

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matters 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 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

The South Dakota Public Utilities Commission (“SDPUC”) submits these reply comments regarding the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM”)¹ in the above referenced dockets.

With the NPRM, the FCC is seeking to modernize the Universal Service Fund (“USF”) and intercarrier compensation (“ICC”) system. The overarching goal of these modernization efforts is to ensure affordable broadband is available to all Americans. The NPRM properly recognizes the importance of a robust broadband infrastructure. There is no doubt that access to broadband services has become increasingly vital.

Universal Service

The NPRM first tackles the difficult task of the reform and modernization of the federal universal service high-cost program. The FCC lists four priorities: 1) to preserve and advance voice service; 2) ensure the universal deployment of modern networks capable of supporting broadband and voice service; 3) ensure that rates for broadband and voice services are reasonably comparable in all regions of the nation; and 4) limit the contribution burden on households.² The SDPUC finds these to be laudable priorities. Framed against the backdrop of our rural state, our comments address whether certain proposals contained in the NPRM will achieve these priorities. We will address the first two priorities together.

¹ *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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

² NPRM ¶ 80.

1. The preservation and advancement of both voice and broadband services.

As the Commission is well aware, the deployment, preservation, and advancement of modern networks are not easy tasks. The difficulties of these tasks are only compounded in a rural state such as South Dakota. It is hard to overstate the challenges that all of our state's carriers face in providing voice and broadband services to their customers. South Dakota is the 17th largest state with around 77,000 square miles; yet it is ranked 46th in population density. As we have pointed out in past comments, one of our rural carriers, Golden West Telecommunications, serves nearly *one-third* of South Dakota's land mass (which is greater than the land mass of Rhode Island, Connecticut, New Jersey, and New Hampshire combined). Within this large service area, Golden West Telecommunications has only 1.79 subscribers per square mile of service area. These facts regarding our rural areas illustrate the difficulties in both preserving and deploying modern broadband networks.

But focusing only on our most rural areas tells an incomplete story. Also instructive is a review of our urban areas. Sioux Falls, our largest city, has a population of around 155,000. Our second most populated city, Rapid City, drops to less than half the size of Sioux Falls with around 68,000 residents. Next on the list, Aberdeen, has a population of only around 25,000 – one-sixth the size of our biggest city. Thus, not only do our carriers serve areas with very few subscribers per mile, even our most densely populated areas have relatively small populations.

It is also difficult to overstate the value of access to voice and broadband services. The ability of our South Dakota consumers to have access to broadband services will enhance our state's economic development, especially in our rural areas. Advanced services that are made available through broadband are essential for economic development, health and safety, and quality of life issues. Thus, the SDPUC

agrees with the FCC that deployment to unserved or underserved areas is of critical importance.

Not only must voice and broadband services be *advanced*, these services must also be *preserved*. Our emphasis on this point is in recognition of the carriers serving South Dakota that have successfully deployed voice and broadband networks and continue to invest in their infrastructure. With the deployment of these networks, many South Dakota residents enjoy the benefits of a modern broadband network. In addition, the underlying infrastructure benefits other telecommunications providers. Affordable access to broadband to all Americans will not be achieved if new broadband infrastructure is deployed but existing infrastructure is allowed to deteriorate due to inadequate funding. As the Rural Associations state in their comments, any “reshuffling” of support should not put at risk prior investment made under the existing rules.³

2. Assuring reasonably comparable services in rural states.

Within its NPRM, the FCC justifiably emphasizes the value and interdependence of fixed and mobile networks.⁴ The importance of *mobility* for *rural areas* is recognized in its statement that “[t]he benefits of mobility may be particularly important to rural consumers and schoolchildren who typically travel farther distances to reach work and school, and are vital for public safety.”⁵ Acknowledgement of the necessity of *fixed networks* is found in the FCC’s statement that “[b]usinesses, anchor institutions, and individuals rely on the high-speed capabilities of fixed broadband networks for services such as high-definition remote medical consultations, ‘telepresence’ videoconferencing,

³ Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance; along with Concurring Associations (“Rural Associations”) at 40.

⁴ The FCC states that “[i]n the 21st century, Americans will use fixed and mobile networks to experience the benefits of broadband.” *NPRM* ¶ 4.

⁵ *NPRM* ¶ 4.

and video-based distance learning.”⁶ The interrelated nature of fixed and mobile networks is highlighted when the FCC states that “fixed networks remain essential for mobile services, which typically depend on fixed backhaul to connect cell towers and enable mobile communications to other networks.”⁷

These statements demonstrate why the recommendation in the National Broadband Plan that there should be, at most, only one subsidized provider of broadband service per geographic area should be rejected.⁸ Fixed and mobile networks are not only essential stand-alone services but are complementary and interdependent services. The funding of only one type of network would inevitably lead to rural, high-cost areas being placed at a disadvantage with the urban, low-cost areas where both fixed and mobile networks will be available. We agree with the Rural Associations’ statement that “the ‘reasonable comparability’ requirement of section 254 warrants establishment of high-cost support mechanisms for both a fixed broadband network and a mobile wireless broadband network. . . .”⁹

An additional concern of the SDPUC regards the proposed use of auctions as a means to determine who will receive support and the amount of that support. We share many of the concerns with the use of auctions that were noted by the State Members of the Federal State Joint Board. Some of these concerns were: 1) that no bids will be filed in many areas; 2) constraints on the ability of certain entities to participate in the auction process; 3) the possibility that bid prices will be above the bidders’ efficient costs; 4) the risks inherent in the use of auctions for universal service funding may result in bidders adding a risk premium to their bids; and 5) the difficulty of ensuring a long-term course of

⁶ *Id.*

⁷ *Id.*

⁸ In its NPRM, the FCC seeks comment on this recommendation contained in the National Broadband Plan. *NPRM* ¶ 402.

⁹ Comments of Rural Associations at 83.

performance by the recipient after its one-time grant has been received.¹⁰ The SDPUC can understand the appeal of using auctions in an attempt to achieve the goals of ubiquitous broadband in the most cost-effective manner, but we remain less than convinced that use of such auctions will actually lead to the desired outcome. As stated by the Rural Associations, “[a] reverse auction undermines the normal incentives for investment in high-cost, sparsely populated areas because there is no assurance that the provider will have a reasonable opportunity to recover initial or on-going costs.”¹¹ We share this concern that auctions will not prove to be a long-term solution to providing modern broadband networks in rural areas.

The SDPUC also questions the use of a nationwide broadband cost model to determine the amount of CAF support as discussed in the FCC’s right of first refusal proposal.¹² With the goals of both preservation and advancement of USF firmly in mind, the SDPUC has serious reservations regarding the use of a cost model, especially to determine costs in rural areas. As we noted in previous comments, the Hybrid Cost Proxy Model (HCPM) that is currently used to determine support for *non-rural* carriers has resulted in one state receiving a majority of the non-rural support.¹³ This type of result calls into question whether a nationwide cost model can be developed that will accurately reflect the costs of providing broadband services and maintaining broadband networks in sparsely populated rural areas like South Dakota. Instead of relying on national cost models that would be applicable to all types of carriers, the FCC should look to other approaches such as the alternative referenced in the NRPM that would

¹⁰ Comments by State Members of the Federal State Joint Board on Universal Service at 78-91.

¹¹ Comments of Rural Associations at 77.

¹² *NPRM* ¶ 432.

¹³ See Comments of the South Dakota Public Utilities Commission, *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for our Future*, GN Docket No. 09-51; *High-Cost Universal Service Support*, WC Docket No.05-337, filed July 12, 2010 at 8.

continue “to provide ongoing support based on reasonable actual investment to smaller, rate-of-return companies.”¹⁴

In the NPRM, the FCC asks how states can be encouraged to preserve and advance universal service.¹⁵ The NPRM notes the states that have established universal service funds or have taken other actions to advance universal service.¹⁶ The NPRM seeks comment on what level of financial commitment should be expected from the states to advance broadband.¹⁷ A question posed in the NPRM that is of particular significance to South Dakota is how the FCC should “address states that are disproportionately rural and generally lack a sizeable population to support service in rural areas.”¹⁸

As highlighted at the beginning of our comments, South Dakota lacks a sizable population in both our rural and urban areas which means a state universal service fund is likely to either be underfunded or result in excessive monthly charges on South Dakota consumers. While we understand the responsibility of states to advance universal service, we also understand first hand the difficulty of very rural states that encompass large, sparsely populated areas to shoulder the financial costs of universal service. We ask that the FCC continue to take into consideration the ability of states such as South Dakota to fund universal service. Failure to recognize the lack of a population base over which the costs of universal service can be spread will likely lead to rates in rural South Dakota not being comparable to the more urban states.

3. Limiting the contribution burden on households.

The NPRM demonstrates that the FCC is carefully reviewing current support mechanisms in order to determine how to reform and transition these support

¹⁴ *NPRM* ¶ 401.

¹⁵ *Id.* ¶ 84.

¹⁶ *Id.* ¶ 87.

¹⁷ *Id.* ¶ 86.

¹⁸ *Id.*

mechanisms. The SDPUC agrees that the modernization of USF and ICC must involve a close examination of current support mechanisms in order to limit what consumers pay to support universal service. Doubtless there are inefficiencies that need to be addressed through this process. For example, the SDPUC supports the elimination of the identical support rule which provides CETCs the same per-line amount of high-cost support as the ILEC serving the same area.¹⁹ The NPRM references caps and other constraints on investments and expenses. Again, we support the identification and elimination of the funding of any unnecessary or excessive investments.

When making these decisions, we ask that the FCC not adopt a one size fits all approach. The SDPUC joins in the comments of the North Dakota Public Service Commission (“NDPSC”) in urging that the FCC take into consideration the differences in the investment required to serve densely populated areas versus sparsely populated areas. As stated by the NDPSC, “[t]he design of any caps, constraints, or benchmarks for cost recovery is certainly complicated by differences in size, customer base, customer density, serving area size, topography, cost-of-living in a given area, as well as other factors.”²⁰ Care must be taken to balance limitations on funding with realistic appraisals of the amount of funding needed to achieve the goal of ubiquitous broadband access.

Intercarrier Compensation

In its quest to reform intercarrier compensation, the FCC seeks to implement rules that will: 1) make affordable broadband available and reduce waste and inefficiency by curbing arbitrage; 2) promote fiscal responsibility; 3) require accountability; and 4) transition to market-driven and incentive-based principles.²¹ In

¹⁹ The FCC has proposed to eliminate the identical support rule. *NPRM* ¶ 243.

²⁰ Comments of the North Dakota Public Service Commission at 3.

²¹ *NPRM* ¶ 490.

addition, the FCC intends “to create a framework and transition that is predictable to enable service providers and investors time to react and plan appropriately.”²²

As part of its reform proposals, the FCC sets forth two approaches for implementation. The first approach relies on the states and the FCC “to act within their existing roles in regulating intercarrier compensation, such that states would remain responsible for reforming intrastate access charges.”²³ The second approach would have the FCC “use the tools provided by sections 251 and 252 in the 1996 Act to unify all intercarrier rates, including those for intrastate calls, under the reciprocal compensation framework.”²⁴

As stated by NARUC in its initial comments, the FCC’s legal analysis that it uses to support the second approach is “fatally flawed.”²⁵ The SDPUC agrees with NARUC that “[t]heories that attempt to expand §251(b)(5) reciprocal compensation to include intrastate access charges flounder on any examination of either the legislative history or the unambiguous statutory text.”²⁶ We urge the Commission to not attempt to circumvent existing law with an approach that will be subject to strong legal challenge. The likely effect of adopting such an approach is continued delay in achieving ICC reform.

The SDPUC also has concerns about certain approaches for reform set forth in the NPRM. For example, the SDPUC takes exception to the proposition that bill-and-keep would be a suitable “end-point” for ICC reform.²⁷ The NPRM states that under a bill-and-keep methodology, instead of recovering costs associated with providing access from other service providers, the carriers would instead “recover such costs from their

²² *Id.*

²³ *Id.* ¶ 491.

²⁴ *Id.*

²⁵ Comments of the National Association of Regulatory Utility Commissioners at 9.

²⁶ *Id.* at 10.

²⁷ *NPRM* ¶¶ 529, 530.

own end users, possibly in conjunction with CAF support.”²⁸ Looking first to the recovery of costs from a provider’s end users, it is very likely that this will serve only to lead to rates in rural areas that will not be comparable to rates in urban areas. In a small carrier analysis reported by NECA regarding South Dakota, it was estimated that the adoption of bill and keep would cause rates for at least 25% of subscribers to increase by \$30.00 or more.²⁹ Similarly, dependence on the CAF to recover these costs will make it less likely that the FCC will be able to limit the contribution burden on end users.

The simple fact is that intercarrier compensation is compensation by one provider for the use of another provider’s network. As noted by the State Members, it is difficult to “understand how a market could operate requiring some participants to offer their assets to others without charge. Indeed, the premise of all the current bill and keep proposals is that regulatory power is necessary to reach a result that does not arise naturally.”³⁰ The State Members outlined the pitfalls of such an approach as follows:

Prescribing zero rates for intercarrier compensation would greatly increase the burden on federal and State USFs. Incumbent LECs have three major revenue sources: 1) subscriber revenues; 2) intercarrier revenues (including per-minute services like toll access payments and per-month services like special access circuits); and 3) universal service. Eliminating or greatly reducing intercarrier compensation would force carriers either to find other revenue sources or to dramatically reduce their costs, which could jeopardize the capital resources needed to build broadband networks. For the more costly networks, costs cannot be recovered solely from subscribers without violating universal service principles. Therefore, mandating zero rates would require more support to keep these networks functioning.³¹

By allowing carriers to continue to charge one another for the use of their networks, the FCC will be in a better position to achieve the goals of the section 254.

²⁸ *Id.* ¶ 530.

²⁹ This analysis was referred to in the comments by State Members of the Federal State Joint Board on Universal Service at 105.

³⁰ *Id.* at 149.

³¹ *Id.* at 145.

V. CONCLUSION

The SDPUC commends the Commission for working to resolve these complicated and important issues. We respectfully request that the Commission take our views in to consideration when deciding these issues.

Respectfully submitted,

SOUTH DAKOTA PUBLIC
UTILITIES COMMISISON

By: /s/ Rolayne Ailts Wiest
Rolayne Ailts Wiest
General Counsel
500 E. Capitol
Pierre, SD 57501
(605) 773-3201

May 23, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of May, 2011, a copy of the Reply Comments of the South Dakota Public Utilities Commission was served via electronic mail as indicated below, to the following:

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

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW.
Washington, DC 20554
fcc@bcpiweb.com

By: /s/ Rolayne Ailts Wiest
South Dakota Public Utilities Commission
Rolayne Ailts Wiest
General Counsel
500 E. Capitol
Pierre, SD 57501
(605) 773-3201