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

REPLY COMMENTS

of

FRED WILLIAMSON & ASSOCIATES, INC (FWA)

I. COMMENT SUMMARY

Capping of Interstate Common Line Support (ICLS) funding along with the complete elimination of current Universal Service Fund (USF) support and switched access, combined with a very likely insufficient replacement of funding from the Connect America Fund (CAF), will result in an estimated loss of approximately 50 percent or more of the rural Rate of Return (RoR) Incumbent Local Exchange Carriers' (ILECs) revenues.[1] These losses will have harmful, if not devastating effects on rural RoR ILECs and the customers in their service areas. At odds with the harmful effects of these proposals, the existing RoR and USF mechanisms have successfully incented deployment and maintenance of quality broadband capable networks for customers in rural RoR ILEC service areas. Price cap or similar incentive regulation does not incent carriers to deploy rural broadband.

The Commission is premature in proposing to (a) cap ICLS, (b) move RoR carriers to some form of price cap or incentive based regulation, (c) eliminate current USF and replace it with insufficient CAF funding and (d) eliminate switched access with minimal funding replacement, without further analysis as to how the replacement mechanism(s) will work in actual practice, whether they will provide sufficient funding, and whether they in reality will incent broadband network deployment in rural service areas. The Commission is also premature in assuming that carriers under incentive based regulation need additional support without further analysis.

While this analysis gets underway, there are a number of excellent proposals in the comments that could be implemented immediately and that should be considered by the Commission:

[1] See Attachment to FWA comments.

1. The principles listed by Independent Telephone and Telecommunications Alliance (ITTA)[2] provide a straightforward roadmap for the reform of USF.

2. The USF contribution methodology should be reformed as discussed by the Associations and other organizations[3] and ITTA.[4]

3. The Pennsylvania Public Utility Commission (PaPUC) proposal[5] provides a straightforward and simple way to administer and reform USF and encourage broadband deployment while at the same time imposing minimal disruption to the funding process.

4. Competitive Eligible Telecommunications Carrier (CETC) funding should be phased out[6] and after the Commission completes its analysis of support required by ILECs under incentive based regulation, CETC funding should be used to augment areas of need to assist in the deployment of broadband in these rural areas. Depending on the results of the analysis, the Commission may also wish to implement a mechanism that would require the carrier under incentive based regulation to match some portion of the Federal support it receives with internally generated funds.

5. FWA tends to agree with Windstream[7] that Interstate Access Support (IAS) should not be eliminated before the Commission conducts a review of the need for this support.

6. Intercarrier Compensation (ICC) reform should be initiated immediately:

- First, resolve the phantom traffic and VoIP issues as discussed by the Associations and other organizations[8] and ITTA.[9]

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[2] ITTA comments. Page 8.
[3] Association and other organization comments, pages 67 and 68.
[4] ITTA comments, page 24.
[5] PaPUC comments, pages 15 to 18.
[6] FWA believes that a portion of the phased out CETC support should be used for an extended period, if necessary, to recover the cost of investments made by CETCs with the expectation that USF funding would be made available for investments deployed to fulfill ETC build out obligations.
[7] Windstream comments, pages 38 to 40.
[8] Association and other organization comments, pages 69 and 70.

- Next, reduce intrastate originating and terminating switched access rates to interstate levels and move the lost revenue net of corporate expense savings[10] and revenues generated by increasing Subscriber Line Charges (SLCs) to their caps (and if a benchmark local rate is established, net of revenue increases if any to this benchmark) to the ILECs' USF. If corporate expense savings exceed the revenues lost, those expense savings should be redirected to investment in broadband deployment for that ILEC's rural areas.
- Ultimately, further reduce interstate and intrastate originating and terminating switched access rates to zero and move the lost revenue net of corporate expense savings and revenues generated by increasing SLCs to their caps (and if a benchmark local rate is established, net of revenue increases if any to this benchmark) to the ILECs' USF. If corporate expense savings exceed the revenues lost, those expense savings should be redirected to investment in broadband deployment for that ILEC's rural areas.

7. Implement a Tribal Broadband Fund as proposed in Sandwich Isles comments. Broadband access, promoted by this fund, would assist in providing educational, health care and economic opportunities to Native American groups, including native Hawaiians. The fund should be available to existing Tribal lands (See 54.400e of the Commission rules and regulations) and to native Hawaiian homelands.

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[9] ITTA comments, pages 24 to 27.
[10] Payments no longer made by affiliates of a corporation for (a) termination of local calls under reciprocal compensation agreements and (b) origination and termination of switched access calls.

II. THE CHANGES PROPOSED IN THE NPRM, NOI AND NBP, IF ADOPTED, WOULD HARM, RURAL RoR ILECs AND THEIR CUSTOMERS

The Notice of Proposed Rulemaking (NPRM), Notice of Inquiry (NOI) and National Broadband Plan (NBP) propose that:

- RoR regulation be eliminated for rural ILEC service areas;[11]
- ICLS be capped or frozen;[12]
- All current Federal USFs be eliminated by 2020 and be replaced by an undefined and unquantified CAF;[13]
- Interstate and Intrastate switched access be eliminated by 2020 and the lost revenues replaced by local rate and SLC increases and possibly by undefined and unquantified CAF support.[14]

The NBP indicates that these changes are necessary to accomplish the following goals:

- Insure that the overall level of funding does not substantively increase over 2010 levels,[15] and
- Provide support for rural areas where broadband has not been made available.[16]

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[11] Notice of Inquiry and Notice of Proposed Rulemaking in WC Docket No. 10-90, GN Docket No. 09-51 and WC Docket No. 05-337, released April 21, 2010, paragraphs 55. Also see National Broadband Plan (NBP), Chapter 8, Recommendation 8.6, page 147.
[12] Id., paragraph 56.
[13] "By 2020, the 'old' High-Cost program will cease operations, and service providers will only receive support…through the CAF." NBP, page 150.
[14]For ICC, "…the framework should set forth a glide path to phase out per-minute charges by 2020." NBP, page 148.
[15] **"**The FCC should manage the total size of the USF to remain close to its current size (in 2010 dollars)…" NBP, page 149
[16] Approximately 65% of unserved households are in RBOC and Mid-Size company areas. NBP, page 141.
"USF resources are finite, and policymakers need to weigh tradeoffs in allocating those resources so that the nation 'gets the most bang for its buck.' The objective should be to maximize the number of households that are served…" NBP, page 143.
"Once the FCC completes rulemakings to establish the parameters of the new CAF, it should begin to distribute CAF funding to discrete geographic areas that contain unserved households. The FCC potentially

A. Insufficient Funding Will Be Available For Rural RoR ILECs To Maintain Existing Networks And To Provide Voice And Broadband Services For Their Customers

The NBP indicates that approximately 65% of the rural areas without broadband service are in areas served by large and mid-sized price cap ILECs, and proposes to use the CAF to target funding to deploy high speed broadband service in these areas by 2020.[17] Within the constraints laid out in the NBP, the only way to achieve this goal, while maintaining the overall level of funding at approximately 2010 levels is to retarget funding to these areas from (a) CETCs, (b) Interstate Access Support (IAS) now received by price cap ILECs and (c) rural RoR ILECs.

Unlike carriers operating under incentive regulation that have little or no incentive to deploy capital in high cost to serve rural areas, rural RoR ILECs have, as a result of the incentives of RoR regulation and USF cost based network funding, continued to upgrade and deploy broadband capable networks in their service areas.[18] The NBP suggests that funding will be available from the CAF to support already deployed rural broadband networks,[19] but no data or quantification supports these suggestions. FWA[20] and other commenters[21] have provided data and analysis that shows that the individual and

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could focus first on those states that have a higher absolute number or percentage of unserved housing units per capita, or those states that provide matching funds for broadband construction." NBP, page 149.

[17] Id.

[18] See comments of the PaPUC at page 11 and comments of ITTA at pages 4 and 13.

[19] In a number of places the NBP indicates that the plan will take "…care to ensure that consumers continue to enjoy broadband and voice services that are available today.", page 141. The NBP also states in recommendation 8.7 on page 148 regarding ICC reform, that "The FCC also should provide carriers the opportunity for adequate cost recovery." Further the NPB, on page 151 states that "The FCC's ability to shift funds from existing programs to broadband assumes that shifting the identified money from voice service to broadband will not negatively impact company operations or future deployment strategies."

[20] See Attachment to FWA comments.

[21] Among others, comments of Alma Communications Company; JBN Telephone Company; Peoples Telecommunications; Warinner, Gesinger and Associates; Wheat State Telephone; National Exchange Carrier Association, the National Telecommunications Cooperative Association, the Organization For The

combined effects of the NPRM, NOI and NBP proposals will, at odds with NBP comments about supporting existing networks, provide insufficient funding for rural RoR ILECs to:

- Maintain existing networks capable of providing quality and affordably priced basic and broadband services, and
- Continue to upgrade and deploy networks to provide broadband services to unserved customers.

As the Associations and other organizations state in their comments:

> "It is inconceivable how sufficient support can be made available for the deployment, operation, and maintenance of scalable broadband networks, capable of meeting the long-term bandwidth needs of consumers throughout rural America, if the total size of the USF is kept roughly at its current level (in 2010 dollars). Furthermore, funding shortfalls will grow even worse over time if the Commission phases out existing 'legacy' support mechanisms and per-minute ICC charges, as recommended by the NBP."[22]

B. The Proposed Changes, If Adopted, Will Significantly Harm Rural RoR ILECs And Their Customers

Capping of ICLS funding along with the complete elimination of current USF and switched access combined with a very likely insufficient replacement of funding from the CAF[23] will result in an estimated loss of approximately 50 percent or more of the rural

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Promotion And Advancement Of Small Telecommunications Companies, the Western Telecommunications Alliance , the Rural Alliance and other organizations.

[22] Joint Comments of the National Exchange Carrier Association, the National Telecommunications Cooperative Association, the Organization For The Promotion And Advancement Of Small Telecommunications Companies, the Western Telecommunications Alliance, the Rural Alliance and other organizations, (Associations and other organizations), page 12.

[23] Data has not been provided by the NOI or NBP to allow a rural ILEC to factually determine if sufficient replacement funding will be available to (a) sustain its existing network deployment or (b) provide funding to continue upgrades necessary to provide broadband service to unserved customers (See AT&T comments

ILECs' revenues.[24] These losses will have the following harmful, if not devastating effects on rural RoR ILECs and the customers in their service areas:

- Significant harm to rural economic development – businesses and residential customers would no longer have access to high quality voice and broadband service at affordable rate levels that are comparable to those offered in urban areas.
- Hospitals, clinics and schools would be disadvantaged – inability to obtain reliable high speed broadband service.
- Jobs at rural RoR ILECs will be lost. Indirectly, jobs for suppliers and businesses that provide services to the rural RoR ILEC and their employees will be lost. This will have a secondary impact on businesses operating in rural communities. The salaries from individuals that lose jobs will no longer be available to purchase goods and services in rural community businesses.
- Loss of rural community tax base and revenues paid to other rural utilities (gas, electric and water), further harming the ability of the rural community to remain viable.

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at pages 3 and 4). It appears clear however, that insufficient funding will be provided based on the constraints placed on the CAF and the proposed basis for creating and distributing the CAF:

- Retargeting existing funding to primarily non-rural ILEC service areas.
- CAF support based on hypothetical model, not real or actual costs to deploy broadband service. A model can not accurately replicate the diversity of real costs faced by small rural RoR ILECs through the United States and will very likely understate those costs to provide Carrier of Last Resort (COLR) services.
- Distribution of CAF support through reverse or procurement auctions. These auctions will likely favor large wireless or landline carriers that can under-bid small rural RoR ILECs and support those low bids with revenues from their urban areas and other unregulated operations. As ITTA notes on page 11 of its comments, "In served areas, the actual costs are known and have been incurred in reliance of ongoing support, so market-based mechanisms should not be invoked to re-calculate and adjust support."
- Distribution of CAF support based on census block or county areas. These so called "neutral" support distribution areas are by no definition "neutral". Instead, because a rural RoR ILECs service area is often only a small part of a county or is within multiple census blocks (see Attachment to this filing), a rural RoR ILEC would need to bid on substantial additional areas outside of its own service area to retain the support for its own service area. With the likelihood that insufficient support will be provided by the CAF to provide adequate broadband network funding, such bidding would be a losing proposition.

[24] See Attachment to FWA comments.

- Loan defaults by the rural RoR ILEC and loss of equity by rural RoR ILEC owners.

III. CURRENT RoR AND USF MECHANISMS INCENT BROADBAND DEPLOYMENT IN RURAL AREAS

At odds with the harmful effects of the NPRM, NOI and NBP proposals, the existing RoR and USF mechanisms have successfully incented deployment and maintenance of broadband capable networks for customers in rural RoR ILEC service areas.[25] As noted by the PaPUC:

> "…the FCC should abandon the proposal to eliminate rate of return regulation. The PaPUC argues that to replace rate of return regulation with price cap regulation is counter-productive….Rate of return regulation is a cost-based form of incentive regulation where the incentives match the FCC's desire to promote the provision of broadband service….Conversely, the incentive in price cap

[25] There are often unfounded assertions that RoR regulation incents unnecessary capital deployment and provides no incentive to actually sell basic and broadband services to customers. See Windstream comments at page 36: "Rate-or return regulation tends to give carriers perverse incentives to spend more than is efficient simply to increase the rate base on which they earn their profits." and at page 43, where Windstream alleges that RoR ILECs are "gold-plating" their networks.

At odds with these assertions, the facts of rural RoR ILEC network deployment and customer service clearly disprove these baseless claims:

- Rural RoR ILECs often must qualify for loans to obtain the capital for network upgrades and deployment. Loans are not provided by lenders for unnecessary capital expenditures. Instead lenders require that rural RoR ILECs provide extensive information about the proposed upgrade or deployment (engineering layouts, equipment costs, etc) and will not approve the loans until they are satisfied with the information provided.
- Rural RoR ILECs and lenders must also be satisfied that the loans can be repaid. Financial information sufficient to prove to the lender that there will be sufficient customer, USF and access revenue to support the loans is required. If sufficient revenues are unavailable, loans are not made. It simply is not in either the rural RoR ILECs or lenders interest to provide loans for unnecessary investment.
- Rural RoR ILECs are focused on rural customer expectations. Network upgrades are not being deployed simply to put plant into the ground to receive USF, but are being deployed as a result of customer expectations. Rural RoR ILECs make every effort to make available to their customers quality basic and broadband services at affordable rates comparable to those offered in urban areas, because more and more of their customers want those services and are willing to pay affordable rates, comparable to rates in urban areas for the services.

regulation severs the connection between costs and rates and because it ensures an inflation-based price increase annually regardless of costs incurred, it will thwart network investment."[26]

These comments are absolutely correct. RoR regulation has, as evidenced by the facts, incented efficient[27] deployment of capital in rural RoR ILEC service areas while price cap or incentive regulation has generally not. Although revenues to deploy broadband networks may be available to some or all of the carriers under price cap or similar incentive regulatory plans, these carriers are not incented to use revenues to deploy rural broadband. Many large and mid-size ILECs moved from RoR regulation to incentive regulation for a very simple reason --- Incentive regulation provided the opportunity to earn higher returns than were allowable under RoR regulation and allowed the carriers under incentive regulation to keep, not reinvest those returns in their rural areas. Price cap or similar regulation incents revenue maximization through:

- Significant expense cuts. Jobs are frequently eliminated with the salary savings often going to stockholders, not capital deployment in the ILECs' rural service areas.
- Rationing of capital expenditures – Capital is generally deployed in more densely populated areas where customers are able to pay for the costs of the capital deployment and where higher returns on investment are likely.

Although this behavior is perfectly rational for an ILEC that chooses to operate under incentive regulation, it is not, as the PaPUC points out, appropriate for, nor in concert

[26] Comments of the PaPUC, page 4.

[27] Assertions that RoR is inefficient (see Windstream comments at page 36) are wrong. As ITTA notes in its comments at page 13, "…the notion that current ILEC high-cost programs are entirely *inefficient* should be set aside. The Commission must not be encouraged to action on the basis of imprecise premises….The characterization of current processes as entirely inefficient, however, risks wholesale disposal of generally successful mechanisms, without creating an opportunity to refine what exists today."

with the goals of the NBP where the incentives should be to cause capital deployment in rural service areas.

FWA believes that a more productive approach to USF and ICC reform would be to retain the current processes, including RoR regulation, and refine those processes as necessary (See Section VI below). As stated by the ITTA:

> "Rather than discard a program [RoR regulation] that has generated 'commendable' results,[28] the Commission should extend its successful principles to enable greater broadband deployment."[29]

IV. THE COMMISSION SHOULD EVALUATE WHETHER ADDITIONAL FUNDING IS REQUIRED TO DEPLOY BROADBAND IN AREAS SERVED BY CARRIERS UNDER INCENTIVE REGULATION

Windstream claims in its comments that reform of the current USF programs is essential to target funds to close gaps in broadband availability, presumably in Windstream rural service areas.[30] Windstream goes on to state that:

> "Such reform is essential to eliminate the rural-rural 'digital divide' that has arisen under current federal program rules, wherein certain high-cost areas receive generous support and are served by enhanced network facilities, while other high-cost areas-exhibiting comparable cost conditions-are virtually ignored."[31]

Further, Windstream states that:

[28] "…rural LECs (RLECs) have done a commendable job of providing broadband to nearly all their customers. While this program may need adjustments, we recognize its effectiveness in maintaining an essential network for POLRs and in deploying broadband." High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision, WC Docket No. 05-337, CC Docket No. 96-45, paragraph 30 (2007) (2007 Joint Board Recommendation).
[29] ITTA comments, page 4, information in brackets added for clarity.
[30] Comments of Windstream at page 1.
[31] Id., pages 1 and 2

"Windstream has made significant progress with private investment, but this approach may have reached its limit. With relatively little assistance from the federal high-cost program, Windstream has invested nearly $700 million in the past four years to extend broadband to approximately 90 percent of its customer base…"[32]

These comments do not correlate with other Windstream information. In the years 2006 to 2009, Windstream's current rural study areas received the following approximate amounts of Federal USF support:

2006 -- $ 99M
2007 -- $ 94M
2008 -- $108M
2009 -- $109M
Four Year Total -- $410M[33]

Presumably this funding, which is approximately 59% of the $700M that Windstream invested in its network in the last four years, was used in total or in part to assist in that network deployment.[34] This is more than a 'little assistance" from Federal USF programs. Alternatively, if Windstream really did use primarily private investment to fund the $700M in investment, then some share of the yearly Federal funding, may have been used to fund the following Dividends paid to shareholders:[35]

2007 -- $477M

[32] Id., page 2
[33] These amounts were obtained from USAC at http://www.usac.org/hc/tools/disbursements/default.aspx. Federal funding was summed for all of Windstream's service areas. In this analysis, some of Windstream's service areas may have been missed (and thus the support shown is understated) because The National Association of State Utility Consumer Advocates in its comments at page 7, indicates that Windstream received $124M in Federal support in 2009.
[34] Some portion of the $410M may have been used for maintenance of the existing rural Windstream network.
[35] Windstream 2009 Annual Report, Proxy Statement and Form 10K, Consolidated Statements of Cash Flows, F36. Information for the year 2006 unavailable.

2008 -- $445M

2009 -- $437M

If some share of the USF support was not used for dividends, and if private money did largely fund the $700M broadband investment, then Windstream may have used the USF support for some other purpose, not contemplated by Section 254 of the Communications Act.

Based on this high level analysis, Windstream has more than a little Federal USF that is either being used (a) to deploy and maintain networks capable of providing both voice and broadband services or (b) to likely fund, in part, shareholder dividends or for some other non-Section 254 purpose.

As to the notion of a rural-rural digital divide, this was created, not because of funding provided to rural RoR carriers as Windstream implies, but because Windstream opted for price cap or incentive regulation. Presumably Windstream opted to operate under incentive regulation in order to maximize earnings or net income.[36] Under this form of regulation, Windstream's incentive is to do precisely what it has apparently done – substantially reward shareholders (over $400M/year, equating to approximately 45% of its 2009 operating income)[37] with earnings achieved under incentive regulation. Windstream's incentive is not to use a share of those earnings to further invest in broadband capable networks in its rural service areas.

[36] Windstream notes in its comments at page 34 that "Price cap regulation rewards 'companies that become more productive and efficient,' and this productivity and efficiency ultimately benefits consumers." The first part of this statement is correct. Price cap regulation maximizes earnings through expense and salary or job cuts because the company under price cap regulation is allowed to keep these savings. The second part of the statement is likely incorrect. The real beneficiaries are stockholders who receive dividends, not rural consumers that are often relegated to a lower priority in terms of receiving broadband service.

[37] Windstream 2009 Annual Report, Proxy Statement and Form 10K, $437.4M in 2009 dividends from the Consolidated Statements of Cash Flows, F36, divided by $956.9M in 2009 operating income from Organization and Results of Operations, F6, equals 45.7%.

The Commission should not be mislead by rhetoric of a “rural-rural digital divide”[38], “prioritizing one set of rural customers over another”[39], “guaranteed cost recovery”[40], “gold-plating”, etc. These are simply tired and misused terms to mislead, obscure and misinterpret facts. For instance, Windstream apparently equates Fiber to the Home deployment with “gold-plating”.[41] In the past, allegations were made that upgrading of rural RoR ILEC networks to one party buried service was gold-plating. It was not, and it is unlikely that anyone now would argue that maintenance of aerial, party-line service would be in the public interest. Currently, Fiber to the Home may be the most efficient way to provide service when network upgrades are necessary, and will allow the provision of innovative services that Windstream discusses on pages 34 and 35 of its comments.

Before the Commission adopts changes in the form of regulation or Federal funding mechanisms for rural RoR ILECs (that would effectively destroy a successful program that incents broadband deployment), it should further evaluate the need of carriers under incentive based regulation like Windstream, for further Federal funding and the use of Federal support funds that they currently receive.[42]

It may be established after a factual evaluation supported by data, that certain, if not all, carriers under incentive regulation need some level of additional support. As will be

[38] Windstream comments, page 1.

[39] Id., page 4. At odds with inferences made by Windstream, the prioritizing that occurs is caused by the form of regulation that a company selects. Incentive regulation incents giving priority to urban customers to the detriment of rural customers in broadband deployment. RoR regulation incents providing a broadband capable network to both urban and rural customers.

[40] Id., page 34. At odds with the implication of this statement, under RoR regulation, there is no guaranteed cost recovery. The only guarantee is that there will be an opportunity to recover costs.

[41] See Windstream comments at pages 36 and 43.

[42] This analysis should include the broadband stimulus funding received by a carrier – Windstream has received approximately $66M in stimulus funding.. See http://www.whitehouse.gov/the-press-office/agriculture-secretary-vilsack-announces-over-120-recovery-act-broadband-projects-br

discussed further in Section VI of these comments, sufficient funding should be available from the phase out of CETC support. However, there should be some disincentive to distribute large dividends to stockholders while minimizing earnings targeted for rural broadband network capital deployment and at the same time receiving USF support. For instance, a carrier under incentive regulation could be incented to redirect a portion of its earnings and dividends to rural broadband deployment if it were required to match some portion of the Federal support it receives with internally generated funds.

V. THE PROPOSED NPRM, NOI AND NBP CHANGES ARE PREMATURE. FURTHER TIME AND DATA ARE NEEDED TO DEVELOP A WORKABLE NBP

Nothing in the NBP, the NPRM or the NOI evaluates factually and with data, the effects of the proposed changes on rural RoR ILECs or their customers, nor is there a factual, data based analysis of the need for further support by carriers under incentive regulation, like Windstream. In fact, with regard to the CAF mechanism which would replace existing USF and intercarrier compensation funding, there is no way to concretely determine if it would provide sufficient revenue to operate existing voice and broadband networks, pay the loans for those networks and to build out broadband networks to unserved customers. It is clear from the NBP that the existing mechanisms will be eliminated, but rural RoR ILECs and other commenters are asked to evaluate the NPRM proposals (capping ICLS and elimination of RoR) and the NOI model CAF questions without sufficient information. Unfortunately, the information that does exist about the CAF (based on some kind of hypothetical model, not real costs; possibly reduced CAF support based on some form of auction; and CAF support distributed based on hypothetical, not actual service areas) points to a significant reduction of support for rural RoR ILECs.

In their comments, AT&T stated that:

> "…by requesting detailed comments on modeling issues without determining whether a model is even necessary and proposing to eliminate legacy high-cost support without indicating how this transitioned support will be distributed via the CAF, if at all, the Commission has essentially jumped the gun….much information about the NBP model…remains unknown, which makes it impossible to answer one of the Commission's threshold NOI questions: Should the Commission 'use the [NBP] model as the starting point for developing a cost model, or alternatively, a cost/revenue model…?'"[43]

Further AT&T states that:

> "A broadband-focused, high-cost universal service program must address two distinct issues: how to incent broadband providers to build out broadband infrastructure in unserved areas where no private sector business case can be made; and how to maintain broadband availability and sufficient incentives for continued investment in areas that would be at risk of becoming unserved without legacy high-cost support and intercarrier compensation payments. How the Commission ultimately decides to address the first issue may not be the best way to address the second."[44]

FWA agrees with AT&T that the Commission is premature[45] in proposing to (a) cap ICLS, (b) move RoR carriers to some form of price cap regulation, (c) eliminate current

[43] AT&T comments, pages 3 and 4, footnotes deleted.
[44] Id., pages 4 and 5.
[45] ITTA also proposed these changes be suspended: "Proposals to eliminate or otherwise limit the availability of existing high-cost support to carriers that are providing broadband in supported areas should

USF and replace it with insufficient CAF funding and (d) eliminate switched access with minimal funding replacement, without further analysis as to how the replacement mechanism(s) will work in actual practice, whether they will provide sufficient funding, and whether they in reality will incent broadband network deployment in rural service areas. The Commission is also premature in assuming that all carriers under incentive based regulation need additional support without further analysis.

Further, as noted by ITTA, the premise for the initial changes proposed in the NPRM to move rural RoR ILECs to incentive regulation by capping ICLS is flawed:

> "The question of whether current high-cost support for ILECs should be capped implies incorrectly that high-cost support for ILECs has been growing when, in fact, it has been relatively stable overall and declining for many recipients…The proposal to impose a cap on the USF risks perpetuation of a myth that the high-cost portion of the fund is growing; assertions that the Fund is inefficient insinuate that carriers are receiving *excessive* support, while in fact the current [HCLF] cap and its adjustable components *exclude* carriers from support on an annual basis."[46]

The Commission should abandon the headlong rush to adopt changes to the current USF and intercarrier compensation funding that are not grounded in facts but are based on misplaced theories and incorrect assumptions and assertions and take the time to factually and with data evaluate the questions proposed above by AT&T and ITTA.[47]

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be suspended until the Connect America Fund is defined and poised for implementation." ITTA comments, page i.

[46] ITTA comments at pages 20, 21 and 23, information in brackets added for clarity.

[47] ITTA also noted that "USF mechanisms have enabled a strong record of infrastructure deployment and reasonable rates in the rural areas where they have provided adequate support; those mechanisms must remain in place while the CAF is developed. Failure to do so will create unpredictability in capital markets and hamper the flow of capital for broadband deployment." ITTA comments at page 7.

VI. RATIONAL CHANGES THAT WILL INCENT RURAL BROADBAND DEPLOYMENT

Before the Commission adopts the proposed changes in the NPRM and NOI that would substantially affect the USF funding of any ILEC, it should conduct the factual based analysis discussed in Section IV above and the analysis proposed by AT&T and ITTA in Section V above.

While this analysis gets underway, there are a number of excellent proposals in the comments that could be implemented immediately and that should be considered by the Commission:

1. The principles listed by ITTA on page 8 of its comments provide a straightforward roadmap for the reform of USF.

2. The USF contribution methodology should be reformed as discussed by the Associations and other organizations in their comments at pages 67 and 68, and ITTA in its comments at page 24.

3. The PaPUC proposal (comments at pages 15 to 18) provides a straightforward and simple way to administer and reform USF and encourage broadband deployment while at the same time imposing minimal disruption to the funding process.

4. CETC funding should be phased out[48] and after the Commission completes its analysis of support required by ILECs under incentive based regulation, CETC funding should be used to augment areas of need to assist in the deployment of broadband in these rural areas. Depending on the results of the analysis, the Commission may also wish to

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implement a mechanism that would require the carrier under incentive based regulation to match some portion of the Federal support it receives with internally generated funds.

5. FWA tends to agree with Windstream (comments at pages 38 to 40) that Interstate Access Support (IAS) should not be eliminated before the Commission conducts a review of the need for this support.

6. ICC reform should be initiated immediately:

- First, resolve the phantom traffic and VoIP issues as discussed by the Associations and other organizations in their comments at pages 69 and 70, and ITTA in its comments at page 24 to 27.
- Next, reduce intrastate originating and terminating switched access rates to interstate levels and move the lost revenue net of corporate expense savings[49] and revenues generated by increasing SLCs to their caps (and if a benchmark local rate is established, net of revenue increases if any to this benchmark) to the ILECs' USF. If corporate expense savings exceed the revenues lost, those expense savings should be redirected to investment in broadband deployment for that ILEC's rural areas.
- Ultimately, further reduce interstate and intrastate originating and terminating switched access rates to zero and move the lost revenue net of corporate expense savings and revenues generated by increasing SLCs to their caps (and if a benchmark local rate is established, net of revenue increases if any to this benchmark) to the ILECs' USF. If corporate expense savings exceed the revenues lost, those expense savings should be redirected to investment in broadband deployment for that ILEC's rural areas.

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[49] Payments no longer made by affiliates of a corporation for (a) termination of local calls under reciprocal compensation agreements and (b) origination and termination of switched access calls.

7. Implement a Tribal Broadband Fund as proposed in Sandwich Isles comments. Broadband access, promoted by this fund, would assist in providing educational, health care and economic opportunities to Native American groups, including native Hawaiians. The fund should be available to existing Tribal lands (See 54.400e of the Commission rules and regulations) and to native Hawaiian homelands.

Respectfully submitted,

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ATTACHMENT

The NBP proposes to distribute CAF support by "neutral" geographical areas such as census block groups or counties. However, the supposed "neutral" areas are not neutral – They disadvantage rural ILECs because as shown below, rural RoR ILECs would be required to bid for support, not just for their service area, but for service areas served by other ILECs.

- The area labeled Lenapah is an exchange of Totah Communications, a rural RoR ILEC in Oklahoma.
- The areas labeled 1, 2 and 3 are three census block groups in which the Lenapah exchange resides.
- In order to bid for support for the Lenapah exchange, Totah Communications would be required to bid for support for the entire three census block groups shown. As a result, Totah would have to bid for support for substantive areas where it currently does not provide service and has no facilities.
- If Totah were required to bid by county (the total area shown below – Nowata county), it would have to bid on even more area where it does not serve and where it has no facilities.