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
	)	WC Docket No. 05-337
High-Cost Universal Service Support	)	
	)	CC Docket No. 01-92
Developing an Unified Intercarrier Compensation Regime	)	

COMMENTS OF THE UTAH RURAL TELECOM ASSOCIATION

April 18, 2011

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I. INTRODUCTION

The Utah Rural Telecom Association ("URTA"), by and through its undersigned counsel, files these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") on Universal Service Fund ("USF") and Intercarrier Compensation reform released February 9, 2011 and published March 2, 2011 in Volume 76, Number 41 of the Federal Register. URTA is an association of fourteen rural local exchange carriers who serve customers throughout rural Utah and receive high-cost universal service support. URTA is filing these comments for itself and on behalf of each of its members individually.[1]

[1] The URTA members are All West Communications, Bear Lake Communications, Beehive Telephone, Carbon Emery Telcom, Central Utah Telephone, Direct Communications, Emery Telcom, Gunnison Telephone, Hanksville Telcom, Manti Telephone Company, Skyline Telecom, South Central Communications, Strata Networks, and Union Telephone Company.

In addition to traditional local exchange service, all URTA members provide broadband service to their customers and several members operate separate wireless affiliates. Collectively and individually, URTA members have in-depth experience with the current high-cost support system and have a significant interest in the reforms in the USF and the Intercarrier Compensation system proposed by the Commission in the NPRM.

II. NPRM IS INCONSISTENT WITH THE COMMISSION'S OBJECTIVES

URTA is concerned that as proposed, the Commission's NPRM is inconsistent with the Commission's stated objectives. The Commission's four core principles enumerated in the NPRM are: modernizing and refocusing the USF and ICC (Intercarrier Compensation) to ensure all Americans have access to robust, affordable broadband and to accelerate the transition to IP networks; fiscal responsibility; accountability; and use of market-driven and incentive-based policies.[2] The Commission also proposes four priorities: 1) preserve and advance voice service; 2) ensure deployment of modern networks capable of supporting broadband applications; 3) maintain comparable rates for voice and broadband services throughout the nation; and, 4) limit the contribution burden on households.[3] If the Commission pursues the NPRM in its current form, it will diminish access to robust, affordable broadband and increase rates in rural parts of Utah served by URTA members.

A. Capping the USF and expanding supported services will harm service in rural areas in Utah if no other action is taken

The Commission has asked for comment concerning capping the USF,[4] expanding the use of the USF to support broadband, creating a Mobility Fund, and expanding the eligible

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[2] NPRM ¶¶ 10, 14.

[3] NPRM ¶ 80.

[4] NPRM ¶¶ 412 – 413.

recipients.[5] Once the USF is capped it becomes a zero sum game and there will be winners and losers. One provider's gain will be another provider's loss under these conditions. Perhaps it is too obvious, but if the capped USF is used to support more services, create a Mobility Fund, and additional recipients become eligible for funding, that can only mean that current USF recipients, like URTA members, lose.

The loss of funding will not make broadband services more available, robust, or affordable as the Commission desires. Instead, it will become more difficult to maintain services in rural Utah where URTA members have used USF funds both for one-time capital projects and to pay ongoing operations expenses. Reductions, therefore, will not just hurt the expansion and enhancement of networks and service in unserved areas, they will hurt operations and cause service to deteriorate in areas that are served already. They may also jeopardize URTA members' current financing arrangements and make it more difficult to raise capital privately. Investors do not invest in companies that default on their loans.

URTA does not dispute that the Commission can expand the services supported by the USF. 47 U.S.C. 254 appears to provide for it.[6] Nor does URTA oppose USF reform if it is done

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[5] NPRM ¶ 55.

[6] Section 254(c) states:

> Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—
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> **(A)** are essential to education, public health, or public safety;

correctly and fairly. URTA has consistently advocated that the Commission seek contribution reform either before or simultaneously with universal service reform. It is impossible to maintain let alone expand service using the same level of funding for more USF-supported services. In comments filed in WC Docket No. 05-337, URTA wrote:

> If the Commission first reformed universal service contribution policy and expanded the contributor base, both the concern over customer burden and the perceived need to cap the fund would disappear. The impact of contributions on individual customers would decrease, the fund would increase, and the statutory requirements of universal service could be addressed sufficiently.[7]

The Commission should not add broadband and mobile services to the list of supported services without seeking congressional authorization to require customers of those services to contribute to the USF.[8] Supporting broadband from the USF to which broadband does not contribute is unfair, unjust, and unreasonable.

B. Incentive regulation will reduce investment in rural areas

The Commission's proposal to transition from rate-of-return regulation to incentive-based, or market-based regulation will disincent investment in rural areas. Perhaps it is too obvious again, but the majority of the poorly served areas in the nation are served by providers that have been regulated on an incentive basis and have had no incentive to invest in the less densely populated areas where the returns are so poor that they cannot recover their costs. Not surprisingly, their incentive has been to serve areas that have the highest returns and to neglect

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(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

[7]URTA comments filed April 7, 2008 in WC Docket No. 05-337, Fn 9.

[8]Section 254(d) only mandates that telecommunications carriers providing interstate telecommunications service contribute to the USF.

the areas with the lowest rates of return. Though regulated returns are much lower, they are predictable and allow investors in regulated companies to recover their investment.

With all of its imperfections, rate of return regulation has served rural Utah well. It has allowed URTA members to extend broadband service to most remote areas and establish an availability rate of over 96 percent. The "rural-rural divide" about which the Commission complains has arisen between areas served by price regulated and rate of return regulated providers.[9] URTA recommends that the Commission not react precipitously to address this divide until it understands the cause and has a solution that works. Otherwise the cure could result in unintended consequences and be worse than the treated symptoms.

C. Reverse Auctions and will worsen the quality and availability of service in rural America

The Commission proposes to use reverse auctions to extend service to unserved areas and "... more generally as a longer-term means of disbursing ongoing CAF support."[10] URTA discourages the Commission from using reverse auctions. In comments filed in WC Docket No. 05-337, URTA addressed reverse auctions, stating:

> URTA opposes the development and implementation of any reverse auction mechanism because of the negative effect it will have on investment in infrastructure in rural areas and urges the Commission to reconsider and reverse its tentative position. It is URTA's position that under a reverse auction regime, service in rural areas will deteriorate and it will not be possible to ensure the universal availability of services. URTA believes that reverse auctions will be to quality and availability of service in rural America what the identical support rule has been to the universal service fund support mechanism in terms of the unintended adverse exponential, unsustainable growth the rule created. If implemented, the use of reverse auctions to distribute support funds is a policy the

[9] NPRM ¶ 6.

[10] NPRM ¶¶ 24, 266.

> Commission will likely have to change within a few years following implementation to address the harm it will have caused to service in rural areas.[11]

URTA expressed additional concerns about reverse auctions and their impact in investment in rural America:

> Economic lives of most facilities and cost recovery periods for investment in infrastructure will be longer than the length of an auction term. If universal service fund revenues are only available during the term of an auction, those revenues will be at risk each time there is an auction. Should a rural local exchange service provider lose an auction and the accompanying universal service revenues before it has had an opportunity to recover its investment costs, the provider may have to default on its loans and possibly seek bankruptcy protection. Lenders will not lend money under this cloud of risk and the provider will have no incentive to invest. As the lowest bidder with the least support from the support fund, the winning bidder will avoid upgrading its equipment where possible and will be slow to extend service to unserved areas. URTA avers reverse auctions simply reverse investment incentives and will worsen the quality and availability of service in rural America.[12]

Nothing has changed with respect to reverse auctions since URTA submitted these comments and URTA urges the Commission again not to use them.

III. COMMISSION HAS NO JURISDICTION OVER INTRASTATE ACCESS

In Section XIII of the NPRM, the Commission queries how it can reduce intrastate access rates as part of the Commission's efforts to reform intercarrier compensation rules. The Commission proposes two options for doing so: working with the states under traditional roles and provide incentives to reduce intrastate access rates, or asserting jurisdiction under Sections 251 and 252 of the 1996 Act to unify all intercarrier rates.[13] The Commission has no jurisdiction over intrastate rates. Attempting to exercise authority over intrastate access rates under the 1996 Act will invite legal challenge and will cause the Commission's reform efforts to languish in

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[11]URTA comments filed April 7, 2008 in WC Docket No. 05-337 at 8.

[12] *Id.* at 9.

[13]NPRM ¶ 534.

litigation. URTA, therefore, discourages the Commission from attempting to assert jurisdiction over intrastate access rates.

IV. TARGET BROADBAND SPEEDS MUST BE TREATED ACCURATELY

The Commission seeks comment about setting broadband speeds that a provider must offer in order to qualify for USF distributions.[14] If the Commission sets target speeds, URTA recommends that the speeds be set uniformly so there is no distinction between urban and rural areas with respect to speeds or technologies. In addition, URTA urges the Commission to acknowledge the availability of broadband in areas irrespective of the subscription rate. URTA made this same point in an Ex Parte letter to the Commission dated October 25, 2010 in GN Docket No. 10-159:

> Third, subscribership should not be a criterion to determine availability of broadband service. In the Sixth Broadband Deployment Report, the FCC required that at least one percent of the households of a county subscribe to download speeds greater than 3 Mbps and upload speeds greater than 768 Kbps. Using these criteria, the FCC erroneously concluded that 13 counties in Utah are unserved when in fact much faster broadband speeds are available in these counties and thousands of customers subscribe to speeds exceeding the download benchmark.
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> There is no statutory authority to consider subscribership. On the other hand, Sections 706(a) and (b) specifically emphasize availability of advanced services to elementary and secondary schools, but that does not appear to have been a consideration in the Sixth Report and should be considered in the FCC's Seventh Report. In Utah, all 116 high schools and 142 middle schools are served with one Gbps capability. Of the 593 elementary and charter schools in the state, 443 have at least 100 Mbps service with the majority of them being served with one Gbps. Using E-rate funds, the Utah Education Network ("UEN") has contracted with local telecommunications service providers to provide these services. After UEN has fully distributed the $13.5 million BTOP grant it received from the National Telecommunications and Information Administration ("NTIA"), all but approximately 75 elementary schools will have a minimum of 100 Mbps service. Many of the 701 schools that are already highly served are in the Utah counties adjudged in the Sixth Report to have no service. That is a flaw in the Sixth Report that should be corrected in the Seventh Report. Congress clearly believed

[14] NPRM ¶ 116.

> these data were part of the determination of whether broadband service is available. If the FCC is determined to use subscribership to establish the availability of broadband service, any future analysis should also take into account households that exceed one of the benchmarks and the availability and use of broadband at schools. That would produce a more accurate view of the actual availability of broadband service.

Using the criteria the FCC used in its Sixth Broadband Deployment Report is misleading and can distort the distribution of USF funds to the detriment of customers in rural Utah and America. Any action the Commission takes must be based on fact and not be ends-driven.

V. URTA SUPPORTS ELIMINATION OF IDENTICAL SUPPORT RULE

The Commission proposes to eliminate the identical support rule in the context of rationalizing funding for competitive eligible telecommunications carriers.[15] URTA unequivocally supports the Commission in eliminating this rule as wasteful of the USF. In comments to the Commission in WC Docket No. 05-337, URTA said this:

> URTA also supports the Commission's other tentative conclusions to provide support to competitive ETCs based on the CETCs' own costs instead of the incumbents', and to require CETCs to file cost data demonstrating their per-line costs to provide service in order to receive universal service support. Taking such action should reduce demands on the universal service fund and begin to ensure that support is only distributed where it is needed. URTA suggests that CETCs report their costs based on and in alignment with the study areas of the incumbents where they offer service. The Commission should also require that CETCs file total costs for all study areas where they serve in order to compare those costs to the costs from the study areas where the CETCs are seeking universal service support. That is one potential option to crosscheck the CETCs' costs in order to prevent costs from being shifted to the higher cost areas.[16]

URTA believes the identical support rule has failed and should be eliminated no matter what other reforms can be rationalized and adopted.

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[15] NPRM ¶ 242.

[16] URTA comments filed April 7, 2008 in Docket No. 05-337 at 7-8.

VI. CONCLUSION

The Commission has proposed rulemaking that will negatively affect investment and existing and future service in rural Utah. Capping the USF without contribution reform, imposing incentive regulation, and relying on reverse auctions to attract investment will have the opposite effect of the Commission's stated objective to make robust, affordable broadband service universally available. The outcome is contrary to the principles and priorities enumerated in the NPRM.

URTA does not oppose fair universal service reform, but the NPRM does not achieve that. Instead, it proposes Commission assertion of jurisdiction over intrastate access rates where the Commission has no jurisdiction which will mire reform efforts in litigation. Any Commission action should be based on facts and not be ends-driven. URTA recommends that the Commission step back and start over if necessary to redirect its efforts to accomplish the principles and priorities the Commission is seeking to achieve.

Respectfully submitted this 18th day of April, 2011.

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