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

In the Matters of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

FURTHER COMMENTS OF THE

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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

The South Dakota Public Utilities Commission ("SDPUC") submits these comments regarding the Federal Communications Commission's ("FCC" or "Commission") Further Inquiry into Certain Issues in the Universal Service Intercarrier Compensation Transformation Proceeding ("*Further Inquiry*" or "*Inquiry*") in the above referenced dockets.[1]

The *Further Inquiry* seeks comment on proposals for reform that have been formulated by various interested parties in these proceedings. These include proposals from the State Members of the Federal-State Universal Service Joint Board, the Joint Rural Associations, and the Price Cap Companies.[2] The *Inquiry* also seeks comment on additional issues that are not fully developed in the record.

Background

In order to give the FCC some perspective on the challenges faced by our carriers, the SDPUC has submitted previous comments in these dockets in which we highlighted the rural nature of our state. We noted that one of our rural carriers, Golden West Telecommunications, serves nearly *one-third* of South Dakota's land mass (which is greater than the land mass of Rhode Island, Connecticut, New Jersey, and New Hampshire combined) with only 1.79 subscribers per square mile of service area. Our three *largest* cities have populations of 155,000, 68,000, and 25,000 respectively. Given South Dakota's very low rural population and our low urban populations, we continue to ask that the FCC take into consideration the feasibility of states such as South Dakota to adequately fund universal service. This funding is needed not only to operate and

[1] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

[2] Six Price Cap Companies filed a plan called "America's Broadband Connectivity Plan" ("ABC Plan").

maintain our network but to continually improve the underlying infrastructure for the benefit and use of other telecommunications providers and our consumers. The end result of universal service and intercarrier compensation reforms for states like South Dakota must be increased, not decreased, access to advanced services at affordable prices.

Proposed Plans

One of areas addressed in the *Inquiry* seeks comment on how the states can work in partnership with the FCC in advancing universal service. Specifically, the *Inquiry* asks whether, under a Right of First Refusal ("ROFR") mechanism the states could determine "whether a provider has already made a substantial broadband investment in a particular area" and would therefore be eligible to receive support."[3] The *Inquiry* also asks whether the states should determine whether charges for extending service to newly constructed building are reasonable, based on local conditions, and whether the states should collect information regarding customer complaints.[4]

State commissions are obviously well qualified for the role of monitoring and oversight by recipients of universal service support. State commissions have first-hand knowledge of the facilities and providers in their states, as well as the amount of competition or lack of competition throughout their states. A partnership role between the FCC and the states has already been developed in a number of areas, most notably in this context, with regards to the designation and certification of eligible telecommunications carriers ("ETCs"). As part of the designation process, state commissions closely monitor the build out by ETCs of facilities into unserved areas and assess the quality and level of service in served areas. With the annual certifications,

[3] *Further Inquiry* at 5.
[4] *Id.*

state commissions carefully analyze how high cost support has been used to provide service throughout an ETC's service area.

However, our willingness to partner with the FCC should not be misinterpreted as acquiescence with any of the legal arguments that advocate the preemption of the states' regulation of intrastate calls. The latest such arguments can be found in the ABC Plan. In that plan, the Price Cap Companies assert a number of legal arguments for preemption, among them the argument that "section 251(b)(5), as interpreted by the Commission, is broad enough to capture *all* traffic currently subject to the existing, disparate intercarrier compensation regimes, including the reciprocal compensation regime and the interstate and intrastate access regimes."[5] As we stated in previous comments, we believe that any attempts by the Commission to preempt the states on this issue are not legally supportable. We urge the FCC to reject such an approach.

Similarly, we urge the FCC to reject the ABC Plan's call for the FCC to ensure that "anachronistic ETC and COLR obligations are fundamentally transformed or eliminated altogether."[6] The Price Cap Companies argue that "[s]ervice obligations such as COLR requirements, which originally were imposed on telecommunications carriers as a means of ensuring universal service in a monopoly environment, are poorly suited to today's competitive communications ecosystem."[7] The ABC Plan's proposal to eliminate these supposedly "anachronistic" obligations is not limited to the federal side. The ABC Plan also argues that "[i]f a *state* maintains obligations to serve, including carrier of last resort (COLR) obligations for price cap incumbent LECs, the Commission must preempt such obligations as inconsistent with federal broadband policy unless the state fully funds the obligations with explicit support and the ILEC agrees to accept the

[5] ABC Plan, Legal Authority Whitepaper at 11 (emphasis in original).
[6] *Id.* at 49-50.
[7] *Id.* at 49.

obligations in exchange for funding."[8] Specifically, the ABC Plan asserts that "states should 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. States could not unilaterally abrogate the terms of the agreement or force a carrier to bear additional obligations without its consent."[9]

Contrary to the assertions of the Price Cap Companies, COLR and ETC obligations are often essential to ensuring that all consumers have access to telecommunications services. The Price Cap Companies fail to convincingly support their contention that the COLR and ETC service obligations "no longer serve their intended purpose, but instead *undermine* federal universal service policy with respect to broadband and IP-enabled services."[10] The elimination of COLR and ETC obligations, as proposed in the ABC Plan, will likely only serve to undermine the basic universal service principle that rural services should be comparable in terms of quality and type of services and price with urban services and prices. The end result may well be an increase in unserved areas and unserved customers -- an end result that is directly contrary to the universal service principles the FCC is bound to uphold.

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[8] ABC Plan, Framework of the Proposal at 13 (emphasis added).
[9] ABC Plan, Legal Authority Whitepaper at 61.
[10] *Id.* at 51 (emphasis in original).

V. CONCLUSION

The SDPUC respectfully requests that the Commission take our views into consideration when deciding these important issues.

Respectfully submitted,

SOUTH DAKOTA PUBLIC
UTILITIES COMMISISON

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August 24, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of August, 2011, a copy of the Reply Comments of the South Dakota Public Utilities Commission was served via electronic mail as indicated below, to the following:

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