

Before the
Federal Communications Commission
Washington, D.C. 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
)	

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	4
DISCUSSION	4
A. The Commission Should Not Preempt State Authority in Order to Achieve Intercarrier Compensation Reform	5
B. The Preemptive Proposals in the ABC Plan are Contrary to the Plain Language of Federal Law	6
C. Reform Would be Better Achieved Through a Coordinated Federal-State Framework	11
D. Comments Specifically Responsive to the Further Inquiry	12
1. Use of a Cost Model for Price Cap Areas	12
2. Public Interest Obligations	13
3. State Role	14
4. Ensuring Consumer Equity	16
5. Highest-Cost Areas	17
6. Intercarrier Compensation/Federal-State Roles	17
7. Federal-State Role in Recovery Mechanism	20
8. Impact on Consumers	20
9. VoIP ICC	21
CONCLUSION	22

EXECUTIVE SUMMARY

The Commission's Further Inquiry Notice seeks comment on how the proposals submitted by the State Members of the Federal-State Joint Board (State Members) the "RLEC Plan" and the "ABC Plan" comport with the Commission's articulated objectives and statutory requirements. The NPSC believes significant portions of the "ABC Plan" do not meet the articulated objectives and do not comport with statutory requirements and it therefore must be rejected.

The Commission should not use preemption as a tool to implement universal service and intercarrier compensation reform. Rather, the Commission should clearly articulate its objectives first, and then provide states with the opportunity to enact consistent and complimentary reform. The legal framework of the ABC Plan which uses preemption of state rate setting authority, carrier designation, and carrier of last resort obligations, contradicts the explicit federal-state partnership required by the Telecommunications Act.

In addition, if portions of the ABC Plan are being considered, the Commission should require further clarity and specificity to enable the Commission and interested persons to determine the practical impact of the proposal. Specifically, the Commission should require the ABC Plan proponents to provide further detail about the cost model so that interested persons can have a meaningful opportunity verify results or offer specific modifications. The Commission should also require additional information from the ABC Plan proponents about how the access recovery mechanism will ensure that predictable, affordable, and reasonably comparable communications services will continue to be provided to consumers.

INTRODUCTION

The Nebraska Public Service Commission (NPSC) hereby submits its comments in response to the Public Notice¹ of the pleading cycle established in the proceeding referenced above. Given the extremely short timeframe² to review the “America’s Broadband Connectivity Plan” (hereinafter referred to as the ABC Plan) filed by the six Price Cap Companies,³ the NPSC will limit its comments to the most fundamental shortcomings of the ABC Plan and to questions propounded in the Further Notice which affect the states’ role in the reformed universal service program.

DISCUSSION

The ABC Plan is an industry-driven proposal that was negotiated by *some* but not all segments of the industry to reform universal service and intercarrier compensation mechanisms to their benefit. Absent from this negotiation process were many competitive carriers, cable providers, smaller wireless and wireline providers, state governments, and consumer advocates. The ABC Plan promoters have made it quite clear that if the Commission changes any portion of their proposal, the ABC Plan will lose the backing of some the industry members. The Plan

¹ See *Further Inquiry Into Certain Issues in the Universal Service Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket No. 01-92, 96-45; GN Docket No. 09-51, Public Notice (rel. August 3, 2011)(“Public Notice”).

² A request for an extension of time was requested by NASUCA and NARUC but the request was denied by the Commission. The NPSC was also preparing to file a motion in support the extension of time, however, the Commission’s denial was released prior to the NPSC’s ability to meet and make such a decision.

³ See Letter and Attachments 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 WC Docket No. 10-90 et al. (filed July 29, 2011) (“ABC Plan”). See also Letter from Walther 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”).

offers no alternatives, unlike the recommendations provided by the State Members of the Joint Board, and is perceived as a threat to the Commission and other interested parties.

The expectation that the Commission should simply accept a negotiated agreement of some industry representatives without edit is contrary to the Commission's function to independently balance the interests of all stakeholders and particularly consumers. We recommend the Commission independently determine sensible reform objectives within the constructs of the authority permitted by the plain meaning of the Telecommunications Act; and, as the Commission has in the past, be mindful that universal service is supposed to benefit consumers, not the industry.

A. The Commission Should Not Preempt State Authority in Order to Achieve Intercarrier Compensation Reform

As the Commission would expect, the NPSC has strong objections to the preemption of states' authority over intrastate access rates and carrier of last resort obligations as recommended in the legal framework of the ABC Plan. The NPSC questions the need for a preemptive approach to reform given the many states' similar commitment to modernizing universal service programs and promoting the deployment of affordable broadband to all consumers.

Rather than adopting a preemptive approach, the Commission should first create a framework with predictable and fair reform measures and give states an opportunity to enact consistent reform. The Commission should establish a deadline for states to enact such reform. The NPSC believes that a range between three to five years may be reasonable. A number of states have already significantly reformed intrastate access rates and have the mechanisms in place to enact further reform where appropriate. Nebraska law for example, requires the NPSC to

be consistent with federal law when reviewing intrastate access rate changes.⁴ While we recognize not all states have the same statutory construct, if given the proper guidance from the Commission, state reform would most likely occur absent preemption.

However, a significant point of interest to states is the recovery mechanism used to offset state reductions. Rather than setting a uniform rate benchmark, the Commission should induce states to contribute a certain dollar amount to aid in access recovery. The plan filed by the State Members of the Federal-State Universal Service Joint Board provided the Commission with a specific and workable framework which would encourage states to appropriately price intercarrier compensation and supplement federal high-cost support. The NPSC continues to endorse a methodology which provides a per-line match requirement, or in the alternative, a reduction to a state's allocation of support if that state has failed to take appropriate reform measures. The NPSC believes this is a more appropriate way to balance the interests of consumers in states that have already implemented reform.

B. The Preemptive Proposals in the ABC Plan are Contrary to the Plain Language of Federal Law

In developing the legal framework for reform, the ABC Plan proponents ignore the plain language of the Telecommunications Act of 1996 which expressly reserves state jurisdiction over intrastate rates, terms, and conditions of service.⁵ Specifically, the ABC Plan would require the Commission to preempt state authority over all intercarrier compensation, including charges for jurisdictionally intrastate traffic, and adopting a uniform default terminating rate of \$.0007 per

⁴ See Neb. Rev. Stat. § 86-140.

⁵ 47 U.S.C. § 152(b).

minute by July 1, 2017 for all price cap incumbent LEC, CLEC and CMRS carriers with a transitional glide path to the \$.0007 rate for all other carriers.⁶ The ABC Plan would also preempt important consumer protection measures and carrier of last resort obligations traditionally enforced by state commissions. Finally, the ABC Plan would substantively preempt state universal service funding mechanisms and broadband initiatives. Contrary to the arguments made by the ABC proponents, the NPSC does not agree the Commission legally can--or should as a policy matter-- preempt state authority in this regard.

Section 254(b)(5) of the Act requires a partnership between the federal and state governments to achieve universal service objectives. While the Act requires state universal service policies to be consistent with federal goals, the Act does not provide the Commission jurisdiction with respect to “charges, classifications, and practices for or in connection with intrastate communication service.”⁷ The ABC Plan proponents claim that the Commission has the authority under §§ 201(b) and 251(b)(5) to set uniform rates for all traffic. Respectfully, § 201(b) has its limits. While the Commission may use its § 201(b) authority to carry out the provisions of the Act, it is clearly recognized that § 201(b) does not extend to intrastate traffic where Congress has expressly reserved such authority to the states.⁸ ABC Plan proponents cite to the recent decision in *Core Communications* as support for the position that § 251(b)(5) extends to all telecommunications traffic. Rather than supporting this position, the Court in *Core Communications* did not reach this issue of intrusion on intrastate jurisdiction but rather held

⁶ See ABC Plan at 10.

⁷ 47 U.S.C. § 152(b).

⁸ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 421 (5th Cir. 1999)(The agency has no “unambiguous or straightforward grant of authority to override the limits set by § 2(b) and, accordingly, it has no jurisdiction . . .”); compare e.g., *Core Communications v. FCC*, 592 F.3d 139, 143 (D.C. Cir.), *cert denied*, 131 S.Ct. 597, 626 (2010).

there was no conflict between § 201 and §§ 251-252 as the dial-up internet traffic in question involved interstate communications.⁹ In short, the Commission should not disregard other explicit provisions of the Act which plainly reserve certain jurisdictional authority to the states under the guise of implementing the local competition provisions of the Act.

Contrary to the ABC Plan proponent's claims, the Commission has no power to act, let alone preempt validly enacted legislation of a sovereign state, unless and until Congress confers power upon it.¹⁰ In addition, the Commission cannot overstep its jurisdictional limitations even if it thinks such action will best effectuate a federal policy.¹¹ Even if the establishment of a uniform federal policy was a sufficient basis for preemption the Commission should start with the assumption that the historic police powers of the States were not to be superseded by the Act unless that was the clear and manifest purpose of Congress.¹²

The ABC Plan proponents argue the Commission should nevertheless preempt intrastate rate setting authority claiming that state authority stands as an "obstacle" to the accomplishment of federal purpose and claiming the impossibility of complying with state law absent preemption. First, there is no state obstacle because states have the same interests: appropriately pricing rates, removing arbitrage opportunities, and extending affordable broadband services to every consumer within its borders. Second, this argument wrongly assumes this federal policy is supported by the Act. It is not. There was no Congressional intent to eliminate state ratemaking

⁹ See 592 F.3d at 144.

¹⁰ *Louisiana Public Service Com'n v. FCC*, 476 U.S. 355, 374, 106 S. Ct. 1890, 1901 (1986).

¹¹ *Louisiana Public Service Com'n*, 476 U.S. 355, 374, 106 S. Ct. 1890, 1902.

¹² *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947).

authority or consumer protection obligations in order to promote competition. Rather, the Act envisions a state-federal balanced approach to promoting the advancement of communications networks, removing barriers to competition, and ensuring reasonably comparable communications services at affordable rates. Clearly, the plain language of the Act and legislative history contravene the ABC Plan proponents' viewpoint and support the maintenance of a federal/state regulatory duality. Had Congress believed intrastate rate setting authority posed as an obstacle to its objectives, it would have expressly preempted that traditional state authority in the 1996 Act amendments. Instead Congress chose not to do so.

On the other hand, preemption of state authority would contradict express Congressional intent to promote both federal and state universal service objectives; and could therefore be an obstacle to the accomplishment of this federal intent. Rather than furthering the goals of universal service, the adoption of the ABC Plan framework would unfortunately prompt states to abandon valuable universal service and broadband programs. Significantly, a declaration that all VoIP is subject only to the interstate jurisdiction would severely undercut the Commission's Nebraska/Kansas Declaratory Ruling which permits states to require contributions from nomadic VoIP carriers.¹³ Adopting the ABC Plan framework would also remove state incentives to provide additional support for advanced telecommunications services, particularly if there is no continued oversight of pricing, service quality, and broadband commitments. Preemption of state authority would contravene the dual regulatory structure envisioned by the Act.

In the alternative, the ABC Plan proponents maintain that because the Commission has the ability to determine pricing methodology under federal law, that the Commission can simply set

¹³ See *In the Matter of Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of a Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122, Declaratory Ruling, 25 F.C.C.R. 15651, 25 FCC Rcd. 15651 (November 5, 2010).

a uniform rate through a specific price cap imposed for all traffic.¹⁴ Again, while the Commission may establish a pricing methodology, it does not have jurisdiction to set the actual rates.¹⁵ At issue in *Iowa Utilities Bd.* was the authority of the Commission to establish a forward-looking pricing mechanism to be used by states in determining rates for unbundled network elements. Setting a uniform rate or capping a rate at \$.0007 is setting intrastate rates. Undoubtedly, Congress had the ability to craft language explicitly authorizing the Commission to determine rates for all telecommunications services, which it did not do. It expressly reserved such authority to the states. Accordingly, this interpretation must be rejected.¹⁶

Finally, the Commission should not be swayed by the argument that all intercarrier traffic is “inseverable” and therefore can be declared interstate in nature. The ABC Plan proponents are attempting to lead the Commission down a path to making faulty and unsupported conclusions about facts which are not in the record. Contrary to the statements made in its analysis, the Commission cannot find that all traffic routed to or from the PSTN is now suddenly inseverable as a practical matter. In fact there are a number of reasons why carriers must already determine the jurisdictional nature of traffic for purposes of emergency services, universal service, CALEA, and network interoperability.

¹⁴ See ABC Plan White Paper at 16.

¹⁵ See *Iowa Utilities Bd. v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000).

¹⁶ In addition, just because the Commission utilizes a transitional plan to reduce the carriers’ rates to \$.0007, this does not mean the rates are “interim rates.” There is nothing in the ABC Plan which would indicate that the rates are to be priced at \$.0007 for a temporary period of time.

C. Reform Would be Better Achieved Through a Coordinated Federal-State Framework

The ABC Plan essentially eliminates the state-federal partnership required by the Act. Even if their approach to re-writing the Act to remove state oversight is appropriate, it would be astoundingly bad policy. Contrary to public interest, the ABC Plan would have the Commission eliminate all carrier-of-last-resort (COLR) and consumer protection obligations. Consumers need a forum within their state to resolve billing and service quality issues. Most consumer complaints do not warrant the cost of formalized legal proceedings. Service and billing disputes related to wireline, wireless, and even broadband service, are handled routinely by state commissions. In Nebraska for example, consumers can file informal complaints with the NPSC at no cost and receive timely assistance from our consumer advocate. Consumers also have the ability to file a formal complaint with the NPSC and have an evidentiary hearing so that their issues may be resolved. The ABC Plan regrettably takes that ability away from consumers.

In addition, state commissions have a vested interest to ensure that rates are affordable and that quality services are provided. States are strongly devoted to promoting the economic development opportunities ubiquitous broadband service would provide. Rather than promoting states in this role, the ABC Plan punishes the states that have already expended significant resources and developed broadband initiatives. There is no doubt state broadband programs would be jeopardized by the sweepingly preemptive approach taken in the ABC Plan through proposed the elimination of provider commitments and build-out obligations already made to state commissions. The ABC Plan removes the incentives states currently have to share in the

responsibility for broadband programs. We would urge the Commission to leave current state incentives and oversight intact.

D. *Comments Specifically Responsive to the Further Inquiry*

1. Use of a Cost Model for Price Cap Areas

In its Public Notice the Commission sought comment on what information would need to be filed in the record regarding the Cost Quest Broadband Analysis Tool (CQBAT model). An open, transparent, independently verifiable cost model should be available to all interested persons to satisfy procedural and substantive due process concerns.¹⁷ The NPSC supported the use of a forward looking cost model for the determination of support in its prior comments and continues to believe a forward-looking model should be utilized. At this point, however, the CQBAT model has not been publicly released for inspection. Accordingly, it is difficult to provide comments on whether any improvements or changes should be considered. In order to provide a fair and open process, the NPSC recommends the Commission provide all interested persons with an open version of the CQBAT model and proposed model results demonstrating support allocated to each state by census block or support area so that everyone may have the ability to quantify the level of universal service support which could be received for broadband services.

Although we recognize that the ABC Plan wasn't filed with the Commission until July 29, 2011, the Commission should recognize that even as comments are being filed, more details of the plan specifics are emerging. Because of the late date in which additional cost information has

¹⁷ Some company specific inputs could be confidentially withheld to protect trade secret information—such as carrier costs/earnings in a particular area. However, an open version of the proposed cost model should be released publicly so that companies can run model scenarios and so other interested persons can determine how support is to be calculated in each support area.

become available, the NPSC has not been afforded the opportunity to review, test, or meaningfully consider the proposed cost model. Based on a PDF attachment to an August 16, 2011 ex parte communication, we know only that Nebraska price-cap carriers' proposed distributions will equal roughly 1.6 percent of the overall fund distributions. That ex parte did not indicate whether an open version of the cost model would be made available for public inspection.¹⁸

We recommend the Commission require that the CQBAT cost model be made available so that all interested persons can verify, test, or in some cases challenge the model results. Consistent with adequate due process requirements, an agency must give interested persons an opportunity to participate in a proceeding through the submission of written data, views, or arguments. Integral to these requirements is the agency's duty to identify and make available technical studies and data that it has employed in reaching the decisions.¹⁹ In addition, interested persons must be given a reasonable timeframe to review the underlying data in order to provide meaningful comment.

2. *Public Interest Obligations*

To the extent possible, the states should maintain oversight over the quality of service provided by the communications providers and the rates at which the service is provided to the

¹⁸ See Letter from Jonathan Banks to Marlene Dortch, FCC WC Docket No. 10-90 et al. (Filed August 16, 2011); see also Letter and Erratum Letter from Mike Lieberman, AT&T, Jeffrey S. Lanning, CenturyLink, Michael, T. Skrivan, FairPoint, Michael D. Saperstein Jr., Frontier, Margaret McCready, Verizon, and Frank Shueneman, Windstream, to Marlene H. Dortch, FCC WC Docket No. 10-90 et al. (Filed August 12, 2011 and August 18, 2011).

¹⁹ See *Owner-Operator Independent Drivers Ass'n, Inc. v. Federal Motor Carrier Safety Admin.* 494 F.3d 188 (D.C. Cir. 2007); see also *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 530-31 (D.C. Cir. 1982)(finding it is especially important for the agency to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules).

consumer. The ABC Plan recommends preemption of the traditional state role to apply public interest obligations on essentially all providers receiving federal broadband support. As described in the Public Notice, the ABC Plan does not address the pricing of broadband services or usage allowances.²⁰

The Commission has a statutory obligation to ensure that consumers in rural areas are receiving reasonably comparable services at reasonably comparable prices.²¹ In Nebraska, state law requires the NPSC to ensure that consumers in rural areas have access to telecommunications and advanced communications services; and that such consumers are receiving reasonably comparable services at reasonably comparable prices. The Commission should continue in its responsibility to ensure that there are reasonably comparable services at reasonably comparable pricing among the various states. The Commission should also preserve the ability of states to ensure that rates and services are reasonably comparable between urban and rural markets. Accordingly, the Commission should adopt reporting requirements for supported providers and the Commission should not preempt states from adopting reporting requirements, pricing standards or using affordability benchmarks.

3. *State Role*

The Commission also sought 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. Respectfully, the NPSC believes it has already been working in partnership with the Commission over the last 12 years by adopting a consistent framework which

²⁰ See Public Notice at 4.

²¹ See 47 U.S.C. § 254.

supplements the federal universal service fund. The NPSC recently held a public hearing on the implementation of a proposed broadband grant program which would be administered through its state universal service fund and is estimated to start in January of 2012. The NPSC has also recently modified its dedicated wireless fund program to give higher prioritization to wireless carriers having a broadband service offering. In addition, as the Commission is aware, the NPSC previously implemented access reform, rebalanced local rates, developed affordability benchmarks, and provides supplemental high-cost, Telehealth and Lifeline support through its state universal service fund program. All this, and more, has been done at great expense to state taxpayers for program implementation and ratepayers who pay into the Nebraska universal service fund thereby offsetting costs to the federal universal service fund.

Going forward, state commissions can be extremely valuable to the Commission. States could identify unserved and underserved areas, help the Commission prioritize areas for support, provide supplemental funding in high-cost areas, and assist in determining whether support was used appropriately. Specifically, the Commission sought comment on whether states could determine when a provider would be eligible for support amounts. States are well-equipped to take on that role. States have close knowledge of the extent to which broadband is being provided. States are familiar with the obstacles impeding broadband deployment. In addition, many state commissions, like the NPSC, are familiar with the operating costs, investment levels, and revenue sources of the carriers. The NPSC recommends that states should be charged with determining whether a provider should be eligible to be offered broadband support amounts similar to the way that states currently designate ETCs. The Commission can provide the states with a framework to use to ensure that all states are consistently applying eligibility benchmarks.

Further, the Commission asks whether ETCs should be required to file copies of all information submitted to the Commission regarding compliance with public interest obligations. The NPSC recommends that the Commission adopt this requirement. If states are still able to supplement the federal fund through state universal service support mechanisms, the information provided to the Commission and USAC would be valuable to ensure that carriers do not receive duplicate support for the same network costs.

4. Ensuring Consumer Equity

The Commission also sought comment on the use of a rate benchmark to encourage states to rebalance their rates and ensure that universal service does not subsidize carriers with artificially low rates. The NPSC has supported rate benchmarks in prior comments to encourage states to rebalance their rates. This should be used in the context of an incentive. Local rates in Nebraska are either at or above the benchmarks in the ABC Plan. Accordingly, we have concerns that any rate increases through the use of higher subscriber line charge (SLC) cap adjustments may result in rates which are not affordable for consumers or are discriminatorily high in states which have already completed rate rebalancing. The Commission should clarify whether carriers in states which already have rates at or above the benchmark are expected to increase rates higher in order to be eligible for federal support. The Commission should also require the ABC Plan promoters to clarify what happens to retail rates after the Access Recovery Mechanism sunsets in 2020.

5. *Highest-Cost Areas*

The ABC Plan relies on satellite broadband to serve extremely high-cost areas. It is difficult to discern by the limited information made available how many consumers in Nebraska would fall into this category. It is also unclear how the ABC Plan exactly advances universal deployment of broadband technologies beyond what is already available through the current system, or beyond what current market investment plans would produce in the next 10 year time frame. Consumers presently have access to satellite service and under the ABC Plan satellite providers do not appear to be eligible for CAF support.

However, as the National Broadband Plan recognized, satellite could be the best alternative for broadband service in some areas.²² The NPSC recommends that the Commission craft its policies in a competitively and technologically neutral manner so that satellite providers can be eligible to receive support in unserved, extremely high-cost areas. However, to be sufficient, consumers must have access to this technology at reasonable rates. If satellite is seen as a substitute for traditional voice communications, the Commission must ensure that the service is reliable and consumers have access to 911 emergency services.

6. *Intercarrier Compensation/Federal-State Roles*

As provided above, the NPSC has significant concerns with the ABC Plan relative to intercarrier compensation rates. We agree that the Commission and states need to provide a sustainable framework which reduces the dependence upon an outdated intercarrier compensation mechanism. However, the NPSC does not believe the Commission should implement the ABC proposal. States should be given a set period of time to develop an intrastate

²² See Connecting America: The National Broadband Plan (March 16, 2010) at 150.

reform plan and should be given the ability to create a transition to a cost-based system consistent with federal goals. The Commission could then provide an incentive to the states by matching federal universal service dollars for states that are using a fund to reform intrastate charges. The NPSC supports a per-line match. Under a state-federal framework, states can adopt an appropriate transition, the length of which may depend on whether any reform of intrastate rates has been implemented, the number of price cap versus rate-of-return carriers, and whether the states already have a state universal service fund program. In its 1999 universal service fund implementation order for example, the NPSC provided for a three-year access reform plan for nonrural carriers and a four-year transitional plan for rural carriers.

The ABC Plan could be improved by providing states incentives to reform intrastate rates, increase artificially low local rates, and/or create state universal service funds by requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions. As indicated above, creating state inducements is preferable to preemption.

Moreover, the NPSC also has misgivings about the proposed uniform \$.0007 rate. The cost of providing intrastate access is not the same for every carrier. Yet, the ABC Plan proponents disregard the actual cost of providing access service and propose to establish a rate that appears to be non-compensatory for small carriers serving high-cost areas. To recover this cost, the ABC Plan proposes the burden will be shifted to states in the form of higher rates for consumers. It appears to have chosen an arbitrary rate for the convenience of the industry rather one that reflects real costs. It is as egregious as the “identical support rule” that was allowed for years with no cost analysis. In addition, the Plan provides “the LECs are given the opportunity to adjust their business plans and rely to a greater extent on retail customer revenue” where “the plan lessens restrictions on incumbent LEC’s federal subscriber line charge (SLC) rates and

pricing flexibility.”²³ Such an “opportunity” will bypass any state regulatory process which in the normal course would include input from consumers.

In addition, the ABC Plan does not sufficiently address the proposed Access Replacement Mechanism (ARM). The plan provides that there will be transitional “access replacement” where necessary but gives no specifics on how this will be structured. For example, the ABC Plan provides that LECs “*may* recover a *limited portion* of their intercarrier revenue reductions from universal service support.”²⁴ Beginning in 2017, the access replacement support is reduced each year until support is completely eliminated entirely in 2020. Long-term, the ABC Plan contemplates that carriers will rely on retail revenues and not intercarrier payments. To the NPSC, this translates into higher consumer costs for the same service that is being provided today.²⁵ Contrary to the claims that the ABC Plan will not increase costs for the consumer, there is nothing in the plan which addresses how rates in high-cost states will continue to be affordable consistent with § 254 requirements that comparable service be provided to consumers in rural areas at comparable rates. Nebraska retail rates are already at the proposed retail benchmark, so presumably no carrier would be required to increase subscriber line charges; however, if the access replacement mechanism does not adequately compensate the carriers for their costs of providing service then carriers will need to find an alternative funding source to manage network costs. The NPSC recommends the Commission seek further clarification from the industry on the framework of the access replacement proposal and ensure that any proposed access reform clearly identify the impact on retail rates for consumers long-term.

²³ ABC Plan at 11.

²⁴ ABC Plan at 12 (Emphasis Added).

²⁵ Since service quality requirements are to be preempted and/or deregulated under the ABC Plan, it is likely that consumers will be paying more for a lesser degree of service.

7. Federal-State Role in Recovery Mechanism

The Commission questions whether it could achieve a more comprehensive reform of intercarrier compensation rate elements if recovery was achieved through a federal-state partnership. The NPSC responds in the affirmative and believes that a federal-state partnership is required. States can and should share responsibility for recovery of reduced revenue sources. However such recovery mechanisms must be reasonably balanced between federal and state responsibility. The Commission must ensure that consumers are not left with degraded services at higher rates.

8. Impact on Consumers

The Commission sought comments on what steps should be taken in order to ensure that consumers realize the benefits of reduced long distance and wireless rates as part of intercarrier compensation reform. The Commission is in the unique position to ensure that any benefits from reforming rates will be passed on to consumers. As a part of the NPSC's intrastate access reform, consistent with state law, it required the interexchange carriers to file pass-through plans demonstrating how the savings from access reductions would be passed on to consumers.

To ensure that the benefits to consumers aren't just given lip service, the NPSC believes that the Commission should do one of two things: (1) require companies to report certain earnings information to demonstrate that the benefits are not being diverted elsewhere; or (2) prescribe a standard retail rate cap for interstate long distance and wireless service. The consumer impact is extremely important. The Commission must establish tangible consumer benefits and make its expectations explicitly known to the providers.

9. *VoIP ICC*

The Commission also seeks comments on how it should implement the ABC Plan's proposal for intercarrier compensation relative to VoIP. Respectfully, we think the Commission should not implement the ABC Plan's proposal for VoIP intercarrier compensation. Subjecting VoIP traffic to a differential rate structure will provide an incentive to carriers to mislabel, reroute, or create avoidance schemes for any payment of switched intrastate access calls. Rather than create a specific carve-out for VoIP traffic, the Commission should find that VoIP services are subject to the same transition plan as other traffic. In addition, the NPSC recommends the Commission adopt its proposed rules related to phantom traffic and call signaling to remove current arbitrage temptations, or adopt a safe harbor allocation which can determine the appropriate compensation for VoIP traffic.

We also have concerns about the impact of such a decision on the Commission's ruling on the Nebraska/Kansas Petition relative to state authority to require contributions from VoIP providers. State universal service mechanisms must be sufficient to preserve and advance universal service and must help assure affordable and reasonably comparable rates.²⁶ If the Commission does decide to implement the ABC Plan proposal for VoIP traffic, the Commission should clarify that the Nebraska/Kansas decision relative to state universal service contribution requirements on nomadic VoIP providers is not affected.

²⁶ See 47 U.S.C. §§ 254(b)(5) and (f); see also *Qwest v. FCC*, 258 F.3d 1191,1203 (10th Cir. 2001)(finding there should be specific, predictable and sufficient Federal and state mechanisms to preserve and advance universal service);

