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

In the Matter of	)	
	)	
Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund – Alaska Plan	)	WC Docket No. 16-271
	)	
Expanding Broadband Service Through the A-CAM Program	)	RM-11868

COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

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EXECUTIVE SUMMARY

The instant Notice of Proposed Rulemaking poses critical questions regarding how best to leverage several of the most successful high-cost universal service fund ("USF") programs to date in order to deliver even better and more affordable broadband services to millions of rural Americans. The efforts of the Federal Communications Commission (the "Commission") remain as essential as ever for the ultimate objectives of universal service – not just for the deployment of networks but the ongoing delivery of services – and the NPRM represents a critical juncture for the future of USF. In these comments, NTCA recommends a straightforward five-step plan that the Commission can and should adopt now to ensure that these essential high-cost USF programs keep pace with consumer demand, that they will enable the deployment of more robust networks, and that they will sustain the delivery of high-quality services at affordable rates in rural areas – all in a more efficient manner and in effective coordination with new network construction grant programs that will be implemented over the next several years.

Although some contend that the Commission's universal service programs will become less relevant (or even irrelevant) in a "post-grant" world, such arguments demonstrate a fundamental misunderstanding of the statutory mission and defined purposes of universal service. The need for specific, sufficient, and predictable universal service support is critical as post-pandemic demand for broadband increases steadily – grant programs finance networks by providing upfront capital, but the high-cost USF programs help to enable business cases for investment and, even more importantly, help to sustain networks, help services keep pace with consumer demands over time, and help keep rates affordable in deeply rural areas. In other words, the USF programs serve an essential and ongoing set of functions that grants simply do not. Moreover, if acted upon promptly, the recommendations set forth herein could begin to deliver on the promise of better broadband across rural America in advance of still-under-development grant programs, helping consumers in need much sooner and enabling effective coordination with these other programs in a way that will allow them to target their resources to other areas in need as well.

For the reasons articulated above and further herein, to meet evolving and escalating demands for better broadband services and in lieu of abdicating or deferring its statutory mandate to preserve and advance universal service, the Commission should take **five simple steps** as soon as possible to enhance and update its essential high-cost USF mechanisms:

1. ***Offer all recipients of A-CAM support, as well as interested CAF-BLS recipients, the opportunity to elect "enhanced" support, which would consist of receiving support pursuant to the revised formula and extended support term proposed by the A-CAM Broadband Coalition.***

2. ***In exchange for this enhanced and extended support, require each electing A-CAM recipient to deliver materially higher 100/20 Mbps broadband speeds to at least 90% of eligible locations as recommended by the coalition.***

3. ***Address concerns arising in recent years with respect to the CAF-BLS and HCLS support budget by recalibrating the annual budget at the current level of demand as a new baseline for support, restore the $200 per-line cap to $250 per month, and apply a forward-looking inflationary factor consistent with the Commission's observation in its most recent budget waiver order.***

4. ***In exchange for such support, require each CAF-BLS recipient to deliver higher 100/20 Mbps broadband speeds to at least 90% of locations in its study area. Given the magnitude of this leap in service level commitments, the Commission should also consider deferring application of the budget control for several years so that providers can ramp investments to fulfill these materially increased obligations on a study area-wide basis.***

5. ***Release a Further Notice of Proposed Rulemaking seeking comment on other voluntary paths to fixed support for CAF-BLS recipients along the lines of those suggested herein.***

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COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these Comments in response to the Notice of Proposed Rulemaking[2] released by the Federal Communications Commission (the "Commission") in the above-captioned proceedings. The NPRM poses important questions regarding how best to leverage several of the most successful high-cost universal service fund ("USF") programs to date in order to deliver even better broadband services to millions of rural Americans. The Commission's efforts remain as critical as ever for the ultimate objectives of universal service – not just for the deployment of networks but the ongoing delivery of services – and the NPRM represents a critical juncture for the future of USF. NTCA urges the Commission to act now consistent with the recommendations herein to ensure that these essential high-cost USF

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1 NTCA represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

2 *Connect America Fund*, *et al.*, WC Docket No. 10-90, *et al.*, Notice of Proposed Rulemaking (rel. May 20, 2022) ("NPRM").

programs will keep pace with consumer demand, that they will enable the deployment of more robust networks, and that they will sustain the delivery of high-quality services at affordable rates in rural areas – all in a more efficient manner and in effective coordination with new network construction grant programs that will be implemented over the next several years.

I. THE NEED FOR SPECIFIC, SUFFICIENT, AND PREDICTABLE UNIVERSAL SERVICE SUPPORT IS CRITICAL AS DEMAND FOR BROADBAND INCREASES STEADILY.

A. The COVID-19 Pandemic Has Sparked Increased Demand for Better Broadband.

The COVID-19 pandemic has marked an inflection point recognizing the necessity of broadband to support and enhance numerous aspects of normal and ordinary daily living. And yet the realities of building networks and delivering broadband services in sparsely populated rural areas remain unchanged: broadband networks are expensive to build and operate, and areas with dense, high-income populations offer better opportunities to realize a return on investment and ongoing operation than rural areas where "large investments and diminishing profits make building broadband infrastructure an unattractive investment."[3] The universal service provisions of the Telecommunications Act of 1996 (the "1996 Act") address these market conditions through mandates to ensure that users in rural and insular areas have access to services that are "reasonably comparable" in price and quality to those offered in urban areas. Moreover, the 1996 Act prescribes that USF support must be "specific, predictable and sufficient." This allows rational planning for networks that demand careful design for the long-haul – the high-cost USF programs do not themselves provide capital for deployment, but they enable some level of certainty in the business

[3] Christopher G. Reddick; Roger Enriquez; Richard J. Harris; and Bonita Sharma, *Determinants of Broadband Access and Affordability: An Analysis of a Community Survey on the Digital Divide*, College for Health, Community, and Policy, University of Texas at San Antonio, at 3 (2020). *See also* Read, Anna, *How Can the United States Address Broadband Affordability*, Pew Trusts, at 2 (Apr. 29, 2022).

case for investment by providing reliable ongoing support to recover costs and deliver services at rates that consumers could more reasonably be expected to pay than in the absence of support.

Stepping back, it is clear that what must be considered "reasonably comparable" in the context of broadband – and thus what must be considered as the proper objective of the Commission's USF programs – has evolved rapidly and dramatically. It is anticipated that in just one year, 92% of the U.S. population will be internet users.[4] Deloitte reports that 28% of consumers are using connected home devices that demand consumer bandwidth.[5] And McKinsey estimates that every second, 127 devices connect to the internet for the first time.[6] These trends, and the increasing demand they place on broadband networks, are only expected to increase – underscoring the critical need to ensure that once networks are built, they are maintained and have the capacity to accommodate these ever-expanding demands in rural and urban markets alike.

Indeed, over the past five years, downstream and upload rates have increased at an annual average rate of 30.5% and 33.3%, respectively.[7] These increases match growing consumer demand for and use of broadband enabled applications. Cisco explains, "Broadband speed is a crucial enabler of IP traffic. Broadband-speed improvements result in increased consumption and use of high-

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[4] Cisco Annual Internet Report – Cisco Annual Internet Report Highlights Tool, (https://www.cisco.com/c/en/us/solutions/executive-perspectives/annual-internet-report/air-highlights.html#) (visited Jul. 10, 2022) ("Cisco Internet Report").

[5] Kevin Westcott; Jeff Loucks; Dan Littman; Phil Wilson; Shashank Srivastava; and David Ciampa, *Build It and They Will Embrace It: Consumers Are Preparing for 5G Connectivity in the Home and On the Go*, Deloitte Insights Deloitte Center for Technology, Media & Telecommunications, at 2 (2019) ("Deloitte 2019 Report").

[6] Kim Baroudy; Sunil Kishore; Sumesh Nair; and Mark Patel, *Unlocking Value from IoT Connectivity: Six Considerations for Choosing a Provider*, McKinsey and Company (2018) (https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/unlocking-value-from-iot-connectivity-six-considerations--for-choosing-a-provider) (visited Jul. 10, 2022).

[7] Cartesian, Fiber Broadband Association, NTCA–The Rural Broadband Association, *Broadband Infrastructure Playbook,* at 5 (2022) (https://www.ntca.org/sites/default/files/documents/2022-03/Broadband%20Infrastructure%20Playbook_FBA%20NTCA%20Cartesian.pdf) (visited Jul. 10, 2022).

bandwidth content and applications."[8] Cisco also notes that "today's bandwidth needs are a sliver of future needs" given the "enormous demand" as well as the rapid and significant increase in the number and types of connected devices from 2018 to 2023.[9] Deloitte articulates the need for increased capacity succinctly: those who connect more devices tend to purchase more bandwidth.[10] Meanwhile, increased use of broadband capabilities for in school and outside-school assignments is expected to continue,[11] and more than 80% of pandemic-period teleworkers reported using video or online conferencing services to connect to co-workers.[12] The range of industries that provide telework opportunities is expansive and is fueling a new-found outlook of "work anywhere, from anywhere," a maxim that bodes well for rural spaces with robust broadband availability as workers consider new residential opportunities.[13]

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8 Cisco Internet Report at Section 2. B.

9 *Id*. at Figure 13.

10 Deloitte 2019 Report at 11.

11 *The Evolution of Distance Education in 2020*, School of Education and Human Sciences, University of Kansas (Sep. 17, 2020) (https://educationonline.ku.edu/community/distance-education-evolution-in-2020) (visited Jul. 12, 2021).

12 Kim Parker, Julianna Menasce Horowitz, and Rachel Minkin, *How the Coronavirus Outbreak Has – and Hasn't – Changed the Way Americans Work*, Pew Research Center (Dec. 9, 2020) (https://www.pewresearch.org/socialtrends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/) (visited Jul. 12, 2022).

13 *See* Kim Parker, Julianna Menasce Horowitz, and Rachel Minkin, *COVID-19 Pandemic Continues to Reshape Work in America*, Pew Research Center (Feb. 16, 2022) (https://www.pewresearch.org/social-trends/2022/02/16/covid-19-pandemic-continues-to-reshape-work-in-america/) (visited Jul. 7, 2022). *See also* Chip Cutter and Catherine Dill, *Remote Work is the New Signing Bonus*, Wall Street Journal (Jun. 26, 2021) (https://www.wsj.com/articles/remote-work-is-the-new-signing-bonus-11624680029) (visited Jul. 8, 2022); Chip Cutter, *Many Companies Want Remote Workers – Except from Colorado*, Wall Street Journal (Jun. 17, 2021) (https://www.wsj.com/articles/many-companies-want-remote- workersexcept-from-colorado11623937649) (visited Jul. 14, 2022); *Remote Work Has Two-Thirds of Americans Considering Moving from Cities to the Country*, NextGov.com (Oct. 27, 2020) (https://www.nextgov.com/cio-briefing/2020/10/remotework-has-two-thirds-americans-considering-moving-cities-country/169598/) (visited Jul. 8, 2022).

These data indicate not only growing demand for broadband, but also demand for growing broadband. As Chairwoman Rosenworcel observed just a few days ago, "The needs of internet users long ago surpassed the FCC's 25/3 speed metric, especially during a global health pandemic that moved so much of life online. . . . . That's why we need to raise the standard for minimum broadband speeds now and while also aiming even higher for the future, because we need to set big goals if we want everyone everywhere to have a fair shot at 21st century success."[14] Indeed, as NTCA has long advocated in the context of universal service programs, performance targets should be based not upon the "here and now," but instead upon a reasonable anticipation of how consumer demands will evolve over the life of the funded network – by setting expectations for performance that ensure scalable networks and cutting-edge services that a decade or more from now look as efficient and effective an investment as the day they were first made.

All of these trends support the need to ensure that Commission programs support the development and expansion of more robust broadband networks and, just as importantly, the ongoing delivery of more affordable services at higher speeds over time. To this end, NTCA members and small rural operators like them have been responsible and effective stewards of USF support in not only meeting but often exceeding such demands and, with a foundation of existing networks that can be extended and upgraded, they stand ready and are well-positioned to meet the demands of growing broadband commitments if the programs that support them evolve as well. Of course, there is more work to be done – for the significant success achieved by rural providers to date leveraging Alternative Connect America Model ("A-CAM") and Connect America Fund-Broadband Loop Support ("CAF-BLS") support in leading the charge to connect rural America, there are still areas to be reached with robust and affordable broadband. It is also worth noting that most of the substantial

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[14] *Chairwoman Rosenworcel Proposes to Increase Minimum Broadband Speeds and Set Gigabit Future Goal*, Press Release (rel. July 15, 2022).

deployment efforts to date have been undertaken *before* grant funds became more prevalent and were achieved largely through loans or the use of other private capital that now must be recovered over the life of the network from a small customer base scattered across great rural distances. Thus, facile assertions that "grants will take care of everything" overlook the fact that a substantial portion of the highest quality networks existing in rural America have been built *without* grant funds, and that the costs of deploying them and delivering services atop them at affordable rates will not be addressed by grants awarded in the future in *other* areas. Put another way, the Commission need not, should not, and cannot abdicate its statutory universal service mandate simply because grant funds might be awarded in some subset of rural markets sometime in the future. As always, specific, predictable, and sufficient USF support remains critical to the repayment of loans or recoupment of other private capital already expended and, just as importantly, to the ongoing delivery of services that are reasonably comparable in price and quality to those available in urban areas.

Indeed, the work of NTCA members and providers like them is all the more remarkable – and the challenges that justify ongoing and enhanced USF support all the more clear – when one takes stock of the relative rurality of the areas they serve even as compared just to other rural areas. This, of course, is no accident; the very reason that these smaller providers exist is because they serve the most deeply rural areas long ago left neglected by larger operators in first stringing telephone wires across the country. NTCA estimates, for example, that the average population density in rural local exchange carrier study areas is fewer than six households per square mile, while the rural areas served historically by other kinds of operators are approximately four times as dense, averaging nearly 24 households per square mile. Yet, despite these low densities and other challenges, a compelling and effective mix of private and other capital, community commitment, entrepreneurial spirit, and high-cost USF support has enabled these small rural providers to deploy state-of-the-art services to the hardest-to-reach places in a manner that far outpaces other operators. These accomplishments *despite the challenges*, combined with the trends toward demand for more robust services at still-affordable rates, confirm the need for policies that not only enable the deployment of broadband networks but which also, and consistent with the universal service provisions of the 1996 Act, ensure that those networks maintain a dynamic ability to remain reasonably comparable to growing capabilities enjoyed in urban regions.

B. Grants and Loans are Complements to, and not Substitutes for, Effective High-Cost USF Programs – Ongoing Support is Critical to Maintain and Sustain Networks and Help Keep Service Rates Affordable.

As described above, demand for broadband has scaled rapidly and is anticipated to increase substantially for both consumer and industrial use. Accordingly, even providers that have achieved notable levels of deployment will nevertheless often need ongoing support to repay loans for the networks already built, to enable maintenance and upgrading of networks to meet escalating demand, and to provide services at more affordable rates in areas as rural as those served by NTCA members and operators like them. This is consistent with Congressional actions that are intended to ensure that networks are scalable for future needs. Within the context of the Administration's directive for inter-agency coordination,[15] it would be illogical to devote extensive resources from one agency to *build* the network while other policies risk stagnation or neglect. Rather, the Commission's mandate from the 1996 Act is clear – to ensure that at *all* times, consumers in rural and insular parts of the Nation have continuing access to reasonably comparable services at reasonably comparable rates. Not just the day on which the service is "turned on" or soon thereafter. To the contrary, Congress itself could not have been more clear in the Infrastructure Investment and Jobs Act that, even as new grant programs were being created, the Commission was not to neglect the ongoing mission of

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[15] Broadband Interagency Coordination Act of 2020, Pub. L. 116-260, State. 3214, FF Title IX § 904 (2020), codified at 47 U.S.C. § 1308 ("BICA"). The Commission is currently seeking comment on BICA. *See Wireline Competition Bureau Seeks Comment on the Interagency Broadband Coordination Agreement*, Public Notice DA 22-712, WC Docket No. 22-151 (rel. Jul. 1, 2022).

universal service; as examples, Congress indicated that the new law should not be interpreted "in any way [as reducing] the congressional mandate to achieve the universal service goals for broadband"[16] and that the new appropriated funding was intended to "supplement, and not supplant," existing efforts to support broadband.[17]

Initiatives that focus on providing grants, such as the Broadband Equity, Access, and Deployment ("BEAD") program or ReConnect, finance upfront capital expenditures. USF high-cost programs, in comparison, focus on recovery of any such capital expenditures not covered by financing programs, along with the ongoing costs arising out of operation and maintenance of networks – with the aim of ensuring that rural Americans can obtain services at rates reasonably comparable to those in urban areas in lieu of facing unaffordable rates. As a matter of good government and effective use of scarce resources, these various programs can (and, by law, must) be used in concert to deploy the fastest, most reliable, and most sustainable networks possible to as many Americans as possible while ensuring long-term sustainability and assisting with affordability of services delivered over them.

It is not only NTCA that professes this understanding, drawn from the language of the statute that emphasizes a recognition of the "evolving" characteristics of services to be supported by the USF.[18] Numerous parties commenting in the "Future of Universal Service" proceeding earlier this year affirmed their recognition of distinct respective mandates of the various statutes and resultant programs. Those commenters urged the Commission to ensure the universal service goals of sustainability of both networks and services, rather than allowing the influx of intensive capital

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[16] Infrastructure Investment and Jobs Act of 2021, Division F, Title I, § 60104(c)(3)(A), Pub. L. 117-58, 135 Stat. 429 (Nov. 15, 2021) ("Infrastructure Act" or "IIJA").

[17] *Id*. at § 60102(l).

[18] *See* 47 U.S.C. § 254(c)(1).

infrastructure funding to distract from the longer-term needs of ongoing support. These commenters represented a broad range of interests, yet shared a common vision that working in tandem, complementary Federal programs ensure *both* the initial establishment of connectivity *and* the ongoing availability of robust and reliable services at affordable rates.

By way of example, Cisco observed, "Support for both up-front investment and ongoing operations are essential for broadband services to be viable over the long term. In light of the [Infrastructure] Act's appropriation of over $42 billion for infrastructure, the Commission should ensure that its high-cost programs adequately support the ongoing operating expenses of existing infrastructure as well as the incremental cost of new infrastructure enabled by the IIJA."[19] Likewise, Public Knowledge articulated a clear path to define USF to provide for the inevitable and *desired* need to maintain reasonably comparable rates and quality while ensuring ongoing network upgrades:

> Networks do not run themselves; they require people, equipment, maintenance, and upgrades. These are the operating expenses a provider will incur in delivering service to their community. The Commission must take these substantial expenses into account as it seeks modification to the Commission's rules so that any changes do not result in a shock to the system as the quantile regression and other reforms of the past decade did. Discipline and accountability are critical elements of a sustainable program, but not at the expense of extracting the marrow out of the bones of our communications networks.[20]

Other commenters shared similar themes regarding the need for ongoing USF support, including ACA Connects,[21] the National Rural Electric Cooperative Association ("NRECA"),[22] Vantage Point

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19 Cisco Comments at 2.

20 Public Knowledge Comments at 10.

21 ACA Connects Comments at 17 (explaining that smaller operators in particular will "need to continue to access support from the Commission to cover above-average operational costs.").

22 NRECA Comments at 14 (highlighting the need "to ensure that these new broadband systems in rural and high-cost areas are also well-maintained and affordable.").

Solutions ("VPS"),[23] Lumen,[24] and USTelecom-The Broadband Association ("USTelecom").[25] With the 1996 Act, the IIJA, and these comments as backdrop, it is clear that the Commission need not, should not, and cannot abdicate its responsibility to ensure universal service by, for example, simplistically "waiting for BEAD." Although it is essential of course to ensure proper coordination among the operation of different broadband-supporting programs across different agencies, the Commission should ultimately take those steps it deems necessary to fulfill its ongoing mission in lieu of taking a back seat and deferring to other agencies in promoting both the availability and affordability of broadband services.

NTCA recognizes the need of course to ensure access in "unserved" areas and has been a substantial supporter of new grant programs to help with such concerns. Indeed, the availability of a network is an essential condition precedent to achievement of universal service, but network deployment is not the end itself of universal service. The Commission should therefore avoid viewing the application of high-cost USF support as a binary objective that divides recipient areas into "served" and "unserved." Rather, the controlling statute envisions an ongoing effort to ensure a dynamic state of reasonably comparable service that the statute itself defines as "evolving."[26] At *best,* ineligibility for future funding would shackle a network as others advance to meet the evolving

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[23] VPS Comments at 10. ("Current and future USF programs play a significant role in enabling and sustaining broadband performance and will need to reach beyond the initial task of network construction. Those 'rules of the broadband road' are required for the Commission to continue to be successful with broadband public policy.")

[24] Lumen Comments at 9. ("In some rural areas, even once a network is built, the location lacks the business case to maintain it, much less improve upon it. Using High-Cost Program funding to support upgrades and maintenance will ensure that service providers located in such areas will continue to be able to meet consumer demand for high-speed broadband services.")

[25] USTelecom Comments at 15. ("The High Cost program as designed is not just a capital expenditure fund. Support may also be used for operating expenses. Particularly in the most rural, less dense, highest cost portions of the United States, providers have had an ongoing need for support in order to maintain and keep those networks operating and have relied on USF support to do so.")

[26] 47 U.S.C. § 254(c)(1).

needs of technology and the marketplace. At worst, as discussed in the following subsection, the suspension of funding could disable the ability to maintain even the *status quo* through regular maintenance and affordable rates. The need to create a flexible comprehensive approach is even more necessary given the influx of BEAD and other capital expense funding that could lead inadvertently to a misunderstanding that once built, costs cease and operations are necessarily self-sustaining. In the instant case, as discussed further in Section II, *infra*, this means the Commission should not defer much-needed updates to its critical high-cost USF programs simply because BEAD will at some point launch. Instead, the Commission should take – and is required by statute to take – those steps necessary in updating its USF mechanisms to ensure that they are keeping pace with the evolving mission of universal service.

C. It is Long Past Time to Recognize that the High-Cost USF Program Promotes *Both* Availability *and* Affordability.

It is critical to ensure that USF recipients who have met or exceeded their service level commitments or deployment milestones are not penalized by the withholding of future USF support simply for having done so. There is again the need for ongoing support even in areas where robust networks may already exist, and this concern is not without precedent: as NTCA described previously, a recipient of Connect America Fund ("CAF") Phase II model-based universal service support far "outperformed" its prior 10/1 Mbps buildout obligations, deploying instead a fiber network capable of potentially delivering 100 Mbps or even Gigabit service.[27] As a "reward" for such additional effort, the area in which this network was built was considered ineligible for Rural Digital Opportunity Fund ("RDOF") support because available speeds exceeded 25/3 Mbps – resulting in the complete cessation of high-cost USF support in that area without any consideration

[27] *Ex Parte* Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 19-126, 10-90, at 1 (fil. Jan. 17, 2020).

of whether support was necessary to ensure reasonably comparable services at reasonably comparable rates over time. As was the case there, it is critical that emerging policies accommodate the reality that even once built to the highest level of performance, costs cannot always be recovered through consumer rates alone; the rates required to recover such costs in many cases would not be "reasonably comparable" as required by law[28] and could range into the hundreds of dollars per month. Rather than provide incentives for build-out and concomitant benefits for the community, these types of outcomes would offer a punishing "reward" for efficiency and motivated commitment – with rural consumers paying the ultimate price either in the form of higher prices because their provider "built too quickly and well" or in the form of better broadband services delayed or denied as providers purposefully do nothing more than the bare minimum when investing in networks so that they can qualify for subsequent rounds of funding. Neither outcome reflects efficient or sound policy.

To be sure, there are specific mechanisms to attend the needs of low-income users through Lifeline, and the new Affordable Connectivity Program ("ACP") builds upon these efforts by providing greater subsidy levels to an expanded pool of low-income consumers for broadband access. However, the plain mandate of the statute to ensure rates in rural and insular areas that are reasonably comparable to those charged in urban areas cannot be lost – and the operations of the Lifeline and ACP programs will not ensure this standing alone. The Commission, of course, is well aware of this construct: every year, the Wireline Competition Bureau and the Office of Economics and Analytics undertake a survey to collect data on rates for standalone broadband service in urban areas. In the Commission's own words, "The main purpose of the broadband [urban rate survey] is to produce

[28] 47 U.S.C. § 251(b)(3).

reasonable broadband comparability benchmarks for every possible service tier."[29] This survey and the ensuring publication of the reasonable comparability benchmarks for the various service tiers show that, even *with* high-cost USF support, average rural rates are generally pegged to be tens of dollars higher per month than the urban average rate – underscoring how much higher still they would be *in the absence of* high-cost USF support. This effort makes unmistakably clear that high-cost USF support is critical to the *affordability* of services as much as it is essential to make the business case for network *availability*, meaning that programs like A-CAM and CAF-BLS play a far more comprehensive role in the ongoing fulfillment of the statutory mandate for universal service than the likewise-important-but-more-narrowly-focused efforts of BEAD and other grant initiatives.

The significance of the high-cost USF programs to affordability can be captured rather easily by considering the difference between the cost of serving the average rural consumer and the price that must be charged to that customer under the Commission's high-cost USF rules. For example, if a provider's cost per location on a deployed 100 Mbps-capable network is $200 per month but the reasonable comparability benchmark set by the Commission's urban rate survey is $75, it is high-cost USF that helps to make up the difference between what would need to be recovered from the rural customer in the absence of USF support and the "reasonably comparable" benchmark rate (which in turn is still two standard deviations higher than what urban consumers pay on average). To help highlight the critical nature of the high-cost USF programs in promoting not only availability but also affordability, NTCA recently polled its members on potential rate impacts if a certain percentage of USF support were lost due to reforms or budget controls. The answers indicated that a 20% reduction in A-CAM or CAF-BLS support would result in providers having to increase

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[29] *See 2022 Urban Rate Survey*, available at https://www.fcc.gov/file/22209/download (visited Jul. 7, 2022). *See also Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2022 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, Public Notice DA 21-1588, WC Docket No. 10-90 (rel. Dec. 16, 2021).

customers' monthly rates for 100 Mbps broadband by nearly $20 (or roughly 31%), and, that if all USF support were lost, customers' rates would increase by more than 150% (or nearly $100 per month). It is of course worth noting again that these rate increases for rural consumers would come atop rates that *are by program design* tens of dollars higher per month to start with than those paid by the average urban user. Such data points help to underscore that the Commission's high-cost USF programs play a distinct, important, and much farther-reaching role than any grant programs, and it is against this backdrop of sustainability and affordability that the Commission should act now to enhance and extend the critical A-CAM and CAF-BLS programs as further recommended herein.

II. THE COMMISSION SHOULD ACT IMMEDIATELY TO UPDATE AND ENHANCE THE A-CAM USF MECHANISM.

As described above, the mission of delivering universal service involves continuous effort – there is the need to deploy new network facilities to meet increased demand, to maintain and upgrade existing broadband networks, to keep services affordable atop such networks, and to repay loans or recoup private capital expended to invest in those networks in the first instance. The proposal to enhance and extend the A-CAM program teed up for consideration in the NPRM offers an important opportunity to fulfill these objectives.

A. Consistent With the Distinct Statutory Mandate for Universal Service, the Commission Should Move Forward Now to Update and Enhance the A-CAM Mechanism.

The Commission should act as soon as possible in the wake of the NPRM to adopt an "enhanced" A-CAM support mechanism that leverages the success of the existing and successful program, orients it toward the future, and promotes the sustainability of rural networks and the affordability of services that ride atop them. Such action represents the most direct route – leveraging proven programs, existing networks, and demonstrated displays of community commitment – to achieving the ongoing mission of universal service. Congress could not have been clearer in the IIJA that that the Commission was not to "sit on the sidelines" pending the implementation of new grant programs. In particular, the IIJA states that the BEAD is meant to "supplement [and] not supplant"[30] other mechanisms. Perhaps more directly relevant to the instant discussion on the timing of USF reforms, the statute also tells the Commission that in assessing the future of the USF it shall not "in any way reduce the congressional mandate for universal service,"[31] and the agency is in fact encouraged by the IIJA to consider "recommendations to expand the universal service goals for broadband."[32] Of course, careful coordination will be essential to ensure the effective operation of each program in complementing the other, but this certainly indicates that Congress did not intend for the Commission to abdicate its responsibility to fulfill the separate mandate for universal service during the pendency of other agencies implementing new grant programs.

With these statutory directives in mind, as well as the detailed discussion in Section I, *supra*, demonstrating the importance of the high-cost USF programs to *both getting and keeping* rural Americans connected, the Commission can and should take several steps to enhance these programs where possible and without delay. The mission of universal service should not turn upon the hope that another program yet-to-be-implemented *might* deliver better services in the future if sufficient funds are available under that program *and* if a provider applies to serve the area in question *and* if the provider can then sustain services *and* keep rates affordable over that network once built. The USF programs have a demonstrable track record in enabling deployment and sustainability of broadband networks, and they incorporate substantial accountability measures to ensure that consumers receive what is promised, with performance testing, location reporting for deployment, and eligible telecommunications carrier ("ETC") oversight at both the federal and state level. Such measures – as well as the fact that A-CAM and CAF-BLS are up and running and standing ready to

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[30] Infrastructure Act at § 60102(l).

[31] *Id*. at § 60104(c)(3)(A).

[32] *Id*.

continue the work of universal service – provide further justification for leveraging and enhancing these existing mechanisms to achieve and sustain the statutory mandate for universal service.

Indeed, even where operators are not yet delivering 100 Mbps or greater service today, "waiting for BEAD" before enhancing and extending A-CAM would not represent the most effective or efficient means of overcoming these digital divides. First, deferring to BEAD and "figuring out USF later" would create unnecessary complexity and substantial additional work for the Commission and other agencies. For example, if BEAD were awarded in a USF-supported area (whether to the current USF recipient or to another operator), the Commission would need to determine what to do with the existing USF support there. This likely would include having to reduce or wind down one kind of USF support as part of a transition and potentially needing to replace it with a new USF program to support the BEAD recipient – and if the BEAD recipient is not already designated as an ETC, additional complexities and processes will arise in considering how to provide ongoing support where needed in such areas. By contrast, if the Commission were to enhance the existing A-CAM and leverage existing networks, it could achieve the same or better results for consumers more directly and more efficiently, allowing BEAD resources in turn to be deployed in other areas. Importantly, an enhanced A-CAM can commence work sooner (as well as continue the efforts already underway) as compared to the still-under-development BEAD program, with USF recipients sustaining and expanding on the good work they have already done and continue to do, leaving BEAD available to target other gaps. This is precisely the kind of smart coordination envisioned by Congress, and such an effort would help BEAD funds go farther by allowing that program to focus upon areas in greater need because, for example, they lack a committed local provider and/or sufficient existing network facilities to leverage efficiently.

Furthermore, "waiting for BEAD" before extending A-CAM makes no sense whatsoever in those areas where providers have already deployed robust networks (and thus would be ineligible for

BEAD) but still face years (if not decades) before they fully recover the costs of having done so – the fiber already deployed by so many NTCA members to meet and exceed current deployment obligations typically has a depreciable life of 20 to 25 years. Indeed, some areas in which USF support is being provided for smaller rural operators will not be eligible for new grant awards precisely because these community-committed providers have already made the extra effort to invest in networks that exceed current deployment obligations. Holding off on addressing whether the term of and/or budget for ongoing USF support in such areas is sufficient to sustain these networks, to help repay loans taken out to build them, and to keep services more affordable and in pace with consumer demand based only on the existence of BEAD would be nonsensical as *BEAD funding will not be available in these areas*. Given that the statutory mandate for universal service turns not on the one-time act of a network being built but rather on the continuing nature of services delivered and rates charged, an enhanced A-CAM (and stabilized and updated CAF-BLS mechanism) that promotes network sustainability and affordability of services where BEAD will by definition not be available is essential to meet this ongoing and evolving – and still applicable - statutory objective.

B. Service Level Commitments Should Build Upon the Success of A-CAM Thus Far While Recognizing the Realities of Deeply Rural Markets.

The Commission should adopt the A-CAM Broadband Coalition proposal for service level commitments that would obligate electing carriers to make a minimum of 100/20 Mbps broadband service available to 90% of their post-Fabric eligible locations. As the A-CAM Coalition noted, "if all A-CAM companies elect to participate in the Enhancement plan, approximately 1.1 million eligible locations would be served at a minimum of 100/20 Mbps."[33] In other words, the Commission can ensure that the A-CAM mechanism is better positioned to meet the bandwidth demands discussed

[33] Comments of the A-CAM Broadband Coalition ("A-CAM Coalition"), WC Docket No. 10-90 (fil. Feb. 17, 2022), at 4.

above (and those that have become the increasing focus of broadband funding programs more generally) for over one million rural consumers by building upon the good work that has been done in these rural areas.

The Commission also seeks comment on the A-CAM Coalition proposal to require electing carriers to make a minimum of 25/3 Mbps service available to the remaining 10% of post-Fabric locations. As an initial matter, the Commission should enable electing carriers to choose to meet the 100/20 Mbps minimum to 100% of their eligible locations. Each carrier should have the option of evaluating whether its circumstances permit extension of 100/20 Mbps service to the entirety of its eligible locations; it would also be worth considering further the terms of support that may be necessary to promote more widespread election of this option, so that in more study areas *all* eligible locations could be addressed through an enhanced and extended A-CAM offer. That said, some areas are so deeply rural with serviceable locations set so far apart that some providers will be unable to deliver 100/20 Mbps broadband to 100% of their eligible locations. In these cases, a commitment to deliver at least 25/3 Mbps service to 10% of locations would ensure some baseline level of service, pending further consideration of whether more robust broadband service could be delivered to those locations leveraging BEAD or other grants. To facilitate identifying such areas and the consideration of what additional measures could be done to serve them at higher speeds, providers electing enhanced A-CAM but committing to deliver 100/20 Mbps to fewer than 100% of their locations should identify the geography and locations that would receive 25/3 Mbps services instead.

Relatedly, the Commission should adopt the NPRM proposal to replace the existing milestones for service delivery adopted for A-CAM I and A-CAM II support recipients that elect enhanced support.[34] For one, the Commission is correct that retaining the interim milestones would

[34] NPRM at ¶ 34.

only produce administrative complexity – existing milestones are based on when carriers elected to participate in the A-CAM mechanism, and the accelerated deployment timelines will, as the NPRM recognizes, render them moot.[35] The Commission should also decline to mirror A-CAM service level commitment timelines with BEAD program buildout schedules.[36] An apples-to-apples comparison of the two programs shows that 8-year commitments for enhanced A-CAM would almost certainly begin a year or two before BEAD buildout timeframes – rendering timing differences between the two relatively immaterial over that full duration while starting to deliver better broadband sooner to more rural Americans through a proven program that also has the benefit of requiring service across a widespread eligible area. Particularly to the extent that BEAD grants might not begin to flow in earnest until later in 2024, for example, action now to enhance A-CAM and update CAF-BLS as recommended herein would likely deliver far better broadband sooner to far more rural Americans.

The Commission should also carry forward to the updated program the penalties currently applicable to A-CAM support recipients that fail to meet deployment milestones.[37] For one, there is no indication that the existing penalties – which are strict and, for small rural carriers, would represent a significant amount of lost cost recovery – do not provide a strong incentive for these operators to strictly meet their obligations. Moreover, the fact that the broadband data collection ("BDC") maps will produce more accurate location counts[38] does not lead to the conclusion that the existing penalties are insufficient – to the contrary, that location counts are more accurate would

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[35] *Id*.

[36] *Id*. at ¶ 36.

[37] *Id*. at ¶ 30.

[38] *Id*.

seem to offer a greater incentive to meet interim milestones based on the knowledge that enforcement of them is much easier for the Commission.

C. Enhanced Support Recipients Should Provide Some Level of Broadband to Every Location Within Eligible Census Blocks; Fiber-Served Census Blocks Should Be Eligible for Ongoing Support to Ensure Network Sustainability and Service Affordability.

The NPRM seeks comment related to the locations and census blocks that would be eligible for enhanced A-CAM support.[39] As described above in the discussion of service level commitments and milestones, NTCA supports obligating those carriers electing enhanced A-CAM support to provide some level of service to every location in eligible census blocks.[40] This approach would be more consistent with how operators build networks generally – even as the Commission's current high-cost USF support obligations are tied to locations, the fact is that providers tend to build and maintain networks throughout areas and do not design connections on an individual basis. Networks are built to serve a particular geography, and the costs involved typically bear little relation to the number of locations. Indeed, as NTCA has previously noted,[41] many of the things that fall under the heading of "network deployment" are efforts that must be undertaken without a proportional relationship to the number of locations served. As a just few examples, engineering studies, obtaining rights-of-way, permitting fees, and labor costs typically are not incurred on a per-location basis – a provider deploying fiber along a 50 mile stretch of road will incur largely the same overall costs to serve 25 customers as it will for 50. A 2018 study confirmed this,[42] finding that location

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39 *Id*. at ¶¶ 25-32.

40 *Id*. at ¶ 26.

41 Comments of NTCA–The Rural Broadband Association, WC Docket No. 10-90 (fil. Jun. 29, 2020).

42 *See* Steve G. Parsons, Parsons Applied Economics, and James Stegeman, CostQuest Associates, *Rural Broadband Economics: A Review of Rural Subsidies* (2018) (available at: https://www.costquest.com/uploads/pdf/ruralbroadbandeconomics-areviewofruralsubsidiesfinalv07112018r2.pdf).

counts have, at most, a marginal effect on overall deployment costs. Even as each individual location will incur the additional cost of a drop and an optical network terminal to initiate service, the main categories of construction costs with respect to passing all of the locations within that geography remain unchanged and disproportional to the total number of locations. The A-CAM support mechanism should reflect this reality, with service level commitments tied to geography and location counts being seen more as a measure of tracking whether that geography is being served than an absolute tally of their own.

At the same time, census blocks originally deemed *ineligible* for A-CAM should be excluded from service level commitments. This makes sense as these are differing geographies where the A-CAM support mechanism has not already been at work – including these would require providers to modify network designs to reach new areas and meet enhanced service level commitments in areas that have been unsupported and outside the existing A-CAM framework. Some operators may find a way to economically serve these census blocks absent support (and some may already be doing so), but an unfunded mandate to deliver a committed level of service in such areas as well represents bad policy. Moreover, if a provider in the end does not find a way to deliver a minimum level of service in these A-CAM-ineligible census blocks, this is a perfect example of where BEAD or other grant programs can help in a coordinated fashion; in these areas, BEAD can help providers do what has not yet been done otherwise due to the lack of USF support in the area.

It is also critical that the Commission deem fiber-served census blocks eligible for enhanced A-CAM support (and ongoing USF support more generally). As discussed above in much greater detail, enhancing A-CAM for the future must also include reorienting it more closely to its intended purpose by statute, which is both getting *and keeping* rural Americans connected to high-quality, affordable advanced services. This includes a recognition that the ongoing delivery of affordable service in even fiber-served census blocks can involve significant cost, and that the mere deployment of fiber in the first instance does not mean the job is done and costs in excess of those experienced in urban areas are no longer incurred and in need of recovery. Indeed, the Commission previously recognized this by including fiber-served census blocks within its A-CAM II offer made in 2018.[43] There, the Commission expressly recognized the maintenance costs attending the provision of broadband service in even well-served rural areas, as well as the increased service level commitments attached to the model offer at that time.[44] Given the identical nature of the issues presented here and the support for that approach by a unanimous Commission four years ago, the 2018 approach should serve as a model for an enhanced A-CAM in 2022. Moreover, as discussed above and in greater detail in NTCA's "Future of Universal Service" comments,[45] such a policy avoids the inefficient shortcomings of prior regimes, where "incrementalism" in setting universal service objectives encouraged providers to do to the bare minimum to meet today's speeds for fear of losing support in the future by exceeding expectations and attempting to "get ahead of" today's customer demands.

Finally, the Commission should retain the existing assessments of competition and area eligibility rather than engaging in time-consuming efforts to revisit eligibility of individual census blocks or engage in location reconciliation processes before moving forward (especially if providers will be expected ultimately to serve all locations within supported areas). With respect to purported unsubsidized competition, re-running the analysis of competition already built within A-CAM would place in the path of reform a multi-step, time-consuming process of "re-running" the BDC maps to

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43 *Connect America Fund*, WC Docket No. 10-90, et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, FCC 18-176 (rel. Dec. 13, 2018) ("2018 Rate-of-Return Reform Order"), at ¶ 34.

44 *Id*. at ¶ 40.

45 Comments of NTCA–The Rural Broadband Association, WC Docket No. 21-476 (fil. Jun. 29, 2020), at 25 (highlighting how a policy of repeated attempts to promote deployment of networks in unserved areas at incrementally higher levels of service "sets poor incentives to deliver the best possible service as soon as possible to customers in need and almost certainly costs the USF program more over time as networks constantly need to be rebuilt to achieve the next level of performance.").

identify census blocks/locations that would be "presumptively served" at the new levels of service, followed by a competitive overlap proceeding (similar to those undertaken in the past[46]) to reconcile claimed versus actually served census blocks/locations. These steps would delay the impact of much-needed reforms to update A-CAM and get faster speeds into the hands of consumers in these areas with little clear benefit. In a similar way, a process to reconcile discrepancies between model identified locations and those identified by the "Fabric" should not delay reform. As discussed above, networks are built to serve geographies rather than individual locations. The costs involved bear little relation to the number of locations, and as suggested above, the Commission's universal service rules should incorporate that reality and adopt reforms that enable support recipients to serve every single location within eligible census blocks rather than becoming mired in location-specific analysis.

D. Enhanced A-CAM Support Amounts Should Reflect the Materially Higher Levels of Service that Providers Will Deliver, as well as the Critical Role USF Support Will Have in Sustaining Operations and Keeping Rates Affordable in Rural Areas.

Just as expectations in terms of service levels for the A-CAM mechanism must be enhanced, the support necessary for small, rural operators to meet these materially higher speeds must be considered as well. The support amounts and adjustment to the support cap contained in the A-CAM Coalition proposal represent effective efforts to calibrate support to meet the significantly increased obligations that will be expected of electing carriers.

As an initial matter, it is worth remembering that even as current A-CAM I and II support is subject to a cap,[47] support recipients have done a tremendous job in delivering on the expectations

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[46] *See Wireline Competition Bureau Publishes Preliminary Determination of Rate-Of-Return Study Areas 100 Percent Overlapped by Unsubsidized Competitors*, WC Docket No, 10-90, Public Notice, DA 15-868 (rel. Jul. 29, 2015).

[47] *See* NPRM at ¶ 39.

set by the original model offers. That said, it is important to recognize that much of this success has been achieved against the backdrop of capped support levels that do not fully reflect the cost deploying and operating in rural areas and present constant challenges in attempting to keep rates for rural Americans affordable. This has been exacerbated in recent years by severe supply chain shortages and inflationary pressures that have driven up the costs of labor as well as materials necessary for deployment and maintenance – and these increased costs show no signs of returning to normal any time soon, or at all. Pandemic-related impacts on cash flows (tied to the provision of free or discounted Internet services for educational purposes and "writing-off" bills or late fees for consumers not able to keep up) have been burdens to overcome as well. Indeed, the Commission has already recognized the effect this financial backdrop has had on carriers receiving CAF-BLS support, where it noted that such providers "have been and will continue to be subject to increased costs to address labor and supply issues, maintain existing services, and meet the demands of new customers."[48] There, the Commission took action recently to ensure that the success of these efforts, in the short-term at least, is not undermined.

Against this backdrop, the budget should be appropriately and responsibly updated to reflect the increased costs associated with deployment of higher-speed networks and delivery of more robust services, particularly in lower-density rural areas. Setting a proper budget for the enhanced A-CAM offer must also reflect certain statutory responsibilities to which the Commission is beholden and otherwise factor in the realities of serving rural areas in today's environment. Thus, the budget for the updated A-CAM must: (1) be sized sufficiently to correspond to the set of materially increased buildout and other performance tasks that will now be expected of support recipients as well as sufficient to achieve "true universal service" in the form of scalable networks that can evolve to meet

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[48] *Connect America Fund*, WC Docket No. 10-90, Order, FCC 22-32 (rel. May 10, 2022), at ¶ 1 (adopting "a budget constraint of 0%, *i.e.* a full waiver of the budget constraint, for the July 2022 to June 2023 tariff year").

consumer demand; (2) be sized sufficiently as well to ensure "reasonable comparability" in terms of services and pricing; and (3) be sized properly to account for significant inflationary pressures that have driven up material and labor costs to historically high levels.

Taking action to provide a more sufficient budget in the face of increased obligations and other pressures is consistent with previous Commission action. In 2018, the Commission increased the budget for cost-based support recipients, and in doing so noted that, "[c]onsumers demand higher speeds as they realize the benefits that come with them, and we cannot leave consumers in rural areas behind. Providing legacy carriers an increased budget will provide the means and the certainty necessary to spur investments to meet demand and help achieve our universal service goals."[49] While in that context action was taken to reset the budget based on demand as of that time period, here, a similar reasoning applies. The support formula proposed by the A-CAM Coalition reasonably reflects the economic challenges of getting and keeping rural Americans connected with higher levels of service over time while also retaining fiscal responsibility, and its adoption would enable the Commission to fulfill its statutory universal service mandate.

E. The Proposed Extended Term of Support Properly Balances the Goal of Delivering Faster Speeds in a Timely Manner with the Nature of Cost Recovery for Long-Lived Network Infrastructure and Requirements for Ongoing Service Delivery.

The Commission should adopt a six-year extended term of support for carriers electing enhanced A-CAM support as proposed.[50] It is important to see this proposal through the prism of

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[49] 2018 Rate-of-Return Reform Order at ¶ 80.

[50] NPRM at ¶ 50. In the interest of administrative efficiency, the Commission should adopt an *eight-year* extended term of support for so called "glide-path" carriers. As the Commission knows, these operators elected the glide-path option in 2016, and thus their term of support is set to end in 2026 and two years prior to A-CAM I and II recipients. An eight-year extended term of support would align the support terms across the various entities electing enhanced A-CAM. *See Connect America Fund*, *et al*., WC Docket No. 10-90, *et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016), at ¶¶ 72-75.

rural network economics – the Commission should recognize that broadband network infrastructure typically has a life of 20 years or more, and the cost recovery for the capital expenditures and depreciation schedules that come with deploying such infrastructure extend over that timeframe as well. That being said, in order to accelerate the availability of "enhanced" broadband services for rural consumers, the proposed extended 6-year term of support strikes the proper balance between promoting more effective recovery of such costs and delivering faster speeds to rural consumers as rapidly as is feasible.

With respect to increased support being made available as of the start of 2022, it is important to note the misleading nature of labeling this as "retroactive." To reiterate what should already be widely understood, the high-cost USF program (A-CAM included) is not a grant program, under which funds are extended to a broadband provider that, in turn, utilizes this capital to deploy network infrastructure. Rather, these high-cost USF programs reflect ongoing cost recovery, including costs incurred earlier this year – costs that have increased due to significant inflationary pressures – such that providing recovery of such costs will help providers continue to offer service at affordable rates and high levels of performance where they already do so while also allowing for achievement of milestones to upgrade services sooner where additional deployment efforts are necessary.

Finally, NTCA supports the proposed transition options set forth in the NPRM for "glide-path" carriers.[51] The proposal to offer these carriers the option of "receiv[ing] support pursuant to their current schedule until such time as their total annual support is less than that under the Enhancement Plan and, at that time…convert[ing] to the Enhancement Plan funding level….receiv[ing] support at the level provided for in the Enhancement Plan,"[52] will avoid "flash-cuts" in these operators' support but eventually transition them to the enhanced mechanism.

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[51] NPRM at ¶ 51.

[52] *Id.*

F. The Enhanced A-CAM Mechanism Should be Voluntary, Should be Made Available Regardless of How Many Elect, and Should Retain Election Timeframes Previously Established.

As with prior model offers, the Commission should proceed with a *voluntary* election by eligible entities. Prior offers of this kind (and similar efforts to promote alternative or incentive regulation measures) have rightly recognized that small rural providers are as diverse as the rural communities they serve all across the United States. For some, the current A-CAM mechanism through which they receive support (or the CAF-BLS mechanism, for that matter) best capture conditions "on the ground" and allow them to make the business case for investment and ongoing operations. Consistent with past practice, each support recipient should have the option to make the best business decision based on their particular circumstances and the challenges they face.

Just as importantly, the Commission should not set a minimum participation threshold for implementation of an enhanced A-CAM. While the NRPM references the possibility of other funding mechanisms to address areas eligible for the enhanced A-CAM,[53] as discussed at length above, the more efficient, effective, and direct method would be to enhance and modernize an existing and successful mechanism to address service demands and consumer needs in as many rural areas as possible – and moving forward on updating the A-CAM without regard to the number of carriers that elect it is the best way to do that. Similarly, when it comes to election procedure, the Commission should avoid "fixing what is not broken" – the Commission should follow the same election process, including time frame, as utilized for the A-CAM II support offers.[54] Nothing from past experience suggests the need to tinker with that process.

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[53] *Id*. at ¶ 56.

[54] *Id*. at ¶ 55.

G. Performance and Reporting Measures Should Mirror in All Respects Those in Place Now for High-Cost Support Recipients.

The Commission should retain, in all respects, the performance and reporting measures as adopted for high-cost USF support recipients as utilized not only for A-CAM I and II and cost-based support recipients, but also for CAF II and RDOF auction awardees.[55] While it may be prudent of the Commission to inquire about potential changes of direction, much as in the case of modifications to election procedures, nothing in the record suggests that the structure of the testing and reporting regime as adopted by the Commission is in need of revision or amendment. This mechanism that enables the capture of real-time data from randomly selected customer locations should be retained and carried over to updated and enhanced support mechanisms in all respects.

Indeed, with respect to the USF performance testing requirements, it is telling that a similar accountability regime was – at NTCA's urging[56] – adopted by NTIA with respect to the BEAD program.[57] In so adopting the Commission's testing/reporting regime, NTIA noted that it did so in part to "promote consistency across federal agencies."[58] The Commission should not upend this measure of consistency that is poised to exist across the USF and BEAD programs by now departing from it. Changing any material aspects of the current performance measurement rules in the absence

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[55] *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, FCC 19-104 (rel. Oct. 31, 2019).

[56] Comments of NTCA, Infrastructure Investment and Jobs Act Implementation, National Telecommunications and Information Administration ("NTIA") Docket No. 220105–0002 RIN 0660–ZA33 (fil. Feb. 4, 2022), at 36-37.

[57] Notice of Funding Opportunity, BEAD Program, NTIA, at 64. ("To ensure that Funded Networks meet current and future use cases and to promote consistency across federal agencies, NTIA adopts the compliance standards and testing protocols for speed and latency established and used by the Commission in multiple contexts, including the Connect America Fund and the Rural Digital Opportunity Fund.")

[58] *Id*.

of evidence they are failing to promote accountability would only distract operators and the Commission in making more necessary updates to the A-CAM mechanism for the future.

H. Any Cybersecurity and Supply Chain Certification Requirements Should be Accompanied by Significant Commission Guidance.

The NPRM seeks comment on whether to require recipients of enhanced A-CAM and other USF support to attest to having in place a cybersecurity risk management plan and a supply-chain risk management plan. The NPRM notes that this would be consistent with the requirements in place for the BEAD program. NTCA supports consistency among federal agencies in general and specifically with respect to cyber practices – this will mitigate the potential for confusion and extra compliance costs that would come with incongruent requirements across separate funding programs. This being said, many current high-cost USF support recipients are small businesses with little, if any, "in-house" cyber expertise. Accordingly, to promote more secure broadband networks within an enhanced A-CAM support mechanism, if a certification requirement were adopted, it would be essential for the Commission to provide resources that demonstrate not only how to create the kinds of cybersecurity and supply chain risk management plans contemplated but also how to tailor those plans to the specific needs of each company as well as how to put those plans into the provider's operations.

The Commission's stated goal of promoting greater security in network operations and supply chain management would be better served if the Commission, whether on its own or in partnership with other agencies, can provide meaningful guidance first on how to prepare cybersecurity and supply-chain risk management plans, rather than simply being issuing a directive that small businesses create such plans. Thus, in addition to creating or sharing links to resources on the Commission's website, NTCA encourages the Commission to engage directly with providers through workshops and other forums such as CyberShare: The Small Broadband Provider ISAC[59] before adopting such requirements.

In short, the Commission can go a long way toward assisting small providers with implementing cybersecurity and supply-chain security practices by making relevant guides and resources readily available on the Commission's website, offering workshops, and engaging with public forums focused on assisting small broadband providers enhance their cybersecurity and supply chain posture.

I. The Commission Can Leverage the Affordable Connectivity Plan to Promote Affordability in Rural Areas.

The NPRM recognizes the importance of affordable broadband and seeks comment on whether carriers participating in Enhanced A-CAM should be required or incentivized to offer the Affordable Connectivity Plan ("ACP") to consumers.[60] NTCA members also recognize the importance of affordability – high-speed Internet that enables rural consumers to engage in telehealth services, allows students to complete their homework at home instead of in the parking lot of a business that has Wi-Fi, and take jobs in far-off urban areas should be available regardless of income level.

As described earlier in these comments, however, even as the high-cost USF programs provide a "baseline" that helps ensure the rates paid by rural consumers are at least *somewhat* closer to those charged to urban consumers, this delta is not closed entirely. The rates in urban and rural areas are not identical because "reasonable comparability" is measured for the purposes of high-cost USF by a benchmark that pegs rural broadband rates "two standard deviations above the average

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59 CyberShare: The Small Broadband Provider ISAC, available at https://www.ntca.org/member-services/cybershare.

60 NPRM at ¶ 38.

urban rates for a specific set of service characteristics."[61] This means that rates available to the average rural consumer are, by the very design and operation of the Commission's own rules, higher than those available in urban areas. Thus, even as the high-cost USF program is again as much an affordability initiative as it is an availability program, it also does not overcome *the entirety* of the affordability challenge in rural areas.

With respect to low-income rural consumers more specifically, NTCA believes that tying enhanced A-CAM support to participation in the ACP program could be a reasonable initial step – the $30 per month subsidy offers a critical bridge that could narrow the "rural affordability gap." That being said, to make this effort effective, the Commission likely would need to take its commitment to rural affordability a step further – more specifically, the Commission should leverage the authority issued by the IIJA, under which an "enhanced" ACP benefit of up to $75 per month would be available to households served by providers in "high-cost areas" – in this case enhanced A-CAM participants.[62] Without "enhanced" ACP support, the rate paid by rural low-income consumers in areas where high-cost USF support is provided, by definition and operation of the Commission's own formulas as described above, will be higher than those paid by urban low-income consumers. It therefore makes sense to tie the availability of the enhanced ACP with a higher level of subsidy to a provider's receipt of high-cost USF support. In the end, the "enhanced" ACP subsidy

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[61] *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 14-190 (rel. Dec. 14, 2014), at ¶ 118. *See also Urban Rate Survey Methodology, 2022 Urban Rate Survey – Fixed Broadband Service Methodology*, at 8, available at https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources.

[62] *See Affordable Connectivity Program*, WC Docket No. 21-450, *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (rel. Jan. 21, 2022), at ¶ 287 (noting that the "enhanced benefit" is "up to $75 per month for broadband service 'upon a showing that the applicability of the lower limit under subparagraph A [the $30 rate] to the provision of the affordable connectivity benefit by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.'"). Internal citations omitted.

can help bridge the "gap" between the "reasonable comparability" benchmark and "affordability" that the high-cost USF program does not close on its own due to the operation of the latter program's rules. Thus, the distribution of high-cost USF support to a provider should be seen as a *prima facie* indication of the challenges of serving the area in question, necessitating additional support in the form of an increased ACP subsidy to ensure rates are affordable for rural low-income consumers specifically.

III. REFORMS TO THE CAF-BLS AND HCLS MECHANISMS SHOULD BE ADOPTED NOW AS WELL IN LIGHT OF LONG-CONTEMPLATED PROCEEDINGS AND INCREASINGLY PRESSING CONCERNS.

A. Rather than Conducting Serial Proceedings on Similar Subject Matter, the Commission Should Adopt Reforms Now to Address Long-Standing Needs in the CAF-BLS and HCLS Mechanisms and Promote Equity in Broadband Access Among Rural Consumers Under Different Programs.

The NPRM highlights a number of open questions related to CAF-BLS support and seeks comment on "aligning the high-cost funding programs for rate of return areas." In particular, the Commission observes that it needs to address "questions regarding the level of services to be delivered, identifying eligible locations, and the level of support required.[63] As a matter of process and substance, it makes sense for the Commission to act now to address these questions, doing so in a way that aligns better the A-CAM and these cost-based support mechanisms with each other and with the obligations of other broadband funding programs.

By way of background, in 2018, the Commission reformed the CAF-BLS and high-cost loop support ("HCLS") mechanisms by: (1) increasing the service level commitments expected of recipients of such support from 10/1 Mbps to 25/3 Mbps;[64] (2) recalibrating the capped overall budget for such support at the 2018 level of demand, plus an increase of 7% to address concerns about

[63] NPRM at ¶ 58.

[64] 2018 Rate-of-Return Reform Order at ¶ 101.

budget impacts related to the pace of standalone broadband conversions;[65] and (3) adopting an inflationary factor to be applied to the new budget level going forward.[66] These were welcome measures indeed after years of uncertainty, instability, and insufficiency in these programs, but the Commission expressly noted that updates and additional refinements would be needed in the future to ensure that these programs could keep pace with consumer demands and recover the costs of investing in higher-speed networks and delivering more robust and affordable services in deeply rural areas. The timeframes identified by the Commission to revisit and address such modifications are fast-approaching, and doing so now in parallel with A-CAM reforms makes sense to streamline program administration, address concerns that have become apparent in the programs since 2018, and promote greater equity for consumers served pursuant to various programs.

For example, in resetting the service levels expected of support recipients to 25/3 Mbps in 2018, the Commission established a five-year window for such performance. Fulfilment of these obligations is due at the end of 2023, and they will need to be reset again thereafter to keep pace with consumer demand. In other words, the time is ripe and the process is already contemplated for updates to these service level commitments. Rather than addressing in separate and sequential proceedings the question of what level of performance CAF-BLS recipients should deliver in the future as compared to A-CAM recipients, and rather than wait until next year to redefine the performance obligations that will apply at the end of that year, the Commission should move now to adopt new service level commitments to replace the outdated 25/3 Mbps metrics and have those take effect coincident with the obligations adopted for A-CAM.

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65 *Id*. at ¶¶ 79 and 90-92.

66 *Id*. at ¶¶ 88-89.

Indeed, the Commission should adopt service level commitments for CAF-BLS recipients that mirror to the greatest extent possible those for A-CAM as described above. **Specifically, the Commission should require each CAF-BLS recipient to deliver at least 100/20 Mbps to 90% of locations in the recipient's study area, with the remaining locations receiving at least 25/3 Mbps; the milestones for such performance should track as well to those adopted for A-CAM recipients as described above.** Such an approach would be far more efficient and effective for the Commission itself than engaging in separate and undoubtedly repetitive debates over service level commitments under the A-CAM and CAF-BLS mechanisms, would provide CAF-BLS recipients greater visibility and ability to plan for the new obligations to come, would help the Commission in planning for the interaction of its USF programs and the BEAD program, and would most importantly serve the interests of rural consumers by ensuring that they can ultimately expect a comparably higher level of service regardless of the kind of USF support received by their provider.[67]

The time is likewise ripe – and the Commission similarly presaged in 2018 the need – to revisit the budget levels for CAF-BLS and HCLS. Even as it recalibrated the budget in 2018 and adopted an inflationary factor moving forward, the Commission acknowledged that changes in circumstances could affect the sufficiency of that adjusted budget, indicating that "it may be appropriate to revisit the budget [by 2024] to reevaluate whether any changes to the budget are appropriate."[68] The Commission also sought comment in particular on the effects of standalone broadband conversions on program demand, noting that it had increased the 2018 baseline budget

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67 As in the case of enhanced A-CAM, the Commission should enable CAF-BLS recipients to elect to meet the 100/20 Mbps minimum for up to 100% of their study areas (and to identify those portions of the study area that will not receive service at such levels). The Commission should also, however, acknowledge that special challenges exist in certain areas, such as tribal lands, and should adopt more flexible milestones and speed targets with respect to the delivery of services in those areas than the 90% 100/20 Mbps commitment otherwise recommended herein.

68 *Id*. at ¶ 97.

due to such concerns and that additional measures may be needed because "as carriers move from offering voice and voice/broadband lines to broadband-only lines, the amount of support required from the Fund will increase."[69]

A mix of increased inflationary pressures, pandemic-related demand for rapid broadband deployment and installation, and an accelerating pace of standalone broadband conversions over the past four years have resulted in the very outcome that led the Commission in 2018 to tee up a future budget review and to seek comment at that time on measures to address some of the concerns likely to drive increased support demand.[70] Indeed, the most recent order thankfully waiving the 2022-2023 budget control mechanism by unanimous Commission vote could not have better captured the current state of affairs and how they differ from the hopes in 2018 that there would be "stable and sufficient budgets for at least the next five years":[71]

> In part, the growth in projected support is due to an increased conversion of voice lines to broadband-only lines, which receive a higher support amount, and an increase in the number of new customers subscribing to broadband-only lines, particularly given population migration during the pandemic to areas served by legacy rate-of-return carriers….
>
> Moreover, while the budget control mechanism annually provides an upwards adjustment to account for inflation, it does not fully account for increased costs in this instance because the inflation factor is backward looking. For instance, the inflation adjustment for the budget control mechanism for the relevant time period was 1.3%. Projected CAF BLS, though, is forward looking (i.e., based on projected costs), and today's projected costs account for the current inflation rate of 8.1%....
>
> Moreover, carriers continue to face cash flow and other economic challenges resulting from the pandemic….

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[69] *Id*. at ¶ 200.

[70] *Id*. at ¶¶ 201-202.

[71] *Id*. at ¶ 97.

> Taken together, we find that current circumstances pose significant burdens on legacy carriers, which would be exacerbated should there be a significant reduction in support, at a time when they are facing insufficient cash flow and increased expenses….[72]

In short, every factor predicted and/or warned about in 2018 as having the potential to place upward pressure on the CAF-BLS/HCLS budget in future years and necessitating a budget review in 2024 has come to pass – but at a more accelerated pace than could have been foreseen in a pre-pandemic environment four years ago.[73] Hewing to such attempts at predictive judgment and deferring efforts to address such issues holistically until 2024 simply because that timeframe was tentatively suggested four years ago would fly in the face of current realities and, in light of the need to grant waivers of the budget control mechanism the past two years, would clearly be imprudent. In short, there is no need or valid reason for the Commission to delay addressing CAF-BLS concerns in this proceeding alongside much-needed updates to A-CAM. The Commission knew and specifically called out in 2018 that a time would come when it would need to address these same questions for CAF-BLS, and the mere fact that it has come slightly earlier than anticipated (in the wake of a pandemic and unforeseen spikes in broadband demand) should not be cited as a reason to sit idle artificially for several months longer.

To the contrary, it makes far more sense for the Commission to move in parallel with A-CAM updates and get ahold and ahead of such issues for CAF-BLS and HCLS now, especially when it can and should do so in conjunction with a much-needed updating of the service level commitments tied to CAF-BLS support – the Commission certainly should not impose materially increased performance obligations for CAF-BLS while failing to consider the budget for the support to which

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[72] *Connect America Fund*, WC Docket No. 10-90, Order (rel. May 10, 2022) ("2022 Waiver Order"), at ¶¶ 8-10.

[73] *But see Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al*. (fil. July 11, 2019) (projecting budget control cuts ranging from 1.8% to 19.8% depending upon the level of broadband-only line conversions year-over-year).

those obligations attach. Moreover, it would be far more efficient for the Commission to tackle similar questions arising in the cost-based and model support mechanisms at the same time, rather than engaging serially in debates that will implicate the same issues, raise the same questions, and all but certainly result in similar if not identical answers. It would also make sense for the Commission to update both mechanisms' service level commitments now so that these can be recognized in the BEAD program and permit more effective use of that program's resources in other areas that are more in need and lack a provider ready to start as soon as possible on the mission of delivering such higher-speed services. It is also worth noting that the Commission would still need to analyze, post-BEAD, the need for USF support in areas that have been awarded such funds, as Congress has been explicit that the award of BEAD grants does not obviate or override the universal service mandate contained elsewhere in federal law[74] – meaning that "waiting for BEAD" is in fact likely to result in significantly more work for the Commission, as discussed in Section II, *supra*, just to arrive at the same fundamental destination of ensuring that every rural consumer has effective ongoing access to broadband. (More work would all but certainly be required if the Commission needs to wind down existing support in these areas as well, creating a multi-stage transition to reach the same effective destination). Finally, as noted above, taking steps now to update CAF-BLS and HCLS alongside A-CAM will serve rural consumers best, helping to ensure that consumers receive a higher level of service regardless of the kind of support their provider happens to receive – with deployment efforts to deliver such services commencing sooner than would be the case if one "waited for BEAD."

[74] Infrastructure Act at § 60102(c)(3)(A).

For these reasons – and coincident with a substantial increase in the service level commitments expected of recipients of CAF-BLS support as proposed above and consistent with the Commission's own reasoning just several weeks ago in unanimously granting a waiver of the budget control mechanism – **the Commission should recalibrate the annual current CAF-BLS/HCLS budget at the current level of demand as a new baseline for support, restore the $200 per-line cap to $250 per month,[75] and thereafter apply a "forward-looking" inflationary factor as identified in the waiver order to the overall CAF-BLS/HCLS budget.[76]** Given the magnitude of the "leap" in service level commitments recommended herein, the Commission should also consider only applying the budget control mechanism starting again in several years, thereby providing operators the opportunity to ramp investments to deliver as quickly as possible on these materially higher commitments across entire study areas. Indeed, adopting these recommendations would help to capture in the budget going forward the effects of pandemic-related deployment and migration as well as standalone broadband conversion over the past several years, and would better position providers to deliver on the substantially increased service level commitments proposed above thereafter.

Finally, as suggested in the NPRM, the Commission should also offer recipients of CAF-BLS and HCLS support a voluntary opportunity to elect enhanced A-CAM support.[77] Although the current recipients of cost-based support have twice declined elections of model-based support, the

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[75] In 2018, the Commission reduced the per-line cap on CAF-BLS/HCLS support from $250 per month to $200. *See* 2018 Reform Order at ¶¶ 129-135. NTCA does not challenge the reasoning of that decision at the time but submits that circumstances have changed and increased demands for broadband, increased investment efforts, and inflationary pressures all warrant restoring the per-line cap to $250 for individual providers in addition to adopting a revised inflationary factor for the overall budget.

[76] *See* 2022 Waiver Order at n. 18 (citing Table 4. Price Indexes for Gross Domestic Product and Related Measures: Percent Change from Preceding Period in BEA News Release: Gross Domestic Product, First Quarter 2022 https://www.bea.gov/sites/default/files/2022-04/gdp1q22_adv.pdf.)

[77] NPRM at ¶ 54.

revised offer contemplated here may encourage new elections and should be extended at the same time that updates to CAF-BLS and HCLS are adopted consistent with the other recommendations above. Undertaking reform in this comprehensive manner would give providers a complete picture of the kinds of support available and give those more interested in the certainty of fixed support the opportunity to make a fully-informed choice to migrate in that direction.

Although the measures proposed here can and should be acted upon now to provide regulatory certainty that enables greater investment and sustains the ability to deliver more robust services at more affordable rates, there will always be the need to oversee such programs and consider adjustments based upon evolving conditions. The mission of universal service involves ongoing achievement (and ongoing oversight), rather than a one-time act of declaring mission accomplished simply upon construction of a network. Thus, in the next subsection, NTCA suggests additional steps the Commission should consider in a further notice of proposed rulemaking to improve further the effectiveness of the programs. But the measures recommended above can and should be adopted now given that they were specifically and expressly teed up as considerations for future action in 2018 – and given that they would help to put the CAF-BLS/HCLS budget on more solid footing and enable the delivery of services at speeds and prices that are reasonably comparable to those available to urban consumers.

B. The Commission Should Seek Comment on Other Voluntary Paths for Fixed Support.

The questions addressed above regarding the CAF-BLS service level commitments and the budget for CAF-BLS/HCLS support were clearly teed up in 2018 as needing to be addressed in future years, and the Commission can and should act now to address them in the manner proposed above. There are additional measures, however, that the Commission should consider in a further notice of proposed rulemaking to encourage additional voluntary migration to fixed support by providers.

A number of providers have found it anywhere from uneconomic to impossible to elect model-based support when asked twice before in light of current model parameters and unique circumstances faced in their markets. There will be some providers that, even after a third offer, still cannot accept model-based support. This does not mean, however, that these providers are entirely disinterested in fixed support. Rather, for some, it is merely the case that the underlying model has consistently failed to capture the discrete challenges faced by these providers. To address such concerns and encourage a greater migration by smaller rural providers to fixed support, the Commission should seek comment on creating a voluntary "incentive regulation" pathway that would benefit the agency and providers alike by providing greater regulatory certainty and streamlining oversight and administration.

As an example of a proposal in this regard upon which the Commission could seek comment, NTCA suggests consideration of a transition wherein current CAF-BLS/HCLS recipients voluntarily electing incentive regulation would receive fixed support at a frozen level for a series of years (e.g., six calendar years) before transitioning to a different level of frozen support thereafter to reflect an effective level of necessary ongoing support, with support holding constant thereafter to enable the sustainability of the network and delivery of high-quality services at more affordable rates. This defined and frozen level of support would not be subject to the budget control mechanism that applies otherwise to recipients of cost-based support. To ease administration and yet again fulfill the goal of ensuring that all rural consumers will receive similar levels of service regardless of which "broadband funding" program happens to apply in their area, the Commission could require that providers electing such incentive regulation deliver the same levels of service commitment as providers receiving A-CAM or CAF-BLS support.

Such a plan would be relatively simple in structure while advancing multiple policy objectives. The Commission would benefit from the alignment of service commitments with A-

CAM and CAF-BLS, rather than being forced to oversee a different set of milestones and deliverables for performance. Encouraging more providers to elect fixed support on a voluntary basis would also mitigate administration burdens such as audits needed for cost-based support, and in turn encourage each electing provider to operate efficiently knowing that its support will be fixed at a specified level. At the same time, for those providers that can elect it, an incentive regulation pathway would yield greater budget certainty in planning for future investments and operations. As always in seeking to migrate more providers to fixed or model-based support, the Commission would need in the comment cycle considering such a plan to identify the potential for unintended negative impacts on those providers that cannot elect such support and the rural consumers *they* serve, and mitigating measures may be necessary to ensure that such collateral negative impacts do not follow from such reform. But this is precisely why such subject matter would be ripe for a further notice of proposed rulemaking, and NTCA encourages to pair such a notice with an order adopting the A-CAM and CAF-BLS/HCLS reforms suggested herein.

IV. THE COMMISSION SHOULD TAKE A NUMBER OF THE STEPS PROPOSED TO IMPROVE THE ADMINISTRATION OF THE HIGH-COST PROGRAM, BUT SEVERAL REQUIRE MORE CAREFUL CONSIDERATION OR RESTRUCTURING.

In the final substantive section of the NPRM, the Commission discusses a series of potential changes to various reporting requirements, reviews of proposed mergers and acquisitions, and study area waiver requests. NTCA supports many of the suggestions identified for addressing these, although several require more thoughtful consideration and potential restructuring.

As an initial matter, the Commission should adopt the NPRM proposal to streamline the process by which high-cost support recipients comply with Section 54.313 of the Commission's rules by eliminating the duplicate copy requirement.[78] As the NPRM correctly notes, implementation of

[78] NPRM at ¶ 62.

the online Universal Service Administrative Company ("USAC") reporting portal can ensure that the annual reports will be available to other government entities that need access, thereby eliminating any need for duplicative filings elsewhere. The Commission should also eliminate the requirement that ETCs send both USAC and the Commission itself the annual certification attesting to the fact that support has only been utilized for its intended purposes, as submission to USAC alone will have no adverse effect on the Commission's oversight of the programs.[79] Similarly in the vein of supporting more efficient reporting, NTCA believes quarterly reporting of performance test results would benefit the Commission and providers alike – as the Commission observes, providers are tracking their results on a quarterly basis in any event such that the burden of submitting those results on the same basis should be minimal, and obtaining more frequent visibility into testing results would enhance Commission oversight.[80]

NTCA also continues to support elimination of the Section 54.313 obligation for A-CAM recipients to submit audited financial statements to the Commission.[81] As NTCA noted in a Petition for Rulemaking seeking to eliminate this provision,[82] it was adopted in 2011 when every RLEC was a recipient of cost-based universal service support.[83] Yet as NTCA noted, and the NPRM acknowledges,[84] the Commission concluded in that very same order that "it is not necessary to require the filing of such information by recipients of funding determined through a forward looking

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79 *Id*. at ¶ 63.

80 *Id*. at ¶¶ 65-67.

81 *Id*. at ¶¶ 68-70.

82 Petition for Rulemaking of NTCA—The Rural Broadband Association, WC Docket Nos. 10-9 et al. (fil. Oct. 20, 2020) ("NTCA Petition").

83 *Id*. at 3, citing *Connect America Fund*, *et al*. WC Docket No. 10-90, *et al*., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("2011 Order").

84 NPRM at ¶ 69.

cost model or through a competitive bidding process, even if those recipients are privately held."[85] Of course, RLEC recipients of A-CAM support now fall under that category. Even as the NPRM invokes the fact that "most carriers that received CAF Phase II model-based support are publicly traded companies"[86] thus enabling the Commission to "obtain such information directly for Securities and Exchange Commission registrants,"[87] that is not true across the board. But all are recipients of fixed support, which the Commission has already recognized leads to them being "disciplined by market forces" and which should be the dispositive factor here – and it is hard to see how price cap carriers as well as many others are so disciplined by the market where smaller operators are not as well. The Commission should therefore eliminate this unnecessary and expensive[88] requirement.

NTCA likewise supports the Commission's proposal to create a consistent grace period for all compliance filings. As the Commission observes, current rules provide different grace periods for different filings – including in some cases, different extensions for different ETCs. Providers typically are required to file multiple compliance filings per year with the Commission and, for small providers especially, these filings often require many hours of dedicated staff time. Establishing consistent grace periods for compliance filings would reduce the time needed to track the deadlines for multiple filings – thereby allowing these staff resources to be utilized elsewhere – while also minimizing the burden on the Commission to ensure providers are complying with the varying

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85 2011 Order at ¶ 596.

86 NPRM at ¶ 70.

87 *Id.*

88 NTCA Petition at 6 (noting that "a firm with 15,000 or few subscribers would be estimated to incur external fees of $20,000-$38,000, with internal staff costs equivalent to $60,000; internal costs include time for preparation, auditor assistance and follow-ups. The addition of a subsidiary could be expected to add between $9,500-$16,500, with additional internal staff costs.").

deadlines. NTCA agrees as well with the Commission that the language "on a recurring basis" contained in Section 54.316(a)(1) of the rules is extraneous due to the fact that the rule applies to high-cost support recipients, all of whom are already subject to annual reporting requirements.[89] Accordingly, removing the extraneous language from the rule would not modify existing requirements and should be eliminated.

Moreover, the Commission accurately points out that the requirement to report voice data as of June 1 on Form 481 for the same year the report is filed while other data to be included in the same filing is reported as of December 31 of the prior year is confusing and no longer necessary due to elimination of the rate floor provision.[90] Using the same December 31 date for all data will also provide the Commission with the ability to more readily compare rates among different services while simultaneously reducing the burden on providers that offer multiple services subject to the Form 481 reporting requirement. Accordingly, NTCA supports the Commission's proposal to modify its rules to specify that the applicable reporting period for all rates subject to reporting on Form 481 are as of December 31 of the previous calendar year**.**

NTCA agrees with the proposal to require any entity seeking to relinquish its ETC status to provide the Commission with both advance notice when seeking to do so and notice again 10 days following the date on which the state commission grants the request.[91] The Commission accurately points out that ETC status is required by the Communications Act of 1934 for carriers to be eligible to receive universal service support. Furthermore, states would not necessarily be aware of any universal support obligations a carrier seeking to relinquish their ETC status might have while

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89 *See* NPRM at ¶ 74.

90 *See id*. at ¶¶ 75-76.

91 *Id*. at ¶ 106.

carriers are not presently required to seek prior Commission approval to relinquish their ETC status. Thus, requiring these carriers to provide notice to the Commission of their request to discontinue their ETC status would allow the Commission to coordinate with the applicable state commission to require any high-cost support commitments owed by the carrier to be fulfilled prior to granting the application. This in turn would help ensure the integrity of the Commission's universal support program and the fulfillment of commitments made by program recipients.

Finally, while NTCA concurs generally with the notion of providing greater flexibility to report locations served in a given year even after the reporting period ends,[92] the proposed penalty that would attach to providers in doing so has the potential to be disproportionately punitive for certain providers. In particular, if support is reduced by a percentage of a recipient's total locations as suggested,[93] this would appear to have an outsized negative impact on smaller reporting entities – the penalties for belatedly reporting 100 locations would affect an ETC that serves 1,000 locations overall quite differently than one that serves 10,000 locations. NTCA appreciates the opportunity for providers to supplement their reports with additional locations served without the need to seek a waiver, but the automatic penalty that the Commission suggests attach to the ability to do so does not work as proposed. Moreover, while the Commission expresses concern about incentives to file timely and complete reports in the absence of such penalties, NTCA believes the ability for providers to show progress and service coverage in investments in the HUBB portal is itself an incentive. Of course, ultimately some effort to coordinate HUBB and Broadband Data Collection filings would help greatly in addressing such concerns *and* mitigate any potential perceived incentives for delayed reporting of served locations for high-cost USF purposes.

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[92] *Id*. at ¶ 77.

[93] *Id*. at ¶ 81.

V. CONCLUSION

For the foregoing reasons, NTCA respectfully requests that the Commission move promptly to update, enhance, and otherwise reform the A-CAM, CAF-BLS, and HCLS programs as recommended herein.

Respectfully submitted,

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