

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Rural Broadband Experiments)	WC Docket No. 14-259
)	

**REPLY COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL AND THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The Utilities Technology Council (“UTC”)¹ and the National Rural Electric Cooperative Association (“NRECA”) hereby file the following reply comments to the opposition by the United States Telecom Association (“USTA”).² Contrary to USTA, the Commission should reconsider its decision to make ineligible certain census blocks that have recently been served by 10/1 mbps. UTC and NRECA also oppose Verizon’s and USTA’s requests to permit providers to impose data caps for the above-baseline and gigabit service tiers in the Phase II auction.

I. The Commission Should Preserve Funding in Census Blocks Where Qualified Non-Winning Applicants Proposed to Provide Category 1 Rural Broadband Experiments.

The public interest would be served by preserving funding in areas where RBE applicants deployed broadband networks and are providing broadband services. As UTC and NRECA explained in their petition, these RBE applicants acted with the good faith expectation that they would be able to compete in the Phase II auction for access to funding to cover the cost of their

¹ UTC was formerly the “Utilities Telecom Council”. See www.utc.org.

² Opposition and Comments of the United States Telecom Association in WC Docket No. 10-90 (filed Sept. 2, 2016).

deployment.³ Contrary to USTA, the FCC's decision to remove these areas does indeed pull the rug out from under these RBE applicants, preventing them from competing for access to funding for the broadband networks they have deployed in those areas.

Moreover, it sets a terrible precedent. First, it punishes those RBE applicants for doing the right thing. Instead of waiting for the FCC to conduct the auction, the RBE applicants went and deployed broadband in those areas where no one else – especially and including the price cap carriers – would provide service. They deserve the opportunity to compete for access to funding in the Phase II auction to help to offset the cost of providing broadband in those areas. Moreover, this precedent will only hurt consumers going forward by discouraging competitive providers from deploying broadband, lest they lose any chance of getting funding from CAF Phase II.

This precedent also thwarts competition and unfairly favors price cap carriers, which ultimately also harms consumers, as well. It unfairly denies RBE applicants (and other competitors) equal opportunities for access to funding as was provided to the price cap carriers, who were given the right of first refusal to model based support without any removal of census blocks in those areas. It also encourages price cap carriers to game the process and thwart competition, because it creates an open opportunity for them to target RBE areas for deployment, thereby undercutting their competitors from being able to access funding in those areas. This hurts consumers because price cap carriers need only provide 10/1 mbps service and they need only serve one consumer in a given census block to render that census block ineligible for funding; whereas if RBE applicants were able to compete for funding and won the bid, all of the consumers in those census blocks would have access to 25/3 mbps service or higher. The longer

³ Joint Petition for Reconsideration of the National Rural Electric Cooperative Association and the Utilities Technology Council in WC Docket Nos. 10-90, 14-58 and 14-259 at 8 (filed Jul. 21, 2016)(“Petition”).

the FCC delays the Phase II auction, the more time the price cap carriers will continue to receive funding from model-based support and also be able to deploy in the RBE areas and cut off funding to their competitors.

While USTA claims that the FCC's decision makes prudent use of limited funds, the reality is that this decision will enable the price cap carriers to frustrate the underlying purpose of the Rural Broadband Experiments.⁴ The Commission established the RBE for the purpose of providing "critical information regarding which and what types of parties are willing to build networks that will deliver services that exceed [the Commission's] performance standards for an amount of money equal to or less than the support amounts calculated by the adopted Phase II Connect America Cost Model."⁵ In short, the RBE was established to challenge the status quo. Therefore, removing funding from RBE projects in these census blocks would frustrate the fundamental purpose of the RBE program to challenge status quo broadband from the price cap carriers.

In addition, this decision will enable the price cap carriers to negate the carve-out that the Commission provided in census blocks where RBE applicants proposed to deploy networks capable of 100/25 mbps.⁶ The Commission provided the carve-out because it quite rightly recognized that these RBE applicants would offer better service for less money than what the

⁴ Comments and Opposition of USTA at 4.

⁵ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 8769, 8771, ¶6 (2014) ("RBE Order").

⁶ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order, 29 FCC Rcd. 15644, 15675 at ¶85 (2014) ("December 2014 Connect America Order") (stating that "[w]e determine that rural broadband experiment proposals submitted in funding category one that facially meet the requirements for submission of financial and technical information could help us achieve our universal service goals in a cost-effective manner.")

price-cap carriers would provide under the right-of-first-refusal of model-based support.⁷ As the Commission stated, the carve-out was a more efficient use funding that would enable the FCC to stretch its finite Connect America budget even further.⁸ It's no wonder that USTA and the price cap carriers support removing these census blocks from eligibility. Doing so enables them to easily negate the carve-out and prevent funding from going to their competitors.

As NRECA and UTC explained, the Commission's decision to exclude these census blocks significantly disadvantages communities served by rural utilities, which is undisputed by USTA or any other parties on the record. The Commission's decision will remove more than a third of the census blocks in areas that five of the rural electric cooperatives proposed to serve with qualifying, non-winning Category 1 RBE projects. Without this funding, rural electric cooperatives and utilities will be hard pressed to deploy broadband networks quickly and economically in these census blocks and in the surrounding areas.⁹ This threatens to deny consumers the benefits that broadband could bring in terms of economic growth, better jobs, improved health care and richer educational opportunities.¹⁰ In addition, it threatens to deprive these areas from access to robust, affordable and reliable broadband services that would have been provided by these Category 1 RBE projects. The cost efficiencies that would be gained by removing these census blocks are greatly outweighed by the public interest benefits that would

⁷ *Id.* at ¶85 (stating that “[w]e are not convinced that providing model-based support to a price cap carrier in an area where another entity [i.e. a category one RBE applicant] has demonstrated an interest to provide service that so significantly exceeds the Commission’s speed requirements, for an amount at or below the model-determined support, would be an efficient use of funding.”)

⁸ *Id.* (stating that “excluding these areas from the offer of model-based support and instead making them available in the Phase II competitive bidding process should enable us to stretch our finite Connect America budget even further.”)

⁹ Several electric cooperatives have filed comments in support of the Joint Petition for Reconsideration by NRECA and UTC. *See* Comments of Orcas Electric Cooperative in WC Docket No. 10-90 (filed Aug. 30, 2016); Comments of Illinois Rural Electric Cooperative in WC Docket No. 10-90 (filed Aug. 26, 2016); and Comments of Roanoke Electric Cooperative in WC Docket No. 10-90 (filed Aug. 23, 2016).

¹⁰ Petition at 3.

be lost if these census blocks go unfunded.

Contrary to USTA, the Commission did not provide adequate notice and opportunity to comment before suddenly deciding to remove these census blocks from eligibility. As NRECA and UTC explained, the Commission never provided any indication whatsoever that it was considering removing these census blocks from the Phase II auction; despite the Commission's statement to the contrary.¹¹ Contrary to USTA, the Commission's general statements in the *2011 USF/ICC Transformation Order* are inapposite, because they were made when the FCC was originally determining which census blocks would be included in the offer of model-based support to the price cap carriers.¹² The RBE program didn't even exist then. While rural electric cooperatives and other utilities may have understood that those census blocks were ineligible for funding and that the Commission provided a challenge process so that other census blocks could be removed from eligibility, they did not have any notice that the Commission would be removing additional census blocks from the Phase II auction, especially census blocks where non-winning Category 1 applicants for rural broadband experiments had deployed broadband networks in advance of the Phase II auction. Quite the opposite, because the Commission had emphasized that the challenge process would be the only opportunity by which additional census blocks would be removed from eligibility.¹³

¹¹ Petition at 7. *But see, Report and Order* at ¶55, citing *December 2014 Connect America Fund Order*, 29 FCC Rcd 15 15674, ¶80 (stating, “[w]e expect to update the list of census blocks that will be excluded from eligibility from the Phase II competitive bidding process based on the most current data available at the time shortly before that auction to take into account any new deployment that is completed in the coming year.”)

¹² Opposition and Comments of USTA at 4, citing *Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund*, 26 FCC Rcd. 17663 at ¶170 (Nov. 18, 2011)(claiming that the Commission's decision in 2011 provided sufficient notice that the Commission would remove census blocks from eligibility for purposes of the RBE carve-out and Phase II auction, if they later became served by and unsubsidized competitor.).

¹³ See *Connect America Fund, Order*, WC Docket No. 10-90, DA 15-383, rel. Mar. 30, 2015. See also *Wireline Competition Bureau Commences Connect America Phase II Challenge Process*, WC Docket Nos. 14-93, 10-90, Public Notice, 29 FCC Rcd. 7986 (Wireline Comp. Bur. 2014); and *Connect America Fund, Report and Order*, 28 FCC Rcd. 7211 (Wireline Comp. Bur. 2013).

Finally, NRECA and UTC reiterate that the Commission’s decision to remove these census blocks from eligibility is arbitrary and capricious because it arbitrarily allows price cap carriers to continue to receive funding under the statewide offer in areas where they are already deploying, but at the same time it disparately denies competitive providers, including rural electric cooperatives and other utilities, from being able to receive funding under Phase II in areas where they have deployed broadband networks. This is particularly capricious because it funds price cap carriers for deploying networks that only offer 4/1 mbps or 10/1 mbps services – but it denies Category 1 RBE applicants funding for deploying faster networks that offer 25/3 mbps service. Restricting funding to RBE applicants while providing funding to price cap carriers for costlier and inferior service is the essence of arbitrary decision-making.

II. The Commission Should Deny Verizon and USTA’s Request to Allow Data Caps for the Above-Baseline and Gigabit Service Tiers.

UTC and NRECA oppose Verizon’s and USTA’s requests that the Commission reconsider its decision to require that providers permit unlimited usage (i.e. without data caps) for Phase II auction proposals in the “above-baseline” and “gigabit” service tiers.¹⁴ These requests are contrary to public policy, because data caps are a barrier to the availability of broadband and discourage the adoption of broadband.¹⁵ Specifically, data caps are a barrier because they prevent consumers from using the Internet to support applications such as streaming video, and they discourage consumer adoption of broadband because they impose

¹⁴ See Petition for Reconsideration of Verizon in WC Docket No. 10-90; and see Comments and Opposition of USTA in WC Docket No. 10-90.

¹⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 16-245, Twelfth Broadband Progress Notice of Inquiry, FCC 16-100, at ¶52, rel. Aug. 4, 2016 (inquiring about the impact of data caps on access to streaming video and inquiring whether there are other ways in which data allowances or other non-speed metrics may affect the availability of advanced telecommunications capability.) See also Comments of the Utilities Telecom Council in GN Docket No. 16-245 (filed Sept. 6, 2016)(opposing data caps as a barrier to broadband adoption that discourages streaming video and imposes surcharges on consumers for overages.)

overage charges which may make broadband unaffordable for many Americans.¹⁶ Verizon and USTA fail to provide any technical basis for their request. Instead, they vaguely assert that unlimited usage allowances will increase costs for potential providers and that may have the effect of discouraging them from bidding to provide service in some areas. These claims have been drawn into question,¹⁷ and some providers have backed away from them.¹⁸

Verizon also claims that the Commission's urban rate survey data supports the adoption of usage allowances for the above-baseline and gigabit service tiers, but actually the urban rate survey data shows that there are many urban providers that allow unlimited usage for service tiers that are less than 100 mbps download speeds.¹⁹ To the extent that there are providers with data caps for 100 mbps services, they tend to be cable television companies or other video service providers.²⁰ Most telecommunications carriers do not impose data caps on 100 mbps services or higher speed services.²¹ As such, the urban rate survey data does not support usage allowances for the above-baseline and the gigabit service tiers, and the data tends to show that unlimited usage allowances are reasonably comparable to the level of services in urban areas.

¹⁶ Thomas Gryta and Shalini Ramachandran, Wall Street Journal, "Broadband Data Caps Pressure 'Cord Cutters'" (Apr. 21, 2016), visited at <http://www.wsj.com/articles/broadband-data-caps-pressure-cord-cutters-1461257846>.

¹⁷ Bill Snyder, CIO from IDG, "What big ISPs don't want you to know about data caps" (May 27, 2016) *visited at* <http://www.cio.com/article/3075975/internet-service-providers/what-big-isps-dont-want-you-to-know-about-data-caps.html> (questioning claims that data caps are necessary to offset increased costs caused by subscribers who use a disproportionate amount of bandwidth on the network).

¹⁸ Jon Brodtkin, ARS Technica, "Comcast VP: 300GB data cap is "business policy," not technical necessity," *visited at* <http://arstechnica.com/business/2015/08/comcast-vp-300gb-data-cap-is-business-policy-not-technical-necessity/>

¹⁹ See Petition for Reconsideration of Verizon in GC Docket No. 10-90 at 5 (filed Aug. 8, 2016)(stating that "many urban providers have usage limits for services of 100 megabits per second or more that range from 250 gigabytes per month to 1,000 gigabytes per month," and that the Commission's usage allowances for the above-baseline and gigabit service tiers should be in line with those urban providers' usage limits.)

²⁰ See FCC, "Urban Rate Survey Data & Resources" *visited at* <https://www.fcc.gov/general/urban-rate-survey-data-resources>.

²¹ *Id.* Interestingly, the urban rate survey data shows that Verizon provides unlimited usage allowances for its services of 100 mbps.

Given that the data caps represent a barrier to broadband and discourage broadband adoption, the Commission should reject the baseless requests by Verizon and USTA to permit data caps as part of the above-baseline and the gigabit service tiers in the Phase II auction. As a technical matter, fiber platforms that are capable of offering 100/20 mbps do not require data caps to manage bandwidth congestion on the network. As a policy matter, data caps hurt consumers by discouraging them from using internet-based over-the-top video platforms and by imposing surcharges for overages. Therefore, the Commission's decision to require unlimited usage allowances for the above-baseline and the gigabit service tiers in the Phase II auction was reasonable and should be maintained.

CONCLUSION

WHEREFORE, UTC and NRECA respectfully request that the Commission reconsider its decision to remove certain census blocks from eligibility for funding in the Phase II auction, particularly where rural electric cooperatives and other utilities that were non-winning Category 1 RBE applicants deployed broadband networks. These rural electric cooperatives and other utilities should have the opportunity to compete for access to funding in those areas to offset the cost of deploying broadband networks that will provide services that are much faster than the speeds that the price cap carriers are required to offer under the offer of model-based support. Denying that opportunity unfairly disadvantages these RBE applicants and encourages price cap carriers to game the process in order to prevent them from accessing funding to deploy broadband in those areas. Ultimately, consumers are harmed because they are denied access to broadband services that are faster and more affordable than what the price cap carriers will provide them.

Similarly, the Commission should also protect consumers by rejecting demands from the price cap carriers to adopt data caps for the above-baseline and gigabit service tiers in the Phase II auction. Instead, the Commission should retain the requirement of unlimited usage allowances for these service tiers. Doing so is not only reasonable, it serves the public interest by making broadband more affordable and attractive for consumers.

Respectfully submitted,

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