COMMENTS OF THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION ON THE FURTHER INQUIRY ON UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION

The South Dakota Telecommunications Association (SDTA), by its attorneys, submits the following comments on the Commission’s Public Notice (Further Inquiry into Certain Issues in the Universal Service – Intercarrier Compensation Transformation Proceeding), DA 11-1348, released August 3, 2011 (“Public Notice”). Specifically, SDTA supports and urges the Commission to adopt the Joint Rural Associations Plan as put forth by the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Telecommunications Companies, and Western
Telecommunications Alliance, as modified by the Consensus Framework\(^1\) reached with the six price cap carrier supporters (AT&T, Verizon, CenturyLink, Windstream, Frontier and FairPoint) of the America’s Broadband Connectivity Plan.

I. Introduction

SDTA’s membership includes all of South Dakota’s rural incumbent local exchange carriers (RLECs).\(^2\) The membership includes 12 companies that are rural telephone cooperatives, 5 local exchange carriers that are owned by and affiliated with these cooperatives, 3 municipally owned telephone companies, 1 tribally owned telecommunications company, and 4 privately held rural telephone companies which are either locally based or which have local facilities in the State. The service areas of the RLECs cover approximately 80% of the State’s geographic area consisting of an area of approximately 62,162 square miles. The average customer density throughout the RLECs' service areas is approximately 2.3 customers per square mile.

As of the fourth quarter of 2010, SDTA's members served 134,365 access lines.\(^3\) As SDTA noted in earlier comments in this proceeding, SDTA's members invested over $133,196,000 in capital expenditures in 2008 and 2009 and were projected to invest over the

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\(^{2}\) A listing of all of the current SDTA members is filed herewith as “Attachment A”.

\(^{3}\) This access line count number is taken from the USAC document “High Cost Loop Support Projected by State by Study Area Fourth Quarter 2010” and includes all study areas served by SDTA member incumbent local exchange carriers.
2010-2011 two-year time frame approximately $91,966,000. In most cases, the RLECs were the first companies to provide basic telephone services to the rural communities that they serve, and they have existed in these areas as the only “Carrier of Last Resort” (COLR) for fifty (50) years or more. In addition to basic telephone services, all of the RLECs also provide access to broadband service to almost 100% of their customers via a variety of broadband delivery technologies, including Digital Subscriber Line (DSL), Cable Modems, Fiber-to-the-Premises, and wireless technologies. Deployment of DSL, one of the primary broadband delivery technologies, started in the late 1990's in South Dakota and became widespread by the early 2000's. Since that time, the RLECs have deployed broadband facilities steadily, and now almost 100% of customers within their service areas have broadband Internet access.

Federal universal service support and intercarrier compensation revenues have been critical in enabling the RLECs to make the necessary investment in facilities to deploy high quality voice and broadband services. Presently, the RLECs members of SDTA receive, on average, approximately 24 percent of their total regulated revenues from federal universal service support and 28 percent of total regulated revenues from intercarrier compensation (including special access).4 The RLECs' voice and broadband networks would not exist as they do today without the assistance that has been provided through the federal universal service support mechanisms and the revenues provided through intercarrier compensation payments.

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4 It should be noted that these percentages are based on both 2009 and 2010 data. The intercarrier compensation percentage, specifically, is based on a comparison of only billed switched and billed special access revenues to total regulated revenues (for 23 of SDTA’s 25 member companies, representing 95 percent of total SDTA member company access lines or working loops). If the special access revenues are removed and only billed switched access and reciprocal compensation revenues are included, the intercarrier compensation percentage in relation to total regulated revenues is 18 percent.
II. The Joint Rural Associations Plan Universal Service and Intercarrier Compensation Proposals, As Modified by the Consensus Framework, Would Reduce the Adverse Effects of Reform

As shown in SDTA’s reply comments filed in this proceeding on May 23, 2011, the proposed changes to high cost loop support set forth in this Commission’s earlier Notice of Proposed Rulemaking (NPRM), released on February 9, 2011, would reduce, arbitrarily and significantly, the revenues of the South Dakota RLECs, inhibiting the ability of many of the carriers to maintain and operate their current networks and expand broadband facilities. Further, the proposals to eliminate all recovery for corporate operating expenses (COE) and eliminate local switching support (LSS) seem particularly biased against the operations of RLECs and cannot be justified. As an alternative, the proposed targeted changes to universal service mechanisms in the Joint Rural Associations Plan, as modified by the Consensus Framework, would satisfy the Commission’s reform objectives while reducing the negative impact on the broadband facilities and services already deployed by rural ILECs.

Similarly, as shown in SDTA’s reply comments, the various proposed changes to intercarrier compensation, as set forth in the Commission’s earlier NPRM, would have a substantial adverse effect on SDTA’s member companies. The South Dakota RLECs obtain approximately 28 percent of their total regulated revenues from intercarrier compensation. As shown in SDTA’s Reply Comments, the South Dakota RLECs charge an average, composite intrastate switched access rate of $0.122 per minute of use. The average, composite interstate switched access rate charged by the same companies is $.0527 per minute of use. Accordingly, given the significant differences in these intrastate and interstate rates, a significant reduction in the intrastate switched access rates would be needed to make the rates equal, which would result in a significant loss in intrastate access revenues. Reducing access charges further to a unified
rate of $0.0007 would result in an estimated revenue loss of over $37 million (approximately $37,247,577), or $24.27 per line per month, on average, for the South Dakota RLECs. For many of the companies, the per-line, per-month impacts would be even greater.

Very clearly, the adoption of such a proposal, absent making some offsetting revenue recovery available through a “Restructure Mechanism,” would have severe negative consequences for all of the RLECs in South Dakota and their rural customers. End user rates simply could not rise to the levels needed to replace these revenue losses in a competitive market and, in any event, rates at such levels would obviously no longer be "reasonably comparable" to urban rates as is required under the federal universal service provisions in the Act. Further, the revenue losses that would accompany the “.0007” proposal would profoundly impact the RLECs’ ability to maintain and operate their current networks and meet their existing loan commitments, and would make it almost impossible for the carriers to continue with network upgrades and advance their broadband service offerings.

Because of the significant revenue losses associated with reducing access charges, a sufficient federal revenue replacement mechanism must be part of any such rebalancing. Accordingly, SDTA supports the establishment of a Restructure Mechanism as is recommended under the Consensus Framework. Although the Restructure Mechanism described within that Framework would not be applicable to any rate changes associated with originating switched access services and this does cause concern, the Mechanism as proposed would be adopted in conjunction with terminating access charge rate reductions and would reasonably grow over a defined transition path. A Restructure Mechanism of this sort that is sufficient and predictable based on the specific rate reductions prescribed, is absolutely essential to avoid rate shock and
keep both retail local service and broadband rates affordable and to also ensure a level of continued capital investment needed to maintain high quality services to rural area customers.

III. All ETCs Should Meet Carrier of Last Resort Obligations

SDTA continues to maintain that all entities receiving universal service support (including support from a Connect America Fund) must be subject to a carrier of last resort (COLR) obligation. Section 214(e) of the Act establishes comprehensive COLR status and responsibilities for federal universal service recipients. Moreover, the success of rural ILECs in extending voice and broadband services to all parts of their service area is, in large part, a consequence of the serious commitment to meet COLR obligations. If broadband deployment is to be expanded to unserved and underserved areas, especially those served by larger carriers, well defined COLR obligations should be applied to and enforced on all universal service recipients. Accordingly, SDTA urges the Commission, with the assistance of State Commissions, to impose a COLR obligation on all recipients of federal universal service support.

IV. Support Can Only be Provided to Common Carriers

SDTA continues to maintain that the Commission has neither the authority nor the jurisdiction to distribute universal service funds to non-common carriers. The language and legislative history of §254(e) and §214(e) make it plain that support may only go to eligible telecommunications carriers (ETCs). Sections 254(e) and 214(e) unequivocally provide that only properly designated ETCs are eligible to receive Federal universal service support, and that

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5 See, e.g., Comments of the Blooston Rural Carriers, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51, filed April 18, 2011, at p. 19.
an entity designated as an ETC must be a common carrier.\textsuperscript{6} The Commission cannot ignore the mandate of Congress, plainly stated, in these sections of the Act.

Neither can the Commission forbear from enforcing Sections 254(e) and 214(e) of the Act, which require federal support to be distributed to eligible telecommunications carriers alone. On the contrary, Sections 254(e) and 214(e) are restrictions on the Commission, not on telecommunications carriers or services and, therefore, are not subject to forbearance. Furthermore, the Commission can only forbear from regulations whose protections are no longer necessary.

\textbf{V. The Commission Does Not Have Unconstrained Authority to Define Service Areas}

SDTA continues to maintain that the Commission does not have the sole authority to define or redefine service areas and, therefore, cannot on its own substitute census blocks (or any other delineation) for determining the distribution of universal service funds. In addition, as discussed by SDTA in its Reply Comments filed on May 23, 2011\textsuperscript{1}, census blocks have already proven to be problematic, having created complications in the NTIA Broadband Mapping Program and BTOP/BIP\textsuperscript{7} stimulus funding programs.

Section 214(e)(5) expressly limits the definition of service area to the study area of the relevant company, unless and until the Commission and the state commission take prescribed steps to change the definition. Therefore, SDTA believes that the Commission does not have the authority to change the way service areas are designated for the purposes of universal service funding.

\textsuperscript{6} \textit{Id.} at 20.
\textsuperscript{7} The Broadband Technology Opportunities Program and the Broadband Initiatives Program, respectively.
VI. Conclusion

Federal universal service support and intercarrier compensation revenues have long been critical in enabling the RLECs to make the investments necessary to deploy high-quality voice and broadband facilities. SDTA supports the Joint Rural Associations Plan, as modified by the Consensus Framework, to ease revenue reductions via a federal restructuring mechanism, and impose COLR obligations on all recipients of federal universal service funds. These proposals will address some of the identified issues in the industry, while preserving universal service.

For these reasons, SDTA urges the Commission to adopt the proposals contained in the Joint Rural Associations Plan, as modified by the Consensus Framework.

Respectfully submitted,

THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

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Beresford Municipal Telephone Company
Brookings Municipal Utilities d/b/a Swiftel Communications
Cheyenne River Sioux Tribal Telephone Authority
Faith Municipal Telephone Company
Fort Randall Telephone Company
Golden West Telecommunications Cooperative
Hills Telephone Company, Inc.
Interstate Telecommunications Cooperative, Inc
James Valley Telecommunications
Kennebec Telephone Company, Inc.
Knology Community Telephone
Long Lines d/b/a Jefferson Telephone
Midstate Communications, Inc.
RC Communications, Inc.
Roberts County Telephone Cooperative Association of New Effington, SD
Santel Communications Cooperative, Inc.
Splitrock Properties, Inc.
Stockholm-Strandburg Telephone Company d/b/a ITC
TrioTel Communications
Valley Telecommunications Cooperative Association, Inc.
Venture Communications Cooperative
West River Cooperative Telephone Company
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8/24/11
Service List

On August 24, 2011, a copy of the forgoing Comments of the South Dakota Telecommunications Association on the Further Inquiry on Universal Service and Intercarrier Compensation was served on each of the following via U.S. Mail, postage prepaid, or electronic mail, as indicated:

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