

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
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 a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	

COMMENTS OF ITTA

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COMMENTS OF ITTA

ITTA – The Voice of Mid-Size Communications Companies hereby submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) June 10, 2014 Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-captioned proceedings.¹ The *FNPRM* seeks comment on a variety of issues related to further implementation of Connect America Fund (“CAF”) Phase II.

¹ *In the Matter of Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime; Universal Service Reform – Mobility Fund; WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92, WT Docket No. 10-208, 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) (“CAF II Omnibus Order” or “FNPRM,” as appropriate).*

I. INTRODUCTION AND SUMMARY

ITTA commends the Commission for moving forward with implementation of CAF Phase II in areas served by price cap carriers. We share the Commission's goal to ensure that all American consumers have access to advanced telecommunications services regardless of where they reside, but we caution that this critical goal could be compromised if CAF Phase II is not implemented in a manner that takes into account the myriad challenges faced by carriers serving uneconomic rural areas.

Should the Commission increase the broadband speed requirement for CAF Phase II recipients to 10 Mbps downstream, it is imperative that other CAF Phase II service parameters be modified. The cost of deploying a broadband network capable of delivering 10 Mbps is significantly more expensive than deploying a network capable of delivering 4 Mbps downstream. As such, the Commission must increase the term of support and associated build-out obligations for CAF Phase II recipients to ten years to allow them sufficient time to recoup their substantially increased investment, and it should commit to maintain the same broadband speed requirement for the duration of the funding period.

The Commission also should provide greater flexibility to CAF Phase II recipients in meeting their deployment obligations if it increases the required downstream broadband speed to 10 Mbps. Specifically, the Commission should allow CAF Phase II recipients to deploy service to up to 10 percent fewer locations in eligible census blocks within a state with an accompanying straight-line reduction in support. It also should allow CAF Phase II recipients to substitute locations in eligible census blocks with unserved locations in partially-served census blocks as circumstances warrant. This approach would enable service providers to decide how best to upgrade or extend their networks to serve high-cost and extremely high-cost areas rather than

having the Commission artificially pre-determine which areas should receive support through CAF Phase II and which should be served through a separate support mechanism.

In addition, the Commission should modify the eligibility criteria for CAF Phase II so that areas are considered unserved based on lack of broadband at 10/1 Mbps as opposed to the current 4/1 Mbps standard. Doing so would significantly expand the number of consumers who would be eligible to receive service at 10/1 Mbps and ensure that all high-cost customers have access to 10/1 Mbps service as opposed to lower-speed services offered by competitors.

If the Commission increases the required downstream broadband speed without modifying other CAF Phase II service parameters as ITTA suggests, the Commission runs the risk that price cap carriers will be unable to elect a statewide commitment in most situations. This would delay broadband deployment in unserved areas pending completion of the competitive bidding process and would likely leave consumers in the nation's highest-cost areas without broadband in contravention of the Commission's core universal service goals.

Universal service policy requires that the Commission apply the same performance requirements to all CAF Phase II recipients. Thus, to the extent the Commission allows CAF Phase II recipients to meet their deployment obligations utilizing mobile or satellite technologies, it must ensure that all consumers receive the same baseline level of service. Adopting less robust requirements for alternative technologies would relegate affected consumers to lower quality service, which is inconsistent with the Commission's statutory duty to ensure that consumers in hard-to-serve areas have access to reasonably comparable services at reasonably comparable rates.

The Commission should not undermine previous investment through imposition of unfunded mandates on carriers when universal support is provided to another entity as a result of

the competitive bidding process. ETC obligations must be tied to the receipt of universal service support. The elimination of ongoing federal support should result in the lifting of a carrier's ETC obligations in the geographic area in which it is no longer receiving support. It would be unreasonable and a potential constitutional violation for the Commission to impose continued service obligations on carriers when it has withdrawn funding necessary to support those obligations.

The competitive bidding process should be structured to advance universal service objectives. Thus, the Commission should not provide priority treatment for bids that propose to provide broadband service that substantially exceeds the Commission's performance criteria. Universal service policy dictates that the Commission focus on maximizing coverage once its minimum service threshold is met. The Commission should therefore give the same weight to all bids that propose to meet or exceed the Commission's performance obligations. In situations where a provider cannot deploy broadband service that meets the requisite performance criteria with the amount of support provided by the model, ITTA suggests that the Commission consider allowing the provider to serve fewer locations rather than relaxing the performance criteria.

ITTA supports the Commission's proposals to allow package bidding and to permit multiple rounds of bidding. Allowing providers to select how many and which census tracts (or census blocks, as appropriate) to bid on in a given state ensures that service providers are free to construct networks in an efficient manner and are not asked to serve certain high-cost areas without the scale to do so. Adopting a multi-round auction process affords competitive bidders the opportunity to reevaluate their bids in light of the actions of others. ITTA also supports the Commission's proposal to establish reserve prices for given geographic areas based on the Connect America Cost Model ("CACM") by setting the reserve price at the model-derived price

plus an additional percentage for each census tract or census block subject to competitive bidding.

ITTA supports the Commission's interest in facilitating a path for rate-of-return carriers to participate in CAF Phase II. We are delighted that the Commission recognizes the merits of the ITTA Plan, which would allow rate-of-return carriers to voluntarily transition to an alternative regulatory framework. We put a tremendous amount of effort into development of a proposal that we believe strikes an appropriate balance between the needs of carriers currently under rate-of-return regulation and the principles and goals that are important to the FCC and Congress.

ITTA urges the Commission to implement the plan in a way that allows carriers maximum flexibility to participate. As such, ITTA proposes that the Commission adopt an annual open enrollment period to give rate-of-return carriers time to determine whether an alternative regulation plan could work for them. We also stand by our proposal that the Commission allow carriers to opt into the plan on a study area-by-study area basis and allow carriers whose frozen support is more than model-based support to transition to the lower model-based amount over a five-year period. The ITTA Plan, as proposed, creates incentives for carriers to transition from the legacy rate-of-return regulatory framework by providing necessary predictability and flexibility. The Commission should not deviate from this carefully crafted approach.

Before moving forward with any alternative regulatory path for rate-of-return carriers, the Commission must ensure that the study area boundary data used in connection with calculating support is accurate, complete, and up-to-date. The Bureau has taken several steps to address inaccuracies in the study area boundary data used in the past. We urge the Commission to ensure

that the process of updating the maps, including resolution of any study area boundary disputes, has been completed before utilizing them in conjunction with the offer of model-based support.

Another crucial preliminary step the Commission must take before rate-of-return carriers can participate in CAF Phase II is to ensure that it has adequate processes in place to determine the presence of unsubsidized competition. The deficiencies of the National Broadband Map (“NBM”) and the challenge process used in price cap areas are well documented. These problems would result in even greater inequities if not changed before implementing a Connect America Fund for rate-of-return carriers. Rate-of-return carriers typically have far fewer study areas than price cap carriers, so inaccuracies regarding the presence of unsubsidized competition in a particular study area may have a much greater impact.

Rather than relying on the NBM to determine the presence of unsubsidized competition in rate-of-return areas, ITTA suggests a simpler process that relies on FCC Form 477 data. Under this process, the Commission would use revised Form 477 data to develop and publish a list of all census blocks where competitors do not actually provide service to at least 20 percent of locations. Such census blocks would be deemed eligible for support unless competitors provide evidence that they are able to provide service meeting the Commission’s performance standards to 100 percent of locations in the relevant census block. This method would provide a less burdensome means of determining the presence of unsubsidized competition in rate-of-return areas than the time and resource-intensive challenge process used in the price cap context.

The ITTA Plan would not require the Commission to change its rules relating to the treatment of special access services or NECA pooling procedures. The NECA pooling rules and rate-setting procedures for carriers opting alternative regulation under the ITTA Plan would work similarly to how they are applied today for average schedule carriers and rate-of-return affiliates

of price cap carriers. For carriers that do not participate in the NECA pool, current standard price cap rules with respect to special access services would apply.

Nor would the Commission need to modify the switched access transition process or recovery mechanism under the ITTA Plan. The switched access transition and associated recovery mechanism the Commission established for rate-of-return carriers in the *USF/ICC Transformation Order* should continue unchanged for carriers participating in the ITTA Plan.

With respect to near-term reforms to rate-of-return regulation, ITTA supports the Commission's proposal to address the "race to the top" incentives and the "cliff effect" created by the current rules by reducing support proportionally among all HCLS recipients instead of relying on the national average cost-per-loop in annually adjusting the HCLS cap. However, we disagree with the Commission's proposal to disallow recovery for new investment through HSCLS and ICLS after a date certain when such investment occurs in areas that are already served by a qualifying competitor. Such a rule is infeasible in the near term at least in part because there is no verifiable method of determining where unsubsidized competition actually exists. The Commission must have a process in place that is sufficient to assess the presence of unsubsidized competition in rate-of-return areas such as the method proposed by ITTA before it can adopt a 'no new investment' rule along the lines proposed in the *FNPRM*.

Should the Commission nonetheless determine to adopt a 'no new investment' rule at this time, it must reconsider the measures it proposes to monitor and enforce compliance with the rule – i.e., requiring carriers to provide asset records at the census block level or to publicly disclose their investment plans as a safe harbor. The former approach is not feasible because rate-of-return carriers do not maintain asset records at the census block level of detail and requiring them to do so would be unduly burdensome. The latter approach is significantly

burdensome, and allowing competitors to review CAF Phase II recipients' proposed investment strategy would put recipients of support at a distinct competitive disadvantage.

With respect to long-term rate-of-return reforms, we urge the Commission to keep the current HCLS and ICLS mechanisms in place to provide continuing support for past investment. While we support the Commission's efforts to create a new Connect America Fund tailored to rate-of return carriers, the Commission must not lose sight of the fact that the HCLS and ICLS mechanisms have proven very successful in enabling new rural broadband investment and in providing for the maintenance of existing networks. It is most equitable to allow for the recovery of investment through the mechanisms in place at the time the investment decisions were made.

II. SHOULD THE COMMISSION ADOPT INCREASED SPEED REQUIREMENTS FOR CAF PHASE II, OTHER SERVICE PARAMETERS MUST BE MODIFIED

A. Adopting Increased Speed Requirements Without Modifying Other Service Parameters for CAF Phase II Would Undermine the Commission's Universal Service Goals

The Commission proposes to increase the minimum broadband speed for service provided by CAF Phase II recipients from 4 to 10 Mbps downstream, and seeks comment on whether to increase the upstream speed requirement to a higher benchmark than 1 Mbps.² ITTA recognizes the need for the Commission to periodically evaluate broadband speeds to ensure they adequately meet evolving consumer needs.³ However, increasing the CAF Phase II broadband speed requirement at this time without modifying other service parameters of the program would

² *Id.* at ¶ 138.

³ Indeed, Congress requires the Commission to do so within the context of a periodic review under Section 706 of the Communications Act to determine whether advanced telecommunications capability is being deployed to consumers in a reasonable and timely fashion. *See* 47 U.S.C. § 706(b).

be highly problematic. If the Commission more than doubles the required downstream broadband speed without providing adequate flexibility for CAF recipients to meet their public interest obligations, the program's overall goals would be compromised.⁴

In crafting the rules adopted in the *USF/ICC Transformation Order*, the Commission struck a delicate balance aimed at ensuring that as implicit universal service support is phased out explicit model-based support would be made available to enable carriers to deploy broadband to greater numbers of Americans.⁵ Should the Commission decide to significantly increase the broadband speed requirement for CAF Phase II recipients without modifying any of the other service parameters that CAF recipients are required to meet, this delicate balance would be upended. The requirement to provide 10 Mbps downstream to 100 percent of locations in eligible census blocks within a state will take substantially more funding than the current 4 Mbps speed requirement. Unless other service parameters are modified to provide price cap carriers more flexibility, it will be impossible for carriers to accept model-based support in most situations. Broadband deployment to unserved consumers would be significantly delayed pending conclusion of the yet-to-be implemented competitive bidding process and many

⁴ This point has recently been made by several members of Congress in letters to the Commission. See, e.g., Letter from Congressman H. Morgan Griffith to FCC Chairman Tom Wheeler, July 29, 2014.

⁵ See *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

consumers in the nation's highest-cost areas likely would be left without broadband in contravention of the Commission's core universal service reform objectives.⁶

Should the Commission decide to increase the mandatory speed requirement to 10 Mbps downstream, it must modify other critical service parameters of CAF Phase II to help enable price cap carriers to accept CAF Phase II support. Specifically, the term of support and associated build-out obligations for price cap carriers that elect model-based support should be increased to ten years, consistent with the approach the Commission is taking with respect to the competitive bidding process, and the mandatory speed requirement should remain constant for the duration of the funding period.⁷ The Commission also should provide flexibility to CAF Phase II recipients to serve fewer than 100 percent of locations in eligible census blocks within a state and to meet their deployment obligations by substituting locations in eligible census blocks with unserved locations in partially-served census blocks as circumstances warrant. In addition, the Commission should modify the eligibility criteria so that areas are considered unserved based on lack of broadband at 10/1 Mbps as opposed to the current 4/1 Mbps standard. Each of these necessary modifications is discussed in more detail below.

B. The Term of Support for CAF Phase II Recipients Electing Model-Based Support Should Be Ten Years and the Speed Requirement Should Remain Constant During the Entire Term

If the Commission adopts its proposal to increase the broadband speed to 10 Mbps downstream, it seeks comment on whether it should provide a longer term for CAF Phase II

⁶ See 47 U.S.C. § 254(b) (directing the Commission to ensure that residents in all parts of the country, including rural and high-cost areas, have access to advanced telecommunications and information services).

⁷ See *CAF II Omnibus Order* at ¶ 35.

model-based support than the five-year term it adopted in the *USF/ICC Transformation Order*.⁸

The answer is “yes.” As indicated above, increasing the required broadband speed without making other changes to the CAF Phase II service parameters would in most cases prevent carriers from electing model-based support due to the significantly increased investment required to meet the higher speed benchmark.

Building and upgrading network infrastructure capable of delivering 10/1 Mbps is substantially more expensive than deploying facilities capable of delivering 4/1 Mbps. Due to the significant deployment costs associated with deploying a higher-capacity network, it is not reasonable for the Commission to demand that price cap carriers recover these costs within five years. The Commission cannot expand the deployment obligations for price cap carriers as it now proposes without also providing a reasonable opportunity for carriers to recover on their substantially increased investment. Ten years is a reasonable time frame in which to do so.⁹

Moreover, any increased speed requirements the Commission adopts should be established before CAF Phase II is underway and should remain unchanged throughout the entire term of support. As the Commission has acknowledged, “recipients of support need to know ahead of time what will be expected of them” in order to plan a network.¹⁰ Communications providers make investment decisions and establish build-out plans at the outset of constructing or upgrading network infrastructure. Changing Phase II obligations in later years of the support term, such as by adapting them to usage trends, would decrease carriers’ incentives to accept

⁸ *FNPRM* at ¶ 148.

⁹ The ten-year term also would apply to rate-of-return carriers electing to participate in Phase II of the voluntary alternative regulation plan proposed by ITTA and discussed herein in Section VIII.

¹⁰ *FNPRM* at ¶ 157.

support under the program. The Commission should establish any increased speed requirements for CAF Phase II prior to making the offer of support to price cap carriers in exchange for a statewide commitment so that industry stakeholders know and understand the obligations that will apply throughout the support term before undertaking them.

C. The Commission Must Give CAF Phase II Recipients the Flexibility to Serve Fewer than 100 Percent of Eligible Locations

As the Commission has recognized on previous occasions, recipients of CAF support should be permitted a certain measure of flexibility in meeting their voice and broadband deployment obligations. The Commission determined in the *USF/ICC Transformation Order* that price cap carriers electing model-based support should be allowed to substitute census blocks in extremely high-cost areas for eligible census blocks in meeting their obligation to serve a particular number of locations in a state.¹¹ In the *CAF II Omnibus Order*, the Commission concluded that ETCs receiving support pursuant to the competitive bidding process should have the same flexibility.¹² As the Commission explained, this approach enables service providers to decide how best to upgrade or extend networks to serve high-cost and extremely high-cost areas rather than having the Commission artificially predetermine which areas should receive support through CAF Phase II and which should be served through a separate support mechanism.¹³ The

¹¹ *USF/ICC Transformation Order* at ¶ 171, n. 279.

¹² *CAF II Omnibus Order* at ¶ 30. The Commission also provided greater flexibility to carriers in determining how best to deploy networks in high-cost areas when it provided a second round of CAF Phase I incremental support. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766, ¶¶ 14-21 (2013). Similarly, in Mobility Fund Phase I, winning bidders were allowed to deploy to less than the number of road miles specified in their bids, with additional funding available to the extent they fully deployed to 100 percent of the requisite road miles. *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, ¶ 28 (WTB 2012).

¹³ *CAF II Omnibus Order* at ¶ 30.

Commission understands that CAF recipients “are in a better position to know local conditions on the ground and thus determine whether the support potentially available will enable them to meet the associated obligations.”¹⁴

The Commission now seeks comment on potential measures that would provide recipients of CAF Phase II funding greater flexibility to satisfy their deployment obligations. First, the Commission seeks comment on permitting CAF Phase II recipients the ability to deploy to less than 100 percent of locations in their funded areas with associated reductions in support.¹⁵ Second, the Commission seeks comment on allowing CAF II recipients to substitute some number of unserved locations within partially-served census blocks for locations within eligible census blocks.¹⁶ ITTA supports adoption of both proposals as critical to advancing the Commission’s broadband deployment goals. It is particularly critical that the Commission adopt these measures should it choose to increase the broadband speed requirement to 10 Mbps downstream.

i. CAF Phase II Recipients Should Be Able to Serve Up to 10 Percent Fewer Locations with an Accompanying Straight-Line Reduction in Support and the Flexibility to Adjust Deployment Commitments for Some Period of Time

The Commission should allow carriers accepting CAF Phase II support to deploy service to fewer than 100 percent of locations in their funded areas.¹⁷ More specifically, CAF Phase II recipients should be allowed to serve up to 10 percent fewer locations with an accompanying straight-line reduction in support. This flexibility would allow CAF II recipients to accommodate the differences that will necessarily occur between the CACM modeling and

¹⁴ *Id.* at ¶ 31.

¹⁵ *FNPRM* at ¶ 165.

¹⁶ *Id.* at ¶ 167.

¹⁷ The same flexibility should be afforded to winners of the competitive bidding process.

actual model-supported broadband deployment costs and would also help mitigate the impact of the increased speed requirement.

In addition, CAF Phase II recipients should have the flexibility to adjust deployment commitments for some period of time after making a state-level commitment. It may not be possible for a carrier to identify exactly how many locations can be served in an area with a particular level of investment until after it begins the process of expanding or upgrading its network. Therefore, it would be both practical and more efficient to allow CAF Phase II recipients to adjust their deployment commitments for some period of time.¹⁸

ii. CAF Phase II Recipients Should Have the Flexibility to Substitute Eligible Locations with Unserved Locations in Partially-Served Census Blocks

ITTA endorses the proposal to afford CAF Phase II recipients the option to deploy to some number of unserved locations within partially-served census blocks in lieu of deploying to locations in otherwise eligible census blocks.¹⁹ As noted in the *FNPRM*, this approach would “enable more effective network deployment and bring service to unserved consumers in those partially-served census blocks” in furtherance of the Commission’s universal service objectives.²⁰

When the Commission determined to treat partially-served census blocks as fully served for purposes of identifying areas that will be eligible for support under CAF Phase II, it did so primarily due to concerns that conducting the challenge process at the sub-census block level would be time consuming and burdensome for affected parties.²¹ The approach proposed in the

¹⁸ The same flexibility should be afforded to winners of the competitive bidding process.

¹⁹ *FNPRM* at ¶ 167.

²⁰ *Id.*

²¹ *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 7211, ¶ 22 (WCB 2013).

FNPRM does not raise these concerns because it would not require the Bureau to review evidence or make preliminary determinations as to the status of particular locations. Rather, CAF Phase II recipients would identify locations outside of their funded census blocks intended for deployment on an annual basis during the term of support. They would then wait a period of time before commencing construction to those locations to enable existing providers to inform them that they already serve the locations in question with service that satisfies the Commission's service standards. This approach would minimize the burden of monitoring intended deployment plans on potentially impacted parties, and be simple and straightforward for the Commission and CAF Phase II recipients to administer.

D. The Commission Should Use Any Increased Speed Requirement It Adopts to Determine the Availability of Broadband Service from Competitors

The Commission proposes to determine the availability of service from unsubsidized competitors based on any new speed requirements it adopts.²² In other words, if the Commission implements its proposal to establish a new downstream speed benchmark of 10 Mbps, CAF Phase II funds would be made available in areas lacking 10/1 Mbps service.

ITTA agrees that the Commission must use any new speed requirement it adopts as the standard for determining the presence of competition that would exclude areas from CAF Phase II support. The Commission recently published information regarding the number of locations that would be eligible for the offer of model-based support using the 10 Mbps downstream speed benchmark to determine the presence of unsubsidized competition.²³ This data shows that use of the higher speed standard to determine where unsubsidized competition exists would

²² See *FNPRM* at ¶¶ 174-75.

²³ *Wireline Competition Bureau Releases Connect America Cost Model Illustrative Results Using Higher Speed Benchmark*, Public Notice, DA 14-833 (rel. June 17, 2014).

significantly expand the number of consumers who would be eligible to receive 10/1 Mbps service.

Applying the 10 Mbps downstream benchmark to unsubsidized competitors would ensure that all high-cost customers have access to at least 10 Mbps service instead of trapping some customers with speeds below what the Commission considers adequate. Failure to apply the 10 Mbps standard to unsubsidized competitors would, in effect, penalize those customers who have access to low-grade services today, which is contrary to the Commission's comparability goals. Overall, evaluating the presence of competition based on the increased speed benchmark would enable carriers to provide service to more consumers that lack broadband access at the speeds the Commission deems desirable.

III. THE COMMISSION SHOULD APPLY THE SAME PERFORMANCE REQUIREMENTS TO ALL CAF PHASE II RECIPIENTS

The *FNPRM* seeks comment on the role of alternative technologies in CAF Phase II.²⁴ When the Commission established the Connect America Fund, it was focused on deployment of terrestrial, fixed broadband service to consumers. While providers are not prohibited from using mobile or satellite technology in meeting their CAF Phase II obligations, the services they provide must be comparable to terrestrial, fixed broadband.

To the extent the Commission decides to allow a CAF Phase II recipient to utilize mobile or satellite technology to provide service, the recipient must meet the established CAF Phase II requirements for speed, latency, usage allowances, pricing, and other relevant service metrics.²⁵

²⁴ *FNPRM* at ¶¶ 153-56.

²⁵ ITTA continues to be concerned that the limitations inherent in mobile and fixed wireless and satellite technologies preclude mobile, satellite, and fixed wireless providers from offering consistently reliable service that is comparable to terrestrial fixed broadband offered by wireline providers. *See, e.g.*, Comments of ITTA in Support of CenturyLink Petition for Waiver, WC

The Commission is required by statute to ensure that consumers in high-cost areas have access to voice and broadband that is reasonably comparable in terms of the quality and price of service available in lower-cost areas.²⁶ In order to meet this requirement, the Commission must ensure that all consumers in high-cost areas are afforded access to the same baseline level of broadband service regardless of the technology used to provide it.

For these reasons, the Commission must not relax its performance standards for participants in the CAF Phase II competitive bidding process.²⁷ Adopting less robust requirements for providers that are authorized to receive support pursuant to the competitive bidding process would contradict the Commission's statutory duty to ensure that consumers in hard-to-serve areas have access to reasonably comparable services at reasonably comparable prices. Moreover, relegating certain consumers to service that is substantially lower in quality than that available to consumers served by other recipients of CAF Phase II support would not be consistent with the Commission's universal service goals.

IV. THE COMMISSION SHOULD ENSURE THE MOST EFFICIENT USE OF CAF FUNDING IN ESTABLISHING AREAS THAT ARE ELIGIBLE FOR PHASE II SUPPORT

The *FNPRM* seeks comment on whether universal service funds are ever efficiently used when spent to overbuild areas where another provider has already deployed service. The answer to this question is a resounding “no.” As the Commission points out, “[e]very dollar that is spent

(footnote cont'd.)

Docket No. 10-90, *et al.* (filed July 12, 2012), at 1-2. Although satellite and wireless technologies continue to evolve over time, the end-user experience with respect to broadband service provided with those technologies is not yet functionally equivalent to a broadband connection provided through fixed, wireline means.

²⁶ See 47 U.S.C. § 254(b)(3).

²⁷ See *FNPRM* at ¶ 150.

in [areas where service is already available] is a dollar not available to extend broadband to areas that lack it.”²⁸ Allowing the limited dollars available in CAF Phase II to be used to overbuild an existing broadband network capable of providing service that meets the Commission’s performance requirements would be antithetical to the fundamental universal service policy goal of deploying broadband to the greatest number of unserved Americans as efficiently and expeditiously as possible.

To prevent this outcome, the Commission should exclude from Phase II support only those areas where the current provider or providers certify the ability and willingness to continue providing terrestrial fixed residential voice and broadband services meeting the Commission’s service requirements for a specified period of time.²⁹ Not only would this approach prevent inefficient use of universal service dollars by preventing them from being spent to overbuild areas where another provider has deployed broadband facilities and evidenced an ongoing commitment to provide service, it also would ensure that consumers are not left without service in areas where a subsidized provider’s support is phased out or in areas where an unsubsidized provider is unwilling or unable to ensure it will continue to provide service. Requiring a certification would provide assurance that consumers will receive the same level of service they otherwise would have if the area were receiving Phase II support.

V. THE COMMISSION SHOULD NOT UNDERMINE PREVIOUS INVESTMENT THROUGH IMPOSITION OF UNFUNDED MANDATES

The *FNPRM* seeks comment on several transition issues relating to implementation of CAF Phase II in areas currently served by price cap carriers. In particular, the Commission requests input regarding the obligations of incumbent carriers where they no longer receive high-

²⁸ *Id.* at ¶ 174.

²⁹ *See id.* at ¶ 177.

cost support for a given geographic area because a non-incumbent carrier has been selected for support through the competitive bidding process.³⁰ The Commission asks whether ETCs in this situation should be deemed to only have a federal high-cost obligation for the geographic areas for which they receive support.³¹

A carrier's public interest obligations should correspond to the geographic area in which it receives federal universal service support. This interpretation comports with the statutory language in Section 214 of the Communications Act, which requires ETCs, "throughout the service area for which the designation is received [to] offer the services that are supported by Federal universal service support mechanisms under section 254(c)."³² Section 214 links ETC status to the receipt of universal service support. Therefore, ETC obligations for incumbent providers should be removed in areas where universal service support is eliminated and funding is provided to another entity. Consistent with this principle, however, the Commission must continue to provide support for the incumbent ETC until a competitor begins to receive support for that area.

Incumbent ETCs have constructed substantial broadband networks in high-cost areas with the assistance of and in reliance on federal USF dollars. In many cases, without ongoing support, the continued maintenance and expansion of those networks would not be economically feasible. It would be unreasonable, and a potential constitutional violation, for the FCC to impose unfunded mandates in the form of continued service obligations on those carriers when it

³⁰ *Id.* at ¶¶ 195-98.

³¹ *Id.* at ¶ 197.

³² 47 U.S.C. § 214(e)(1).

has withdrawn funding necessary to support those obligations and/or directed such funding to another provider.

Historically, regulated service offerings have been provided based on a commitment by regulators to allow the service provider a reasonable opportunity to earn a fair return on its investment.³³ Although the Commission has the authority to alter or eliminate support programs and there is no constitutional right to guaranteed government-subsidized profits, the Commission is bound by the Takings Clause of the U.S. Constitution to ensure that regulated entities are afforded the opportunity to earn a reasonable rate of return based on regulated assets and costs.³⁴ In light of these concerns, it is critical that carrier service obligations be tied to available funding. When such funding is no longer available, any associated regulatory burdens also should cease.

In situations where a price cap carrier experiences a reduction in support because another ETC is awarded funding through the competitive bidding process to serve a portion, but not all, of the incumbent's service area, ITTA supports the interim methodology proposed in the *FNPRM*.³⁵ Under this methodology, the Commission would use the CACM to develop a ratio of the cost of serving all census blocks within a state where the average cost per location is at or above the final funding benchmark adopted by the Bureau for determining the offer of model-based support to price cap carriers, to the total cost of serving that state. That ratio would then be multiplied by the total amount of CAF Phase I frozen support for the carrier in the relevant

³³ See *Federal Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 591, 600-03 (1944); see also *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 127 (1990).

³⁴ See *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989).

³⁵ See *FNPRM* at ¶ 191.

state. This interim methodology is a simple and reasonable approach to calculate support for incumbents in areas that no other ETC is designated to serve.

VI. AREAS THAT ARE SELECTED FOR RURAL BROADBAND EXPERIMENTS SHOULD BE INELIGIBLE FOR CAF PHASE II SUPPORT AND SHOULD BE REPLACED WITH OTHER AREAS THAT WILL RECEIVE COMPARABLE FUNDING

The Commission raises a number of questions regarding the impact of rural broadband experiments on model-based support for price cap carriers.³⁶ Among other things, the FCC seeks input on whether experimental areas should be removed from the offer of support to price cap carriers in return for a state-level commitment and, if so, what conditions formal proposals for rural broadband experiments should have to meet in order to remove a geographic area from a price cap carrier's state-level commitment.³⁷

ITTA believes that areas impacted by rural broadband experiments should not be eligible for support under CAF Phase II and should be removed from the offer of a state-level commitment by price cap carriers as well as the Phase II competitive bidding process. However, an area should only be excluded from CAF Phase II support once it has been selected for a rural broadband experiment, not before. Furthermore, once experimental areas are removed from the state-level commitment and/or competitive bidding process, the Commission should replace them with other areas that will receive comparable CAF Phase II funding. Making additional areas eligible for CAF Phase II support once the experimental areas have been removed is the best way to maximize broadband deployment to households that lack sufficient broadband.

³⁶ *Id.* at ¶¶ 220-223.

³⁷ *Id.* at ¶ 221.

VII. THE COMPETITIVE BIDDING PROCESS SHOULD BE STRUCTURED TO ADVANCE UNIVERSAL SERVICE OBJECTIVES

In the *FNPRM*, the Commission seeks additional input on finalizing the mechanics of the competitive bidding process so that it can be implemented shortly after the Commission makes the offer of model-based support to price cap carriers electing a statewide commitment.³⁸

Among other things, the Commission proposes to implement the competitive bidding process in a manner that provides priority treatment for bids that propose to provide broadband service that substantially exceeds the Commission's standards.³⁹ In addition, the Commission proposes to allow package bidding,⁴⁰ permit multiple rounds of bidding,⁴¹ and establish reserve prices for given geographic areas based on the CACM.⁴² ITTA addresses each of these suggestions below with a view toward promoting those proposals that advance the Commission's universal service objectives.

A. The Commission Should Not Give Preferential Treatment to Applications Proposing to Provide Broadband that Substantially Exceeds the Commission's Service Standards

In the *FNPRM*, the Commission proposes a complex process to prioritize projects that would provide broadband service that exceeds the Commission's performance requirements.⁴³ First, the Commission would identify those potential bids that propose service that substantially surpasses the Commission's performance standards for an amount per location equal to or less

³⁸ *Id.* at ¶¶ 224-34.

³⁹ *Id.* at ¶ 231.

⁴⁰ *Id.* at ¶ 228.

⁴¹ *Id.* at ¶ 230.

⁴² *Id.* at ¶ 227.

⁴³ *Id.* at ¶ 231.

than the model-determined amount of support for the relevant geographic areas.⁴⁴ To the extent funding remains available, the Commission would then identify those bids proposing to provide service that meets the Commission's service standards for an amount of support per location equal to or less than the model-determined amount.⁴⁵ If funding is still available following these two determinations, the Commission would then identify bidders that are willing to provide service using relaxed performance standards for an amount of support equal to, or less than, the model-determined reserve price.⁴⁶

The Commission should not provide preferential treatment to bids that propose to provide broadband service that substantially exceeds the Commission's standards. Universal service policy dictates that the Commission focus on maximizing coverage once its minimum service threshold is met. Thus, the Commission should give the same weight to all bids that propose to meet or exceed the Commission's performance obligations. It may be permissible for the Commission to consider bids for areas where it is not economically feasible to provide the minimum level of service with model-based support. Rather than relaxing the speed, latency, usage allowances, and/or other service metrics associated with such support, however, the Commission should consider allowing interested parties to serve fewer locations in such areas without a reduction in support.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

B. The Commission Should Adopt a Package Bidding Approach that Allows Providers to Select How Many and Which Census Tracts to Bid On in a Given State

The Commission proposes to permit service providers to bid for a package of geographic areas, either census blocks or census tracts as appropriate.⁴⁷ ITTA agrees that the Commission should allow package bidding so that service providers are free to construct networks in an efficient manner and are not asked to serve certain high-cost areas without the scale to do so. Under this approach, the Commission should allow providers in price cap territories to select how many and which census tracts to bid on in a given state. In rate-of-return service areas, the Commission should permit bidding at the census block level instead of the census tract level given that smaller providers may wish to bid on smaller geographic areas.

C. The Commission Should Conduct a Multi-Round Auction

In the *FNPRM*, the Commission proposes to adopt a multi-round auction process that affords competitive bidders the opportunity to reevaluate their bids in light of the actions of others.⁴⁸ ITTA agrees with this proposal. The Commission should allow multiple rounds of bids with a short time period (i.e., days) between rounds. Bidding should continue until no further bids are forthcoming. A multi-round process is particularly appropriate in CAF Phase II to enable service providers to reexamine their deployment objectives in light of the demonstrated willingness of other bidders to build out broadband in specific geographic areas.

⁴⁷ *Id.* at ¶ 228.

⁴⁸ *Id.* at ¶ 230.

D. The Commission Should Set a Reserve Price that is Calculated Based on the Model-Derived Price Plus an Additional Percentage for Each Census Tract Subject to Competitive Bidding

The Commission proposes to adopt reserve prices based on the CACM, such that the reserve price for a given geographic area in the competitive bidding process equals the amount of support the model would have calculated for that same geographic unit in the state-level election process.⁴⁹ ITTA believes the Commission should adopt this proposal with the following modification: the reserve price should be set based on the model-derived amount plus an additional percentage for each census tract (or census block, as appropriate) subject to competitive bidding.

If a price cap carrier did not elect a statewide commitment under CAF Phase II, it is likely because it was not economically feasible for the carrier to do so based on the amount of support provided under the model. Thus, in setting a reserve price for areas subject to the competitive bidding process, it would be appropriate for the Commission to add on a reasonable percentage to recognize that the cost of deploying service in such areas is likely to be more costly than the model allows.

VIII. THE COMMISSION SHOULD ADOPT THE VOLUNTARY ALTERNATIVE REGULATION PLAN PROPOSED BY ITTA

The Commission has observed on numerous occasions that the legacy rate-of-return regulatory framework is not without its shortcomings. In the Commission's view, it not only permits, but in some ways also encourages, inefficient investment by providing some carriers more support than is necessary to ensure reasonably comparable services at reasonably

⁴⁹ *Id.* at ¶ 227.

comparable rates.⁵⁰ Facilitating a path for rate-of-return carriers to voluntarily participate in CAF Phase II could address those concerns and would promote the Commission's longstanding goal of providing support to all carriers through incentive-based mechanisms.

ITTA supports the Commission's interest in adopting rules that would allow rate-of-return carriers to voluntarily participate in an alternative regulation plan.⁵¹ ITTA is delighted that the Commission recognizes the merits of the plan it has developed and has asked for comment on its specifics.⁵²

ITTA members have put tremendous effort into development of a proposal that we believe strikes an appropriate balance between the needs of carriers currently under rate-of-return regulation generally and the principles and goals that are important to the FCC. ITTA's Plan directly responds to a Public Notice the Bureau issued in May 2013 seeking to further develop the record on facilitating rate-of-return carriers' voluntary participation in CAF Phase II.⁵³ Our members have spent a considerable amount of time in the months since then devising a detailed and comprehensive proposal for such a transition in coordination with other industry stakeholders and the Commission. ITTA firmly believes this proposal is consistent with the direction the Commission charted in the May 16 Public Notice. We also firmly believe that this proposal addresses a number of concerns expressed by rate-of-return carriers with respect to

⁵⁰ See, e.g., *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶¶ 170-74 (2011).

⁵¹ *FNPRM* at ¶¶ 276, 283.

⁵² *Id.* at ¶ 278.

⁵³ *Wireline Competition Bureau Seeks Comment on Options to Promote Rural Broadband in Rate-of-Return Areas*, WC Docket No. 10-90, Public Notice, DA 13-1112, ¶¶ 8-19 (rel. May 16, 2013).

moving to model-based support by providing stability, certainty, and an adequate transition period for those carriers that opt to participate in the plan.

The *FNPRM* poses various questions regarding how the plan should be implemented, including the time frame for implementation, the impact on the CAF budget, necessary adjustments to the cost model, the treatment of special access services, NECA pooling issues, and other aspects of the plan.⁵⁴ ITTA offers its input regarding these issues below.

Time Frame for Implementation. The Commission observes that the ITTA Plan does not appear on its face to contemplate a specific time frame in which rate-of-return carriers would elect to participate in the plan and seeks comment on whether to allow carriers to transition to the plan within a limited election window (i.e., 2015 only) or in any year for the remaining years of model-based support.⁵⁵

We propose an annual open enrollment period that would run from January 1 until March 1 of each year the plan is available.⁵⁶ This approach would give rate-of-return carriers needed time to determine whether an alternative regulation plan could work for them, thereby maximizing participation by the rate-of-return carrier community. Once carriers opt into the ITTA Plan, they are precluded from returning to traditional rate-of-return regulation in those study areas for which they decide to participate. This approach is consistent with how price cap regulation works – once a carrier chooses to convert to price cap regulation, it is a one-way street and there is no return to rate-of-return regulation. As such, carriers will need to be certain the plan would provide the right incentives for them to continue deploying broadband before opting

⁵⁴ *FNPRM* at ¶¶ 283-99.

⁵⁵ *Id.* at ¶¶ 284-85.

⁵⁶ We suggest the March 1 cut-off to give NECA and individually-filing carriers enough time to prepare annual tariffs for filing July 1.

in. Under Phase I, once a carrier elects to participate in the plan, its ICLS and HCLS would be frozen at the study area level as of December 31 of the year prior to the election, as proposed by the Commission.⁵⁷

Impact on HCLS Cap. The Commission proposes to rebase the high-cost loop cap to deduct the HCLS that electing rate-of-return carriers would have received in the year after their election had they not opted into the ITTA Plan.⁵⁸ ITTA supports this proposal because it is consistent with the approach taken when the Commission transitioned price cap carriers and their rate-of-return affiliates to CAF Phase I. Under this approach, the Commission would direct NECA to submit on an annual basis a revised HCLS cap within 30 days of the March 1 deadline for the election by rate-of-return carriers to opt into the plan.⁵⁹

State-Level Election. Under ITTA's Plan, carriers could choose to participate on a study area-specific basis. The Commission, on the other hand, suggests that carriers be required to make a state-level election to participate.⁶⁰ ITTA urges the Commission to permit carriers the flexibility to participate in the plan by study area. Study area-specific elections would allow greater participation in the plan. If the Commission were to require state-level elections, some carriers likely would decline to participate because the plan would not be a good fit for all of their study areas in a particular state.

Although the Commission suggests that allowing carriers to elect into the plan on a study area basis could enable them to cherry pick those areas where model support would likely be

⁵⁷ *FNPRM* at ¶¶ 284-85.

⁵⁸ *Id.* at ¶ 286.

⁵⁹ *Id.*

⁶⁰ *Id.* at ¶ 287.

greater than legacy support, the same concerns would apply to state-specific elections.⁶¹ ITTA urges the Commission to adopt the approach that would maximize participation by the rate-of-return carrier industry in an alternative regulation mechanism since greater participation would result in increased broadband deployment. The ITTA Plan as proposed would lead to greater participation and therefore should be adopted.

Transition to Model-Based Support. The Commission seeks comment on the appropriate period of time for electing carriers whose frozen support is more than model-based support to transition to the lower model-based amount over time.⁶² ITTA is pleased that the *FNPRM* recognizes the need for a transition when model-based support under Phase II is less than frozen support under Phase I. A transition will increase participation in the plan by making it viable for more rate-of-return carriers in more locations. However, the transition period proposed in the *FNPRM* is not adequate. The Commission instead should adopt the transition period proposed in the ITTA Plan which would afford affected carriers five years for the phase-in of lower model-based support.

Impact on Budget. The Commission seeks input on how implementation of a voluntary alternative regulation plan for rate-of-return carriers would impact carriers that do not participate in the plan, given the overall CAF budget and the budget for rate-of-return areas specifically.⁶³ The Commission is concerned that there could be a budget shortfall if only rate-of-return carriers who receive more support under the plan choose to participate.⁶⁴

⁶¹ *Id.*

⁶² *Id.* at ¶ 288.

⁶³ *Id.* at ¶ 289.

⁶⁴ *Id.*

Any concern that voluntary participation in the ITTA Plan could create a squeeze on the remaining rate-of-return CAF budget is not a problem *caused* by the plan. It is the result of the budget cap currently in place. That said, it is by no means certain that only rate-of-return carriers who receive more support under the plan will choose to opt in. That assumption ignores the fact that the plan promotes additional broadband deployment by (1) providing participants with a stable revenue stream and (2) allowing for support in areas that today lack adequate broadband service. These business-planning factors will be relevant for all rate-of-return carriers when they are determining whether to participate in the plan.

Should there be any shortfall, however, ITTA endorses the *FNPRM*'s suggestion that a fixed amount from the broadband reserve account be added to the rate-of-return budget to account for the shortage.⁶⁵ This option would allow the Commission to maintain the overall CAF budget and help facilitate participation in the ITTA Plan.

Adjustments to the Model. As a number of parties have observed, there are certain aspects of the CACM adopted for price cap areas that make it inappropriate for use in the rate-of-return context.⁶⁶ The Commission asks commenters to address what specific changes should be made to the model before using it to calculate the offer of model-based support for rate-of-return carriers that voluntarily elect to participate in Phase II of the ITTA Plan.⁶⁷

Study Area Boundary Data. A critical preliminary step that must be taken before model-based support can be implemented for rate-of-return carriers is to ensure that the study area

⁶⁵ *Id.*

⁶⁶ *See, e.g.*, Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90 (filed June 17, 2013); Comments of NTCA, WC Docket No. 10-90 (filed June 17, 2013) (“NTCA Comments”).

⁶⁷ *FNPRM* at ¶ 290.

boundary data used in connection with calculating support is accurate, complete, and up-to-date. It is even more vital that accurate study area boundary data be utilized in conjunction with the model for rate-of-return carriers than for price cap carriers. Price cap carriers typically have a larger scale and serve many more study areas than rate-of-return carriers and rate-of-return study areas are typically much smaller and less dense than price cap study areas. Consequently, the problems caused by inaccuracies in a single study area or a small number of study areas tend to have less significance overall for price cap carriers than for rate-of-return carriers.

The numerous problems with the study area boundary data used in the past have been well documented.⁶⁸ Census blocks were not mapped accurately into study areas or were omitted from study areas entirely. Locations were not mapped to census blocks consistently or accurately. The Bureau has taken a number of steps to fix these problems and to obtain accurate, up-to-date study area boundary data from the carrier community. ITTA applauds these efforts and urges the Commission to ensure that the process of updating the boundary maps – including by resolving any study area boundary disputes – has been completed before utilizing the maps in conjunction with a cost model for rate-of-return carriers under a voluntary alternative regulation plan.

Unsubsidized Competition. Another crucial prerequisite to implementation of model-based support for rate-of-return carriers is to have adequate safeguards in place to ensure that carriers are not deemed ineligible for support in areas where other providers have overstated their presence as unsubsidized competitors. Under Phase II of the ITTA Plan, participants will be subject to the same service obligations as price cap carriers and the same limitations regarding

⁶⁸ See, e.g., *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, DA 12-646, ¶¶ 26-27 (rel. Apr. 25, 2012).

support where there is unsubsidized competition. There are myriad well-documented problems with the use of the NBM to determine where unsubsidized competition exists (i.e., overstated coverage areas by WISPs, etc.).⁶⁹ And there are myriad well-documented problems with the challenge process used by the FCC in the price cap context.⁷⁰

These problems would result in even greater inequities if imported without modification into the rate-of-return arena. As indicated above, rate-of-return carriers typically have far fewer study areas than price cap carriers, so inaccuracies regarding the presence of unsubsidized competition in a particular study area may have a much bigger impact. A rate-of return carrier serving a small number of study areas lacks the scale with which to “average out” a loss of support in some areas by balancing it with other non-competitive areas it serves. A rate-of-return carrier serving a single study area deemed ineligible for support would be precluded from participating in model-based support altogether. The Commission must ensure that the process for determining where unsubsidized competition actually exists has been corrected before the model can be fairly utilized in rate-of-return areas.

ITTA suggests that rather than using the challenge process established for price cap areas, the Commission should adopt the following process to determine where unsubsidized competition exists. The Bureau should use revised Form 477 data to develop and publish a list of all census blocks in rate-of-return areas where competitors do not actually provide service to

⁶⁹ See, e.g., CenturyLink Petition for Waiver, WC Docket Nos. 10-90, *et al.*, at 5-11 (filed June 26, 2012).

⁷⁰ See, e.g., Comments of the National Telecommunications Cooperative Association, the National Exchange Carrier Association, and the Western Telecommunications Alliance, WC Docket No. 10-90, *et al.* (filed Feb. 19, 2013), at 8.

at least 20 percent of locations.⁷¹ These census blocks would be deemed eligible for the offer of model-based support under Phase II of ITTA's plan unless competitors provide evidence within a specific period of time (e.g., 30 days) demonstrating that they are able to provide service meeting the Commission's performance standards to 100 percent of locations in the relevant census block. Only then would such census blocks be excluded from the offer of model-based support to rate-of-return carriers under Phase II of ITTA's Plan. This method would provide a simpler, less burdensome means of determining the presence of unsubsidized competition and would avoid the time and resource-intensive price cap area process that rate-of-return carriers are not equipped to navigate.

Adjustments to Model Inputs. In addition to ensuring the accuracy of data regarding study area boundaries and the presence of unsubsidized competition, the Commission should ensure that the various inputs used in the cost model take into account the unique nature of rate-of-return carriers. As indicated above, due to their larger size and geographic footprint, price cap carriers are less affected by the lack of precision associated with the modeling process. In contrast, rate-of-return carriers serve smaller, lower density geographic areas and do not share the same flexibility to adapt to inaccuracies produced by a model.

Given that the CACM has been constructed exclusively for use in the distribution of high-cost support to price cap carriers, it is likely that certain inputs used in the model will require modification to ensure that a model-based approach is suitable for smaller carriers.

Several parties have indicated that adjustments to inputs relating to plant mix are likely to be

⁷¹ The Form 477 data that will be filed by carriers this fall will include, by census tract, the number of subscribers (i.e., current customers) a carrier is serving. The Commission should modify this requirement to require the filing of current customer counts on a census block level. Once it does so, Form 477 data could easily be used to identify the census blocks in which competitors do not serve at least 20 percent of locations.

necessary because plant mix varies significantly among rate-of-return carriers within a state.⁷² Currently, the CACM utilizes state-specific plant mix and sharing assumptions that were developed largely based on information provided by larger companies. Because plant mix and related assumptions in the model have a significant impact on network costs, the Commission may need to tailor these inputs to properly reflect the operations of smaller providers.

It also may be necessary for the Commission to modify inputs relating to cost of capital. The CACM currently utilizes a default rate of 8.5 percent as the weighted average cost of capital for price cap carriers in the calculation of model-based support. Because the average cost of capital for rate-of-return carriers is almost certainly higher than 8.5 percent, the Commission may need to adjust this figure accordingly.⁷³

Treatment of Special Access Services Under the ITTA Plan. The Commission raises several questions regarding the treatment of special access services under the ITTA Plan.⁷⁴ In particular, the Commission asks parties to address what rules or principles should govern the development of special access rates, whether they are established individually or within the NECA pool.⁷⁵ For pooling companies filing under Section 61.38 of the Commission's rules, the current rules and procedures are adequate and no changes are necessary. Study areas under alternative regulation would be treated the same as average schedule study areas in the NECA tariff are today for rate-setting purposes, and there is no reason to depart from this approach. Likewise, no rule changes are necessary with respect to carriers filing their own tariffs. For

⁷² See, e.g., NTCA Comments at 20.

⁷³ See *id.* at 17-19.

⁷⁴ FNPRM at ¶¶ 292-94.

⁷⁵ *Id.* at ¶ 294.

carriers that do not participate in the NECA pool, current standard price cap rules would apply. The ITTA Plan does not require any modifications to this framework.

NECA Pooling Issues. The Commission raises questions regarding a single traffic-sensitive pool for both carriers participating in the ITTA Plan and those remaining under traditional rate-of-return regulation and asks whether any changes to the NECA pooling procedures are necessary to ensure that both types of carriers are treated equitably.⁷⁶

Specifically, the Commission requests that parties address how earning variations within the pool should be handled, whether pool entry and exit rules would need to be modified, and if there would be any effect on the banding processes that NECA uses to establish special access rates.⁷⁷

No changes to the current rules or pooling procedures would be necessary. The rules and procedures for carriers opting alternative regulation under the ITTA Plan would work similarly to how they are applied today for average schedule carriers and rate-of-return affiliates of price cap carriers. Thus, earnings variations would be handled in the same manner as they are handled today for average schedule carriers, no pool entry or exit rules would need to be modified, and there would be no effect on the banding processes NECA uses to establish special access rates. The ITTA Plan does not necessitate any changes to these procedures.

Switched Access Services. The Commission asks parties to comment on whether there are changes that should be made to the switched access transition process or recovery mechanism if the ITTA Plan is adopted.⁷⁸ As ITTA has proposed, the switched access transition and associated recovery mechanism the Commission established for rate-of-return carriers in the

⁷⁶ *Id.* at ¶ 295.

⁷⁷ *Id.*

⁷⁸ *Id.* at ¶ 297.

USF/ICC Transformation Order should continue unchanged for carriers participating in the ITTA Plan. The transition the Commission adopted for rate-of-return carriers in the *Order* properly takes into account the fact that these smaller, more rural carriers are more dependent on ICC revenues than larger price cap carriers. That fact does not change should a rate-of-return carrier opt in to an alternative mechanism for USF recovery. As such, the Commission should not alter the existing ICC transition plan for rate-of-return carriers electing to participate in the ITTA Plan.

Common Line Rate Elements. The Commission requests further input from ITTA and others on how an alternative rate regulation plan would adjust, if at all, the rates for common line rate elements going forward.⁷⁹ To clarify, ITTA proposes that all of a participating carrier's common line rate elements (SLCs, PRI port charges, etc.) would be frozen at their level on December 31 of the year prior to opting into the plan.

IX. MODIFICATIONS SHOULD BE MADE TO THE PROPOSED NEAR-TERM REFORMS FOR RATE-OF-RETURN CARRIERS

The Commission seeks comment on near-term reforms to address problems inherent in the existing rate-of-return regulatory framework, such as the “race to the top” incentives that exist under HCLS and the “cliff effect” of the annual adjustment of the HCLS cap.⁸⁰ The Commission proposes to reduce support proportionally among all HCLS recipients by no longer adjusting the national average cost-per-loop (“NACPL”), but instead reducing the reimbursement percentages for all carriers.⁸¹ Under this approach, reductions in support would be spread proportionally among all carriers and carriers presently close to the NACPL would no longer run

⁷⁹ *Id.* at ¶ 298.

⁸⁰ *Id.* at ¶¶ 259-62.

⁸¹ *Id.* at ¶ 261.

the risk of falling of the cliff in terms of their receipt of HCLS support. ITTA supports the Commission's adoption of this proposal and agrees that it would help alleviate problems created by the structure of the current HCLS mechanism.

As another near-term measure, the Commission proposes to adopt a rule that no new investment after a date certain (i.e., December 31, 2014) may be recovered through HCLS and ICLS when such investment occurs in areas that are already served by a qualifying competitor.⁸² To enforce this requirement, rate-of-return carriers would be required to produce, in an audit or other inquiry, asset records and associated receipts to document that new investment for which recovery is sought through the federal support mechanisms, after a date certain, occurred only in census blocks that are not served by other providers.⁸³

Adoption of a rule that no new investment after a date certain may be recovered through HCLS and ICLS when it occurs in areas that are already served by a qualifying competitor is not feasible in the near term at least in part because there is no verifiable method of determining where unsubsidized competition actually exists. As explained above, defects in the NBM and the current challenge process make them unsuitable for determining the presence of competition in rate-of-return study areas.⁸⁴ ITTA urges the Commission to use a different process to determine the presence of unsubsidized competition in rate-of-return study areas. ITTA's suggested approach represents a more accurate, easily verifiable method for determining where unsubsidized competition actually exists than the current process and it, or a similar process, should be implemented before any 'no new investment' rule is adopted.

⁸² *Id.* at ¶ 263.

⁸³ *See id.* at ¶ 265.

⁸⁴ *See* discussion in Section VIII *infra*.

Should the Commission nonetheless determine to adopt a ‘no new investment’ rule at this time, it must reconsider the measures it proposes in the *FNPRM* to monitor and enforce compliance with the rule.⁸⁵ As indicated above, the Commission proposes to require rate-of-return carriers to provide asset records demonstrating the existence of facilities that serve locations in census blocks where there is no unsubsidized competitor to comply with the rule. Such carriers typically maintain this information at the wire center or study area level and the requirement to maintain asset records at the census block level would be unduly burdensome. Although the Commission currently requires price cap carriers to provide asset records at the census block level for purposes of demonstrating they are not using CAF support in areas with unsubsidized competition, this process is not practical for smaller rate-of-return carriers.⁸⁶

Unfortunately, the safe harbor proposed by the Commission does not present a workable solution for rate-of-return carriers to comply with the rule. Recognizing concerns regarding the broadband coverage stated in the NBM, the *FNPRM* suggests a safe harbor for new investment where a rate-of-return carrier posts its investment plans on its website, waits 90 days, and if a competing provider does not indicate that they are already serving that area within the specified period, the investment may be recovered.⁸⁷ This proposal is not practical for multiple reasons.

Requiring rate-of-return carriers to post investment plans online with the specific intent of allowing competitors to review them would put rate-of-return carriers at a distinct competitive disadvantage. Capital investments frequently cover areas that may be partially served by a

⁸⁵ See *FNPRM* at ¶ 265.

⁸⁶ Additionally, no process exists to segregate investments used to serve only areas where competition already exists. Specifically, a fiber feeder cable might connect DSLAMs in areas covered by competition and continue past such areas to reach DSLAMs in more remote areas not served by an unsubsidized competitor.

⁸⁷ *FNPRM* at ¶ 265.

competitor. Public disclosure of investment plans would allow other service providers to decide where to compete based on their would-be competitors' intended investment strategy.

Complying with this process also would create significant burdens for rate-of-return carriers. The posted plans would have to be very granular to accurately identify those areas where unsubsidized competition does and does not exist, making them challenging to prepare. It also is likely that scenarios will arise where a competitor claims service over a subset of the area covered by a posted investment plan but does not provide specific information about where within the area it provides service. The rate-of-return carrier would then have to perform additional analysis and post a revised investment plan. The competitor could then force the cycle to be repeated by claiming service within a portion of the area once again. It also is worth noting that many routine investments (e.g., replacing copper distribution plant and drops) are performed with less than 90 days lead time. Should a competitor claim service in an area where such routine investments have already been made, records would have to be manually adjusted after the fact, thereby increasing administrative burdens.⁸⁸

X. EFFORTS TO DEVELOP A CONNECT AMERICA FUND THAT IS TARGETED TO THE NEEDS OF RATE-OF-RETURN CARRIERS SHOULD BE A PRIORITY

In the longer term, the Commission questions the continued viability of the HCLS and ICLS mechanisms and suggests that efforts would be better spent on creating a new Connect America Fund for rate-of-return carriers.⁸⁹ To that end, the Commission seeks comment on a rule that would exclude new investment from the cost studies used for the determination of HCLS and ICLS after a date certain, and allow recovery under those mechanisms only for past

⁸⁸ Should the Commission decide to adopt the proposed safe harbor, ITTA suggests that it include an exception for routine investments.

⁸⁹ *FNPRM* at ¶ 267.

investment occurring prior to that date certain.⁹⁰ Over time, the amount recovered through HCLS and ICLS would diminish and all new investment would be recovered through a new CAF for rate-of-return territories.⁹¹

ITTA supports the *FNPRM*'s focus on creating a new Connect America Fund for rate-of-return carriers.⁹² That said, the Commission should not lose sight of the fact that the HCLS and ICLS mechanisms have proven very successful in enabling new rural broadband investment and in providing for the maintenance of existing networks. Current mechanisms (HCLS and ICLS) should be maintained to provide continuing support for past investment. It is most equitable to allow for the recovery of investment through the mechanisms in place at the time the investment decisions were made.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

XI. CONCLUSION

The Commission should move forward expeditiously with implementation of CAF Phase II in price cap territories. However, it must ensure that any proposals it adopts do not compromise its universal service goals. ITTA also supports the Commission's efforts to facilitate a path for rate-of-return carriers to voluntarily participate in CAF Phase II and to make other changes that would address the Commission's concerns with existing rate-of-return universal service support mechanisms. We urge the Commission to adopt the ITTA Plan, as it creates incentives for increased broadband deployment by rate-of-return carriers in furtherance of the Commission's universal service goals.

Respectfully submitted,

**ITTA – THE VOICE OF MID-SIZE
COMMUNICATIONS COMPANIES**

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