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April 27, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On April 26, 2011, Mike Saperstein of Frontier, Bill Kreutz of Windstream, and I spoke with the following FCC staff members: Amy Bender, Michael Byrne, Trent Harkrader, Katie King, Kevin King, Elise Kohn, Carol Mattey, and Steve Rosenberg. We urged the Federal Communications Commission to act now to adopt policies that will begin to narrow the "rural-rural" divide in the distribution of ongoing support. Specifically, we advocated adoption of the following immediate reforms: (a) combine High-Cost Loop funding currently received by "rural" price cap carriers with High-Cost Model funding allocated to "non-rural" carriers and (b) redistribute this support to price cap carriers of last resort ("COLRs") based solely on costs calculated on a wire center basis. These reforms—which, notably, would operate under a capped budget and thereby would not increase the size the Universal Service Fund—would increase the cost benchmark for wire centers eligible for support. In any funded wire center, we noted that a competitive eligible telecommunications carrier ("CETC") could be allowed to challenge and replace the incumbent local exchange carrier as the support recipient if the CETC were willing to assume COLR obligations for materially less High-Cost Model support. Our discussions were consistent with the attached and our prior advocacy in the dockets listed above.

Please feel free to contact me if you require any additional information.

Sincerely,

/s/

Jennie B. Chandra

cc: Amy Bender
Michael Byrne
Trent Harkrader
Katie King
Kevin King
Elise Kohn
Carol Mattey
Steve Rosenberg

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

In the Matter of	)	
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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
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High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

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Dated: April 18, 2011

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COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following in response to the Federal Communications Commission ("Commission") request for comment on proposals to reform and modernize the Universal Service Fund and intercarrier compensation system. [1]

Windstream is a local exchange carrier that offers broadband and voice service in primarily rural regions spread across 24 states. Despite challenges inherent to deploying broadband in rural areas, Windstream has invested more than $700 million in the past five years

[1] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, WC Docket Nos. 10-90, 07-135, and 05-337 and GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (rel. Feb. 9, 2011) ("*NPRM/FNPRM*").

to extend broadband to approximately 90 percent of its voice customer base, up from 76 percent in 2006. Today more than 1.3 million of Windstream's 3.3 million customers subscribe to its broadband service, one of the highest take rates in the telecommunications industry. Over the next two years, Windstream will mount one of the industry's most aggressive campaigns to improve rural broadband access. In addition to its planned level of investment, Windstream will spend $241.7 million ($60.4 million of its own money to complement $181.3 million in broadband stimulus grants through the Department of Agriculture) to deploy additional facilities in high-cost areas in 13 states and boost company-wide broadband availability by approximately 3 percent. The balance of Windstream's unserved areas, however, are expected to remain unserved until the Universal Service Fund is reformed.

I. INTRODUCTION AND SUMMARY

Windstream agrees that today's complex system of explicit support and implicit subsidies should be replaced with a single program that produces efficient and targeted high-cost funding. As the Commission recognizes, the current Universal Service Fund regime has created a "rural-rural divide," whereby "support has enabled some rural telephone companies to deploy broadband-capable lines," while "many rural areas receive insufficient support for broadband."[2] This divide is to the detriment of all consumers paying for universal service, and in particular to the detriment of rural consumers living in areas served by underfunded carriers.

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[2] *NPRM/FNPRM* at ¶ 6.

Windstream knows first-hand the limitations of the existing system. With relatively little assistance from the federal high-cost program,[3] Windstream maintains a service territory that averages 17 subscribers per square mile, versus about 100 per square mile for the largest telecommunications providers. A subset of Windstream's customers resides in high-cost, low-density areas where it is impossible to make a rational economic case for private sector investment in broadband deployment. Windstream's operations in many of these areas receive little or no federal high-cost support. Neighboring areas served by small companies and co-ops, meanwhile, have access to state-of-the-art networks supported by universal service funding.

As Windstream submits comments on reforms needed to address this broken regime, it is the first night of the Passover holiday. Individuals observing this holiday engage in a ritual feast in which they ask and answer "four questions," which are intended to focus participants on key elements of the celebration. Similarly, here, Windstream's comments may be framed as responses to four questions focused on key elements of comprehensive reform efforts:

- What reforms can be implemented *now* that will have a powerful impact, minimizing the rural-rural divide and advancing broadband deployment?
- What public interest obligations for universal service recipients will maximize the value of universal service support?
- How can the Commission meaningfully reform legacy high-cost programs to free up substantial funding for higher-value purposes?
- What essential support must be preserved until comprehensive reform is fully implemented and replaces all explicit and implicit subsidies?

What reforms can be implemented now that will have a powerful impact, minimizing the rural-rural divide and advancing broadband deployment? The Commission should adopt

[3] Windstream receives less than 1 percent of its total revenue from High-Cost Loop and High-Cost Model support, and less than 3 percent of its total revenues from all federal high-cost support combined.

immediate reforms to existing mechanisms—better targeting ongoing support to new and existing networks in consistently high-cost areas—to substantially narrow the rural-rural divide in the near term. Specifically, Windstream submits a proposal for how the Commission could begin reforming ongoing support for "Price Cap Areas First." Under this proposal, the Commission would combine High-Cost Loop support currently received by rural price cap carriers with existing High-Cost Model support, and then redistribute this support based solely on costs calculated on a wire-center basis. The proposal—which, notably, would operate under a capped budget and thereby would not increase the size the Fund—would entail an increase in the benchmark for wire centers eligible for support. In any funded wire center, the ILEC would possess the presumptive right to receive the High-Cost Model support, but a competitive carrier could challenge and replace the ILEC if that competitor were willing to assume carrier-of-last-resort obligations for less funding.

As a complement to this proposed reform, the Commission also should award targeted, *non-recurring* funding for broadband deployment to unserved households that are not located in consistently high-cost areas, but nonetheless are uneconomic to serve. Competitive bidding may help ensure that the Commission gets the biggest "bang for the buck" from this limited funding. But to be successful, the competitive bidding process must target support to very granular areas and must include measures to prevent providers from receiving support for areas where deployment could occur without government help.

What public interest obligations for universal service recipients will maximize the value of universal service support? It is essential that the Commission adopt uniform public interest obligations that will encourage all universal service recipients to engage in efficient, scalable deployment of communications networks in high-cost areas. Initial speed requirements of

4 Mbps download and 768 Kbps upload will drive "second mile" fiber deeper into rural areas, serving as a platform for scalable wireline and wireless services, and will ensure that limited funding goes toward providing a high-quality broadband experience to as many households as possible. Obligations with respect to voice service should be based on functionality offered to consumers and must be commensurate with carriers' financial support. Finally, consistent with the Commission's preference for technological neutrality, uniform public interest obligations, including any network openness standards, should apply to all recipients of high-cost support—be they wired or wireless, fixed or mobile.

How can the Commission meaningfully reform legacy high-cost programs to free up substantial funding for higher-value purposes? The Commission should immediately undertake reforms to recapture high-cost funding that currently is allocated inefficiently and to redirect that funding toward better targeted support for broadband and voice services. First, the Commission, as proposed in the *NPRM/FNPRM*, should eliminate all legacy high-cost support to competitive eligible telecommunications carriers ("CETCs"). CETC support amounts to one-third of all high-cost support and is duplicative funding, at odds with the Commission's goals. Second, the Commission should make several reforms—both large and small—to mechanisms that deliver support to COLRs. These reforms should include meaningful changes to the High-Cost Loop and Interstate Common Line Support ("ICLS") mechanisms to bring rate-of-return carriers' support more closely in line with what they would receive under incentive regulation.[4] In

[4] In particular, the Commission should (1) rationalize the distribution of High-Cost Loop support by using a regression analysis to determine appropriate levels for operating and capital costs and to distribute support based on the costs of an efficient carrier, rather than on a carrier's embedded costs; and (2) cap rate-of-return carriers' ICLS on a per-line basis unless they choose to operate under a reformed ICLS regime that would limit operational and capital expenses and would distribute support based on a regression model as recommended for the High-Cost Loop mechanism.

developing these reforms, the Commission should incorporate necessary transitions and ensure that the mechanisms provide reasonable support for efficient investment in building and maintaining facilities in high-cost areas.

What essential support must be preserved until comprehensive reform is fully implemented and replaces all explicit and implicit subsidies? Until the Connect America Fund ("CAF") replaces all existing support and implicit subsidies, the Commission must take care to preserve funds that are essential to maintaining existing facilities and enabling the transition to next-generation networks. Specifically any intercarrier compensation reform should be conducted by the Commission, not individual states, and should offer reasonable transitions and a meaningful opportunity for carriers to recover revenues diminished by mandated rate reductions. In addition, the Commission should maintain essential sources of high-cost support for mid-sized price cap companies that serve high-cost areas. In particular, the Commission should preserve frozen ICLS, which provides crucial support for recently converted price cap companies, and closely examine the role and sufficiency of Interstate Access Support ("IAS")—particularly with regard to mid-sized carriers—before considering a phase-down of support.

II. TO NARROW THE RURAL-RURAL DIVIDE, THE COMMISSION SHOULD ADOPT NEAR-TERM REFORMS THAT DIRECT FUNDING TO HIGH-COST AREAS THAT HAVE BEEN NEGLECTED UNDER THE CURRENT REGIME.

Windstream supports rational reforms that would replace all of today's explicit support and implicit subsidies with a single program that produces efficient and targeted high-cost funding. As the Commission recognizes, the current Universal Service Fund regime has created a "rural-rural divide," whereby "support has enabled some rural telephone companies to deploy broadband-capable lines," while "many rural areas receive insufficient support for broadband."[5] This divide is to the detriment of all consumers paying for universal service, and in particular to the detriment of rural consumers living in areas served by underfunded carriers.

To "move USF and the companies along the road to the future state of reform," the Commission is correct to conclude that it should act now to adopt near-term reforms that "provide the Commission and industry valuable experience with market-based mechanisms for allocating support, while improving the Commission's data on the functioning of USF."[6] In part, as recognized by the Commission, these near-term reforms should include measures that will establish how to effectively disburse one-time-only grants for broadband deployment. As discussed below, such grants will be critical to enabling broadband deployments to unserved households that are in relatively lower-cost regions, but nonetheless are uneconomic to serve.

The Commission's near-term efforts to address areas neglected under the rural-rural divide, however, should not focus solely on the creation of the mechanism to disburse one-time-only grants. While significant, this measure, without more, would offer a woefully incomplete "road test" for the CAF. As recognized in the *NPRM/FNPRM*, a central role of the CAF in the future will be to disburse *ongoing* support in an efficient and effective manner—a task that will require an overhaul in targeting and distribution of ongoing support.[7] Consistent with and in preparation for these changes, the Commission should act now to adopt additional, near-term

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[5] *NPRM/FNPRM* at ¶ 6.

[6] *Id*. at ¶ 28.

[7] *See id*. at ¶¶ 30-32.

reforms that, at a minimum, will improve targeting and distribution of *ongoing* support in price cap areas.

A. Immediate Reforms that Better Target *Ongoing* Support Within Price Cap Areas Would Accelerate the Full Transition to the CAF.

Windstream is pleased to see that the Commission's long-term vision for the CAF contemplates improvements to both "targeting and distribution" of ongoing universal service support.[8] Windstream supports the National Broadband Plan's recommendation to limit high-cost funding to one provider per area,[9] and Windstream encourages rational reforms that would better target ongoing support to "areas that are uneconomic to serve absent government support."[10] Such reforms offer a welcome departure from the current practice of distributing ongoing support in a manner that effectively prioritizes one set of rural consumers over another. As recognized by the Commission, the current Universal Service Fund regime has created a "rural-rural divide," whereby "support has enabled some rural telephone companies to deploy broadband-capable lines," while "many rural areas receive insufficient support for broadband."[11] Ultimately the CAF needs to fully replace this broken funding regime with a program that responds directly to the cost of deploying and sustaining networks in *all* high-cost areas, rather than the size or business model of the companies serving those areas.

The Commission's reforms to better target ongoing support, however, should not be merely "long-term" aspirations. The Commission can and should act now to adopt policies that

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[8] *Id*. at ¶ 417.

[9] *See* Federal Communications Commission, Connecting America: The National Broadband Plan at 145 (rel. March 16, 2010) ("National Broadband Plan").

[10] *NPRM/FNPRM* at ¶ 30.

[11] *Id*. at ¶ 6.

will begin to narrow the "rural-rural" divide in the distribution of ongoing support. Specifically, Windstream—consistent with the Commission's suggestion that it might consider a "staged approach" that would reform ongoing support for "Price Cap Areas First"[12]—urges adoption of the following *immediate* reforms: (a) combine High-Cost Loop funding currently received by rural price cap carriers with the funding allocated under the High-Cost Model mechanism and (b) redistribute this support based solely on costs calculated on a wire center basis (i.e., with no regard to statewide average costs) (hereinafter the "Price Cap Areas First Proposal"). The Price Cap Areas First Proposal—which, notably, would operate under a capped budget and thereby would not increase the size the Fund—would entail an increase in the benchmark for wire centers eligible for support. In any funded wire center, Windstream recommends that the ILEC, as the designated carrier of last resort ("COLR"), be afforded the presumptive right to receive the newly targeted High-Cost Model support, but a CETC should be allowed to challenge and replace the ILEC if the CETC is willing to assume the COLR obligations for less High-Cost Model support.

The Price Cap Areas First Proposal would shorten the timeline for comprehensive reform and accelerate the necessary, *full* transition to the CAF. First, the staged approach would help the Commission accomplish the difficult task of "forecasting the consequences of changes to a system as complex and interdependent as USF and ICC" and allow the agency to make any necessary "course corrections . . . along the path to long-term reform."[13] Effectively this approach would make it possible for the Commission to "road test" a regime that only offers ongoing support to one provider per area, allows CETCs to compete with ILECs for this support,

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[12] *See id.* at ¶¶ 401, 420, 447.

[13] *Id.* at ¶ 28.

and better targets support to granular areas that would be uneconomic to serve absent government funding. These are core elements of long-term reform proposals articulated in the *NPRM/FNPRM*, and all elements that could be realized with no change in the contribution factor.

Second, the Price Cap Areas First Proposal is consistent with the Commission's desire to promote more efficient use of universal service funds in the near term. Currently rural price cap carriers' receipt of High-Cost Loop support is based upon their study area-wide embedded costs. The Price Cap Areas First Proposal, however, would make this funding subject to a forward-looking mechanism by wire center—a measure that would help maximize the utility of high-cost support. As the Commission observed when establishing the forward-looking mechanism, using forward-looking costs provides sufficient support without giving carriers an incentive to inflate their costs or to refrain from efficient cost-cutting.[14] The Proposal also would eliminate the mismatch of price cap carriers' basing investment decisions on the competitive marketplace (which rewards efficient capital deployment, generally resulting in lower costs), while receiving their High-Cost Loop support based on embedded costs (which rewards higher costs).

Third, the Price Cap Areas First Proposal would further competition by curtailing support to the majority of exchanges where there is cable telephony (or other facilities-based entry). Based on data for Windstream's service territory, it is not until costs drop to about $41 per line per month, and subscriber density rises to about 30 access lines per square mile, that a wire center has even a 50 percent chance of possessing any degree of cable telephony entry.[15]

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[14] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 224-26 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[15] *See* Comments of Windstream Communications, Inc., WC Docket No. 05-337, GN Docket No. 09-51, RM-11584 (Jan. 7, 2010) at 11. Windstream has on average just 17 subscribers per square mile.

Because the pattern of cable entry largely *does* follow the forward-looking cost per line of providing service in a given wire center, choosing a substantially higher benchmark and redirecting support to the highest-cost wire centers regardless of statewide average costs would have the effect of directing support to those areas that are less likely to support cable or other facilities-based competition.

Finally, the Price Cap Areas First Proposal would correct the unwarranted allocation of High-Cost Model funding to just 10 states and put into place a more equitable distribution of funding across all states. When developing the High-Cost Model mechanism in 1999, the Commission presumed that states would use their "authority . . . to achieve reasonable comparability of rates within [their] borders,"[16] so the Commission concluded that it only would need to offer funding for states with the highest statewide average costs. This assumption, unfortunately, proved to be misguided. Most states still have not taken advantage of "the opportunity to support [their] high-cost wire centers with funds from [their] low-cost wire centers" through establishment of an explicit state fund.[17] Consequently many wire centers in genuinely high-cost areas are grossly underfunded. But with the Price Cap Areas First Proposal, the Commission would correct the overly optimistic assumption that has resulted in lopsided distribution of high-cost support—to the benefit of carriers and customers residing in high-cost areas of states that currently receive no High-Cost Model funding under the current regime.

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[16] *Federal-State Joint Board on Universal Service*, FCC 99-306, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration (rel. Nov. 2, 1999) at ¶ 48.

[17] *Id*. at ¶ 49.

B. As a Complement to Reforms to Ongoing Support, the Commission Should Award Non-Recurring Funds for Broadband Deployment to Unserved Households That Are Uneconomic to Serve, But Are Not Located in Areas With Consistently High Costs.

Along with near-term reforms to better target ongoing support to areas with consistently high costs, Windstream also supports awards of targeted, *non-recurring* funding for broadband deployment to unserved households that are *uneconomic to serve, but are not located in areas exhibiting consistently high costs*. Competitive bidding may help the Commission ensure that any such non-recurring support is distributed in a manner that will "efficiently [] expand broadband to as many unserved housing units . . . as possible."[18] To be successful, however, the Commission must ensure that this competitive bidding process (1) includes measures that prevent providers from receiving support in areas where deployment could occur without government help, and (2) targets non-recurring support to very granular areas.

The Commission cannot achieve its goal of ubiquitous broadband deployment unless it dedicates high-cost support toward the initial build-out of broadband facilities to all unserved households where deployment would be net present value-negative—even though some of these households do not fall within areas where costs are consistently high. In areas where deployment and operating costs are generally lower, there can be small pockets of households where, for various reasons, no rational economic case can be made for initial build-out of broadband. For example, Windstream's Ashland, Kentucky exchange is generally characterized by areas of higher density and lower cost, but Windstream cannot develop a rational economic case to deploy broadband to the 5 percent of its voice customers who reside in isolated pockets of the exchange where there are especially low population densities.

[18] *NPRM/FNPRM* at ¶ 267.

Competitive bidding may offer an effective means to determine non-recurring support for new broadband deployments to these types of areas. Bidding would focus on the incremental cost of upgrading or extending existing networks to provide broadband. Once up-front support makes it possible to surmount these initial barriers to deployment, ongoing government support generally would not be required.[19]

In designing this competitive bidding process, the Commission should be sure to adopt two measures to award funding as efficiently as possible. First, it is critical that the bid selection criteria address "cost effectiveness" in a manner that ensures that funding does not support deployment to households where there is already a rational economic case for deployment, or where the investment can be supported by current prices. As Federal-State Joint Board Commissioner Larry Landis recently noted, "Whether an area is unserved may be quite different from whether it is uneconomic to do so."[20] There is an inherent danger that when funding is directed first toward areas with the lowest per-unit costs (as the Commission proposes), the areas winning support will be ones in which a business case for deployment can be made, but the incumbent has chosen instead to put its money into more profitable ventures. For example, in announcing its proposed acquisition of T-Mobile, AT&T pledged that the combined company would ensure that 95 percent of Americans have access to LTE mobile broadband.[21] This commitment indicates that there are areas served by T-Mobile and AT&T that currently lack

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[19] To the extent deploying to an unserved area could cause a broadband provider to incur high incremental operating costs (such as middle-mile lease transport expenses), additional government funding may be appropriate.

[20] Yu-Ting Wang and Bill Myers, "Access-Charge Battles in States Expected to Intensify", Communications Daily (March 9, 2011).

[21] Press Release, "AT&T To Acquire T-Mobile USA From Deutsche Telekom" (March 20, 2011), *available at* http://mobilizeeverything.com/home.php (last visited April 16, 2011).

broadband access that would meet the Commission's requirements, but to which such broadband can be deployed without government support.

Any competitive bidding process should include a clear-cut mechanism to prevent broadband providers from being rewarded for having failed to invest where a business case for deployment already can be made. This assurance could be accomplished, for example, with the imposition of a minimum private investment requirement before a subsidy kicks in (such as the $800-per-household benchmark proposed in the Broadband Now Plan put forth by Windstream and others).[22] Alternatively or in addition, the selection process could include an assessment of revenue/expense forecasts for project areas, like those conducted for the broadband stimulus programs.[23]

Second, providers should be permitted to bid for and receive support in granular geographic areas, such as census blocks or aggregations of census blocks, as the Commission proposes.[24] Windstream has previously noted that a regime in which providers select their own geographic unit for support would be most effective and technology-neutral when awarding one-time-only funding for broadband deployment in unserved areas.[25] Census blocks are sufficiently

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[22] *See* Comments of CenturyLink, Consolidated Communications, Frontier Communications Corporation, Iowa Telecommunications Services, Inc., and Windstream Communications, Inc., GN Docket No. 09-51 (Dec. 7, 2009), Attachment at 1-2 ("Broadband Now Plan"). Under the Broadband Now Plan, if it cost $1,000 to deploy broadband to an unserved household, the provider would be required to put forth the first $800 and would receive support for the remaining $200 in deployment costs.

[23] *See* Broadband Initiatives Program, Broadband Technology Opportunities Program, Notice of Funds Availability, 74 Fed. Reg. 33103, 33115 (July 9, 2009).

[24] *NPRM/FNPRM* at ¶ 289.

[25] *See* Reply Comments of Windstream Communications, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 33 (August 11, 2010) (Windstream CAF NOI Reply).

granular to enable providers to approximate closely their desired new deployment areas,[26] and represent a neutral geographic unit to satisfy the Commission's goal that universal service support should be competitively neutral.[27]

III. THE PUBLIC INTEREST OBLIGATIONS APPLIED TO FUND RECIPIENTS SHOULD REFLECT THE COMMISSION'S DESIRE TO MAXIMIZE THE IMPACT OF UNIVERSAL SERVICE SUPPORT.

As we embark on the path toward comprehensive reform of the universal service and intercarrier compensation systems, it is essential that the Commission adopt public interest obligations for Fund recipients that encourage efficient, scalable deployments of communications networks in high-cost areas. Specifically, Windstream offers three recommendations for how to construct obligations. First, Windstream proposes that the Commission adopt initial speed requirements of 4 Mbps download/768 Kbps upload for universal service. This threshold will drive high-speed "second-mile" fiber deeper into the network, which will serve as a platform for scalable wireline and wireless services, and will ensure that limited funding goes toward providing a high-quality broadband experience to as many households as possible. Second, Windstream urges the Commission to define "high-quality, reliable voice service"[28] based on functionality offered to consumers and commensurate with carriers' financial support. Third, in accordance with its well-founded intention for public interest obligations to be technology neutral, the Commission should apply the same public

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[26] *See, e.g.*, Comments of NASUCA et al. on Notice of Inquiry, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 20-21 (July 12, 2010) (NASUCA Comments on NOI) (noting that a census-block "approach appears more likely to match both current serving areas of broadband providers and the areas which are **not** served by any current provider").

[27] *See Universal Service First Report and Order* at *¶ 47.*

[28] *NPRM/FNPRM* at ¶ 16.

interest obligations, including any network openness standards, to all entities receiving CAF funding—be they wired or wireless, fixed or mobile.

A. An Initial Speed Target of 4 Mbps Download/768 Kbps Upload Will Advance Universal Deployment Goals While Laying a Foundation for Scalable Wireline and Wireless Services.

In light of the Commission's goals of providing universal access to networks capable of supporting necessary broadband applications while controlling the size of the Universal Service Fund, Windstream proposes that the Commission require that any recipient of support—regardless of technology—deploy facilities capable of providing 4 Mbps download and 768 Kbps upload speeds. These thresholds strike an appropriate balance between the Commission's competing priorities, and the networks deployed pursuant to these thresholds will serve as a platform for scalable wireline and wireless services in the future.

Windstream supports the National Broadband Plan's recommendation that the Commission adopt an initial universalization target of 4 Mbps actual download speed.[29] As the National Broadband Plan recognized, a 4 Mbps download speed will support a set of applications that include sending and receiving e-mail, downloading Web pages, photos and video, and using simple video conferencing.[30] In addition, this threshold is aggressive given current consumer demand. The Commission's most recent report on Internet access service showed that, as of June 2010, download speeds of at least 6 Mbps were available to 85 percent of customers, but only 31 percent of reportable connections were at least 6 Mbps.[31]

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[29] *See* National Broadband Plan at 135.

[30] *See id*.

[31] *See* Industry Analysis and Technology Division, Wireline Competition Bureau, Internet Access Services: Status as of June 30, 2010, at 2, 7 (March 2011) (March 2011 Internet Access Services Report).

Furthermore, a 4 Mbps download speed threshold will result in fiber deployments deeper in the network, enhancing the second-mile and middle-mile infrastructure used by both wired and wireless providers.[32] Given existing funding constraints, the common-sense approach to broadband deployment in the near term is to focus on establishing high-speed second-mile connectivity via fiber while continuing to utilize existing last-mile infrastructure. An initial investment in second-mile fiber will bring baseline broadband to unserved Americans and lay the groundwork for continued advancements in broadband services offered by both wireline providers and wireless providers, which often rely on second-mile fiber connectivity for new and existing cell sites.[33] As former Commission chief technologist Dale Hatfield explained in a recent article, "fiber-optic cable is often referred to as being 'future proof'," and policymakers should focus on the "immediate need to bring fiber significantly closer to the customer to support a vastly increased number of access nodes."[34] Down the road, as customers' bandwidth needs grow, it may be feasible to augment existing last-mile facilities or replace them with fiber connecting to the second-mile facilities. Thus, a focus at this point on second-mile infrastructure sufficient to support 4 Mbps service is a prudent response to both current and future demands.

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[32] Achieving conventional ADSL2+ download speeds of 4 Mbps will require broadband serving area designs with maximum loops of 12,000 to 15,000 feet, instead of traditional 18,000 feet serving area designs that deliver a minimum of 3 Mbps. A 4 Mbps download requirement will drive the creation of smaller serving areas and the deployment of fiber closer to the end user as these smaller serving areas are connected to the network.

[33] *See* Comments of Windstream Communications, Inc., on NBP Public Notice No. 11, GN Docket Nos. 09-47, 09-51, 09-147, at 9-10 (Nov. 4, 2009).

[34] Dale N. Hatfield, "The Challenge of Increasing Broadband Capacity," Federal Communications Law Journal, Volume 63, Number 1, at 66 (Dec. 2010). Hatfield also notes that this approach will reduce strain on demand for spectrum by enabling more intense frequency reuse by wireless providers.

With respect to upload speeds, Windstream urges the Commission to adopt an initial universalization target of 768 Kbps actual upload speed. As Windstream and others have previously noted, and as the Commission has acknowledged, current technologies can deliver 768 Kbps upload speed with significantly lower deployment costs than 1 Mbps would require, and the incremental benefit of 232 Kbps is arguably not worth the incremental additional deployment costs and added strain on the Universal Service Fund.[35] In addition, a 768 Kbps target would be responsive to consumer demand. The Commission's March 2011 Internet Access Services Report notes that 63 percent of reported connections have upload speeds of less than 768 Kbps, although upload speeds of 1.5 Mbps are available to 85 percent of customers.[36]

B. The Commission Should Focus on Functionality Offered by Voice Services, and Ensure that Support for This Functionality Is Commensurate With Universal Service Obligations.

Windstream shares the Commission's goal that the Universal Service Fund should continue to "preserve and advance voice service" for all Americans even as it is refocused toward supporting broadband.[37] Accordingly, Windstream urges the Commission to articulate its

[35] *See NPRM/FNPRM* at ¶ 110. Windstream has previously explained that 1 Mbps upload speeds would not be available to all customers served by standard ADSL 2+architecture over a 24 AWG copper pair of 12,000 feet, but in fact would require a special investment in solutions, such as two-pair bonded ADSL 2+, that would create incremental costs. Two-pair bonded ADSL2+ essentially doubles last mile deployment cost since the end user modem is two to three times the cost of a normal single pair modem, two cable pairs are used instead of one, and two ADSL2+ ports are required at the DSLAM. Because the Commission's broadband performance testing initiatives are focused on measuring end user payload, to achieve 1 Mbps of payload throughput would require an upload connection speed of more than 1.2 Mbps, while an upload connection speed of 1 Mbps would produce an actual throughput of about 820 Kbps. *See* Comments of Windstream Communications, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Appendix at 6 (July 12, 2010) (Windstream CAF NOI Comments).

[36] *See* March 2011 Internet Access Services Report at 3, 7.

[37] *See NPRM/FNPRM* at ¶ 80.

vision for the preservation and advancement of voice service in a manner that (1) focuses on functionality offered to consumers and (2) is commensurate with the amount of support allocated to COLRs.

What is the "high-quality, reliable voice service"[38] that the Commission is prioritizing—facilities-based service over broadband, a voice application over broadband, Plain Old Telephone Service, or something else? On one hand, the Commission expresses an intention that voice service will be "ultimately provided as an application over broadband networks,"[39] and queries whether it is "sufficient that a customer could subscribe to an over-the-top VoIP service for voice service."[40] On the other hand, the Commission proposes to require support recipients to offer voice telephony service as a standalone service,[41] which would "be subject to any existing state or federal requirements for providers of voice service."[42] The financial impact on the Universal Service Fund could vary significantly based on the definition employed. For example, Windstream currently installs broadband ports sufficient to support the percentage of its customers that are forecasted to subscribe to its broadband service in the reasonably foreseeable future. If providers were required to supply broadband ports to all voice customers, in areas

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[38] *Id.* at ¶ 16.

[39] *Id*. at ¶ 30.

[40] *Id*. at ¶ 99.

[41] *Id*.

[42] *Id*. at ¶ 93.

where broadband is already deployed, the costs would be significantly greater in total, perhaps by hundreds of millions of dollars for Windstream alone.[43]

As the Commission answers these questions, Windstream urges it to abide by two guiding principles. First, public interest obligations should focus on voice functionality offered to consumers, rather than the type of technology used to deliver the service. This approach is consistent with the call for "reasonably comparable services" in Section 254 of the Communications Act,[44] as well as Commission decisions that have extended requirements for voice traffic over the PSTN to interconnected VoIP.[45] This precedent recognizes that what matters to consumers is not the specific technology and facilities used, but the functionality offered. Second, carriers' support must be commensurate with any obligations imposed. If funding recipients are required to deliver facilities-based services over broadband, these carriers must receive funding sufficient to do so. Likewise, if current COLRs do not receive support as broadband providers, they cannot be required to maintain POTS offerings as COLRs without appropriate funding. Unfunded mandates will serve only to degrade existing communications services in high-cost areas.

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[43] *See* Letter from Eric N. Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92; WC Docket Nos. 99-68, 05-337, 06-122, 07-135, and 08-152 (Oct. 27, 2008) at 3.

[44] *See* 47 U.S.C. § 254(b)(3) (assuring universal access to "reasonably comparable" services).

[45] *See* Comments of Windstream Communications, Inc. on Section XV, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket No. 01-92, at fn.11-18 (April 1, 2011).

C. Public Interest Obligations—Including Any Network Openness Standards—Should Be Uniform Across All Technologies.

Windstream supports the Commission's intention to ensure that public interest obligations for the provision of voice and broadband service are technology neutral.[46] Specifically, the Commission should apply the same public interest obligations to all entities receiving CAF funding—be they wired or wireless, fixed or mobile—and these obligations should include any network openness standards that the Commission has deemed necessary and proper for fixed broadband providers.

Technology-neutral standards and obligations are required in the context of universal service funding for broadband networks for several reasons. First, technology-neutral standards are needed to ensure, for all consumers, access to comparable networks—an explicit goal of Section 254 of the Act. It would be contrary to the goals of the Act to institute a funding regime whereby a customer in one high-cost area would be afforded access to a network with one network management and performance standard, while another customer in a neighboring area would only have access to a network that is less "open" or less robust. Second, disparate treatment would distort future competition for CAF support. Finally, any attempt to draw stark lines between technologies eligible for support would be contrary to marketplace realities, wherein the technological lines between wireline and wireless, fixed and mobile networks are becoming increasingly blurred.

[46] *NPRM/FNPRM* at ¶ 93.

1. Technology-neutral standards will ensure access to comparable networks for all consumers.

Section 254 of the Communications Act provides that all consumers, including those in high-cost areas, should have access to "reasonably comparable" services.[47] It would be contrary to the Act to institute a funding regime whereby a customer in one high-cost area would be afforded access to a network with one network management and performance standard, while another customer in a neighboring area would only have access to a network that is less "open" or less robust. Accordingly, Windstream has long supported a uniform speed requirement for support recipients,[48] and has also asserted that if fixed providers are subject to network openness rules, those same rules must apply to any provider—including any mobile service provider—that offers broadband as a supported service pursuant to Section 254.[49] Given the Commission's intention to provide support to only one provider per area, such uniform requirements are needed to ensure that all Americans in high-cost areas have access to services that are reasonably comparable to those available in lower-cost areas where competition is more robust.

2. Disparate treatment would distort competition for future CAF support.

As noted above, the Commission proposes that only one provider per geographic area would receive CAF support during the initial phase of the CAF,[50] and seeks comment on the

[47] 47 U.S.C. § 254(b)(3).

[48] *See supra* pages 16-18; Windstream CAF NOI Comments at 12 (noting Windstream's concern with undue disparities in how the OBI White Paper addresses presumed broadband deployment requirements for wireless and wireline networks).

[49] *See* Letter from Malena F. Barzilai, Windstream, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, CC Docket Nos. 01-92 and 99-68, WC Docket Nos. 04-36, 10-90, 05-337, and 07-135 (January 27, 2011) at 2.

[50] *NPRM/FNPRM* at ¶ 281.

same format for the long-term CAF.[51] In addition to creating the danger that neighboring services would not be "reasonably comparable," technology-specific standards within such a format would distort competition for CAF support. Providers that are subject to less stringent requirements with regard to speed, coverage, or openness, for example, would likely be able to under-bid those that are subject to more stringent requirements and thus are likely to deliver higher-quality service. The result of such disparate treatment would be that the CAF would not ensure that scarce resources are going toward delivering the best possible offerings to consumers. To avoid this outcome, the Commission must hold all technologies to the same standards. As Chairman Genachowski noted in his statement accompanying the *NPRM/FNPRM*, "a technology-neutral approach is key to putting scarce resources to the best possible use."

Indeed, the Commission has long recognized, in many contexts, the importance of treating like services alike. For example, in its various broadband Internet classification orders, the Commission scrupulously avoids favoring one technological platform over another, recognizing that doing so would distort a developing marketplace to the detriment of consumers.[52] In the *Wireless Broadband Order*, which brought fixed and mobile wireless technologies under the same regulatory framework as wired technologies, the Commission cites "the Congressional goal of promoting broadband deployment and encouraging competition in the

[51] *Id*. at ¶ 418.

[52] *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, Report and Order, 20 FCC Rcd 14853, ¶ 1 (2005); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd 13281, ¶ 2 (2006).

provision of broadband services."[53] It warns of the dangers of treating wireless broadband services differently: "Without a consistent approach toward all Internet service providers (both within the wireless industry and across diverse technologies), and absent a showing that an application of common carrier regulation to only one type of Internet access provider will promote the public interest, *the possibility of full and fair competition will be compromised*."[54] This finding is no less true in the context of the CAF, where the competition will be for universal service support, and the distortion of this competition ultimately would harm consumers, particularly those residing in high-cost areas.

3. Uniform standards are most appropriate in this age of technological convergence.

Finally, any attempt to draw stark lines between technologies eligible for support would be contrary to the reality of the marketplace, in which technological lines between wireline and wireless, fixed and mobile networks are becoming increasingly blurred. As Windstream has previously discussed in great detail,[55] wired and wireless broadband services compete with one another in the market and will continue to do so more vigorously as the spectral efficiency and speed of wireless technologies continue to increase. In addition, the networks used to support wireless and wireline broadband services are becoming increasingly interchangeable as wireless companies respond to their own capacity limits by encouraging the use of femtocells and Wi-Fi to offload traffic onto wireline broadband networks at the point closest to the end-user. The

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[53] *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 55 (2007) (Wireless Broadband Order).

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

[55] *See* Comments of Windstream Communications, Inc., GN Docket No. 09-191, WC Docket No. 07-52, at 6-19 (October 12, 2010); Reply Comments of Windstream Communications, Inc., GN Docket No. 10-127 (August 12, 2010).

result is that for a very large percentage of broadband communications, there is *no technological difference* between broadband connectivity used to support traditional wireline broadband service and the connectivity supporting a "wireless" handset's broadband service.

Even where differences currently exist, these differences are matters of degree and not kind. While wireless providers have spectrum scarcity and network management issues, wireline and cable operators have to manage finite network capacity as well—and these capacity constraints are compounded by the wireless providers' strategy of offloading voice and broadband traffic onto wired broadband networks wherever possible. Indeed, wireline carriers have faced massive increases in consumer Internet usage in recent years. The average Windstream customer now generates more than ten times the amount of downstream Internet traffic generated by the average Windstream customer in July 2006. Deploying additional fiber and upgrading electronics to handle this increased demand may not be the same process as acquiring new spectrum in an auction, but these measures are hardly so inexpensive and inconsequential that wired providers have an insignificant need to manage capacity on their networks. Holding wireline providers to more stringent public interest obligations would effectively penalize them for investing the most in ensuring optimum performance for their customers (whether that performance is measured by speed or by degree of network openness), and run counter to the increasing technological convergence in the industry.

IV. THE COMMISSION SHOULD PROMPTLY UNDERTAKE HIGH-COST REFORMS THAT WILL FREE UP FUNDS FOR HIGHER-VALUE PURPOSES.

Windstream understands the Commission's desire to avoid increasing the size of the Universal Service Fund, but that goal need not preclude the Commission from taking on the suggested near-term reforms. In a variety of ways, the current high-cost mechanisms fail to allocate limited funding equitably and in a method that is responsive to the needs and cost conditions of granular areas. The Commission immediately should undertake reforms that will address these problems and free up funds for targeted support for broadband and voice services.

First, the Commission, as proposed in the *NPRM/FNPRM*, should promptly eliminate all legacy high-cost support to CETCs, which amounts to one-third of total high-cost funding and goes toward duplicative funding that is at odds with the Commission's goals. Second, the Commission should make changes to mechanisms that deliver support to carriers of last resort, to promote a more equitable distribution and efficient investment of limited resources. In particular, the Commission should (1) rationalize the distribution of High-Cost Loop support by using a regression analysis to determine appropriate levels for operating and capital costs and to distribute support based on costs of an efficient carrier, rather than a carrier's embedded costs; and (2) cap rate-of-return carriers' ICLS on a per-line basis unless they choose to operate under a reformed ICLS regime that limits operating and capital costs and distributes support based on a regression analysis (as recommended for the High-Cost Loop mechanism).

A. The Commission Should Quickly Eliminate All Legacy High-Cost Support to CETCs.

Windstream supports the Commission's intention to phase out legacy CETC funding—which accounts for approximately one-third of all high-cost funding—and redirect the savings toward targeted support for broadband and voice services.[56] Although ILEC support has declined slightly since 2003, CETC support under the existing high-cost mechanisms has grown

[56] *NPRM/FNPRM* at ¶ 242.

more than 1,000 percent over that period.[57] As recognized in the National Broadband Plan, this subsidization of more than one provider per geographic area has imposed irrational burdens on the consumers who contribute to the Universal Service Fund.[58] The identical support rule has provided a windfall to CETCs, which, unlike ILECs, are not subject to the carrier-of-last-resort obligations and extensive rate and economic regulation. If the Commission wishes to fund mobile broadband coverage in unserved areas, it should do so in a rational process that is based on the efficient costs of mobile broadband deployment.

Given these conditions, the Commission should eliminate all legacy CETC support *more rapidly* than the five-year phase out proposed in the *NPRM/FNPRM*.[59] CETCs have been on notice for several years that comprehensive universal service reform likely would drastically reduce or eliminate support for competitive providers. Indeed, in 2007, the Federal-State Joint Board on Universal Service stated that it "no longer believe[s] it is in the public interest to use federal universal service support to subsidize competition and build duplicative networks in high-cost areas."[60] The following year, at the recommendation of the Joint Board, the Commission—noting that the "rapid growth of CETC support" is the problem that "most directly threatens the specificity, predictability, and sustainability of the [Universal Service Fund]"—

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[57] 2010 Universal Service Monitoring Report (data through August 2010), Federal-State Staff for the Federal-State Joint Board on Universal Service, Table 3.2 (Dec. 31, 2010) ("2010 Monitoring Report").

[58] National Broadband Plan at 145.

[59] *NPRM/FNPRM* at ¶ 242.

[60] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 8998, ¶ 12 (2007) ("*Interim Cap Recommended Decision*").

adopted a cap on the amount of high-cost support that CETCs may receive.[61] Promptly eliminating all remaining legacy support to CETCs will enable the Commission to redirect more money in the near term toward targeted funding for voice and broadband services in high-cost areas.

1. High-cost support to CETCs has skyrocketed, due to inefficient funding of more than one provider per high-cost area.

Excessive funding of CETCs threatens the health of the universal service program. As the Federal-State Joint Board on Universal Service ("Joint Board") recognized in recommending the interim cap on CETC support, "without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire jeopardy of becoming unsustainable."[62] In 1999, support for CETCs totaled $500,000; in 2010, support for CETCs was an estimated $1.695 billion.[63] Comparisons between CETC and ILEC support are striking. While ILEC support actually has declined slightly since 2003, CETC support has grown more than 1,000 percent, from $130 million to at least $1.366 billion over the same period.[64] Overall the 212 CETCs, in aggregate, receive approximately half of the total high-cost support that the 831

[61] *High -Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, ¶ 9 (2008) (*Interim Cap Order*).

[62] *Interim Cap Recommended Decision* at ¶ 4.

[63] 2010 Monitoring Report at Table 3.2.

[64] Since the 2010 Monitoring Report was published, the Commission capped total annual CETC support at approximately $1.366 billion. *See* Letter from Sharon Gillett, Chief, Wireline Competition Bureau, to Karen Majcher, USAC, WC Docket No. 05-337, DA 11-243 (dated Feb. 8, 2011). The $1.695 billion in payments estimated by USAC in the 2010 Monitoring Report apparently includes out-of-period adjustments, true-ups, and retroactive payments.

ILECs draw. With regard to "non-rural" support in particular, CETCs now receive more support than all ILEC recipients combined.[65]

All CETC support is duplicative funding, which runs counter to Commission plans for one-provider-per-area support. The Universal Service Fund now may support more than a dozen CETCs that provide voice service in a single area,[66] and in many instances, wireless CETCs receive support for multiple handsets on a single family plan.[67] Furthermore, Verizon Wireless, AT&T Wireless, and U.S. Cellular (the wireless subsidiary of TDS Telecommunications) together receive more than $650 million in CETC support[68]—nearly half of all CETC support.

Given the priority the Commission has placed on targeting support to both broadband and voice service, the Commission must move away from subsidizing more than one carrier in high-cost areas and must redirect CETC funding toward targeted support for broadband and voice offerings by a single carrier in each high-cost area. Excessive, redundant support cannot continue if the Commission intends to expand services without unnecessarily burdening the consumers who contribute to the Universal Service Fund.[69] In addition, this new strategy will

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[65] National Broadband Plan at 159.

[66] *See* Letter from Michael J. Copps, Acting Chairman, FCC, to the Honorable Henry J. Waxman, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Part 4 (May 4, 2009), *available at* http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1644.

[67] National Broadband Plan at 148.

[68] Universal Service Administrative Company, Second Quarter Appendices – 2011, HCO1 – High Cost Support With Capped CETC Support Projected By State By Study Area, *available at* http://www.universalservice.org/about/governance/fcc-filings/2011/quarter-2.aspx (last visited April 18, 2011).

[69] *See* 47 U.S.C. § 254(b)(5) (stating the Commission should ensure "specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service").

continue to provide essential support to competitive carriers that arose in the wake of the Telecommunications Act of 1996, because all eligible telecommunications companies, both incumbents and competitors, will be able to compete for CAF funding, so long as they agree to meet any attendant obligations the Commission imposes.[70]

2. CETCs—particularly the wireless CETCs that receive the bulk of high-cost support—currently receive windfalls in universal service funding because of the identical support rule.

The identical support rule allows for the disbursement of high-cost support to CETCs based on the costs of the competing ILEC, and permits CETCs to receive support that bears no relation to the nature or level of their own costs. First, CETCs receive 26 percent of all IAS and 37 percent of all ICLS,[71] even though CETCs have no legitimate need for access charge replacement funding. As the Commission has observed, "IAS and ICLS were created by the Commission in order to maintain the Commission's cap on subscriber line charge ("SLC") rates that incumbent LECs may charge end users, while eliminating the implicit support found in common line access charges, imposed by incumbent LECs on interexchange carriers, that previously preserved the lower SLC rates."[72] IAS and ICLS funding to incumbents subsidizes the non-traffic-sensitive (loop) portions of their networks. Wireless CETCs have no comparable

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[70] *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers. So long as there is a sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act.")

[71] *See* 2010 Monitoring Report at Table 3.2 (projecting that 2010 IAS will be $644.6 million, of which CETCs will receive $170.2 million, and 2010 ICLS will be $1.78 billion, of which CETCs will receive $654.6 million).

[72] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1477, ¶ 23 (2008) ("*Identical Support Rule NPRM*").

loop components of their networks to justify the receipt of IAS or ICLS funding. In addition, permitting CETCs to receive these access charge replacement funds is "inconsistent" with how CETCs are regulated, including how they "recover their costs or set rates."[73] ILECs are generally subject to COLR obligations and extensive rate and economic regulation. In contrast, CETCs can choose which geographic markets to serve and have the freedom to determine how much to charge for services.

Second, CETCs receive Local Switching Support ("LSS") based on a formula that bears no relation to their actual switching costs. As the Commission has noted, LSS includes a number of assumptions regarding ILEC switching costs, such as the economies of scope and scale, that are not likely to be accurate for CETCs.[74] CETCs receive support that was designed to enable recovery of special high costs incurred by small ILECs, though CETC switch expenses differ from those of small ILECs. Furthermore, CETCs generally serve large geographic areas with one switch and, thus, have more scale than the small ILECs (with study areas comprising less than 50,000 lines) for which LSS was intended.[75]

Third, CETCs receive High-Cost Model and High-Cost Loop support as a function of incumbent carriers' costs, which often are based on different technologies and are unrelated to the CETCs' costs. The High-Cost Model and High-Cost Loop mechanisms are almost entirely designed to recover loop investment, but as explained above, wireless CETCs (which receive the bulk of CETC support) don't have loops. Theoretically, the identical support rule could result in under-compensation of CETCs, if CETCs have higher network costs, but evidence supports the

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[73] *Id*.

[74] *Id*. at ¶ 24.

[75] *See Universal Service First Report and Order*, 12 FCC Rcd at 8941-42, ¶¶ 303-04.

hypothesis that the rule most often results in over-compensation of CETCs. The Commission, in its 2008 *Order* establishing an interim cap on CETC high-cost support, adopted an exception to the cap for a CETC if it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC.[76] To Windstream's knowledge, only one cost study has been submitted,[77] and it has not been approved by the Commission. The lack of cost study filings indicates that CETCs are receiving high-cost support that meets their needs, or exceeds their needs—and thereby undermines marketplace competition. Funding under the identical support regime would be competitively neutral only if all carriers' costs were identical, thereby ensuring that no provider received more support than its costs would justify.

As observed below, the Commission must exercise caution in reducing or changing modes of support to incumbent carriers serving as the providers of last resort. There is much less concern, however, with respect to CETCs, which for years have received high-cost support at the same levels as incumbents despite the fact that they bear little or no responsibility for maintaining essential network infrastructure. There is no legitimate basis for reducing CETCs' support on the same timeframe as incumbent carriers' support. If the Commission hopes to achieve universal broadband deployment, it must act to recapture, in an accelerated fashion, the approximately one-third of total high-cost support that currently is flowing to CETCs.

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[76] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Communications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, Order, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8848, ¶ 31 (2008) ("*CETC Interim Cap Order*").

[77] *See* Letter from Catherine Veach Moyer, WestLink Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 96-45 (Oct. 24, 2008).

B. The Commission Should Make Changes to Carrier-of-Last-Resort Support Mechanisms To Promote the More Equitable Distribution and Efficient Investment of Limited Resources.

In addition to the wholesale elimination of legacy support to competitive carriers, the Commission should make several changes—some substantial, some less so—to how the high-cost mechanisms distribute support to carriers of last resort. First, the Commission should modify how funding is awarded under the High-Cost Loop mechanism, which currently enables and encourages overinvestment in some rural areas and thus expands the existing rural-rural divide. These modifications should include major changes—such as the institution of a regression analysis to determine appropriate spending levels and make appropriate support calculations—and some of the more minor changes suggested by the Commission. Second, the Commission should make near-term reforms to ICLS that will bring rate-of-return carriers' support in line with what they would receive under an incentive-based regime. Specifically, the Commission should cap rate-of-return carriers' ICLS on a per-line basis unless they choose to operate under a reformed ICLS regime that constrains support to levels needed by an efficient carrier. Third, if the Commission chooses to phase out the LSS program, it should do so over a three-year period, with appropriate support for switching costs incorporated into the High-Cost Loop mechanism.

1. The Commission should modify how funding is awarded under the High-Cost Loop mechanism.

The Commission correctly recognizes that rationalizing the distribution of High-Cost Loop support is an essential component of comprehensive Universal Service Fund reform.[78] As Windstream noted in prior comments, prompt changes to how funding is awarded under the

[78] *See NPRM/FNPRM* at ¶ 175.

High-Cost Loop program, which represents nearly one-third of all high-cost funding, are imperative if the Commission hopes to capitalize the CAF sufficiently.[79] The current High-Cost Loop program, with its idiosyncratic distribution mechanism, actually undermines the Commission's goal of universal broadband by enabling and encouraging overinvestment in some rural areas, at the expense of other areas where carriers fail to receive support for even the most basic voice, much less broadband, facilities.

The High-Cost Loop mechanism, though it does not explicitly support broadband build-out, has enabled many ILECs serving high-cost areas to make great strides in deploying broadband to substantial portions of their customer bases.[80] However, even in the near term, the Universal Service Fund cannot continue to bear the strain of expansion of Fiber to the Home that is being deployed in some high-cost areas served by small, rate-of-return carriers. Each year, the cost level that triggers High-Cost Loop support—costs exceeding 115 percent of the national average cost per line—grows higher and, because of the overall cap on High-Cost Loop support, only those companies that are spending the most in loop investment will receive sufficient funding, regardless of whether the investments are reasonable.[81] Instead of focusing support on the rural consumers most in need of new broadband deployment, this approach expands the existing rural-rural digital divide, and makes it less likely that the Universal Service Fund will be

[79] *See* Windstream CAF NOI Comments at 40-44.

[80] *See* Letter from Joshua Seidemann, Independent Telephone and Telecommunications Alliance, Stuart Polikoff, OPASTCO, and Derrick Owens, WTA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137, WC Docket No. 05-337, CC Docket No. 99-45 (March 10, 2010).

[81] The National Average Cost Per Loop has grown from $265.96 in 2000 to $458.36 in 2010. Most of the NACPL increase comes from increased loop investment, though some also may be due to loss of customers, as fixed costs now are spread over fewer loops.

able to support broadband deployment in the remaining unserved areas and maintain quality voice and broadband services in areas where they are already deployed.

Given these conditions, Windstream supports many of the Commission's proposed reforms to the current High-Cost Loop mechanism. First, Windstream supports the Commission's proposal to use a regression analysis to determine appropriate levels for operating and capital costs, and Windstream also advocates extending the application of regression analysis to the distribution calculation of the mechanism. These changes would result in distribution of support based on the reasonable network costs of an efficient carrier, rather on a carrier's embedded costs. Second, the Commission's proposal to reduce the current 65 and 75 percent reimbursement percentages for High-Cost Loop support for ILECs operating less than 200,000 loops to 55 and 65 percent, respectively, is a productive early step toward a more rational distribution of limited funding. This measure also will promote more efficient investment by carriers. Third, if the Commission eliminates the safety net additive, it should do so with a reasonable transition and redirect the funding toward areas neglected due to program rules that have created a rural-rural divide.

The Commission should not, however, implement its proposal to eliminate High-Cost Loop support for study areas with more than 200,000 loops. This proposal is inconsistent with other Commission proposals that would encourage study area consolidation and resulting efficiencies. It also runs counter to the goal of targeting support based on the cost conditions of more granular areas.

a. Utilizing a regression analysis to determine appropriate levels for operating and capital costs *as well as* the actual distribution of support will encourage more efficient levels of investment.

Windstream supports the Commission's proposal to use a regression analysis to determine appropriate levels for operating and capital costs under the High-Cost Loop program.[82] Limiting the amount of operating and capital expenditures included in calculations of High Cost Loop support will ensure all recipients are making sound and reasonable investments, by alleviating the incentives for small rural carriers to engage in a "race to the top," outspending their neighbors to maintain their high-cost support.[83] Windstream also supports using a regression analysis to determine the actual distribution of High-Cost Loop support. Specifically, Windstream suggests that support be distributed based on the reasonable network costs for an efficient carrier to provide services pursuant to Section 254—as determined by a regression formula—rather than based on a carrier's embedded costs. This regime would address the Commission's concerns about inefficient levels of investment under the High-Cost Loop mechanism, but still would be responsive to the cost characteristics of individual areas in need of support.[84]

The Commission already has used regression formulas to distribute support successfully. As the Commission notes, many rate-of-return carriers currently receive support based on a

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[82] *See NPRM/FNPRM* at ¶ 203.

[83] *See id.* at ¶ 179.

[84] For example, as the *NPRM/FNPRM* notes, the Nebraska state universal service fund employs a regression analysis that relies heavily on household density to determine support for very granular areas within wire centers. Pursuant to this analysis, higher support appropriately is designated to lower-density areas, so carriers that serve particularly challenging areas are provided sufficient support. *See id.* at ¶ 203, fn.319 (citing Nebraska Rural Independent Companies July 12, 2010 Comments).

similar regression analysis under the Commission's average schedule rules.[85] Furthermore, a more holistic approach to High-Cost Loop reform, correlating support levels with the needs of an efficient carrier and accounting for various expense drivers, would simplify the support system and eliminate the need for many of the piecemeal changes the Commission is considering. First, this approach would obviate any need for the Commission separately to reduce or eliminate support for corporate operations, because it would appropriately measure and fund corporate operations expenses.[86] Second, if the Commission chooses to phase out the LSS mechanism (a proposal discussed in further detail below), the reformed High-Cost Loop program could be used to provide efficient funding for switching costs in areas where support continues to be required. Third, the reforms to the High-Cost Loop mechanism likely would do away with any need for a limit on total per-line high-cost support, because they would largely eliminate the over-funding and gold-plating that plague the current system.

b. The Commission should decrease the current support percentages for ILECs operating 200,000 or fewer loops to 55 percent and 65 percent.

The Commission's proposal to reduce the current 65 and 75 percent High-Cost Loop reimbursement percentages to 55 and 65 percent, respectively, for ILECs operating less than

[85] *See NPRM/FNPRM* at ¶ 203 fn.320 (citing 47 C.F.R. §§ 36.611-613).

[86] Though Windstream would be supportive of a review to the current corporate operations limitation in the existing High-Cost Loop formula (if the Commission elects not to make more wholesale changes to the formula), Windstream cautions the Commission against pursuing a flash-cut elimination of support for corporate operations expenses. Many corporate operations—such as payroll, labor relations activities (such as hiring field installation and repair technicians and managing employee safety programs), procurement departments that manage the purchase of cable and electronics deployed in the network, and legal services that acquire access to rights of way—are intrinsically linked to network deployment and maintenance.

200,000 loops is a productive near-term step toward broader universal service reform.[87] Under the current, idiosyncratic system, an ILEC operating less than 200,000 loops in a study area with an average cost per loop that is more than 150 percent above the national average (currently $458.36) recovers *all* of its revenue requirement above 150 percent for that study area—no matter how much the ILEC spends—through the interstate High-Cost Loop, ICLS, and SLC recovery mechanisms.[88] Whether the ILEC's costs are $700 per loop per year or $20,000 per loop per year, only $404.51 ($33.71 per month) remains for the ILEC to recover from the state jurisdiction, generally through end-user customer rates or intrastate access carrier common line charges.[89] Thus, there is a strong incentive for the ILEC to spend more than 150 percent above the national average cost per loop, and no disincentive to spend much more than that.[90]

Under the Commission's proposed reductions, the federal system appropriately would bear less of the burden of the revenue requirement above 115 and 150 percent. The hypothetical ILEC with costs of $700 per loop would need to recover $421.79 ($35.15 per month) instead of

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[87] *NPRM/FNPRM* at ¶ 180.

[88] *See NPRM/FNPRM* at ¶ 202 (recognizing that rural rate-of-return carriers with high loop costs may have up to 100 percent of their marginal loop costs above a certain threshold reimbursed from the federal universal service).

[89] *See* Rural/Rate of Return USF Analysis / Current Algorithm, attached as Exhibit A.

[90] *See NPRM/FNPRM* at ¶ 202 (noting that this process incentivizes carriers with high costs to further increase their loop costs, lessens incentives for some carriers to control costs and invest rationally, and shifts the responsibility of supporting these high-cost carriers to the federal jurisdiction, and ultimately to consumers across the country). This is evidenced by the fact that the average study area cost per loop in study areas in which costs exceed 150 percent of the national average cost per loop has grown from $730 in 2000 to $1,251 in 2009.

$404.51, and the hypothetical ILEC with costs of $20,000 per loop would find that $2,351.76 ($195.98 per month) is not covered by federal Universal Service support.[91]

Although a relatively small change, this reform to the High-Cost Loop program would help bridge the rural-rural divide. The money saved through lower disbursements could be directed toward fulfilling the Commission's long-term goal of better targeting funds to areas currently neglected by the High-Cost Loop program. Moreover, this modest change might encourage small rate-of-return ILECs to invest more efficiently in the future, because their federal recovery amount would bear a more direct relation to their spending levels.

c. If the Commission eliminates the safety net additive, it should do so with a reasonable transition and should immediately redirect recaptured funds toward better targeted voice and broadband support.

Though Windstream continues to receive funding from the safety net additive,[92] Windstream recognizes that the funding distributed under the additive could be better targeted toward the deployment and maintenance of broadband and voice networks. If the Commission eliminates this additive (as proposed[93]), the Commission should phase out support gradually, because some parties are expecting and depending on safety net additive support to help "pay off the mortgage" on investments already undertaken. Specifically, the Commission should state that there will be no new qualifiers for safety net additive support, and that support for current recipients shall end when the term of support (typically five years) is set to expire.

[91] *See* Rural/Rate of Return USF Analysis / Proposed Algorithm, attached as Exhibit B.

[92] Windstream currently receives $7.2 million in safety net additive support.

d. The Commission should not eliminate High-Cost Loop support for study areas with more than 200,000 loops.

The Commission should not implement its proposal to eliminate High-Cost Loop support for study areas with more than 200,000 loops.[94] The Commission in the *NPRM/FNPRM* generally expresses a preference for measures that encourage carriers to consolidate and achieve efficiencies of scale.[95] Eliminating High-Cost Loop support for study areas with more than 200,000 loops, however, would be inconsistent with this preference. This proposed High-Cost Loop reform would further discourage carriers from consolidating study areas. The current High-Cost Loop program, which employs study-area averaging and provides lower reimbursements for study areas with more than 200,000 loops, already favors smaller, rate-of-return carriers with smaller study areas, without regard to the actual cost conditions of individual wire centers.[96] Carriers undoubtedly would be even less likely to consolidate if doing so would mean altogether foregoing valuable universal service support.

Moreover, implementing this proposal, within the context of the existing High-Cost Loop system and the study-area averaging that it employs, would run counter to the goal of eliminating the rural-rural divide. Though the Commission correctly notes that none of the five rural ILECs with more than 200,000 loops currently receives High-Cost Loop support,[97] there may be more study areas with more than 200,000 loops in the future if the Commission's attempts to

[94] *See NPRM/FNPRM* at ¶ 181.

[95] *See id.* at ¶¶ 218-24 (proposing various methods to streamline the study area waiver process to facilitate the transfer and acquisition of exchanges).

[96] Study areas with fewer than 200,000 lines receive 65 percent of costs per loop when their costs per loop are 115 percent to 150 percent of the national average cost per loop. Study areas with more than 200,000 lines receive 10 percent of costs per loop when their costs per loop are 115 percent to 160 percent of the national average.

[97] *See NPRM/FNPRM* at ¶ 181.

encourage efficient consolidation are successful. Eliminating the possibility for High-Cost Loop support entirely for such study areas would only move us further away from a system in which granular, high-cost areas can be supported primarily on the basis of their needs, rather than the size and business model of the companies serving them.[98]

2. ICLS should be capped on a per-line basis for carriers electing not to operate under a reformed ICLS regime that constrains support to levels that an efficient carrier would require.

As recognized in the *NPRM/FNPRM*,[99] the major problems with today's high-cost program arise not from rate-of-return regulation per se, but from the inequitable and inefficient resource distribution that results from the current mechanisms. Like the High-Cost Loop mechanism, the current ICLS mechanism fosters irrational spending and exacerbates the rural-rural divide. Under the current regime, rate-of-return carriers receive ICLS to recover any shortfall between their interstate revenue requirement and their SLC revenues, and because ICLS is uncapped, increases in interstate common line costs associated with upgrading and maintaining networks, together with declines in SLC revenues caused by line loss, are leading to the growth of ICLS support.[100]

To directly address uneven distribution of high-cost support, Windstream supports near-term reforms to ICLS that will bring rate-of-return carriers' support in line with what they would receive under an incentive-based regime. Such reforms would incentivize more rational spending and limit growth of the ICLS mechanism. They also would enable the Commission to

[98] *See, e.g.,* Comments of Windstream Communications, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 7-11 (April 17, 2008).

[99] *See NPRM/FNPRM at* ¶ 162.

[100] *See id.* at ¶ 169.

begin to recapture ICLS funding to put toward better targeted support for broadband and voice services.

In particular, each rate-of-return carrier should be given a choice of two options. First, the carrier could elect to have its ICLS frozen on a per-line basis and capped overall. As the Commission knows, there is substantial precedent for carriers shifting to receipt of frozen per-line ICLS. Since 2008, Windstream and a number of other companies have converted many of their subsidiaries to price cap regulation under a framework that included conversion of their ICLS to a frozen amount per line.[101] In addition, in each of these cases, the Commission capped each converting company's future overall annual ICLS at an amount equal to its overall last full year before conversion, after application of any required true-ups. Second, in the alternative, the rate-of-return carrier could choose to be subject to a reformed ICLS regime that, like the reformed High-Cost Loop mechanism proposed above, would include operating and capital cost limitations and would use a regression analysis to constrain appropriate support levels for

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[101] *See, e.g., Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 (2008) ("*Windstream Order*"); *Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Windstream Petition for Limited Waiver Relief*, WC Docket Nos. 10-37, 10-47, 10-55, Order, 25 FCC Rcd 4824 (Wireline Comp. Bur. 2010); *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-220, Order, 24 FCC Rcd 4664 (Wireline Comp. Bur. 2009); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-191, Order, 24 FCC Rcd 4677 (Wireline Comp. Bur. 2009); *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (Wireline Comp. Bur. 2008).

operating and capital costs, based on the costs that an efficient carrier would incur in a high-cost area. Like High-Cost Loop support, ICLS is derived from loop investment and expenses, so a similar regression constraint is a natural fit for ICLS determinations. Furthermore, this analysis would ensure that ICLS, if it is continued on an actual rate-of-return basis, would only provide a carrier support for reasonable levels of used and useful plant investment.

3. If the Local Switching Support program is eliminated, it should be phased out over three years, with appropriate support for switching costs incorporated into the High-Cost Loop program.

Though Windstream received $8.7 million in LSS last year, Windstream recognizes that funding distributed under the LSS program could be better targeted toward voice and broadband support.[102] The program currently rewards small study areas without regard to average switch size and without any high-cost qualifying threshold, and thereby provides a disincentive for carriers to merge study areas within the same state. Existing LSS funding could be repurposed to produce a more equitable distribution of scarce resources to serve rural consumers and further the Commission's goals of universal access to broadband and quality voice services.

If the Commission chooses to eliminate LSS, Windstream urges the Commission to include two measures designed to limit the negative impact on companies with very high switching costs. First, in very low-density areas where switching costs remain high, support for these switching costs should be addressed through modification of the High-Cost Loop program. This measure could be carried out effectively if, as discussed above, the Commission institutes a regression analysis to determine reasonable network costs—including switching costs—for an efficient carrier, and then uses this analysis when establishing appropriate support amounts.

[102] *See id.* at ¶ 190.

Second, in line with its goal to avoid undue "flash cuts" in its policies,[103] the Commission should phase out LSS over a period of time that is at least as long as the timeframe ultimately allotted to total elimination of CETC support.[104] Such a transition will minimize disruption, provide certainty, and give providers that rely on this support sufficient time to adapt to the change.

V. UNTIL THE CAF IS FULLY IMPLEMENTED, THE COMMISSION SHOULD TAKE CARE TO PRESERVE ESSENTIAL FUNDING FOR EXISTING NETWORKS IN HIGH-COST AREAS.

Until the Connect America Fund is fully implemented and replaces all explicit support and implicit subsidies, the Commission must take care to preserve existing funding that is essential to maintain facilities and enable the transition to next-generation networks. To that end, any successful intercarrier compensation reform effort must be managed by the Commission and include reasonable transitions and a meaningful opportunity for carriers to recover revenues. The Commission also should protect essential sources of high-cost support to mid-sized price cap companies. In particular, the Commission should preserve frozen ICLS, which provides crucial support for recently converted price cap companies, and should closely examine the role and sufficiency of IAS—especially with regard to mid-sized carriers—before considering a phase-down of support.

A. Existing Facilities in Truly High-Cost Areas Will Continue to Require Support.

Windstream appreciates the Commission's recognition that the high-cost program must continue to "preserve and advance voice service" for all Americans even as it is refocused toward supporting broadband.[105] Carriers will continue to require support to offset costs of

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[103] *Id*. at ¶ 12.

[104] Ideally, LSS to CETCs should be phased out more rapidly than LSS to ILECs.

[105] *NPRM/FNPRM* at ¶ 80.

providing communications services in areas that would be uneconomic to serve absent government funding. Such support will be needed to address depreciation expense tied to prior network deployments, as well as operating and maintenance expenses incurred on an ongoing basis. Undue funding cuts that undermine the ability of providers of last resort to maintain their existing networks would be counterproductive to the goal of universal broadband service.

First, as the Commission knows, the existing high-cost support program has indirectly contributed to the deployment of broadband networks, which utilize many of the same network components as supported voice services.[106] ILECs have invested well over $100 billion to develop a nationwide network that provides high-quality, reliable, and ubiquitous coverage, and ILECs are continuing to invest billions of dollars to upgrade existing networks for increasingly faster broadband and to extend the reach of these networks to the most costly areas to deploy. Especially in the lowest-density, highest-cost areas of the country, public switched telephone network facilities will continue to be an essential component of the delivery of high-quality, reasonably priced voice and broadband services to consumers. Ongoing support is needed to provide carriers with a reasonable opportunity to recover past and current investments.

Second, federal funding is needed to address costs for operating and maintaining networks in sparsely populated rural areas—costs that do not evaporate with the implementation of IP technology. The economic reality that underlay the framework of the universal service and intercarrier compensation systems—the extremely high cost of providing reliable network service to customers in low-density areas—still remains. Operating and maintaining last-mile and second-mile infrastructure connecting customers to the carrier's network will continue to be

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[106] *See* National Broadband Plan at 141.

necessary, and costly, regardless of the technology the network uses. To fulfill the directive of Section 254 of the Act,[107] continued support is necessary to ensure that these existing networks are not stranded and that all Americans receive consistent, reliable, and high quality service, regardless of where they live.

B. Intercarrier Compensation Reform Must Include Appropriate, Federally Directed Access Recovery and Adequate Transitions.

Windstream has long favored a measured, rational approach to intercarrier compensation reform.[108] Rather than reiterate the details of its past filings, Windstream in these comments focuses on two central components of any successful intercarrier compensation reform effort that may occur prior to replacement of all explicit support and implicit subsidies with CAF support. First, it is critical that any reform offer a meaningful opportunity, through an access recovery mechanism (ARM) and reasonable rate increases, for carriers to recover revenues diminished by mandated rate reductions. Second, the Commission, not states, must manage nationwide reform of intercarrier rates, including the unification of intrastate and interstate switched access rates, and the development of access recovery mechanisms.

1. Reform must offer a meaningful opportunity to recover revenues diminished by mandated rate reductions.

Windstream is pleased that the Commission recognizes the need for a recovery mechanism as part of comprehensive reform of the intercarrier compensation system.[109] Though there is widespread agreement that the existing system is flawed, intercarrier compensation

[107] 47 U.S.C. § 254(b)

[108] *See, e.g.,* Reply Comments of Windstream Communications, Inc., WC Docket Nos. 05-337, 03-109, 06-122, 04-36, CC Docket Nos. 96-45, 96-98, 01-92, 99-68, 99-200 (December 21, 2008); Broadband Now Plan.

[109] *See NPRM/FNPRM* at ¶ 559.

nevertheless offers important implicit subsidies for the provision of universal, comparable service, and it is a significant source of revenues for carriers serving high-cost, rural areas. If reform is not addressed in a rational manner, which includes a reasonable opportunity for recovery of lost revenues, the carriers most likely to be harmed are Windstream and others that currently offer broadband service in high-cost areas and are most likely to engage in future broadband deployments in unserved and underserved areas. In contrast, rational reforms would better enable these carriers to attract private investment capital and advance the Commission's universal broadband goals.

Windstream's intent is not to make carriers whole, but to equitably spread the burdens of intercarrier compensation reform among all stakeholders, rather than placing those burdens entirely on consumers in high-cost areas and the companies that serve them. Specifically, Windstream proposes that the Commission establish a local rate benchmark; permit capped annual increases to retail rates, including increases to the SLC; and create an ARM to ensure sufficient revenue replacement. Reductions in intercarrier compensation revenue would be offset with incremental revenues from the retail rate increases toward the benchmark and a proper level of subsidy through an ARM. This framework would control the size of the ARM and ensure that it does not support unreasonably low retail rates. Carriers would *not* be able to recover all lost access revenues, because they are constrained by competition from raising rates to the benchmark.

2. The Commission should manage nationwide reform, including the unification of rates and development of an access recovery mechanism.

The *NPRM/FNPRM* sets forth two possible approaches for the Commission to work in partnership with the states to reform intercarrier compensation.[110] For intercarrier compensation reform to be successful, the Commission must pursue the second approach—in which it (not the states) would unify all intercarrier rates, including those for intrastate traffic, under the framework of reciprocal compensation. This approach will facilitate a faster, more consistent reform process that is more likely to include appropriate opportunities for revenue recovery on which carriers can rely.

As the Commission recognizes, the primary problem with today's intercarrier compensation system is the mélange of rules and mechanisms creating wildly disparate rates that encourage arbitrage and disputes and distort competition.[111] Unifying intrastate and interstate switched access rates, where the largest gaps frequently exist, is an essential first step in comprehensive reform and is likely to solve most of the arbitrage that plagues the current system. The Commission, which is focused on and committed to addressing this thorny problem, is the optimal party to manage this reform process and set forth a single framework for the various states. This approach will provide greater certainty to providers and ease costs of compliance.

State commissions undoubtedly recognize the need for significant intercarrier compensation reform and appropriate opportunities for revenue recovery. But while many states have adopted some type of intercarrier compensation reform in the past seven years, and others have open proceedings, only eight states have established complete parity between intrastate and

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[110] *See id.* at ¶ 534.

[111] See *id.* at ¶ 496.

interstate switched access rates and structures.[112] There are many valid impediments to comprehensive access reform at the state level: State commissions may be focused on other priorities, including energy policy, or reluctant to address the need for revenue recovery by raising consumer rates or increasing universal service fees, particularly in difficult economic times. Nevertheless, the fact remains that most states have heretofore been unable to execute comprehensive reform and are unlikely to do so within the next four years. If states fail to execute designated tasks, while the Commission moves forward with further reductions in interstate and reciprocal compensation rates, the result would be even wider disparities in rates and even more arbitrage and carrier disputes. This result would significantly impede, rather than advance, broadband deployment.

The Commission queries whether it could institute incentives to encourage states to reduce intrastate rates, and proposes, for example, a preference for receipt of Phase I CAF funds for carriers in states that have engaged or are engaging in access reform.[113] Windstream, however, is unable to imagine any incentives that could be properly directed and would achieve the Commission's goals. Moreover, if states fail to respond to these incentives, the parties who will suffer will be carriers that are serving high-cost areas—and, importantly, consumers. If carriers in a state that fails to engage in access reform are ineligible to receive CAF funding, the Commission is essentially punishing the unserved consumers in that state. Comprehensive reform is long overdue, and the unification of interstate and intrastate switched access rates must occur soon. Only the Commission can ensure that reform will happen, and Windstream urges

[112] *See, e.g.*, Letter from Brian J. Benison, Director – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 05-337, GN Docket No. 09-51, Attach. 1, 2 (filed Oct. 25, 2010).

[113] *See NPRM/FNPRM* at ¶ 544.

the Commission to use its statutory authority under Sections 251 and 252 of the 1996 Act to take ownership of the complete reform process.

C. Until the CAF Is Fully Implemented, the Commission Should Preserve Essential Sources of the Limited High-Cost Support That Is Currently Made Available to Price Cap Carriers Serving High-Cost Areas.

Until the Connect America Fund is fully implemented and replaces all explicit support and implicit subsidies, the Commission should protect essential sources of high-cost support to mid-sized price cap companies. In particular, the Commission should preserve frozen ICLS, which provides crucial support for recently converted price cap companies, and should closely examine the role and sufficiency of IAS—particularly with regard to mid-sized carriers—before considering a phase-down of support.

1. The Commission should maintain frozen ICLS, which provides crucial support for recently converted price cap carriers.

Windstream commends the Commission for not proposing to phase down frozen ICLS at this time.[114] As the Commission notes, several carriers that have recently converted to price cap regulation continue to receive ICLS, but now this support is offered to them on a frozen-per-line basis. This approach has reduced total USF support and carrier interstate access rates. Near-term preservation of frozen ICLS best serves the Commission's goals of rationalizing the universal service system and advancing the deployment of broadband-capable networks.

Although the Commission's "all or nothing" rule requires carriers with some price cap study areas to bring all of their study areas under price cap regulation, when Windstream in 2008 petitioned to convert its rate-of-return subsidiaries to price cap regulation, there was no clear

[114] *See id*. at ¶ 393.

path for such a conversion.[115] The Commission could have placed Windstream's converted study areas under the regime set forth in the *CALLS Order* and made them eligible for a portion of the $650 million IAS fund,[116] or the Commission could have granted a partial waiver of the IAS rules to enable Windstream to receive IAS funding without affecting other IAS recipients.[117] (In fact, several parties commenting on the Petition urged the Commission to ensure that Windstream's conversion did not affect their own receipt of IAS.)[118] However, the Commission deliberately chose instead to grant Windstream a waiver to allow it to continue to receive ICLS for the converted study areas at a frozen per-line amount that was based on Windstream's 2007 cost and revenue data.[119] This support is gradually decreasing as Windstream loses lines, and was capped so total frozen ICLS could never exceed the amount Windstream received at the time it converted.[120] Windstream also agreed to forego any Primary Interexchange Carrier Charges ("PICC") or Carrier Common Line ("CCL") charges to which it might have had access under the

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[115] *See Windstream Order*.

[116] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, 15 FCC Rcd 12962, 13044-45, ¶ 198 (2000) (*CALLS Order*).

[117] *See Windstream Order* at ¶¶ 33-34.

[118] *See, e.g.*, Comments of Embarq Corporation, WC Docket No. 07-171, at 6-7 (Sept. 24, 2007) (arguing that the "Commission should ensure Windstream's conversion does not dilute IAS support for other price cap carriers"); Comments of Frontier Communications, Inc., WC Docket No. 07-171, at 4 (Sept. 24, 2007) (noting that "[i]t would be equally unfair to allow a carrier converting to price caps to receive IAS, but only by reducing the amount of IAS received by existing price cap carriers").

[119] *Windstream Order* at ¶¶ 20-21.

[120] *Id.* at ¶ 22 (noting that the amount of ICLS Windstream receives will decline if its number of lines declines).

CALLS regime, to forego an increase in its non-primary residential SLC cap, ***and to lower its interstate switched access rates***.[121]

Windstream and a number of other mid-sized telephone companies have since converted many of their subsidiaries to price cap regulation under the framework set forth in the *Windstream Order*.[122] In each case, the Commission has effectively converted the company's ICLS to a frozen amount per line based on its cost and revenue data from the past year, and the company has agreed to forego potential increases in its non-primary residential line SLC caps, as well as any PICC and CCL charges to which it would have had access under *CALLS*. Thus, frozen ICLS has a different basis than IAS and was accepted by its recipients under different terms and different expectations. Given these terms, it is questionable whether frozen ICLS recipients would be able to make exogenous adjustments to their price cap indices to help compensate for any reductions in ICLS, as IAS recipients would likely be permitted.[123]

Frozen ICLS remains an essential source of funding for recently converted price cap carriers to ensure affordable and comparable rates for voice service, and the mechanism funds dual-use facilities that provide broadband in high-cost areas. By subsidizing loop costs, frozen ICLS enables companies like Windstream to upgrade their loop plant to support DSL service,

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[121] *Id.* at ¶ 20.

[122] *See Connect America Fund; A National Broadband Plan for our Future; High Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, at fn.123 (rel. April 21, 2010); Responses of Julius Genachowski to Questions for the Record, Senate Committee on Commerce, Science, and Transportation Hearing on Reviewing the National Broadband Plan (Genachowski Responses), at 8 (June 15, 2010) ("[A] growing number of rural carriers have voluntarily elected to convert to price cap regulation to become more efficient and competitive.").

[123] *See NPRM/FNPRM* at ¶ 235. As discussed below, Windstream also opposes the near-term phase-down or elimination of IAS; however, any decision to do away with IAS should have no bearing on the Commission's approach to frozen ICLS.

and the funding, which accounted for 44 percent of Windstream's federal support in 2010, has been integral to Windstream's ability to deploy broadband facilities to more than 90 percent of its customers, and particularly those in low-density areas. The loss of this support would hinder Windstream's ability to maintain existing voice and broadband facilities and to continue deployment of new facilities.

Furthermore, the maintenance of frozen ICLS through the transition of all universal service funding and implicit subsidies to the CAF is consistent with the Commission's preference for incentive-based regulation[124] and its desire to move carriers toward such regulation.[125] As the *NPRM/FNPRM* notes, "'[t]he attractiveness of incentive regulation lies in its ability to replicate more accurately than rate-of-return the dynamic, consumer-oriented process that characterizes a competitive market.'[126] An incentive regulation system can better encourage efficient operation, because '[c]arriers that can substantially increase their productivity can earn and retain profits at reasonable levels above those [allowed] for rate-of-return carriers.'"[127] If the Commission were to do away with frozen ICLS on an accelerated path, this reform would affect only companies that have converted from rate-of-return to price cap regulation—essentially punishing recently converted companies for voluntarily leaving

[124] *See Policy and Rules Concerning Rates for Dominant Carriers,* Second Report and Order, 5 FCC Rcd 6786, 6790, ¶ 29 (1990) ("*LEC Price Cap Order*") (subsequent history omitted) ("[I]ncentive regulation is superior to rate of return . . . .").

[125] *See NPRM/FNPRM* at ¶ 598-99 (recognizing that "there are a number of benefits with incentive regulation" and aiming to "adopt a recovery framework that provides incentives for carriers to operate efficiently").

[126] *Id*. at ¶ 498 (citing *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 2893, ¶ 36 (1989) (*AT&T Price Cap Order*)).

[127] *Id.* (citing *LEC Price Cap Order*, 5 FCC Rcd at 6789, ¶ 22).

behind rate-of-return regulation, as the Commission has for many years encouraged carriers to do. Eliminating frozen ICLS in the near term also would heighten the fears and resistance of rate-of-return carriers that are being encouraged to follow in the footsteps of Windstream and other recently converted companies.

2. The Commission should closely examine the role and sufficiency of IAS—particularly with regard to mid-sized carriers—before considering a phase out of support.

IAS remains a substantial source of revenue for many price cap carriers, and is all the more important due to the deficiencies in other forms of high-cost support. It is essential that the Commission first conduct a fact-based reexamination of IAS, before concluding that this support should be eliminated or phased down in its current form.[128] As noted in the *NPRM/FNPRM*, a reexamination of the role and sufficiency of the IAS funding mechanism is long overdue.[129] Should the Commission then decide that it must phase out IAS, it should consider retaining the support until the CAF is fully implemented, or at least instituting a longer glide-path, for mid-sized ILECs, as proposed in the *NPRM/FNPRM*.[130] Mid-sized ILECs have used IAS to deploy broadband and voice facilities, and the support is important for the maintenance of existing networks in high-cost areas.

IAS was established in 2000 pursuant to negotiations among the Commission, the interexchange carriers, and the ILECs, and was designed to replace implicit universal service

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[128] Companies that transitioned to price cap regulation after the establishment of the IAS mechanism generally continue to receive ICLS at frozen per-line amounts, rather than IAS. For the purposes of this discussion, IAS refers to the IAS funding established by the CALLS Order in 2000, and not to any ICLS funding that later-transitioning price cap carriers receive.

[129] *NPRM/FNPRM* at ¶ 230.

[130] *Id*. at ¶ 234.

support in interstate switched access charges.[131] The size of the support mechanism, $650 million, was the product of discussion among the parties and was within the widely disparate estimates of existing implicit support in interstate switched access charges.[132] In the *CALLS Order* establishing IAS, the Commission noted that it would reevaluate the mechanism in five years to "ensure that such funding is sufficient, yet not excessive."[133] Ten years later, that reevaluation still has not occurred. Rather than arbitrarily concluding that IAS is no longer required, the Commission should formally conduct a fact-based reexamination of the role and sufficiency of the mechanism, and make any recommendations on that basis.

If the Commission subsequently decides that some IAS should be redirected, it should retain IAS for the mid-sized ILECs while the CAF is still being formulated, or at the very least put the mid-sized ILECs on a longer glide-path. The mid-sized ILECs are aggressively deploying broadband in rural areas—as evidenced, for example, by Windstream's stimulus awards[134] —and IAS has factored into carriers' determinations of their ability to make broadband deployment plans. Like frozen ICLS, IAS enables companies like Windstream to upgrade their loop plant, which enables and is the most expensive component of delivering broadband and voice services.

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[131] *CALLS Order*, 15 FCC Rcd at 13039 ¶ 186.

[132] *Id.* at 13044-45, ¶ 198. It should be noted that ILECs currently receive much less than $650 million in IAS funding. Based on projections from USAC, 2010 IAS to ILECs was approximately $474 million. CETCs received $170 million in IAS in 2010, approximately a 70 percent increase over 2009.

[133] *Id*. at 13047, ¶ 203.

[134] *See supra* page 2.

In addition, any reductions in IAS should be implemented in conjunction with universal service reforms that assure necessary support is available for serving high-cost areas. The Commission's goal of universal broadband and voice deployment, even at a baseline level, will be extremely expensive, and ILECs cannot be left in a position where they face costly obligations and inadequate support. The Commission must exercise caution in reducing or changing modes of support to incumbent carriers, whose networks must remain viable to support ILEC retail services, and will continue to be expected to serve CLECs and mobile wireless providers with wholesale services.[135] The need to exercise caution with respect to mid-sized carriers is especially important here given deficiencies in other mechanisms that have placed them on the wrong side of the rural-rural divide.

VI. CONCLUSION

Windstream appreciates the Commission's recognition of the need to address the rural-rural divide and lay the groundwork for new and better broadband service in areas that have been neglected under the current universal service regime. To successfully narrow the rural-rural divide, the Commission should (1) immediately implement measures to better target support based upon cost conditions in granular, rural areas; (2) articulate uniform public interest obligations that will maximize the impact of universal service reform; (3) meaningfully reform legacy high-cost programs to free up substantial funding for higher-value purposes; and (4)

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[135] *See* Statement of Commissioner Larry S. Landis, *High-Cost Universal Service Reform, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20505 (2007) ("[G]reat care and attention must be given to the method by which a transition from the existing, increasingly dysfunctional mechanisms to the proposed new Funds is effected. In the Recommended Decision, appropriate attention is given to the importance of effecting the transition over time, to give providers the time required to adjust their business models to account for shifts in emphasis and process. Too frequently, particularly when it has come to communications policy, remediation has taken the form of a 'flash cut' to a new and presumably better framework.")

preserve essential support until the CAF is fully implemented and replaces all explicit and implicit subsidies.

Respectfully submitted,

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The USF Beat – Part 2: The Mississippi and Alabama Situation

Posted by: Hank Hultquist on July 28, 2010 at 1:54 pm

My previous blog post examined how a wireless provider like AT&T mobility ended up getting money from the Federal Universal Service Fund (USF), and why AT&T continues to receive money from a fund which it has been urging the FCC to reform for years. In this blog, I take a closer look at the USF funding that AT&T receives for its wireline operations in rural and high cost areas.

As I mentioned last time, AT&T's USF receipts are split about 50/50 between its mobility business and its traditional wireline local phone business. And, on the wireline side, well over half of the money AT&T receives is for just two of the twenty-two states where AT&T provides traditional wireline phone service – Mississippi and Alabama. (You can get all the gory details here.)

If that seems odd to you, be assured that you're not alone. In fact, you're in the good company of the U.S. Court of Appeals for the 10th Circuit, which has twice told the FCC to fix the program that creates this situation. The FCC in turn has made no changes to this program, but has most recently told the court that the program is in fact serving the policies set out by Congress, and, by the way, the FCC plans to phase the program out entirely as it transitions universal service support to broadband.

From an analytical perspective, the FCC's mistake was to base the availability of universal service money on, among other things, a comparison of costs that are averaged, in AT&T's case, on a statewide basis. As a consequence, little to no support is provided in states like California or Texas that have a combination of large, densely-populated metropolitan areas and sparsely populated rural areas. In contrast, states like Mississippi and Alabama, that have no cities comparable to Los Angeles or Houston, receive significant support.

For the curious souls wanting to know why the FCC determined a state's USF support based in part on statewide averaging, a quick primer. The use of statewide averaging for a provider like AT&T is a throwback to the days before the local voice market was opened to competition. Then, the phone company's various rates were set so as to create a series of cross-subsidies. Business and long distance services subsidized basic local service, and the provision of service in urban areas subsidized the provision of service in rural areas. Indeed, to this day, regulated local phone rates are often lower in rural areas than in urban areas.

The 1996 Act was supposed to end all of this. In a market where other providers' rates are not regulated, cross-subsidies are not economically sustainable. But the FCC has never fully implemented the vision of the 1996 Act with respect to cross-subsidization — not in its universal service programs, and not in its intercarrier compensation rules. And, that is why one frequently hears the refrain, "We urge the Commission to finally fix the broken USF."

Ok, now back to our regularly scheduled programming.... It is noteworthy that smaller local phone companies, in particular those still subject to rate-of-return regulation, are not as affected by this averaging problem as companies like AT&T. This is in part because they typically don't serve very large metropolitan areas and, perhaps more importantly, because their relevant costs are measured over much smaller areas, often over a single wire center. The effects of this difference are dramatic. AT&T's wireline footprint covers about 30% of the country's rural homes, yet AT&T receives about 4% of the total USF high cost support for it doing so. A group of smaller companies, which collectively cover about 38% of the country's rural homes, receive almost 60% of the total USF high cost support. In some cases, these companies receive thousands of dollars in support for every line that they serve.

I want to be clear that AT&T is not seeking to change the fund so that it would receive support similar to that received by these smaller companies. What AT&T has advocated for is a system where support is determined for all providers based on geographic areas relevant to investment decisions. And happily, this is exactly the approach endorsed by the National Broadband Plan.

In the next blog post in our series on the USF, I'll explain what the FCC's recent 706 report has to do with the pathologies of its universal service policies.

TAGS: FCC, National Broadband Plan, Universal Service Fund, wireline

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