

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

**REPLY COMMENTS
of the
RURAL ASSOCIATIONS**

**NTCA – THE RURAL BROADBAND ASSOCIATION;
WTA – ADVOCATES FOR RURAL BROADBAND;
EASTERN RURAL TELECOM ASSOCIATION;
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;**
AND
**COLORADO TELECOMMUNICATIONS ASSOCIATION;
ILLINOIS INDEPENDENT TELEPHONE ASSOCIATION;
IOWA COMMUNICATIONS ALLIANCE;
MINNESOTA TELECOM ALLIANCE;
NORTH DAKOTA ASSOCIATION OF TELEPHONE COOPERATIVES;
OKLAHOMA TELEPHONE ASSOCIATION;
STATE INDEPENDENT TELEPHONE ASSOCIATION OF KANSAS;
TENNESSEE TELECOMMUNICATIONS ASSOCIATION;
UTAH RURAL TELECOM ASSOCIATION;
WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION;**
and
WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION

September 8, 2014

Table of Contents

I.	INTRODUCTION AND SUMMARY	2
II.	THE RURAL ASSOCIATIONS’ CONNECT AMERICA FUND PROPOSAL REPRESENTS THE SIMPLEST AND BEST PATH FOR ACCOMPLISHING THE COMMISSION’S REFORM OBJECTIVES AND FULFILLING THE STATUTORY MANDATES FOR UNIVERSAL SERVICE IN A BROADBAND-ORIENTED WORLD.....	4
III.	COMMENTERS AGREE THAT INCREASES IN BROADBAND SPEED REQUIREMENTS MUST BE ACCOMPANIED BY SUFFICIENT AND PREDICTABLE FUNDING TO ASSURE BOTH INITIAL DEPLOYMENT AND SUSTAINABILITY.....	9
IV.	THE RECORD SUPPORTS A THOUGHTFUL, DATA-DRIVEN APPROACH TO ADDRESSING ANY POTENTIAL INTERPLAY OF COMPETITIVE ISSUES AND UNIVERSAL SERVICE.	13
V.	THE COMMISSION SHOULD CAREFULLY CONSIDER THE IMPACTS OF ITS PROPOSAL TO “FREEZE” THE NATIONAL AVERAGE COST PER LOOP (NACPL).....	21
VI.	ACCOUNTABILITY AND OVERSIGHT.....	22
	A. The Commission Should Proceed with Caution Before Requiring RLECs to Certify Their Broadband Rates are “Reasonably Comparable” to Urban Providers’ Rates.....	22
	B. The Commission Should Delete Rules Requiring Imposition of Penalties for Late Filing Penalties and Instead Resolve Compliance Problems via Targeted Enforcement Proceedings.	24
VII.	CONCLUSION.....	25

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I. INTRODUCTION AND SUMMARY

Comments submitted in response to the Commission's June 10, 2014 *Further Notice*¹ confirm that the simplest and most straightforward way the Commission can accomplish its goals in this proceeding is to move forward rapidly with adoption of a new Connect America Fund (CAF) support mechanism for rate-of-return local exchange companies (RLECs) consistent with the proposal of the Rural Associations.² A rather narrow objection to this proposal – which has been in the record since June 2013 – was raised by only a single commenter, and as shown herein, even that narrow objection is unfounded. In contrast, several parties raised concerns over the Commission's proposal to bifurcate support between old and new investment. The Rural Associations agree this approach would create substantial complications and complexity for the

¹ *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014) (*Further Notice*).

² As used in this filing the Rural Associations include NTCA – The Rural Broadband Association (NTCA), WTA – Advocates for Rural Broadband (WTA), Eastern Rural Telecom Association (ERTA) and the National Exchange Carrier Association, Inc. (NECA). NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. WTA is a national trade association that represents more than 250 rural telecommunications carriers providing voice, video and data services. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities. ERTA is a trade association representing rural community-based telecommunications service companies operating in states east of the Mississippi River. 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). The various state associations participating in these comments represent RLECs within their particular states.

Commission, for consumers, and for the industry, making it difficult to pursue such an approach any further.

Commenters also agree that it would be reasonable for the Commission to increase minimum broadband speeds to 10Mbps downstream, provided there are clear guidelines governing reasonable requests for such services and predictable and sufficient funding is available, as required under the Communications Act of 1934, as amended (the Act).³

Numerous commenters raised concerns regarding proposals to adjust support in areas served by unsubsidized competitors using alternative technologies. Commenters generally agree with the Rural Associations that potential support recipients must meet the Commission's standards for universal service on a sustainable basis. Commenters also generally opposed adoption of the "qualifying competitor" concept proposed in the *Further Notice*.

Comments varied with respect to the Commission's proposal to freeze the National Average Cost Per Loop (NACPL),⁴ with some, including the Rural Associations, expressing concern over the impact this approach would have on relatively higher-cost companies.⁵ The Commission's proposal to permit RLECs to elect model-based support also elicited concerns about the potential for adverse budgetary impacts on companies who do not choose this option.⁶

Finally, commenters generally support the Commission's proposal to amend section 54.313 of the rules, relating to reasonably comparable rate certifications for broadband, so long as the benchmark is calculated in a reasonable manner. While parties generally support the Commission's proposal to revise its rules relating to reductions in support for late filings, the

³ 47 U.S.C. § 254(b).

⁴ *Further Notice* ¶ 262.

⁵ Rural Associations at 64-65; ERTA at 3; TCA at 9; Western Associations at 6.

⁶ Rural Associations at 65-67. *See* Alaska Rural Coalition at 41-42; Small Company Coalition at 8; Alexicon at 6.

Rural Associations continue to believe the Commission should delete sections 54.313(j) and 54.314(d) in their entirety rather than modifying them, as concerns regarding late filings of reports and certifications are more appropriately handled via individualized Enforcement Bureau proceedings.

II. THE RURAL ASSOCIATIONS’ CONNECT AMERICA FUND PROPOSAL REPRESENTS THE SIMPLEST AND BEST PATH FOR ACCOMPLISHING THE COMMISSION’S REFORM OBJECTIVES AND FULFILLING THE STATUTORY MANDATES FOR UNIVERSAL SERVICE IN A BROADBAND-ORIENTED WORLD.

Comments on the *Further Notice* make clear the Commission should act expeditiously to adopt the Rural Association’s proposed CAF support mechanism. The Western Associations, for example, state that the Commission should give “strong consideration” to the CAF proposal developed by the Rural Associations.⁷ TCA similarly urged the Commission to adopt the Rural Association proposal “without delay,” explaining it fully meets the Commission’s objectives in this proceeding⁸ in that it (1) shifts funding away from legacy USF mechanisms to a separate mechanism as customers choose to adopt Data-Only Broadband (DOBB) connections,⁹ thus limiting the need for additional funding over time; (2) substantially relies upon existing FCC

⁷ Western Associations at 10.

⁸ TCA at 3, *citing Further Notice* ¶ 269.

⁹ For purposes of clarification, while the Rural Associations’ proposal has been characterized as supporting “Data-Only Broadband” services, this forward-looking CAF mechanism would in fact support *all* local loops over which broadband is provided by the RLEC, with the exception of those loops on which voice-grade regulated local exchange service (“POTS”) also happens to be provided by the RLEC. For example, the proposed CAF mechanism would support RLEC broadband network connections over which interconnected VoIP is provided by either the RLEC itself or any other entity. The new mechanism would also, of course, support loops over which *only* broadband is provided by the RLEC (*e.g.*, a circumstance in which the customer either uses mobile wireless services for voice or does not have any voice service at all). Put another way, going forward, the legacy mechanisms would apply *only* to connections where the consumers in question specifically continue to purchase regulated POTS service from an RLEC.

rules resulting in a readily understandable, efficient and equitable mechanism by which to distribute support; (3) increases the affordability of DOBB by allowing customers “to determine the services they wish to purchase, rather than maintaining perverse incentives to retain legacy services the[y] may no longer want;” and, (4) includes rule changes to ensure that no double recovery occurs between legacy mechanisms and the new CAF mechanism.¹⁰

USTelecom’s comments also explain in detail how the Rural Associations’ proposed CAF mechanism meets the Commission’s stated objectives in this proceeding, pointing out that modifications made to the Rural Associations’ proposal to ensure conformance with high-cost budget targets “should eliminate any concerns about projecting the size of the broadband-only fund and whether the three RLEC Plan funding mechanisms (HCLS, ICLS and the broadband-only fund) can all fit within the Commission’s budget framework.”¹¹ Overall, USTelecom states that the Rural Associations’ CAF proposal represents a “practical, simple, administrable and forward-looking solution” that the Commission can implement quickly to promote deployment of broadband in areas served by RLECs.¹²

In contrast, commenting parties express significant reservations about the proposal in the *Further Notice* to bifurcate support mechanisms between old and new investments. USTelecom, for example, points out this approach would complicate cost studies for small companies and potentially create opportunities for “gaming,”¹³ while the Rural Associations’ proposal “has a

¹⁰ *Id.* at 4. TCA further explains how “the plan would shift loops away from ICLS and HCLS calculations and contains a true-up process to ensure accurate distributions.” *Id.*

¹¹ USTelecom at 39. USTelecom notes that efforts are underway among the Rural Associations to develop a specific construction project limit for the RLEC Plan that would accomplish the goal of establishing an “automatic trigger” to satisfy concerns raised by the Commission in the *Further Notice* regarding the manner in which spending limits would be administered. *Id.* at 40.

¹² *Id.*

¹³ *Id.* at 42.

greater probability of moving more quickly from the legacy HCLS and ICLS mechanisms to a rate-of-return CAF.”¹⁴

USTelecom also expressed concern with the Commission’s proposal to use “forward-looking costing” in the USF context for rate-of-return companies.¹⁵ USTelecom noted that the Commission itself has rejected similar prior proposals for RLECs due to concerns about “deterred investment” and noted that “smaller rural incumbent LECs lacking scale cannot tolerate the same margin of error inherent in a model-based approach that can be acceptable to larger price cap LECs.”¹⁶

Indeed, there may be no better explanation of the current concerns regarding application of a model to small carrier support than that found in comments by CenturyLink¹⁷, which extensively discuss the critical variances between the cost estimates obtained from the Connect America Cost Model (CACM) and the actual costs of networks and customer locations that it serves.¹⁸ As CenturyLink notes, CACM-modeled costs are “reasonable estimates on average, but they cannot accurately estimate costs for any given location, node, or network route because of variances between modeled and real world conditions. Additionally there necessarily will be differences between the [CACM] modeling and actual network deployments because a

¹⁴ *Id.*

¹⁵ *Id.* See also Rural Associations at 16-17.

¹⁶ USTelecom at 42-43.

¹⁷ CenturyLink is the third largest telecommunications company in the United States and is included among the Fortune 500 list of America's largest corporations.” <http://www.centurylink.com/Pages/AboutUs/CompanyInformation/> (last visited on September 8, 2014). Detailed descriptions of its holdings and service territories in 45 states can be found at <http://news.centurylink.com/resources/facts> (last visited on September 8, 2014).

¹⁸ See CenturyLink at 14-20.

significant number of the high-cost locations in the model are based on statistical algorithms or have changed since the last Census.”¹⁹

Thus, the model might work for carriers like CenturyLink and others of comparable or slightly larger or smaller size so long as they can “smooth out the rough edges” By averaging support as needed among serving areas. But as CenturyLink’s comments make clear, those “rough edges,” which exist in even the most refined model, compel even a large carrier like CenturyLink is compelled to raise specific concerns about how to utilize model-based distributions on a more granular basis within its study areas. These issues are, of course, of far greater concern for smaller RLECs, who have no ability to average out such variances between regions or study areas. Put another way, three small companies in Nebraska or Texas cannot “trade off and swap” their model-based support to ensure that such support is in fact “right-sized” for each of their individual study areas in the way that a CenturyLink can across its individual serving areas. Smaller companies clearly require more detail and precision in any model-based support mechanism due to the fact “they ‘generally lack the economies of scale that would allow them to tolerate the same margin of error in a model that may be acceptable to a price cap LEC that serves much larger areas, including more metropolitan as well as rural areas.’”²⁰

Only a single commenter criticized the Rural Associations’ proposal, and its criticism focused upon a supposed failure to account for the presence of competitors.²¹ The Commission itself, however, has already adopted rules, and is considering adopting additional rules, that

¹⁹ *Id.* at 9.

²⁰ Rural Associations at 17.

²¹ NCTA at 4, *citing Further Notice* ¶ 274.

would eliminate or reduce support in areas served by unsubsidized competitive providers.²² As discussed in initial comments and further below, the Rural Associations have acknowledged that, in cases where an entire rural market is sufficiently economic to enable a competitor to invest and sustain operations and provide truly substitutable services throughout that market without any support or cross-subsidy, there may be no need for USF support in that area.²³ But delaying or deferring implementation of a workable CAF support mechanism pending resolution of the many problems associated with altering support flows in partially competitive areas will “run counter to universal service statutory mandates, defy consumer preference, and continue to harm consumers and businesses located in RLEC areas without producing any corresponding benefits to the overall Universal Service Fund”²⁴

Instead, the Commission should proceed as discussed in the Rural Associations’ initial comments and further below – that is, to first resolve study area boundary irregularities, implement the rule that it has already adopted with respect to “100% competitive overlap” pursuant to a thoughtful evidentiary process, examine the effects of that implementation on consumers and carrier of last resort requirements, and then assess whether and to what degree further application of such a rule might make sense – and what such a step might mean as costs are disaggregated and reallocated within various study areas.

²² *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 Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ¶¶ 280-284 (*USF/ICC Reform Order*); *Further Notice* ¶ 266.

²³ Rural Associations at 42.

²⁴ *Id.* at 27.

III. COMMENTERS AGREE THAT INCREASES IN BROADBAND SPEED REQUIREMENTS MUST BE ACCOMPANIED BY SUFFICIENT AND PREDICTABLE FUNDING TO ASSURE BOTH INITIAL DEPLOYMENT AND SUSTAINABILITY.

In their initial comments, the Rural Associations reiterated the continuing desire of their RLEC members to deploy the robust, high-capacity broadband networks needed to provide the rapidly evolving broadband services required by their rural customers to participate in the 21st Century economy and society. They cautiously supported the Commission’s proposal to take the next step toward the ultimate high-speed National Broadband Network by increasing the minimum broadband speed sought to be achieved with universal service support from 4 Megabits per second (Mbps) to 10 Mbps downstream,²⁵ provided that sufficient universal service funding is furnished and that reasonable deployment conditions and timelines are adopted and implemented.

The Rural Associations were in basic agreement with other industry participants that commented on this issue. For example, AT&T stated that the technologies and network design needed to deliver 10 Mbps downstream are substantially different from those associated with the prior 4 Mbps downstream standard, and that the proposed speed increase will add to carrier costs and deployment time. Consequently, AT&T urged the Commission to give price cap carriers an additional three years of support and time to complete their CAF Phase II build-outs if it adopts the 10 Mbps proposal.²⁶

Similarly, USTelecom declared that there is a significant difference in the design and associated costs of a 10 Mbps-capable network, and that the actual deployment thereof requires

²⁵ The Rural Associations understand that the Commission is proposing to retain its current 1 Mbps upstream standard at this time. They note that increasing upstream broadband speeds above 1 Mbps is a significantly more difficult and expensive undertaking, particularly in rural areas.

²⁶ AT&T at 44.

outside plant construction to push fiber further out in the network with attendant increased construction costs, right-of-way negotiations, historical preservation and environmental issues, contractor and vendor bottlenecks, weather delays and limited construction seasons.²⁷ Because the “proposed increase in downstream speed has an enormous impact upon the feasibility of investment in broadband facilities,” USTelecom proposes a ten-year term of support and build-out period for all CAF Phase II support recipients.²⁸

The Utah Public Service Commission supports the idea of increasing the required broadband speeds over time, but requests that the time allowed to complete such projects be extended due to the higher level of required investment.²⁹ Finally, other RLEC representatives, such as the Western Associations, support an increase of the minimum downstream speed standard from 4 Mbps to 10 Mbps so long as “the change is expressly recognized as one that will be supported by and implemented through the CAF for rural rate-of-return carriers or some other explicit funding source.”³⁰

In contrast, the Wireless Internet Service Providers Association (WISPA) states that its “concerns throughout the USF reform process have been focused on ensuring that telecommunications carriers do not receive CAF support in areas where [wireless internet service providers (WISPs)] already offer fixed broadband service.”³¹ WISPA’s major focus appears to be that an increase of 10 Mbps will leave fixed wireless services behind, and the frustrations of

²⁷ USTelecom at 4.

²⁸ *Id.* at 4-5.

²⁹ Utah Public Service Commission at 1.

³⁰ Western Associations at 5.

³¹ Wireless Internet Service Providers Association at 2-3.

being “required to spend additional private funds to upgrade [WISP] networks merely to preclude large price cap carriers from receiving federal funds to build faster networks.”³²

RLECs are also small businesses that fully understand the costs and difficulties of upgrading their networks. But the speed increase to 10 Mbps that might leave fixed wireless behind is not an artificial product of regulation; instead, as Chairman Wheeler’s recent speech highlighted, this speed increase is a genuine product of consumer demand.³³ And the need to provide rural customers with access to broadband facilities and services that are reasonably comparable in quality and price to those available in urban areas must not be ignored or breezed past in setting universal service policy.³⁴ 10 Mbps downstream services are increasingly prevalent in urban areas, and are not predominately focused upon gaming and other entertainment services, as WISPA implies. Since rural customers will increasingly need higher and higher broadband speeds in order to utilize the applications and services available to their urban counterparts, an increase in the speed benchmark appears reasonable.

The Rural Associations reiterate, however, that their support for the proposed 10 Mbps downstream speed standard is conditioned upon provision of the sufficient and predictable universal service funding necessary to sustain the significantly increased network design and construction costs necessary to meet the standard. They are aware of the current budget constraints, but are hopeful that a consensus can be reached in the near future that the completion of a high-speed National Broadband Network is the infrastructure challenge of the early Twenty-

³² *Id.* at 6.

³³ Tom Wheeler, Chairman, Fed. Comm. Comm’n, Address on “The Facts and Future of Broadband Competition” at the 1776 Headquarters (Sept. 4, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf (*Wheeler Speech on Broadband Competition*). Indeed, Chairman Wheeler noted that even 10 Mbps may soon be surpassed as the baseline levels of broadband for which we should aim as a society in competition and universal service policy.

³⁴ *See* 47 U.S.C. § 254(b)(3).

First Century, and that such a network will generate economic, educational, health care, political and social benefits that will far exceed its costs.

In addition, the Rural Associations condition their support upon the adoption and implementation of the conditions and timetables proposed by the Commission, including: (1) that the primary focus of the proposed 10 Mbps standard will be new deployments of broadband capable infrastructure and will not entail requirements to upgrade entire existing networks precipitously; (2) that the new 10 Mbps standard will be achieved over a number of years rather than immediately;³⁵ (3) that there will be no immediate consequence (and, particularly, no loss of universal service support) to the extent that an existing ETC proves unable to meet the current or increased speed standard throughout its service territory;³⁶ and (4) that RLECs will only be required to meet the proposed new 10 Mbps standard upon “reasonable request” as defined in the *Further Notice*.³⁷

Finally, the Rural Associations note that broadband speeds and latency are affected not only by local RLEC networks, but also by the middle mile facilities that transport traffic between RLEC networks and the Internet. In many cases, RLECs cannot obtain the middle mile capacities they need at reasonable prices; in others, they have no control over the quality and reliability of the third party middle mile facilities they must use. Consequently, some RLECs may be unable to meet certain Commission broadband speed or latency standards no matter how much they upgrade their own networks.

³⁵ *Further Notice* ¶ 142. This is consistent with Chairman Wheeler’s comment in his recent speech that universal service policy may not result in “the highest speeds all at once, but steadily to prevent the creation of a new digital divide.” *Wheeler Speech on Broadband Competition* at 6.

³⁶ *Id.* ¶ 143.

³⁷ *Id.* ¶ 144.

IV. THE RECORD SUPPORTS A THOUGHTFUL, DATA-DRIVEN APPROACH TO ADDRESSING ANY POTENTIAL INTERPLAY OF COMPETITIVE ISSUES AND UNIVERSAL SERVICE.

In considering any policy that would reduce USF/CAF support in areas served by purported competitors, the Rural Associations, in their comments, urged the Commission to ensure that the core mission of universal service can be achieved *and* sustained in high-cost rural areas. In particular, the Rural Associations observed that in the *2011 USF/ICC Reform Order*³⁸ and the ensuing *CAF Phase II Service Obligations Order*:³⁹ (1) the Commission and Bureau defined the minimum level of service quality standards and pricing requirements expected of CAF Phase II recipients to ensure “reasonable comparability” in a broadband world; and (2) made clear that would-be competitors are likewise expected to meet those standards for purposes of determining whether an area is subject to “unsubsidized competition” such that it should be deemed ineligible for USF/CAF support.⁴⁰ The Rural Associations noted that analyses of the extent to which competition exists at all and whether such competition can in fact provide a true substitute for USF supported-services requires a thoughtful and detailed review rather than reliance upon untested presumptions, static “snapshots in time” of service capabilities, and self-asserted blanket claims regarding service delivery.⁴¹

The Rural Associations therefore encouraged the Commission to establish a baseline set of service performance criteria to confirm whether USF/CAF recipients and would-be unsubsidized competitors are indeed delivering (and will continue to deliver) on the mission of universal service. They noted that the service performance obligations established in the *2011*

³⁸ See *USF/ICC Reform Order* ¶ 170.

³⁹ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd. 15060 (2013) ¶¶ 45-46 (*CAF Phase II Service Obligations Order*).

⁴⁰ Rural Associations at 34.

⁴¹ *Id.* at 35.

USF/ICC Reform Order and further clarified in the *CAF Phase II Service Obligations Order* by and large provide a sound baseline for that start, although the Commission needs to ensure that: (1) those standards remain “reasonably comparable” by evolving and updating them over time to keep pace with consumer demands and service improvements in urban areas;⁴² (2) those standards are enforced equally against all USF/CAF recipients and would-be competitors alike;⁴³ and (3) USF/CAF recipients and would-be competitors are both obligated to satisfy those standards not just at one selected time, but on an ongoing basis to ensure both accountability in the use of support funds and the long-term sustainability of universal service, whether achieved via explicit support or the operation of an ostensibly competitive market.⁴⁴

The Rural Associations then proposed a detailed framework by which to approach these issues. The Rural Associations recommended that the Commission should first complete the reconciliation of study area boundaries prior to any implementation of its “100 percent competitive overlap rules.”⁴⁵ Once study area boundary reconciliation is complete, the Rural Associations urged the Commission to adopt a data-driven process to identify and validate the presence of would-be competitors specifically for purposes of the “100% competitive overlap” rule that was just recently codified and has yet to be implemented.⁴⁶ The Rural Associations suggested that this identification and validation process could be based largely upon that used in the price cap carrier CAF programs, but tailored for the workings of the USF programs in RLEC-served areas.

⁴² *Id.* at 37-38.

⁴³ *Id.* at 38.

⁴⁴ *Id.*

⁴⁵ *Id.* at 41-44.

⁴⁶ *Id.* at 45-46.

In particular, this process should commence based not upon self-asserted, unproven assertions of a provider nor based on broadband coverage maps, but instead should require a would-be competitor (the party with optimal access to competitive presence information) to meet a substantial burden of proceeding by filing a detailed petition, providing specific evidence that it is not only present in a given area but that it also currently provides voice and broadband services to customers located in that study area that are actually consistent with all the baseline requirements for universal service defined by the Commission. Such a petition should show that each location in question is “served” by the would-be competitor, as defined in recent Commission orders;⁴⁷ that the would-be competitor does not subsidize its operations to those locations;⁴⁸ and that the services offered to each location in the study area meet all of the performance and pricing criteria (such as speed, latency, and usage limitations) defined by the Commission in the above-referenced Orders and as further developed in this rulemaking.⁴⁹ The Rural Associations also urged the Commission to ensure that any such would-be competitor is subject to ongoing compliance obligations aimed at protecting consumers and promoting universal service over the long-run.

The Rural Associations noted that such a process would be essential to ensure that, whether via explicit support or “the workings of the market,” universal service is preserved and advanced in high-cost rural areas consistent with the Commission’s statutory mandate. Moreover, the experience gleaned from developing and implementing such a process in the context of “100% competitive overlap” areas could be instructive in determining whether to

⁴⁷ *Id.* at 47.

⁴⁸ *Id.* at 50.

⁴⁹ *Id.*

adopt any changes to that rule in the future.⁵⁰ Finally, however, the Rural Associations observed that any modification to this rule to either preclude new investment in sub-areas that are purported to be competitively served and/or to change support in study areas with less than 100% competitive overlap must be reviewed carefully, as such changes would introduce legal and economic hurdles associated with redefinition and disaggregation of study areas that could have significant adverse impacts on consumers and universal service budgetary objectives.⁵¹

The record indicates widespread support for a thoughtful, data-driven approach to these issues, starting from baseline standards similar to those developed for assessing the existence of “unsubsidized competition” in price cap carrier areas, but then tailoring the process for application in RLEC study areas that are allegedly completely overlapped by such a competitor. For example, the Nebraska Rural Independent Companies (NRIC) urge the Commission to “codify the same [price cap] Carrier performance standards for service obligations of competitors serving in [RLEC] areas”⁵² and to ensure that those standards are then met for services to all locations within the applicable area through “consistent, fact-based determinations of actual competitive services.”⁵³ NRIC appropriately highlights the data-integrity and consistency problems that arise out of relying substantially on National Broadband Map and Form 477 data to capture accurately 100% overlaps – particularly as to standards like usage allowances, latency, and pricing.⁵⁴

⁵⁰ *Id.* at 55.

⁵¹ *Id.* at 57.

⁵² NRIC at 54.

⁵³ *Id.* at 43.

⁵⁴ *Id.* at 44-45.

Similarly, GVNW urges the Commission to adopt “at least a baseline set of service performance metrics in order to gauge provider performance regarding the performance of universal service obligations.”⁵⁵ GVNW likewise cautions against a process that allows would-be competitors to “just show up and with generalized assertions” establish themselves as satisfying national universal service objectives defined by the Commission.⁵⁶ Instead, GVNW recommends that any process adopted by the Commission “must address substantial public interest questions regarding performance, public safety and accountability.”⁵⁷

USTelecom raises similar concerns, urging “independent verification that the purported unsubsidized competitor is providing a level of service to all locations in the study area that meets the performance standards adopted for use in CAF Phase II,” but noting too that, unlike CAF Phase II, the purported unsubsidized competitor should “provide broadband service that meets any new broadband speed requirements adopted by the Commission pursuant to this *Further Notice*.”⁵⁸ USTelecom also notes that the burden in undertaking such an examination is correctly placed on the would-be competitor – the party in the best position to capture and

⁵⁵ GVNW at 10.

⁵⁶ *Id.* at 9.

⁵⁷ *Id.*

⁵⁸ USTelecom at 53-54. The Rural Associations strongly support the specific recommendation by USTelecom that “[p]rior to making the determination of 100 percent overlap, the Commission should verify through independent testing that the technologies used by the unsubsidized broadband provider fully meet the established performance requirements in *all* the locations in the study area.” *Id.* at 54 (emphasis in original). There is no good reason whatsoever for the Commission to adopt short-cuts in assessing whether “the market” is achieving universal service in the absence of explicit support; elimination of support in a high-cost area on the basis of a process that relies upon shoddy evidence, predictive judgments, one-time snapshots, and speculative conjecture would raise serious legal questions as to whether the Commission has carried out its statutory universal service mandate.

present “the most accurate and current information as to the scope and capabilities of its network and service offerings” for consideration by the Commission and any interested parties.⁵⁹

The comments also indicate that the Commission would be well-advised to complete work on study area boundary reconciliation prior to undertaking any work with respect to implementation of any “unsubsidized competition” rule. NRIC, for example, notes that “an important first step is to correct and validate the geographic areas served by each [RLEC].”⁶⁰ USTelecom echoes this notion, rightly observing that “[t]here is no way to determine whether all locations in a study area are served by an unsubsidized broadband provider until it can be determined which locations are within the study area, and this cannot be determined until the boundaries are confirmed.”⁶¹

Even after study area boundaries are reconciled, however, the record supports completing implementation and review of the aforementioned standards and processes in the context of the “100% competitive overlap” rule prior to considering any changes to or extensions of this rule. NRIC and the Western Associations observe, for example, that modifying the rule to apply not only in cases of “unsubsidized competition” but also with respect to “qualifying” competition or cutting off from support any new investments in areas served by such a competitor could create significant administrative difficulties and concerns about the long-term viability of universal service.⁶² USTelecom similarly notes the Commission should first ensure that it can in fact

⁵⁹ *Id.* at 55.

⁶⁰ NRIC at 30.

⁶¹ USTelecom at 53.

⁶² NRIC at 43; Western Associations at 6-7.

accurately identify the presence of effective competition at all locations in cases of 100% overlap prior to seeking to extend or modify that rule.⁶³

USTelecom also highlights that any attempt to migrate this rule to sub-study area levels introduces substantial questions with respect to disaggregation,⁶⁴ and both USTelecom and the Concerned Rural ILECs point out that disaggregation of study areas and costs of service associated with implementing any changes to a “100% competitive overlap” are likely to increase pressure on universal service “budgets.”⁶⁵

Finally, the Commission should proceed with substantial caution in considering wireless or satellite services as a substitute for fixed broadband services in connection with any “unsubsidized competition” policies. As an initial matter, the Chairman has observed quite succinctly (and correctly) that “it seems clear that mobile broadband is not a full substitute for fixed broadband.”⁶⁶ Moreover, echoing comments raised above with respect to the need for a data-driven process that can be shown to accurately identify and independently verify the presence of such a competitor, it is telling that the record contains significant uncertainty as to the coverage of wireless services. For example, the Competitive Carriers Association (CCA) – a group that should be as familiar as anyone with wireless coverage capabilities given its membership – argues that the Commission’s *Further Notice* “significantly overstates the existing level of mobile broadband penetration.”⁶⁷ Specifically, CCA questions both the dataset used by

⁶³ USTelecom at 56.

⁶⁴ *Id.*

⁶⁵ USTelecom at 56-57; Concerned Rural ILECs at 12-14.

⁶⁶ *Wheeler Speech on Broadband Competition* at 5. See also Letter from Scott Bergmann, CTIA, to Marlene H. Dortch, FCC, GN Docket No. 14-28, *et al.* (filed Sept. 4, 2014) CTIA’s filing detailed a number of the technical shortcomings of spectrum-based broadband.

⁶⁷ CCA at 6.

the Commission to reach its conclusions regarding mobile wireless coverage and the methodology by which the Commission did so, arguing that most such services are incapable of meeting the performance requirements adopted in this proceeding⁶⁸ – *the very same performance requirements that would be used to identify an unsubsidized competitor*. When a leading mobile wireless association questions both the integrity of the data with respect to mobile broadband coverage and the methodology used to assess that coverage, and when the conclusion it reaches is that those errors lead to an overstatement of penetration, it should be clear that a more data-driven, accurate process is needed to assess actual service characteristics and coverage.

The same is true of fixed wireless broadband services. To be clear, many RLECs use fixed wireless in their operations to offer broadband in portions of their serving areas.⁶⁹ But while fixed wireless services, like mobile broadband, can have real value in specific applications and circumstances, RLECs are also aware of the limitations of such services as a result of their use of them. It is telling that WISPA argues so strongly *against* any accountability in being considered as an unsubsidized competitor, perhaps tacitly acknowledging the limitations of the services such providers offer. Indeed, WISPA's comments are replete with arguments about relaxation of ETC obligations and against any certification of continued performance by would-be competitors.⁷⁰ As the Rural Associations explained in their initial comments, sustainability and accountability must be hallmarks of USF/CAF reform – and those principles should be expected from and demanded of ETCs and would-be competitors alike.

⁶⁸ *Id.* at 6-7.

⁶⁹ See NTCA 2013 Wireless Survey Report (Jan. 2014), <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2013ntcawirelessurvey.pdf>

⁷⁰ WISPA at 8-9.

V. THE COMMISSION SHOULD CAREFULLY CONSIDER THE IMPACTS OF ITS PROPOSAL TO “FREEZE” THE NATIONAL AVERAGE COST PER LOOP (NACPL).

In comments, the Rural Associations noted that the Commission’s proposal to freeze the National Average Cost Per Loop (NACPL) and adjust support percentages proportionately among RLECs may be a reasonable step for the limited purpose of implementing the existing overall cap on HCLS.⁷¹ It would ameliorate the “cliff” effect that occurs where small upward shifts in the NACPL can cause some companies to experience dramatic percentage shifts in support levels as a particular threshold is crossed, particularly in cases where a shift in the NACPL causes a company to fall below the 115% threshold level for eligibility. Moving to the proposed percentage-based adjustment mechanism could minimize this effect by instead requiring that all companies experience the same reductions in terms of support percentages. It would, however, have the disparate effect of causing greater dollar reductions to relatively higher-cost companies than under the current mechanism.⁷² Accordingly, the Rural Associations urged the Commission to carefully evaluate potential impacts the “freeze” would have on higher-cost companies and whether it would affect their ability to “continue providing universal service” and thus conform “with the statutory requirement that universal service support be ‘sufficient’”.⁷³

Comments filed by other parties⁷⁴ reflect similar concerns and make clear that a decision to freeze the NACPL may have significant impacts on companies. This, in turn, suggests that further study and possible modifications would be required prior to implementing the freeze as

⁷¹ Rural Associations at 64.

⁷² *Id.*

⁷³ *Id.* at 65. *See* 47 U.S.C. § 254(e).

⁷⁴ *See* ERTA at 3; TCA at 9; Western Associations at 6.

proposed. The Rural Associations look forward to discussing such matters further with the Commission.

VI. ACCOUNTABILITY AND OVERSIGHT.

A. The Commission Should Proceed with Caution Before Requiring RLECs to Certify Their Broadband Rates are “Reasonably Comparable” to Urban Providers’ Rates.

The Commission’s June 10, 2014 *Further Notice* proposed to require all ETCs receiving CAF support to certify they offer broadband services meeting the Commission’s performance standards at rates that are reasonably comparable to offerings of comparable services in urban areas as a condition of receiving CAF support.⁷⁵ The Wireline Competition Bureau is developing potential methods for determining the broadband benchmark rate, which will also be used when determining whether an unsubsidized competitor is providing broadband service that meets the Commission’s service performance and rate requirements within a price cap census block or throughout an RLEC study area.⁷⁶

As discussed in comments submitted in response to the *Further Notice*,⁷⁷ the Rural Associations do not necessarily object to requirements that ETCs certify they offer a broadband plan in compliance with the applicable reasonable comparability benchmark.⁷⁸ However,

⁷⁵ *Further Notice* ¶¶ 311-316. (note language in *Further Notice* pertaining to RLEC receipt of other high-cost support)

⁷⁶ See *CAF Phase II Service Obligations Order*, 28 FCC Rcd. 15060 (2013).

⁷⁷ See Rural Associations at 71-80.

⁷⁸ The Rural Associations recently filed comments in response to a *Public Notice* issued by the Wireline Competition Bureau discussing specific methods for calculating a reasonable comparability benchmark for fixed broadband services. Comments of NTCA, WTA, ERTA, and NECA, WC Docket No. 10-90 (filed Aug. 20, 2014). In that context the Rural Associations agreed that the linear weighted regression analysis plus two standard deviations method proposed by the Bureau would be preferable to less precise methods, but expressed concern that the subset of data the Bureau proposes to use is too narrow if only one benchmark at speeds of 4Mbps/1Mbps is to be adopted. The Rural Associations also suggested the Bureau consider

significant concerns remain regarding a potential “revenue squeeze” between broadband rate ceilings and high-cost support limitations as the scheduled reductions of intercarrier compensation and CAF-ICC support are rapidly making broadband rates and high-cost USF support the predominant revenue streams for RLECs. Limited high-cost support will force many RLECs to exceed the Commission-prescribed broadband rate ceilings in order to repay their loans and cover operating expenses and thus remain viable. This concern is yet another strong reason for the Commission to promptly adopt a CAF broadband support mechanism for RLECs, such as the Rural Associations’ proposal. Customers are increasingly requesting standalone broadband services with the expectation that rates for such services will be comparable to those available in urban areas. Without such a mechanism to provide sufficient and predictable support in accordance with section 254 of the Communications Act, it will be impossible for RLECs operating in high-cost areas to provide broadband services at “reasonably comparable” rates.⁷⁹

The Concerned Rural ILECs also appear to generally support the concept of benchmark rates, for both voice and broadband services, provided the rates are reasonably comparable to urban areas and they are adopted in conjunction with a CAF mechanism for RLECs.⁸⁰ This further stresses the need for a CAF mechanism as proposed by the Rural Associations. Such a proposal, in conjunction with accurate reasonably comparable benchmark rates, should obviate the need for significant rate increases for rural consumers.

adopting two separate benchmarks given the fact that the Commission in this proceeding proposes to raise the broadband speed requirement to 10/1 Mbps. *Id.*

⁷⁹ See 47 U.S.C. § 254(b). See also Rural Associations at 13.

⁸⁰ Concerned Rural ILECS at 18. It should also be noted that the Alaska Rural Coalition submitted comments opposing a nationwide broadband benchmark rule that does not take the cost of providing service into account. They further urged that any benchmarks be set on a regional basis. ARC at 51-52.

B. The Commission Should Delete Rules Requiring Imposition of Penalties for Late Filing Penalties and Instead Resolve Compliance Problems via Targeted Enforcement Proceedings.

The Rural Associations agree with other industry participants who suggest the Commission's proposal to modify penalties stated under sections 54.313(j) and 54.314(d) of its rules for late filing of annual FCC Form 481 reports, and penalties for late filing of annual certifications under section 54.314 of the rules constitutes a step in the right direction.⁸¹ However, the Rural Associations urge the Commission to delete the section 54.313(j) and 54.314(d) late filing penalties entirely, and to deal with late filings instead via the established forfeiture and consent decree procedures of the Enforcement Bureau. Specifically, late filings can be disciplined by the three thousand dollars (\$3,000) forfeiture guideline established in section 1.80(b)(8) of the rules for "failure to file required forms or information," which can be adjusted upward or downward for various aggravating or mitigating factors and which is implemented by negotiated consent decrees rather than waiver orders.

The considerations here boil down to incentives for timely filings, deterrence of late filings, and punishment for non-compliance. The Rural Associations can confidently declare that none of their RLEC members have ever knowingly and/or deliberately refused to make a USF-related report or certification by its filing deadline. RLECs understand that they must provide the Commission and other regulators and agents with the information necessary to calculate their support and monitor its use, and realize that delays in providing this information are likely to delay their receipt of support. In other words, the importance of USF support to RLEC and other ETC revenue streams, and the substantial hardships caused by delays in the receipt of such support, by themselves constitute a substantial and effective incentive for timely filings.

⁸¹ Missouri PSC Commissioner Scott T. Rupp at 5; Alaska Rural Coalition at 53-54; GVNW Consulting at 19.

Secondly, the actual dollar amount of a forfeiture or penalty for late USF filings – whether large or small -- will have virtually no impact upon its deterrent value. This is because no RLEC or RLEC employee has ever knowingly or deliberately missed a USF filing deadline, and because any and all future late filings will be inadvertent miscalculations, oversights or other unintentional lapses rather than the types of conscious acts that are affected by the sizes of potential penalties.

Finally, by depriving ETCs of dollars that are needed for infrastructure upgrades and service improvements, the Section 54.313(j) and 54.314(d) late filing penalties punish innocent rural customers far more than the managers and employees responsible for the mistake or oversight.

VII. CONCLUSION

The Rural Associations' reform proposal presents the simplest and most efficient way for the Commission to fulfill its statutory mandates in a broadband-oriented world and accomplish its goals for establishing an RLEC CAF mechanism in this proceeding. Commenters also generally support the Commission's proposal to increase minimum broadband speed requirements, provided clear guidelines and sufficient funding are in place to support and sustain the network upgrades needed to achieve such speeds in rural areas. The comments also express significant concerns with proposals to adjust support in areas served by unsubsidized competitors using alternative technologies, and generally agree with the Rural Associations that the Commission's "qualifying competitor" concept should not be adopted nor should other changes be made to any unsubsidized competition policies until those policies are properly implemented and tested pursuant to a thoughtful, data-driven process.

While the Commission’s proposal to “freeze” the NACPL may be reasonable, there are other reasonable alternatives, and the Rural Associations and other commenters expressed concern with the potential for unintended impacts to universal service support. Thus, the Rural Associations maintain that the Commission must carefully consider the effect of any such freeze, including whether sufficient funds would be available for higher-cost companies to continue providing universal service.

In light of ongoing reductions in USF support and ICC amounts and increasing costs associated with higher broadband speed requirements, the Commission should apply caution in implementing requirements for RLECs to certify broadband rates are reasonably comparable to urban rates. Finally, the Commission should consider dealing with problems associated with late filings via Enforcement Bureau procedures rather than hard-and-fast rules imposing penalties.

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