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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

Comments of TCA

I. Introduction

On February 9, 2011 the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) addressing the issues in the dockets referenced above.[1] The Commission seeks comment on near term reforms to the current Universal Service Fund (USF), developing a near term Connect America Fund (CAF) as well as long term Intercarrier Compensation (ICC) reforms and

[1] Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (*NPRM*).

transitioning all support to the CAF. The Commission wishes to modernize current funds to provide explicit support of broadband networks while eliminating waste and inefficiency.

TCA strongly supports the Commission's goal of bringing robust, affordable broadband to all Americans and wishes to thank the Commission for providing this opportunity to give our insight on this important topic. Some of the proposed rule changes, such as eliminating the Parent Trap rule, eliminating the Identical Support rule, creating a separate wireline and wireless fund and retaining rate of return regulations for rural Local Exchange Carriers (LECs) have merit and should, in principal, be adopted by the Commission. However, many others would be harmful to rural consumers and local economies in rural areas ultimately denying them access to robust broadband networks which will be required to compete in the world economy in the future. Specifically, for rural LECs, the Commission should not: 1) take heavy-handed approaches to addressing purported concerns with existing high-cost support, 2) utilize reverse auctions or cost models in the distribution of CAF funds, or 3) make disaggregation mandatory. Instead the Commission should adopt modest changes to the current USF targeting reforms to address the specific objectives it identifies in the NPRM, in order to achieve its mission of ensuring that all Americans have access to reasonably comparable telecommunications and advanced services at just, reasonable and affordable rates as mandated in the Telecommunications Act of 1996.

TCA is a national consulting firm that performs financial, regulatory and marketing services for over one-hundred rural LECs and their affiliates. The vast majority of TCA clients are rate of return regulated in the interstate jurisdiction and offer traditional voice and broadband services to their customers. Because of their sparsely-populated high-cost service areas, they are heavily dependent upon federal and state high-cost support and access revenues.

II. The FCC can achieve its stated reform objectives without radically reforming existing USF and ICC regimes for rural LECs

The NPRM proposes certain near-term reforms to the current USF high cost mechanism purportedly to promote greater efficiencies.[2] However, the proposed changes are too heavy-handed and are more analogous to a surgeon using a butcher knife rather than a scalpel. Specifically, the Commission should not cap total support per line, change the High Cost Loop Support (HCLS) algorithm, eliminate Safety Net Additive (SNA) support, eliminate Local Switching Support (LSS), freeze Interstate Common Line Support (ICLS) or eliminate any recovery of Corporate Operations Expense in the manner described in the NPRM. All of these proposed changes would disincentive broadband investment in high cost areas. Instead, the Commission should target reforms to the specific issues it outlines and then adopt these reforms on a prospective basis. TCA strongly encourages the Commission to adopt a comprehensive broadband support mechanism for rural LECs similar to the CAF implementation proposal by the Rural Associations.[3]

The NPRM contains a proposal to cap total USF at an annual per-line amount of $3,000.[4] The Commission seeks comment on whether applying this cap is consistent with fiscal responsibility. This is problematic for rural LECs that are servicing debt and particularly for those with ARRA projects, which, due to their mandated aggressive deployment schedules, could push

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[2] *NPRM* at Section VI(A)

[3] NECA, NTCA, OPASTCO, WTA, Rural Alliance Notice of Ex Parte Presentation; in WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51 (January 26, 2011)

[4] *NPRM* at para. 210

the required support beyond the proposed cap in forthcoming years.[5] While only twenty companies currently exceed the proposed cap, these companies serve a small number of customers and may have built their facilities due to state Carrier of Last Resort (COLR) obligations which require incumbent LECs to provide service upon request to any customers in their service territory. Therefore, these companies should not be penalized by the retroactive imposition of a total USF cap on a per line basis. However, should the Commission adopt a cap on total USF, it should be for LECs who have yet to make the investments that generate this amount of support, so investment plans could be prudently revised. The Commission should also create a waiver process to allow LECs to file for exceptions going forward.

The NPRM also states that the current method for distributing HCLS is in need of reform.[6] The Commission is proposing reforms in an attempt to discourage "a race to the top." HCLS is currently a capped fund, which provides an increasing amount of support to rural LECs as their cost per loop exceeds 115% of the national average. The FCC suspects that HCLS as currently structured has created a competition of sorts among rural LECs (a race to the top), which has resulted in some rural LECs investing and upgrading their networks more than would be considered prudent.[7] Therefore, the Commission proposes to reduce the support percentages in the USF algorithm to purportedly distribute HCLS in a more equitable manner.[8] Effectively, this change would cause support to be reallocated from the highest cost areas served by community-based rural LECs to lower cost areas. On its face, this change contradicts the entire concept of

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[5] ARRA projects are required to be substantially complete within 2 years of receipt of funds and fully complete within 3 years.

[6] *NPRM* Section VI(A)(2)

[7] *Ibid*. at para. 178

[8] *Ibid*. at para. 180

universal service – that the highest cost areas receive the most support.[9] Rural LECs tend to have higher costs because they serve areas where there is no independent business case to provide service – and they rely heavily on HCLS to assist them with this mission. By redirecting funds away from rural LECs, they will have little incentive to invest further and in some cases, they may not be able to invest in their networks. This will deprive rural consumers of access to the broadband services and speeds that will be necessary to thrive in the 21st Century economy. Rather than adopting the proposed change in the NPRM, which will have detrimental effects on rural LECs and rural consumers in extremely high cost areas, the Commission should adopt limits on capital expenditures eligible for USF.[10] This would solve the Commission's stated problem of LECs investing imprudently without harming community based rural LECs and still provide incentive to invest in extremely high cost areas.

Similarly, the Commission proposes to eliminate SNA because an unintended consequence of the current rules allows some LECs to be eligible for SNA support when they experience significant line loss.[11] SNA was designed to provide funding above the HCLS cap to companies making significant investments and benefits rural LECs who are frequently required to undertake significant investment in a single year. However, instead of directly addressing its concern, the FCC proposes to simply eliminate SNA. Instead of this draconian measure, the Commission should change the eligibility rules for SNA on a prospective basis so that support is based on increases in total investment, rather than growth of telecommunications plant-in service investment on a per line basis. The Commission will need to develop a method of calculating this

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[9] 47U.S.C. §254(b)

[10] One such example can be found in Section VI(A)(5) of the *NPRM*.

[11] *NPRM* at para. 184

so that it is tailored to the size of the rural LEC and this change should be applied only to future investments.

The Commission proposes to eliminate LSS to promote greater efficiency. The FCC claims that some large holding companies may have several separate study areas within a state, which allows them to collect LSS even though in total they may serve more than 50,000 lines.[12] Eliminating LSS would create substantial increases in interstate access rates for rural LECs, contrary to the Commission goals for ICC reform.[13] Currently, LSS provides recovery for the interstate portion of local switching equipment; however, the Commission is not proposing to alter the jurisdictional allocation factor responsible for assigning costs. Therefore, switching equipment costs would still be over-allocated to the interstate jurisdiction but with no support mechanism to recover these costs. Rural LEC revenue requirements recovered from the NECA pool would simply increase and result in increased access rates to cover these additional costs. Instead of eliminating LSS, the Commission should simply require consolidation of a holding company's contiguous study areas in each state that could reasonably utilize the same switching equipment. This will remove any incentive for inefficiencies identified by the FCC without creating additional pressures on access rates. In the alternative, the Commission should convert LSS into other support mechanisms.[14]

The Commission should also abandon its proposal to freeze ICLS for rate of return companies, even on an interim basis.[15] ICLS and subscriber line charges (SLCs) are the only two methods available to rural LECs for recovering the portion of the local loop assigned to the

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[12] *Ibid*. at para. 188

[13] *Ibid*. at Section XV

[14] *Ibid*. at para. 191

[15] *NPRM* at para. 394

interstate jurisdiction. As TCA has previously demonstrated, requiring rural LECs to recover ICLS shortfalls from SLCs would have devastating impacts on rural consumers – causing SLCs to increase as much as $60 per month.[16] This scenario would clearly violate Section 254(b)(1) of the Telecommunications Act which requires that services should be available at just, reasonable and affordable rates. Furthermore, freezing ICLS will bring broadband deployment to a screeching halt in high cost areas as rural LECs will lose the ability to recover the costs of constructing new facilities.

The FCC has proposed eliminating the recovery of corporate operations expenses from all federal support mechanisms (HCLS, LSS and ICLS) under the erroneous assumption that these expenses are not related to providing telecommunications service.[17] These expenses include costs associated with management of the company as well as complying with financial and regulatory mandates from the Commission and are therefore not only related, but vital to providing high quality and affordable services to high cost areas. Therefore, eliminating this expense is inappropriate and will ultimately harm consumers as rural LECs will be forced to choose between raising local rates to cover corporate operations expenses or sacrificing quality of service by reducing these expenses. If the Commission is concerned that corporate operations expenses are encouraging inefficiencies, it should limit the amount of recovery from LSS and ICLS in a similar manner to the treatment of these expenses in HCLS.

Finally, the Commission rightfully recognizes that any changes to existing funding mechanisms will impact rural LECs that have made good faith investments and commitments

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[16] Reply Comments of TCA, in WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51 (August 11, 2010) based on an average of 46 TCA clients.

[17] *NPRM* at para. 197

under the current rules.[18] It is vital that the Commission not apply any reforms retroactively and phase in changes to rural LECs that have made investments utilizing public funding, such as the Rural Utility Service (RUS) loans and American Recovery and Reinvestment Act Broadband Stimulus programs (ARRA). Significant decreases in the anticipated revenues from USF and ICC will render many of these projects uneconomic.[19]

III. CAF Support should not be distributed with Reverse Auctions in Rural LEC Service Areas

The FCC seeks comment on the first phase of the CAF which includes a proposal to create a "competitive process" to target funding to areas that are currently unserved.[20] While TCA supports the Commission's goal of promoting broadband deployment in unserved areas, it is diametrically opposed to reverse auctions – which will not result in ubiquitous broadband availability.

Most importantly, reverse auctions place rural LECs – the primary provider of universal service in the country – at a distinct disadvantage. Rural LECs have government mandated COLR obligations which coupled with the very high cost areas they serve result in significantly higher costs than other providers. COLR obligations require service to be provided to all who request it within a certificated service territory, virtually assuring that facility investments will be required which are cost-prohibitive to recover from the requesting customer. COLR obligations are typically accompanied by considerable state commission oversight, including, but not limited to:

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[18] *Ibid*. at para. 163

[19] Connecting America: The National Broadband Plan, FCC (released March 16, 2010) (*NBP*) at p. 140. The FCC acknowledges that that 60% or more of revenues for rural LECs can be attributed to the USF and ICC.

[20] *NPRM* at para. 274 For the first phase of CAF, this funding would be on top of existing USF funds.

1) extensive customer service rules; 2) numerous service quality standards; and 3) intrusive and prolonged proceedings to modify rates for services, depreciable lives and access to state high-cost funds. Despite this impediment, rural LECs have met the needs of the communities they serve as well as meeting the FCCs goals by deploying broadband more so than large incumbent LECs who serve more densely-populated areas.[21] Also, the Commission should consider that rural LECs have continuously proven themselves to be responsible recipients of USF dollars.[22] Therefore, the Commission should not adopt a reverse auction distribution method which will categorically disadvantage rural LECs.

Reverse auctions will create a "race to the bottom" where bidders may sacrifice quality of service or genuinely underestimate the costs of serving an area. Without sufficient support, rural customers will receive poor quality service, drastically increased retail prices or no service at all, which is contrary to universal service principles.[23] Another concern with reverse auctions in high-cost areas is the very real potential of providers - other than the rural LEC - winning and then avoiding or circumventing COLR obligations. The loss in USF by the incumbent rural LEC will likely preclude it from stepping in and provide/resume service in areas that are abandoned by the winning bidders.

However, if the Commission ultimately chooses to adopt reverse auctions as its method to disburse the first phase of CAF, only current ETCs should be allowed to participate. Section 254(e) of the Telecommunications Act requires that only designated ETCs may receive support funding. While the Commission asserts that it could forbear from this requirement, it also

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[21] *The Broadband Availability Gap*, OBI Technical Paper No. 1 (released April 2010) at p. 20

[22] Universal Service Administrative Company Analysis of the Federal Communications Commission Office of Inspector General 2008 Reports on the Universal Service Fund (released February 12, 2009) at p. 12

[23] 47U.S.C. 254(b)(5) requires that support be specific, sufficient and predictable to preserve and advance universal service.

recognizes that reverse auctions that are open to non-ETCs could provide opportunities for fraud and abuse.[24] The Commission acknowledges that ETCs are in a better position to meet the Commission's goals because of their unique understanding of how to meet requirements that the Commission may impose on awardees. This concern is very valid. The FCC's experience in distributing USF to wireless carriers – many of which lacked a fundamental understanding of universal service – to promote competition in rural high-cost areas resulted in considerable waste and abuse.[25] The risks of including non-ETCs in reverse auctions simply do not outweigh the benefits of having a larger pool of bidders. Accordingly, the Commission should not forbear from Section 254(e) which requires that only ETCs may receive universal service support.

If the Commission ultimately adopts reverse auctions for the first phase of CAF, it should also adopt the proposed caveat of ensuring that no CAF funding is awarded to areas with pre-existing deployment plans or government funding, as duplicative funding of high-cost areas would be a waste of precious USF monies.[26] Furthermore, the Commission should give incumbent rural LECs with COLR obligations priority when awarding funding. Incumbent rural LECs should be allowed to accept the winning bid amount to continue serving an awarded area, as they are typically in a better position to serve unserved areas in their territories by upgrading current facilities. Extending existing broadband facilities would also have the advantage of serving higher-cost areas more economically and would prevent the funding of duplicative networks.

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[24] *NPRM* at para. 319

[25] *The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds,* authored by Nicholas Vantzelfde, Criterion Economics, L.L.C. (released June 13, 2007) which demonstrated that wireless ETCs provide little incremental coverage compared to unsubsidized carriers and concluded that to the extent subsidies to wireless ETCs are intended to increase the availability of wireless service in high cost areas, the vast majority of the funds are simply wasted.

[26] *Ibid*. at para. 308

Therefore, incumbents should receive the priority for first phase of CAF funding and they should also have the first right of refusal should they not have the winning bid.

IV. Rate of Return Regulation Provides the Proper Incentives for Broadband Deployment in High Cost Areas

The Commission presents several alternatives for the future of the CAF including reverse auctions, combining auctions with cost models to predict the level of support needed in an area and continued rate of return in certain areas.[27] TCA is heartened that the Commission has recognized that the differences between rural and non-rural LECs warrant separate high-cost mechanisms and looks forward to working with the Commission on developing an appropriate rate of return regime for the CAF. As the Commission has previously recognized, rural LECs have done a commendable job of deploying broadband under rate of return regulation.[28] Building on this record of success is an important step to deploying ubiquitous broadband. Furthermore, the record is replete with demonstrations that the use of reverse auctions and cost models is not appropriate for distribution of high-cost funding in areas served by rural LECs.[29]

The use of models is unlikely to result in sufficient support in the areas served by rural LECs. There are simply too many factors to incorporate into a model to accurately predict the amount of support required in high cost areas. It is inevitable that some areas may receive too much support and others too little. While the results may "even out" for large or midsized price

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[27] *NPRM* at paras. 400-401

[28] *NBP* at p. 141

[29] NECA, NTCA, OPASTCO, WTA, and the Rural Alliance Comments; Blooston Rural Carriers; GTA Telecom; Nebraska Rural Independent Companies; Fred Williamson & Associates Inc.; John Staurulakis, Inc.; in WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51 (July 12, 2010).

cap carriers serving many states, small rural LECs will not have the ability to absorb anomalies in model-based support.

More importantly, cost models do not encourage investment. The Commission need only look at the maps showing current broadband deployment in areas that receive High Cost Model (HCM) support for evidence of this. The Commission's own studies have shown that the majority of consumers without broadband availability are in areas served by price-cap LECs.[30] This is not a coincidence. Providing carriers with the same amount of support regardless of whether or not they invest, provides no incentive for them to invest in high cost areas. Developing a model to allocate future USF will only continue and exacerbate this problem leaving rural Americans further and further behind their urban counterparts.

Fortunately, the FCC has an alternative to reverse auctions. The existing regulatory regime for rural LECs – rate of return regulation – has a proven record of success in incenting the deployment of broadband in high cost areas. Instead of discarding rate of return regulation for reverse auctions – an unproven economic theory without a track record of success – the FCC should modify the existing regime to achieve its stated goals of USF reform. TCA remains convinced that rate of return regulation is the only viable framework for distributing high cost support in areas served by rural LECs and is eager to work with the Commission within the parameters in the NPRM.[31]

Finally, throughout the NPRM, the Commission rightfully recognizes the unique challenges to providing service in Tribal areas and that telecommunications penetration in Tribal

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[30] See *supra* note 21

[31] *NPRM* at Section(VII)(C)(3)

areas has traditionally been significantly lower than in other parts of the country.[32] Adequate funding is needed to address this disparity, and assist entities in efforts to bring state of the art technologies to these areas. Therefore, the Commission should set aside CAF funding for broadband providers in Tribal areas to ensure that these areas are no longer left behind.[33]

V. Disaggregation should not be Mandatory

The Commission proposes to require all incumbent LECs to disaggregate support in their study areas with the goal of targeting support to areas that need ongoing support.[34] Disaggregation was initially established as an option to remedy the possibility of competitive ETCs receiving undue support under the Identical Support rule if they chose to serve only lower cost areas. Developing a disaggregation plan is a costly and time-consuming process and implementing a disaggregation plan is administratively burdensome. Furthermore, with the Commission's proposal to phase out competitive ETC support over five years, it is unclear what purpose mandatory disaggregation would actually serve. Mandating a costly new requirement for an unspecified purpose is clearly contrary to the Commission's stated goal of promoting efficiency. Furthermore, if the Commission implements its proposal to eliminate the recovery of any Corporate Operations Expense, this mandate would be unfunded.

Finally, as the Commission acknowledges, retaining costs for low-cost customers in the support calculations can lower the overall level of support required to serve an area.[35] In other words, mandatory disaggregation could have the unintended consequence of increasing overall

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[32] *NBP* at 152

[33] *NPRM* at paras. 302 & 303

[34] *NPRM* at para. 375

[35] *Ibid*. at para. 388

high cost support funding. This is clearly contrary to the FCC's stated goals for USF reform and therefore, should not be adopted.

VI. The FCC should immediately Eliminate the Parent Trap Rule

The NPRM proposes to modify Section 54.305(b) of the Commission's rules, commonly known as the Parent Trap Rule, which provides that a LEC acquiring exchanges from another carrier receives the same per-line levels of USF funding for which the acquired exchanges were eligible prior to their acquisition.[36] The Commission proposes to eliminate the Parent Trap Rule for exchanges that are deemed underserved five years after their acquisition. TCA strongly supports eliminating the Parent Trap Rule, which has discouraged rural LECs from acquiring underserved exchanges from price cap carriers. Rural LECs that have deployed broadband in their service areas are frequently approached by neighboring communities where the price cap LEC has shown little interest in providing service. Occasionally, the rural LEC is able to acquire the serving area from the price cap LEC; however, the parent trap rule significantly diminishes its ability to perform the necessary facility upgrades.[37] Eliminating this rule will remove this barrier and allow rural LECs to construct the necessary facilities to enable these consumers to receive broadband service. It is puzzling, however, that the Commission would propose to wait five years after an acquisition before eliminating this barrier to broadband deployment. While the Commission expresses concern regarding rural LECs acquiring exchanges simply to increase their USF draw, this concern should be secondary when compared to the millions of Americans

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[36] *NPRM* at Section VI(B)(2)

[37] Safety valve support is available for these areas, but only provides 50% of the difference between the index year HCLS amount (determined by calculating the loop expense adjustment for the area prior to acquisition) and the HCLS amount in subsequent years.

currently without broadband service. By waiting five years from the time an exchange is acquired, the Commission is merely postponing broadband deployment and prolonging the suffering of rural consumers and economies. Instead, the Commission should eliminate the Parent Trap Rule immediately upon acquisition if the exchange is deemed underserved.

VII. TCA Supports Funding both Fixed and Mobile Networks

As part of the Long-Term vision for the CAF, the Commission also seeks comment on a proposal to fund one mobile and one fixed provider per area.[38] Consistent with its previous comments, TCA supports this proposal. The Telecommunications Act charges the Commission with the task of ensuring that Americans living in rural areas have access to "reasonably comparable" services to those in urban areas.[39] TCA holds that these services are complementary – not competing – technologies, which is demonstrated by the fact that many Americans have adopted both wireless and wireline service due to the unique benefits associated with these services.[40] By limiting future CAF funding in high cost areas to one technology or the other, the FCC would be, in effect, creating "rural-rural" divides in both the functionality and applications that rural customers can utilize.

Last year, the Commission also proposed to develop a Mobility Fund which will provide $100-300 million of funding for infrastructure investment in areas currently unserved by at least 3G mobile broadband service.[41] Coincidently, the Commission proposed to eliminate the Identical Support rule, which provided little incentive for mobile providers to expand coverage into sparsely

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[38] *NPRM* at para. 403

[39] 47USC §254(b)

[40] *NBP* at p. 180

[41] Mobility Fund Notice of Proposed Rulemaking, in Docket WT 10-208 (released October 14, 2010)

populated high-cost rural areas. TCA supports both of these proposals which will provided wireless carriers with sufficient and predictable support, while incenting providers to deploy mobile broadband in high cost areas. These changes will ensure that rural consumers will not be left behind as the wireless industry continues to grow and discover new technological innovations.

While mobility is certainly beneficial for broadband access on the go, the FCC has recognized it has limited capacity which creates challenges for utilizing high bandwidth applications.[42] As we move closer and closer to an IP based world, the industry is already seeing more and more of these services delivered by broadband. As adoption increases, it will become increasingly difficult for mobile providers to meet all of this demand utilizing their own networks. As a result, a fixed broadband network is imperative to handle increased capacity that mobile networks are incapable of handling.

Fiber-based broadband networks, are more readily scalable and play an important role for delivering desired content to residences and businesses (e.g. video, health care applications). These networks are generally more reliable as mobile networks can quickly become overloaded during public gatherings or in times of crisis. Therefore, only supporting one technology type in any given high cost area will force customers to forgo the benefits enjoyed by urban Americans of these technologies working together.

VIII. **Conclusion**

As the Commission moves forward with USF and ICC reforms and developing the CAF, it is vital that it take careful, measured steps to ensure that no customers living in high-cost areas are

[42] See Report and Order in dockets GN 09-191 and WC 07-52, released December 23, 2010 at para. 103 in which the Commission forbears from applying non-discrimination rules to wireless networks.

left behind. This will be achieved by adopting policies that provide adequate incentive for broadband providers to invest in high cost areas. Successful policies will recognize the important role rural LECs have in providing service, the need for sufficient funding to cover COLR obligations and will refrain from imposing one-size-fits-all approaches to reform.

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