

**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 Inter-carrier 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

REPLY COMMENTS OF GVNW CONSULTING, INC.

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EXECUTIVE SUMMARY

We support the change from distinguishing between rural and non-rural carriers to classifying based on rate of return and price cap carrier distinctions, as it is consistent with the unprecedented industry agreement that was filed with the Commission on July 29, 2011 by the rural carrier national associations and the large price cap companies. This agreement represented significant compromise on the part of each of the signatories in order to reach a consensus. The framework filed provides a complementary set of reform plans designed to advance the cause of sustainable universal service throughout rural America.

Reliance upon satellite service is severely flawed. Satellite service is not effectively comparable to any other wireline or wireless broadband service. The latency issue alone makes a satellite broadband offering inadequate for those who are involved with interactive applications including basic voice, online gaming, remote surgery, or other real-time dependent uses. The unpredictable difficulties that latency can cause with Virtual Private Networks (VPNs) and some forms of VoIP and videoconferencing cause these applications to be nearly unusable. Satellite tends to be somewhat sensitive to atmospheric conditions as well. Rain, snow, heavy clouding and lightning can all affect the performance of the user experience in satellite broadband.

For at least the last five years, parties have attempted to obfuscate the debate on an identical support replacement by understating the abilities of CETCs to produce basic accounting data. One of the more egregious examples of this strategy is contained in the GCI comment filing in the 2008 Reform Notice proceeding. At page 70 of its filing, GCI appears to pretend that “documentation” requirements would be new phenomena for

CETCs. If this is the case, then we ask how the Commission and the Universal Service Administration Company requirement to ensure that support funds are used for the purpose of providing supported services are being met by CETCs such as GCI. At page 73, GCI criticizes the WiCAC proposal focus on wireless technology. We suggest that with a small reallocation from its impressive legal and lobbying budget to its accounting budget that GCI would be able to determine what its cost based support might look like.

A separate funding mechanism such as Insular State Support (ISS) that recognizes the unique nature of these insular areas is appropriate to help the consumers and carriers in these states receive commensurate benefits from the expansion of broadband networks in high-cost to serve areas of rural America. Offered as a conceptual approach to funding Alaska/Hawaii extraordinary needs, this Commission may determine that it is in the public interest to recognize these differences.

For the rural wireline carrier, the proposed Restructure Mechanism (RM) is the key recovery mechanism with respect to ICC reform. The RM in the Consensus Framework is an essential component to ensuring that rural customers will be able to receive affordable broadband services. If rate-of-return carriers are able to have access to a sufficient RM, further network investment may be possible in rural areas. If not, the National Broadband Plan will be an Urban Broadband Plan.

The rural carrier RM is designed to be different than the price cap RM in several key aspects. The rural carrier RM is intended to be an on-going support mechanism and is not designed to be phased-out over time.

Introduction and Background

The purpose of these reply comments is to respond to the Further Inquiry of the Federal Communications Commission released on August 3, 2011 (DA 11-1348). In the instant Further Inquiry, the Commission seeks comment on certain issues in the universal service and intercarrier compensation proceeding. The Commission's stated intent for any proposed rules it will adopt is to comprehensively reform and modernize the universal service fund (USF) and intercarrier compensation (ICC) systems in place for communications carriers.

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America. We are pleased to have the opportunity to offer reply comments addressing the issues the Commission has raised in its Further Inquiry.

For the rural wireline carrier, the proposed Restructure Mechanism (RM) is the key recovery mechanism with respect to ICC reform. The RM in the Consensus Framework is an essential component to ensuring that rural customers will be able to receive affordable broadband services. If rate-of-return carriers are able to have access to a sufficient RM, further network investment may be possible in rural areas. If not, the National Broadband Plan will be an Urban Broadband Plan.

UNIVERSAL SERVICE

We address the Commission's request for reply comments with the following.

Elimination of Rural and Non-Rural Carrier Distinctions

We support this change in policy focus, as it is consistent with the unprecedented industry agreement that was filed with the Commission on July 29, 2011 by the rural carrier national associations and the large price cap companies. This agreement represented significant compromise on the part of each of the signatories in order to reach a consensus. The framework filed provides a complementary set of reform plans designed to advance the cause of sustainable universal service throughout rural¹ America.

The ETC proposal in the ABC plan that CAF support recipients "incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission" demonstrates the desire of large price cap carriers to modify² their carrier of last resort responsibilities. This further demonstrates the need for the Commission to have separate regulatory tracks for price cap carriers and rate of return carriers.

CAF Support for Price Cap Areas

At pages 3-5 of the Further Inquiry, the Commission requests input on issues including use of a model. While a number of parties³ objected to the use of a price cap model, we leave that debate to the wisdom of the Commission. With regard to rural rate-

¹ As the Western Associations state in their comments, the RLEC plan is a well thought out, integrated and comprehensive plan that represents significant compromise on the part of rural carriers across the nation.

² The South Dakota PUC expressed their concern about the ABC Plan's call to ensure that "*anachronistic ETC and COLR obligations are fundamentally transformed or eliminated altogether.*"

³ See, for example, Alaska Communications Systems Group; Consolidated Communications; Dave Burnstein; ITTA, Cincinnati Bell, Hargray Telephone Company and Hickory Tech; and the Louisiana Telecommunications Association – Small Company Committee.

of-return carriers, the experience gained and record formed during the Rural Task Force effort indicates that models are not appropriate for rural carriers due to sparsely populated territories lacking a core urban base, significant variations in study area sizes, and higher construction costs. The modeling errors in large company territory tend to average out, which would not be the case for smaller rural providers.

Reforms for Rate-of-Return Carriers

On pages 5-7 of the Further Inquiry, the Commission addresses issues specific to the discrete proposals directed toward rate-of-return reform for rural carriers. We support the comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon and Windstream with regard to a need to defer to the rural associations to work with the Commission to finalize the details of universal service support in rate of return areas, as the rural carriers provide the crucial backbone infrastructure in the rural areas. With respect to that “crucial backbone” infrastructure, the mobility provider depends on the wireline provider in its call completion architecture. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality. This network reality is documented in *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, published by the Foundation for Rural Service in March, 2006.

This paper states⁴ in part, in a succinct manner, why prudent policy makers must recognize the dependence of the wireless system on the wireline fiber backbone.

With regard to eliminating support for areas with an unsubsidized competitor, we concur with the concerns expressed by the National Exchange Carrier Association (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and Western Telecommunications Alliance (WTA) at page 25 of their joint comments that the practical and legal obstacles to implementing a so-called “donut and hole” approach with the CAF mechanism in rural carrier areas would undermine USF reform efforts, as well as prevent achieving the funding targets specified in the Consensus Framework:

Beyond these substantial legal and jurisdictional considerations and the many practical hurdles still to be resolved, rapid implementation of a “donut and hole” concept without careful forethought could also undermine or even defeat one of the Commission’s primary reform objectives – constraining growth in the size of the High Cost program. The Commission itself noted in the NPRM that disaggregation may very well increase the need for support. . . The Commission should therefore not adopt a “donut and hole” mechanism in areas served by RLECs at this time, in the midst of much broader reform. Instead, it should take a separate, narrower look at the legal, practical, and economic considerations involved in such an exercise.

⁴ *Without thoughtful consideration by policymakers of the challenges of providing wireless services in rural America, as well as the dependence of wireless services on wireline networks, portions of the nation are likely to remain underserved. . . Most importantly, one must recognize that without the underlying wireline network, wireless networks could not exist in their current form. In spite of this obvious fact, large wireless carriers and policymakers alike continue to pursue practices and policies that will in fact undermine the critical wireline network. While discussions on how to modify reciprocal compensation, access charges, and universal service continue, attention must be placed on ensuring these mechanisms are capable of maintaining the fiscal health of that wireline network.*

Highest-Cost Areas

In the Further Inquiry at page 8, the Commission raises the issue as to the viability of satellite service to meet the broadband needs of customers in the highest-cost to serve areas. We have previously discussed this issue with the Commission in the context of service in the Alaska bush regions. We believe that the comments of the Maine Public Utilities Commission (MPUC), Vermont Public Service Board (VPSB), and Vermont Department of Public Service (VDPS) capture the inadequacy of satellite in the broadband context. Beginning at page 4 of their comments, these regulators state in part:

The reliance upon satellite service is severely flawed. Satellite service is not effectively comparable to any other wireline or wireless broadband service. The latency issue alone makes a satellite broadband offering inadequate for those who are involved with interactive applications including basic voice, online gaming, remote surgery, or other real-time dependent uses. The unpredictable difficulties that latency can cause with Virtual Private Networks (VPNs) and some forms of VoIP and videoconferencing cause these applications to be nearly unusable. Satellite tends to be somewhat sensitive to atmospheric conditions as well. Rain, snow, heavy clouding and lightning can all affect the performance of the user experience in satellite broadband.

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

In this section, we address the inconsistencies in GCI's critique of the TBF proposal, and introduce a concept known as Insular State Support (ISS).

GCI is inconsistent in its criticism of cost-based support

With the goal of offering a cost-based solution to the challenge of providing broadband service in tribal and native locations that meets the FCC's four principles in FCC 11-13, GVNW developed jointly with four carriers serving tribal/native territory the Tribal/Native Broadband Fund (TBF) proposal. This draft rule section was submitted as Subpart L in ex partes on June 27, June 28 and August 8. [Since that time, we have become aware that the draft of the Restructure Mechanism rules may be designated as Subpart L, and thus the TBF could need to be considered Subpart N.] The proposed TBF meets the principles that the Commission indicated it plans to be guided by in USF and ICC reform: *Modernize USF and ICC for Broadband; Fiscal Responsibility; Accountability; and Market-Driven Policies.*

In the comment round completed August 24, GCI criticized several aspects of the proposed Tribal/Native Broadband Fund (TBF). We will address GCI's erroneous assertions in the context of the FCC's principles for USF and ICC reform.

Modernize USF and ICC for Broadband – GCI asserts at page 29 of its comments that “*the GVNW plan would not close Alaska's wireless or broadband gap.*”

We disagree. The TBF provides the opportunity for small rate of return carriers that are focused on serving tribal and native villages to obtain loans and provide the needed investment in broadband infrastructure. The TBF provides a transition for carriers committed to making the transition to a broadband paradigm truly a national broadband plan by including the residents in tribal and native regions. The most remote Alaskan native villages are predominantly served by the small rate-of-return carriers. To adequately serve these high-cost-to-serve areas, a Tribal/Native Broadband Fund (TBF)

is proposed as a “safety net” for the purpose of maintaining financially viable small rate of return carriers throughout the transition from current legacy USF to the CAF paradigm. The TBF assures that only an “earnings floor” is met, it is not a “make-whole” mechanism.

An acceptable Alaska plan must fairly address rate of return and other carrier distinctions, each of which creates unique policy requirements. A regulatory policy approach appropriate to each carrier class should be adopted by the Commission.

Fiscal Responsibility – GCI’s alternative plan for Alaska is to carefully mask its desire to continue its identical support funding under a different nomenclature. As discussed above, the TBF is a “net gap” funding approach that provides a limitation to the amount of support that will be provided as it is initially a safety net fund. For eligible and participating carriers, essentially no new USF would be required, as the reform reductions calculated would be offset by the TBF safety net that maintains the current TIER levels.

GCI refers to a “*moral hazard*” at page 29 of its comments. We believe the moral hazard that is created is the one that results from GCI’s attempt to continue the windfall of identical support under a different name. We believe, based on several years of statements in the record, that the Commission is committed to reform that will require cost-based support and discontinue identical support in all regions of the country.

Accountability – GCI complains in its comments on page 28 that there are no Part 32 categories for wireless services. GVNW addressed this several years ago with a mapping of Part 32 wireline accounts to a corresponding approach for wireless carriers with its WiCAC and later WiPan proposals. We refreshed the FCC record in this regard on May 25, 2011, and have included that May 25, 2011 ex parte as an attachment to these replies.

As we noted at page 5 of the May, 2011 ex parte filing, which restates some language from a 2008 ex parte:

*Third, several parties have attempted to obfuscate the debate on an identical support replacement by understating the abilities of CETCs to produce basic accounting data. One of the more egregious examples of this strategy is contained in the GCI comment filing in the Reform Notice proceeding. At page 70 of its filing, GCI appears to pretend that “documentation” requirements would be new phenomena for CETCs. If this is the case, then we ask how the Commission and the Universal Service Administration Company requirement to ensure that support funds are used for the purpose of providing supported services are being met by CETCs such as GCI. **At page 73, GCI criticizes the WiCAC proposal focus on wireless technology.** We invite GCI to propose some supplemental rules to address their multiple technology platforms.*

We added the emphasis to the sentence where in 2008 GCI criticized the WiCAC filing (the first version of what eventually became WiPan) for its focus on wireless. We are still waiting three years later for GCI to offer a better and less dismissive perspective on the accounting issues. We suggest that with a small reallocation from its impressive legal and lobbying budget to its accounting budget that GCI would be able to determine what its cost based support might look like. With such an effort, GCI could move from its current “Terra” status to one of being more on terra firma.

In addition, this debate is an old one. In earlier rounds of this debate, OPASTCO offered reply comments at July 2, 2007 in WCD No. 05-337 at pages 13-14: “*If competitive ETCs do not want to provide and support their costs and be held **accountable** for the use of publicly provided funds – just as rural ILECs are – they can choose not to seek ETC designation.*” (Emphasis added)

Insular State Support

The goal of the FCC National Broadband Plan is to extend broadband networks and connectivity into unserved and underserved areas of rural America. This comes with a price, and the Commission has determined to accomplish needed infrastructure deployment within the budgetary limits of current Universal Service support. This, of course, must be layered and meshed with the compelling need to recover prior investments that have been made in good faith upon current rules – investments which, in many parts of Alaska and Hawaii, would not have been made but for the availability of Universal Service support and some of which may fail if that support is reduced or eliminated. The ABC and RLEC plans attempt to rationalize these several goals for a majority of the industry players.

However, commenters from the insular states of Alaska and Hawaii have identified unique circumstances in those two states, which, if the industry plans were implemented in concert, would derail these goals. While we note in the three previous pages that we disagree with their solution set, we note that: “*GCI recognizes the importance of reforming USF and intercarrier compensation, yet urges the Commission to carefully consider the implications of reform proposals on Alaska. Numerous portions of others’ reform plans are inappropriate for Alaska, and if implemented, would be disastrous for consumers and carriers in the state. . .*”⁵ In addition, the Rural Coalition in Alaska states: “*As the Commission’s record reflects, Alaska is unique in terms of its*

⁵ General Communication, Inc. (GCI), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed August 24, 2011, at 29. While Alaska carriers are unified in recognizing a problem exists, the proposed solution sets differ significantly. GCI wants to continue its identical support, while rural carriers propose support be cost-justified and carriers be accountable.

*telecommunications infrastructure and needs . . . It is important for the Commission to consider these differences when weighing alternatives for rule changes. . . .*⁶

In a similar vein, Hawaiian Telcom offers this statement of concern: “*HT urges the Commission to recognize the special circumstances that have made it so challenging to deliver broadband in Hawaii. . . the nation’s most isolated state. . .*”⁷ Hawaiian Telcom further states, “*HT cited in its reply comments numerous comments supporting special consideration for Hawaii, not least of all because of the historically underserved native population dispersed throughout the state.*”⁸

Although fiscal responsibility has always been a key consideration in the formulation of USF programs and rules, clearly the challenges are significantly greater and the costs to build and operate broadband networks in these two insular states are very high even when compared to other rural areas within the Lower 48. USF/ICC reform should not be implemented in a way that creates a public safety, health, and educational divide between Alaska/Hawaii and the Lower 48.

A separate funding mechanism such as Insular State Support (ISS) that recognizes the unique nature of these insular areas is appropriate to help the consumers and carriers in these states receive commensurate benefits from the expansion of broadband networks in high-cost to serve areas of rural America. Offered as a conceptual approach to funding Alaska/Hawaii extraordinary needs, this Commission may determine that it is in the public interest to repurpose a portion of Alaska’s and Hawaii’s current CETC Identical

⁶ Alaska Rural Coalition, Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed August 24, 2011, at 2.

⁷ Hawaiian Telcom, Inc. (HT), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed August 24, 2011, at 20.

⁸ *Ibid.*, at 3.

Support, rather than phase it out completely over a 5 year period. These retained support funds would be used on an “as needed” basis as a “safety net” under the reformed USF and ICC programs to offset at an appropriate level of support, as determined by this Commission, the additional funding needs of Alaska and Hawaii ETCs with COLR obligations. In addition, the wireless CETCs operating in the two states should draw support from the new Advanced Mobility/Satellite Fund now under consideration. However, if through a showing of actual cost, additional support were justified, the Commission should consider repurposing some portion of the CETC Identical Support funds from Alaska and Hawaii, respectively, on an “as needed” basis for these specific CETCs.

The Native Telecom Coalition for Broadband (NTCB) has proposed a “safety-net” concept for the wireline ETCs serving Tribal lands. A mechanism similar to the NTCB proposal could satisfy the requirement for “specific, predictable, and sufficient” support for the small rate-of-return ETCs in Alaska and Hawaii. And the GVNW developed cost model, WiPan, could be used to determine whether additional support, outside the Advanced Mobility/Satellite Fund, was justified for the wireless CETCs operating within these two states, based on their individual company costs.

Implementing Reform within a Defined Budget

At page 9 of the Further Inquiry, the Commission poses questions related to fund budget issues. While we question the ability to fully achieve a national broadband plan within the budget constraints⁹ that have been discussed to date, we acknowledge that interim steps such as deferring CAF funding for study areas served by particular price cap companies and deferring reductions in intercarrier compensation when funding is not available in that year may be needed steps during the CAF transition.

We believe that it will be necessary for the Commission to act on its lengthy record in the contribution mechanism reform matter in order to fully address budget issues in a matter that will withstand legal scrutiny.

INTERCARRIER COMPENSATION

Avoidance of access has created an increased demand on USF and will not go away by a continued avoidance of the problem. Until the actual point in time that voice becomes an application, the FCC must face its access charge regulatory responsibility if it is to meet the legal standard as the expert agency in the matter.

Federal-State Roles

The Further Inquiry at pages 10-13 poses a series of questions with respect to the proper consistency in the reform of ICC. With regard to benchmarks, rate of return carriers typically serve customers with lower average incomes than do the price cap

⁹ The Commission's own National Broadband Plan discussed in Section 8.1 (Exhibit 8-B) an estimated present value of a broadband availability gap of approximately \$24 Billion, stated in present year dollars. This reinforces the need for the pause points proposed in the Rural Carrier portion of the Consensus Framework, in order to evaluate the performance of the transition approach for rate of return carriers and to determine what modifications, if any, are necessary to achieve prudent public policy.

carriers that serve a more urban base of customers. We believe that a \$5 differential in initial benchmark should be considered reasonable in the current environment.

With respect to the issue on page 13 of the Further Inquiry regarding the length of the rate transition being three years for price cap carriers and five years for rate-of-return carriers, we respectfully submit that two more years for the transition for rate-of-return carriers is appropriate in light of the respective starting points of the respective rate structures.

Scope of Reform

In the Further Inquiry at page 13, the Commission addresses the issue pertaining to the initial focus of the ICC reform in the Consensus Framework being on terminating rates for end office switching. Parties commenting expressed a variety of views, with some desiring the inclusion of originating access in reform and some desiring a faster change to a lower rate.

This more limited approach than some may have initially envisioned was necessitated by the Commission's desire to control the size of the fund. It is important to note that a key provision of the Consensus Framework is that if sufficient funding is not expected to be available to provide the required levels of USF support or ICC restructure funding in any year, then any and all reductions in ICC rates are deferred until sufficient funding is available.

Recovery Mechanism

At page 13 of the Further Inquiry, the Commission begins a discussion on the appropriate recovery mechanisms for ICC reform. Access charges represent real costs to

maintain the underlying carrier network for both wireline and wireless networks in the United States. For GVNW clients, access charges represent roughly 1/3 of their revenue stream.

For the rural wireline carrier, the proposed Restructure Mechanism (RM) is the key recovery mechanism with respect to ICC reform. The RM in the Consensus Framework is an essential component to ensuring that rural customers will be able to receive affordable broadband services. If rate-of-return carriers are able to have access to a sufficient RM, further network investment may be possible in rural areas. If not, the National Broadband Plan will be an Urban Broadband Plan.

The rural carrier RM is designed to be different than the price cap RM in several key aspects. The rural carrier RM is intended to be an on-going support mechanism and is not designed to be phased-out over time. As noted by the South Dakota Telecommunications Association, a sufficient federal Restructure Mechanism must be part of any access rebalancing due to the significant revenue losses associated with such a transition.

As noted in the July 29 Joint Letter, the RM for rate-of-return carriers is not transitional and has no phase-down or sunset date. The public policy rationale for this difference from the price cap RM is due to the percentage that access charges represent of a rural carrier revenue stream, the low-cost territories served by price cap carriers, and the lack of price flexibility afforded rate-of-return carriers.

VoIP ICC

Several of the comments filed provide a microcosm into the VoIP debate of the past several years. The EarthLink suggestion that any carve-out for VoIP traffic is “administratively unworkable” is incorrect. It might be unpleasant for those that now have to pay for something that previously they had not been charged for, but it is very workable and very much needed.

The FCC should take actions in 2011 to confirm that current access charges apply to all traffic terminating via carrier facilities on the public switched telecommunications network (PSTN). There should be no exceptions based on regulatory classification or the technology used to originate the calls (e.g., VoIP). We respectfully submit that it was never the intent to exempt this form of traffic from access charges. We disagree with Comcast’s assertion that the new rules pertaining to VoIP should be prospective¹⁰ only.

What has actually occurred is that the debate as to the applicable rate has devolved into a situation where carriers are permitted forms of self-help not available to wireline carriers in phantom traffic scenarios.

¹⁰ Allowing “reform” to occur by regulatory inaction and thus defaulting to all traffic being considered as VoIP is not consistent with existing law, does not fulfill the Commission’s universal service responsibilities and defies common sense and logic. VoIP traffic uses the PSTN the same way as traffic that is generated through the use of other technology platforms. The Commission was correct seven years ago in the 2004 IP-Enabled NPRM, by stating at paragraph 61 that: “*We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.*” We hope that the FCC will balance the promotion of competition with equitable treatment to those that invest in the infrastructure that actually provides the service to customers.

GVNW Reply Comments on Further Inquiry
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Respectfully submitted,

Via ECFS at 9/6/11

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