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 a 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

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INTRODUCTION AND SUMMARY

America's Broadband Connectivity Plan presents the Commission with a historic opportunity to put its own *National Broadband Plan* into action and deliver broadband to all Americans, no matter where they live.[1] While the vast majority of Americans now have access to broadband as a result of massive private investments, the Plan promotes deployment even in those areas where it is not otherwise economical and provides funding to maintain broadband service in areas where facilities are present only because of existing support. To achieve ubiquitous access to broadband, the ABC Plan effects critical reform of the universal service and intercarrier compensation systems — reform that is now within reach for the first time since the 1996 Act. The Plan is good for consumers, is good policy for the Commission, and makes good business sense for the industry. We collectively urge the Commission to adopt the ABC Plan without delay.

The ABC Plan represents an unprecedented agreement among six providers of broadband, voice, and other communications services. It also incorporates a breakthrough compromise with NTCA, OPASTCO, and WTA, the trade associations representing the majority of rural rate-of-return carriers.[2] These agreements carefully navigate the most complicated, contentious issues that have blocked essential changes to the universal service and intercarrier

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1 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, FCC, CC Docket Nos. 01-92, 99-200, 96-98, 99-68; WC Docket Nos. 05-337, 07-135, 10-90, 03-109, 06-122, 04-36; GN Docket No. 09-51 (filed July 29, 2011) ("ABC Plan" or "Plan").

2 Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 96-45, 99-200, 96-98, 99-68; WC Docket Nos. 05-337, 07-135, 10-90, 03-109, 06-122, 04-36; GN Docket No. 09-51, Attach. at 1 (filed July 29, 2011) ("Consensus Framework Letter").

compensation systems for more than a decade. Together, these agreements make comprehensive reform possible.

To be sure, the ABC Plan requires deep compromises on entrenched positions from all sides. But the Plan finds consensus because of its focus on three key objectives that put consumers first:

- **Targeted and sufficient support for broadband in high-cost areas.** The ABC Plan would repurpose the antiquated high-cost portion of the Universal Service Fund ("USF") over time to offer targeted, sufficient support for the construction and maintenance of broadband networks in granular areas where there is no private-sector business case to deploy them.[3] The Plan would ensure that four million rural homes and businesses in high-cost areas served by price-cap carriers have access to broadband, two million of which would have access to broadband for the first time.[4] As part of the process, the Commission would shift to a procurement model for universal service in which carriers may elect, in exchange for funding, to provide broadband service in high-cost areas using any technology capable of delivering defined speeds and other capabilities.[5] At the same time, the Commission would eliminate, in areas where carriers are not supported, legacy regulatory obligations that no longer make sense in today's marketplace.[6]

- **A fiscally responsible USF budget.** Consumers pay for universal service programs through charges on their monthly bills. Consumers should not be required to double up on USF contributions for both standalone voice and new broadband services — and it is not necessary for them to do so. Broadband puts a suite of the most modern communications tools (including access to voice services) at consumers' fingertips. Critically, the ABC Plan and the companion agreement with rural rate-of-return ILECs would set an overall budget for the high-cost fund of $4.5 billion per year during the budget period (2012 – 2017) — the size of the current fund.[7] Moreover, the Commission would use a forward-looking cost model to ensure that high-cost funding is awarded in an efficient manner in areas served today by price-cap carriers.

- **Rational, uniform intercarrier compensation rates.** The byzantine system of different intercarrier compensation rates that depends on the location of the calling

[3] ABC Plan, Attachment 1, Framework of the Proposal, at 3, 8-9 ("ABC Plan Framework").

[4] *Id.* at 2, 5.

[5] *Id.* at 2-3.

[6] *Id.* at 8-9, 13.

[7] Consensus Framework Letter at 2; ABC Plan Framework at 1.

> and called parties, the technology used to make and receive a call, or the legacy regulatory status of the providers involved is not sustainable. The volume of calls subject to traditional intrastate and interstate access charges is shrinking rapidly, and arbitrage schemes manipulating intercarrier compensation payments continue to multiply. Carriers can no longer rely on revenue from these charges, nor do the different charges that carriers bill work in an environment where consumers demand any-distance, jurisdiction-agnostic services that include both voice and data functions. The ABC Plan would rationalize terminating rates with a single, low default rate of $0.0007 per minute for all traffic exchanged with the PSTN, regardless of provider or technology.[8] Carriers would remain free to negotiate different arrangements on a business-to-business basis.[9] Intercarrier compensation rates would transition down over time (avoiding flash cuts), while limited increases to federal subscriber line charges would be permitted and carriers would have an opportunity for time-limited recovery of a portion of their lost intercarrier compensation revenues from universal service funding.[10] At the same time, the Commission would address the appropriate intercarrier compensation treatment for VoIP traffic going forward, initially subjecting VoIP to either interstate access or reciprocal compensation rates.[11] Consumers would ultimately benefit from lower intercarrier compensation rates through lower prices and service innovations.

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The signatories to the ABC Plan will work collectively and individually in the coming weeks to help the Commission adopt an order at its October open meeting that implements the Plan and the companion agreement with the rural rate-of-return ILECs.[12] It is essential that the Commission quickly harness the unprecedented momentum from agreement on the ABC Plan and the consensus on critical elements of reform reflected in the companion agreement with the trade associations representing rural rate-of-return carriers. The Commission has been close before (though never this close and with this much support), but it ultimately failed to adopt

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[8] ABC Plan Framework at 9.

[9] *Id.* at 11.

[10] *Id.* at 9-11.

[11] *Id.* at 10.

[12] *Bringing Broadband to Rural America: The Home Stretch on USF and ICC Reform*, Joint FCC Blog post by Chairman Genachowski, Commissioner Copps, Commissioner McDowell, and Commissioner Clyburn (Aug. 8, 2011), http://www.fcc.gov/blog/bringing-broadband-rural-america-home-stretch.

comprehensive universal service and intercarrier compensation reforms — and the opportunity could again slip away unless the Commission acts very soon. Further delay is untenable and would leave millions of consumers without access to broadband and the tools they need to be full participants in the information age.

In the Public Notice,[13] the Commission asks a number of important, detailed questions about how to operationalize the ABC Plan and about the merits of other proposals, including a complementary plan to reform universal service support for rate-of-return carriers[14] and a different reform proposal by the state members of the Federal-State Joint Board for Universal Service.[15] Consistent with the agreement that the ABC Plan signatories negotiated with the trade associations representing rural rate-of-return carriers, we will defer to those associations to work with the Commission to finalize the details of universal service support in rate-of-return areas.

The state members of the Joint Board also propose many good ideas, some of which are reflected in the details of the ABC Plan. The state members' approach, however, focuses primarily on broadband funding in an impractical, cost-based way that does not reflect the modern communications marketplace. For instance, the centerpiece of the state members' plan

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13 Public Notice, *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, DA 11-1348, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 10-90, 07-135, 05-337, 03-109 (rel. Aug. 3, 2011) ("Public Notice").

14 Comments of NECA, et. al., *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime*, CC Docket Nos. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135, 10-90 (filed Apr. 18, 2011).

15 Comments by State Members of the Federal State Joint Board on Universal Service, *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90 (filed May 2, 2011).

is a well-intended but unworkable provider-of-last-resort fund that requires a "total company financial view" in order to determine and limit carrier-specific support amounts.[16] This regressive approach would subject the whole industry to an even more complicated version of rate-of-return regulation, which has matters precisely backwards. Indeed, the Joint Board's rate-of-return approach is contrary to the state-induced evolution away from rate-of-return regulation, as many states decades ago enacted laws to implement some form of alternative regulation. Even if a total company financial view could be devised and administered on a carrier-by-carrier basis, companies in a competitive market cannot subsidize one service with revenues from a different service. A system with these sorts of implicit support mechanisms is what we have today — and it does not work. Unlike the ABC Plan, the state members' approach also does not go far enough to keep the size of the high-cost fund at a level that consumers can afford. Nor does it solve the many problems associated with disparate intercarrier compensation rates.

Therefore, what follows below are specific responses to questions in the Public Notice about the ABC Plan. As this process moves forward, we will remain committed to addressing additional questions about how to operationalize and implement new universal service and intercarrier compensation systems that make sense for consumers, the Commission, and the industry.

Finally, we reiterate that the ABC Plan is a series of very carefully crafted compromises. Because of that, individual pieces of the Plan cannot be lifted out or modified without putting the whole Plan, and the support for it, in jeopardy. Likewise, changes to the timelines for implementing reforms not only could threaten the ABC Plan's proposed budget, but also could jeopardize the consensus support of the Plan. The intercarrier compensation reform and

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16 *Id.* at 56 (internal quotations omitted); *see* 4, 9, 33-35.

universal service reform provisions of the ABC Plan are inextricably linked, and it is essential that, as the Plan details, reductions in intercarrier compensation rates occur simultaneously with the ramp-up of the Connect America Fund and the new access replacement mechanism. The ABC Plan is already the result of hard choices and shared sacrifices. The Plan cannot be viewed as merely yet another starting point for reform; if it is, the opportunity to adopt comprehensive universal service and intercarrier compensation reform will slip away once more and may not come again. The ABC Plan signatories fully appreciate that it is the Commission's role to set the right public policy. We ask, however, that in exercising that important judgment the Commission weigh the value of a cohesive plan that has broad-based, unprecedented support.

DISCUSSION

In the pages that follow, the ABC Plan signatories offer direct answers to the questions posed by the Commission in the Public Notice. For each issue, we reproduce the question as articulated by the Commission and offer our collective response.

I. UNIVERSAL SERVICE.

A. Separate Support for Mobile Broadband.

- **Several parties propose that the Commission create two separate components of the Connect America Fund, one focused on ensuring that consumers receive fixed voice and broadband service (which could be wired or wireless) from a single provider of last resort in areas that are uneconomic to serve with fixed service, and one focused on providing ongoing support for mobile voice and broadband service in areas that are uneconomic to serve with mobile service (*i.e.*, a Mobile Connect America Fund), with the two components together providing annual support under a defined budget. We seek comment on providing separate funding for fixed broadband (wired or wireless) and mobility. How should the Commission set the relative budgets of two separate components? How should the budgets be revised over time?**

Consistent with the Commission's commitment to "control[] the size of the USF,"[17] the ABC Plan proposes two new support mechanisms that will help achieve the Commission's broadband goals while operating within the Commission's desired budget.[18] Under the Plan, the Connect America Fund ("CAF") would support the provision of broadband service "in those high-cost areas in which there is no private sector business case to offer broadband."[19] Contrary to the suggestion in the Public Notice, the CAF would not just provide support for "*fixed* . . . broadband service (which could be wired or wireless)."[20] Mobile broadband providers also would be entitled to compete for CAF support so long as their service offerings satisfy the definition of "broadband" adopted for purposes of the CAF mechanism and corresponding service obligations.[21] The budget for the CAF would set annual funding targets of $2.2 billion per year in high-cost areas served today by price-cap incumbent LECs,[22] and up to $2.3 billion per year in areas served by rate-of-return incumbent LECs.[23] The Advanced Mobility / Satellite Fund ("AMF") would support mobile service in certain high-cost areas[24] and satellite broadband

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17 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, 26 FCC Rcd 4554, 4647, 4680-81 ¶¶ 275, 414 (2011) ("*2011 NPRM*") (proposing to cap the Connect America Fund at the size of the legacy high-cost program in 2010); FCC, *Connecting America: The National Broadband Plan*, at 149-50 (2010), http://download.broadband.gov/plan/national-broadband-plan.pdf ("*National Broadband Plan*") (recommending that the Commission manage the overall size of the universal service fund to ensure that the fund remains close to its 2010 size).

18 ABC Plan Framework at 1. As part of its intercarrier compensation reforms, the Plan also proposes a "transitional access replacement mechanism" that "will disburse approximately $60-$80 million in the peak year and then decline over time as access demand declines . . . until access replacement support is eliminated entirely on July 1, 2020." *Id.* at 13.

19 ABC Plan Framework at 3.

20 Public Notice at 2 (emphasis added).

21 *See* ABC Plan Framework at 3 ("The broadband service obligation is technology-neutral: providers can use any wireline or wireless technology that meets the specified bandwidth and service requirements.").

22 The actual amount of funding distributed could be even less if competitive processes produce savings.

23 ABC Plan Framework at 2, 5; Consensus Framework Letter at 2. The agreement with the rate-of-return carriers calls for the Commission to "establish an annual funding target for areas served by rate-of-return carriers that begins at $2 billion and, to the extent necessary to help ensure sufficient funding, increases by $50 million per year (*i.e.*, increasing to $300 million, or a total annual budget target of $2.3 billion, in the sixth year)." Consensus Framework Letter at 2.

24 As discussed in the Framework, "[t]he ABC Plan does not include a detailed proposal for the operation of the AMF," and the ABC Plan signatories take no position on the specific mobile services that should be supported by the AMF. ABC Plan Framework at 8. Instead, the

service in the highest-cost areas.[25] The annual funding target for the AMF would be set at no more than $300 million per year.[26] The Plan also contemplates that, if necessary to keep the size of the high-cost fund within the annual budget of $4.5 billion during the budget period (2012 – 2017), the Commission could defer implementation of the CAF mechanism for high-cost areas served today by AT&T and Verizon. It is important that the Commission not expand these annual funding targets, as doing so would increase the contribution burden on consumers.

The amount of funding set aside under the ABC Plan specifically for mobility and satellite service is less funding than is distributed to competitive eligible telecommunications carriers ("CETCs") today. But this is not the only funding available to CETCs under the Plan. Any provider that can satisfy the broadband service requirements set by the Commission will be eligible to bid to become the broadband universal service provider in areas where the ILEC is not eligible for a "right of first refusal" for CAF support or declines to exercise that option. Moreover, the current identical support rule for CETCs contributed substantially to fund growth in recent years and makes little sense. A substantial amount of the high-cost support allocated to CETCs today is distributed in areas where multiple mobile providers — and sometimes more than *ten* mobile providers — offer service, including some that do so without receiving any support.[27] There simply is no reason to compound or perpetuate that problem. Indeed, in many of the areas where duplicative CETC funding is provided today, *no* carrier will be entitled to CAF or AMF funding, as the areas are already served by an unsubsidized broadband competitor and a mobile wireless provider.[28]

- **In the *USF/ICC Transformation NPRM*, the Commission sought comment on phasing down high-cost support for competitive eligible telecommunications carriers (competitive ETCs) over 5 years and transitioning such support to**

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signatories "look forward to working with providers of rural mobile broadband service, satellite broadband providers, and other interested parties to develop a complete proposal for the operation of the AMF." *Id.*

25 *Id.* at 1, 8.

26 *Id.* at 8.

27 *See FCC Response to U.S. House of Representatives, Committee on Energy and Commerce, Universal Service Fund Data Request of June 22, 2011, Request 7, Study Areas with the Most Eligible Telecommunications Carriers*, at 2, 10-11 (filed July 28, 2011), http://republicans.energycommerce.house.gov/Media/file/PDFs/2011usf/ResponsetoQuestion7.pdf (listing ten study areas where more than ten CETCs receive federal universal service funding, including one study area with 25 CETCs and another with 18); *id.* at 10-11 (suggesting that at least 15 of the 25 CETCs in the first study area and at least 12 of the 18 CETCs in the second study area are mobile wireless providers); *id.* at 12-19 (discussing similar figures in a number of other study areas); *id.* at 59 (indicating that 39.2 percent of the nation's housing units are in areas serviced by two or more wireless CETCs).

28 *See id.* at 46-58 (listing study areas where more than ten CETCs receive federal high-cost universal service support, but where multiple mobile wireless providers do *not* receive any such support).

the CAF. To what extent would projected savings associated with intercarrier compensation reform for wireless carriers as proposed in the ABC Plan help offset reductions in high-cost support for competitive ETCs? We ask parties to substantiate their comments with data and remind parties that they may file data under the protective order issued in this proceeding.

As proposed in the ABC Plan, the Commission should eliminate the identical support rule for CETC funding and transition to a technology-neutral method of distributing support for broadband networks in areas that would not be served without subsidies. It would be a mistake, however, to assume there is any connection between a wireless carrier's (or, for that matter, a wireline carrier's) reduction in legacy universal service support and any savings in intercarrier compensation expenses. It is certainly true that CETCs will see a reduction in intercarrier compensation expenses and will benefit from a more efficient and economical system. But any effort to engage in some form of "netting" of benefits is misplaced in competitive markets. In fact, the ABC Plan reasonably assumes — supported by Professor Hausman's paper — that reductions in intercarrier compensation expenses will flow through in benefits to consumers, whether in the form of lower prices, or beneficial investments and service innovations, or both.[29] In other words, reductions in intercarrier compensation expenses are likely to be competed away because carriers will be forced to reduce prices, or the "savings" to particular carriers will be accounted for through investments and innovations to services. Therefore, while the signatories to the ABC Plan agree that legacy CETC support (and all legacy high-cost support) should be phased out, the policy basis for that decision is not that there will be some numerical netting of benefits and burdens. Rather, as discussed above, CETC funding has long been an independent candidate for reform, and CETCs will have an opportunity to receive new AMF and CAF support.

B. Elimination of Rural and Non-Rural Carrier Distinctions.

- **[….] We seek comment on the policy implications of eliminating the current references to rural and non-rural carriers in our rules and of adopting two separate approaches to determining support for carriers that operate in rural areas that are uneconomic to serve, based on whether a company is regulated under rate of return or price caps in the interstate jurisdiction.**

The ABC Plan acknowledges that it is no longer appropriate for the Commission to distinguish between "rural" and "non-rural" carriers[30] when distributing universal service funding.[31] So-called "non-rural" carriers actually serve vastly more of the nation's rural and

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[29] ABC Plan, Attachment 4, Professor Jerry Hausman, *Consumer Benefits of Low Intercarrier Compensation Rates*, at 8-10 ("Hausman Paper").

[30] 47 U.S.C. § 153(44) (defining "rural telephone company"); 47 C.F.R. § 54.5 (adopting the statutory definition of "rural telephone company" for universal service purposes).

[31] *See* ABC Plan Framework at 2. Consistent with the ABC Plan and the complementary plan for rate-of-return carriers, differences between price-cap and rate-of-return LECs would remain.

high-cost lines than "rural" carriers,[32] and thus the distinction bears little relationship to the costs of providing service in the carriers' respective service areas.[33] Nor is there any other legitimate policy rationale for continuing to apply this distinction in the universal service context. To the contrary, the distinction has exacerbated the "rural-rural" divide by depriving non-rural carriers of the support they need to deploy advanced services in high-cost areas.[34] Were the Commission to eliminate this distinction for purposes of the CAF mechanism — as it has already done for many of its other universal service programs — the Commission would be better equipped to target support to the rural and high-cost areas that need it. This reform also would better align incentive-based price-cap regulation with a similar universal service support program that bases all high-cost support in areas served by price-cap companies on forward-looking costs.

C. CAF Support for Price Cap Areas.

1. *Use of a Model.*

- **The ABC Plan proposes using one technology to determine the modeled costs of 4 Mbps download/768 kbps upload service, while permitting support recipients to use any technology capable of meeting those requirements. Should the amounts determined by a model be adjusted to reflect the technology actually deployed? Is ten years an appropriate time frame for determining support levels, given statutory requirements for an evolving definition of universal service? Should the model reflect the costs of building a network capable of meeting future consumer demand for higher bandwidth that reasonably can be anticipated five years from now?**

The Commission should not adjust a CAF recipient's model-calculated support based on the particular technology that the recipient ultimately uses to satisfy its CAF service obligations. Technological neutrality is an essential element of sound policy in general and the ABC Plan in particular, and providers should have both the flexibility and the incentive to deploy the lowest-cost, most efficient technology available to meet the service standards they have agreed to provide. In any event, adjusting the model-derived support amounts "to reflect the technology actually deployed"[35] in every census block would be administratively unworkable, as it would require constant revisions to support amounts as recipients modify their technology plans.

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[32] *See* ABC Plan, Attachment 5, Legal Authority White Paper, at 56 n.60 ("ABC Legal Analysis").

[33] 47 U.S.C. § 153(44) (defining "rural telephone company" largely in terms of the company's size).

[34] *2011 NPRM*, 26 FCC Rcd at 4559 ¶ 6 ("While the Fund's support has enabled some rural telephone companies to deploy broadband-capable lines, many rural areas receive insufficient support for broadband, creating a 'rural-rural divide.'").

[35] Public Notice at 3.

Further, the model should reflect only the costs of deploying the specific broadband service that the ABC Plan would support.[36] Importantly, the Commission should not make unilateral mid-course adjustments to the service obligations of CAF recipients to reflect "an evolving definition of universal service,"[37] as this would undermine a fundamental feature critical to support for the Plan and would contravene Section 254 of the Act.[38] As the signatories have explained, "[t]he design of the CAF reflects a procurement model, under which providers incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission."[39] This approach is essential to achieving the Commission's broadband goals, as providers must have certainty as to both their service obligations and their support amounts if they are to participate in the CAF program. Few providers would be willing to take part if they risked incurring more burdensome service obligations at some future date, particularly without any guarantee of sufficient universal service funding to satisfy those obligations. Accordingly, if the Commission were to alter the definition of the CAF-supported "broadband service" to account for changes in consumer demand, any definitional revision must apply only prospectively, where CAF recipients expressly agree to new support amounts in exchange for meeting a higher bandwidth standard.

2. *Right of First Refusal (ROFR).*

- **The ABC Plan would give an incumbent local exchange carrier (LEC) the opportunity to accept or decline a model-determined support amount in a wire center if the incumbent LEC has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center. We seek comment on this proposal. Would aggregating census blocks to something other than a wire center be an improvement to the proposal? Is 35 percent a reasonable threshold? Should areas that are overlapped by an unsubsidized facilities-based provider be excluded when calculating the percentage? Is the opportunity to exercise a ROFR reasonable consideration for an incumbent LEC's ongoing responsibility to serve as a voice carrier of last resort throughout its study areas, even as legacy support flows are being phased down? Should any ROFR go to the provider with the most broadband deployment in the relevant area rather than automatically to the incumbent LEC? Alternatively, if there are at least two providers in the relevant area that exceed the**

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36 The ABC Plan provides: "Providers that receive CAF support must make available broadband service that provides customers with a minimum actual downstream bandwidth of 4 Mb/s and a minimum actual upstream bandwidth of 768 kb/s, and also provides robust service that is sufficient for households to use education and health care applications specified by the Commission." ABC Plan Framework at 2-3.

37 Public Notice at 3.

38 *See* 47 U.S.C. § 254(b)(5) (indicating that "specific, predictable, and sufficient" support should be provided "to preserve and advance universal service").

39 ABC Plan Framework at 2; ABC Legal Analysis at 52-53, 60-61.

threshold, should the Commission use competitive bidding to select the support recipient?

As an initial matter, there is some ambiguity in the passage's assertion that, under the ABC Plan, any ILEC will maintain "ongoing responsibility to serve as a voice carrier of last resort throughout its study areas, even as legacy support flows are being phased down."[40] If this language is construed to mean that ETC/carrier-of-last-resort ("COLR") obligations would persist even after legacy funding is eliminated, it would be an inaccurate description of the ABC Plan. Under the Plan, ETC and COLR obligations would phase out as federal legacy funding phases out and would be eliminated altogether when federal legacy high-cost funding disappears, which is already the case today in some areas.[41] In particular, the Plan calls on the Commission, immediately upon adopting the Plan, to revise its interpretation of Section 214(e)(1)[42] and eliminate a carrier's ETC obligations in any geographic area for which that carrier does not receive legacy high-cost support.[43] And the Plan calls on the Commission to preempt COLR and all other state legacy obligations to serve by the time that the Commission eliminates its legacy ETC obligations for all carriers (if the states themselves have not already eliminated those obligations).[44] These are integral components of the Plan.

The Plan also provides that an ILEC has a right of first refusal if it has already made high-speed Internet service available to more than 35 percent of the service locations in a wire center.[45] By first offering CAF support to an ILEC that has already made substantial broadband investments in a given wire center, the Plan will accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs. The Commission has recognized that "some companies receiving High-Cost support have deployed broadband-capable infrastructure" and has noted that the high-cost program supports components of a network that can be used to provide both voice and broadband service.[46] Moreover, the intercarrier compensation system has provided implicit

40 Public Notice at 4.

41 ABC Plan Framework at 13; ABC Legal Analysis at 53-54, 60.

42 47 U.S.C. § 214(e)(1).

43 ABC Legal Analysis at 53-58; ABC Plan Framework at 13. Further, the Plan calls for elimination of *all* legacy ETC obligations for all carriers when the Commission eliminates its legacy high-cost universal service support mechanisms. ABC Plan Framework at 13; ABC Legal Analysis at 53-54.

44 ABC Legal Analysis at 59-60. *But see id.* at 60-61 (suggesting that a state likely could maintain its legacy service obligations consistent with the Commission's procurement-model approach to universal service if the state were: (i) "to provide explicit universal service support that fully compensates carriers for the costs of complying with state-imposed service obligations" and (ii) to "enter into an express agreement with a COLR, under which that carrier would agree to serve a specific geographic area for a specific period of time in exchange for a specific amount of state universal service support"); ABC Plan Framework at 13 (same).

45 ABC Plan Framework at 6.

46 *National Broadband Plan* at 141.

support that has long enabled broadband deployment in some high-cost areas. Where explicit and implicit support has enabled significant investments in broadband deployment in high-cost areas, efficiency demands that the Commission leverage those investments rather than abandoning them and funding duplicative facilities. This element of the ABC Plan, like the exclusion from CAF eligibility of census blocks already served by an unsupported competitor,[47] is designed to ensure that limited support is targeted toward the highest purposes and the areas most in need of funding.

The Public Notice asks whether, in some or all cases, ILECs should lose their right of first refusal if some other provider has also established a competitive presence in the relevant area.[48] The ABC Plan provides no CAF funding to areas where there is existing, unsubsidized broadband competition as of a certain date. In other areas, the Plan recognizes that, as a result of their historically distinct regulatory treatment, ILECs stand in a different position from other providers. Uniquely, in many cases ILECs have built out their networks — often including joint-use voice and data facilities — to unusually high-cost areas not because it made independent business sense to do so, but because federal and state regulation compelled them to do so. The ABC Plan's right-of-first-refusal provision is designed to avoid the equitable and legal concerns that would arise from stranded ILEC investments. In contrast, cable operators, wireless carriers, and other non-ILEC providers have had no similar service obligations, and they have therefore built out their networks, as a general matter, in places where it made business sense for them to do so.[49]

The 35-percent threshold specified in the ABC Plan is a reasonable one that will ensure the efficient distribution of limited CAF funding. The threshold will appropriately capture those areas in which carriers already have made meaningful investments in broadband networks and will provide support to carriers who have demonstrated expertise in deploying facilities in the supported high-cost area. At the same time, this threshold generally will ensure that competitors are not precluded from receiving CAF funding for areas in which they could most efficiently provide service.

3. *Public Interest Obligations.*

- **The ABC Plan proposes that CAF recipients provide broadband service that meets specified bandwidth requirements to all locations within a supported area, but does not address the pricing of such services or usage allowances. Should the Commission adopt reporting requirements for supported providers regarding pricing and usage**

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47 ABC Plan Framework at 3.

48 Public Notice at 4.

49 In any event, even the ILEC's service areas are unlikely to receive funding where "there are at least two providers in the relevant area that exceed the threshold." *Id.* at 4. Such areas are unlikely to exhibit the high costs that would qualify them for support under the ABC Plan, because unsupported broadband competitors generally have focused their deployments on areas with lower costs.

allowances to facilitate its ability to ensure that consumers in rural areas are receiving reasonably comparable services at reasonably comparable rates?

Although the Commission may wish to *monitor* pricing and usage allowances for broadband services supported by CAF funding, it should not directly regulate these service features in the absence of a demonstrated problem. Further, although targeted reporting requirements will be necessary to enable the Commission to engage in any such monitoring, the nature and scope of such requirements should be determined in a separate proceeding. Disputes about reporting requirements should not be permitted to further delay adoption of comprehensive universal service and intercarrier compensation reform.

4. ***Eligible Telecommunications Carrier (ETC) Requirements.***

- **The ABC Plan proposes a procurement model, in which recipients of CAF support incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission, and CAF recipients are free to use any technology, wireline or wireless, that meets specified bandwidth and service requirements. What specific rule changes to the Commission's rules, including Part 54, Subpart C of the Commission's rules, would be necessary to implement such a proposal?**

The ABC Plan signatories are currently drafting proposed changes to Part 54 of the Commission's rules (to implement the universal service provisions of the Plan) and to Parts 51, 64, and 69 (to implement the intercarrier compensation provisions). We will submit those proposed rule changes in a subsequent filing.

5. ***State Role.***

- **The State Members and other commenters propose an ongoing role for states in monitoring and oversight over recipients of universal service support. We seek comment on specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework, and invite comments on other suggestions.**

Under the ABC Plan, states would continue their critical partnership with the Commission on high-cost universal service matters. States could play an important role in the initial implementation of the CAF program by, for example, determining whether specific geographic areas are ineligible for CAF funding because they are already served by an "unsupported broadband competitor."[50] In addition, states could play an ongoing role by

[50] ABC Plan Framework at 3 ("State commissions may elect to be responsible for determining whether an area is already served by an unsupported broadband competitor as of January 1, 2012. A state commission may make that determination using broadband deployment mapping information, but states must give parties the opportunity to challenge the mapping data

monitoring and reporting to the Commission on whether a CAF recipient has completed its broadband build-out within five years.[51] At the same time, however, states should not cross the line from oversight to direct regulation of CAF recipients. States should not, for example, "be charged with determining whether any charges for extending service to newly constructed buildings are reasonable."[52] Further, even with respect to monitoring and oversight functions, the Commission should ensure that states do not adopt divergent policies that make compliance difficult for broadband providers offering service in many different states. Achieving the goal of ubiquitous broadband coverage will be complicated enough without subjecting broadband providers to a variety of potentially conflicting obligations in 50 different states.

D. Reforms for Rate-of-Return Carriers.

E. Ensuring Consumer Equity.

F. Highest-Cost Areas.

- **The ABC Plan would rely on satellite broadband to serve extremely high-cost areas. We seek comment on a proposal by ViaSat to create a Competitive Technologies Fund to distribute support through a combination of a reverse auction and consumer vouchers to enable consumers in highest-cost areas to obtain service from wireless, satellite, or other providers.**

The ABC Plan, like the *National Broadband Plan*, proposes to rely on satellite broadband service for the most expensive high-cost service locations.[53] ViaSat and Hughes have announced plans to significantly expand the capacity of satellite broadband services in the near term and to improve those services' speed and other performance characteristics.[54] These are encouraging developments. In certain extremely-high-cost areas, satellite broadband is the only viable solution for near-term broadband deployment. To accommodate the important role of satellite broadband service in ensuring ubiquitous access to broadband, the ABC Plan allocates up to $300 million annually for mobility and satellite support.[55] Where support for satellite services may be necessary, it makes sense to focus on the one-time, upfront equipment and other costs of installation that can be unique to satellite broadband.

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and provide additional information that indicates the presence or absence of an unsupported broadband competitor.").

[51] *Id.* at 7-8 (discussing build-out obligations for CAF recipients).

[52] Public Notice at 5.

[53] ABC Plan Framework at 4-6. *See also National Broadband Plan* at 150.

[54] *See, e.g.*, Letter from John Janka, ViaSat, Inc. and WildBlue Communications, Inc., to Marlene Dortch, FCC, GN Docket No. 09-51; WC Docket Nos. 05-337, 10-90 (Nov. 2, 2010); Letter from L. Charles Keller, DISH Network & EchoStar Satellite Services to Marlene Dortch, FCC, WC Docket Nos. 05-337, 10-90, at 6 (Nov. 12, 2010).

[55] ABC Plan Framework at 1, 8.

- **We also seek comment on what obligations are appropriate to impose on recipients of funding, as a condition of receiving support, to facilitate provisioning by others in areas the recipients are not obligated to serve. For example, Public Knowledge has proposed to require recipients to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks. Should recipients' Acceptable Use Policies also be required to allow customers to share their broadband connections with unserved customers nearby, for example, through the use of WiFi combined with directional antenna technology?**

The Commission should reject network unbundling and other onerous, agenda-driven conditions on new universal service funding for broadband. Such conditions are not administratively feasible to implement or monitor and would artificially increase support requirements, putting even more pressure on the budget for the Universal Service Fund. The Commission's experience with its recent D-Block (public-safety obligations resulting in a failed auction[56]) and C-Block (open-access conditions resulting in lower bids[57]) spectrum auctions serves as a warning about the importance of not over-conditioning support. More specifically, it does not make sense to require CAF funding recipients to build for and accommodate broadband competitors in areas that are prohibitively expensive for even one provider to serve. Such an approach would increase funding requirements because providers would need to deploy additional facilities and, if a competitor ever appears, would realize less revenue due to a smaller customer base. Thus, such conditions would force the Commission either to increase the budget for the CAF or to delay deployment of broadband service in many high-cost areas.

G. CAF Support for Alaska, Hawaii, Tribal Lands, U.S. Territories, and Other Areas.

- **GCI has proposed an Alaska-specific set of universal service reforms that it asserts better reflect the operating conditions in Alaska and the lower level of broadband and mobile deployment in that state. We seek comment on this proposal for Alaska, and ask whether this, or a similar approach, would also be warranted for Hawaii, Tribal lands, the U.S. Territories, or other particular areas, and how we should consider such proposals in light of the Tribal lands exclusion from the current cap on high-cost support for competitive ETCs. We further seek comment on other proposals relating to Alaska and Hawaii that have been proposed in the record. We further seek**

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56 *See* FCC Office of Inspector General Report, *D-Block Investigation,* at 2 (Apr. 25, 2008), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281791A1.pdf.

57 *See* George S. Ford, Thomas M. Koutsky & Lawrence J. Spinak, *Using Auction Results to Forecast the Impact of Wireless* Carterfone *Regulation on Wireless Networks,* Phoenix Center Policy Bulletin No. 20 (2d ed.), at 13 (May 2008) ("[W]e predict the Upper C block should have sold for approximately $7.9 billion . . . . The actual price for the block was about $4.75 billion, which suggests that the open access regulations trimmed $3.1 billion from the winning bids, or nearly a 40% loss in revenues.").

comment on how such proposals could be improved, if the Commission were to adopt a plan to constrain the size of the CAF and access restructuring within a $4.5 billion annual budget, and whether, in the alternative, other modifications are warranted to the national policy to better reflect operating conditions in these areas.

The appropriate treatment of Alaska, Hawaii, Tribal lands, and U.S. Territories is an important but complex issue. The ABC Plan signatories are committed to working with the Commission and other interested parties to arrive at an approach to these areas that promotes nationwide access to broadband service without expanding the size of the Universal Service Fund.

H. Implementing Reform Within a Defined Budget.

- **The ABC Plan recommends a five-year transition for phasing down legacy funding, concomitant with a phase-in of potential CAF support, including potential access recovery associated with intercarrier compensation reform; the Joint Letter suggests several potential measures that could be taken to keep support totals within a budget, such as phasing in funding for mobility, deferring CAF funding for study areas served by particular price cap companies, or deferring reductions in intercarrier compensation. We seek comment on the implications of these and alternative proposals, including variations to the Commission's prior proposals regarding safety net additive (SNA) and LSS, for ensuring that total funding remains within a defined budget.**

The ABC Plan and the Consensus Framework are carefully designed to ensure that reform is achieved within the $4.5 billion budget set out in the Plan. Attached as Exhibit A is an empirical analysis demonstrating that, even under conservative assumptions, the Plan's reforms for price-cap areas can be implemented within the proposed price-cap annual funding target. Exhibit A also demonstrates that comprehensive reform can be achieved within the overall budget negotiated with the trade associations representing rate-of-return carriers.

I. Interim Reforms for Price Cap Carriers.

- **As an interim step, Windstream, Frontier and CenturyLink suggest that the Commission could immediately target support that currently flows to price cap carriers to the highest-cost wire centers within their service territories, using a regression analysis based on the Commission's existing high-cost model to estimate wire center forward-looking costs for both rural and non-rural price cap carriers. We seek comment on this proposal and how it relates to other proposals in the record for comprehensive reform.**

CenturyLink, Frontier, and Windstream proposed this interim step in response to the Commission's request for input on reforms that could be operationalized in the context of a two-staged approach to universal service reform.[58] A two-staged approach, however, is not preferred by any signatory to the ABC Plan — including the three companies that proposed the interim step referenced in the Public Notice. We recommend that the Commission adopt the comprehensive universal service reforms set forth in the ABC Plan in their entirety now, so that greater amounts of repurposed funds will flow immediately to high-cost areas that have long been on the wrong side of the rural-rural divide.

II. INTERCARRIER COMPENSATION.

A. Federal-State Roles.

- **We seek comment on whether the ABC Plan could be improved by providing states incentives to increase artificially low consumer rates or create state USFs for example through the use of a consumer monthly rate ceiling or benchmark or by requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions?**

- **In the alternative, the State Members propose that the states reform intrastate rates and that the Commission facilitate this reform through state inducements rather than a federal framework. We seek comment on this proposal.**

Uniformity is an essential component of the ABC Plan's intercarrier compensation reform proposal. Under the Plan, *all* traffic that connects with the PSTN — regardless of the location of the calling and called parties, the technology used, and the legacy regulatory status of the providers involved — will be subject to a uniform default terminating rate of $0.0007 per minute.[59]

The Commission should not "facilitate [intercarrier compensation] reform through state inducements rather than a federal framework."[60] Tasking *state* regulators with responsibility for comprehensive *national* reform would inevitably result in confusion, inaction, and continued disparities in regulatory outcomes. The resulting disuniformity would fatally undermine federal reform objectives and harm consumers.

In the exercise of its jurisdiction under sections 201 and 332(c), the Commission has long had a "goal" of "develop[ing] a *uniform* regime for all forms of intercarrier compensation."[61]

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58 *See, e.g.*, Letter from Jennie B. Chandra, Windstream, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90 (filed Jun. 30, 2011).

59 ABC Plan Framework at 9; Consensus Framework Letter at 3.

60 Public Notice at 12.

61 Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9644 ¶ 97 (2001) ("*2001 NPRM*") (emphasis added); *see also* Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685, 4702 ¶ 33 (2005) ("*2005 FNPRM*") (expressing the Commission's

That uniformity is "competitively and technologically neutral" and "is consistent with the pro-competitive de-regulatory environment envisioned by the 1996 Act," which requires "minimal regulatory intervention and enforcement."[62] The D.C. Circuit, moreover, has upheld a Commission decision that was based on these " 'policies favoring a unified compensation regime,' " explaining that it is "not for th[e] court[s] to second-guess the conclusion reached by the agency that Congress has entrusted with balancing those policies."[63]

The Commission has also recognized the importance of ensuring that "carriers have [the] incentive to compete . . . on [the] basis of quality and efficiency," rather than "on the basis of their ability to shift costs to other carriers," which creates "troubling distortion[s] that prevent[] market forces from distributing limited investment resources to their most efficient uses."[64] These distortions "create[] incentives for inefficient entry" by carriers intent on taking advantage of "opportunit[ies] for regulatory arbitrage," rather than engaging in the kind of "telephone competition[] [that] Congress had intended to facilitate with the 1996 Act."[65] And the Commission, applying section 706 of the 1996 Act,[66] has recognized the importance of "promot[ing] the timely and comprehensive deployment of broadband facilities" in areas where broadband is not currently being deployed.[67]

Any reform scenario permitting non-uniform intercarrier compensation rates and/or access recovery opportunities — especially one in which one or more states refuse to align their rates with the otherwise-uniform federal default rate — would pose an insurmountable obstacle to the federal policies set out above. The Commission has emphasized that the current "patchwork of rates and regulations is inefficient" and "wasteful," because, where "opportunities for regulatory arbitrage" exist, "parties will revise or rearrange their transactions to exploit a more advantageous regulatory treatment, even though such actions, in the absence of regulation,

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goal of "a regime that would apply [intercarrier compensation] rates in a uniform manner for all traffic"); *2011 NPRM*, 26 FCC Rcd at 4703 ¶ 495 (noting that a "fundamental problem[]" with the current ICC regime is that "rates vary based on the type of provider and where the call originated, even though the function of originating or terminating the call does not change").

62 *2005 FNPRM*, 20 FCC Rcd at 4702 ¶ 33.

63 *In re Core Commc'ns, Inc.*, 455 F.3d 267, 283 (D.C. Cir. 2006) (citation omitted).

64 Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, 9154 ¶ 4 (2001) ("*ISP Remand Order*"), *remanded by Worldcom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

65 *Id.* at 9162 ¶ 21.

66 47 U.S.C. § 1302.

67 Memorandum Opinion and Order, *Petition for Forbearance of the Verizon Telephone Companies, SBC Communications, Inc., Qwest Communications Int'l, Inc., BellSouth Telecomms. Inc.*, 19 FCC Rcd 21496, 21500, 21512 ¶¶ 6, 34 (2004); *see also National Broadband Plan* at 142 (noting that "[t]he current per-minute ICC system was never designed to promote deployment of broadband networks").

would be viewed as costly or inefficient."[68] In other words, "regulatory uncertainty . . . as well as a lack of uniform rates, may be hindering investment and the introduction of new IP-based services and products."[69]

Contrary to the suggestion in the Public Notice, comprehensive *national* reform simply cannot be achieved via a framework that relies on "incentives" or "inducements" to unify a patchwork of regulatory efforts in 50 different states. The problems with the existing system were largely *caused* by jurisdictional and distance-based classifications that led to a variety of disparate federal and state rates, and the *solution* to those problems requires a prompt transition to a single, unified rate for all traffic. The Commission's broader reform efforts will ultimately be futile if a handful of states — or even a single state — refuse to undertake the necessary reforms. Indeed, relying on the states to achieve intercarrier compensation reform would jeopardize each key element of the ABC Plan: it would slow the transition, raise implementation costs, threaten the financial viability of broadband providers, call into doubt the chances of ending up with a single default rate at the end of the process, give rise to new arbitrage opportunities (thereby undermining one of the Commission's chief goals in this proceeding[70]), and create new economic distortions and inefficiencies as different states move at different paces or employ different approaches to reform.

The history of state efforts to reform intrastate switched access rates and provide explicit universal service support is strong evidence that relying on states to fix the system is all but certain to fail. States have understood for many years the urgent need to reform intrastate switched access rates — and that reform would benefit consumers and eliminate arbitrage — but few have taken meaningful action, allowing widely varying rates to exist nationwide, and in some cases high (up to double-digit) access rates remain. *See, e.g.*, *2011 NPRM*, 26 FCC Rcd at 4574-75 ¶ 54 (noting that "the majority of states have not comprehensively reformed intrastate access charges, and continue to maintain intrastate access charges that far exceed interstate charges, with some intrastate access charges in excess of 13 cents per minute"). In addition, most states still have not adopted comprehensive intercarrier compensation and universal service reform. Admittedly, the ABC Plan signatories have had differing views in the past about whether states should take particular actions with respect to universal service and intercarrier compensation. Nonetheless, if anything, allowing states to play a prominent role in intercarrier compensation reform now would *exacerbate* existing problems. Different states would inevitably undertake reform at different speeds, or undertake no reform at all despite any

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68 *2011 NPRM*, 26 FCC Rcd at 4707, 4709 ¶¶ 502, 504; *2001 NPRM*, 16 FCC Rcd at 9616 ¶¶ 11-12; *see also National Broadband Plan* at 142 (noting that, as a result of ICC-related "arbitrage opportunit[ies]," "investment is directed to free conference calling and similar schemes for adult entertainment that ultimately cost consumers money, rather than to other, more productive endeavors" such as broadband deployment) (footnote omitted); *2005 FNPRM*, 20 FCC Rcd at 4687 ¶ 3 (noting that the availability of different rates for different types of traffic "create[s] both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions").

69 *National Broadband Plan* at 142.

70 *2011 NPRM*, 26 FCC Rcd at 4569, 4571, 4703, 4715-16 ¶¶ 35, 44, 495, 524.

incentives the Commission provides, thus creating new and constantly shifting rate disparities and arbitrage opportunities, and inevitably producing a patchwork of results. As a result, incumbent providers in those states that failed to respond to the Commission's incentives would be left with the same obligations, reduced intercarrier revenues, and no reasonable opportunity to make up the difference. Inevitably, such incumbents would have to scale back or drop further upgrades to their networks, and thus deployment of broadband, in order to cover the cost of meeting their legacy service obligations with fewer financial resources. State inaction thus would not only harm incumbent providers, but also (more importantly) consumers, who would be deprived of the benefits such further broadband deployment would bring. But the harms to consumers and incumbent providers would not be limited only to the states that failed to act. Such harms would extend to other states as well by forcing providers in states that do act to subsidize, through the federal universal service fund, broadband deployment by service providers in states that fail to act, in effect requiring them to ship funds out of state that otherwise could be used within their states for investment and innovation that would directly benefit consumers.

The Commission should not expend federal resources or distort other regulatory regimes in order to create "incentives" to convince state regulators to take actions that plainly need to be taken to protect and promote consumers' interests. The need for a prompt, harmonized transition to a single, unified rate for all traffic and accompanying access recovery opportunities is sufficiently great that the Commission cannot reasonably place its hope in some combination of carrots and sticks to achieve *indirectly* in 50 different states what the Commission can, and should, do *directly*. Without a single rate that applies to all states and all carriers, the primary "incentive" states will have is to keep their rates high so that implicit subsidies flow from consumers in other states.

In sum, the Commission should reject any proposal that could allow states to act as bottlenecks to much-needed intercarrier compensation reform by failing to act in a timely manner, or by not acting in unison with other jurisdictions. Instead, the Commission should adopt the ABC Plan's framework for an orderly transition to a *uniform* national default rate for all terminating traffic exchanged with the PSTN, which will reduce wasteful arbitrage opportunities and promote the deployment of broadband and other advanced services. To the extent some states have undertaken reform of their intercarrier compensation rules and rates, those efforts generally are directionally consistent with the ABC Plan. Because of the need for uniform, national default rates for terminating traffic, upon adoption of the ABC Plan any state action that would effect a different transition schedule for terminating rates should be superseded by the Commission order implementing the Plan.

- **In the ABC Plan, in calculating access recovery, the initial consumer monthly rate is taken as a snapshot in time as of January 1, 2012. In lieu of a snapshot, and in order to avoid deterring states from rebalancing local rates and/or establishing state USFs, should the rate used to determine access recovery be the "higher of" (1) the rate as of January 2012 and (2) the rate at future points before annual access recovery amounts are calculated?**

To the degree that a state commission authorizes end-user rate increases to offset reductions to intrastate switched access rates in a way that is consistent with the ABC Plan, then the rate increase (*e.g.*, local rate, state SLC, and/or EAS rates) could be used in the benchmark comparison.

B. Scope of Reform.

- **We seek comment on the approach outlined in the ABC Plan to reform substantially terminating rates for end office switching while taking a more limited approach to reforming certain transport elements and originating access. Would any problematic incentives, such as arbitrage schemes, arise from or be left in place by such an approach, and if so, what could be done to mitigate them?**

By adopting a uniform default terminating rate of $0.0007 per minute for all traffic exchanged with the PSTN, the ABC Plan will eliminate most existing arbitrage schemes, which generally take advantage of widely disparate terminating rates in different jurisdictions. To the extent that arbitrage schemes do arise or persist, the Commission can address them directly in a separate proceeding and should not delay adoption of the critical reforms set forth in the ABC Plan.

The Plan proposes to cap interstate and intrastate originating access and certain other intercarrier rates at current levels.[71] The cap proposal is a reasonable measure, as any further reforms of those rates would likely make it more difficult to keep the access replacement fund at a manageable size. The ABC Plan does not call for reductions in originating access charges, and the Commission should not undermine support for the Plan by altering this aspect of the carefully-negotiated compromise.

As the Commission notes, it is true that arbitrage opportunities may continue to exist. For example, some existing arbitrage schemes involve the use of calling cards with local access numbers to avoid paying originating access charges, while others involve carriers sharing originating access charges and 8YY database charges with wireless carriers and VoIP providers. But the majority of past and current arbitrage schemes involve terminating traffic, and the ABC Plan's reforms of terminating charges — along with Commission action to address phantom traffic and traffic/mileage pumping[72] — will eliminate most of those schemes.

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[71] ABC Plan Framework at 11.

[72] The ABC Plan signatories urge the Commission to "adopt rules to address phantom traffic and arbitrage schemes involving both originating and terminating traffic, including traffic pumping. The plan does not recommend specific rules, but the plan supporters agree that the Commission should adopt an order addressing phantom traffic, traffic pumping, and other arbitrage schemes that is effective no later than January 1, 2012." *Id.* at 10. "Traffic pumping," also known as access stimulation, "is an arbitrage scheme employed to take advantage of intercarrier compensation rates by generating elevated traffic volumes to maximize revenues. Access stimulation occurs when, for example, a LEC enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and 'free' conference calls. The arrangement inflates or stimulates the amount of access minutes terminated to the LEC, and the LEC then shares a portion of the increased access revenues resulting from the

While some arbitrage efforts may persist or arise with respect to transport or originating access — and, indeed, it would be impossible to foresee and prevent, in advance, every arbitrage opportunity that enterprising minds might identify — that possibility should not hinder the Commission's immediate adoption of the proposals set forth in the Plan. "Reform may take place one step at a time, addressing itself to the phase of the problem which seems most acute to the regulatory mind."[73] The Commission, of course, can take targeted action to address existing arbitrage schemes. And the Commission should be prepared to address future arbitrage schemes if and when they arise.

C. Recovery Mechanism.

1. *Federal-State Role in Recovery.*

- **As noted above, the ABC Plan proposes to shift recovery for reduced intrastate access charge revenues to the federal jurisdiction. Could the Commission achieve more comprehensive reform of intercarrier compensation rate elements if recovery is achieved through a federal-state partnership? We seek comment above on different means by which states could share responsibility for recovery of reduced intrastate access revenues.**

For the same reasons set forth above, *see supra* at 18-21, the access replacement mechanism should be a *uniform* federal scheme. Attempting to layer 50 different state access replacement mechanisms atop the federal program would only result in confusion, delay, non-uniformity, and the perpetuation of implicit support mechanisms — which could significantly harm carriers requiring explicit support to offset intercarrier compensation revenue reductions.

2. *Price Cap Carriers.*

- **For price cap carriers electing to receive support from the transitional access replacement mechanism, the ABC Plan's recovery proposal includes annual true-ups to adjust for possible increases or decreases in minutes of use. Although minutes of use for incumbent LECs have been declining, the ABC Plan's proposal establishing how VoIP minutes are included in the intercarrier compensation system prospectively and addressing phantom traffic could cause minutes of use to flatten or possibly even increase. In addition, the ABC Plan**

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increased demand with the 'free' service provider." *2011 NPRM*, 26 FCC Rcd at 4758 ¶ 636. "Mileage pumping" occurs when LECs (including competitive tandem providers) and centralized equal access providers engage in schemes to designate distant points of interconnection solely to inflate the mileage used to compute the transport component of switched access charges paid by IXCs.

[73] *U.S. Cellular Corp. v. FCC*, 254 F.3d 78, 86 (D.C. Cir. 2001) (internal punctuation and citation omitted).

would treat all VoIP traffic as interstate, which potentially could reduce the minutes billed at intrastate access rates (depending upon existing payment practices). Thus the true-up approach could result in the need for additional recovery, including additional federal universal service funding. We seek comment on alternatives to the true-up process.

The ABC Plan provides that incumbent LECs losing intercarrier compensation revenues as a result of the Plan's reforms will have the opportunity to offset a portion of these losses with support from a transitional access replacement mechanism.[74] As recognized in the Public Notice, in addition to offsetting other revenue losses, the ABC Plan's proposed access replacement mechanism, in particular, would offer support in response to revenue losses that may arise due to the interim intercarrier compensation treatment of VoIP traffic going forward under the Plan (*i.e.*, interstate access charges for access calls and reciprocal compensation charges for non-access calls).[75] The opportunity to recover a portion of the intercarrier compensation revenue losses resulting from the Plan is necessary to avoid flash cuts and ensure that reforms do not jeopardize the operations of broadband providers that rely on intercarrier compensation revenues for implicit support of networks in high-cost areas. This measure also is consistent with the ABC Plan's goal for measured transitions to allow carriers to prepare for and adjust to the revenue reductions. True-ups accounting for the interim intercarrier compensation treatment of VoIP traffic going forward under the Plan should occur every six months until terminating rates are at parity on July 1, 2013. Specific recommendations for rule changes required to implement these reforms will be provided by the ABC Plan signatories in a subsequent filing. Alternatives that would offer less recovery than the ABC Plan could result in disruptions to the operations of broadband providers operating in high-cost areas and should be avoided.

3. *Rate of Return Carriers.*

4. *Reciprocal Compensation.*

- **The ABC Plan's proposal provides recovery for reductions in reciprocal compensation rates to the extent they are above $0.0007, but the ABC Plan estimates on the impact of the federal universal service fund do not include estimated recovery from reciprocal compensation. We ask whether providing federal universal service support for reductions in reciprocal compensation rates strikes the appropriate policy balance as we seek to control the size of the universal service fund, and whether there are alternatives to such an approach.**

74 ABC Plan Framework at 12-13.

75 Public Notice at 14; ABC Plan Framework at 10.

As an initial matter, the ABC Plan does not entitle carriers to recover the full amount of their "reductions in reciprocal compensation rates."[76] Instead, the Plan allows each carrier to recover only "the *net* impact of the reduction in reciprocal compensation rates," *i.e.*, that carrier's overall revenue losses offset by its overall expense savings resulting from reductions in reciprocal compensation rates.[77] In short, many carriers will recover little or nothing from the universal service fund for "reductions in reciprocal compensation rates."

This limited, temporary recovery of reciprocal compensation revenues is a reasonable means of ensuring that certain carriers will not experience severe disruptions during the transition from today's fragmented intercarrier compensation regime to a uniform default rate of $0.0007 per minute. While $0.0007 represents the default rate for a significant amount of traffic that carriers exchange today, and is consistent with the rates contained in some agreements between ILECs and CLECs, many carriers serving rural, high-cost areas currently recover their costs through reciprocal compensation rates that exceed $0.0007. A temporary mechanism to provide recovery for a portion of the reduction of such rates must be included as a part of the Commission's comprehensive reforms.

Such a mechanism will help prevent a "flash-cut" that could impede the ability of carriers to provide "reasonably comparable" services to all Americans at "reasonably comparable" rates, as Section 254 requires the Commission to ensure.[78] It will give carriers a short glide path on which to adjust to the uniform default rate and avoid sharp, immediate decreases in intercarrier compensation that would threaten their provision of universal service in high-cost areas. As the ABC Plan signatories have previously noted,[79] the Commission has deemed it appropriate in a variety of contexts — including intercarrier compensation — to adopt transitional mechanisms that advance its policy goals while avoiding "a market-disruptive 'flash cut' " to the end state of the new policy regime.[80] And the courts have repeatedly upheld the Commission's authority in this regard.[81]

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[76] Public Notice at 15.

[77] ABC Plan Framework at 12 (emphasis added).

[78] 47 U.S.C. § 254(b)(3).

[79] ABC Legal Analysis at 4, 38-39.

[80] *See, e.g.*, *ISP Remand Order*, 16 FCC Rcd at 9186-87 ¶¶ 77-78 (adopting transitional mechanism that gradually lowered the intercarrier compensation rate for ISP-bound traffic over a 36-month period).

[81] As the D.C. Circuit has explained, "[a]voidance of market disruption pending broader reforms is, of course, a standard and accepted justification for a temporary rule." *Competitive Telecomms. Ass'n v. FCC*, 309 F.3d 8, 14 (D.C. Cir. 2002); *see also Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 437 (5th Cir. 1999) (deferring to the Commission's "reasonable judgment about what will constitute 'sufficient' support during the transition period from one universal service system to another"); *Cmty. Television, Inc. v. FCC*, 216 F.3d 1133, 1142 (D.C. Cir. 2000) (affirming transitional mechanism for migration from analog to digital television where the Commission "reasonably balanced competing demands for spectrum" and "adequately addressed the equitable concerns" of companies that would be affected by the transition).

Moreover, this transitional mechanism for recovery of intercarrier compensation revenues is a crucial component of the agreement among many differently situated carriers to address, in a comprehensive fashion, an extremely complicated and many-faceted problem. In the past, the Commission has resolved "historically vexing issues" involving "interstate access reform" by adopting a negotiated agreement reached by a coalition of different providers that "negotiated with each other in good faith and fashioned a reasonable compromise that . . . addresses their competing interests."[82] Here, the signatories to the ABC Plan would not have been able to attain consensus support for unification of reciprocal compensation rates at the same, low level as interstate and intrastate rates — a measure that will curb arbitrage that impedes efficient broadband investment[83] — if the negotiated agreement did not also offer support for a temporary recovery mechanism that would partially offset reciprocal compensation rate reductions and thus avoid sudden changes that may disrupt the provision of service.[84] In the interest of achieving successful, long-term reform of the existing universal service and intercarrier compensation systems, the Commission should implement this limited, transitional opportunity for universal service funding.

5. ***Originating Access*****.**

- **If the Commission were to address originating access as part of comprehensive reform, should the Commission treat originating access revenues differently from terminating access revenues for recovery purposes since, in many cases, the originating incumbent LEC's affiliate is offering the long distance service? For example, is it necessary to provide any recovery for the originating access that an incumbent LEC historically charged for originating calls from the retail long distance customers of its affiliate?**

The ABC Plan does not call for reductions in originating access charges,[85] and the Commission should not undermine support for the Plan by altering this aspect of the carefully-negotiated compromise. In any event, if the Commission *does* mandate such reductions, it will need to address rate rebalancing through potential end-user rate increases and additional recovery from the transitional access replacement mechanism — and adding funding requirements to the

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[82] Sixth Report and Order, Report and Order, Eleventh Report and Order, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962, 12964, 12981 ¶¶ 1-2, 48 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 324 (5th Cir. 2001).

[83] *See 2011 NPRM*, 26 FCC Rcd at 4571, 4703-04, 4770-72 ¶¶ 44, 496, 671-74.

[84] *See id.* at 4561 ¶ 12 (noting the Commission's desire to avoid flash-cuts and disruptions in reforming universal service and intercarrier compensation).

[85] Originating intrastate dedicated transport rates are the only exception. *See* ABC Plan Framework at 11 ("During the first two steps of the transition, both originating and terminating intrastate dedicated transport rates are transitioned to interstate levels.").

access replacement mechanism would threaten the USF budget at this time. Even where "the originating incumbent LEC's affiliate is offering the long distance service," there are many circumstances in which a reduction in originating access charges would cause a net loss of revenues for the LEC and its long-distance affiliate. The need to address such recovery is an important reason why the Commission should not reform originating access charges at this time.

- **Alternatively, should recovery for such originating access take the form of a flat per-customer charge imposed on the incumbent LEC's long distance affiliate for each of its presubscribed customers? Should such a flat originating access replacement charge be used for recovery of all originating access revenues more generally? How would any of these approaches be implemented? Should any flat originating access replacement charge differ by end-user customer class (such as residential vs. business), by level of demand, or otherwise?**

If the Commission does reduce or eliminate originating access charges, it should enable LECs to recover the relevant network costs through an access recovery fund or end-user charges, not through flat-rated per-customer charges on presubscribed *interexchange carriers*. Imposing such charges on IXCs would improvidently replicate a failed late-1990s regulatory experiment known as the "Presubscribed Interexchange Carrier Charge" ("PICC"), which likewise imposed a flat-rated per-customer charge on each IXC as a means of helping LECs recover loop costs.[86] The Commission eliminated PICCs three years later, in the *CALLS Order,* after concluding that they had "created market inefficiencies."[87]

In particular, the Commission observed that "[b]ecause PICCs are an external cost to the IXCs that they cannot reduce by managing it better or being more efficient, PICCs are unlikely to be competed away."[88] In that respect, the Commission concluded, PICCs are far inferior to SLCs as a basis for efficient cost recovery: "If common line costs are recovered in the SLC, a LEC can reduce its costs through efficiency gains and will have the incentive to avoid costs and reduce prices as it faces increased competition" from competing last-mile providers.[89] Moreover, cost recovery through SLCs (or line-item universal service charges) is "more apparent to the end user" than PICCs, which are imposed on IXCs and then passed through to end users non-transparently and inefficiently, subject to the geographic rate-averaging requirements of Section 254(g).[90] Finally, the Commission found that PICCs had created perverse incentives for

[86] *See* First Report and Order, *Access Charge Reform; Price Cap Performance Review For Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982, 16004 ¶ 55 (1997), *aff'd Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998).

[87] *CALLS Order*, 15 FCC Rcd at 12970 ¶ 19.

[88] *Id*. at 12997 ¶ 89.

[89] *Id*. at 12998 ¶ 89.

[90] *Id*. at 12970, 12998 ¶¶ 19, 89; 47 U.S.C. § 254(g).

IXCs to "discourag[e] presubscription by customers that it would prefer not to serve, such as those who make few long-distance calls," which, the Commission explained, "is not a result that we would like to encourage."[91]

In short, the PICC was short-lived for a reason: despite the best of intentions, it made little economic sense as a means of LEC cost recovery. The Commission should heed that experience and avoid making the same mistake again.

D. Impact on Consumers.

- **The ABC Plan permits incumbent carriers to increase consumer SLC rates \$0.50-0.75 per year for five years or until the consumer's rate reaches the rate benchmark of \$30. Similarly, the Joint Letter permits incumbent carriers to increase consumer SLC rates \$0.75 per year for six years or until the consumer's rate reaches the rate benchmark of \$25. Professor Hausman's paper indicates that companies are constrained by competition, which could mean that companies may not be able to increase SLC rates on consumers. We seek comment on the actual likely consumer impact of SLC increases, in the aggregate and with as much granularity (e.g., by company, by type of state, by specific state) as can be provided. . . .**

The SLC increases permitted under the ABC Plan are an essential component of the Plan's strategy for reforming the fast-eroding patchwork of implicit support mechanisms (implemented through ILEC rates) on which federal and state regulators relied to meet 20th-century universal service objectives. That patchwork must be replaced with a more efficient, rational, and sustainable regime designed to promote the nation's ambitious broadband deployment and adoption goals in telecommunications markets opened to competition. The need for such reform is urgent. Current rules limit incumbents' ability to respond appropriately to competition in the marketplace and are a key factor contributing to the steep decline in ILEC access lines. As outlined in the ABC Plan, the Commission should reform existing rate regulation by transitioning away from the unsustainable implicit support mechanisms upon which the current regime is based and granting ILECs modest flexibility with respect to their end-user rates. Such a transition to a more rational rate structure will *benefit* consumers: not only will they enjoy better service overall, but every industry participant (including incumbents) will have greater incentives to be both more efficient and more responsive to their customers' needs.

The existing ILEC rate structure is an artifact of monopoly regulation. It is built on a hodgepodge of implicit support mechanisms designed to keep rates for basic local service low and thereby ensure universal service throughout an incumbent's service area. Under this regime, regulators historically have required ILECs to keep basic local rates, including in rural, high-cost areas, artificially low, but have permitted them to offset their losses by charging higher rates in other areas or to other customer segments. In addition, regulators traditionally have provided implicit support for basic local rates for *all* customers through the access charges that long

[91] *Id*. at 12997-98 ¶ 89.

distance providers pay for the origination and termination of interexchange traffic. As a result of these implicit support mechanisms, many consumers do not pay what they would in a competitive market for the services they receive. And, counter-intuitively, consumers in many of the highest-cost areas actually pay much lower rates than their counterparts in more densely populated, lower-cost areas.

This system helped to promote universal service in a monopoly environment, but it is ill-suited to today's highly competitive communications marketplace. ILECs no longer enjoy the exclusive franchises that once enabled them to charge regulator-mandated rates that ignore market realities. Instead, they must compete with a variety of intra- and intermodal competitors to retain their customers, including CLECs, cable providers, wireless carriers, over-the-top VoIP providers, and a host of new communications alternatives ranging from instant messaging to social media. And the implicit support mechanisms built into ILECs' outdated rate structures make it difficult for them to compete effectively in this dramatically changed marketplace. Although their competitors can impose end-user rates in high-cost areas that recover their costs of providing service (or can refuse to serve those areas), ILECs are often barred by regulatory limitations from doing so. And incumbents are unable to offset those losses by charging higher rates in lower-cost urban areas, where competition is at its fiercest.[92]

By impeding ILECs' ability to respond appropriately to market pressures, existing rate regulation has harmed incumbents' ability to compete. ILECs are losing lines with astonishing speed — around 10% a year.[93] Indeed, as the chart below reflects, ILECs have suffered severe losses in lines and switched access minutes *every year* for more than a decade, despite a significant increase in U.S. housing units ("HUs"):

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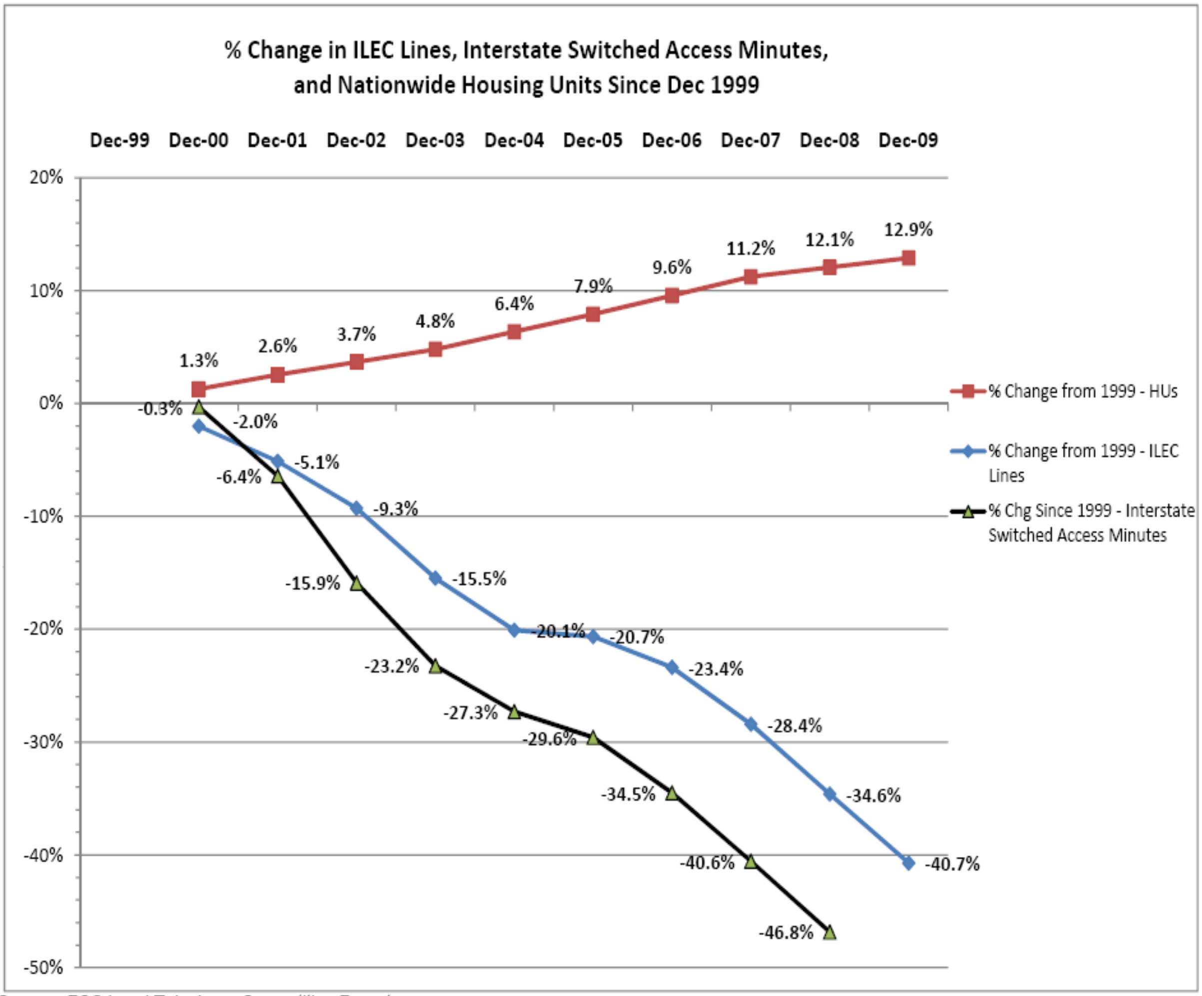
92 As incumbents lose more and more customers, they are increasingly left with only those high-cost customers that other providers choose not to serve — while at the same time, they are losing the low-cost customers whose associated revenues have provided the implicit subsidies on which incumbents have relied to fund the provision of service in high-cost areas.

93 Saul Hansell, *Will the Phone Industry Need a Bailout, Too?*, N.Y. Times, May 8, 2009, http://bits.blogs.nytimes.com/2009/05/08/will-the-phone-industry-need-a-bailout-too/.



Source: FCC Local Telephone Competition Reports,
FCC Trends in Telphone Service Reports,
and Census Bureau American Housing Surveys

The competition driving these line losses takes many forms. According to the federal government's own data, the percentage of American households that have "cut the cord" in favor of exclusive reliance on their cellphones for voice service has quintupled from "approximately 6 percent of households" in 2005[94] to nearly 30 percent by year-end 2010.[95] In addition, even if one focuses artificially only on residential retail *wireline* connections, nearly one-third of *them*

94 Memorandum Opinion and Order, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18482 ¶ 91 (2005).

95 Stephen Blumberg & Julian Luke, U.S. Centers for Disease Control, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey July – December 2010*, at 1 (June 8, 2011), http://www.cdc.gov/nchs/data/nhis/earlyrelease/ wireless201106.pdf.

— 28.2 million out of 89.8 million total — were provided by non-ILECs as of June 30, 2010, including cable and over-the-top VoIP providers:[96]

Wireline Retail Local Telephone Service Connections by Customer Type and Regulatory Status as of June 30, 2010 (In Thousands)

	Residential	Business	Total
ILEC	61,574	40,814	102,388
Non-ILEC	28,179	20,603	48,782
Total	89,753	61,417	151,171

Figures may not add to totals due to rounding.

More recent analyst calculations put the percentage of non-ILEC wireline customers even higher: "Market share of [fixed lines for] wireline voice today stands at 63% for the Telcos and 30% for Cable with other landline accounting for 7%."[97] In total, these losses to wireless carriers, VoIP providers, and other competitors have taken a severe toll on ILECs' standing in the overall marketplace for voice services: "Between 2003 and 2010, telcos' voice market share went from 80% to 40%."[98]

Researchers and analysts expect the decline in wireline voice services to continue. For example, analysts at Bank of America/Merrill Lynch note that, for wireline voice, "We forecast a continued share shift from the Telcos to cable, moving to 56% share for the Telcos and 37% share for cable by 2012."[99] And Oppenheimer predicts more generally that, "given the continued competition from cable voice bundles, wireless substitution and VoIP technologies, we expect access line losses for incumbents to remain high, though stable" — in particular, it projects that incumbent access lines will decline over 24 percent between 2010 and the end of 2013.[100]

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96 FCC, Industry Analysis & Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2010*, at 4 (Mar. 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305297A1.pdf.

97 Jessica Reif Cohen et al., Bank of America/Merrill Lynch, *Battle for the Bundle: Back in Black*, at 10 (Mar. 11, 2011) ("*Bank of America/Merrill Lynch Analysis*").

98 Timothy Horan et al., Oppenheimer & Co., *Communications Services Poised to Outperform*, at 6 (July 6, 2011). Other analysts cite similar figures, noting that, today, of "112 million occupied US households, only 60% have a wireline voice connection," and within that category, "*[t]elco* voice declined to around 47.7 million wireline subs, or 43% of all US households." Jason Bazinet et al., Citi Investment Research & Analysis, *Video, Data, & Voice Distribution*, at 6 & Figure 8 (May 13, 2011) (emphasis added).

99 *Bank of America/Merrill Lynch Analysis* at 10.

100 Timothy Horan et al., Oppenheimer & Co., 2Q11 Postview, at 6, 16 & Exh. 15 (Aug. 18, 2011).

If incumbent wireline providers are to survive in today's marketplace, the Commission must allow them to adopt a more rational rate structure that reduces implicit support mechanisms and gives carriers greater flexibility with respect to the rates they charge different customers. Indeed, if the Commission goes forward with its proposed intercarrier compensation reforms, the need for such flexibility will be even greater, as ILECs will lose a substantial source of revenue on which they depend today. Thus, it is essential that, as part of its comprehensive reforms, the Commission permit ILECs to make modest increases to the end-user rates they charge their highest-cost customers.

Consumers would not be harmed if the Commission were to grant ILECs additional flexibility with respect to end-user charges. As an initial matter, there is broad consensus that consumers in many high-cost areas are paying far too little for service today. As discussed, they often pay aggregate charges that are far below what their counterparts in urban areas pay.[101] This result is not only unfair, it contravenes the Commission's statutory obligation to ensure "reasonable comparability" of rates in different parts of the country.[102]

Furthermore, if the Commission were to adopt the reforms proposed in the ABC Plan, consumers in *all* areas of the country would benefit from protections that would prevent harmful or unreasonable rate increases. First, the SLC increases permitted by the Plan are modest and phase in slowly over a period of five years.[103] Second, the Plan provides additional protection to consumers in the form of a rate "benchmark" that precludes ILECs from raising their SLCs if doing so would "cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, if the state has a high-cost fund, to exceed a benchmark of $30 per month."[104] Finally, in many of the areas where aggregate end-

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[101] *See, e.g.*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service*, 18 FCC Rcd 22559, Appx. C (2003) (indicating that the median aggregate monthly rate for local telephone service in rural (non-MSA) areas is nearly five percent lower than comparable service in urban (central city/suburban) areas, and that in many areas the price differential is far greater); Debra J. Aron & David E. Burnstein, *Regulatory Policy and the Reverse Cellophane Fallacy*, 6 J. Competition L. & Econ. 973, 988 (2010) ("Perversely, from an economic perspective, . . . it was historically a common regulatory practice in the telecommunications industry to set regulated prices at a *higher* level in urban areas than in rural areas.").

[102] 47 U.S.C. § 254(b)(3).

[103] ABC Plan Framework at 11-12 ("If a price cap LEC elects to receive support from the transitional access replacement mechanism . . . , the cumulative increase in the SLC may not exceed $0.50 effective July 1, 2012; $1.00 effective July 1, 2013; $1.50 effective July 1, 2014; $2.00 effective July 1, 2015; and $2.50 effective July 1, 2016. If a price cap LEC does not elect to receive support from the transitional access replacement mechanism, the cumulative increase in the SLC may not exceed $0.75 effective July 1, 2012; $1.50 effective July 1, 2013; $2.25 effective July 1, 2014; $3.00 effective July 1, 2015; and $3.75 effective July 1, 2016.").

[104] *Id.* at 12.

user rates today are closest to the Plan's $30 benchmark, the robust competition discussed above will prevent ILECs from raising their SLCs to the levels permitted by the Plan.[105]

In any event, the limited SLC increases permitted under the Plan will be more than offset by passed-through reductions in intercarrier rates, increased investment and service innovations, and improved efficiency more generally as regulatory anomalies are eliminated. By eradicating wasteful arbitrage and the myriad disputes and transaction costs generated by such arbitrage, the Plan will make it possible for providers to dedicate more of their finite resources to offering lower prices and better service to their customers. Moreover, consumers' phone bills today reflect the costs of intercarrier charges that long distance providers pay to LECs and that LECs pay to each other. By reducing those charges and replacing them with end-user charges, the Plan will generate considerable efficiency gains. These reforms will force each carrier to look primarily to its own end users for recovery of its own network costs, rather than to other carriers and ultimately (through passed-through charges) to the customers of those other carriers. And this, in turn, will make each carrier more *responsible* to its own end users for the quality and efficiency of its service, and thus will empower consumers to choose the service that offers them the best service for the best price. Finally, the Plan's reforms also will result in lower prices and service improvements for communications services that will benefit from the Plan's reductions in intercarrier compensation rates. As discussed below and in Professor Hausman's paper, robust competition will force these carriers to pass through their intercarrier compensation savings to customers in the form of lower rates, investment in improved services and service quality, and wider deployment of innovative technology.[106] For all of these reasons, adoption of the ABC Plan would be a boon to consumers despite the Plan's modest increases to regulatory caps on end-user charges.

- **We seek comment on how to ensure that consumers realize benefits of reduced long distance and wireless rates as part of intercarrier compensation reform. The ABC Plan attaches a paper by Professor Jerry Hausman analyzing the consumer benefits of intercarrier compensation reform. Should the potential realization of consumer pass through benefits from intercarrier compensation reform be left to the market, as Professor Hausman asserts, or should any steps be taken to ensure that such benefits are realized by consumers? If so, what steps should be taken?**

The Commission should leave the "potential realization of consumer pass through benefits from intercarrier compensation reform" to the market. Not only is the market likely to be effective in this regard, there is no other practical means "to ensure that such benefits are realized by consumers."

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105 As Professor Hausman explains, retail competition will often keep ILECs from raising the SLC to the full amount of the modestly increased caps because most consumers can now easily switch to an alternative voice provider in response to any price increase. Hausman Paper at 8-9.

106 *See* pages 33-34, *infra*; Hausman Paper at 8-10.

Long distance and wireless carriers may see some cost savings from intercarrier compensation reform. However, they likely will not be able to retain those cost savings, because wireless and long distance services are among the most fiercely competitive in the industry. Instead, the market ultimately will force these carriers to pass through their intercarrier compensation savings to their customers, whether in the form of lower rates, investment in improved services or service quality, and/or wider deployment of innovative technology, such as next-generation broadband services.[107]

Moreover, crafting a mechanism to "ensure" that intercarrier compensation savings are passed through to consumers would force the Commission to engage in the equivalent of rate-of-return regulation for services that have long been deregulated. The Commission would need to inspect the books of each affected company to calculate the cost savings that each company derives from reductions in access charges. And the Commission would then need to determine, based on that analysis, how each company should "pass through" those savings to customers. This determination could not rely merely on a mathematical calculation (as complicated as such a calculation would be), because a carrier's cost reductions can be "passed through" to consumers in a variety of ways that are not readily susceptible to quantification, such as improved service quality and deployment of new services. Engaging in this type of analysis would not only be a monumental undertaking for the Commission, it would also constitute a highly intrusive form of rate regulation. And the Commission could not rationally conclude, after years of deregulated pricing that has spawned record-low rates, that long distance, wireless, and other services are now in need of such regulation.

- **The ABC Plan permits incumbent carriers to increase the consumer SLC up to $9.20 before increasing the multiline business SLC, although multiline business SLCs potentially could increase once consumer SLCs reach that level. To decrease the potential burden on consumers and the federal universal service fund, should multiline business customers also see a modest SLC increase and, if so, how much?**

This question reflects a misunderstanding of how SLC increases would operate under the ABC Plan. In those circumstances where a carrier's multiline business SLC is *below* $9.20, that SLC, too, and not merely the residential SLC, could be increased. Specifically, whenever the residential SLC reaches the same level as the multiline business SLC, the two rates could be raised in lockstep under the Plan. And, importantly, many multiline business SLCs are far below the $9.20 threshold mentioned in the Public Notice. Industry data reveal that more than 81 percent of *all* multiline business SLCs are at or below $7.00.[108] Thus, contrary to the assumption underlying the Commission's question, many multiline business customers could potentially "see a modest SLC increase" under the ABC Plan.

In any event, where multiline business SLCs are higher than residential SLCs, it makes policy sense to raise the latter before the former. The typical business line is not necessarily any

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107 Hausman Paper at 8-10.

108 This figure was compiled using federal SLC and access line data submitted in ILECs' June 2010 annual interstate access filings.

more costly to serve than the typical residential line. There is thus no cost justification for imposing lower SLC caps for residential lines than business lines. Instead, this discrepancy is just another economically unsustainable implicit support mechanism, in this case running from business customers to residential customers. One of the important goals of the Commission's reform proposals (and the ABC Plan) is to eliminate such implicit support mechanisms and the market-distorting effects that they create.

E. VoIP ICC.

- ***Implementation.*** **We seek comment on the implementation of the ABC Plan's proposal for VoIP intercarrier compensation. Under that proposal, VoIP access traffic would be subject to intercarrier compensation rates different from rates applied to other access traffic during the first part of the transition.**

    - **How would VoIP traffic subject to the ICC framework be identified for purposes of the proposed tariffing regime?**

    - **Would it be feasible to use call record information or factors or ratios to identify the portion of overall traffic that is (or reasonably is considered to be) relevant VoIP traffic, perhaps subject to certification or audits?**

    - **Should the Commission identify a "safe harbor" percentage of VoIP traffic for use in this context? If so, what should be the factual basis for such a safe harbor? For example, Global Crossing estimates "that on average roughly fifty to sixty percent of the traffic [on its network] is VoIP." Would that, or other data, provide a basis for a safe harbor?**

    - **Are there alternative mechanisms besides tariffs that could be used to determine the amount of VoIP traffic exchanged between two carriers for purposes of the VoIP ICC framework, and if so, what would be the relative merits of such an approach?**

The ABC Plan proposes to treat VoIP traffic differently from non-VoIP traffic during the opening phase of the transitional period. Specifically, VoIP traffic initially will be subject only to interstate access or reciprocal compensation rates, and not intrastate access rates.[109] This distinct treatment of VoIP will last for only the first 18 months of the transition, after which existing intrastate rates will have been reduced to interstate rates — before all rates are phased down to $0.0007 per minute.[110] This was a carefully negotiated compromise among the signatories to the Plan, who have widely divergent views about the intercarrier compensation rules that do and should apply to VoIP.

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[109] ABC Plan Framework at 10.

[110] *Id.* at 11.

Any operational or logistical issues with a "different" intercarrier compensation treatment for VoIP traffic during the Plan's transitional period are manageable. Most importantly, as noted above, the Plan applies different rules to VoIP traffic for only the first 18 months of the transition. During that period, companies should work cooperatively to develop methods to determine which traffic is VoIP and which is not. Traffic-factoring methods, which are already used today for some intercarrier compensation billing purposes, can be employed. These methods include factors, certifications, and audits. The Commission has followed a similar approach in prior proceedings. For example, in 2006, the Commission required carrier certifications to identify certain prepaid calling card traffic for intercarrier compensation and universal service contribution purposes.[111]

To implement the rules for VoIP traffic during the 18-month transitional period, the Commission should also require LECs to incorporate specific access tariff provisions to help manage the transition.[112] Those provisions could, for example, require carriers delivering traffic for termination to identify the percentage of traffic that is VoIP, and to support those figures with traffic studies or other reasonable analyses that are subject to audit or certifications. This approach does not call for an extension to IP providers of a right to now tariff access charges and, as noted, only applies to IP traffic on the PSTN — *i.e.*, it does not apply to IP-to-IP traffic.

The Commission should not attempt to set a "safe harbor" percentage of VoIP traffic. Providers handle widely varying percentages of VoIP traffic on their networks, and any attempt to impose a one-size-fits-all safe harbor rule will inevitably lead to over- or under-billing of certain carriers. Indeed, the process of calculating an appropriate safe harbor — which would only be needed at all during the brief, 18-month transitional period — would be far more complicated than using the well-established procedures discussed above to identify VoIP traffic for billing purposes.

CONCLUSION

For the reasons detailed above, the signatories to the ABC Plan collectively urge the Commission to adopt the Plan without delay.

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111 *See* Declaratory Ruling and Report and Order, *Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290, 7300 ¶ 29 (2006), *aff'd in part and vacated in part on other grounds*, *Qwest Servs. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007).

112 New traffic-identification requirements for LEC tariffs would apply prospectively. As with the ABC Plan itself, for purposes of these comments the Plan signatories maintain their individual views as to whether tariffed switched access charges themselves can be applied to VoIP traffic.

Respectfully submitted,

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