

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	
Establishing Just And Reasonable Rates For Local Exchange Carriers)	WC Docket No. 07-135
)	
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

**REPLY COMMENTS OF THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE**

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SUMMARY

Existing broadband providers have made great strides in bringing broadband to a vast majority of Americans. In particular, rural incumbent local exchange companies (“ILECs”) have deployed broadband services using universal service funds where it would otherwise be uneconomic to serve customers. Despite comments stating the contrary, universal service funding is critical to supporting and improving currently available broadband services as well as expanding these services to unserved areas. Differences in broadband deployment rates between high-cost areas served by rural and non-rural ILECs forcefully demonstrate that sufficient universal service support is necessary for broadband deployment in *all* high-cost areas.

There is no doubt that the current universal service fund (“USF”) and intercarrier compensation regimes are not sustainable in light of market and technological changes. Yet the *Notice* proposed radical revisions to these mechanisms that are untested and could lead to unknown results. The comments show that there is no industry consensus in favor of the reforms outlined in the *Notice* or any other plan to promote broadband deployment to unserved areas.

Given the uncertain results of the changes proposed in the *Notice* (and the lack of support from stakeholders), it is critical that the Commission proceed carefully to ensure its efforts to expand broadband deployment “do no harm” to those high-cost areas already benefitting from broadband, in large part provided by carriers of last resort (“COLRs”) for voice services.

Adoption initiatives, though important, are useless if networks are not there to meet demand. The FCC must focus on preserving and expanding existing broadband networks in addition to encouraging further deployment of wireless broadband. Because building and maintaining networks is in large part dependent on private investment, stable and sufficient funding for existing networks must be a priority. Without this, the providers who have already invested in high-cost, rural areas will not be able to maintain and upgrade their networks and will

be unable to expand to those nearby areas that remain unserved today because they are not economically viable without external support.

To implement these principles, the FCC should:

- not adopt competitive bidding where existing providers have COLR obligations because the mechanism can seriously harm existing consumer needs;
- continue to provide USF where existing network providers are operating and expanding broadband services;
- not shortchange wireline broadband customers to fund mobile carriers based on the unproven promises of mobile broadband;
- avoid unfunded mandates through continued unsustainable cross subsidies from inclusion of non-supported service revenues or use of study-area or state-wide averaging in awarding USF support;
- maintain IAS, LSS, and safety net additive funding, but condition continued receipt on deployment and maintenance of broadband services;
- refuse to order bill-an-keep or near zero intercarrier compensation payments because the decreased revenues will undermine broadband deployment and harm consumers; and
- not adopt a mechanism to force adoption of IP networks prior to natural business investment cycles.

The State Joint Board Members offer some promising ideas that are consistent with protecting existing broadband gains while promoting expansion to unserved areas. The State Members would establish a fund for those providers with COLR responsibilities to support ongoing maintenance of broadband-capable networks, while eliminating the Identical Support rule and the bloated competitive eligible telecommunications carrier (“CETC”) funding that has resulted from the rule, to better target public support dollars. The State Members recognize the paramount importance of maintaining existing wireline support, while using retargeted CETC funding for expansion of broadband networks into unserved areas. Expanding current networks will in the long run be cheaper and of more certain outcome, and produce faster results with limited public resources. The public interest therefore mandates that the FCC take a practical view in reforming universal service and intercarrier compensation.

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**REPLY COMMENTS OF THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its reply to the initial comments filed in the above-captioned proceedings.¹ Although the comments are virtually unanimous in expressing the need for universal service and intercarrier compensation reform, they disagree markedly over how to achieve it. With commenters promoting untested mechanisms and making contradictory claims, there is one fundamental truth that should inform this debate: the existing universal service program has been responsible for significant universal service gains and promises to make broadband more affordable and

¹ *Connect America Fund*, WC Docket No. 10-90, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (“*Notice*”).

available to rural Americans. Thus, the Federal Communications Commission (“FCC” or “Commission”) should “do no harm” in enacting any reforms by preserving existing universal service achievements.

I. THE COMMISSION MUST PRESERVE CURRENT BROADBAND SUCCESSES.

A. Existing universal service and intercarrier compensation regimes have resulted in deployment of broadband throughout most rural areas in the United States.

Existing broadband providers have been making great strides in bringing broadband to a vast majority of Americans. In particular, rural incumbent local exchange companies (“ILECs”) have been deploying broadband services using universal service funds where it is uneconomic to serve customers without external support.² Despite statements to the contrary,³ universal service funding is critical to promoting the deployment of broadband. Differences in broadband deployment rates between high-cost areas served by rural and non-rural ILECs forcefully demonstrate that sufficient universal service support is necessary for broadband deployment in *all* high-cost areas.⁴

There is no doubt that the current universal service fund (“USF”) and intercarrier compensation regimes are not sustainable in light of market and technological changes. Yet the *Notice* proposed radical revisions to these mechanisms that are untested and could lead to

² Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, *et al.*, 2-4 (filed Apr. 18, 2011) (“ITTA Comments”); Comments of CenturyLink, WC Docket No. 10-90, *et al.*, 15-16 (filed Apr. 18, 2011) (“CenturyLink Comments”); Comments of TDS Telecommunications Corp., WC Docket No. 10-90, *et al.*, 2 (filed Apr. 18, 2011).

³ Comments of Free Press, WC Docket No. 10-90, *et al.*, 2-3 (filed Apr. 18, 2011) (“Free Press Comments”); Comments of Ad Hoc Users Committee, WC Docket No. 10-90, *et al.*, 6 (filed Apr. 18, 2011) (“Ad Hoc Comments”).

⁴ Federal Communications Commission, Connecting America: The National Broadband Plan at 141 (rel. Mar. 2010), *available at* <http://www.broadband.gov/plan/> (“National Broadband Plan”); Comments of State Members of the Federal State Joint Board on Universal Service, WC Docket No. 10-90, *et al.*, 32-33 (filed May 1, 2011) (“State Members Comments”); Comments of Windstream Communications, Inc., WC Docket No. 10-90, *et al.*, 6-8 (filed Apr. 18, 2011) (“Windstream Comments”).

unknown results. The comments show that there is no industry consensus in favor of the reforms outlined in the *Notice* or any other plan to promote broadband deployment to unserved areas.

Given the uncertain results of the changes proposed in the *Notice* (and the lack of support from stakeholders), it is critical that the Commission proceed carefully to ensure its efforts to expand broadband deployment “do no harm” to those high-cost areas already benefitting from broadband, in large part provided by carriers of last resort (“COLRs”) for voice services.

Adoption initiatives, though important, are useless if networks are not there to meet demand. The FCC must focus on preserving and expanding existing broadband networks. Because building and maintaining networks is in large part dependent on private investment,⁵ stable and sufficient funding for existing networks must be a priority. Without this, the providers who have already invested in high-cost, rural areas will not be able to maintain and upgrade their networks and will be unable to expand to those nearby areas that remain unserved today because they are not economically viable without external support.

The State Joint Board Members offer some promising ideas that are consistent with protecting existing broadband gains while promoting expansion to unserved areas. The State Members would establish a fund for those providers with COLR responsibilities to support ongoing maintenance of broadband-capable networks while eliminating the Identical Support rule and the bloated competitive eligible telecommunications carrier (“CETC”) funding that has resulted from the rule, to better target public support dollars.⁶ The State Members recognize the paramount importance of maintaining existing wireline support, while using retargeted CETC funding for expansion of broadband networks into unserved areas. Expanding current networks will in the long run be cheaper, of more certain outcome, and produce faster results with limited

⁵ National Broadband Plan at 5.

⁶ State Members Comments at 10-11, 29-67.

public resources. The public interest mandates that the FCC take a practical view in deciding which reforms to adopt.

II. BROADBAND DEPLOYMENT TO HIGH-COST AREAS WILL BE UNDERMINED IF THE CAF DOES NOT PROVIDE SUFFICIENT FUNDING TO COLRS.

A. Competitive bidding should not be adopted because it will not adequately take into account the responsibilities and contributions of existing COLR providers.

Verizon and others argue that competitive bidding should be used to distribute universal service support.⁷ The State Joint Board Members cogently describe the myriad of problems that a system of competitive bidding can create when evaluating universal service support for carriers with COLR obligations.⁸ Auctions for areas served by those with COLR obligations will create difficult consumer issues if no bidders appear, and can lead to skewed results.⁹ Auction participants can create havoc through strategic bidding, which could eliminate needed support without leading to improved service to subscribers.¹⁰ Uncertainty over the market and agency rules can make the auction process unworkable.¹¹ Selection of a service area could increase costs and make evaluating bids very difficult.¹² Auctions can also lead to deteriorating service

⁷ Comments of Verizon & Verizon Wireless, WC Docket No. 10-90, *et al.*, 58 (filed Apr. 18, 2011) (“Verizon Comments”); Comments of Comcast Corp., WC Docket No. 10-90, *et al.*, 16 (filed Apr. 18, 2011) (“Comcast Comments”); Opening Comments and Reply Comments on Section XV of Time Warner Cable Inc., WC Docket No. 10-90, *et al.*, 21, 25-27 (filed Apr. 18, 2011).

⁸ State Members Comments at 78-85.

⁹ *Id.* at 78-79.

¹⁰ *Id.* at 80-82.

¹¹ *Id.* at 82-83.

¹² *Id.* at 84-85.

quality if build-out proves more costly than anticipated and if auctions are conducted at periodic intervals.¹³

As ITTA explained in its comments, although competitive bidding may be useful in certain areas that are unserved by COLRs today, it poses real potential harms to consumers currently served by a COLR.¹⁴ Bidding proponents fail to address these critical issues. There is little doubt that competitive bidding could minimize universal service payments in the short term, which is a laudable goal as long as long-term objectives are not sacrificed. An auction is equally likely, however, to provide insufficient support to encourage building and maintaining broadband-capable networks in rural areas. Thus, auction proposals not only potentially violate Section 254's sufficiency requirement, but also may fail to achieve the Commission's main goal: to encourage availability and adoption of broadband services.

A number of commenters claim that a right-of-first-refusal option should not be adopted because it is not competitively neutral.¹⁵ Although competitive neutrality is a valid universal service goal, other aims must also be considered, such as efficiently using universal service-supported investments in existing networks.¹⁶ Achievement of universal service always has been, and should continue to be, the paramount goal of FCC policies. COLRs have already constructed substantial broadband networks in reliance on federal USF policies. It is these networks that are providing broadband services in high-cost rural areas today. Sufficient ongoing support is essential for the continued maintenance and expansion of these networks.

¹³ *Id.* at 89-91.

¹⁴ ITTA Comments at 23-25.

¹⁵ Comments of CTIA—The Wireless Association®, WC Docket No. 10-90, *et al.*, 24 (filed Apr. 18, 2011) (“CTIA Comments”); Comments of COMPTTEL, WC Docket No. 10-90, *et al.*, 31 (filed Apr. 18, 2011).

¹⁶ The court of appeals already invalidated agency rules for failing to take all statutory factors into account in formulating USF methodologies. *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

The right-of-first-refusal option, if developed properly, could take these real-world issues into account.¹⁷ AT&T supports the right-of-first-refusal concept, noting that it is less expensive to expand broadband services by leveraging investment in existing networks.¹⁸

The State Joint Board Members have set forth an alternative proposal that could achieve the same objective as the right-of-first-refusal option. The Members would establish a Provider of Last Resort fund that would recognize the benefits of ensuring continued service from existing networks.¹⁹ Their plan would provide sufficient cost-based support for COLRs and expand COLR responsibilities to include broadband.²⁰ ITTA supports this concept. In addition, the State Members would provide limited construction funds for mobile and wired broadband providers to help build out into uneconomic areas.²¹ These proposals have certain advantages and warrant further consideration.

¹⁷ Policymakers have already concluded that the current rules, by granting identical support, have gone too far in promoting competition, rather than focusing on advancing universal service. *See, e.g., High-Cost Universal Service Support*, WC Docket No. 05-337, 22 FCC Rcd 20477, ¶ 35 (Fed.-St. Jt. Bd. USF, 2007) (stating “it is no longer in the public interest to use federal universal service support to subsidize competition and build duplicate networks in high-cost areas”).

¹⁸ Comments of AT&T, Inc., WC Docket No. 10-90, *et al.*, 98-99 (filed Apr. 18, 2011) (“AT&T Comments”). *See also* CenturyLink Comments at 38-39; Comments of FairPoint Communications, Inc., WC Docket No. 10-90, *et al.*, 20 (filed Apr. 18, 2011) (“FairPoint Comments”); Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90, *et al.* 11 (filed Apr. 18, 2011). ITTA supports AT&T’s proposal to give existing providers an opportunity to object to a CAF applicant’s applying for funds to duplicate an existing provider’s network. AT&T Comments at 97. This proposal would advance the Commission’s stated goal of providing support for only one provider in a geographic area. *Notice*, ¶ 281.

¹⁹ State Members Comments at 29-67.

²⁰ *Id.*

²¹ *Id.* at 68-78.

B. Continued universal service support is critical to maintaining and expanding broadband deployment.

Some parties argue that ILECs, particularly larger companies, have not demonstrated that they need universal service funding.²² This is incorrect. As the Commission has recognized, non-rural carriers serving rural areas have not received universal service support to the same extent as rural carriers.²³ The results of this policy are clear: companies that have not received support to serve high-cost areas have not deployed broadband to those areas.²⁴ If support is based on criteria other than the level of costs, those in rural areas served by non-rural carriers will continue to be short-changed and the rural-rural divide will continue to grow.

There is no doubt that larger company economies of scale should redound to the benefit of all ratepayers. However, lower common costs, the main by-product of large company efficiencies, provide only limited benefits in high-cost areas. The major issues in high-cost areas are longer loop lengths, greater transport costs, and lower demand, which cannot be solved solely through larger company efficiencies.

Free Press and Ad Hoc claim that where voice and broadband coverage already exist, universal service support is no longer needed even if network deployment was initially USF-supported.²⁵ Free Press further supports giving subsidies to consumers not companies.²⁶ These proposals fail to take into account that high-cost areas are uneconomic to serve, and even voice-only service could not continue to be provided without ongoing support. In addition, giving all

²² Comments of National Association of State Utility Consumer Advocates, WC Docket No. 10-90, *et al.*, 9 (filed Apr. 18, 2011); Ad Hoc Comments at 4-6; Comments of Google, Inc., WC Docket No. 10-90, *et al.*, 4 (filed Apr. 18, 2011).

²³ National Broadband Plan at 141.

²⁴ *See* authorities cited in note 2, *supra*.

²⁵ Free Press Comments at 3; Ad Hoc Comments at 4-6, 8.

²⁶ Free Press Comments at 5.

universal service support directly to consumers is an unreliable way of ensuring that providers will build and expand networks to unserved areas. Subscribers may use their vouchers for multiple providers, giving no network provider enough volume to justify the investment necessary to build a network and making subsidies ultimately useless to consumers.

NCTA and Sprint argue that no areas should receive USF support where there are unsubsidized competitors.²⁷ This proposal is highly deceptive and, if adopted as proposed, would ultimately undermine service in the highest-cost areas. Competitive entrants in rural areas have focused on serving the lowest-cost customers in an ILEC study area.²⁸ Indeed, cable companies have often defined their franchise areas so as to avoid serving the highest-cost customers. Removing support from a COLR because a new entrant is serving only part of a COLR's area will further isolate the highest-cost customers because the COLR will be unable, and the competitive provider will be unwilling, to serve them. The Commission should implement its one-to-an-area policy in a manner that does not further isolate high-cost consumers.

C. Support for wireline broadband should not be shortchanged in favor of funding for wireless broadband.

CTIA argues that the Commission's focus for universal service should entirely "be targeted toward the services that consumers increasingly demand," which it asserts are wireless services.²⁹ This distorted approach fails to acknowledge the limits on mobile service's ability to deliver high-speed broadband for today's uses and its insufficient and unreliable bandwidth. The

²⁷ Comments of National Cable & Telecommunications Association, WC Docket No. 10-90, *et al.*, 10-11 (filed Apr. 18, 2011) ("NCTA Comments"); Comments of Sprint Nextel Corp., WC Docket No. 10-90, *et al.*, 34-35 (filed Apr. 18, 2011) ("Sprint Comments").

²⁸ ITTA Comments at 30-31; *see also* Comments of CenturyLink, WC Docket No. 10-90, 46-49 (filed Jul. 12, 2010).

²⁹ CTIA Comments at 8.

political rhetoric touting mobile broadband in recent months has been advanced in large part to promote the passage of legislation to increase the amount of spectrum available for mobile service.³⁰ Although such legislation and additional spectrum could prove useful to subscribers, it is far from clear that such legislation actually will be enacted, and if it is, whether spectrum can and will be allocated and used to provide broadband to unserved customers in the near future. Based on past experience, there is no doubt that the entire spectrum reallocation process, if successful at all, will take a minimum of five years to accomplish.³¹ In the meantime, wireline networks are built and operating. Those networks hold the best promise of providing faster broadband speeds to Americans being served today and expanding the reach of broadband to currently unserved locations. Therefore, the FCC should disregard the political hype and refrain from discontinuing universal service support to wireline providers when it is these providers that offer the best promise of achieving immediate benefits for customers.

The wireline network will continue to be critical to delivering robust broadband for several reasons. First, mobile services typically provide only the “last mile” of connection. Mobile providers then depend upon wireline networks to transport voice and data for interconnection with the public switched telephone network (“PSTN”) and the Internet. Wireline service to end users is critical to providing the scale necessary to fund middle mile investment to carry that end-user traffic – middle-mile capacity upon which both wireline and wireless

³⁰ Press Release, Office of the President, President Obama Details Plan to Win the Future through Expanded Wireless Access (Feb. 10, 2011), *located at* <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access> (last visited May 10, 2011).

³¹ It took over five years from the time personal communications services were first proposed to when licenses began to be granted for that service. A similar delay occurred with the decision to license 700 MHz services, with the service first proposed in 2006 and services only recently beginning to become available in some frequency blocks in some geographic locations.

providers are dependent.³² Second, the Commission has acknowledged that mobile broadband demand is rapidly increasing and that there is limited spectrum to fulfill these needs.³³ Bandwidth-heavy services such as video are placing increasing strains on even the wireline network.³⁴ It is unrealistic to expect wireless providers to be able to meet all broadband data needs in the immediate future. Third, although mobile services can provide some added coverage and competitive choice, there is little proof that wireless carriers will actually serve rural Americans in the near term, given the mobile industry's checkered history in providing service to rural America outside of interstate highways notwithstanding the receipt of millions of dollars in universal service funding.³⁵

D. The FCC should avoid creating unfunded mandates and additional cross subsidies.

The State Members of the Joint Board suggest that states be allowed to put additional obligations on eligible telecommunications carriers (“ETCs”).³⁶ The FCC should not permit states to impose additional requirements unless support is available to meet these obligations. The *Notice* contemplates that eligible carriers will agree to meet the FCC's broadband deployment rules in exchange for a specified amount of money. If states are allowed to add to those burdens, particularly after the award is made, it is likely that insufficient funds will have been provided to support these additional obligations. Unfunded mandates threaten the

³² Funding for middle-mile projects is justified based on the fact that there is insufficient demand from end users alone to privately fund middle-mile capacity, given the high middle-mile costs associated with providing broadband access in rural areas. National Broadband Plan at 143. It is only logical that the greater the number of end-user connections, the more private support would be available for middle-mile facilities, thereby reducing the amount of public support required to build the middle-mile facility.

³³ National Broadband Plan at 75.

³⁴ Bill Myers, “Netflix Growing, Cords Not Being Cut, Researcher Says,” *Communications Daily* (Mar. 31, 2011).

³⁵ Windstream Comments at 32.

³⁶ State Members Comments at 137.

deployment of broadband because they undermine providers' financial resources. Funding should be commensurate with the burdens placed on eligible carriers.

The State Members plan for universal service reform suggests that an overall limit be placed on the support calculation for each carrier based on all carrier revenues, combining high and low-cost areas, rather than just those of supported services in high-cost areas.³⁷ Although the plan is not entirely clear, it seems to determine support for discrete high-cost areas based on unsupported service revenues, such as special access revenues and unspecified "other revenues."³⁸ This type of cross-subsidy has created the current rural-rural divide; the error should not be repeated in the reformed system.

By including carrier revenues derived from non-supported services, carriers serving both high-cost and low-cost areas would not receive sufficient support for their high-cost areas and would therefore have no incentive to deploy broadband to these high-cost customers. In addition, the FCC has never before required that a carrier cross-subsidize regulated services with unregulated revenues, and the State Members have failed to explain any rational basis for establishing this new policy now. For instance, low-end adjustments in price cap regulations were always permitted based on revenues received from regulated telecommunications services, not revenues from unregulated products.³⁹ Further, such a cross-subsidy is unsustainable from an economic perspective. The price of competitive products and services are by definition set by the market.⁴⁰ Requiring part or all of the revenues derived from these services to be used to

³⁷ State Members Comments at 56.

³⁸ Although the State Joint Board Members would exclude video revenues, it is unclear what other types of revenues they would include. State Members Comments at 48.

³⁹ 47 C.F.R. § 61.45(d)(vii).

⁴⁰ The FCC has taken action to deregulate or detariff many special access services based on the level of competition in the market. *See, e.g., Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999); *Petition of AT&T Inc. for*

subsidize the price of a regulated service would therefore not affect the price of the competitive product or service, but would simply cause the company to receive less revenue. The FCC has already found this type of cross subsidy to be uneconomic and declared it to be inappropriate public policy.⁴¹ For all of these reasons, the FCC should not consider revenues from non-supported services in determining universal service support payments.

In a similar vein, the FCC should reject the Communication Workers of America's ("CWA") proposal to limit universal service payments based on dividends paid to shareholders.⁴² Dividends are set at market levels depending on what a potential shareholder demands to provide equity funds to a company. Payment of dividends is crucial to attracting investment in telecommunications companies, and carriers could not attract equity investors without paying dividends given their market characteristics and history. Dividends are also commonly paid by other regulated entities such as electric, water, and gas companies. The payment of a dividend is part of the "cost of equity capital," a figure which regulators have used for years in evaluating a company's return. When a regulatory agency sets an authorized rate of return, it examines both the theoretical cost of equity and the cost of debt.⁴³ Regulators have preferred a substantial level of equity investment because it is less risky to the utility, and thus ultimately to ratepayers. The

Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services, Memorandum Opinion and Order, 22 FCC Rcd 18705, ¶ 58 (2007); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements*, Memorandum Opinion and Order, 22 FCC Rcd 19478, ¶ 55 (2007). Commenters are simply incorrect that special access services are offered at unreasonable prices. *See, e.g.*, Sprint Comments at 29.

⁴¹ *Federal-State Joint Board on Universal Service*, First Report & Order, 12 FCC Rcd 8776, ¶ 17 (1997).

⁴² Comments of the Communications Workers of America, WC Docket No. 10-90, *et al.*, 18 (filed Apr. 18, 2011) ("CWA Comments").

⁴³ *See, e.g.*, *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Rescription and Enforcement Processes*, 10 FCC Rcd 6788, ¶ 5 (1995).

actual payment of dividends is irrelevant to a regulator in determining the cost of capital, or permitted return, calculation.

What is more, the actual level of dividend payments is not part of the regulated revenue requirement and is thus not a consideration in the ratemaking process.⁴⁴ The actual level of dividends is not included as a cost for purposes of setting rates in carrier tariffs.⁴⁵ Similarly, dividends are irrelevant to price-cap calculations and the level of dividends is likewise not included in any jurisdictional separations allocations or in setting current universal service fund payments. Therefore, it would be unprecedented (and unwise public policy) for the FCC to base a company's universal service funding on whether it pays dividends.

E. The Commission must ensure that any changes to the universal service mechanism promote new deployment without harming current deployment.

Some commenters argue that an overall cap on universal service support should be imposed.⁴⁶ ITTA shares the concerns about the increasing consumer burden of universal service funding. However, capping the overall fund will provide insufficient support if the size of one of the component funds has to be decreased to accommodate increases in other fund programs. This result would obviously violate Section 254's "sufficiency" requirement and should be avoided. In evaluating whether to cap individual fund programs, the Commission should pay careful attention to "right size" the individual components to accommodate the new broadband service goal, and then examine whether there should be a cap at that level. While ITTA does not advocate a large increase in the overall size of the USF, by right sizing, and eliminating the

⁴⁴ *Id.*, ¶ 76.

⁴⁵ Only the allowed rate of return, which is based on a hypothetical level of debt and equity, is included.

⁴⁶ Verizon Comments at 55; Comcast Comments at 11-12.

waste caused by the Identical Support rule, the Commission can make a more rational judgment on the appropriate size of fund programs.

NATOA asks that state and local entities be allowed to file for universal service support, even if they are not telecommunications carriers.⁴⁷ Allowing local governmental entities to obtain universal service funding would provide them another unfair advantage vis-à-vis competitors, who do not own rights-of-way or enjoy tax revenues. Moreover, local entities may not be in the best position to define high-cost areas. High-cost areas may consist of only a portion of a city or state or could encompass several local areas not under the same authority. Section 254 contains strict limits on the entities to which funding can be awarded, and may not legally be ignored.⁴⁸ NATOA's request should be rejected.

III. IAS, LSS, AND SAFETY NET ADDITIVE FUNDING SHOULD BE PROVIDED TO EXISTING RECIPIENTS UNTIL THE PERMANENT CAF IS IN PLACE BUT SHOULD BE CONDITIONED ON USING THE SUPPORT FOR BROADBAND DEPLOYMENT AND MAINTENANCE.

Some parties argue that Interstate Access Support ("IAS") for price-cap carriers and local switching support ("LSS") and safety net additive funding for rate-of-return carriers should be eliminated.⁴⁹ In its comments, ITTA explained that IAS funding was designed to replace implicit universal service support that was removed from price-cap carrier access charges as part of the CALLS Plan.⁵⁰ Similarly, LSS and the safety net additive funds provide support for rate-of-return carriers that do not have the same economies of scale as larger carriers. It is these support mechanisms, in part, that have permitted carriers to provide broadband services in marginal areas that cannot fully support broadband services by themselves. Carriers receiving

⁴⁷ Comments of National Association of Telecommunications Officers & Advisors, WC Docket No. 10-90, *et al.*, 5 (filed Apr. 18, 2011).

⁴⁸ 47 U.S.C. § 254(e).

⁴⁹ NCTA Comments at 5-7; Comcast Comments at 13-15.

⁵⁰ ITTA Comments at 9-10.

IAS, LSS, and safety net additive funds have a proven track record of providing broadband services in high-cost areas and can leverage their existing operations when expanding into new areas. For example, Frontier explained that it is using IAS funds in the territories it recently purchased from Verizon to deploy broadband.⁵¹ Frontier has spent \$45.5 million dollars in those areas, and this investment would not have been possible without IAS.⁵²

CWA argues that IAS support should be maintained until the CAF is fully implemented and that in the interim period providers should commit to using IAS to deploy broadband in unserved areas.⁵³ ITTA endorses this approach for IAS, LSS, and safety net additive funds. Continued receipt of IAS, LSS, and safety net additive funds should be conditioned on their use for broadband deployment and network maintenance purposes. Such a requirement will undoubtedly result in a faster, more cost-effective deployment than the untested interim proposals in the *Notice* and does not require any additional universal service funding above what is already being made available.⁵⁴

Ad Hoc argues that IAS should be eliminated and that this would not qualify for exogenous cost treatment under the Commission's price-cap rules.⁵⁵ If the Commission were to eliminate IAS – which it should not – the Commission would be effectively requiring carriers to recover the costs currently recovered through IAS through other rate elements. This is clearly a

⁵¹ Comments of Frontier Communications Corp., WC Docket No. 10-90, *et al.*, 13 (filed Apr. 18, 2011).

⁵² *Id.*

⁵³ CWA Comments at 9.

⁵⁴ The IAS support provided to CETCs under the Identical Support rule is distinguishable. CETCs are receiving support based on ILEC costs even though CETCs typically have lower costs because they do not have COLR obligations. ITTA Comments at 15. Also, there is virtually no record of CETCs building broadband facilities to high-cost areas. Therefore, CETC IAS support can and should be phased out over a reasonable period of time.

⁵⁵ Ad Hoc Comments at 35.

governmental action that would require recovery of costs in a different manner and would thus qualify for an exogenous cost adjustment under Section 61.45(d). The Commission correctly states in the *Notice* that “a price cap carrier typically would be permitted to make an exogenous cost adjustment to its price cap indices (which are used to set access rates including SLCs) when a regulatory change materially affects its ability to recover its permitted revenues”⁵⁶ and asks only if there are any reasons such an adjustment “should not be permitted.”⁵⁷ Ad Hoc has identified no valid reason why this change should be treated any differently than other exogenous changes.

Verizon suggests that, in addition to eliminating IAS, the Commission should terminate frozen Interstate Common Line Support (“ICLS”).⁵⁸ This assertion is both short sighted and unjustified. When a rate-of-return carrier converts to price-cap regulation, the amount of ICLS support that carrier receives is frozen, but continues.⁵⁹ Discontinuing frozen ICLS support provides a disincentive for rate-of-return carriers to covert to price-cap regulation. This is contrary to Commission precedent which recognizes the clear benefits of price-cap regulation over rate-of-return calculations.⁶⁰ Further, the purpose of ICLS is to remove implicit support from access rates.⁶¹ There has been no showing that this funding is no longer necessary to preserve affordable rates. It would also be discriminatory to maintain ICLS for rate-of-return

⁵⁶ *Notice*, ¶ 235.

⁵⁷ *Id.*

⁵⁸ Verizon Comments at 52.

⁵⁹ See, e.g., *Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, 25 FCC Rcd 4824, ¶ 2 (2010).

⁶⁰ *Id.*, ¶ 8.

⁶¹ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, 16 FCC Rcd 19613, ¶ 15 (2001).

carriers, but eliminate the same support for recently converted price-cap carriers. Verizon's proposal should be rejected.

IV. MEASURED REFORM OF INTERCARRIER COMPENSATION IS ESSENTIAL TO PRESERVING CARRIER BROADBAND DEPLOYMENT SUCCESSES.

The comments confirm that intercarrier compensation is a critical revenue component for many telephone companies, particularly those telephone companies serving rural areas.⁶² Elimination of, or drastic reductions to, these charges is premature and would result in substantially increased rates in rural areas, necessitating further universal service support to meet the requirements of Section 254. Instead, the Commission should adopt the gradual glide path proposed by ITTA⁶³ and then reevaluate market conditions to determine what further action is needed. A measured reduction in intercarrier compensation charges would allow carriers to adjust to changes, prevent rate shock, and provide the Commission with sufficient time to review the effect such changes have on consumer prices and network maintenance and deployment. Rapid, large reductions in intercarrier compensation, and therefore carrier revenues, could undermine the substantial broadband deployment already available in areas served by rural carriers.

A. A bill-and-keep or equivalent structure should not be implemented at this time.

Several parties assert that intercarrier compensation should be ramped down rapidly to \$0.0007 or eliminated entirely through adoption of a bill-and-keep mechanism.⁶⁴ As ITTA explained in its comments, such proposals make restructuring much more expensive and will

⁶² See, e.g., CenturyLink Comments at 61-62; FairPoint Comments at 2.

⁶³ ITTA Comments at 42-44. Sprint proposes a similar glide path for ILECs other than AT&T, Verizon, and CenturyLink. Sprint Comments at 6-7.

⁶⁴ Verizon Comments at 5; Comcast Comments at 4-6; Comments of XO Communications, LLC, WC Docket No. 10-90, *et al.*, 25 -28 (filed Apr. 18, 2011).

potentially overburden consumers.⁶⁵ Those promoting these drastic reductions fail to explain how these issues will be resolved. For example, Verizon argues that carriers have had ample notice that reductions in access charges would occur and “should have prepared for the transition – such as by developing innovative services and collecting a greater share of their revenue from end user customers.”⁶⁶ However, these arguments are nonsensical. First, rural companies, which typically have higher access charges than urban companies, have in fact used intercarrier compensation revenues, along with universal service support, to aggressively deploy broadband networks and to make new services available to customers throughout their territories. Their success is demonstrated by the fact that ITTA members have substantially higher broadband deployment than Verizon in areas with similar characteristics. Second, the mere fact that some private parties have argued for lower rates in the past does not provide a credible basis for any carrier to anticipate such low rates.

Drastically reducing or eliminating intercarrier compensation, with no alternative recovery mechanism,⁶⁷ would prevent carriers from providing new, innovative services to more customers and would increase the differences between urban and rural rates. It is rural carriers’ greater intercarrier compensation revenue and universal service funding that has allowed them to deploy broadband in high-cost areas, where larger carriers like Verizon have not. Reducing intercarrier compensation so that these carriers are in the same position as Verizon will not promote the Commission’s goal of bringing broadband to all Americans. Moreover, extreme rate reductions would adversely affect consumers. The State Members of the Joint Board note that the National Exchange Carrier Association (“NECA”) has estimated that reducing interstate

⁶⁵ ITTA Comments at 40-42.

⁶⁶ Verizon Comments at 19.

⁶⁷ Verizon proposes that any alternative recovery mechanism be limited to three years. *Id.* at 21.

access rates to reciprocal compensation rates (assuming a reciprocal compensation rate of \$.0128) would result in a national weighted mean increase in local rates of \$11.77.⁶⁸ If a bill-and-keep mechanism were adopted, the weighted mean effect on local rates would be an increase of \$16.47.⁶⁹ Such increases would make telephone company services – voice and broadband – harder to afford and therefore likely adversely affect adoption rates.

In addition to supporting a bill-and-keep regime,⁷⁰ Ad Hoc contends there should be a rebuttable presumption that no increases are needed in other rates⁷¹ and that SLCs should not be raised.⁷² There is no basis for these assertions. Ad Hoc argues against making changes in intercarrier compensation revenue neutral because “[c]arriers are not entitled to rate increases merely because they’ve grown accustomed to an artificially inflated intercarrier revenue stream under the existing regime and wish to preserve it.”⁷³ There has been no showing, by Ad Hoc or any other party, that ITTA members’ revenues are artificially inflated. Carrier access charges have been established based on numerous proceedings, are subject to substantial review, and are consistent with FCC ratemaking principles. It is for this reason that prior restructuring efforts have been based on revenue neutrality principles. Therefore, if access charges are decreased, the presumption should be the opposite of Ad Hoc’s: Lost revenue would need to be recovered through some other charge, with SLCs being one possibility. Similarly, claims that alternative recovery mechanisms should be limited to an arbitrary length of time or phased out⁷⁴ should be

⁶⁸ State Members Comments at 103.

⁶⁹ *Id.* at 104.

⁷⁰ Ad Hoc Comments at 43.

⁷¹ *Id.* at 50.

⁷² *Id.* at 56.

⁷³ *Id.* at 49; *see also* CTIA Comments at 42.

⁷⁴ Verizon Comments at 21; State Members Comments at 56.

rejected. There has been no showing that current carrier rates are unreasonable, and there is no basis for assuming that costs being recovered through these rates will magically vanish in three to five years time. As ITTA has argued, constitutional due process requires that carriers be provided an opportunity to earn a reasonable return on the services they provide.⁷⁵ Mandatory decreases and phase outs violate this constitutional principle.

Ad Hoc claims that SLC caps should not be raised to allow alternative recovery of revenues lost due to intercarrier compensation reform.⁷⁶ However, Ad Hoc provides no evidence to support its arguments, which are wrong on their face. First, Ad Hoc argues that SLCs are designed to recover loop costs and should not be raised to ensure revenue neutrality of intercarrier compensation reform. There is no impediment to the FCC modifying rules in this rulemaking to include recovery of other costs in the SLC. Thus, these costs could be properly included in an increased SLC. Second, Ad Hoc claims that “most states in recent years have de-tariffed, forborne from regulating, or simply de-regulated most local exchange services and rates.”⁷⁷ Ad Hoc provides no evidence to support this conclusion. Third, based on its assumption that state rates are no longer regulated, Ad Hoc argues that where there is local competition raising the SLC would have no effect because competition would constrain ILEC pricing.⁷⁸ However, if competition is constraining pricing, there would be no harm in raising the SLC cap. Conversely, Ad Hoc asserts that if there is no local competition, the ILEC is already recovering its costs through monopoly profits so raising the SLC cap is unwarranted.⁷⁹ Again, Ad Hoc provides no evidence to support this point, which is evidently based on the assumption

⁷⁵ ITTA Comments at 12-13.

⁷⁶ Ad Hoc Comments at 56-59.

⁷⁷ *Id.* at 59.

⁷⁸ *Id.* at 59.

⁷⁹ *Id.* at 60.

that there is duplicative recovery between local and intercarrier compensation rates, a false premise. Moreover, if an ILEC were to recover costs through the SLC that were previously recovered from intercarrier compensation, the customer would be no better or worse off than he or she is currently. Ad Hoc's suggestions should be rejected.

B. Intercarrier compensation and universal service reform should incorporate a reasonable benchmark of local and broadband rates.

NECA asserts that a benchmark rate of \$25 be established in computing reasonable revenues from providing voice and broadband services in the development of a recovery mechanism.⁸⁰ ITTA supports this proposal. Benchmarks are useful because they, along with proper cost calculations or estimates, aid in the determination of sufficient support for universal service. A benchmark involving revenues for supported services also would conserve support by establishing a baseline expectation of what portion of revenues are reasonably derived from end users. It also would protect carriers that have already priced end-user services at a reasonable level, who might be forced to subsidize carriers that charge much lower rates to their end users.

C. Intercarrier compensation should not be used to artificially expedite the implementation of IP networks.

Some commenters argue that intercarrier compensation should be reformed in a manner that promotes an expedited transition to IP-based networks.⁸¹ As explained in ITTA's comments, using intercarrier compensation to speed such a transformation is unnecessary and inefficient.⁸² Carriers already recognize the benefits of IP technology and are converting their networks in an economically efficient manner. Using intercarrier compensation to elicit

⁸⁰ Comments of National Exchange Carrier Association, Inc., *et al.*, WC Docket No. 10-90, *et al.*, 16 (filed Apr. 18, 2011). *See also* AT&T Comments at 33.

⁸¹ Verizon Comments at 17-18; CTIA Comments at 35-36.

⁸² Reply Comments of the Independent Telephone & Telecommunications Alliance on Intercarrier Compensation Arbitrage Issues, CC Docket No. 10-90, *et al.*, 7-9 (filed Apr. 18, 2011).

investment before it is economically efficient to do so will only increase overall costs. ITTA believes that the market should govern how swiftly providers convert to IP networks. The Commission should instead focus on the National Broadband Plan goal of bringing broadband to unserved areas and ensuring that providers have sufficient resources to maintain and expand their networks.

Verizon claims that universal service support for voice services encourages carriers to continue using circuit-switched networks rather than transitioning to IP technology and that high intercarrier compensation rates are discouraging investment and deployment of new services.⁸³ This position is incorrect. It is the current universal service and intercarrier compensation mechanisms that have funded the successful deployment of broadband to the majority of rural, high-cost areas. Not only are these mechanisms not hindering deployment, they have allowed rural carriers to achieve substantially higher rates of deployment in high-cost areas than non-rural carriers have in similarly situated areas. ITTA agrees that the current mechanisms must be reformed consistent with new market conditions and technologies. However, in reforming the current programs, the Commission should not endanger existing achievements.

V. CONCLUSION

This country has made great strides in bringing broadband to Americans, including those residing in rural areas. The FCC should effectuate the goals of the National Broadband Plan by ensuring that this progress is maintained and expanded by wireline providers, which hold the real promise of quick advances in broadband availability. ITTA urges the FCC to target USF support

⁸³ Verizon Comments at 17. Verizon claims that “high intercarrier compensation rates are diverting dollars away from and thereby ‘hindering investment and the introduction of new IP-based services and products,’” quoting the National Broadband Plan. *Id.* However, the National Broadband Plan actually attributes these effects to “regulatory uncertainty about whether or what intercarrier compensation payments are required for VoIP traffic, as well as a lack of uniform rates.” National Broadband Plan at 142 (footnotes omitted).

where it will actually advance universal service in the near term, and to modify intercarrier compensation in a graduated manner that will maintain needed services to all Americans.

Respectfully submitted,

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