Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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 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
	)	

To: The Commission

COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

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EXECUTIVE SUMMARY

CTIA applauds the Commission's effort to reform comprehensively the outdated universal service and intercarrier compensation regimes. As CTIA describes in these comments, the FCC should move forward expeditiously by adopting reforms that recognize the value of mobile services to modern consumers, make more efficient use of scarce government subsidy resources, eliminate marketplace distorting regulatory arbitrage, and promote investment into innovative technologies by commercial providers.

CTIA strongly agrees with Chairman Genachowski's recent assessment, made at International CTIA WIRELESS® 2011 just last month, that "[i]t's all about mobile. . . . No sector of the communications industry holds greater potential to enhance America's economic competitiveness, spur job creation, and improve the quality of our lives." CTIA urges the Commission, as it reworks the nearly 8 billion dollar high cost USF and the multi-billion dollar intercarrier compensation system, to keep these guiding words in mind.

A reformed high-cost universal service mechanism must support the deployment and operation of mobile broadband networks, consistent with the Act, the National Broadband Plan, the President's Wireless Initiative, and clear consumer demand for mobile broadband service. Support for mobile wireless broadband must be sufficiently robust to permit deployment in areas where there is no viable business model for mobile build-out, a goal for which the Mobility Fund, as proposed, would be inadequate, and should support the ongoing costs of providing service. Further, support should account for the competitive mobile wireless landscape, and thus should experiment with market-based approaches to calibrating support levels.

In the near term, the Commission should vigorously pursue reforms meant to promote efficiency in the support mechanisms currently enjoyed by ILECs. CTIA supports reform of the ILEC-specific mechanisms and believes that the NPRM has put forth numerous promising proposals, such as consolidating and reducing the support thresholds for high cost loop support; eliminating safety net additive support, support for corporate operations expenses, and local switching support; imposing reasonable limits on reimbursable operating and capital costs for rate-of-return companies, and imposing a meaningful cap on high cost. The Commission should continue to move forward with the National Broadband Plan's proposal to end rate-of-return regulation and, in the interim, quickly adopt its common sense proposals to cap ICLS, strengthen the definition of "used and useful," and reduce the permitted rate of return.

As it transitions support away from the legacy high-cost mechanisms, the Commission must ensure that there is a plan in place to ensure that 3G wireless availability does not *decrease*. Eliminating support without a plan to safeguard against backsliding would be in tension with the FCC's goals, the National Broadband Plan, and the President's Wireless Initiative. Such an approach would also be inconsistent with consumer demand. Likewise, the Commission should not adopt a flash-cut in support for wireless family-plan subscribers, and should clarify that ETCs are released from their federal obligations as support is phased out.

Long-term reform should rely on new mechanisms, reward efficient use of scarce public resources, and facilitate adoption of innovative services. The existing mechanisms are not well tailored to the Commission's broadband and mobility goals, and comprehensive reform is warranted. Such reform should continue to rely on technological and competitive neutrality, reflecting the needs and demands of consumers.

Comprehensive reform of the intercarrier compensation regime is long overdue; the current framework promotes arbitrage and deters investment in next-generation networks. Intercarrier compensation reform should focus on low, uniform rates and, ultimately, the adoption of a bill-and-keep framework. CTIA therefore advocates a two-stage transition whereby intercarrier charges are unified at a single, low per-minute rate – ideally the $0.0007 rate now applicable to ISP-bound dial-up traffic – and then, no later than five years from today, reduced to zero. CTIA has proposed its Mutually Efficient Traffic Exchange ("METE") proposal to govern interconnection.

The Commission should ground intercarrier compensation reform in the Section 251(b)(5) "reciprocal compensation" framework set out by the 1996 Act. The Act is best understood to contemplate that all traffic would become subject to this regime over time, and the Section 251 approach is most consistent with a consistent, rational rate structure. The 1996 Act framework is also better suited to the Commission's transition toward bill-and-keep, and thus should be implemented immediately.

To the extent the Commission adopts a recovery mechanism in concert with intercarrier compensation reform, that mechanism should be narrowly tailored and should focus on end-user recovery. Such a mechanism should not be directed toward "revenue neutrality," but rather should focus on providing ILECs a reasonable amount of time to adjust their business models. Any recovery mechanism should rely on rate benchmarks, and ultimately result in carriers recovering their costs from their own end users.

Finally, the Commission should clarify certain matters with respect to wireless interconnection. In particular, the Commission should grant the pending Sprint petition, clarifying that ILECs may not refuse to load numbering resources of an interconnecting carrier or refuse to honor the routing and rating points designated by such a carrier. Moreover, the Commission should maintain the intra-MTA rule until all traffic exchange rates are made uniform.

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To: The Commission

COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

I. INTRODUCTION

CTIA–The Wireless Association® ("CTIA") submits the following comments on the Commission's Notice of Proposed Rulemaking seeking comment on broad reforms to universal service and intercarrier compensation.[1] As CTIA describes in these comments, the FCC should move forward expeditiously with a comprehensive revision of the outdated Universal Service high cost programs and the anachronistic intercarrier compensation system by adopting reforms that recognize the value of mobile services to modern consumers, make more efficient use of

[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 a 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, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) ("NPRM").

scarce government subsidy resources, and that promote investment in innovative technologies by commercial providers.

CTIA strongly agrees with Chairman Genachowski's recent assessment, made at International CTIA WIRELESS® 2011 just last month, that "It's all about mobile. . . . No sector of the communications industry holds greater potential to enhance America's economic competitiveness, spur job creation, and improve the quality of our lives."[2] CTIA urges the Commission, as it reworks the nearly 8 billion dollar high cost Universal Service Fund ("USF") and the multi-billion dollar intercarrier compensation system, to keep these guiding words in mind.

CTIA is encouraged by Chairman Genachowski's observation that universal service reform "will be technology neutral, and [the Commission] expect[s] that wireless providers will be active participants in the Connect America Fund."[3] In these comments, CTIA offers reform proposals to ensure that the Commission can achieve the Nation's mobile broadband goals, to the benefit of American consumers. Specifically, CTIA urges the Commission to adopt reforms that:

- Include the development of mechanisms to support the deployment and on-going operations of mobile broadband networks;
- Provide funding for mobile broadband that is sufficiently robust;
- Achieve significantly greater efficiency in the way incumbent Local Exchange Carriers ("LECs"), particularly rate-of-return incumbent LECs, receive support;

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[2] Julius Genachowski, Chairman, FCC, Prepared Remarks at International CTIA WIRELESSI.T. & Entertainment®, *America's Mobile Broadband Future* (Oct. 7, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf

[3] *Id.*

- Ensure, as it transitions from legacy high cost support mechanisms to new mechanisms, that there is a plan to maintain 3G availability;
- Ensure that competitive and technological neutrality are the pillars of the Connect America Fund;
- Establish public interest and other obligations on eligible telecommunications carriers ("ETCs") that are carefully tailored, set at the federal level, and tied to the specific funding received;
- Define broadband without reference to any particular technology;
- Exercise Federal authority under the Communications Act to adopt low, uniform intercarrier compensation rates with a clearly defined path to bill-and-keep;
- Limit the amount and duration of any alternative recovery mechanism to provide LECs time to adjust their business models, rather than seeking to ensure "revenue neutrality;" and
- Clarify wireless interconnection issues by declaring that: (1) an ILEC may not refuse to load numbering resources of an interconnecting carrier; and (2) an ILEC may not refuse to honor the routing and rating points designated by that interconnecting carrier.

With ever higher contribution burdens placed on consumers, with legacy universal service programs designed to support technologies of the past century, and with an intercarrier compensation system that bears no relation to either the current technologies or marketplace, the time for reform has come.

Reform promises not only benefits for the competitive market and for innovation, but also offers direct and indirect benefits for consumers. It is consumers who ultimately bear the costs of the inefficient intercarrier compensation and universal service systems, as competitive carriers – who, for example, are not rate-of-return beneficiaries – must pass these costs on to their customers. And it is consumers who miss out on the benefits of competition, in the form of additional choice among providers, lower prices, and innovative services. CTIA is committed to working with the Commission to develop reforms that meet consumers' needs, which increasingly include the critical function of mobility. CTIA looks forward to developing new programs that meet this consumer and business demand, while also promoting innovation and making use of limited public resources.

II. MODERNIZATION OF HIGH-COST USF MUST INCLUDE THE DEVELOPMENT OF MECHANISMS TO SUPPORT THE DEPLOYMENT AND ON-GOING OPERATIONS OF MOBILE BROADBAND NETWORKS

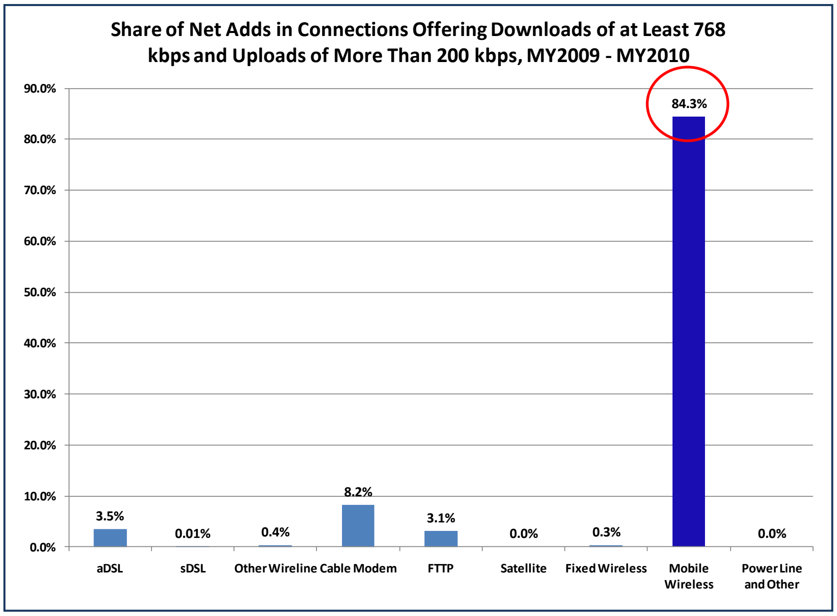
A. Support for Mobile Broadband Advances National Goals and Priorities

Support for mobile broadband is consistent with consumer demand, the Communications Act of 1934, as amended (the "Act"), the National Broadband Plan, and President Obama's Wireless Initiative. As CTIA has argued in this and related proceedings, as the Commission considers reform of high-cost universal service it must weigh carefully whether its proposed changes will help or impede the twin goals of maintaining and advancing the United States' mobile broadband leadership and fulfilling the Act's mandate that it ensure access to "reasonably comparable" services in rural areas.

Consumers place enormous and ever-increasing value on the flexibility of using data and voice services wherever they are, and are embracing mobile broadband faster than any other broadband platform. Indeed, Commission reports show that, over the twelve-month period from June 2009 to June 2010, the number of mobile wireless connections with download speeds of at least 768 kbps *increased by over 150%*, and accounted for *almost 85% of all new connections* in that speed range.[4] This explosive growth in consumer demand for mobile broadband services is shown in the following chart:

[4] *Compare* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Internet Access Services: Status as of June 2009*, at 13 Table 6 (Sept. 2010) (approximately 16 million mobile wireless connections and 86.6 total connections with download speeds of 768 kbps or greater and upload speeds over 200 kbps) *with* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Internet Access Services: Status as of June 30, 2010*, at 30, Table 12 (March 2011)

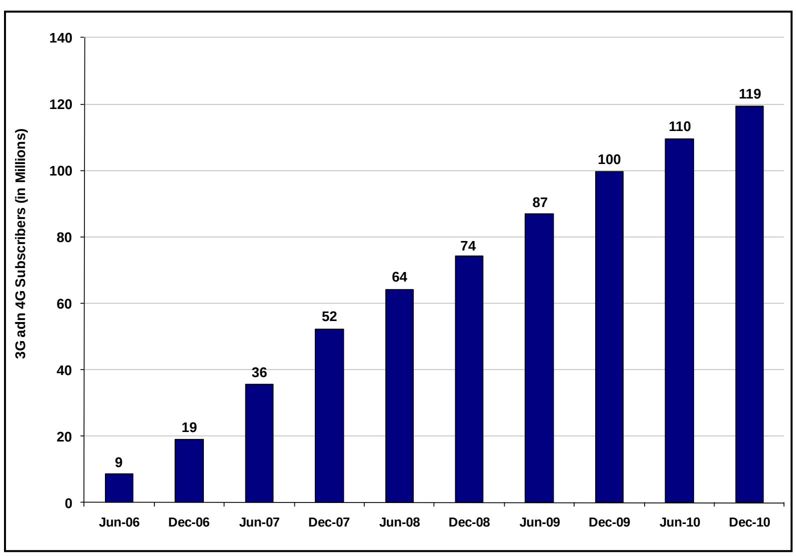
Growth In Broadband Connections With Download Speeds Of At Least 768 Kbps



Source: FCC Internet Access Services Report, March 2011

Other sources confirm the dramatic growth in unique mobile broadband subscribership, as the following chart demonstrates:

Unique High-Speed Wireless Subscribership Is Growing



(approximately 40.3 million mobile wireless connections and 115.4 million overall connections with download speeds of 768 kbps or greater and upload speeds over 200 kbps).

Sources: comScore MobiLens

Mobile broadband is singularly beneficial for low-income and minority consumers. According to a report from the Pew Internet and American Life Project, low-income groups in the U.S. are now the fastest growing group of wireless Internet adopters, up to 46 percent from 35 percent in April 2009.[5] Additionally, 54 percent of African-Americans and 53 percent of English-speaking Hispanics access the Internet over their mobile phones, compared to 35 percent of Caucasians.[6] And 17 percent of those who earn less than $30,000 per year, 20 percent of those who have not graduated from high school, and 15 percent of those who have graduated from high school but have not attended college, connect to the Internet solely through a mobile wireless connection.[7] Additionally, African-Americans and English-speaking Latinos continue to be among the most active users of the mobile web.[8] Cell phone ownership is higher among African-Americans and Hispanics than among Caucasians (87 percent vs. 80 percent), and minority cell phone owners use a much greater range of their phones' features compared with Caucasian mobile phone users.[9] Mobile devices, with their ever-increasing capabilities, are bringing broadband Internet access to individuals in novel and expanding ways. In this way, the mobile platform is delivering broadband availability to those that otherwise might not have it.

[5] AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJECT, MOBILE ACCESS 2010 at 9 (July 7, 2010) ("Pew Mobile Access 2010 Report"), *available at* http://www.pewinternet.org/Reports/2010/Mobile-Access-2010.aspx; *see also* Matt Hamblan, *Pew study finds rapid increase in mobile Internet use by low-income Americans*, NETWORK WORLD, July 9, 2010, *available at*: http://www.networkworld.com/news/2010/070910-pew-study-finds-rapid-increase.html?hpg1=bn.

[6] Pew Mobile Access 2010 Report at 10. The survey did not cover Spanish-speaking Hispanics.

[7] *Id.*

[8] *Id.* at 15.

[9] *Id*. at 16.

As Chairman Genachowski observed recently, "[m]obile broadband is being adopted faster than any computing platform in history – creating a uniquely powerful platform for innovation."[10] The National Broadband Plan similarly recognized that "[m]obile broadband represents the convergence of the last two great disruptive technologies—Internet computing and mobile communications—and may be more transformative than either of these previous breakthroughs."[11] Through its six overarching goals, the National Broadband Plan therefore committed the United States to continuing to lead the world in mobile broadband.[12]

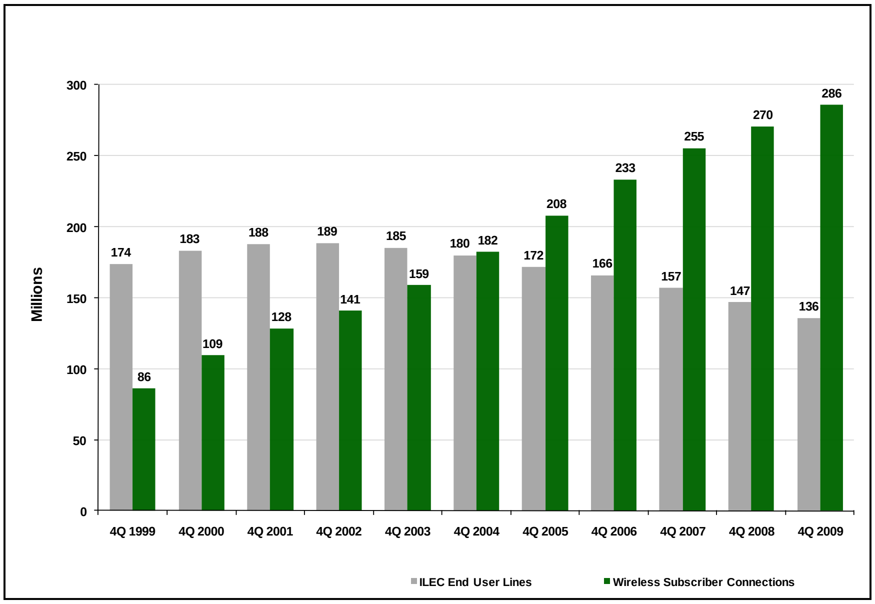
These trends in mobile broadband growth mirror trends in the mobile wireless industry more generally. The following chart shows the growth in mobile wireless connections over time, as compared to the declining number of incumbent LEC wireline connections:

[10] Julius Genachowski, Chairman, FCC, Prepared Remarks on Spectrum, The White House (Apr. 6, 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0406/DOC-305593A1.pdf. *See also supra* note 4.

[11] *Connect America: The National Broadband Plan* (2009) ("NBP") at 75.

[12] *Id.* at 9, Goal 2 ("The United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.").

Trends In Connections By Type



Sources: CTIA, USAC Quarterly FCC Filings, FCC Local Telephone Competition Reports

As this chart shows, wireless connections have continued to soar, reaching nearly 290 million by 2009 (and have now climbed over 300 million), while ILEC wireline connections have continued to ebb as consumers shift to broadband and mobile technologies.

Given these trends, it is critical that the Commission's universal service reform proposals be targeted toward the services that consumers increasingly demand, as opposed to preserving legacy technologies, business models, or businesses. Recognizing the increasing importance of mobile services to consumers and businesses, it is not surprising that policymakers have identified the importance of facilitating widespread access to mobile broadband services.

Providing support for the deployment and ongoing operation of mobile broadband networks in unserved areas would advance both the National Broadband Plan and President Obama's Wireless Initiative, which calls for the deployment of next-generation, high-speed wireless service coverage to 98 percent of all Americans.[13] The Wireless Initiative recognizes that the benefits of mobility are perhaps most pronounced in rural areas, where distance creates unique challenges for family life, economic development, safety, and public health. In addition, the Commission has acknowledged that in many high-cost areas, wireless broadband may be the most cost-effective and technologically-feasible way to deploy broadband.[14]

Thus, in order to seize the opportunities of mobile broadband for all Americans, the need for sufficient universal service support for mobile broadband networks is readily apparent. This support must be "sufficient" to meet the Commission's statutory obligation to ensure that rural consumers have access to mobile services that are "reasonably comparable" to those available to urban consumers.[15] In turn, the Commission's proposed changes to the high-cost universal service program must be measured by whether they will help or impede these national goals and priorities.

B. Funding for Mobile Broadband Must be Sufficiently Robust

Universal service funding for mobile broadband services must be sufficiently robust to meet the "reasonably comparable" provisions of Section 254, and current proposals fall short. As described below, ensuring this standard is met will require a significant investment beyond what has been proposed, and require a data-driven Commission analysis, as well as a

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[13] *See* National Economic Council, *A Strategy for American Innovation: Driving Towards Sustainable Growth and Quality Jobs* (Feb. 4, 2011), *available at* http://www.whitehouse.gov/innovation/strategy/executive-summary

[14] *See* THE BROADBAND AVAILABILITY GAP, OBI Technical Paper No. 1 (2010) at 13, Exh. 1-J ("BROADBAND GAP"). *See also* Acting Chairman Michael J. Copps, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, at ¶ 142 (May 22, 2009) ("Rural Broadband Report"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf.

[15] *See* 47 U.S.C. §§ 254(e), 254(b)(3).

commitment to providing ongoing support for mobile broadband deployment. It is concerning that, at the same time that the President and the FCC have identified ubiquitous mobile broadband as a central national priority, there is no definitive framework for supporting mobile broadband in unserved areas and areas that would not receive service but for support.

Despite the significant progress that wireless carriers have made in deploying mobile broadband, the Commission has recognized that there remain areas of the country for which there will be no business model for deploying next generation services.[16] Thus, in the NPRM, the Commission proposes two near-term programs that may be available to support mobile broadband deployment — the Mobility Fund and "Phase One" of the Connect America Fund.

CTIA and others already have expressed concerns that the proposed Mobility Fund, which is proposed for approximately $100-$300 million,[17] is wholly insufficient to support the deployment of ubiquitous mobile broadband.[18] The proposed "Phase One" of the Connect America Fund ("CAF"), which would redirect roughly $1 billion from existing universal service programs – including reductions in competitive ETC support – merely amplifies CTIA's concerns about the sufficiency of mobile broadband funding going-forward.[19] It is unclear from

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[16] NBP at 145, Rec. 8.2 (the Commission should "target [] funding to the areas where there is no private sector business case to offer broadband service.")

[17] *See Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, 14722 ¶ 13 (2010).

[18] *See Universal Service Reform; Mobility Fund*, WT Docket No. 10-208, AT&T Comments at 3; California PUC comments at 7-8; CTIA comments at 11-12; GCI comments at 2-3; Indiana Commission comments at 6-7; Mid-Rivers comments at 4; Mobile Future comments at 5-6; PUCO comments at 4; RCA comments at 9; RTG comments at 2-3; T-Mobile comments at 4; USA Coalition comments at 23-24; U.S. Cellular comments at 11 (filed on or about Dec. 16, 2010).

[19] NPRM at ¶ 276.

the NPRM whether any or how much of this support will be available to support mobile deployment.

As it formulates its near-term support plans, as well as plans for the long-term CAF, the Commission must ensure that the support is adequate to the task of ensuring the availability of advanced mobile services to *all* Americans. The Commission has repeatedly committed itself to basing its policies on a "data-driven" understanding of their impact.[20] Unfortunately, the Commission has undertaken no analysis in the NPRM to define the amount of support that will be necessary for the goal of ubiquitous mobile broadband. To the extent that the Commission decides to rely on a funding mechanism in the CAF that is dedicated to mobility,[21] it must develop the record further to determine the amount of support required to bridge the private investment gap and clarify how the Mobility Fund and CAF will be coordinated to ensure that mobile broadband services are available ubiquitously.

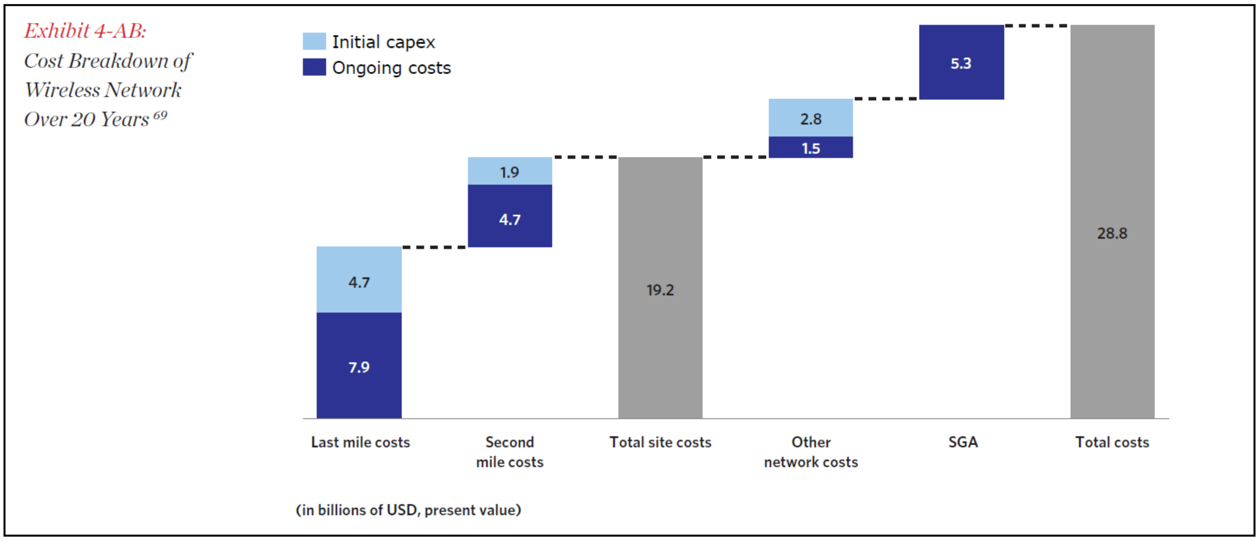
To be sufficient, support for mobile broadband must include support for the *ongoing costs* of serving these areas. Many commenters in the *Mobility Fund NPRM* proceeding argued persuasively that, to be effective, support for mobile broadband must include support for ongoing costs.[22] As the following chart shows, an analysis undertaken by the Commission's OBI team has shown that wireless providers typically experience a significant proportion of total costs as ongoing operating expenses:

[20] *See, e.g.*, NBP at 143.

[21] *See* NPRM at ¶¶ 241-260, ¶ 404.

[22] *See, e.g.*, *Universal Service Reform; Mobility Fund*, WT Docket No. 10-208, CTIA comments at 6; GCI comments at 4; NTTA comments at 16; RTG comments at 5-6; TIA comments at 10; T-Mobile comments at 4; USA Coalition comments at 20-22 (filed on or about Dec. 16, 2010).

Cost Breakdown of Wireless Networks: Initial Capex v. Ongoing Costs



Source: FCC OBI Technical Paper No. 1 at Exhibit 4-AB

Specifically, the OBI staff found that ongoing costs would constitute over 67 percent of the costs of deploying wireless networks to serve unserved areas.[23] These costs include not only upgrades to equipment but also the increased and ongoing backhaul costs resulting from additional capacity and throughput.

In sum, the challenge of ensuring that all Americans in rural and high-cost areas have access to advanced wireless services that are reasonably comparable with those in urban areas will require considerable analysis and significant investment. The Commission must articulate a coherent plan for determining the precise scope of these needs and ensuring that they are met.

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[23] BROADBAND GAP at 81, Exh. 4-AB (showing $28.8 billion in total costs for wireless network deployment, comprised of $9.5 billion in initial capex and $19.4 billion in operating costs). While the staff analysis focused on fixed wireless broadband services, there is little reason to believe that the proportion of ongoing expenses would be less for mobile broadband services.

C. Support Mechanisms for Mobile Broadband Should Account for the Competitive Wireless Marketplace

CTIA has consistently acknowledged that market-based approaches, including reverse auctions, may be useful in ensuring universal service support is calibrated at efficient levels.[24] Encouraging efficient investment can help balance the Commission's multiple statutory mandates. To establish a successful universal service program, the Commission must ensure sufficient support so that consumers in high-cost areas have access to reasonably comparable services against the burden on consumers that ultimately pay for universal service. Support based on efficient costs can help the Commission achieve that balance

Among market-based mechanisms, the NPRM seeks particular comment on the use of reverse auctions. Should the FCC move forward with reverse auctions for purposes of the Mobility Fund and the CAF, the FCC should be cautious about endorsing mechanisms that have the potential to inhibit the functioning of the competitive wireless marketplace. The Commission has, with good reason, trumpeted the competitive nature of the wireless marketplace and the resulting benefits to consumers and the economy.[25] The Commission should be careful not to undermine the competitive wireless market, as it develops appropriate support mechanisms.

Although the Commission acknowledges the wireless industry's concerns about limiting support to one provider per area,[26] the NPRM evinces a clear preference for single-winner reverse auctions.[27] CTIA recommends that some experimentation involving different types of

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[24] *See, e.g.*, CTIA comments, WC Docket Nos. 10-90 and 05-337 (filed Jul. 12, 2010) at 28-30; CTIA comments, WC Docket No. 05-337, CC Docket No. 96-45 (filed Jan. 28, 2010) at 13.

[25] *See, e.g.*, *Fostering Innovation and Investment in the Wireless Communications Market*, GN Docket No. 09-157, Notice of Inquiry, 24 FCC Rcd 11322, 11323 ¶ 3 (2009).

[26] NPRM at ¶ 283.

[27] *Id.* at ¶ 264.

market-based mechanisms and rules that promote greater participation is warranted. Before the Commission prematurely gravitates toward a single methodology for determining and distributing all support nationwide, CTIA believes that the FCC should conduct trials of different types of market-based mechanisms, including at minimum a "winner-takes-more" approach whereby competitive ETCs would only receive subsidies for the consumers they win in the marketplace.[28]

III. CTIA SUPPORTS NEAR-TERM REFORMS TO ACHIEVE GREATER EFFICIENCY IN THE WAY INCUMBENT LECS, PARTICULARLY RATE-OF-RETURN INCUMBENT LECS, RECEIVE SUPPORT

CTIA supports the Commission's effort to adopt near-term reforms to "eliminate waste and inefficiency, improve incentives for rational investment and operations by companies operating in rural areas, and set rate-of-return companies on the path to incentive-based regulation."[29] CTIA notes that the bulk of the high cost program support, over $3 billion each year, is directed at incumbent LECs. This has remained true despite the declining number of incumbent LEC lines, as illustrated in the chart on page 8 *supra*. The NPRM raises a number of promising proposals for reforming support to incumbent LEC ETCs, and accurately emphasizes the particular need to address support flows to rate-of-return incumbent LECs. CTIA supports the near-term and long-term proposals to reform support directed at incumbent LECs, and encourages the Commission to carefully examine whether the further reductions in support for

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[28] *See, e.g.,* Comments of SouthernLINC Wireless, WC Docket No. 05-337 and CC Docket No. 96-45 (filed April 17, 2008) at 17-30; James Stegeman, Steve Parsons, Robert Frieden, and Mike Wilson, "Controlling Universal Service Funding and Promoting Competition Through Reverse Auctions," Attachment to Reply Comments of CTIA, WC Docket No. 05-337 (filed Nov. 8, 2006).

[29] NPRM at ¶ 157.

these carriers are warranted in order to ensure that limited scarce public resources are efficiently allocated.

The Commission should adopt its proposed near-term modifications to the high-cost loop support mechanism.[30] CTIA agrees that the existing structure "may provide inadequate incentive for high-cost loop support recipients, especially those operating 200,000 or fewer loops, to operate as efficiently as possible."[31] The rules for these programs, adopted when line counts were growing, create perverse incentives for ILECs now that their line counts are falling. As an interim step to increase incentives for efficiency, the Commission should adopt its proposals to consolidate and reduce the support thresholds, and to eliminate safety net additive support.[32]

CTIA also supports the elimination of local switching support ("LSS").[33] As CTIA has argued, LSS is explicitly designed to support last-century technology, and discourages ILECs from deploying less costly, more efficient soft switches.[34] This kind of support works directly against the goals of efficiency and encouraging deployment of next-generation, IP-based solutions. LSS should be eliminated as quickly as feasible.

The proposal to eliminate support for corporate operations expenses is similarly well-founded.[35] CTIA has advocated this step for a number of years.[36] As the NPRM points out, this

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[30] *Id.* at ¶ 175-185.

[31] *Id.* at ¶ 178.

[32] *Id.* at ¶¶ 180-185.

[33] *Id.* at ¶ 186.

[34] *See* CTIA Comments, WC Docket No. 05-337 (filed Nov. 24, 2009) at 5.

[35] NPRM at ¶ 194.

step would make more support available for actual investment in facilities and reduce potential gamesmanship designed to maximize support.[37] Support for corporate operations expenses should be phased out as soon as practicable.

The Commission also should impose limits on reimbursable operating and capital costs for rate-of-return companies.[38] As the NPRM points out, the current rules create incentives for rate-of-return carriers to incur inefficient loop investments, both to maximize their support and to be sure they out-spend their peers.[39] Thus, these rules should be amended as soon as possible. To the extent necessary, the rate-of-return rules should be modified to implement this change.[40]

CTIA also supports the Commission's proposal to implement a cap on total support per line for ILEC support mechanisms in the continental United States, and urges that the Commission seek a lower cap amount, which would encourage greater efficiencies.[41] As the NPRM observes, some ILECs receive extraordinarily high per-line support amounts, which raise concerns about whether it is fiscally responsible to require other consumers to fund such high subsidy amounts.[42] From the data presented in the NPRM, it appears however that the proposed cap of $3,000 per line per year is too high. The NPRM recognizes that fewer than 20 ILECs

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[36] *See, e.g.,* CTIA Comments, WC Docket No. 05-337 (filed June 2, 2008) at 9; CTIA Comments, WC Docket No. 05-337 (filed July 12, 2010) at 20.

[37] NPRM at ¶¶ 198-199.

[38] *Id.* at ¶ 201.

[39] *Id.* at ¶ 202.

[40] *See* NPRM at ¶ 207. *See also Alenco Comm's v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (the "Act does *not* guarantee all local telephone service providers a sufficient return on investment") (emphasis in original).

[41] NPRM at ¶ 208.

[42] *Id.* at ¶ 210.

have costs that exceed the $3,000 threshold, out of 1,442 ILECs that receive support.[43] Thus, the proposed cap would affect *less than two percent* of ILECs that currently receive support. Moreover, the Commission has sought comment on exception for carriers operating outside the continental United States, which could further erode the utility of the proposed cap. Accordingly, the Commission should carefully consider whether a lower threshold would better serve the purposes of the rule.

CTIA also suggests that the FCC carefully examine whether it is possible to adopt more robust reductions to the existing support program. A recent analysis by Scott Wallsten of the Technology Policy Institute shows that "on average $0.59 of every dollar in high-cost subsidies given to recipient ILECs goes to inflated overhead expenses. That result holds even controlling for firm size and firm fixed effects. That is, more than half of all high-cost funds end up paying for goods and services that are unrelated to the goals of the program."[44] This strongly suggests that the Commission may be able to find additional near-term economies without affecting ILECs' ability to provide the supported services to their customers.

In addition to these immediate reforms for rural and rate-of-return ILECs, CTIA also supports the proposal to transition current interstate access support ("IAS") funding to the CAF.[45] As CTIA has previously argued, to accomplish this step in a competitively neutral manner, the Commission should begin by reducing ILECs' per-line IAS support in each state to

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[43] *Id.* at ¶ 209.

[44] Scott Wallsten, *The Universal Service Fund: What Do High-Cost Subsidies Subsidize?* Technology Policy Institute (Feb. 2011) at 15, *available at* http://techpolicyinstitute.org/files/wallsten%20universal_service_money_trail_final.pdf.

[45] NPRM at ¶ 228.

the level of CETCs' IAS support, as determined based on the interim CETC cap.[46] Once the per-line support amounts are the same for all ETCs, the remaining IAS support can be redirected in a neutral manner across all ETCs.

IV. THE FCC MUST ENSURE, AS IT TRANSITIONS FROM LEGACY HIGH COST SUPPORT MECHANISMS TO NEW MECHANISMS, THAT THERE IS A PLAN TO MAINTAIN 3G AVAILABILITY

Wireless providers are firmly committed to comprehensive reform of the existing high-cost support mechanisms, and understand that all parties must be asked to adjust to new approaches. At the same time, the Commission must take care to ensure that, as any transition from legacy high cost support mechanisms to new mechanisms occurs, there is a plan in place to guard against any erosion of 3G availability in high-cost areas.

As noted in the National Broadband Plan, some states lag well behind the national average in terms of 3G deployment.[47] The National Broadband Plan also observed that, in many cases, wireless carriers will leverage existing 3G infrastructure for the rollout of 4G networks.[48] These and other factors led the Commission to call for the creation of the Mobility Fund. As described above, CTIA does not believe that the amount of support currently envisioned for the Mobility Fund will be sufficient to provide ubiquitous mobile broadband services, and questions whether areas that currently receive support will continue to enjoy 3G service as support is phased out.[49]

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[46] *See, e.g.*, CTIA Comments, WC Docket No. 05-337 (filed July 12, 2010) at 19.

[47] NBP at 146.

[48] *Id.*

[49] *See supra* Section II.B.

Eliminating support without a plan to safeguard against backsliding would be in tension with the FCC's goals, the National Broadband Plan, and the President's Wireless Initiative. Such an approach would also be inconsistent with consumer demand. Indeed, more and more consumers are subscribing to wireless lines (whether voice or broadband) and many Americans rely on wireless for the majority of their calls.[50] The record in this and other proceedings amply demonstrates that, given the numerous benefits of high-cost support to rural wireless deployment, the Commission should proceed carefully in reforming support for these services, so as to minimize harm to consumers and carriers. Otherwise, the benefits that flow from the creation of a Mobility Fund and CAF could be offset and jeopardized by the losses incurred in terms of mobility access for those areas that require ongoing support.

With respect to other transitional issues, CTIA again opposes proposals to adopt a *de facto* primary line restriction for wireless family plan subscribers.[51] CTIA has previously pointed out that support for family plan arrangements is virtually indistinguishable from the Commission's treatment of wireline ETCs, which receive support for multiple lines per household or business. Supporting only one handset in wireless family plans would not only violate the statutory principle of competitive neutrality, it would run afoul of the Congressional prohibition on restricting universal service support to a primary line.[52] Moreover, the

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[50] *See* Pew Internet & American Life Project, *A Closer Look at Generations and Cell Phone Ownership* (Feb. 3, 2011) (finding that 85% of Americans aged 18 and older own a cell phone, "making it by far the most popular device among adults"), *available at* http://www.pewinternet.org/Infographics/2011/Generations-and-cell-phones.aspx. *See also supra* Section II.A. (wireless connections at least 768 kbps increased by over 150% from June 2009 to June 2010, accounting for almost 85% of new connections of at least 768 kbps in that period).

[51] *See* NPRM at ¶ 257.

[52] *See, e.g.*, Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat. 2809 (2004); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 511, 121 Stat. 1844

Commission has emphasized that it will avoid any “sudden changes” or “flash cuts” in its universal policies in order to minimize disruptions in service to customers and enable stakeholders to adapt to changing circumstances.[53]

Irrespective of any decisions the Commission makes regarding phase-out of legacy support, the Commission could more effectively achieve national goals and priorities by explicitly permitting CETCs to use existing funding for mobile broadband deployments while it develops new high-cost mechanisms. This approach would be consistent with the FCC’s existing policies allowing rural ILECs that receive support to invest in dual-use, broadband capable facilities. Furthermore, to the extent that any CETCs (using any technology) are subject to any phase-down in support, the Commission should clarify that these ETCs are released from federal ETC obligations as their support is phased out. To do otherwise would subject providers that lose support to an unfunded mandate.[54]

V. LONG-TERM REFORM SHOULD RELY ON NEW MECHANISMS, REWARD EFFICIENT USE OF SCARCE PUBLIC RESOURCES, AND FACILITATE ADOPTION OF INNOVATIVE SERVICES

A. Existing Support Mechanisms Are Not Well Tailored to Meet the FCC’s Reform Goals

CTIA supports the general proposal to transition all high-cost funds to a forward-looking program that supports the broadband and mobile networks that consumers value today.[55] As CTIA has consistently argued, the existing high-cost universal service programs are relics of an

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(2007); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, § 502, 123 Stat. 524 (2009); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, § 502, 123 Stat. 3034 (2009) (prohibiting Commission from using funds to implement primary line restrictions).

[53] NPRM at ¶ 12.

[54] *See id.* at ¶ 265.

[55] *Id.* at ¶ 398.

earlier era when a monopoly incumbent wireline provider offered primarily voice service. Although the Commission has designated some wireless and other competitive carriers serving rural and high-cost areas as eligible for support, the seven wireline-centric high-cost mechanisms are ill-suited to supporting the mobile wireless and broadband services that most consumers are using today.

As CTIA explained extensively in Section II, the benefits of mobile wireless services are especially pronounced in rural areas, where distances make mobility an essential element of family life, economic development, safety and public health. The high-cost universal service program thus must be restructured to focus on the mobile and broadband networks that consumers are demanding, and which are still lagging in many rural areas.[56]

As the National Broadband Plan recognizes, "the current regulatory framework [for universal service] will not close the broadband availability gap."[57] The existing high-cost program does not provide explicit support for broadband networks.[58] Moreover, in order to realize the National Broadband Plan's goal of "lead[ing] the world in mobile innovation,"[59] the Commission must take care not to simply layer additional wireline-centric broadband support on top of the legacy support mechanisms. Rather, any new long-term support mechanism must maintain and advance the United States' mobile broadband leadership and fulfill the Section 254

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[56] *See, e.g.,* CTIA Comments at 2-5, WC Docket No. 10-90 (filed July 12, 2010); CTIA Comments at 2-5, WC Docket No. 05-337 (filed May 8, 2009); CTIA Comments at 2-12, WC Docket No. 05-337 (filed Apr. 17, 2008).

[57] NBP at 141.

[58] *Id.*

[59] *Id.* at 9, Goal 2.

mandate to ensure access to "reasonably comparable" mobile broadband services that consumers demand.[60]

With three record contribution factors in the last four quarters, the Commission should act quickly to create incentives for efficiency. CTIA has long argued that adopting a reformed high-cost mechanism based on efficient costs is the surest way to ensure that the mechanism achieves all of the statutory principles in Section 254(b) of the Act.

The Commission has correctly concluded that it must balance competing goals in establishing successful reform policies. First, the Commission must ensure that support is sufficient and that consumers in rural, high-cost areas have access to affordable and reasonably comparable services. At the same time, the Commission must also weigh carefully the contribution burden on consumers that ultimately pay for universal service. Providing support based on efficient costs balances these important policy goals. Thus, CTIA believes that any reformed mechanism should provide support to both incumbents and competitors based on the most efficient technology and the most efficient use of scarce public funds. Because, as described more extensively below, wireless is often the most efficient technology, mobility must play a key role in the CAF.[61]

B. Competitive and Technological Neutrality Should be Pillars of the Connect America Fund

Any new support mechanisms – whether the CAF Phase I or Phase II – should be competitively and technologically neutral and support services commensurate with their

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[60] 47 U.S.C. § 254(b)(3) (consumers in high-cost areas should have access to "telecommunications and information services, including . . . advanced . . . services, that are reasonably comparable" to services provided in urban areas).

[61] CTIA Comments at 20-22, WC Docket No. 10-90 (filed July 12, 2010); CTIA Comments at 7-17, WC Docket No. 05-337 (filed May 8, 2009).

importance to consumers. Given the evolution of technology and the marketplace, competitive neutrality has become an even more important universal service principle than when the Commission adopted the principle in 1997.[62] In the *First Report and Order*, the Commission stated that "universal service support mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another."[63]

As the United States Court of Appeals for the Fifth Circuit held, the universal service program "must treat all market participants equally . . . so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers."[64] This non-discriminatory access to high-cost support "is made necessary not only by the realities of competitive markets but also by statute."[65]

In furtherance of this statutory mandate, the National Broadband Plan recommended that "eligibility criteria for obtaining support from CAF should be company- and technology-agnostic."[66] As the Commission considers national goals and priorities for the reformed universal service program, competitive neutrality must remain an important guiding principle.[67]

For example, the CAF should not lock in or rule out specific technologies. Wireless carriers must have a fair and meaningful opportunity to compete for CAF funding and to receive

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[62] *See* NPRM at ¶ 82.

[63] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801 ¶ 47 (1997) (subsequent history omitted).

[64] *Alenco Commun. Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2001) ("*Alenco*").

[65] *Id.*

[66] NBP at 145, Rec. 8.2.

[67] NPRM at ¶ 82.

ongoing support on the same terms as wireline providers. The importance of neutrality is underscored by consumers' increasing demand for wireless and mobile broadband services and declining use of legacy wireline services. The proper focus of any universal service mechanism should be "sufficient funding of *customers*, not providers," and incentives for efficiency and technological evolution, rather than a guarantee of "a sufficient return on investment" for incumbents' legacy costs.[68] In short, funding should go to the services used by high-cost customers, which increasingly are wireless and mobile broadband services.

C. The FCC Should Reject Proposals to Grant ILECs a Right of First Refusal

The bedrock USF principle of competitive neutrality *requires the rejection of the proposed ILEC "right of first refusal"* to become the long-term CAF recipient in its service area.[69] Giving the wireline incumbent the option of becoming the only CAF recipient in its service area would flatly contradict the policies of competitive and technological neutrality. How can a mechanism be competitively neutral if only one company can participate? How can a mechanism be technologically neutral if only one provider is entitled to participate? Particularly if the Commission adopts its proposals to fund only one recipient of CAF support in a given service area, granting ILECs a right of first refusal ("ROFR") would lock in the ILEC's monopoly by indefinitely hindering competitive alternatives, whether cable, satellite, or terrestrial wireless.

Giving the ILEC the right of first refusal also would forfeit the efficiency benefits of using robust wireless competition to exert downward pressure on the amount of support that

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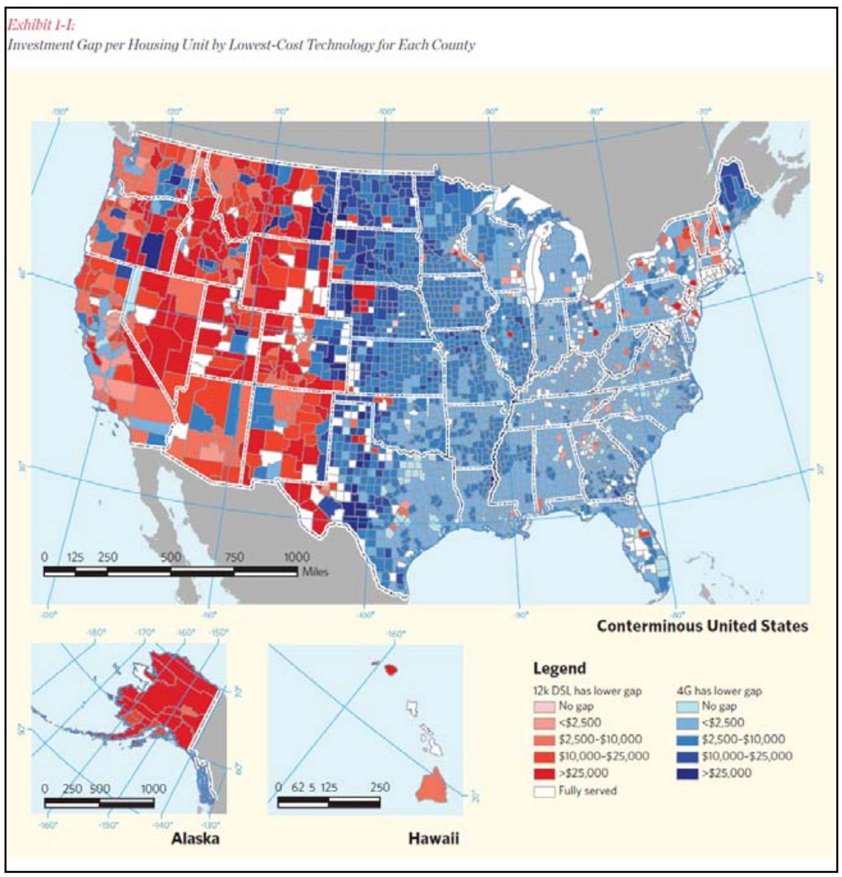
[68] *Alenco*, 201 F.3d at 620 (emphasis in original).

[69] NPRM at ¶¶ 431-47.

would be given to the ILEC.[70] The National Broadband Plan OBI Technical Paper No. 1 "The Broadband Availability Gap" estimated that wireless broadband technologies were the least cost alternative for more than half the continental United States.

The following map from OBI Technical Paper No. 1 illustrates the investment gap per housing unit by the lowest-cost technology for each county, with wireless broadband shown in blue and representing the least cost technology for more than half of the country:

Investment Gap by Lowest-Cost Technology As Determined by FCC OBI



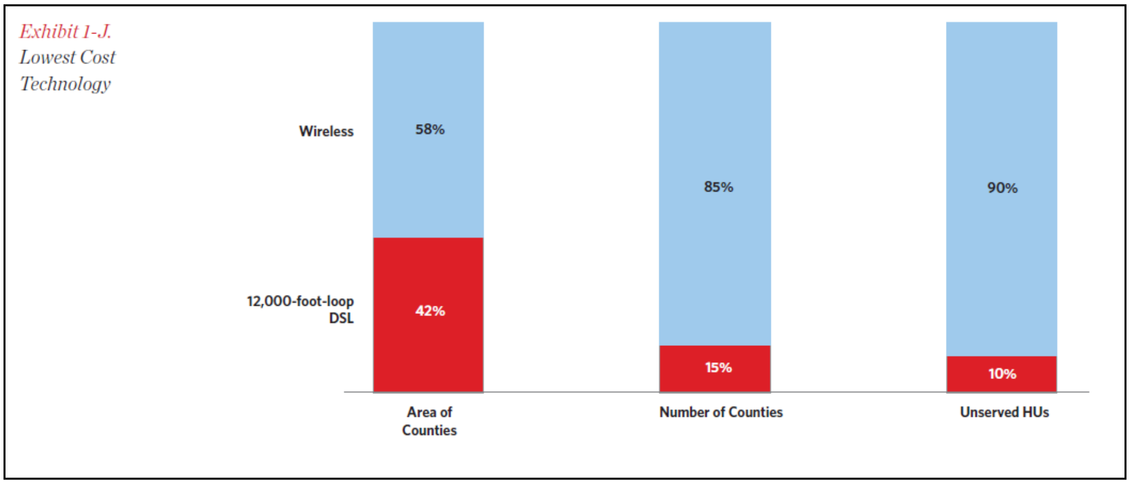
Source: FCC OBI Technical Paper No. 1 At Exhibit 1-I

Indeed, the National Broadband staff analysis shows that wireless broadband technologies would be the lowest cost option in a significant portion of the United States: in 85 percent of the

[70] *See* CTIA Comments at 22, WC Docket No. 10-90 (filed July 12, 2010).

counties, in 58% of the area by county, and for 90 percent of households.[71] The following graphic illustrates this point:

Lowest Cost Technology As Determined by FCC OBI



Source: OBI Technical Paper No. 1 at Exhibit 1-J

Thus, granting incumbent LECs a right of first refusal in their territories would not only significantly hamstring the competitive pressure brought by wireless and other providers, but would represent a stunning and unnecessary increase in the amount of support needed in many areas of the country.

D. The FCC Should Eliminate Support Where There is an Unsubsidized Competitor Providing Service

CTIA agrees with the NPRM's proposal to eliminate support where there is an unsubsidized competitor providing service. Competitive and technological neutrality, as well as the goal of efficiency, would be advanced by the elimination of support for providers in areas where there is an unsubsidized broadband provider.[72] There are numerous study areas served by ILECs receiving high-cost support where wireless or other carriers are providing broadband

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[71] BROADBAND GAP, Exh. 1-J.

[72] NPRM at ¶ 409.

service without any high-cost support. There is no reason to keep subsidizing ILECs in order to duplicate services now available from other unsubsidized providers. Where unsupported broadband service is available, high-cost support is not needed for customers and thus serves only to support providers. Because the purpose of high-cost support is to ensure "sufficient funding of *customers,* not *providers,*"[73] continued support for ILECs in these circumstances violates competitive neutrality by propping up legacy inefficiencies and imposing additional costs on customers served by alternative providers in such high-cost areas.

E. CTIA Supports the NBP Proposal to Shift Rate-of-Return Carriers to Price Cap Regulation

The Plan recommended that "the FCC should require rate-of-return carriers to move to incentive regulation,"[74] and CTIA continues to support this recommendation.[75]

One of the central failings of the current high-cost support system is that much of it is tied inextricably to rate-of-return regulations that deter innovation, cast a blind eye toward inefficiency, and do not reflect the level of retail competition that has developed across the U.S. The NBP recognized the outdated nature and severe limitations of this system, concluding: "Rate-of-return regulation was not designed to promote efficiency or innovation; indeed, when the FCC adopted price cap regulation in 1990, it recognized that 'rate of return does not provide sufficient incentives for broad innovations in the way firms do business.'"[76]

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[73] *Alenco*, 201 F.3d at 620 (emphasis in original).

[74] NBP at 147.

[75] *See also* CTIA Comments, GN Docket Nos. 09-51 *et al.* (filed July 12, 2010) at 16.

[76] NBP at 147, quoting *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6790 ¶ 32 (1990), *aff'd Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

In addition to squelching efficiency and innovation, rate-of-return regulation frustrates competition. If the Commission is truly committed to providing support on a competitively and technologically neutral basis, it cannot guarantee artificially high rates of return on the backs of the competitive carriers, including wireless providers, and their customers, who ultimately bear the costs. Continuing this approach is particularly inapt as the Commission looks to wireless providers to provide meaningful competitive pressure in the local telephony and, increasingly, in the broadband market. CTIA therefore opposes leaving rate-of-return regulation in place anywhere once the long-term CAF is implemented.[77]

In the event rate-of-return regulation remains in effect anywhere, nonetheless, once the long-term CAF is implemented, the NPRM's proposed additional reforms would be minimum steps to constrain the harm it would continue to cause to competition, innovation, and efficiency.[78] Interstate common line support ("ICLS") should be capped and converted to a frozen amount on a per-line or per-study-area basis[79] – whichever interferes least with the long-term CAF. The definitions of what property is "used and useful" in providing the supported services should be strengthened.[80] And the permitted rate of return unquestionably must be reduced from the current 11.25 percent level.[81] That amount was set at a time when the cost of money was much higher, and it is excessive in light of current conditions in the industry.

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[77] NPRM at ¶¶ 448-449.

[78] *Id.* at ¶¶ 449-456.

[79] *Id.* at ¶ 450.

[80] *Id.* at ¶ 454.

[81] *Id.* at ¶ 455.

Indeed, CTIA believes that these latter proposals – capping ICLS, strengthening the definition of "used and useful," and reducing the permitted rate of return – should be implemented as soon as possible as additional *near-term* reforms.[82] Rather than holding these common-sense proposals as contingency plans for the indefinite future, the Commission should move quickly to harness the benefits for consumers, competition, and innovation that these reforms promise.

VI. PERFORMANCE GOALS, PUBLIC INTEREST OBLIGATIONS, AND ACCOUNTABILITY MEASURES SHOULD BE CAREFULLY TAILORED

A. CTIA Supports Adoption of Performance Measures for the High-Cost Program

As a long-time proponent of establishing measurable goals and performance metrics for the high-cost program,[83] CTIA supports the NPRM's proposal to develop outcome-based metrics consistent with the Office of Management and Budget's ("OMB's") Program Assessment Rating Tool ("PART").[84]

CTIA specifically agrees that an outcome-based goal of the high-cost universal service program should be to "ensure that all Americans in all parts of the nation, including those in rural, insular, and high-cost areas, have access to modern communications networks capable of supporting the necessary applications that empower them to learn, work and innovate."[85] In order to achieve this goal, however, it is insufficient that consumers merely have access to

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[82] *See also supra* Section III.

[83] *See, e.g.,* CTIA Comments on NBP PN #19, GN Docket Nos. 09-47, 09-51, and 09-137 (filed Dec. 7, 2009) at 5-8.

[84] NPRM at ¶¶ 479-481.

[85] *Id.* at ¶ 485.

"*either* fixed *or* mobile technologies."[86] As the Commission is well aware, mobile services play an ever increasing role in enabling consumers and communities to "learn, work, prosper and innovate." Thus, the Commission's goals should explicitly contemplate access to broadband, voice, *and* mobile services. Accordingly, the performance metric should specifically ensure the availability of advanced mobile services to all Americans.

B. Public Interest Obligations Should Be Established at the Federal Level and Tailored to the Funding Received

Wireless ETCs are accustomed to operating under explicit public interest obligations, given that they have been subject to such obligations at least since 2004 (and earlier in some states).[87] CTIA agrees that "[p]roviders that benefit from public investment in their networks should be subject to clearly defined obligations associated with the use of such funding."[88] At the same time, obligations on recipients should be carefully-tailored, no more burdensome than necessary, and adopted in advance and at the Federal level.

CTIA believes that the public interest obligations of funding recipients should be tailored to suit the specific goals and characteristics of the various funding programs. Thus, the public interest obligations should "vary for recipients under the current high-cost funding program, recipients of funding in the first phase of the CAF, and CAF recipients over the longer term."[89]

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[86] *Id.* (emphasis added).

[87] *See Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, ¶¶ 1, 4, 27, 28, 46 (2004); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438 ¶¶ 1, 33 (2004). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005).

[88] NPRM at ¶ 90.

[89] *Id.* at ¶ 94.

This is particularly appropriate for programs such as the first-phase CAF (as well as the Mobility Fund, as proposed) that may have limited scope.

Any reporting requirements imposed on funding recipients should be no more burdensome than necessary to obtain information that the Commission needs to administer the program.[90] As CTIA has argued in the Form 477 proceeding, providers should not be required to report on coverage, actual speed, or pricing.[91] CMRS carriers' coverage data is widely available from commercial sources such as American Roamer, and there are real technological limits on the degree of detail to which coverage can be specified. As described in the following section, reporting on "actual" speed is particularly problematic for wireless networks, which are affected by factors ranging from atmospheric conditions and foliage to the consumer's device and location. And CTIA is concerned that a mandated effort to collect wireless pricing data would inevitably fail to capture the wide range of pricing and bundling options available to wireless consumers. The variety in wireless pricing plans is an enormous benefit to consumers, but makes a government-mandated formulaic presentation of pricing data difficult to compile and without corresponding value.

The Commission, not individual states, should adopt rules establishing the public interest obligations for recipients of near-term and long-term CAF support. These obligations must be explicitly spelled out in the federal rules so that "providers know how they are expected to use the funding and that the public will receive specific benefits from its investment."[92] To this end, the Commission should *not* broadly incorporate "any existing state or federal requirements for

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[90] *See id.* at ¶¶ 458-467.

[91] CTIA Comments, WC Docket No. 11-10 (filed March 30, 2011) at 6-11.

[92] NPRM at ¶ 90.

providers of voice service"[93] without specifically identifying and analyzing the appropriateness of the obligations. The Commission particularly should *not* incorporate state carrier-of-last-resort ("COLR") obligations into the federal obligations without identifying these obligations and determining whether they are consistent with federal universal service goals.[94] These obligations are generally relics of monopoly-era ILEC regulation, and their specific parameters are often difficult to discern. It is possible that some of them may be useful in the context of a broadband-focused fund in a competitive environment, but this can only be established by specifically identifying and analyzing the subject requirements. To the extent that states are permitted to continue to impose USF-related obligations on recipients of federal funds, the Commission should, at minimum, create strong incentives for states to harmonize these requirements.[95]

C. The FCC Should Define Broadband Without Reference to Any Particular Technology and Should Not Impose Arbitrary Speed Tests on Mobile Broadband Services

In defining broadband service obligations, the Commission should "characterize broadband without reference to any particular technology."[96] As the Commission rightly notes, "speed is only one measure of broadband performance."[97] CTIA supports a functional definition of broadband tied to services that consumers are utilizing in the market, such as 3G mobile

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[93] *Id.* at ¶ 93.

[94] *See id.* at ¶¶ 100-101.

[95] *Id.*

[96] *Id.* at ¶ 104.

[97] *Id.* at ¶ 105.

broadband service.[98] Indeed, mobility is also an increasingly important functionality for broadband.[99] As Chairman Genachowski has noted, mobility holds unmatched "potential to enhance America's economic competitiveness, spur job creation, and improve the quality of our lives."[100] Consumers clearly recognize this value, and are using ever-greater amounts of mobile broadband.[101] Thus, in establishing performance metrics for broadband, the Commission must include consumers' access to advanced mobility.

CTIA reiterates its previously expressed concerns about arbitrary speed thresholds and testing requirements. With respect to speed thresholds, CTIA believes that any proposed speed targets must reflect a reasonable balancing of rural consumers' need for comparable service against the threat of a ballooning fund and must not arbitrarily exclude mobile wireless broadband services.

CTIA has also significant concerns about the accuracy and usefulness of the SamKnows speed measurement solution, particularly in the wireless context, and urges the Commission not to use the results of those tests in formulating any speed thresholds or other standards for broadband.[102] CTIA conducted its own speed test across multiple wireless devices and carriers in 2010, which demonstrated that, in a single three minute period, there can be as much as a 97 percent drop in speed followed by a 1200 percent increase in speed, even without movement by

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[98] *See, e.g.*, CTIA Comments, WC Docket No. 10-90 (filed July 12, 2010) at 28.

[99] *See id.* at ¶ 114.

[100] Julius Genachowski, Chairman, FCC, Prepared Remarks at International CTIA WIRELESS I.T. & Entertainment®, *America's Mobile Broadband Future* (Oct. 7, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf

[101] *See supra* Section II.

[102] *See, e.g.*, CTIA Comments, CG Docket No. 09-158 (filed July 8, 2010).

the consumer.[103] Such drastic variability in mobile broadband speed cannot realistically be captured in data submitted as part of mandatory universal service reporting obligations. The mobile nature of wireless broadband services provides remarkable utility to consumers, but, as the Commission has acknowledged, mobile wireless broadband is particularly susceptible to factors that may affect speed, and that are not present in wireline networks.[104] Finally, rather than adopting a series of burdensome reporting requirements, CTIA encourages the Commission to rely primarily on consumer complaints to track performance. The market is also the best way to ensure the adequacy of service in a competitive marketplace. Thus, the Commission's oversight of broadband quality should focus on consumer complaints.[105]

VII. THE COMMISSION SHOULD ADOPT LOW, UNIFORM INTERCARRIER COMPENSATION RATES ON A PATH TO BILL-AND-KEEP

A. Comprehensive Reform Of Intercarrier Compensation Is Necessary And Overdue

The Commission is correct that intercarrier compensation is "broken" and must be reformed, through both immediate and comprehensive measures.[106] A rational intercarrier compensation regime is crucial to creating appropriate incentives for providers to invest in infrastructure, deploy broadband networks, and make innovative services available to all

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[103] *See* Comments of CTIA – The Wireless Association®, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, at 2 (July 8, 2010).

[104] "The Broadband Availability Gap, Omnibus Broadband Initiative Technical Paper No. 1," FCC, at 66, *available at* Appendix *to Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 09-51, 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 (rel. Apr. 21, 2010) ("[A] wireless network has several layers of complexity that are not found in wireline networks, each of which affect the user experience.").

[105] *See* NPRM at ¶ 116.

[106] NPRM at ¶ 508.

Americans. As the Commission observed, the current system is plagued by inefficiencies and disparities that invite arbitrage and deter migration to next-generation networks and services.[107]

The current framework, premised on above-cost per-minute charges that vary depending on circumstances that bear little or no relationship to cost, has given rise to multiple arbitrage schemes that have drained resources from productive use. Today, these schemes are exemplified by traffic pumping, a practice that exploits the inefficiencies that are inherent in the current regime and is inimical to the public interest. This issue is of particular concern to wireless providers who are required to pay above-cost ILEC access charges but are not allowed the same opportunity to collect these charges. As CTIA argued in its ICC Arbitrage Issues comments, it is essential that the FCC act quickly to address traffic pumping issues, during the pendency of broader intercarrier compensation reform and as proposed in CTIA's comments.[108]

In fact, the traffic pumping and phantom traffic issues described in the NPRM are merely reflections of how broken the current intercarrier compensation system is. They are "symptoms" of the inevitable market distortions generated by an intercarrier compensation system that arbitrarily imposes disparate charges based on artificial distinctions among different jurisdictional and technological categories of traffic and types of providers.

Even aside from outright arbitrage, however, the current framework has (as the NPRM recognizes) impeded the transition to more efficient and feature-rich IP networks by creating artificial financial incentives for carriers to continue to exchange traffic on a circuit-switched

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[107] *See id.* at ¶¶ 502, 505-506.

[108] Comments of CTIA-The Wireless Association® (addressing Section XV, intercarrier compensation arbitrage issues), pp. 4-8 (filed April 1, 2011) ("CTIA Intercarrier Compensation Arbitrage Comments").

basis.[109] The current system imposes disparate charges based on outmoded jurisdictional and technological categories that have no connection to a provider's costs. Thus, the perpetuation of the access charge regime continues to foster inefficient retention of circuit-switched technologies for the exchange of traffic, particularly given that access charges are set well above ILEC costs. So long as the heavy thumb of access charges remains on the scales, carriers will not face appropriate incentives, and will make network investment decisions based on the hope for continued subsidies rather than on a basis designed to minimize social costs.

The Commission, in the NPRM and in the National Broadband Plan, has recognized that the end point for intercarrier compensation reform should rest with the elimination of mandated per minute charges, and should instead rely on negotiation between providers to determine the most efficient traffic exchange arrangements. This concept, known as "bill-and-keep," relies on carriers recovering their costs from their own consumers. It is the model that has been successful in the wireless industry. It is also perfectly consistent with the realities of the modern telecommunications network and cost-causation principles.[110] Both the calling and called parties benefit from participating in the call, and a bill-and-keep regime fairly apportions costs premised on that reality – a point the Commission has recognized for a decade.[111]

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[109] NPRM at ¶¶ 502, 507.

[110] *See id.* at ¶ 525.

[111] *Id.* at ¶ 525 & n.779; *see also Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

B. The Commission Should Adopt A Two-Stage Transition to Bill-and-Keep, Beginning With The Unification of Rates.

CTIA generally agrees with a phased approach to intercarrier compensation reform as proposed in the NPRM.[112] In particular, CTIA endorses a staged migration to bill-and-keep,[113] beginning with the unification of rates. As discussed above,[114] bill-and-keep would eliminate arbitrage opportunities, promote network-architecture decisions based on efficient design principles rather than maximization of intercarrier payments, and comport with cost-causation.

As a first and intermediate step, the Commission should expeditiously unify all intercarrier compensation rates[115] at a lower, closer to cost-based rate, such as the per-minute termination rate established for ISP-bound traffic, $0.0007.[116] Unifying rates as soon as possible will reduce a number of the arbitrage opportunities that plague the current system. The Commission has concluded, and the D.C. Circuit Court of Appeals has affirmed, that the $0.0007

[112] *See id.* at ¶ 533.

[113] *See id.* at ¶¶ 34, 530.

[114] *See supra* Section VII.A.

[115] As CTIA stated in its previous comments, however, IP-PSTN traffic should be placed under a default bill-and-keep regime now. *CTIA Intercarrier Compensation Arbitrage Comments* at 11. *See also* NPRM at ¶¶ 615, 616 (interconnected VoIP is "telecommunications" traffic within the scope of section 251(b)(5), and therefore potentially subject to bill-and-keep as a reciprocal compensation arrangement; alternatively, the Commission could determine that interconnected VoIP is subject to intercarrier compensation charges (including bill-and-keep) under a regime unique to interconnected VoIP traffic).

[116] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, 9156 ¶ 8, 9190-91 ¶ 85 & n.158 (2001) ("ISP-Bound Traffic Docket"). In 2008, responding to a remand of the $0.0007 cap on different legal grounds, the Commission reaffirmed the propriety of that cap. *High Cost Universal Service Support*, 24 FCC Rcd 6475, 6478 ¶ 6 (2008).

per-minute rate is reasonable and compensatory for ISP-bound traffic.[117] Further, the Commission has determined that there is no difference in the work performed by a LEC in terminating an ISP-bound call as opposed to any other type of call.[118] Thus, there is no reason to believe that a $0.0007 rate would be inadequate with regard to other forms of traffic. Given its current application in connection with ISP-bound traffic and its use in many existing interconnection agreements, a unitary $0.0007 rate would also be consistent with the transition to bill-and-keep.[119]

During the transition period, the Commission should also ensure that market-derived intercarrier compensation arrangements are not superseded by higher interim rates. Indeed, the Commission should make clear that any interim unitary compensation rate does not have the effect of raising preexisting negotiated rates that are lower than the interim rates that would replace them. It would be illogical and unfair to countermand commercial agreements contemplating lower rates by insisting on the application of a rate that moved the parties farther away from the ultimate bill-and-keep framework.

Given that these reforms have been considered for many years, they should be implemented quickly and the timeline should be aggressive. Three years ago, in 2008, CTIA supported the Commission's five-year transition plan, which would have reduced intrastate

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[117] *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, Order, 19 FCC Rcd 20179, 20187 ¶ 23 (2004) ("*Core Forbearance Order*"), *aff'd sub nom. In re Core Communications*, 455 F.3d 267 (D.C. Cir. 2006) ("*Core I*").

[118] *Core Forbearance Order*, 19 FCC Rcd at 20188 ¶ 24; *Core I*, 455 F.3d at 281.

[119] Any unified rate *higher* than $0.0007 would represent an increase in the current rate for such traffic, which would conflict with a downward progression of rates towards bill-and-keep.

access rates to interstate levels in the first year.[120] Had that schedule been adopted at that time, the transition would have been completed in 2013. Thus, there is no reason that the rate unification and reduction transition should begin later than 2012, and the transition to bill-and-keep should be completed as quickly as possible, but in any event within no more than five years. The sooner the Commission requires carriers to implement the unitary rate during the transition period, the sooner the benefits can be realized.

Finally, with regard to specific interconnection points for a bill-and-keep regime,[121] CTIA has previously advocated its Mutually Efficient Traffic Exchange ("METE") proposal,[122] and again recommends adoption of the METE approach, pursuant to which carriers would bear their own costs to deliver traffic to each other at specified network "edges." Under the METE proposal, the originating carrier would be responsible for assuming the costs of delivering a call, including securing any necessary transport services, to the terminating carrier's network edge, and could determine how to do so.[123] Each carrier, including wireless carriers, would be required to designate at least one edge to receive traffic in every LATA it serves. For the direct exchange of traffic, originating and transiting carriers could select a delivery point from among the terminating carrier's designated edges in the LATA, but would be required to use different trunk groups for each of the terminating carrier's terminating switching facilities in the LATA.

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[120] CTIA Comments, CC Docket Nos. 01-92 *et al*. (filed Nov. 26, 2008) at 33-34.

[121] NPRM at ¶ 680.

[122] *See, e.g.,* CTIA Comments in CC Docket No. 01-92 (filed May 23, 2005); Letter from Paul Garnett, CTIA to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed April 19, 2006).

[123] CTIA Comments, CC Docket No. 01-92 (filed May 23, 2005) at 21-23.

VIII. THE 1996 ACT GAVE THE COMMISSION AUTHORITY OVER THE FRAMEWORK FOR COMPENSATION FOR ALL TELECOMMUNICATIONS TRAFFIC

The Commission has the authority to adopt a path to reform based on the framework of the 1996 Act, and should exercise it to reform the intercarrier compensation regime.[124] CTIA specifically endorses the proposal whereby the Commission would initially bring all traffic within the reciprocal compensation framework of section 251(b)(5) at the beginning of the transition, and set a glide path to gradually reduce all intercarrier compensation rates, ultimately eliminating per-minute charges altogether.[125] This approach is consistent with CTIA's comments in Section VII above, urging the immediate adoption of a unitary intercarrier compensation rate that would apply until per-minute charges are eliminated through the implementation of bill-and-keep.

This approach is most consistent with the statutory framework. The most natural reading of the 1996 Act is that Congress intended for all "telecommunications" exchanged with LECs to be governed by section 251(b)(5), and preserved the access regime only until the access charge rules were "explicitly superseded by regulations prescribed by the Commission."[126] Thus, Congress appears to have expected the Commission to eventually eliminate the access charge regime as part of its implementation of the 1996 Act, so that all "telecommunications" traffic would be governed by the plain terms of section 251(b)(5).

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[124] *See generally* NPRM at ¶¶ 512-522, 550-555.

[125] *Id.* at ¶ 550.

[126] 47 U.S.C. § 251(g).

The Commission also has clear authority over intercarrier compensation for traffic exchanged with wireless carriers.[127] As the Commission correctly observed, sections 201 and 332 of the 1996 Act confer jurisdiction on the Commission to regulate charges for interstate traffic involving a CMRS provider, and section 332 extends that authority to rates paid by CMRS providers for intrastate traffic as well.[128]

The alternative approach to reform, which would attempt to implement changes while preserving the existing jurisdictional framework, would be fraught with problems.[129] Such an approach would, at least to some degree, perpetuate the difficulties that beset the existing byzantine jurisdictional framework, and that motivated the Commission to undertake reform in the first place. It would require the continued jurisdictionalization of calls, both on a geographic and technological basis, at a time when those distinctions have become increasingly irrelevant to both consumers and providers. The Commission's experience with the current regime, where markedly different rates apply to otherwise indistinguishable work performed by a carrier's network, based solely on such geographical and technological bases, should amply prove one thing: so long as disparate rates exist, so too will arbitrage. Moreover, reliance on the current regime would all but ensure a patchwork of regulation that continued to depress incentives for network modernization, undercutting the NPRM's chief goal. Attempting to craft meaningful

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[127] NPRM at ¶ 511.

[128] *See id. See generally Iowa Utils Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997) (rev'd on other grounds) ("Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by Commercial Mobile Radio Service (CMRS) providers …, and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers ….").

[129] NPRM at ¶¶ 537-549.

reform within a paradigm that, by all accounts is already "broken and needs to be fixed"[130] would be akin to trying to repair a car while it hurtles down the highway. Comprehensive reform is necessary, and should begin with a comprehensive rethinking of the legal basis for the intercarrier compensation regime itself.

IX. ANY RECOVERY MECHANISM SHOULD BE NARROWLY TAILORED AND FOCUSED ON END-USER RECOVERY

The purpose of any mechanism intended to provide recovery to LECs for diminished intercarrier compensation payments should be to provide LECs sufficient time to adjust their business models, *not* to ensure "revenue neutrality" or undercut the desired incentives associated with the new regime.[131] Any recovery mechanism that would require complete revenue neutrality would simply perpetuate the distortions present in the current intercarrier compensation regime, and would be equally unsustainable. Further, there can be no legitimate cost-based justification for revenue neutrality. As the Commission observed, intercarrier compensation revenues often exceed the actual costs of providing origination, transport and termination functions.[132] There is no reason to preserve these revenues, particularly when LECs *also* derive significant unregulated revenues from broadband and other unregulated services provided over the supported network (a practice that has been promoted by the Commission's "no barriers" policy).[133] As the Commission noted, there is no compelling reason to simply ignore any network-related revenues when considering how much support a provider "needs" to

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[130] *Id.* at ¶ 508.

[131] *See, e.g., id.* at ¶ 533.

[132] *Id.* at ¶ 567.

[133] *Id.* at ¶ 569.

serve end users following intercarrier compensation reform.[134] CTIA also agrees with the Commission that revenue neutrality in the migration from the existing intercarrier compensation regime is not required, as a matter of law.[135]

The primary consideration in establishing a recovery mechanism is therefore not ensuring revenue neutrality, but rather, the need to maintain affordable end-user rates.[136] The ultimate goal of reform is to ensure that all carriers recover their costs from their own customers, as described previously in Section VII. A recovery mechanism, too, should advance this goal, but a revenue neutrality requirement would prevent this. Any attempt at revenue neutrality would simply require other carriers' customers – particularly CMRS customers – to continue to subsidize LECs and their investors.

Generally, given how interrelated these issues are, questions about how to ensure affordable services are better addressed, to the extent necessary, in the universal service context—that is, through the development of competitively neutral, explicit support mechanisms that do not distort the market or impede the migration to IP networks. Universal service support may not be used, however, simply to replace access revenue. The Act specifies that universal service support may be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[137] Thus, universal service funds may not be used for access replacement unless the revenue is specifically found to be necessary to preserve and advance universal service. As a result, any recovery mechanism must be limited to only the

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[134] *See id.*

[135] *Id.* at ¶ 568.

[136] *Id.* at ¶ 562.

[137] 47 U.S.C. § 254(c).

amount required to ensure universal service. Recovery should be allowed only when an ILEC can show that it will not be able to charge "affordable" rates without it.

CTIA agrees with the Commission that rate benchmarks can serve as a valuable tool in this analysis.[138] Benchmarks will ensure that excessively low rates are not subsidized, and reward states that have already undertaken access charge reform.[139] The Commission should therefore employ a rate benchmark as one element of the analysis of whether interim access replacement recovery should be permitted.

X. THE COMMISSION SHOULD CLARIFY WIRELESS INTERCONNECTION ISSUES PENDING REFORM

The Commission should also take this opportunity to address interim traffic exchange issues for wireless traffic. Specifically, the Commission should grant the long-pending Sprint petition by making clear that incumbent LECs may neither refuse to load numbering resources of an interconnecting carrier, nor refuse to honor the routing and rating points designated by the interconnecting carrier.

As the Commission observed in the NPRM, while CMRS providers typically obtain numbers for customers with NXX codes that are rated in the customers' wireline rate center, the actual routing point for a wireless customer often does not correspond to the rating point associated with assigned NXX.[140] This is particularly true where CMRS providers interconnect with small LEC customers not directly, but rather through a BOC's tandem. This assignment of telephone numbers to CMRS customers with separate, and geographically distant, rating and

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[138] NPRM at ¶ 574.

[139] *See id.*

[140] *Id.* at ¶ 684, n.1099.

routing points, has led to a number of disputes.[141] Nearly a decade ago Sprint filed a petition seeking clarification on this issue, and requested a declaratory ruling that: (1) an incumbent LEC may not refuse to load numbering resources of an interconnecting carrier; and (2) an incumbent LEC may not refuse to honor the routing and rating points designated by that interconnecting carrier.[142] The Commission should settle this issue by granting the Sprint petition.

As CTIA has previously explained, the differences between competitive LEC practices, which utilize virtual foreign exchange service by implementing virtual rate centers, and the LEC-CMRS arrangement, whereby a CMRS carrier uses different routing and rating points, are significant. CMRS providers have facilities and customers in close proximity to the virtual rate center and CMRS carriers do not use virtual rate centers to aggregate traffic to avoid toll charges. CMRS carriers utilize different routing and rating points to associate a wireless telephone number with a wireline rate center, even though that rate center may be different from the location where the ILEC delivers the call to the CMRS provider (the mobile gateway). Because of the large geographic areas covered by most CMRS licensees, a wireless carrier can offer service to customers in the areas served by both the LEC end office and the tandem where the two carriers interconnect. Thus, the CMRS provider must be permitted to obtain telephone numbers in all areas within its local calling area (the MTA) to permit its subscribers to receive calls from wireline users that are rated to the wireline customer as local calls.

[141] *See id.* at ¶ 686.

[142] *See Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92, (filed May 9, 2002), Public Notice, 17 FCC Rcd 13859 (Released July 18 2002).

CTIA also applauds the Commission for recognizing the important role that the intraMTA rule continues to play in the deployment of wireless services.[143] The Commission's decision in 1996 to adopt a rule clarifying CMRS carriers' "local" calling areas was fundamentally sound and has been instrumental in the deployment of wireless service on a national basis and to all areas of the country. As long as the Commission retains a distinction between "local" and "long distance" (reciprocal compensation and access) traffic, a rule is needed to divide wireless traffic. While CTIA heartily supports greater uniformity in the intercarrier compensation system, there is currently no other way to allocate wireless traffic. Thus, there is no reason to address the intra-MTA rule at this time. Rather, the Commission's attention is best spent on the ambitious but necessary reforms discussed in these comments.

[143] NPRM at ¶ 685.

XI. CONCLUSION

CTIA urges the Commission to reform the universal service and intercarrier compensation systems consistent with these comments. Reform, consistent with CTIA's proposals herein, will enable the Commission to meet its goals, those of the National Broadband Plan, and those of the President's Wireless Initiative.

Reform promises not only benefits for the competitive market and for innovation, but also for consumers. It is consumers who ultimately bear directly and indirectly the costs of the inefficient intercarrier compensation and universal service systems. CTIA is committed to working with the Commission to develop reforms that meet consumers' needs, which increasingly include the critical component of mobility. CTIA looks forward to developing new programs that meet this consumer and business demand, while also promoting innovation and making use of limited public resources.

Respectfully submitted,

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