

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Options to Promote Rural Broadband in) WC Docket No. 10-90
Rate-of-Return Areas)

**COMMENTS
of
NTCA – THE RURAL BROADBAND ASSOCIATION; the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.; the
WESTERN TELECOMMUNICATIONS ALLIANCE; and the
EASTERN RURAL TELECOM ASSOCIATION**

June 17, 2013

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I. INTRODUCTION AND SUMMARY

By Public Notice issued May 16, 2013, the Wireline Competition Bureau (“Bureau”) has requested comment on two options to promote deployment of rural broadband in areas served by rate-of-return regulated local exchange carriers (“RLECs”).¹ The first such option, proposed by the Rural Associations² in prior filings and ex partes,³ would involve straightforward revisions

¹ *Wireline Competition Bureau Seeks Comment on Options to Promote Rural Broadband in Rate-of-Return Areas*, Public Notice, DA 13-1112 (rel. May 16, 2013) (“*Public Notice*”).

² NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers (LECs) and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended. 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). WTA is a trade association that represents

to several existing rules so as to permit RLECs to receive support for standalone (*i.e.*, data-only) broadband lines via a new Data-Only Broadband (“DOBB”) loop support mechanism. The second option would facilitate RLECs’ ability to convert to price cap regulation or otherwise permit these companies to seek model-based Connect America Fund (“CAF”) Phase II support for broadband deployment.

The Rural Associations strongly support careful examination of alternative approaches to promoting rural broadband deployment. These comments accordingly respond to questions set forth in the Public Notice regarding the costs and benefits of each proposed option, and provide specific proposed amendments to existing Parts 54 and 69 rules to implement the DOBB support mechanism proposed by the Rural Associations.

Other potential means of promoting rural broadband deployment, including maintaining the option of converting to price cap regulation or otherwise considering how RLECs might avail themselves of model-based support short of electing such conversion, could have promise and also warrant further examination. Unfortunately, the lack of definition in the Connect America Cost Model (“CACM”), especially when paired with some of the policy choices embedded within the CAF Phase II program more broadly, makes it difficult at this point to identify

over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River.

³ See, e.g., Petition of NTCA for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353, at 15 (filed Nov. 19, 2012) (*NTCA IP Evolution Petition*); Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed Jan. 28, 2013); Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed Feb. 22, 2013); Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed Apr. 1, 2013); Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed Apr. 25, 2013); Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No 10-90 *et al.*, at 32 (filed Jan. 18, 2012) (*Rural Associations’ Comments*).

whether this specific model-based path represents a viable option for individual RLECs to deliver universal service to the consumers they serve. The Rural Associations accordingly provide in these comments a series of preliminary observations with respect to the development of the CACM, and identify those policy concerns that would likely be of importance or concern to RLECs in evaluating the viability of any voluntary path toward model-based USF/CAF support distribution.

II. THE COMMISSION SHOULD MOVE FORWARD WITH ADOPTING THE RURAL ASSOCIATIONS' PROPOSED DATA-ONLY BROADBAND SUPPORT MECHANISM VIA A TARGETED NOTICE OF PROPOSED RULEMAKING.

Pursuant to the Rural Associations' proposal, DOBB service is a standalone broadband transmission service, provided on a Title II common carrier basis, that provides a connection between an end user and a connection point with an Internet Service Provider ("ISP").⁴ The service uses the same loop facilities currently provided by RLECs to enable customers to access the Public Switched Telephone Network ("PSTN") or its functional equivalent, but is sold without traditional voice services. As the Public Notice recognizes, current Universal Service Fund ("USF") mechanisms provide support to RLECs when such loop facilities are provided to consumers choosing to purchase regulated local exchange telephone service, but do not provide support when customers seek to obtain standalone broadband services.⁵ Thus, where a customer chooses *not* to take "plain old telephone service" ("POTS") on the loop that serves that customer and instead desires to take only broadband, the costs of that loop are re-assigned entirely to the interstate

⁴ Inasmuch as the data-only broadband transmission services provided by RLECs are "telecommunications services" under the Act and fully subject to the Commission's Title II jurisdiction, there can be no question the Commission is authorized under section 254 of the Act to establish a support mechanism for DOBB service as proposed by the Rural Associations.

⁵ *Public Notice* ¶ 3.

Traffic Sensitive Pool (as special access), and no USF support is then available under current rules with respect to that loop. In practical terms, this means that a consumer's rates for broadband in high-cost 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 undermines consumer freedom of choice, deters broadband adoption, inhibits technological evolution, and frustrates the objectives of universal service – that is, fulfilling the ultimate goal of ensuring that consumers can obtain access to reasonably comparable services at reasonably comparable rates. In the wake of reforms that were ostensibly intended to reorient the USF for a broadband-capable world, there is no reason that consumers should be compelled to take POTS to obtain broadband at rates that are affordable in price and reasonably comparable in quality to those available in urban areas.

The Commission clearly grasped the need for an evolution in such policies as part of its November 2011 *USF/ICC Order*, indicating that the service to be supported going forward would not be the *sale* of POTS, but rather the *offer* of “voice telephony service.”⁶ Specifically, the Commission determined that to be eligible for receipt of USF support, carriers should be required “to offer voice telephony as a standalone service throughout their designated service areas.”⁷ The Commission further stated that “Section 254 grants . . . the authority to support not only voice telephony service but also the facilities over which it is offered,”⁸ and that “the

⁶ *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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011) ¶¶ 77-81 (*USF/ICC Order* or *USF/ICC FNPRM*).

⁷ *Id.* ¶ 80.

⁸ *Id.* ¶ 64.

modified definition simply shifts to a technology neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks.”⁹

To promote broadband deployment in rural areas via “predictable and sufficient” USF mechanisms, as envisioned by the Commission’s National Broadband Plan,¹⁰ and consistent with the vision enunciated in the *USF/ICC Order* and the fact that the Connect America Fund for price cap carriers is already providing support for networks regardless of whether the consumer affirmatively chooses to procure voice telephony service as offered, the Commission is now considering whether to change its existing rules to provide support when a consumer chooses to purchase DOBB service from a supported RLEC without necessarily purchasing the voice telephone services offered by that RLEC. Such an evaluation is very much welcomed, and is consistent with the premise now clearly embodied in the CAF that universal service should support *telecommunications networks* that enable consumers to choose from among offered voice, voice/data or data-only services, rather than merely supporting individual lines where consumers elect POTS services.

The Public Notice asks various questions regarding an approach proposed by the Rural Associations that would involve relatively straightforward adjustments to existing rules so as to permit RLECs to receive support for data-only broadband services. Under the Rural Associations’ proposal, DOBB service loop cost funding would be calculated as the difference between the loop-related cost to provide the service and a Broadband Subscriber Line Charge (“BBSLC”). The BBSLC, together with a tariffed wholesale transmission rate, forms a benchmark to help ensure consumers in rural areas pay an amount for standalone broadband

⁹ *Id.* ¶ 78.

¹⁰ *Connecting America: The National Broadband Plan*, FCC (rel. Mar. 16, 2010) (“*NBP*”).

Internet access service that is reasonably comparable to amounts paid for similar services by subscribers in non-rural areas.

DOBB service loop cost would be developed based on projected costs, with a true-up to actual costs, using existing cost definitions specified in section 36.621 of the Commission's rules applied to total study area loops. Notably, neither DOBB support nor the benchmark components would provide for recovery of middle mile and other non-network ISP operational costs. This is in contrast to the price cap model, which includes some middle mile costs¹¹ and some non-network ISP operational costs in both the applicable benchmark and the CACM support mechanism itself. It is also important to note that such a benchmark mechanism within the DOBB concept must be structured in a manner consistent with the statutory requirements for universal service. Any mechanism that aims to enable consumer choice and serve the core principles of universal service will fail if it rests upon a benchmark that is tailored not to serve those objectives (*e.g.*, reasonable comparability), but is instead configured exclusively or even primarily to manage budgetary requirements.

¹¹ This factor must not be lost in the consideration of any DOBB support mechanism – unlike the CACM, the proposal set forth herein does *not* include any recovery of middle mile costs. To once again “keep things simple,” and recognizing that recovery through USF of middle mile costs presents distinct questions, the DOBB CAF proposal discussed herein *only* provides for USF-based recovery of certain loop-related costs. Thus, because middle mile costs are not recovered through this narrower proposal, the benchmark in the DOBB proposal herein does not reflect an offset for middle mile costs like the CACM. Still, there is a separate, and very important, need for further discussion of how middle mile costs can be recovered through USF for areas served by RLECs, and the Rural Associations look forward to continuing that discussion on a separate but coordinated track. *See, e.g., NTCA IP Evolution Petition* at n.21; *Rural Associations' Comments* at 24; Comments of NECA, GN Docket Nos. 09-47, 09-51, 09-137 (filed Nov. 4, 2009); Comments of Verizon and Verizon Wireless, GN Docket Nos. 09-47, 09-51, 09-137 (filed Nov. 4, 2009); *NBP* at 166.

The Bureau requests specific comment on what rule changes would be required to implement such a mechanism.¹² As currently envisioned, no modifications would be needed to the Commission’s Part 36 separations rules, and only limited changes would be needed to the Commission’s Part 54 rules to define and govern support payments for DOBB service. As the Public Notice recognizes, changes would also be needed to existing Part 69 rules, primarily to modify assignment of interstate DOBB transmission service loop costs from the Special Access element to the Common Line element for use in the calculation of DOBB support, and to govern development and assessment of the BBSLC.¹³ Under the Rural Associations proposal, the BBSLC, similar to the current end user voice SLC, would be capped based on the actual cost of the data-only loop costs transferred from the special access element to the common line element. Since data-only broadband Internet access transmission service is classified as an interstate service, current Commission separations rules assign 100% of the loop cost for this service to the interstate jurisdiction compared to 25% of the loop cost associated with a voice service. Thus, given the data-only loop cost assignment to the interstate jurisdiction is four times the voice loop cost assignment, the cap on the BBSLC is proposed to be \$26, or four times the current end user voice SLC cap of \$6.50.¹⁴ Suggested amendments to the Part 54 and 69 rules incorporating such changes are included with these comments as Attachment 1.

¹² *Public Notice* ¶¶ 5-6.

¹³ *Id.* ¶ 6.

¹⁴ To be clear, the BBSLC would not represent a mandated “retail” rate to be assessed upon the broadband Internet access service end-user. Instead, this benchmark component would constitute a charge to be borne by the ISP providing the Internet access service to the end user. The BBSLC is the benchmark component used in the calculation of the proposed DOBB loop support calculation proposed herein. This BBSLC charge, together with the wholesale transmission rate and required non-regulated costs (including middle mile costs) of providing Internet access service to end users, comprise the costs that need to be considered in achieving “reasonably comparable” end-user retail rates for stand-alone broadband offerings.

The Bureau asks what near-term impacts implementation of the Rural Associations' proposal would have on existing high cost mechanisms, including the High-Cost Loop Support ("HCLS") and Interstate Common Line Support ("ICLS") programs, and what changes would occur in support levels among RLECs should such a program be implemented for data-only broadband services.¹⁵ There are, of course, substantial uncertainties regarding the extent to which consumers are likely to adopt DOBB services in the near term, as well as changes in the overall marketplace for IP-enabled services. In addition, substantial regulatory and legal uncertainties exist regarding limitations and adjustments to be applied to HCLS support mechanisms under current rules, as well as the prospect of additional limits on ICLS as proposed in the Commission's 2011 *Further Notice*.¹⁶ In this environment it would be extremely difficult, if not impossible, to predict the financial effects of introducing a new DOBB funding mechanism on individual companies or overall RLEC support levels with any precision.

As a general matter, however, the structure of the proposed DOBB mechanism can be expected to cause support payments under existing HCLS and ICLS support mechanisms to be reduced as DOBB services displace traditional voice/data telecommunications services, while funding under the new DOBB mechanism would increase. (Put another way, as any given consumer ceases to buy traditional voice service and chooses to buy standalone broadband service instead, the recovery of costs through ICLS and HCLS on that line would cease, with such costs recovered instead through the new DOBB support mechanism.) The rate of such changes for individual RLECs and for fund mechanisms in total would depend on the speed and

¹⁵ *Id.* ¶ 5.

¹⁶ *See, USF/ICC FNPRM* ¶ 1058. *See also, e.g.,* Letter from Cheryl L. Parrino, Parrino Strategic Consulting Group, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed June 6, 2013).

degree to which individual consumers and businesses discontinue purchasing traditional voice/data services in favor of data-only broadband services as well as a variety of other factors. In other words, the DOBB mechanism would provide the benefit of being *both* a straightforward vehicle for transition from existing USF cost-recovery programs as consumers make their own choices with respect to migration *and* also an “end state” broadband-oriented Connect America Fund support mechanism for consumers in areas served by RLECs once those consumers have chosen to migrate to broadband.

For example, today, less than three percent of total lines provided by RLECs participating in NECA’s Traffic Sensitive access charge tariff for broadband transmission services are purchased as data-only broadband lines. Assuming implementation of a DOBB funding mechanism as described herein, total support under the HCLS, ICLS and the new DOBB fund would be expected to increase slightly overall over time to the extent that broadband-only adoption increases, but the relative proportion of traditional HCLS and ICLS support mechanisms would decline as greater percentages of lines are converted to data-only broadband services. The proposal also includes, at this time, presumed application of the corporate operations expense cap and the \$250/month cap adopted in the *USF/ICC Order* (notwithstanding the Rural Associations’ continuing concerns and even legal challenges with respect to certain of these items), but this proposal does not at this time include any caps based upon quantile regression analysis (“QRA”) given the substantial uncertainty and confusion that continues to swirl about those caps and the continuing efforts to make better sense of the QRA model.¹⁷ The Rural Associations look forward to working further with the Commission to ensure that this

¹⁷ See, e.g. *Letter from* Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.*, at 2 (filed May 31, 2013); *Letter from* Joshua Seidemann, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Apr. 24, 2013).

mechanism is sustainable, provides effective incentives for much-needed investment, and ultimately sets forth clear, transparent, and predictable “rules of the road” with respect to which network deployments will (or would not) be recoverable over the life of those investments.

The Public Notice asks a number of technical questions regarding the need to establish separate loop categories to account for joint-use lines and standalone broadband lines, including whether there are definitional issues relating to Part 69 implementation that would need to be addressed to define rate elements necessary to offer standalone broadband service, whether a loop element and a port element structure similar to the structure currently used for joint-use loops would be required and, if so, how should different speeds be handled within the rate structure.¹⁸

As a general matter, the Rural Associations seek to keep the proposed initial DOBB service funding mechanism as simple as possible pending further development and implementation of the Commission’s overall CAF proceedings as well as related matters such as pending IP Transition proceedings. Thus, for example, the proposed rules provided in Attachment 1 to these comments incorporate definitions of new rate elements for DOBB similar in detail to existing Part 69 rate elements. Since the proposed mechanism focuses on recovery of costs associated with loop facilities, however, there would not be a need at this time to establish separate port elements or rates for different speeds or grades of service.¹⁹ For the same reason, there would be no need for the Commission to establish different classes of DOBB service or specify special cost allocation procedures for different DOBB offerings, as such allocations

¹⁸ *Public Notice* ¶ 6.

¹⁹ These elements would be provided as special access service offerings and not subject to DOBB support.

would not apply to costs of supported loop facilities but would instead continue to be accomplished as part of the Special Access ratemaking process.

The Rural Associations continue to believe that the simplest and most efficient means for the Commission to accomplish its broadband deployment goals in the rural areas served by RLECs would be to adopt the proposed DOBB support rules outlined in Appendix 1 on an expedited basis. The Commission should accordingly issue a notice of proposed rulemaking incorporating these rules, targeting January 1, 2014 for initial implementation.

III. A PATHWAY TO PROMOTE RURAL BROADBAND THROUGH VOLUNTARY ELECTION OF MODEL-BASED SUPPORT COULD BE USEFUL, BUT THE MODEL REQUIRES MORE DEFINITION AND MORE DELIBERATION IS NEEDED REGARDING SPECIFIC EMBEDDED POLICY CHOICES AS THEY AFFECT SMALL CARRIERS.

The Commission also seeks comment on “creating a more explicit voluntary pathway to model-based support” as “an additional way to promote efficient new broadband deployment in rural rate-of-return areas.”²⁰ The Rural Associations once again welcome the Commission’s focus upon the critical questions of how to reorient existing support mechanisms for a broadband-focused, IP-enabled future²¹ and how to ensure that a “rural-rural divide” will not result from the injection of additional funding to encourage larger providers to deploy rural broadband while areas served by smaller carriers are left only with declining USF and ICC cost recovery. Such measured debates and more thoughtful reviews going forward will be essential in determining whether the statutory objectives of universal service can still be achieved and furthered.

²⁰ *Public Notice* ¶ 8.

²¹ *See, NTCA IP Evolution Petition.*

There are several threshold issues that must be examined and resolved to achieve successful adoption and implementation of a voluntary model-based support option for smaller rural carriers. For one, the model itself is still being constructed for its primary purpose – distributing high-cost USF support to price cap carriers. Given that a good deal of the CACM itself, particularly the cost inputs and assumptions, remain in flux and there is no track record yet by which to evaluate whether the CACM (or any other model) can spur *sustainable* broadband investment in any rural area, it is difficult at this point to undertake a meaningful evaluation of whether a voluntary path toward CACM support could make sense for any given RLEC.²² Moreover, there are a series of policy choices embedded both within the distribution module of the model itself and more broadly with the CAF Phase II framework that require further examination and will likely require modification – in some cases, potentially significant – to ensure that a model-based approach can enable the delivery of universal service by smaller carriers. In the spirit of advancing this much-needed constructive dialogue over how to develop different options to promote and sustain rural broadband, to provide some thoughts and recommendations that could help overcome such threshold concerns, and to assist the Commission more specifically in its continuing review of CACM even as the model will apply to price cap carriers in the first instance, the Rural Associations provide here a series of preliminary

²² It seems all too often lost in the debate over USF reform that universal service entails not just the act of “getting it there,” but also requires “keeping it there.” See 47 U.S.C. § 254(b)(5) (“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”). A USF/CAF program that focuses only upon the short-term initial *availability* of rural broadband (*e.g.*, “but look how many unserved became served!”) and ignores or downplays the longer-term question of *sustainability* – specifically, whether broadband services will remain *reasonably comparable* in price and quality over the life of the investment in question such that consumers can adopt and make meaningful use of broadband – is doomed to fall short of the statutory universal service mandates and is at great risk of putting valuable USF dollars at risk through unsustainable investments.

comments with respect to the development of the CACM and policy questions surrounding its implementation that would likely be of most importance to RLECs in evaluating the viability of any voluntary path toward model-based USF/CAF support distribution.

A. General Observations Regarding Model Development and Use

Although the use of a model for distribution of CAF has to date been contemplated only for – and is by rule only applicable to – price cap carriers, the CACM contains certain data and assumptions with respect to RLECs. While the CACM has the capability to produce outputs for RLECs, it has not yet been specifically proposed, designed, or vetted for this purpose. Thus, before the CACM, or any of the assumptions or inputs therein, were to be extended for use beyond price cap CAF model-based distribution or even considered as precedential in other contexts, both the model structure *and* those specific assumptions and inputs must be tested and reviewed, and the legal and policy implications of doing so must be vetted.²³

Stepping back, the programs and mechanisms to support universal service for price cap carriers and RLECs, respectively, are intrinsically different with good reason. Price cap carriers have been operating under model-based support mechanisms for over 10 years.²⁴ Their large size and geographic footprint help to ameliorate the inevitable lack of precision in any modeling process. Put another way, their size and reach helps to “smooth out” the rough edges of any model, while giving these carriers greater flexibility to operate under alternative regulatory

²³ *E.g.*, Joint Comments of NECA, NTCA, *et al.*, WC Docket No. 10-90, *et al.*, at 52 (filed July 12, 2010) (*Associations’ July 2010 Comments*). *See also, e.g.*, Comments of NECA, WC Docket No. 05-337 (filed May 31, 2007).

²⁴ *See, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432 (1999), *rev’d in part and remanded*, *Qwest v. FCC*, 258 F.3d 1191 (10th Cir. 2001), and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd. 22559 (2003).

regimes such as price cap regulation. Moreover, the fact that these carriers often serve both larger markets and high-cost areas with smaller customer bases renders these carriers less dependent upon USF or CAF support simply to sustain operations – and thus better able to work (or just survive) under the imperfections that are resident in any model.

Finally, certain policy decisions “baked into” the CACM are certain to affect the RLEC perspective on that model, and must be examined in greater detail for the model to become a viable path for voluntary election of support by any given RLEC. Notably, the CACM consists of a cost module and a support distribution module. The distribution module drives support and consists of a number of “dials” largely designed to fit support within a predetermined budget, regardless of estimates from the cost module or the actual underlying costs that any given company might incur to deploy and operate a rural broadband network and deliver affordable, high-quality broadband services. The distribution module is in significant part a “ratchet” to meet budgetary objectives that have little, if anything, to do with the costs required to fulfill universal service.

Here again, certain “dials” and thresholds may be acceptable to larger carriers that are not so reliant on USF support due to the fact that their operations span multiple geographies, customer bases, and product lines, but such methods and policy approaches remain untested and a poor fit for small RLECs that serve exclusively rural areas. Put another way, to an RLEC whose entire operation is premised upon operating in areas where the “big town” may have a few thousand people, the distribution of USF/CAF support – and its importance in keeping prices affordable and service quality reasonably comparable – is going to mean a lot more than to a company that has the good fortune of also serving major metropolitan areas like New York City, Dallas, or Denver. This is not to say that a model can never be used for smaller carriers – some

may very well see the value in a model and elect such support despite the necessary use of estimates and averaging of inputs within. Nor is this to say that the mere size of a party that serves a rural area or the size of other markets it serves should necessarily be a disqualifier to universal service support for a rural area; it is important that the objectives of universal service be fulfilled in all areas. Rather, this is all only to say that the imprecision or “rough justice” that may be tolerable to a company that serves millions of customers overall in getting model-based USF support to serve a rural town of ten thousand people is likely much different than the cost recovery that is actually needed by a small company that serves several thousand people or less in total. These are considerations that all stakeholders must take into account in developing a model tailored to further the mission of universal service in areas served by smaller providers.

Beyond these general observations with respect to the development, application, and potential precedential impact of the CACM, the Rural Associations provide below a number of more specific comments arising out of their preliminary review of certain cost, support distribution and policy aspects of the CACM. Examination and resolution of these more specific issues, together with some opportunity to see whether the CACM in operation encourages *sustainable* broadband investment and affordable, high-quality broadband services in rural areas will likely be essential in mapping out a viable path for RLECs who wish to avail themselves voluntarily of model-based support.

B. Cost-Specific Observations

Mapping Accuracy

The CACM utilizes information from the National Broadband Map (“NBM”) in identifying the eligibility of census blocks for CAF support. As the Commission and Bureau are well aware, however, there are significant problems with the integrity and accuracy of data contained within

the NBM,²⁵ and even the translation of census blocks to study area boundaries continues to be a persistent problem.²⁶ While once again such imperfections may be “close enough” for carriers that serve hundreds of thousands or millions of customers across multiple urban and rural service areas, the impact of mapping distortions for small carriers that serve only several hundred or thousand rural consumers in a very limited number of (sometimes, only one) service areas is magnified. Indeed, imperfections in translating census blocks to study area boundaries for a price cap carrier likely includes or excludes only a small percentage of the total number of census blocks within that carrier’s study area(s), thus making little difference in the overall level of support to be obtained by that carrier. By contrast, an RLEC may have a study area within a state that includes serving areas that are non-contiguous, and rural census blocks tend to be larger than urban blocks given the lack of density in the areas served by RLECs. A boundary error with respect to any given RLEC thus impacts a greater percentage of its total number of census blocks, potentially skewing the available support for that carrier radically.²⁷

²⁵ See, e.g., *Rural Associations Comments* at 92 (filed Jan. 18, 2012); 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). Distinct policy concerns relating to the purported identification of so-called “unsubsidized” competitors arising out of the NBM are discussed *infra*.

²⁶ Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, at 2 (filed May 31, 2013) (*Associations’ May 31, 2013 Letter*).

²⁷ Another “mapping”-related imprecision in the model arises out of how households would be allocated within census blocks. While certain approaches to allocation may seem “good enough” to a larger carrier for whom a rural census block represents a tiny percentage of its geographic serving area and even a smaller proportion still of its customer base, such imprecision will likely be material to an RLEC that happens to serve *only* rural census blocks – and in many cases, may only serve a handful of them. Careful vetting is thus needed to determine the degree to which the model can provide a more accurate estimate of the costs of serving a small customer base in a high-cost area.

Any model that relies on maps must have those maps vetted and rendered accurate before they are used to inform distribution of support. Certain ongoing proceedings are poised to help improve the quality of some of this mapping information – particularly as to the study area boundaries themselves – but solutions relating to better mapping of census blocks to study areas continue to be examined,²⁸ and this work must be completed and the results tested to avoid the possibility of introducing such material errors in a model-based support distribution mechanism, particularly for smaller companies.

Risk Profiles and the Weighted Average Cost of Capital/Rate of Return

The CACM utilizes a weighted average cost of capital (“WACC”) in developing factors employed in the calculation of CAF support. In response to earlier versions of the CACM that used a 9 percent WACC, the American Cable Association (“ACA”) indicated that the WACC included within the CACM should be considerably lower,²⁹ and the Wireline Competition Bureau recently released a Public Notice noting the potential use of an 8 percent WACC in the model.³⁰ The Wireline Competition Bureau further issued a staff report regarding rate-of-return prescription asserting “a zone of reasonableness” for the cost of capital of approximately seven percent to approximately nine percent.³¹

²⁸ *Associations’ May 31, 2013 Letter, attach.* at 4-8.

²⁹ Letter from Thomas Cohen, Kelley Drye & Warren, LLP, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed. May 2, 2013).

³⁰ See, *Wireline Competition Bureau Announces Availability of Version 3.1.2 of the Conenct America Fund Phase II Cost Model and Adds Additional Discussion Topics to Connect America Cost Model Virtual Workshop*, WC Docket No. 10-90, Public Notice, DA 13- 1136 (rel. May 17, 2013).

³¹ See, *Prescribing the Authorized Rate of Return, Analysis of Methods for Establishing Just and Reasonable Rates for Local Exchange Carriers*, WCB, WC Docket No. 10-90 (rel. May 16, 2013), ¶¶ 117-118.

Although the ACA has indicated that its comments are specifically applicable only to larger price cap carriers and do not reflect the significant challenges faced by smaller operators, and while the staff report on repricing remains itself subject to review and comment, it is important to underscore that the WACC for RLECs is almost certainly *greater* than 9% for a variety of reasons. As Professors Barbara Cherry and Steven Wildman (now the Commission's Chief Economist) stated unequivocally in a paper in January 2012, "RLEC[s] are differently situated from price cap LECs in several respects, which renders an appropriate rate of return for price cap LECs an inappropriate surrogate for the rate of return of RLECs."³² Indeed, RLECs serve smaller, lower density, discrete geographies that are generally higher cost than areas served by price cap carriers. There is no ability to average costs across multiple states or service areas, nor is there the capability of spreading costs to multiple products and services.³³ The capital structure of the typical RLEC is often different from price cap companies, and as recently demonstrated, even the limited sources of capital that have been historically available to RLECs now perceive much greater risk than perhaps ever before in lending funds to enable long-term investments by this sector in the wake of the FCC's *USF/ICC Order*.³⁴ And while comments regarding the Staff Report are not yet due, the Rural Associations have previously submitted

³² Profs. Barbara Cherry and Steven Wildman, *The Rate of Return for RLECs Must be in the Upper Range for Reform Under the Connect America Fund Order to Ensure Sustainable Policy Goals*, at 9 (attached as Appendix B) to *Rural Associations Comments* (filed Jan. 18, 2012).

³³ See, e.g., *Associations' July 2010 Comments* at 53.

³⁴ See, Letter from Robert F. West, Senior Vice President, Communications Banking Group to Marlene H. Dortch, WC Docket No. 10-90, *et al.* (filed May 8, 2012) ("The various caps and limitations on universal service funding and inter-carrier compensation, especially for rate-of-return carriers, are making it increasingly difficult for us to extend credit for the purpose of deploying ubiquitous rural broadband networks."); Letter from Jonathan Adelstein, Administrator, Rural Utilities Service, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.*, (filed May 31, 2012) (*RUS May 31, 2012 Letter*).

extensive analyses showing that: (1) as a substantive matter, the WACC should be considered materially higher than 9% for small companies that operate exclusively in small, rural markets; and (2) as a procedural matter, any efforts to determine the rate of return for RLECs must be undertaken by the Commission – not staff – consistent with and pursuant to the process required by the Communications Act of 1934, as amended.³⁵ Until such further examination is undertaken in the context of a more detailed and procedurally proper proceeding, however, a modeling process should not and cannot assume that any WACC used in the model for price cap carriers would be appropriate for RLECs.

Accuracy and Granularity of Capital and Operating Expense Inputs

The capital costs (“CapEx”) associated with building a forward-looking voice and broadband capable network represent the core cost inputs in the CACM. Operating expenses (“OpEx”) are in turn a function of CapEx through the application of annual charge factors. The CACM CapEx and OpEx inputs, however, are derived primarily from larger price cap carriers. Although there are some “rough justice” parameters intended to recognize the different economies of scale, scope and density of smaller carriers, the model does not appear to capture accurately the variation and variability of costs associated with companies of different sizes serving different kinds of terrain with different levels of customer density and distances. The model might represent a more viable voluntary alternative for USF/CAF support distribution for RLECs if it incorporates proper cost inputs that not only recognize sweeping differences in

³⁵ Comments of NECA, NTCA, OPASTCO, and WT, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012), pp. 47-63, Appendix B “Professor Barbara Cherry & Professor Steven Wildman, Paper: The Rate of Return for RLECs Must be in the Upper Range for Reform Under the Connect America Fund Order to Ensure Sustainable Policy Goals”; Appendix C Professor Randall Billingsley Statement: In Re: Interstate Rate of Return Represcription Report and Order of Further Notice of Proposed Rulemaking, FCC 11-161, November 18, 2011.”

purchasing power between larger and smaller companies, but also take account of how the network components and other drivers of CapEx and OpEx can vary among RLECs themselves. Indeed, as even the Commission's regression analysis model at least attempts to capture, cost drivers for a certain group of RLECs may be completely different from those for another group. Errors in modeling assumptions and inputs compound and will quickly create distortions in results for individual RLECs in a way that, while perhaps more tolerable as applied to larger price cap carrier operations, can be disruptive, if not fatal, for smaller RLEC company operations that only serve consumers in rural areas. Such errors or imprecision will need to be examined and resolved in the model to make it a more attractive option for smaller carriers in need of USF support.

Accuracy and Granularity of Plant Mix and Sharing

Plant mix and sharing assumptions in the model have a significant impact on network costs. The CACM utilizes state-specific plant mix and sharing assumptions and also considers terrain as a factor. The validity of such an approach for purposes of deployments by smaller carriers that serve only the hardest-to-serve portions of a given state has not yet been tested. It also appears, yet again, that the plant mix and sharing estimates have been developed largely upon the basis of inputs and information supplied by larger companies.³⁶ As with CapEx and OpEx inputs, it will be important to tailor, vet, and test such assumptions to ensure that they accurately and properly reflect the operations of smaller providers.

³⁶ See, Letter from Craig J. Brown, CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed May 24, 2013); Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed May 22, 2013); Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed May 23, 2013).

Need for – and Potential Inadequacy of – Middle Mile Support Mechanisms for Broadband-Capable Networks in Current Cost Recovery Structures

Getting the identification of middle mile costs “right,” and providing sufficient and predictable support for those costs, will become increasingly important over time to ensure that “bottlenecks” in the middle mile do not frustrate affordable, high-quality, and reasonably comparable broadband services for consumers. Regardless of the technology used to deliver broadband services to the customer premises, even the most robust last-mile facilities – and therefore the end users’ experiences – are dependent on the quality and availability of upstream providers of middle-mile transport to the Internet backbone. Indeed, the National Broadband Plan specifically recognized that the challenge of overcoming long distances to reach the Internet backbone from rural areas justifies thoughtful consideration of providing USF or CAF support toward the deployment and/or operation of middle mile facilities,³⁷ and there is broad, long-standing support in the record for making middle mile costs eligible for USF or CAF recovery.³⁸

Middle mile costs have the potential to grow rapidly and could, over time, become one of the major costs for consumers of broadband in rural areas as consumer demands for capacity continue to increase dramatically.³⁹ Considerable review (and most likely re-work) is required both in terms of middle mile design and costs in the CACM before middle mile modeling results truly reflect the needs of and demands associated with serving rural consumers. For example,

³⁷ *NBP* at 158.

³⁸ *See, e.g.*, comments filed in WC Docket No. 10-90, *et al.* on January 18, 2012, by Moss Adams Companies at 21-22; NASUCA, the Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel, and the Utility Reform Network (Consumer Advocates) at 27-28; Western Associations at 11-12; Nebraska Rural Independent Companies (NRIC) at 81; USTelecom at 5-6.

³⁹ *See*, Joan Engebretson, Akamai Sees Big Jump in U.S. Internet Connections Above 10 Mbps, telecompetitor, (Jan. 23, 2013), <http://www.telecompetitor.com/akamai-19-of-u-s-internet-users-see-average-speeds-above-10-mbps/>.

the Rural Associations understand that the current iteration of the CACM focuses narrowly on interoffice transport requirements and fails to take account of the full extent of middle mile networks needed to overcome the challenges of reaching distant “on-ramps” to Internet backbones.⁴⁰ While the availability of middle mile support within RLEC-specific mechanisms remains very much in debate as well,⁴¹ the ability to obtain sufficient and predictable support for middle mile costs from a model will likely be a factor that any RLEC would want and need to consider in assessing an option to use that model.

C. Policy Considerations That May Ultimately be “Hard-Wired” Into the Distribution Module of the CACM for Price Cap Carriers Could Deter RLECs From Seeking to Use the Model on a Voluntary Basis.

Examination and resolution of the cost-specific issues identified above in a thoughtful manner that is tailored to address the diversity of challenges faced by RLECs will be essential for the model to present a viable option for USF/CAF distribution by potential RLEC converts. Beyond these important “technical” cost-related questions, however, a number of policy questions arise out of the CACM that may also hinder the usefulness of that model as an alternative source of support. Several of the most important of these policy considerations are highlighted below.

As discussed earlier, the distribution parameters contained within the CACM appear to have been determined on the basis of “budgetary” considerations. That is, even assuming *arguendo* the cost module of the CACM were accurate in every respect and on a highly granular basis, the current iteration of the distribution module appears driven not by an attempt to cover the true costs of deploying and providing rural broadband, but rather by a more basic desire to

⁴⁰ <http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012-inter-office-transport-cost>.

⁴¹ See, *NTCA IP Evolution Petition* at n. 21.

“slice a pre-determined budgetary pie” among a group of potential CAF Phase II participants. It is unclear whether and to what degree the distribution module of the CACM (or the USF more generally) might ever again be “right-sized” for the actual job at hand (*i.e.*, made sufficient for the purposes of compliance with the universal service mandates of the Act). By definition, the statutory principle of sufficiency cannot be served if the distribution module defines support levels by specifically and explicitly attempting to “ratchet” what the cost module of the CACM identifies as necessary to deliver reasonably comparable voice and broadband services in rural areas. At the very least, it is important to evaluate the extent to which such policy choices, having been designed and decided largely to date by focusing on price cap carriers, must be tailored and adjusted to address the needs of consumers in areas served by smaller carriers or otherwise as needed to fulfill universal service.

As just one key example, the “benchmark” that would be used in the CACM distribution module to identify what would qualify as “high cost” and thus be eligible for support must be something more than a “rough justice” tool for managing the USF budget. Instead, as noted earlier in these comments, any benchmark must ultimately tie back to the fundamental statutory mandate of reasonable comparability – the benchmark must specifically ensure that consumers in rural areas are not compelled to pay an “unreasonably incomparable” amount for services that are reasonably comparable to those obtained by other consumers. To fulfill this mandate, rather than picking a number for use in the distribution module of the CACM based largely upon budgetary desires, the benchmark should be tethered ultimately to what consumers in different parts of the country pay for services – and only then should *the Commission itself* (given the

policy implications of this decision) adopt a “benchmark” that is grounded in fact and consistent with law rather than the product of results-oriented analysis.⁴²

Another policy consideration that is important to assess in the distribution module of the CACM is the “granularity of distribution” and a related concept that might be best called the concept of “proximate geography.” While costs and eligible areas for support will be determined on a census block basis, and while the CACM makes some effort to take account of the scope and scale of providers of different sizes as described above, it would appear to make sense to take additional account of efficiencies that can be achieved through the “proximate geography” served by would-be CAF recipients, particularly if “budget management” is a paramount objective of reform implementation and there is a need to prioritize where support should be directed. For example, if two equally deserving census blocks are eligible for support, but one happens to be served by a carrier that also serves a city of 100,000 or 1 million people in the same contiguous study area, while the other census block is served by a carrier that has no town of larger than 5,000 people in its contiguous study area, one would presume that the company with the greater scope of operations in its study area could deliver broadband to the high-cost census block with at least somewhat less support than the firm that serves only high-cost locations in its contiguous study area. This is not to say that carriers should necessarily be

⁴² Similar questions and concerns arise with respect to the use of an “upper limit” cut-off in CACM for USF/CAF support in the form of an alternate-technology threshold. As the Rural Associations have noted in other contexts, it remains to be seen whether the Remote Areas Fund (which is seemingly predicated upon directing some support to those locations that fall above the alternate technology threshold) can be implemented in a way that does not relegate some consumers to second-class citizenship (or worse) in our increasingly online, IP-enabled world. *See Rural Associations Comments* at 91-93 (filed Jan. 18, 2012). If this threshold is ultimately set in a way that makes budget management rather than reasonable comparability the paramount objective, this could be another deterrent to participation in a model-based distribution mechanism – particularly for RLECs that continue to bear carrier of last resort or other obligations with respect to the entirety of their study areas.

required to cross-subsidize across states or even non-contiguous study areas, but there should be some additional recognition in the model that appears to be lacking now of the efficiencies gained by serving both higher-cost and lower-cost census blocks in a contiguous “proximate geography” – such an omission is particularly striking if realizing efficiencies and “fiscal responsibility” represent part of the Commission’s objectives.

D. Several Other “Structural” Aspects of the CAF Phase II Framework Beyond the Model Itself Will Require Changes to Encourage RLECs to Opt for Model-Based Support.

Although the instant Public Notice appears to contemplate a structure in which RLECs would somehow participate directly in the CAF Phase II framework, for the reasons identified throughout these Comments, the Rural Associations believe that a more productive approach would be to develop a path pursuant to which individual RLECs could now or in the future opt to avail themselves of some version of model-based support without necessarily electing either full price cap conversion or formal participation in the CAF Phase II program right now. Such an approach would provide the Commission with time to examine and address issues of the kind noted above with respect to the cost and distribution modules of the CACM, and it would also allow the Commission to consider whether additional structural aspects of the CAF Phase II program (beyond the model itself) can encourage or might deter voluntary election of model-based support by individual RLECs. Moreover, such an approach would give RLECs themselves the opportunity to examine the extent to which the CAF Phase II program and the CACM have are succeeding in promoting sustainable broadband deployment in rural areas.

With respect more generally to the CAF Phase II program, and moving beyond the more CACM-specific matters discussed above, the current CAF Phase II framework contains several “structural” elements that warrant further consideration in the context of providing support to

smaller carriers. One such structural element is the five-year limit on the distribution of model-based support under CAF Phase II adopted in the *USF/ICC Order*.⁴³ The provision of broadband-capable facilities requires investment in infrastructure with useful lives far beyond five years. Moreover, it is impossible to achieve return on investment associated with rural network deployment in five years – instead, payback on rural network investment is more often measured in terms of decades.⁴⁴ Thus, while CAF Phase II support may provide “a steady universal service revenue stream for a defined period of years,”⁴⁵ RLECs must necessarily plan for time frames longer than five years, particularly in light of the fact that many finance their infrastructure investments with Rural Utilities Service loans (or loans from other institutions) with amortization schedules far beyond five years.

As noted earlier in these comments, if the CAF’s perspective on universal service is focused entirely on what it takes to “get broadband there” – as compared to what it also takes to “keep broadband there” (and reasonably comparable in price and quality) – then the CAF program will fail in most RLEC rural areas. Indeed, it is unclear why any term limits should be placed on receipt of CAF support by an RLEC as long as the RLEC continues to act as a carrier-of-last-resort in the study area in question. At the very least, any limits that might be placed on the term of support distributions must account for such factors if the program is to work in enabling an RLEC to obtain reasonable access to capital for network deployment and keep rates and service quality for consumers reasonably comparable beyond a short-term window.

Moreover, rather than presuming that untested reverse auction programs will be employed at the

⁴³ *USF/ICC Order* ¶¶ 23-24, 116.

⁴⁴ *RUS May 31, 2012 Letter* (stating that “RUS makes loans to finance the construction and upgrade of high capacity broadband networks whose terms can exceed 20 years.”).

⁴⁵ *Public Notice* ¶ 14.

end of any distribution term (if one is used), for RLECs that rely upon long-term network loans to deploy almost exclusively in the hardest-to-serve areas, the Commission should adopt an approach that instead recalibrates the model at the end of a reasonable distribution term for changed circumstances over the next distribution term.

Another “structural” concern in the CAF Phase II program arises out of the way in which so-called “unsubsidized competitors” may be identified for purposes of determining areas eligible for USF support. As the Rural Associations have noted time and again, reliance on the National Broadband Map’s identification of individual census blocks as “served” would be sorely mistaken, as numerous errors and “false positives” exist as to the presence of so-called unsubsidized competitors.⁴⁶ Unless and until these concerns are resolved, an RLEC would have little incentive to voluntarily opt-in to a support mechanism that may erroneously eliminate high-cost support for portions of its study area where *some* broadband may look to be available from a competitor. It is important to note this is of particular concern where the RLEC still bears carrier-of-last-resort obligations for the entire study area, and the purported competitor may not in fact offer voice or broadband at reasonable rates on a stand-alone basis. It is also of concern to the extent that the so-called “unsubsidized competitor” realizes significant subsidies in the form of, for example, favorable franchise terms or cross-subsidization of its operations. Until a sensible, evidentiary-based process for identifying *truly* unsubsidized and effective competition is in place, and some means of ensuring that the RLEC that loses support in portions of its study area does not remain burdened by unfunded mandates thereafter, a “check-the-box” use of a map

⁴⁶ *E.g.*, Comments of NECA, NTCA, ERTA, and WTA, WC Docket No. 10-90, at 5-7 (filed Mar. 28, 2013); Comments of NTCA, NECA, and WTA, WC Docket No. 10-90, at 2 (filed Feb. 19, 2013).

baked into the model together with a misplaced burden of “disproof” on the incumbent represents a significant deterrent to participation in any model-based support mechanism.

IV. CONCLUSION

The Rural Associations support the Commission’s efforts to examine alternative rural broadband deployment funding mechanisms in a careful and thoughtful manner. For the reasons discussed above, the Rural Associations continue to believe the Commission should move forward to adopt the proposed DOBB support mechanism outlined by the Rural Associations, specifically by issuing a Notice of Proposed Rulemaking formally proposing the rule amendments provided in Attachment 1, with a target implementation date of January 1, 2014. Moreover, the Rural Associations generally support changes to Commission rules that might facilitate adoption in the future of model-based support on a voluntary basis in addition to full conversion to price caps or participation otherwise in the CAF Phase II framework, but more examination and more work remain to be done consistent with the recommendations made and issues spotted in these comments for this approach to represent a viable mechanism for advancing rural broadband deployment and adoption in rural America.

Respectfully Submitted,

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Proposed Data-Only Broadband Service Support Rule Language [New Rule Language Underlined]

§ 54.5 Terms and Definitions

Data Only Broadband Service is defined as transmission service from an end user to a connection point with an ISP sold without voice service, but over a facility that has the ability to provide voice grade service with access to the PSTN or its equivalent.

§ 54.302 Monthly per-line limit on universal service support.

- (a) Beginning July 1, 2012 and until June 30, 2013, each study area's universal service monthly support, including data-only broadband support, (not including Connect America Fund support provided pursuant to § 54.304) on a per-line basis shall not exceed \$250 per-line plus two-thirds of the difference between its uncapped per-line monthly support and \$250. Beginning July 1, 2013 and until June 30, 2014, each study area's universal service monthly support on a per-line basis shall not exceed \$250 per-line plus one third of the difference between its uncapped per-line monthly support and \$250. Beginning July 1, 2014, each study area's universal service monthly per-line support shall not exceed \$250.
- (b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 36.605 and 36.631, of this chapter and §§ 54.301, 54.305, 54.322 and 54.901 through .904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 36.611(h) of this chapter plus data-only broadband lines.
- (c) The Administrator, in order to limit support to \$250 for affected carriers, shall reduce safety net additive support, high-cost loop support, safety valve support, interstate common line support, and data-only broadband support in proportion to the relative amounts of each support the study area would receive absent such limitation.

§ 54.322 High Cost Support for Data Only Broadband Service

For rural rate of return ILEC study areas, each Data-Only Broadband Service transmission line meeting the criteria outlined in §54.5 shall receive Data-Only Broadband Support based on the difference between the cost of providing the loop facilities as determined by the provisions of § 36.621 (a)(1) through (a)(4) of the Commission's rules, or its Category 2 equivalent cost, and the revenue from the Data-Only Broadband Service Charge pursuant to § 69.132(a). Preliminary support amounts will be based on projected costs and revenues and trued-up when actual data becomes available in pursuant to the schedule set forth in § 54.323.

§ 54.323 Obligations of rate-of-return carriers and the Administrator for Data Only Broadband Service

- (a) To be eligible for Data-Only Broadband Support, each rate-of-return carrier shall make the following filings with the Administrator
 - 1) Each rate-of-return carrier shall submit to the Administrator annually on March 31st projected data necessary to calculate the carrier's prospective Data Only Broadband Support, for each of its study areas in the upcoming funding year. The funding year shall be July 1 of the current year through June 30 of the next year. Each rate-of-return carrier will be permitted to submit a correction to the

projected data filed on March 31 until June 30 for the upcoming funding year. On June 30 each rate-of-return carrier will be permitted to submit to the Administrator an update to the projected data for the funding year ending on that date.

- 2) Each rate-of-return carrier shall submit to the Administrator on December 31st of each year the data necessary to calculate a carrier's Data-Only Broadband Support, including cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly Data-Only Broadband Support amounts in the final two quarters of the following calendar year to the extent of any differences between the carrier's Data-Only Broadband Support received based on projected data and the Data-Only Broadband Support for which the carrier is ultimately eligible based on its actual data during the relevant period.

§ 69.132 Data-Only Broadband Service charges for non-price cap incumbent local exchange carriers.

- (a) This section is applicable only to incumbent local exchange carriers that are not subject to price cap regulation as that term is defined in § 61.3(ee) of this chapter. A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to Data-Only Broadband Service. The maximum monthly charge for each Data-Only Broadband Service line shall be the lesser of one-twelfth of the projected annual revenue requirement for the Data-Only Broadband Service in §69.501(g)(ii) divided by the projected average number of Data-Only Broadband Service lines in use during such annual period or \$26.00.

§ 69.501 General

- (f) Until December 31, 2013, the Common Line element revenue requirement shall be apportioned between End User Common Line and Carrier Common Line pursuant to § 69.502. The Common Line element annual revenue requirement shall be described as the base factor portion for purposes of this subpart.
- (g) Beginning January 1, 2014, the Common Line element revenue requirement shall be apportioned to End User Common Line, Data-Only Broadband Service, and Carrier Common Line.
 - i. The Common Line element annual revenue requirement less Data-Only Broadband Service determined pursuant to §69.501(g)(ii) shall be described as the base factor portion for purposes of this subpart and apportioned between End User Common Line and Carrier Common Line pursuant to §69.502.
 - ii. The Data-Only Broadband Service revenue requirement shall consist of a shift from the Special Access Element, §69.114, to the Common Line Element equal to the loop cost of providing the service as determined pursuant to §54.322.

§ 54.901 Calculation of Interstate Common Line Support.

(a) Interstate Common Line Support available to a rate-of-return carrier shall equal the Common Line Revenue Requirement per Study Area less the Data-Only Broadband Service as calculated in accordance with §69.501 of this chapter minus:

- (1) the study area revenues obtained from end user common line charges at their allowable maximum as determined by §§ 69.104(n) and 69.104(o) of this chapter;
- (2) the carrier common line charge revenues to be phased out pursuant to § 69.105 of this chapter;
- (3) the special access surcharge pursuant to § 69.115 of this chapter;
- (4) the line port costs in excess of basic analog service pursuant to § 69.130 of this chapter; and
- (5) Any Long Term Support for which the carrier is eligible or, if the carrier ceased participation in the NECA common line pool after October 11, 2001, any Long Term Support for which the carrier would have been eligible if it had not ceased its participation in the pool.