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

JOINT REPLY COMMENTS OF AT&T, CENTURYLINK, FAIRPOINT, FRONTIER, VERIZON, AND WINDSTREAM

Cathy Carpino
Christopher M. Heimann
Gary L. Phillips
Paul K. Mancini
AT&T SERVICES, INC.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-3046 (phone)

Michael T. Skrivan
FAIRPOINT COMMUNICATIONS, INC.
1 Davis Farm Road
Portland, ME 04103
(207) 535-4150 (phone)

Robin E. Tuttle
FAIRPOINT COMMUNICATIONS, INC.
521 E. Morehead Street, Suite 250
Charlotte, NC 28202
(704) 344-8150 (phone)

Jeffrey S. Lanning
CENTURYLINK
1099 New York Avenue, N.W., Suite 250
Washington, D.C. 20001
(202) 429-3113 (phone)

Timothy M. Boucher
Tiffany West Smink
(303) 992-5751 (phone)
Counsel for CenturyLink

Kenneth F. Mason
Michael D. Saperstein, Jr.
FRONTIER COMMUNICATIONS
2300 N Street, N.W., Suite 710
Washington, D.C. 20037
(202) 223-6807 (phone)

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(additional parties on following page)

Michael E. Glover, *Of Counsel*
Christopher M. Miller
VERIZON & VERIZON WIRELESS
1320 North Courthouse Road – 9th Floor
Arlington, VA 22201-2909
(703) 351-3071 (phone)

Eric N. Einhorn
Jennie B. Chandra
Malena Barzilai
WINDSTREAM COMMUNICATIONS, INC.
1101 17th Street, N.W., Suite 802
Washington, D.C. 20036
(202) 223-7664 (phone)

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INTRODUCTION AND SUMMARY

The comments filed in this proceeding demonstrate the unprecedented breadth of support for the ABC Plan and the Consensus Framework.[1] Parties from many different segments of the industry have embraced the Plan's approach to comprehensive intercarrier compensation and universal service reform. The Plan represents the Commission's best chance to achieve meaningful — but, to date, elusive — universal service and intercarrier compensation reform. The Commission should adopt it.

Some, of course, would prefer a different approach. But it would be impossible to satisfy every industry participant or interest group, because any effective reform plan will necessarily require sacrifices from all sides, and some stakeholders are unwilling to move away from their entrenched positions. Nonetheless, even opponents of the Plan concede that the existing intercarrier compensation and universal service systems are fundamentally broken and unsustainable.[2] And the Commission has before it a reasonable compromise Plan that will stabilize and transform the high-cost universal service and intercarrier compensation systems, will enhance broadband deployment in rural America, and enjoys widespread support on issues that have paralyzed the industry for years. It would be futile for the Commission to continue to wait for a perfect consensus, as one will never emerge. Further delay would only allow the existing regime to crumble further and inflict significant harm on the industry as a whole and, more importantly, on consumers.

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[1] Letter 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, WC Dkt. Nos. 10-90 *et al.* (July 29, 2011) ("ABC Plan" or "Plan"); Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, WC Dkt. Nos. 10-90 *et al.*, Attach. (July 29, 2011) ("Consensus Framework Letter").

[2] *See, e.g.*, Vonage Comments at 3, 5; Connecticut Dep't of Energy and Envtl. Prot. & Public Utils. Regulatory Auth. Comments at 1, 4.

Further delay also would squander the powerful momentum that has grown in support of the ABC Plan and the Consensus Framework. Supporters include mobile providers,[3] as well as CTIA, the leading wireless trade association,[4] and numerous state communications associations, whose diverse memberships include ILECs, wireless carriers, interexchange carriers, and middle-mile broadband providers.[5] The Plan also has backing from consumer and labor groups, including the National Grange, which is America's oldest rural advocacy group and which boasts more than 200,000 members in 2,700 communities throughout the United States.[6] Some state commissions, too, have come out in support of the Plan's elements,[7] as have equipment manufacturers.[8] And, of course, the Plan is sponsored by six communications companies with diverse portfolios and diverse interests, and by the hundreds of rural rate-of-return carriers represented by NTCA, OPASTCO, and WTA. *See* Consensus Framework Letter at 3-4. The

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[3] ABC Plan, Cover Letter at 1, 5; *see also* MetroPCS Comments at 2 (generally supporting "the direction in which the RLEC Plan and the ABC Plan are heading" but arguing that comprehensive reform should occur even sooner).

[4] *See* CTIA Comments at 2 ("The ABC Plan advances several key goals, particularly in the area of intercarrier compensation reform" and "also advances the discussion on universal service reform by calling for a focus on broadband and mobility and recognizing the need to reassess the current rate-of-return mechanism.").

[5] *See, e.g.*, Missouri Telecommunications Industry Ass'n Comments at 2; Nevada Telecommunications Ass'n Comments at 2-3; Ohio PUC Comments at 2-4.

[6] *See* National Grange Comments at 1-2; *see also* CWA Comments at 2; Asian American Justice Center Comments at 1; United States Distance Learning Ass'n Comments at 1-2.

[7] Montana PSC Reply Comments at 2 ("The MPSC generally supports the 'consensus framework' and the ABC and RLEC plans."); Wisconsin PSC Comments at 3 ("The recently released America's Broadband Connectively Plan (ABC Plan) and its complementary RLEC Plan . . . provide a rare moment of major consensus among significant parts of the telecommunications industry. The ABC Consensus Reform Framework has brought key parts of the industry together and appears to be a foundation for potential resolution of these growing problems."); New York PSC Comments at 2 (supporting many of the key elements of the Plan but rejecting its approach to preemption).

[8] *See* ADTRAN Comments at 1-2.

combined service territories of these price-cap ILECs and rural rate-of-return carriers encompass nearly all consumers residing in rural America.

It is critical that the Commission adopt the ABC Plan's proposed intercarrier compensation and universal service reforms simultaneously and in short order. The Commission should seize this opportunity to adopt a comprehensive reform package — which is good for consumers, is good policy for the Commission, and makes good business sense for the industry. Such an opportunity is unlikely to come again, and thus the Plan presents the last clear chance for the Commission to implement comprehensive reform in time to avoid severe industry disruptions and lengthy delays in broadband deployment in high-cost areas.

* * *

In these reply comments, the ABC Plan signatories respond to some of the criticisms of opponents of the Plan. We first explain the many ways in which adoption of the Plan would benefit consumers, and make clear that the Plan's subscriber line charge ("SLC") cap mechanism would not unduly burden LEC customers. We then detail how the ABC Plan appropriately leverages existing broadband and joint-use voice and data infrastructure while avoiding disruptive "flash cuts" and balancing the need to ensure competitive and technological neutrality. Next, we explain why it is essential to preempt state intercarrier compensation rules and eliminate both state and federal legacy service obligations that no longer reflect consumer needs or demands. Finally, we explain why the CostQuest Associates Broadband Analysis Tool ("CQBAT") model is transparent and open to review by the Commission and interested parties.

I. THE ABC PLAN IS PRO-CONSUMER

The ABC Plan will yield enormous benefits to consumers. Most importantly, the Plan will expand the reach of broadband service to two million homes and businesses that lack access to it today, and will sustain and enhance existing broadband services in areas that are uneconomic to serve absent support.[9] The benefits of ensuring access to broadband service for millions of consumers in rural and high-cost areas cannot be overstated. As Congress and the Commission have recognized, broadband infrastructure and services improve consumer welfare in a multitude of ways, including through job creation and economic growth, improved health care services, increased civic participation, and more effective public safety and homeland security services.[10] Broadband also provides access to a whole new world of educational, commercial, entertainment, and social opportunities that most Americans already take for granted. Without access to these IP-enabled services, many consumers will be left behind as the rest of the country charges ahead into the information age.

The intercarrier compensation reforms proposed in the Plan will also generate a wealth of benefits for consumers. As Professor Hausman explains, wireless and long distance carriers will pass through their intercarrier compensation savings to consumers in the form of lower prices, beneficial investments, and service innovations.[11] In addition, by uniting today's divergent terminating rates into one low, uniform rate, the Plan will eliminate many forms of arbitrage and fraud, thereby allowing the entire industry to operate more efficiently.[12] It also will sharply decrease the number of disputes concerning intercarrier compensation, which will reduce dispute expenses and transaction costs, and enable carriers to dedicate more of their finite resources to

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[9] ABC Plan, Attach. 1, Framework of the Proposal at 5 ("ABC Plan Framework").

[10] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, div. B, tit. VI, § 6001(k)(2) (Feb. 17, 2009); FCC, *Connecting America: The National Broadband Plan* at 197-202, 263-79, 297-300, 311-20 (2010), *at* http://download.broadband.gov/plan/national-broadband-plan.pdf ("*National Broadband Plan*").

[11] ABC Plan, Attach. 4, Professor Jerry Hausman, *Consumer Benefits of Low Intercarrier Compensation Rates* at 8-10 ("Hausman Paper"); *see also* ABC Plan Signatories' Comments at 9, 33-34.

[12] Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Developing an Unified Intercarrier Compensation Regime*, 26 FCC Rcd 4554, ¶¶ 35, 44, 495, 524 (2011) ("*2011 NPRM*"); *see also* ABC Plan Signatories' Comments at 20.

improving service and reducing prices.[13] Finally, intercarrier compensation reductions will make individual carriers more efficient and more responsive to their customers, as each carrier will be transitioned to a system in which it will rely primarily on its own end-users for recovery of its network costs in areas that are economic to serve, rather than on payments from other carriers (and, ultimately, their customers).

Importantly, the Plan will produce all of these benefits while constraining the high-cost portion of the Universal Service Fund ("USF") to its current size, thereby limiting the contribution burden on consumers. Together, the Plan and the Consensus Framework will set an overall budget for high-cost funding of $4.5 billion per year during the budget period (2012-2017).[14] This figure includes not just Connect America Fund ("CAF") support for areas currently served by price-cap and rate-of-return ILECs, but also Advanced Mobility/Satellite Fund ("AMF") support, transitional access replacement mechanism ("ARM") funding, and all remaining high-cost support for legacy price cap ILEC and competitive ETCs during the five-year phase down for such funding, as well as any remaining legacy high-cost support for rate-of-return carriers.

Some parties express skepticism that the many benefits outlined above can be achieved within the ABC Plan's proposed budget. The American Cable Association ("ACA"), for example, argues that the Plan "would enable universal service funding to grow significantly."[15] But under the Plan, contributions from consumers in any given year *will not exceed* $4.5 billion

[13] *2011 NPRM* ¶ 39; *see also* ABC Plan Signatories' Comments at 19-20.

[14] Consensus Framework Letter at 2; ABC Plan Framework at 1; ABC Plan Signatories' Comments at 2, 7-8.

[15] ACA Comments at i, 6; *see also* Letter from Matthew M. Polka, ACA, and Michael K. Powell, NCTA, to Chairman Julius Genachowski, FCC, WC Dkt. Nos. 10-90 *et al*., at 3 (Aug. 23, 2011) ("ACA/NCTA Letter").

through at least 2017. ABC Plan Signatories' Comments, Exh. A, at 1-3. The ABC Plan's universal service budget, which was attached to the ABC Plan Signatories' Comments, shows that the Commission may disburse more or less in support in individual years, but the burden on consumers will not exceed the size of the program as it stands today. *See id.* In addition, a number of conservative assumptions were built into the ABC Plan's budget, and it is possible that the amount of funding actually disbursed to providers could be lower than what the budget forecasts.[16]

Finally, some commenters contend that the Plan will *harm* consumers because it calls for limited SLC increases.[17] This argument is unfounded for several reasons.[18] First, to ensure that no consumer is asked to pay significantly more for local phone service, the Plan establishes a $30 cap on the aggregate total of end-user rates, which will prevent SLC increases to the extent they would increase rates above that benchmark.[19] Thus, even with the SLC increases authorized under the Plan, end-user rates in rural and other high-cost areas will remain not only just,

[16] *See* ABC Plan Signatories' Comments, Exh. A, at 2-3 (explaining the assumptions underlying the Plan budget). For example, the budget assumes that the maximum amount of potential support identified by the CQBAT model will be distributed in all high-cost areas. But in many areas — either because an ILEC has not substantially deployed broadband infrastructure already or because an ILEC turns down a right of first refusal — the competitive bidding procedure proposed in the Plan could result in reduced support for the same obligations. *See id.* at 3.

[17] *See, e.g.*, NASUCA Comments at 6 (SLC increases would "harm universal service by making telephone service less affordable"); *id.* at 14, 23-25, 57-77; Kansas Rural Independent Tel. Cos., *et al.* Comments at 7-8 ("Increased end user charges, however categorized, directly undermine the objective of affordability."); Massachusetts DTC Comments at 10; District of Columbia PSC Comments at 4-5.

[18] Many commenters support the Plan's SLC increases. *See, e.g.*, CTIA Comments at 13 (discussing efficiency of end-user cost recovery); New York PSC Comments at 2, 8; Time Warner Cable Comments at 13.

[19] *See* ABC Plan Framework at 12 (precluding ILECs from raising SLCs if doing so would "cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, if the state has a high-cost fund, to exceed a benchmark of $30 per month").

reasonable, and affordable, but also reasonably comparable to those charged in urban areas, consistent with the requirements of section 254(b) of the Communications Act.[20] Second, the SLC increases permitted under the Plan not only are modest in size, but also will be phased in slowly, over five years.[21] Third, there is widespread agreement that rates in certain areas are too low. *See supra* n.20. The existing ILEC rate structure is a relic of monopoly regulation that is unsustainable in today's competitive marketplace, especially as incumbents continue to lose access lines at a significant rate. *See* ABC Plan Signatories' Comments at 28-31. Fourth, those few consumers for whom the Plan's modest SLC increases constitute a burden may "vote with their feet" and obtain voice service from any number of non-ILEC companies, as tens of millions of Americans already have; the Lifeline program will also remain available to assist low-income consumers.[22] Finally, any increases in end-user rates will be more than outweighed by the other massive benefits outlined above — including greater access to broadband service, lower-priced and more competitive long distance and all-distance calling plans, and greater efficiency and responsiveness throughout the industry as a whole.[23]

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[20] 47 U.S.C. § 254(b). In many cases, the aggregate rates charged to consumers in rural and other high-cost areas under the Plan will, for the first time, be reasonably comparable to those charged to consumers in lower-cost urban areas, because carriers serving those high-cost areas often have been required through regulation to offer service at rates significantly below those in urban areas. *See* ABC Plan Signatories' Comments at 28, 32 & n.101.

[21] ABC Plan Framework at 11-12 (providing for yearly increases of $0.50 or $0.75 depending on whether a carrier receives support from the transitional access replacement mechanism).

[22] Lifeline program beneficiaries receive baseline support that is equal to the amount of the SLC charged by the ILEC serving the area where they live. *See* 47 C.F.R. § 54.403(a)(1).

[23] Some commenters have suggested that Professor Hausman's analysis did not account for the SLC increases permitted by the Plan. That is wrong. Professor Hausman acknowledged that "wireline consumer welfare gains (but not the gains on the wireless side) would be reduced to the extent wireline providers increase end-user prices to make up for lost intercarrier revenue," but explained that "in at least a substantial portion of the country, competitive pressures would

II. THE ABC PLAN APPROPRIATELY LEVERAGES EXISTING INVESTMENT AND INFRASTRUCTURE

A. The ABC Plan Includes an Integral Role for Wireless Technologies, Without Directing Scarce Resources Toward Inefficiently Subsidizing Competition in High-Cost Areas

Various commenters mistakenly assert that the ABC Plan locks in support for price-cap ILECs while marginalizing wireless technologies. For example, the Rural Cellular Association claims that the ABC Plan would "reserve at least $4.2 billion" for ILECs while allocating only $300 million to wireless.[24] To the contrary, the ABC Plan provides a crucial role for wireless technologies.

The Plan does not limit CAF support exclusively to ILECs. Where an ILEC either has not made substantial broadband investments in a wire center or declines the baseline support amount, the Plan provides that *any* qualified wireless or wireline provider that can meet the specified broadband service obligations may apply for the baseline support and the obligation to serve the associated census blocks.[25] As Mobile Future correctly notes, the Plan "is technology-

likely constrain many firms from increasing end-user rates by amounts equal to the lost intercarrier compensation revenue." Hausman Paper at 13 n.25.

[24] Rural Cellular Ass'n Comments at 12; *see also* U.S. Cellular Comments at 23 (asserting that the ABC and RLEC Plans "lock in $4.2-$4.5 billion in support to wireline technology"); MTPCS Comments at 7 (claiming the ABC Plan "would ignore the significant funds already invested over the last six or seven years in rapid buildout of PCS infrastructure, and invested for decades in cellular").

[25] *See* ABC Plan Framework at 2-3 (indicating that the "broadband service obligation is technology-neutral" and CAF recipients "can use any wireline or wireless technology" to meet the obligation, which requires recipients to "make available broadband service that provides customers with a minimum actual downstream bandwidth of 4 Mb/s and a minimum actual upstream bandwidth of 768 kb/s, and also provides robust service that is sufficient for households to use education and health care applications specified by the Commission").

neutral and would not prevent the use of CAF funding for mobile broadband when it is the most cost-efficient option."[26]

In addition, the Plan provides up to $300 million per year for a dedicated Advanced Mobility/Satellite Fund, which will support the provision of mobile services in high-cost areas that the private sector may not otherwise reach, and may support a portion of the installation costs for a limited number of broadband satellite customers in the highest-cost areas.[27] Unlike the CAF, which can support an array of broadband technologies, the Advanced Mobility/Satellite Fund will support *only* mobile wireless and satellite services.

Several rural wireless providers claim that $300 million per year is insufficient for a dedicated Advanced Mobility/Satellite Fund.[28] However, as other commenters note, this size is appropriate given the focused purpose of the fund.[29] Wireless services, including various levels of broadband capabilities, have already been deployed throughout the nation, and providers have announced plans to deploy in even more areas and to upgrade existing services. Most of this deployment has been or will be accomplished without universal service support. For example, Verizon alone has announced plans to reach at least 147 domestic cities with LTE wireless

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[26] Mobile Future Comments at 4; *see also* TIA Comments at 7 ("endors[ing] the technology-neutral aspect of the proposal").

[27] The ABC Plan "does not include a detailed proposal for the operation of the AMF," and the signatories take no position on the specific mobile services that should be supported by the AMF. ABC Plan Framework at 8. Instead, the signatories "look forward to working with providers of rural mobile broadband service, satellite broadband providers, and other interested parties to develop a complete proposal for the operation of the AMF." *Id.*

[28] *See, e.g.*, Cellular South Comments at 11-13; MTPCS Comments at 14-15; Northeast Colorado Cellular Comments at 10-12; Rural Cellular Ass'n Comments at 11; Rural Telecommunications Group Comments at 4; SouthernLINC Wireless Comments at 21; T-Mobile Comments at 20-23; U.S. Cellular Comments at 24.

[29] *See* ADTRAN Comments at 3-4 (noting that because most of the country will have access to 4G service, $300 million seems appropriate as an initial level of funding); NASUCA Comments at 80 (stating that mobile broadband is being reasonably deployed already).

service by the end of 2011 and will have LTE coverage throughout its 3G footprint by the end of 2013.[30] Earlier this year, Ericsson and NetAmerica Alliance announced a technology agreement that will bring 4G/LTE to smaller operators in rural markets.[31] Clearwire reports that, as of February 2011, its 4G network reached over 119 million Americans.[32] AT&T, as part of its planned acquisition of T-Mobile, has pledged that the combined company would ensure that over 97 percent of Americans have access to LTE mobile broadband, without relying on high-cost universal service support to fund the expansion.[33] Likewise, Sprint has 4G coverage available in dozens of cities and plans further deployment,[34] and MetroPCS offers LTE service in many major U.S. cities. Given these widespread deployment initiatives, Advanced Mobility/Satellite Fund support will be needed in only a few limited areas where mobile service will not be commercially viable absent support.

Essentially, many rural wireless and other competitive providers would prefer to maintain how they receive support under the current system, which distributes approximately one-third of all high-cost funding to CETCs. But CETC support today is simply not rational. In many cases, this support goes to multiple CETCs to operate in the same high-cost areas — areas that very

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[30] *See* Bonnie Cha, *Verizon 4G LTE network to cover 147 cities by end of year* (CTIA Mar. 22, 2011), *at* http://reviews.cnet.com/8301-12261_7-20046102-10356022.html; Verizon, *4G LTE We're Ready. Are you?*, *at* http://network4g.verizonwireless.com/#/coverage.

[31] *See* Press Release, *NetAmerica and Ericsson To Bring Comprehensive 4G Solution to Rural Markets*" (Mar. 22, 2011), *at* http://www.netamericaalliance.com/latest-news/2011-03-netamerica-and-ericsson.html.

[32] *See VOIP IP Telephony, Clearwater Reports Solid Q4 And Total 2010 Growth* (Feb. 22, 2011), *at* http://snapvoip.blogspot.com/2011/02/clearwire-reports-solid-q4-and-total.html.

[33] AT&T and T-Mobile, *Frequently Asked Questions*, *at* http://mobilizeeverything.com/facts/frequently-asked-questions.

[34] *See* Sprint, Coverage Map, *at* http://coverage.sprint.com/IMPACT.jsp?INTNAV=ATG:FT:Cov.

often also have unsupported providers.[35] However, given its emphasis on expanding the range of supported services without increasing the contribution burden on consumers, the Commission should not distribute CAF support to more than one service provider in each high-cost area. Instead, it should redirect legacy CETC funding toward targeted support for broadband and voice offerings by a single provider — wireline or wireless — in each high-cost area that would not otherwise be economical to serve, with that provider bearing the CAF service obligation. *See National Broadband Plan* at 145. Excessive, redundant support is a fundamental flaw of the current high-cost program, and it simply cannot be sustained going forward.

B. The Right-of-First-Refusal Approach Minimizes Stranded Investment and Balances Competing USF Objectives

For very different reasons, parties on both ends of the policy spectrum have voiced opposition to the ABC Plan's right-of-first-refusal approach to distributing CAF support in certain high-cost areas where there is no unsupported broadband provider and the ILEC has already significantly deployed broadband services. Some argue that the right of first refusal should not be offered to ILECs in any wire center,[36] while others call for the right of first refusal to be made available in *all* wire centers, not just those where the ILEC has deployed broadband service to 35 percent of the service locations, *see* CWA Comments at 2-3.

The ABC Plan's right of first refusal appropriately balances the competing interests articulated in these parties' advocacy. That right is narrowly tailored to minimize stranded investment in ILEC plant and joint-use facilities that enable both voice and broadband services in high-cost areas. The right of first refusal responds to a variety of important policy objectives,

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[35] *See* MTPCS Comments at 25-26 (arguing that high-cost program should provide support to more than one carrier in each area); SouthernLINC Wireless Comments at 23-24.

[36] *See* ACA/NCTA Letter at 2; Letter from Scott Bergmann, CTIA, to Marlene H. Dortch, WC Dkt. Nos. 10-90 *et al.*, Attach. at 7 (July 29, 2011).

including preserving existing broadband service in high-cost areas, enabling new broadband deployment in unserved areas, and incorporating competitive and technological neutrality.

The Plan's right of first refusal is not designed to "tilt the competitive landscape in favor of the Price Cap incumbents," as some contend.[37] Instead, it is a narrowly-targeted means of accelerating broadband deployment and preventing inefficient duplication of existing facilities. In short, it identifies those wire centers where a provider has made significant progress in deploying joint-use voice and broadband facilities and gives that provider an opportunity to extend those facilities to unserved households and businesses in those wire centers. Importantly, the right of first refusal appropriately recognizes that ILECs, due to their historically distinct regulatory treatment, are dissimilarly situated from cable operators, wireless carriers, and other competitive providers. In many cases, ILECs have deployed their joint-use facilities to unusually high-cost areas not because it made independent business sense to do so, but because federal and state regulation compelled them to do so. *See* ABC Plan Signatories' Comments at 13. The Plan's right of first refusal is intended to avoid the equitable and legal concerns that would arise from stranding these ILEC investments. *See id.* Nonetheless, to ensure a level playing field for competitive providers, the right of first refusal cannot be exercised for support in any census block where an unsupported broadband provider already offers service, and it is not available to any ILEC that has not deployed broadband service to at least 35 percent of the service locations in a given wire center.

More specifically, the ABC Plan provides no high-cost funding whatsoever in any census block where an unsupported broadband provider — *e.g.*, a cable company — is already offering service, or any census block where the average costs do not exceed a high-cost benchmark of

[37] ACA Comments at i; ACA/NCTA Letter at 2.

$80 per line.[38] This ensures that scarce USF resources are not used to support service where the private sector has in fact already deployed broadband or is likely to deploy service in the near term. In other words, the ABC Plan targets CAF support only to the high-cost "donut" (*i.e.*, the countryside) and not the lower-cost "hole" (*i.e.*, the town). In this way, the ABC Plan goes even further than NCTA's previous proposal for a "challenge" process whereby a wireline provider competing with an ILEC could petition to eliminate funding in an area where the provider offers voice service without support.[39] As a starting point, the ABC Plan makes all areas where there is an unsupported broadband provider ineligible for CAF support.

Moreover, even in those areas *not* served by a cable company or another facilities-based broadband competitor, the right of first refusal is limited further. In order to exercise that right in a given wire center, an ILEC must have already deployed broadband to 35 percent of the service locations there. *See* ABC Plan Framework at 6. This threshold ensures that substantial investments in broadband facilities are not stranded, but instead will be leveraged to provide broadband throughout the high-cost areas of a wire center. Further, this threshold recognizes that, even in those census blocks where an ILEC has not yet deployed broadband facilities, in most cases the LEC, often as the carrier of last resort ("COLR") (where such requirements still exist), has deployed significant telephone plant and joint-use voice facilities that can also be

[38] ABC Plan Framework at 3, 5-6. Although the cable industry claims that "[c]able broadband is available to 93% of U.S. households," *see* NCTA, *Broadband Adoption – NCTA Position*, *at* http://www.ncta.com/IssueBriefs/Broadband-Adoption.aspx?view=2, the industry has not publicly produced granular data regarding the extent to which such companies are offering broadband service in each census block. With more granular data from the cable industry, the Commission could more precisely target CAF support to those census blocks that currently are not served by an unsupported broadband provider.

[39] *See* NCTA, Petition for Rulemaking, *Reducing Universal Service Support in Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition*, RM-11584, at i-ii (filed Nov. 5, 2009), *at* http://www.ncta.com/PublicationType/RegulatoryFiling/NCTA-Petition-for-Rulemaking-11-05-09.aspx.

leveraged and upgraded for broadband in an efficient way. At the same time, this threshold is high enough that it will not preclude competitors from receiving CAF funding for high-cost areas in which they could most efficiently provide service.

Cable commenters assert that, under the ABC Plan, "alternative providers" will be denied "the opportunity to receive support even where they can serve the area more efficiently." ACA/NCTA Letter at 2. To the contrary, the right of first refusal is tied to a support amount for an efficient broadband network. Under the ABC Plan, a forward-looking cost model will be used to help calculate the baseline support amount for CAF-eligible areas. *See* ABC Plan Framework at 4-6. An ILEC that qualifies for a right of first refusal in a wire center may conclude that it will not be able to meet the requisite service commitments for the high-cost areas with that amount of support and decline it. At that point, any broadband provider could bid to provide broadband service to the high-cost areas for that support amount. Given this design, and particularly the use of a forward-looking cost model to calculate the support available for an incumbent provider exercising a right of first refusal, the available support amount should be no more than necessary to support an efficient broadband network.

In effect, the right-of-first-refusal approach in the ABC Plan is designed to balance competing policy objectives. The reality is that the Commission is not "starting from scratch" with broadband deployment, and in fact NTIA's Broadband Statistics Report shows that, as of June 2010, the private sector was already delivering broadband with download speeds in excess of 3 Mbps and upload speeds in excess of 768 Kbps to the vast majority — more than 95 percent — of the population.[40] In some high-cost areas, particularly rural areas, ILECs have been able to invest in broadband only because existing universal service support for voice services also

[40] *See* http://www.broadbandmap.gov/analyze (Access to Broadband Technology by Speed Report).

indirectly supported the same joint-use facilities that are necessary to deliver broadband, or because implicit support in access charges made such investment financially viable.[41] It is essential to take advantage of existing investments in ILEC infrastructure and to leverage those facilities in a way that will deliver ubiquitous access to broadband while working within the current budget for high-cost funding. Moreover, the elimination of existing implicit and explicit support for broadband following the transition to all-broadband high-cost funding could compromise the viability of broadband in many high-cost areas. The right of first refusal included in the Plan appropriately minimizes such risks for substantial broadband investments that have been made by USF-supported ILECs in high-cost areas, while sustaining competitive and technological neutrality.[42]

At the same time, the right-of-first-refusal approach maximizes the opportunity to push broadband networks into the few remaining areas that do not have access to broadband. As discussed above, the right of first refusal is available only for those high-cost areas where there is no unsupported broadband provider today and where an ILEC has already deployed broadband to at least 35 percent of the service locations in the given wire center. In those high-cost areas, only the ILEC has had to assume COLR obligations (where such obligations still exist), which may have required it to serve high-cost locations with voice service. That voice-providing plant can be leveraged and upgraded to deliver broadband. Under these narrow circumstances, in these targeted high-cost areas, the ILEC often will be in the best position to capitalize on a new CAF program and efficiently deliver broadband to unserved consumers.

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[41] *See National Broadband Plan* at 141 & n.35; ABC Plan Signatories' Comments at 12-13.

[42] *See* Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶¶ 46-52 (1997) (adopting neutrality principles).

The right-of-first-refusal approach also preserves both competitive and technological neutrality. This approach sustains competitive neutrality because, as discussed above, the option applies only in a limited number of high-cost areas where there is no unsupported broadband competitor (and, given cost conditions, near-term entry of a competitor is unlikely), the only facilities-based service is provided by the ILEC, and the ILEC has deployed broadband to at least 35 percent of the service locations in the given wire center. In these situations, there simply is no other similarly situated competitor. Moreover, if the ILEC turns down the right of first refusal or is not eligible for it in the first place, then the wire center will be open to competitive bidding and any provider may bid for the opportunity to become the single high-cost universal service recipient in the wire center and assume the attendant service obligations.

This approach also provides for technological neutrality. In setting applicable standards for broadband service — *i.e.*, wireline or wireless — in high-cost areas the Commission should focus on the functionality of the service to the end-user. And under the ABC Plan the high-cost universal service recipient in an area — *i.e.*, the ILEC that accepts a right of first refusal or a different provider that is designated the CAF recipient through an application process or competitive bidding — will have the flexibility to deploy any broadband technology, so long as the service meets the Commission's broadband performance obligations.[43]

C. The Transitional Access Replacement Mechanism Is Needed To Ensure a Reasonable Glide Path

The ABC Plan's transitional ARM is critical to ensuring a reasonable glide path for implementing the proposed intercarrier compensation reforms. The ARM fulfills the Commission's desire that reforms "avoid sudden changes or 'flash cuts'" and offer "measured

[43] *See also* Mobile Future Comments at 4; TIA Comments at 9 ("endors[ing] the technology-neutral aspect of the proposal").

transitions." *2011 NPRM* ¶ 12. It also is consistent with past Commission decisions that have recognized the need to provide for explicit funding when carrier revenues are reduced as a result of intercarrier compensation reforms.[44] Without meaningful access recovery, the intercarrier compensation reforms proposed today, like those previously enacted, "could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business operations."[45]

Contrary to claims of critics of the ABC Plan's ARM, opportunities for increased SLCs and cost savings realized from intercarrier compensation reforms do not obviate the need for the ARM.[46] Together, the ABC Plan's ARM, managed SLC increases, and the $30 benchmark appropriately balance the goals of controlling the size of the USF and enabling reasonably comparable, affordable service for all areas.[47] The ARM is narrowly tailored to ensure that only legitimate recovery needs will be addressed: not only is support from the ARM available only to the extent that a carrier's intercarrier compensation losses exceed the maximum SLC increases permitted under the Plan, but the ARM also will not fully compensate carriers for even *those*

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[44] *See* Report and Order, *Access Charge Reform*, 15 FCC Rcd 12962, ¶¶ 201-205 (2000) ("*CALLS Order*") (establishing a "$650 million interstate access universal service support mechanism") (subsequent history omitted); Report and Order, *Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, 16 FCC Rcd 19613, ¶ 3 (2001) (creating Interstate Common Line Support mechanism).

[45] First Report and Order, *Access Charge Reform*, 12 FCC Rcd 15982, ¶ 46 (1997) (subsequent history omitted).

[46] *See, e.g.*, Comcast Comments at 15-16; Time Warner Cable Comments at 12-13; Virginia Corporation Commission Comments at 6-7.

[47] Accordingly, there is no need for the Commission to adopt the proposal for a separate cap on the ARM. *See* Cbeyond, *et al*. Comments at 9; COMPTEL Comments, Attach. 1. With significant restrictions on when a carrier may seek ARM support and the requirement that total high-cost funding fall within a $4.5 billion budget, the ABC Plan already has sufficient measures in place to constrain the size of the USF. There is no need to further complicate matters with a separate cap on a relatively small component of high-cost support.

losses.[48] Instead, the ARM will offset only 90 percent of revenue reductions above those that may be recovered through the maximum SLC increase, and it will be phased out starting in 2018.[49] In addition, many ILECs do not maintain operations that could see cost savings as a result of reform (*i.e.*, long distance and wireless operations), and — for those that do — the competitive market will force carriers to pass through any cost reductions to their long distance and wireless customers. ARM funding, therefore, cannot be offset by any supposed savings.[50] Indeed, these pricing pressures, combined with limitations on ARM support, will prevent incumbent LECs from recovering large amounts of their intercarrier compensation revenue reductions.

In addition, comments suggesting that price-cap carriers should use other revenue streams to offset reductions in implicit support are misguided.[51] This approach would contravene section 254(e) of the Communications Act, which provides that universal service support "should be

[48] *See* ABC Plan Framework at 12.

[49] *See id.* at 12-13. Such limitations will significantly restrain the size of the ARM — which the ABC Plan signatories project would only be $66 million at its highest annual level. *See* ABC Plan Signatories' Comments, Exh. A.

[50] *See* Hausman Paper at 8-10 (noting that the market ultimately will ensure that carriers pass through any intercarrier compensation savings to their customers, whether in the form of lower rates, investment in improved services or service quality, and/or wider deployment of innovative technology, such as next-generation broadband services).

[51] Some parties request that the ARM "account for other profitable revenue streams," including unregulated revenues, while other parties recommend implementation of a total company earnings test — a measure that would be tantamount to instituting a new form of rate-of-return regulation. *See* Ad Hoc Telecommunications Users Committee Comments at 28; Comcast Comments at 16; Google Comments at 18; NCTA Comments at 21; Sprint Comments at 22; T-Mobile Comments at 15-16. Imposing a total company earnings test here would be inconsistent with the Commission's longstanding preference for incentive regulation — *see* Second Report and Order, *Policy and Rules Concerning Rates for Dominant Carriers,* 5 FCC Rcd 6786, ¶ 29 (1990) (subsequent history omitted) ("[I]ncentive regulation is superior to rate of return . . . .") — and, in fact, would be contrary to some of the other recommendations offered by opponents of the ARM. *See, e.g.*, NCTA Comments at 11 (requesting that the Commission "affirmatively adopt an end date for rate-of-return regulation").

explicit and sufficient."[52] If denied ARM support, this approach effectively would ask some price-cap carriers — which would retain COLR obligations (where such obligations still exist) during the transition — to use revenues from their lower-cost areas to implicitly support delivery of comparable, affordable telecommunications services to customers residing in high-cost areas. One form of implicit universal service support would be replaced with another form of implicit support.

It also would be unwise to assume that carriers *could* readily support higher-cost areas with returns generated in their lower-cost areas. Increased competition in lower-cost areas constrains carriers' ability to raise rates.[53] Furthermore, a regime that would require some carriers to divert a portion of their revenues to support networks in high-cost areas — but would not ask the same of competitors that do not serve these areas — would skew the competitive marketplace, causing investors to rethink the value of carriers serving high-cost areas. And this, in turn, is likely to significantly increase the cost of capital needed to fund these carriers' investments and operations in high-cost areas.

Finally, there is no basis to suggest that the ARM is unnecessary because "the CAF support mechanism will serve to identify explicitly the total amount of support that is necessary to serve high-cost areas." NCTA Comments at 21. The CAF and ARM have different purposes and are not directly tied together. Under the ABC Plan, the CAF would provide support for broadband service, while the ARM would be a purely transitional mechanism that serves as a

[52] 47 U.S.C. § 254(e); *see also CALLS Order* ¶ 193 (determining that "implicit support for universal service should be identified and removed from interstate access charges, and should be provided instead through explicit support mechanisms").

[53] *See 2011 NPRM* ¶ 8 (finding that ILECs operating in rural areas increasingly face competition from other providers, including cable and wireless companies, but remain the COLR outside of towns, where there are typically too few customers to support a sustainable business).

bridge to the new regime enabled by the CAF.[54] The proposed ARM would help address the need to support legacy voice facilities in the near term and enable a smooth transition to a regime where voice service will be merely one of many communications tools offered over the broadband network.

D. The Commission Can Adopt Simple Accountability Safeguards To Ensure That CAF Recipients Meet Their Service Obligations

The Greenlining Institute and a few other commenters complain that "the ABC Plan proposes a minimal level of monitoring and accountability."[55] Similarly, the Virginia Corporation Commission notes that, "[u]nder the ABC Plan, there does not appear to be any accountability required of CAF fund recipients." Virginia Corporation Commission Comments at 5. These commenters misunderstand the intent of the ABC Plan. The mere fact that the Plan does not spell out the specific reporting requirements and enforcement mechanisms to which funding recipients will be subject does *not* mean that there will be no such safeguards.

The Plan would require CAF support recipients, as a condition of receiving support, to meet service obligations specified by the Commission. *See* ABC Plan Framework at 2. The ABC Plan signatories recognize that the Commission will need to exercise oversight to ensure that providers live up to their end of the agreement. *See* ABC Plan Signatories' Comments at 14-15 (noting that "states could play an ongoing role by monitoring and reporting to the Commission on whether a CAF recipient has completed its broadband build-out within five years"). Among other things, the Commission may need to adopt reporting requirements so that it can monitor funding recipients' progress in meeting certain targets, including build-out

[54] As discussed above, the ABC Plan calls for the ARM to be phased out automatically over three years once the $0.0007 rate applies to all price-cap carriers' terminating traffic. *See* ABC Plan Framework at 11, 13.

[55] Greenlining Institute Comments at 7; *see also* ACA/NCTA Letter at 3 (questioning the sufficiency of the Plan's accountability protections).

obligations. *See id.* at 13-14. In addition, the Commission may need mechanisms to ensure that CAF recipients provide the specified level of service, including a way to confirm that recipients are supplying the actual broadband speeds and other performance characteristics recommended by the ABC Plan. And, if a CAF recipient falls short, the Commission may need to take action to enforce that recipient's service obligations. The ABC Plan signatories are fully committed to working with the Commission and other stakeholders to develop these and other appropriate accountability safeguards.

III. A UNIFORM FEDERAL REGIME IS ESSENTIAL TO ACHIEVING MEANINGFUL INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE REFORM

A. The Commission Can, and Should, Establish a Uniform Default Terminating Rate for All Traffic, Regardless of Provider or Technology

A *uniform* default terminating rate for all traffic exchanged with the PSTN, regardless of provider or technology, is a critical component of any effective intercarrier compensation reform. Numerous commenters, representing a broad cross-section of the industry, recognize this fact. Vonage, for example, notes that, "[i]n order for ICC reform to work, it must be applied consistently and on the same timeline," and that "whatever the structure of the final ICC reform, the Commission should set intrastate ICC rates rather than leaving that task to states." Vonage Comments at 8. Comcast similarly explains that, "[i]n view of the well-documented disruptions, anomalies, and economic inefficiencies caused by the current 'patchwork' system of intercarrier compensation, the most desirable policy is to supplant the existing arrangements decisively and expeditiously" via a "brief transition to a uniform terminating rate for all providers." Comcast Comments at 12. Indeed, even the Public Service Commission of Wisconsin has "recognize[d] that some limited preemption of current state authority may be necessary" and that, "[t]o achieve modernization, it may be necessary to eliminate distortions in the marketplace caused by varying rates for different types of traffic." Wisconsin PSC Comments at 5.[56]

Some parties nonetheless argue that the Commission lacks authority to adopt a uniform default rate for all terminating traffic exchanged with a LEC. Those opponents advance three primary arguments, each of which is misplaced.

First, some argue that section 251(b)(5) "has no applicability to interstate or intrastate exchange access service."[57] Those parties ignore that the Commission has squarely, and unequivocally, rejected that argument, holding that section 251(b)(5) is broad enough to cover "the transport and termination of *all telecommunications* exchanged with LECs."[58] The Commission's previous order that was predicated on that interpretation was upheld by the D.C. Circuit.[59] Thus, the Commission has previously concluded that it was Congress — in enacting section 251(b)(5) — that displaced pre-existing state intercarrier compensation regimes.

Second, some claim that section 251(d)(3), which provides that the Commission "shall not preclude the enforcement of any regulation, order, or policy of a State commission that — (A) establishes access and interconnection obligations of local exchange carriers," prevents the Commission from displacing existing intrastate access charges with rates set under section

[56] *See also* New York PSC Comments at 2, 9 (supporting "the multi-year transition to a reduction in per-minute intrastate terminating rates" and recognizing "that the [Commission] is uniquely positioned to balance competing policy trade-offs and effectively implement ICC reform"); Google Comments at 32-33; XO Comments at 5-6; CTIA Comments at 7; Time Warner Cable Comments at 11-12; Cox Comments at 16-19; MetroPCS Comments at 9-10.

[57] NASUCA Comments at 30; *see also* Nebraska Rural Companies Comments at 18-20.

[58] Order on Remand and Further Notice of Proposed Rulemaking, *Intercarrier Compensation for ISP-Bound Traffic*, 24 FCC Rcd 6475, ¶ 15 (2008) (emphasis added); *see also* Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, ¶¶ 15-16, 34, 45 (2001).

[59] *See Core Communications, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir.), *cert. denied*, 131 S. Ct. 597 (2010).

251(b)(5).[60] The word "access" in section 251(d)(3), however, refers not to access charge obligations, but to unbundled network element requirements. As the Commission has explained, section 251(d)(3) both addresses and limits state authority "to prescribe regulations *related to unbundling*."[61] Indeed, section 251(d)(2) — which immediately precedes section 251(d)(3) — requires the Commission to consider whether "*access* to such network elements as are proprietary in nature is necessary," and whether "the failure to provide *access* to such network elements would impair the ability of the telecommunications carrier . . . to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2) (emphases added). In contrast, the "exchange access" services at issue here are expressly addressed in section 251(g), which makes clear that pre-existing rules regarding "exchange access, information access, and exchange services" — including intrastate exchange access obligations — shall remain in force only until they are "explicitly superseded by regulations prescribed by the Commission." *Id.* § 251(g).[62]

Third, opponents of the ABC Plan rely heavily on *Iowa Utilities Board v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000), for the proposition that the Commission lacks authority to establish uniform default rates for all traffic pursuant to section 251(b)(5).[63] But the Eighth Circuit over-read the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999). The Supreme Court simply held that it was "enough" that — under the TELRIC rules then in

[60] 47 U.S.C. § 251(d)(3); *see* NARUC Comments at 15 & n.19; Nebraska Rural Companies Comments at 18-21.

[61] Memorandum Opinion and Order and Notice of Inquiry, *BellSouth Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services*, 20 FCC Rcd 6830, ¶ 23 (2005) (emphasis added).

[62] The Commission has long held that section 251(g) applies to both interstate and intrastate access charge regimes. *See* Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685, ¶ 79 (2005) ("*2005 FNPRM*"); *see also 2011 NPRM* ¶ 514; First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 732 (1996).

[63] *See* NARUC Comments at 10-13; Nebraska Rural Companies Comments at 22-25.

effect — the states would "apply" and "implement" a "pricing methodology" established by the Commission. *Id.* at 385. The Court did not hold, or even suggest, that the pricing methodology was at the outer limit of the Commission's authority to promulgate rules implementing section 251(b)(5). Furthermore, the ABC Plan's proposal — capping reciprocal compensation rates at $0.0007 per minute in the absence of a voluntary agreement and allowing carriers to recover additional funds from their customers and through a temporary ARM — is plainly consistent with section 252(d)(2). Indeed, that provision can be satisfied by mutual arrangements in which one carrier recovers *all* of its costs from its customers and *none* from other carriers. *See* 47 U.S.C. § 252(d)(2)(B)(i).[64]

Separate and apart from section 251(b)(5), the Commission also possesses the authority to preempt state intercarrier compensation rates, and the Commission can invoke both of these mutually reinforcing sources of authority. A traditional preemption analysis based on the inseverability doctrine — and the fact that continued application of state intercarrier compensation rules that differ from the uniform federal regime would pose a direct obstacle to the accomplishment of federal policy — would simply recognize that the current patchwork regime is not a viable option going forward in light of technological and marketplace developments.[65] What will *not* work is the so-called "incentive" or "carrot-and-stick" approach

[64] In any event, section 252(d)(2), by its terms, applies only to incumbent LECs; it does not encompass either traffic exchanged without the involvement of an incumbent LEC or any rates that non-incumbent LECs charge, even if an incumbent LEC is involved. The Commission can set a uniform default rate for all of this traffic simply by exercising its section 201(b) rulemaking authority to establish rules implementing section 251(b)(5).

[65] *See* ABC Plan, Attach. 5, Legal Authority White Paper at 18-34 ("ABC Plan Legal Analysis").

to encourage states to uniformly reduce rates. *See* ABC Plan Signatories' Comments at 18-21. Plan opponents' arguments to the contrary lack merit.[66]

NARUC argues that all traffic is not inseverable because, in certain circumstances, carriers are still able to identify the physical locations of the parties to a call. *See* NARUC Comments at 18-20. But, even when telephone numbers still provide a meaningful proxy for geography, they will not necessarily provide a *complete* picture of the geography of an IP-based communication for jurisdictional purposes. Consumers are now using innovative, "multifaceted" IP-based services — including wireless services[67] — that offer a "suite of integrated capabilities and features" that allows them "to perform different types of communications simultaneously," thus challenging the traditional notion that a communication has only two end points.[68]

Moreover, not a single opponent of the ABC Plan disputes that the primary *cause* of the breakdown of the current intercarrier compensation regime is the patchwork of rates that differ widely based on provider, technology, and jurisdiction.[69] Maintaining those disparate rates will,

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[66] *See, e.g.*, Nebraska Rural Companies Comments at 25-37; NARUC Comments at 14-19; New York PSC Comments at 8-14; Iowa Utilities Board Comments at 3; Massachusetts DTC Comments at 14-16; Oregon PUC Comments at 2-3; Virginia Corporation Commission Comments at 2-4.

[67] Wireless lines now far exceed wireline lines. *See* FCC, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2010*, at 12, 28 (Tables 1, 17) (Mar. 2011) ("FCC, *Local Tel. Competition Status*"), *at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0321/DOC-305297A1.pdf (showing 151.1 million wireline switched access lines and 278.9 million wireless subscribers as of June 30, 2010).

[68] Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd 22404, ¶¶ 7, 22-23, 25, 32 (2004).

[69] *2011 NPRM* ¶¶ 502, 504 (emphasizing that the current "patchwork of rates and regulations is inefficient" and "wasteful," because, where "opportunities for [regulatory] arbitrage" exist, "parties will revise or rearrange their transactions to exploit a more advantageous regulatory treatment, even though such actions, in the absence of regulation, would be viewed as costly or inefficient"); Notice of Proposed Rulemaking *Developing a Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610, ¶ 11-12 (2001); *see also National*

by definition, pose a direct obstacle to the Commission's longstanding goal of reforming and unifying the intercarrier compensation regime in order to promote efficiency and innovation. The transition to a uniform regime may be uncomfortable for certain parties with a vested interest in the status quo, but it is an essential component of any meaningful reform plan.

B. The Commission Should Eliminate Federal and State Legacy Service Obligations

Eliminating federal ETC obligations and preempting state COLR and other legacy service obligations are essential elements of the ABC Plan because those rules impose unfunded mandates, lock consumers into legacy technologies, and may have the effect of deterring carriers from deploying broadband and IP-enabled services. *See* ABC Plan Legal Analysis at 7-8, 61-68. Some state commissions express concern about these aspects of the Plan.[70] Such concerns, however, are unwarranted. Consumers will not be harmed by the elimination of legacy service obligations and, indeed, they will *benefit* from the retirement of these outdated and innovation-deterring mandates.

State and federal obligations to provide legacy telecommunications services hinder the deployment of broadband service. ABC Plan Legal Analysis at 49-53. In some cases, these obligations may make it difficult (or even impossible) for carriers to retire their TDM facilities, essentially requiring them to maintain those legacy facilities *and* IP facilities when both are not needed. But supporting duplicative circuit-switched and packet-switched facilities is expensive

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Broadband Plan at 142 (noting that, as a result of ICC-related "arbitrage opportunit[ies]," "investment is directed to free conference calling and similar schemes for adult entertainment that ultimately cost consumers money, rather than to other, more productive endeavors" such as broadband deployment) (footnote omitted); *2005 FNPRM* ¶ 3 (noting that the availability of different rates for different types of traffic "create[s] both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions").

[70] *See, e.g.*, Louisiana PSC Comments at 4-5; Massachusetts DTC Comments at 21; New York PSC Comments at 4-5; Michigan PSC Comments at 2-3; *see also* NASUCA Comments at 6-7, 26-30.

— and each dollar that a carrier is forced to invest in the former may be one fewer dollar that can be invested in deployment of broadband facilities and IP-enabled services. *See id.* at 52.

Some commenters assert that consumers could be left without voice service if legacy obligations are eliminated.[71] This concern is misplaced. As an initial matter, transformative changes in the communications marketplace have made it possible for nearly all consumers to select competitive alternatives to ILEC service, including wireless and VoIP services.[72] Furthermore, this concern ignores the fact that the ABC Plan requires CAF recipients to deploy broadband service that provides access to voice service.[73] In other words, consumers in those high-cost areas where ILECs ultimately may find it uneconomic to continue providing legacy services not only may be able to turn to competitive alternatives, but also can rely on the CAF recipient to offer broadband service that provides access to voice service. Finally, the ABC Plan gives state commissions the ability to ensure that consumers retain access even to legacy, TDM-based telecommunications services. Under the ABC Plan, states may impose service obligations for voice service so long as they (i) "provide explicit universal service support that fully compensates carriers for the costs of complying with state-imposed service obligations" and (ii) "enter into an express agreement with a COLR, under which that carrier would agree to serve

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[71] *See, e.g.*, New York PSC Comments at 4-5; Massachusetts DTC Comments at 21; Michigan PSC Comments at 2-3.

[72] For example, mobile wireless voice services are available to more than 99.8 percent of the U.S. population. Indeed, 99.2 percent of the population is served by at least *two* mobile voice providers, and 97.2 percent of the population is served by at least *three*. Fifteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, FCC 11-103, ¶¶ 2, 45 (Table 5) (rel. June 27, 2011). Moreover, in its most recent report on local competition, the Commission determined that, as of June 2010, 87.9 percent of U.S. households were located in zip codes where *ten or more* CLEC or non-ILEC VoIP providers are offering wireline service. *See* FCC, *Local Tel. Competition Status* at 29 (Table 19).

[73] *See* ABC Plan Framework at 2-3. Carriers could satisfy this service obligation by providing broadband service that is capable of supporting over-the-top VoIP.

a specific geographic area for a specific period of time in exchange for a specific amount of state universal service support."[74]

Some commenters argue that the Commission does not have legal authority to eliminate legacy federal ETC and state COLR obligations.[75] These arguments, too, are wrong. First, the Commission unquestionably has authority to eliminate all legacy ETC obligations when it eliminates the legacy high-cost funding mechanism, because section 214 of the Communications Act requires ETCs to offer only those "services that are supported by Federal universal service support mechanisms."[76] Similarly, even before all legacy funding is transitioned to the CAF, the Commission has authority to take the interim step of relieving ETCs of their service obligations in those areas where they do not receive any support. *See* ABC Plan Legal Analysis at 54-58. The Commission should interpret section 214(e)(1) according to its express terms to require a carrier to offer service *only* in those geographic areas where the carrier is receiving support — *i.e.*, where the services "are supported." *Id.* at 55 (quoting 47 U.S.C. § 214(e)(1)). Alternatively, the Commission could direct state commissions to redefine the "service areas" of existing ETCs so that they include only those locations where the ETCs are receiving legacy support. *Id.* at 55-58. Finally, the Commission has authority to preempt state COLR and other legacy service obligations. Those obligations would be flatly inconsistent with federal broadband policy, including a federal procurement model for universal service once the Commission eliminates

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[74] ABC Plan Legal Analysis at 61; *see* ABC Plan Framework at 13.

[75] *See, e.g.*, Massachusetts DTC Comments at 21; Pennsylvania PUC Comments, Attach. (Legal Memorandum); New York PSC Comments at 8-14.

[76] 47 U.S.C. § 214(e)(1) (emphasis added); ABC Plan Legal Analysis at 54.

legacy ETC obligations for unfunded carriers. State COLR obligations would also directly contravene section 254(f) of the Communications Act. *See id.* at 59-68.[77]

IV. THE ABC PLAN PARTICIPANTS HAVE PROVIDED AMPLE INFORMATION ABOUT THE CQBAT MODEL AND WILL MAKE ADDITIONAL INFORMATION AVAILABLE TO THE COMMISSION AND THE PUBLIC

Certain parties have requested information about various aspects of the CQBAT used to develop the ABC Plan.[78] The signatories to the Plan respect those concerns and will supplement the disclosures that they have already made to ensure that the Commission and parties to this proceeding have access to all relevant aspects of the CQBAT.

The Plan signatories have already filed the raw data that served as inputs into the CQBAT model and were used to calculate the results for the model scenarios described in the July 29th ABC Plan filing. These data, which were filed publicly on August 18, 2011, include: (1) Excel workbooks that represent the inputs used when modeling the wireline network configuration for fiber to the DSLAM and a subscriber loop of up to 12,000 feet of copper; and (2) a description of commercial vendor data sets that were used in the CQBAT, as compared to the data sets used in the Commission's Broadband Assessment Model.[79]

The Plan signatories are also committed to ensuring that all interested parties have robust access to the cost estimates produced by the CQBAT. Consistent with appropriate

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[77] As a related matter, the Commission should avoid significant distractions from the narrow USF and intercarrier compensation issues presented in the most recent Public Notice. For example, some parties recycle longstanding positions regarding IP-to-IP interconnection in their comments, suggesting that the Commission must resolve disputes regarding the scope of section 251 under current law and in the current regulatory environment in order to make meaningful progress on USF and intercarrier compensation reforms. *See, e.g.*, NCTA Comments at 18 n.43; Cbeyond, *et al.* Comments at 20-21; COMPTEL Comments at 4-7; XO Comments at 11-12.

[78] *See* Nebraska Rural Companies Comments at 2-13; NARUC Comments at 7-9.

[79] *See* Ex Parte Letter from ABC Plan Participants, to Marlene H. Dortch, WC Dkt. Nos. 10-90 *et al*. (filed Aug. 18, 2011) (with attachments).

confidentiality protection in light of the sensitive nature of the data and proprietary aspects of the CQBAT model, the ABC Plan signatories anticipate that parties will soon be able to access CQBAT results over the Internet using a standard web browser. They will be able to generate reports based on the same database of results that produced the outputs contained in the ABC Plan filing of July 29, 2011. Users will have the capability to test the sensitivities of various support parameters in the model, including, for example, the alternative technology cost threshold and cap on high-cost support. Interested parties will not be charged for accessing this information, and will likely have access through December 31, 2011. A User Manual and Webinar also may be offered to provide information regarding the operation of CQBAT.

In sum, all parties to this proceeding will have ample opportunity to review, evaluate, and comment on the CQBAT, thus fulfilling the Commission's notice obligations under the Administrative Procedure Act.

CONCLUSION

The signatories to the ABC Plan collectively urge the Commission to adopt the Plan without delay.

Respectfully submitted,

/s/ Cathy Carpino
Cathy Carpino
Christopher M. Heimann
Gary L. Phillips
Paul K. Mancini
AT&T SERVICES, INC.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-3046 (phone)

/s/ Timothy M. Boucher
Jeffrey S. Lanning
CENTURYLINK
1099 New York Avenue, N.W., Suite 250
Washington, D.C. 20001
(202) 429-3113 (phone)

Timothy M. Boucher
Tiffany West Smink
(303) 992-5751 (phone)
Counsel for CenturyLink

/s/ Michael T. Skrivan
Michael T. Skrivan
FAIRPOINT COMMUNICATIONS, INC.
1 Davis Farm Road
Portland, ME 04103
(207) 535-4150 (phone)

Robin E. Tuttle
FAIRPOINT COMMUNICATIONS, INC.
521 E. Morehead Street, Suite 250
Charlotte, NC 28202
(704) 344-8150 (phone)

/s/ Kenneth F. Mason
Kenneth F. Mason
Michael D. Saperstein, Jr.
FRONTIER COMMUNICATIONS
2300 N Street, N.W., Suite 710
Washington, D.C. 20037
(202) 223-6807 (phone)

/s/ Christopher M. Miller
Michael E. Glover, *Of Counsel*
Christopher M. Miller
VERIZON & VERIZON WIRELESS
1320 North Courthouse Road – 9th Floor
Arlington, VA 22201-2909
(703) 351-3071 (phone)

/s/ Eric N. Einhorn
Eric N. Einhorn
Jennie B. Chandra
Malena Barzilai
WINDSTREAM COMMUNICATIONS, INC.
1101 17th Street, N.W., Suite 802
Washington, D.C. 20036
(202) 223-7664 (phone)

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