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 an 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

COMMENTS
of the
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

The Public Service Commission of the District of Columbia ("DC PSC") hereby submits these Comments in response to the Federal Communications Commission ("FCC" or "Commission") Notice of Proposed Rulemaking ("*NPRM*") and the Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-captioned proceeding.[1] The *NPRM/FNPRM* request comment on the Commission's proposals to fundamentally modernize and reform the Commission's Universal Service Fund ("USF" or "Fund") and intercarrier compensation ("ICC") system to meet the need for broadband service availability in all parts of the United States,

[1] *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 an 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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, February 9, 2011, 76 F.R. 11632 (March 2, 2011).

including where it is not economically viable to deploy and/or operate broadband networks.[2] We look forward to the creation of an efficient and effective Connect America Fund ("CAF") that will financially support the deployment of broadband infrastructure to truly "unserved" populations in rural America.

I. INTRODUCTION

In the Introduction to the *NPRM/FNPRM*, the Commission recognizes that USF and ICC are both hybrid state-federal systems and that reform will work best with the Commission and state regulators, such as the DC PSC, cooperating to achieve shared goals.[3] The Commission also acknowledges that crucial work has already been done to advance broadband infrastructure deployment, including by the National Telecommunications and Information Administration ("NTIA") and by the Rural Utilities Service ("RUS"), as well as by states' own efforts.[4] The DC PSC is pleased to contribute these comments to the Commission's modernization and reform undertaking. In the last several years, we have engaged in our own program responsibly to advance the deployment and adoption of broadband services in the District of Columbia. The DC PSC has gathered three rounds of broadband service availability data from broadband service providers in the District of Columbia to assist the District Office of the Chief Technology Officer ("OCTO") data submission to the National Telecommunications and Information Administration ("NTIA"), State Broadband Data and Development Grant Program, for use in the preparation of NTIA's National Broadband Map; see: http://www.broadbandmap.gov/. In addition, the DC PSC has assisted OCTO in creating a broadband map website specific to the District of Columbia; see: http//broadbandmap.dc.gov. The DC map shows a stark digital divide in the District. The average broadband wireline adoption rate for the District as a whole was 65.3% in 2009. However, in Wards 5, 7 and 8, adoption rates were below 40%, while adoption rates in more affluent Wards fall in the 80-

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2 *NPRM/FNPRM* at ¶ 1.

3 *Id.* at ¶ 13.

4 *Id.*

100% range.[5] Thus, we have an interest in reforming the USF/ICC systems to help accelerate the deployment and adoption of broadband in underserved areas of the District.

We also have a sincere interest in fiscally responsible reform. The District has historically and consistently been a "net contributing state" to the federal Universal Service Fund, in effect, subsidizing the telecommunications services provided in other jurisdictions. Table 1 shows the estimated net dollar flow from the District of Columbia to the USF for the last three years for which data are available.[6]

Table 1 (in thousands)

Year	Payments From USF to Providers	Estimated Contributions	Estimated Net Dollar Flow
2009	9,518	34,291	-24,773
2008	22,049	33,942	-11,893
2007	1,191	33,588	-32,397

It is clear that District of Columbia residents and businesses would be adversely affected by any waste or inefficiencies in the USF system. Thus, we are interested in ensuring that the reforms sought by the Commission both advance the deployment of broadband, and insure fiscal responsibility and accountability.

II. DISCUSSION

A. Identifying Areas Eligible for Support

The Commission proposes to identify unserved areas on a Census Block basis and to offer support for deployment of broadband services to bidder-defined service areas, either by individual Census Blocks or aggregations of Census Blocks.[7] Use of Census Blocks will facilitate

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[5] See Press Release, Office of the Chief Technology Officer, March 9, 2011. See http://octo.dc.gov.

[6] See Federal-State Joint Board on Universal Service, Monitoring Reports, available at www.fcc.gov/wcb/iatd/monitor.html. Note that in 2008 a substantial payment of $21,403,000 was made to the Schools & Libraries program.

[7] *NPRM/FNPRM* at ¶289.

use of the NTIA National Broadband Map, which uses information collected on a Census Block basis.[8] The Commission asks for comment on how to define unserved areas based on the data collection initiated by the Broadband Data Improvement Act ("BDIA") and funded through the NTIA State Broadband Data and Development Grant program ("SBDD").[9]

The DC PSC recommends that the FCC not rely solely on the National Broadband Map to define and locate unserved areas. Rather, the Commission should coordinate with NTIA and the RUS so as to get the latest overlay maps showing the areas to be served by private and public infrastructure projects that have received funding under the NTIA Broadband Technology Opportunities Program ("BTOP") and the RUS Broadband Initiatives Program ("BIP"). NTIA has awarded $3.5 billion in BTOP grants for the construction of 123 broadband infrastructure projects.[10] The RUS has approved 320 awards for a total of $3.529 billion. The RUS awards include 285 "last mile" projects, 12 "middle mile" projects, four satellite awards and 19 technical assistance awards, providing access to 2.8 million households, 364,000 businesses and 32,000 anchor institutions.[11] The Commission should not identify unserved areas without taking into consideration whether areas shown as "unserved" on the National Broadband Map are actually receiving funds under the BTOP and BIP programs.

The Commission appears to recognize this dilemma when it proposes to require applicants for CAF financial support to avoid areas where broadband infrastructure deployment is funded by other sources.[12] The DC PSC does not believe that a proposed applicant would necessarily have sufficient information to be able to certify about other sources of funding. In particular, an entity that seeks to qualify as a CAF reverse auction bidder would probably not have up-to-date information about the status of NTIA/RUS funded project deployment.

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8 *Id.* at ¶ 291.

9 *Id.*

10 NTIA, BTOP Quarterly Program Status Report, February 2011, available at www.ntia.doc.gov/recovery/BTOP/BTOP_QuarterlyReport_Feb_2011.pdf.

11 See www.rurdev.usda.gov/utp_bip.html.

12 *NPRM/FNPRM* at ¶ 323.

Therefore, that information should be built into the "front end" of the identification process through early coordination with NTIA and the RUS.

B. Pre-Existing Deployment Plans

The Commission has concluded that the goal of the first phase of the CAF is to increase deployment in unserved rural and high cost areas, not to fund existing facilities or deployment to which a carrier is already committed.[13] The Commission cites as an example the case of Frontier Communications, which has, in the context of its acquisition of almost 5 million access lines from Verizon, committed to significantly extend broadband in its service areas.[14] The Commission asks whether it should explicitly limit funding in the first phase of the CAF to "new" or "incremental capacity or deployment to which the carrier has not already committed"?[15]

The DC PSC strongly agrees that pre-existing deployment plans or commitments should be considered when determining whether an area is unserved. It has become common practice for companies to make such broadband deployment commitments when seeking FCC approval for an acquisition or merger. For example, in 2007, the Commission approved the acquisition by Fairpoint Communications of the Maine, New Hampshire and Vermont assets of Verizon Communications. In doing so, the Commission specifically pointed to Fairpoint's plans to increase broadband addressability to the same level it has achieved in its existing service territory in those three states.[16] Indeed, the Commission specifically stated its belief that Fairpoint's plans for broadband deployment would produce public benefits.[17]

In these and other examples, it is clear that there are commitments to deploy broadband services that formed the basis of Commission public interest findings. These should not be ignored. Rather they should be specifically considered when the Commission is determining whether there are unserved areas that require CAF support.

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13 *Id.* at 308.

14 *Id.*

15 *Id.*

16 *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to Fairpoint Communications, Inc*, FCC 07-226, January 9, 2008 at ¶ 30.

17 *Id.* at ¶ 32.

In addition to considering these commitments, however, the Commission must also enforce them. If the Commission were to exclude areas from the "unserved" category based on commitments made by companies seeking Commission favor for an acquisition or merger, then those areas would not be part of the auction process and would remain outside the CAF system. If, in turn, the companies making those commitments failed to live up to them, the citizens of those unserved areas would continue to be unserved, despite the Commission's best efforts at reform.

This is not a minor problem. There are many examples of cases in which the Commission has heard and accepted promises of broadband infrastructure deployment in return for agreeing to a transaction that might not otherwise be considered in the public interest.[18] Indeed, it seems quite fashionable to promise broadband services to large swaths of the U.S. population when companies want something.[19] The Commission must not forget those promises; it must employ an organized system of enforcement that ensures that promises of broadband infrastructure deployment are kept.

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[18] See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC,* FCC 08-258, November 10, 2008; *Sprint Nextel Corporation and Clearwire Corporation*, FCC 08-259, November 7, 2008; *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, FCC 09-54, June 25, 2009; *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, FCC 10-87, May 21, 2010; *Sky Terra Communications, Inc. and Harbinger Capital Partners Funds*, DA 10-535, March 26, 2010; *Applications of Comcast Corporation, General Electric Company and NBC Universal Inc.*, FCC 11-4, January 20, 2011; *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control*, FCC 11-47, March 18, 2011.

[19] "Expands 4G LTE deployment to 95 percent of U.S. population – urban and rural areas," Press Release, AT&T to Acquire T-Mobile USA from Deutsche Telekom, March 20, 2011, available at www.mobilizeeverything.com.

III. CONCLUSION

The DC PSC respectfully requests the Federal Communications Commission to consider these comments when determining the important issues surrounding the future of the Universal Service Fund and Intercarrier Compensation systems.

Respectfully submitted;

PUBLIC SERVICE COMMISSION
of the DISTRICT OF COLUMBIA

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