Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

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

COMMENTS OF TDS TELECOMMUNICATION CORPORATION

TDS Telecommunications Corporation ("TDS Telecom") files these comments in support of the Consensus Framework submitted to the Commission on July 29, 2011 (the "Joint Letter"),[1] including its incorporation and modification of the Rural Local Exchange Carrier ("RLEC") Plan described in a May 2, 2011 letter of the Rural Associations.[2] The Consensus

[1] *See* Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) ("Joint Letter").

[2] Signatories to the RLEC Plan include the National Exchange Carrier Association, Inc.; the National Telecommunications Cooperative Association; the Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance, *et al*.

Framework provides the Commission with a rare opportunity to orient the Universal Service Fund ("USF") towards broadband ubiquity, resolve current intercarrier compensation ("ICC") issues, and set the path for longer-term ICC reform – consistent with the policy goals articulated by Congress and the National Broadband Plan for service to rural and other high-cost communities. TDS Telecom urges that the Commission seize this opportunity, which depends upon adoption of the Consensus Framework without any changes that would further modify support to rate-of-return ("ROR") carriers beyond the substantial reductions and concessions described in the Joint Letter.

I. ANY FURTHER REDUCTIONS IN SUPPORT TO RATE-OF-RETURN CARRIERS WOULD CAUSE THE CONSENSUS FRAMEWORK TO UNRAVEL.

> "[T]he parties to this proposal urge specific and particular sensitivity to the fact that what may appear to be an immaterial change to policy makers or another party may in fact disrupt a delicate balance of interests and collapse a breakthrough compromise."
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> *– from the Joint Letter of U.S. Telecom Association, AT&T, CenturyLink, Fairpoint Communications, Frontier, Verizon, Windstream, NTCA, OPASTCO, and Western Telecommunications Alliance to the FCC (July 29, 2011)*

The Consensus Framework is the result of long and difficult negotiations between representatives of Rate of Return ("ROR") and Price Cap telecommunications carriers with diverse and often contradictory views and priorities, motivated by the common goal of bringing robust, affordable broadband to all Americans. Reaching agreement required all parties to make sacrifices. Particularly for ROR carriers such as TDS Telecom, the Consensus Framework provides the minimum level of support that could conceivably be adequate in the coming years. Any further reductions would cause support for the Consensus Framework to vanish because they would solidify and likely worsen the broadband gap that exists today between rural and urban America.

To be clear, even the Consensus Framework falls short in providing for the level of investment in rural broadband that ROR carriers like TDS Telecom and the associations of which they are members have advocated in this proceeding, and which is necessary to bring to fruition the vision of the National Broadband Plan for truly universal broadband. As the Joint Letter notes, "the rate-of-return associations would be unlikely to support in other contexts any reductions to their authorized interstate rate-of-return [from 11.25 percent to 10 percent] or the intercarrier compensation reforms included in this framework [reducing terminating switched access rates to $0.0007]."[3] The Connect America Fund ("CAF") envisioned by the Consensus Framework will provide less overall support to ROR carriers than under the current federal USF, and its implementation will require careful attention to the effects of the transition on the ability of ROR carriers to further universal service objectives.[4] Nevertheless, ROR carriers largely have supported the Consensus Framework because it adheres to certain fundamental principles, such as the importance of ROR regulation to the goal of universal broadband, an adequate recovery mechanism for revenues lost from the reduction of terminating switched access rates, and the closing of loopholes that interconnected Voice over Internet Protocol ("VoIP") providers continue to exploit today.

Given that the modified RLEC Plan described in the Joint Letter represents a floor below which there would be grossly insufficient investment in broadband, the Commission must

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[3] *Id.*

[4] While the RLEC Plan has been calibrated to fit within the Commission's proposed budget, it is important to bear in mind that there are over 1,000 ROR carriers. In order to avoid disruptions in business planning, promote the ability to seek out and receive necessary funding for operations and investment, and bring about a level of certainty to a CAF funding mechanism that has not yet been tested in practice, the Commission should allow for a transition by which no individual study area would lose more than a certain percentage of its annual federal USF revenue. Such a mechanism should run for the first 3 to 5 years of the ROR CAF implementation.

reject proposals that "pick and choose" among different elements of that Framework. In particular, the Public Notice issued by the Commission on August 3, 2011 contemplates material changes to the Consensus Framework that would, in the language of the Joint Letter, "disrupt a delicate balance of interests and collapse a breakthrough compromise."[5] The effect of such proposals would be to reduce support for broadband in rural and other high-cost areas below any amount that could reasonably be expected to solve the "great infrastructure challenge of our time."[6] Their adoption would cause the carefully balanced compromise reflected in the Consensus Plan to unravel.

Successful reform also requires immediate action on the short-term ICC reform measures described in the Consensus Framework and RLEC Plan. Regulatory abuses by which VoIP providers and certain other providers evade paying their fair share of costs for terminating voice traffic on the public switched telephone network ("PSTN") undermine the ability of rural ILECs to invest in broadband infrastructure and new technologies and services. Prompt action to address these regulatory abuses is necessary to provide a solid foundation for longer-term reform of the USF and ICC.

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[5] *See* Joint Letter. For example, among other problems, the Public Notice contemplates calculating CAF support for areas served by ROR companies using an 8.5 percent rate of return, instead of the already reduced figure of 10 percent set forth in the Consensus Framework; calculating CAF support based upon a total company earnings review, including non-regulated operations; and/or reducing or eliminating support to carriers of last resort based upon the presence of competition in some portions of a study area. *Further Inquiry Into Certain Issues In The Universal Service-Intercarrier Compensation Transformation Proceeding*, Public Notice, DA 11-1348 (Aug. 3, 2011) ("Public Notice").

[6] *See* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, at para. 10 (Feb. 9, 2011) ("*NPRM/FNPRM*").

II. THE RLEC PLAN ADVANCES THE FOUR PRINCIPLES THAT THE COMMISSION ARTICULATED IN THE NPRM/FNPRM.

In its February 2011 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (the "NPRM/FNPRM") in this proceeding, the Commission announced that it would be guided by four principles "rooted in Section 254" of the Communications Act: (1) modernization of the USF and ICC for broadband; (2) fiscal responsibility; (3) accountability; and (4) maximization of the value of scarce resources. As discussed below, the Consensus Framework generally and the RLEC Plan specifically fulfill each of those four principles.

Modernization of USF and ICC for Broadband. The RLEC Plan provides a glidepath by which the Commission can phase out the legacy, voice-centric federal USF mechanism and phase in a CAF designed specifically to support broadband deployment and maintenance in rural and other high-cost areas. As described in more detail in the Rural Association's letter of May 6, during a transition period, support under existing high-cost mechanisms including HCLS and ICLS would decline as broadband-focused support phases in through use of a Broadband Allocation Factor.[7] The RLEC Plan also reforms and reduces ICC payments, with a restructure mechanism provided based upon a $25 residential rate benchmark.

Importantly, the RLEC Plan is carefully designed to reduce uncertainty and prevent disruption of the ability of ROR carriers to maintain the broadband networks they already have deployed, and under the right circumstances to advance broadband further into their networks. The Consensus Framework makes this possible in part by rejecting the notion that orienting USF and ICC for broadband is a "one-size-fits-all" proposition. To the contrary, the

[7] *See* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 6, 2011).

Consensus Framework establishes separate transition mechanisms for price cap and ROR carriers, given that the two categories of carriers differ in their ability to replace ICC revenue streams and otherwise respond to incentives for deploying and sustaining broadband. For price cap companies, the Consensus Framework relies on flexibility in subscriber line charge ("SLCs") increases to make up lost access revenues, and CAF support will be directed towards initial deployments in areas that presently are unserved. ROR carriers, however, will make up these lost revenues principally through the restructure mechanism. Thus, were the Commission to modify the Consensus Framework along the lines considered in the Public Notice – for example, to impose the price cap restructure mechanism on the ROR companies – it would doom the Consensus Framework by undermining its core assumptions.

Fiscal Responsibility. The Consensus Framework envisions a CAF budget of $4.5 billion per year during an initial six-year period, with $2 billion of that annual amount (which may be increased to $2.3 billion by the sixth year) allocated to ROR carriers under the RLEC Plan and $2.2 billion allocated to price cap carriers; it also establishes a $300 million funding target for meeting mobility objectives. This budget approach provides a necessary level of flexibility that is not found in a "cap." For instance, in the event that the budget were found to be inadequate to fulfill the Commission's statutory mandate for promoting reasonably comparable service at reasonably comparable rates, planned ICC reductions would be deferred until sufficient funding were confirmed to be available. In contrast, under a cap there is no flexibility to address unexpected shortfalls.

The RLEC Plan imposes further limitations on recovery of prospective RLEC capital expenditures by tying permissible recovery amounts to the depreciation of a carrier's loop plant. This measure cures the widely-recognized problems that currently arise in connection with the distribution of funds within the cap on High Cost Loop Support ("HCLS"). In addition, to address the concerns expressed in the NPRM/FNPRM regarding corporate operations expenses, the RLEC Plan would extend the formula for the current HCLS corporation operations expense cap to all federal high-cost support programs.

Accountability. The RLEC Plan ensures that ROR carriers remain accountable to the communities for which they receive support to serve by imposing strict yet reasonable and well-defined broadband provider of last resort ("POLR") obligations that are successors to the carrier of last resort obligations from the PSTN context. These POLR obligations may vary by state, but generally will revolve around five key elements explained in further detail in the comments of the Rural Association in response to the NPRM/FNPRM: the duty to serve, line extensions, exit barriers, other retail obligations, and carrier-to-carrier obligations.[8] Acceptance of these responsibilities will represent a compact between consumers and the POLR that implicitly benefits the government's longstanding universal service goals.

The POLR obligations, however, should be proportionate to the support provided to carriers and the Commission should ensure that it does not impose any unfunded mandates on carriers. For example, the obligation to extend distribution networks throughout defined service areas upon request should not apply to the extent that reasonably sufficient support has not been provided to a POLR for such build-out. In addition, if the budget were unable to support build-out at levels reasonably comparable to those available in urban areas within a defined time frame, carriers should not be required to meet those targets until such funding becomes available.

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[8] Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, *et al*. (April 18, 2011), at 69-70.

Maximization of the Value of Scarce Program Resources. For many of the same reasons that it ensures efficiency, the RLEC Plan fulfills the Commission's expressed desire for a support mechanism that "encourage[s] technologies and services that maximize the value of scarce program resources and the benefits to all consumers."[9] The capping of corporate operations expenses ensures that carriers have an incentive to maintain those costs at efficient levels, as does the tying of investment recovery to depreciation of a carrier's loop plant. Moreover, over the initial six-year period, support for the "technologies and services" most in need of support – *i.e.*, broadband – will transition in as voice-centric support declines.

It bears emphasis that the Consensus Framework is the only proposal before the Commission that fulfills the four principles of the NPRM/FNPRM. Given its unique ability to fulfill those principles, it is not surprising that the Consensus Framework also is the only proposal that has broad-based support. Other proposals that have been put forth suffer from numerous inequities and would fail to provide reasonably comparable broadband service at reasonably comparable rates in rural and other high-cost areas. For example, the Federal-State Universal Service Joint Board put forth a proposal (the "State Plan") that would prescribe a sharp reduction in ROR carriers' rate of return to 8.5 percent, undermining the goal of providing universal broadband and leaving behind many areas served by ROR carriers. The reform proposals articulated in the NPRM/FNPRM would do even more immediate damage than the State Plan by sharply reducing needed support to carriers and eliminating the incentives that have allowed TDS Telecom and other ROR carriers to make ongoing investments in broadband for high-cost areas – collapsing investment in broadband at the very time that it is needed most.

[9] *NPRM/FNPRM*, at para. 10.

CONCLUSION

ROR carriers such as TDS Telecom are offering to make painful concessions in connection with the Consensus Framework because that Framework provides the best hope for resolving the most controversial and vexing policy questions inherent in orienting universal service for the 21st Century. There is, however, no room for imposing any declines in support for ROR carriers beyond those described in the Consensus Framework. So that the opportunity before the Commission does not slip by, TDS Telecom urges the Commission to adopt the Consensus Framework promptly and without any of the modifications described in the Public Notice.

Respectfully Submitted,

TDS TELECOMMUNICATIONS CORP.

By: ______________________

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