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

In the Matter of	)	
Connect America Fund	)	WC Docket Nos. 10-90; 05-337
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
High Cost Universal Service Support	)	

COMMENTS

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July 12, 2010

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Executive Summary

The ACA supports the Commission's proposal to cap the size of the High-Cost fund at 2010 levels. An overriding guide in reforming the Universal Service fund and establishing the Connect America Fund ("CAF") should be the simple fact that the consumer is the ultimate contributor to Universal Service. Capping the fund at the current level should be a cornerstone of the Commission's plans. The ACA believes that the CAF can be sufficiently funded through the elimination of existing inefficiencies and ineffectiveness in the current Universal Service fund.

The ACA supports the Commission's proposal to create the CAF to assure that broadband is brought to unserved and underserved areas. The ACA believes, however, that there is value in continuing the current High-Cost mechanism in a limited fashion to support voice and evolving telecommunications services for smaller telephone companies who require the support to ensure that they can provide quality services at rates reasonably comparable to that provided in urban areas.

Thus, the ACA supports a balanced approach to Universal Service fund reform; one that takes into account the significant challenges that some small telephone companies and their users may face if the High-Cost funding is totally eliminated. The ACA proposes that current wireline Eligible Telecommunications Carriers with fewer than 100,000 access lines should have the option to continue to draw from the fund as they draw today (by area) unless the company chooses to access the CAF, in which case the CAF would replace the High-Cost fund support for that area.

Admittedly, the continuation of the current High-Cost fund for some smaller telephone companies may delay the bringing of broadband to all unserved areas. However, the goal of universal broadband must be weighed against the equally sound principle of assuring the continued availability of wireline voice services in high-cost areas at rates that are reasonably comparable to that provided in urban areas.

I. Introduction.

The American Cable Association ("ACA") files these Comments in response to the Commission's Notice of Inquiry ("NOI") and Notice of Proposed Rulemaking ("NPRM") regarding Universal Service reform and the establishment of the Connect America Fund ("CAF").[1] The ACA, given its diverse membership with a long history of bringing broadband services to rural areas, is uniquely qualified to assist the Commission.

The ACA's members, who serve more than 7.6 million households and businesses, are a microcosm of the communications universe. These members include traditional cable and telephone providers who operate as corporations, cooperatives, and municipalities, all of whom provide video services, and most of whom deliver other traditional and advanced services, including high speed Internet access and VoIP services. In small markets and rural areas across the country, customers receive video services from hundreds of small and medium-sized independent operators represented by the ACA. More than half of the ACA's members serve fewer than 2,000 video subscribers.

Not only does the ACA membership cover the ambit of the telecommunications industry, but with specific regard to the Universal Service fund, the membership includes:

- Cable operators who provide high speed broadband service in rural areas who do not draw from the fund;
- Cable operators who provide high speed broadband and VoIP services in rural areas and contribute to but do not draw from the fund;
- Cable operators who provide high speed data and VoIP services in metropolitan non-high cost areas who contribute to but do not draw from the fund;

[1] *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, and High-cost Universal Service Support*, Notice of Inquiry and Notice of Proposed Rulemaking, WC Dockets Nos. 10-90 & 05-337, GN Docket No. 09-51 (rel. Apr. 21, 2010). ("*NOI/NPRM").*

- Incumbent telephone operators in rural areas who also provide video service and high speed broadband services and currently draw from the fund as eligible telecommunication carriers ("ETC");

- Competitive telephone operators who also provide video service and high speed broadband service and currently draw from the fund as competitive eligible telecommunications carriers ("CETC"), both as for wireline and wireless services.

Because of the diverse make-up of the ACA membership, when it came time to fashioning a position on the reform of Universal Service, we had no choice but to adopt an approach that balanced diverse policy concerns with the multitude of specific company interests. The ACA's members recognized that the current system has value which should be preserved and flaws that need to be addressed. The members also understood that in a broadband era there were new needs that should be incorporated into the Universal Service program.

Developing an ACA position on USF thus required a weighing of different interests, and it was a time-consuming process. It involved numerous discussions, committee work and one-on-one interviews with members who provide service as cable, phone, and even wireless operators, and who contribute and may receive funding from the Universal Service fund in all sorts of various combinations. After many months, ACA developed a proposal to reform and evolve Universal Service for the broadband era in an efficient, competitively and technology neutral manner that best serves the consumer, who ultimately funds Universal Service. The proposal was presented in Comments filed on December 7, 2009 in the National Broadband proceeding.[2] Since then, as new issues arise and the Commission's proceedings progress, ACA has continued to devote significant time discussing these

[2] In the Matter of The Universal Service Fund And Intercarrier Compensation In The National Broadband Plan, *Public Notice*, GN Docket Nos. 09-47, 09-51, 09-137, 24 FCC Rcd. 13757 (2009), Comments of the American Cable Association (filed Dec. 7, 2009) ("*ACA National Broadband Plan Comments*").

matters with its members, and this process will continue, especially as the Commission hones its policy recommendations.

Several of the positions advocated by the ACA, including capping the Universal Service fund and the establishment of a new fund to support the deployment of broadband in unserved and underserved areas, are reflected in the proposals set forth by the Commission in the National Broadband Plan and in this proceeding. There are, however, important differences between the proposals in the NPRM and those of the ACA. More specifically, the ACA is concerned that in moving to institute the CAF as the sole Universal Service fund, the Commission is overlooking the value of the current High-Cost fund for users in areas served by smaller providers. The ACA thus believes the Commission should adopt a more balanced approach – moving to achieve the new broadband objectives while preserving key benefits of the current High-Cost fund. The ACA provides these Comments to further explain its positions on various proposals included in the *NOI/NPRM*.

II. The Universal Service Fund Should be Capped at 2010 Levels.

The ACA supports the Commission's proposal to cap Universal Service funding so that its total size does not exceed its current 2010 level.[3] The fund has grown substantially in the past decade, placing more of a burden on consumers. As such, the cap benefits consumers who are the ultimate funding source for Universal Service. As noted in the National Broadband Plan and the *NOI/NPRM*, imposing a cap necessarily involves reviewing and eliminating the excesses and inefficiencies associated with the current program and using the savings to establish and fund the CAF.[4] Imposing a cap directs the

[3] *NOI/NPRM*, at ¶ 51.

[4] *NOI/NPRM*, at ¶ 50.

focus of all involved to evolving the current Universal Service fund into an efficient funding mechanism to provide broadband expansion where needed, without unnecessarily impacting consumers.

While the goals of the USF program are laudable, the continued growth of the USF has resulted in presumably unforeseen burdens on consumers and thus harms some of the very individuals it was designed to benefit. Over a nine year period from 2000 to 2008, the USF High-Cost fund grew from $2.2 billion[5] to $4.4 billion[6] and the burden on consumers increased as well, with consumers contributing at factors ranging from 5.7% to 11.4%.[7] Currently the contribution factor for the third quarter of 2010 stands at 13.6%, below the second quarter rate of 15.3% but still far above earlier levels.[8] As the Joint Board noted in its November 2007 Recommended Decision, "[l]arger USF contributions increase the risk that telecommunications services will become unaffordable for some, or even a substantial number, of consumers"[9] – a result that is clearly contrary to the goals of universal service. At a time when more and more consumers are facing financial hardships, these increasing

[5] Federal and State Staff for the Federal-State Joint Board on Universal Service; *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 3.1 (2002) ("*2002 USF Report*").

[6] *2008 USF Report*, Table 3.1.

[7] *See* Public Notice: Proposed Second Quarter 2000 Universal Service Contribution Factor, DA 00-517 (CCB Mar. 7, 2000); Public Notice: Proposed Fourth Quarter 2008 Universal Service Contribution Factor, DA 08-2091 (OMD Sept. 12, 2008).

[8] Public Notice: Proposed Third Quarter 2010 Universal Service Contribution Factor, DA 10-1055 (OMD June 6, 2010); Public Notice: Proposed Second Quarter 2010 Universal Service Contribution Factor, DA DA-10-427 (OMD Mar. 12, 2010)

[9] In re High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, 22 FCC Rcd 20477 (2007) ("*Joint Board November 2007 Recommended Decision*").

contribution rates are an unwelcome and significant burden on consumers and support the capping of the Fund.[10]

Accordingly, the ACA – whose members include many who contribute to the fund and some of whom draw – concluded, for the following reasons, the fund should be capped at current levels and that, by focusing funding where it is most needed, there would be sufficient funding for broadband advancement:

- First, because competition has developed in many areas where entities currently receive funding – and might receive funding for broadband – funding in such areas is no longer required or, at least, can be more targeted.[11]
- Second, evidence over the past decade indicates that entities drawing from the fund have strong incentives to maximize their individual take and that, absent a hard cap, the Commission is not likely to limit (or will have a very difficult time limiting) the collective distribution.[12]
- Third, the funds have increased in size so significantly over the past decade, and there is evidence that the funds are not operated efficiently.[13]
- Fourth, the "tax" on telephone consumers to pay for the fund has increased dramatically. Because of the off-budget nature of the program and the ease with which this "tax" has been increased, this

[10] The ACA recognizes that these rates have the potential to decrease if the base of contributors to USF is broadened. However, that is not certain. In addition, the rationale for a cap is supported by the growth in the contribution rate over the past decade, even if the rate is normalized for decreasing interstate minutes of use.

[11] *See, e.g.,* the Petition for Rulemaking of the National Telecommunication and Cable Association which notes that cable operators currently provide voice service to between 74 and 84 percent of households overall and 43 percent of households (6.6 million) in rural LEC study areas. The Petition further noted that cable voice service is available in most rural study areas and in 21 percent of the study areas, coverage exceeds 50 percent. National Cable & Telecommunications Association Petition for Rulemaking, Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition, RM-11584 (filed Nov. 5, 2009)

[12] *ACA National Broadband Plan Comments* at ¶ 16-20.

[13] *Id.* at ¶ 20-27.

will be a continuing concern even if the contribution base is broadened or the methodology altered.

- Fifth, support for broadband advancement can in many instances be in the form of capital funding for infrastructure deployment, which is to ensure that consumers in unserved areas have last mile and middle mile broadband networks which they can access. Such support has at least two advantages. First, the deployment of new network facilities will decrease operating expenses significantly, thus lowering ongoing subsidies. Second, capital funding does not need to be a grant but rather can be in the form of alternative financial instruments (*e.g.* loan guarantees) that can leverage USF resources, thus extending the resources of the fund.

When taken in combination, these factors led the ACA to conclude that the fund and the components should be capped and that, even with the cap, there should be sufficient funding available for broadband advancement.

Capping various portions of the fund has been used in the past in an attempt to control the growth of the fund and the corresponding burden on consumers. The Commission in 2008, in response to a recommendation of the Joint Board, adopted an interim cap on High-Cost funding to CETCs.[14] At that time, the Commission noted that "the rapid growth in high-cost support places the federal universal service fund in dire jeopardy."[15] Further, the Commission confirmed that a cap on CETC support was both legal and consistent with the goals of the USF so there is no legal impediment to the Commission's adoption of a permanent cap.[16] The Commission has also previously implemented caps on high-cost loop support and interstate access support for ILECs.[17] In addition, funding for the E-Rate and Rural Healthcare programs have been capped as

[14] *In re: High-Cost Universal Service Support*, 23 FCC Rcd 8834 (2008) ("*CETC Cap Order*").

[15] *CETC Cap Order*, ¶ 6.

[16] *CETC Cap Order*, ¶¶ 12-23.

[17] *CETC Cap Order*, ¶ 9.

well.[18] Accordingly, from the perspective of the government, a cap on USF funding is an often-used regulatory tool. Accordingly, there is ample support and precedent for capping the fund at 2010 levels

Finally, in response to the NPRM's inquiry on how to cap the fund,[19] except as expressly noted below, the ACA believes that the Commission should impose an overall cap on the High-Cost fund and not otherwise limit the individual components or providers. This allows for more flexibility to address changes in economics, costs and technology which may occur for carriers or individual fund mechanisms.

III. The Creation of the Connect America Fund Should Not Include Mandatory Elimination of the High-Cost Support Fund for Smaller Telephone Companies – Such Companies Should Have an Option.

The ACA supports the Commission's proposal to establish the CAF to support universal access to broadband and voice services in unserved and underserved areas.[20] The ACA believes, however, that in creating this new approach the Commission should not totally eliminate the high-cost support mechanisms for smaller telephone carriers. The Commission should recognize that there is both a legal basis in section 254 of the Communications Act (47 U.S.C. § 254) and a sound policy basis in many instances for high-cost support. Complete elimination of this support mechanism could have a severe impact on the ability of these smaller companies to continue to provide the level of current service at a cost that is comparable to those in non high-cost areas.

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[18] *See* 47 C.F.R. §§ 54.507(a), 54.623.

[19] *NOI/NPRM*, at ¶ 52.

[20] *NOI/NPRM,* at ¶10. While the ACA supports the overall goal of the CAF to provide broadband service in unserved areas, it has concerns with some of the details for the operation of the fund as set forth in the National Broadband Plan. The ACA plans to provide further details of its concerns and solutions to these concerns in later comments.

The Communications Act, in general, provides that Universal Service funding shall ensure that all consumers have access to telecommunications services that are "reasonably comparable" and at rates that are "reasonably comparable."[21] The push for broadband should not be at the expense of jeopardizing traditional wireline voice services in high-cost areas. Thus, while the ACA proposal included the establishment of a broadband fund similar to the CAF, it balanced this objective by allowing smaller telephone companies operating in high-cost areas to continue to draw from the current fund rather than the broadband fund so that their ability to provide existing services at reasonably comparable rates would not be threatened. In essence this means that smaller operators could essentially "opt-out" of the CAF and continue to receive high-cost support for their voice service.

The ACA proposes that current wireline Eligible Telecommunications Carriers ("ETCs") with fewer than 100,000 access lines in total be able to continue to draw from the High-Cost fund as they draw today (by area) for the provision of voice service unless they choose to access funding from the CAF to serve that area, in which case the funding regime in the CAF would replace the current High-Cost funding support.

In sum, while the continuation of the High-Cost fund in this limited situation means that it may take longer to provide broadband to all households in unserved areas, the ACA believes that there are equally sound legal and policy reasons to ensure that households in high-cost areas continue to receive current and evolving telecommunications services at reasonably comparable rates. Allowing smaller wireline ETC's the ability to choose when they move from their traditional method of support to the CAF helps assure that the move to

[21] 47 U.S.C. § 254(b).

broadband will not threaten universal accessibility to wireline voice services at comparable rates. Once the smaller telephone company accesses the CAF support, the company's traditional High-Cost support would be eliminated in that area.[22]

IV. Specific Steps to Cut Legacy High-Cost Support.

A. Mandating Rate-of-Return Carriers to Adopt Incentive Regulation.

The Commission seeks comment on the National Broadband Plan's recommendation that rate-of-return carriers move to incentive regulation.[23] Consistent with its overall proposal, the ACA believes that the Commission should move cautiously in mandating the switch to incentive regulation for smaller telecommunication carriers, especially in high-cost areas. While the price-cap or other form of alternative regulation may have increased efficiencies, such a change could have a very detrimental impact on the economics of smaller companies thus affecting service levels and quality and investment, including the recovery on investments undertaken based the expectation of a specific rate of return.

B. Sprint and Verizon Wireless Voluntary Commitments.

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[22] While the ACA believes that smaller telecommunications providers should have the option of when to transition from the High-Cost fund, it believes the legal basis and policy rationale for other providers is far less cogent. It therefore has proposed that: (1) Current wireline ETCs with more than 100,000 access lines on a holding company basis would continue to draw from the fund based on the "current high cost differential" per access line multiplied by the number of voice access lines in service annually. No such wireline ETC may draw from the fund for an access line if (i) the user can obtain voice service from another wireline provider who is able to serve the user without drawing from the fund, (ii) the state regulator has deregulated the wireline ETC's provision of voice telephone service for the user, or (iii) the wireline ETC accesses funding from the new broadband fund to serve the user; (2) A wireline competitive ETC ("CETC") would draw from the fund based on the number of voice access lines served, except that (i) no funds would be awarded if another competitive wireline provider was able to serve the same customer without drawing from the fund, and (ii) no funds would be awarded if the CETC accesses funding from the Broadband Fund to serve that customer; and (3) A wireless competitive ETC ("CETC") would draw from the fund based on the number of voice access lines served, except that (i) no funds would be awarded if another wireless provider was able to serve the same customer without drawing from the fund, and (ii) no funds would be awarded if the CETC accesses funding from the Broadband Fund to serve that customer. The ACA also proposes that there should be no additional High-Cost funding for any area not currently receiving funding.

[23] *NOI/NPRM*, ¶55.

The ACA supports the Commission's proposal to issue an order which would implement the voluntary merger commitments of Sprint and Verizon Wireless to reduce the High-Cost funding support they receive as ETCs to 0% over a five year period.[24] Issuing an order will confirm the mandatory nature and enforceability of the commitments made by the companies in seeking approval of their mergers.

C. Competitive ETC Support Should be Targeted As an Opportunity to Reduce Unnecessary High-Cost Funding.

The Commission seeks comments on the National Broadband Plan's recommendation to eliminate competitive ETC funding.[25] The ACA believes that universal service support for competitive ETCs should be narrowly targeted to customers who are not otherwise able to obtain service from a provider who is not subsidized by the High-Cost fund. Thus, support for competitive ETCs should be capped at current levels, and a wireline competitive ETC should only be allowed to continue to draw from the fund if there is no other wireline provider able to serve the same customer without drawing from the fund. Similarly, a wireless competitive ETC should not be allowed to draw from the fund if there is another wireless provider able to serve the customer without support from the fund. In each case, the existence of another provider who is able to serve the customer without drawing from the fund indicates that universal service support is not needed to provide the service. Finally, competitive providers should not be able to access funding if a regulator has deregulated the provision of service to that consumer or area, indicating again that sufficient competition exists to meet the needs of users.

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[24] *NOI/NPRM,* ¶59*.*

[25] *NOI/NPRM*, ¶ 60.

V. Conclusion.

The ACA strongly supports the capping of the USF at existing 2010 levels and eliminating inefficiencies and excesses in the fund and using the savings to fund the CAF. The ACA, while supporting the creation of the CAF, believes that small telephone companies with 100,000 or fewer access lines should have the option of continuing with their current High-Cost funding support until they decide to access funds from the CAF for that area.

Respectfully submitted,

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