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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rules 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

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COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") and its affiliates hereby submit these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("*NPRM*") released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[1]

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

I. INTRODUCTION AND SUMMARY

Comcast strongly supports the Commission's commitment to a comprehensive reform of the current intercarrier compensation and universal service policies and programs. Comcast also commends the Commission's efforts to control the size of the high-cost fund and support the deployment of broadband to unserved areas.[2] To advance these goals, Comcast recommends, *inter alia*, that the Commission: (1) promptly implement a three-year transition for reforming intercarrier compensation that will set the default compensation rate for all terminating voice traffic equal to the applicable reciprocal compensation rates; (2) cap the size of the total Universal Service Fund ("USF" or "Fund"); (3) reduce and, where possible, eliminate inefficient and ineffective high-cost support mechanisms; and (4) use the Connect America Fund ("CAF") to promote broadband deployment in unserved areas through a well-designed reverse auction.

II. LONG-TERM INTERCARRIER COMPENSATION REFORM

It is imperative that the Commission act now to reform intercarrier compensation. There is broad consensus among the various industry segments as well as state regulatory commissions that technological developments in the telecommunications sector are placing tremendous strain on the existing compensation system.[3] Comcast, therefore, urges the Commission to adopt the

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[2] Comments of Comcast Corporation, WC Docket No. 10-90 (April 1, 2011) ("Comcast April 1 Comments").

[3] *See, e.g.*, Comments of AT&T, WC Docket No. 05-337, at 1 (Nov. 26, 2008) ("[T]he telecommunications marketplace has changed almost beyond recognition, even as the archaic intercarrier compensation regime has remained essentially unchanged."); Comments of the California Public Utilities Commission, WC Docket No. 05-337, at 2 (Nov. 26, 2008); Comments of CTIA, WC Docket No. 05-337, at 7 (Nov. 26, 2008) ("[I]ntercarrier compensation and universal service reform must reflect new technological and marketplace realities."); Letter from Ben Scott, Free Press, to Marlene Dortch, FCC Secretary, WC Docket No. 05-337, at 2 (Oct. 13, 2008; filed Oct. 14, 2008) ("There appears to be consensus in the record that the regulatory framework put in place by the Commission to implement the interconnection and

three-year transition plan discussed below that would establish a uniform default rate for all traffic terminated by a voice provider. The Commission, in addition, should address certain transitional issues regarding intercarrier compensation reform, including the impact of reform on existing arrangements and transitional rates.

A. The Commission Should Adopt a Three-Year Transition to a Low, Uniform Rate for the Transport and Termination of All Traffic

The inherent flaws in the current compensation regime are well documented.[4] Under the current regime, carriers charge different rates for transporting and terminating a call depending on the originating point of the call, the technology used, and the regulatory status of the carrier delivering the call. A sustainable, long-term intercarrier compensation regime requires the elimination of these pricing anomalies.

The Commission's prior reform efforts have been piecemeal and, as the Commission acknowledges, were not designed to address the "fundamental, ongoing shift in technology, consumer behavior, and competition."[5] Consequently, the current compensation system continues to rely on a "patchwork of rates and regulations [that] is inefficient, wasteful and slowing the evolution to IP networks."[6] Moreover, the decline in absolute access minutes over the last decade due to e-mail, texting, and wireless usage has placed increasing pressure on

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universal service provisions of the Act is being overtaken by innovation, progress, and arbitrage.").

4 As the National Broadband Plan notes, intercarrier compensation "has not been reformed to reflect fundamental, ongoing shifts in technology and consumer behavior, and it continues to include above-cost rates." FCC, "Connecting America: The National Broadband Plan," at 142 (rel. March 16, 2010), *available at*: <http://download.broadband.gov/plan/national-broadband-plan.pdf> ("NBP" or "National Broadband Plan").

5 *NPRM* ¶ 501; *see also id.* ¶ 501 n.718.

6 *Id.* ¶ 502.

intercarrier compensation revenue streams.[7] Further, as the *NPRM* recognizes, the current intercarrier compensation system affirmatively discourages carriers from upgrading from time-division multiplexing ("TDM") technology to Internet protocol ("IP") technology.[8] Indeed, the current regime encourages carriers to invest in TDM technology in order to continue collecting access charges.[9]

To address these systemic flaws, Comcast has recommended that the Commission promptly implement comprehensive reform that would reduce current switched access intercarrier compensation rates and result in a single compensation regime that treats all traffic, including voice over Internet protocol ("VoIP") traffic, in a uniform manner.[10] Pending the implementation of a comprehensive plan, Comcast has proposed that the Commission set the default rate for VoIP-originated traffic equal to the rate the terminating carrier assesses on local traffic pursuant to the reciprocal compensation provision of section 251(b)(5) of the Communications Act. This approach would promote the Commission's goal of increasing the deployment of broadband networks during the transition to a single long-term intercarrier compensation system for all traffic.

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7 *Id.* ¶ 503, Figure 13.

8 *Id.* ¶ 506.

9 *See, e.g.,* NBP at 142 ("Because providers' rates are above cost, the current system creates disincentives to migrate to all IP-based networks. For example, to retain ICC revenues, carriers may require an interconnecting carrier to convert [VoIP] calls to time-division multiplexing in order to collect intercarrier compensation revenue. While this may be in the short-term interest of a carrier seeking to retain ICC revenues, it actually hinders the transformation of America's networks for broadband.").

10 Comcast April 1 Comments. As Comcast asserted, "the optimal approach would involve . . . the integration of VoIP traffic into a single compensation regime that treats all traffic in a uniform way," and VoIP traffic should only receive separate treatment "if the plan ultimately adopted for comprehensive reform involves an extended transition period." *Id.* at 3-4.

For all other voice traffic, Comcast recommends that the Commission adopt a transition plan, pursuant to section 251(b)(5), that first requires intrastate access rates to be set at interstate levels, then reduces all transport and termination charges to a level equal to the rate the terminating provider assesses on local traffic pursuant to the reciprocal compensation provisions of section 251(b)(5) and section 252 of the Communications Act.[11] The low, uniform reciprocal compensation rates would apply only as a default.[12] Implementing these measures over a period of three years would advance the Commission's objective of "avoid[ing] sudden changes or 'flash cuts'" in its policies.[13]

Replacing the existing compensation patchwork with Comcast's plan would address the inherent flaws of the current regime and generate substantial benefits for the industry and consumers by "eliminat[ing] jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services."[14] Such a regime also would minimize the potential for regulatory arbitrage by setting rates that are consistent with the low incremental costs that providers incur to terminate traffic and, consequently, also are consistent with the goal of setting rates at economically efficient levels.[15] Because all traffic that uses the same transport

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11 47 U.S.C. §§ 251(b)(5), 252(d)(2).

12 State commissions may want to consider initiating new proceedings to examine whether the costs of transport and termination have decreased as a result of technological advances that have occurred since the current rates were established. *See* 47 U.S.C. § 252(d)(2)(A)(ii).

13 *NPRM* ¶ 12.

14 *High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, App. A, ¶ 221 (2008) ("*2008 FNPRM*").

15 These rates have been established by state commissions after appropriate review and reflect a "reasonable approximation" of the additional costs providers incur to transport and terminate traffic that originates on another provider's network. 47 U.S.C. § 252(d)(2)(A)(ii).

and termination functions in a provider's network would be subject to uniform rates, the proposed regime would eliminate the opportunity for one carrier to "game the system" by incorrectly classifying traffic. Moreover, the use of a short transition will move the industry promptly to more economically efficient transport and termination rates for all traffic, rather than prolonging the harmful, anti-competitive intercarrier compensation system over a longer period.

B. The Commission Possesses Legal Authority to Undertake Intercarrier Compensation Reform

The Commission has the statutory authority to establish uniform intercarrier compensation rules for all classes of telecommunications traffic and adopt guidelines to interpret section 251(f)(2).

1. Section 251(b)(5)

The Commission correctly asserts that it has jurisdiction to adopt a uniform intercarrier compensation methodology for all telecommunications traffic, including intrastate, interstate, and wireless.[16] Congress drafted section 251(b)(5) expansively to apply to all compensation issues related to the transport and termination of "telecommunications," which the statute defines very broadly.[17] Moreover, section 251(b)(5) makes no distinctions among traffic on the basis of

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The "reciprocal compensation" rates are generally lower than the access charges that apply to most toll traffic today.

[16] *NPRM* ¶¶ 509-522. Comcast also agrees with the Commission's conclusion with respect to wireless traffic that it "plainly [has] authority under sections 201and 332 to regulate charges with respect to interstate traffic involving a wireless provider, as well as charges imposed by wireless providers regarding intrastate traffic." *Id.* ¶ 511.

[17] 47 U.S.C. § 153(50).

jurisdiction (local, toll, intrastate, interstate) or service definition (*e.g.*, exchange access, local exchange service, VoIP).[18]

Section 201(b) of the Communications Act authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[19] As the Supreme Court has confirmed, the Commission's section 201(b) rulemaking authority extends to all provisions of the Communications Act, including those that encompass matters that fell within the exclusive jurisdiction of the states prior to the Telecommunications Act of 1996.[20] The Commission thus may adopt rules implementing section 251(b)(5) with respect to all traffic within the scope of that provision, including interstate and intrastate telecommunications.[21] The Commission should use that authority to implement Comcast's

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18 *See, e.g.*, *2008 FNPRM* ¶ 15 (explaining that the "broad language of section 251(b)(5) . . . supports our view that the transport and termination of all telecommunications traffic exchanged with LECs is subject to the reciprocal compensation regime in sections 251(b)(5) and 252(d)(2)"); *id.* ¶ 7 (finding that "section 251(b)(5) is not limited to local traffic"); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶¶ 39-41 (2006) (finding that interconnected VoIP traffic is "telecommunications" traffic, regardless of whether interconnected VoIP service is classified as a telecommunications service or an information service).

19 47 U.S.C. § 201(b).

20 *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-86 (1999).

21 As the Commission previously has found, section 251(b)(5) applies not just to the exchange of traffic between two LECs, but more broadly to the exchange of any traffic involving a LEC at one end. *Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 1041 (1996) ("Although section 251(b)(5) does not explicitly state to whom the LEC's obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to *any* telecommunications carriers.") (emphasis added). In other words, "although the obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications falls on LECs, Congress did not limit to other LECs the class of potential *beneficiaries* of that obligation." Comments of the Intercarrier Compensation Forum, CC Docket No. 01-92, at 40 (May 23, 2005).

proposal for establishing a durable, economically efficient national intercarrier compensation plan.

2. *Section 251(f)(2)*

The Commission seeks comment on the effect, if any, of section 251(f)(2) on the Commission's authority to establish a compensation methodology.[22] Section 251(f)(2) permits state commissions to suspend or modify the reciprocal compensation obligations of carriers with less than two percent of the nation's subscriber lines "to the extent that, and for such duration as," the commission finds that: (1) the requested suspension is in the public interest; and (2) compliance would be technically infeasible or would impose an undue economic burden on consumers or the affected incumbent LEC.[23] In contrast to section 251(f)(1), which *exempts* rural telephone companies from the requirements of section 251(c), section 251(f)(2) only empowers a state commission to grant a petition for *suspension* of section 251(b) and (c) obligations.[24] As the Supreme Court has confirmed, the Commission has authority to interpret the standards of section 251(f).[25]

The Commission should exercise its authority to adopt standards to guide state commissions in determining whether to relieve incumbent LECs of their statutory, pro-competitive responsibilities under section 251. Specifically, the Commission should limit any suspension under section 251(f)(2) to a reasonable period, but no more than three years beyond the three-year transition period Comcast proposes for all other carriers. Comcast also

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22 *NPRM* ¶¶ 519-520.

23 47 U.S.C. § 251(f)(2).

24 47 U.S.C. § 251(f)(1)-(2).

25 *AT&T v. Iowa Utils. Bd.*, 525 U.S. at 385.

urges the Commission to require that any application for suspension from the comprehensive intercarrier compensation plan pursuant to section 251(f)(2) demonstrate that the plan will have a "measurably large" adverse net impact on telecommunications users generally.[26] These proposed standards are consistent with the statute and vital to safeguarding the benefits of intercarrier compensation reform.[27]

C. The Commission Should Address Certain Transitional Issues Related to Comprehensive Intercarrier Compensation Reform

The Commission also seeks comment on two important transition issues related to intercarrier compensation reform. First, the Commission asks how it can prevent carriers from increasing their intercarrier compensation rates prior to transitioning to new compensation arrangements.[28] The key goals of reform are to lower unsustainably high intercarrier compensation rates to uniform, more economically efficient levels and reduce arbitrage opportunities by establishing equal treatment for all traffic. Consequently, there is no plausible public interest benefit that would be advanced by allowing carriers that currently assess access rates below the benchmark levels to raise their rates at any point during the transition. The Commission therefore should prohibit providers from raising their below-benchmark rates during the transition. To the contrary, the rates charged by all providers should be reduced from their pre-plan levels over the term of the transition.

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26 *2008 FNPRM* ¶ 284.

27 *Id.* ¶ 288 ("The Act is silent on what occurs if a state grants a suspension or modification of the section 251(b) or (c) obligations. We find that this silence creates ambiguities and could lead to inconsistent results following a modification or suspension under section 251(f)(2). We are concerned that a suspension or modification of section 251(b)(5) could result in exactly the kind of disparate treatment that we intend to correct with our actions today.").

28 *NPRM* ¶¶ 557-558.

Second, the Commission seeks comment on the effect of intercarrier compensation reforms on certain types of existing agreements and asks whether the proposed reforms would trigger contractual change in law provisions.[29] Change of law and similar provisions are part of carefully negotiated agreements and whether they are triggered by a particular Commission action is a matter of contractual interpretation best left to the parties.[30] The Commission has been reluctant to interfere with existing contracts for good reasons, including respect for the investment-backed expectations represented in each contract.[31]

III. UNIVERSAL SERVICE FUND REFORM

This proceeding gives the Commission a much-needed opportunity to replace the wasteful and inefficient high-cost support system with a cost-effective universal service program that promotes affordable access to broadband Internet for all Americans. To that end, Comcast urges the Commission to implement comprehensive reform that: (1) limits and puts downward pressure on the size of the Fund; (2) employs a competitively and technologically neutral reverse auction mechanism; (3) limits any recovery mechanism and does not base recovery amounts on the revenues previously obtained from intercarrier compensation payments; (4) relies on the Commission's statutory authority to provide universal service support for broadband services; and (5) ensures that the need for high-cost support is periodically reviewed and reassessed.

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29 *Id.* ¶¶ 688-689.

30 *See, e.g., 2008 FNPRM* ¶ 293 (2008) ("Rather than adopt a rule that these commercial arrangements must be reopened [in light of intercarrier compensation reforms], we will leave such issues to any change-of-law provisions in these commercial arrangements, or to commercial negotiations among the parties.").

31 *See, e.g., Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983, ¶ 36 (2000).

A. The Size of the Fund Must Be Constrained

The continued growth and overall size of the Fund both undermine the program's viability and place significant burdens on rate-paying consumers. Comcast agrees with the Commission that it must control the costs of its high-cost support program and promote the more efficient, targeted distribution of funds to ensure the sustainability of the existing high-cost mechanisms and, ultimately, the Connect America Fund.[32] To further these ends, Comcast urges the Commission to: (1) cap total future high-cost support at the 2010 level; (2) eliminate outdated high-cost support mechanisms; and (3) use a meaningful share of the savings from these reductions to decrease the size of the Fund.

1. Capped Fund Size

The Commission should take an initial step toward reducing the contribution burden on consumers by capping "the sum of the CAF and any existing high-cost programs (however modified . . .) in a given year" at the size of the high-cost program in 2010.[33] The contribution factor, which was below 10% for years, has ballooned to nearly 15%.[34] Indeed, both the

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32 *NPRM* ¶ 80. As NCTA noted in its Petition for Rulemaking, "any effort to use the USF program to subsidize broadband must be preceded by actions to control the size of the existing mechanisms and to more carefully target any future subsidy." National Cable & Telecommunications Association, *Reducing Universal Service Support in Geographic Areas that Are Experiencing Unsupported Facilities-Based Competition*, Petition for Rulemaking, GN Docket No. 09-51, WC Docket No. 05-337, at 4 (Nov. 5, 2009).

33 *NPRM* ¶ 414. *See also* NBP at 149 (recommending that the Commission "manage the total size of the USF to remain close to its current size (in 2010 dollars) in order to minimize the burden of increasing universal service contributions on consumers").

34 *Proposed Second Quarter 2011 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 11-473 (rel. March 10, 2011) (establishing a USF contribution factor of 14.9% for the second quarter of 2011); *see also Proposed First Quarter 2011 Universal Service Contribution Factor*, Public Notice, 25 FCC Rcd 17175 (2010) (establishing a USF contribution factor of 15.5% for the first quarter of 2011).

contribution factor[35] and the Fund's size[36] have more than doubled in the past ten years, notwithstanding efficiency gains in the industry. As the Commission has noted, the continuing increase in the contribution factor in conjunction with the ongoing decline in the assessable revenue base jeopardizes the stability and sustainability of the USF program and "threatens the specificity, predictability, and sustainability of the fund."[37] In particular, universal service subsidies are a burden on consumers and may have an adverse impact on subscribership in unsubsidized areas.[38] The Commission can begin to ease the financial onus on consumers by capping the overall size of the existing Fund and any new fund at the level of the 2010 high-cost program.

2. *Reduced High-Cost Recovery Mechanisms*

If the Commission makes the Fund more efficient and controls its ballooning costs, the high-cost program can play a key role in promoting the ubiquitous deployment of broadband

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35 *Id.*; *Proposed First Quarter 2001 Universal Service Contribution Factor*, Pubic Notice, 15 FCC Rcd 24089 (2000) (establishing a USF contribution factor of 6.68% for the first quarter of 2001).

36 By 2010, the High-Cost Program had risen to $ 4.1 billion, more than double the 2000-2001 level of $1.95 billion. FCC, *Universal Service Monitoring Report*, CC Docket No. 98-202, at 1-34, Table 1.10 (2010) (reporting data received through October 2010), *available at:* <http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1230/DOC-303886A1.pdf>; FCC, *Universal Service Monitoring Report*, CC Docket No. 98-202, at 1-6, Table 1.2a (2001) (reporting data received through April 2001), *available at:* <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mrs01-0.pdf>.

37 *High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834, ¶¶ 5-6, 9 (2008).

38 *See Qwest Communications Int'l v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (noting that "excessive subsidization arguably may affect the affordability of telecommunications services [for unsubsidized areas], thus violating the principle in § 254(b)(1)"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Inquiry, 24 FCC Rcd 4281, ¶ 20 (2009); *Federal-State Joint Board on Universal Service,* Seventh Report and Order, 14 FCC Rcd 8078, ¶ 69 (1999).

service throughout the nation. Comcast supports the Commission's efforts to limit the size of the Fund by reducing or eliminating several existing high-cost subsidies.[39]

i. Reducing High-Cost Loop Support

Today's high-cost loop support ("HCLS") mechanism inefficiently provides subsidies to incumbents based on their total loop costs, which are fixed, averaged over the number of lines in service. Thus, under this approach, even if an incumbent loses lines to a competitor, it receives the same total amount of support. Keeping an incumbent LEC's subsidy payment constant inequitably insulates the incumbent from competitive pressures and needlessly inflates the size of the Fund. The Commission's proposals to reduce reimbursement for high-cost loop support and limit the total support per line any one carrier may receive will help to address these flaws in the current system.[40]

ii. Eliminating Local Switching Support

Comcast encourages the Commission to adopt its proposal to eliminate Local Switching Support ("LSS") immediately.[41] Put simply, the rationale for LSS has been undermined at an increasingly rapid pace as the telecommunications market has evolved from circuit-switched to IP-based technologies. The Commission correctly explains that "[s]oft switches and routers tend to be cheaper and more efficiently scaled to smaller operating sizes than the specialized hardware-based switches that predominated when LSS was created."[42] As a result, the LSS mechanism does not "appropriately target funding to high-cost areas, nor does it target funding

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39 *NPRM* ¶¶ 162-260.

40 *Id.* ¶¶ 175-185, 208-215.

41 *Id.* ¶¶ 186-193.

42 *Id.* ¶ 187.

to areas that are unserved with broadband."[43] The LSS mechanism should, therefore, be eliminated immediately.

iii. Eliminating Interstate Access Support

Comcast supports the Commission's proposal to eliminate Interstate Access Support ("IAS") funding over several years.[44] No credible evidence has been presented that the IAS recovery mechanism is necessary to ensure the continued provision of legacy services to high cost areas. The IAS was established in 2000 to convert the "implicit subsidies" of the interstate carrier common line and presubscribed interexchange carrier charges to explicit support payments.[45] As the Commission notes, "IAS was a component of the transitional CALLS Plan, which has lasted long past its intended five-year lifespan," and commenters "have not established . . . that such support is needed to ensure the provision of voice service at reasonable rates."[46] The marketplace has changed substantially in the intervening decade. Local telephone plant is now used to offer a wide array of services beyond basic voice, and new providers of voice service compete without receiving any subsidy.

The Commission, therefore, can and should eliminate the IAS to advance its efforts to eliminate support mechanisms that have outlived their usefulness. Comcast also urges the Commission to reconsider its tentative proposal to delay the transition of interstate common line

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43 *Id.* ¶ 190.

44 *Id.* ¶¶ 228-240.

45 *Access Charge Reform; Price Cap Performance Review of Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service,* Sixth Report and Order, Report and Order, and Eleventh Report and Order, 15 FCC Rcd 12962, ¶¶ 195-96 (2000).

46 *NPRM* ¶ 233.

support ("ICLS") to the CAF.[47] The transition of IAS and ICLS should occur together. Both of these programs initially were designed as replacements for access charge revenues in connection with earlier reform plans and both should be phased out at the same time.

iv. Rationalizing Competitive Eligible Telecommunications Carrier Support

Comcast also supports the Commission's proposal for a phased elimination of the funding for competitive eligible telecommunications carriers ("ETCs") over several years.[48] As the National Broadband Plan noted, "[i]n some areas today, the USF supports more than a dozen competitive ETCs that provide voice service, and in many instances, companies receive support for multiple handsets on a single family plan. Given the national imperative to advance broadband, subsidizing this many competitive ETCs for voice service is clearly inefficient."[49] Despite the fact that "the identical support rule offers limited and only indirect incentive to invest in unserved and underserved areas,"[50] high-cost support for competitive ETCs has increased from under $17 million in 2001 to the current capped amount of $1.366 billion.[51]

3. Applying Some of the Savings to Reduce Consumer Burden

Comcast agrees with the Commission that much of the initial savings to be realized from the Commission's reforms of existing high-cost support programs should fund the Connect

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47 *Id.* ¶ 393.

48 *Id.* ¶¶ 241-260.

49 NBP at 148.

50 *NPRM* ¶ 246. The Joint Board also has identified increased support to competitive ETCs as the leading cause of the sizeable growth in the high-cost fund in recent years and has warned that "without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire jeopardy of becoming unsustainable." *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Recommended Decision, 22 FCC Rcd 8998, ¶ 4 (2007).

51 *NPRM* ¶ 20, Figure 2.

America Fund. The Commission, however, also should use a meaningful portion of the savings to reduce the size of the existing Fund. Over time, that Fund should be reduced as support is increasingly shifted to broadband. Moreover, the support required for the CAF also should decline in coming years, as the construction of broadband networks to reach unserved areas is completed.[52] Hence, as the broadband investment gap closes, the contribution burden on consumers should be reduced. Using part of savings generated by initial reforms to reduce the size of the Fund and the contribution burden would be an important first step.[53]

B. Award CAF Support With a Well-Designed Reverse Auction

Comcast urges the Commission to use a well-designed reverse auction to award CAF support to finance the construction of broadband networks in unserved areas where marketplace forces would not lead to new entry.[54] A reverse auction would further the statutory goal of sustainability by rewarding more efficient providers that are prepared to build out broadband networks in unserved high cost areas. A reverse auction that incorporates the proposals outlined below also would serve the interests of consumers who must fund the CAF by directing the support to more efficient providers.

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52 FCC, *The Broadband Availability Gap,* OBI Technical Paper No.1, at 5, Exhibit I-A (April 2010), *available at:* <http://download.broadband.gov/plan/the-broadband-availability-gap-obi-technical-paper-no-1.pdf> ("OBI Technical Paper"). *See also* NBP at 138 (noting that "[i]n some areas, subsidizing all or part of the initial capex will allow a service provider to have a sustainable business.").

53 *See NPRM* ¶ 10.

54 *Id.* ¶¶ 284-288 (proposing to award a fixed amount of CAF support, paid out in installments, based on the lowest bid amounts submitted in a competitive reverse auction).

1. *Single Provider Per Geographic Area*

Comcast supports the Commission's proposal to limit CAF payments to a single provider per geographic area.[55] Subsidizing multiple broadband infrastructures is unnecessary to achieve ubiquitous deployment and would impose excessive burdens on the service providers and consumers who fund the program.[56]

2. *Technologically and Competitively Neutral Auction Rules*

Comcast also urges the Commission to ensure that its auction rules, including its technical requirements, are technologically and competitively neutral and encourage the participation of all industry segments.[57] For example, the Commission should ensure its auction eligibility rules do not have the effect of foreclosing the use of satellite or other technologies to expand broadband service to areas where marketplace forces would not foster new entry.[58] Permitting parties from different industry segments to participate will more closely mimic the workings of a competitive marketplace.[59]

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55 *Id.* ¶¶ 281-283.

56 *See, e.g.,* NBP at 145.

57 As the National Broadband Plan recommends, "[s]upport should be available to both incumbent and competitive telephone companies (whether classified today as 'rural' or 'non-rural'), fixed and mobile wireless providers, satellite providers and other broadband providers." *Id.*

58 For example, the OBI Technical Paper recognized that satellite technology "has some clear advantages relative to terrestrial service for the most remote, highest-gap homes: [including] near-ubiquity in service footprint and a cost structure not influenced by low densities." OBI Technical Paper at 40. The cost of serving the "highest-gap" homes using land-based technology, however, is a very large proportion of the total gap amount. Indeed, the OBI Technical Paper reports that 57% of the total gap, or $13.4 billion, is attributable to the cost of serving only 3.5% of the unserved housing units. *Id.* at 40-41.

59 *See, e.g., Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997) ("*1997 USF R&O*").

3. *Use of Census Blocks*

The Commission should adopt its proposal to identify unserved areas by census block. Using this small, established, widely-used geographic area that is not aligned with any particular provider's network is the sole competitively neutral and consumer-focused solution that also allows the Commission to better target support where it is needed. Importantly, the use of census blocks does not favor any particular class of bidder. Census blocks also can be easily aggregated into other census-based units such as census block groups or census tracts. The Commission should, therefore, provide CAF support to geographic service areas as defined by bidding participants, whether individual census blocks or aggregations of multiple census blocks.[60]

4. *Bidding Credit for the Least Densely Populated Census Blocks*

The Commission should ensure that CAF support is directed only to those areas where residential and small business consumers would not otherwise have access to reasonably priced voice and broadband services.[61] There are currently unserved areas in which broadband almost certainly would be deployed in the near-term even without CAF funding. The Commission should ensure that its auction and support policies do not create incentives for providers to bid solely for areas in which they would have deployed broadband without a government subsidy and ignore areas that are, and will remain, unserved. In order to ensure that CAF support is directed to the areas where it is most needed, the Commission should adopt stringent criteria that will exclude any geographic area where it is uncertain whether marketplace forces will drive buildout, and the Commission must exercise vigilant oversight of the CAF program to ensure

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60 *NPRM* ¶¶ 289-295.

61 *Id.* ¶ 409.

that support is provided solely to truly unserved areas. The Commission also should provide bidding credits or priority status to those who bid on the least densely populated census blocks.

C. Any Recovery Mechanism Should Be Limited and Should Not Be Based on Revenues Previously Obtained from Intercarrier Compensation Payments

The Commission should reject claims that recipients of high-cost support are entitled to the dollar-for-dollar recovery of revenues previously obtained from intercarrier compensation revenues.[62] Incumbent LECs today are not wholly dependent on revenues generated from regulated telecommunications services. To the contrary, as the Commission predicted more than a decade ago, competition and new technologies have led "to the development of new services that . . . produce additional revenues per line and to reductions in the costs of providing the services generating those revenues."[63]

The rapid increase in the revenue streams generated by these new and often unregulated service offerings undermines any claims that new subsidy mechanisms should provide to incumbent LECs the same revenue amount that the existing subsidies and intercarrier compensation arrangements produce. Rather, in assessing the need for high-cost support in the future, the Commission should look at the carriers' regulated and non-regulated revenues as well as technological advances and the efficiencies that companies realize when they provide multiple services over a single network. Using all revenues in determining where support is truly needed will advance the Commission's goal of lowering the funding burden on consumers.[64] Comcast

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62 *Id.* ¶¶ 559-602.

63 *1997 USF R&O* ¶ 260.

64 As the Commission has noted, "[w]e are concerned that universal service support be targeted to those companies whose reduced intercarrier compensation revenues truly are needed to continue providing quality service at affordable rates, and that it should not simply enable the

also supports the Commission's proposals to use local rate benchmarks and to raise subscriber line charge ("SLC") caps to offset reduced intercarrier compensation revenues.[65]

Carriers should not be permitted to obtain high-cost support while maintaining unreasonably low rates for local exchange service. As Comcast has previously advocated, "[c]arriers seeking USF support to replace lost [intercarrier compensation] revenues [should] be required to (i) make a showing that discloses all of their costs and revenues, both regulated and non-regulated, and (ii) demonstrate that their federal SLCs, state SLCs (if any), and state retail local service rates are at the maximum permissible levels."[66] In this way, the Commission can ensure that any new universal service subsidies are sustainable and carefully targeted to where they are truly needed.

D. The Commission Has the Statutory Authority to Provide Universal Service Support for Broadband Services

The Commission possesses statutory authority under section 254 of the Communications Act to extend universal service support to broadband services offered as telecommunications and information services. As the Commission correctly notes, section 254(b) requires the Commission to promote access both to "advanced telecommunications and *information services*."[67] Further, section 254(c)(2) provides that the Joint Board may "recommend to the Commission modifications in the definition of *services* that are supported by Federal universal

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company to pay bigger dividends to shareholders or pad a company's bottom line." *2008 FNPRM* ¶ 314.

65 *NPRM* ¶¶ 573-584.

66 Comments of Comcast Corporation, WC Docket No. 05-337, at 9 (Nov. 26, 2008).

67 47 U.S.C. § 254(b) (emphasis added).

service support mechanisms."[68] Significantly, the statute does not limit such changes to "telecommunications services."

Thus, although section 254(c)(1) refers to universal service as "an evolving level of telecommunications services," that provision must be read in conjunction with, and not in isolation from, other provisions of the same statutory section that do not limit the scope of section 254 to "telecommunications services." As AT&T has noted, the Commission has previously concluded in its analysis of section 254(h) that the "varying use of the terms 'telecommunications services' and 'services' . . . suggests that the terms were used consciously to signify different meanings."[69] The Commission in that decision held that the use of the term "services" in section 254(h)(1)(B) permitted the use of universal support to subsidize access to non-telecommunications services.[70] The Commission here similarly should conclude that the use of the term "services" in section 254(c)(2) authorizes the use of universal service support for broadband services. In short, therefore, the Commission possesses the requisite legal authority to provide universal service support for broadband services.

E. The Commission Must Periodically Review the Continuing Need for CAF Support

The Commission proposes to review periodically whether it is making progress in addressing its universal service goals.[71] While Comcast agrees with this ongoing review, the

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68 47 U.S.C. § 254(c)(3) (emphasis added).

69 AT&T, *The Federal Communications Commission Has Statutory Authority To Fund Universal Broadband Service Initiatives*, at 3 (quoting *1997 USF R&O* ¶ 439), attached to Letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-51 (Jan. 29, 2010).

70 *1997 USF R&O* ¶ 439.

71 *NPRM* ¶ 83.

Commission also should review periodically the continuing need for support. The Commission should reduce or eliminate support when it becomes apparent that marketplace forces are sufficient to achieve deployment in an area.[72] Support should be limited to those rural areas that truly need it – areas that are unserved today and would remain unserved by broadband service in the absence of universal service subsidies. Ensuring that support is limited in this way through a periodic review will create a sustainable fund that takes into account technological advances and new competitive entry.

IV. CONCLUSION

The Commission should adopt comprehensive plans for intercarrier compensation and high-cost universal service reform that are consistent with the foregoing proposals and comments.

Respectfully submitted,

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[72] *See, e.g.*, NBP at 145 (asserting that the "CAF should only provide funding in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service.").

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 18th day of April, 2011, I caused true and correct copies of the foregoing Comments of Comcast Corporation to be mailed by electronic mail addressed to:

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/s/ Ruth E. Holder
Ruth E. Holder