BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

REPLY COMMENTS

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I. BACKGROUND AND INTRODUCTION

Montana Independent Telecommunications Systems, LLC (MITS) respectfully submits its response to comments filed in Federal Communications Commission ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM")[1], FCC 11-13, released February 9, 2011.

MITS is a statewide association of Montana rural telecommunications providers serving areas that are among the most remote, sparsely populated, and high-cost areas within the continental United States.[2] Their service areas range from approximately 1,000 to 30,000 square miles, with an average population density of 1.6 persons per square mile. MITS members are cooperative or cooperative affiliated companies that provide quality telecommunications and broadband in these extremely rural areas of Montana.

MITS members are troubled by many of the proposals set forth in the NPRM. Universal service is the cornerstone of the foundation for the networks and infrastructure essential for access to telecommunications and broadband in rural America. It is the initial "stone", the pivotal element that determines the quality, the strength, and the sustainability of affordable telecommunications.

For over fifty years, MITS companies have provided both the leadership and the infrastructure critical for preserving communities and enhancing rural economies. They have used limited resources wisely. They solidified their long term visions for advancing communications access by incurring the risks associated with their rural investments in high cost areas. They have made those commitments and incurred those risks so that rural consumers may have telecommunications and broadband access comparable to urban consumers. The networks and infrastructure in which they have invested are the scalable conduits for global communications and technology.

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[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, 26 FCC Rcd 4554 (2011) (*NPRM*).

[2] MITS members are Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Triangle Telephone Cooperative Association, Central Montana Communications, InterBel Telephone Cooperative and Mid-Rivers Telephone Cooperative, Inc.

Proposals that will significantly alter cost recovery mechanisms such as universal service and intercarrier compensation must seriously consider how those changes will impact rural consumers and the rural providers that serve them.

MITS is a signatory on both the initial comments and the reply comments in this proceeding filed on behalf of the Rural Associations[3]. MITS additionally is filing specific responses relating to a number of initial comments filed in this matter.

II. COMMENTARY

1. Changes in cost recovery in high cost rural areas should be gradually phased in taking into consideration the investments rural providers have made relying on public funding, such as the Rural Utility Service (RUS) loans and American Recovery and Reinvestment Act Broadband Stimulus programs (ARRA).

RUS has played no small role in the ability of MITS companies to invest in their networks and continually upgrade infrastructure and plant.

As an example, InterBel Telephone Cooperative, Inc. (InterBel) is a small telecommunications provider located in northwest Montana. It serves approximately 3,000 subscribers within its 1,000 square mile service area. It is currently implementing a five-year modernization plan utilizing a RUS loan for $11.3 million. Although InterBel has offered broadband to all its customers via Digital Subscriber Lines (DSL) since 2001, the Fiber to the Home (FTTH) project, financed to a large extent through RUS loans, allows it to replace outdated copper plant with fiber, a cheaper alternative in today's market than replacing copper with copper. This cost efficient replacement of plant brings telehealth, e-business, and virtual education broadband applications directly into the homes and businesses in its service area. It also is a major tool that supports our Nation's

[3] The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally,* 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 460 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

security. The northern boundary of InterBel's service area lies on the U.S.-Canadian border which is a mere seven miles north of InterBel's headquarters.

The largest town within InterBel's 1,000 square miles service area is Eureka, Montana, population 1,037, according to the 2010 U.S. Census. Data from the 2010 Census indicates that Eureka experienced a 1.9% growth in population over the past ten years. There were 20 more people living in Eureka in 2010 than there were in 2000.

InterBel serves a remote and isolated area that has embraced advanced technologies and the opportunities available through broadband. Like most of Montana, this area lacks the population to support the private investment in communications networks. The cost recovery mechanisms of universal service and intercarrier compensation, coupled with low interest loans from entities such as RUS and the dedicated commitment of local telephone cooperatives, ensures that the healthcare and education facilities, government offices, local businesses, and residents have affordable access to telecommunications and broadband capable networks.

Without exception, the combination of loans from private lending institutions and the public entities such as the RUS provided the impetus leading to the high quality, scalable networks utilized today in Montana. MITS members and other rural telecommunications providers incur significant debt to meet customer demand for top quality networks. The debt obligations and strategic planning required for network upgrades are not short term commitments. Triangle Telephone Cooperative, Inc. (Triangle) and Central Montana Communications (CMC), for example, together have network upgrade plans scheduled through the year 2024.

Since its inception in 1954, Triangle has used RUS loans to build and upgrade telecommunications facilities. Together, the service areas of Triangle and CMC extend across 24,000 square miles of central Montana stretching from the U.S.-Canadian border on the north nearly to the Wyoming border on the south. They serve 1.36 subscribers per square mile. They have made commitments to customers that they will deploy fiber to the premise in conjunction with the retirement of copper plant that necessitates replacement. The less expensive fiber technology will give consumers quality voice and broadband access. Two of the most recent RUS loans will fund fiber to the premise on the two

Indian Reservations located in Triangle's service area, namely the Rocky Boy and the Fort Belknap Reservations.

MITS members and rural companies similar to them face tremendous uncertainties given the lack of predictability and sustainability of universal service and intercarrier access funding.

Many rural providers, including InterBel, also face major challenges triggered by the FCC itself, i.e., the disbursement of universal service Rural Healthcare Program (RHCP and RHCPP) dollars to fund infrastructure projects that duplicate existing broadband facilities. This diversion of universal service funds puts yet another financial strain on rural providers.

In a letter filed with the FCC on December 29, 2010, the Health Information Exchange of Montana (HIEM) attempted to justify why its original RHCPP award of $13.6 million is ballooning to a project HIEM estimates will now cost $31.68 million dollars! [4] HIEM states that with additional universal service RHCPP funds and FCC extensions of time for project completion, it will be "empowered to provide fiber connectivity to all eligible health care providers within the region thus ensuring a secure, high capacity, efficient, cost-effective, future-proofed network for at least the next 25 to 30 years."[5] "Eligible health care providers within the region" include those now already served via fiber by InterBel Telephone Cooperative. Distributing RHCPP universal service funds to applicants such HIEM that would use the funds to build networks duplicating those already in place is not good public policy. Awarding RHCPP funds to applicants who intend to use the RHCPP-funded networks to cream skim some of the best customers in sparsely populated frontier areas further exacerbates the challenges and uncertainties facing rural telecommunications carriers as universal service and intercarrier compensation "reforms" unfold.

Randy Wilson, General Manager of InterBel, headquartered in Eureka, Montana, has clearly affirmed InterBel's ability to serve the healthcare hospital and clinics within his service area.

[4] See Letter from Kipman Smith, Executive Director, HIEM to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No 02-60, December 29, 2010.
[5] *Id*, p3.

> "InterBel currently has fiber to the premise and is in a position to offer virtually any capacity or broadband speed now or in the foreseeable future…I go on record as opposing what HIEM is doing with their fiber construction build-out strategy, essentially using grant money to overbuild existing networks in Montana…you have made it clear of HIEM's intention to construct and own/lease fiber networks, regardless of what other networks and services already exist, so you can resell unused capacity to generate revenue that will offset or zero out the cost of serving rural medical clinics. This is not a fair or ethical practice and I don't believe it was the intended use of the grant money being provided to HIEM…Such duplication of existing networks puts at risk the ability of existing broadband providers to operate and maintain their networks, and threatens to increase rates and decrease deployment of broadband services to customers served by these existing network providers."[6]

The American Telemedicine Association (ATA) likewise expressed its concerns to the FCC questioning the wisdom of disbursing universal service funds to RHCPP infrastructure projects such HIEM's. The ATA noted in comments to the FCC that the use of universal service healthcare funds to support broadband infrastructure is ill advised and that the program encourages the use of federal funds to purposely overbuild broadband networks.[7]

It is disingenuous public policy for the FCC to position on a fast track proposed revisions that will significantly reduce or eliminate universal service high-cost recovery for rural telecommunications providers that have demonstrated their commitment to deploy and maintain high quality broadband-capable networks while, at the same time, the FCC continues to disburse millions of dollars from the RHCPP universal service program to fund new infrastructure projects that duplicate and overbuild networks in sparsely populated rural areas where consumers already have broadband access.

USF rural health care dollars should not be awarded to applicants that propose to sustain their medical and health care services by transitioning themselves into competitive telecommunications and broadband providers particularly in areas where consumers currently have broadband access. It is critical that the FCC conduct a thorough public interest analysis of proposed rural health care projects funded through USF.

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[6] See letter from Randy Wilson to Kip Smith, HIEM Executive Director, Northwest Healthcare, Aug 20, 2010; See Attachment to Comments filed by MITS, In the matter of the Wireless Competition Bureau seeking Comments on Health Information Exchange of Montana Request for Additional Funding Under the Rural Health Care Pilot Program, WC Docket 02-60, Feb 18, 2011.

[7] In the Matter of Notice of Proposed Rulemaking Regarding the Universal Service Support Mechanism for Rural Healthcare, WC Docket 02-60, September 8, 2010, p 3.

Applicants must be required to present data and evidence to verify that the scope of the project area indeed is currently unserved by existing providers. It makes no sense to put rural providers at risk by high cost universal service reductions while continuing to pour millions of RHCPP dollars into duplicative telecommunications and broadband infrastructure.

MITS has similar concerns with proposals that suggest universal service reforms should be applied retroactively to ILEC investments made utilizing American Recovery and Reinvestment Act (ARRA) Broadband Stimulus funding (BTOP and BIP).

It is ironic that the FCC's proposals to transition and to eliminate the universal service high cost program are delivered on the heels of significant awards of ARRA funded loans and grants from the Federal Departments of Agriculture and Commerce. Two of MITS members, Project Telephone Company and Nemont Telephone Cooperative, were awarded approximately $40 million in ARRA broadband loans and grants to extend last mile fiber to the premise throughout the Crow and Fort Peck Indian Reservations. How will rural companies such as Project and Nemont have the resources to maintain these networks and infrastructure if the current support mechanisms that provide cost recovery for capital and operational expenses are eliminated or reduced?

2. The Identical Support Rule should be quickly replaced with cost-based support for competitive eligible telecommunications carriers (CETCs).

MITS agrees with the commenters such as the Rural Independent Competitive Alliance that argue the identical support rule is inconsistent with the 1996 Telecommunications Act because the amount of support provided bears no relationship to the cost of providing service to the CETC.[8] MITS urges the FCC to eliminate the identical support rule quickly and to replace CETC support with a cost-based recovery mechanism. Cost recovery for rural eligible telecommunications carriers (ETCs), whether wireline or wireless, incumbent or competitive, should be based upon the provider's own costs. The proposed elimination of identical support without a replacement cost-based

[8] RICA Initial Comments, NPRM, 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; April 18, 2011, p10.

support mechanism for CETCs serving high cost rural areas will result in the total elimination of those providers from the market. Simply put, high cost rural areas are service areas where the costs of providing telecommunications to consumers are far greater than the revenues generated. Eliminating identical support does not equate to eliminating the high costs of providing service within rural, remote, and frontier areas. The costs remain. If the support is removed, the carriers would not be able to continue to provide consumers in those areas with access to telecommunications services.

Rather than phasing out CETC funding entirely, the FCC should replace identical support with cost-based support and act immediately to develop a wireless cost study process to ensure consistency in determining wireless network costs. While there should be uniformity in cost studies developed for the purpose of CETC cost recovery, it is important that the role of ETC and CETC designations and certifications remain with the State Commissions.

The growth of the high cost universal service fund cannot be attributed to the distribution of USF to the small rural wireless providers. It is the large nationwide wireless providers, receiving high cost support based upon the costs of the incumbent providers, which have caused the growth in CETC funding. The amount of high cost universal service funding attributable to rural wireless CETCs is equivalent to a "rounding error" compared to the level of support received by the large wireless carriers, yet it is absolutely critical to the ongoing operations of these small wireless networks.

Service requirements similar to those placed upon carriers of last resort should be applicable to all CETCs. They should be required to meet minimum service standards and, on an ongoing basis, comply with specific service quality criteria and build-out requirements, with reporting to state regulatory agencies.

MITS agrees that the growth of CETC funding may have contributed to the uncertainty over the sustainability of the Federal universal service fund. However, it must be recognized that the share of the rapid growth of the high cost fund attributed to CETC funding is directly linked to the failure of the FCC and many states to initially require public interest considerations in CETC designation applications by non-rural providers. In the early years after implementation of the 1996 Federal Telecommunications Act, the FCC and states granted many CETC designations without any public interest analyses and generally without imposing compliance requirements including service quality oversight or commitments for build outs to extend the footprint of service. It was a formula for failure.

It is not necessary now, however, to toss out the baby with the bathwater. The unprecedented growth of the universal service fund associated with the identical support rule and the designation of CETCs absent a through public policy consideration can be decelerated by a combination of two factors: Regulatory oversight of CETCs and expansion of the USF contribution base. Content and applications providers that use and benefit from the broadband network should support the network through contributions to the fund.

The Montana Public Service Commission (MT PSC) represents an excellent example of a state regulatory agency that refused to buy into the concept of unfettered designation of CETCs. After designating its first rural CETC for Montana in 2004, the MT PSC turned to administrative rulemaking, endorsed by the two statewide telecommunications associations, and adopted comprehensive administrative rules for CETC designations and certifications. The MT PSC firmly established its oversight of CETCs. It established minimum filing requirements, standards of service, compliance oversight, mandatory quarterly service quality reporting requirements and filing requirements for six-month build-out reports. The establishment and enforcement of the MT PSC rules has resulted in the responsible designation and oversight of CETCs in Montana.

The FCC's proposal to eliminate CETC funding would be devastating to states such as Montana that "got it right" in the first place. In comments recently presented to the MT PSC, Mike Kilgore, General Manager of Nemont Telephone Cooperative, Inc. (Nemont) and its subsidiary companies, Project Telephone Company (Project), Nemont Communications, Inc., and Sagebrush Cellular, Inc. (Sagebrush), detailed the importance of CETC funding to companies such as Sagebrush.

The MT PSC designated Sagebrush as a CETC in November, 2005, with assurances that Sagebrush would aggressively deploy wireless cellular communications throughout two study areas encompassing 13,000 square miles of rural, rugged country having an average population density less than two people per square mile. Not taking its

CETC designation lightly, Sagebrush hit the road running, negotiating rights of way and aggressively installing towers to give rural consumers much needed access to wireless communications and the public safety benefits that accompany it. In most cases, this was the first time that the rural subscribers had cellular access. By 2008, Sagebrush met the MT PSC-imposed 98% wireless coverage requirement within the Nemont study area, one full year ahead of schedule. It did not, however, stop there. It continued to extend towers to minimize the gaps of service coverage, and that strategy is continuing to this day.

The aggressive extension of Sagebrush's wireless footprint within the Project study area has been in jeopardy, however, since May of 2008, when the FCC imposed the interim cap on the amount of high cost universal support that CETCs may receive. This has created a significant barrier for Sagebrush to achieve the 98% coverage requirement in the Project Telephone service area. In August, 2009, the MT PSC granted a three-year extension to Sagebrush and stated in its order that, "Nothing less than an immediate abrogation of the FCC's interim cap could mitigate the obstacle Sagebrush faces."

A comparison between what Sagebrush, under MT PSC-imposed build out requirements and compliance oversight, has accomplished in the Nemont study area and what Sagebrush has not been able to accomplish in the Project study area as a direct result of the FCC's 2008 Interim Cap on CETC funding is a startling example of the unintended consequences that can result from poorly designed regulatory reforms. Despite the CETC funding cap, Sagebrush has still achieved approximately 72% population coverage in the Project area, but this is far less than the 98% coverage in the Nemont area. Nonetheless, Sagebrush currently operates over 60 cell towers in frontier Montana. Its subscriber growth has increased from approximately 6,000 subscribers in 2005 to over 14,000 subscribers today. As Mike Kilgore affirmed to the MT PSC, "The Montana Public Service Commission made the right decision in 2005 [in designating Sagebrush a CETC] and Sagebrush has done its best to meet the obligations set forth by the Commission."

Eliminating universal service support for rural CETCs will disable the ability of stable and conscientious companies like Sagebrush to maintain the high quality and advanced communications services it has been providing. It will put build-out plans in abeyance, and put in jeopardy its ability to repay loans that were granted based on the expectation of specific, predictable and sufficient mechanisms as governed by Section 254 of the 1996 Federal Telecommunications Act.

The MT PSC addressed this and other rural CETC concerns specific to Montana in its comment filed in this proceeding.[9] The MT PSC indicates that Qwest Communications, the ILEC and ETC in ten Montana exchanges also being served by a competitive wireline ETC, has lost 71% of its customer base within those exchanges since 2002. While the MT PSC is unable to determine whether the loss of access lines is related to a wireline or wireless competitor, it has concluded that, "There is absolutely no doubt that the vast majority of the wireline customers in those exchanges have migrated from the CenturyLink [formerly Qwest] network to the more modern wireline CETC networks."[10] The MT PSC further indicates that in six of the ten wireline CETC exchanges, the wireline CETC is not only the predominant provider of wireline phone service, it is also the only provider of DSL broadband service. It states that the loss of CETC support would threaten the viability of the CETCs and networks and adversely affect broadband subscribers.

One cannot assume that all CETCs utilize wireless technologies or that all CETCs have failed to demonstrate their commitment to extending access to telecommunications and broadband networks for rural consumers.

MITS urges the Commission to replace the identical support rule for CETC funding with cost-based support.

3. States should continue to designate and to certify all ETCs and CETCs.

State regulatory commissions are best positioned to designate and to certify the carriers that are eligible for funds from the Universal Service High Cost Program and from the Connect America Fund (CAF) for broadband deployment. State Commissioners have the most expertise in telecommunications, technology, and related public policies

[9] Montana Public Service Commission Comments, NPRM, 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; April 23, 2011, p7-9.
[10] Id, p8.

within their unique states. Providers are familiar with State Commission procedures and State Commissioners have in-depth experience with both providers and the consumers. For CAF funding, the State Commissions should be the agencies that designate one wireline ETC and one wireless ETC within study areas or exchanges. MITS agrees with the Montana Public Service Commission that wireline support should not automatically default to the ILEC. Rather the support should go to the provider that has demonstrated its commitment to consumers by serving the majority of the broadband subscribers within the area.

4. The Recovery Mechanisms that may be available to rural local exchange carriers (RLECs) to replace access charge losses must also be available to rural competitive local exchange carriers (CLECs).

It is not clear whether or not the Recovery Mechanisms that may be available to RLECs to replace access charge losses will also be available to rural CLECs. It is critical that rural wireline CLECs have the ability to recover loss access revenues.

The Rural CLEC Access Rule was implemented to address cost recovery in high cost areas where rural CLECs provide service. That same concept should apply to access recovery through the CAF. CLECs that have committed to serve high-cost areas should have an opportunity to continue to recover revenues they currently receive from rural CLEC access charges.

III. CONCLUSION

MITS appreciates the opportunity to file reply comments in this proceeding. There are unique challenges in deploying telecommunications and broadband capable networks in frontier areas such as Montana. We urge the Commission to consider carefully the impacts that proposals to change current cost recovery mechanisms will have on rural providers, rural consumers, and rural economies.

RESPECTFULLY SUBMITTED

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