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
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

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TABLE OF CONTENTS

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	)	
	)	
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COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association (NCTA)[1] hereby submits its comments in response to the *FNPRM* in the above-referenced proceedings.[2] NCTA supports the Commission's proposals to modernize and reform universal service high-cost support and intercarrier compensation in a fiscally responsible manner so as to promote the availability of broadband services.

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1 NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over $170 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

2 *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (*FNPRM*).

INTRODUCTION AND SUMMARY

The Commission has been attempting to reform universal service high-cost support and intercarrier compensation for more than a decade, yet comprehensive improvements to these systems have remained elusive. It is encouraging that the Commission in the *FNPRM* has proposed to target funding to broadband deployment in a manner that limits the burden imposed on consumers who ultimately pay into the fund and ensures that recipients of funds are fully and transparently accountable for their use. As NCTA proposed in its 2009 petition for rulemaking, and as the National Broadband Plan recommended, high-cost support should be targeted to areas where there is no private sector business case to offer service and phased out in areas where unsubsidized providers are offering service.[3]

To achieve the long-term reforms envisioned in the National Broadband Plan and in the *FNPRM*, the Commission should first focus on immediate steps to repurpose the high-cost fund and rationalize intercarrier compensation, while setting the stage for further reforms that will eventually transition the majority of legacy high-cost support to fund broadband. Specifically, and as explained more fully below, the Commission should immediately cap both the overall size of the Universal Service Fund and the amount of annual high-cost support at 2010 levels. By enacting reductions proposed in the *FNPRM*, the Commission should repurpose approximately $2 billion in high-cost support for broadband deployment through a Connect America Fund, leaving roughly $2.5 billion in existing high-cost support for an interim three year period. Proceeding in this manner will allow the Commission to begin directing support to areas without

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[3] National Cable & Telecommunications Association Petition for Rulemaking, Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition, WC Docket No. 05-337, at 11-20 (filed Nov. 5, 2009) (NCTA Petition); *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 145, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (*National Broadband Plan*).

broadband, while preserving sufficient support under existing mechanisms to ensure that consumers in in rural areas will continue to have access to supported services.

After the three year transition period for the changes described above, the Commission should adopt additional reforms to high-cost support in rural areas as proposed in the *FNPRM*. It also should commence a proceeding to reduce the 11.25 percent authorized rate of return, which was adopted more than two decades ago, in 1990, to levels that more accurately reflect current market conditions. While the interim legacy high-cost support remains available, the Commission also should examine the amount of support being provided to areas where broadband service would be unavailable absent support, *i.e.*, where no unsubsidized entity is providing broadband, to determine whether additional reforms are warranted.[4]

I. CAP UNIVERSAL SERVICE FUNDS AT THE 2010 LEVELS

In the *FNPRM* the Commission identifies four overarching principles to guide its reform of the Universal Service Fund and intercarrier compensation: modernization for broadband; accountability; market-driven policies; and fiscal responsibility.[5] Consistent with the principle of fiscal responsibility, the Commission seeks comment on capping the amount of annual high-cost support at the 2010 level.[6] The National Broadband Plan recognized the problem that unrestrained growth in the overall size of the Universal Service Fund poses, noting that the Fund

[4] In addition to reforming universal service high-cost support, the Commission is also planning to reform intercarrier compensation. NCTA supports the Commission's overall objective of moving to a system where carriers exchange all traffic at a low, unified rate. Our initial comments focus primarily on reforms to universal service high-cost support and we plan to address intercarrier compensation issues in our reply comments.

[5] *FNPRM*, FCC 11-13 at ¶ 10.

[6] *Id.* at ¶ 414.

had nearly doubled in size over the last decade.[7] As a result, the Plan recommended limiting the Universal Service Fund to the 2010 amount.[8]

NCTA recommends that the Commission adopt an overall cap on the size of the Universal Service Fund at the 2010 level, and also cap the amount of annual high-cost support at the amount disbursed in 2010. As the National Broadband Plan noted, unrestrained growth in the fund not only affects consumers, who pay into the fund via a contribution factor that continues to reach higher and higher levels, but could also "jeopardize public support for the goals of universal service."[9] Adopting these limits would provide total universal service support for all programs of approximately $8 billion per year, and would allow for nearly $4.5 billion in high-cost support per year.[10]

Such caps would provide a generous level of funding to achieve the goals of universal service and, paired with the reforms identified by the Commission in the *FNPRM*, will provide sufficient and predictable funding to deploy broadband in areas where it currently is unavailable and to ensure that consumers in high-cost areas continue to receive supported services. It also sets an appropriate budget for the Universal Service Fund, which, unlike most other federal programs, has been without this type of fiscal restraint since its inception. Finally, adoption of these caps is a positive benefit for all consumers of interstate and international telecommunications who currently pay into the Universal Service Fund. These consumers should not have to contend with ever-increasing contribution factors applied to their

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[7] *National Broadband Plan* at 149-50.

[8] *Id.* at 136, 149-50.

[9] *Id.* at 149.

[10] According to the Universal Service Administrative Company (USAC) annual report, total Universal Service Fund support disbursed in 2010 was slightly less than $8 billion, and total high-cost support was approximately $4.3 billion in 2010. Universal Service Administrative Company 2010 Annual Report, http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2010.pdf, at 56, 48 (last visited Apr. 13, 2011) (USAC 2010 Annual Report).

telecommunications bills. Instead, adopting a budget for the overall Fund and for high-cost support provides certainty and limits the burden on the majority of payors who support service to the limited number of consumers in high-cost areas.

II. MAKE UNIVERSAL SERVICE FUNDS AVAILABLE TO SUPPORT BROADBAND

The Commission should immediately move forward on its proposal to repurpose a portion of legacy high-cost support to fund broadband deployment in unserved areas through a Connect America Fund. As described below, the Commission should reduce existing support mechanisms by roughly $2 billion over the next three years, while preserving the remaining high-cost support on an interim basis. Such an approach should enable the Commission to begin funding the construction of broadband networks in unserved areas without jeopardizing the availability of supported services.

A. Repurpose Some Legacy High-Cost Support Funding

To modernize high-cost support to more directly fund broadband services, the Commission should adopt its proposals to eliminate interstate access support (IAS), local switching support (LSS), and wireless competitive eligible telecommunications carrier (ETC) support, except in tribal areas and in Alaska native regions. Eliminating these support mechanisms would make available approximately $2 billion annually to be used for the broadband-focused Connect America Fund without impairing the ability of consumers to continue to receive voice service.[11] The Commission could phase out these legacy support mechanisms over a three year period, beginning in 2012. As this support declines during the

[11] In 2010, approximately $550 million in IAS, $360 million in LSS, and $1.2 billion in competitive ETC high-cost support was disbursed. USAC 2010 Annual Report at 50. The competitive ETC support available for the Connect America Fund would be slightly lower than the $1.2 billion, because this amount includes competitive ETC support disbursed in IAS and LSS, as well as in tribal areas, Alaska Native regions, and to wireline competitive ETCs.

three year transition, a corresponding amount of support could be added to the Connect America Fund, so that the full amount would be available for distribution through the Connect America Fund in 2015.

As the Commission points out in the *FNPRM*, the proposal to eliminate IAS is fully supported by the record compiled in response to the Commission's *2010 High-Cost Reform NPRM*.[12] IAS was intended to provide a limited amount of support to offset interstate access rate reductions enacted in the 2000 *CALLS Order*.[13] The changes adopted in the *CALLS Order* were to remain in effect for a five year period, and the Commission stated that it would revisit the size and operation of the IAS mechanism within that timeframe but the Commission has not taken action since the rules originally were adopted.[14] As a consequence, providers have continued to receive IAS pursuant to the *CALLS Order* for more than twice as long as this support was intended to be available. As the Commission notes, continued receipt of IAS is not necessary for carriers to provide voice service at affordable and reasonably comparable rates.[15] This support should be eliminated and made available to providers that offer broadband in currently unserved areas.

Similarly, the Commission should adopt its proposal to eliminate LSS. As the Commission states, this support was intended to ensure that small carriers could afford to purchase large and expensive traditional circuit switches, but advances in technology have made

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[12] *FNPRM*, FCC 10-11 at ¶ 232; *Connect America Fund*, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6680-81 (2010) (*2010 High-Cost Reform NPRM*).

[13] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13046-47, ¶¶ 201-03 (2000) (*CALLS Order*).

[14] *Id.*

[15] *FNPRM*, FCC 11-10 at ¶ 233.

soft switches and routers scalable and less costly for small companies.[16] Furthermore, the Commission recognizes that many carriers that receive LSS are not "small" companies at all, but are larger companies that choose to operate smaller study areas, allowing them to qualify for LSS.[17] As a result, elimination of LSS will not jeopardize service for existing consumers, and this outdated support should be phased out and turned into support for broadband services.

The Commission should also eliminate competitive ETC support to wireless providers. As NCTA has previously noted, the wireless segment of competitive ETC support is where the likelihood of unnecessary payments is greatest because there are often multiple wireless competitive ETCs in a market and consumers often purchase multiple supported lines per household.[18] Eliminating this support will provide funding for broadband services and will not cause consumers to lose access to voice service. Furthermore, the Commission has proposed to adopt an additional support mechanism for wireless providers that are not available to wireline ETCs.[19] The Commission should eliminate competitive ETC support to wireless carriers over the same three year transition period used for the elimination of IAS and LSS.[20] This support should be made available to broadband providers on a technology-neutral basis through the Connect America Fund.

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16 *Id.* at ¶ 187.

17 *Id.* at ¶¶ 188-89.

18 Comments of the National Cable & Telecommunications Association, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 16 (filed July 12, 2010).

19 *Universal Service Reform; Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) (*Mobility Fund NPRM*).

20 Consistent with its prior recognition of the need for high-cost support in tribal areas and Alaska Native regions, the Commission should exempt providers serving these areas from the reductions in high-cost support. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8848, ¶ 32 (2008) (*Interim Cap Order*) (excepting from the cap on support competitive ETCs serving tribal lands or Alaska Native regions due to the low penetration rates for basic telephone service in these locations).

B. Use Repurposed Funds to Start the Connect America Fund for Broadband

The Commission should create the Connect America Fund to support the availability of broadband services capable of providing 4 Mbps downstream and 1 Mbps upstream speeds (4/1 Mbps) in areas that currently lack this service. Over the next three years, from 2012 through 2014, the Connect America Fund should disburse funds that are repurposed from the reductions identified above. After the end of this three year transition, the Connect America Fund would have approximately $2 billion to disburse to unserved areas in 2015.

During the first three years, the Connect America Fund should be limited to funding the deployment of retail broadband service of 4/1 Mbps in areas where service at these speeds is not currently available.[21] The Commission should use the 4/1 Mbps definition of broadband identified in the National Broadband Plan and in the Commission's last 706 Report.[22] After the three year transition period, the Commission should shift additional support from the legacy high-cost support mechanisms as described in section III(B) below. At that time and as part of these additional reform efforts, the Commission could consider extending the Connect America Fund to support areas that currently have 4/1 Mbps retail broadband service but that would not have this service absent the receipt of legacy high-cost support.

Connect America Fund support should be available on a technology neutral basis to any provider that can provide the 4/1 Mbps broadband service to all existing consumers within a

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[21] As it proposed in the *FNPRM*, the Commission should ensure that Connect America Fund support does not go to fund the deployment of broadband in an area where broadband deployment is funded by other federal or state broadband grants to the same or different providers. *FNPRM*, FCC 11-13 at ¶ 323.

[22] *National Broadband Plan* at 135; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket Nos. 09-137, 09-51, Sixth Broadband Deployment Report, 25 FCC Rcd 9556, 9559-60, ¶ 5 (2010) (*Sixth 706 Report*).

given unserved geographic area and should not be limited to supporting only fixed or mobile broadband services. Conversely, there should not be separate and duplicative funds awarded in the same geographic area to support both a fixed and a wireless broadband provider (which could, in some cases, be the same provider or an affiliated provider). The Commission should first ensure that consumers in all areas of the country have access to 4/1 Mbps retail broadband service, which could be provided by either a fixed or a mobile service.

The Commission should adopt its proposal to distribute Connect America Fund support through a competitive bidding process. Support would be available to cover the costs of providing 4/1 Mbps retail broadband service to all existing households within the project area. Both capital and operating expenditures could be included in the support amount bid, and winning bidders would be obligated to provide service for a set period of time, *e.g*., 10 years. Geographic areas covered by Connect America Fund projects should be technologically neutral census blocks, rather than incumbent LEC study areas or wire centers. To provide for the widest possible participation, the Commission should forbear from requiring that Connect America Fund recipients be ETCs, and should instead allow both carriers and non-carriers to participate in the bidding process.

To ensure that support is used wisely and efficiently, the Commission should establish a $3000 per-line subsidy limit above which providers will not receive Connect America Fund support, as proposed in the *FNPRM*.[23] Rather than funding terrestrial facility construction in extremely high-cost areas, the Commission should provide consumers with discounts or vouchers to offset a portion of the cost of satellite service. These satellite service discounts

[23] *Id.* at ¶ 211.

could also be available to consumers in areas without 4/1 Mbps service and where no provider applies for Connect America Fund support.

III. FURTHER REFORM OF REMAINING LEGACY HIGH-COST SUPPORT

In addition to establishing the Connect America Fund over a three year period, the Commission should also reform the remaining legacy high-cost support mechanisms, including conducting an analysis to determine the amount of high-cost support that is being disbursed in non-competitive areas. If the Commission repurposes approximately $2 billion of high-cost support for disbursement through a Connect America Fund, approximately $2.5 billion will continue to be available for disbursement under the remaining high-cost support mechanisms. The Commission should adopt its proposals for modernizing and eliminating inefficiencies in this support.

A. Identify the Amount of High-Cost Support Attributable to Areas with No Unsubsidized Competitors

In the *FNPRM*, the Commission proposes to require rural carriers to disaggregate support within study areas beginning in 2012. The Commission recognizes that this disaggregation would not change the total amount of support, but it would "facilitate our ability to identify those areas most in need of ongoing support in the future."[24]

NCTA agrees that it is important for the Commission to analyze distribution of high-cost support on a more granular basis and assign high-cost support to areas without an unsubsidized competitor. The Commission should require incumbent LECs that receive high-cost support to identify the census blocks within their service territories and the number of lines they serve in those areas. The Commission should identify the census blocks where no unsubsidized competitors provide 4/1 Mbps retail broadband service and combine this information with USAC

[24] *Id.* at ¶ 375.

data on high-cost support distribution so that the public can see how much support (in total and on a per-line basis) is being spent in each census block that does not have unsubsidized competitive broadband service. The Commission can use this granular information to help decide how much additional support is needed to bring broadband to unserved areas and to determine what sort of transition is needed for areas that currently have 4/1 Mbps retail broadband service, but where continued funding may be needed to provide this service.

B. Reform High-Cost Loop and Interstate Common Line Support

The Commission should adopt its proposals to reform and rationalize existing high-cost loop support (HCLS) and interstate common line support (ICLS), which are available to rural and rate-of-return regulated ETCs. These reforms should become effective after a three year period, in 2015. Adopting an effective date for these changes of January 1, 2015, will retain, on an interim basis, approximately $2.5 billion in legacy high-cost support, which will allow entities that currently receive this type of support, i.e., generally smaller, rural carriers, to plan for the reductions and adjust accordingly.[25]

The Commission has identified several areas in the HCLS and ICLS mechanisms that result in inefficient use of funds or encourage imprudent investments by carriers. First, the Commission recognized that the high percentage of reimbursable costs available under the HCLS mechanism created incentives for carriers to inflate their costs by incurring network expenses that would not be prudent given these companies' number of declining access lines.[26] To address this issue, and to "facilitate more equitable distribution of limited HCLS funds among rural carriers," the Commission proposed to reduce the HCLS support percentages from 65 and 75

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[25] An ETC could seek a waiver if it could demonstrate that these reductions would cause it to discontinue service and consumers would have no alternative service provider in the area. The combination of a three year transition period and a waiver process should ensure that consumers are not adversely affected by the changes proposed in the *FNPRM*.

[26] *FNPRM*, FCC 11-13 at ¶¶ 178, 180.

percent to 55 and 65 percent.[27] The Commission also proposed to eliminate HCLS for incumbent LECs with more than 200,000 working loops, recognizing that there are only five rural incumbent LECs in this category and none of them are receiving HCLS because their loop costs are far below the required threshold.[28] To discourage rural incumbent LECs from incurring unnecessary costs, the Commission should adopt these proposed rule changes.

The Commission also proposes to eliminate support for corporate overhead expenses, stating that these expenses are not the result of providing telecommunications services, but are instead based on managerial priorities and discretionary spending.[29] Similarly, the Commission proposes to eliminate Safety Net Additive support.[30] This support was meant to reimburse providers for significant increases in investment, but under the operation of the rules, incumbent LECs are instead receiving this support due to significant line losses.[31] We support the Commission's proposals to eliminate these inefficient uses of limited universal service funds.

The Commission further proposes to reform existing support by capping the amount of operating and capital expenses reimbursable through high-cost support.[32] Under the current rules, the Commission recognized that rural rate-of-return carriers are able to recover the entire amount of their marginal loop costs above a certain threshold through universal service support, rather than recovering it from their customers.[33] The effect of this recovery mechanism is to encourage such carriers to inflate their costs, and discourage them from reducing their costs by

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27 *Id.* at ¶ 180. Under the current HCLS rules, rural incumbent LECs operating 200,000 or fewer loops receive 65% of their costs that exceed 115% of the national average cost per loop (NACPL). These carriers receive 75% of their costs that exceed 150% of the NACPL. 47 C.F.R. § 36.631.

28 *FNPRM*, FCC 11-13 at ¶ 181.

29 *Id.* at ¶¶ 197-98.

30 *Id.* at ¶ 185.

31 *Id.* at ¶ 184.

32 *Id.* at ¶ 203.

33 *Id.* at ¶ 202.

operating more efficiently.[34] To address these concerns, the Commission proposes to limit high-cost support for operating and capital expenses to a certain threshold.[35] The Commission also proposes to adopt a limit on the amount of high-cost support available per line, and lists $3,000 per year as a potential limit.[36] Consistent with its principle of fiscal responsibility and to ensure that high-cost funds are used as efficiently as possible, we urge the Commission to adopt these proposals.

At the end of the three year period, the Commission should repurpose legacy high-cost model support (HCMS), which is available to price cap regulated carriers, and disburse this support to providers through the Connect America Fund. As discussed above, during the initial three years the Connect America Fund should support broadband only in unserved areas. With the addition of funds previously disbursed through HCMS, however, the Connect America Fund could also support broadband where it currently exists but where ongoing support is required, *i.e.*, where there is no business case for an unsubsidized competitor to provide service.

C. Immediately Commence a Rate of Return Proceeding

The Commission should initiate a proceeding to reset the rate of return applicable to incumbent LECs regulated under this method. These carriers have been subject to an authorized 11.25 percent rate of return that was established in 1990. There have been considerable changes in the marketplace since that time, and it seems highly unlikely that a rate of return set more than 20 years ago yields rates that are just and reasonable today. The Commission should conclude its proceeding and establish a new rate of return prior to the filing of interstate access tariffs for the 2012-13 tariff year, by July 1, 2012. The Commission should also lift the stay of section

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34 *Id.*

35 *Id.* at ¶¶ 203-04.

36 *Id.* at ¶ 211.

65.101 of its rules regarding the trigger for commencing a rate-of-return proceeding.[37] The Commission stayed the rule in 2001 due to its intention to reexamine the rate regulation rules in light of Congress's preference for "competition as the fundamental policy for the telecommunications industry."[38] This reexamination did not occur and as long as the Commission retains rate-of-return regulation, the rate of return used must be reexamined and reset as necessary to ensure that rates remain just and reasonable as required by section 201 of the Communications Act.[39]

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[37] 47 C.F.R. § 65.101.

[38] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19700-02, ¶¶ 206-210 (2001) (*MAG Order*).

[39] 47 U.S.C. § 201.

CONCLUSION

NCTA urges the Commission to adopt its proposed reforms to the high-cost and intercarrier compensation systems. Capping the size of the Universal Service Fund and high-cost support will serve to ensure that such funds are collected and disbursed in a fiscally responsible manner. The Commission also should immediately act to reduce certain inefficient legacy high-cost support funds and transition these funds to provide broadband services to currently unserved areas. Additional reforms should be adopted after a three year transition period while the Commission examines the need for support in areas where broadband is offered only by subsidized providers.

Respectfully submitted,

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