

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

In the Matter of

)

Connect America Fund

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)

WC Docket No. 10-90

**COMMENTS OF  
NTCA–THE RURAL BROADBAND ASSOCIATION,  
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC., AND THE  
EASTERN RURAL TELECOM ASSOCIATION.**

March 31, 2014

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NTCA–The Rural Broadband Association,<sup>1</sup> the National Exchange Carrier Association, Inc.,<sup>2</sup> and the Eastern Rural Telecom Association,<sup>3</sup> (collectively, the “Rural Associations”) respectfully submit these comments in response to the Further Notice of Proposed Rulemaking included with the *IP Experiments Order and FNPRM* released by the Federal Communications Commission (the “Commission”) on January 31, 2014.<sup>4</sup>

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<sup>1</sup> NTCA–The Rural Broadband Association (“NTCA”) represents nearly 900 rural rate-of-return regulated local exchange carriers that provide broadband, as well as wireless, video, and/or other telecommunications and information services.

<sup>2</sup> The National Exchange Carrier Association, Inc. (“NECA”) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

<sup>3</sup> The Eastern Rural Telecom Association (“ERTA”) is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River.

<sup>4</sup> *In the Matter of Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, *Connect America Fund*, WC Docket No. 10-90, *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, FCC 14-5 (rel. Jan. 31, 2014) (“*IP Experiments Order and FNPRM*” or “*Order*”).

## **I. INTRODUCTION AND SUMMARY**

In its *IP Experiments Order and FNPRM*, the Commission approved the conduct of certain limited rural broadband experiments using Connect America Fund (“CAF”) “reserve funds” and sought comment on a series of issues relating to the structure and implementation of such experiments. The Rural Associations support efforts by the Commission to provide additional support in furtherance of universal service objectives, and they have actively encouraged their members to seek to participate in the experiments. But it is important at the same time that the Commission address a number of key issues in moving forward with the application phase of the experiments. Specifically, the Commission should clarify how the rural broadband experiments will be integrated and coordinated with existing federal Universal Service Fund (“USF”) programs, as well as other programs such as the Remote Area Fund (“RAF”) and the Rural Gigabit Network Pilot Program, which must be implemented by the United States Department of Agriculture (“USDA”). The Commission also must not allow the development and conduct of limited experiments to distract from much-needed and still ongoing work to update existing USF support mechanisms so that rural broadband can remain reasonably comparable in both price and quality, on a sustainable basis. In particular, the Commission should move forward as soon as possible to adopt a mechanism such as that proposed by the Rural Associations, which would ensure that millions of rural consumers will not lose access to robust, affordable broadband services simply for having chosen to “cut the cord” on plain old telephone service (“POTS”) and move more affirmatively into an “all-IP” world.

As the Commission moves to develop the experiments themselves, the Commission needs to be mindful as well of existing carrier of last resort (“COLR”) and eligible telecommunications carrier (“ETC”) obligations. Although some may seek to marginalize such

duties as outdated or breeze past such obligations in a “race for the money,” these obligations are required by law, and even if in need of some updating, they should be seen as the keystone to ensuring that these experiments – and any USF program (including, but not limited to CAF initiatives) – serve the interest of the consumer first and foremost. The Commission must therefore make sure that the statutory requirements and obligations connected to universal service and ETC designation are fulfilled faithfully in connection with the structuring of an application process and the ensuing consideration of submitted applications. It is also essential that the experiments do not affect the availability or affordability of vital services, both voice *and* broadband, already being provided by COLRs and ETCs in significant part thanks to USF support. The Commission should be clear that only focused, well-defined areas truly lacking sufficient broadband will be eligible for “experiment funds,” and it should expressly confirm that the receipt of funds by an applicant will not affect any USF support already received by ETCs for prior investment and the continued delivery of supported services in the area in question.

Finally, the Commission should note, based upon both their prior track record and the quantity and quality of expressions of interest (“EOIs”) recently submitted, that rural rate-of-return-regulated local exchange carriers (“RLECs”) have been and remain effective, committed and qualified solutions for the continued deployment of sufficient and sustainable broadband throughout rural America. To leverage this experience, the Commission should: (1) provide RLECs an initial opportunity to obtain approval of experiments in their incumbent study areas (analogous to the CAF Phase I “injection” of support afforded to price cap carriers); (2) allow RLECs a well-defined “right-of-first-refusal” (“RoFR”) with respect to proposals submitted by other providers within or adjacent to their incumbent study areas (analogous to the CAF Phase II RoFR afforded to price cap carriers); and (3) adopt a robust challenge process to ensure that

experiment resources are not used in a manner that results in USF-supported broadband-capable networks being built atop already existing or planned USF-supported broadband-capable networks.

**II. IT IS ESSENTIAL TO RECONCILE THE RURAL BROADBAND EXPERIMENTS WITH OTHER HIGH-COST USF PROGRAMS, ONGOING REFORMS NOT YET IMPLEMENTED, AND OTHER MUCH-NEEDED USF UPDATES.**

The Rural Associations welcome any effort to provide fully sufficient support in furtherance of universal service objectives. They have strongly encouraged members – who have struggled to identify additional resources for the deployment and ongoing operation of rural broadband networks in the wake of USF program changes promulgated in 2011 – to participate in the experiments to the extent needed to reach truly unserved locations both within and outside of their incumbent study areas.

At the same time, the Rural Associations share concerns raised by some policymakers that it is not yet clear how the experiments may fit with other initiatives to serve high-cost areas and, furthermore, that the experiments must not divert much-needed funds or attention away from expanding broadband access to all Americans in favor of a few, select projects.<sup>5</sup> The Rural Associations urge the Commission to be mindful of how any “experiments,” which could inject universal service support into areas where networks and services are *already* being supported through USF resources, might affect pre-existing networks, carriers of last resort operating in such areas, and consumers who are already receiving quality voice and broadband services at affordable rates. In short, while the experiments could yield interesting results and informative

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<sup>5</sup> See, e.g., Official FCC Blog, Duplication Alert: Broadband Pilot Projects, Michael O’Rielly, FCC Commissioner (Mar. 6. 2014).

data, it is essential that the experiments be carefully constructed to comport with applicable law and advance, rather than undermine, a sustainable comprehensive universal service policy.

**A. The Commission should further articulate how this experiment will be integrated and coordinated with existing programs.**

The Commission acknowledged in 2011 that regulatory reforms that seek to address real issues or gaps in service or service quality cannot be created or implemented in a vacuum. In its *USF/ICC Transformation Order*, the Commission stated “the CAF is not created on a blank slate, but rather against the backdrop of a decades-old regulatory system.”<sup>6</sup> In particular, the Commission should remain mindful of the need “to avoid consumer disruption,” while also promoting “robust, scalable broadband to substantial numbers of unserved rural Americans as quickly as possible.”<sup>7</sup> Additionally, it must be careful to avoid committing limited USF resources to build new networks where networks already exist. It is crucial, therefore, that the Commission articulate more clearly how its experiments relate to, and will integrate with, existing programs designed to accomplish what are essentially the same goals – to deploy advanced communications services and speed technological advances and innovations by preserving core values of public safety, ubiquitous and affordable access, competition, and consumer protection.<sup>8</sup>

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<sup>6</sup> *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (*USF/ICC Transformation Order*), ¶ 165.

<sup>7</sup> *Id.*

<sup>8</sup> *IP Experiments Order and FNPRM*, ¶ 1.

For example, the recently enacted Farm Bill authorized the USDA to establish a \$50 million Rural Gigabit Network Pilot Program. To access funds through that program, an applicant must build out “ultra-high-speed Internet service” within three years in rural areas that lack such service.<sup>9</sup> The USDA will need to develop the processes and specific criteria for receipt of and accountability for those funds. Of course, several broadband-promoting programs and funding reforms were also adopted as part of the *2011 USF/ICC Transformation Order*, and those programs are still very much in the process of being refined and implemented. In Phase II of the CAF, for example, areas of funding eligibility will be determined pursuant to a model still under development. Price-cap ILECs will have a “right-of-first-refusal” to serve these areas at levels of support determined by the model, followed by a competitive bidding process for those areas in which they decline support – a process which these experiments may help in part to define. In a similar vein, and in an attempt to reach even more remote unserved areas, a Remote Areas Fund was created with a budget of at least \$100 million annually. The goal of that program is “to ensure that Americans living in the most remote areas in the nation, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access.”<sup>10</sup> In January 2013, the Commission sought comment on various issues relating to the RAF, including how to define the areas eligible, the qualifications for participants and the public interest obligations applicable to the providers.<sup>11</sup> Explaining how the experiments fit into the larger mosaic created by all of these programs and others will be useful for all stakeholders and help to maximize the likelihood of successful coordination.

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<sup>9</sup> Agricultural Act of 2014, Pub. L. No. 113-79, § 6105 (2014)

<sup>10</sup> *USF/ICC Transformation Order*, ¶ 30.

<sup>11</sup> *Wireline Competition Bureau Seeks Comments on Issues Regarding the Design of the Remote Areas Fund*, WC Docket No. 10-90, Public Notice, DA 13-69 (rel. Jan. 17, 2013).



Finally, the Rural Associations continue to emphasize the need for the Commission to update the support mechanisms that are applicable to the millions of consumers in the areas their members serve as incumbents. Common-sense, surgical updates are needed to ensure that no rural consumer will be denied affordable broadband services where that consumer chooses not to take voice service offered by a RLEC.<sup>12</sup> Although the rural broadband experiments may yield interesting results and could help to reach some consumers who lack broadband today, tailored, targeted updates of existing universal service support mechanisms of the kind advocated for some time by the Rural Associations must be seen as a priority of the Commission's "technology transitions" efforts and an essential part of any comprehensive national universal service policy for a broadband world. Outdated regulatory constructs that effectively compel millions of rural customers to purchase POTS in order to obtain affordable broadband services are flatly inconsistent with the Commission's policy goals for an all-IP communications environment. Unfortunately, the current rules governing distribution of universal service to RLECs require just this, despite the fact that the rules for CAF support in larger carriers' service areas were updated in 2011 to support broadband-capable networks where consumers choose not to buy voice service.

To be clear, RLECs remain firmly committed to offering voice telephony as a supported telecommunications service to every consumer in their study areas consistent with both the statute and their commitment to community-oriented, carrier-grade service quality. But the Commission can only achieve its broadband deployment and adoption goals (and help spur the IP evolution for millions of rural Americans) on a sustained basis if it makes predictable and sufficient USF support available when a consumer chooses to purchase broadband service only

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<sup>12</sup> See, Comments of NTCA, *et al.*, WC Docket No. 10-90 (filed June 17, 2013), pp. 1-10 and Attachment 1.

and thus declines to also purchase voice telephone service offered by the ETC. Such support would be consistent with the *USF/ICC Transformation Order*, which found that while ETCs are required “to offer voice telephony service as a standalone service, throughout their designated service areas,”<sup>13</sup> Section 254 also grants the authority “to support. . . the facilities over which it is offered”<sup>14</sup> and “that the modified definition simply shifts to a technology neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks.”<sup>15</sup>

Such straightforward, common-sense updates to current universal service rules can be implemented on a targeted basis and must be seen as an essential component of broader efforts to promote and sustain ongoing technological evolution for the benefit of consumers. The Rural Associations therefore urge the Commission not to lose sight of the need for, or to delay working on, these essential, surgical updates to existing rules even as it moves forward also with these experiments. Consumers in all rural areas should have the opportunity to participate meaningfully in an IP-enabled world while having a panoply of service options from which to choose on a supported network. This proceeding should, if anything, remind policymakers of the urgent need to not only “experiment” with new approaches to universal service in limited ways, but also to make tailored, targeted, and carefully calibrated updates to ensure that existing programs that have served millions of consumers throughout rural America well to date continue to do so in a broadband era.

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<sup>13</sup> *USF/ICC Transformation Order*, ¶ 80.

<sup>14</sup> *Id.*, ¶ 64.

<sup>15</sup> *Id.*, ¶ 78.

**B. The Commission must be mindful of Carrier of Last Resort and Eligible Telecommunications Carrier Obligations and ensure that the experiments do not adversely affect consumer access to and use of existing services and networks.**

COLR and/or ETC obligations are designed to serve the public good. They are the legal requirements that demand accountability of those that receive support and serve areas that otherwise would have gone “unserved” decades ago. Although some may seek to marginalize such duties as outdated or breeze past such obligations in a “race for the money,” these obligations are required by law, and even if in need of some updating, they should be seen as the keystone to ensuring that these experiments – and any USF program (including, but not limited to CAF initiatives) – serve the interest of the consumer first and foremost. The Commission must therefore ensure that these essential consumer protection and accountability measures are not lost in the rush to implement experiments. The Commission need also ensure that these experiments, with a focus on pockets of unserved locations, do not adversely affect the sustained availability and affordability of vital services already provided by COLRs and ETCs to millions of consumers throughout far-reaching rural service areas.

Designed to ensure that rural consumers have access to quality communications services as a matter of legal obligation, State and Federal COLR and ETC obligations render substantial service availability and service continuity benefits that are essential to public health, safety, and welfare. Entities subject to COLR obligations, and only those entities, have a duty to serve. Typically, they must extend specified retail telecommunications service to all potential customers within defined service areas at the request of each customer – they cannot pick or choose which customers they will serve across wide swaths of rural America. COLR obligations typically require entities to extend distribution networks throughout defined service areas (including unserved and newly settled areas) at the request of new applicants for service. And

those entities must continue providing service to customers within the defined service areas unless and until the relevant regulatory authority grants permission to exit. The consumer who wants service has the opportunity to obtain it, not at the discretion of the provider or dependent upon a business case which may result in capital being allocated to more profitable ventures or locations. COLR obligations ensure that the consumer is thus protected from the business decisions of the provider and the potential of losing service once it is obtained. A COLR may be subject to mandated rate designs and mandated discounts for low-income and disabled customers. It may also be required to furnish nondiscriminatory interconnection and wholesale services needed by other carriers. COLR and ETC obligations of RLECs are essential to ensure that consumers in costly, difficult to serve locations have access to essential communications services that serve an important public safety function. In short, COLR and ETC obligations should be seen as the keystone of universal service policy – the accountability measures that ensure universal service remains focused always on the consumer.

ETCs are also subject to legal obligations with respect to their service offerings, as well as strict accountability standards that require them to submit annual reports to the Universal Service Administrative Company (“USAC”), and often to state commissions that are closest to the consumers, detailing their use of USF funds, including whether requests for both voice and broadband services have been fulfilled.<sup>16</sup> To monitor ETC accountability, USAC runs two separate audit programs: the Beneficiary and Contributor Audit Program (“BCAP”) and the Payment Quality Assurance Program (“PQA”).

COLR and ETC obligations reflect the accountability and long-term commitment that should be expected of those that receive universal service support. Too often in recent years,

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<sup>16</sup> 47 C.F.R. § 54.313; *USF/ICC Transformation Order*, ¶¶ 208, 576-590.

universal service policy has focused on the short-term act of “getting networks there.” But universal service is defined in the law not by reference to networks but instead by reference to services: “Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”<sup>17</sup> While advanced networks are of course a prerequisite to advanced services, just building networks and hoping they remain self-sustaining, affordable, and high-quality in rural areas is simply not enough. To ensure responsible and effective use of USF resources for the benefit of consumers over the long-run, it is essential that the Commission also ensure the sustainability of the networks that are built and the commitment to community of the provider that builds and operates them. COLR and ETC policies ensure that consumers have access to *sustainable* services that can “evolve” as required by statute – the COLR and/or ETC is there “for the long haul,” investing in a network that is capable of delivering quality voice and broadband services at reasonably comparable rates to all comers in a rural area. The Commission must consider experimental proposals against this backdrop and ensure that the ability of COLRs and existing ETCs to continue to serve this essential role on a *community-wide basis* is not jeopardized by selective “cherry-picking” or creative redefinition of rural service areas.

As the Commission moves forward to develop “scoring criteria” for consideration of any experiment applications, it should avoid letting any rush to “get broadband out there” result in a loss of focus on scalability and sustainability. Instead, the assessment of applications should place substantial value both on the prior track record of performance of the applicants in question and their demonstrated capability to deploy and operate on an ongoing basis networks that can

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<sup>17</sup> 47 U.S.C. § 254(c)(1).

offer consumers “an evolving level of telecommunications service” both in the near-term and over the long-run. The Commission should approve experiments that will deploy scalable and cost-effective technologies that allow not only for delivery of high-quality connections today, but are capable of sustaining and upgrading such services far into the future as bandwidth usage and consumer preferences evolve. While certain experiments may have superficial appeal as “headline grabbers” based upon promises of quick deployment of broadband service for what appears to be a cheap price tag, sustainable universal service policy demands more than “quick fix” solutions that cannot keep pace with the needs of consumers or, worse still, that leave consumers and policymakers wondering five to seven years from now where the USF-funded network, USF-supported services, and USF-recipient operator ever went.

**III. FUNDING FOR RURAL BROADBAND EXPERIMENTS MUST BE SUBJECT TO CLEAR GUIDELINES AND PROVIDED IN STRICT COMPLIANCE WITH THE TERMS OF THE ACT.**

In seeking to conduct rural broadband experiments, the Commission hopes to find new and better ways to address the needs of consumers living in unserved rural areas.<sup>18</sup> While laudable goals, as the Commission itself recognizes, plans to conduct experiments with universal service funding amounts raise significant questions and concerns, which need to be addressed if the process is going to survive legal scrutiny and produce useful information.

To date, nearly 1,000 EOIs have been submitted to the Commission from a wide range of entities. The sheer volume of these submissions suggests substantial interest by a variety of entities in supplying broadband service to consumers. Even a cursory review of the EOIs shows, however, that the Commission will need to provide more substantial and precise guidance to interested parties before it can invite useful formal proposals or specific applications for funding.

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<sup>18</sup> *IP Experiments Order and FNPRM*, ¶ 203.

The Rural Associations also note that a substantial number of EOIs were submitted by parties that are not currently considered ETCs under section 214 of the Act, and it is not readily apparent how some of these entities would or could ever qualify for the ETC status required by law and demanded by good prudence as an assurance of accountability.

Any application process developed for rural broadband experiments must ensure that funding is provided in full compliance with the statute. As required under section 254 of the Act, the Commission must ensure that applicants are ETCs, or will at least become ETCs, prior to receipt of funds,<sup>19</sup> and that any recipient will use the funds to offer supported telecommunications services, including voice telephony services, throughout the ETC's designated serving area.<sup>20</sup> Supported services must also be provided in a manner that is reasonably comparable in quality and price to services offered in urban areas.<sup>21</sup>

Moreover, in areas served by a RLEC, experiments must comport with the statutory requirements governing USF distribution in such areas. Specifically, Section 214(e) requires a regulatory finding that the designation of an additional ETC in a RLEC study area is in the

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<sup>19</sup> 47 U.S.C. §§ 214(e), 254(e). The Commission also suggested in the *IP Experiments Order and FNPRM* that only one party to a consortium proposal need be an ETC to qualify the consortium for experiment support. *IP Experiments Order and FNPRM*, ¶ 122. The statute is clear, however, that high-cost USF (including CAF) can be provided only to an ETC, and that the ETC must then be the provider of the “supported service” to consumers. Thus, the Commission should scrutinize each consortium application to ensure that proper processes will be followed and these strict legal obligations will be met in each case.

<sup>20</sup> 47 U.S.C. § 254, 47 C.F.R. § 54.101(e). By statute, the “supported service” must be a “telecommunications service.” Thus, even if a service *resembles* but is not specifically offered by its provider to consumers as a supported “telecommunications service,” that offering is insufficient to justify the receipt of support. As noted by the Rural Associations in the past, however, the Commission’s policy should not turn upon whether a particular consumer actually *chooses* to take a supported telecommunications service for the distribution of support; rather, all that is required in the wake of the *2011 USF/ICC Transformation Order* is that an ETC offer the supported telecommunications service on a standalone basis to each and every consumer at rates that are reasonably comparable to those offered in urban areas.

<sup>21</sup> 47 U.S.C. § 254(b)

public interest.<sup>22</sup> Such a determination requires an individualized fact-based analysis of the ETC’s capabilities and proposed service offerings that “cannot be achieved by, for example, a reverse auction or a mechanical competitive bidding process.”<sup>23</sup> Further, should “any ETC seek designation for less than the entirety of an RLEC study area, substantial caution and an additional layer of individualized public interest analysis are required to examine the impact on existing services and consumers in the affected study area.”<sup>24</sup>

In addition to undertaking the individualized, fact-based analysis required by statute in considering any application (and the need to work with state commissions in doing so), the Commission should adopt several process safeguards “on the front end” to promote compliance with the statutory framework. In particular, the Commission should adopt rules that preclude applicants from “picking and choosing” those portions of a rural service area where it might be the most profitable or convenient for them to deploy new services under the “cover” that some portion of that service area is “unserved.” In this regard, although the Commission appears to recognize that census blocks are more appropriate than census tracts for evaluating whether a rate-of-return area is “served,” it nevertheless still appears willing to accept applications submitted on the municipal, county, or census tract level.<sup>25</sup> The Rural Associations urge the Commission, however, to evaluate all applications for experiments in rate-of-return areas (whether proposed by RLECs or by any other entity) solely on the census block level, as

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<sup>22</sup> See, Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed Jan. 17, 2013); 47 USC §§ 214(e)(2)(6).

<sup>23</sup> *Id.*; See also, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, Report and Order (rel. Mar. 17, 2005) (*Federal-State Joint Board Order*), ¶ 44.

<sup>24</sup> See, Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed Jan. 17, 2013); See also, *Federal-State Joint Board Order*, ¶¶ 48-53.

<sup>25</sup> *IP Experiments Order and FNPRM*, ¶¶ 208, 209.



experiments intended to encompass tract(s) containing rural towns and countryside are likely to include areas already served.<sup>26</sup>

The Rural Associations agree with the Commission’s proposal to contain experiments to areas in high cost census blocks truly lacking sufficient broadband deployment.<sup>27</sup> In attempting to determine what unserved areas are eligible for such support, the Commission asks whether the Connect America Cost Model (“CACM”) can “be employed to identify potential areas where experiments in rate-of-return areas might be useful.”<sup>28</sup> The Rural Associations continue to maintain that no existing model, including the CACM, is capable of accurately predicting support levels for rate of return companies. The Rural Associations also question the accuracy of the mapping/service information contained within the CACM, and have no reason to believe it would be helpful in determining what rate of return areas are most in need of CAF funds for broadband experiments.<sup>29</sup> Thus, regardless of the manner in which the Commission chooses the areas and applicants eligible to receive CAF funds for the rural broadband experiments, the Commission should also implement a robust, fair, and transparent challenge process, as described further below, so that RLECs have a formal procedure to contest claims that an area is unserved.

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<sup>26</sup> For example, consider an unserved rural census block that resides within the same census tract as three other census blocks that are all served by fiber to the premises that has been deployed at every location through a combination of private capital and federal USF support. Assume further that one of those census blocks contains what passes for a “city center” in many rural areas, containing perhaps a school, a few stores, a library, and a medical clinic. If an applicant can creatively “self-define” its service area at the tract level, the applicant could use USF resources to overbuild USF-supported networks in 75% of the census tract landmass, all under the auspices of theoretically reaching the 25% of the census tract that lacked broadband to date. Defining both unavailability of broadband *and* project scope at least at the census block level is essential to avoid such circumstances and inefficient use of USF resources.

<sup>27</sup> *IP Experiments Order and FNPRM*, ¶ 208.

<sup>28</sup> *Id.*

<sup>29</sup> *See*, Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (fil. Jan. 17, 2013); Comments of NTCA, *et al.*, WC Docket No. 10-90 (fil. Jan. 7, 2014), pp. 2-5; Comments of NTCA, *et al.*, WC Docket No. 10-90 (fil. Mar. 28, 2013).

The Rural Associations oppose the notion that applicants should be able to apply for and serve partially-served census blocks that are not otherwise eligible for model-based support.<sup>30</sup>

The Commission bases its proposal on the idea that the administrative challenges that existed when dealing with similar concerns in the price-cap context could be mitigated here by entertaining challenges only after an applicant has tentatively been awarded experiment funds in a rate-of-return area.<sup>31</sup> Yet this approach would place an unfair burden on RLECs – most of whom are very small businesses – who must then bear the expense and administrative burden of such a challenge when it is clear they provide service within the census block. At a minimum, RLECs should be provided with the “right-of-first-refusal” as discussed further below.<sup>32</sup>

Finally, the Commission should expressly confirm that the receipt of funds for rural broadband experiments will not adversely affect any CAF or USF funds being received by a pre-existing ETC for continued provision of supported services within their designated service area, including the area where a new experiment might be conducted. Although the Commission states that it does not “intend such experiments to threaten the financial viability of broadband networks that exist today through support from our existing high-cost mechanisms,”<sup>33</sup> the Rural Associations are concerned that by only referencing “broadband networks” the door has been left open to examine or call into question existing support for other supported services offered by ETCs.

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<sup>30</sup> *IP Experiments Order and FNPRM*, ¶ 221.

<sup>31</sup> *Id.*

<sup>32</sup> *Infra*, p. 19, note 38.

<sup>33</sup> *IP Experiments Order and FNPRM*, ¶ 208.

**IV. THE EXPRESSIONS OF INTEREST DEMONSTRATE THAT RLECs ARE THE MOST EFFECTIVE, COMMITTED AND QUALIFIED SOLUTIONS FOR ACCELERATING RURAL BROADBAND DEPLOYMENT; CERTAIN PROCEDURES SHOULD THEREFORE BE IMPLEMENTED DURING THE APPLICATION PHASE TO TAKE ADVANTAGE OF THEIR PROVEN TRACK RECORD, FOR THE NEAR-TERM AND LONG-TERM BENEFIT OF RURAL CONSUMERS AND COMMUNITIES.**

As the Commission notes in the *IP Experiments Order and FNPRM*, the provision of affordable, high-quality broadband service in high-cost rural areas poses unique challenges due to lower population density, geological and topographical challenges, and weather conditions, among many others.<sup>34</sup> Despite these challenges, as the *Order* also acknowledges,<sup>35</sup> RLECs have done a tremendous job of deploying cutting-edge, IP-enabled switching/routing platforms, and other IP-based services, leading the IP evolution by upgrading the underlying technology they use to serve their high-cost rural areas while maintaining a high level of service quality, consumer satisfaction, and universal service. In short, RLECs have not stood idly by while the IP evolution hurtles past them or their communities. To the contrary, these small carriers have been at the forefront of this evolution, leveraging entrepreneurship, experience in serving high-cost areas, private capital, universal service support, intercarrier compensation, sound working partnerships with federal and state regulators, and a commitment to the high-cost communities they serve and in which they reside.<sup>36</sup>

In light of this early success and demonstrated ongoing commitment to bringing the IP evolution to high-cost rural areas, the Rural Associations are somewhat perplexed as to the

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, ¶ 87.

<sup>36</sup> As of December 2010, small rural carriers had deployed at least basic levels of broadband to over 92 percent of their customers, and more than half of these carriers had either already deployed or had plans to deploy softswitches by the end of 2011. *See*, Petition of NTCA for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353, at 3 (filed Nov. 19, 2012).

apparent determination to “cast about” for “solutions” to furthering the IP evolution already well underway in areas served by RLECs. No doubt, substantial work remains to be done to improve broadband speeds in rural areas all across the nation, to reach those “unserved” locations that lack access to broadband service altogether, and to keep services affordable and of high quality on a sustainable basis both for those that are “long-served” and those that may be “newly served.” But RLECs have shown the commitment to face this challenge time and again, and they are eager for the prospect of additional ways in which they might be able to promote and sustain the IP evolution in the rural communities in which they live and serve. Thus, just as the Commission looked first to larger incumbents in the CAF to see what they could do in relatively short order to edge out broadband within their rural serving areas, it would seem that a logical place for the Commission to start such a new exercise would be with the smaller carriers that not only have already demonstrated the commitment and experience necessary to serve these areas, but also have the network in place or nearby to provide service. In short, the solution for rural broadband is right before the Commission in the form of those small rural carriers who have shown more commitment – and achieved more success, at least thus far – than any other sector in reaching across wide swaths of rural America to deliver advanced services at affordable rates to consumers and businesses.

The Commission need look no further than the EOIs solicited by the *Order* to recognize RLECs’ deep commitment and readiness to serve. In both quantity and quality, the EOIs submitted by RLECs and their affiliated companies stand out, as these providers have answered the Commission’s call for serious and thoughtful proposals to provide high-quality, IP-based services to rural areas. EOIs submitted by RLECs and their affiliated companies far outpace the

number submitted by other types of entities,<sup>37</sup> and the quality of these EOIs reflect RLECs' familiarity with what is expected and demanded of high-cost USF recipients. Indeed, while the EOIs submitted by RLECs and many others confirm the expensive nature of serving high-cost rural areas, the EOIs submitted by RLECs in particular are measured and reasonable in how they would put limited universal service funds to work. RLECs' decades of experience and track record of success in serving customers that most providers have historically ignored, lend even more credibility to their collective submission of EOIs.

With that in mind, the Commission's next steps in this proceeding should be to leverage the experience and demonstrated commitment of these local, community-based carriers in serving high-cost areas and their existing networks to see how they can help deploy sustainable broadband as quickly and effectively as possible. To that end, the Commission should take three specific programmatic steps:

- 1) create a window within which RLECs would be given the first opportunity to propose and have accepted, on a "fast-track" basis, any experiments within their incumbent study areas;
- 2) provide RLECs with a "right-of-first refusal" with respect to any application that is subsequently submitted by a non-RLEC ETC for an experiment in any given portion of a RLEC study area;<sup>38</sup> and

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<sup>37</sup> The Rural Associations estimate that approximately 30 percent of the EOIs filed by the March 7, 2014 deadline were submitted by RLECs or their affiliated companies.

<sup>38</sup> As described above, the Commission should be clear that any CAF/USF support received by a RLEC in connection with an experiment will be supplemental to the current support received by the RLEC under existing mechanisms. Additionally, the Commission should consider extend the "right-of-first-refusal," in certain circumstances, to census blocks immediately adjacent to RLEC study areas given that an RLEC that is already the COLR and providing service (or has an affiliate capable of providing service to the areas in question) in a neighboring rural area is likely in the best position to deploy service quickly. In fact, a number of RLECs' affiliated providers have already "edged out" and are providing service to consumers that other providers have chosen not to serve in these neighboring areas. This would yet again take advantage of networks already in place, maximizing the benefit to the program and speeding delivery to the consumer. The Rural Associations agree, however, that this "right-of-first-refusal" should not operate in cases where the incumbent price cap carrier itself has submitted an application for a rural broadband experiment to provide service in the census block(s) in question.

- 3) adopt a robust challenge process that would require a non-RLEC experiment applicant to demonstrate that no network facilities are available in or near to the census block(s) at issue in the application to provide service to areas designated as “unserved”<sup>39</sup> in RLEC study areas.

The first step – a “fast-track” window – would resemble the incremental support provided to price cap carriers as part of the CAF Phase I mechanism. Much like CAF Phase I, this “fast-track” window could operate as an immediate injection of funds to enable those RLECs who are “ready to go” to start as soon as possible in extending the quality and/or reach of existing facilities and accelerating broadband deployment to unserved consumers within their incumbent study areas.<sup>40</sup> Such a policy makes all the more sense when one considers that, beyond their local presence and significant track record of success to date, RLECs with network facilities near “unserved” areas (or with facilities in need of upgrades) would be in a much better position to leverage these existing facilities quickly than other providers “starting from scratch.”

In the second step, with respect to any application that is subsequently submitted by a non-RLEC ETC for an experiment in a given census block(s) in a RLEC study area, the Commission should afford the RLEC a “right-of-first-refusal” to undertake a given project itself to the extent that it is willing to perform the same deployment as the non-RLEC ETC for equal or less support than that proposed by the non-RLEC ETC. Again, this mechanism would be analogous to the right that will be afforded the price cap carriers via the CAF Phase II mechanism. Such a right would appropriately recognize RLECs’ many years of service as COLRs to the broader study area community – along with their experience fulfilling the numerous public interest conditions that have long attached to COLRs that receive high-cost

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<sup>39</sup> Defined as any census block lacking access to broadband Internet access service with speeds of at least 3 Mbps downstream and 768 kbps upstream.

<sup>40</sup> *USF/ICC Transformation Order*, ¶ 132.

funding – and provide assurance that service quality, consumer protection, and public safety standards will be met. This process would also have the benefit of minimizing experiment outlays (as the RLEC would need to meet or beat the support sought by the competing proposal) and speeding up deployment timeframes (as the RLEC would need to meet or beat the schedule proposed by the competitor – who based upon the Commission’s own rules, might not even be an ETC at the time of submission of the proposal and/or is almost certain to be proposing a sub-study area ETC designation that by law will require, in cooperation with state commissions, a subsequent public interest analysis and finding prior to approval).<sup>41</sup>

Third, to the extent that non-RLEC ETCs participate in a rural broadband experiment in any portion of a RLEC study area, a robust “challenge process,” at least as stringent as that adopted in the CAF Phase I and II mechanisms, is required.<sup>42</sup> In an era of limited resources and capped high-cost funding mechanisms, it makes little sense to enable overbuilding of existing networks that are already supported in part by universal service funds. This “cannibalization” of existing supported networks would waste limited resources that could be better spent elsewhere.

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<sup>41</sup> Another “experiment” the Commission should consider that also takes stock of the commendable track record of RLECs in providing solutions for rural broadband quandaries is to take a “fresh look” at the effect of the “parent trap” and Safety Valve Support (“SVS”) mechanisms on sustainable network deployment in high-cost areas. The “parent trap” rule as currently designed limits high cost support to acquired exchanges. The SVS mechanism, in turn, was designed to incent post-transaction investment in rural exchanges sold from one carrier to another despite the workings of the “parent trap” rule. Press reports indicate that larger providers continue to ponder (to say the least) what to do with their rural serving areas. See, Verizon and AT&T: No Interest in Rural Areas (Mar. 25, 2014), available at <http://www.fool.com/investing/general/2014/03/25/verizon-and-att-no-interest-in-rural-areas.aspx> Allowing smaller, locally-based providers to gain scale and “edge out” broadband into neighboring “Bell towns” through use of USF/CAF mechanisms – specifically a fresh look at the parent trap and SVS mechanisms to facilitate exchange acquisitions and broadband deployment by RLECs– could offer a logical solution to this quandary and an effective (but not forced) means of promoting greater scale in the delivery of services in rural areas that is to the benefit of consumers, rural communities, larger providers who may be interested in focusing on larger markets, and smaller providers for whom the adjacent Bell towns *are* the “larger markets.”

<sup>42</sup> *In the Matter of Connect America Fund*, WC Docket 10-90, Report and Order, 28 FCC Rcd. 7211(May 16, 2013).

And to the extent that any gamesmanship (through a creative pairing of purportedly “unserved” and served areas or “creamskimming”) is allowed to occur, the pressure for additional high-cost support increases as lower cost portions of an RLEC’s study area are artificially removed.<sup>43</sup> A meaningful challenge process would mitigate these concerns.

## V. CONCLUSION

Before moving forward with the rural broadband experiments, the Commission should clarify how they will be integrated and coordinated with existing federal USF programs, as well as other federal funding programs. The Commission also must not allow the experiments to distract from much-needed and still ongoing work to update existing USF support mechanisms so that rural broadband can remain reasonably comparable in both price and quality, on a sustainable basis.

In addition, the Commission needs to be mindful as well of existing COLR and ETC obligations. These obligations are required by law and serve the interest of the consumer first and foremost. They must be fulfilled faithfully in connection with the structuring of an application process and the ensuing consideration of submitted applications.

It is also essential that the experiments do not affect the availability or affordability of vital services, both voice *and* broadband, already being provided by COLRs and ETCs in significant part thanks to USF support. Only focused, well-defined areas truly lacking sufficient broadband will be eligible for “experiment funds.”

Finally, to leverage RLECs’ experience and track record in serving rural consumers, the Commission should: (1) provide RLECs an initial opportunity to obtain approval of experiments

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<sup>43</sup> The Commission should be clear that any CAF/USF support that might be received by another ETC in connection with an experiment that has in fact been approved in proper accordance with the applicable statutory and regulatory provisions will have no effect on the USF support already received by the RLEC for its operations and investments in the affected study area.



in their incumbent study areas (analogous to the CAF Phase I “injection” of support afforded to price cap carriers); (2) allow RLECs a well-defined “right-of-first-refusal” with respect to proposals submitted by other providers within or adjacent to their incumbent study areas (analogous to the CAF Phase II RoFR afforded to price cap carriers); and (3) adopt a robust challenge process to ensure that experiment resources are not used in a manner that results in USF-supported broadband-capable networks being built atop already existing or planned USF-supported broadband-capable networks.

Respectfully Submitted,

**NTCA THE RURAL BROADBAND ASSOCIATION**

By: /s/ Michael R. Romano

Michael R. Romano

Senior Vice President – Policy

[mromano@ntca.org](mailto:mromano@ntca.org)

Brian Ford

Regulatory Counsel

[bford@ntca.org](mailto:bford@ntca.org)

4121 Wilson Blvd, 10<sup>th</sup> Floor

Arlington, VA 22203

(703) 351-2000

**NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

By: /s/ Richard A. Askoff

Richard Askoff

Robert J. Deegan

Its Attorneys

Teresa Evert, Senior Regulatory Manager

80 South Jefferson Road

Whippany, NJ 07981

(973) 884-8000

March 31, 2014

**EASTERN RURAL TELECOM ASSOCIATION**

By: /s/ Jerry Weikle

Jerry Weikle

Regulatory Consultant

PO Box 6263

Raleigh, NC 27628

(919) 708-7464