Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
High Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementing of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

Initial Comments of TCA

I. Introduction

TCA hereby submits these comments in response to the Federal Communications Commission's (FCC or Commission) Order on Remand and Further Notice of Proposed Rulemaking (FNPRM) captioned above.[1] TCA is a consulting firm that performs financial, regulatory, management, and marketing services for over one hundred small, rural local exchange carriers (LECs) and their affiliates throughout the United States. TCA's clients have all been granted eligible telecommunications carrier (ETC) status, qualifying them to receive support from federal universal service support mechanisms and all are subject to rate-of return

[1] FNPRM, rel. November 5, 2008 (*FNPRM*)

(RoR) regulation in the interstate jurisdiction. TCA clients serve some of the most sparsely populated, high-cost areas of the country and depend upon both the federal universal service fund (USF) and cost-based intercarrier compensation (ICC) rates in order to provide state-of-the-art communications services to their customers. Accordingly, TCA files these comments of behalf of its clients, which will be directly impacted by this proceeding.

The FNPRM requests comment on three specific proposals for the comprehensive reform of the USF. The Chairman's Proposal[2] is the draft order circulated by Chairman Martin on October 15, 2008, and scheduled for vote at the November 4, 2008 open meeting. The Alternative Proposal[3] was circulated by the Chairman on November 5, 2008 and is a modified version of his initial proposal, incorporating various changes proposed by various segments of the industry. The Narrow Proposal[4] was circulated on October 31, 2008. The first two draft orders also propose substantial reform of the existing ICC regime. Finally, the FCC requests comment on the proper cost standard for determining the rate for termination and whether the rate should be applicable to individual carriers or statewide. TCA appreciates the opportunity to again comment on the critical issues surrounding comprehensive ICC and USF reform.

II. Summary

TCA is encouraged that the Commission is committed to the expedited reform of the ICC and USF systems and agrees with the majority of the commissioners that a growing consensus on many aspects of ICC and USF reform has emerged.[5] Accordingly, TCA strongly encourages prompt action on these issues - many of which we have commented on frequently during the past several years - including: 1) unifying access rates, 2) not unduly burdening consumers with rate increases and instead implementing alternative cost recovery mechanisms, 3) addressing phantom traffic, 4) eliminating the identical support rule and 5) emphasizing the importance of broadband to the future of universal service.

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[2] Ibid., Appendix A

[3] Ibid., Appendix C

[4] Ibid., Appendix B

[5] Ibid., Joint Statement of Commissioners Copps, Adelstein, Tate and McDowell

TCA asserts that while none of the three proposed orders contain the entirety of appropriate ICC and USF reforms, the Alternative Proposal is clearly the superior alternative. Adoption of either the Chairman's Proposal or the Narrow Proposal without modification would be catastrophic for rural consumers, as broadband deployment in high-cost areas would come to a halt and many rural LECs would likely cease operations. As a result, TCA will focus these comments on necessary improvements to the Alternative Proposal, which contains many positive reforms, including: 1) the unification and reduction of termination rates with revenue losses replaced with a restructure mechanism for rural LECs, 2) the requirement that all terminating traffic be properly identified by transiting carriers, 3) elimination of the identical support rule, which is responsible for the explosive growth in the USF and 4) establishment of the goal of universal broadband availability. However, the Alternative Proposal also contains several negative aspects, which require modification, including: 1) establishment of a statewide, "near zero" termination rate that is not cost-based for rural LECs and results in a *de facto* bill and keep regime, 2) exemption of certain carriers from legitimate termination charges, creating an arbitrage opportunity which will potentially render many of the positive ICC reforms meaningless, 3) freezes USF for carriers, which eliminates both the ability and the incentive to deploy broadband, and 4) mandates broadband availability with the threat of reverse auctions, instead of providing appropriate investment incentives. The modifications to the Alternative Proposal proposed by TCA would result in a USF that provides sufficient, sustainable and predictable support to incent the deployment of broadband-capable facilities and an ICC regime with uniform termination rules and rates to allow for the appropriate cost recovery of network facilities. Once the FCC adopts these changes, TCA is confident that broadband deployments will accelerate in rural high-cost areas.

III. Proper Incentives for Investment will Increase Broadband Availability

TCA agrees that the focus of the USF should be the advancement of broadband access to consumers in sparsely-populated, high-cost areas of the nation. However, TCA asserts that this should be accomplished by providing carriers the proper incentives to deploy broadband-capable facilities - not unworkable reverse auctions or regulatory fiat. The only proven incentive for the deployment of facilities in high-cost areas is linking high-cost support mechanisms to facility investment.[6] Unfortunately, instead of expanding this critical incentive for the deployment of facilities to all carriers serving high cost areas, all three proposed orders eliminate it for rural LECs.

TCA opposes the proposal to freeze federal USF at individual carrier levels, as this would significantly reduce the incentive for rural LECs to deploy broadband-capable facilities. Under existing FCC rules, rural LECs that invest in facility upgrades in high-cost areas increase their receipt of USF to offset the cost of the investment – without increasing the size of the USF. The Federal-State Joint Board on Universal Service (Joint Board) recently recognized this fact, by singling out rural LECs for their commendable job of deploying broadband during the past five years with flat or declining support.[7] The FCC must not destroy this critical linkage between investment and support – but instead should expand it to all carriers. The primary reason for the lack of broadband in high-cost areas served by price cap LECs can be directly attributed to the lack of investment incentive. LECs electing price cap regulation receive federal support regardless of whether any actual facility investments are made, which creates a different incentive – one of profit maximization. Accordingly, TCA strongly recommends that existing federal support mechanisms for rural LECs be left intact to provide the continued incentive for investment in broadband-capable facilities in high-cost areas.

IV. The Identical Support Rule Should be Eliminated

TCA strongly agrees that the identical support rule – which provides competitive ETCs with the same per-line support as the incumbent LEC – should be eliminated. Under the guise of competitive neutrality, the identical support rule has provided wireless carriers with billions of dollars from the USF, purportedly to expand wireless coverage into high-cost unserved areas. While a few smaller wireless carriers have actually used universal service funds for this purpose – large national wireless carriers have received the vast majority of these funds and frequently "use" them for little more than profitability enhancement.[8] The Joint Board has recognized the

[6] Under current FCC rules, this linkage exists only for rural LECs.

[7] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (rel. November 20, 2007) (*Recommended Decision*) at ¶39

[8] See *The Effects of Providing Universal Service Subsidies to Wireless Carriers*, authored by Kevin W. Caves, PhD. and Jeffrey A. Eisenach, PhD., Criterion Economics, L.L.C., released June 13, 2007. The Caves and Eisenach study

failure of the identical support rule to promote appropriate public policy by conceding that the rule bears little or no relationship to the amount of money competitive ETCs have invested in rural and other high cost areas of the country.[9]

Similar to high-cost support mechanisms for rural LECs, any future support for mobility must be based on the cost of providing *wireless* service and require the construction of facilities in sparsely-populated areas. TCA has previously supported several proposals which would provide subsidies to wireless carriers for construction of facilities in unserved areas.[10] TCA remains convinced that establishing a link between high-cost universal service support and network investment in areas without adequate wireless service is far more likely to improve wireless service in rural areas – with far less support than under the identical support rule. However, before the FCC creates any new support mechanism for wireless carriers, it must first reallocate wireless support among the states. Currently, wireless support is allocated among states based upon the willingness of that state's regulators to grant ETC status. As a result, states that have designated wireless ETCs simply to "promote competition" receive substantial funding, while states that require adherence to the designation requirements of the Telecommunications Act of 1996 (the Act) receive little, if any, federal support. Fairness dictates that this policy must be changed and support be allocated based upon unserved or underserved areas in each state. Furthermore, states who have received little wireless support should receive priority access to

recognized the inherent flaw in the identical support rule – that instead of providing incentive for wireless ETCs to make availability-enhancing investments in underserved or unserved areas, it simply incents recipients to serve more customers within the subsidized service area. This has frequently been accomplished without facility investment, by simply investing in retail outlets, a bigger advertising budget or other marketing activities. The Caves and Eisenach study found no evidence of a positive relationship between universal service fund subsidies and wireless service availability and choice - even after considering efforts by regulators to affect the ways these subsidies are spent.

[9] *Recommended Decision* at ¶35

[10] See Comments of TCA, CC Docket No. 96-45, FCC 03J-1, filed September 30, 2003, at pp.7- 8. TCA supported *The Universal Service Endpoint Reform Plan* ("USERP"), authored by Peter Bluhm, Vermont Public Service Board, Joel Shifman, Maine Public Utilities Commission and Jeff Pursley, Nebraska Public Service Commission. The USERP proposed a Portability Fund of $1 billion for annual grants to wireless ETCs. The USERP assigned the responsibility of identifying areas lacking quality wireless service, allocating construction grants and retaining oversight of the grants to ensure they are properly expended to state commissions. See also Comments of TCA, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4, filed April 17, 2008, at pp.4-7. TCA supported the recommendation of the Joint Board that a separate Mobility Fund be created.

any new fund, as the states that have already received the bulk of the funds should have significantly reduced, or even eliminated, unserved areas.

V. USF Reverse Auctions Will Decrease - Not Increase - Broadband Availability

The lack of national universal broadband availability can be attributed to a variety of reasons, including the lack of sufficient support, failure to provide the appropriate investment incentive to incumbent price cap carriers and the uncertainty surrounding USF reform. Allocating the USF with reverse auctions – with a stated goal of reducing available support - will not resolve any of these problems and likely will only worsen them.

The Narrow Proposal, which requires the immediate distribution of support by reverse auctions, would have huge negative repercussions for rural LECs. Many rural LECs have constructed state-of-the-art networks to provide ubiquitous broadband availability throughout the entirety of their certificated service area. Under FCC rules, these rural LECs were required to invest in these facilities in high-cost areas *before* receiving USF. Virtually all of these rural LECs borrowed the necessary funds to make these uneconomic investments in infrastructure and heavily depend upon federal support mechanisms to repay these loans. Requiring reverse auctions to distribute USF without a lengthy transition period will likely result in bankruptcy for many of these rural LECs.[11]

Although the Chairman's Proposal and the Alternative Proposal both limit reverse auctions to areas that where the incumbent LEC does not commit to ubiquitous broadband availability, this action would be detrimental for both rural carriers and consumers. Instead of providing the necessary incentive for facility upgrades in high-cost areas, reverse auctions – which are designed to limit support – will actually reduce the incentive for deploying broadband-capable facilities. Furthermore, the increased obligations and responsibilities required of rural

[11] Even "winning" a reverse auction with substantial reductions in support would be devastating for many rural LECs.

LECs[12] – the true providers of universal service in this country – would place them at a significant disadvantage in competitive bidding for USF. Until this core issue is resolved and all bidders have similar obligations and responsibilities, a fair and equitable competitive bidding process simply cannot be designed.

Even the threat of reverse auctions will have a negative impact upon rural LECs, as the uncertainty surrounding the availability of federal support mechanisms would at a minimum increase the cost of obtaining financing and will likely result in a reduction in availability of financing these investments in facilities in high-cost areas. The Rural Telephone Finance Cooperative (RTFC) – one of the primary lenders for rural LECs with more than two billion dollars in outstanding loans to rural providers – correctly recognizes the repercussions of reverse auctions, as follows:

> Reverse auctions (competitive bidding) to determine high-cost universal service funding for incumbent rural local exchange carriers (RLECs) *will discourage investment* in the rural telecommunications infrastructure and *result in lesser quality service* to rural Americans. Such a high-cost support regime will cause lenders to reconsider lending into rural telecom space.[13]

Finally, allocating high-cost universal service support based upon the results of a reverse auction would not comply with the statutory universal service provisions, which require the Commission to establish specific, predictable and sufficient support mechanisms to preserve and advance universal service.[14] Requiring carriers to competitively bid for support mechanisms would increase the uncertainty surrounding the sufficiency and the predictability of these funds. Clearly, reverse auctions fail to meet the statutory objective of high-cost support mechanisms.

There is little evidence that threatening or mandating reverse auctions will increase broadband availability. TCA recommends the FCC consider an alternative approach, which would include: 1) conditioning the receipt of USF for price cap LECs on facility investment in

[12] State commissions possess jurisdictional oversight of rural LEC operations and most still exercise authority over consumer protection, service quality, local rate regulation and POLR obligations. However, this jurisdictional oversight rarely, if ever, extends to rural LEC competitors.

[13] Comments of Rural Telephone Finance Cooperative, WC Docket No. 05-337, CC Docket No. 96-45, FCC 06J-1, filed October 10, 2006, at p. 2 (*Emphasis added*).

[14] 47 U.S.C. §254(b)(5)

high-cost areas, 2) allocating sufficient USF to incent universal broadband deployment in all high-cost areas and 3) eliminating the FCC's parent trap rules, which unfairly deny rural consumers access to advanced services, and allow rural LECs to acquire and upgrade these neglected areas.

VI. Capping the USF Will Unnecessarily Constrain the Deployment of Broadband

TCA has significant concerns regarding any proposed caps on the universal service fund, especially while the FCC has proposed simultaneously mandating ubiquitous broadband availability. Constructing the necessary facilities in high-cost areas will be costly and will require greater access to support mechanisms. Complying with the consumer demand for ever-increasing data speeds will also require substantial facilities investment. Ubiquitous broadband availability – at increasing higher data speeds – is not a goal that can be achieved without sufficient funding. Accordingly, TCA opposes both an overall cap and an individual carrier cap on the USF.

TCA concurs with the Commission's efforts to refocus the federal universal service fund on the deployment of ubiquitous broadband. However, artificially capping the USF will unnecessarily impede the accomplishment of this goal. TCA contends that now is time for a bold initiative from the FCC to make ubiquitous broadband a reality. To stimulate the nation's depressed economy, President-elect Obama is preparing a significant economic stimulus package, which reportedly will be focused on enhancing the nation's infrastructure. The broadband networks deployed throughout the country are arguably the most important component of our national infrastructure and should not be excluded from increased funding. Accordingly, instead of artificially limiting funds for broadband deployment, the FCC should focus ensuring that sufficient support is available to carriers to incent the investment in broadband-capable facilities.

VII. Rural LEC ICC Rates Should be Unified and Reduced with a Restructure Mechanism

TCA strongly agrees that comprehensive ICC reform is needed and concurs with the basic concept articulated in the proposals for ICC reform – transitioning to unified and reduced termination rates with a restructure mechanism. TCA also concurs with the principle that ICC reform must require all carriers terminating traffic to compensate the terminating carrier for the use of their network.

TCA also agrees with many of the details in Alternative Proposal for the rural LEC restructure mechanism, supplemental interstate common line support (ICLS).[15] TCA agrees that the fund should provide for a relatively simple re-balancing of rates. TCA recommends that to ensure equitable, prompt and uniform treatment of recipients, the National Exchange Carrier Association (NECA) should administer the supplemental ICLS. As the current administrator of the ICLS, NECA can easily implement the Commission's requirements for access to supplemental ICLS, thereby ensuring that support amounts are sufficient, but not excessive.[16] While many state commissions have implemented state high cost funds to reduce termination rates, many others have not. The restructure mechanism is too critical for rural LECs to be delegated to fifty different state commissions to establish different rules and with different implementation timelines.

TCA also agrees that equity requires that the restructure mechanism contain a benchmark local rate and that, at minimum, it be set at the national average urban local rate of $20.76. Consumers in states that have already reduced intrastate termination rates by creating state high cost funds and increasing local rates should not be required to subsidize lower local rates in states that have failed to do so. TCA recommends that local rate benchmark should include not only the local rate, the interstate subscriber line charge (SLC) and mandatory Extended Area Service (EAS) charges, but also any per-line contribution to the state high cost fund. A reasonable benchmark local rate also has the added benefit of limiting the size of the restructure

[15] ¶¶320,321

[16] Supplemental ICLS should require adherence to the FCC's authorized rate-of-return for rural LECs of 11.25%.

mechanism. However, should the FCC increase the cap on SLCs, increases should be mandatory only to the extent necessary to enable a LEC to reach the benchmark local rate. Mandatory SLC increases for rural LECs above the benchmark local rate further discriminates against early adopter states.

While TCA agrees that rates for termination need to be unified, we strongly disagree that the rates should be set below a reasonable cost-based level. The Alternative Proposal establishes a ceiling rate of $.0007 for termination and indicates that state commissions should ultimately adopt even lower statewide rates. TCA is not aware of any legitimate cost study that indicates that $.0007 represents the cost of termination on any network, let alone a rural LEC network in a sparsely-populated service area.[17] For rural LECs, this is a *de facto* "bill and keep" regime, as a rate of $.0007 fails to cover the even the cost of billing terminating carriers, let alone any reasonable recovery of network costs.[18] Any new costing standards adopted by the FCC must recognize that the reasonable costs of providing transport and termination include common costs and overheads – and that the resultant rates for rural LECs are not "near zero." Failure to provide rural LECs the ability to recover reasonable network costs will halt construction of facilities in high-cost areas and bring the advancement of broadband to a screeching halt. Below-cost termination rates will also create network congestion and inefficiencies, as carriers will undoubtedly abandon dedicated transport arrangements to enjoy the benefit of "free" access to common transport. Finally, the elimination of termination charges will unnecessarily increase the funds that rural LECs will be required to receive from the restructure mechanism as proposed in the Alternative Proposal.

TCA also contends that a single, statewide termination rate fails to comply with the requirement of the Act for cost-based rates.[19] There should be no question that there is a significant difference in the cost of termination for a large carrier like Verizon and small rural LEC, who may serve less than one customer per square mile. The FCC has previously

[17] ¶194 The termination rate of $.0007was not the product of a cost study, but was reached through arbitration.

[18] "Bill and Keep" is a misnomer, as under this arrangement there is no billing and hence, nothing to keep. A more accurate depiction would be "termination without compensation."

[19] 47 U.S.C. §252(d)

recognized the differential in cost of termination among price cap carriers.[20] Accordingly, TCA cannot understand why the same principle – higher termination rates for more sparsely-populated service areas - was not incorporated in either the Chairman's Proposal or the Alternative Proposal. TCA strongly asserts that recognition of the higher cost of termination in sparsely-populated areas is an absolute necessity for any appropriate ICC reform for rural LECs. Furthermore, TCA strongly disagrees that a statewide termination rate would "simplify" the regulatory process.[21] Reciprocal compensation and access proceedings at the state commission level involve virtually every stakeholder in the industry and are complex, time-consuming and costly. Requiring a statewide termination rate will only increase the stakes in these state commission proceedings for large national carriers, who will undoubtedly devote even more resources to ensure the lowest possible termination rate, placing rural LECs at an even greater disadvantage.[22] Unfortunately, this will force rural LECs to divert even more limited resources to these state commission proceedings – monies that could be far better spent deploying broadband.

VIII. ICC Rules and Rates Must Apply Uniformly to All Carriers

TCA strongly supports the financial responsibilities depicted in the Alternative Proposal and contends that these changes are absolutely critical for equitable ICC reform.[23] During the past decade, an increasing number of carriers have been able to escape compensating network providers for the use of their networks by masking the origin of the traffic through a variety of often fraudulent schemes.[24] While transiting carriers have much of the necessary information to identify the originators of this "phantom" traffic, they have historically been of little or no assistance in ensuring the traffic they carry complies with existing signaling rules. Allowing terminating carriers to bill transiting carriers – at their highest authorized termination rates –

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[20] *Access Charge Reform, Price Cap Performance for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, CC Docket No. 96-262 *et al.*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC00-193 (released May 31, 2000) (*CALLS order*) at ¶176. The CALLS plan established higher access rates for carriers with lower-density service areas.

[21] ¶269

[22] Because of the minimal impact of termination rates of rural LECs, national carriers frequently limit participation in these state commission proceedings.

[23] ¶¶332-338

[24] Rural LECs receive a greater percentage of revenues from termination than other carriers, and therefore are more adversely impacted by these fraudulent activities.

provides the necessary incentive for transiting carriers to ensure that traffic carried on their network is properly labeled and identifiable.

Unfortunately, the Alternative Proposal also classifies traffic that originates or terminates on a VoIP platform as an information service.[25] While not specifically stated, presumably the intent of this classification is to exempt VoIP providers from paying legitimate termination charges.[26] If this is the case, the Alternative Proposal has not solved the "phantom" traffic problem, but instead legitimizes a scheme to avoid compensation for traffic termination. VoIP traffic uses the same facilities and causes the same costs as circuit-switched voice traffic terminated by rural LECs. Accordingly, there is simply no justification for exempting VoIP – a service marketed by its providers as identical to traditional voice service – from transport and termination charges. Any equitable ICC reform requires this loophole for regulatory arbitrage be eliminated.

Finally, TCA supports the limitation on the transport of traffic by rural LECs in the Alternative Proposal.[27] Rural LECs should not be required to incur additional costs to transport traffic beyond their exchange boundaries. Fairness dictates that carriers electing to not establish a point of presence within a rural LEC's service territory should bear the cost of transporting this traffic to their networks and not simply imposing this cost upon the rural LEC.

IX. Conclusion

TCA is encouraged by the FCC's commitment for expedited reform of the current USF and ICC regimes. TCA further agrees that a consensus has emerged on the appropriate resolution of several issues that have historically been obstacles to comprehensive reform. TCA strongly encourages the Commission to address the consensus issues, including: 1) unifying access rates, 2) not unduly burdening consumers with rate increases and instead implementing

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[25] ¶204

[26] ¶210 While state commissions are theoretically provided the ability to establish terminating charges, this is only permissible under the proposed costing methodology which produces a rate too low to even justify billing.

[27] ¶270

alternative cost recovery mechanisms, 3) addressing phantom traffic, 4) eliminating the identical support rule and 5) emphasizing the importance of broadband to the future of universal service.

However, all three of proposals contained in the FNPRM are deficient in several respects and should not be adopted without significant modification. Two of the proposals – the Chairman's Proposal and the Narrow Proposal - would be catastrophic for consumers in rural areas and should be routinely rejected. The Alternative Proposal – if significantly modified – could serve as the basis for comprehensive ICC and USF reform.

Reform of the USF requires that support be linked with facilities investment in high-cost areas - for all carriers, not only rural LECs. Caps on the USF, at either the individual company level or overall, will not provide sufficient support for the nation to realize the goal of ubiquitous and affordable broadband. Reverse auctions - instead of advancing the deployment of broadband - would discourage investment in rural areas and jeopardize the access of consumers to high-quality, comparably priced broadband services.

Reform of the ICC regime requires that termination rates be unified and reduced – not eliminated. For rural LECs, this action requires the creation of a restructure mechanism to offset the revenue losses. Termination rates must be carrier-specific, cost-based, and include an appropriate amount of common costs. ICC rules must also apply uniformly to all carriers to ensure that compensation is provided for all termination.

Respectfully submitted,

[electronically filed]

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