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 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 CONSOLIDATED COMMUNICATIONS ON FURTHER INQUIRY PUBLIC NOTICE

Consolidated Communications Holdings, Inc. ("Consolidated") respectfully submits the following comments in response to the Public Notice issued in the above-captioned dockets on August 3, 2011.[1]

[1] *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 a Unified Intercarrier Compensation System, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, DA 11-1348 (rel. Aug. 3, 2011) ("*Further Inquiry*"). Terms defined in the *Further Inquiry*, such as "ABC Plan" and "RLEC Plan," are used in these Comments consistent with those definitions, and without further citation.

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I. INTRODUCTION AND SUMMARY

A. Company Background

Consolidated, founded in 1894, and headquartered in Mattoon, Illinois, is a family of companies[2] providing advanced communications services to both residential and business customers in Illinois, Texas and Pennsylvania. Consolidated offers a wide range of services over

[2] Consolidated's local exchange operating companies are Illinois Consolidated Telephone Company, Consolidated Communications of Texas Company, Consolidated Communications of Fort Bend Company, and Consolidated Communications of Pennsylvania Company. Consolidated also has other operating subsidiaries, including a competitive LEC operating in western Pennsylvania, as well as non-LEC businesses.

its technologically advanced IP-based network, including local and long distance telephone, Digital Phone, High-Speed Internet access and Digital TV. Each of its ILEC subsidiaries serves predominantly rural and suburban territories with low population densities. Significantly, over 97% of Consolidated's customers currently have access to dedicated high-speed Internet access, at downstream speeds ranging (depending on location and distance from the central office) from 768 kilobits up to 20 megabits/sec.

Consolidated serves a single study area in Illinois consisting of 35 geographically contiguous exchanges serving predominantly small towns and rural areas in an approximately 2,681 square mile area primarily in five central Illinois counties: Coles; Christian; Montgomery; Effingham; and Shelby. Consolidated is the incumbent provider of basic telephone services within these exchanges, with approximately 49,907 local exchange access lines, or approximately 19 lines per square mile, as of December 31, 2010. Approximately 63% of Consolidated's Illinois local access lines serve residential customers. Consolidated's business customers are predominantly small retail, commercial, light manufacturing and service industry accounts, as well as universities and hospitals.

Consolidated serves two study areas in Texas, which together cover three principal geographic markets: Lufkin, Conroe, and Katy, Texas, consisting in total of 21 exchanges covering approximately 2,054 square miles, and serving approximately 118,375 local exchange access lines, or approximately 58 lines per square mile, as of December 31, 2010. Approximately 68% of Consolidated's Texas local access lines serve residential customers. Consolidated's business customers are predominantly manufacturing and retail industries accounts, and its largest business customers are hospitals, local governments and school districts.

Consolidated serves a single study area in Pennsylvania consisting of eight geographically contiguous exchanges serving approximately 285 square miles, primarily in portions of

Allegheny, Armstrong, Butler and Westmorland Counties in western Pennsylvania. Consolidated is the incumbent provider of basic telephone services within these exchanges, with approximately 46,888 local exchange access lines, or approximately 164 lines per square mile, as of December 31, 2010. Approximately 56% of Consolidated's Pennsylvania local access lines serve residential customers. Consolidated's business customers are predominantly manufacturing and retail industries accounts, and its largest business customers are hospitals, local governments and school districts.

Effective July 1, 2008, Consolidated converted its Illinois and Texas study areas to price cap regulation, based upon a waiver granted by the Commission.[3] Under this waiver, Consolidated was permitted to convert these study areas to price caps, and required to retarget its switched access rates to the target levels established in the CALLS plan, but in exchange was permitted to continue recovering Interstate Common Line Support (ICLS) on a frozen, per-line basis. Consolidated's Pennsylvania study area is classified as an average schedule company, and therefore participates in the NECA access pools on a rate-of-return basis.

B. Summary of Positions

Although the ABC Plan filed by large price-cap carriers merits serious consideration by the Commission, it is lacking in crucial details and is a "one-size-fits-all" approach that does not take account of the particular circumstances faced by smaller carriers that have recently elected to convert to price cap regulation. Further, the ABC Plan and the Rural Associations Plan, although offered in tandem as a joint "framework," are inconsistent in several critical respects. While the Commission might rationally choose different transition plans for companies that currently are subject to different regulatory constraints, its long-term goal should be a consistent

[3] *See Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-291, DA 08-1026 (rel. May 6, 2008).

approach to universal service support for all territories and all service providers. The proposed "framework" does not present a path towards such a unified outcome.

The Commission should not adopt a specific forward-looking cost model, as proposed in the ABC Plan, without a detailed understanding of the algorithms, cost data, and other inputs used by the model; further, it should ensure that interested parties have a meaningful opportunity to review and comment on this information. An inaccurate, skewed, or unreliable cost model could do more harm than good in the allocation of scarce resources to support universal service. In these comments, Consolidated suggests a number of specific questions about the ABC Plan's proposed model that should be answered before the Commission considers adopting it.

Consolidated opposes the ABC Plan's proposal to abandon customers in the highest-cost areas and provide no support for provision of fixed broadband service in these areas. Although budgetary constraints may limit the ability to support these areas, the Commission should provide some support for companies that are willing to undertake the risk of constructing facilities to remote service areas. This may include, for example, permitting companies to elect to receive a capped level of support for facilities serving these areas; or providing support through a separate Alternative Technologies Fund for any provider that extends broadband service to otherwise unsupported customers.

A further major gap in the ABC Plan is its failure to consider the specific circumstances faced by a small number of companies that recently elected to convert to price caps, including Consolidated. The proposed five-year transition to model-based funding does not take account of these companies' particular needs for support simply to maintain existing networks and provide service to their customers at reasonable prices. To avoid severe impacts on these customers, the Commission should permit this class of companies to elect to retain frozen per-line ICLS support for ten years, in lieu of model-based support.

With respect to intercarrier compensation, Consolidated supports the unification of all forms of compensation through reductions in intrastate access and, where applicable, reciprocal compensation rates. However, the ABC Plan's proposals to reduce only terminating rates while allowing higher originating rates, and to impose a uniform $0.0007 termination rate on all carriers regardless of their costs, are unreasonable and risky. The Commission should require a review of the impact of rate changes after the first two steps, so that it can determine the effects of these steps (including reductions in intrastate access charges) on arbitrage and access avoidance; and it should replace the $0.0007 termination rate with a company-specific target based on long-run incremental costs as determined by State commissions.

If the Commission does proceed with intercarrier compensation reform, it should adopt an access recovery mechanism that takes account of increases in state-regulated local rates as well as in interstate SLCs. Without this, State commissions will find it practically impossible to proceed with rebalancing of intrastate rates without excessive impact on consumers. However, the access recovery mechanism also must not penalize carriers who are prevented by State laws or regulatory policies from rebalancing those intrastate rates.

Consolidated opposes the ABC Plan's proposal to eliminate intrastate access charges on VoIP traffic immediately. This proposal is rife with the potential for abuse, because terminating carriers would have no way to identify VoIP traffic and would have to take the word of the delivering carriers. This would result in widespread evasion of intrastate access charges and create incentives for exactly the kind of arbitrage that the Commission has been trying to eliminate.

II. UNIVERSAL SERVICE ISSUES

A. Support for Mobile Broadband

Consolidated supports the concept of dedicating some CAF support to expansion of mobile service in currently unserved areas.[4] However, as discussed further in Section II.F, below, the Commission should not rely on mobile service as the sole method of serving customers in the highest-cost areas. Some provision must also be made for supporting other technologies that may be capable of providing fixed service to these remote areas.

B. Elimination of Rural and Non-Rural Carrier Distinction

The *Further Inquiry* asks whether the Commission should base long-term universal service support on the interstate regulatory status (price cap versus rate-of-return) of incumbent LECs currently serving a given locality, rather than on their classification as "rural" or non-rural companies under Section 3(37) of the Communications Act.[5] Although the two types of companies may require different transitional mechanisms due to the existing differences in their regulatory treatment, Consolidated believes that the Commission's policy goal should be to support all high-cost areas on a consistent basis, regardless of which company serves a particular area. The "framework" proposed by the ABC Plan and the rural associations seems to envision a permanent divide between two classes of companies, but the Commission should seek a plan that can ultimately unify support for all areas on a consistent basis. As Consolidated is somewhat unusual in serving three price-cap and one rate-of-return study area, it is acutely aware of the anomalies that may result from applying different long-term approaches to different areas based on the accident of past regulatory classifications. The rural nature of a service area, rather than the "rural" classification of the LEC, should be the more significant factor.

[4] *Further Inquiry*, p. 2.

[5] *Further Inquiry*, pp. 2-3.

It is important to note, however, that any changes that the Commission makes in this docket that alter the rural/non-rural distinction for purposes of universal service support should not affect the status of rural telephone companies under Sections 251 and 252 of the Act. Section 251(f) provides specific exemptions from burdensome unbundling, interconnection, and other requirements for rural telephone companies. As these exemptions are mandated by statute, the Commission cannot remove them without conducting a full forbearance analysis, which has not been proposed in this docket, nor would such forbearance be justified based on the considerable additional cost these requirements would impose on rural companies.

C. CAF Support for Price Cap Areas

The *Further Inquiry* asks what information would need to be filed in the record regarding the CostQuest Broadband Analysis Tool (CQBAT model) for the Commission to consider adopting it, as proposed in the ABC Plan.[6] Consolidated has significant concerns about the CQBAT model, and encourages the Commission to require extensive disclosure and testing of the assumptions, data sources, and algorithms underlying the model. Regardless of whether such disclosure is required as a matter of administrative law (which it may well be), sound policymaking requires that the Commission be able to determine as a matter of fact whether the model produces sufficiently valid results to be useful in distributing support that will be both "predictable" and "sufficient" to meet the statutory universal service goals.

Any forward-looking cost model, such as CQBAT, must be tested both for accuracy and precision. "Accuracy," in this context, means whether the model results *on average* closely approximate the real-world cost of constructing and operating broadband networks. Clearly, if a model generally underestimates the actual cost of deploying networks, then it will not provide "sufficient" support to network operators. Conversely, a model that generally overestimates the

6 *Further Inquiry*, p. 3.

cost of deployment will result in wasteful support to some providers, and (due to constraints on the overall size of the fund) would likely divert support away from other areas that actually need it.

"Precision," by contrast, means how far the results of the model for individual service areas (in the CQBAT model, census blocks) diverge from the actual costs of broadband deployment in each particular area. Any model that seeks to predict costs based on aggregated economic and geographic data will inevitably entail some level of error in applying that data to highly disaggregated service areas, as the ABC plan proponents acknowledge.[7] A model could produce results that are accurate in the aggregate but highly imprecise, so that the amount of support directed to any given area would not correlate well with the actual costs incurred to serve that area. For example, a model might underestimate the costs associated with certain types of terrain, or overestimate the costs associated with particular demographic characteristics.

Precision issues are a particularly important concern for smaller price cap companies, like Consolidated. A company with a geographically diverse, nationwide footprint, like the six companies that sponsored the ABC plan, could reasonably expect that any localized errors in determining their support would tend to average out, and that they would receive the "correct" amount of support overall even if there are errors at a local level. That would not be true for Consolidated or other small price cap companies, where any localized error in the cost model might have a material effect on their overall support.

The ABC plan raises many more questions than it answers concerning the cost model. The Commission should ensure not only that the answers to these questions are in the record before proceeding, but it also should provide interested parties a meaningful opportunity to

[7] ABC plan, Attachment 1, page 7 ("the plan recognizes the limitations of census block-level modeling …").

review and comment on the plan *after* this information is provided. Among the questions that need to be addressed are the following —

1. What were the sources of unit cost data used in developing the model? How current are the costs? Was any allowance made for predicted inflation over the 10-year support period?

2. What specific algorithms were used to develop network costs from these unit costs?

3. How does the model aggregate support from census blocks to the wire center level if the boundaries of census blocks do not correspond directly to wire center service areas (*i.e.*, where parts of one census block are served by different wire centers)?

4. Have the model results been validated by comparison to real-world costs of recently-constructed networks? If so, did the examples used for validation represent a complete and realistic range of demographic, topographic, and other relevant conditions affecting cost? How well do the model results correlate with these variables?

5. How did the plan sponsors arrive at the support "floor" of $80 per line? Was this based on market prices of comparable services, on some cost analysis, or was it simply an arbitrary choice driven by the "budget" for the overall fund size? How would use of a different floor (either lower or higher) affect the fund size and the levels of support payable by wire center?

6. The plan indicates that the support "ceiling" (or "alternative technology threshold") of $256 per line was explicitly selected based on the fund "budget"; that is, it was necessary to cut off support at some point in order to stay within the desired $2.2 billion support level.[8] How much does the alternative technology threshold change if the support floor was

[8] ABC Plan, Attachment 1, pp. 4-5

lower, or higher? How many census blocks, and how many inhabitants, would be affected by such changes?

7. How will the existence of an "unsupported broadband competitor" be determined?[9] USTelecom has provided Consolidated the results (although without supporting detail) of two runs of the CQBAT model for Consolidated's wire centers. The two runs used different "cable overlays," that is, different sources of cable coverage data; and the results varied by nearly 50% ($9 million vs. $13 million). Clearly, these figures cannot both be right, which implies that at least one of the two cable overlays is using erroneous data. Possibly, they are both wrong. Will the Commission and the public be able to scrutinize the cable coverage data before it is used to determine final support levels? Will there be a process for CAF applicants to challenge erroneous cable coverage data?

8. The CQBAT model assumes that one technology, namely fiber-fed DSLAMs, will be used in all locations.[10] Assuming for the sake of argument that this is the lowest-cost technology (today) on an overall basis, is it necessarily the lowest-cost in all circumstances? Under some combinations of terrain, distance from wire center, and low density, other technologies may be less expensive. If the CQBAT model projects the cost to serve a particular census block at over $256, the area would remain unsupported, but if another technology is available to the incumbent LEC to serve that block at a lower cost, the goals of Section 254 imply that the Commission should create incentives to deploy that lower-cost technology, rather than leave the area unserved.

9. The ABC Plan proposes that support be allocated in advance for a ten-year term.[11] Does the CQBAT model assume that all construction costs will be amortized within ten years? If

[9] ABC Plan, Attachment 1, p. 3.

[10] *Further Inquiry*, p. 3.

[11] *Further Inquiry*, p. 3.

not, how can support recipients expect to amortize the remainder of those costs after the support period expires? How can support recipients expect to recover operating costs, to the extent those costs exceed what can be charged to customers, after the ten-year support period expires? What, if any, assumptions concerning inflation over the ten-year period are incorporated in the model?

10. If an incumbent LEC elected to convert from rate of return to price cap regulation after July 1, 2012, would it become subject to the forward-looking cost model? How would such a company be transitioned into the price-cap CAF regime?

1. Public Interest Obligations

The *Further Inquiry* asks whether the Commission should adopt interim (1-, 3-, and 5-year) build-out milestones for CAF recipients.[12] Consolidated opposes any such milestones based upon the number of locations served. Any build-out plan will necessarily be designed based on assumptions about construction times that will have to be adjusted in the face of real-world conditions. Any unanticipated event, such as a hurricane, tornado, windstorm, flood, wildfire, or other natural or man-made disaster that impacts a significant part of a company's service area would require significant adjustments to the schedule, and an arbitrary build-out milestone system is inherently incapable of adjusting for such contingencies.

Consolidated suggests, however, that a more realistic approach to milestones would be to phase in the bandwidth standard. For example, the Commission might require recipients to provide 2 Mbps down/768 Kbps up service to all supported locations within five years, and allow another three years to upgrade all locations to 4 Mbps down. This would ensure that all customers have access to a reasonable interim level of broadband service in the short term, while reducing the total burden on the fund in the early years, and still requiring a full build-out of high-quality service.

[12] *Further Inquiry*, p. 4.

The Commission should also clarify the consequences of failure to meet a build-out requirement. The ABC Plan proposes a five-year build-out obligation, but does not specify the consequences of a shortfall. A company that has invested significant resources in building out broadband to previously unserved customers, but has fallen slightly short of the required milestone, should not face a disproportionate penalty.

Consolidated opposes the suggestion that the Commission regulate the pricing of broadband services offered by CAF recipients, or impose burdensome new reporting requirements concerning pricing and terms of service.[13] The purpose of the CAF should be to encourage build-out of networks, not to dictate what services are offered over those networks. Once the facilities are in place, the market should be permitted to determine prices, usage allowances, and other terms of service.

2. Newly Built Locations

As the *Further Inquiry* notes, the ABC Plan is silent regarding whether, and under what conditions, CAF recipients would be obligated to serve locations that are newly built during the ten-year support term.[14] Consolidated suggests that CAF recipients should be required to serve such newly-built locations on the same basis as existing residences and businesses within supported areas,[15] but also should receive additional per-line support to make this extension of service economically viable.

D. Elimination of Support in Competitive Areas

The *Further Inquiry* seeks comment on the provisions of the RLEC Plan that would reduce an incumbent LEC's support if another facilities-based carrier demonstrates that it provides

[13] *Further Inquiry*, pp. 4-5.

[14] *Further Inquiry*, p. 5.

[15] If the new locations are built during the first four years of the initial five-year buildout period, service should be available to them by the end of that period. If they are built after the fourth year, service should be available to them within one year after completion.

unsubsidized broadband service to at least 95 percent of the households in the incumbent's study area.[16] This demonstration of competitive service levels should be mirrored in the ABC Plan, which automatically denies support to any census block in which an unsubsidized provider offers broadband access, regardless of the extent of that offering. As suggested earlier, the Commission should strive for consistency in its approach to universal service; if it is going to deny support to some areas that have cable broadband service, it should treat all such areas similarly. Conversely, it should not support overbuilding of cable networks in some areas unless it is going to support all similarly-situated areas.

E. Ensuring Consumer Equity

The *Further Inquiry* seeks comment on the use of a rate benchmark, under which High Cost support to incumbent LECs would be reduced if the LEC's residential voice service rate fell below a benchmark level, to give states an incentive to rebalance rates.[17] Consolidated opposes this proposal as presented in the *Further Inquiry*. Although its rates in Illinois and Pennsylvania exceed the proposed $21.36 benchmark, those in Texas are considerably lower, because the company is prohibited from increasing them (and the Texas PUC is prohibited from allowing any increase) by state statute. The benchmark as proposed would penalize Consolidated for complying with state law, and would not create any meaningful incentive because state law would prevent the company from rebalancing rates even if it, and the Texas PUC, agreed that this was desirable.[18]

If the Commission does adopt a rate benchmark for high-cost support, then Consolidated suggests it be governed by the following principles. First, the benchmark should be phased in

[16] *Further Notice*, pp. 6-7.

[17] *Further Inquiry*, p. 7.

[18] The Texas Legislature meets only in odd-numbered years, so the earliest that this constraint could possibly be lifted is in 2013. In practice, most state legislation takes effect on September 1 in the year of enactment.

over a minimum of three years so that companies have time to address rate rebalancing through state legislative and regulatory processes. Second, the benchmark should be the same for all support recipients, and should be the same as any benchmark used for ICC recovery purposes. Third, any benchmark should be indexed for inflation, or linked to a price index of comparable services offered by non-subsidized companies, to comply with the statute's mandate of comparable prices between rural and urban areas.

Consolidated opposes the idea of a "total company earnings review" as proposed by the State Members.[19] Rate of return regulation has historically been based on separated telephone costs, and consideration of revenues or costs outside that context would raise complex accounting issues. If the Commission does scrutinize earnings from other than telephone services, however, it needs to ensure that it considers both revenues and costs on a consistent basis.[20] The Commission should not consider video service revenues unless it also accounts for all video service costs, including programming and backhaul costs.

F. Highest-Cost Areas

Consolidated has serious concerns about the proposal in the ABC Plan to deny support to areas with a modeled cost above an "alternative technology threshold." Consolidated believes that a significant number of census blocks in the outlying areas of its service territories would be denied support under this proposal. It is simply inconsistent with the national policy goals contained in Section 254 to "write off" higher-cost areas and provide them with no support at all, or with patently inadequate support.

[19] *Further Inquiry*, pp. 7-8.

[20] The State Members recommended that the Commission exclude revenues and costs of video operations to "avoid the risk of subsidizing video operating losses…." *Id*. at 8. It would be unfair to limit a recipient's earnings from profitable services but impose no limit on its losses from video services. Once the Commission starts considering any non-telecommunications earnings, it would be arbitrary and capricious not to consider all of them.

As an initial step towards addressing this problem, Consolidated suggests that if the model projects a cost in excess of the threshold for a particular census block, the CAF recipient be given the option of accepting the threshold amount (for example, $176 per line in the ABC Plan's illustrative calculations), foregoing any modeled costs above that level, and serving the high-cost area anyway. This would likely incent providers to serve at least some higher-cost census blocks where the cost is only slightly above the threshold amount, or where alternative technology can be used to provide service affordably.

In addition, Consolidated supports the concept of an Alternative Technologies Fund that would provide support for broadband service in areas not supported by the main CAF program.[21] It is crucial, however, that this support be available on a technology-neutral basis. For example, if a wireline provider such as Consolidated can extend broadband to outlying areas of its service territory, whether by building out its wireline infrastructure or by extending it with fixed wireless or other technologies, it should be eligible to seek reimbursement from this fund on the same basis as satellite and other "alternative technology" providers.

Consolidated opposes any requirement that CAF recipients facilitate the construction or interconnection of municipally-owned networks in unserved high-cost communities.[22] Municipal networks should not receive any special treatment under the rules, as this would amount to a subsidy of government entities operating in competition with private businesses.

G. Other Issues

Neither the ABC Plan nor the *Further Inquiry* addresses the unique circumstances of elective price cap companies like Consolidated that currently receive frozen per-line ICLS. It

[21] *Further Inquiry*, p. 8.

[22] *Further Inquiry*, p. 9.

appears that the ABC Plan would phase out this frozen ICLS on the same five-year schedule as all other "legacy" support.

As Consolidated has previously explained in comments filed jointly with similarly-situated price cap carriers,[23] recently converted carriers face unique challenges not shared by other price cap regulated LECs. These carriers only recently converted to price cap regulation, and voluntarily undertook reductions in their switched access usage rates as part of this process. These carriers' receipt of frozen ICLS is critical to their continued ability to meet the telecommunications and broadband needs of their customers. Due to the deficiencies of other high-cost mechanisms (such as insufficient targeting of support to highest-cost areas), ICLS is an especially important source of federal high-cost support for these carriers, representing between 25 percent and 100 percent of the total federal high-cost support provided to each carrier. This support enables preservation of affordable rates and maintenance and expansion of the carriers' networks.

In granting these carriers waivers to permit conversion to price cap regulation within the past three years, the Commission permitted each of them to continue receiving ICLS for each converted study area, frozen on a per-line basis at the time of their respective price cap election, and subject to a total cap on ICLS for each study area. The Commission found that this regime would facilitate lower interstate access rates, for the benefit of wholesale competition and retail customers alike. It also recognized that this arrangement would encourage the new price cap carriers to operate more efficiently and respond more effectively to competition.[24] As explained

[23] *See* Comments of Recently Converted Price Cap Carriers, WC Docket No. 10-90 *et al.*, filed April 1, 2011.

[24] *Petition of Virgin Islands Telephone Corporation for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules; Petition of China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; and Windstream Petition for*

in more detail in the April 1 comments, phasing down these carriers' Frozen ICLS on the same schedule as other support for established price cap carriers would jeopardize their ability to continue to provide voice and broadband services to their customers in high-cost areas, and would be contrary to the public interest.

Notwithstanding any changes to the ABC Plan as currently constructed, Consolidated therefore recommends that price cap carriers currently receiving frozen ICLS be permitted to elect to continue receiving that support (on the same frozen per-line basis as at present) for ten years following adoption of the CAF, in lieu of support available under the forward-looking cost model or other system adopted for distributing CAF support. Since this continued support would be at the carrier's option, it would allow individual companies (such as CenturyLink, Windstream, Frontier, and Fairpoint, all of which receive ICLS for some study areas but which also are signatories to the ABC Plan) to forego ICLS if they prefer to participate in the CAF on the same terms as established price cap companies.[25]

Because relatively few study areas are currently receiving frozen ICLS, the overall impact of this proposal on the size of the CAF would be modest. According to USAC filings, for

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Limited Relief, WC Docket Nos. 10-39, 10-47, 10-55, Order, 25 FCC Rcd 4824 (Wireline Comp. 2010); *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, Order, WC Docket No. 08-220, Order, 24 FCC Rcd 4664 (Wireline Comp. Bur. 2009); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-191, Order, 24 FCC Rcd 4677 (Wireline Comp. Bur. 2009); *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (Wireline Comp. Bur. 2008); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07J171, Order, 23 FCC Rcd 5294 (2008).

[25] Under this proposal, HCLS and LSS payments to Consolidated's price cap study areas would remain subject to the five-year phase-out period for existing support.

the year starting July 1, 2011, only 76 study areas are eligible for frozen ICLS, in an annual amount of $157.5 million.[26] If access rates continue to decline as they have in recent years, this amount will continue to decrease over the projected ten-year CAF funding period. For example, an average decrease of 3% per year (which is a very conservative forecast) would reduce total frozen ICLS funding to less than $116.2 million for the year starting July 1, 2021. And this is not a net increase in the CAF budget, because it would be offset by the reduction in cost model-based support that would otherwise be payable to these study areas under the ABC Plan. Thus, the net cost of continuing to support consumers located in the high-cost areas served by frozen ICLS price cap carriers would be nominal and can easily be accommodated within the proposed fund budget.

III. INTERCARRIER COMPENSATION ISSUES

A. Federal-State Roles

Although Consolidated believes that federal preemption of State regulatory jurisdiction should be avoided whenever possible, it concurs with the ABC Plan's proposal to reduce intrastate access charges and reciprocal compensation rates to the extent that they exceed interstate access rates. Experience has shown that the existence of multiple different rates for transport and termination of traffic, where the services being performed by the terminating LEC are completely indistinguishable, creates massive incentives for arbitrage and evasion. These schemes directly affect both interstate and intrastate revenues and costs, and it is impossible to isolate the effects, or the solution, of this problem to a single jurisdiction, making preemption imperative.

The *Further Inquiry* also asks whether the "rate benchmarks" of $30 for price cap study areas and $25 for rate of return study areas, as ceilings on the residential voice rate, are sufficient

[26] Of these 76 study areas, 56 are served by companies that sponsored the ABC Plan and therefore would likely elect to receive model-based CAF funding instead of frozen ICLS. The remaining 20 study areas will receive only $78.5 million in frozen ICLS over the current funding year.

to mitigate impacts of rate rebalancing on consumers. As noted earlier in these comments, Consolidated believes that the use of different rate ceilings for study areas based on past regulatory status is arbitrary and capricious. Although the transition periods for study areas may need to vary (to prevent rate shock) based on current rates, there is no reason for the ultimate ceiling to differ from one area to another based solely on past regulatory treatment. Consolidated would support a uniform benchmark ceiling of $25 for all study areas, subject to future adjustment based on inflation (as discussed further in Section II.E above).

Consolidated agrees with the suggestion that "any increased consumer rates as a result of state reforms" would count towards the revenue benchmark,[27] so that consumers would not be subject to "double-barreled" rate increases as a result of both state and federal reforms. For example, in Texas, Consolidated's local rates are currently held very low by state policies, and are subsidized by a state universal service fund. If that subsidy were to be eliminated, Consolidated would have to increase its local rates substantially, and it should not be required also to increase its SLCs for the same customers before being eligible for an access recovery payment. In fact, Consolidated suggests that any net loss of revenue due to loss of state subsidies, if not fully recouped by local rate increases, should be recoverable from the access recovery fund.

B. Scope of Reform

The *Further Inquiry* seeks comment on the ABC Plan's proposal to reform terminating end office switching charges first, while leaving transport charges and originating access mostly unchanged.[28] Consolidated believes that the Commission should approach this proposal with great caution. The industry and the regulatory agencies have spent the last decade and a half grappling with a series of arbitrage schemes stemming from the unintended consequences of past

[27] *Further Inquiry*, p. 11.

[28] *Further Inquiry*, p. 13.

efforts at intercarrier compensation reform. It would be foolhardy to assume that this reform will have no such unintended consequences. The divergence of originating and terminating rates, and the drastic changes in relationship between end office and tandem termination prices, may well create unforeseen new incentives for schemes that exploit these rate differentials.

Likewise, the proposed adoption of a uniform[29] rate of $0.0007 per minute for termination of all traffic may have unanticipated impacts. For smaller companies, this rate is likely to be below cost. Providing transport and switching capacity for termination of additional traffic imposes additional costs on telecommunications carriers. Consolidated estimates its long-run incremental cost of terminating a minute of voice traffic at about $0.003, or about four times higher than the proposed rate. Consolidated agrees that transport and termination rates should not be set above cost to provide an implicit subsidy to other services; but neither should they be set below cost, which would result in an implicit subsidy *from* other services to enable termination of other carriers' traffic.

To address both of these concerns, Consolidated recommends that the Commission modify both the ABC Plan and the Rural Associations plan to provide for a "pause" and further review of rate impacts after the step at which all termination rates have been made equal to (or less than) current interstate access charges effective July 1, 2013. The rules to be adopted in this docket should only mandate the first two steps of rate reductions, and should call for the Commission to commence a proceeding later in 2013 to evaluate the impacts of the rate reductions undertaken thus far and determine whether (and how quickly) to proceed with the remaining rate reductions proposed in the framework plans. In that subsequent proceeding, the Commission

[29] Under the so-called "framework" consisting of the ABC Plan and the Rural Associations plan, the ultimate rate would not actually be uniform, because transport rates would be zero for price cap ILECs but would remain at current interstate access levels for rate-of-return ILECs.

should also adopt TELRIC costs for transport and termination, as determined by State commissions, as the ultimate rate target in lieu of the uniform (and arbitrary) rate of $0.0007 per minute.

C. VoIP ICC

Contrary to the ABC Plan, Consolidated believes that VoIP traffic should be subject to access charges on the same basis as any other voice traffic. From a legal standpoint, there is no rational basis to distinguish between two minutes of traffic that are both delivered to the terminating carrier's network in the same format, terminated in the same format, and impose the same costs. Further, from a practical standpoint, there is no technical means available by which the terminating carrier can determine whether a particular minute of use originated in IP format or in TDM format. The ABC Plan would require different jurisdictional treatment of terminating traffic, at least for the first 18 months, based on whether it originated in IP or in TDM format. Non-local IP traffic would be subject exclusively to interstate access rates, while TDM traffic would continue to be subject to either interstate or intrastate access rates depending on the originating telephone number. This is simply an invitation to further arbitrage and abuse of the intercarrier compensation regime. Terminating carriers would have no way to identify whether traffic claimed to be "IP-originated" intrastate traffic actually was originated in that way, or is simply TDM traffic disguised or misrepresented as VoIP. The practical impact of this proposal likely would be that *no IXC would pay any intrastate access charges at all* after January 1, 2012, because all of their access traffic would suddenly and mysteriously become "VoIP."[30]

Consolidated strongly urges the Commission to subject VoIP traffic to *both* interstate and intrastate access charges on the same basis as all other terminating calls. As a practical matter,

[30] An approach based on certifications, factors, and *post hoc* audits, *Further Inquiry*, p. 17, would be costly and highly impractical for smaller carriers like Consolidated. The cost of auditing the usage of an IXC would likely exceed the amount of revenue that could potentially be collected, so that Consolidated would effectively have to take the IXC's word for how much traffic is "VoIP."

this would only require payment of existing intrastate access charges for six months under the framework proposal, because after July 1, 2012, those intrastate charges would be reduced substantially, and after July 1, 2013, the issue would be moot because interstate and intrastate access charges would be unified.

Further, the Commission should put an end to IXC self-help and give LECs some reasonable degree of certainty that they will actually be able to collect the access charges they bill. As long as any access customer can unilaterally withhold payment of bills based on an unsubstantiated legal theory that charges billed in accordance with standard industry practices are somehow improper or illegal, the entire intercarrier compensation regime is no more than a house of cards ready to topple at the slightest gust of wind. The adoption of new rules should provide certainty as to what payments are owed, when, and by whom, and should expressly prohibit any disputes other than factual disputes over the accuracy of billed usage or rates.

IV. CONCLUSION

Consolidated encourages the Commission to address the issues identified in the above comments in its consideration of the ABC Plan and the Rural Associations Plan, and to modify those plans as outlined above.

Respectfully submitted,

/s/

Michael Shultz
Vice President, Regulatory & Public Policy
Consolidated Communications
350 S. Loop 336 W.
Conroe, TX 77304
Phone: (936) 788-7414