Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

REPLY COMMENTS OF
CTIA–THE WIRELESS ASSOCIATION®

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I. INTRODUCTION AND SUMMARY

CTIA-The Wireless Association® submits the following reply comments on the Commission's Notice of Proposed Rulemaking on broad reforms to universal service and intercarrier compensation.[1] Following years of work on these issues by the Commission and stakeholders, the comments show that consensus is emerging on the need for comprehensive reform of the legacy universal service and intercarrier compensation frameworks in a manner that recognizes the value of mobile services to modern consumers, makes more efficient use of

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

scarce government subsidy resources, eliminates marketplace-distorting regulatory arbitrage, and promotes investment into innovative technologies by commercial providers.

Accordingly, in these reply comments, CTIA urges the Commission to:

- Affirmatively recognize the need for specific and sufficient support for mobile broadband services;
- Adopt a uniform set of criteria for awarding universal service support;
- Contain the overall size of the Connect America Fund by rationalizing universal service support to rural incumbent local exchange carriers ("ILECs") in an expeditious manner;
- Begin the transition toward a bill-and-keep regime by adopting low, uniform intercarrier compensation rates; and
- Eliminate opportunities for certain carriers to engage in market-distortion by acting quickly to end traffic pumping.

These economically rational and sustainable reforms will help the Commission meet its goals of extending broadband service throughout the country, promoting the adoption of innovative Internet Protocol technologies, and ensuring that universal service funds are put to the most effective use. By enabling wireless carriers to bring the benefits of mobile broadband to even more Americans, and by ensuring that competitive and technological neutrality are the central pillars of the Connect America Fund ("CAF"), the Commission can make significant progress toward achieving its key national goals and priorities, as articulated in President Obama's Wireless Initiative and the National Broadband Plan.[2]

[2] *Connect America: The National Broadband Plan* (2010) ("NBP").

II. THE RECORD REFLECTS BROAD RECOGNITION OF THE NEED FOR SUFFICIENT AND SPECIFIC SUPPORT FOR MOBILE BROADBAND

Most commenters recognize the imperative for specific and sufficient support for mobile broadband services, given their enormous importance to consumers and businesses.[3] Equally as important, no commenter affirmatively argues that there is no need for support for mobility in rural areas. The fact that there is no obvious disagreement with a policy of specific mobile broadband support reflects the reality that mobility is a functionality that consumers deeply value.[4] Indeed, as the Commission recently heard during a workshop dedicated to universal service reform, the allure of mobility outweighs any perceived speed limitations that mobile broadband might have v*is-à-vis* fixed wireline networks.[5]

CTIA has documented, and the Commission has recognized, the enormous value of mobile services to all consumers, particularly rural and low-income consumers.[6] Although some commenters have ignored mobility altogether, the Commission should not reverse course and downplay its importance, as doing so would be counterproductive. Rather, the Commission should clarify that it will dedicate funding for mobile broadband services in an amount sufficient to satisfy the Commission's responsibilities under the Communications Act of 1934, as amended (the "Act"). Indeed, as the trade associations representing rural ILECs have acknowledged, most

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[3] *See*, *e.g.*, ITTA comments at 30, n.83; RCA comments at 15-16; State Members comments at 68-72; T-Mobile comments at 4-6; Verizon comments at 63.

[4] *See*, *e.g.*, TR Daily, "Mobility More Important than Ultra High Speeds" (Mar. 18, 2011) (quoting Consumer Federation of America director Mark Cooper as stating that mobility is more valuable to consumers than extremely high speeds when it comes to Internet connections, and touting mobile broadband as the solution for areas lacking wired connections today).

[5] *See* TR Daily, "Reverse Auctions, Wireless Broadband Top Concerns at FCC USF Workshop" (Apr. 27, 2011).

[6] *See* CTIA comments at 4-9.

households and businesses in urban areas now have access to affordable fixed and mobile broadband services, and the "reasonably comparable" provisions of Section 254 warrant the establishment of a mobile broadband support mechanism in qualifying high-cost areas.[7]

To promote regulatory certainty, CTIA urges the Commission to develop the record further on the amount of support required for carriers to bridge the private investment gap. Then, the Commission should offer a concrete proposal on how it intends to coordinate ongoing mobile broadband support between the Mobility Fund and the CAF going forward. The Commission cannot afford to leave any more doubts about its commitment to mobility for rural consumers.

Most of the comments also recognize that there is a need for uniformity in criteria for awarding federal universal service support.[8] Although there are myriad proposals on what the general public interest obligations of funding recipients should be, a single set of standards is especially appropriate for mobile broadband, which is a mobile service used nationwide. Thus, CTIA is concerned that a block grant program for mobile broadband support, such as that envisioned by the State Members of the Federal State Joint Board on Universal Service,[9] would be overly burdensome and administratively inefficient. A patchwork of funding mechanisms risks impeding the deployment of "reasonably comparable" mobile broadband services to rural and high-cost areas.

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[7] Rural Associations comments at 83.

[8] *See, e.g.*, AT&T comments at 60-75; California PUC comments at 11; Sprint comments at 42; T-Mobile comments at 2; Windstream comments at 15.

[9] State Members comments at iv.

III. THE INITIAL COMMENTS SHOW THAT THE COMMISSION SHOULD MOVE QUICKLY TO REFORM SUPPORT TO INCUMBENT LECS AND TO DEVELOP NEW, MORE EFFICIENT SUPPORT MECHANISMS

The debate regarding measures to eliminate waste and inefficiency by ILECs operating in rural areas has evolved considerably over the past several years. It is therefore not surprising that the Commission's proposals to rationalize subsidies to these carriers enjoy widespread support.[10] As one commenter pointed out, a number of rural ILEC support mechanisms have outlived their usefulness, and the Commission's near-term reforms would therefore constitute a "moderate and necessary first step in a quick and orderly phase-out."[11] These reform proposals— such as consolidating and reducing the support thresholds for high-cost loop support; eliminating safety net additive support, support for corporate operations expenses, and local switching support; imposing reasonable limits on reimbursable operating and capital costs for rate-of-return companies; and imposing a "hard cap" on high-cost— will free up significant funds that can be redirected toward mobile and broadband technologies.[12] Other commenters urge the Commission to go even further than these proposals and undertake a reasonably expeditious phase-down of legacy ILEC support.[13]

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[10] *See, e.g.*, Ad Hoc Telecommunications Users comments at 12-28; Comcast comments at 13-14; COMPTEL comments at 30-31; CWA comments at 7-9; Free Press comments at 4-5; Sprint comments at 33-34; T-Mobile comments at 10-13; XO Communications comments at 36-37.

[11] Sprint comments at 32.

[12] For instance, eliminating local switching support and the incumbent share of interstate access support would save approximately $734 million per year. *See* NPRM at ¶ 20.

[13] *See, e.g.*, AT&T comments at 109 (calling for all legacy high-cost support to be phased down in equal increments over a five-year period once the final CAF rules are issued); Cox Communications Comments at 9-10 (supporting NCTA's proposal to transition carriers away from high-cost support in areas that are served by at least one provider of 4Mbps/1 Mbps broadband service).

CTIA agrees with the general thrust of these comments in favor of substantial reformation of the support levels provided to incumbent providers. For instance, as CTIA stated in its initial comments, existing support for ILECs should be eliminated in areas where an unsubsidized broadband competitor is providing service in order to ensure "sufficient funding of *customers*, not *providers*."[14] The Commission has already moved to cap and reduce funding for mobile wireless services, which represents less than 25 percent of the high-cost mechanism. As the comments suggest, now is the time to focus on the 75 percent of funding that goes to the incumbent LEC providers.

As the Commission moves to rationalize ILEC support through near-term reforms, the Commission should not graft other inefficient aspects of legacy support into the CAF. In particular, many commenters continue to see merit in the National Broadband Plan's recommendation that "the FCC should require rate-of-return carriers to move to incentive regulation."[15] These commenters have urged the Commission to consider reducing the permitted rate-of-return or eliminating rate-of-return regulation altogether.[16] These proposals have much in common with CTIA's initial comments, which requested the Commission to move expeditiously to cap interstate common line support ("ICLS"), strengthen the definition of what property is "used and useful" in providing supported services, and reduce the permitted rate of return from its current 11.25 percent level.

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[14] *Alenco Comm's v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (emphasis in original).

[15] NBP at 147.

[16] Ad Hoc Telecommunications Users comments at 27-28; NCTA comments at 13-14; T-Mobile comments at 12; Verizon comments at 53-55.

While rate-of-return ILECs advocate against these common-sense reforms, their arguments ring hollow.[17] The current trends on both the taxing and spending side of the federal USF mechanism are simply unsustainable.[18] The last four quarters have seen three record contribution factors. The contribution factor has increased from 5.7% in the second quarter of 2000 to 15.5% in first quarter 2011.[19] The Commission has further observed that, over time, high-cost fund support for rate of return carriers in particular has increased, while support for price cap carriers has actually declined.[20] The Commission should reject the argument that the current USF mechanisms and support levels must be maintained to ensure that rate of return carriers earn any particular rate of return.[21] Inflating the fund to ensure a guaranteed rate of return for such carriers will mean further increases in assessments, and will strain the current system to the point of breaking, without any showing that such support is necessary to ensure service to rural and high-cost consumers.

Rather, the Commission should phase out rate of return regulation for smaller and mid-sized ILECs as quickly as possible. The Commission has long recognized the inefficiency and irrational incentive structure inherent in rate of return regulation.[22] The marketplace, even in the

[17] *See, e.g.,* ITTA comments at 8-13.

[18] NPRM at ¶ 6; *see also Universal Service Monitoring Report 2010* (Jt. Bd. Staff 2010) at 3-15, tbl. 3.1 (high-cost support has more than doubled from $2.235 billion in 2000 to $4.752 billion in 2010); *Telecommunications Industry Revenues 2009* (WCB IATD May 2011) at 3, chart 1 (end-user telecommunications revenue base has been flat or falling from 2000-2010).

[19] *See Proposed Second Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 15 FCC Rcd 16469 (CCB 2000); *Proposed First Quarter 2011 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 25 FCC Rcd 17175 (WCB 2010).

[20] NPRM at ¶ 166.

[21] *See, e.g.,* ITTA comments at 12.

[22] NPRM at ¶¶ 49, 157.

territory of smaller and rural ILECS, is becoming increasingly competitive.[23] In a competitive market no carrier is entitled even to recover its costs, let alone earn a guaranteed rate of return. As the Commission observed, there is ample legal authority demonstrating that "[t]he Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market."[24]

Putting aside whether the strained USF regime could tolerate the burden of sustaining the flow of subsidies to rate of return carriers, it would be particularly bad policy to inflate the fund to protect any particular carrier's or group of carriers' operations or rates, as some commenters suggest is appropriate.[25] Such an approach views the issue of USF reform through the wrong lens; USF support is designed to support, and should support, customers, not discrete carriers.[26] If wireline carriers are not sufficiently efficient to charge competitive rates, the fund should not subsidize those operations. To do so would merely perpetuate these inefficiencies, and continue to create competitive distortions in the marketplace.[27] These carriers' customers increasingly can receive service from other providers, including in wireless providers.[28] The appropriate question is whether customers will have access to these services if the Commission reforms its approach to USF. The ample record in this proceeding makes clear that they will.

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[23] NPRM at ¶ 8.

[24] NPRM at ¶ 384, quoting *Alenco Comm's*, 201 F.3d at 620 (emphasis in original).

[25] *See, e.g.*, Indiana Regulatory Utility Commission comments at 3-4; Rural Associations comments at 38-42, Public Utilities Commission of Ohio comments at 15-20.

[26] *See Alenco Comm's*, 201 F.3d at 620 (USF support should ensure "sufficient funding of *customers*, not *providers*") (emphasis in original).

[27] NPRM at ¶ 7.

[28] NPRM at ¶ 8.

Nor does the legacy of Carrier of Last Resort (COLR) obligations entitle ILECs to ongoing USF support, as maintained by some commenters.[29] First, the market-based expansion of networks is making the concept of a "COLR" less and less relevant. Regulators only need a "COLR" in areas where consumers otherwise would be unable to receive service, and such areas are becoming fewer by the day as wireless, cable, and other providers extend their networks.[30] In areas where no service otherwise would be available, the Commission has made clear that a CAF recipient will be identified, and that CAF recipient will (and should) assume reasonable public interest obligations, including the obligation to serve. Thus, the reformed universal service mechanism need not concern itself with ILECs' legacy COLR obligations. Indeed, some states already have begun to recognize that COLR obligations are no longer needed where competition exists, and have significantly curtailed them in such circumstances. Examples include Florida,[31] Nevada,[32] Kansas,[33] Indiana,[34] and Texas;[35] the Missouri legislature is currently considering similar legislation.[36]

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[29] *See, e.g.,* Rural Associations comments at 69-75; ITTA comments at 15-16.

[30] In addition, the Commission retains statutory authority to direct any carrier to provide service. 47 U.S.C. § 214(e)(3).

[31] Section 364.025, Fla.Stat.

[32] Nevada Administrative Code, Section 704.711, *et seq.*

[33] Kan. Stat. Ann. § 66-2009.

[34] Ind. Code § 8-1-32.4-16(a) (COLR duties on ILEC relieved where competitor enters exclusive arrangement to serve).

[35] Tex. Pub. Util. Reg. Act § 54.302 (state commission may abate POLR duties when the ILEC does not have facilities in the area but another provider does).

[36] SB209 is currently before consideration of the Senate of Missouri's General Assembly, with a proposed effective date of August 28, 2011. The bill would allow ILECs to shed COLR obligations in greenfield areas in certain situations, and in St. Louis and Kansas City.

IV. INITIAL COMMENTS REFLECT BROAD ACKNOWLEDGEMENT OF THE NEED FOR LOWER, UNIFORM INTERCARRIER COMPENSATION RATES

In its initial comments CTIA urged the Commission to move swiftly to develop lower and more uniform intercarrier compensation rates.[37] Numerous commenters agreed on this point. As expressed by the California Public Utilities Commission ("CPUC"), "[r]eduction and unification of rates would have the advantages sought by the FCC: reduction in arbitrage opportunities, minimizing disruption to customers and service providers, and providing the FCC with the ability to modulate the impact on the CAF."[38]

Further, numerous commenters concurred with the Commission that it has ample authority under the Act to implement a framework, under section 251(b)(5) and 251(g), to achieve lower, uniform intercarrier compensation rates.[39] Many concurred that this lower rate should eventually be a zero rate, under a bill-and-keep regime, or at a minimum a rate very close to zero.[40]

In taking this approach, the Commission is not proposing to preempt any authority reserved to the states under section 251.[41] Indeed, section 251(b)(5) on its face applies to all

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[37] CTIA comments at 37-39.

[38] CPUC comments at 19. *See also* AT&T comments at 16-17; Comcast comments at 2-6; COMPTEL comments at 32-33; ITTA comments at 42-44; NECA comments at 12-22; T-Mobile comments at 22-31; Time Warner comments at 5-11; Verizon comments at 6-15.

[39] NPRM at ¶¶ 513-516; *see also* AT&T comments at 37-53; Comcast comments at 6-9;Google comments at 10; MetroPCS Communications comments at 9-12; Paetec comments at 25-30; Sprint comments at 2, Appendix A; XO comments at 12-15.

[40] *See, e.g.,* Ad Hoc Telecommunications Users comments at 43-49; Google comments at 9-10; MetroPCS Communications comments at 13-14; Sprint comments at 2-9; T-Mobile comments at 22-30.

[41] *Cf.* State Members comments at 143-145.

"telecommunications" traffic;[42] the language applies equally to all types of traffic (both toll and local, interstate and intrastate). Under the Commission's proposal, which CTIA supports, the states would retain their statutory role under section 251, subject to a pricing methodology validly adopted by the Commission.[43] Accordingly, treating all traffic under the ambit of section 251(b)(5) does not require the Commission to preempt any authority reserved to the states under section 251(b), nor is the Commission purporting to preempt state authority in this arena.

The State Members correctly point out that Section 251(g) "was intended to maintain the pre- [Telecommunications Act of 1996] *status quo*" access charge regime,[44] but that is true only until those regulations "are explicitly superseded by regulations prescribed by the Commission."[45] Accordingly, the Act explicitly contemplated not only that the Commission would eventually treat *all* "telecommunications" traffic under section 251(b)(5), but also that the 1996 status quo intercarrier compensation regime would not remain in place forever, but only until such time as the Commission expressly superseded that regime—precisely as it now proposes to do. Once the Commission has adopted a pricing methodology for the exchange of all telecommunications traffic pursuant to section 251(b)(5), a state's ability to maintain rates inconsistent with the pricing methodology established by the Commission must cede to section 251(b)(5), and would no longer be protected (if in fact it ever was) by section 251(d)(3).

In any event, the Commission unquestionably has authority under sections 201 and 332 to reduce to more efficient levels all intercarrier compensation charges paid by or to CMRS

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[42] 47 U.S.C. § 251(b)(5).

[43] *See* NPRM at ¶ 516, *citing AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 378 (1999) (FCC authority to establish a pricing methodology for section 251 traffic).

[44] State Members comments at 143.

[45] 47 U.S.C. § 251(g).

carriers.[46] The D.C. Circuit has recently confirmed that the Commission has "the authority to regulate intrastate termination rates" paid by CMRS carriers under these statutory provisions.[47]

Finally, commenters strongly agreed that the Commission should act quickly to end access stimulation. As CTIA observed, access stimulation, more commonly known as "traffic pumping," is symptomatic of the current, broken intercarrier compensation regime.[48] While a strong consensus emerged regarding the need for comprehensive reform, as described above, an equally strong consensus emerged that the Commission must take immediate action to end traffic pumping under the current intercarrier compensation regime, which may remain in place in some form during the transition to a final end-state. During any such transitional period, it is critical that the Commission plug this substantial arbitrage hole.[49]

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[46] NPRM at ¶ 511.

[47] *MetroPCS California, LLC v. FCC*, No. 10-1003 (D.C. Cir. May 17, 2011), *slip op.* at 4-5. While confirming the FCC's jurisdiction over intrastate termination rates paid by CMRS carriers, the court also upheld the FCC's election, in that instance, to permit the states to regulate such rates under the current regime. *Id.*

[48] CTIA comments at 35.

[49] *See, e.g.,* AT&T interim comments at 7-11; MetroPCS interim comments at 9-12; NARUC interim comments at 8-9; Time Warner interim comments at 14-15; T-Mobile interim comments at 4-5; USTelecom interim comments at 7-9; Verizon interim comments at 34-39.

V. **CONCLUSION**

CTIA urges the Commission to consider these reply comments in formulating its plans for universal service and intercarrier compensation reform.

Respectfully submitted,

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