

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

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

TO: The Commission

COMMENTS OF BLOOSTON RURAL CARRIERS

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Summary

The Blooston Rural Carriers agree with the Commission that broadband is *the* great infrastructure challenge of the early 21st Century, and that the developing National Broadband Network can expand and revitalize economic and social opportunities for all Americans, including present and future residents of rural areas. The Blooston Rural Carriers are rate-of-return rural local exchange carriers (“RLECs”) that have been active participants in the ongoing evolution from the public switched voice network to the current multiple use telecommunications and information network to the future broadband network. They recognize the need for prudent regulatory modifications that will preserve the investment incentives and financial resources that have been successful in enabling RLECs to deploy broadband to their rural customers and that will enable RLECs to make the future upgrades necessary to continue offering their rural customers broadband services reasonably comparable to those available in urban areas.

The Blooston Rural Carriers urge the Commission to abandon initial proposals: (a) for a rural support “target” that will be inadequate when implemented and that threatens to create a permanent digital divide between a rural 4 Mbps/1 Mbps network and an urban 100 Mbps/50 Mbps network; and (b) for a “capped” total \$8.7 billion Universal Service Fund until 2020 that will not be sufficient to meet the broadband support needs of RLECs, mid-sized carriers, RBOCs and low income customers.

RLECs have been **the** great success story of the existing Universal Service Fund. These small carriers have long accepted the burdens of serving remote and sparsely populated areas that were not wanted by larger carriers and that comprise 37 percent of the nation’s area. In addition, RLECs have undertaken the obligations of carrier of last resort (“COLR”) status in areas where it has required costly extensions of facilities and service to non-profitable customers.

Notwithstanding these difficult conditions and the disadvantages of their small size and limited financial resources, RLECs have an unparalleled record of bringing quality and affordable service to their rural service areas. During recent years, they have successfully upgraded their voice networks to multiple use networks which are currently providing broadband services to approximately 90 percent of their rural customers.

The Blooston Rural Carriers urge the Commission not to force RLECs to abandon a rate-of-return regulatory system that has contributed greatly to their current and past success by assuring lenders and owners that 20-to-30-year infrastructure loans will be repaid and thereby enabling RLECs to obtain financing for network upgrades. They are particularly concerned that the Commission is considering a forced move from rate-of-return regulation to incentive regulatory systems that have heretofore failed to provide larger carriers with effective incentives to upgrade their networks.

Finally, the Blooston Rural Carriers recognize that existing high-cost mechanisms need to evolve into broadband high-cost mechanisms. In light of the past successes of RLEC high-cost support programs and the very different investment incentives and financial characteristics of RLECs and other carriers, the Blooston Rural Carriers recommend that the Commission establish separate broadband high-cost mechanisms for RLECs and for RBOCs and mid-sized carriers. Whereas the RLEC mechanism could merge existing programs into a single mechanism, it should keep as many as possible of the features (including, supporting both capital expenditures and operating costs, employing actual costs rather than model costs, and using funding from industry contributions) that have enabled the present RLEC high-cost mechanisms to be successful. In contrast, the RBOC/mid-sized carrier mechanism could be focused upon capital

grants to create the incentives necessary to convince larger carriers to make broadband infrastructure investments in their rural service areas.

What should not take place is a redistribution of current RLEC high-cost support to other carriers, including the RBOCs and mid-sized carriers. Redistribution of a critical revenue stream upon which many RLECs rely would disrupt and reverse the substantial recent success of RLECs in bringing broadband to their rural customers.

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The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston”), on behalf of its rural local exchange carrier (“RLEC”) clients listed in Attachment A (the “Blooston Rural Carriers”), respectfully submits the following comments in response to the Commission’s *Notice of Inquiry and Notice of Proposed Rulemaking*, FCC 10-58, released April 21, 2010 (“*NOI/NPRM*”) in the captioned proceedings.

The Blooston Rural Carriers enthusiastically support the Commission’s goals for the ubiquitous deployment of high-speed broadband infrastructure and services throughout the United States. Like over 1,000 other rural rate-of-return local exchange carriers (“RLECs”), they have actively been engaged in the ongoing evolution from the traditional public switched voice telephone network (“PSTN”) to the current multiple use telecommunications and information service network to the future National Broadband Network (“NBN”). Whereas the Blooston Rural Carriers recognize the need for modification of regulatory and high-cost support mechanisms in light of this network evolution, they also are well aware that not all “change” is for the better. Rather, they seek change that will: (a) preserve the investment incentives and

financial resources that have proven successful in enabling small RLECs to deploy broadband to the vast majority of their rural customers and that will enable them to make the future upgrades necessary to continue offering broadband facilities, services and service rates reasonably comparable to those available in urban areas; and (b) develop more effective investment incentives and universal service mechanisms for other carriers (such as the large and mid-sized local exchange carriers) that have not been as successful to date in deploying broadband to their rural customers. The Blooston Rural Carriers are very concerned that the Commission's tentative rural bandwidth targets and its initially outlined broadband high-cost support mechanisms will simply redistribute existing high-cost support away from RLECs to the "unserved" rural areas of larger carriers, and that such redistribution will cripple and then reverse the successful ongoing and past efforts of RLECs to bring broadband to their rural customers.

I.

The Commission's Goal of Deploying Ubiquitous Broadband Is Critical to the Future Economic and Social Development of Rural America

The Blooston Rural Carriers fully agree with the Commission's observation in its March 16, 2010 *Joint Statement on Broadband* that high-speed broadband is beginning to reshape every sector of the nation's economy and life, and with the Commission's conclusion therein that broadband "can be an indispensable engine for unleashing innovation and investment, spurring job creation and economic growth, and ensuring our country's global competitiveness."¹

They also vigorously support the Commission's determination in its accompanying National Broadband Plan that "Broadband is *the* great infrastructure challenge of the early 21st century."² The Commission has accurately observed that broadband is enabling entire new industries and unlocking vast new possibilities for existing businesses and households. In

¹ *Joint Statement on Broadband*, FCC 10-42, GN Docket No. 10-66, released March 16, 2010.

² Federal Communications Commission, *Connecting America: The National Broadband Plan* (March 16, 2010), pp. xi, 3 ("NBP").

addition to its current and future impacts upon economic growth, job creation, telecommuting and global competitiveness, the Commission has recognized that broadband can and will continue to improve the American way of life by changing the ways that children are educated, health care is delivered, energy transmission and consumption are managed, public safety is enhanced, improved constituent access to government is provided, and greater access, organization and dissemination of knowledge is promoted.³

Broadband infrastructure and services are particularly important to economic development and living conditions in Rural America. In the 2008 Farm Bill, Congress found that the need for broadband in rural areas was becoming ever more critical and required the Commission to prepare a comprehensive rural broadband strategy for both the short term and the long term.⁴ The Commission's resulting 2009 *Rural Broadband Strategy Report* determined that a "state-of-the-art, secure and resilient broadband service should be our goal for rural America, just as it is for the non-rural parts of the nation," and that the rural broadband networks deployed to provide these services "should be designed on principles of durability, reliability, openness, scalability, and interoperability so that they can evolve over time to keep pace with the growing array of transformational applications and services that are increasingly available to consumers and businesses in other parts of the country."⁵

High-speed broadband services are able to eliminate a major part of the distance and transportation constraints that have traditionally hindered rural households and businesses from participating in the economic, social and political life of the nation. Both existing broadband Internet access services and emerging new high-speed, broadband-enabled services (such as

³ *Id.* at xi.

⁴ Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, §6112, 122 Stat. 923, 1966 (2008) ("2008 Farm Bill").

⁵ Federal Communications Commission, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy* (May 22, 2009) at p. 4 ("2009 Rural Broadband Strategy Report").

cloud computing, ultra high definition video, advanced videoconferencing and telepresence, real-time collaboration, smart grids and appliances, home security, virtual sports, online gaming, virtual laboratories, telesurgery, and remote diagnosis and medical imaging, as well as many future services that are not yet even envisioned) give households and businesses much more freedom and flexibility to locate where they wish in Rural America, while retaining access to economic, telecommuting, informational, educational and social resources and opportunities that are reasonably comparable to those available to their urban counterparts.

State-of-the-art rural broadband infrastructure and services are essential not only at the present time but also for the readily foreseeable future of the nation. The United States is a very large country that still has both a growing population and substantial untapped resources. Of major significance is the likelihood that the U.S. population will increase from 300 million to 400 million during the first half of the 21st Century.⁶ These additional 100 million people cannot be accommodated comfortably and feasibly in the presently congested urban areas of the East Coast, West Coast, Sunbelt and Upper Midwest. However, they have the potential to fuel an economic and demographic resurgence in the Great Plains, the Intermountain West, the Rural South, Appalachia, the Ozarks and other portions of Rural America.⁷ With appropriate high-speed broadband infrastructure and services, households and businesses will be able to leave crowded and expensive urban areas for the wide open spaces and rich natural environment of Rural America. In addition to its traditional agriculture and mining industries and to telecommuters in a broad range of industries, Rural America can become home to a variety of high-technology services, energy production, manufacturing and warehousing businesses that will create substantial new wealth and help to revive and expand the U.S. economy. However,

⁶ Joel Kotkin, *The Next Hundred Million: America in 2050* (Penguin Press: 2010), pp. 1, 105.

⁷ *Id.* at Chapter Four: "The Resurgent Heartland," pp. 105-138.

the key to this potential renaissance of Rural America is the existence of state-of-the-art broadband infrastructure. If rural areas do not have quality high-speed broadband facilities and services in place beforehand, they will not be selected as new locations for the many households and businesses that will be looking to participate and compete in the 21st Century economy and society from less congested places.

II.
The Commission's Initial Rural Broadband Target
Threatens a Digital Divide Between Urban and Rural America

The Commission proposes to employ an initial broadband availability “target” of only 4 megabits per second (“Mbps”) of actual download speed and 1 Mbps of actual upload speed to identify the “unserved” areas (also known as “the broadband availability gap”) to which federal high-cost broadband support will be directed. Whereas some RLECs can offer these speeds in mid-2010 and some RLECs cannot, the proposed 4/1 Mbps “target” for supporting broadband deployment in “unserved” rural areas is unreasonably slow for the time period intended – whether that is the entire period until 2020 or a period of four years or more until the criterion may be reviewed and revised. If adopted and implemented, a 4/1 Mbps rural “target” will obstruct or halt the deployment of highly scalable fiber optic facilities and other economical long-term broadband solutions in rural areas during the critical 2010-2020 period, and will result in a permanent digital divide wherein the broadband facilities, services and rates available in the affected rural areas will not be even remotely “comparable” (reasonably or otherwise) to those available in urban and suburban areas.

The Commission based its proposed rural “target” upon materials indicating a median actual maximum download speed of 3.1 Mbps in the United States for the first half of 2009 (with likely growth above 4 Mbps by the end of 2010), and smaller sample data showing a median

actual download speed of 3.6 Mbps in January 2010.⁸ [The Commission also relied upon data indicating certain current application usage speeds of 1 Mbps that are expected to double every three-to-four years.⁹] It is not clear why the Commission elected to use a median broadband speed (half of the observations above, half below) and particularly why it used a current median broadband speed for proposals intended to be implemented for a period of at least 4-to-10 years when, by its own admission, broadband speeds have been growing approximately 20 percent annually since 1997.¹⁰

It appears that one of the underlying rationales for the proposed 4/1 Mbps “target” is to discourage what certain members of the Commission’s staff believe to be a rash of construction of “expensive” and “unnecessary” fiber-to-the-home (“FTTH”) exchanges by RLECs in their rural service areas while many non-RLEC rural exchanges still lack any service that can be reasonably be classified as “broadband.” The Blooston Rural Carriers note that there is substantial evidence that FTTH is less expensive to deploy than copper loops in new housing developments and similar “green field” applications, and that deployed fiber optic trunks and lines have the huge technical and economic advantage of being scalable so that their bandwidth can readily be increased merely by changing the electronics at each end of a line rather than by repetitive and expensive construction to modify, upgrade and/or replace existing facilities. The Blooston Rural Carriers also note that the established Rural Utilities Service (“RUS”) loan programs, as well as the recent Broadband Technology Opportunities Program (“BTOP”) of the National Telecommunications Information Agency (“NTIA”) and the RUS Broadband Infrastructure Program (“BIP”), have been encouraging the deployment of fiber optic broadband

⁸ Federal Communications Commission, *OBI Technical Paper No. 1: The Broadband Availability Gap* (April 2010), at p. 43 (“*OBI Technical Paper No. 1*”).

⁹ *Id.*

¹⁰ *Id.*

infrastructure in rural areas. However, the Blooston Rural Carriers wish to assure the Commission that FTTH remains the exception rather than the rule in the RLEC industry. The predominant RLEC deployment of fiber continues to be for trunks and rings to extend digital subscriber line (“DSL”) facilities and services to more and more rural customers, and to increase the bandwidth of DSL services as rural customers demand higher and higher broadband speeds.¹¹

A primary National Broadband Plan goal is for at least 100 million U.S. homes (or approximately 73.7 percent of the projected 135.7 million U.S. homes in 2020¹²) to have affordable access to actual download speeds of at least 100 Mbps and actual upload speeds of at least 50 Mbps by 2020¹³. The Blooston Rural Carriers understand that this 100/50 Mbps goal is intended to be accomplished by private investment, and that the vast majority of the 100 million U.S. homes will be located in urban areas. However, the nation’s existing statutory universal service policies require access to reasonably comparable telecommunications facilities and services, including broadband and other advanced services, to be provided to all Americans in all areas of the country. Section 254(b)(2) of the Communications Act declares that “Access to advanced telecommunications and information services should be provided in all regions of the Nation.” 47 U.S.C. §254(b)(2). And Section 254(b)(3) states that “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably

¹¹ As the Commission is aware, early asymmetrical digital subscriber line (“ADSL”) services were available only to the relatively small portion of rural customers located within approximately 18,000 feet from central offices. By extending fiber gradually into their distribution plant, RLECs have been able to offer ADSL services to 90 percent or more of their rural customers, as well as to offer faster symmetrical digital subscriber line (“SDSL”), high data rate digital subscriber line (“HDSL”) and very high speed digital subscriber line (“VDSL”) services to more and more of their rural customers.

¹² Joint Center for Housing, Harvard University, *N06-1: Revised Interim Joint Center Household Projections Based Upon 1.2 Million Annual Net Immigrants* (March 2006), at Table 1.

¹³ *NPB*, p. 9

comparable to those services provided in urban areas, and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. §254(b)(3). These universal policies will not be accomplished by limiting federal universal service support to 4/1 Mbps broadband facilities and services in rural areas for the next 4-to-10 years or more, while pushing for 100/50 Mbps broadband facilities and services to a substantial majority of urban households by 2020.

A 4/1 Mbps “target” is low, even with respect to contemporary national and international standards. As one critic of U.S. industrial and telecommunications policy has recently noted:

Let’s take the concrete example of telecommunications and fast broadband internet service, and compare Korea and the United States. Fifteen years ago, we had telecommunications service far superior to Korea’s, which was actually pretty bad. Today Koreans laugh at our cell phones and our internet. We call it fast broadband, but for them our 3.9 megabits per second (Mbps) average speed is no better than snail mail compared to their 49.5 Mbps.¹⁴

A 4/1 Mbps speed is even more inadequate as a targeted rural broadband criterion for the period ending in 2020. If broadband speeds continue to grow at 20 percent per year during the coming decade as they have during the past 13 years, a 4.0 Mbps median download speed in 2010 is likely to increase to 4.8 Mbps in 2011, to 5.76 Mbps in 2012, to 6.91 Mbps in 2013, to 8.29 Mbps in 2014, to 9.95 Mbps in 2015, to 11.94 Mbps in 2016, to 14.33 Mbps in 2017, to 17.20 Mbps in 2018, to 20.64 Mbps in 2019, and to 24.77 Mbps in 2020. In other words, 4.0 Mbps will be too slow by the time that the first wave of the *National Broadband Plan* rules are implemented during 2012 and 2013, and will become increasingly inadequate and outmoded by the time a revised “target” can first be adopted and implemented sometime in 2015 or thereafter.

¹⁴ Clyde Prestowitz, *The Betrayal of American Prosperity* (New York: Free Press, 2010), pp. 265-66.

Finally, the proposed 4/1 Mbps “target” not only disregards, but also runs directly contrary to, the findings and conclusions of the Commission’s *2009 Rural Broadband Strategy Report*. In particular, the Commission determined and informed Congress that:

Given the high fixed costs of constructing broadband networks, once built, they are not likely to be replaced, especially in rural networks that are unserved today. As a consequence, we believe that networks deployed in rural areas should not merely be adequate for current bandwidth demands. Instead, they also should be readily upgradeable to meet bandwidth demands of the future. An international comparison suggests significant additional capacity may be necessary. For example, while the average download speed for residential broadband subscribers in the United States is currently 2.3 Mbps, residential subscribers in Japan now average 63 Mbps [footnote omitted]. Moreover, service providers in Hong Kong, Japan, South Korea and Singapore either offer 1 Gbps residential service now or are planning to have comprehensive 1 Gbps residential service in the near future [footnote omitted], and South Korea is complementing its fiber rollout with 10 Mbps wireless 4G services for mobility [footnote omitted]. Bandwidth-intensive applications could very quickly become the norm in the U.S. – even in rural areas. Technologies that cannot be upgraded easily could make Internet applications less than five years from now look like the dial-up downloads of today.¹⁵

The Blooston Rural Carriers believe that the Commission got it right in its *2009 Rural Broadband Strategy Report*, and that the high-cost support mechanisms implemented by the Commission for the evolving broadband network need to encourage deployment of fiber and other scalable technologies in rural areas that can be upgraded readily and economically over the long term to support foreseeable future service and bandwidth requirements and as well as current bandwidth use. The proposed 4/1 Mbps rural “target” does not meet this basic criterion, but rather is likely to cause the deployment of short-term fixes that will become more and more expensive in the longer term as they need to be replaced or radically restructured when rendered obsolete or deficient by increases in bandwidth demand. The ultimate danger is that the 4/1 Mbps rural “target” will halt and roll back the ongoing deployment of fiber by RLECs, and create a permanent digital divide wherein many urban residents will enjoy the advanced services

¹⁵ *2009 Rural Broadband Strategy Report*, par. 82.

available over 100/50 Mbps facilities while rural residents will suffer the handicap of patchwork networks that cannot provide access to reasonably comparable bandwidths, services and rates.

The Blooston Rural Carriers strongly recommend that the Commission reject the proposed 4/1 Mbps rural “target” as inadequate and not reasonably comparable with the broadband facilities and speeds that are currently being deployed in urban areas. Instead, the Commission should adopt a more flexible definition of supported “broadband” facilities and services. For example, the Commission could establish a range of supported broadband speeds for a reasonable technological and market-based time horizon (e.g., three years), and allow support for higher speeds where a carrier (with the support of its state commission or RUS) can show that the higher speed is warranted by local demand, by reasonable comparability with the relevant urban area and/or by efficient and cost-effective construction principles.

III. Keeping the Universal Service Fund at its Current Size Until 2020 Will Undermine and Impair Broadband Deployment

A second major problem with the Commission’s broadband plan is the initial proposal to keep the total size of the Universal Service Fund close to its current level (*i.e.*, \$8.7 billion in 2010 dollars) for the ten-year period (2010 to 2020) during which the Commission intends to transition from the existing multiple use network to the National Broadband Network.¹⁶

The Blooston Rural Carriers understand the need to maintain the universal service contributions passed through on consumer bills at reasonable levels, as well as the concerns of many government officials and citizens with the growth of federal spending and trillion dollar budget deficits. However, the deployment of broadband facilities and services has correctly been described in the *National Broadband Plan* as “*the great infrastructure challenge of the early 21st*”

¹⁶ *NPRM/NOI*, par. 51; *NBP*, p. 150.

century,”¹⁷ and as critical to the achievement of “an America of universal opportunity and unceasing innovation, an America that can continue to lead the global economy, an America with world-leading broadband-enabled health care, education, energy, job training, civic engagement, government performance and public safety.”¹⁸ Whereas no one advocates wasteful spending, the provision of access to broadband capability to **all** of the people of the United States at faster and faster speeds during the next decade should be a very high priority of the Commission, the Congress and the Executive Branch. Increases in universal service support over the \$8.7 billion distributed in 2010 are likely to be needed to accomplish these critical broadband goals and priorities. Put another way, the completion of the critical Information Superhighway warrants a federal universal service support commitment greater than \$8.7 billion a year during the 2010-2020 period, particularly when compared with the approximately \$40 billion per year that the federal Highway Trust Fund has been distributing to support the construction, upgrade and maintenance of “legacy” roads and bridges during the 2006-2011 period.¹⁹

The Communications Act requires universal service support to be sufficient, both for the voice services supported at the time of the 1996 Act and for the advanced telecommunications and information services that Congress recognized would become more important in the future. Section 254(b) Act declares, *inter alia*, that there should be “specific, predictable, and sufficient” federal and state mechanisms to preserve and advance universal service. 47 U.S.C. §254(b)(5). Section 254(e) reemphasizes the critical importance of “sufficient” support by requiring that the federal universal service support received by RLECs and other designated ETCs be “specific” and “sufficient to achieve the purposes of” Section 254. 47 U.S.C. §254(e). Hence, once the

¹⁷ *NBP*, pp. xi and 3.

¹⁸ *Id.* at p. 3.

¹⁹ U.S. Government Accountability Office, *Overview of Highway Trust Fund Estimates* (GAO-06-572T: released April 4, 2006).

Commission defines the “broadband” telecommunications services that will be supported by federal universal service support mechanisms pursuant to the procedures set forth in Section 254(c) of the Act, it will be required by Sections 254(b)(5) and 254(e) to provide “specific” and “sufficient” federal universal service support for such services and the infrastructure needed to furnish them.

Unfortunately, it does not appear possible to provide “sufficient” support for the deployment, operation and maintenance of quality, affordable and reasonably comparable broadband services in high-cost rural areas during the 2010-2020 period while keeping the total size of Universal Service Fund mechanisms close to their current \$8.7 billion level.

The aggregate High Cost Loop (“HCL”), Local Switching Support (“LSS”) and Interstate Common Line Support (“ICLS”) distributed to rural carriers has remained stable at the \$2.4 billion level during the past half-decade. Such total rural carrier high-cost support was \$2.395 billion in 2005, \$2.382 billion in 2006, \$2.411 billion in 2007, \$2.406 billion in 2008 and \$2.412 billion in 2009, and is expected to be \$2.353 billion in 2010.²⁰ The portion of this rural carrier high-cost support distributed to RLECs is currently about \$1.9 billion.²¹

Whereas RLECs have been using their high-cost support to upgrade, extend and operate multiple-use networks capable of providing access to some broadband services as well as voice services, the amount of high-cost support needed by rural carriers to complete the transition to the National Broadband Network during the coming decade will increase significantly above \$2.4 billion per year for various reasons. These reasons include: (a) those rural carriers that are mid-sized price cap carriers presently serve areas that encompass an estimated 15 percent of

²⁰ USAC Quarterly Federal Universal Service Support Mechanism Fund Size Projections, Appendix HC01.

²¹ *Id.*

households designated as “unserved” by the *National Broadband Plan*,²² and will need substantial additional federal support of some nature to meet broadband deployment goals in their rural service areas; (b) RLECs have made significant progress in deploying fiber to extend their DSL services to more and more of their rural customers, but will need to make substantial additional investments in fiber extensions and upgrades to increase their broadband speeds to the higher and higher speeds being demanded by their rural customers (including, for some, the Commission’s 4/1 Mbps target speed); (c) RLECs are incurring greater and greater recurring costs for Middle Mile transport to and from the Internet as their rural customers use more and higher-speed broadband services; and (d) RLECs rely significantly upon access charges and other intercarrier compensation revenue streams as well as federal high-cost support, and are likely (as the *National Broadband Plan* has recognized²³) to need additional high-cost support from the revised broadband universal service mechanisms if intercarrier compensation rates are reduced and then phased out completely by 2020 as proposed in the *National Broadband Plan*.²⁴ For these and other reasons, the amount of high-cost support needed by RLECs and other rural carriers to continue transitioning to and operating broadband facilities and services during the 2011-2020 decade will significantly exceed the recent \$2.4 billion annual level.

During the same decade, it is likely that substantial additional federal support of some nature will be needed to spur the deployment of broadband infrastructure and services in the rural service areas of the remaining Regional Bell Operating Companies (“RBOCs”). These RBOC rural service areas were found by the *National Broadband Plan* to contain an estimated 50 percent of the nation’s “unserved” households.²⁵ However, during 2010, the RBOCs will

²² *Connecting America: The National Broadband Plan*, p. 141.

²³ *Id.*, p. 148.

²⁴ *Id.*

²⁵ *Id.*, p. 141.

receive only an estimated \$899.5 million in support from current Universal Service Fund mechanisms (i.e., Interstate Access Support and High Cost Model Support).²⁶

Likewise, the federal low income support mechanisms (i.e., Lifeline, Link-Up and Toll Limitation Support) have been growing rapidly during the past few years, and are likely to continue to grow rather than decrease during the 2011-2020 period. Aggregate federal low income support has increased from \$823.3 million in 2007 and \$822.0 million in 2008, to \$1.0231 billion in 2009 and to a projected \$1.3866 billion in 2010.²⁷ Whereas the impact of the recent recession may fade, the increases in future low income support needed to boost broadband take rates by helping low income customers pay for more expensive broadband services (as opposed to existing voice services) can be expected to require substantial and continuing increases in the size of the low income mechanisms during the coming decade.

Finally, the Blooston Rural Carriers do not expect to see the Commission or Congress order significant decreases in the size of the Schools and Libraries mechanism (currently capped at 2.25 billion per year) or the size of the Rural Health Care mechanism (currently capped at \$400 million per year) during the foreseeable future.

Hence, barring a recurrence of the New Testament miracle of the loaves and the fishes, the Blooston Rural Carriers do not see how the Commission can hold the total size of the federal Universal Service support mechanism at its current \$8.7 billion level (in 2010 dollars) until 2020, and still (a) provide the necessary incentives and increased financial resources for RLECs, mid-sized rural price cap carriers and RBOCs to meet the broadband infrastructure and service goals necessary to continue the transition to the National Broadband Network in rural areas; (b) provide the increased funding to enable urban and rural low income customers to participate in

²⁶ Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2010* (April 30, 2010), at pp. 12-13.

²⁷ *Id.* at pp. 15-17 and Appendix LI07.

the National Broadband Network; and (c) continue the Schools and Libraries program and the Rural Health Care program. The amounts of universal service support needed to meet these goals simply add up to far more than \$8.7 billion.

The Blooston Rural Carriers believe that the adoption and implementation of a more broadly based mechanism for universal service contributions would permit funding for the Universal Service program to increase by expanding the number of contributors, without increasing significantly the financial burdens placed upon existing contributors. As the Commission is aware, a substantial reason for recent increases in the universal service contribution factor has been the continuing decreases in the base of interstate and international end-user telecommunications revenues upon which contributions are assessed. Rather than imposing greater burdens upon the declining base of interstate toll users and rather than permitting certain customers and service providers to develop schemes to use the public network while avoiding or evading universal service contributions, the Commission should move ahead rapidly with the implementation of a more broadly based and equitable contribution mechanism that has the potential to produce the larger fund necessary to support broadband facilities and services without significantly increasing the monthly service bills of existing contributors.

Also, as detailed below, the Blooston Rural Carriers believe that the Commission can accomplish its rural broadband deployment and adoption goals more effectively and economically by utilizing separate support mechanisms attuned to the investment incentives and financial resources of the very different types of carriers serving Rural America rather than trying to force all into a single "one-size-fits-all" mechanism like the proposed Connect America Fund ("CAF").

IV

The Commission Should Not Scrap a Rate-of-Return System that Has Been Very Successful in Producing Broadband Deployment by RLECs

An important question the Commission needs to ask is why small rate-of-return RLECs with limited financial resources have done a much better job of deploying broadband facilities and services to their rural customers than the much larger and financially powerful RBOCs and mid-sized price cap carriers. The Blooston Rural Carriers submit that differing investment incentives and differing regulatory regimes explain most of the past and present variations in infrastructure investment (both voice and broadband) between small RLECs and their large and mid-sized ILEC counterparts. Rather than moving RLECs from rate-of-return regulation (under which they have made great strides in deploying broadband) to price cap or other incentive regulation options (that have not produced significant broadband deployment), or moving large and mid-sized price cap carriers back to rate-of-return regulation, the Blooston Rural Carriers suggest that the Commission adopt and implement separate RLEC and large/mid-sized ILEC broadband high-cost support mechanisms that recognize and take advantage of the different sizes, financial resources and investment incentives of the two classes of carriers.

The high-cost support program for rural rate-of-return carriers (*i.e.*, the HCL, LSS and ICLS mechanisms) has been THE major success story of the Universal Service Fund. It has enabled small carriers with limited financial resources and limited access to capital markets to bring quality and affordable telecommunications and information services to the most expensive and unwanted (by larger carriers) rural service areas, and to make major contributions toward sustaining and stimulating the economies of such areas. High-cost support has helped the Blooston Rural Carriers and other RLECs to install and operate digital switches and soft switches, to implement Signaling System 7, to construct and maintain copper or hybrid fiber-

copper DSL lines to virtually all of the residents of their service areas pursuant to carrier of last resort (“COLR”) obligations, to bury lines to limit weather damage and outages, to provide local or centralized equal access, to offer custom calling options, to comply with Emergency 911 (“E911”) and Communications Assistance for Law Enforcement (“CALEA”) responsibilities, and to provide access to the Internet and information services.

During recent years, RLECs have been using their federal high-cost support to deploy and operate multiple use networks capable of providing access to broadband services as well as to voice services. The Joint Board noted in its November 2007 *Recommended Decision* that “a significant portion of the High Cost Loop fund supports the capital costs of providing broadband-capable facilities for rural carriers” and that “RLECs have done a commendable job of providing broadband to nearly all their customers.”²⁸ The Joint Board reiterated later therein that “Under existing support mechanisms, RLECs have done a commendable job of providing voice and broadband services to their subscribers.”²⁹

A. Differing Investment Incentives

Why have small RLECs been so successful in bringing first quality voice services and then broadband services to their rural service areas?

First, the small size of RLECs is much more conducive to investing in remote and sparsely populated areas with limited profit potential. During the first half of the 20th Century, RLECs were generally formed as family-owned companies or cooperatives to serve rural areas that were not wanted by the Bell System and that otherwise would have received little or no telephone service. As RLECs have developed during the following decades, their primary

²⁸ *In the Matter of High-Cost Universal Service Support*, Recommended Decision, WC Docket No. 05-337 and CC Docket No. 96-45, FCC 07J-4, released November 30, 2007, at par. 30.

²⁹ *Id.* at par. 39.

business has remained the provision of increasing ranges of telecommunications and information services to their rural local exchange service areas.

Most RLECs are small businesses with minimal financial resources and little or no access to regional, national or international capital markets. They borrow primarily from RUS, CoBank, the Rural Telephone Finance Cooperative ("RTFC") and small local banks, and generally lack the resources and opportunities to expand their business operations far outside their existing telecommunications-related services and their existing service territories.³⁰ Locally owned or managed RLECs are serving their own employees, families, friends and neighbors, and consequently have immediate and extensive knowledge of local service needs and issues as well as significant business and personal incentives to keep happy customers whom they run across frequently in stores, churches, schools, playing field and the like.

In contrast, the RBOCs and mid-sized price cap carriers are generally publicly traded regional, national or international companies that are required to maximize their profits, dividends and stock prices for the benefit of their many and widely dispersed shareholders, and that have a broad and substantial variety of business ventures and investment opportunities in numerous markets in the United States and abroad. These large and mid-sized companies have very little incentive to invest in broadband deployments and other substantial network upgrades in marginally profitable rural areas when they have many more attractive investment opportunities in other markets. Likewise, most large and mid-sized carriers manage their rural exchanges from remote locations, and often have only a technician located in or near a cluster of their rural exchanges. To date, the most effective investment incentives for large and mid-sized carriers with respect to their rural exchanges have been state minimum quality of service

³⁰ Where RLECs have expanded, it has generally been into rural areas and communities adjacent to their service territories.

requirements and orders; and many of these have resulted in the sale by the larger companies of rural exchanges to nearly small RLECs that were more interested in serving them.

B. Rate-of-Return Versus Incentive Regulation

Rate-of-return regulation has enabled small RLECs to overcome the disadvantage of their limited financial resources and lack of access to capital markets, in order to invest in the network upgrades necessary to provide their rural customers with quality service.

By allowing RLECs to recover their reasonable and prudent investment costs (plus a prescribed rate-of-return) and their reasonable and prudent operating expenses, rate-of-return regulation [in association with mechanisms such as the National Exchange Carrier Association (“NECA”) pools and federal high-cost support] has been the critical factor in convincing RLEC lenders, owners and managers that their infrastructure loans would repaid, and therefore in enabling RLEC investments in infrastructure upgrades and expansions to take place. This fact has been hammered home recently when questions and concerns regarding continuation by the Commission of rate-of-return regulation and sufficient high-cost support for RLECs have significantly increased the reluctance of RTFC, CoBank and other lenders to make RLEC infrastructure loans, and has caused increasing numbers of RLECs to cancel or postpone broadband infrastructure investments (and some even to consider turning down BIP loan/grants).

In contrast, price caps and other incentive regulation mechanisms reward carriers only for investing in highly profitable facilities and discourage both marginal investments and quality service. The essence of incentive regulation is that a carrier gets to keep as profit (and ultimately distribute as dividends to its owners) everything that it does not invest in new plant or spend on existing operations. Hence, the “incentive” of incentive regulation is to invest in new or upgraded facilities only when absolutely necessary (and then only to the extent that such

investments will be likely to return a substantial profit) and to keep recurring operating expenses as low as possible (even if this results in degradation of the service provided to customers). The record of the RBOCs in serving their long-neglected rural exchanges (which exchanges contain an estimated half of the nation's homes that are "unserved" with respect to broadband) offers a stark portrait of the consequences of incentive regulation in rural areas.

Notwithstanding the urban legend that rate-of-return regulation produces "waste" and "inefficiency," there has never been significant evidence produced to substantiate such allegations. Whereas any group of more than 1,000 entities is likely to have a couple members that push the limits, the wide and substantial variety of RLEC oversight mechanisms (including Commission tariff reviews, state commission audits and rate cases, NECA audits and RUS compliance reviews) has demonstrated time and time again that the vast majority of RLECs are law-abiding entities that use federal-regulated and state-regulated resources in a reasonable, prudent and efficient manner.

Because they have limited financial resources and lack access to capital markets, RLECs bear the formidable burden of justifying their investment projects and business plans to RUS, RTFC, CoBank and other potential lenders, as well as to their owners and managers, before they can get approval and funding for significant infrastructure upgrades and operating budgets. These extensive loan and budget review procedures ensure that RLEC investment projects are lean and prudent. For example, as noted above, RLECs are not (as some Commission personnel appear to believe) deploying FTTH willy nilly to maximize their high-cost support. Rather, RLECs are using fiber very carefully and conservatively to extend their DSL services to rural customers located further and further from their central offices and to increase the speeds and capacities of their existing DSL services in response to customer demands. FTTH is being

limited predominately to green field and similar applications (e.g., some exchange rebuilds) where the RLEC has been able to demonstrate to its lenders that fiber lines are less expensive to deploy than copper lines.³¹

The higher costs of many RLECs are due to the nature of their rural service areas and to the impact of Carrier of Last Resort (“COLR”) requirements rather than rate-of-return regulation. The Commission needs to keep in mind that RLECs serve the approximately 37 percent of the land area of the United States that is so remote, rugged, sparsely populated and/or expensive to serve that the Bell System and other larger carriers declined repeatedly to serve it. Put simply, most of the current RLEC service areas were the “reject” areas that remained unserved during the early 20th Century after the Bell Companies and the mid-sized independent carriers built their networks in the nation’s cities, suburbs and more attractive rural areas.

Whereas most incumbent local exchange carriers are COLRs, COLR obligations and requirements are significant only in instances where it is unprofitable to serve the customer. In Montgomery County, Maryland and Fairfax County, Virginia where the revenue potential of hundreds of thousands of prosperous and densely-packed customers far outweighs the costs of serving them, Verizon may be the COLR but there is no need to invoke COLR obligations to induce Verizon and other carriers to offer service. COLR obligations have a much different significance and impact in rural areas where the costs of constructing and maintaining 20, 30, 40 and 50-mile loops may never be recovered from local service rates.

The essence of COLR status³² is the requirement to disregard normal business and economic considerations, and to construct facilities and provide service anyway to customers

³¹ RUS appears to strongly encourage or require its RLEC borrowers to deploy fiber optic facilities (including FTTH facilities) under certain circumstances.

³² The predominant source of COLR obligations for RLECs is state law or state commission regulations. In addition, RUS loan agreements and telephone cooperative charters may contain COLR requirements.

whose remote locations, high costs of service and/or minimal profit potentials would not normally induce a non-COLR to offer them service at affordable rates. In addition to the substantial investments and recurring expenses necessary to serve unprofitable customers, COLRs are subject to a host of additional and expensive regulatory obligations, including service quality standards, requirements to maintain “warm lines” or “soft dialtone” in households that have terminated service, and federal and state oversight of rates, costs, accounting methods, record keeping and customer relationships. Because they constructed and upgraded their existing networks under requirements that they serve all customers requesting service, the Blooston Rural Carriers believe that most of the costs of serving their rural exchanges are attributable, in whole or part, to their COLR obligations.

Even if a model to determine universal service support levels and supported costs could be developed in a proper and transparent manner, such a model is not likely to operate accurately to determine the typical and efficient costs of most or all of the more than 1,000 RLECs or to distribute high-cost support to them in an effective and equitable manner. A theoretical model may work with an acceptable degree of accuracy with respect to a large carrier with hundreds or thousands of exchanges because overestimation errors with respect to the costs or support for some exchanges will be offset against underestimation errors with respect to the costs or support for other exchanges. When such a model is applied to RLECs and other small carriers that serve only a handful of exchanges, estimation errors are as likely to create arbitrary and substantial winners and losers as they are to cancel out each other. Moreover, because the more than 1,000 small RLECs serve rural areas with very different geographic, demographic and economic characteristics (including exchange sizes, terrains, climates, populations, population densities and patterns, incomes and income distribution, business activities, and natural resources), it will

be extremely difficult to develop and implement a model that takes account of these variations and complexities in an accurate, effective and equitable manner. Finally, a model that distributes critical high-cost support to small RLECs on a basis other than their actual costs³³ will create inherent uncertainty and instability because their lenders must be assured that they will be able to make the actual payments required to repay their actual loans.

C. Conclusion

The Blooston Rural Carriers will let others argue the legal question as to whether the Commission possesses the legal authority to require RLECs to move from rate-of-return regulation to some heretofore undefined form of incentive regulation. However, even if the legal hurdles can be cleared, it still makes absolutely no sense to cap ICLS or take other actions that force small RLECs to move from the regulatory system that has enabled them to deploy broadband to most of their rural customers despite their limited financial resources, and to subject them instead to a form of regulation that has produced a very poor record of broadband investment in rural areas by both large and mid-sized carriers.

V.

A Modest Proposal

Rather than eliminating effective regulatory and universal service support mechanisms and forcing carriers with very different economic characteristics and investment incentives into a single broadband support mechanism, the Blooston Rural Carriers recommend that the Commission take a flexible approach that employs different broadband high-cost support mechanisms to encourage and enable carriers with very different resources and incentives to

³³ The Blooston Rural Carriers recognize that some very small RLECs receive their NECA pool settlements and high-cost support on the basis of average schedules. The average schedule system was put in place decades ago because some RLECs had such small staffs and small customer bases that it was not practicable to require them to bear the costs of preparing their own specific cost studies. The average cost schedules used to determine the settlements distributed to these very small RLECs are based upon the actual costs of other RLECs and have been modified and refined over the years during the course of regular reviews and adjustments by NECA and the Commission.

deploy broadband in the rural and other high-cost areas that they serve. Specifically, the Commission can and should develop and implement at least two separate broadband high-cost support mechanisms: (1) to enable RLECs and similar small and financially limited COLRs to continue to upgrade, operate and maintain their networks and to furnish reasonably comparable broadband services to their rural customers as broadband services evolve; and (2) to encourage RBOCs, mid-sized and other large and financially powerful carriers to make the capital expenditures necessary to deploy broadband in their rural service areas.

The rationale for a separate RLEC broadband high-cost support mechanism is the higher capital and operating costs of RLEC service areas and COLR obligations, as well as the singular and proven success of existing RLEC high-cost mechanisms in enabling RLECs to provide their rural customers first with quality and affordable voice services and more recently with higher and higher speed broadband services. The existing HCL, LSS and ICLS mechanisms could be modified and combined to form a new RLEC broadband mechanism. In a broadband world, LSS needs are likely to decrease as soft switches replace circuit switches; but loop support needs are likely to increase as fiber is gradually extended to replace copper and increase service speeds. In addition, RLEC broadband high-cost support increases are likely to be needed to deal with increasing middle mile transport costs and to offset decreases in access revenues and other intercarrier compensation.

The key success factors for an RLEC broadband mechanism are sufficiency and stability, for both carriers and lenders require assurance that the typical 20-to-30 year loans required for substantial infrastructure investments will be repaid. Sufficiency is likely to require more than the current \$1.9 billion of high-cost support distributed to RLECs in light of the referenced middle mile, ICC and other considerations, and would definitely be precluded by a redistribution

of some or all of the current \$1.9 billion to larger carriers. Stability requires that RLEC high-cost support continue to be distributed via an industry-supported mechanism that is not subject to the uncertainty of annual Congressional appropriations. In light of the great success of current RLEC high-cost mechanisms, the Commission should exercise care to preserve as many as possible of their strengths and investment incentives as they are modified to adapt to the broadband world.

In contrast, the broadband mechanism for large carriers can and should focus upon capital expenditures, for rural broadband infrastructure investments need to be made more attractive to these publicly traded entities than the more profitable business alternatives to which they have traditionally given higher priority. Once a large carrier has been awarded a one-time grant to induce and underwrite the investment necessary to deploy broadband in a particular rural area, it generally has more than sufficient financial resources to operate and maintain the upgraded facilities. A capital expenditures mechanism for large carriers meshes well with the Commission's need for the flexibility to balance the speed of broadband deployment vis-à-vis the size and growth of its universal service program. Capital expenditure grants can be increased when and where broadband upgrades are urgently needed and/or universal service funding resources permit, and can be decreased when circumstances and conditions change. Capital expenditure grants are also capable of being readily increased or supplemented by Congressional appropriations if and when Congress determines that the pace of broadband deployment needs to be accelerated.

VI. **Conclusion**

The Blooston Rural Carriers agree with the Commission that broadband is *the* great infrastructure challenge of the early 21st Century. Given the unrivaled promise and potential of

broadband facilities and services for expanding and revitalizing economic and social opportunities for all Americans, they urge the Commission to focus its considerable influence and authority upon the promotion and advancement of broadband deployment in rural and other areas where (without sufficient and predictable federal support) high costs and low profit potentials discourage investment and/or produce unaffordable rates.

The Commission should abandon initial proposals: (a) for a 4 Mbps/1 Mbps rural support “target” that will be inadequate by the time it is implemented and that is likely to create a permanent digital divide vis-a-vis the nation’s urban areas for which 100 Mbps/50 Mbps services are sought; and (b) for a “capped” total \$8.7 billion Universal Service Fund until 2020 that will not be sufficient (whether measured in 2010 dollars or otherwise) to meet the increased broadband support needs of RLECs, mid-sized carriers, RBOCs and low income customers.

RLECs have been **the** great success story of the existing federal high-cost support mechanisms. Unlike other entities, small and locally owned/managed RLECs have demonstrated a strong and unwavering interest in serving their rural exchange areas, and have willingly undertaken the burdens of serving remote, rugged and sparsely populated areas unwanted by larger carriers that comprise approximately 37 percent of the nation’s land area, as well as the substantial additional costs and obligations of COLR status. Notwithstanding the disadvantages of their small size and limited financial resources, RLECs have an unparalleled record of bringing quality and affordable telecommunications services to their rural service areas. As recognized by the Joint Board, RLECs have moved during recent years to upgrade their networks from voice networks to multiple use networks which are currently providing approximately 90 percent of their rural customers with access to some type of broadband service.

A great deal of this RLEC success can be traced to rate-of-return regulation and to sufficient and predictable federal high-cost support. Rate-of-return regulation has offset the financial disadvantages of RLECs by assuring their lenders and owners that 20-to-30-year infrastructure loans will be repaid and operating expenses recovered. Federal high-cost support has helped to make up the difference between RLEC costs, on the one hand, and RLEC customer service revenues and intercarrier compensation revenues on the other.

The Blooston Rural Carriers urge the Commission not to force RLECs to abandon a rate-of-return regulatory system that has contributed greatly to their current and past success. They are particularly puzzled that the Commission appears to be considering a forced move from rate-of-return to incentive regulatory systems that have heretofore failed to provide effective incentives for the upgrade of networks to provide quality voice or broadband services.

Finally, the Blooston Rural Carriers recognize that the existing high-cost mechanisms need to evolve into broadband high-cost mechanisms. Given the past successes and experiences of federal high-cost support programs and the very different investment incentives and financial characteristics of RLECs and other carriers, the Blooston Rural Carriers recommend that the Commission establish at least two separate broadband high-cost mechanisms – one for RLECs and the other for RBOCs and mid-sized carriers. Whereas the RLEC mechanism could merge the existing HCL, LSS and ICLS programs into a single mechanism, it should keep as many as possible of the features (including, but not limited to, supporting both capital expenditures and operating costs, employing actual costs rather than theoretical model costs, and using funding from industry contributions) that have enabled the present RLEC high-cost mechanisms to be successful. In contrast, the RBOC/mid-sized carrier mechanism could be focused upon capital grants to create the incentives necessary to convince these larger carriers to make broadband

infrastructure investments in their rural service areas. What should not take place is a redistribution of current RLEC high-cost support to other carriers, including the RBOCs and mid-sized carriers. Redistribution of a critical revenue stream upon which many RLECs have come to rely would halt and then reverse the substantial recent success of RLECs in bringing broadband to their rural customers.

Respectfully submitted,
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ATTACHMENT A

Blooston Rural Carriers

Amery Telcom
Beaver Creek Telephone of Washington
Bernard Telephone Co.
Bloomer Telephone Company
Breda Telephone Corp. d/b/a Western Iowa Networks
Buggs Island Telephone Cooperative
Butler-Bremer Communications
Cal-Ore Telephone Company
Cameron Telephone Company, LLC
Chickasaw Telephone Company
Choctaw Telephone Company
Clear Lake Independent Telephone Company
Clear Lake Telephone Company
Dakota Central Telecommunications Cooperative
Dickey Rural Telephone Cooperative
Direct Communications Rockland Inc. of Idaho
Direct Communications Cedar Valley, LLC of Utah
East Ascension Telephone Company, LLC
Electra Telephone Company
Harmony Telephone Company
Harrisonville Telephone Company
Haxtun Telephone Company
Hector Communications Corporation
Hillsboro Telephone Company, Inc.
Hinton Telephone Company
Horizon Telcom, Inc.
La Valle Telephone Cooperative
Lakefield Telephone Company Newton WI
Lakeland Communications Milltown WI
Lonsdale Telephone Co.
Lost Nation – Elwood Telephone Company
Luck Telephone Company
Mabel Co-op Telephone Company
Manawa Telephone Company
Manti Telephone Company
Milltown Mutual Telephone Company
MoKan Dial, Inc.
Mount Horeb Telephone Company
Nelson Telephone Cooperative, Inc.
New Florence Telephone of Missouri
Northeast Florida Telephone Company
Nucla-Naturita Telephone Company

Oregon Telephone Co. of Oregon
Penasco Valley Telephone Cooperative Inc.
Pineland Telephone Cooperative
Pymatuning Independent Telephone Company
Richland-Grant Telephone Cooperative
Spring Grove Communications
Tatum Telephone Company
Triangle Telephone Cooperative Assn. Inc.
Upper Peninsula Telephone Company
Wabash Telephone Coop. Inc.
Waitsfield-Fayston Telephone Co., Inc.
Walnut Hill Telephone Company
Walnut Telephone Company Inc
Webster-Calhoun Cooperative Telephone Association
Wiggins Telephone Association
Yadkin Valley Telephone Membership Corporation