

**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
)	
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 Through the ACAM Program)	RM-11868

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
REGARDING NOTICE OF INQUIRY**

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EXECUTIVE SUMMARY

This proceeding offers great promise in ensuring that the critical high-cost universal service fund (“USF”) programs will be well positioned to deliver on the enduring goal of universal service by focusing not merely upon the initial act of *getting* rural Americans connected but *keeping* them connected. Policymakers have rightly been concerned in recent years with promoting the deployment of networks where they do not exist, with the pandemic highlighting the problems that can arise where fundamental access is lacking. But Congress could not have been clearer about the enduring and evolving nature of the mission of universal service in directing the creation of USF programs, and in this proceeding the Federal Communications Commission (the “Commission”) rightly and responsibly turns its attention to the oft neglected but essential question of what is needed to ensure universal service *continues* once robust connections are established.

The need for a sustainability framework can perhaps best be captured by the fact that there remain “market failure areas” throughout rural America where no provider can make a business case to invest in a broadband network absent universal service support to help recover the costs of both investment and ongoing operations and maintenance. While there will be some rural areas where grants may provide sufficient economic support to enable self-sustaining operations thereafter, there will also be rural areas where even a grant covering 100% of capital costs cannot overcome the difficult economics of providing ongoing services – and there are many rural areas in which broadband networks built to date have *not* leveraged grant funding. The Commission should therefore use this Notice of Inquiry to launch a more detailed analysis of where “reasonably comparable” end-user rates will be insufficient, standing alone, to recover the capital expended to deploy networks in the first instance (*e.g.*, to repay loans, provide a return on equity, and/or cover the matching funds that providers must put forward) *and* to maintain and upgrade such networks

to keep pace with an evolving level of service that is “reasonably comparable” to that enjoyed by urban consumers.

A sustainability framework should be positioned as a coordinated complement to existing high-cost USF mechanisms while the latter programs’ work is completed. In particular, it would be logical to target a sustainability framework to begin with in those high-cost areas specifically where three conditions are met: (a) a “full-service network” as described herein already exists; (b) there is only one full-service network in that area; and (c) these other existing high-cost USF programs are *not* already at work. Then, as the existing high-cost USF programs run their respective courses, the Commission can consider whether full-service networks in these other areas might transition to sustainability support as well. NTCA further offers herein recommendations to guide a notice of proposed rulemaking on these matters, including a suggested definition of a “full-service network,” a process for developing and providing cost-based and model-based options for sustainability support, and other critical program parameters such as term, service obligations, and other accountability measures.

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**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
REGARDING NOTICE OF INQUIRY**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Comments in response to the Notice of Inquiry released by the Federal Communications Commission (the “Commission”) in the above-captioned proceedings.² This proceeding offers great promise in ensuring that the Commission’s critical high-cost universal service fund (“USF”) programs will be well positioned to deliver on the enduring goal of universal service by focusing not merely upon the initial act of *getting* rural Americans connected but *keeping* them connected consistent with the more comprehensive statutory mission.

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

² *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (rel. July 24, 2023) (“*NOP*” or “*Enhanced A-CAM Order*,” as applicable).

I. THE MISSION OF UNIVERSAL SERVICE DOES NOT END WHEN NETWORKS ARE CONSTRUCTED, AND THE COMMISSION SHOULD THEREFORE DEVELOP A “SUSTAINABILITY FRAMEWORK” TO IDENTIFY WHERE AND TO WHAT DEGREE ONGOING SUPPORT IS NEEDED TO FULFILL THE ENDURING MISSION OF UNIVERSAL SERVICE.

A. The Statutory Mandate for Reasonably Comparable Services at Reasonably Comparable Rates Denotes an Explicit Ongoing Mission of Universal Service, and the High-Cost USF Program Should be Designed Accordingly.

Even as the *Enhanced A-CAM Order* charted a path to 100/20 Mbps and better broadband service for many rural locations, substantial work remains ahead to connect millions of other rural consumers to the services they need to participate in an increasingly online world. As the *NOI* notes, the Broadband Equity, Access, and Deployment (“BEAD”) program and other grant initiatives at the state and federal levels are poised to deliver at least 100/20 Mbps broadband service to millions of currently unserved and underserved Americans.³ Yet, even as these and other mechanisms will help initially to connect many rural communities lacking meaningful broadband access today, the fundamental mission of universal service articulated by Congress contemplates more than the mere deployment these funds will enable. The Commission must therefore turn its attention to ensuring that the ongoing mission of universal service is preserved over the long-term in these areas after networks are initially built – and in other rural areas where private capital investment has resulted in robust broadband networks. To be clear, this does not mean necessarily that universal service fund (“USF”) mechanisms must look precisely as they did in the past, but it also does not mean that policymakers and legislators can declare their efforts complete and ignore the need for ongoing USF support in some rural places simply for the fact of having connected Americans in the first instance.

³ *NOI*, at ¶ 155.

Congress could not have been clearer about the enduring nature of the mission of universal service in the Communications Act of 1934, as amended (the “Act”). Over the past ninety years and through several updates, Congress has ensured that the Act is replete with repeated references not just to networks but to *services*. This reflects a consistent and recurring recognition that our nation benefits not just from the connections put into place, but rather what those connections enable. Such perspectives can be seen in original text from the Act charging the Commission to ensure “rapid, efficient, Nation-wide, and world-wide wire and radio communication *service* with adequate facilities at reasonable charges”⁴ to more updated provisions that compel this agency to ensure that “[q]uality *services* should be available at just, reasonable, and affordable rates,” that “advanced telecommunications and information *services*” are available in all parts of the nation, and that all Americans “have access to telecommunications and information *services*” that are reasonably comparable in price and quality to those in urban areas.⁵ These directives and principles make clear that connecting consumers is a prerequisite to universal service, but the ultimate objective is *keeping Americans connected with services* upon which they can rely to communicate with family, friends, neighbors, business partners, teachers, doctors, and others across the country and throughout the world.

Policymakers have rightly been concerned in recent years with promoting the deployment of networks where they do not exist, with the pandemic highlighting the problems that can arise where fundamental access is lacking. But now the Commission rightly and responsibly turns its attention to the essential question of what is needed to ensure universal service continues once robust connections are established. Indeed, the *NOI* recognizes the importance of this perspective

⁴ 47 U.S.C. § 151 (emphasis added).

⁵ *Id.* at § 254(b)(1)-(3) (emphasis added)

at the outset, stating that it is intended to “build a record to help the Commission explore methods to ensure universally *affordable and available* fixed broadband services *into the future*, in light of section 254(c)(1)’s definition of universal service as an ‘evolving level of . . . service, taking into account advances in telecommunications and information technologies and *services*.’”⁶ Section 254(e) is relevant as well, requiring that a “carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁷ Moreover, that section specifically calls for support that is “explicit and sufficient to achieve the purposes of this section,”⁸ indicating that the Act clearly contemplates the provision of sustainability funding to meet this ongoing mission. Indeed, the statutory call for services that are “reasonably comparable to those services provided in urban areas” is perhaps the most operative manifestation of the “evolving” nature of universal service – as urban consumers continue to see leaps in the quality of broadband access, the Commission could not fulfill the mission for reasonable comparability if universal service were viewed as a static outcome.

Looking beyond the statute’s general objectives to the specific work that Congress intended, the need for a sustainability framework can perhaps best be captured by the fact that there remain “market failure areas” throughout rural America where no provider can make a business case to invest in a broadband network absent universal service support to help recover the costs of that investment and ongoing operations and maintenance. Although there will be some rural areas where grants may provide sufficient economic support to enable self-sustaining operations thereafter, it is true as well that there will be areas where even a grant covering 100%

⁶ *NOI*, at ¶ 154 (citing 47 U.S.C. § 254(c)(1)) (emphasis added).

⁷ 47 U.S.C. § 254(e)

⁸ *Id.*

of capital costs cannot overcome the difficult economics of providing ongoing services. And, as discussed further below, it is critical to note that most rural broadband networks built to date have *not* leveraged grant funding, and even grant funding typically requires a sizeable match of private capital. (Finally, it must not be overlooked that even the most robust “full-service networks” at some point reach the ends of their useful and/or economic lives, and at that point must be rebuilt.) The first step then is to determine where a market failure exists such that ongoing support is needed, followed by a determination of the appropriate level of such support to ensure that the enduring mission of universal service is fulfilled.

More specifically, the Commission should use the *NOI* to launch a more detailed analysis of where “reasonably comparable” end-user rates will be insufficient to recover the private capital expended to deploy networks in the first instance (*e.g.*, to repay loans, provide a return on equity, and/or cover the matching funds that providers must put forward) *and* to maintain and upgrade such networks to keep pace with an evolving level of service that is “reasonably comparable” to that enjoyed by urban consumers. In the end, as Congress recognized long ago and has reiterated many times since, sufficient and predictable support through the High-Cost USF program is critical for any operator to make a business case to deploy networks in many rural areas and to ensure that consumers will realize the benefits of universal service over time.

The need for ongoing support to sustain networks and services is something the Commission itself has repeatedly recognized in prior USF reforms. For example, even as it was primarily focused on promoting deployment that would cover every location within widespread study areas, the inclusion in the *Enhanced A-CAM Order* of a level of ongoing support for locations to which electors have already deployed 100/20 Mbps represented an explicit recognition that such carriers will “continue to experience ongoing operational and depreciation costs associated with

these already-constructed locations.”⁹ The Commission similarly recognized in extending model support offers in 2018 that “areas with partially or fully-deployed fiber-to-the-premises may still require high-cost support to maintain existing service.”¹⁰ The Future of Universal Service report acknowledged too the need to evaluate how networks – including via BEAD program funding specifically – can be kept operational and capable of meeting consumers’ needs into the future.¹¹

Moreover, even as it created the BEAD program via the Infrastructure Investment and Jobs Act (“IIJA”), Congress made clear that the Commission was neither to abandon nor otherwise to neglect the continuing mission of universal service simply because grants would aim to provide “Internet for All.” To the contrary, Section 60104 of the IIJA prompted the Commission’s “Report on the Future of Universal Service” and expressed the position that the new law should be read as “expanding” and not “reducing” the “congressional mandate to achieve the universal service goals for broadband.”¹² And, as the *NOI* notes,¹³ NTIA understands the significance of sustainability as well, having noted that “the key cost considerations for providers [awarded BEAD funding] are their remaining CapEx costs (match amount) and ongoing OpEx once the network is operational.”¹⁴

⁹ *NOI*, at ¶ 74

¹⁰ *Connect America Fund*, WC Docket No. 10-90, et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration (rel. Dec. 13, 2018), at ¶ 45.

¹¹ *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report (rel. Aug. 15, 2022), at ¶¶ 45-46.

¹² IIJA, Pub. L. No. 117-58, 135 Stat. 429 (2021), at § 60104(c).

¹³ *Enhanced A-CAM Order*, at n. 434.

¹⁴ National Telecommunications and Information Administration (“NTIA”), *Economics of Broadband Networks: an Overview* (2022), at 3 (available at: <https://broadband.usa.ntia.doc.gov/sites/default/files/2022-03/Economics%20of%20Broadband%20Networks%20PDF.pdf>).

In short, policymakers of all kinds – from Congress to the Commission to NTIA – have recognized and emphasized the importance of not just building networks, but sustaining them and the services offered atop them. While over the past decade or so there has been an understandable focus on deployment as a prerequisite to achieving an initial state of universal service, as substantial progress has been made and as grant programs just now coming online are poised to establish initial connections farther and wider, it is essential that the Commission return to fulfilling its unique statutory mission of universal *service* through a lens of sustainability.

B. The Mere Award of a Broadband Deployment Grant Does Not Overcome a “Market Failure” or Obviate the Need for Sustainability Support.

Just as important as recognizing the need to create a sustainability framework is determining where to target such support, and several factors are relevant to that discussion. As an initial matter, the level of service provided by the network will be key; as discussed further below, until a network is “full-service,” support for further investments (whether through grant funding or USF distributions) will be necessary *in addition to* support for ongoing operations in many deeply rural areas to promote reasonable comparability in price and quality of service. Of course, even where a “full-service network” may exist, private capital must still be recovered and/or loans repaid such that USF support is needed to help *both* recover that initial investment *and* address ongoing costs so that rates can remain affordable.¹⁵ But there will be places too where, even after all private capital is recovered and loans repaid, sustainability support will be required

¹⁵ The Commission expressly recognized this distinction between upfront financing and ongoing support in 2016: “We recognize that carriers that are fully deployed in some cases have taken out loans to finance such expansion and therefore may have significant loan repayment obligations for years to come.” *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. Mar. 30, 2016), at ¶ 66.

to cover ongoing costs of operation and maintenance (including but not limited to transit and backhaul costs) that would otherwise render service unaffordable or put at risk service quality.

One therefore cannot simply assume then that because a grant has been awarded, it is a follow-on truism that the network built will be self-sustaining. Nor, to be clear, can it be presumed on the other hand that ongoing support is needed in all cases to sustain networks and services simply because an area is rural. A more discerning analysis is needed, and targeting support to those areas where it is needed should be the first logical step in crafting a sustainability framework.

Moving forward, addressing the diverse nature of rural areas as discussed above requires the Commission to identify those “market failure areas” where high-cost USF support remains essential to overcome an adverse business case for delivery of “reasonably comparable” services and to recover those capital and operating costs that cannot be recovered from end users without charging “unreasonably incomparable” rates. The Commission has before it an historic opportunity to recalibrate and reaffirm the long-standing (but recently overlooked) notion that USF looks to achieve broader objectives than other federal and state agencies’ network financing loan and grant programs. Indeed, the high-cost USF plays a unique and multi-faceted role distinct from these “one-time” initiatives by: (a) enabling the business case for rural network deployment by justifying access to and use of capital from other sources; (b) helping to sustain those rural networks once built by providing recovery thereafter of a portion of both that initial capital (if not a grant) and ongoing expenses where they are higher than seen in urban areas; and (c) helping to deliver services in rural America that are and will stay comparable in quality and price to those in urban markets. Against this backdrop, NTCA discusses below how the Commission should approach and begin to structure a comprehensive set of USF programs for the ongoing achievement of universal service, including the interplay with existing programs and the

mechanics of a sustainability framework for those rural high-cost places where “full-service” networks exist but the business case for continued provision of reasonably comparable services at reasonably comparable rates nonetheless remains challenging.

II. A SUSTAINABILITY FRAMEWORK SHOULD BUILD UPON AND COMPLEMENT EXISTING EFFORTS, AIMING FIRST TO ADDRESS AREAS WHERE A PROVIDER OF LAST RESORT HAS DEPLOYED A “FULL-SERVICE NETWORK” AND FOCUSING PRIMARILY ON ONGOING SUPPORT FOR OPERATIONS AND MAINTENANCE.

A number of high-cost USF initiatives already work to promote the objectives of universal service, including but not limited to: (i) Connect America Fund-Broadband Loop Support (“CAF-BLS”) and High-Cost Loop Support (“HCLS”); (ii) several iterations of Alternative Connect America Cost Model Support (“ACAM”), such as ACAM I, ACAM II, and Enhanced ACAM; (iii) the Alaska Plan; and (iv) the Connect America Fund (“CAF”) Phase II and Rural Digital Opportunity Fund (“RDOF”) auction-based support mechanisms (“Existing High-Cost USF Programs”). A sustainability framework should be positioned as a coordinated complement to these existing mechanisms while their work is completed. Even as some of these initiatives may be more effective than others, as a general matter, it would be disruptive to alter any of these programs mid-stream – especially given that each incorporates specific and ambitious deployment commitments over a period of time. Rather, it would be logical to target a sustainability framework to begin with in those high-cost areas specifically where three conditions are met: (a) a full-service network as described further below already exists; (b) there is only one full-service network in that area; and (c) these other high-cost USF programs are not already at work.

In practical terms, this would mean that each of the Existing High-Cost USF Programs identified above should run its respective course to achieve its respective goals, subject only to surgical programmatic updates in the interim where needed (*e.g.*, to establish refreshed deployment

obligations within the CAF-BLS program).¹⁶ A sustainability framework could then apply in such areas as each program completes its respective term (presuming the existence of a full-service network at that point). NTCA would submit, however, that rather than launching a sustainability framework in piecemeal fashion across different rural areas covered by the Existing High-Cost USF Programs as various terms lapse, the Commission should initiate such a framework and begin to distribute such support across all such areas on a comparable timeframe – meaning that interim extensions of certain Existing High-Cost USF Programs are warranted. For example, the ACAM I term in some cases runs through 2026, while in other cases ACAM I and ACAM II run through 2028. The CAF Phase II auction program provides support for 10 years, which for most recipients translates to 2029. The RDOF auction similarly provides support for 10 years, with most recipients’ terms running through 2031 or 2032.

Thus, in lieu of having differing dates for the conclusion of the various Existing High-Cost USF Programs and piecemeal migration to sustainability support, NTCA submits that the Commission should consider interim extensions of the various Existing High-Cost USF Programs with limited updates as necessary through 2032 – with a sustainability framework only applying in these areas thereafter. In this manner, the Commission would better harmonize its universal service programs by having as many areas as possible covered by a single program (*i.e.*, a sustainability framework) that takes effect at the same time across wider rural geographies. Meanwhile, for other high-cost rural areas where Existing High-Cost USF Programs are *not* currently operating – including both those areas where networks have been built only using private capital without support and those areas where various grant programs are helping to fund network

¹⁶ See, *e.g.*, Comments of NTCA, WC Docket No. 10-90, *et al.* (filed Sept. 18, 2023), at 7-13. It is worth noting that the CAF-BLS and HCLS programs do not have specified terms and, as discussed further below, by their design and operations in fact work well as one part of a broader sustainability framework.

construction – the Commission should explore in an ensuing further notice of proposed rulemaking how to implement a sustainability framework in the next several years to ensure fulfillment of the comprehensive mission of universal service. This involves tackling several questions rightly teed up in the *NOI*.

A. Definition of a “Full-Service Network”

The definition of a “full-service network” is essential to identify the point at which network deployment can be considered substantially complete such that the focus of support can shift largely to sustainability.¹⁷ In the context of fixed networks, NTCA submits that a network should only be considered “full-service” if it provides a fiber connection directly to the location in question. Although other technologies can deliver levels of performance that may be sufficient in the near future or several years looking forward, only fiber offers the scalability and reliability sufficient to conclude that network construction can be considered substantially complete for many years to come.¹⁸ Thus, a network should not be deemed “full-service” such that a shift to a sustainability framework for support would apply until such time as a fiber-to-the premises (“FTTP”) connection has been deployed.¹⁹

¹⁷ *NOI*, at ¶¶ 161-163.

¹⁸ *See, e.g.,* Vantage Point Solutions, Inc., *Future Proof: Economics of Rural Broadband - Comparing Terrestrial Technologies & Investment Considerations To Meet Increasing Consumer Broadband Demands, A Greenfield Rural Broadband Case Study* (May 2021) (available at: https://www.ntca.org/sites/default/files/documents/2021-05/Future%20Proof%20--%20Economics%20of%20Rural%20Broadband%20FINAL_0.pdf).

¹⁹ For purposes of clarification, this is *not* to say that only fiber networks should be supported by high-cost USF programs. Rather, the question presented by this *NOI* is at what point the Commission’s high-cost USF mechanisms might shift from *both* enabling further deployment *and* sustaining already-built networks to focusing primarily upon sustainability. NTCA submits that, until fiber has been deployed in an area, that area should be considered one in which further capital investment is likely needed and thus not an area that should shift into a sustainability support framework. It should be further noted that this is not to say that there will be no additional capital expenditures needed once a full-service network has been deployed; even the most advanced

Alternatively, if the Commission chooses not to specify that a FTTP connection is necessary for a network to be considered “full-service,” it should at a minimum: (a) utilize the definition of “Reliable Broadband Service” employed by NTIA;²⁰ and (b) only treat a network as “full-service” if it offers at least Gigabit download and 500 Mbps upload speeds, roundtrip latency of less than 40 milliseconds, and monthly usage limitations of no less than two Terabytes. Although the use of speeds and other performance characteristics to determine what should qualify for USF support is suboptimal as consumer demands tend to outpace program goals, levels of performance such as those noted above would provide at least some assurance that the network will be capable of keeping pace with consumer demand and remaining “reasonably comparable” for some time to come.²¹ If performance characteristics are used in lieu of technology to define a “full-service network,” it would likely be appropriate to revisit these characteristics every ten years to determine the extent to which they remain current or are in need of updating.

The *NOI* further inquires whether a network should be considered “full-service” only if it can deliver service within a set number of days to each location in the area in question, and also how to factor in deployment obligations under other programs.²² NTCA supports generally a

networks will require investment to maintain and upgrade electronics over time, and such costs should be factored into a sustainability support framework as discussed further below.

²⁰ NTIA, Broadband Equity, Access, and Deployment Program, Notice of Funding Opportunity (May 12, 2022), at 15.

²¹ Ookla reports that the median U.S. fixed broadband speeds increased from 167 Mbps upstream and 22 Mbps downstream in August 2022 to 210 and 24 Mbps, respectively, in August 2023. Ookla Speedtest Global Index (available at: <https://www.speedtest.net/global-index/united-states#market-analysis>); *see also* OpenVault Broadband Insights Report 1Q23 (available at: https://openvault.com/wp-content/uploads/2023/05/OVBI_1Q23_Report_FINALv.pdf) (noting a 9% increase in weighted average data consumption from 1Q 2022 to 1Q 2023 and that the percentage of subscribers provisioned for maximum speeds under 200 Mbps dropped by 39% over the same period).

²² *NOI*, at ¶ 162.

requirement that a full-service network be capable of delivering a committed level of service to every customer in the area within a specified timeframe, but cautions that even reaching a tentative conclusion regarding the scope of such a requirement would be premature given continuing concerns about both inaccurate coverage claims on existing broadband maps and the accuracy of serviceable locations on these maps.²³ The precise contours and timing of such a requirement (and the conditions precedent to it taking effect) would therefore seem ripe for consideration in an ensuing further notice of proposed rulemaking. As for how to factor in enforceable commitments under other programs, NTCA addresses this question below in the context of how competition will be identified and accounted for in a sustainability support mechanism, as the two issues largely involve the same question of establishing proper support levels and implementing disaggregation.

Finally, for purposes of sustainability support, the Commission should *not* adopt a different definition of a “full-service network” for areas outside the contiguous United States and for Tribal lands.²⁴ This is not to say that we can reasonably expect such areas to realize “full-service” networks as relatively quickly and easily as other rural areas in light of the unique challenges of serving Tribal reservations or Alaska, for example. Rather, what NTCA intends in suggesting a common definition of “full-service network” is that the ultimate statutory goal is to deliver service that is ultimately “reasonably comparable” in price and quality for *all* areas, regardless of geography. Thus, to the extent that there is no “full-service network” in a high-cost rural area wherever located, the Commission should not implement a sustainability framework and should instead leverage more comprehensive support mechanisms like some of the Existing High-Cost

²³ See Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, *et al.* (filed Sept. 15, 2023), at 3-14.

²⁴ *NOI*, at ¶ 163.

USF Programs (*e.g.*, the Alaska Plan or CAF-BLS) to enable the business case for further investment and to sustain those networks once built. Put another way, a sustainability framework should be implemented wherever a “full-service network” has been deployed, but that term should not be defined downward in certain rural areas simply to justify applying a sustainability support framework prematurely to a less capable network.

B. Developing a Support Methodology

The *NOI* next seeks comment on how to develop a support methodology by using the Commission’s existing cost model, a new model, or alternatives such as competitive bidding.²⁵ As an initial matter, the Commission need not and should not use competitive bidding or applications to distribute support in this circumstance. Sustainability support should only go to those places where there is only one “full-service network” in operation, meaning that: (a) by definition, there is no unsubsidized competitive provider; and (b) it is not an unserved area for which multiple parties would efficiently compete for funding to deploy. In other words, the sustainability framework should apply only where there is effectively a “provider of last resort” that has already done the work of deploying a robust network and is delivering reliable high-performing services that qualify for such support. Under such circumstances, it would make little sense to “open the program” for bidding. By contrast, if it were an area with multiple networks, no support would presumably be distributed – and if it were an unserved area, this is where other programs (such as BEAD) will provide one-time grants through a competitive process to fill such voids. Moreover, while the Commission expresses concern about the length of time it might take to develop other support methodologies, most of the Existing High-Cost USF Programs have a number of years left in their existing terms and most grant-funded networks are still under

²⁵ *Id.* at ¶¶ 164 and 175-177.

construction or still-to-be-started. The Commission therefore has a reasonable amount of time within which to develop a better methodology in lieu of racing to implement a sustainability framework through inapplicable and contrived auctions.

By contrast, a cost-based mechanism like CAF-BLS and a cost model would represent more promising vehicles for distributing sustainability support to an effective provider of last resort. Of course, a cost-based mechanism would require potential recipients to submit cost studies and other data to justify the level of support sought. Even as NTCA would submit that cost-based support has been the most successful methodology to date in stimulating and sustaining the availability of robust and reliable broadband in many rural areas, it is likely that not all operators in need of sustainability support would want to prepare such information for submission – and the Commission itself may find administration of such a mechanism on a widespread basis administratively difficult.²⁶ Thus, in addition to leveraging CAF-BLS as a logical framework for sustainability support for those providers that want to continue with that mechanism, the Commission should consider how to develop and use a voluntary cost model as an alternative for distribution of sustainability support.

In this regard, the current cost model provides a useful starting point for such an exercise by assuming “a green-field, Internet protocol (IP)-based fiber-to-the-premises (FTTP) network capable of providing both voice-grade access and broadband services.”²⁷ This being said, the current cost model is in need of material updates and should be leveraged only as a baseline. While the Commission sought to incorporate current census and mapping data in extending Enhanced

²⁶ See *id.* at ¶ 171 (discussing the potential for “submission of accounting and financial information” to discern costs in need of support).

²⁷ *Id.* at ¶ 164.

ACAM offers most recently, it recognized that questions remained regarding the accuracy of this information and provided up to *two years* for potential support adjustments to reflect corrected information and data still forthcoming from States as to grant awards.²⁸ Moreover, as the *NOI* observes, an ensuing notice of proposed rulemaking should engage in a detailed review of model inputs. Indeed, the orders to which the *NOI* cites in describing the current state of the model platform and inputs are nearly a decade old,²⁹ and the costs within the model are older still – and were derived largely from (and designed largely to estimate) the costs of investment and operations for a small subset of larger broadband providers. As just a few further examples of why updates are warranted, technological advancements on the one hand may have yielded operating efficiencies, but inflationary pressures are likely to have affected costs adversely as well (and replacement costs of equipment in even “full-service” networks cannot be neglected). A fresh look at such inputs would be useful.

It would also seem prudent in this context to consider how the operator of a “full-service network” has obtained, and to what degree it has recovered, the capital used to deploy that network (and what capital needs may exist for maintenance and replacements going forward), as the current model does not capture specific mixes of capital composition.³⁰ Relatedly, while the current model essentially uses “carrying charges” to estimate certain ongoing costs,³¹ given that the primary

²⁸ *Enhanced A-CAM Order*, at ¶ 34.

²⁹ *See id.*, at notes 5, 439, and 444 (citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 28 FCC Rcd 5301 (WCB 2013); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (WCB 2014)).

³⁰ *NOI*, at ¶ 169; *see also id.* at ¶ 173 (discussing how to incorporate amounts received from grants in the determination of what level of ongoing support is required to sustain operations).

³¹ *Id.* at ¶ 168.

purpose of this exercise is to focus support on sustainability for ongoing operations and maintenance, it would seem advisable to consider other means of estimating such costs. In summary, when it comes to estimating capital and operating costs for a new model, NTCA recommends that the Commission undertake an effort mirroring that of a decade ago, whereby the agency retained an expert to develop a cost model reflecting the most current cost information available at that time for the providers that were subject to the model, set support parameters for that model, and sought public stakeholder comment on the further development and ultimate adoption of that model. As part of this exercise, the Commission could evaluate the degree to which underlying data has changed since this effort was last undertaken a decade ago and the extent to which there would be value in “refreshing” a sustainability model every ten years or on some other comparable cycle.³²

With respect to questions regarding how to incorporate the effects of competitive presence into support calculations and the geography for support, NTCA recommends that the Commission continue to use census blocks as a baseline unit for evaluation of costs, revenues, and disaggregation calculations in the event of unsubsidized competitive presence or enforceable commitments by other providers pursuant to federal or state grant awards.³³ Some level of aggregation would aid in program administration, and census blocks continue to provide a reasonably sized geography for such estimations. As part of a further notice of proposed rulemaking, the Commission should seek comment as well on an effective data-driven means of

³² *Id.* at ¶¶ 171 and 174.

³³ *See id.* at ¶¶ 164-165; *see also id.* at ¶ 179 (discussing calculations and adjustment of support for locations where an unsubsidized competitor offers service comparable to those in urban areas at comparable prices).

identifying and validating purported unsubsidized competition,³⁴ the appropriate means of calculating disaggregation impacts, and the proper timing of such reviews.

Finally, NTCA strongly supports a review of how to address *force majeure* events as part of any further notice of proposed rulemaking, especially if sustainability support winds up being distributed pursuant to a cost model.³⁵ Indeed, the Commission should consider whether and how to establish a separate support mechanism designed specifically for such events, and as part of such an examination, should consider how to permit the submission of data by affected providers showing actual costs incurred in responding to the event (which would then allow the Commission to consider the extent to which other factors such as insurance may have helped to mitigate such costs).

C. Setting a Budget and Support Term

In the *NOI*, the Commission asks what budget and term it should set for a sustainability framework.³⁶ NTCA submits that it would be premature at this point to speculate as to what an appropriate program budget could be, because the work described above in terms of retaining experts to develop a model and otherwise reviewing information about ongoing costs of operations and maintenance – as well as the level of capital still to be recovered in existing “full-service networks” – would all be critical to make an informed assessment. Moreover, as noted above with respect to the term of such support, it would seem prudent to “refresh” a sustainability framework every ten years, and NTCA therefore submits that the term of distribution of such support should

³⁴ For example, an entity should not be deemed a qualifying competitor unless it operates a “full-service network” of its own that offers voice and broadband on a standalone basis and meets the applicable performance parameters.

³⁵ *NOI*, at ¶ 178.

³⁶ *Id.* at ¶¶ 180-182.

then be fixed for a period of at least ten years as well. In fact, it must be noted that providers in high-cost rural areas typically measure returns on investment and cost recovery over even longer periods, but a period of ten years would correspond to a potential periodic refreshing of the model and would therefore appear to represent a reasonable term for such distributions as well.

D. Service Obligations and Accountability

NTCA generally supports continued application of existing obligations for recipients of high-cost USF support, including periodic reporting, performance testing, and the application of eligible telecommunications carrier requirements.³⁷ In the case of sustainability support, however, there would be no deployment obligations to fulfill precisely because the network is already “full-service.” In this regard, NTCA recommends that the Commission condition continued receipt of sustainability support on the continued provision of the required level of service to all serviceable locations in the area for which such support is received. For example, in addition to performance testing, a recipient of sustainability support should have indicated in its Broadband Data Collection filings that every location in the supported area in question is served via fiber (or a Reliable Broadband Service, as applicable) at the required levels of performance.

³⁷ *Id.* at ¶ 183.

III. CONCLUSION

For the foregoing reasons, NTCA respectfully requests that the Commission act consistent with the recommendations set forth herein.

Respectfully submitted,

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