

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

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION,
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.,
THE EASTERN RURAL TELECOM ASSOCIATION, AND
WTA – ADVOCATES FOR RURAL BROADBAND.**

April 14, 2014

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I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”),¹ the National Exchange Carrier Association, Inc. (“NECA”),² the Eastern Rural Telecom Association (“ERTA”),³ and WTA – Advocates for Rural Broadband (“WTA”)⁴ (collectively, the “Rural Associations”) respectfully submit these reply comments in response to comments filed on the Further Notice of Proposed Rulemaking included with the *IP Experiments Order and FNPRM* released by the Federal Communications Commission (the “Commission”) on January 31, 2014.⁵ Commenters

¹ NTCA represents nearly 900 rural rate-of-return regulated local exchange carriers (“RLECs”) that provide broadband, as well as wireless, video, and/or other telecommunications and information services.

² NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

³ ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River.

⁴ WTA is a national trade association that represents more than 250 small rural telecommunications carriers that provide voice, video and data services to some of the most rural and hard-to-serve communities in the country and that are the providers of last resort to those communities.

⁵ *In the Matter of Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, *Connect America Fund*, WC Docket No. 10-90, *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51,

recognize the value of looking to RLECs' prior track records and experience in serving high-cost rural areas as the Commission seeks to undertake such experiments, especially in geographies that other providers have chosen to ignore. Commenters thus support both an initial opportunity to obtain approval of experiments in their incumbent study areas and a "right-of-first-refusal" for RLECs with respect to proposals submitted by other providers within or adjacent to their incumbent study areas. Such a process would take advantage of existing network facilities near "unserved" areas (or of facilities in need of upgrades) and therefore more quickly result in deployment of broadband services to consumers that currently lack service. It would also be a much more efficient use of "experiment" funds than enabling unsustainable "high-cost islands" served by one provider in the midst of a much larger rural study area served by another provider.

Parties also recognize the numerous consumer protections that are part and parcel of existing carrier of last resort ("COLR") and eligible telecommunications carrier ("ETC") obligations. Those who would seek to minimize the importance of these duties fail to understand that these obligations serve the interest of the consumer, first and foremost. The Commission should reject this "race for the money," (without the accountability demanded by Congress), and make sure instead that the statutory requirements and obligations connected to universal service funding and ETC designation are fulfilled faithfully when structuring the formal application process and the ensuing consideration of submitted applications.

Finally, while the rural broadband experiments may yield interesting results and extend service to some that lack access today, it is important they do not become a distraction from the

Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, 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, FCC 14-5 (rel. Jan. 31, 2014) ("*IP Experiments Order and FNPRM*").

larger task at hand. That is, the creation of a broadband-focused Connect America Fund (“CAF”) mechanism for RLECs and other tailored, targeted updates of existing universal service support mechanisms that can accelerate broadband deployment on a much larger basis.

II. THE RECORD IN THIS PROCEEDING SUPPORTS GRANT OF AN INITIAL FILING WINDOW TO AND A “RIGHT-OF-FIRST-REFUSAL” FOR RLECS WITH RESPECT TO BROADBAND EXPERIMENTS IN THEIR INCUMBENT STUDY AREAS; COMMENTERS ALSO SUPPORT A ROBUST “CHALLENGE PROCESS.”

RLECs have demonstrated their sustained commitment to serving high-cost rural areas of the nation, overcoming a number of challenges to “edge out” broadband-capable networks over time and make advanced services available to consumers that would otherwise lack access. RLECs have lead the way in terms of the ongoing IP evolution, leveraging entrepreneurship, experience in serving high-cost areas, private capital, universal service support, intercarrier compensation, sound working partnerships with federal and state regulators, and a commitment to the high-cost communities they serve and in which they reside.

This long-standing commitment to responsible, effective, and sustainable rural broadband deployment is again demonstrated by the expressions of interest (“EOIs”) submitted by RLECs in response to the *IP Experiments Order and FNPRM*. Both the quantity *and* the quality of those EOIs stand out, as these providers have come forward with serious and thoughtful proposals to provide high-quality, IP-based services to rural areas in a manner that both respects the contours of the Commission’s framework and the Act, and yet provides a realistic depiction of the hard work it takes to deploy and sustain rural broadband networks. The EOIs submitted by RLECs and their affiliated companies reflect RLECs’ familiarity with what is expected and demanded of high-cost Universal Service Fund (“USF”) recipients and the challenges of serving high-cost areas over decades of effort. This experience and commitment to serving areas of the nation

long ignored by other providers should serve as the starting point for the Commission as it proceeds to set forth the rules and criteria for formal proposals, and ultimately selects projects for funding.

The Commission should leverage this experience and the demonstrated commitment of RLECs, as well as their existing networks in nearby locations, to deploy sustainable broadband to hard-to-reach, unserved and underserved rural locations as quickly and effectively as possible. To this end, the Commission should create a window within which RLECs would be given the first opportunity to propose and have accepted, on a “fast-track” basis, any experiments within their incumbent study areas. The comments filed in this proceeding clearly support this proposal. As ITTA states, this “comports with the Commission’s policy preference to leverage existing network infrastructure to expand broadband service in rural areas in order to avoid undermining the substantial previous investment incumbent carriers have made to deploy networks in high-cost areas.”⁶ Such a policy makes all the more sense because RLECs with network facilities near “unserved” areas (or with facilities in need of upgrades) would be in a position to use existing facilities to provide services more quickly than other providers. Such a policy finds precedent in the CAF Phase I mechanism adopted for price cap carriers, which was designed to operate as an immediate injection of funds to enable carriers to begin extending the quality and/or reach of existing facilities and accelerating broadband deployment to unserved consumers as quickly as possible.⁷

⁶ ITTA – The Voice of Mid-Size Telecommunications Carriers (“ITTA”), p. 12; *See also*, John Staurulakis, Inc. (“JSI”), p. 11; WTA – Advocates for Rural Broadband (“WTA”), pp. 5-6.

⁷ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our 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 –*

Commenters also support providing RLECs with a “right-of-first-refusal” with respect to any application that is subsequently submitted by a non-RLEC ETC for an experiment in any given portion of a RLEC study area. As the Alaska Rural Coalition (“ARC”) correctly notes, “RLECs have the best experience with network construction and maintenance in their service areas, and best know how to structure services to optimize service availability and quality.”⁸ RLECs’ many years of service as COLRs to the broader study area community, and their experience with fulfilling the public interest conditions that have long attached to COLRs and the ETC designation, will provide the Commission with the assurance that service quality, consumer protection, and public safety standards will continue to be met. Moreover, RLECs also have systems and procedures in place to ensure that USF funding is used in the manner for which it is intended, to prevent waste, fraud and abuse, and to file ETC reports with the Commission annually to this end.

Those few commenters opposed to a “right-of-first-refusal” for RLECs miss several important points.⁹ For one, this would enable the provider that already serves the larger area to “edge out” its existing network and more quickly serve the locations at issue, particularly since the RLEC already has been designated as an ETC. A non-RLEC applicant, on the other hand, is unlikely to have any network assets in place and therefore will require a much longer “ramp up” time prior to providing service. A right-of-first-refusal would also help to promote much greater

Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (*USF/ICC Transformation Order*), ¶ 132.

⁸ ARC, p. 9; *See also*, TCA, p. 5 (“RLECs understand the technical requirements of a network build, they understand the financial implications as well as the required quality service standards imposed on ETCs. With that track record, it would be nonsensical for the FCC to not leverage the talents and resourcefulness of these carriers.”); JSI, p. 11; WTA, pp. 5-6.

⁹ California Public Utilities Commission (“CA PUC”), pp. 3-4; National Cable & Telecommunications Association (“Cable”), p. 7; the Wireless Internet Service Providers Association (“WISPA”), p. 6.

efficiency in the use of universal service resources by leveraging scale – rather than having a set of census blocks, or portions of census blocks, form a potentially unsustainable “high-cost island” served by one provider in the midst of a much larger rural study area served by another provider.¹⁰ Finally, the record supports the adoption of a robust and meaningful challenge process for any non-RLEC ETC proposal for a rural broadband experiment in any portion of a RLEC study area.¹¹ Not only would this prevent a needless “waste of limited rural broadband experiment dollars in areas that already have 3/768 service,”¹² but it would also prevent “cannibalizing” existing networks built and maintained with limited High-Cost fund resources. As the Commission recognizes in the *IP Experiments Order and FNPRM*, “experiments [should not] threaten the financial viability of broadband networks that exist today through support from our existing high-cost mechanisms.”¹³

III. THE RECORD CONFIRMS THE COMMISSION SHOULD ADOPT CLEAR GUIDELINES FOR THE RURAL BROADBAND EXPERIMENTS THAT FOCUS ON CONSUMER PROTECTION AND THE ACCOUNTABILITY FOR AND COST-EFFECTIVE USE OF UNIVERSAL SERVICE FUND DOLLARS.

A. ETC and COLR obligations play a vital role in promoting and sustaining universal service and in ensuring accountability for the use of ratepayer dollars.

A number of comments concur with the Rural Associations in recognizing the substantial consumer and accountability benefits that come with ETC and COLR obligations in high-cost

¹⁰ In addition, a number of non-RLEC applicants may not even be ETCs at the time their proposal is submitted. Most are almost certain to be proposing a sub-study area ETC designation that by law will require, in cooperation with state commissions, a subsequent public interest analysis. As noted below, the importance of this public interest analysis in terms of the numerous consumer protection benefits that come with ETC and COLR obligations cannot be cavalierly dismissed. *See, infra*, Section III. A. and notes 18 and 19.

¹¹ WTA, p. 8; United States Telecom Association (“USTelecom”), p. 13.

¹² WTA, p. 8.

¹³ *IP Experiments Order and FNPRM*, ¶ 208.

rural areas.¹⁴ These consumer-centric obligations ensure that universal service policy is “all about the consumer,” not only in theme and rhetoric, but also in execution and deed. ETC and COLR obligations help ensure that all consumers have access to quality communications services that are essential to public health, safety, and welfare. COLR obligations in particular ensure that carriers cannot pick and choose which customers to serve and that a specified level of retail service is available to all potential customers within a defined service area.

With this in mind, the Commission should dismiss those who would seek to marginalize or minimize the substantial benefits these obligations bring about for consumers, even as those same parties make a firm grasp for the dollars to which such obligations typically attach. While such parties would seek to classify the ETC designation process as “superfluous”¹⁵ or as delaying “the achievement of federal funding objectives,”¹⁶ ETC obligations exist to ensure that ratepayer dollars are used to provide all Americans, regardless of where they live or work, access to high-quality basic and advanced communications services. They also exist to make recipients of USF funds accountable for the use of these funds. In other words, they exist for the protection of consumers, first and foremost. Conveniently, they are also the law – and for good reason. Congress foresaw and therefore prescribed that a measure of accountability was required as a matter of statute from any party receiving USF support, and the ETC designation is the statutory linchpin of such accountability.

Indeed, the very nature of many of the EOIs argues against an arbitrary “shot clock” or “short-circuiting” of ETC designations. As the Massachusetts Department of

¹⁴ WTA, p. 8; TCA, pp. 4-5; JSI, pp. 7-10.

¹⁵ American Cable Association (“ACA”), p. 9.

¹⁶ Cable, p. 6.

Telecommunications and Cable (“MDTC”) notes, “[t]he FCC has received letters of interest from a diverse pool of applicants, including nontraditional communications providers. State knowledge of the organizational history, business practices, financial stability and general effectiveness of these applicants could be valuable to the FCC’s identification of successful proposals.”¹⁷ The Commission should take advantage of states’ particular knowledge of such entities – and, pursuant to statute, should look to the states to determine who can or cannot be designated as an ETC, especially in portions of RLEC study areas. Of course, that diversity of applicants (many inexperienced in serving sparsely-populated areas of the nation that often lack a business case for providing service) also argues in favor of a meaningful ETC designation process in states where the Commission itself performs the requisite public interest analysis.

Moreover, JSI is correct in pointing out that, pursuant to Section 214, the designation of an additional ETC in a RLEC study area requires a finding that such a designation is in the public interest.¹⁸ For portions of the country where a business case cannot support broadband deployment by one provider, designating two entities to receive public funds is nonsensical. In addition, an even greater level of scrutiny is required to the extent ETC designation is sought at

¹⁷ MDTC, p. 5; *See also*, TCA, pp. 4-5 (stating that, “[w]here the selected participant is either already a designated ETC within the State (and is looking to extend its designation to cover the geographic location within its application) or is an affiliated subsidiary of an existing ETC, 60 days would be more than sufficient time for a State commission to render a decision. However, for new entrants into provisioning broadband and voice services, the FCC should be reluctant to adopt rules that preempt State authority, and should allow more time for a more thorough review.”).

¹⁸ *See*, JSI, p. 9 (stating that “the designation of a carrier in a rural telephone company area must satisfy another provision of the Act that requires the area of designation to be the rural telephone company’s study area unless and until the Commission and States determine otherwise. JSI is not aware of any Federal-State Joint Board referral from the Commission that requests its recommendation on changing this study area requirement for purposes of the Commission’s rural broadband experiments. Until these provisions are satisfied, the Commission seemingly cannot select census blocks in a rural telephone company study area and then assume that designation by state commissions will be forthcoming.”).

the “sub study area” level.¹⁹ Would-be competitors should not be permitted to pick and choose the customers they are willing to serve to the disadvantage of the incumbent provider.

In that regard, the Rural Associations reiterate their concern that the Commission is apparently open to considering applications at the municipal, county, or census tract level in RLEC service areas. Under such an approach, an applicant could “self-define” its service area for purposes of the experiment and include a small number of “unserved” census blocks, or communities within a census block, within a larger area that may already be served by the incumbent provider. A robust challenge process, and an evaluation of all applications for experiments in RLEC service areas at the individual census block level, is therefore required in order to remain faithful to the intent of Section 214(e).

B. “Scoring criteria” for the rural broadband experiments must focus on using universal service funds for sustainable and scalable network deployment.

Beyond the substantial consumer protection benefits discussed above, ETC and COLR obligations also reflect the long-term commitment that should be demanded of those who seek universal service support. An exclusive or overly emphatic focus on merely “getting broadband out there” (building networks and hoping that they somehow remain self-sustaining, affordable, and robust enough, over time, to keep up with rural consumers’ long term needs) misses more than half the equation, and is the antitheses of the statutory universal service mandate to foster “an evolving level of telecommunications services.”²⁰ No evolution can occur if, in five to ten years, the network that has been promised is not built or, worse yet, neglected or even abandoned. Thus, as the Rural Associations noted in their initial comments, while certain

¹⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 05-46, Report and Order (rel. Mar. 17, 2005) (*Federal-State Joint Board Order*), ¶¶ 48-53.

²⁰ 47 U.S.C. § 254(c)(1).

experiments may have superficial appeal in the form of promises of rapid broadband deployment at “rock bottom” price tags, the concept of an “evolving level of telecommunications services” demands a longer term mindset and commitment from both the Commission and the ETCs who would seek USF support via an experiment or otherwise.

This “in it for the long haul” mindset should be reflected in the scoring criteria adopted by the Commission. A number of commenters, like the Rural Associations, urged the Commission to focus on “robust, scalable networks.”²¹ Scalable technologies ultimately represent the most cost-effective use of universal service funds, as these technologies will allow for the delivery of high-capacity connections today and over time as consumers’ bandwidth and service needs inevitably change and increase.²² Much like the sustainability discussion above, scoring criteria that fail to look beyond “getting broadband out there” will fail to keep up with the needs of rural consumers both today and into the future.

IV. COMMENTERS AGREE THAT THE RURAL BROADBAND EXPERIMENTS MUST NOT DISTRACT THE COMMISSION FROM MOVING FORWARD ON MUCH-NEEDED WORK ON UPDATING EXISTING HIGH-COST SUPPORT MECHANISMS.

Nearly two and half years after the adoption of the *USF/ICC Transformation Order*, which created a CAF for price cap carriers, a similar mechanism adapted to the unique operating

²¹ See, JSI, p. 12; ARC, p. 10; SouthEast Association of Telecommunications Officers and Advisors (“SEATOA”), p. 2.

²² And while scalability is important, so too is ensuring that the network is capable of offering supported voice telephony telecommunications service that meets the performance obligations for such as defined pursuant to law and the Commission’s rules. While voice may increasingly be an application that is offered atop broadband-capable networks, this does not change the fact that quality voice telephony must, as a matter of law, be offered as the supported service or its significance for public safety and other essential civic and commercial engagements. Securing commitments to deploy and offer broadband may be the primary aim, but parties receiving support must also be required to deploy networks over which they will commit as ETCs to offer voice telephony service that is reasonably comparable in price and quality to that offered in urban areas. Otherwise, rural consumers in that area are not in fact being provided universal service.

circumstances of RLECs has not yet been adopted.²³ To be clear, the Rural Associations believe that the rural broadband experiments may yield interesting results that could inform future policy decisions and, more importantly, could help to reach some consumers who lack broadband today. However, tailored, targeted updates of existing universal service support mechanisms must be seen as a top priority of the Commission's universal service policy. In fact, this proceeding only underscores the need for a broadband-focused CAF mechanism for RLECs; the fact that approximately 30 percent of the EOIs filed were from RLECs and their affiliates demonstrates the sense of urgency these providers feel in terms of improving the quality and reach of their existing broadband-capable networks.

In terms of the long terms needs of rural consumers, under current rules, a consumer's rates for broadband in RLEC areas increase simply because that consumer might decide that he or she only wants broadband and no longer wants to purchase regulated local exchange voice service on that line. This outdated regulatory construct that effectively compels millions of rural customers to purchase voice service in order to obtain affordable broadband service is flatly inconsistent with the Commission's policy goals for an all-IP communications environment.²⁴

²³ See, TCA, p. 2 (urging the FCC to "not lose sight of creating a mechanism to fund broadband for RLECs. Today, there is no long-term vision from the FCC or support in place for broadband deployment and operations in RLEC service areas. This policy deficit could be addressed by making small, reasonable adjustments to the current legacy support mechanisms to establish funding for standalone broadband."); US Telecom, p. 3 (urging the Commission to "focus on encouraging continued, reasonable investment by rate-of-return carriers by eliminating the existing Quantile Regression Analysis and implementing a transition to a mechanism that would fund broadband only lines and create regulatory certainty.").

²⁴ RLECs remain firmly committed to offering voice telephony as a supported telecommunications service to every consumer in their study areas consistent with both the statute and their commitment to community-oriented, carrier-grade service quality. However, the Commission can only achieve its broadband deployment and adoption goals on a sustained basis if it makes predictable and sufficient USF support available when a consumer *affirmatively* chooses to purchase broadband service only and thus declines to also purchase voice telephone service offered by the ETC. As it stands today, a consumer's rates for broadband in RLEC areas will increase simply because that consumer might decide that he or she only wants broadband and no longer wants to purchase POTS on that line. Such a result significantly

Consumers in all rural areas should have the opportunity to participate meaningfully in an IP-enabled world while having a panoply of service options from which to choose on a supported network. The good news is that the “fix” for this is a simple and targeted modernization of the High-Cost program.²⁵ It should not be lost, however, that this issue is but one of the many challenges the Commission faces in terms of modernizing and reforming the high-cost program.²⁶ Thus, the Rural Associations urge the Commission to move expeditiously with a mechanism to support consumers’ choice to migrate toward broadband service in RLEC areas, as well as on the numerous other issues it faces in terms of modernizing the high-cost universal service fund.

Finally, one immediate step the Commission could take to incent smaller, locally-based providers to gain scale and “edge out” broadband into neighboring unserved areas would involve a reevaluation of the “Parent Trap” and Safety Valve Support (“SVS”) mechanisms. Today, the “Parent Trap” rule limits high cost support available to carriers that acquire exchanges from other carriers, while the SVS mechanism is designed to incent post-transaction investment in rural exchanges sold from one carrier to another despite the workings of the “Parent Trap” rule. A “fresh look” at these mechanisms could offer a much simpler solution to a lack of broadband deployment in areas where larger providers may be, understandably, more interested in focusing on larger markets. It would also help smaller providers obtain greater scale and sustainability in their operations, to the benefit of rural consumers and the universal service program itself in the longer run. For smaller providers, many of these areas *are* the “larger markets” and it only

undermines consumer freedom of choice, deters broadband adoption, inhibits technological evolution, and frustrates the objectives of universal service.

²⁵ See, Comments of NTCA, *et al.*, WC Docket No. 10-90 (filed June 17, 2013), pp. 1-10 and Attachment 1.

²⁶ See, USTelecom, pp. 1-3.

makes sense to utilize their experience and track records in serving high-costs areas, and thus the Commission should look to provide these areas with the support necessary to make broadband service available.

V. CONCLUSION

Like the Rural Associations, commenters support both an initial opportunity to obtain approval of experiments in their incumbent study areas and a “right-of-first-refusal” for RLECs with respect to proposals submitted by other providers within or adjacent to their incumbent study areas. This would take advantage of existing network facilities near “unserved” areas (or facilities in need of upgrades) and therefore more quickly result in deployment of broadband services to consumers that currently lack service. Commenters also recognize the numerous consumer protections that come with COLR and ETC obligations. The Commission should dismiss arguments that seek to minimize the importance of these duties in a naked “race for the money.”

Finally, commenters agree that it is important the Commission not become distracted by these experiments from the larger task of modernizing the high-cost program, including the creation of a CAF mechanism for RLECs and other tailored, targeted updates of existing universal service support mechanisms that can accelerate broadband deployment on a much larger basis.

Respectfully Submitted,

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