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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION, THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE,
AND THE ABC COALITION**

I. INTRODUCTION AND SUMMARY

Expanding broadband to unserved areas in the United States is a national imperative. The Obama Administration repeatedly has emphasized the importance of ensuring broadband availability in rural and high-cost areas.¹ Likewise, in recognition of the significant socio-economic benefits of broadband, the Commission has made increased broadband deployment a critical component of its communications agenda.² Indeed, all five members of the Commission

¹ President Barack Obama, 2012 State of the Union (Jan. 24, 2012) (“So much of America needs to be rebuilt. We’ve got ... [a]n incomplete high-speed broadband network that prevents a small business owner in rural America from selling her products all over the world.”) (http://www.cspan.org/uploadedFiles/Content/The_Administration/State_of_the_Union/SOTU-2012.pdf); *see also* Exec. Order No. 13,616, 77 Fed. Reg. 36,903 (June 20, 2012) (“Broadband access is essential to the Nation's global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability. While broadband infrastructure has been deployed in a vast majority of communities across the country, today too many areas still lack adequate access to this crucial resource.”); *see also* The 2012 Democratic National Platform: Moving America Forward at 9, 15 (enunciating the Democratic party’s intention to “strengthen[] rural ... broadband infrastructure to make rural businesses more competitive” and to “ensure that America has a 21st century digital infrastructure,” including “robust wired and wireless broadband capability”).

² Federal Communications Commission, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, 135 (2010) (“Everyone in the United States today should have access to broadband services supporting a basic set of applications that include sending and receiving email, downloading Web pages, photos, and videos, and using simple video conferencing”)

have acknowledged the importance of broadband connectivity to improving the quality of American life and revitalizing the United States economy.³

Phase I Incremental Support of the Connect America Fund (“CAF”) is a critical mechanism in the Commission’s overall plan for meeting these objectives. Designed to “spur immediate broadband buildout” and “accelerate broadband deployment in unserved areas across America,” CAF I Incremental Support was envisioned by the Commission as a means to get funding to those carriers best positioned to deploy broadband infrastructure expeditiously.⁴

(footnote cont’d.)

(available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>) (“National Broadband Plan”).

³ See, e.g., Remarks of Chairman Julius Genachowski, M-Health Summit, Washington, D.C. (Dec. 6, 2011) (“[E]nsur[ing] that all people in all corners of America—from small towns to highways to big cities—have ubiquitous broadband” is a “core part” of the Commission’s mission.”); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”), Statement of Commissioner Mignon Clyburn (declaring it “unacceptable” that so many Americans lack access to broadband and praising the Commission’s plan to “provide[] for speedy broadband deployment to many of these consumers, with an injection in capital for both fixed and mobile technologies”); Remarks of Commissioner Robert McDowell, First Annual Mid-Atlantic Telehealth Resource Center Summit, Charlottesville, VA (Mar. 15, 2012) (“spurring broadband to remote areas” will improve and expand rural health care and facilitate new economic growth, job development, and educational opportunities); Statement of Commissioner Jessica Rosenworcel, FCC, Before the Subcommittee on Communications and Technology, “Oversight of the Federal Communications Commissioner,” 2 (July 10, 2012) (“No matter who you are or where you live, prosperity in the twenty-first century will require access to broadband.”); Remarks of Commissioner Ajit Pai, Rural Broadband Roundtable, Oswego, Kansas (Sept. 6, 2012) ([I]f “we want to revitalize rural America, encouraging rural broadband deployment needs to be a top priority”).

⁴ *USF/ICC Transformation Order*, ¶¶ 22, 132 & 137. CAF I Incremental Support fits together with the rest of the Connect America Fund to create a transition path for the entire industry. CAF I Incremental Support addresses the unique circumstances of incumbent local exchange carriers subject to federal price cap regulation, just as the CAF Mobility Fund addresses the unique circumstances of wireless carriers. Thus, CAF I Incremental Support is entirely consistent with principles of competitive neutrality, notwithstanding claims to the contrary. See, e.g., Comments of the National Cable & Telecommunications Association, WC Docket 10-90, at 5 (filed Feb. 9, 2012).

The United States Telecom Association (“USTelecom”), The Independent Telephone & Telecommunications Alliance (“ITTA”), and the ABC Coalition⁵ (collectively, “the Coalition”) strongly endorse the Commission’s efforts to modify CAF Phase I to expand opportunities for carriers to take advantage of the program.⁶ With \$185 million in CAF I Incremental Support remaining from 2012 and \$300 million potentially available for incremental support in 2013,⁷ additional work remains in order for the program to achieve its intended purposes.

The Commission’s proposed modifications are essential to achieving those purposes and to bringing the clear-cut benefits of increased broadband deployment to rural America. This is particularly true in light of the Commission’s recent conclusion that “broadband is not yet being deployed to all Americans in a reasonable and timely fashion.”⁸ Because price cap carriers are in a “unique position to deploy broadband networks rapidly and efficiently” in their service areas,

⁵ The ABC Coalition consists of AT&T, CenturyLink, FairPoint Communications, Frontier Communications, Verizon, and Windstream Communications. *See, e.g.*, Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90, et al. (filed July 29, 2011).

⁶ *See FNPRM* ¶ 9 (proposing changes to CAF Phase I “that build on the success of the first round of funding and use the remaining \$185 million of incremental support and any future Phase I funding with maximum impact”). The Coalition is not alone in supporting changes to the CAF Phase I program to facilitate timely broadband deployment. *See, e.g.*, Letter from Sen. Charles E. Schumer (D-N.Y.) to Chairman Julius Genachowski, Federal Communications Commission, WC Docket No. 10-90 (Jan. 17, 2013) (noting that “[e]specially in non-urban areas, Americans are suffering from inadequate access to reliable broadband service in their homes and businesses” and urging the Commission to refine the CAF Phase I program “so that the money can be quickly released for investment in broadband for rural communities”).

⁷ *See Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138, ¶¶ 2-3 (rel. Nov. 19, 2012) (“*FNRPM*”).

⁸ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, GN Docket No. 09-137, FCC 12-90, ¶ 1 (2012) (“*Eighth Broadband Report*”).

the Commission concluded that CAF I Incremental Support would enable broadband deployment “beyond what carriers would otherwise undertake,” absent such funding.⁹ This conclusion remains equally valid today. Thus, without increased use of CAF I Incremental Support, it will be difficult, if not impossible, for the Commission to close the rural-urban broadband divide in the near term.

Modifying CAF Phase I to make it a more effective program is a considerably superior alternative to adding the remaining Phase I Incremental Support to CAF Phase II.¹⁰ Despite diligent efforts by the Commission, a number of steps remain to complete the implementation of CAF Phase II. The cost model for allocating CAF Phase II support is still under development; once finalized, it must be thoroughly tested and reviewed before carriers can elect to receive support utilizing that model.¹¹ In addition, an auction process must be developed and implemented. Simply put, adding remaining Incremental Support under CAF Phase I to CAF Phase II would not advance the Commission’s “interest in disbursing the available funds to bring

⁹ *USF/ICC Transformation Order* ¶ 177; *see also id.* ¶ 137; *id.* ¶ 145 (with CAF I Incremental Support, “we distribute funding to those carriers that provide service in the highest-cost areas because these are the areas where we can be most confident, based on available information, that USF support will be necessary in order to realize timely deployment. Thus, we can be confident we are allocating support to carriers that will need it to deploy broadband in some portion of their service territory. At the same time, to promote the most rapid expansion of broadband to as many households as possible, we wish to encourage carriers to use the support in lower cost areas where there is no private sector business case for deployment of broadband, to the extent carriers also serve such areas.”).

¹⁰ *See FNPRM* ¶¶ 41-42.

¹¹ *See, e.g.,* Public Notice, *Wireline Competition Bureau Announces Availability of Version Two of the Connect America Fund Phase II Cost Model*, WC Docket No. 10-90 (rel. Jan. 13, 2013); Public Notice, *Comment Cycle Established for Bureau’s Public Notice Regarding Connect America Phase II*, WC Docket No. 10-90 (rel. Jan. 22, 2013).

robust broadband-capable networks to consumers and businesses as soon as possible.”¹² This proposal also would frustrate the Commission’s duty under Section 706 of the Communications Act “to take immediate action to accelerate deployment” of broadband.¹³

Notwithstanding claims to the contrary, the fact that more than half of CAF I Incremental Support funding from 2012 went unclaimed does not demonstrate a lack of need for such support.¹⁴ Nor, as shown by the waiver requests filed by CAF I Incremental Support recipients,

¹² *FNPRM* ¶ 7. While intending that CAF Phase II would begin on January 1, 2013, the Commission recognized that this date was an aggressive target and provided that “if CAF Phase II has not been implemented to go into effect by that date, CAF Phase I will continue to provide support....” *USF/ICC Transformation Order* ¶ 148.

¹³ *See Eighth Broadband Report* ¶ 8. Adding the remaining Phase I Incremental Support to CAF Phase II would delay the economic benefits stemming from increased broadband deployment, which the United States can ill afford at present. Numerous studies have shown that broadband deployment contributes directly to jobs and economic growth. *See, e.g.*, National Broadband Plan at 257 (describing broadband deployment projects in rural Virginia towns that led to thousands of new jobs and tens of millions in private investments); Shane Greenstein and Ryan McDevitt, *The Broadband Bonus: Accounting for Broadband Internet’s Impact on US GDP*, NBER Working Paper No. 14758 (Feb. 2009), <http://www.nber.org/papers/w14758.pdf>; Raul Katz, *The Impact of Broadband on the Economy: Research to Date and Policy Issues*, TRENDS IN TELECOMMUNICATIONS REFORM 2010-2011: ENABLING TOMORROW’S DIGITAL WORLD (2011); Robert Crandall, William Lehr, and Robert Litan, *The Effect of Broadband Deployment on Output and Employment: A Cross-section Analysis of US. Data*, The Brookings Institute: Issues in Economic Policy (July 2007), http://www.brookings.edu/~media/research/files/papers/2007/6/labor%20crandall/06labor_crandall.pdf; Sharon Gillett et al., *Measuring the Economic Impact of Broadband Deployment*, Prepared for the U.S. Department of Commerce, Economic Development Administration (Feb. 2006), http://cfp.mit.edu/publications/CFP_Papers/Measuring_bb_econ_impact-final.pdf.

¹⁴ *See, e.g.*, Comments of United States Cellular Corporation, WC Docket Nos. 10-90, 6 (Aug. 24, 2012) (recommending that funding be reallocated to the Mobility Fund I auction); Letter from Elizabeth Bowles, President, and Richard D. Harnish, Executive Director, Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Aug. 13, 2012) (asserting that unaccepted funds should be allocated to the Remote Areas Fund); Letter from Steven K. Berry, CEO, and Rebecca Murphy Thompson, General Counsel, RCA – The Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Aug. 3, 2012) (arguing that declined CAF Phase I support should be made available to wireless ETCs).

does it demonstrate a lack of interest in the support.¹⁵ Despite serving more than 83 percent of the people who lack broadband, price cap carriers historically have received significantly less high-cost support as compared to rate-of-return carriers.¹⁶ And without adequate support, price cap carriers will be unable to provide broadband to hundreds of thousands of rural and other high cost customer locations.¹⁷ By targeting funding to such locations, CAF I Incremental Support is instrumental to enabling the rapid broadband deployment envisioned by the Commission.¹⁸

Although well intended, the original design of CAF I Incremental Support coupled with the lack of clarity on the obligations that attach to the support made it difficult for many price cap carriers to accept some or all of their allocated support in 2012. For example, for price cap carriers that serve extremely rural areas and have made significant investments in broadband

¹⁵ See Windstream Election and Petition for Waiver, WC Docket No. 10-90 (July 24, 2012) (“Windstream Waiver Petition”); CenturyLink Petition for Waiver, WC Docket No. 10-90 (filed June 26, 2012) (“CenturyLink Waiver Petition”); FairPoint Communications, Inc. Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission’s Rules and Conditional Election of Incremental CAF Support, WC Docket 10-90 (filed Sept. 10, 2012) (“FairPoint Waiver Petition”); Petition for Waiver of Section 54.312(b)(2) and (b)(3) of the Commission’s Rules of ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc., WC Docket No. 10-90 (filed Sept. 26, 2012) (“ACS Waiver Petition”).

¹⁶ *USF/ICC Transformation Order* ¶ 130 (noting that price cap companies “serve more than 83 percent of the people that lack broadband, many of whom live in areas that are just as low-density and remote as areas served by rural companies”); ¶ 158 (stating that more than 83 percent of unserved locations are in price cap areas, yet such areas receive just 25 percent of high-cost support).

¹⁷ Windstream, for example, has highlighted that more than 200,000 customer locations in its service areas lack broadband. See Reply Comments of Windstream Corporation in Support of its Petition for Waiver, WC Docket No. 10-90, 3 (Sept. 10, 2012) (“Windstream Reply Comments”).

¹⁸ Modeling done for the National Broadband Plan bears out that price cap carriers can more efficiently deploy broadband in unserved areas than wireless carriers. As the Commission explained, the total cost of building out a fixed wireless network to all unserved homes in the country is more expensive than the cost of upgrading existing facilities to offer broadband over 12,000-foot-loop DSL. See *USF/ICC Transformation Order* ¶ 191, n.313 (citing Omnibus Broadband Initiative, “The Broadband Availability Gap: OBI Technical Paper No. 1,” at 62, Ex. 4-C (April 2010)).

infrastructure, it is simply infeasible to deploy broadband to a remaining unserved location with \$775 in support.¹⁹ That \$185 million in support went unclaimed in 2012 only underscores the need to modify CAF I Incremental Support so that the program achieves its purposes.

Given the appropriate program structure, price cap carriers will be able to use CAF I Incremental Support to deploy broadband to unserved areas. In order to facilitate such deployment, the Commission should refine the CAF I Incremental Support rules in the following respects.

First, as proposed in the *FNPRM*, the Commission should expand the definition of unserved areas for purposes of CAF Phase I funding to include any census block that lacks access to broadband service with speeds of 4 Mbps downstream and 1 Mbps upstream (“4/1 service”).²⁰ This approach would more closely align the program with the Commission’s broadband definition for universal service purposes and would rectify the problems stemming from the Commission’s initial decision to limit support to areas lacking access to 768 kbps downstream and 200 kbps upstream service (“768/200 service”).

However, the Commission should not use the presence in an area of 3 Mbps downstream and 768 kbps upstream service (“3/768 service”) as evidence that such areas have 4/1 service and thus should be excluded from receiving CAF I Incremental Support. As detailed below, the availability of 3/768 service is far from dispositive of the question whether 4/1 service is

¹⁹ See, e.g., Windstream Reply Comments at 4 (“Windstream is particularly constrained by the CAF Phase I requirement that carriers deploy broadband to one unserved location per \$775 in support—an amount that is nowhere near sufficient to make deployment economic in a truly high-cost area.”). ACS accepted its allotted \$4 million but has since explained that it would not be able to use all of its funding under the current rules. See Letter from Richard R. Cameron, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 (Aug. 28, 2012); ACS Waiver Petition.

²⁰ See *FNPRM* ¶ 9.

available. Indeed, there are a great many locations where 3/768 service is available, but 4/1 service is not. Therefore, the Commission should use the National Broadband Map's next speed tiers—6 Mbps downstream and 1.5 Mbps upstream (“6/1.5”)—as the proxy for the availability of 4/1 service.

Second, because of shortcomings with the National Broadband Map and the data from which it was created, the Commission should adopt a reasonable process for challenging the status of areas where price cap carriers intend to use CAF I Incremental Support. This challenge process should begin once price cap carriers have identified the particular areas where they are requesting such support. Otherwise, the determination of eligibility will be needlessly and unduly burdensome for support recipients, the providers claiming to serve areas being challenged, and the Commission staff attempting to resolve such disputes. In addition, that challenge process should place the burden on the provider claiming to provide service in a disputed area to offer affirmative proof of that service. Absent the sensible challenge process outlined in these comments, customers in unserved areas will be denied the opportunity to benefit from CAF I Incremental Support based on erroneous information underlying the National Broadband Map, which would be a disservice to rural Americans.

Third, the Commission should distribute CAF I Incremental Support funding by giving price cap carriers the option to satisfy their buildout obligations with second-mile fiber deployments.²¹ Under this approach, the Coalition proposes that carriers be eligible to receive \$38,910 in support per mile of dedicated fiber build and \$318 in electronics support per enabled location. As explained below, these support amounts are reasonable and verifiable, as they were derived utilizing data directly from the CostQuest Broadband Analytical Tool (“CQBAT”)

²¹ See *id.* ¶¶ 18-28.

model, which is “similar” to the Connect America Cost Model currently being developed by the Commission for use in CAF Phase II.²² With this funding option, and with the expanded definition of areas eligible for CAF I Incremental Support, the Commission would create incentives for carriers to deploy fiber deeper into their networks, and the number of unserved locations to which price cap carriers could use support to deploy broadband service would more than double.

Fourth, in disbursing remaining CAF I Incremental Support, any carrier that sought a waiver of the current rules should be afforded an opportunity to accept the funding to which the waiver pertains under the Commission’s second round rules, in addition to the funding it would otherwise be allocated in the second round. Any other funds remaining from round one should be reallocated in round two using the same distribution process used for the round one set forth in section 54.312(b)(1) of the Commission’s rules. Finally, CAF I Incremental Support that a price cap carrier elects not to accept should be redistributed to deploy broadband-capable networks by other price cap carriers with demonstrated need for such funds.

²² See Public Notice, *Wireline Competition Bureau Announces Availability of Version One of the Connect America Fund Phase II Cost Model*, WC Docket Nos. 10-90, 05-337, DA 12-2011 (rel. Dec. 11, 2012) (“December 2012 Public Notice”); Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 05-337 (filed Feb. 13, 2012) (attaching updated documentation of CQBAT model). The CQBAT model modified the ABC Coalition’s prior proposal for a forward-looking model that was submitted prior to the release of the *USF/ICC Transformation Order*. Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. 1 at 13 (filed July 29, 2011).

II. THE COMMISSION SHOULD BROADEN THE APPROACH TO DETERMINING UNSERVED AREAS ELIGIBLE FOR CAF PHASE 1 SUPPORT.

A. The Commission Should Make CAF Phase I Support Available For All Census Blocks That Lack 4/1 Service.

The Coalition strongly supports the Commission’s proposal to “[permit] carriers to accept additional funds to target consumers and businesses that are in areas unserved by broadband that meets our 4 Mbps downstream and 1 Mbps upstream standard.”²³ Such an expansion of the definition of eligible areas for CAF I incremental support would enable price cap carriers to deploy broadband services more quickly to greater numbers of consumers.

First, the Commission’s proposal would rectify the shortcomings of classifying only areas without 768/200 service as “unserved” for CAF Phase I purposes, which resulted in significant areas being ineligible for support even though such areas do not enjoy “broadband” service as the Commission and consumers use this term. Second, this proposal would more precisely identify those areas where customers currently lack broadband service that is capable of supporting “modern Internet applications, such as voice over Internet protocol and streaming video.”²⁴ Third, it would ensure consistency between the threshold used to identify areas eligible for CAF Phase I funding and the standard that the Commission requires recipients of both CAF Phase I and CAF Phase II support to provide in meeting their broadband service requirements.²⁵

Accordingly, the Commission should adopt its proposal to permit price cap carriers to accept CAF I Incremental Support to serve locations that lack 4/1 service.

²³ *FNPRM* ¶ 11.

²⁴ *Id.* ¶ 12.

²⁵ *Id.*

B. The Commission Should Not Use Evidence Than An Area Has 3/768 Service As A Proxy For Determining That An Area Has 4/1 Service.

While supportive of expanding the definition of unserved areas for purposes of CAF Phase I funding to include any locations that lack access to 4/1 service, the Coalition opposes the proposal to designate such areas only if “shown on the National Broadband Map as unserved by fixed terrestrial broadband with an advertised speed” of 3/768.²⁶ This approach would perpetuate the mismatch inherent in the initial distribution of CAF I Incremental Support by rendering large areas of the country ineligible for CAF Phase I support, despite the fact that such areas lack access to 4/1 services. As a result, this approach would undermine the Commission’s goal of promoting broadband in rural America by “spur[ring] immediate” deployment of “robust scalable broadband.”²⁷

As several commenters have detailed in their recent responses to the Wireline Competition Bureau’s (“Bureau”) list of unserved census blocks that would be eligible for future CAF I Incremental Support,²⁸ the fact that a census block is listed on the National Broadband

²⁶ *Id.*

²⁷ See *USF/ICC Transformation Order* ¶ 22; see also *id.* ¶ 145 (enunciating goal “to promote the most rapid expansion of broadband to as many households as possible” and “where there is no private sector business case for deployment of broadband”).

²⁸ In the *FNPRM*, the Commission instructed the Bureau to publish and seek comment on a list of “eligible census blocks shown on the current version of the National Broadband Map as unserved by fixed terrestrial broadband with an advertised speed of 3 Mbps downstream and 768 kbps upstream.” *FNPRM* ¶ 15. Pursuant to these instructions, the Bureau developed and recently sought comment on such an “eligibility list.” See *Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support*, Public Notice, WC Docket No. 10-90, DA 12-1961 (Wireline Bur. Dec. 5, 2012); *Wireline Competition Bureau Updates the List of Potentially Unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List*, Public Notice, WC Docket No. 10-90, DA 12-2001 (Wireline Bur. Dec. 10, 2012) (updating the list of potentially unserved census blocks in price cap areas). USTelecom filed comments explaining why the Bureau’s eligibility list understates the areas that should be eligible for CAF Phase I

Map as having access to broadband service at speeds of at least 3/768 in no way indicates that it has access to 4/1 broadband service.²⁹ Thus, by using 3/768 service as a proxy for the 4/1 standard, the Commission will invariably exclude from funding eligibility many locations that are served by price cap carriers with less than 4/1 service. Indeed, based on NTIA data as of end-of-year 2011 compared with the Commission's list of unserved census blocks, USTelecom estimates that in excess of one million housing units classified as served by broadband at 3/768 speeds are not served at 4/1 speeds.³⁰ In such cases, significant and costly network upgrades would be necessary to offer individuals and businesses broadband service meeting the 4/1 standard.³¹

To the extent the Commission wishes to use National Broadband Map data to generate a list of potentially eligible census blocks, instead of using 3/768 service as a proxy for 4/1 service,

(footnote cont'd.)

support. *See* Comments of the United States Telecom Association, WC Docket No. 10-90, 2-3 (Jan. 9, 2013) ("USTelecom Comments").

²⁹ *See* USTelecom Comments at 3-6; Comments of Windstream Corporation, WC Docket No. 10-90, at 3-6 (Jan. 9, 2013) ("Windstream Comments"); Comments of the National Telecommunications Cooperative Association, the National Exchange Carrier Association, Inc., the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, WC Docket No. 10-90, n. 17 (filed Jan. 9, 2013) ("Rural Associations Comments"); Comments of CenturyLink, WC Docket No. 10-90, 9-10 (Jan. 9, 2013) ("CenturyLink Comments").

³⁰ This estimate is based on census blocks where the incumbent local exchange carrier is the sole provider of 3/768 service using ADSL. *See* USTelecom Comments at 2.

³¹ *See* USTelecom Comments at 4-5; *see also* Windstream Comments at 5; Rural Associations Comments at n. 17 ("As many have made clear time and again, achieving 1 Mbps upstream requires more significant network deployment, such that a map showing 768 kbps upstream hardly constitutes a reasonable proxy for determining 'served' locations.") (citing Windstream Waiver Petition, n. 4) (July 24, 2012); Comments of AT&T, WC Docket No. 10-90, 94 (April 18, 2011); Comments of ADTRAN, Inc., WC Docket No. 10-90, 10-11, 22 (April 18, 2011)). This discrepancy would be particularly pronounced in rural areas served by DSL, where networks are mostly engineered to provide an upstream speed of 768 kbps and where considerable investments would be required in order to provide broadband service meeting the 4/1 standard. *See, e.g.*, USTelecom Comments at 4-5.

it should use the next speed tier reflected on the Map—6/1.5 service—until actual 4/1 data is available.³² To ensure that price cap carriers do not use CAF Phase I funding in areas that already have 4/1 service (but do not have 6/1.5 service), the Commission could require that carriers certify that such funds are only used to deploy broadband to locations that are not currently engineered to meet the 4/1 standard.³³ This approach would be consistent with the *USF/ICC Transformation Order*, in which the Commission, while acknowledging claims that the National Broadband Map “is not completely accurate,” found that its use “*along with our requirement that carriers certify that the areas to which they intend to deploy are unserved to the best of each carrier’s knowledge*, is a reasonable and efficient means to identify areas that are, in fact, unserved....”³⁴

C. The Commission Should Clarify that the 4/1 Standard Applies to Areas Rendered Ineligible Due to Existing Capital Plans and Regulatory Obligations.

As it seeks to promote the deployment of broadband meeting the 4/1 standard, the Commission should apply that same standard to its eligibility requirements. Specifically, to obtain CAF Phase I support, a provider must certify “that [its] current capital improvement plan does not already include plans to complete broadband deployment to that area within the next three years, and that CAF Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.”³⁵ Providers across the country have various regulatory obligations with respect to broadband deployment, but not every obligation requires

³² See USTelecom Comments at 5; Windstream Comments at 6-7; CenturyLink Comments at 10.

³³ See USTelecom Comments at 5-6; Windstream Comments at 6.

³⁴ *USF/ICC Transformation Order*, n.231 (emphasis added).

³⁵ *Id.* ¶ 146.

providers to deploy 4/1 service or greater. Likewise, providers' capital improvement plans could include deployments to certain areas, but only with speeds below 4/1 due to technical limitations. In both cases, providers should be able to use CAF Phase I support to build out broadband at 4/1 so that consumers can obtain the minimum speeds to best take advantage of the Internet.

D. The Commission Should Harmonize Its Round One Funding Rules With Whatever Modifications To The CAF Program It Adopts For Round Two.

A price cap carrier that accepted all or part of the funding it was allocated in the first round should be able to avail itself of whatever program modifications the Commission makes to CAF Phase I in this proceeding, including any challenge process that the Commission establishes. Price cap carriers deploying broadband under the first round of incremental funding have found many instances where broadband coverage is overstated on the National Broadband Map as described below. Providing carriers with access to a reasonable challenge process for the first round would ensure that unserved rural Americans are not artificially prevented from receiving the benefits of round one funding.

Further, this unified approach to CAF Phase I support would give price cap carriers maximum flexibility in deploying their broadband-capable networks, which is in the best interest of customers desiring broadband service. It also would avoid a carrier having to design deployments in a piecemeal fashion merely to satisfy different regulatory requirements governing round one and round two of CAF Phase I, which would tend to increase planning and deployment costs and otherwise harm customers.³⁶

³⁶ At the same time the FCC updates the rules for CAF I Incremental Support, if not before, it also should act on the several reconsideration petitions pending regarding the section 54.313 reporting requirements that appear to apply to all "high-cost recipients." The analysis that carriers must make before accepting CAF I Incremental Support is a difficult one, and it is made even more problematic by the lack of clarity on the regulatory requirements that will attach to the

III. THE COMMISSION SHOULD IMPLEMENT A REASONABLE CHALLENGE PROCESS TO ENSURE THAT ONLY THOSE AREAS WHERE BROADBAND SERVICE IS ACTUALLY AVAILABLE ARE INELIGIBLE FOR CAF PHASE I FUNDING.

Using the National Broadband Map to identify unserved areas eligible for CAF Phase I funding runs the risk that customers will be denied broadband service by virtue of their living in areas erroneously reflected as served. This risk is significant given that the data used to develop the National Broadband Map is largely self-reported by Internet service providers (“ISPs”), and the Map has been described as a “best-efforts snapshot” of broadband coverage.³⁷ An ISP may be incented to over-report its capabilities and coverage areas to the extent such representations may provide marketing advantages or may help to exclude another provider from receiving Universal Service Fund support in given areas.

Problems with the National Broadband Map accurately identifying the availability of broadband service are well documented.³⁸ For example, the National Broadband Map reflects that large portions of rural America receive 3/768 service because a wireless Internet service provider (“WISP”) claims to provide such service. However, such claims often are based on a WISP’s generic coverage maps and have not been independently verified. As USTelecom and

(footnote cont’d.)

funding. As it stands today, it is not clear if, when, or what type of broadband performance metrics would apply to round 2 recipients or what type of comparable rate showing would be required and when. Will these carriers have to file 5-year service plans even though the commitment to build is only three years? Do they have to engage with Tribal Governments even if they are not building to locations on tribal land? Requirements such as these can have an impact on business case analysis, and it is imperative that the Commission resolve these basic issues.

³⁷ See NTIA, “About National Broadband Map,” available at <http://www.broadbandmap.gov/about>.

³⁸ See, e.g., Comments of the Mississippi Public Service Commission, WC Docket No. 10-90, at 1 (filed Jan. 8, 2013) (“Upon review of the NBM of the unserved fixed broadband areas in Mississippi, it is evident that the coverage area in Mississippi is grossly misstated”).

others have previously explained, WISPs face a host of technical issues that affect their ability to provide broadband service at a level that meets consumers' and the Commission's expectations.³⁹ These issues include: (i) unpredictable degradation in service due to third-party interference from common devices such as cordless phones, garage door openers, and microwave ovens when WISPs use unlicensed spectrum; (ii) difficulties in maintaining sustained speeds, particularly during busy times, at the 4/1 level required of recipients of CAF support; (iii) lack of capacity to accommodate significant increases in traffic or customers within their service areas; and (iv) line of sight requirements for WISPs using unlicensed spectrum that do not enable a customer to enjoy broadband service when the provider's antenna is obstructed, for example, by a tree, a building, or a hill.⁴⁰ In addition, WISPs often have capacity caps that limit the robustness of their broadband services and do not comply with the standard for 4/1 broadband service to which CAF I Incremental Support recipients are required to build their networks.⁴¹

Likewise, many census blocks are excluded because the National Broadband Map demonstrates the presence of an unsubsidized competitor—often a cable company—but for which data and experience indicate that no such competitor is providing broadband service at speeds of at least 3/768.⁴² Indeed, just this past week, the nation's largest cable operator – Comcast – identified nearly 77,000 census blocks that were reflected on the National Broadband

³⁹ See, e.g., USTelecom Comments at 7-8; see also CenturyLink Waiver Petition at 7-14.

⁴⁰ USTelecom Comments at 8; CenturyLink Waiver Petition at 8; Letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 *et al.*, at 2 & n.2 (March 30, 2012).

⁴¹ See, e.g., USTelecom Comments at 7, n.16.

⁴² See, e.g., Windstream Comments at 7-9 (describing process that identified areas where Windstream offers 3/768 service but has not received a single request in two years to port a phone number to a competitor and cancel the associated Windstream broadband service, despite the alleged presence of a competitor providing service at speeds of at least 3/768 service).

Map as being served but where Comcast does not in fact provide broadband service and thus should no longer be designated as served by Comcast.⁴³

Preventing customers from benefitting from CAF I Incremental Support based on potentially inflated coverage claims of an ISP or plainly erroneous coverage data of an ISP would be a disservice to rural Americans. Under the circumstances, the Commission should adopt a reasonable process for challenging National Broadband Map coverage claims.

There are several elements that any challenge process must include. The first essential component relates to timing. In order to ensure maximum effectiveness while conserving limited resources, the challenge process should begin once price cap carriers have identified the particular areas where they are requesting CAF I Incremental Support. This approach would minimize the burden on all parties – including the Commission – by limiting challenges to the specific locations that matter, *i.e.*, where price cap carriers intend to use incremental support, rather than attempting to correct the National Broadband Map ubiquitously. If the challenge process is invoked prematurely – that is, before price cap carriers have determined where they likely would use CAF I Incremental Support to deploy broadband service – the industry and the Commission will be compelled to expend time and resources to make determinations that ultimately may have no impact on how and where CAF Phase I funds are utilized.

⁴³ See Letter from Mary McManus, Comcast, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Jan. 24, 2013). Comcast also identified approximately 31,000 census blocks that were designated as unserved where Comcast purportedly provides broadband service at least the 3/768 level. According to Comcast, it was able to uncover these significant discrepancies in the accuracy of the National Broadband Map only by retaining an “independent consultant” who undertook a “time-consuming and complex analysis” utilizing a “modified database that contains more granular mapping data.” *Id.* at 2. It is not clear that any other cable company has undertaken a similar approach to verifying its coverage area as reflected on the National Broadband Map.

This is one of the fundamental flaws of the challenge process outlined in the *FNPRM*. On December 5, 2012, the Wireline Competition Bureau (“Bureau”) released an Initial Public Notice containing a list of potentially eligible census blocks as derived from the most recent version of the National Broadband Map.⁴⁴ On December 10, 2012, the Bureau released a Revised Public Notice that updated this list.⁴⁵ The Revised Public Notice called for comment by January 9, 2013 on areas where coverage is either overstated or understated, and, according to the *FNPRM*, a “detailed explanation of why the commenter believes the areas are inaccurately reported” would be “most useful.”⁴⁶ In addition, according to the *FNPRM*, “more weight” should be given “to comments supported by tests ... and/or engineering certifications.”⁴⁷ The *FNPRM* proposes further that, where it finds “the evidence demonstrates that it is more probable than not” that the National Broadband Map is inaccurate with respect to a particular census block, the Bureau should change the classification of that census block and publish a revised list of areas eligible for CAF I Incremental Support.⁴⁸

The process established by the Commission compelled providers to submit whatever evidence they could quickly gather for all locations in their service territories, even those where CAF I Incremental Support may ultimately not be used. It also forces the Bureau to weigh evidence and make determinations regarding locations that are unlikely to be affected by CAF

⁴⁴ *Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support*, WC Docket No. 10-90, DA 12-1961, at 2 (rel. Dec. 5, 2012) (“Initial Public Notice”).

⁴⁵ *Wireline Competition Bureau Updates the List of Potentially Unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List*, WC Docket No. 10-90, DA 12-2001 (rel. Dec. 10, 2012) (“Revised Public Notice”).

⁴⁶ *FNPRM* ¶ 15.

⁴⁷ *Id.* ¶ 16.

⁴⁸ *Id.*

Phase I. Clearly, the challenge process provided for in the *FNPRM* is inefficient and entails the expenditure of significant unnecessary resources.

In addition to timing, the second essential component of an effective challenge process involves placing the burden of proof on the appropriate entity. The *FNPRM* proposes that a “more probable than not” standard should govern whether the National Broadband Map accurately portrays coverage in a particular area.⁴⁹ While the Coalition does not object to the use of this standard, the burden of meeting that standard should rest with the entity claiming to serve the area.

For example, in the event a price cap carrier believes that a particular unsubsidized competitor listed on the National Broadband Map as providing broadband service to a particular location does not in reality serve that location at the requisite speeds, the price cap carrier should be obligated to provide the Bureau with whatever information it can gather supporting that belief. This information could take the form of consumer affidavits, service details and specifications from the unsubsidized competitor’s website and marketing materials, objective data such as porting information that identifies competitive presence within a particular area, or other relevant evidence. Once the price cap carrier has provided this information, the burden should shift to the provider claiming to serve the area – the entity in possession of the affirmative data necessary to refute the price cap carrier’s challenge – to provide such data to the Bureau. If the burden is not shifted to the provider claiming to serve the area, then the price cap carrier would in effect be required to prove a negative – a standard that would be difficult, if not impossible, to meet.

⁴⁹

Id.

Accordingly, the Coalition proposes that the Commission adopt the following challenge process for determining areas that are eligible for CAF I Incremental Support.

First, the Commission should issue an order modifying the Phase I eligibility standard to 4/1 service, for the reasons explained above, and the Bureau should issue a revised list of unserved (*i.e.*, eligible) census blocks. This list should be developed utilizing the 6/1.5 proxy for DSL broadband services based on the National Broadband Map data in the absence of actual 4/1 data.

Second, once the Commission has established its rules regarding distribution of CAF Phase I funding for 2013, the Bureau should issue a list specifying price cap carrier allocation amounts and provide carriers with a reasonable period of time to decide the amount of funding they wish to accept and the locations where they intend to use the funds.

Third, at the time a price cap carrier indicates the amount of CAF I Incremental Support it wishes to accept and identifies the census blocks of the locations where it proposes to use the funds, it should have the opportunity to invoke the challenge process by specifying any purportedly “served” locations it believes should be eligible for incremental support and by providing the relevant evidence upon which this belief is based. At the same time, any provider purportedly providing broadband service to locations designated as “unserved” could file a challenge and submit appropriate evidence supporting its claims. From there, as discussed above, the providers claiming to offer broadband service in those locations would bear the burden of providing affirmative evidence of service in such areas, including engineering analyses and customer billing records.

Fourth, with respect to these challenged areas, the Bureau would make a reasoned decision, based on the evidence before it, on whether the challenged areas are in fact served. If

the Bureau establishes that the areas are served and thus ineligible, the price cap carrier would be permitted to amend its designation and election, if necessary, to include other locations where it proposes to use its allocated funding.

The Coalition believes that the challenge process outlined above constitutes a reasonable and expeditious way to ensure that CAF Phase I Incremental Support is made available and is utilized to serve all eligible locations.

IV. THE COMMISSION’S ADDITIONAL PROPOSAL FOR DISTRIBUTING CAF PHASE I FUNDING BASED ON THE CONSTRUCTION OF SECOND-MILE FIBER WOULD PROMOTE THE DEPLOYMENT OF BROADBAND-CAPABLE NETWORKS TO CURRENTLY UNSERVED LOCATIONS.

In the *FNPRM* the Commission outlines several thoughtful alternatives for distributing CAF Phase I funding. Although each has merit, the Coalition believes that the Commission’s proposal to allow carriers accepting CAF I Incremental Support to build a certain number of miles of fiber for a specified amount of support accepted is the most workable solution and most likely to advance the goals of the program.⁵⁰

As envisioned by the Commission, this proposal would permit a carrier to receive support for second-mile fiber deployments, which would allow the carrier “to count any fiber it builds between its central office and an unserved location, where that location is unserved by the carrier with 4 Mbps downstream and 1 Mbps upstream broadband, and that location is within a census block not served by any other provider”⁵¹ The Commission requests comment on the specific metric that should be adopted to implement this approach.

⁵⁰ *FNPRM* ¶¶ 18-28. It is important, however, that any new alternative for the use of CAF Phase I Incremental Support be just that—an alternative. Thus, the Commission should still allow carriers to accept CAF Phase I Incremental Support support based on the Commission’s current metric of one unserved location per \$775 accepted.

⁵¹ *Id.* ¶ 18.

The Coalition proposes a two-part methodology for providing CAF I Incremental Support under this approach: (i) \$38,910 in support for fiber feeder deployment on a per-mile basis, and (ii) \$318 in support for electronics on a per enabled location basis. Based on outputs of the CQBAT model, these support amounts are both reasonable and verifiable.⁵²

Relying upon the CQBAT model in establishing support amounts offers several advantages as compared to the use of actual company-specific data. First, this approach ensures that support is based on forward-looking costs, which is consistent with the Commission's general approach to universal service support.⁵³ Second, in contrast to historical construction records, the CQBAT model allows costs to be estimated only in the areas not served by an unsubsidized competitor or telecommunications carrier at 4/1 speeds, which is the approach the Coalition followed in developing its support proposals.⁵⁴ Third, the CQBAT model has been thoroughly reviewed and heavily scrutinized, and thus the Commission should have every confidence in establishing support based on the model's outputs.⁵⁵

⁵² See Declaration of Peter Copeland ¶¶ 5-6 (“Copeland Declaration”)

⁵³ See *USF/ICC Transformation Order*, ¶ 184 (finding that a forward-looking model should be used to estimate costs for CAF Phase II); see also *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 250 (1997) (in adopting criteria for its existing narrowband cost model, the Commission required that “[o]nly long-run forward-looking economic cost may be included”).

⁵⁴ Copeland Declaration ¶ 3.

⁵⁵ Although the Commission declined to adopt the CQBAT model in the *USF/ICC Transformation Order*, it did so because there had been insufficient opportunity to review and modify the model, not because of any concerns regarding the structure of or inputs to the model. *USF/ICC Transformation Order*, ¶ 185, n.84. Since that time, the Commission has developed the Connect America Cost Model, which is “similar to the CQBAT model.” See December 2012 Public Notice. Furthermore, the Commission has relied upon data from the CQBAT model in calculating support amounts under CAF Phase I. See Public Notice, *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, 27 FCC Rcd 4203, ¶¶ 6-7 (2012) (utilizing business line count data from the CQBAT model in calculating support in the United States Virgin Islands and Puerto Rico).

An estimate of the CQBAT fiber feeder investment per mile is not directly available from the investment output reports of the CQBAT model. However, in 2012, USTelecom asked CostQuest to build a Feeder Cost Estimation tool based on the data in the CQBAT model. This tool was used to calculate the fiber feeder support per mile of \$38,910.⁵⁶

An estimate of total electronic investment is directly available from the investment output of the CQBAT FTTd run. The components of electronics investment include the router, regeneration, feeder-distribution interface, DSLAM, fiber cable splitters, and splitter cards. The sum of these investments is divided by working customers to calculate the electronics support of \$318 per enabled location basis.⁵⁷

Although the Commission proposed that second-mile fiber support include “a requirement to connect to a minimum number of unserved locations per mile,”⁵⁸ the Coalition does not believe such a proposal is necessary or workable. Based on analysis of select carrier data, the minimum number of customers served by any second-mile fiber deployment can vary considerably, depending upon the company and the geographic area it serves. Thus, there is no practical way to develop an “average minimum number of unserved locations” that every carrier

⁵⁶ Copeland Declaration ¶ 5, Appendix 1. The Feeder Cost Estimation tool utilizes the material, structure, engineering, and labor inputs from the CQBAT model. The tool has adjustable inputs for the various components, including: (i) percent mix of rural/suburban/urban; (ii) percent structure ownership for aerial/buried/underground; and (iii) percent normal terrain/medium terrain/hard terrain. In developing this proposal, the rural/suburban/urban mixture and the terrain mixtures were based on the CQBAT data for areas without an unsubsidized competitor providing 4/1 service. This data was extracted from the CQBAT FTTd run by CostQuest and used as an input in the tool. The structure ownership was based on the weighted ownership between the rural, suburban, and urban areas. The plant mix was based on the national average data weighted for the rural, suburban, urban mix in the targeted areas. These inputs drive the estimation of the investment per fiber mile of a 48 strand fiber cable using the material and structure inputs from the CQBAT model. Copeland Declaration ¶ 5.

⁵⁷ Copeland Declaration ¶ 6, Appendix 2.

⁵⁸ *FNPRM* ¶ 18.

would have to serve with each mile of fiber deployed. Indeed, imposing such a requirement is likely to undermine the Commission’s broadband deployment goals by preventing some price cap carriers from being able to accept some or all of their allocated CAF Phase I support.

To the extent the Commission is concerned that, without a minimum average number of unserved locations per fiber mile, price cap carriers would use CAF I Incremental Support to deploy in areas with very few unserved locations, including extremely high-cost areas and areas already chiefly served by an unsubsidized competitor,⁵⁹ the Coalition’s proposal includes several safeguards. First, carriers can be required to certify that they are using CAF I Incremental Support to deploy broadband facilities on their routes in a manner intended to maximize benefits to unserved locations.⁶⁰ Second, under the Coalition’s proposal, electronics support would only be available to serve locations in areas that are unserved, which would ensure that support is not being provided “in areas where an unsubsidized competitor provides service without support.”⁶¹

Permitting a price cap carrier to elect to deploy broadband pursuant to the second-mile fiber option and thus to receive \$38,910 in support for fiber feeder on a per-mile basis and \$318 in support for electronics on a per-enabled-location basis would offer significant benefits. Specifically, it would provide incentives for carriers to push fiber deeper into their networks, which the Commission has recognized benefits consumers.⁶² It also would lead to increased

⁵⁹ *Id.* ¶ 20.

⁶⁰ Indeed, carriers are incentivized by their own business interest to carry out deployment projects that offer the lowest cost per unserved location.

⁶¹ *Id.* ¶ 21.

⁶² *Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58, Appendix C, The Broadband Availability Gap: OBI Technical Paper No. 1, at 76 (rel. April 21, 2010) (“any solution that brings fiber closer to the home by pushing it deeper into the network puts into place

broadband deployment. Indeed, the Coalition estimates that the second-mile fiber option, in conjunction with the expansion of the definition of unserved areas to include any census block lacking access to 4/1 service, would result in a more than twofold increase in the number of households likely to receive broadband service from CAF I Incremental Support.⁶³

With regard to the relationship between CAF Phase I and CAF Phase II when incremental support is used to deploy second-mile fiber and associated electronics, the Commission should not exclude any census blocks served by “Phase I fiber” from the CAF Phase II process.⁶⁴

While second-mile fiber projects constructed with CAF I Incremental Support will be used to provide broadband to certain locations in a census block, it is likely that some locations in that census block will remain unserved. Eliminating the entire census block from the CAF Phase II

(footnote cont’d.)

an infrastructure that has long-term strategic benefits”); Public Notice, *Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Transmission Capability Between the Central Office and End-Users in Next Generation Networks*, 16 FCC Rcd 5367 (2001) (commending “the efforts of carriers that are deploying fiber deeper in their physical plant and closer to customers to meet the escalating demand for greater bandwidth”); *see also Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration, 19 FCC Rcd 15856 (2004), Statement of Commissioner Kathleen Abernathy (noting the Commission’s decision to provide relief from unbundling obligations for the broadband capabilities of fiber-to-the-home (FTTH) deployments was “already achieving its desired impact as carriers are accelerating plans to deploy fiber deeper in the network -- in many cases all the way to the customer”).

⁶³ The ability of a price cap carrier to elect to receive CAF Phase I support based on per-mile of fiber deployed and per-location for electronics installed should be in addition to, and not in lieu, of the current \$775 per location metric. With the expansion of the definition of unserved areas, certain price cap carriers may determine they are able to accept CAF Phase I funding that they previously decided to decline under the more limited approach to identifying unserved areas. The Commission should give carriers the flexibility to make this determination in order to maximize the benefits of the CAF Phase I program.

⁶⁴ *See FNPRM ¶ 28.*

process merely because fiber and electronics have been deployed somewhere in that census block would be antithetical to the Commission's goal of closing the rural broadband divide.

To the extent the Commission is concerned about "providing double support,"⁶⁵ the Commission could rule that, when a carrier accepts CAF Phase II funding in a census block where that carrier accepted CAF I Incremental Support to deploy a second-mile fiber project, that carrier should repurpose the prior support to provide broadband to other eligible unserved locations. Under this approach, the Commission would calculate the per location amount of CAF I Incremental Support (the total amount of incremental support spent on the second-mile fiber deployment project divided by the total number of locations served). If the price cap carrier receives CAF Phase II support in the same census block in which a second-mile deployment was funded with CAF I Incremental Support, the carrier would be required to spend the CAF I Incremental Support amount associated with this census block to deploy broadband to other CAF Phase I unserved locations in its service area that are not supported by CAF Phase II.

This approach would eliminate any concerns about "double recovery" and would serve the public interest by further advancing broadband deployment. It also would avoid the inherent timing problems associated with any proposal to exclude "Phase I fiber" from the CAF Phase II cost model, given that the model is expected to be completed long before the construction of any second-mile fibers utilizing CAF I Incremental Support.⁶⁶

⁶⁵ *Id.* (defining "double support" as "providing support to construct a mile of fiber in Phase I, then providing support to construct that same mile again in Phase II").

⁶⁶ *See id.*

V. A CARRIER THAT FILED A WAIVER SHOULD BE ALLOCATED CAF PHASE I SUPPORT THAT IT PREVIOUSLY SOUGHT, IN ADDITION TO ANY FUNDING IT WOULD OTHERWISE BE ALLOCATED IN A FUTURE ROUND, AND ANY REMAINING CAF PHASE I FUNDING AVAILABLE AFTER ROUND 2 SHOULD BE REDISTRIBUTED BASED ON DEMONSTRATED NEED.

The Commission has requested comment about the distribution of the remaining \$185 million from the first round of CAF Phase I and whatever additional funding may be made available under a future round of the program to deploy broadband-capable networks in unserved locations.⁶⁷ The Coalition agrees that a carrier should be allocated any 2012 funding it previously sought through a waiver request, in addition to the funding it would otherwise be allocated for the future round.

Price cap carriers declining all or a portion of the funds from the first round of CAF Phase I had different reasons for their decisions. However, some carriers did so because the current rules of the program made it impossible for them to take advantage of the funding but then promptly filed waiver petitions seeking relief from these rules.⁶⁸ Given the Commission's willingness to revisit its rules, it should give price cap carriers that filed waiver petitions the opportunity to consider in the first instance whether they can utilize the funding from round one under whatever new paradigm the Commission may adopt in this proceeding.⁶⁹

The Commission should not penalize price cap carriers that sought waivers in order to take advantage of the support they were allocated in the first round of CAF Phase I.

Unfortunately, that would be the case if support were allocated "based on carriers' original

⁶⁷ *FNPRM* ¶ 37.

⁶⁸ As of the date of this filing, these waiver petitions remain pending before the Commission.

⁶⁹ *FNPRM* ¶ 7 (seeking "comment on rule changes that would provide further opportunities to advance our overarching goal to use available funds to rapidly and efficiently deploy broadband networks throughout America").

allocations, regardless of the amount of funding a carrier took in 2012.”⁷⁰ Accordingly, the Commission should reject this approach to allocating CAF Phase I funds.

However, if a price cap carrier did not accept the support it was allocated in the first round of CAF I and did not seek a waiver, this allocated amount should be rolled over to round two and allocated to all of the price cap carriers, along with any additional round two funding, using the same distribution process used for round one set forth in section 54.312(b)(1) of the Commission’s rules. Such an approach would not constitute a penalty but rather would merely acknowledge a price cap carrier’s decision to forgo support from the first round.

The Coalition also supports the Commission’s proposal “to allow carriers to accept additional funding if other carriers choose not to accept their full allocation” in 2013 by modifying its rules “to permit carriers to seek support up to the entire amount of available Phase I funding.”⁷¹ This proposal would advance the goals of the CAF Phase I program by putting all available funds to use. The Coalition agrees that if the total requested funding from all carriers is less than the amount available, each carrier would receive the amount it requested. If the total requested funding exceeds the amount available, funds should be distributed “in proportion to the relative allocations between carriers requesting additional support.”⁷²

⁷⁰ *Id.* ¶ 37, n. 38.

⁷¹ *Id.* ¶ 38.

⁷² *Id.*

VI. CONCLUSION

For the foregoing reasons, the Commission should modify the CAF Phase I program in the manner recommended by the Coalition.

Respectfully submitted,

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