Before the
Federal Communications Commission
Washington, DC 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

American Cable Association

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

Thomas Cohen
Randall W. Sifers
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, DC 20007
Tel. (202) 342-8518
Fax (202) 342-8451
tcohen@kelleydrye.com
Counsel to the
American Cable Association

April 18, 2011

SUMMARY

The American Cable Association's (ACA's) members have an intense interest in the Federal Communications Commission's efforts to reform the High-Cost fund and create the Connect America Fund (CAF). Most of its members provide voice services and assess universal service fees on their subscribers; many compete with incumbent local telephone companies that draw from the High-Cost fund; a large group receives High-Cost funding; and, a significant number would like to seek to obtain funds from the CAF.

Because of this diverse and interested membership, in developing a plan to reform the universal service fund for a broadband era, ACA has had to navigate and balance strongly competing interests, while ensuring any policy proposals are in the public interest. Yet, after lengthy and exhaustive discussions among its members, it developed an overall policy framework supported by a consensus of its membership and that is squarely in the public interest. ACA supports the Commission adopting a fiscally responsible and competitively neutral program to ensure universal broadband service.

The proposals in ACA's policy framework strike a balance that in many aspects is similar to the balance proposed by the Commission in its *NPRM*. Yet, as discussed at length herein, there are key differences, especially regarding the need to target funding where there is no competitive choice, to ensure all providers can participate in seeking funding, and to address the unique issues of households in rural areas served by entities currently receiving High-Cost support. Thus, ACA believes the Commission's proposals provide a good starting point to bring broadband to unserved areas, and, through refinements and targeted rebalancing, there is the potential to adopt reforms this year to reorient the High-Cost fund to improve efficiency and achieve universal broadband service.

ACA strongly supports the Commission's proposal to cap the overall budget for the CAF and any existing high-cost programs so that its total fund size does not exceed the year-end 2010 High-Cost fund level. The High-Cost fund has grown enormously – quadrupling in size – since passage of the 1996 Telecom Act. Consequently, it has become increasingly costly to consumers who bear the burdens of the program. Imposing a hard cap will help eliminate excesses and inefficiencies associated with the High-Cost program and ensure that going-forward funds are allocated precisely to those areas that truly require support. Even with a hard cap, the year-end 2010 funding level for CAF will be sufficient to transition from the current support mechanisms and allow the Commission to meet its goal of driving universal access to affordable broadband services as efficiently as possible.

The creation of the CAF to replace over time all other explicit support provided by the current High-Cost fund is the right mechanism to enable the Commission to achieve its universal broadband objective. Although the CAF should be available to both fixed and mobile broadband providers, the Commission should allocate separate support for each within the total CAF because the performance, coverage, and reliability capabilities of fixed and mobile differ significantly, making them distinctly different services. The unserved nature of each broadband service should be assessed separately, and the Commission could then determine funding objectives and budgets for each. That said, the CAF should initially focus on: (1) providing capital grants to a single provider – distributed through reverse auctions – to extend fixed broadband services to unserved areas; and (2) implementing the proposed Mobility Fund to address immediate mobile coverage issues.

Funding the CAF to support fixed broadband services should be achieved in several ways. First, High-Cost support for larger telephone companies (those with more than

100,000 lines in aggregate nationwide) should be reduced by rapidly phasing down interim support and by eliminating support where there are competitors providing service that do not receive High-Cost support. In addition, the identical support rule should be eliminated, and the funding should be redirected over a five year period to the CAF. Such steps should produce initial funding for the CAF in excess of $500 million annually – with this amount expected to grow to approximately $1.5 million annually – which can be used to support the deployment of fixed broadband services.

Because broadband providers are already serving most of the country, it is essential that the Commission ensure that it selects areas for support that are truly unserved. That means sufficient evidence should be available to determine that an area lacks service. ACA's concern here is based on its members' experience during the Broadband Stimulus award process. Many members found that awards to areas that were putatively unserved were in fact served by them. In addition, High-Cost support currently is awarded by study area, which can cover a large area, based on an average calculation rather than a precise determination of need. ACA supports the Commission's proposal to identify unserved areas on a much more granular (census block) basis – that is, it should undertake the process of disaggregating larger study areas into census blocks that are unserved, not unserved but served only by the incumbent, and those served by competitors – to ensure that support is precisely targeted. But instead of having bidders define the service areas for reverse auctions, the Commission should aggregate census blocks into relatively compact unserved service territories such that both network deployments and operations are economically and technically feasible. A census block should be defined as unserved where at least 90 percent of the households do not have access to broadband service at speeds at least equal to a national average broadband speed, which initially should be set at 4

Mbps (actual) downstream and 1 Mbps (actual) upstream. To ensure that the performance benchmark keeps pace with technological improvements, the Commission should review that national average broadband speed every two years and adjust it to determine unserved areas. To limit gerrymandering, each census block in an unserved area must be unserved – the Commission should not average across census blocks. After unserved areas have been identified, the Commission should publish for public comment a preliminary list of areas that will be made available for bid, enabling the Commission to obtain confirmation that its list is accurate both in terms of areas where funding is truly needed and to ensure that the areas identified for auction are areas where it is feasible for a single provider to offer service.

Reverse auctions should be held to select a broadband service provider to receive a capital grant to construct infrastructure in an unserved area. Because the current Eligible Telecommunications Carrier qualification rules can inhibit qualified bidders, the Commission should permit "qualified bidders," defined as providers operating networks where broadband service has been provided for at least five years, to participate in reverse auctions. This policy will advance the Commission's objectives of driving access to affordable broadband services in unserved areas as efficiently as possible and maximize the number of participants. If no bids are received (or bids exceed an amount predetermined and announced by the Commission for an unserved area), the Commission should consider offering to provide operating support in which case it should seek bids from all providers, including satellite and mobile providers.

While ACA supports many of the Commission's proposals, they should be rebalanced when dealing with telephone companies with fewer than 100,000 lines in the aggregate nationwide, because these smaller providers are most reliant on current High-Cost funding to provide service to consumers and will suffer most if funding is reduced significantly and precipitously. To address the unique concerns of these smaller providers, the Commission should offer them a right of first refusal to continue to draw from the High-Cost fund for a period of eight years so long as they agree to commit to provide broadband service in all their service areas at specified minimum performance levels. If the provider refuses the offer, the Commission would undertake the same process of disaggregating the study area discussed for larger telephone companies and then hold a reverse auction to select a provider to receive a capital grant to provide broadband service in the area. At the end of the eight year period, High-Cost funding to these providers will sunset. Support will then be disaggregated in the overall service territory of the smaller carrier to ensure that no support is awarded within an area where broadband service is being offered. For areas that fall within the then current benchmark as being unserved, reverse auctions will be held to select service providers that will be eligible to receive capital grants to provide broadband service in the unserved areas.

Finally, a focus just on unserved areas will leave many households – the so-called underserved area problem – without access to broadband service. Underserved areas contain operating broadband networks serving many households, which have the potential to be expanded to reach additional households and upgraded to provide higher performance service. The underserved area problem should be addressed first by conducting a pilot program using "broadband vouchers," which can be expanded if successful. Broadband vouchers would be made available to pay for the cost of bringing infrastructure to individual unserved households. The affected household would select a broadband service provider to construct that facility, and funding would be issued directly to the provider.

TABLE OF CONTENTS

Page

I. THE COMMISSION SHOULD IMPOSE A HARD CAP ON FUNDING FOR THE CAF AND ANY CONTINUING HIGH-COST SUPPORT AT THE YEAR-END 2010 OVERALL HIGH-COST FUNDING LEVEL 8

II. ESTABLISHING AND OPERATING THE CONNECT AMERICA FUND................ 12

A. THE COMMISSION SHOULD ESTABLISH SEPARATE SUPPORT FOR FIXED AND MOBILE BROADBAND WITHIN THE OVERALL CAF... 13

B. THE MOBILITY FUND SHOULD PROVIDE INITIAL SUPPORT FOR UNIVERSAL MOBILE BROADBAND SERVICE 14

C. FUNDING THE CAF TO SUPPORT FIXED BROADBAND SERVICES...... 15

1. REDUCING AND TARGETING SUPPORT FOR ETCS WITH MORE THAN 100,000 LINES – THE DISAGGREGATION PROCESS 16

2. THE IDENTICAL SUPPORT RULE SHOULD BE ELIMINATED... 18

D. CAF SUPPORT SHOULD BE PROVIDED IN UNSERVED AREAS............. 19

1. DEFINING UNSERVED AREAS: THE COMMISSION SHOULD AGGREGATE CENSUS BLOCKS TO DETERMINE AN UNSERVED AREA.. 20

2. DEFINING UNSERVED AREAS: NATIONAL AVERAGE BROADBAND SPEEDS ARE THE APPROPRIATE PEFORMANCE BENCHMARK.. 22

3. DEFINING UNSERVED AREAS: THE LIST OF UNSERVED AREAS SHOULD BE PUBLISHED FOR PUBLIC COMMENT......... 23

E. CAF SUPPORT SHOULD BE AWARDED TO A SINGLE PROVIDER IN AN UNSERVED AREA THROUGH REVERSE AUCTIONS.................... 24

F. REVERSE AUCTION PROCESS 25

1. THE COMMISSION SHOULD ENABLE “QUALIFIED” PROVIDERS TO PARTICIPATE AS BIDDERS AT REVERSE AUCTIONS 26

2. THE COMMISSION SHALL ESTABLISH OBJECTIVE, MINIMAL CRITERIA TO ENSURE THAT ALL BIDDERS ARE QUALIFIED 27

3. BUILD-OUT AND CONTINUING SERVICE OBLIGATIONS FOR AUCTION WINNERS.. 27

TABLE OF CONTENTS
(continued)

Page

4. AUCTION WINNER PERFORMANCE AND PRICE COMMITMENTS ... 28

5. THE COMMISSION SHOULD ENSURE THAT ANY WINNING BIDDER HAS THE REQUISITE FINANCIAL AND OPERATIONAL WHEREWITHAL AND WILL CONSTRUCT AND OPERATE A NETWORK WITH SUFFICIENT PERFORMANCE CAPABILITIES, COVERAGE, AND RELIABILITY/QUALITY ... 30

6. ANY WINNING BIDDER MAY USE ITS NETWORK ONLY TO PROVIDE BROADBAND SERVICE TO THE DESIGNATED UNSERVED AREA AND NOT TO ANY SERVED AREA, UNLESS THE BIDDER IS ALREADY SERVING THAT AREA ... 31

7. MONITORING, COMPLIANCE AND ENFORCEMENT ... 32

G. IF NO BIDS ARE RECEIVED OR BIDS ARE EXCESSIVE FOR AN UNSERVED AREA, THE COMMISSION SHALL OFFER TO PROVIDE OPERATING SUPPORT AND SHALL SEEK BIDS FROM ALL PROVIDERS, INCLUDING SATELLITE AND MOBILE PROVIDERS ... 33

H. THE COMMISSION SHOULD REEVALUATE UNSERVED AREAS AT THE END OF THE SERVICE OBLIGATION PERIOD ... 33

I. PROVIDING A GRADUAL TRANSITION FOR COMPETITIVE ETCS WITH FEWER THAN 100,000 LINES CONSISENT WITH THE COMMISSION'S UNIVERSAL BROADBAND OBJECTIVE AND OVERALL REFORM OF UNIVERSAL SERVICE FUNDING ... 34

J. PILOT PROGRAM FOR UNDERSERVED AREAS ... 36

III. CONCLUSION ... 37

APPENDIX

Before the
Federal Communications Commission
Washington, DC 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 AMERICAN CABLE ASSOCIATION

The American Cable Association (ACA), by its attorneys, respectfully submits these Comments in response to the Commission's Notice of Proposed Rulemaking (*NPRM*) in the above captioned proceeding.[1] ACA's comments are directed to the issues of reforming the High-Cost universal service fund and the adoption and implementation of the Connect America Fund (CAF).

INTRODUCTION AND OVERVIEW OF ACA'S PROPOSAL

ACA's membership is large – approximately 900 members; extensive – covering 49 states and providing service to approximately 7.6 million subscribers; and diverse – approximately 60% are traditional mid-size and small cable operators and 40% are local

1 *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (released Feb. 9, 2011).

telephone companies providing cable services. Most ACA members provide the triple-play of voice, video, and Internet access services, and, of particular relevance for the above-mentioned proceedings, ACA membership includes:

- Cable operators who provide broadband service in rural areas who do not draw from the High-Cost universal service fund;
- Cable operators who provide broadband and VOIP services in rural, high-cost and urban, non-high-cost areas and contribute, but do not draw, from the fund;
- Incumbent telephone operators in rural areas who also provide video service and broadband services and currently contribute to and draw from the fund as eligible telecommunication carriers;
- Competitive voice providers who also provide video service and broadband service in rural areas and currently contribute to and draw from the fund as competitive eligible telecommunications carriers, both for wireline and wireless services.

ACA members' opinions on the broadband grant and loan programs[2] established under the American Recovery and Reinvestment Act (Recovery Act) also vary. Many ACA members participated in applying for the Broadband Stimulus funding under the Recovery Act. Some, primarily local telephone companies, won awards to enhance their broadband networks. Other did not; many of them have concerns about the objectivity of the process. Still others who did not apply were concerned that awards were made in areas where they provided broadband service.

Because of this diverse membership with a wide variety of business plans and experiences and regulatory interests, in developing a plan to reform the universal service fund for

[2] There are two ARRA broadband grants and loan programs: the Broadband Initiatives Program (BIP) operated by the Rural Utilities Service (RUS) and the Broadband Technology Opportunities Program (BTOP) operated by the National Telecommunications and Information Administration (NTIA) (together, the Broadband Stimulus programs). Background on the two programs can be found at: http://www.broadbandusa.gov/.

a broadband era, ACA has had to navigate and balance strongly competing interests, while ensuring any policy proposals are in the public interest. Yet, after lengthy and exhaustive discussions among its members, it has been able to develop an overall policy framework supported by a consensus of its membership and that is squarely in the public interest. ACA supports the Commission adopting a fiscally responsible and competitively neutral program to ensure universal broadband service.

The proposals in ACA's framework strike a balance that in many aspects is similar to the balance proposed by the Commission in its *NPRM*. Yet, as discussed at length herein, there are key differences, especially regarding the need to target funding where there is no competitive choice, to ensure all providers can participate in seeking funding, and to address the unique issues of households in rural areas served by entities currently receiving High-Cost support. Thus, ACA believes the Commission's proposals provide a good starting point to bringing broadband to unserved areas, and, through refinements and targeted rebalancing, there is the potential to adopt reforms this year to reorient the High-Cost fund to improve efficiency and achieve universal broadband service.

ACA's approach to reform of the High-Cost fund and creation of a broadband fund is based on four baseline policy principles:

1. Ensure fiscal responsibility and efficiency in the distribution of support;
2. Do not skew market-driven competition by continuing support to only one or a select number of providers in a market;
3. Provide future support on a competitively and technology neutral basis using reverse auctions;
4. Enable smaller incumbent providers (those with fewer than 100,000 lines in aggregate nationwide) which have demonstrated competence, but rely to a great extent on support, a sufficient time to transition while ensuring they act consistently with the universal broadband objective.

Applying these principles to the challenge of how to achieve efficiently and effectively universal broadband service, ACA reached the following policy conclusions:

1. Cap the Fund. There are sufficient funds within the current High-Cost fund to adequately support the development of universal broadband service – both for fixed and mobile service – and a hard cap on the current fund level (year end 2010) should be imposed. Over the past 15 years, the High-Cost fund (and for that matter all universal service funding overseen by the Commission) has grown significantly, which has greatly increased the fees service providers have levied, and thus burdens imposed, on their subscribers. This concern becomes even greater because universal service funding is "off-budget," *i.e.*, it does not go through the normal federal budget accountability process. Thus, the Commission must exhaust all efforts to eliminate waste and make funding more efficient.

2. Eliminate support where there is competition. Except for a finite period in areas served by the smallest incumbent local exchange providers, support should not be provided where competitors covering a significant part of an area are providing – or are in the process of providing – service. It was not that long ago that local telephone companies only provided voice service and cable operators only provided video service. Since they were not direct competitors, providing government support to only one entity did not skew the marketplace. However, that is no longer the case in most areas of the country. A variety of providers compete head-to-head to provide voice and broadband access services (and video as well), and the Commission must be careful not to "pick winners" by awarding support to only a select entity or group of entities.

The Commission should view the advent of widespread competition for voice and broadband services as an opportunity to retarget support so it reaches those areas where there is (or is likelihood of) only a single provider. This means the Commission will need to undertake the difficult task of disaggregating larger study areas, on which basis support is currently provided; that is, the Commission should determine at a more granular level (census blocks) the areas where support is needed and where it is no longer necessary. ACA believes that the Commission should begin this process first with larger local telephone providers who have greater financial wherewithal to withstand this material change.[3]

3. Create a new fund (CAF) to support universal access to broadband service. ACA supports the Commission's aim of universal access to broadband service and the creation of the CAF to bring broadband service to households in unserved areas of the country. ACA also recognizes that there may be many areas that are not unserved, but where a substantial number of households may not have access to broadband service (so-called underserved areas). Support may be required for these households as well, but, because of concerns raised about awards being made in the Broadband Stimulus programs in areas where competitors were already providing – or readily could provide – service, the Commission should proceed cautiously here, and ACA supports a pilot program to test the best way to assist households in underserved areas.

4. Use the CAF to separately support universal fixed and mobile broadband service. Fixed and mobile broadband services are sufficiently different in nature and price – and their availability in the market is sufficiently different – that the Commission needs to develop separate support programs for each within the CAF. The Commission's Mobility Fund proposal[4] reflects the difference in characteristics of these broadband services. It also is an excellent example of the type of sharply focused support that should become the focus of universal service

---

[3] As discussed later in these comments, ACA supports ensuring that sufficient transition mechanisms are in place prior to a CAF recipient initiating service so that no household in an area where an incumbent wireline provider is current receiving High-Cost support will lose access to voice service.

[4] *Universal Service Reform, Mobility Fund*, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) (*Mobility Fund NPRM*).

funding, and ACA has supported its creation and implementation.[5] Thus, the Commission should review the state of access by households and consumers to each of these two types of broadband service and then determine whether support is necessary, to what extent is it necessary, and for how long. Again, the Commission has an opportunity in this proceeding to create a new paradigm in how to think about and provide universal service funding, and it should employ more targeted and more finite funding.

5. Award CAF support in unserved areas through a competitive process. In awarding capital support to develop fixed broadband networks and services, the Commission should employ a competitive process to produce an efficient, objective, and competitively-neutral result. That means it should use for all reverse auctions only clear and objective requirements that CAF recipients would need to meet:

(a) The unserved area should be defined as a group of census blocks where at least 90 percent of the households do not have access to broadband service with a performance of 4 megabits per second (Mbps) downstream and 1 Mbps upstream; each census block in any unserved area must meet the broadband speed limitation (*i.e.*, no averaging among census blocks); moreover, the Commission must ensure the area is truly "unserved" and compact and suitable for network deployment and the provision of services.

(b) The network should be built within 3 years of the winning bid, and services should be provided for 5 years after construction is completed.

(c) Expected broadband performance should be forward-looking, which, at a minimum, should be 16 Mbps downstream and 4 Mbps upstream.

(d) The price charged to users for broadband service should be a national urban average rate for such service.

In addition, the Commission should select a single provider in each area and give awards for unserved areas in order of priority, beginning with the bid that is the lowest amount per household passed. Further, the Commission needs to establish and announce prior to an auction

[5] *Mobility Fund NPRM*, Reply Comments of American Cable Association, Jan. 18, 2011.

an upper limit based on the cost to pass a household beyond which it should not award capital grants. For those areas where no bids are received (or bids exceed an amount predetermined and announced by the Commission), the Commission should consider permitting all, including non-fixed providers, to bid for operating support to provide service.

Funding for the capital grants would come from reducing and eliminating High-Cost support for larger telephone companies and competitive eligible telecommunications providers. Under ACA's plan, approximately $500 million per year would be made available initially and this amount would grow to over $1.5 billion per year.

5. Permit smaller local telephone companies to deploy broadband by continuing to receive support for a finite period. Smaller local telephone companies have demonstrated, for the most part, competence in providing telecommunications service in high-cost, rural areas. They operate in fewer and much smaller service territories and also tend to be less diversified than the major telephone providers. In other words, High-Cost support makes up a much larger percentage of their operating revenues. For those reasons, any transition should be more gradual. Yet, households in their territories need and deserve high-speed broadband service. Finally, if unserved areas within these territories are included in the earlier rounds of auctions, because there may be so many of them (potentially thousands), it may prove administratively burdensome for the Commission. ACA believes these concerns and goals can be best balanced by permitting smaller telephone companies to elect to continue to receive High-Cost support so long as they agree to rapidly upgrade their networks to provide the same broadband performance required of auction winners. This election would sunset at the end of eight years, and the Commission would then undertake the process of disaggregating the service territories into served and

unserved areas.[6] That said, the Commission has a continuing obligation to ensure that funding is awarded efficiently and responsibly, and it should not permit its universal broadband objective to override this aim.

ACA believes that by adopting and implementing its policy balance, the Commission can relatively swiftly and efficiently bring broadband to the maximum number of households in the country. Below are the specific policy proposals of the ACA as well as the rationale for each. (A summary of ACA's proposals is attached to these comments in the Appendix.)

I. THE COMMISSION SHOULD IMPOSE A HARD CAP ON FUNDING FOR THE CAF AND ANY CONTINUING HIGH-COST SUPPORT AT THE YEAR-END 2010 OVERALL HIGH-COST FUNDING LEVEL

At the outset of the *NPRM*, the Commission sets forth a key objective in the proceeding: "eliminating waste and inefficiency."[7] Given the extraordinary recent growth in the High-Cost fund and the many economic, technical and structural changes in the industry, it is hard to argue that the fund is sharply targeted on true needs and cannot be pared deeply in many ways. Further, the Commission should not create a new broadband fund based on the flawed practices of the current fund. Thus, the Commission cannot move forward to establish the CAF – as well as permit any current support to continue – without imposing real fiscal accountability. To that end, ACA strongly supports the Commission's proposal to cap the overall budget for the CAF and any existing high-cost programs so that its total fund size does not exceed the year-end 2010 high-cost fund level.[8] Indeed, capping the CAF at this level should be a cornerstone of the

---

6 The smaller telephone company would continue to receive support to provide service in an unserved area until such time that the CAF recipient (which may be the smaller telephone company) has built out its network.

7 *NPRM*, ¶ 1.

8 *Id.*, ¶ 414.

Commission's plans. Although the Commission should impose an overall cap on the total High-Cost support budget (CAF plus any existing high-cost programs), it should not otherwise limit or guarantee continued support to the individual components or providers, except as explained herein. This would allow for more flexibility to address changes in economics, costs and technology which may occur for providers or individual fund mechanisms.

As discussed below, imposing a hard cap on the overall budget is warranted for many reasons. It will help eliminate excesses and inefficiencies associated with the current High-Cost program and ensure that going-forward funds are allocated precisely to only those areas that truly require support. It will benefit consumers who are the ultimate funding source for universal service. And, even though total funding will be constrained, by making the fund more efficient, ACA submits that there will be sufficient funding for the CAF.

The High-Cost fund has grown enormously since passage of the 1996 Telecommunications Act, when Congress directed the Commission to establish the current support mechanisms, and it has become increasingly costly to consumers as they continue to bear the increased burdens of the program. Over the thirteen year period from 1997 through 2010, the High-Cost fund quadrupled in size, growing from approximately $1.2 billion to nearly $4.8 billion,[9] as a result of new entities drawing from the fund and incumbents receiving increased High-Cost support, as intercarrier compensation rates have decreased.

While the goals of the universal service program are laudable, its continued growth has resulted in presumably unforeseen burdens on consumers and thus harms some of the very individuals it was designed to benefit. Currently, the contribution factor for second quarter

9 Federal and State Staff for the Federal-State Board on Universal Service, *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 3.1 (2010).

2011 stands at 14.9 percent,[10] which is below the first quarter 2011 rate of 15.5 percent, but still far above earlier levels.[11] As the Joint Board noted in its November 2007 Recommended Decision, "[l]arger contributions increase the risk that telecommunications services will become unaffordable for some, or even a substantial number, of consumers"[12] – a result that actually serves to undermine the goal of making services available ubiquitously at affordable prices. In an era when consumers are facing more economic hardships, increasing contribution rates are an unwelcome and significant burden on consumers and weigh in favor of capping the fund.

Moreover, growth of the universal service fund (and the High-Cost component thereof) has increased so dramatically over that past decade and a half, it has far outgrown anyone's expectation of how large it needs to be. The current contribution rate is so high – nearly 15 percent – that the fund's contribution base would have to be expanded so significantly to bring the rate down to a reasonable level (for instance, below 3 percent) where it would not have such a negative affect on the sale of the service to which it applies. An increase in the contribution factor increases costs to consumers in real terms (*i.e.*, the price paid for a service) and in costs generated from an increase in distortion of consumption decisions. In other words, because demand for services other than the most basic telephone service are somewhat elastic (*i.e.*, more sensitive to price fluctuations),[13] for a given increase in the price of the service, the level of consumption of that service decreases proportionally. Thus, as the size of the

---

10 *Public Notice: Proposed Second Quarter 2011 Universal Service Contribution Factor*, DA 11-473 (2011).

11 For example, the contribution rate in second quarter 2000 was 5.7 percent. *Public Notice: Proposed Second Quarter 2000 Universal Service Contribution Factor*, DA 00-517 (2000).

12 *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Recommended Decision, 22 FCC Rcd 20477, 24083 (¶ 24) (2007) (*Joint Board November 2007 Recommended Decision*).

13 *Cong. Budget Office, Financing Universal Telephone Service* 19 (2005), *available at* http://www.cbo.gov/ftpdocs/61xx/doc6191/03-28-Telephone.pdf.

contribution rate grows, not only do consumers incur that cost, but they also consume less of the service than they would otherwise. Certainly no one would argue that it is good to suppress the demand for telecommunications services, but suppression of demand for these services is the exact result of a contribution rate so high.

Further, no one should expect that if the Commission were able to expand the contribution base, the rate would not quickly resume its upward trend. Experience has demonstrated that a leak in distributing billions of universal service funding can quickly turn into a torrent. Because of the off-budget nature of the universal service program and the ease with which the contribution rate has been increased, the possibility of the program rapidly inflating, producing increased contribution rates, is a very real concern, unless, of course, a hard cap on funding is imposed.

Finally, even with a hard cap, the year-end 2010 level of funding for CAF will be sufficient to transition from the current support mechanisms and meet the Commission's universal broadband objective for a variety of reasons:

- Evidence over the past decade indicates that entities drawing from the High-Cost fund have strong incentives to maximize their individual take and few incentives to become more efficient.[14] Substantial savings can be realized by administering the High-Cost fund more efficiently and reducing wasteful spending.

- Certain of the High-Cost support mechanisms still in effect were originally designed to be temporary.[15]

- Because competition has developed in many areas where entities currently receive High-Cost support, funding in such areas is no longer required or can be more effectively targeted.[16]

---

14 *National Broadband Plan* at 147.

15 For example, Interstate Access Support (IAS) was originally created in 2000 as an interim part of a five-year transitional reform plan, which was expressly designed to keep regulated voice rates affordable. The Commission noted that in the *USF Reform NOI and NPRM* no commenter provided data or analysis demonstrating that IAS continues to be necessary to address its original intended purpose. *See NPRM*, ¶ 232.

- Telecommunications/Broadband is a declining cost industry characterized by substantial economies of scale and scope and rapid technological innovation.

As discussed in the next section, by accounting for these factors, the Commission can quickly create sufficient funding to move forward to achieve its universal broadband objective.

II. ESTABLISHING AND OPERATING THE CONNECT AMERICA FUND

ACA supports the Commission's goal of driving universal access to affordable broadband services as efficiently as possible.[17] ACA believes the creation of the CAF to replace over time all other explicit support provided by the current High-Cost fund is the right mechanism to accomplish that goal. In the long run, all broadband – and for that matter voice – support should be through the CAF.

Many member companies of ACA, which include broadband providers in rural areas, believe that they could provide broadband efficiently in unserved areas if the government provided capital grants to extend their infrastructure to premises (last mile support) and to construct or obtain middle mile links with sufficient capacity. They are eager to see the Commission create and implement a CAF that is competitively-neutral and efficient so they can seek to serve these areas.

---

16 In its Petition for Rulemaking filed in 2009, the National Telecommunications and Cable Association determined that cable operators provide voice service to between 74 and 84 percent of households overall and 43 percent of households (6.6 million) in rural LEC study areas. The Petition further determined that cable voice service is available in most rural study areas, and in 21 percent of the study areas coverage exceeds 50 percent. *National Telecommunications and Cable Association, Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition*, Petition for Rulemaking, RM-11584, at 6-7 and n.17. (filed Nov. 5, 2009); *see also* Federal Communications Commission, *Connecting America: The National Broadband Plan* at 147 and n.94 (rel. Mar. 16, 2010) (*National Broadband Plan*) (*citing* Nat'l Telecomm. Coop. Ass'n, 2009 Broadband/Internet Availability Survey Report 3, 9).

17 *NPRM*, ¶ 1.

A. THE COMMISSION SHOULD ESTABLISH SEPARATE SUPPORT FOR FIXED AND MOBILE BROADBAND WITHIN THE OVERALL CAF

The *National Broadband Plan* concluded that "America should have healthy fixed and mobile broadband ecosystems."[18] ACA agrees and believes the CAF should be available to both fixed and mobile broadband providers. However, mobile and fixed broadband services are not sufficiently close substitutes because the performance, coverage, and reliability capabilities differ significantly.[19] Consequently, ACA strongly recommends that the Commission separate support for each within the total CAF. The Commission would assess the unserved nature of each broadband service separately, and then determine funding objectives and budgets for each.

Fixed and mobile broadband services have materially different sets of basic capabilities. As a consequence, they are and are likely to remain distinct services – with much different deployment issues for the purposes of achieving universal broadband service – that will not be perceived as close substitutes in most user or usage contexts for the foreseeable future. Mobile broadband services generally offer lower data rates, have less, or at least more variable coverage, and potentially greater congestion than fixed broadband services.[20] The Commission

---

18 *National Broadband Plan* at 146.

19 It should be noted that the *National Broadband Plan* recognizes there are differences between fixed and mobile services and recommends the creation of a fund for the explicit purpose of ensuring universal 3G mobile service. *Id.*

20 *See e.g.,* William Lehr, Mobile Broadband and Implications for Broadband Competition and Adoption *available at:* http://www.broadbandforamerica.com/sites/default/themes/broadband/images/mail/LehrMobileandBroadbandCompetition.pdf. "Because it is reasonable to expect that mobile and fixed broadband will continue to be characterized by different service features, I expect that mobile and fixed broadband services will be perceived as distinct and complementary services, rather than as close service substitutes in most user/usage contexts. However, for some subscribers and in some contexts, mobile broadband may be perceived as an acceptable substitute and thereby mobile services will impose a degree of (intermodal) competitive discipline on broadband service markets in general, and on fixed broadband services more specifically. It is likely

in the recent *Open Internet Order* supported this conclusion about the distinct nature of fixed and mobile broadband services, finding that "Mobile broadband speeds, capacity, and penetration are typically much lower than for fixed broadband . . . . In addition, existing mobile networks present operational constraints that fixed broadband networks do not typically encounter."[21] Hence, the Commission should evaluate each service separately in seeking to achieve its universal service broadband objective.

Despite urging the Commission to separate fixed and mobile broadband services for purposes of the CAF, there should be one exception to this rule. In general, ACA believes that the CAF should initially focus on providing capital grants (distributed through reverse auctions) to extend fixed (wireline or wireless) broadband service to unserved areas, while the proposed Mobility Fund can focus on providing capital grants to address immediate mobile coverage issues.[22] However, ACA recognizes that certain areas will be prohibitively expensive to serve by fixed wireline service. In such areas, ACA recommends that the Commission, after first conducting reverse auctions for capital grants, consider seeking bids from all providers regardless of technology, including satellite and mobile broadband providers, to provide service in the area through the receipt of operating support from the fund.

B. THE MOBILITY FUND SHOULD PROVIDE INITIAL SUPPORT FOR UNIVERSAL MOBILE BROADBAND SERVICE

For mobile broadband service, the Commission should move forward to establish the Mobility Fund it has proposed, which seeks to "significantly improve coverage of current-

---

that mobile broadband will provide most direct competitive pressure on first-generation, lower-quality fixed broadband services."

21 *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Report and Order, FCC 10-201, ¶ 95 (rel. Dec. 23, 2010).

22 *See generally, Mobility Fund NPRM*.

generation or better mobile voice and Internet service for consumers in areas where coverage is currently missing."[23] The Commission has proposed using a portion of competitive ETC funding already relinquished by Verizon Wireless and Sprint Nextel for the Mobility Fund.[24] The *Mobility Fund NPRM* recognized that even in areas without 3G coverage, there may be access to other supported services using non-mobile wireless technologies and thus there may be no need for support from the Mobility Fund.[25] To ensure that only areas truly in need of support receive it, ACA believes it essential that the Commission limit access to Mobility Fund support to only those areas where 3G service will not be constructed by the private sector. Specifically, ACA believes that no Mobility Fund support should be awarded in areas in which the applicant or another provider would have built out 3G service without Mobility Fund support. To ensure adherence to this principal, applicants for Mobility Fund support should be required to certify to the Commission that they had no previous plans to deploy 3G or better services within five years in the area for which they seek funding. Finally, prior to determining whether support is required and to what extent to ensure universal 4G service, the FCC should open an inquiry and seek comment.

C. FUNDING THE CAF TO SUPPORT FIXED BROADBAND SERVICES

Funding for fixed broadband through the CAF will be achieved in several ways. First, the Commission should reduce High-Cost support for larger local telephone companies (those with more than 100,000 total access lines in the aggregate nationwide) by rapidly phasing down so-called "interim" support mechanisms and by eliminating support where there are competitors providing service that do not receive high-cost support. In addition, as it proposes,

23 *Id.*, ¶ 1.

24 *Id.*, ¶ 13.

25 *Id.*, ¶ 23.

the Commission should eliminate the identical support rule[26] for competitive Eligible Telecommunications Carriers (ETCs) and redirect this funding over five years to the CAF.[27] The following sections describe these steps in greater detail, which, if taken in full, should produce initial funding for the CAF in excess of $500 million annually with this amount to grow to approximately $1.5 million annually to be used to support the deployment of fixed broadband services.[28]

1. REDUCING AND TARGETING SUPPORT FOR ETCS WITH MORE THAN 100,000 LINES – THE DISAGGREGATION PROCESS

ACA supports the Commission's proposals to phase-out current interim support for larger telephone companies. Specifically, beginning in January, 2012, the Commission should phase out High-Cost Model support and Interstate Access Support (IAS) over a two year period.[29] ACA also supports the Commission's proposed process to disaggregate support within existing study areas[30] – except that ACA does not support, as proposed by the Commission,[31] continuing to provide to a larger telephone company the same total amount of support drawn prior to the disaggregation process. ACA believes that would defeat the aim of more precisely

---

26 47 C.F.R. § 54.307.

27 *NPRM*, ¶ 242

28 The current High-Cost fund distributes approximately $4.4 billion annually, of which approximately $2.2 goes to incumbent local telephone carriers with fewer than 100,000 access lines in aggregate. As proposed by ACA, these smaller carriers could elect to continue to receive support for eight years if they agree to deploy higher-performance broadband services. Competitive ETCs now draw about $1.2 billion annually, and the Commission has already begun to phase-down that support. Larger telephone companies draw about $1 billion annually, and ACA has proposed a relatively rapid reduction in this support. The ACA's calculation of the amounts available for the CAF are based on the combined reductions in support for competitive ETCs and the larger telephone companies and account for funding for the proposed Mobility Fund.

29 *See, e.g.*, *NPRM*, ¶ 229-32.

30 *Id.*, ¶ 375.

31 *Id.*

targeting support and ensuring other, unsupported providers do not compete with supported entities. Instead, ACA believes it is crucial that the Commission should no longer sanction support to larger telephone companies in areas where a competitor is offering broadband service without relying on support. The Commission should begin to address this matter immediately by disaggregating support within the service territory (study area) of these larger providers. ACA recommends that, beginning in January, 2013, ETCs with more than 100,000 access lines in aggregate nationwide no longer draw High-Cost funds in areas where a broadband provider not receiving High-Cost support is offering broadband services to more than 66 percent of the households in the census block at performance levels proposed by the Commission at today's baseline broadband service levels and obligations – 4 Mbps downstream and 1 Mbps upstream[32] (the disaggregation process).[33] ACA expects that because competitive providers are providing broadband service to most, if not all, of a service area, the overall area is sufficiently competitive so that voice services will continue to be provided to households and broadband services will be available at reasonable rates and broadband capabilities will increase without the need for government support.

For geographic areas identified as unserved (*i.e.*, no provider is offering broadband service at the 4 Mbps downstream and 1 Mbps upstream performance level) that are within the larger ETC service area, the Commission should hold reverse auctions to select service providers that will be eligible to receive capital grants to provide broadband service in

32 All broadband speeds in the comments are actual speeds, as that term is used in the National Broadband Plan. *See National Broadband Plan* at 157 n.2.

33 The Commission should permit larger telephone companies to seek limited waivers on an interim basis to ensure the continued support for voice service.

the unserved areas.[34] The goal should be to make these large telephone companies' unserved areas among the first to be auctioned so that new providers can begin deployment in 2013 and begin service a year later. However, prior to an auction of and initiation of broadband service in all parts of an unserved area, the Commission should ensure that the incumbent ETC continues to receive sufficient support for the continuation of service to households in areas where support has been provided.

2. <u>**THE IDENTICAL SUPPORT RULE SHOULD BE ELIMINATED**</u>

ACA agrees that the current identical support rule for competitive ETCs should be eliminated because it bears no relationship to the amount of money competitive ETCs have invested in high-cost areas.[35] Under the identical support rule, competitive ETCs receive High-Cost support at the same per line level as the incumbent. Wireless providers make up a majority of all competitive ETCs. Wireless networks are generally less expensive to deploy and maintain than wireline networks. However, the identical support rule allows wireless ETCs to receive support at the same per-line level as the incumbent LEC.[36] As a result, wireless ETCs are essentially receiving a higher rate of return on their network investments than wireline ETCs at the expense of consumers. Because a competitive ETC's per-line support is based solely on the per-line support received by the ILEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities. Instead, competitive ETCs have greater incentives to expand the number of

---

34 For large telephone company areas that are (1) not unserved, (2) where there is no competitive alternative, and (3) the company has been receiving High-Cost support, such support would continue, with the reductions in High-Cost model and IAS support applying.

35 *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support NPRM*).

36 *See* 47 C.F.R. § 54.307(a).

subscribers, particularly those located in the lower cost portions of high-cost areas, rather than to expand the geographic scope of their networks. Accordingly, ACA supports the Commission's proposal to reduce existing competitive ETC support by eliminating the identical support rule by no later than 2016.[37]

D. CAF SUPPORT SHOULD BE PROVIDED IN UNSERVED AREAS

ACA believes that availability of affordable, high-quality broadband services is a key factor in promoting and protecting the growth and well-being of communities. Today, broadband service is available to approximately 95 percent of American households,[38] and the CAF should focus on bringing service to those areas not yet served.[39]

In undertaking this activity, because broadband providers are already serving most of the country, it is essential that the Commission ensure that areas it supports are truly unserved. That means there should be sufficient evidence to determine that an area (census block) lacks service. ACA believes its concern about the designation of unserved areas is warranted.

---

37 *NPRM*, ¶ 160.

38 The National Broadband Plan found that 95 percent of the U.S. population has access to a 4 Mbps/1 Mbps terrestrial broadband service. *National Broadband Plan* at 20.

39 The Commission inquires about whether "we should reserve a defined amount of funds in the first phase of the CAF to award to bidders that will deploy broadband on Tribal Lands that are unserved." (*NPRM*, ¶ 302). While ACA has members serving Tribal Lands and supports new mechanisms designed to bring broadband to these areas, new funding programs should not substitute for or otherwise reduce current High-Cost support going to Tribal Lands. Accordingly, the Commission should continue the policy adopted in its competitive ETC *Interim Cap Order* by exempting competitive ETCs that serve Tribal Lands from any proposed phase downs or reductions in high-cost support, at the very least until the Commission implements a long-term replacement mechanism. (High-*Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*)).

First, many ACA members found that areas identified as putatively unserved in the Broadband Stimulus awards program were in fact areas served by them.[40] In addition, High-Cost support is currently awarded by study area based on whether the costs of providing service in that area are sufficiently above the national average. Often, these areas are large, consisting of segments where service is economically and technically feasible without support and those where support is required. Thus, the determination of support is based on an average calculation – rather than on a precise determination of need.

Further, over the past fifteen years, many competitive facilities-based providers have deployed telephone and broadband services and now provide such services to the vast majority of households. As such, they are often (and increasingly) in direct competition with incumbent carriers receiving support. It is important that the Commission account for these deployments. ACA also believes these providers have an obligation to inform the Commission of their presence. Unless there are regulatory mechanisms in place to force carriers benefiting from High-Cost support to wean themselves from support when competition has been introduced, any new funding mechanism will remain inefficient and lack competitive neutrality.

1. DEFINING UNSERVED AREAS: THE COMMISSION SHOULD AGGREGATE CENSUS BLOCKS TO DETERMINE AN UNSERVED AREA

Unserved areas should be determined by using the smallest feasible geographic area that can be identified with relative ease, and ACA supports the Commission's proposal to identify unserved areas "at the census block level."[41] Based on their experiences with the

---

40 *See* ACA Letter to RUS: http://www.americancable.org/files/100324%20RUS%20Letter %20on%20ACA%20Concerns.pdf; ACA Letter to NTIA:http://www.americancable.org /files/100416%20ACA-NTIA%20Letter% 20re%20Armstrong.pdf.

41 *NPRM*, ¶ 290.

Broadband Stimulus programs, ACA's members believe use of the census block ensures support is most precisely targeted. In addition, working with census blocks is not overly burdensome.

ACA does not agree with the Commission that bidders should define the service areas used in reverse auctions.[42] While bidders (service providers) may have knowledge about areas they consider unserved, the knowledge possessed by bidders will vary greatly, and ACA is concerned that bidder-defined areas will skew the fairness and objective nature of the auctions. It will be especially difficult for smaller entities, who may be the most efficient provider for an unserved area, to expend the necessary resources to identify an unserved area and then participate in an auction with others who have identified a different unserved area which may include just a select number of common census blocks.

Instead, ACA submits that the Commission should take these census blocks and aggregate them into a relatively compact unserved service territory such that both network deployments and operations are economically and technically feasible. The Commission should define a census block as unserved where at least 90 percent of the households do not have access to broadband service at speeds at least equal to the national average broadband speed, which initially should be set at 4 Mbps downstream and 1 Mbps upstream.[43] Finally, to limit gerrymandering, each census block in an unserved area must be unserved, *i.e.* the Commission should not average across a group of census blocks.

---

[42] *Id.*, ¶ 293.

[43] The national average broadband speed is based on the National Broadband Plan's recommendation. *National Broadband Plan* at 135; s*ee also NPRM*, ¶ 108.

2. **DEFINING UNSERVED AREAS: NATIONAL AVERAGE BROADBAND SPEEDS ARE THE APPROPRIATE PEFORMANCE BENCHMARK**

ACA supports using today's national average broadband speeds to define an unserved area. This benchmark ensures that the Commission focuses support on the areas most in need: these are areas where few people have access to broadband services that are available to most Americans. This is similar to the approach used by the RUS in the just released interim rules for its Rural Broadband Access Loan and Loan Guarantee Program.[44]

While the 4 Mpbs/1 Mbps performance standard should be used today to take a snapshot of unserved areas, rapid technological improvements in broadband performance and network deployment necessitate that the Commission be flexible in reviewing and adjusting the national average broadband speed. Because historical speed growth indicates a doubling of speed roughly every four years for broadband technologies,[45] the Commission periodically will need to upgrade this benchmark to accurately reflect market conditions when it identifies unserved areas to include in auctions held in subsequent years. To ensure that the performance benchmark keeps pace with technological improvements in the broadband industry, ACA recommends that every two years, beginning on January 1, 2014, the Commission should review the national average broadband speed and, if necessary, adjust it, and then use the new benchmark to determine unserved areas.

---

44 Rural Broadband Access Loans and Loan Guarantees, Interim Rule, 76 Fed. Reg. 13770 (Mar. 14, 2011).

45 *See* Omnibus Broadband Initiative, *Broadband Performance: OBI Technical Paper No. 4*, at 11. (2010).

3. DEFINING UNSERVED AREAS: THE LIST OF UNSERVED AREAS SHOULD BE PUBLISHED FOR PUBLIC COMMENT

ACA believes that once the Commission determines, based on the criteria set forth in the previous sections, which areas are unserved, it should then publish for public comment (with a relatively short comment period) a preliminary list identifying unserved areas that presumably will be made available for bid. This has two purposes. First, it will help ensure that the areas selected by the Commission are economically and technically feasible areas for network deployment and broadband operations. Second, while the Commission and other agencies gather data about broadband deployment, there are gaps in their maps. As indicated earlier, ACA members participating in the Broadband Stimulus program process believe grants were awarded to areas that were either not unserved or underserved. Hence, because the CAF should focus on funding broadband in unserved areas, it is important that the Commission obtain from non-government sources confirmation that its list is accurate both in terms of areas where funding is truly needed and to ensure that the areas identified for auction are areas where it is practical for a single provider to offer service.[46] Any person should be able to comment on the list, including on whether the area is unserved and whether it represents an area where, because of the area's boundaries or topology, bidders are likely to participate. After comments have been received and reviewed, the Commission should publish a final list identifying unserved areas where auctions may be held to choose a single provider.

[46] The Commission states (*NPRM*, ¶ 308) that the CAF should "not fund existing facilities or deployment to which carrier has already committed to federal or state regulators," and then seeks comment on how to avoid this outcome. ACA submits that its proposed comment period would serve to minimize such undesired results.

E. **CAF SUPPORT SHOULD BE AWARDED TO A SINGLE PROVIDER IN AN UNSERVED AREA THROUGH REVERSE AUCTIONS**

ACA strongly believes that it is essential that any broadband awards be made on an efficient, competitively-neutral and objective basis. This has important policy benefits. First, the fund will be more efficient when more entities participate. Second, the quality and performance of broadband service should be greater as additional and more capable broadband providers vie to receive support. Third, it will limit any government role in providing competitive advantages among broadband providers. To ensure funds are awarded in an efficient and competitively-neutral manner, capital grants should be awarded, as proposed by the Commission,[47] through the use of reverse auctions with the award being made to a single provider.[48] In addition, reverse auctions should be conducted using objective government-established criteria involving: the geographic area, the construction and service obligations, the level of broadband performance (as measured from the user to the Internet point-of-presence), and the price for service. Each of these criteria are discussed further below.

The Commission should auction a substantial number of unserved areas simultaneously.[49] The number of unserved areas in these groups should be sufficient to achieve

---

47 *NPRM*, ¶ 284.

48 The Commission proposes (*NPRM*, ¶ 282) "to allow the subsidized provider to partner with others to satisfy the public interest obligations associated with the CAF." ACA agrees so long as the subsidized provider remains ultimately responsible for compliance, and there is no diminution in the public interest commitments (that is, the terms and conditions of the award regarding such issues as coverage, service provision, performance, or price). ACA also agrees with the Commission that reverse auctions "should represent a good estimate of the support needed to offer service to the areas covered by the bid." (*NPRM*, ¶ 285)

49 ACA recognizes that it is critical that the Commission implement an effective transition between the time when an area receives High-Cost support and then is deemed unserved and auctioned for CAF support and new, broadband service initiated. Thus, for such an unserved area, until service is initiated by the CAF recipient, the Commission needs to continue sufficient operating support to the entity that has been receiving High-Cost

the universal broadband objective and to ensure support is provided most efficiently. This latter goal also should be pursued by awarding funding in order of priority, beginning with the unserved area where the most households will be served at the lowest price.

F. REVERSE AUCTION PROCESS

The Commission should hold reverse auctions to select a broadband service provider to receive a capital grant to construct infrastructure in an unserved area and provide service in accordance with the processes described below. As an initial inquiry, the Commission seeks comment on whether it can and should forbear from applying Section 254(c)(1),[50] which defines universal service as an evolving level of telecommunications services. ACA agrees that the Commission should adopt the Joint Board's recently recommended policy principle "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services."[51] ACA believes that the Commission need not forbear from applying Section 254(c)(1) to extend universal service support to broadband services offered as information services because the Commission already has the necessary authority. ACA agrees with the analysis set forth in the *NPRM* that the Commission has authority under Section 254, Section 706 and ancillary authority to extend universal service support to broadband services offered as information services.[52] In short, the Commission's statutory responsibilities set forth in Section 254(b), impose "a mandatory duty on the Commission" to base universal service policies on the promotion of access to advanced telecommunications and information services

---

support and providing service to that area. Such support should only be sufficient to continue service to that particular area.

50 *NPRM*, ¶¶ 60, 72.

51 *Id.*, ¶ 55.

52 *Id.*, ¶¶ 60-61.

throughout the nation.[53] Two key principles enumerated in Section 254(b) make clear that Congress's universal service funding objectives include advanced telecommunication services and information services in addition to traditional telecommunications services. First, Section 254(b)(2) provides that "[a]ccess to advanced telecommunications and *information services* should be provided in all regions of the Nation," and second, Section 254(b)(3) provides that [c]onsumers 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 . . . advanced telecommunications services and *information services*, that are reasonably comparable to those services provided in urban areas."[54]

1. The Commission should enable "Qualified" providers to participate as bidders at reverse auctions.

To maximize the value of the CAF (and potentially other High-Cost funding sources to support the extension of broadband into unserved areas), the Commission should allow all qualified providers to participate in reverse auctions. The current ETC qualification rules can be burdensome, inhibiting qualified bidders – particularly smaller providers that have demonstrated capability and expertise to offer advance broadband service in unserved areas – from participating in the reverse auctions. ACA submits that all "qualified bidders," which it defines as providers operating networks where broadband service has been provided for at least five years, should be permitted to participate in reverse auctions.[55] Allowing qualified bidders to participate in the reverse auction process will advance the Commission's objectives of driving access to affordable broadband services in unserved areas as efficiently as possible and

---

[53] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001).

[54] 47 U.S.C. §§ 254(b)(2) & (3) (emphasis added).

[55] The Commission should permit providers to seek waivers if they do not meet this criterion but offer proof that their participation would be in the public interest.

maximize the number of participants. ACA's proposal balances these objectives by permitting non-ETCs to participate if they can demonstrate they are qualified and thus is in the public interest.

2. The Commission shall establish objective, minimal criteria to ensure that all bidders are qualified.

ACA agrees with the Commission that it use a two-stage application to vet providers that wish to participate in the auction.[56] The initial (or short-form) application would include sufficient information to ensure the provider is bona fide, *i.e.* at least minimally qualified. This information should include relevant information about the bidding entity's ownership, including affiliations, and any agreements with other bidders. In ACA's view, such criteria also should include an initial showing by a potential bidder that it has sufficient financial resources and experience to undertake the construction of facilities necessary to offer broadband service.

3. Build-out and continuing service obligations for auction winners.

ACA supports the Commission's proposal that auction winners receiving support during the initial phase of the CAF should be required to complete the build-out of the broadband service described in their bid submission packages within three years of their initial receipt of funding, and must fulfill provider obligations for five years after completion of the build-out.[57] The three year build-out period is the same as required in the Broadband Stimulus programs,[58] which was acceptable to many hundreds of applicants and appears to be successfully implemented by awardees. That said, the Commission should require an annual certification

---

56 *NPRM*, ¶ 326

57 *Id.*, ¶ 313.

58 7 C.F.R. § 1738.101(b)(2).

from a CAF recipient that it is making reasonable progress to achieving that objective and does not foresee impediments to meeting the deadline.

The Commission also inquires about whether it should establish a coverage requirement.[59] At the outset, it is important to understand that, under ACA's proposal, the Commission would determine the unserved area based in part on comments from providers as to whether the area is economically and technically capable of supporting broadband service. Thus, there should be an expectation that the entire area is feasible for complete coverage. However, ACA believes it is acceptable for the Commission to require coverage in all but the least dense areas, so long as it is specified in advance of the auction by the Commission and is consistent for all areas where funds are being awarded.[60] This is similar to the requirement in many cable franchise agreements.

As for the five year service period, ACA believes it is sufficient to enable broadband penetration to grow to levels sufficient to support ongoing operations. At the end of this period, the Commission can then make an assessment as to whether either a new auction needs to be held for the area because it continues to be unserved or whether operating support may be required for another interim period.

4. Auction winner performance and price commitments.

The Commission establishes an initial broadband performance service level of 4 Mbps/1 Mbps and then asks whether performance should evolve during the award period.[61]

---

59 *NPRM*, ¶ 310.

60 ACA notes that cable franchise agreements commonly contain an exception to any build-out requirement for low density areas in the service territory. For these low density areas, franchise agreements provide that the cable operator will build line extensions if households pay to be connected. The density level varies among agreements but may be as high as 30 homes per mile.

61 *NPRM,* ¶ 311.

ACA submits that CAF funds should be awarded in unserved areas only to broadband providers that commit to offer service throughout the service obligation period at performance levels that keep pace with technological innovations while meeting the demands of customers. While ACA believes the Commission should define unserved areas by current average broadband performance to ensure those areas most in need of service obtain it, because the auction winner will be subject to a continuing service obligation that extends well into the future (eight years), the Commission should require auction winners to provide forward-looking broadband performance at a level that is technically possible today. Requiring CAF recipients to commit to provide service at forward-looking higher speeds will help ensure that areas receiving support will have access to high-performance service necessary to access critical applications and content farther into the future. ACA notes that the RUS, as part of its new broadband grant rules, adopted a similar policy approach, defining the service area by taking a snapshot of currently offered speeds but requiring forward-looking speeds for the project.[62] ACA has canvassed its members and based on this criteria proposes that the Commission require auction winners to commit to provide service within the unserved area at national forward-looking broadband speeds that initially should be at a minimum level of 16 Mbps downstream and 4 Mbps upstream.

Because CAF auctions will continue to be held, the FCC should reexamine the forward-looking broadband performance every two years, beginning in January, 2014, to ensure it reflects the projected market.[63] The Commission should select a broadband performance

62 *See* publication of interim rules for Rural Broadband Access Loans and Loan Guarantees, 76 Fed. Reg. 13770, 13778, 13780 (Mar. 14, 2011).

63 Historical broadband speed growth indicates a doubling of speed roughly every four years. *See* Omnibus Broadband Initiative, *Broadband Performance: OBI Technical Paper No. 4*, at 11. (2010).

capability that is currently technically achievable and is the projected level in the latter two years of the service period.

As for the commitments by CAF recipients regarding the price for broadband service, ACA suggests that the Commission establish a single price for all areas where funding is awarded based on the national average price in urban areas. The Communications Act, in general, provides that universal service funding shall ensure that all consumers have access to telecommunications services that are "reasonably comparable" and at rates that are "reasonably comparable."[64] Consequently, consumers in unserved areas should have affordable access to broadband services of the highest quality. Thus, price is an essential component of any auction award, and, as discussed herein, it is important that all auction criteria be objective. For these reasons, ACA proposes that Commission establish a uniform national price for broadband service -- based on the average comparable rate for such service in urban areas -- at the performance level indicated above that all auction CAF recipients should charge. As with performance benchmarks, the Commission should recalculate this price every two years beginning on January 1, 2014.

5. The Commission should ensure that any winning bidder has the requisite financial and operational wherewithal and will construct and operate a network with sufficient performance capabilities, coverage, and reliability/quality.

The Commission proposes that it use a long-form application to conduct due diligence on winning bidders,[65] ACA agrees. While ACA believes that the determination of auction winners should be based only on objective factors, the Commission should require winning bidders to provide detailed information and make firm commitments before being

---

64 *See* 47 U.S.C. § 254(b).

65 *NPRM,* ¶¶ 349-360.

certified as eligible to receive support and before funds are disbursed. First, winning bidders must confirm the ownership information provided in its pre-auction application or update that information, as appropriate. Second, the winning bidder should be required to submit a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, and describes each development phase of the project. Third, a winning bidder must certify to the availability of funds for all project costs that exceed the amount of support to be received from the CAF and certify that it will comply with all program requirements. Fourth, the winning bidder should be required to post financial security as a condition to receiving support to ensure that it has committed sufficient financial resources to meet program obligations.

Finally, to ensure the integrity of the CAF program, if the Commission finds that a winning bidder is not sufficiently capable and qualified to provide service in the unserved area and did not bid in good faith, it should impose a penalty on that bidder, including monetary forfeitures.

6. Any winning bidder may use its network only to provide broadband service to the designated unserved area and not to any served area, unless the bidder is already serving that area.

As ACA has discussed above, the government should not provide support to entities that compete with unsupported providers. Thus, while an unsupported entity may use its network and operations in a served area to provide broadband service with CAF support in an unserved area, an entity receiving support expressly to serve an unserved area may not use that network and its operations to provide service in served areas. As part of its rules and certifications from winning bidders, the Commission should mandate that, unless a winning bidder is already providing broadband service to a served area adjacent to an unserved area, that winning bidder cannot use its CAF funded network and operations to provide broadband service to customers in that adjacent served area.

7. Monitoring, compliance and enforcement.

While reverse auctions will select the provider who is most willing to provide broadband service at the lowest cost, such provider may not be the most competent or reliable provider. Therefore, ACA agrees with the Commission that it "require all recipients of CAF funding to comply with audit and record retention requirements."[66] ACA suggests that the Commission base its requirements on those employed by RUS and NTIA in the BIP and BTOP, respectively.[67] The RUS based its requirements on its lengthy experiences overseeing broadband loans and grants, and NTIA used the well-established requirement of the Department of Commerce. Thus, both agencies' requirements are time-tested. ACA also agrees with the Commission that it seek to utilize RUS field agents to confirm deployment.[68] While the Commission could potentially ensure compliance with certifications, as the RUS has found, it is important to examine deployments first-hand, especially to catch problems before they occur or to deal with unforeseen circumstances. Finally, the Commission should impose consequential penalties for CAF recipients, including the seizing of assets for eventual use by another party, that do not construct and provide broadband service and do not comply with any requirements.

---

66 *NPRM*, ¶ 368.

67 *See* 7 C.F.R. § 1738.254, 7 C.F.R. § 1770, subparts A & B; *see also* RUS Bulletin 1170B-1.

68 *NPRM*, ¶ 370.

G. IF NO BIDS ARE RECEIVED FOR AN UNSERVED AREA, THE COMMISSION SHOULD CONSIDER OFFERING TO PROVIDE OPERATING SUPPORT, IN WHICH CASE IT SHOULD SEEK BIDS FROM ALL PROVIDERS, INCLUDING SATELLITE AND MOBILE PROVIDERS

It may simply be economically or technically too difficult to serve certain unserved areas by awarding capital grants. This may occur because the density of households is very low or the terrain challenging. As a result, in a reverse auction, the Commission may receive no bids to provide service via access to capital grants (or bids exceeding the maximum bid permitted by the Commission).[69] In such areas, the Commission should consider holding separate reverse auctions wherein the winning bidder would obtain operating support to provide service for each of those areas. The Commission should permit all qualified providers, including satellite and mobile broadband service providers, to bid to obtain support to provide broadband service in these areas.[70]

H. THE COMMISSION SHOULD REEVALUATE UNSERVED AREAS AT THE END OF THE SERVICE OBLIGATION PERIOD

The Commission proposes that over the long-run it use CAF to provide "high-quality voice service and broadband Internet access service."[71] ACA supports this vision so long as the CAF distributes funding only to areas that are truly unserved and does so efficiently. This means that the Commission needs to regularly assess areas that have received funds (and potentially those that have not). ACA thus proposes that, for those unserved areas where

---

69 The Commission should establish prior to holding auctions an upper limit on any award based on the cost per household passed. For the second round of the BIP, RUS imposed a cap of $10,000 per household passed in the second round of awarding grants and loans. In addition after making its grant/loan awards, for other unserved areas, RUS reviewed and funded proposals by satellite providers to obtain operating support to serve an area. (*See* Notice of Funds Availability (NOFA) and solicitation of applications, 75 Fed. Reg. 3820 (Jan. 22, 2010); *see also* Request for proposals, 75 Fed. Reg. 25185 (May 7, 2010).)

71 *NPRM*, ¶ 398.

broadband service has been provided by a CAF recipient, at the end of the eight year period, the Commission should determine whether the area meets the definition of an unserved area: do 90 percent of the households lack access to broadband at the most recently adopted national average broadband speed? For those areas that are unserved, the Commission should hold auctions to determine the service provider in these areas.

I. PROVIDING A GRADUAL TRANSITION FOR COMPETITIVE ETCS WITH FEWER THAN 100,000 LINES CONSISENT WITH THE COMMISSION'S UNIVERSAL BROADBAND OBJECTIVE AND OVERALL REFORM OF UNIVERSAL SERVICE FUNDING

The Commission's proposals to reform the High-Cost fund and establish the CAF seek to strike a balance among many objectives, including seeking universal broadband service and eliminating inefficiencies. While ACA supports many of the Commission's proposals, it believes they should be rebalanced when it comes to dealing with telephone companies (ETCs) with fewer than 100,000 lines in the aggregate. These smaller providers are most reliant on current High-Cost funding to provide service to consumers and will suffer most if funding is reduced significantly and precipitously. Further, these smaller telephone companies have generally demonstrated competence in providing service and have a deep commitment to their customers. They thus have the capability to help meet the Commission's universal service objective. Finally, the Commission, because its policy reforms are ambitious, involving new procedures, may face difficulties in the implementation process. This process could be eased by providing a longer glide path for smaller providers.

To address these concerns, ACA proposes that the Commission offer smaller wireline ETCs a right of first refusal to continue to draw from the High-Cost fund for a period of eight years so long as they agree to commit to provide broadband service in all their service areas (with coverage to 90 percent of households) at the following minimum performance levels:

- Within two years, 4 Mbps downstream and 1 Mbps upstream;
- Within four years, 8 Mbps downstream and 2 Mbps upstream; and
- Within six years, 16 Mbps downstream and 4 Mbps upstream.

If the provider refuses the offer, the Commission would undertake the same disaggregation process discussed herein for larger telephone companies (which would include ensuring appropriate transitional operating support is provided prior to the CAF recipient initiating service) and then hold a reverse auction to select a provider to receive a capital grant to provide broadband service in the area. Of course, ACA's proposal does not obviate the need for the Commission to ensure that any support going to these entities is efficient.

At the end of the eight year period, High-Cost funding to these providers would sunset. The Commission will then disaggregate support in the overall service territory of the smaller carrier to ensure that no support is awarded within an area where broadband service is being offered. For areas that fall within the then current benchmark as being unserved, the Commission will hold reverse auctions to select service providers (which may be the smaller telephone companies) that will be eligible to receive capital grants to provide broadband service in the unserved areas.

ACA notes that its approach has a sound basis. In 2008, the Commission considered – and there appeared to be strong support for – a rule permitting smaller ETCs to continue to draw High-Cost support so long as they fulfilled broadband performance mandates.[72] ACA's proposal is even more stringent, increasing those performance requirements substantially so that they reflect the current state of technology and expected performance and providing for

72 *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008).

an eventual sunset. In sum, ACA believes its proposal will further the goal of universal broadband service efficiently and equitably.

J. PILOT PROGRAM FOR UNDERSERVED AREAS

ACA recognizes that a focus just on unserved areas will leave many households without access to broadband service. This is the so-called underserved area problem. As just discussed, ACA addresses that concern to a large degree by giving smaller ETCs a right to continue to serve an area by providing higher-performance broadband service to virtually all of its households. However, in areas served by larger telephone companies, many households many continue not to have access to broadband service. Yet, any solution to this concern must ensure that support is provided efficiently and only in areas where individual households lack access to a broadband provider.

ACA proposes that the Commission address the underserved area problem by first conducting a pilot program using "broadband vouchers," which it can expand if successful. ACA recognizes that broadband vouchers cannot be a solution where networks are not available. After all, because of the economies involved in providing broadband service, no provider will build just because a single household (or small group of households) wants service. Instead, a critical mass of households is required. However, by definition, underserved areas contain operating broadband networks serving many households, and these networks have the potential to be expanded to reach additional households and upgraded to provide higher performance service. In essence, this is similar to the situation faced by many cable operators, who in their franchise agreements have build-out requirements to all but the least dense areas. As noted earlier, for households in these areas with few houses, the cable operator is required to build a line extension and provide service if the household pays for it. Broadband vouchers would essentially help support line extensions from existing providers for broadband service.

While the concept of broadband vouchers has validity, ACA understands that the Commission should not rely on it as a policy solution without first testing it. It therefore proposes that the Commission conduct a series of pilot projects, which could happen over a two to three year period. After the approach has been evaluated and, if deemed successful, the Commission could then decide to implement it more generally. In these tests, broadband vouchers would be made available to pay for the cost of bringing infrastructure (limited to capital costs only) to individual households that do not have access to broadband service (with performance of 4 Mbps downstream and 1 Mbps upstream) in underserved areas – where 33% of the households do not have access to broadband service. The affected household would select a provider of broadband service to construct that facility, and funding would be issued directly to the provider. ACA recommends that the Commission provide approximately $10,000,000 in funding for the pilot program, which would come from the CAF and High-Cost funding.

III. CONCLUSION

The Commission's proposals to reform the High-Cost universal service fund and implement the CAF provide a good starting point to achieve universal broadband service. Through the refinements and targeted rebalancing proposed herein by ACA, it believes the Commission will enhance the likelihood it will achieve its objectives. ACA stands ready to work with the Commission as these proceedings move forward.

Respectfully submitted,

Thomas Cohen

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220

Thomas Cohen
Randall W. Sifers
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, DC 20007

(412) 922-8300

Tel. (202) 342-8518
Fax (202) 342-8451
tcohen@kelleydrye.com
Counsel to the
American Cable Association

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

April 18, 2011

APPENDIX
SUMMARY
AMERICAN CABLE ASSOCIATION

PROPOSED POLICIES TO REFORM THE HIGH-COST FUND AND ACCELERATE THE DEPOLYMENT OF UNIVERSAL BROADBAND SERVICE

I. Funding for Universal Service Broadband Support – The Commission should cap the amount of funding for the Connect America Fund (CAF) and continued High-Cost support at the level of the High-Cost fund at year-end 2010 level.

II. Establishing and Operating the Connect America Fund

1. Separate funds should be established within the CAF to accelerate broadband deployment in unserved areas via fixed and mobile technologies. Funding will come from reductions in access to the High-Cost fund as detailed in section III. below.

2. For fixed broadband service, unserved areas are defined as a group of contiguous and compact census blocks where at least 90% of the households cannot obtain broadband at speeds at least equal to the national average broadband speed, which initially shall be 4 Mbps downstream and 1 Mbps upstream; each census block in any unserved area must meet the broadband speed limitation (*i.e.* no averaging among census blocks). Every two years, beginning on January 1, 2014, the Commission shall recalculate the national average broadband speed and then redetermine unserved areas.

3. The Commission should determine unserved areas and publish the list for comment; any person may comment on the list, including on whether the area is unserved and whether it represents an area where, because of the area's boundaries or topology bidders are likely to participate; the Commission will then publish a final list of unserved areas where auctions will occur to choose a single provider. (Auctions will not occur in unserved areas where incumbent local telephone companies with fewer than 100,000 lines in aggregate have agreed to provide broadband services as set forth in III.1. below.)

4. For fixed broadband service, the Commission should disaggregate current study areas served by an incumbent local telephone company with more than 100,000 lines in aggregate, determining which areas are served and which are unserved (see III.2. below). For unserved areas of such providers, the Commission should conduct reverse auction as follows to select a single provider to receive a capital grant to deploy a network and provide broadband service:

> a. The Commission should permit ETCs and "Qualified" providers (defined as providers that operate networks where broadband service has been provided for at least five years) to bid at the auction;
>
> b. The Commission should establish objective, minimal criteria to ensure that all bidders are qualified (short-form application).

c. As proposed by the Commission, the auction winner should have 3 years to construct its network and begin to offer service and shall offer service for a period of 5 years;

d. The auction winner should commit to providing complete coverage at national forward-looking "urban" broadband speeds, which shall initially be 16 Mbps/4 Mbps, at a price for service set forth by the Commission prior to auction; the price set by the Commission should be a uniform national price based on the average comparable rate for such service in urban areas, and shall be recalculated every two years beginning on January 1, 2014; every two years, beginning on January 1, 2014, the Commission should recalculate the national forward looking "urban" broadband speeds to ensure they are currently technically achievable and are the projected speeds in the latter two years of the service period;

e. The Commission should ensure that any winning bidder has the requisite financial and operational wherewithal and will construct and operate a network with sufficient performance capabilities, coverage, and reliability/quality (long-form application). If the Commission finds that a winning bidder is not sufficiently capable and did not bid in good faith, it should impose a penalty on that bidder. The Commission should require any winning bidder to post a bond of sufficient magnitude to protect the public's interest.

f. Any winning bidder may extend its existing network to provide broadband service to the designated unserved area; if a winning bidder does not use an existing network to extend service to the unserved area but instead constructs a new network, it may not use this new network to provide broadband service to served areas adjacent to the unserved area.

g. The Commission should auction unserved areas in groups of areas and first select winners that offer the lowest price per household served; the Commission should establish a maximum capital grant level based on cost per household passed.

h. The Commission should conduct audits to ensure broadband service is provided as set forth in its requirements and impose consequential penalties for auction winners that do not construct and provide broadband service and do not comply with any requirements, including the seizing of assets for eventual use by another party.

5. For fixed broadband service, if an unserved area is served by an incumbent local telephone company with fewer than 100,000 lines in aggregate and the company does not agree to comply (or does not comply) with the broadband requirements in III.1. below, a reverse auction shall be held as in 4 above.

6. If the Commission finds no entity bids to receive a capital grant to provide broadband service in an unserved area (or bids exceed an amount predetermined and announced by the Commission for an unserved area), it should consider seeking bids from all providers, including satellite and mobile providers, to offer such service via operating support.

7. For areas where service is provided by an auction winner, at the end of the eight year period the Commission should use the most recently adopted national average broadband speed to define unserved areas and shall publish a list of unserved areas for comments. The Commission also should use its most recently adopted national forward-looking "urban" broadband speed and national average price in urban areas for the broadband service to be provided and then hold auctions to determine the service provider in these areas.

8. The Commission should establish a separate support mechanisms within the CAF to ensure wireline broadband service is provided in Tribal Lands. However, any new funding programs should not substitute for or otherwise reduce current High-Cost support going to Tribal Lands. Accordingly, the Commission should continue the policy adopted in its competitive ETC *Interim Cap Order* by exempting competitive ETCs that serve Tribal Lands from any proposed phase downs or reductions in high-cost support, at the very least until the Commission implements a long-term replacement mechanism.

9. For mobile broadband service, the Commission should move forward to establish the Mobility Fund it has proposed, which seeks to enhance 3G service deployments. Prior to establishing additional funding objectives for 4G service as part of the CAF, the Commission should open an inquiry and seek comment on the precise needs.

10. Pilot Program for Underserved Areas – To address concerns about households in areas that are not unserved but where a significant number do not have access to broadband service, the Commission should initiate an "underserved" areas pilot program to test whether "broadband vouchers" are an efficient and effective policy solution. By their definition, underserved areas contain operating broadband networks which have the potential to be expanded to reach additional households. Under the overall plan proposed by ACA, these areas would be in locations where local telephone companies with greater than 100,000 lines in aggregate are providing service (except where small companies refuse to agree to the requirements in III.1. below). Other broadband providers also may have networks in operation in these areas. Broadband vouchers would be provided to individual households that do not have access to broadband service (at 4 Mbps/1 Mbps) to pay for the cost of bringing infrastructure to that household (capital cost only). The household would then select a provider of broadband service to construct that facility, and funding would be given directly to that provider. The Commission should provide approximately $10,000,000 in funding for the pilot program, which shall come from the current High-Cost fund.

III. Transition

1. ETCs with fewer than 100,000 lines in aggregate may continue to draw the same amounts from the High-Cost fund as they receive today for a period of eight years so long as they commit to providing at least 4 Mbps/1 Mbps broadband service in all their service areas (90% of households served) within two years, 8 Mbps/2 Mbps in four years and 16 Mbps/4 Mbps in six years at rates comparable to "urban" rates. At the end of the eight year period, High-Cost funding lapses, and, as with II.7 above, the Commission shall establish a new benchmark for performance to define unserved areas, and auctions will be held to determine the service provider in these areas.

2. Beginning in January, 2012, the Commission will phase out High-Cost Model support and Interstate Access support over a 2 year period; except that, beginning in January, 2013, ETCs with more than 100,000 access lines in aggregate shall cease drawing High-Cost funds in areas where a broadband provider not receiving High-Cost funding is providing 4 Mbps/1 Mbps service to more than 66% of the households in that census block. (Note: ACA assumes that with competitive providers covering most, if not all, of these served areas, broadband performance will evolve with the overall market.) For areas served by these ETCs that are deemed unserved (i.e. there is no provider offering 4 Mbps/1 Mbps broadband service), the Commission should use reverse auctions to select a provider (Note: The goal is to make these areas among the first auctions so that new providers can begin deployment in 2013). During the time prior to an auction of and initiation of service in an unserved area, the Commission should ensure that the incumbent ETC continues to receive sufficient support for the continuation of service to those households. For areas that that are (1) not unserved, (2) where there is no competitive alternative, and (3) the company has been receiving High-Cost support, such support would continue, with the reductions in High-Cost model and IAS support applying.

3. Support for CETCs should be phased down as proposed by the Commission.