom opposes the proposal in the Further Notice excluding from CAF Phase II support those census blocks where there is a facilities-based terrestrial competitor offering subsidized fixed residential voice and broadband services meeting the new speed standards. Such a policy would result in no subsidies for any provider in the area which has already proven that support is needed for facilities to be deployed.

The Commission should reform the ETC designation and is right to examine what happens to ETC obligations when the corresponding universal service support goes away. USTelecom previously stated in a letter cited by the Commission that Section 214 indeed relieves a provider of its ETC obligations in areas where it no longer receives support. The Commission here should declare that ETC designations and the corresponding ETC obligations are limited to those providers and geographic areas where a provider receives support from a universal support mechanism and, therefore, expire when a provider no longer receives support from that mechanism in that area. USTelecom supports permitting entities be allowed to seek ETC designation after being selected for the offer of CAF Phase II funding, and adopting a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of CAF Phase II competitive bidding or Remote Areas Fund (RAF) if it fails to initiate a proceeding on that petition within 60 days of receiving it. Both are reasonable prescriptions for addressing the statutory requirement of ETC designation under the new structure of universal service support in price cap areas.

The first step in assigning the proper amount of legacy support to areas not included in the service area of the winner of the competitive bidding process is to associate the current statewide level of frozen support with the price cap carrier's high-cost areas, as identified by the CAM. This step recognizes that, while calculated using a less-sophisticated approach than the

CAF, the legacy subsidies were nonetheless intended to provide support for the high-cost areas of the price cap carrier's territory. The next step would be to allocate the proper amount of support to the price cap carrier's high-cost locations not part of the bid of the competitive process winner. This can be accomplished using the cost model by (1) calculating the ratio of the model cost associated with the areas not bid as part of the competitive process to the model cost for all high-cost locations; and (2) applying that ratio to the legacy frozen support amount. The Commission's proposal, taking the cost of the census blocks at or above the funding benchmark and dividing by the total cost of serving the price cap carrier's territory in the state, and then applying that ratio to the historical amount of frozen support, is flawed. It perpetuates the inequities in legacy support that were inherent in the legacy mechanisms which the USF/ICC Transformation Order was designed to eliminate.

Where a price cap ILEC declines high-cost universal service support for a given geographic area or where a non-incumbent carrier has been selected for support through the competitive bidding process, the Commission should sunset the ILEC's ETC designation and its associated obligations. The ETC designation should only be applicable to providers serving the specific areas receiving high-cost support and during the term of that support.

The Commission should view the program that offers carriers serving non-contiguous areas electing frozen support as a third USF mechanism, in addition to the mechanisms for price cap carriers or other participating in CAF Phase II and the mechanism to be designed for rate-of-return carriers. Taking into account the unique circumstances of price cap carriers serving non-contiguous areas, the obligations of such carriers that elect frozen support should be adjusted for the individual circumstances of each carrier.

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. 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.

USTelecom endorses the proposal in the Further Notice to adopt reserve prices based on the Connect America Cost Model so that the reserve price for a given geographic area in the competitive bidding (*i.e.*, census tract or census block) equals the amount of support the model would have calculated for that same geographic unit in the state-level election process. This is a reasonable way to ensure that the funds remaining available for the CAF Phase II competitive bidding process following the statewide election will be used efficiently and prudently. Cost effectiveness should be the primary criteria in evaluating competitive bids in the CAF Phase II auction process. A complex bidding process that weighs multiple criteria will not efficiently result in widespread broadband deployment within the high-cost program budget the Commission has set, and will instead result in a Rubik's cube of options which would vastly complicate the competitive bidding process.

Given the accelerating pace of transition to an Internet Protocol-based communications network, the time needed for the design and implementation of new universal service high-cost

support mechanisms for rate-of-return carriers, and the period of time a new mechanism should and will be in place, the decisions made today need to anticipate and accommodate a network carrying services predominantly based on IP. A measured transition from the current system to a new system should take that into account and encourage carriers to recognize the IP-based nature of current and future services. Measured on how long the transition will take, whether it is practical and administrable, and its effect on broadband investment, the RLEC Plan is superior to the approach laid out in the Further Notice. The RLEC Plan has a greater probability of moving more quickly from the legacy HCLS and ICLS mechanisms to a rate-of-return CAF than does the Further Notice construct.

The RLEC Plan, as modified by the Rural Associations' filing today, meets the Commission's stated objectives and does so in a way that can be operationalized and therefore can be more rapidly implemented. The RLEC Plan fits within the Commission's budget framework. In addition to the rough offsetting of increases in the broadband-only fund by decreases in the HCLS and ICLS mechanisms and the decline in HCLS based on the operation of the Rural Growth Factor, the Rural Associations are proposing a mechanism that will ensure conformance with the high-cost budget allocated to the areas served by rate-of-return carriers. The mechanism will size the broadband-only to ensure that it, plus the total of HCLS and ICLS, fits within the Commission's budget.

In addition, the RLEC broadband-only plan includes incentives for economic investment, consistent with the principle in the Further Notice that any plans "distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so." The RLEC Plan is also a practical and timely way for the Commission to move forward since it uses actual costs with several simple and specific forward-looking controls on future investment.

The RLEC Plan will not lead to double recovery of costs due to timing differences between current HCLS support mechanism, based on historic data, and the proposed broadband-only mechanism, based on projected costs. The RLEC Plan's broadband-only proposal mirrors the current ICLS mechanism as far as the use of projects of support and subsequent true up based on actual costs. This methodology has been used for over a decade and is based on existing Commission rules.

The $26 benchmark included in the RLEC Plan's broadband-only proposal represents only a portion of the amount that consumers would ultimately pay for retail broadband service. It is an imputation against only the regulated local loop transmission networks that underpin broadband Internet access services and would be eligible for broadband-only fund support.

USTelecom supports a voluntary transition of rate-of-return carriers to incentive regulation and model-based support if it includes assurance that adoption of such a plan by some carriers does not negatively impact the funds available to carriers not electing the incentive plan. An optional model-based plan should not be adopted until a mechanism is developed to address the impact on carriers not electing such a plan. The funding for model-based support elected by carriers currently regulated under rate-of-return at the federal level should continue to be

included in the rate-of-return budget. The overall Connect America Fund budget should not affected.

The Commission should adopt its proposal to change the methodology for fairly reducing support to comply with the HCLS cap. While no mechanism is perfectly fair, and the Commission's proposal may have a greater impact on higher-cost carriers for which HCLS is a greater proportion of their revenue stream, the proposed mechanism is significantly superior to the current approach.

USTelecom supports the increase in the broadband speed standard from 4/1 Mbps to 10/1 Mbps for rate-of-return carriers conditioned on clear rules on funding and the definition of "reasonable requests." Similar to the investment decisions made by price cap companies, rate-of-return carriers require some level of certainty before making long-term fixed-cost investments.

The Commission should keep in mind the importance of the middle-mile as the IP transition proceeds and there is more clarity as to the types of network arrangements and the cost of such arrangements that will be available to rate-of-return carriers. Development of a mechanism to provide support for the cost of middle-mile transport for the traffic of rate-of-return carriers is important, but it can be deferred until after a support mechanism for the cost of loop-related broadband infrastructure is completed and implemented.

Implementation of the 100 percent overlap rule for rate-of-return carrier territories must be done carefully as it can have very significant consequences for the carrier and the consumers it serves. Therefore implementation of the 100 percent overlap rule must be approached with great care. In particular, the rate-of-return carrier to whom the phase-out may apply should have settled and confirmed study area boundaries. There should also be independent verification that the purported unsubsidized broadband provider is providing a level of service to all locations in the study area that meets the performance standards adopted for use in CAF Phase II for application in price cap company areas. Providers alleging 100 percent overlap should file petitions to initiate the process and should have the burden of proof of demonstrating provision of service meeting the Commission's performance standards to all locations.

It is premature to adopt a rule that disallows support for new investment after a date certain in areas served by an unsubsidized voice and broadband provider. Before moving on to address partially-covered study areas, the Commission should complete adoption and implementation of a policy covering areas in which there is 100 percent overlap. The Commission should institute a proceeding which would consider how best to develop and implement specific and detailed disaggregation and cost allocation rules.

Before the
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COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTelecom")[1] respectfully submits its comments on the Further Notice of Proposed Rulemaking ("*Further Notice*")[2] in the above captioned dockets. USTelecom supports an efficient and effective universal service high-cost program for price cap carriers, rate-of-return carriers, and carriers located in insular areas that elect frozen support. Each group has different public policy implications and each should be funded within its respective budget limits adopted in the *USF/ICC Transformation Order*.[3]

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[1] USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

[2] *See 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), Report and Order ("*Report and Order*"), Declaratory Ruling, Order ("*Order*"), Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking ("*Further Notice*") (rel. June 10, 2014).

[3] *See Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our*

These comments will address issues specific to each class of carrier as well as issues common to all.

The Commission needs to promptly move forward to finalize universal service high-cost mechanisms for both price cap and rate-of-return carriers. For price cap carriers the implementation of CAF Phase II has been significantly delayed and rate-of-return carriers are still awaiting development of a broadband-oriented Connect America Fund. The benefits of extended and enhanced broadband service have been delayed for many rural Americans, and the increased jobs and economic activity accompanying billions of dollars in new investment are on hold. Similarly, rate-of-return carriers, finally freed from the unpredictable constraints of the Quantile Regression Analysis, and with a new broadband obligation, have a pent up demand for new investment, but remain concerned about predictable cost recovery because of the absence of a Connect America Fund attuned to their needs.

I. A Faster Broadband Service Speed Performance Requirement of 10 Mbps Downstream for Price Cap Carriers Electing the Statewide Obligation Must be Accompanied by Terms of Support That Promote Certainty and Feasibility

It is clear that the Commission understands the practical reality of upgrading and expanding broadband facilities in rural America when it concisely states in the *Further Notice*, "To plan a network, recipients of support need to know ahead of time what will be expected of them."[4] That expectation should be specific and realistic. It should also be unchanging throughout the term of the obligation assumed by the recipient of support and accompanied by terms that allow financially feasible design and buildout. The procurement model of CAF Phase

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Future, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, 26 FCC Rcd. 17663 (2011), ("*USF/ICC Transformation Order")* at ¶¶ 123 – 126.

[4] *See Further Notice* at ¶ 157.

II support adopted by the Commission for areas served by price cap carriers is consistent with such a structure.

USTelecom supports the increase in the broadband speed standard from 4/1 Mbps to 10/1 Mbps for CAF Phase II, conditioned on concurrent changes being made to the other terms of the statewide offer. Those changes should include a ten-year term of support and buildout period, flexibility to deploy to less than 100 percent of eligible locations, the ability to substitute locations in partially-served census blocks for those in unserved census blocks, and certainty as to the required performance standards during the term of support. Such changes would benefit consumers by encouraging investment in the higher-speed facilities envisioned by the Commission's proposal.

A. The Speed Requirement Must Engender Certainty to Attract Investment

The broadband performance standards adopted for CAF Phase II, including broadband speed, should not vary or "evolve" during the period support is provided. The prospect of the standard evolving during the relevant period means that the network must be designed and built to the anticipated evolved standard. This effectively raises the performance standard from day one, and increases the buildout costs, reducing the likelihood that carriers will be able to accept CAF Phase II support and/or limiting the number of locations to which broadband can be extended.

Moreover, while changes in technology and/or the market may encourage and enable broadband performance above that specified in CAF Phase II in some areas, and providers may choose to enhance broadband performance above the CAF Phase II standards in some areas, changes in technology or markets are neither predictable nor necessarily uniform in applicability to the established market or network facilities in all CAF Phase II areas. In that sense, the proposed broadband speed requirement of 10 Mbps downstream and 1 Mbps upstream for

receipt of support,[5] accompanied by additional flexibility in the terms of support, is superior to the current requirement of 4 Mbps downstream and 1 Mbps upstream evolving to 6 Mbps downstream and 1.5 Mbps upstream.

USTelecom endorses the Commission's proposal to no longer require CAF Phase II recipients to specify a number of locations that would receive 6/1.5 Mbps service.[6] Such a service does not exist in the market, unlike the Commission's proposal for 10 Mbps downstream which is a standard offering for at least some providers. In fact, the 10 Mbps downstream speed is generally offered in the market accompanied by an upstream offering at 1 Mbps or less (768 kbps service), not 1.5 Mbps upstream. Such an offering has been embraced by consumers and is consistent with prudent network design and provisioning.

B. Ten Years is the Appropriate Term of Support and Buildout Period for All CAF Phase II Support Recipients

Ten years is the appropriate term and buildout period of support for all CAF Phase II support recipients, including those participating via the statewide election. Five years is an insufficient term of support and buildout period even for the current 4/1 Mbps standard, and there is a significant difference in the design and associated costs of a network designed to meet the proposed higher speed standard. In addition, building a 10/1 Mbps network requires pushing fiber further out into the network, which is not only more expensive but requires significantly more outside plant construction, including plowing of cable, which is time-consuming. The increase in network building due to CAF Phase II will also tax the limited number of fiber manufacturers and installers, which will necessitate longer buildout timelines, and this shortage is exacerbated in areas with short construction seasons. These network buildouts also require rights-of-way acquisition, historical preservation and environmental regulatory approvals. In

[5] *Id* at ¶ 138.
[6] *Id* at ¶ 147.

recognition of these challenges, the comprehensive intercarrier compensation and universal service reform plan filed by the ABC Coalition three years ago proposed a ten-year term of support at a speed of 4 Mbps downstream and 768 kbps upstream.[7] Assuming a useful life of outside plant facilities of 25 years, ten years of support helps cover 40 percent of the cost versus a mere 20 percent for a five-year term of support. If a price cap carrier accepts CAF Phase II funding, then that carrier becomes obligated to provide broadband in areas that were previously deemed unprofitable by the carrier. Capital and operating expenses will be incurred far beyond the funding period. The proposed increase in downstream speed has an enormous impact on the feasibility of the investment in broadband facilities. It is particularly significant because of the different type of investment required to provide 10 Mbps downstream versus the previous 4 Mbps requirement.

In the competitive bidding context, the Commission recognizes the inadequacy of the current five-year term of support with the proposed change to the 10 Mbps downstream speed requirement,[8] and the same rationale applies in the context of the statewide commitment. Presumably, the Commission is assuming the price cap incumbent LECs can leverage current facilities that can be upgraded or extended while winners of competitive bids would be starting from square one, thus requiring a longer term of support to enable financial feasibility. The Commission evidences no basis for such an assumption, and thus no basis for discriminating against incumbent LECs. ILEC voice-grade facilities may or may not be present to all locations in a census block unserved by broadband, and such facilities may or may not be appropriate for upgrading to broadband, particularly broadband that must meet a 10 Mbps download

[7] *See* America's Broadband Connectivity (ABC) Plan (WC Docket No. 10-90), (filed July 29, 2011), Attachment 1, p. 2.
[8] *See Report and Order* at ¶ 35.

requirement. On the other hand, there is no basis for the assumption that potential competitive bidders have no facilities in or near areas eligible for CAF Phase II support. For example, rural electric cooperatives have trumpeted the amount of fiber facilities they have in rural areas that could be adapted to provide broadband.[9] Cable companies may not have facilities in eligible areas, but clearly do have facilities in areas nearby that could be extended. There may be towers in eligible areas that could be used as part of a fixed wireless network.

Commission concerns about extending the term of support for all CAF Phase II recipients should be mitigated by adoption of the Commission's proposal to provide such recipients the opportunity to receive financial incentives for accelerated network deployment.[10] Moreover, carriers have inherent market-driven incentives to deploy as quickly as possible in order to stimulate broadband adoption and end-user revenue. With adequate support to make projects financially feasible, combined with an accelerated income from both end-users and the CAF, when projects are completed early, providers will have sufficient incentives to accelerate network deployment in areas where that is consistent with efficient and prudent network design and construction practices. The Commission therefore should grant the flexibility that a ten-year payout and buildout term would provide.

C. Performance Must be Verified for Any Technology

In the *Further Notice*, the Commission asks whether, for the purposes of CAF Phase II implementation, it should allow the use of mobile or satellite technology that meets the CAF Phase II requirements, while maintaining the service and pricing standards established by the Bureau for the offer of model-based support. Previously, in the *USF/ICC Transformation Order*,

[9] *See* letter of Robert L. Hance, Midwest Energy Cooperative, dated December 9, 2013, WC Docket No. 10-90 "As rural electric cooperatives like Lake Region (Oklahoma), Johnson County (Indiana), Douglas Electric (Oregon), North Alabama Electric (Alabama) and Co-Mo Electric (Missouri) progress with their fiber projects…"

[10] *See Further Notice* at ¶ 161.

the Commission found that "[f]unding recipients may use any wireline, wireless, terrestrial, or satellite technology, or combination of technologies, to deliver service that meets this requirement" (of reasonably comparable speed, latency, and usage limits.) As a general matter, carriers should continue to be permitted to use any technology that is shown through verifiable, independent review to be able to meet the service and pricing standards for all locations in the relevant area. But the Commission should continue to require that CAF Phase II recipients deploy networks capable of providing "broadband service that is reasonably comparable to *terrestrial fixed* broadband service in urban America."[11]

The Commission in the *USF/ICC Transformation Order* observed that "few, if any" mobile and satellite broadband services will "meet the CAF speed, capacity, or latency minimums for all locations."[12] In particular, the Commission found:

> [T]he record suggests that satellite providers are generally unable to provide affordable voice and broadband service that meets our minimum capacity requirements without the aid of a subsidy: Consumer satellite services have limited capacity allowances today, and future satellite services appear unlikely to offer capacity reasonably comparable to urban offerings . . . . Likewise, while 4G mobile broadband services may meet our [4/1] speed requirements in many locations, meeting minimum speeds and capacity guarantees is likely to prove challenging over larger areas, particularly indoors. And because the performance offered by mobile services varies by location, it would be very difficult and costly for a CAF recipient or the Commission to evaluate whether such a service met our performance requirements at all homes and businesses within a study area, census block, or other required area.[13]

Prior to selecting winners in the CAF Phase II competitive bidding process, the Commission should verify through independent testing that the proposed technologies used by bidders are fully capable of meeting the established performance requirements in all the locations

[11] *See USF/ICC Transformation Order* at ¶ 160.
[12] *Id* at ¶ 104.
[13] *Id.*

covered by the bid. This principle should also apply to the verification of coverage by unsubsidized broadband providers in areas served by rate-of-return companies. In the case of satellite technology, the Commission should ensure that there is sufficient capacity within each spot beam to serve the number of locations proposed in the bid or combination of bids. It is unfair to weigh bidders using known and effective technological solutions against those using untested and unproven technology that promises but does not deliver the performance required by the Commission within the budget allocated for the area. It would be unfortunate for rural consumers lacking broadband service if scarce universal service funding was allocated to vaporware or to technologies that can serve some but not all of the locations in the area covered by the bid.

Similarly, recognizing "the benefits of certainty," the Commission stated that it did not anticipate changing the definition of "unsubsidized competitor" for the next several years.[14] Given that the challenge process for CAF II is already underway, and given that it is still the case that "few, if any" mobile and satellite broadband services meet the CAF speed, capacity and latency minimums, the Commission should continue to limit the definition of unsubsidized competitor to terrestrial fixed providers.

D. Adoption of Changes in the Terms of Support Consistent with a 10 Mbps Downstream Requirement Will Facilitate Higher Speeds to Anchor Institutions

The expectation in the *USF/ICC Transformation Order* – that ETCs would offer broadband at speeds greater than 4/Mbps/1Mbps to community anchor institutions in rural and high-cost areas and that they would provide such offerings "at rates that are reasonable comparable to comparable offering to community anchor institutions in urban areas"[15] – is not

[14] *Id* .
[15] *Id* at ¶ 102, n. 164.

unreasonable in the aggregate. However, this expectation should not lead to a prescribed anchor institution service obligation in the context of the CAF Phase II program.

Design of a network capable of providing 10 Mbps downstream necessarily includes enhancements that will facilitate higher speeds to anchor institutions, consistent with the Commission's expectations.[16] But this effect is very fact-specific and can be relatively marginal in many instances. Even though a 10 Mbps downstream design pushes fiber deeper into the local distribution network, most anchor institutions are located in or very near the town, the densest portion of the service area which would already have facilities that could be extended to provide higher-speed service to anchor institutions. If additional construction is required to connect the anchor institution to the network, that should be not be added as an obligation on CAF Phase II recipients. In many cases, market forces will compel the deployment of additional facilities to meet the unique needs of anchor institutions. Connections in some case could be financed through the Schools and Libraries Fund or Rural Health Care Fund. No matter the speed adopted or accompanying term of support for those electing the state-level obligation, funding will only be provided for a fraction of the life of the facilities built by the price cap carrier. The Commission therefore should not add an anchor institution requirement to the already challenging buildout requirements for CAF Phase II.

Although the Commission correctly notes that it indicated its expectation was included in the *USF/ICC Transformation Order*, that order was issued prior to the adoption of the Notice of Proposed Rulemaking seeking to reform the E-rate program. It also did not anticipate that the Commission would propose increasing the broadband speed requirement from 4 Mbps downstream to 10 Mbps downstream before CAF Phase II was even implemented.

[16] *See USF/ICC Transformation Order* at ¶ 102 and *Further Notice* at ¶ 159.

Recipients of CAF Phase II will of course try to sell voice and broadband service to all those in their service areas, especially larger customers which in rural areas often are anchor institutions. To be effective in doing so, they will do their best to meet the needs of those institutions. The foundation provided by CAF Phase II high-cost support will help in that effort, which will then be supplemented by the targeted support included in the discounts available through the E-Rate and Rural Health Care Fund programs.

Discussion of the charges, terms and conditions of service provided to community anchor institutions are issues that apply to all broadband providers, including those providers not interested or eligible to receive or potentially receive CAF Phase II support. These issues should not be addressed in the narrow CAF Phase II context. Instead, they should be deferred to the E-rate proceeding where they properly belong and are already subject to consideration through opportunities for notice and comment before the Commission.

E. 10 Mbps Should Be the New Standard for Determining the Presence of an Unsubsidized Competitor

If the Commission believes that 10 Mbps is the minimum speed necessary for rural America then it must act to ensure that all high-cost areas within the CAF price benchmarks have the ability to receive such speeds. The Commission seeks comment on whether, if it "adopt[s] its proposal to increase the downstream benchmark to 10 Mbps," it should in turn "exclude from [CAF] Phase II those census blocks where there is a facilities-based competitor offering voice and broadband services meeting that new speed standard."[17] Under the current rules, an unsubsidized competitor can preclude a high-cost census block from CAF Phase 2 eligibility merely by providing a 3 Mbps service, despite the fact that the Commission no longer views such service as adequate. Given the extended duration of the CAF Phase 2 program, the

[17] *See Further Notice* at ¶ 174.

Commission runs the risk of indefinitely dooming those high-cost areas with below-standard service. Accordingly, the Commission must adjust its definition of "unsubsidized competitor" from one that provides a minimum of 3 Mbps download to one that provides a minimum of 10 Mbps download.

Changing the benchmark for an unsubsidized competitor to 10 Mbps will also greatly increase the number of consumers served through CAF Phase II, as proved by the Commission's own model results. The *NPRM* directed the Bureau to publish information "regarding the number of locations that would be eligible for an offer of model-based support if the revised speed benchmark were used to determine the presence of an unsubsidized competitor and the number of locations above the extremely high-cost threshold."[18] When the Commission did so, it revealed that nearly half a million additional locations, representing over a million Americans, would be served through CAF Phase II by harmonizing the unsubsidized competitor benchmark with the proposed 10 Mbps benchmark.[19] Stated differently, over a million Americans would be left to wonder when, if ever, their broadband options would be comparable to urban areas if the Commission failed to harmonize the benchmarks. The Commission can bring the most broadband to the greatest number of people by adjusting the benchmark for an unsubsidized competitor to 10 Mbps.

F. Areas Served by a Price Cap Carrier Offering 10 Mbps Service Should Not Generally Be Excluded from the Competitive Bidding Process

USTelecom understands and has been supportive of the concept that CAF Phase II support should not go to areas already served by an unsubsidized competitor. However, as a

[18] *Id* at ¶ 146.
[19] Compare *Wireline Competition Bureau Releases Connect America Cost Model Illustrative Results Using Higher Speed Benchmark,* Public Notice, DA 14-833 (rel. June 17, 2014) with *Wireline Bureau Announces Availability of Version 4.1.1 of the Connect America Fund Phase II Cost Model*, DA 14-515 (rel. Apr. 17, 2014).

general matter, areas where a price cap carrier already offers supported voice and broadband service meeting the requisite standards should not be excluded from receiving support under the competitive bidding mechanism.

Prior to the initiation of the competitive bidding process, the price cap carrier serving the area eligible for bidding should be given the opportunity to state in which areas it provides 10 Mbps downstream service and can continue to provide such service absent support, which would result in those areas being excluded from the bidding process. Other price cap ILEC-served areas would be eligible for inclusion in the competitive bidding process. This approach ensures the most efficient use of the budget allocated to CAF Phase II[20] while not endangering the continued provision of broadband service in rural areas that are uneconomic to serve absent support.

The Commission in the *USF/ICC Transformation Order* recognized the importance of "sustaining existing voice and broadband services" in addition to extending broadband service.[21] Thus, as the Wireline Competition Bureau noted in the Order adopting the platform for the Connect America Cost Model, providing support for areas where the price cap carrier already offers broadband is "consistent with the Commission's goals and directives."[22] The Bureau acknowledged that "carriers may have deployed broadband in certain areas based on past universal support and intercarrier compensation revenues . . . and still may require funding to sustain the previous broadband deployment."[23] This is true in the context of price cap carriers considering the statewide commitment and is no less true in the context of a competitive bidding process in which price cap carriers are considering bids in their own service areas.

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[20] *See Further Notice* at ¶ 175.
[21] *See USF/ICC Transformation Order* at ¶ 156.
[22] *See Model Platform Order* at ¶ 43.
[23] *Id* at ¶ 44.

II. It is Sensible to Promote Flexibility in Meeting Deployment Obligations

It serves the Commission's universal service goals to promote flexibility in meeting deployment obligations. Flexibility encourages efficient network design and potentially increases the amount of locations that can be served with a given amount of CAF Phase II support. The Commission should adopt its proposals to increase such flexibility both by permitting deployment to less than 100 percent of funded locations and by permitting substitution of locations in partially-served census blocks for locations in unserved census blocks.

A. CAF Phase II Recipients Should be Permitted to Deploy to 90 Percent of Locations with Associated Straight-Line Support Reductions

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.[24] This flexibility will vastly increase the efficiency of network design. However, the point at which the reduced deployment and support is applied should differ based on whether the recipient of CAF Phase II support achieved such support via the statewide election or the competitive bidding process.

The nature of competitive bidding militates that implementation of flexibility to serve less than 100 percent of eligible locations should be different for those accepting the state-level commitment than for winning bidders. Price cap carriers electing the state-level commitment have a fixed service area that they are obligated to serve by operation of the election. These carriers should have the flexibility to adjust their deployment commitments after making a state-level commitment. This flexibility should be available during the entire buildout period, as

[24] While USTelecom here addresses the performance obligations of price cap carriers accepting the state-level commitment for model-based support or participating in the competitive bidding process, USTelecom also supports adopting additional flexibility for non-CONUS price cap carriers accepting frozen support. *See infra* Section VI.

knowledge informing decisions about which locations are more or less financially feasible to serve will be gathered as networks are designed and built out.

On the other hand, depending on how the competitive bidding process operates, bidders may be able to specify the areas in which they intend to provide service. In order to have a fair competitive bidding process, the bids must allow the Commission to compare coverage areas along with other criteria. This can only be accomplished if bidders specify the number of locations to which they intend to deploy during the auction process. Participants in the CAF Phase II competitive bidding process already have significantly more flexibility than carriers receiving CAF Phase II pursuant to a statewide election since in making their bids they are selecting which areas to serve, as opposed to having a statewide obligation. Therefore not as much flexibility is required during the design and buildout process.

Percentage support reductions should be equal to the percent of locations served below 100 percent. This should apply to all CAF Phase II recipients. A directly proportional reduction approach is clearly more administrable and far superior to reducing funding based on the support the model attributes to serving each location. The administrability and fairness of a methodology based on model support is highly dependent on an extraordinary level of accuracy in the model's count and placement of locations. Analysis by USTelecom member companies of the data on locations does not demonstrate a sufficient level of accuracy. On the other hand, a directly proportional reduction approach requires a simple calculation of deployment to a defined number of locations divided by total locations initially funded.

It is also not clear that the additional complexity of a model-based reduction approach would be offset by providing better incentives for deployment than a directly proportional approach. Model-determined cost and the realities of network design are not necessarily aligned

in all cases. A provider may build out to a location shown on the model as higher-cost because its network design enables it to do so at lower cost; conversely, a seemingly relatively lower-cost location may not be seen as such by network engineers laying out the most efficient network design.

This flexibility does not mean that all recipients of CAF Phase II support will deploy to the minimum number of funded locations, only that carriers will have some leeway to enable the most cost-efficient network designs. CAF Phase II recipients are entering into an ambitious agreement to extend broadband service (potentially at 10 Mbps downstream) to the challenging areas of rural America not currently served by broadband that meets even the 3 Mbps downstream/768 kbps upstream standard. Permitting prudent and efficient network design by allowing up to 10 percent of funded locations to not be connected (with directly proportional support reductions) will increase the cost-effectiveness of all CAF Phase II funds.

Though the Commission suggests 95 percent as an appropriate minimum, 90 percent is more appropriate given the CAM's shortcomings in identifying the precise number of locations in census blocks. To the extent the CAM substantially overstates the number of locations in a given area, the percentage minimum may effectively be significantly higher, since facilities cannot be deployed to locations that are not actually in existence. The use of 90 percent provides sufficient flexibility to address that problem as well as to encourage efficient network design.

B. CAF Phase II Recipients Should be Permitted to Substitute Unserved Locations Within Partially Served Census Blocks for Locations Within Funded Census Blocks

Per the proposal in the *Further Notice*, CAF Phase II recipients should be permitted to substitute unserved locations within partially served census blocks for locations within funded

census blocks.[25] Although the use of census blocks was reasonably adopted as an administrable method of determining served and unserved areas, people living and working in unserved locations within "served" census blocks should not be penalized due to this structure. Many census blocks that are ineligible for CAF Phase II funding because they are shown as "served" on the National Broadband Map in fact have one or very few locations that are served at the performance levels prescribed by the Commission. The "substitution" proposal is a win/win. As the Commission correctly observed, "This approach could enable more effective network deployment and bring service to unserved consumers in those partially served census blocks."[26] It maintains the relative simplicity of the census block approach to determine areas eligible for support, while funding deployment to unserved locations where the cost of deployment has been prohibitive in the absence of support.

Contrary to the assertion in the *Further Notice*, permitting CAF Phase II support to be used for deployment to unserved locations in partially served census blocks would impose no "costs" on those that have invested private capital to deploy service nearby.[27] The cost/benefit analysis is simple when the cost is zero. This "substitution" proposal fully conforms to the philosophy of the *USF/ICC Transformation Order* that universal service funding should not be used to deploy facilities to locations that already have adequate broadband service.[28] It is cold comfort for a household to have broadband service "nearby" but be unable to access its benefits. The only "costs" of this proposal would be those imposed on those residing in unserved locations in census blocks designated as served if the permitted amount of substitution is arbitrarily limited.

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[25] *Id* at ¶ 167.
[26] *Id*.
[27] *Id* at ¶ 168.
[28] *See USF/ICC Transformation Order* at ¶ 20.

As with the directly proportional calculation of the reduction in support due to serving less than 100 percent of locations in a funded area, the simplest substitution metric is also the best – the number of new locations should be equal to or exceed the number of old locations (i.e., one for one or better swaps). This approach is clearly more administrable and far superior to calculating the permitted number of substituted locations based on the support the model attributed to serving each location. A methodology based on model support places enormous weight on the capability of the model to accurately count and place locations. Analysis of the data on locations by USTelecom member companies does not demonstrate that the model can be relied upon to have a sufficient level of accuracy to be used for this purpose. Administrability and fairness is better served by adoption of a methodology using a directly proportional calculation. This approach requires a simple counting of deployment in partially served census blocks and those in unserved census blocks.

It is also not clear that the additional complexity of a model-based reduction approach would be offset by providing better incentives for deployment than a directly proportional approach. Cost and network design are not necessarily aligned in all cases. A provider may build out to a location shown on the model as higher cost because its network design enables it to do so at lower cost; conversely, a seemingly relatively lower cost location may not be seen as such by network engineers laying out the most efficient network design.

For the same reasons, the substitution rule should apply equally to frozen support elected by non-CONUS carriers. As Alaska Communications Systems (ACS) has stated, many census blocks in Alaska, which tend to be quite large compared to those in other states, are shown as "served" on the National Broadband Map yet feature broadband availability in only a small fraction of locations – sometimes along a single road – while the remaining households and

businesses have no access to high-speed service by any means.[29] Similarly, while broadband may be offered by the cable competitor in certain population centers scattered throughout Hawaii's high-cost rural areas, residents on the outskirts of many such census blocks find no broadband availability. Allowing substitution would enable more individually tailored commitments appropriate to the special circumstances encountered by carriers serving insular areas such as Alaska and Hawaii. It would be an efficient use of limited CAF resources to maximize benefits to end-users, and would stimulate further expansion of advanced services in high-cost areas.

III. If the Commission Terminates High-Cost Support in an Area Served by a Subsidized Competitor, Support Should Cease for All Wireline ETCs Simultaneously

USTelecom is concerned that the proposal in the *Further Notice* to exclude from CAF Phase II support those census blocks where there is a facilities-based terrestrial competitor offering subsidized fixed residential voice and broadband services meeting the new speed standards could distort competition in the affected census blocks, if support is not withdrawn from the price cap carrier and any wireline CETCs simultaneously.[30]

This change in policy has by far the greatest impact on the level of CAF Phase II support available in the state of Alaska. Unfortunately, Alaska is also the state where broadband deployment and performance lags far behind that available in other states despite the presence of two wireline terrestrial competitors, both of which receive high cost support. The exclusion of census blocks served by a subsidized competitor in Alaska would substantially reduce the level of model-based CAF Phase II support available in Alaska. USTelecom believes that the

[29] *See Connect America Fund*, WC Docket No. 10-90, Application for Review of Alaska Communications Systems (filed Nov. 26, 2013), at 12; *Ex Parte* Letter from Karen Brinkmann, Counsel to Alaska Communications Systems, WC Docket No. 10-90 (filed Feb. 6, 2014) at 2.
[30] *See Further Notice* at ¶ 174.

Commission's better course would have been to adopt the sensible adjustments to the CAM proposed by ACS, which would have resulted in sufficient support to deploy sustainable voice and broadband services meeting the CAF Phase II standards throughout the eligible census blocks identified by the CAM, including those that are also served by a subsidized competitor. That course would have preserved and expanded the availability of broadband service during the phase-down of CETC support, following which those areas could have been included in the subsequent competitive auction to set the level of support, if any, for which there was then a continuing need. The Bureau ultimately decided, however, not to incorporate the changes sought by ACS in the CAM, and has acknowledged that significant unanswered questions remain regarding the CAM's cost estimates for voice and broadband service in non-contiguous areas

If the Commission decides to exclude from CAF Phase II support those census blocks where there is a facilities-based wireline terrestrial competitor offering subsidized fixed residential voice and broadband services, the Commission should, at a minimum, terminate the support of both the incumbent price cap carrier and any such wireline CETC competitor(s) on exactly the same timetable. Failure to do so could result in high-cost support continuing to flow to an operator that is subject neither to Commission frozen support obligations nor to state Carrier-of-Last-Resort (COLR) obligations – unaccountable for its use of scarce universal service resources – while the incumbent ETC is relieved of its support but none of its obligations as an ILEC and a COLR. Such a result would compound the problems created by the "same support" rule, contrary to the Act and Commission policy.

IV. The Commission Should Reform the ETC Designation

Congress created the ETC designation in the Telecommunications Act of 1996, tying ETC status (and the obligations that go with it) to the receipt of federal universal service support. A company must be designated as an ETC in order to receive federal universal service support

and – in exchange – the company must "offer the services that are supported by Federal universal service support mechanisms" throughout the service areas for which it is designated as an ETC.[31] Thus, by statute, ETC obligations are matched to universal service support – one depends on the other. The Commission therefore is right to examine what happens to those ETC obligations when the corresponding universal service support goes away.

In particular, the Further Notice seeks comment on the impact that the transition to a new universal service support mechanism under CAF Phase II will have on ETC obligations.[32] Under CAF Phase II, providers will be eligible to receive high-cost support only in certain, designated geographic areas – and, even in those areas, may receive no support if a non-incumbent carrier is selected through the competitive bidding process. The Further Notice appropriately asks how the governing statutory framework applies to situations where an ILEC ETC no longer will receive high cost support for a given geographic area and/or a non-incumbent provider has been selected to receive support in that area through the competitive bidding process.[33] Specifically, the Further Notice acknowledges that Section 214(e) can be read such that:

> ETCs should be deemed to only have a federal high-cost obligation for the geographic areas for which they receive support. … We note that under such a statutory interpretation, if an incumbent LEC 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 ETC relinquishment procedures.[34]

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[31] 47 U.S.C. §§ 214(e)(1), 254.

[32] *See Further Notice*, ¶¶ 195-98.

[33] *Id* at ¶ 196.

[34] *Id* at ¶ 197.

USTelecom previously submitted a letter and memorandum – cited by the Commission – addressing this issue on behalf of its members.[35] As the USTelecom Letter confirms, Section 214 indeed relieves a provider of its ETC obligations in areas where it no longer receives support.

Section 214(e)(1) provides that each ETC "shall be eligible to receive universal service support in accordance with section 254" and "shall, throughout the service area for which such designation is received … offer the services that are *supported by Federal universal service support mechanisms* …."[36] But, once CAF Phase II is implemented, existing ETCs will not be able to offer "services that are supported by Federal universal service support mechanisms" in the many areas that are not targeted and eligible for CAF Phase II support. And, even in those areas where CAF Phase II funding will be available, many current ETCs will be become ineligible to receive that support when the CAF Phase II funding mechanism is implemented and funding is awarded to another provider under the competitive bidding process (at which point, that winning provider would become an ETC for that area). As the Commission has acknowledged, price cap ETCs have the option of declining legacy high-cost support.[37] Under the plain language of Section 214(e)(1), those incumbent providers no longer can be required to maintain their ETC obligations in service areas for which they are no longer supported by Federal universal service support mechanisms.

Indeed, the Commission already recognized this principle in the context of the Mobility Fund, finding it unacceptable that parties might "be required to take on unsupported ETC obligations in … areas that may not be eligible for support or for which they may not win

[35] *Id* at ¶ 197 n.388 (citing Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Mar. 14, 2014) ("USTelecom Letter")).

[36] 47 U.S.C. § 214(e)(1) (emphasis added).

[37] *See Further Notice* at ¶ 120.

support …" and granting forbearance to avoid such a result.[38] For the same reasons, the Commission here should declare that ETC designations and the corresponding ETC obligations are limited to those providers and geographic areas where a provider receives support from a universal support mechanism and, therefore, expire when a provider no longer receives support from that mechanism in that area.[39] The Commission therefore should adopt blanket discontinuance authority for all ETC interstate telecommunications services in any area where the ETC no longer is receiving high-cost support.[40]

This approach is entirely consistent with Section 214(e)(4), which provides that the Commission shall permit an ETC to relinquish its designation "in any area served by more than one" ETC – as would be the case where another provider wins the competitive bidding process for CAF Phase II funds and becomes an ETC – so long as "the remaining [ETCs] ensure that all customers served by the relinquishing carrier will continue to be served." Moreover, relieving ETC obligations where support is withdrawn would be consistent with the Commission's goals of rationalizing regulatory obligations with economic realities. A carrier should not be subject to legacy ETC obligations where support is withdrawn because such locations likely will become economically non-viable for that carrier in the absence of support. Continuance of service thus would no longer be reasonable for that carrier. As an added benefit under this approach, the states and the Commission would have a strong incentive to designate ETCs – and ensure

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[38] *Connect America Fund*, WC Docket 10-90, et al., Second Report and Order, 27 FCC Rcd 7856, ¶ 15 (2012) ("*Mobility Fund Phase I ETC Forbearance Order*").

[39] As detailed in the USTelecom Letter, ETC designations (and obligations) should be limited to the specific support mechanism under which a provider is receiving support (*e.g.*, a CAF Phase II designation or a Mobility Fund Phase I designation) and for the specific term for which funding is available. *See*, *e.g.*, USTelecom Letter at 5. The *Further Notice* acknowledges a similar approach in a proposal that "would tie the ETC obligations of a recipient of support to the Phase II funding term …." *Further Notice*, ¶ 184 n.369.

[40] The Commission previously adopted blanket Section 214(a) authority. *See* 47 C.F.R. § 63.03.

sufficient support – in areas where support truly is necessary to ensure reasonably comparable service at affordable rates. Sunsetting an ETC designations would not impact other obligations, to the extent applicable.[41]

Universal service support should match ETC obligations. Where universal service support is not received there should be no ETC designation or associated obligations. Not only should ETC designations tied to participation in the CAF Phase II competitive bidding process or the Remote Areas Fund (RAF) be sunset after the funding term has expired and the entity has fulfilled its build-out and public interest obligations,[42] but the ETC designation should only be applicable to the voice and broadband providers serving areas receiving high-cost support and during the term of that support. This policy should apply regardless of the derivation of the support – whether it is awarded through competitive bidding, the RAF, frozen support elected in non-CONUS areas in lieu of model-based support or via the state level election.

The Commission's universal service reforms implement a key universal service principle by replacing legacy support with support targeted to narrow, clearly defined areas. No CAF Phase II subsidies will be available outside these areas and even areas receiving frozen support will have a more targeted and defined set of obligations. Thus, the legacy practice of imposing ETC obligations broadly would impose regulatory mandates to offer service in areas that receive no federal universal service support.[43] Lifeline ETC status should be de-linked from status regarding other programs such as CAF Phase II, frozen support, or the Mobility Fund.

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[41] *See Further Notice*, ¶¶ 184, 196.

[42] *See Further Notice* at ¶ 184.

[43] *See* Letter and attached legal paper from Jonathan Banks, Senior Vice President, Law and Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, re Connect America Fund (WC Docket No. 10-90) and High-Cost Universal Service Support (WC Docket No. 05-337).

USTelecom supports permitting entities being allowed to seek ETC designation after being selected for the offer of CAF Phase II funding. This would be contingent on the Commission adopting a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of CAF Phase II competitive bidding or the RAF if it fails to initiate a proceeding on that petition within 60 days of receiving it. Both are reasonable prescriptions for addressing the statutory requirement of ETC designation under the new structure of universal service support in price cap areas. The Commission should also adopt for itself and states processing ETC applications a reasonable time period for decision on such applications that would permit a concurrent second round of competitive bidding for all areas in which the ETC applicant was denied that appellation. Defaulting entities should be ineligible from bidding in that subsequent process.

V. CAF Phase II Treatment of Frozen Support

The following discussion of the appropriate calculation of frozen support is not intended to apply to such support when elected by a carrier providing service to an insular area in lieu of model-based support.

A. Calculation of the Proper Amount of Frozen Support for a Price Cap Carrier When the Winner of a Competitive Bidding Process is Awarded Support to Serve a Portion, But Not All, of the Area that is Subject to the State-Level Commitment

If a price cap ETC declines the offer of model-based support, it will continue to have the option of receiving frozen support at its current level. As the *Transformation Order* concluded, "the carrier will continue to receive support in an amount equal to its CAF Phase I support amount until the first month that the winner of any competitive bidding process receives support under CAF Phase II."[44]

[44] *See USF/ICC Transformation Order* at ¶ 180.

In the *Further Notice*, the Commission seeks comment "on how to calculate the amount of frozen support that should be provided to the price cap carrier in situations where another ETC is awarded support through a competitive bidding process to serve a portion, but not all, of the area that is subject to the state-level commitment."[45] The *Further Notice* clarifies that "the Commission's decision to eliminate frozen support when there is a winner of a competitive bidding process applies only with respect to the geographic area – however defined – where another provider is awarded CAF Phase II support.[46]

Frozen support is based on legacy mechanisms that the Commission has acknowledged provided inadequate support for price cap companies.[47] Such support was based on statewide averaged costs. Recognition of those facts is a necessary precursor to the development of a fair approach to properly allocating frozen support following the initiation of support to the winner of the competitive bidding process.

The first step in assigning the proper amount of legacy support to areas not included in the service area of the winner of the competitive bidding process is to associate the current statewide level of frozen support with the price cap carrier's high-cost areas, as identified by the CAM. This step recognizes that, while calculated using a less-sophisticated approach than the CAF, the legacy subsidies were nonetheless intended to provide support for the high-cost areas of the price cap carrier's territory. The next step would be to allocate the proper amount of support to the price cap carrier's high-cost locations not part of the bid of the competitive process winner. This can be accomplished using the cost model by (1) calculating the ratio of the model

[45] *See Further Notice* at ¶ 190.
[46] *Id* at ¶ 189.
[47] *See USF/ICC Transformation Order* at ¶ 130.

cost associated with the areas not bid as part of the competitive process to the model cost for all high-cost locations; and (2) applying that ratio to the legacy frozen support amount.

The Commission's proposal, taking the cost of the census blocks at or above the funding benchmark and dividing by the total cost of serving the price cap carrier's territory in the state, and then applying that ratio to the historical amount of frozen support,[48] is flawed. It perpetuates the inequities in legacy support that were inherent in the legacy mechanisms which the *USF/ICC Transformation Order* was designed to eliminate.[49]

B. Obligations of ILECs that No Longer Receive High-Cost Support

As discussed in Section IV above, where a price cap ILEC declines high-cost universal service support for a given geographic area or where a non-incumbent carrier has been selected for support through the competitive bidding process, the Commission should sunset the ILEC's ETC designation and its associated obligations. The ETC designation should only be applicable to the providers serving the specific areas receiving high-cost support and during the term of that support. This policy should apply regardless of the derivation of the support – whether it is awarded through competitive bidding, legacy frozen support, the RAF, frozen support elected in insular areas in lieu of model-based support or via the state-wide election.

The Commission's universal service reforms implement a key universal service principle by replacing legacy support with support targeted to narrow, clearly defined areas. No CAF Phase II subsidies will be available outside these areas and even areas that continue to be eligible for frozen support will have a more targeted and defined set of obligations. For price cap companies that elect to continue receiving frozen support in exchange for meeting defined regulatory obligations such as providing ubiquitous and reliable voice service, support should

[48] *See Further Notice* at ¶ 191.
[49] *See USF/ICC Transformation Order* at ¶ 130.

continue until the Commission develops a mechanism to ensure that ubiquitous, high-quality voice service continues to be available in these difficult to serve areas. Thus, the legacy practice of broadly bestowing ETC obligations would impose regulatory mandates to offer service in areas that receive no federal universal service support.[50] Lifeline ETC status should be de-linked from status regarding other programs such as CAF Phase II, frozen support, or the Mobility Fund.

VI. Obligations of Carriers Serving Non-Contiguous Areas that Elect Frozen Support

The Commission should view the program that offers carriers serving non-contiguous areas electing frozen support as a third USF mechanism, in addition to the mechanisms for price cap carriers or other participating in CAF Phase II and the mechanism to be designed for rate-of-return carriers. The *USF/ICC Transformation Order* recognized the unique issues relevant to price cap carriers serving non-contiguous ("non-CONUS") areas of the United States and its territories[51] and provided an opportunity for such carriers to elect a high-cost universal service structure different that that available to price cap carriers in the contiguous 48 states.

Taking into account the unique circumstances of price cap carriers serving non-CONUS areas, the obligations of such carriers that elect frozen support should be adjusted for the individual circumstances of each carrier. For example, the challenges faced by ACS in its service area far exceed those of PRTC, which serves an area with a population density many times that of ACS.

Accordingly, the rules adopted by the Commission for buildout under frozen support should afford non-CONUS carriers the necessary flexibility to design and implement

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[50] *See* Letter and attached legal paper from Jonathan Banks, Senior Vice President, Law and Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, re Connect America Fund (WC Docket No. 10-90) and High-Cost Universal Service Support (WC Docket No. 05-337).

[51] *See USF/ICC Transformation Order* at ¶ 193.

economically rational deployment plans, just as the Commission should afford flexibility to recipients of CAF II model-based support.[52] For ACS, which would not receive any significant increase in support with a statewide commitment despite the state's historically underserved status, there is little incentive to elect model-based support and a commitment to deploy broadband at 10/1 Mbps to over 69,000 new locations, including thousands of locations in extremely high-cost off-road Alaska bush areas.

Non-CONUS carriers such as ACS should be permitted to elect frozen support to provide service to the eligible locations identified by the model *excluding* off-road locations. Further, non-CONUS carriers should be permitted the same flexibility as other price cap carriers to substitute high-cost unserved locations in partially-served census blocks for other eligible locations, in satisfying the total buildout requirement under the CAF II rules. And, as with other price cap carriers that elect model-based support and the state-level commitment, or win support at auction, the buildout and support terms for non-CONUS carriers should be ten years. Lastly, non-CONUS carriers should be afforded the same forms of flexibility available to those carriers receiving CAF Phase II support at levels set based on the CAM, including the flexibility to specify that they are willing to deploy to at least 90 percent of the locations in their funded areas, with proportionate (straight-line) support reductions and to substitute locations in partially-served census blocks, especially in view of the unique difficulties presented in deploying advanced services in non-CONUS areas.

VII. Interplay Between Rural Broadband Experiments and the Offer of Model-based Support

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.

[52] *See supra* Section II. A.

Only *selected* projects should block out areas from such eligibility and only if the experiments are selected prior to the statewide election. The Commission's inquiry as to "what conditions a rural broadband experiment formal proposal would have to meet in order to remove a geographic area from a price cap carrier's state-level commitment"[53] presupposes that such a proposal will be selected. If the area is blocked out by a broadband experiments proposal and the proposal is not selected for funding, the consumers in that area may be denied an opportunity to have broadband as part of CAF Phase II for the foreseeable future.

Disqualifying areas from the statewide commitment process based on applications for broadband experiment funding opens up a tremendous opportunity for gaming. A prospective participant in the competitive bidding process could preserve for itself an opportunity to bid on an area in the CAF Phase II auction by submitting a formal proposal for a broadband experiment in the area which it either never intended to honor if selected or contained an element that guaranteed it would not be selected.

Hopefully the Commission will receive more valid proposals meeting the funding and performance requirements for broadband experiment funding in the future than it did in the "Expressions of Interest" process. The more than 1,000 expressions of interest that were filed[54] do not provide much reassurance that the Commission should rely on applications that would block eligibility for CAF Phase II funding. In reply comments[55] on the Further Notice of Proposed Rulemaking in WC Docket No. 10-90, which addressed discrete issues relating to rural

[53] *See Further Notice* at ¶ 221.
[54] *Id* at ¶ 220.
[55] *See* Reply Comments of the United States Telecom Association (WC Docket No. 10-90) (filed Apr. 15, 2014).

broadband experiments,[56] USTelecom informed the Commission of the results of its review of a random sample of 690 of the more than 1,000 expressions of interest filed for the Rural Broadband Experiments. The results showed that 78 percent of the sampled expressions of interest asked for more than the CAF II support available and that on average the requested amount for this group was almost 10 times more than the available support.[57] We more closely analyzed a random subset of 227 of the 328 expressions that contained both a listing of census tracts and a specified amount of funding, to determine how the requested funding compared to the Commission's CAM model-based support available for the Experiment by the listed census tracts.[58] We divided these expressions into two groups: 1) expressions that requested the same or less than the support available for the CTs; and 2) expressions that requested more than the available support for the CTs. 227 expressions of interest reviewed under USTelecom's streamlined approach sought almost 4 times the CAF II support available, asking for $2.4 billion in support for census tracts identified as having $620 million in available support.

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. The rural broadband experiments process is essentially a pilot program to learn about the competitive bidding process and technological approaches to rural

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[56] *See Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative ("Further Notice"),* Connect America Fund (WC Docket No. 10-90), rel. Jan. 31, 2014.

[57] In this analysis, due to the unavailability of necessary information, we did not make an assessment of the completeness of the proposals relative to proposing to build to all targeted census blocks in the census tracts for which expressions of interest are proposing to cover.

[58] Given the time and resource constraints, this analysis was performed on a census tract basis since applications for the rural broadband experiment in price cap territories will be entertained at the census tract level (*Further Notice* at ¶ 111) with the knowledge that such experiments in rate-of-return areas are proposed to be made at the census block level in lieu of the census tract level in recognition that smaller providers may wish to develop proposals for smaller geographic areas (*Further Notice* at ¶ 209).

broadband and should not divert attention from implementing the universal service policies the Commission has already adopted.

VIII. CAF Phase II Competitive Bidding Process

USTelecom endorses the proposal in the *Further Notice* to adopt reserve prices based on the CAM so that the reserve price for a given geographic area in the competitive bidding (*i.e.*, census tract or census block) equals the amount of support the model would have calculated for that same geographic unit in the state-level election process.[59] This is a reasonable way to ensure that the funds remaining available for the CAF Phase II competitive bidding process following the statewide election will be used efficiently and prudently.

Cost-effectiveness should be the primary criteria in evaluating competitive bids in the CAF Phase II auction process. Fewer and simpler the criteria for selection will accelerate the development of a viable, scalable competitive bidding process for distributing CAF Phase II support not accepted by price cap carriers. A complex bidding process that weighs multiple criteria will not efficiently result in widespread broadband deployment within the high-cost program budget the Commission has set.

Adding in subjective criteria, establishing a point system, use of bidding credits for those proposing to offer service substantially exceeding the Commission's standards, assigning additional weight to a variety of criteria, leveraging of non-Federal sources of funding, or other criteria will result in a Rubik's cube of options which would vastly complicate the competitive bidding process. The potential for bid protests would increase exponentially with each additional criterion. Americans in rural America have waited long enough for access to broadband. They should not have to wait longer due to delays caused by an overly contentious, unnecessarily complex and subjective competitive bidding mechanism design.

[59] *See Further Notice* at ¶ 227.

To create a workable, transparent auction process, the Commission should require participants to deploy broadband meeting its already-specified performance and pricing metrics. The Commission established the CAF performance metrics — including speeds, latency, usage capacity, and pricing — with an eye toward supporting ubiquitous access to sufficient broadband within a limited budget. Overcomplicating the competitive bidding process by creating a "beauty contest" among prospective participants will only serve to delay provision of broadband service to rural areas and encourage submission of projects that may win bids but end up not being feasible to build out.

IX. Reforms Specific to Rate-of-Return Study Areas

The best way to satisfy the broadband needs of consumers in high-cost rural areas served by price cap companies, insular providers and rate-of-return carriers is by adopting distinct approaches for each group. A one-size fits all solution does not ensure that the benefits of universal service high-cost funding are efficiently and effectively passed through to consumers in rural America. The Commission has wisely adopted this approach. USTelecom is pleased to comment on the tailored proposals and solutions appropriate to carriers serving rural Americans in rate-of-return carrier areas.

A. The Commission Should Adopt Long-Term Reform for Rate-of-Return Carriers That Recognizes the IP Transition and is Simple and Administrable

USTelecom agrees with the proposition in the Further Notice that the High-Cost Loop Support (HCLS) and Interstate Common Line Support (ICLS) mechanisms in their current form are not viable in the long term.[60] These mechanisms were designed and implemented for a different telecommunications world than the one that exists today.

[60] *Id* at ¶ 267.

Given the accelerating pace of transition to an Internet Protocol-based communications network, the time needed for the design and implementation of new universal service high-cost support mechanisms for rate-of-return carriers, and the period of time a new mechanism should and will be in place, the decisions made today need to anticipate and accommodate a network carrying services predominantly based on IP. A measured transition from the current system to a new system should take that into account and encourage carriers to recognize the IP-based nature of current and future services.

The fundamental question is upon what basis is the necessary transition accomplished? USTelecom contends that the Commission's decision on the proper basis for transition should be measured by how long the transition will take, whether it is practical and administrable, and its effect on broadband investment.

The *Further Notice* proposes to draw a bright line between old investments that would continue to be recovered by HCLS and ICLS and new investments that would be recovered through a new stand-alone broadband mechanism.[61] Under the Commission's proposal, no new investment would be included in cost studies used for the determination of HCLS and ICLS after a date certain, and HCLS and ICLS would become the mechanisms to recover only past investment occurring prior to that date certain. Over time the amount recovered through HCLS and ICLS would diminish, and all new investment would be recovered through a new Connect America Fund for rate-of-return territories specifically designed to meet the Commission's overall objective to support voice and broadband-capable networks in areas that the marketplace would not otherwise serve. This would ensure that consumers in rural, insular and high-cost

[61] *Id.*

areas have access to reasonably comparable services at reasonably comparable rates to consumers living in high-cost areas.[62]

The proposal submitted by the rural telecom industry for a high-cost support mechanism (the "RLEC Plan") also draws a bright line between costs supported by the old mechanisms and those supported by the yet-to-be-designed CAF for rate-of-return carriers. But the line it draws is based on consumer behavior along with changes in technology and in the marketplace. It proposes to assign a high-cost mechanism based on whether the customer subscribes to traditional voice and broadband service from the rural local exchange provider versus whether the customer subscribes solely to service from that provider.

Measured on how long the transition will take, whether it is practical and administrable, and its effect on broadband investment, the RLEC Plan is superior to the approach laid out in the *Further Notice*.[63] The RLEC Plan has a greater probability of moving more quickly from the legacy HCLS and ICLS mechanisms to a rate-of-return CAF than does the *Further Notice* construct. Under the *Further Notice* proposal, currently installed loop plant would remain under the ICLS and HCLS mechanisms for their useful lives. Given the long depreciation lives typically assigned to such plant, that could be decades for recently installed facilities. Also, some customers can be expected to continue to purchase voice-only services for an extended period of time. Finally, the *Further Notice* plan leaves the decision up to carriers as to which funding mechanism will provide their support by promoting potentially uneconomic decisions to invest or not based on whether that investment would be partially subsidized by the legacy mechanisms or new CAF mechanism.

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[62] *Id.*

[63] The plan is further modified according to proposals made today in a joint filing by the associations which resolve certain concerns about the plan previously evidenced by the Commission.

On the other hand, the transition proposed by the RLEC Plan is driven by the consumer, not the carrier. This basis for a measured transition is advantageous in several ways. As consumers migrate to data-only broadband service, support moves to the new CAF mechanism for rate-of-return carriers. Those customers choosing traditional service remain under the legacy mechanisms. As the IP transition accelerates, so does demand for data-only broadband service, reducing and eventually eliminating the legacy HCLS and ICLS high-cost support mechanisms. Given the pace of the IP transition, along with the penetration of alternative voice providers in rural areas served by rate-of-return carriers, it is not unreasonable to project that the basis for the transition from the legacy USF mechanisms to the broadband-only mechanism would actually be considerably faster under the RLEC Plan than under the construct in the *Further Notice*.

Moreover, while the proposal advanced in the *Further Notice* seems simple on its face – assigning support mechanisms based on the timing of the investment in plant facilities – it actually creates an enormous amount of complexity.[64] This makes it difficult for small companies to comply with the rules, difficult for auditors to ensure compliance, and potential opportunities for companies to interpret the rules in ways that are not necessarily in accord with the Commission's goals of a simple and measured transition. Bifurcating support between "old" and "new" investments raises difficult cost allocation issues regarding CapEx and OpEx expenditures for plant assigned to the old mechanisms versus the new mechanism. The likelihood is high that both traditional lines and broadband-only lines will be supported by both old and new investment for the foreseeable future. This would create the need for some type of company-specific benchmarks with both the CAF for rate-of-return carriers and the existing SLC benchmarks used for ICLS. The Further Notice of Proposed Rulemaking issued along with the

[64] *See Further Notice* at ¶ 267.

USF/ICC Transformation Order questioned such benchmarks that were part of the 2011 RLEC Plan. The Commission at that time evidenced concern about such a mechanism having risks of gamesmanship by carriers.[65] The Commission's concerns about the complexity of the 2011 RLEC Plan, including the element of company-specific benchmarks, were the reason the rural telecom industry pivoted to the development of a new plan that was simple, administrable and quantifiable. As part of that effort, the RLEC Plan is designed to minimize the need for complex and cumbersome rule changes.

Basing the allocation of support to legacy mechanisms or the CAF for rate-of-return carriers' mechanism based on consumer behavior takes the decision out of the hands of the rate-of-return carriers. It is quite possible that the new mechanism will be more advantageous for some carriers than the legacy mechanism and vice versa. Such a situation provides incentives for uneconomic decision-making, whether through promotion of excessive investment or discouragement of needed investment or exploitation of gray areas within the necessarily complex allocations that will be required.

A consumer-oriented approach to the transition as opposed to a carrier-oriented approach also resolves the issue of supporting broadband-only lines that are already in existence. Under the Commission's proposal, such lines would continue to not be supported under the legacy HCLS and ICLS mechanisms. That lack of support presumably would be locked in until HCLS and ICLS were eliminated. On the other hand, new investment for which the consumer may only subscribe to voice service would be supported under the new CAF for rate-of-return carriers' mechanism. Surely the Commission does not intend this nonsensical result.

[65] *See USF/ICC Transformation Order* at ¶ 1040.

Finally, the RLEC Plan supports adherence to the Commission's high-cost support budget levels. The modified version of the plan being submitted in comments today by the Rural Associations includes a mechanism that ensures the combination of old and new support mechanisms for rate-of-return companies will stay within the budget guidelines. On the other hand, it is unclear as to how support under the Commission's proposal can be projected and fairly apportioned among rate-of-return companies, particularly those seeking to make new investments. It is certainly possible that such necessary apportionment could discourage new investment and slow down the transition to the new CAF mechanism.

B. The RLEC Plan Meets the Commission's Stated Objectives

The RLEC Plan, as modified by the Rural Associations' filing today, meets the Commission's stated objectives and does so in a way that can be operationalized and therefore can be more rapidly implemented. The *Further Notice* states that a stand-alone broadband funding mechanism for rate-of-return carriers be designed to: (a) calculate support amounts that remain within the existing rate-of-return budget, (b) distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so, (c) distribute support based on forward-looking costs (rather than embedded costs), and (d) ensue that no double recovery occurs by removing the costs associated with the provision of broadband Internet access service from the regulated rate base.[66] The Commission specifically seeks comment on what rules or rule parts would need to change and whether such a mechanism should be designed in such a way that it provides support based on locations or total network costs, rather than subscriber access lines.[67] The Commission also seeks comment on whether such a mechanism should be designed to support lines where a

[66] *See Further Notice* at ¶ 269.
[67] *Id.*

consumer also subscribes to voice service, and whether collected-but-yet-distributed funds in the broadband reserve account should be used to "kick start" such a mechanism.[68]

The *Further Notice* expresses concerns about the RLEC Plan. This plan has been presented to the Commission on several occasions and has been and continues to be modified to address the Commission's concerns. The *Further Notice* articulates the following concerns about the RLEC Plan: it relies on complicated cost-calculations based on embedded costs, it does not appear to account for the fact that when a carrier's voice line is lost, the following year both its HCLS and ICLS will likely increase on a per-line basis because fixed costs are now recovered over a smaller number of lines, the timing difference between the cost recovery from HCLS and the proposed DOBB mechanism, and the determination of how HCLS is affected by migration to broadband-only lines until true-ups are reconciled two years later and the impact on fund size and incentives for cost reporting.[69] The *Further Notice* also seeks to understand the rationale for the plan's proposed broadband benchmark of $26.[70] Finally, the *Further Notice* asks whether the proposed plan would provide appropriate incentives for efficient expenditures, fit within the overall USF high-cost budget framework and ensure that USF is not subsidizing new investment occurring in areas served by an unsubsidized competitor.[71]

1. The RLEC Plan Fits Within the Commission's Budget Framework

USTelecom supports the Commission's budget framework for high-cost universal service support as adopted in the *USF/ICC Transformation Order* and supports the RLEC Plan as modified to ensure adherence to that budget. In addition to the rough offsetting of increases in the broadband-only fund by decreases in the HCLS and ICLS mechanisms and the decline in

[68] *Id.*
[69] *See Further Notice* at ¶ 270.
[70] *Id* at ¶ 271.
[71] *Id* at ¶¶ 272, 273 and 274.

HCLS based on the operation of the Rural Growth Factor, the Rural Associations are proposing a mechanism that will ensure conformance with the high-cost budget allocated to the areas served by rate-of-return carriers. The mechanism would offset the amounts by which demand for broadband-only funding exceed the budget target by the combination of a per-line adjustment and a proportional reduction of broadband-only high-cost distributions among all companies. This will ensure that the broadband-only fund, plus the total of HCLS and ICLS, fit within the Commission's budget. The mechanism is based on both lines and costs so as to fairly spread the broadband-only revenue reductions, if necessary, across the universe of rate-of-return carriers. It would fairly balance the budget control impacts between relatively higher cost service areas and relatively lower cost service areas. This mechanism should eliminate any concerns about projecting the size of the broadband-only fund and whether the three RLEC Plan funding mechanisms (HCLS, ICLS and the broadband-only fund) can all fit within the Commission's budget framework.

2. The RLEC Broadband-Only Plan Includes Incentives for Economic Investment

The RLEC broadband-only plan includes incentives for economic investment, consistent with the principle in the *Further Notice* that any plans "distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so."[72] The *Further Notice* acknowledges the potential role of the RLEC Plan's Capital Budget Mechanism (CBM) in meeting this goal but correctly identifies a "critical shortcoming" for how the Commission would implement the trigger that "identifies alleged inefficiencies."[73] USTelecom supports development of an automatic trigger that would preclude allowable investments for unreasonably high-cost projects. USTelecom is working

[72] *See Further Notice* at ¶ 269.
[73] *Id* at ¶ 275.

with the Rural Associations to develop a specific construction project limit that would accomplish the goal of establishing an automatic trigger, not requiring Commission intervention. The parties are committed to working with the Commission to further develop this concept and necessary rules to implement this approach which will preclude allowable investments for unreasonably high-cost projects, absent grant of a waiver by the Commission. This concrete step addresses the Commission's concern and is another element of an efficient RLEC Plan that fits within the budget for rate-of-return territories.

The CBM is a straightforward forward-looking approach to limiting investment based on the amount of plant annually depreciated by each rate-of-return carrier. As correctly summarized in the *Further Notice*, the CBM includes a four-step framework for determining a budget for high-cost supported future investment, as follows: (1) determine current loop investment (i.e., total loop investment for each rate-of-return carrier study area), adjusted for inflation; (2) determine a "future allowable loop investment" for each rate-of-return carrier, based on the replacement of depreciated plant, precluding support to replace plant that is still used and useful; (3) use a trigger to identify alleged inefficiencies, which would enable prospective adjustment to a carrier's future allowable loop investment; and (4) establish an annual budget for each rate-of-return carrier by dividing each carrier's future allowable investment by a period of years to establish a budget of supported additional investment each year.[74] None of these steps are complex and all are easily quantifiable and known. With the modification for the automatic trigger requiring no Commission action to enable adjustment to a carrier's future allowable loop investment, the CBM establishes a predictable amount that greatly facilitates planning. Reasonable certainty as to the amount of permitted investment, along with reasonable certainty

[74] *Id.*

as to the amount of the accompanying support, is a tremendous incentive for companies to efficiently plan, borrow and invest in the extension and improvement of infrastructure that supports provision of broadband services.

3. The RLEC Plan is a Practical, Simple, Administrable and Forward-Looking Solution Until a Workable Plan Based on Forward-Looking Costs Can be Developed

While the Commission is developing a plan based on forward-looking costs to support broadband-only lines, it should adopt the RLEC Plan. The *Further Notice* puts the cart before the horse, seeking to mandate implementation of a forward-looking cost plan for rate-of-return companies without developing such a plan and analyzing whether it is consistent with the Commission's other goals. The RLEC Plan uses forward-looking cost constraints to moderate the Commission's concerns about the uneconomic incentives of the use of embedded costs.

The argument for using forward-looking costs as opposed to actual costs is that in contestable markets a firm would be unable to recover historical costs that are more than the current stand-alone cost of re-building the network that it provides. Thus, for regulatory purposes such as quantification of costs used to determine USF support, the argument goes that forward-looking costs should be used to mirror the only costs that could be recovered by a provider in contestable markets. However, the reason these markets are not contestable is that to extend and improve service in low-density high-cost rural areas, firms need to sink large amounts of money into irreversible investments. Because the USF support under a forward-looking costing method diverges from its initial value over time, it subjects the rural ILEC to additional risk. To achieve the same investment decision with forward-looking rules therefore requires a greater expected return on that investment to compensate for this additional risk. The relevant markets are admittedly poor markets to begin with; otherwise they would already be served, potentially by more than one provider. The ability of actual costs to induce earlier

investment results in higher welfare. In markets so thin that broadband service is not available or only offered by one provider, it has not been established that use of forward-looking costs creates the right incentives to invest sooner rather than later, potentially delaying the provision of broadband service to rural consumers. While USTelecom does not necessarily oppose the use of forward-looking costing in the USF context for rate-of-return companies, it is important that these questions be explored before the Commission irreversibly commits to using such a costing methodology on which to base high-cost universal service support.

Bifurcation of universal service high-cost support for rate-of-return companies into a forward-looking cost approach for new investment and an embedded cost approach for past investment complicates cost studies for small companies and potentially creates opportunities for gaming. Small companies making new investments would be forced to perform two different types of cost studies. Somehow these two types of studies would have to be accommodated in the average schedule development process as well. The potential for differing support amounts based on how the investment and thus the costing was characterized could create incentives for gaming as to how costs are classified.

The use of model-based approaches to determine allowable costs for rate-of-return companies does not have a successful history. The Commission rejected such an approach in its MAG order in 2000 based on the work of the Rural Task Force, and the recent Quantile Regression Analysis model was repealed after the Commission determined that it was deterring investment. That is not to say that it is impossible to design a workable model for rate-of-return companies – USTelecom has supported development and implementation of a cost-model for these companies if applied on an optional basis. But if adoption of forward-looking costs implies a mandatory model approach, the implementation of a broadband plan for rate-of-return

companies will be inestimably delayed as will the introduction of the necessary measure of certainty into the high-cost universal service process for rate-of-return areas that is needed to provide incentives for rural broadband investment. Smaller rural incumbent LECs lacking scale cannot tolerate the same margin of error inherent in a model-based approach that can be acceptable to larger price cap LECs. A practical and timely way for the Commission to move forward is to adopt the RLEC Plan which uses actual costs with several simple and specific forward-looking controls on future investment.

4. The Broadband-Only Mechanism Under the RLEC Plan Would Not Result in Double Recovery of Costs

The RLEC Plan will not lead to double recovery of costs due to timing differences between current HCLS support mechanism, based on historic data, and the proposed broadband-only mechanism, based on projected costs. The RLEC Plan's broadband-only proposal mirrors the current ICLS mechanism as far as the use of projects of support and subsequent true up based on actual costs. This methodology has been used for over a decade and is based on existing Commission rules.

When a line becomes broadband-only, current rules remove all loop-related costs associated with voice service from the ICLS and HCLS mechanisms and assign the now data-only loop to the interstate special access category. This clearly precludes double recovery under the RLEC Plan's proposed broadband-only fund and the existing ICLS and HCLS mechanisms.

5. The $26 Benchmark in the RLEC Plan's Broadband-Only Proposal Represents an Imputation Against Only the Regulated Local Loop Transmission Networks that Underpin Broadband Internet Access Services Eligible for Support

The $26 benchmark included in the RLEC Plan's broadband-only proposal represents only a portion of the amount that consumers would ultimately pay for retail broadband service.

It is an imputation against only the regulated local loop transmission networks that underpin broadband Internet access services and would be eligible for broadband-only fund support.

The chart below, last submitted in an ex parte from USTelecom, NTCA, WTA and NECA on December 16, 2013, in *Connect America Fund* (WC Docket No. 10-90); *High-Cost Universal Service Support* (WC Docket No. 05-337); *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution* (GN Docket No. 12-353); *Technology Transitions Policy Task Force* (GN Docket No. 13-5), best explains the role of the $26 benchmark as part of the retail price of the service.

Benchmark Component	**Benchmark/Retail Rate/Other Amount Needed for Cost Recovery From Individual Consumer**		**Relevant Costs Covered**
	Provide Support Per Group Proposal	**Not Providing Support**	
Broadband benchmark	$26.00		Regulated Local Loop Costs (developed on Title II basis pursuant to Parts 32, 36, 64, and 69)

Wholesale Transmission Tariff Rate	$15.05[1]		Regulated Costs of Non-Loop Transmission Facilities and Equipment to Enable Broadband Internet Access (developed on Title II basis pursuant to Parts 32, 36, 64, and 69)
Wholesale Transmission Tariff Rate		$77.63[2]	Regulated Facilities-Based Network Costs of Loop and Transmission to Enable Broadband Internet Access (developed on Title II basis pursuant to Parts 32, 36, 64, and 69)
Total Cost Recovery from Consumer for Supported/Regulated Network Elements	$41.05[3]	$77.63[2]	Regulated Facilities-Based Network Costs of Loop and Transmission to Enable Broadband Internet Access
Middle Mile Costs[4]	$6.50	$6.50	Unsupported unregulated network costs for transmission from Broadband Access Service Connection Point and connections to Internet backbone
Other ISP Costs	**$X**[5]	**$X**[5]	Unsupported unregulated non-network costs associated with provision of Broadband Internet Access to consumers (e.g., marketing, help desk)
Total Approximate Consumer Rate for Finished Broadband Internet Access	$47.55 **PLUS** (banded)	$84.13 **PLUS** (banded)	Finished Broadband Internet Access Service

[1] 2013 Annual Filing – DSL Voice-Data 1/6 Mbps, Rate band 9,Opt B, 3 Year – Rates for rate bands 1-15 range from $8.98 to $17.80

[2] 2013 Annual Filing – DSL Data-Only 1/6 Mbps, Rate band 7, Opt B, 3 Year – Rates for rate bands 1-15 range from $46.57 to $93.01

[3] Note this is a rate banded total, and that the total benchmark would actually range from $34.98 to $43.80 depending on the rate band (*i.e.*, the relative distance and density of the market).

[4] The cost of $6.50 per broadband line is calculated from a $26 weighted average cost per Mbps for Ethernet middle mile (from NECA's 2011 Middle Mile Data collection), multiplying by 4 (for 4 Mbps), and then dividing by 16 (for oversubscription). Although support should be provided for such costs and apparently is included to some degree in the price cap model, such costs are currently unsupported for RLECs.

[5] "X" represents the additional unsupported, unregulated non-network costs that the typical ISP would incur to deliver a finished Broadband Internet Access Product to a consumer. Such costs may include sales and marketing functions, help desk operations, etc. While such costs may vary widely based upon company size, size of addressable customer market, and other factors, a typical business' sales and marketing budgets, for example, will each often equal approximately 7% to 8% of revenue.

As demonstrated above, the $26 regulated cost benchmark is only a minor portion of what consumers would ultimately pay for retail broadband Internet access services. However, it does cover a portion of regulated loop costs on the underlying broadband-capable network, thereby helping to ensure that broadband prices in rate-of-return areas are more reasonably comparable to those in urban areas.

C. USTelecom Conditionally Supports a Voluntary Transition of Rate-of-Return Carriers to Incentive Regulation

USTelecom supports a plan including a voluntary transition of rate-of-return carriers to incentive regulation and model-based support if it includes assurance that adoption of such a plan by some carriers does not negatively impact the funds available to carriers not electing the incentive plan. For some rural carriers, model-based support could potentially provide a level of stability and predictability lacking in the current USF high-cost mechanism or even a future actual-cost-based mechanism applied to such carriers. Other rural carriers may have unique situations not reflected in the model and will not elect it for rational economic reasons.

As recognized in the *Further Notice,* there may be incentives for rate-of-return carriers to opt voluntarily into this plan only if frozen support is the same or greater than their current support under legacy mechanisms.[75] The *Further Notice* also recognizes that the net effect of an election by these carriers would be to squeeze the remaining budget for rate-of-return territories that are served by rate-of-return carriers that do not opt into the plan.[76] Given the difficulties in developing a model-based plan for rural carriers and the length of time it may take for such a plan to be completed and offered to rural carriers, support may be frozen for a significant time period. Non-electing carriers should not be harmed by the presence of carriers whose costs may

[75] *Id* at ¶ 289.
[76] *Id.*

be declining but whose support is frozen, within the limited budget allocation for rate-of-return carriers. Further, under the two-step proposal included in the ITTA plan, a rural carrier could elect frozen support and then not elect to receive support under the cost-model when developed.[77] This would exacerbate the potential for negative effects on non-electing carriers. An optional model-based plan should not be adopted until a mechanism is developed to address the impact on carriers not electing such a plan.

Although receipt of more high-cost USF support under the plan than it would receive otherwise will certainly be an important driver of each carrier's decision to elect such a plan, there may be other reasons for a carrier to elect the voluntary incentive plan. The USF high-cost funding under a model-based approach may be more stable and predictable, and the electing carrier may choose those virtues even if its support is marginally lower. There may also be administrative cost savings to receiving support under a model-based approach as opposed to the cost-studies needed for traditional rate-of-return based mechanisms. Electing carriers may also have a better capability to bear the risks of price regulation and may serve in markets that are amenable to the incentives present in the access pricing regime accompanying ITTA's plan.[78]

The funding for model-based support elected by carriers currently regulated under rate-of-return at the federal level should continue to be included in the rate-of-return budget. The overall Connect America Fund budget should not be affected.

Similarly, any mechanical issues with the development or application of the model that are raised by permitting rate-of-return carriers to receive model-based support should neither impact the calculation nor the application of the model to price cap carriers. Any such issues also should not impact the $1.8 billion allocated to USF support for price cap carriers.

[77] *Id* at ¶ 280.
[78] *Id* at ¶¶ 294 and 297.

D. The Commission Should Adopt its Proposal to Change the Methodology for Fairly Reducing Support to Comply with the HCLS Cap

Because of the cap on HCLS and annual reductions in that cap due to the operation of the Rural Growth Factor,[79] it is necessary to establish a fair method to "spread the pain" of the universal service high-cost revenue reduction. Currently the support reductions are implemented via upward adjustments in the National Average Cost Per Loop (NACPL). The Commission proposes to replace this mechanism with a freeze on the NACPL and a proportional adjustment in the 65 and 75 reimbursement percentages for all carriers receiving HCLS.[80] The new mechanism would become effective January 1, 2015.

While no mechanism is perfectly fair, and the Commission's proposal may have a greater impact on higher-cost carriers for which HCLS is a greater proportion of their revenue stream, the proposed mechanism is significantly superior to the current approach and should be adopted. Under today's mechanism, carriers close to the NACPL see dramatic percentage shifts in HCLS revenue or the total loss of support. This can result from the impact of the rural growth factor on the HCLS cap. It can also be due to greater levels of investment by certain companies (the "race to the top") caused by the HCLS cap and the operation of the current rule.

USTelecom appreciates the Commission's repeal of the Quantile Regression Analysis benchmarking rule[81] which was designed to address the race to the top and supports the Commission's proposal to adopt a much simpler and more predictable substitute in the form of a freeze on the NACPL and proportionate reduction of HCLS on a per-carrier basis. In addition to

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[79] *See* § 36.604 of the Commission's rules.
[80] *See Further Notice* at ¶ 261.
[81] *See* Seventh Order on Reconsideration, *In the Matter of Connect America Fund* (WC Docket No. 10-90), *Universal Service Reform* – WT Docket No. 10-108), *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), (rel. June 10, 2014) at ¶ 131.

deterring behavior resulting in the race to the top, the proposed mechanism mitigates the dramatic shift in the amount of available support or running the risk of "falling off the cliff" (total loss of support) for particular companies close to the NACPL thresholds. USTelecom supports the adoption of this mechanism as proposed by the Commission on January 1, 2015.[82] USTelecom does not object to the second part of the Commission's proposal which would allocate support based on the 65 and 75 percentage reimbursements if there are other changes that would otherwise result in a lowering of the NACPL.[83]

E. USTelecom Supports the Commission's Proposal to Increase Downstream Speed Requirements to 10 Mbps for Rate-of-Return Carriers Provided Clear Guidelines on Funding and the Definition of "Reasonable Requests" Are Also Adopted

USTelecom supports the increase in the broadband speed standard from 4/1 Mbps to 10/1 Mbps for rate-of-return carriers conditioned on clear rules on funding and the definition of "reasonable requests." Similar to the investment decisions made by price cap companies, rate-of-return carriers require some level of certainty before making long-term fixed-cost investments. It is clear that the Commission understands the practical reality of upgrading and expanding broadband facilities in rural America when it concisely states in the *Further Notice* "To plan a network, recipients of support need to know ahead of time what will be expected of them."[84] That expectation should be specific and realistic. It should be unchanging throughout the term of the obligation assumed by the recipient of support and accompanied by terms that allow financially feasible design and buildout.

USTelecom's cautious support for increasing the downstream speed requirement for rate-of-return carriers is based on the Commission's assurances that it (1) is "primarily focusing on

[82] *See Further Notice* at ¶ 261.
[83] *Id* at ¶ 262.
[84] *See Further Notice* at ¶ 157.

the minimum standard for *new* deployments of broadband-capable infrastructure,[85] (2) "do[es] not intend to suggest that ETCs must deliver such speeds immediately upon adoption of a new rule,[86] (3) expects ETCs "to achieve [10 Mbps] over a period of years, as they utilize high-cost support to extend and upgrade networks in high-cost areas,[87] (4) emphasizes "that there is no immediate consequence, and in particular no loss of universal service support, to the extent an existing ETC is not currently offering speeds that meet the current 4 Mbps/1 Mbps benchmark throughout its entire service territory,[88] and (5) recognizes that "a rate-of-return carrier would only be required to meet that higher speed if the request for service was reasonable."[89] These assurances in the text of the order should be clearly and explicitly included in the rules adopted to implement decisions made pursuant to the *Further Notice*.

It is sensible to require the higher downstream speed standard in new deployments. Network infrastructure for new deployments is designed to accommodate higher speeds. It would be irresponsible for a provider to invest in facilities that cannot meet the demands of today's consumer and that are not scalable for tomorrow's customer needs.

No rate-of-return carrier receiving USF high-cost support should be required to upgrade all or a substantial portion of its existing network in the short term. The lack of such upgrading should not cause a reduction of high-cost support due to the lack of such upgrading. USTelecom members are relying on the language in the *Further Notice* implementing those policies.[90]

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[85] *Id* at ¶ 142.
[86] *Id.*
[87] *Id.*
[88] *Id* at ¶ 143.
[89] *Id* at ¶ 144.
[90] *Id* at ¶ 142 ""[w]e are proposing a standard that ETCs, current and future, would be expected to achieve over a period of years, as they utilize high-cost support to extend and upgrade networks in high-cost areas." *Id* at ¶ 144 "But a rate-of-return carrier would only be required to meet that high speed if the request for service was *reasonable*." "[w]e propose that rate-of-return carriers

USTelecom supports the Commission's definition of a "reasonable request" for service as "one where the carrier could cost-effectively extend a voice and broadband-capable network to that location. In determining whether a particular upgrade is cost effective, the carrier should consider not only its anticipated end-user revenues from the services to be offered over that network, both voice and retail broadband internet access, but also other sources of support, such as federal and, where available, state universal service funding."[91] This feasibility standard is similar to that used by the Rural Utilities Service (RUS) in its telecom and broadband lending programs to rural local exchange carriers and others. It determines whether there is sufficient revenue to repay the costs of a government loan for a particular investment. That standard has worked well for RUS and a similar application of this measure of feasibility is a fair way to measure the reasonableness of the costs of fulfilling a consumer request for voice and broadband service.

The feasibility of a reasonable request depends on costs and timing as well as projected revenues. Rural areas can include service territories that are not only topographically challenging, but may necessitate compliance with environmental analysis and other approval proceedings. Facilities crossing federal lands may require federal and state right-of-way negotiations and agreements. Rights-of-way acquisition can also be problematic in dealing with non-federal entities such as railroads. So a request can appear reasonable on its surface but be subject to extra costs and delays unique to building out facilities for that particular project.

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would take into account any revised speed standards when considering whether and where to upgrade existing plan in *the ordinary course of business* [emphasis added]."

[91] *Id* at ¶ 144.

F. In the Future, the Commission Should Consider Support for the Middle-Mile Costs of Rate-of-Return Carriers

The *Further Notice* correctly recognizes that the cost of backhaul is an important component of the ability of rate-of-return carriers to offer broadband services to their customers at rates that are reasonably comparable to similar offerings in urban areas.[92] The middle-mile is part of the network design necessary to provide rural customers the high-capacity connections to the Internet backbone that permit service reasonably comparable in price and quality to that available in urban areas. The cost model adopted for price cap carriers takes into account middle-mile costs, and the needs of rural carriers for middle-mile support are certainly no less than that of the larger carriers.

The Commission should keep in mind the importance of the middle-mile as the IP transition proceeds and there is more clarity as to the types of network arrangements and the cost of such arrangements that will be available to rate-of-return carriers. Development of a mechanism to provide support for the cost of middle-mile transport for the traffic of rate-of-return carriers is important, but it can be deferred until after a support mechanism for the cost of loop-related broadband infrastructure is completed and implemented. Budgetary concerns proscribe development of substantial middle-mile support at this time.

It is reasonable for the Commission to adopt measures to support middle-mile projects on Tribal lands, including remote areas in Alaska.[93] The proposed one-time $10 million budget to fund a limited number of projects[94] as an initial step is a sensible way for the Commission to be informed about the middle-mile challenges facing rate-of-return carriers more generally.

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[92] *Id* at ¶ 300.
[93] *Id* at ¶ 302.
[94] *Id* at ¶ 304.

G. Implementation of the 100 Percent Overlap Rule for Rate-of-Return Carrier Territories Must be Done Carefully

The phase out of support to a rate-of-return carrier due to the presence of an unsubsidized voice and broadband provider serving all locations in its study area can have very significant consequences for the carrier and the consumers it serves. Therefore implementation of the 100 percent overlap rule must be approached with great care.

1. The Determination of 100 Percent Overlap Must Rely on Clear Standards and Verified Facts

There are several sets of facts that must be confirmed before phase out of support begins. First, the rate-of-return carrier to whom the phase-out may apply should have settled and confirmed study area boundaries. The study area boundary reconciliation process has been burdensome, lengthy and difficult. In some instances it is still ongoing. There is no way to determine whether all locations in a study area are served by an unsubsidized broadband provider until it can be determined which locations are within the study area, and this cannot be determined until the boundaries are confirmed.

Second, there should be independent verification that the purported unsubsidized broadband provider is providing a level of service to all locations in the study area that meets the performance standards adopted for use in CAF Phase II for application in price cap company areas. However, unlike CAF Phase II, the purported unsubsidized broadband provider should provide broadband service that meets any new broadband speed requirements adopted by the Commission pursuant to this *Further Notice*.

Third, as was adopted in the CAF Phase II context, the Commission should use the same reasonable and reasoned evidentiary requirement adopted by the Wireline Competition Bureau (Bureau) pursuant to delegated authority. The requirement is that parties present evidence of current or former customers in a census block in order to challenge the Bureau's determination

that the block is unserved for purposes of determining eligibility for CAF Phase II support.[95] The alleging unsubsidized provider should also provide proof that it is capable of using its own facilities to deliver service within 7 to 10 business days of request by a consumer at any purportedly "Served" location within the subject study area without an extraordinary commitment of resources and without any special construction charge or construction fee.

The *USF/ICC Transformation Order*[96] makes a clear delegation to the Bureau to determine if an area is *served*, stating "We conclude, on balance, that it would be appropriate to exclude any area *served* by an unsubsidized competitor that meets our initial performance requirements, and we delegate to the Wireline Competition Bureau the task of implementing the specific requirements of this rule."[97] The Bureau adopted an interpretation of this language that included in its definition of "served" areas those that are unserved but were served in the past, along with areas that are served at the time of the challenge.

The reasonable evidentiary standard adopted by the Bureau will help ensure that residents of rural areas are not denied the opportunity to have broadband available to them based upon the type of thin assertions made during the CAF Phase I challenge process. The experience gained during that process has informed the Bureau's implementation of the Commission's delegated task and will help ensure that the CAF Phase II challenge process is conducted effectively and efficiently. This same standard is appropriate to apply to the rate-of-return area 100 percent overlap determination.

Prior to making the determination of 100 percent overlap, the Commission should verify through independent testing that the technologies used by the unsubsidized broadband provider

[95] *Id* at p. 1.
[96] *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17729 ¶ 170.
[97] *Id.*

fully meet the established performance requirements in *all* the locations in the study area. It would be unfortunate for rural consumers lacking broadband service if needed universal service funding was taken away from a rate-of-return carrier when not all consumers in the study area were receiving adequate voice and broadband service.

2. Providers Alleging 100 Percent Overlap Should File Petitions to Initiate the Process and Should Have the Burden of Proof of Demonstrating Provision of Service Meeting the Commission's Performance Standards to All Locations

The process for determining whether a rate-of-return carrier's study area is 100 percent overlapped by an unsubsidized voice and broadband provider meeting the Commission's performance standards to all locations in the study area should be initiated by the provider purporting to have such coverage. The provider should serve a petition making its claim with the Commission and the affected rate-of-return carrier. The initiation of the process and the burden of proof is rightly placed on the purported unsubsidized voice and broadband provider who should possess the most accurate and current information as to the scope and capabilities of its network and service offerings. This process would be efficient for the party filing the petition, the rate-of-return carrier serving the relevant study area and the Commission since the proceeding should contain all the evidence necessary for the Commission to make its determination.

The affected rate-of-return carrier should have a reasonable period of time (no less than 60 days) to respond to the petition. The process should include sufficient transparency so that the affected rate-of-return carrier can make an informed response and so that the Commission can make a reasoned judgment based on a factual representation. The phase out of USF high-cost support to a rate-of-return carrier should not be based on mere representations and certifications. Too much is at stake for rural consumers.

H. It is Premature to Adopt a Rule That Disallows Support for New Investment After a Date Certain in Areas Served by an Unsubsidized Voice and Broadband Provider

Before moving on to addressing partially-covered study areas, the Commission should complete adoption and implementation of a policy covering areas in which there is 100 percent overlap of a rate-of-return carrier by an unsubsidized voice and broadband provider offering service to all locations that meets the Commission's performance standards. The Commission should ensure that it can accurately make such determinations before it applies this policy more broadly.

The Commission no longer has disaggregation rules that allowed rate-of-return carriers to isolate costs more accurately and on a more granular basis. It eliminated those rules in 2012.[98] Before extending the competitive overlap rule beyond the complete overlap standard adopted in 2011, the Commission should conduct a proceeding which would consider how best to develop and implement specific and detailed disaggregation and cost allocation rules.

Finally, the Commission should consider the potential impact of such disaggregation on the USF high-cost budget adopted for rate-of-return carrier territories. Disaggregation of price cap territories through the adoption of the census block approach and the abandonment of state-level averaging revealed the high-cost areas present even in states with relatively low average costs. This correctly resulted in significantly more USF high-cost support dollars being allocated to price cap companies. The same phenomenon could occur in rate-of-return study areas subject to deaveraging.

[98] Order, *Connect America Fund*, DA 12-247, 27 FCC Rcd 15577 (December 3, 2012).

X. Conclusion

USTelecom supports an efficient and effective universal service high-cost program funded within the budget limits adopted in the *USF/ICC Transformation O*rder. Appropriate policy decisions made pursuant to the *Further Notice* will serve to accelerate the provision of voice and broadband service to rural Americans. The Commission needs to promptly move forward to finalize universal service high-cost mechanisms for both price cap and rate-of-return carriers.

Respectfully submitted,

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