

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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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
	)	

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**REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION  
ON THE COMMISSION'S FURTHER INQUIRY**

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**REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION  
ON THE COMMISSION’S FURTHER INQUIRY**

Cablevision Systems Corporation (“Cablevision”) hereby submits these reply comments in response to the Commission’s Further Inquiry in the above-captioned proceedings.<sup>1/</sup> As the Commission and the vast majority of parties in this proceeding acknowledge, the Universal Service Fund (“USF”) High-Cost Programs are in need of substantial reform.<sup>2/</sup> It is widely

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<sup>1/</sup> See *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 11-90, et al., Public Notice, DA 11-1348 (Aug. 3, 2011) (“*Further Inquiry*”).

<sup>2</sup> See *Connect America Fund, et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶¶ 1-13 (2011) (“*NPRM*”). See also, e.g., Comments of Metro PCS, WC Docket No. 11-90, et al., at 2-3 (Aug. 24, 2011) (“*Metro PCS Inquiry Comments*”) (“Reform is long overdue and the Commission should not miss this opportunity to adopt comprehensive reform that will resolve long standing issues and ‘reduce waste and inefficiency in the intercarrier compensation system,’ reduce opportunities for regulatory arbitrage, place all competing service providers on a level playing field, and reform the universal service program”); Comments of Free Press, WC Docket No. 11-

agreed that USF programs now used to support voice telephone services should be redirected to support for broadband services.<sup>3/</sup> Of equal urgency, however, is the need to restructure USF programs to reflect the emergence of competition.<sup>4/</sup> The current system discourages competitors from entering new markets by conferring a substantial financial advantage on incumbents. In areas where other providers can offer service without USF support, there is no need for legacy carriers to continue to receive support – yet under the current programs they do.<sup>5/</sup> Eliminating the incumbent bias in USF will enable the Commission to better target the program and promote the goal of greater competition in rural areas.

Cablevision agrees with other commenters that even in markets where high costs will likely require a subsidy for any provider offering broadband service, consumers should not and need not be limited to a monopoly provider.<sup>6/</sup> The benefits of competition, choice, and innovation still can be made available to consumers in these areas by redesigning subsidy

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90, et al., at 2-3 (Aug. 24, 2011) (“Free Press Inquiry Comments”) (Reform is needed to “push aside the wasteful and outdated policy regime of the past 15 years in favor of a more modern and responsible universal service program”); Comments of AT&T, WC Docket No. 10-90 at 82 (Apr. 18, 2011) (“The Commission’s existing universal service regime is fundamentally broken.”); Comments of Telecommunications Industry Association, WC Docket No. 10-90 at 2 (Apr. 18, 2011) (“TIA agrees with the Commission that the USF and ICC programs are ‘broken.’”).

<sup>3/</sup> See *NPRM* ¶¶ 18-33, 55-499. See also, e.g., Comments of Comcast, WC Docket No. 10-90 at 10 (Apr. 18, 2011); Comments of CenturyLink, WC Docket No. 10-90 at 3 (Apr. 18, 2011); Comments of Telecommunications Industry Association, WC Docket No. 10-90 at 2 (Apr. 18, 2011) (“[P]art of the solution is to restructure the [USF and ICC] programs to support broadband deployment.”); Comments of Google Inc., WC Docket No. 10-90 at 2 (Apr. 18, 2011) (“[T]he USF should be reformed so that explicit and targeted support is provided for deployment of universally available and open broadband networks.”).

<sup>4/</sup> See Comments of CTIA, WC Docket No. 11-90, et al., at 21 (Aug. 24, 2011) (“CTIA Inquiry Comments”) (“One of the central shortcomings of the current high-cost system is that much of it relies on guaranteed rate-of-return mechanisms that do not reflect the level of competition that has developed, and will continue to develop, across the U.S.”); Comments of Satellite Broadband Providers, WC Docket No. 11-90, et al., at 11 (Aug. 24, 2011) (“Satellite Broadband Providers Inquiry Comments”) Satellite (“The existing High-Cost mechanism . . . simply does not contemplate the diverse, competitive telecommunications landscape that has emerged in recent years, or the availability of multiple technologies, including satellite delivered broadband.”).

<sup>5/</sup> *NPRM* ¶ 7.

<sup>6/</sup> See notes 47 and 50, *infra*.

mechanisms to be consumer-based rather than provider-based, while still ensuring that broadband will be available in these areas at affordable rates. Indeed, by giving consumers the ability to choose providers, even in persistently high-cost areas, a consumer-based subsidy program will promote competitively-priced broadband in these areas, reducing consumer costs and the amount of subsidy required to meet the Commission's broadband goals.

As one of the most successful competitive providers of voice service, Cablevision has brought the benefits of choice and innovation to millions of consumers in its Eastern footprint. It is also an emerging competitor in its Western footprint, but in these states it must compete against incumbents that receive millions of dollars annually in federal USF subsidies. The current proceeding offers the opportunity for the Commission to target USF support to the most difficult-to-serve areas and to reduce the barrier to competitive entry imposed by subsidy programs that support incumbent providers in areas where those subsidies can be reduced or even eliminated. In the current marketplace, USF need not and should not serve as a mechanism to entrench incumbents. As the Commission undertakes reconstruction of the USF system, it should build in fair and open competition as a key value.

Intercarrier compensation ("ICC") reform also provides an opportunity for the Commission to advance the goal of fair and open competition. Basic to this effort is technology neutrality in intercarrier compensation and interconnection. Differential treatment of voice over Internet protocol ("VoIP") traffic reduces incentives to use this more efficient technology, thereby potentially denying consumers the benefits of choice, innovation, and decreased costs that competition by VoIP providers can bring to the market. ICC rules should ensure that the rates carriers charge each other for exchanging traffic do not vary on the basis of the technology used at the end points of a call and that VoIP providers are not penalized for using superior

technology to interconnect with incumbents' networks. The Commission should promote competition and innovative network technologies by ensuring that carriers refusing to interconnect in IP are not rewarded with paying lower terminating rates than their more efficient counterparts.

## INTRODUCTION AND SUMMARY

The *Further Inquiry* seeks comment on three reform proposals.<sup>7/</sup> Those plans – particularly the ABC Plan – include elements that can be adapted to serve as the basis for a solid, forward-looking, and efficient USF support mechanism for broadband services in high cost areas.<sup>8/</sup> Nonetheless, each of these proposals would perpetuate the monopoly focus of the current USF programs.<sup>9/</sup> They also disfavor VoIP providers by proposing discriminatory pricing schemes for traffic that originates or terminates in VoIP. Real USF and ICC reform can and should build on existing competition in the provision of voice and broadband services, and

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<sup>7/</sup> See 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, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (“ABC Plan”); Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011) (“State Members Plan”); Comments of the National Exchange Carrier Association, Inc; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, WC Docket No. 10-90 (filed April 18, 2011) (“RLEC Plan”).

<sup>8/</sup> See, e.g., Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90, at 3 (Aug. 24, 2011) (“NCTA Inquiry Comments”) (suggesting that “the ABC Plan represents a workable framework from which the Commission can start to craft fiscally-responsible universal service high-cost support and intercarrier compensation reforms in a broadband environment,” but that “there are aspects of the ABC Plan that do not comport with the Commission’s stated goals for achieving reform, and which should be amended to ensure that reform is accomplished in a manner that is competitively and technologically neutral, imposes true fiscal discipline and accountability, and achieves regulatory certainty”).

<sup>9/</sup> See, e.g., Satellite Broadband Providers Inquiry Comments at 10 (“[T]he Incumbent Wireline Proposals would create de facto regulatory monopolies by awarding funding preferences to incumbents, regardless of merit, and/or relegating competitive providers to separate, underfunded support mechanisms.”).

facilitate more competition rather than stifling it by clinging to today's outmoded monopoly orientation.

### **Universal Service Reform**

“Since the Telecommunications Act of 1996, U.S. policy has embraced competition as the best means to bring the fruits of investment and innovation – including lower prices, new services and features, higher service quality and choice – to the American people.”<sup>10/</sup> That policy should also guide USF reform.<sup>11/</sup> Today's USF programs unduly favor incumbent providers and establish a substantial financial disincentive to entry by competitors.<sup>12/</sup>

Unfortunately, the major industry group plans on which the Commission seeks comment in the *Further Inquiry*<sup>13/</sup> would entrench this bias in favor of the interests of incumbent providers in the disbursement of USF funds.<sup>14/</sup> Such an approach is neither necessary to meet the Commission's

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<sup>10/</sup> Connecting America: The National Broadband Plan, at 30.

<sup>11/</sup> See Comments of Massachusetts Department of Telecommunications and Cable, WC Docket No. 10-90, at 6 (Aug. 24, 2011) (“Mass. DTC Inquiry Comments”) (“These components of consumer impact and competition are part of the public interest and should be a driving force behind any reform efforts of the USF and the ICC.”).

<sup>12/</sup> See CTIA Inquiry Comments at 21 (“One of the central shortcomings of the current high-cost system is that much of it relies on guaranteed rate-of-return mechanisms that do not reflect the level of competition that has developed, and will continue to develop, across the U.S.”).

<sup>13/</sup> See generally, ABC Plan; State Members Plan; RLEC Plan.

<sup>14/</sup> See e.g., Satellite Broadband Providers Inquiry Comments at 10 (“By subsidizing wireline incumbents on a preferential basis, these proposals also would give them an insurmountable price advantage. This, in turn, would deter competitors from entering and remaining in subsidized markets; competitors are far less likely to attempt to compete against an incumbent that will always be able to beat them on price.”); Comments of Time Warner Cable, WC Docket No. 10-90, at 16 (Aug. 24, 2011) (“Time Warner Cable Inquiry Comments”) (“The ILECs' collective proposals (through the ABC Plan and companion RLEC submissions) would perpetuate today's broken system of awarding billions of dollars of high cost support to ILECs based on assumptions and policies that do not recognize the availability of competitive alternatives”).

broadband goals nor in the interests of consumers in high cost areas, who deserve a choice of provider.<sup>15/</sup>

An effective and efficient CAF program need not deprive residents of high cost areas the benefits of competition.<sup>16/</sup> As demonstrated by the broadband plan principles described below, competition is fully compatible with an efficient and effective broadband support program. In fact, applying competitive principles will make the program more efficient, driving down costs and levels of required subsidies over time, thereby reducing the overall financial size of the program.

To these ends, Cablevision asks the Commission to include the following elements in any program it adopts to provide broadband support to high-cost and unserved areas:

- *Identify high-cost areas and subsidy levels for high-cost areas at the census block level using forward-looking economic costs of the most efficient terrestrial provider.* Cablevision and other commenters agree with the ABC Plan’s proposed use of census blocks to determine subsidy areas.<sup>17/</sup> Such an approach will ensure that support is targeted to only those areas that truly need it. Use of a forward-looking most efficient terrestrial provider benchmark provides support at the level that best replicates, to the extent possible, the conditions of a competitive market.

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<sup>15/</sup> See Satellite Broadband Providers Inquiry Comments at 8-9 (“Nearly fifteen years ago in the USF First Report and Order, the Commission adopted ‘competitive neutrality’ as a guiding principle for the administration of the USF. The Commission defined ‘competitive neutrality’ as the state in which “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.” In doing so, the Commission explained that minimizing competitive and technological bias would facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.”).

<sup>16/</sup> Indeed, as one court described it, “Alongside the universal service mandate [in the Telecommunications Act of 1996] is the directive that local telephone markets be opened to competition,” so “[t]he FCC must see to it that both universal service and local competition are realized; one cannot be sacrificed in favor of the other.” *Alenco Communications, Inc. v. FCC*, 201 F. 3d 608, 615 (5th Cir. 2000).

<sup>17/</sup> See, e.g., Comments of the American Cable Association, WC Docket No. 10-90, at 13 (Aug. 24, 2011) (“American Cable Association Inquiry Comments”); Comments of Comcast Corporation, WC Docket No. 10-90, at 27-28 (Aug. 24, 2011) (“Comcast Inquiry Comments”); Comments of COMPTTEL, WC Docket No. 10-90, at 25 (Aug. 24, 2011) (“COMPTTEL Inquiry Comments”); NCTA Inquiry Comments, Attachment at 3-4;

- *Eliminate subsidies for the incumbent provider in any census block where an unsubsidized competitor offers service to a significant portion of households.*<sup>18/</sup> While the ABC plan proposes to eliminate subsidies in areas where there is currently an unsubsidized competitor, it would deter or even block future unsubsidized entry in areas that lack a competitor today by preserving the incumbent’s subsidy even if a competitor subsequently enters the area. The entry of an unsubsidized competitor is proof that a business case exists for providing service without subsidy, and therefore many commenters agree that no subsidy should be provided in any area also served by an unsubsidized provider.<sup>19/</sup> Where an unsubsidized provider is currently providing service or enters an area, the incumbent’s subsidy could be rapidly phased down over a reasonable period of time, to allow the incumbent to adjust its operations to new financial realities.
- *In persistently high-cost areas, use consumer-controlled portable subsidies to promote consumer choice and reduce the amount of the subsidy over time.* As several commenters point out, consumer-controlled portable subsidies to distribute support in persistently high-cost areas requiring subsidies would allow consumers to enjoy the benefits of competition where multiple providers choose to compete for the subsidies.<sup>20/</sup> Even where there is currently a single provider, the use of portable subsidies would encourage a new entrant, particularly in areas adjacent to already competitive or potentially competitive markets where a provider can expand to enter the market and compete for the portable subsidy on a census block by census block basis. By encouraging competitive entry, portable subsidies may also help drive down costs of the program as providers compete for the vouchers and seek to maximize profits by reducing costs. To afford potential competitors a realistic opportunity to make and implement a decision to enter a currently-subsidized area on an unsubsidized basis after the CAF is established, a “persistently high-cost area” could be defined as one in which no unsubsidized provider enters within a reasonable time period – perhaps 24 months – after the adoption of the rules establishing the CAF.
- *In unserved areas, the initial recipient of the subsidy should be determined by competitive bidding. After a five-year build out period, subsequent operational subsidies would be based on forward-looking costs of the most efficient terrestrial provider and distributed through consumer-controlled portable subsidies.* Where no current broadband services are available, it is sensible to use a competitive bidding process to determine a single provider to receive subsidies to build out a new network or additional network facilities

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<sup>18/</sup> For example, the National Cable & Telecommunications Association has suggested that subsidies should not be provided in areas where services from an unsubsidized provider are available to at least 75 percent of the households in the area. See National Cable & Telecommunications Association, Reducing Universal Service Support in Geographic Areas that are Experiencing Unsupported Facilities-Based Competition, Petition for Rulemaking, GN Docket No. 09-51 and WC Docket No. 05-337, at 12-14 (filed Nov. 5, 2009) (“NCTA Petition”). Last year’s Boucher-Terry bill proposed a similar definition of competitive areas. See H.R. 5228, 111<sup>th</sup> Cong. 2d Sess. (2010), § 103.

<sup>19/</sup> See notes 47 and 50, *infra*.

<sup>20/</sup> See note 65, *infra*.

to the area. To protect the CAF's investment in new infrastructure, the winning bidder should be shielded from competition for subsidies in the area during a five-year build out period. After the new network facilities are fully built, however, subsidies should be converted to consumer-based portable subsidies to allow consumers in the area to benefit from potential broadband competition.

### **Intercarrier Compensation Reform**

In the NPRM, the Commission recognized that ICC and USF issues are intertwined and that USF reform requires simultaneous ICC reform.<sup>21/</sup> The goal of the ABC Plan to transition intercarrier compensation to a unified system with lower, uniform, and consistent pricing is a good step toward creating a level playing field that supports competition. The same cannot be said, however, of the ABC Plan's proposed differential treatment of traffic that originates or terminates in VoIP during the transition to the new unified system. There is no reason that the rates carriers charge each other for exchanging traffic should vary on the basis of the technology used at the end points in the call path.

The ABC Plan is especially discriminatory in its proposal that originating carriers pay lower rates for traffic terminated by a VoIP provider even where the originating carrier refuses to interconnect in Internet protocol ("IP"), thus rewarding the inefficient and anticompetitive behavior of ILECs that refuse IP interconnection. Rather, the Commission should reward efficient interconnection by requiring the cost-causing carrier (the LEC refusing to interconnect in IP) to pay the per-minute rates applicable to TDM traffic for all traffic terminating to the IP carrier. In this scenario, the IP carriers would pay the lower VoIP terminating rate to LECs refusing to interconnect in IP to offset the costs of the IP carrier's TDM conversion. Ultimately, all per minute access rates would be phased out towards a unified rate for all traffic. In this way

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<sup>21/</sup> NPRM ¶ 9 ("[B]ecause of the interrelationship between USF and ICC, and the importance of both to the nation's broadband goals, reform of the two programs must be tackled together.").

the Commission would create the right incentives for non-efficient carriers to more quickly transition to an all IP infrastructure.

**I. AN EFFICIENT AND EFFECTIVE USF PROGRAM SHOULD MAINTAIN AND ENCOURAGE COMPETITION.**

Universal Service Fund High Cost Programs were initially developed in a time when the reality was that almost without exception high cost areas were served solely by a wireline incumbent local exchange carrier (“ILEC”) that held an effective monopoly over the provision of services to the area. Increasingly, however, ILECs are no longer monopolies, even in high cost areas. Competitive local exchange carriers (“CLECs”) have become established, wireless services have proliferated, and VoIP services have developed into a real alternative. The same is true for broadband services provided by an ILEC in a high cost area. CLECs, wireless carriers, and cable companies have developed into real competitive alternatives in many areas.

Given this proliferation of competitive alternatives, USF reform offers the Commission an opportunity to drive competition deeper into rural and high cost areas. By eliminating subsidies where they are unnecessary, the Commission will remove a significant impediment to competitive entry. Through use of consumer-controlled portable subsidies CAF broadband support programs can afford consumers the benefits of competitive choice and innovation, while the programs themselves benefit from competitive efficiencies, keeping the overall size of the subsidy program in check, or even shrinking it over time.

While each of the three plans on which the Commission seeks comment includes positive elements, many commenters agree that the plans nonetheless reflect a monopoly mindset that would deprive consumers in high cost areas of competitive choice – competition that in turn could help limit the overall size of the USF program and ensure that its scarce resources are

directed to areas where a continued subsidy is necessary to ensure affordable broadband.<sup>22/</sup> For instance, the ABC plan would give incumbent providers a “right of first refusal” for CAF support and then lock in those subsidies even if an unsubsidized competitor enters after 2011.<sup>23/</sup> The State Members Plan proposes a “Provider of Last Resort Fund” that would provide support only to incumbent providers,<sup>24/</sup> and the RLEC Plan simply assumes that any broadband subsidy will be directed to the incumbent provider in each high cost area.<sup>25/</sup>

The Commission should reject these impediments to competitive entry and reframe USF programs to promote choice wherever possible.<sup>26/</sup> The framework summarized in the following chart and described below is designed to accomplish these goals.

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<sup>22/</sup> See, e.g., Time Warner Cable Inquiry Comments at 3 (“The Commission also should reject the ABC and RLEC Plans’ ILEC-centric proposals to direct virtually all broadband USF support to existing ILECs. Those proposals ignore vital considerations of competitive neutrality, cost-effectiveness, and consumer preference, and thus would fail to advance the Commission’s USF reform goals.”); Comments of the Rural Cellular Association, WC Docket No. 10-90, at 3 (Aug. 24, 2011) (“Rural Cellular Association Inquiry Comments”) (“[T]he principles of maintaining technological neutrality and harnessing the benefits of competition are nowhere to be found in the ILECs’ latest USF reform proposals.”); Comments of Google, WC Docket No. 10-90, at 13 (Aug. 24, 2011) (“Google Inquiry Comments”) (“The incumbent carrier proposal also should go farther in establishing sufficient market-based incentives to deploy fast, efficient, and competitive broadband access networks and services.”)..

<sup>23/</sup> ABC Plan, Attachment 1, at 6.

<sup>24/</sup> State Members Plan at 29-67.

<sup>25/</sup> RLEC Plan 27-36.

<sup>26/</sup> Mass. DTC Inquiry Comments at 5-6 (“First, universal service and ICC policy should benefit consumers and foster competition as part of the public interest.”).

## Summary of Cablevision USF Reform Proposal

Level of Competition in Census Blocks*	Eligibility for USF Support	Notes
Subsidized provider and unsubsidized provider that currently provides service or enters the area within a reasonable time after initiation of the CAF, prior to identification of census block as “persistently high cost.”	<p>No USF support for any provider if unsubsidized entrant offers service to a significant share of households in a census block.</p> <p>If the Commission believes that a transition to avoid financial shock from the loss of a subsidy is necessary, then the subsidy for currently-subsidized providers could be rapidly phased out over a reasonable period of time.</p>	Where unsubsidized service is demonstrably possible, no subsidy is needed.
Subsidized provider and competitor that enters after the time period that identifies a census block as “persistently high cost.”	<p>Consumer-controlled portable subsidies available to any qualified provider of broadband services meeting minimum speed and quality standards.</p> <p>Subsidy set equal to efficient forward-looking cost minus national benchmark amount.</p>	Portable subsidies allow consumers in high-cost areas to benefit from competition, without increasing cost of the program.
No terrestrial broadband.	<p>Subsidy for reasonable build out period awarded in competitive “reverse auction” process.</p> <p>After build-out, consumer-controlled portable subsidy based on forward-looking costs available to any qualified provider.</p>	After build out period, there is no reason to treat area different than other areas eligible for subsidy.

\*NOTE: No provider would receive a subsidy in any census block where the efficient forward-looking cost of providing broadband is less than a national benchmark or more than alternative technology threshold to be determined by the Commission. Where costs are below the benchmark, no subsidy is needed; where costs are greater than the alternative technology threshold, a subsidy for terrestrial broadband is not cost-effective and the area would be more efficiently served by satellite broadband.

### A. High-Cost Areas and Subsidy Levels Should Be Identified at the Census Block Level Using Forward-Looking Economic Costs of the Most Efficient Terrestrial Provider.

*Identification of High-Cost Areas Eligible for Subsidy.* One problem with existing USF high-cost support programs is that (in general) they identify and establish broad service areas for computation and delivery of support. Because provider costs and support levels are averaged out

across these broad areas, the low cost of providing service to relatively densely populated areas – where no subsidy may be needed to provide service – is averaged with the exceptionally high cost of providing service to very remote areas where, in some instances, service may not make reasonable economic sense even with a subsidy. As a result, subsidies are not effectively targeted to places where they are necessary, yielding inflated funding levels and depriving consumers in otherwise contestable areas the benefits of competition and choice. To ensure efficiency of a new broadband support program, there is a widely recognized need to consider definition of service areas and subsidy levels on a more granular basis.<sup>27/</sup> Cablevision agrees that the census block – a well understood and well established granular geographic division covering the entire nation – is well suited for this purpose.<sup>28/</sup>

The ABC Plan proposes to identify high-cost areas eligible for subsidies through a forward-looking cost model based on a determination of the costs of serving a particular census block.<sup>29/</sup> This is consistent with the Commission’s early determination that “eventually all [USF] support would be provided based on forward-looking economic cost estimates and not based on the incumbents’ embedded costs.”<sup>30/</sup> Cablevision would refine the ABC Plan to provide that the forward looking cost model should be based on the most efficient available terrestrial technology

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<sup>27/</sup> For example, the Commission proposes that identification of unserved areas should be conducted on a census block level. *NPRM* ¶ 289. *See also, e.g.*, ABC Plan, Attachment 1, at 3.

<sup>28/</sup> *See, e.g.*, American Cable Association Inquiry Comments at 13; Comcast Inquiry Comments at 27; COMPTTEL Inquiry Comments at 25; Comments of Joint Commenters, WC Docket No. 10-90, at 9-10 (Aug. 24, 2011) (“Joint Commenters Inquiry Comments”); NCTA Inquiry Comments, Attachment at 3-4.

<sup>29/</sup> ABC Plan, Attachment 1, at 3-4.

<sup>30/</sup> *NPRM* ¶ 243, n. 388 (citing *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 287 (1997) (“*USF First Report and Order*”).

that meets the Commission’s basic standards for broadband service.<sup>31/</sup> This will encourage all providers in an area to strive to be as efficient as possible.<sup>32/</sup>

The Commission has previously endorsed use of a forward-looking cost model based on the most efficient technology when it adopted a total element long run increment cost (“TELRIC”) methodology for pricing unbundled network elements (“UNEs”).<sup>33/</sup> In adopting TELRIC, the Commission described the forward-looking method of modeling costs as “best replicat[ing], to the extent possible, the conditions of a competitive market.”<sup>34/</sup> The same objective should guide the Commission in this proceeding.

Consistent with the goal of making the USF program as efficient as possible, forward-looking costs should be recomputed on a regular basis to capture advancements in broadband technologies and other efficiency improvements that reduce the costs of providing broadband. These advancements and the accompanying reduction in forward-looking costs will better target USF funds by reducing subsidies to reflect gains in efficiency and may even eliminate certain census blocks from the list of areas where subsidies are provided. In either case, through use of a forward-looking cost model based on the most efficient terrestrial technology the CAF will

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<sup>31/</sup> See Satellite Broadband Providers Inquiry Comments at 19-20 (“If a cost model is used to calculate support, it should determine the cost of supporting a given area with 4/1 Mbps service using the most-efficient technology.”). Cf. *NPRM* ¶ 433 (considering whether to “develop a forward-looking economic cost model that estimates the costs of all technologies currently being (or soon to be) deployed that are capable of providing voice service and broadband service that meets whatever standard the Commission ultimately adopts for broadband”).

<sup>32/</sup> See Comments of the Rural Cellular Association, WC Docket No. 10-90, at 11 (Apr. 18, 2011) (“A forward-looking cost model will force providers in high-cost areas to become more efficient by awarding support based on the cost structures that would prevail in a competitive market.”).

<sup>33/</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶¶ 674-703 (1996), *aff’d Verizon Communications Inc. v. FCC*, 535 US 467 (2002).

<sup>34/</sup> *Id.* ¶ 679.

realize savings that can be reallocated to other areas or that can be used to gradually reduce the size of the fund.

A census block would be considered high-cost and therefore eligible to receive CAF subsidies where the average per-service-location cost to serve that census block exceeds a national benchmark (the ABC Plan suggests \$80 per line as an example), so long as the cost remains below what the ABC Plan terms an “alternative technology threshold” (suggested by the ABC Plan to be \$256 per line), above which it may be more reasonable and cost-effective to rely on satellite broadband services than to subsidize terrestrial broadband services.<sup>35/</sup> Both the national benchmark and the “alternative technology threshold” numbers would be determined by the Commission and applied consistently throughout the nation.

This is generally a reasonable process to identify high-cost census blocks that would be eligible for subsidy. Only those census blocks where the forward-looking efficient cost of providing terrestrial broadband service exceeds the national benchmark would be identified as in need of subsidy for provision of broadband services. If the modeled costs to provide service is at or below the national benchmark (representing costs in areas that do not receive subsidy) then it is evident no subsidy is necessary. If the modeled cost is above the “alternative technology threshold,” the subsidy necessary to provide terrestrial broadband services in the census block would be determined excessive, with the area better served by satellite broadband service.<sup>36/</sup>

*Determining the Level of the Subsidy.* The per-service-location subsidy level in each high-cost census block should be set equal to the difference between the per-service-location cost, as established by the forward looking cost model, and the national benchmark set by the

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<sup>35/</sup> See ABC Plan, Attachment 1, at 3-6; see also NCTA Inquiry Comments, Attachment 1 at 3-4 (proposing a similar approach).

<sup>36/</sup> See *id.* at 4-5. See also NPRM at ¶ 211 (suggesting use of the cost of satellite service to determine an appropriate cap for subsidies for terrestrial broadband service).

Commission.<sup>37/</sup> While the subsidy level would be the same for each location within any census block, it would vary from census block to census block reflecting the varying modeled cost characteristics among different census blocks.<sup>38/</sup> As explained below,<sup>39/</sup> there is no need for further aggregation of the subsidy amount. With the use of consumer-controlled portable subsidies, each provider in an area receives the subsidy associated with the customer locations it provides service to in a census block, with the subsidy for that carrier merely reflecting the sum of the portable subsidies it captures in all census blocks it serves.

*The Forward-Looking Efficient Cost Model Should Be Used to Compute Subsidies in All Areas.* The ABC Plan proposes to limit the use of a forward-looking cost model to identify high-cost areas and set subsidy levels to areas served by price-cap local exchange carriers (“LECs”).<sup>40/</sup> There is no reason why the ABC approach – modified so that it is based on forward-looking efficient costs – should not be applied to all areas considered for broadband support, including areas now served by rate-of-return LECs.<sup>41/</sup> While it is possible (even likely) that the potential decrease in subsidies from using a forward-looking cost model would be more substantial for

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<sup>37/</sup> Cf. *NPRM* ¶ 432 (“The amount of support offered would be determined by comparing the cost of serving the COLR’s service area compared to a national cost benchmark. Support would be provided for costs above the benchmark.”).

<sup>38/</sup> As explained above, census blocks with unsubsidized providers or with costs exceeding the alternative technology threshold are not considered to be among high-cost census blocks for which subsidies would be computed or provided, regardless of the actual cost structure applicable to the census block.

<sup>39/</sup> See Part I.C., *infra*.

<sup>40/</sup> See ABC Plan, Attachment 1, at note 1.

<sup>41/</sup> See Comments of Ad Hoc Telecommunications Users Committee, WC Docket No. 10-90, et al., at 25 (Apr. 18, 2011) (“Arguments have been made in the past that developing a forward-looking economic cost (FLEC) model isn’t workable for high cost carriers because of the unique characteristics of their size or terrain. Those arguments, however, should not be persuasive. A model capable of properly estimating what it should cost an efficient provider to provide service in High Cost Fund study areas may, or may not, need to be somewhat more complicated than the High Cost Model used to develop price cap carrier costs. It may require some additional variables, the input costs may vary some (labor rates, for example, are likely lower in rural Montana than in Manhattan), but overall the process should be about the same.”).

rate-of-return LECs,<sup>42/</sup> loss of revenue associated with provisioning service inefficiently does not justify continued government support for subsidy levels exceeding the efficient cost of providing service. Forward-looking costs are the most effective means to allocate subsidies,<sup>43/</sup> and “[t]he purpose of universal service is to benefit the customer, not the carrier.”<sup>44/</sup>

Because all forward-looking costs of operation of a broadband network would be captured in the subsidy computation, there is no need for a “transitional access replacement mechanism” such as that proposed by the ABC Plan to “ensure that the intercarrier compensation reforms do not jeopardize the operations of broadband providers that rely on intercarrier compensation revenues for implicit support of networks in high-cost areas.”<sup>45/</sup> This is especially true for large national or regional ILECs that certainly would not have their continued operation jeopardized by receipt of subsidies designed to provide their full forward-looking costs of providing service. To the extent the Commission nonetheless determines that some sort of temporary financial cushion is needed for some smaller carriers, it should limit eligibility for such support to only the smallest carriers, perhaps those with 10,000 lines or less.

If a rate-of-return LEC concludes it cannot provide broadband services to certain census blocks for the level of support determined by the forward-looking cost model, other broadband providers may be willing to provide broadband services at that subsidy level. If no broadband provider is willing to provide services using the portable subsidy level available in the census

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<sup>42/</sup> Under the current USF program, price-cap LEC subsidies are already computed at least in part based on a form of forward-looking cost model, while the formula for rate-of-return LECs is computed at least in part on the LEC’s embedded costs. See 47 C.F.R. §§ 54.301, 54.309.

<sup>43/</sup> See *USF First Report and Order* ¶ 224 (“[T]he proper measure of cost for determining the level of universal service support is the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services . . .”).

<sup>44/</sup> *Alenco Comm.*, 201 F. 3d at 621.

<sup>45/</sup> ABC Plan, Appendix 1, at 12-13.

blocks, the Commission could declare those census blocks to be unserved and open for competitive bidding using the reverse auction process for unserved areas discussed below.<sup>46/</sup> To ensure no consumers currently receiving service in these areas are temporarily left without access to a provider, current providers could be provided portable subsidies at current subsidy levels until completion of the bidding process.

**B. The Principle That No Subsidy Is Necessary Where There Is Unsubsidized Competition Should Apply Not Only To Currently Competitive Areas, but Also to “Contestable” Areas Where An Unsubsidized Competitor May Enter in the Future.**

Many commenters agree with the principle that no subsidy should be provided to a broadband provider in any area that is also served by an unsubsidized provider.<sup>47/</sup> As the Ad Hoc Telecommunications Users put it, “[T]he continued subsidization of incumbent providers . . . makes little economic sense when a competing provider can and does provide service without subsidies.”<sup>48/</sup> Two of the three plans on which the *Further Inquiry* seeks comment include that principle,<sup>49/</sup> as do a significant number of large and small providers who submitted comments earlier in this proceeding.<sup>50/</sup> The Commission has acknowledged that “in an increasingly

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<sup>46/</sup> See Part I.D., *infra*.

<sup>47/</sup> See, e.g., Ad Hoc Telecommunications Users Group Inquiry Comments at 21; American Cable Association Inquiry Comments at 12; Comments of the Coalition for Rational Universal Service and Intercarrier Reform, WC Docket No. 10-90, et al., at 3 (Aug. 24, 2011) (“Coalition for Rational Universal Service and Intercarrier Reform Inquiry Comments”) (“Universal Service funding needs reform, but the Connect America Fund should not be used to subsidize ILECs to compete against unsubsidized carriers in their markets.”); Comcast Inquiry Comments at 23-24; Free State Foundation Inquiry Comments at 2-3; NCTA Inquiry Comments at 9-10; Satellite Broadband Providers Inquiry Comments at 20; Time Warner Cable Inquiry Comments at 20-21; Comments of XO Communications, WC Docket No. 10-90, et al., at 17 (Aug. 24, 2011) (“XO Communications Inquiry Comments”).

<sup>48/</sup> Ad Hoc Telecommunications Users Group Inquiry Comments at 21.

<sup>49/</sup> ABC Plan, Attachment 1, at 3; State Members Plan at 43.

<sup>50/</sup> See, e.g., Reply Comments of AT&T, WC Docket No. 10-90, at 66 (May 23, 2011) (“CAF support should be directed to only those census blocks . . . where there would be no business case to provide broadband service in the absence of a subsidy.”); Reply Comments of CTIA – The Wireless Association, WC Docket No. 10-90 at 6 (filed May 23, 2011) (“[E]xisting support for ILECs should be

competitive marketplace with unsubsidized competitors operating in a portion of incumbent's territories, permitting carriers to be made whole through USF lessens their incentives to become more efficient and offer innovative new services to retain and attract customers.”<sup>51/</sup> Apart from the fact that awarding subsidies in areas with an unsubsidized competitor would violate the principle of competitive neutrality, the simple fact that at least one provider is able to offer broadband services in that area without a subsidy is clear proof that a subsidy is not required to support broadband services there.<sup>52/</sup>

The use of census blocks to determine subsidy eligibility and subsidy levels addresses and resolves concerns regarding the putative drawbacks of removing subsidies from densely populated portions of currently supported rural areas. Only census blocks where an unsubsidized competitor is offering services should be removed from an area eligible for subsidy, leaving the remainder of the high-cost area eligible for subsidy. Because subsidy levels are set on the census block level, to the extent that cost levels are higher in those remaining areas, subsidy levels for those census blocks would also be higher, leaving the provider serving those areas at no disadvantage.

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eliminated in areas where an unsubsidized broadband competitor is providing service.”); Comments of New Jersey Public Utilities Commission, WC Docket No. 10-90 at 4 (filed Apr. 15, 2011) (“The Commission should follow its own recommendation in the National Broadband Plan . . . that the federal USF should provide funding only in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service.”); Comments of Sprint Nextel Corporation, WC Docket No. 10-90 at 34 (filed Apr. 18, 2011) (“The Commission should not provide high cost or CAF subsidies in areas where unsubsidized facilities-based providers already are competing for customers.”); Comments of Time Warner Cable, WC Docket No. 10-90 at 20 (filed Apr. 18, 2011) (“TWC. . . has supported proposals that would reduce or eliminate USF support in those areas of the country where extensive, unsubsidized facilities-based voice competition exists.”); Comments of Verizon and Verizon Wireless, WC Docket No. 10-90 at 62 (filed Apr. 18, 2011) (“The Commission should adopt the National Broadband Plan’s recommendations to . . . ‘only provide funding where there is no private sector business case’ for broadband service.”).

<sup>51/</sup> *Further Inquiry* at 2.

<sup>52/</sup> *See, e.g., ABC Plan, Attachment 1, at 3* (proposing that CAF support should be available “only in those high-cost areas in which there is no private sector business case to offer broadband”); NCTA Petition. *See also* note 50, *supra*.

The ABC Plan, however, proposes an unnecessary constraint on competition and consumer choice that would perpetuate excessive government subsidy awards and deny the benefits of efficiency and innovation to consumers in many markets. The ABC Plan provides that only census blocks where an unsubsidized provider is providing service on January 1, 2012 should be excluded from eligibility for subsidy, with other high cost areas remaining eligible for subsidy for a ten-year period, even if an unsubsidized provider subsequently begins providing service in the area.<sup>53/</sup> The Commission should reject this arbitrary cutoff. While it would clearly benefit the subsidized provider, which would retain its subsidy even where the entry of an unsubsidized competitor has demonstrated that no subsidy is necessary, it does not serve the public interest in the most efficient deployment of USF funds.<sup>54/</sup> As T-Mobile notes, the most likely impact of a ten-year guaranteed subsidy lock-in for any area that lacks a competing broadband provider would be to unnecessarily deter competition and new entry: “This approach may subsidize areas where it will shortly become apparent, through the entry of an unsubsidized broadband provider, that no subsidy is needed, increasing unnecessarily the burden on all consumers. It also may undermine other providers’ incentives to extend broadband into areas where one provider has a guaranteed subsidy for the next decade.”<sup>55/</sup>

In contrast to the ABC Plan, a rule eliminating subsidies in markets where competitors enter will encourage new entry in markets where such entry has not been feasible up to now because of the economic challenge of competing against a subsidized incumbent. Consumers in

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<sup>53/</sup> ABC Plan, Attachment 1, at 3.

<sup>54/</sup> See, e.g., Coalition for Rational Universal Service and Inter-carrier Reform Inquiry Comments at 9. Cf. CTIA Inquiry Comments at 19 (“Support mechanisms that insulate certain providers from competitive pressure would be manifestly unfair, and potentially retard both the development of competition and the deployment of broadband facilities.”).

<sup>55/</sup> Comments of T-Mobile, WC Docket No. 10-90, et al., at 25 (Aug. 24, 2011) (“T-Mobile Inquiry Comments”).

these “contestable” but not yet competitive markets should not be unnecessarily denied the efficiency, innovation, and generally lower prices that competition can bring, by allowing continuing incumbent subsidies to effectively lock out unsubsidized competitors.

There is no offsetting public benefit from allowing the incumbent to retain a subsidy in the face of a new entrant providing unsubsidized competition in an area. The logic that underpins the general support for avoiding subsidies in areas where there is currently an unsubsidized provider – *i.e.*, that the subsidy represents an unfair competitive advantage and the presence of the unsubsidized provider demonstrates that the subsidy is unnecessary – applies equally to an area which is contestable by a new entrant but for the presence of a subsidized competitor. The ability to offer service in such an area without having to compete against a provider subsidized by the government could alter the investment calculus for network operators in adjacent markets and encourage additional providers to enter, thereby expanding the number of markets offering the benefits of price and service competition.

The ABC Plan states that a ten-year subsidized monopoly for the current incumbent provider is necessary “to provide the stability that is necessary for CAF recipients to take on broadband service obligations for ten years.”<sup>56/</sup> But this assertion is unsupported and illogical. Any subsidy based on forward-looking costs is not intended to help the incumbent recover sunk investment in its current network. Indeed, for most incumbents currently offering broadband service in high-cost areas, network construction and deployment costs already have been partially or fully recovered through past USF support. Looking forward, the incumbent is in no greater need of “stability of funding” and support for maintaining its network than the unsubsidized entrant with which it will be competing. If the new entrant has determined it can

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<sup>56/</sup> ABC Plan, Attachment 1, at 3.

provide services to the area without a guaranteed ten-year subsidy, there is no reason the government should reward the incumbent for its inefficiency for ten years.

Nevertheless, the Commission may want to allow incumbents a chance to adjust to their new, unsubsidized, financial realities in a given area. If so, any phase-out period should be the shortest possible to provide a reasonable time to adjust. Notably, though the incumbent may lose its subsidy in census blocks where there is an unsubsidized competitor, consumers would not be left without access to services because of the presence of one or more competitors, even if the incumbent chooses to no longer provide services in that census block without the subsidy.

**C. In Persistently High-Cost Areas, Consumer-Controlled Portable Subsidies Can Provide the Benefits of Competition and Promote Efficient Use of USF Funds.**

All three of the plans discussed in the *Further Inquiry* disadvantage rural consumers by perpetuating incumbent monopolies in persistently high-cost markets that are not contestable by new entrants absent some continued government support.<sup>57/</sup> For example, the ABC Plan suggests that in any market eligible for a subsidy the grant should be awarded for ten years and offered initially to the incumbent provider with a right of first refusal. If the incumbent declines the grant, it would then be offered to others in a competitive bidding process, with the winning bidder receiving the grant, effectively obtaining a ten-year monopoly on provision of broadband to the area.<sup>58/</sup> The Commission’s NPRM suggests either competitive bidding or incumbent right of first refusal to award the operating subsidy,<sup>59/</sup> and proposes that the CAF should “provid[e]

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<sup>57/</sup> See Satellite Broadband Providers Inquiry Comments at 5 (“[T]hese proposals request that the Commission award the lion’s share of available funds to incumbents, based on their existing wire centers and service areas—without any consideration of whether competitive providers could extend higher quality service to consumers at lower cost or in more expeditious fashion.”).

<sup>58/</sup> ABC Plan, Attachment 1, at 6.

<sup>59/</sup> NPRM ¶¶ 418-31.

support to at most one provider in a given high-cost area.”<sup>60/</sup> The State Members Plan proposes to provide continuing support for current incumbents.<sup>61/</sup>

But no empirical or logical rationale supports using the CAF program to enshrine broadband monopolies even in persistently high cost areas and deprive consumers in these areas of the benefits of competition and choice.<sup>62/</sup> To the contrary, the goals of universal service and broadband choice in such areas can be achieved through use of consumer-controlled portable subsidies in “persistently high-cost” areas.<sup>63/</sup> In its early consideration of universal service program implementation, the Commission itself recognized the benefits of portable subsidies.<sup>64/</sup> A number of commenters in this proceeding<sup>65/</sup> and recognized experts in the field<sup>66/</sup> have

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<sup>60/</sup> *NPRM* ¶ 403. The *NPRM* seeks comment on whether to separately allow support for one wireless broadband service. *Id.* ¶ 407.

<sup>61/</sup> State Members Plan at 29.

<sup>62/</sup> See Satellite Broadband Providers Inquiry Comments at 5 (“The inefficient, non-competitive allocation of limited funds to relatively low-cost areas would reduce the funds available in higher-cost areas. Consequently, it would be more difficult for the Commission to ensure that consumers in those higher-cost areas (arguably the most needy) are able to access high-quality broadband service at affordable rates”); *id.* at 12 (“The exclusion of competitors now would serve only to entrench further a group of carriers that historically have used support inefficiently because they have not been subject to competition for that support.”).

<sup>63/</sup> *Cf.* Google Inquiry Comments at 13 (“Broadband competition in USF supported areas can be increased by expanding USF support beyond incumbent wireline carriers”).

<sup>64/</sup> *NPRM* at note 388 (citing *USF First Report and Order* ¶¶ 287-88).

<sup>65/</sup> See, e.g., American Cable Association Comments at 36-37; Rural Cellular Association Comments at 13-16; Time Warner Cable Comments at 31-32; United States Cellular Association Comments at 39; USA Coalition comments at 12. See also, Rural Cellular Association Inquiry Comments at 20 (“Consumer preference should be at the heart of the Commission’s support allocation analysis.”); Comments of United States Cellular Association, WC Docket No. 10-90, et al., at 28-29 (Aug. 24, 2011) (“United States Cellular Association Inquiry Comments”); NCTA Inquiry Comments at 16, n.38 (collecting citations to commenters and others supporting use of portable subsidies).

<sup>66/</sup> Gregory L. Rosston and Bradley S. Wimmer, *Testimony on Universal Service Reform*, Committee on Energy and Commerce, Subcommittee on Communications Technology and the Internet, United States House of Representatives, at 5-6 (Nov. 17, 2009), available at <http://republicans.energycommerce.house.gov/hearings/Testimony.aspx?TID=2867>. See also Gregory L. Rosston and Scott J. Wallsten, *The Path to Universal Broadband: Why We Should Grant Low-Income Subsidies and Use Experiments and Auctions to Determine the Specifics*, THE ECONOMISTS' VOICE, Vol.

discussed the benefits of portable subsidies and urged the Commission to include a portable subsidy feature in any broadband support program adopted. For these purposes, a “persistently high-cost” area could be defined as a census block where no unsubsidized provider or undertakes tangible, concrete action to construct and deploy broadband network facilities during a reasonable transition period (say, 24 months) after the phase out of the existing high cost funds and the introduction of the CAF.<sup>67/</sup>

If support is distributed through consumer-controlled portable subsidies, every qualified provider that believes it can offer broadband services in a census tract for the sum of its retail price and the amount of the portable subsidy would be free to do so.<sup>68/</sup> To be eligible to receive the portable subsidy, the broadband services offered would have to meet minimum standards set by the Commission for speed and service quality. The competition for customers and their portable subsidies would provide consumers with choice in broadband service provider, and the competition between providers could be expected to bring consumers better, more innovative service as each provider tries to better the others to attract customers.

A consumer-based subsidy program has several advantages over a provider-based program. In particular, it could increase demand for broadband service, thereby encouraging additional providers to enter the market. If subsidies were controlled by households, providers who today receive direct support payments would have to compete to retain their subsidy dollars in the marketplace. Additionally, because firms’ profits would be based on the services they sell

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8: Iss. 1, Article 8 (2011); Ray L. Gifford et al., *Preliminary Report from the Universal Service Working Group Release 1.0*, in DIGITAL AGE COMMUNICATIONS ACT (2005).

<sup>67/</sup> Of course, if, over time, the forward-looking efficient costs fall to or below the national benchmark in any subsidized census block, all subsidies for that block would be eliminated.

<sup>68/</sup> See, e.g., NCTA Inquiry Comments at 8, n.19 (“[T]he Commission could also consider providing support on a portable basis to the provider that wins the customer, or directly to consumers in the form of portable vouchers. Consumers would provide support through the vouchers to the broadband provider of their choice.”).

rather than the subsidies they receive, such a program increases firms' incentives to operate more efficiently.<sup>69/</sup> Competitive entry would not increase the overall expenditure on subsidies in a market. Rather, through the exercise of consumer choice, the subsidy would flow from households to providers that consumers prefer.<sup>70/</sup>

With portable subsidies, there is no reason for concern about how best to aggregate census blocks into larger areas for competitive bidding purposes. Given transparency in calculated amounts of portable subsidy, each provider can determine for itself which census blocks make sense for it to serve within its own business plan and network capabilities. A provider can serve as many or as few high-cost census blocks as it chooses in whatever configuration makes most sense for the provider.

In areas where there are not currently multiple subsidized broadband providers, the incumbent might initially collect all of the portable subsidies and remain the *de facto* monopoly provider. But by leaving allocation of the CAF support in the hands of consumers, the portable subsidies leave open the possibility of competitive entry in the future, particularly because the portable subsidies would allow a competitor that may currently border on the incumbent provider to enter the subsidized market one census block at a time.

The fact that the portable subsidy would be computed individually for each census block means that a competitive provider is receiving only the level of subsidy computed as necessary

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<sup>69/</sup> See Coalition for Rational Universal Service and Intercarrier Reform Inquiry Comments at 15 (“ILEC-ETCs need to be subject to ongoing scrutiny, to ensure that they are not building gold-plated networks and running needlessly-large overhead at the expense of the rest of the country. They should also be subject to some loss of revenue if they lose customers – what real business is held harmless against competitive loss?”).

<sup>70/</sup> In recommending the use of consumer-controlled portable subsidies, Cablevision is not suggesting that the Commission provide the subsidy directly to the consumer in the form of a coupon or voucher. Rather, eligibility for and the amount of the portable subsidy could be attached to the consumer service address, with certification or verification of provision of service to that location used by a provider as evidence of eligibility for the portable subsidy associated with that location. This mechanism is similar to that currently used for distribution of Lifeline program support.

to serve that census block, thus eliminating concerns about “cream skimming” by certain providers serving only the low-cost areas of a high-cost region. If a particular census block has a relatively low cost to serve, it will also have a relatively low portable subsidy associated with it, while census blocks with relatively high costs to serve will maintain high levels of portable subsidy.

Cablevision recognizes that despite the many potential benefits of use of a consumer-controlled portable subsidy, it is a significant departure from the way in which USF subsidies have traditionally been delivered and may warrant additional discussion and consideration. Consequently, the Commission may wish to consider adopting portable subsidies as part of its immediate USF/ICC reform order this fall and seek further comment on the details and mechanics of such a program that could be adopted next spring.

**D. Construction Grants For Unserved Areas Should Provide Exclusive Support For a Limited Build-Out Period, With Subsequent Operational Support Distributed Through Consumer-Controlled Portable Subsidies.**

In census blocks with no current broadband service that meets minimum standards, provision of service will presumably require construction of new or additional network facilities for a provider to be able to provide the service. A competitive bidding procedure, or a “reverse auction,” is the most effective way to determine the level of support and select a provider in this situation. Auction design will have to address how to define bidding areas and precisely what providers will be bidding on. Participation in the auctions should be open to any qualified bidder using any type of technology. If no bids are received for an area, that area could be temporarily added to the list of highest cost areas for which satellite broadband service is deemed appropriate and considered for rebidding at some future time.

Winning bidders would be subject to a reasonable build out requirement – perhaps five years. During that period the provider would be provided the amount of the winning bid in installments for both construction and operating costs. During the build out period, the winning bidder would be the exclusive subsidized provider in the area. Entry by an unsubsidized provider during the build out period would not cause the provider to lose its subsidy.

At the end of the build out period, however, service would be provided with a fully built network and there would no longer be any purpose to treating the area differently than other subsidized high-cost areas that had previously-built networks to offer broadband services. Subsidies to the provider would therefore revert to forward-looking cost based subsidies as computed in all other high-cost areas. As in those other areas, the subsidy would be provided as a consumer-controlled portable subsidy, with other providers able to enter census blocks in the service area to compete for those portable subsidies. Thus, while it is prudent to maintain an effective monopoly for the winning bidder during the limited build out period, consumers in these areas as well can ultimately obtain the benefits of competition.

**II. ANY INTERCARRIER COMPENSATION TRANSITION SHOULD SUBJECT ALL VOICE CALLS TO THE SAME RULES, AND SHOULD NOT REWARD ILECS THAT REFUSE TO INTERCONNECT IN IP.**

Cablevision supports the ABC Plan’s goal of transitioning intercarrier compensation to a simpler, unified system that replaces the current access charge/reciprocal compensation regime with uniform and consistent pricing. However, like many other commenters, Cablevision disagrees with the Plan’s differential treatment of traffic that originates or terminates in VoIP (“VoIP traffic”) during that transition.<sup>71/</sup> As Cablevision has previously explained, there is no reason, either in law or policy, that the rates carriers charge each other for exchanging traffic

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<sup>71/</sup> See, e.g., COMPTTEL Inquiry Comments at 22-23.

should vary on the basis of the technology that was used – or will be used – at some point in the call path.<sup>72/</sup> Although VoIP providers and circuit-switched carriers may use different technologies to originate or terminate calls, they both use the facilities of *other* carriers in identical ways.<sup>73/</sup> Pricing network access services differently based on the technology used to originate or terminate the call is an invitation for carriers to engage in arbitrage, fraud, and to dispute the identification of one another’s traffic.<sup>74/</sup> Differential pricing would also “upset reasonable, investment-backed expectations of companies that use VoIP technology to provide access services.”<sup>75/</sup>

Numerous commenters in this proceeding have agreed that there is no good mechanism to reliably identify VoIP traffic, since both circuit-switched and VoIP calls frequently undergo protocol conversion and are indistinguishable from one another once they reach an interconnecting carrier.<sup>76/</sup> It also makes little sense to expend time and resources to develop such a mechanism for the purposes of an *interim* solution.

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<sup>72/</sup> See Comments of Cablevision Systems Corporation and Charter Communications, WC Docket No. 10-90 et al., at 2-13 (April 18, 2011) (“Cablevision/Charter Comments”); Reply Comments of Cablevision Systems Corporation and Charter Communications, WC Docket No. 10-90 et al., at 4-15 (April 18, 2011) (“Cablevision/Charter Reply Comments”). See also, e.g., Time Warner Cable Inquiry Comments at 2-3 (“IP-originated and IP-terminated traffic should be treated no differently from traffic that originates or terminates in a [TDM] format.”).

<sup>73/</sup> See COMPTTEL Inquiry Comments at 23-24.

<sup>74/</sup> See, e.g., Comments of Bright House, WC Docket No. 10-90, et al., at 3 (Aug. 24, 2011) (“Bright House Inquiry Comments”) (“Because there is no technical or economic distinction between ‘VoIP Traffic’ (as the ABC Plan uses that term) and any other PSTN traffic, introducing a rule that requires such traffic to be treated in some special manner for rating purposes is guaranteed – with 100% certainty – to introduce distortions in sensible economic behavior in order to exploit the arbitrage opportunities created by the new rule.”); Comments of Cbeyond, Inc., et.al, WC Docket No. 10-90, et al., at 13-15 (Aug. 24, 2011) (“Cbeyond, Inc., et.al, Inquiry Comments”).

<sup>75/</sup> Comments of Cox Communications, WC Docket No. 10-90, et al., at 4-5 (Aug. 24, 2011) (“Cox Inquiry Comments”).

<sup>76/</sup> See Cablevision/Charter Reply Comments at 6 & n.16. See also, e.g., Bright House Inquiry Comments at 8-9 (“[T]here is no practical way to distinguish VoIP traffic from any other traffic, whether on the basis of call detail records, call signaling information, or otherwise.”); COMPTTEL Inquiry

Moreover, if the Commission were to adopt a differential interim pricing scheme for VoIP and circuit-switched traffic, it should not adopt a scheme that, as the ABC Plan proposes, penalizes carriers that have made investments in IP architecture to the benefit of their circuit-switched competitors. Under the ABC Plan, originating carriers pay lower rates for traffic terminated by a VoIP provider during the first part of the transition even where the originating carrier refuses to interconnect in IP. This proposal thus rewards the inefficient and anticompetitive behavior of ILECs that refuse IP interconnection. Most ILECs have resisted IP interconnection because it would reduce their own revenues and/or lower costs for their competitors, who currently must buy facilities or lease them from the ILECs in order to exchange traffic in TDM at multiple interconnection points.<sup>77/</sup> These ILECs thus place all the costs of converting traffic between IP and TDM on the IP-based providers – the providers that have made the investments in advanced architecture the Commission seeks to encourage.<sup>78/</sup> As Comcast has explained, allowing ILECs who refuse to interconnect in IP to then pay lower terminating access rates would only exacerbate this “asymmetrical allocation of the costs.”<sup>79/</sup> That policy makes no sense.<sup>80/</sup> “There is no rational policy basis for setting up a special, new regulatory rule the sole

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Comments at 24. *But see* XO Communications Inquiry Comments at 10 (asserting that there are “industry mechanisms and processes” that can “allow carriers to identify VoIP traffic for separate treatment”).

<sup>77/</sup> *See id.* at 7-8; Cablevision/Charter Comments at 6 n.7.

<sup>78/</sup> *See* NCTA Inquiry Comments at 17 (“This additional cost [of conversion between TDM and IP], which incumbent LECs do not bear, essentially operates as a penalty on companies that have deployed modern IP technology”).

<sup>79/</sup> Reply Comments of Comcast Corp., WC Docket No. 10-90 et al., at 11 (April 18, 2011) (“Comcast Reply Comments”). *See also* NCTA Inquiry Comments at 18, n.42 (noting that symmetrical treatment of traffic originated by VoIP providers and traffic terminated by VoIP providers “actually works to the benefit of incumbent LECs because cable operators would continue to bear all the costs of any IP-to-TDM conversion”).

<sup>80/</sup> Likewise, as NCTA explains, the ABC Plan’s proposal to link tandem compensation to ownership of legacy tandem switching facilities harms carriers with more efficient networks, and thus

effect of which is to *punish* the network service providers that have invested in modern, IP-based facilities and *reward* the network service providers that have not done so. Yet that is exactly what the ABC Plan’s treatment of VoIP traffic would accomplish.”<sup>81/</sup>

If the Commission is going to adopt the ABC Plan’s proposal that originating carriers pay lower terminating rates for traffic originated or terminated in VoIP during the transition, it should condition the availability of the lower rate on the originating carrier’s making available IP interconnection.<sup>82/</sup> This kind of approach would both encourage carriers to adopt IP architecture and would reduce the financial burdens on VoIP providers required to invest in inefficient facilities merely to convert traffic to and from TDM for purposes of interconnection. As Comcast has explained, an approach like this one would “lead to more economically efficient charges than the current access regime and create an incentive for providers to upgrade their networks to offer IP-based broadband.”<sup>83/</sup>

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makes no sense as a matter of policy. NCTA Comments, WC Docket No. 10-90, et al., at 19-21 (filed Aug. 24, 2011).

<sup>81/</sup> Bright House Inquiry Comments at 7.

<sup>82/</sup> At the very least, such a scheme could apply where IP interconnection is technically feasible, such as where the terminating carrier provides IP interconnection to its affiliates.

<sup>83/</sup> Comcast Reply Comments at 10.

## CONCLUSION

Cablevision asks the Commission to carefully consider the suggestions it makes above to ensure that USF and ICC reform does not prevent American consumers from enjoying the many benefits of competition in provision of broadband services. Incorporation of these suggestions into any final plan for modernizing intercarrier compensation structures and the framework for support for services in high-cost areas will, as explained above, make the systems more efficient and more effective and ultimately benefit the public interest.

Respectfully submitted,

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