

**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

**COMMENTS ON PUBLIC NOTICE DA 11-1348:
THE FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE-
INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING**



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August 24, 2011

SUMMARY

The American Cable Association's ("ACA's") members have an intense interest in the Federal Communications Commission's efforts to transform and modernize the High-Cost fund and create the Connect America Fund ("CAF"). Most of its members provide voice services and assess universal service fees on their subscribers; many compete with incumbent local telephone companies that draw from the High-Cost fund; a large group receives High-Cost funding; and a significant number would like to seek to obtain funds from the CAF.

In these comments, ACA focuses primarily on the significant problems in the America's Broadband Connectivity ("ABC") Plan submitted by six Price Cap incumbent local exchange carriers. At first, the ABC Plan appears to reflect the Commission's fundamental objectives of fiscal responsibility and competitive-neutrality. However, upon closer examination, the plan is deeply flawed: it would enable universal service funding to grow significantly and would tilt the competitive landscape in favor of the Price Cap incumbents. The lack of competitive neutrality is even more troubling because the advantages the Price Cap incumbents give themselves extend for at least five years and potentially for as long 15 years, at a time during which competitive alternatives are poised to grow even more rapidly. As such, the Commission cannot find the ABC Plan to be in the public interest, and it certainly does not transform "a 20th century program into an integrated program tailored for 21st century needs and opportunities."¹

That said, ACA very much wants the Commission to act this year to modernize the Universal Service Fund and Intercarrier Compensation regimes, and it believes the problems with the ABC Plan (and select shortcomings with the plan proposed by the rural trade

¹ *NPRM*, ¶ 1. Full cite, *see n. 6*.

associations) can be remedied. More specifically, ACA proposes the following specific measures to fix the flaws in the plans:

Adopt a Permanent Cap on Support in High-Cost Areas. The Commission should establish a hard and durable cap of \$4.5 billion for support in high-cost areas, with the eventual objective being to reduce this amount significantly to ease the burden on consumers.

Distribute Funding on a Competitively Neutral Basis. The Commission should not provide Price Cap companies with a right of first refusal. Rather, the Commission should use competitive auctions (or some other competitively neutral distribution mechanism) with objective criteria to distribute support for broadband deployment in areas where there is no business case for fixed or mobile wireless.

Limit any Access Replacement Mechanism. The Commission should not adopt any Access Replacement Mechanism (“ARM”) for Price Cap companies. However, if it decides to do so, the ARM should be limited in time and amount and should only go to those companies that can demonstrate a real need for this additional funding that cannot be made up in any other way.

Accelerate the Phase-Out of Legacy Price Cap Support Mechanisms. Legacy High-Cost support for Price Cap carriers should be completely phased-out in two years or less.

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**COMMENTS ON PUBLIC NOTICE DA 11-1348:
THE FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE-
INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING**

The American Cable Association (“ACA”), by its attorneys, respectfully submits these Comments in response to the Commission’s *Public Notice* seeking further inquiry into certain issues in the above captioned proceedings.² These issues stem primarily from proposals submitted to the Commission by State Members of the Federal-State Universal Service Joint

² *Connect America Fund et al.*, Public Notice, DA 11-1348, (rel. Aug. 3, 2011) (“*Public Notice*”).

Board,³ a group of rural telecommunications trade associations (“RLEC Plan”),⁴ and six Price Cap companies (America’s Broadband Connectivity Plan (“ABC Plan”)).⁵

ACA’s comments focus first on the fact that policies proposed in these filings are inconsistent with the objectives set forth in the Commission’s Notice of Proposed Rulemaking (“NPRM”)⁶ released earlier this year, principally because they are neither fiscally responsible nor competitively neutral.⁷ As a result, rather than being “transformational,” these proposals merely continue, if not exacerbate, current flaws in the universal service fund (“USF”) and intercarrier compensation (“ICC”) regimes. They also directly and materially harm ACA members, who

³ Comments of the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011).

⁴ Comments of NECA, NTCA, OPATSCO, and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011).

⁵ Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 10-90 et al. (filed July 29, 2011).

⁶ *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011), at ¶¶ 80.

⁷ The importance of these concerns was just reinforced in a survey ACA conducted of its members on the issues of USF and ICC reform. This survey resulted in a large response from ACA members, with approximately 20 percent responding. Of these, about 55 percent are small or mid-sized cable operators and 45 percent are telephone companies, most of whom are rate-of-return carriers. The survey found that of the members responding:

1. Seventy percent consider the current universal service fee to be burdensome for their customers and themselves. One-third said it was very burdensome, and only 10 percent said it was not burdensome.
2. All cable operators offer broadband services, and virtually all offer telephone service.
3. Cable operators that do not receive High-Cost support compete extensively with incumbent Price Cap providers that receive support (two-thirds of those responding) and approximately 75 percent of these providers want to compete in the future to receive support to deploy broadband infrastructure and services. On this latter point, the survey found that 65 percent of these providers compete with AT&T, 50 percent with CenturyLink, and approximately 30 percent each with Frontier, Verizon and Windstream.

These findings thus provide a foundation for ACA’s comments herein and its concerns with fiscal responsibility and competitive-neutrality. They also support the Commission’s concerns expressed in the NRPM about the current USF regime and the proposed policies to reform it to support broadband service.

provide telecommunications and broadband services in competition with these Price Cap incumbents, and their subscribers.

That said, these proposals are salvageable. With the targeted fixes to these proposals which ACA sets forth herein, the Commission can correct these significant flaws and adopt an order that achieves its aim to “fundamentally modernize” these regimes to meet “the nation’s broadband availability challenge.”⁸

I. INTRODUCTION AND OVERVIEW: ADOPTING A TRANSFORMATIONAL ORDER TO ENSURE UNIVERSAL BROADBAND SERVICE; THE SIGNIFICANT FLAWS WITH THE PLANS AND ACA’S PROPOSED SOLUTIONS

ACA endorses the Commission’s objective in the *NPRM* “to comprehensively reform and modernize the universal service fund (USF)...in light of recent technological, market, and regulatory changes.”⁹ As one of the authors of the ABC Plan, AT&T, stated in comments filed earlier this year, “Adopted in the era of local exchange monopolies, that regime is no longer adequate to the task of rationally preserving universal service even on the legacy, public switched telephone network...and it is utterly incapable of advancing universal service on the all-IP communications networks of the future.”¹⁰ Now is the time to recognize that, with the growth of competition and new technologies, the industry structure has changed dramatically. As the *National Broadband Plan* found, “More than 80% [of Americans] live in markets with more than one provider capable of offering actual download speeds of at least 4 Mbps.”¹¹ In addition, cable operators offer voice telephone service to most Americans in competition with

⁸ *NPRM*, ¶ 1.

⁹ *Public Notice* at 1.

¹⁰ Comments of AT&T, WC Docket No. 10-90 et al. at 1 (filed Apr. 18, 2011) (“AT&T Comments”).

¹¹ Federal Communications Commission, *Connecting America: The National Broadband Plan* at 20 (2010) (“*National Broadband Plan*”).

incumbent local exchange carriers (“LECs”),¹² and most of the population has access to mobile voice and broadband service provided by multiple providers.¹³ In addition, the current USF and ICC regimes have significant problems which stand in the way of achieving their aims, and our nation has a new objective to provide universal broadband service.¹⁴ ACA believes the new regimes adopted by the Commission must reflect these realities and must be based on forward-looking policies, the specifics of which ACA set forth in its initial comments:¹⁵

¹² In its Petition for Rulemaking filed in 2009, the National Telecommunications and Cable Association determined that cable operators provide voice service to between 74 and 84 percent of households overall and 43 percent of households (6.6 million) in rural LEC study areas. The Petition further determined that cable voice service is available in most rural study areas, and in 21 percent of the study areas coverage exceeds 50 percent. *See National Telecommunications and Cable Association, Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition*, Petition for Rulemaking, RM-11584, at 6-7 and n.17. (filed Nov. 5, 2009); *see also National Broadband Plan* at n.94 (citing Nat’l Telecomm. Coop. Ass’n, 2009 Broadband/Internet Availability Survey Report at 3, 9).

In addition, ACA itself demonstrates how much the telecommunications and broadband sectors have evolved since the last Commission efforts to amend the universal service and intercarrier compensation regimes over a decade ago. ACA’s membership has grown tremendously during that time, and it includes nearly 900 local incumbent and competitive, small and mid-sized wireline providers from across the country, many of whom serve rural and other smaller markets. As determined in the recent ACA survey (*see supra*, n. 7), most cable operators who are members of ACA offer voice and broadband service, do not receive High-Cost funding, and are interested in providing broadband service in unserved or high-cost areas.

¹³ *National Broadband Plan* at 22.

¹⁴ *See, e.g., NPRM* ¶ 1.

¹⁵ *See Comments of American Cable Association, WC Docket No. 10-90 et al.* (filed Apr. 18, 2011) (“ACA Comments”). The following summarizes ACA’s proposals:

1. Impose a hard cap on the fund at the current fund level (year end 2010).
2. Eliminate support where there is competition (except for a finite period in areas served by the smallest incumbent LECs).
3. Create a new fund (Connect America Fund (“CAF”)) to support universal access to broadband service.
4. Use the CAF to separately support universal fixed and mobile broadband service.
5. Award CAF support in unserved areas through a competitive process.

Since submitting its proposal last spring, ACA has had discussions with providers and trade associations throughout the industry, including the authors of the RLEC and ABC Plans, to work to develop a consensus that would span different sectors of the industry. In these discussions, ACA stressed that any reform be based on four fundamental policy principles, which largely echo the Commission's objectives:

- Ensure fiscal responsibility and efficiency in the distribution of support;
- Do not skew market-driven competition by continuing support to only one or a select number of providers in a market;
- Provide future support on a competitively and technology neutral basis using reverse auctions;
- Enable smaller incumbent providers (those with fewer than 100,000 lines in aggregate nationwide), which have demonstrated competence, but rely to a great extent on support, a sufficient time to transition while ensuring they act consistently with the universal broadband objective.

Despite having a productive exchange of ideas, ACA determined that the plans did not meet these criteria. Additionally and unfortunately, each is supported only by a relatively homogenous and narrow group of interests in an industry that has a broad and complex web of participants. As such, they are far from an industry consensus balancing diverse interests, a basic fact the Commission should consider in determining whether these plans are in the public interest.

At first, the ABC Plan appears to take into account some of the Commission's principles: it seems to maintain a budget for universal service funding, and it takes certain steps to eliminate continued high-cost funding where competitive providers offer service. The RLEC Plan as well

6. Permit smaller local telephone companies to deploy broadband by continuing to receive support for a finite period.

appears to meet ACA's aim of providing an appropriate transition for these rural incumbent providers.

However, upon closer examination, the two plans, as elaborated upon in their *ex parte* letter to the Commission on July 29, 2010 ("McCormick Letter"),¹⁶ are significantly flawed because they would enable universal service funding to grow significantly and tilt the competitive landscape in favor of the Price Cap incumbents. The lack of competitive neutrality is even more troubling because the advantages the Price Cap incumbents give themselves extend for at least five years and potentially for as long as 15 years, at a time during which competitive alternatives are poised to grow even more rapidly. As such, the Commission cannot find the incumbent LEC's proposals to be in the public interest, and they are certainly not plans to transform "a 20th century program into an integrated program tailored for 21st century needs and opportunities."¹⁷

ACA very much wants the Commission to act this year to modernize the USF and ICC regimes, and, as stated at the outset, ACA believes these flaws can be remedied. More specifically, ACA proposes the following specific measures to fix the flaws in the plans:

Adopt a Permanent Cap on Support in High-Cost Areas. The Commission should establish a hard and durable cap of \$4.5 billion for support in high-cost areas, with the eventual objective being to reduce this amount significantly to ease the burden on consumers.

Distribute Funding on a Competitively neutral Basis. The Commission should not provide Price Cap companies with a right of first refusal "(ROFR)". Rather, the Commission should use competitive auctions (or some other competitively neutral distribution mechanism) with objective criteria to distribute support for broadband deployment in areas where there is no business case for fixed or mobile wireless.

¹⁶ See *Ex Parte* Letter of Jonathan Banks, USTelecom, to Marlene Dortch, Secretary, Federal Communications Commission, with attached letter from Walter B. McCormick, Jr., President and CEO, United States Telecom Association, et al. to Chairman Genachowski et al., CC Docket No. 01-92 et al. (July 29, 2011).

¹⁷ *NPRM*, ¶ 1.

Limit any Access Replacement Mechanism. The Commission should not adopt any Access Replacement Mechanism (“ARM”) for Price Cap companies. However, if it decides to do so, the ARM should be limited in time and amount and should only go to those companies that can demonstrate a real need for this additional funding that cannot be made up in any other way.

Accelerate the Phase-Out of Legacy Price Cap Support Mechanisms. Legacy High-Cost support for Price Cap carriers should be completely phased-out in two years or less.

The sections that follow discuss in detail the flaws with the ABC and RLEC plans and the fixes ACA submits are necessary to ensure any Commission decision is in the public interest and will create a 21st century USF and ICC regime.¹⁸

II. THE COMMISSION SHOULD IMPOSE A HARD AND DURABLE CAP ON FUNDING FOR THE CAF AND ANY CONTINUING HIGH-COST SUPPORT AT THE YEAR-END 2010 OVERALL HIGH-COST FUNDING LEVEL

In its prior comments, ACA explained that the Commission should cap high-cost funding at the 2010 level because of “the extraordinary recent growth in the High-Cost fund and the many economic, technical and structural changes in the industry.”¹⁹ The burden placed today on consumers of interstate telecommunications services, with a contribution factor approaching or exceeding 15 percent, is far too onerous – a fact supported in the recent ACA survey of its members.²⁰ It not only is inequitable, but it acts as a drag on access to and the use of these services. Accordingly, ACA is heartened that the ABC Plan provides that “the overall level of

¹⁸ ACA recognizes that this approach may not work in select areas. The Commission has acknowledged that Alaska, for instance, may require a different path to reform that reflects the unique challenges and costs of providing broadband services to that state. *See Public Notice* at 9. ACA agrees that a nationwide approach may not work for Alaska and urges the Commission to consider a different mechanism that nonetheless remains consistent with the principles of competitive neutrality and stemming fund growth. *See, e.g.,* Letter from Christopher Nierman, GCI, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed Aug. 1, 2011).

¹⁹ ACA Comments at 8.

²⁰ *See, e.g., Public Notice: Proposed Second Quarter 2011 Universal Service Contribution Factor*, DA 11-473 (2011). Even if the Commission were to double the base of contributors, the fee by any normal standard be considered excessive; *see supra*. n. 7.

universal service support will remain within the \$4.5 billion per year constraint,” which is described as the “current size of the high-cost program.”²¹ However, upon closer examination, this budget as explained further in the McCormick Letter is riddled with loopholes.

First, the amount of funding it allows for rate-of-return carriers increases by \$300 million in the sixth year or \$2.3 billion in total. When this amount is added to the \$2.2 billion allocated for areas served by price cap carriers²² and the \$300 million for mobility objectives, the budget becomes \$4.8 billion, which is almost a seven percent increase.

Second, the budget only remains in effect for six years at which time the authors of the plans believe it should not continue unless the Commission finds “that any budget target limitations are necessary going forward thereafter.”²³ Given the incentives of providers to seek additional government support, the history of past increases in support, and the fact that funding is “off-budget,” this will result in tremendous pressure for the Commission to forgo fiscal discipline and increase funding.

Third, the McCormick Letter even calls into question, when discussing extending the budget, whether “such budget targets can in fact be adopted and implemented consistent with the requirements of Section 254 of the Communications Act, as amended.”²⁴ This approaches a “bait and switch” scheme: how can the initial budget be legally permissible and act to ensure fiscal responsibility but not one adopted six years later? Moreover, this legal reasoning is contrary to comments filed by at least some signatories to the letter. Verizon and Verizon Wireless, for instance, in their April 18, 2011 comments calling for the Commission to “set an

²¹ ABC Plan at 1-2. This amount is \$200 million greater than the cap proposed by the Commission in the *NPRM* (§20).

²² McCormick Letter at 2. It appears that any ARM funding for price cap carriers is included in this amount.

²³ *Id.*

²⁴ *Id.*

overall budget for high cost funding at 2010 levels...and to establish an expectation that funding will decrease over time”²⁵ stated, “The D.C. Circuit concluded last year that the Commission must exercise fiscal responsibility with universal service funding by ‘balanc[ing] the risks of excessive subsidization with the principles set forth in § 254(b)’ and ‘consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service.’”²⁶

Consequently, under the ABC and RLEC Plans, there is abundant opportunity for the fund to grow, which the Commission should not permit. ACA urges it to adopt a hard and durable cap, accounting for all explicit universal service support, set at the 2010 level and remaining in effect without any sunset provision. Further, the Commission should regularly audit the fund during the year to ensure it will remain within the cap.

Finally, ACA notes that, even with a hard and durable cap, the year-end 2010 level of funding for CAF will be sufficient to transition from the current support mechanisms and meet the Commission’s universal broadband objective for a variety of reasons:

Evidence over the past decade indicates that entities drawing from the High-Cost fund have strong incentives to maximize their individual take and few incentives to become more efficient.²⁷ Substantial savings can be realized by administering the High-Cost fund more efficiently and reducing wasteful spending.

²⁵ See Comments of Verizon and Verizon Wireless, WC Docket No. 10-90 et al.at 56 (filed Apr. 18, 2011) (“Verizon Comments”).

²⁶ *Id.* at 56 -57. Verizon and Verizon Wireless continue (at 57): “The court concluded that it was ‘entirely reasonable’ for the Commission to ‘consider its interest in avoiding excessive funding from consumers’...The D.C. Circuit echoed the Fifth Circuit’s earlier finding in its *Alenco* decision.” AT&T in its comments also seeks to limit broadband support: “An excessively large fund would unnecessary burden those contributors, making broadband service less affordable and undermining the Commission’s adoption goals.” AT&T Comments at 85-86.

²⁷ *National Broadband Plan* at 147.

Certain of the High-Cost support mechanisms still in effect were originally designed to be temporary.²⁸

Because competition has developed in many areas where entities currently receive High-Cost support, funding in such areas is no longer required or can be more effectively targeted.²⁹

Telecommunications/Broadband is a declining cost industry characterized by substantial economies of scale and scope and rapid technological innovation.

By accounting for these factors, the Commission will be able to create sufficient funding to move forward to achieve its universal broadband objective.

III. SUPPORT FOR UNIVERSAL BROADBAND SERVICE MUST BE DISTRIBUTED IN A COMPETITIVELY NEUTRAL MANNER

ACA supports the Commission's goal of driving universal access to affordable broadband services as efficiently as possible.³⁰ As indicated by the just completed survey,³¹ 75 percent of ACA cable operator members not currently receiving High-Cost support, which include broadband providers in rural areas, believe that they could provide broadband efficiently in unserved or underserved areas if the government provides support to extend their

²⁸ For example, Interstate Access Support ("IAS") was originally created in 2000 as an interim part of a five-year transitional reform plan, which was expressly designed to keep regulated voice rates affordable. The Commission noted that in the *NPRM* no commenter provided data or analysis demonstrating that IAS continues to be necessary to address its original intended purpose. See *NPRM*, ¶ 232.

²⁹ In its Petition for Rulemaking filed in 2009, the National Telecommunications and Cable Association determined that cable operators provide voice service to between 74 and 84 percent of households overall and 43 percent of households (6.6 million) in rural LEC study areas. The Petition further determined that cable voice service is available in most rural study areas, and in 21 percent of the study areas coverage exceeds 50 percent. *National Telecommunications and Cable Association, Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition*, Petition for Rulemaking, RM-11584, at 6-7 and n.17. (filed Nov. 5, 2009); see also Federal Communications Commission, *Connecting America: The National Broadband Plan* at 147 and n.94 (rel. Mar. 16, 2010) (*National Broadband Plan*) (citing Nat'l Telecomm. Coop. Ass'n, 2009 Broadband/Internet Availability Survey Report 3, 9).

³⁰ See *NPRM*, ¶ 1.

³¹ See *supra* n. 7.

infrastructure to premises (last mile support) and to construct or obtain middle mile links with sufficient capacity. They are eager to see the Commission provide competitively neutral and efficient support for universal broadband deployment so they can seek to serve these areas.

The ABC Plan, however, would quash any attempt by competitors to access government support to deploy high-performance broadband universally, thereby further ensuring that support is distributed most efficiently and effectively. In their proposal for the CAF, the Price Cap incumbents grant themselves a new government entitlement by relying on the specious rationale that because they have “already made substantial investments,” they can “accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs.”³² But, if they are in fact the most effective and efficient providers of broadband to unserved or underserved areas, the Price Cap incumbents would have nothing to fear from a competitively neutral distribution process. The fact that they want to skew the process in their favor demonstrates this is not the case, and the Commission should eschew their proposal for CAF distribution both because it is not competitively neutral and because it is not fiscally responsible.³³

The ABC Plan’s CAF distribution proposal contains a series of measures that provide a substantial competitive advantage for the Price Cap incumbents in accessing this support. The most competitively-offensive of these measures is to forgo a competitive distribution process

³² ABC Plan at 6.

³³ In the *Public Notice*, the Commission poses a number of questions about the mechanics of the ROFR proposal in the ABC Plan. See *Public Notice* at 4. Because ACA believes the ROFR proposal is fundamentally not competitively neutral, it does not believe tinkering with the mechanics will alter the basic inefficiency, profligacy, and unfairness of the proposal.

and, instead, give incumbent LECs a ROFR to access support if they have made Internet service available to more than 35 percent of service locations in the wire center.³⁴

Further, while the ABC plan correctly provides that CAF support will not be awarded in census blocks where there is competition from an “unsupported provider,” the definition of an unsupported provider is unduly and unreasonably restrictive. That is, it does not include an entity: (1) if it once received federal or state high-cost universal service fund support;³⁵ (2) with any state or federal service obligations;³⁶ (3) that offers broadband service meeting the speed thresholds of 4 Mbps downstream and 768 kbps upstream but not meeting the vaguely worded requirement of providing “robust service that is sufficient for households to use education and health care applications specified by the Commission,”³⁷ or, (4) that enters an area after 2012 but prior to the initial award of CAF support.³⁸

The ABC Plan also tilts the process by determining supported areas and the amount of support on the basis of the incumbent LEC’s (wire center) infrastructure – as opposed to a network neutral approach.³⁹ In addition, the obligations placed on CAF recipients are constructed to enable lower performing DSL networks of incumbent LECs to qualify, which deprives consumers in these areas of having access to broadband service at a performance level used by consumers in urban areas. These obligations also provide for an inordinate amount of time to construct facilities – five years – and there is no required price for broadband service. Finally, no restriction is placed on an incumbent LEC (or for that matter any CAF recipient)

³⁴ *Id.* at 6.

³⁵ *Id.* at 3.

³⁶ *Id.*

³⁷ *Id.* at n. 3.

³⁸ *Id.* at 3.

³⁹ *Id.* at 4, 6.

from using its support to build infrastructure that could be used to provide service in areas served by unsupported providers.

In essence, the Price Cap incumbents have given themselves access to much more government support than they have today with minimal obligations. That is a bad deal for consumers, competitors, and the Commission, and it should be rejected.

Instead, ACA submits the following plan for distribution of CAF support, which will maximize the deployment of broadband universally and do so in a competitively neutral manner.

The Commission should:

1. Develop a competitively neutral cost model to determine high-cost census blocks and set the reserve price for competitively neutral distribution (i.e. reverse auctions) of CAF support to wireline service providers;⁴⁰
2. Determine which census blocks are served (or will be served at the time of the auction) by an unsupported provider of broadband service at speeds of 4 Mbps downstream and 1 Mbps upstream;⁴¹
3. Aggregate census blocks that are high-cost and without a competing unsupported provider into compact and contiguous geographic areas suitable for wireline network deployment and the provision of broadband service;
4. Use reverse auctions to award CAF support to a single provider, with the following clear and objective requirements that CAF recipients would need to meet:
 - a. The network should be built within three years of the winning bid, and services should be provided for five years after construction is completed.⁴²

⁴⁰ As noted earlier in these comments, ACA believes that the need for wireless support, other than in the highest-cost areas, should be determined and distributed separately.

⁴¹ See ACA Comments at 22. These performance levels represent current national average broadband speeds. With broadband performance steadily increasing, the Commission should regularly revisit this benchmark.

⁴² The three year build-out requirement is the same used in the Broadband Stimulus support programs administered by the Rural Utilities Service and the National Telecommunications and Information Administration, which attracted hundreds of applications for extensive construction projects. The ABC Plan proposes that the CAF recipient be able to operate the supported network for 10 years. See ABC Plan at 8. In a dynamic industry, that is very long period. ACA can support an operating period longer than five years, but only if support is awarded through a competitive process and where

- b. Expected broadband performance should be forward-looking, which, at a minimum, should be 16 Mbps downstream and 4 Mbps upstream.⁴³
- c. The price charged to users for broadband service should be a national urban average rate for such service.

5. For those areas where no bids are received (or bids exceed an amount predetermined and announced by the Commission), the Commission should consider permitting all, including non-fixed service providers, to bid for operating support to provide service.⁴⁴

ACA further submits that the Commission phase-in the award and distribution of CAF support over a period of several years, beginning with those areas where the least amount of support will ensure broadband service to the greatest number of locations. These areas should be most attractive to providers, thus ensuring bidding is competitive.

In sum, by adopting a competitive process to award CAF support, the Commission will maximize use of its funding and most effectively deploy broadband. In contrast, the ROFR proposal will continue to waste resources in an ineffective effort to extend broadband service.

the recipient is required to continuously upgrade its broadband performance to ensure it is comparable to that being provided at that time in urban areas.

⁴³ See ACA Comments at 28-30. ACA submits that the Commission should require CAF recipients to commit to provide service within the relevant supported area at national forward-looking broadband speeds that initially should be set at a minimum level of 16 Mbps downstream and 4 Mbps upstream. ACA members make broadband service with these speeds available today, and, given the steady advance in technology and network capabilities, these performance levels will be easily met by the time service supported by CAF funds is initiated. Further, requiring CAF recipients to commit to provide service at forward-looking higher speeds will help ensure that areas receiving support will have access to high-performance service necessary to access critical applications and content farther into the future. In sum, not adopting ACA's proposed, or even higher, performance targets would be a real setback for rural America.

⁴⁴ This proposal is similar to the "highest-cost" proposal in the ABC Plan. See ABC Plan at 5.

IV. THE ABC PLAN'S ACCESS REPLACEMENT MECHANISM IS NOT COMPETITIVELY NEUTRAL

Most local telecommunications providers, incumbents and competitors, bill and collect terminating access charges. Thus, any proposal to amend the current regulations affects both types of providers, and, for any new regulation to be competitively neutral and in the public interest, it should treat both equally. Unfortunately, the ARM proposed in the ABC Plan, which is accessed only by Price Cap incumbents, does not meet this criterion. This is especially the case because it provides these incumbents with the ability to “recover 90 percent of any revenue reduction greater than the imputed SLC increase”⁴⁵ until 2018 and only then is the amount phased-out. In short, the Commission should reject the ABC Plan’s proposed ARM on the ground that it is not competitively neutral.

Further, transitional mechanisms like an ARM have a way of becoming permanent rights. The Commission, for instance, noted this reality in the *NPRM* finding that the Interstate Access Support component of the High-Cost fund “has lasted long past its intended five-year lifespan.”⁴⁶ Given this potential, the Commission should only consider adopting an ARM where harm is demonstrable and severe and should ensure the mechanism sunsets automatically after a brief period.

Should the Commission determine that a transitional ARM for the Price Cap incumbents is absolutely necessary, ACA agrees with the comments submitted by Verizon earlier this year that the following policies should apply:

⁴⁵ ABC Plan at 12.

⁴⁶ *NPRM*, ¶ 233.

1. “Companies that do not charge their end users retail rates in line with a reasonable nationwide benchmark should not be permitted to recover from the fund any of the revenue that could be recovered by charging the benchmark rate.”

2. “Any transitional mechanism should disburse less than 100 percent of the intercarrier compensation revenue a carrier loses (properly accounting for end-user rate rebalancing) as a result of intercarrier compensation reform – and that initial disbursement should be further reduced during each transition year by an amount that exceeds the carrier’s historical annual decline in intercarrier compensation revenue (also accounting for annual line loss).”

3. “The transition fund should sunset after...three years.”⁴⁷

V. THE ABC PLAN’S PROLONGED PHASE-OUT OF CURRENT HIGH-COST SUPPORT TO PRICE CAP CARRIERS IS NOT COMPETITIVELY NEUTRAL

The ABC Plan proposes to reduce legacy High-Cost support for price cap LECs over a five-year period beginning in July, 2012.⁴⁸ This contrasts with the Commission’s proposal for a two-year phase-out of IAS, the largest component of support for price cap LECs.⁴⁹ As the Commission concludes, “IAS does not appear necessary to provide voice service at affordable and reasonably comparable rates and does not appear to be effectively structured to promote broadband deployment.”⁵⁰ The Commission also finds “that current IAS recipients would be eligible to compete for CAF support.”⁵¹ ACA supports the Commission’s proposal, not only for

⁴⁷ Verizon Comments at 20-21. AT&T also supports a “*temporary* ARM,” using this rationale as a prime justification for support (Reply Comments of AT&T, WC Docket No. 10-90 et al. at 38 (filed May 23, 2011)).

⁴⁸ ABC Plan at 8-9.

⁴⁹ *NPRM*, ¶ 234.

⁵⁰ *Id.*, ¶ 233.

⁵¹ *Id.*

the reasons expressed by the Commission, but because it reflects competitive realities. The ABC Plan's phase-out is retrogressive, reflecting monopoly era thinking when long transitions had no competitive consequences.

As discussed above, local competitors offering service without support are present in many, if not most, areas served by Price Cap LECs receiving support, a situation that is clearly not competitively neutral. Further, this does not serve the Commission's aim of efficiently distributing universal service funds. The Commission can remedy these problems and achieve its policies by, as it proposes, accelerating the process of phasing out current support and in tandem disaggregating Price Cap LEC study areas into census blocks where competition exists and support is no longer required and those blocks where CAF support is necessary. The Commission can then award CAF funding, including to Price Cap LECs if they are lowest bidders, through an efficient, effective, and competitively neutral mechanism.

VI. OTHER ISSUES IN THE PUBLIC NOTICE

A. All Qualified Providers Should be Able to Seek and Receive CAF Support.

To maximize the value of the CAF and to ensure its policies are competitively neutral, the Commission should allow all qualified providers to receive support. The current Eligible Telecommunications Carrier ("ETC") qualification rules can be burdensome, inhibiting qualified providers – particularly smaller providers that have demonstrated capability and expertise to offer advance broadband service in unserved areas – from participating in the process to receive support. ACA submits that all qualified entities should be permitted to seek support. Allowing qualified entities to seek support, including by participating in the reverse auction process proposed by ACA, will advance the Commission's objectives of driving access to affordable

broadband services in unserved areas as efficiently as possible and maximize the number of participants.

ACA believes its objective can be best achieved by following AT&T's proposal that the submission of an ETC application should not be a prerequisite to participation in a competitive funding-allocation process, and the eventual ETC designation should be granted by the Commission, not a state PUC.⁵² AT&T submits that this can be achieved by the Commission asserting exclusive jurisdiction over the designation of CAF ETCs.⁵³ As AT&T notes, section 214(e)(2) grants state commissions authority to "designate a common carrier . . . as an eligible telecommunications carrier."⁵⁴ Because broadband is an information service regulated by the Commission under Title I of the Act, the Commission has authority to create a separate process for evaluating CAF ETC applications.⁵⁵

ACA also agrees with AT&T that each provider that prevails in the competitive funding-allocation process should be required to apply for designation as a CAF ETC. The Commission should designate the provider as a CAF ETC in all of the census blocks for which it is awarded CAF support and only in those census blocks.⁵⁶ Requiring broadband providers to apply for ETC status only after their bids are accepted would both encourage participation in the bidding process by eliminating a premature (and, at that time, unnecessary) regulatory classification and ensure that providers do not "find [] themselves designated [as ETCs], and subject to the

⁵² See AT&T Comments at 100.

⁵³ *Id.* at 107.

⁵⁴ *Id.*

⁵⁵ For the offering of broadband service, since it is an information service, CAF ETCs would not need to comply with traditional state telecommunications requirements to provide such service. In addition, while ACA believes a CAF ETC should be obligated to provide voice service, this is ancillary to its broadband offering, and any service ETC requirements for such service also should be established by the Commission.

⁵⁶ *Id.* at 101.

obligations that go along with being designated, in areas where they do not win support.”⁵⁷

Regardless of the procedure used, broadband providers should be designated as CAF ETCs only in those census blocks for which they actually receive CAF funding.

B. Providing a Gradual Transition for Incumbent ETCs with Fewer than 100,000 Access Lines is Consistent with the Commission’s Universal Broadband Objective and Overall Reform of Universal Service Funding

The Commission’s proposals in the *NPRM* to reform the High-Cost fund and establish the CAF seek to strike a balance among many objectives, including seeking universal broadband service and eliminating inefficiencies. While ACA supports many of the Commission’s proposals, it believes they should be rebalanced when it comes to dealing with telephone companies (ETCs) with fewer than 100,000 lines in the aggregate. These smaller providers are most reliant on current High-Cost funding to provide service to consumers and will suffer most if funding is reduced significantly and precipitously. Further, these smaller telephone companies have generally demonstrated competence in providing service and have a deep commitment to their customers. They thus have the capability to help meet the Commission’s universal service objective. Finally, the Commission, because its policy reforms are ambitious, involving new procedures, may face difficulties in the implementation process. This process could be eased by providing a longer glide path for smaller providers.

To address these concerns, ACA proposes that the Commission offer smaller wireline ETCs the ability to elect to continue to draw from the High-Cost fund for a period of eight years so long as they agree to commit to provide broadband service in all their service areas (with coverage to 90 percent of households) at the following minimum performance levels:

⁵⁷ *Id.* at 101-102 citing *NPRM* ¶ 319.

- Within two years, 4 Mbps downstream and 1 Mbps upstream;
- Within four years, 8 Mbps downstream and 2 Mbps upstream; and
- Within six years, 16 Mbps downstream and 4 Mbps upstream.

If the provider refuses the offer, the Commission would undertake the same disaggregation process discussed herein for Price Cap carriers⁵⁸ and then hold a reverse auction to select an entity to receive support to provide broadband service. ACA's proposal does not obviate the need for the Commission to ensure that any support going to these entities is efficient.

At the end of the eight year period, High-Cost funding to these providers would sunset. The Commission would then disaggregate support in the overall service territory of the smaller carrier to ensure that no support is awarded within an area (by census block) where broadband service is being offered. For census blocks that have no unsupported competitors and are high-cost, the Commission would hold reverse auctions to select service providers (which may be the smaller incumbent LECs) to receive support to provide broadband service.

ACA notes that its approach has a sound basis. In 2008, the Commission considered – and there appeared to be strong support for – a rule permitting smaller ETCs to continue to draw High-Cost support so long as they fulfilled broadband performance mandates.⁵⁹ ACA's proposal is even more stringent, increasing those performance requirements substantially so that they reflect the current state of technology and expected performance and providing for an eventual sunset. In sum, ACA believes its proposal will further the goal of universal broadband service efficiently and equitably.

⁵⁸ See *supra*. Section III.

⁵⁹ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008).

C. The Commission Should Establish Separate Support for Fixed and Mobile Broadband Within the Overall Cap

The *National Broadband Plan* concluded that “America should have healthy fixed and mobile broadband ecosystems.”⁶⁰ ACA agrees and believes the CAF should be available to both fixed and mobile broadband providers. However, mobile and fixed broadband services are not sufficiently close substitutes because the performance, coverage, and reliability capabilities differ significantly.⁶¹ Consequently, ACA strongly recommends that the Commission separate support for each within the total CAF. The Commission would assess the unserved/underserved nature of each broadband service separately, and then determine funding objectives and budgets for each.

For mobile broadband service, the Commission should move forward to establish the Mobility Fund it has proposed, which seeks to “significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where coverage is currently missing.”⁶² The Commission has proposed using a portion of competitive ETC funding already relinquished by Verizon Wireless and Sprint Nextel for the Mobility Fund.⁶³ The *Mobility Fund NPRM* recognized that even in areas without 3G coverage, there may be access to other supported services using non-mobile wireless technologies and thus there may be no need for support from the Mobility Fund.⁶⁴ To ensure that only areas truly in need of support receive

⁶⁰ *National Broadband Plan* at 146.

⁶¹ It should be noted that the *National Broadband Plan* recognizes there are differences between fixed and mobile services and recommends the creation of a fund for the explicit purpose of ensuring universal 3G mobile service. *Id.*

⁶² *Id.*, ¶ 1.

⁶³ *Id.*, ¶ 13.

⁶⁴ *Id.*, ¶ 23.

it, ACA believes it essential that the Commission limit access to Mobility Fund support to only those areas where 3G service will not be constructed by the private sector.

VII. CONCLUSION

The Commission has an excellent opportunity to reform the USF and ICC regimes later this year to achieve universal broadband deployment. But, it cannot simply marry that new objective with the previous goals and practices of the High-Cost and ICC regimes. Instead, to be in the public interest, any new program must recognize that competition has burgeoned and technology has changed, and hence the old system should be ended as quickly as possible and replaced with one that is fiscally responsible and competitively neutral. ACA believes this is achievable. In these comments, it has set forth a series of fixes for the most problematic parts of the ABC and RLEC plans. It urges the Commission to adopt them as part of any reform measure.

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August 24, 2011

