Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS of the

NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.,
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION,
WESTERN TELECOMMUNICATIONS ALLIANCE, and
EASTERN RURAL TELECOM ASSOCIATION

February 19, 2013

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I. INTRODUCTION & SUMMARY

The National Exchange Carrier Association, Inc. (NECA), the National Telecommunications Cooperative Association (NTCA), the Western Telecommunications Alliance (WTA), and the Eastern Rural Telecom Association (ERTA) (collectively, the Rural Associations)[1] hereby submit these comments on the Public Notice seeking further comment on the design of the Remote Areas Fund (RAF).[2]

[1] 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). NTCA represents more than 570 rate-of-return-regulated local exchange carriers ("RLECs"), many of whom provide voice, video, and broadband Internet services to their communities; each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended. WTA is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. ERTA is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River.

[2] *Wireline Competition Bureau Seeks Further Comment on Issues Regarding the Design of the Remote Areas Fund*, Public Notice, WC Docket No. 10-90, DA 13-69 (rel. Jan. 17, 2013) (*Public Notice*).

In its November 2011 *USF/ICC Transformation Order*[3] (*Order*), the Commission determined that the RAF should be created and funded with a budget of "at least $100 million annually."[4] The RAF's stated purpose was to ensure that people living in the most remote areas of the nation, where the cost of providing terrestrial broadband service is extremely high, can obtain service.

The *Order* did not, however, establish a structure or operating methodology for the RAF. The Commission instead sought additional comment on these issues in the *Further Notice of Proposed Rulemaking* (*Further Notice)* accompanying the *Order*.[5] The *Further Notice* tentatively proposed that the RAF be structured "as a portable consumer subsidy," but also requested comment on several alternative structures for the RAF, including various competitive bidding approaches.[6]

Numerous parties, including the Rural Associations, filed comments responding to the RAF portions of the *Further Notice.* Many suggested it would be premature to rely on yet-to-be developed cost models and/or the National Broadband Map (NBM) to identify eligible areas, as suggested in the *Further Notice*.[7] Commenters also questioned whether it would be in the public

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[3] *See 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, H*igh-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, F*ederal-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, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011) ¶¶ 30, 534, *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (*USF/ICC Transformation Order/Further Notice*).

[4] *Id.* ¶¶ 533-538.

[5] *Id.* ¶¶ 1223 – 1295.

[6] *Id.* ¶ 1225.

[7] *See, e.g.*, Initial Comments of NECA, NTCA, *et al.*, WC Docket No. 10-90, *et al.*, at 91 (filed Jan. 18, 2012) (Rural Associations); NASUCA, the Maine Office of the Public Advocate, the

interest to structure the RAF as a portable consumer subsidy, and whether this approach would be workable in practice.[8]

In the instant *Public Notice*, the Wireline Competition Bureau (Bureau) seeks additional detailed comment on issues relating to "implementation of the Remote Areas Fund as a portable consumer subsidy program . . . ."[9] The *Public Notice* includes dozens of specific questions on how to identify areas eligible for RAF support; the manner in which support should be distributed (e.g., whether to customers or providers); eligibility criteria for consumers and providers; and many other issues.[10]

Despite the presumptive line of questioning in the *Public Notice*, it would be premature to implement the RAF as a portable consumer subsidy mechanism in light of the record to date in this proceeding. The Commission should instead give due and equal consideration to other alternatives raised as lines of inquiry in the *Further Notice of Proposed Rulemaking* and as otherwise proposed by commenters, including in particular the adoption of one or more pilot programs for the RAF in cooperation with state commissions and other entities having

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New Jersey Division of Rate Counsel, and The Utility Reform Network at 100 (Consumer Advocates); The Alaska Rural Coalition at 30.

[8] *See, e.g.*, Alaska Rural Coalition at 29-30 (expressing concern about "piecemeal" provision of portable support); GCI at 22 ("the location-based implementation proposed for the RAF would deny entire communities in Alaska access to either enterprise anchor tenant broadband services necessary for applications such as distance learning and telemedicine or mass market broadband services."); Regulatory Commission of Alaska (RCA) at 22 ("use of a portable consumer subsidy may not incent the infrastructure development that is needed in Alaska.") *See also* Consumer Advocates at 93 (expressing support for portability concept with significant reservations regarding implementation details.)

[9] *Public Notice* ¶ 2.

[10] The Bureau specifically requests comment on the Rural Associations' suggestion the Commission take into account areas affected by the $250/line/month funding cap imposed by the *Order*. *Id.* ¶ 8, *citing* Rural Associations at 94.

knowledge of localized conditions in remote areas.[11] As discussed below, this would provide the Commission and state regulators with "real world" experience in dealing with the challenges of deploying broadband in extremely high-cost areas prior to implementing a national remote areas funding program.

If, however, the Commission elects to move forward with full implementation of the RAF utilizing a portable consumer subsidy approach, it is essential once again as a matter of sound public policy and statutory mandate that the Commission proceed in a measured way. As discussed below, the specific questions identified by the Bureau with respect to how such a program would work are complex, and probably represent only a small portion of the issues that will arise as the program is actually implemented. The Commission should accordingly proceed by issuing a second *Further Notice of Proposed Rulemaking* in this proceeding that includes specific proposed rules for implementing the program, and should provide interested parties with adequate time in which to analyze and comment on these rules – and to provide input on their effects on consumers and the objectives of universal service more generally – before they are adopted.

II. DISCUSSION

A. In the Absence of a Sound Working Cost Model that Has Been Tested and Implemented, the Commission Should Implement the RAF on a Pilot Basis Only, Focusing Support Initially on Areas With Extremely High Costs as Determined by Actual Cost Data.

In the *Further Notice,* the Commission proposed using a forward-looking cost model to identify areas eligible for RAF support.[12] Since such a model does not yet exist, the Commission asked whether it should use the National Broadband Map (NBM) to identify unserved census

[11] Rural Associations at 93. *See also*, Nebraska Rural Independent Companies at 72.

[12] *Further Notice* ¶ 1225.

blocks and for identifying areas eligible for RAF support as an "interim" measure while the Commission develops a forward-looking cost model that is intended ultimately to identify eligible areas.[13]

Using a map that is still clearly in "beta mode" as a back-up for a model that has not yet been developed, tested, or implemented would pile potential error atop potential error. The record in this proceeding – and in several other proceedings – makes abundantly clear that the Commission should not rely on the NBM to make any factual determinations for purposes of providing or limiting CAF support in rural areas.[14] As the Rural Associations pointed out,

> The NBM continues to be plagued by doubts as to its accuracy and validity, with industry sources and other commentators noting the many respects in which the NBM both under-reports and over-reports the presence of providers in various serving areas. Even data improvements in subsequent iterations of the NBM do not appear to have resolved substantial concerns with respect to the accuracy of the data overall. . . . the Commission should [instead] defer to the state commissions and other state authorities for a more granular determination of local conditions, including where unserved locations, competitively served broadband, and remote areas might exist.[15]

Prior comments also made the point that, even where NBM data is accurate, there is the substantial risk that areas that appear unserved pursuant to the NBM will be built out in the future pursuant to Phase II CAF state-level commitments made by price cap carriers, merger

[13] *Id.* ¶ 1230.

[14] Numerous parties have identified stunning inaccuracies in the NBM. *See, e.g.*, Rural Associations at 92; Comments of NTCA, NECA, *et al.*, WC Docket No. 10-90, *et al*., at 3 (filed Jan. 9, 2013); Comments of Windstream, WC Docket No. 10-90, *et al.*, at 3 (filed Jan. 9, 2013); Comments of USTelecom, WC Docket No. 10-90, *et al.*, at 3 (filed Jan. 9, 2013); Comments of Yadkin Valley Telephone Membership Corporation, WC Docket No. 10-90, *et al.*, at 1-2 (Feb. 11, 2013).

[15] Rural Associations at 92.

commitments that remain in effect, stimulus-funded projects that are likewise in progress, and/or other private sector efforts or public-private partnership initiatives to deploy broadband.[16]

The Rural Associations were not alone in expressing concerns about uncertainties surrounding how to identify areas that should qualify for the RAF. Many parties commenting on the RAF portions of the *Further Notice* pointed out the difficulties of identifying geographic areas that are truly "extremely high-cost," remote and unserved.[17] Moreover, there was general agreement in the comments that proposed use of the NBM as an alternative to a cost model would not be reasonable. The NBM is neither sufficiently accurate nor detailed enough to be relied upon for this purpose, as voluntarily-reported data may not be reliable and "overlap" could be a problem.[18] Commenters also questioned the adequacy of satellites to deliver the day-to day needs of even the most basic residential voice services.[19]

Portable consumer subsidies are particularly problematic, as they provide no long-term support for network infrastructure. The Rural Associations and other parties have previously pointed out that consumer "vouchers" can create perverse incentives and lead to competitors determining to provide service only to the relatively lower-cost segments of RAF-eligible areas.[20] Consumers in the highest-cost areas would still not receive service, and incumbent COLRs, left with the remaining highest cost portions of the exchange area, would lose the

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[16] *Id.*

[17] *Id.* at 91-93. *E.g.*, Alaska Rural Coalition at 30-31; USTelecom at 15; Satellite Broadband Providers at 3; Tanana Chiefs Conference at 7, 9.

[18] *See, e.g.*, Consumer Advocates at 101; Nebraska Rural Independent Companies at 72 (FCC should improve its mapping efforts regarding the identification of rural ROR ETC remote areas); USA Coalition at 30 (NBM is insufficient to the task).

[19] *E.g.*, New America Foundation, *et al.* at 3-4; *see also* Frontier at 15-16; Consumer Advocates at 98-99; RCA at 7.

[20] *See supra* n. 8; Nebraska Rural Independent Companies at 74, 77. *See also* NECA Comments, CC Docket No. 80-286, at 48 (filed Oct. 28, 1994).

opportunity to obtain even slender economies of scope that might have existed if they could have used RAF support to expand coverage to RAF locations.[21] Additionally, a mechanism that would provide payments or vouchers directly to individual subscribers could be extremely unwieldy from an administrative point of view, and could result in burdens that outweigh any potential benefit perceived in bypassing the incumbent provider.[22]

In light of these and other complications, the Rural Associations continue to suggest that the Commission at most seek to implement the RAF via pilot projects, working with states to identify eligible areas and to test different approaches to funding. States have the best proximity to "facts on the ground" and can provide better insight into where a RAF and alternative technologies might offer the best means of reaching consumers who will otherwise remain unserved for the foreseeable future.[23] As the Rural Associations also noted, state commissions can rely upon additional resources – including their own field examinations of current conditions in the market – to determine with much greater precision where funding is required.[24] While conducting such pilot programs will unavoidably delay full-fledged implementation of the RAF, the benefits in terms of lessons learned and mistakes avoided would likely more than offset the disadvantages.

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[21] Indeed, this is a problem with the entire effort to "target" support to individual locations or even relatively smaller areas such as census blocks – the benefit of cost averaging is lost, and if anything, the result is only greater pressure on the "budgetary objectives" of the Commission with respect to the high-cost fund.

[22] Certainly, the experience of individual consumer subsidy in the Lifeline program offers some indication of how long it can take to get the administration of such a program under control; the database necessary to administer that program effectively in the long-run *still* has not been developed or deployed. *See* Alaska Rural Coalition at 33; Satellite Broadband Providers at 5-8.

[23] Rural Associations at 93. *E.g.*, Consumer Advocates at 93-94; Nebraska Rural Independent Companies at 71-73; RCA at 11-12.

[24] Rural Associations at 79.

It was in this context that the Rural Associations suggested the Commission consider potential interrelationships between the $250/line/month support cap adopted in the *Order* and the definition of a remote area, at least in RLEC serving areas.[25] Responding to this suggestion, the Bureau asks in the *Public Notice* whether, in lieu of relying on a forward-looking cost model, the Commission should identify areas for the RAF based on reported loop cost "such as a rule that all unserved locations in rate-of-return study areas for which the reported loop cost equals or exceeds the 95th percentile for average cost" be eligible for RAF support.[26]

It seems self-evident that, if the Commission wishes to identify areas that are the most costly to serve, it should start with areas that *have already been identified* in this proceeding as being too costly to support with traditional high-cost funding. RLECs impacted by the $250/line/month support cap have demonstrated with hard data that their areas are extremely costly to serve. Moreover, by obtaining requisite state certifications and establishing operations, these companies have shown that local consumers strongly desire reliable and modern telecommunications services. These customers, unfortunately, are now in danger of losing such service as a result of the $250/line/month cap,[27] and should accordingly be given first priority in developing pilot programs for operation of a new RAF.

In this regard, the *Public Notice* requests comment on potential interrelationships between the RAF and existing support mechanisms in areas served by RLECs (*e.g.*, whether any adjustment need be made to existing support under other high-cost mechanisms if an existing

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[25] *Id.* at 94.

[26] *Public Notice* ¶ 8.

[27] *See e.g.*, Petition for Waiver of Dell Telephone, WC Docket No. 10-90 (filed June 6, 2012); Petition of Border to Border Communications, WC Docket No. 10-90 (filed June 29, 2012); Petition for Waiver of South Central Telephone Association, WC Docket No. 10-90 (filed Dec. 6, 2012).

ETC also receives support from the RAF).[28] Areas that are extremely costly to serve are, almost by definition, areas where existing carriers cannot be expected to provide service on "reasonable request." Inasmuch as the Commission has made the policy choice to establish a special mechanism to support the provision of service to consumers living in such areas, reasonable methods for implementing such support should be pursued. But the availability of RAF support in extremely high cost areas provides no basis for adjusting support paid to RLECs under existing high-cost mechanisms, particularly those companies hard-hit by the per-line cap, as well as those affected by other limitations that cause significant shortfalls in USF funding for existing networks.[29]

B. A Portable Consumer Subsidy Program Should Operate Independently of Existing USF and Should Only Be Implemented Based on Specific Proposed Rules.

For the reasons discussed above, the Rural Associations recommend the Commission refrain from attempting to implement the RAF as a nationwide portable consumer subsidy mechanism utilizing the NBM, but should develop pilot programs in cooperation with states designed to identify effective and administratively workable support programs for areas that are extremely expensive to serve.

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[28] *Public Notice* ¶ 10.

[29] The Rural Associations recognize the Commission and USAC may encounter difficulties identifying customers for whom it would not be "reasonable" for an ILEC to provide service given limitations on existing traditional USF and CAF support mechanisms. This complication, however, is precisely why a pilot program makes such good sense in the first instance. For example, in some states the Commission could establish a program that would provide RAF subsidies to consumers living in areas served by an ILEC, but only if such customers demonstrate they have requested service from the ILEC, have been refused such service (or have been offered service with unreasonably high initial connection or monthly service fees), and that the state commission concurs with the ILEC's determination.

If, however, the Commission nevertheless decides to move forward with the RAF as a nationwide portable consumer subsidy mechanism, as appears to be suggested prematurely in the *Public Notice,* it should do so in a measured way.

The Rural Associations note in this regard that the Commission itself has not yet decided to adopt the portable consumer subsidy approach set forth in the *Further Notice,* nor has it analyzed or evaluated any of the alternative approaches identified therein. Nor has it responded to any of the comments submitted in response to the *Further Notice* suggesting alternative approaches. As a threshold step, it would appear necessary for the Commission to issue a second *Further Notice of Proposed Rulemaking* in this proceeding setting forth the Commission's full rationale for pursuing the portable consumer subsidy approach despite strong record evidence opposing this method. A second *Further Notice* would also permit the Commission to propose specific rule language governing the operations of such a portable subsidy program. As the Administrative Procedure Act requires, interested parties should be given a reasonable time frame (e.g., 60 days from publication in the Federal Register) in which to comment on proposed rules prior to their final adoption and implementation. Among other things, this would permit informed comment on potential technical problems prior to the program's initiation, and thus avoid substantial confusion and potentially costly errors as a new program of this magnitude is initially implemented.

As the Public Notice makes clear, there are numerous questions that arise in connection with the portable consumer subsidy approach. For example, the Bureau asks if the subsidy is structured as a one-time payment, would $200 in one-time support per location be an appropriate amount? How would such payments impact providers who recovery installation costs amortized over monthly rate payments? Should the Commission establish pricing and performance requirements for services obtained via one-time subsidies? And should the Commission establish limits on the ability of consumers to switch providers after receiving service based on a "one-time" subsidy? [30]

On the other hand, if the consumer subsidy is provided on a monthly basis, the Bureau asks whether it would be reasonable to set the urban reference price for voice at $37/month and at $60/month for broadband? This approach also raises questions regarding what should be considered "basic" service levels for satellite voice-broadband services and whether consumers should be able to use their vouchers to obtain higher levels of service. [31]

Provision of one-time payments to consumers or providers may make sense if the key concern is to address high up-front installation costs. This approach tends to increase the risk of stranded investment, however, as technology rapidly changes. Amortizing costs over a longer period would incent providers to undertake best efforts to retain customers. This will also facilitate provider commitment to quality of service standards that meet consumer expectations.

In a related vein, the Bureau asks whether consumers should be able to use a voucher to purchase a service above the basic offering.[32] To prohibit customers to use vouchers to defray the costs of higher tier services seems counter-intuitive to notions of promoting broadband adoption. The Commission should not proscribe purchases above basic service levels.

The Bureau asks whether the Commission should establish that, as a condition of receiving a one-time payment, the supported provider offer voice service at a rate not to exceed the FCC's prior reasonable comparability benchmark for voice services for non-rural areas, *i.e.*, $36.52. The Bureau also notes satellite broadband rates are typically uniform nationwide, and

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[30] *Public Notice* ¶ 18.

[31] *Id.* ¶ 23.

[32] *Id.* ¶ 24.

asks how to account for varying terrestrial wireline or wireless service rates when setting the rate that will be compared to reasonably comparable services in urban areas.[33] These questions highlight the difficulties involved with moving away from location-based cost-recovery approaches to support. If costs in certain regions are higher, then their impact on rates must be contemplated when determining what is "reasonably comparable" to presumably lower rates in lower cost urban areas. In any event, if the Commission wishes to establish benchmarks for determining whether rates in remote areas are reasonably comparable to urban rates, it should do so only after conducting the necessary rate surveys and analyzing resulting data. Mere "guesstimates" as to benchmarks are not sufficient to satisfy the statute's requirement that rates be reasonably comparable.

The Bureau also asks a series of questions regarding consumer eligibility for RAF.[34] The Associations reiterate their position that RAF support should be focused toward the provider's recovery of costs incurred to provide the service, and that RAF should not be implemented as a consumer voucher program. If, however, the Commission determines to implement RAF in this manner, it makes sense to limit vouchers to one service per household, using the same definition of "household" as is applicable in the Lifeline program.[35] At a minimum, consumers should be required to self-certify they do not have terrestrial broadband available at their home meeting the defined requirements as a precondition to receiving a consumer subsidy, and should moreover self-certify they are using the subsidy at their primary address. The Commission should impose

[33] *Id.* ¶¶ 20, 26.

[34] *Id.* ¶¶ 32-40 (asking questions regarding methods to limit consumers to one RAF subsidy per household, whether consumers should be required to self-certify they do not have terrestrial broadband at their homes, that they are using RAF funds for their "primary" residences, etc.).

[35] Where "household" is defined as "any individual or group of individuals who are living together at the same address as one economic unit" and "economic unit" is defined as "all adult individuals contributing to and sharing in the income and expenses of a household."

penalties for false self-certifications, but should not make any provider responsible for verifying householders' certifications.[36] In short, based upon hard-gained lessons in the Lifeline context, if the Commission proceeds full speed ahead with implementation of the RAF, it should build a database and adopt adequate and meaningful controls for such a program *prior to* deploying it.

Finally, the Bureau asks whether any of the reporting requirements found in section 54.313 of the Commission's rules should not apply or otherwise be tailored for RAF recipients.[37] The Rural Associations continue to maintain that the Commission should reconsider and reduce the scope of section 54.313 obligations so as to avoid unnecessary burdens on fund recipients. As a general matter, reporting requirements for providers receiving RAF funding should be no less burdensome than requirements applicable to other high-cost support programs. The Rural Associations recognize, however, that specific requirements may require modification to meet the unique parameters of the RAF. As the Public Notice appears to recognize, there may be no need to require a five-year build-out plan in situations where funding is provided as a portable consumer subsidy, rather than a supply-side subsidy for deployment.[38] Nevertheless, it appears reasonable to ask providers to describe in some manner their anticipated plans to meet evolving consumer demand for increased capacity and improved service.

[36] If consumers self-certify, then USAC should also develop a database of RAF-eligible households (similar to the Lifeline database now under development). That database, however, should be maintained as a separate database since Lifeline implicates issues of individual privacy while the availability or unavailability of broadband at a particular geographic location does not implicate individual privacy.

[37] *Id.* ¶ 56.

[38] *Id.*

III. CONCLUSION

In light of the record to date in this proceeding, the Commission should not implement the RAF as a portable consumer subsidy mechanism at this time. The Commission should instead give due and equal consideration to other alternatives raised in the *Further Notice* and as otherwise proposed by commenters, including in particular adoption of one or more pilot programs for the RAF in cooperation with state commissions and other entities having knowledge of localized conditions in remote areas. If, however, the Commission elects to move forward with full implementation of the RAF utilizing a portable consumer subsidy approach, it should proceed by issuing a second *Further Notice of Proposed Rulemaking* specifying proposed rules for the program, with adequate time allowed for interested parties to provide input on consumer impacts and on the Commission's statutory universal service objectives.

Respectfully submitted,

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February 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 19th day of February, 2013 by electronic filing and e-mail to the persons listed below.

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