Before the
Federal Communications Commission
Washington, DC 20554

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

REPLY COMMENTS ON PUBLIC NOTICE DA 11-1348:
THE FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE-INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING

I. INTRODUCTION AND SUMMARY

The American Cable Association ("ACA"), by its attorneys, respectfully submits these brief Reply Comments in response to the Commission's *Public Notice* seeking further inquiry into certain issues in the above captioned proceedings.[1] In its initial comments, ACA focused on the plan filed by six Price Cap companies (America's Broadband Connectivity Plan ("ABC Plan"))[2] and demonstrated that it did not meet the Commission's objectives of fiscal

1 *Connect America Fund et al.*, Public Notice, DA 11-1348, (rel. Aug. 3, 2011) ("*Public Notice*").

2 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, Federal Communications Commission, WC Docket No. 10-90 et al. (filed July 29, 2011).

accountability or competitive neutrality and thus would not facilitate the deployment of high-performance universal broadband service.[3] Unfortunately, the comments filed two weeks ago by these Price Cap incumbents (or Price Cap local exchange carriers ("LECs")) only serve to heighten concerns with their plan.[4] On the one hand, the Price Cap incumbents argue that any Commission decision should reflect the reality that the telecommunications landscape is now dominated by competitive forces. On the other hand, they propose in the ABC Plan a series of blatantly pro-incumbent, anti-competitive policies. These backwards-looking policies are even more troubling because the incumbents lock-in their advantages for the rest of the decade and beyond, a time when competition and new technological developments are certain to increase. Further, by favoring themselves at the expense of competitors and consumers, the Price Cap LECs waste valuable government support and set-back the expansion of universal broadband deployment.

While the flaws in the ABC Plan are substantial, ACA believes they can be fixed so that the Commission, in adopting new, transformational Universal Service Fund ("USF") and Intercarrier Compensation ("ICC") regimes, ensures the efficient and effective deployment of high-performance universal broadband service and modern networks. In its initial comments, ACA described its solutions to the problems in the ABC Plan:

- Adopt a Permanent Cap on Support in High-Cost Areas
- Distribute Funding on a Competitively Neutral Basis
- Eliminate or at Least Limit any Access Replacement Mechanism
- Accelerate the Phase-Out of Legacy Price Cap Support Mechanisms

[3] *See* Comments of the American Cable Association, WC Docket No. 10-90 et al. (filed Aug. 24, 2011) ("ACA Comments").

[4] *See* Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon, and Windstream, WC Docket No. 10-90 et al. (Aug. 24, 2011) ("ABC Joint Comments").

In these reply comments, ACA, by examining the flaws in the ABC Plan, again demonstrates the benefits gained by adopting its solution.

II. THE ABC PLAN IS NOT COMPETITIVELY NEUTRAL

There is no doubt that the Price Cap incumbents understand that the telecommunications landscape is far different from even a decade ago, when the Commission last revised its USF and ICC regulations. When it comes to providing a rationale to accelerate and dramatically alter the ICC regime, these incumbents forcefully assert that the current market is "highly competitive" and that they "must compete with a variety of intra- and intermodal competitors to retain their customers."[5] They even provide specific evidence from various analyst reports showing that their market share of the wireline voice business has declined to approximately 60 percent over the past decade while the market share for cable operators has increased to over 30 percent and that these trends will continue.[6] ACA agrees with these assertions. Moreover, in the provision of broadband service, which the Commission wants to ensure is deployed universally, competition is even more heated, with cable operators having garnered a larger share of the market.

Yet, when it comes to many of the specific proposals in the ABC Plan, the incumbents ignore the fundamental reality that there are other providers of voice and broadband services, including those that already serve rural areas and others that have such capability. Further, these competitive forces can and should be employed to achieve the Commission's objective of efficiently deploying high-quality and high-performance broadband universally.[7] The following

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5 *Id.* at 29.

6 *Id.* at 31.

7 In its initial comments, ACA recognized that reform in Alaska may require its own solution. *See* ACA Comments at n. 18.

are the major deficiencies in the ABC Plan that skew competition in favor of the Price Cap incumbents:[8]

A. The ABC Plan's Access Replacement Mechanism Serves Only the Price Cap Incumbents and Not the Public Interest; It Should be Eliminated.

The ABC Plan contends that the Access Replacement Mechanism ("ARM") "is necessary to avoid flash cuts and ensure that reforms do not jeopardize the operations of broadband providers that rely on intercarrier compensation revenues for implicit support of networks in high-cost areas."[9] The flaws in this logic are numerous. Specifically, the proposed ARM is a blunt instrument, indiscriminately providing an incumbent with a new subsidy even if:

(1) There is no proof it is needed to support networks in a particular high-cost area,[10]

(2) The incumbent would normally lose lines (revenues) because of competition,[11]

(3) The incumbent charges end user retail rates below the national average,[12]

(4) The incumbent receives sufficient revenues from other services provided over the same network,[13]

(5) The incumbent benefits because of the reductions in terminating access charges,[14] and

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8 ACA also discussed in its initial comments its concerns with the lengthy phase-out of current High-Cost support for Price Cap LECs and submitted that, because of competitive concerns and because these LECs have had sufficient notice that this funding was only interim, it should be ended in two years as proposed by the Commission. *See* ACA Comments at 16-17.

9 ABC Joint Comments at 24.

10 *See, e.g.*, Comments of Sprint Nextel Corporation, WC Docket No. 10-90 et al. at 22 (Aug. 24, 2011). Lack of proof also undermines the goal of fiscal responsibility.

11 *See, e.g.*, Comments of Comcast Corporation, WC Docket No. 10-90 et al. at 15 (Aug. 24, 2011) ("Comcast Comments"), and Comments of Time Warner Cable, Inc., WC Docket No. 10-90 et al. at 13 (Aug. 24, 2011) ("Time Warner Cable Comments").

12 *See, e.g.*, Comments of Verizon and Verizon Wireless, WC Docket No. 10-90 et al. at 20 (Apr. 18, 2011) ("Verizon Comments").

13 *See, e.g.*, Comcast Comments at 16.

(6) States no longer require (or will soon end the requirement for) incumbents to be carriers-of-last-resort ("COLR").[15]

There are three other factors that weigh against the proposed ARM. First, the Price Cap incumbents have numerous competitors that will not receive the subsidy and, in some instances, may serve customers in high-cost areas. Second, it continues for far too long – eight years, which is several years past the date of the final ICC rate reduction proposed in the ABC Plan. In prior comments, Verizon, for instance, suggested a three year limit.[16] Finally, by instituting the new Connect America Fund ("CAF"), the Commission will be able to address public interest concerns that consumers in high-cost areas served by these incumbents may not receive service at affordable rates.[17]

B. The ABC Plan's Connect America Fund Will not Deliver Broadband Service Efficiently and Effectively to High-Cost Areas; A Pro-Competitive Policy Should be Employed.

In the ABC Joint Comments, the Price Cap incumbents claim their reform of USF will enable it "to offer targeted, sufficient support for the construction and maintenance of broadband networks in granular areas where there is no private-sector business case to deploy them."[18] However, by skewing the distribution process towards themselves, they ensure that support is not awarded efficiently nor consistently with the objective of competitive neutrality. Further, by not

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14 *See, e.g.*, Comments of Cox Communications, Inc., WC Docket No. 10-90 et al. at 12 (Aug. 24, 2011) ("Cox Comments"); Comcast Comments at 15.

15 *See, e.g.*, Comments of Cbeyond, Inc., Integra Telecom, Inc., and TW Telecom Inc., WC Docket No. 10-90 at 8 (Aug. 24, 2011).

16 *See* Verizon Comments at 21.

17 *See, e.g.*, Comments of the National Cable & Telecommunications Association, WC Docket 10-90 et al. at 21 (Aug. 24, 2011) ("There is no need to provide such carriers access replacement funding, particularly when the CAF support mechanism will serve to identify explicitly the total amount of support that is necessary to serve high-cost areas.") ("NCTA Comments").

18 ABC Joint Comments at 2.

awarding support efficiently, the ABC Plan's proposal is not fiscally responsible. Finally, the ABC Plan funds broadband networks without sufficient performance capabilities to meet the needs of users. The following are the key flaws with the CAF as proposed in the ABC Plan:

1. The Right of First Refusal Proposal Will Not Foster the Efficient and Effective Deployment of Universal Broadband. The Plan claims that by giving the Price Cap incumbents a Right of First Refusal ("ROFR") to receive CAF support it "will accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs."[19] However, this is a mere assertion, without proof and without any economic basis. If these incumbents were the most efficient providers, then they would have no reason not to support a competitive bidding process since they would be the lowest bidder.[20] Further, these incumbents in prior filings have effectively claimed there is no cost advantage for a provider in a denser area to serve an adjacent rural area.[21] Yet, now they contend just the opposite: when a provider serves more than 35 percent of the service locations in the denser areas of a wire center, it would be most efficient for it to receive support to serve the sparser areas.[22] Obviously, the only way the Commission can ensure it is awarding support most efficiently and maximizing use of the its funding resources[23] is to employ competitive bidding.[24]

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19 *Id.* at 12.

20 *See, e.g.,* Cox Comments at 23; Comcast Comments at 30.

21 *See, e.g.*, Comments of Embarq, WC Docket No. 05-337 at 7 (May 31, 2007).

22 *See, e.g.*, Comcast Comments at 29-30.

23 *See, e.g.*, *id.* at 28 ("The [ROFR] proposal also would increase the size of subsidies needed to support broadband in unserved areas, thereby unnecessarily increasing the financial burden on consumers.").

24 The Price Cap incumbents also claim that the ROFR process "is designed to avoid the equitable and legal concerns that would arise from stranded ILEC investments." ABC Joint Comments at 13. However, every entity drawing USF is on notice that the Commission could act at any time, after an appropriate notice and comment period, to alter the regime. In addition, the ABC Plan accounts for a transition from current support by providing for an unduly long (five year) transition.

2. The Plan Does Not Sufficiently Account for Service by Competitors. The ABC Plan seeks to account for the presence of competition by eliminating CAF support in census blocks where there is an "unsupported provider."[25] However, it creates a series of loopholes to lessen the effect of this important policy. For instance, the competitor can never have received federal or state high-cost universal service fund support.[26] In addition, competitors are excluded if they enter an area after 2012 but prior to the initial award of CAF support.[27] Policies such as these run counter to the Commission's goals of fiscal responsibility and competitive neutrality.

3. The Plan's Performance Benchmarks are Inadequate for Users and Applications/Content Providers. The ABC Plan only requires a CAF recipient to provide broadband service at speeds of 4 Mbps downstream and 768 kbps upstream, and the Price Cap incumbents argue that "the Commission should not make unilateral mid-course adjustments to the service obligations of CAF recipients to reflect 'an evolving definition of universal service.' as this would undermine a fundamental feature critical to support for the Plan and would contravene Section 254 of the Act."[28] As the Commission notes, these speeds are the "Minimum Download Speed" needed today for high-resolution video instruction and conferencing applications.[29] However, in households with multiple users seeking simultaneous access to such applications, the Commission suggests access to broadband service with a downstream speed of 6 to 15 Mbps.[30] Further, because these requirements keep advancing, even for a single user, the

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25 *See* ABC Plan, Attachment 1 at 3.

26 *Id.* at 3.

27 *Id.*

28 ABC Joint Comments at 11.

29 *See* FCC Broadband Speed Guide, *available at*: http://www.fcc.gov/guides/broadband-speed-guide.

30 *See* FCC Household Broadband Guide, *available at*: http://www.fcc.gov/guides/household-broadband-guide.

proposed 4 Mbps/768 kbps benchmark will be completely inadequate in just a few years, let alone over a decade from now when the ABC Plan's CAF support to a provider would end. Thus, the effect of this policy is to relegate users into these areas to inadequate broadband service, which would not be comparable to service received in urban areas. ACA members are prepared today to receive CAF support to offer broadband service at higher speeds and to increase those speeds over time. As part of the competitive bidding process, while the Commission should select areas based on today's average broadband speeds, it should require CAF recipients to offer higher speed broadband service (16 Mbps/4 Mbps), and recipients should be on notice that these requirements may increase to ensure "comparable" broadband service is provided.

4. Awarding CAF Support on a Wire Center Basis Improperly Favors the Incumbent's Telephone Network Architecture. As noted by Comcast, "the [ABC Plan] proposal to use wire center boundaries for the reverse auction would give the incumbent LECs a substantial advantage compared to other bidders whose network (or potential build out) would not overlap with these boundaries…and could foreclose an optimal outcome."[31] Comcast then proposes that the bidders aggregate census blocks, and the Commission employ bidding software to "find the combination of bids that minimized the level of subsidy needed to support build-out in all areas up for bid."[32] ACA agrees with Comcast that the ABC Plan's use of wire centers provides just one more mechanism by which the Price Cap incumbents favor themselves at the expense of the public interest. While it has supported having the Commission aggregate census blocks into serving areas for auction to provide greater certainty, it notes that the Comcast proposal is far more equitable and efficient than that proposed in the ABC Plan.

31 Comcast Comments at 27. *See also* Time Warner Cable Comments at 22.

32 Comcast Comments at n. 80.

Finally, the ABC Plan is correctly concerned about the "rural-rural divide" and the need to ensure the consumers in any rural area receive adequate broadband service regardless of provider. The Price Cap incumbents note that by eliminating the distinction between incumbent rural LECs, "the Commission would be better equipped to target support to the rural and high-cost areas that need it."[33] ACA agrees, provided that the distinction between Price Cap incumbents and competitors is eliminated as well and all providers compete on an equal footing to serve these areas. After all, that would ensure all rural consumers would receive broadband service with the highest-performance most efficiently, and it would best use the limited government support that is available.[34]

III. THE ABC PLAN'S BUDGET IS NOT SUFFICIENT TO ENSURE UNIVERSAL SERVICE FUNDING IS FISCALLY RESPONSIBLE; THE COMMISSION SHOULD IMPOSE A HARD AND DURABLE CAP

ACA appreciates the effort made by the Price Cap incumbents to establish a $4.5 budget for high-cost distributions in each of the next six years.[35] However, despite this effort, the ABC Plan's budget has important shortcomings, which highlight the need for a permanent hard cap on expenditures.[36] First, in four of six years, the budget target is breached, with distributions (expenditures) exceeding contributions in each successive year by a greater amount. In the final year of the ABC Plan's budget (2017), distributions are almost 10 percent above budget. Second, the budget terminates in 2017, and the burden is on those seeking fiscal responsibility to

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33 ABC Joint Comments at 10.

34 ACA acknowledges that with its competitive distribution proposal, any current COLR obligations would end when another provider received CAF support to serve an area. In other words, COLR obligations should only attach to providers receiving government support specifically linked to a service obligation.

35 Exhibit A of the ABC Joint Comments clarifies how distributions, including any ARM, would occur.

36 *See also, e.g.,* Comcast Comments at 21-23.

have the Commission reinstate a limitation. This is backwards: those parties who wish to establish a larger budget should bear the burden. Third, as ACA discussed in its initial comments, the incumbent LECs question the Commission's legal authority to impose any limitation on distributions.[37] When taken together, all of these concerns undermine the contention that the ABC Plan's budget is fiscally responsible.[38]

Decades ago, during the monopoly era, universal service distributions and contributions were largely an intra-incumbent LEC managed operation with minimal oversight from regulators. But, that regime ended long ago, and the Commission now has that responsibility, including to ensure that users are not unduly burdened by universal service fees. As the Commission states in the *NPRM*, "[W]e recognize that American consumers and businesses ultimately pay for USF, and that this contribution burden may undermine the benefits of the program by discouraging adoption."[39] The Commission can best meet this objective by placing a permanent, hard cap on the fund. There is simply too much evidence that without such a cap the fund will burgeon.

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37 *See* ACA Comments at 8-9. ACA noted that Verizon, one of the authors of the ABC Plan, previously commented that the Commission has such authority.

38 ACA's concerns about lack of fiscal responsibility are exacerbated by the comments of the rural incumbent LECs: "To be clear, these funding targets should not be considered 'caps' to be adopted and implemented by rule. Rather, the Commission can and should evaluate the proposed mechanisms to ensure they are calibrated to meet the desired funding targets during the budget period – but it should and cannot adopt a rule that treats these funding targets as absolute caps that artificially constrain whatever funding is necessary under the support mechanisms that are adopted." Comments of the National Exchange Carrier Association, Inc. et al., WC Docket No. 10-90 at 5-6 (Aug. 24, 2011).

39 *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, ¶ 10 (rel. Feb. 9, 2011) ("*NPRM*").

IV. CONCLUSION

In its initial and reply comments, ACA has set forth troubling problems with the ABC Plan. That said, ACA also believes the Commission can fix these problems so that the new USF and ICC regimes meet its public interest objectives, and it has submitted to the Commission specific solutions to remedy the problems in the ABC Plan. ACA looks forward to working with the Commission over the coming months to incorporate these fixes as the Commission seeks to adopt a final, transformational plan to modern these regimes.

Respectfully submitted,

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September 6, 2011