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October 21, 2011

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WC Docket No. 04-36

Dear Ms. Dortch:

On October 19, 2011, Hank Hultquist and the undersigned of AT&T, Kathy Grillo and Alan Buzacott of Verizon, Jeff Lanning of CenturyLink, Eric Einhorn of Windstream, Michael Skrivan of FairPoint, Mike Saperstein of Frontier, and Jon Banks of USTelecom met with Steven Rosenberg and Amy Bender of the Wireline Competition Bureau, and Michael Steffen of the Office of General Counsel to discuss several issues related to an interim Connect America Fund (CAF). Cesar Caballero, Bill Kreutz, and Jennie Chandra of Windstream, Chris Miller of Verizon, and Ken Mason of Frontier joined this discussion via telephone. During this meeting the ABC Plan Coalition discussed the results of its regression analysis based on the Commission's existing high-cost proxy model (HCPM). We attach those results to this letter.

It is our understanding that the universal service and intercarrier compensation order that is on circulation establishes an interim CAF that would disburse and attach broadband obligations to approximately $300 million in new high-cost support for price cap carriers. We further understand that the $300 million will be allocated among these carriers through the application of a regression analysis that uses the Commission's existing HCPM. How to perform the regression analysis and use its results have been the subject of some discussion among the ABC Plan Coalition members and Commission staff. Below, we offer our recommendations and explain why the Commission has the authority to disburse the incremental support in the manner that we recommend.

The ABC Plan Coalition recommends that the Commission use the results of the regression analysis to distribute price cap carriers' existing high-cost support and an additional $300 million in available support. That is, the Commission should combine price cap carriers' existing high-cost support amounts (which total approximately $1 billion) together with the new $300 million for the purposes of performing the analysis. Including price cap carriers' existing high-cost support amounts in the regression analysis will have the benefit of identifying the relative cost conditions in more of the high-cost areas that are uneconomic to serve, and the Commission would use this information for the sole purpose of allocating the $300 million in incremental support among the price cap carriers in a consistent manner. In contrast, limiting the regression analysis simply to the new $300 million would limit the identified areas to only a small subset of those that are uneconomic to serve.

The Commission should use the results of the regression analysis exclusively to determine the *incremental* support price cap carriers would receive at a holding company level. "Incremental" support is the difference between the support calculated for the holding company using the model run and the support that the holding company receives today. For this purpose, a "holding company" is the nationwide aggregation of commonly-owned or controlled price cap eligible telecommunications carriers (ETCs).

The Commission should give holding companies the flexibility to identify the individual locations where the new high-cost support is needed and would have the greatest impact in the near term. This flexibility is necessary because carriers are best positioned to identify the locations where they could satisfy the Commission's broadband obligations associated with this new funding in the short time that the Commission will give carriers to perform their obligations. Once holding companies have identified the locations where the new high-cost support would have the greatest impact, the Commission should require them to identify the amount of incremental support that should flow to each of their ETCs. The Commission would have the opportunity to review and approve each holding company's proposed ETC distribution and, once approved, the Commission would disburse support to the ETCs consistent with the approved proposal.

The Commission should not use the results of the regression analysis to reallocate *existing* high cost support. A wholesale reallocation of existing high-cost support based on this regression analysis would be extraordinarily disruptive to the affected carriers and state commissions.[1] Indeed, significantly reallocating $1 billion dollars in existing support for a one-year period violates the Commission's obligations to establish universal service support mechanisms that are "specific, predictable and sufficient." 47 U.S.C. § 254(b)(5).[2] Instead, the Commission should perform an "as if" calculation that would leave untouched existing high-cost support in this interim phase of the CAF.

The Commission also should not limit use of the incremental support to the specific high-cost areas identified by the regression analysis. Under that approach, the incremental support would flow only to a small subset of high-cost areas that are uneconomic to serve. Because a carrier's costs are so high in such areas, at the end of the interim CAF, a much smaller number of service locations would have access to broadband than if the Commission had permitted carriers to self-identify their high-cost locations for incremental funding. Indeed, the *National Broadband Plan* recommended that satellite be used to provide broadband service to the highest cost locations in the country precisely because of the significant costs associated with deploying

[1] *See* Letter from Malena F. Barzilai, Windstream, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (filed Oct. 20, 2011) (explaining the interaction of state universal service funds with federal universal service funds and noting that, in several states, an increase in the federal universal service support received by a carrier in that state triggers a decrease, by the same amount, in the state support received by that carrier).

[2] *See also* 47 U.S.C. §254(e) (requiring support to be "explicit and sufficient").

terrestrial broadband.[3] Giving carriers the flexibility to self-identify which of their high-cost areas they elect to receive incremental support will make it possible for carriers to spend the new federal funding more efficiently and in a manner that best serves the Commission's interim CAF broadband objectives.

The Commission has the authority to perform these "as if" calculations to determine how to allocate the new funding among price cap carriers while giving these carriers the flexibility to identify the high-cost areas where the Commission will target the new support and where the ETCs will spend this funding consistent with the "provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e). The entities that will spend the new support are, of course, existing ETCs, which satisfies another requirement of section 254(e), that only ETCs "designated under section 214(e) shall be eligible to receive specific Federal universal service support." *Id.* As an interim program, the Commission need not require mathematical precision so that each dollar of the incremental support is distributed to a carrier to spend in the exact high-cost area that the model identified. The Commission does not require such precision with current high-cost model support, which uses the HCPM to allocate support among non-rural carriers providing service in certain eligible states.[4]

The Commission should perform its "as if" calculations, explained above, inform price cap carriers how much incremental support they will receive at the holding company level, and require these carriers to notify the Commission within some reasonable period of time which of their ETCs will receive the additional support (and by how much per ETC). In this way, the Commission can be assured that an ETC that "*receives*" this incremental service will use that support only for the intended purpose, consistent with section 254(e). Namely, only ETCs will receive this incremental support and, because the Commission is distributing specific amounts of the new funding to specific ETCs (both of which have been specified by the carrier and approved by the Commission), the Commission will retain control over where this new funding is going and can evaluate whether the ETCs are satisfying both their statutory obligations and any broadband obligations that the Commission attaches to the incremental support.[5]

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[3] Connecting America: The National Broadband Plan, at 150 (rel. March 16, 2010), *available at* 2010 WL 972375 (recommending that the Commission "consider alternative approaches [to terrestrial broadband service], such as satellite broadband, for addressing the most costly areas of the country to minimize the contribution burden on consumers across America").

[4] *See, e.g., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, ¶¶ 95-96 (1999) (subsequent history omitted) (explaining that states have the flexibility to decide how carriers use federal high-cost model support as long as those uses are consistent with section 254(e) and noting that an example of such an acceptable use includes lowering intrastate rates). Permitting (or requiring) a carrier to use its federal high-cost model support to lower its intrastate rates obviously would have a statewide effect. That is, a carrier would not lower its intrastate rates only in those wire centers that were "targeted" for high-cost model support. Similarly, the Commission's so-called identical support rule disburses high-cost support to competitive ETCs at amounts that may have little to no relation to a competitive ETC's costs of providing service in that area.

[5] There is no reason why the Commission would have to distribute the incremental support, which is a transitional mechanism, through its existing high-cost support mechanisms particularly when doing so would result in fewer households having access to broadband at the end of the interim CAF. *See supra* at

In the alternative, the Commission could exercise its authority under section 10 and forbear from the section 254(e) requirement that a carrier that "receives" high-cost support shall use it for the intended purpose. This measure would enable the Commission to give carriers the necessary discretion to identify their high-cost locations where the Commission should target the incremental support, without regard to the high-cost areas that the model identified for purposes of allocating the $300 million. This would not be the first time that the Commission has forborne from section 254(e). In 2005, to ensure that non-rural carriers could repair and rebuild facilities damaged by Hurricane Katrina, regardless of whether those facilities were in high-cost areas, the Commission forbore from section 254(e).[6]

Finally, as the ABC Plan Coalition members have explained previously in support of certain intercarrier compensation interim rules,[7] the Commission will be afforded substantial leeway in establishing the interim CAF, which is a transitional mechanism. By necessity, the Commission must apply interim rules to govern the allocation and distribution of this incremental funding, given the relatively brief period of time during which the interim CAF will be operational. The existing high-cost support mechanisms simply could not appropriately target the incremental support in a manner that best serves the Commission's broadband objectives for the interim CAF. The D.C. Circuit has previously concluded that the line-drawing inherent in establishing a transitional mechanism "amount[s] to a policy decision" that the Commission is uniquely equipped to make.[8] Adopting allocation and distribution interim rules as recommended above will ensure that the incremental support will be "specific, predictable and sufficient" and will best further the universal service principles that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation" and "[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas . . . ."[9]

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2 (explaining that using the regression analysis to distribute the incremental support will result in only a small subset of high-cost areas receiving support).

[6] *Hurricane Katrina Order*, 20 FCC Rcd 16883, ¶ 55 (2005).

[7] 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, CC Docket Nos. 96-45, 01-92, 99-200, 96-98, 99-68; WC Docket Nos. 05-337, 07-135, 10-90, 03-109, 06-122, 04-36; GN Docket No. 09-51 (filed July 29, 2011) (ABC Plan, Attach. 5 at 37-38).

[8] *PSWF Corp. v. FCC*, 108 F.3d 354, 358 (D.C. Cir. 1997). *See also Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1073-74 (8th Cir. 1997) ("Although temporary agency rules are subject to judicial review notwithstanding their transitory nature, 'substantial deference by courts is accorded to an agency when the issue concerns interim relief.' ") (quoting *MCI Telecomms. Corp. v. FCC*, 750 F.2d 135, 140 (D.C. Cir. 1984)).

[9] *See* 47 U.S.C. § 254(b)(2), (3), (5). *See also Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 437 (5th Cir. 1999) (deferring to the Commission's "reasonable judgment about what will constitute 'sufficient' support during the transition period from one universal service system to another").

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachment

cc: Steven Rosenberg
Amy Bender
Michael Steffen

Regression USF Scenarios - FCC Meeting Oct. 19, 2011

Assumptions:

Current USF reflects all USF (HCM, HCL, IAS, ICLS, LSS)
Wire Center Cost over Benchmark funded at 100%
Support Cap limits support to $250 per month per location for wire centers above support cap
Territories include Puerto Rico (PR), Vitelco (VI) and Micronesia.
Demographic information for PR and VI were able to be obtained and those entities were included in the regression runs.
Wire center boundary information for Micronesia was not available and therefore Micronesia has not been included in the regression

Scenarios:	**Study Areas Included**	**Territories Included**	**$250 Support Cap**	**Current USF (in millions)**	**Additional Funding**	**Regression Funding**	**Benchmark**
				(in millions)	(in millions)	(in millions)	
Scenario A	PC, Aver, ROR	None	No	$1,001.6	$300	$1,301.6	$ 67.14
Scenario B	PC, Aver, ROR	None	Yes	$1,001.6	$300	$1,301.6	$ 66.42
Scenario C	PC, Aver, ROR	PR, VI	No	$1,054.8	$300	$1,354.8	$ 66.11
Scenario D	PC, Aver, ROR	PR, VI	Yes	$1,054.8	$300	$1,354.8	$ 65.44
Scenario E	PC, Aver, ROR	None	No		$300	$300	$ 117.96
Scenario F	PC, Aver, ROR	None	Yes		$300	$300	$ 114.65
Scenario G	PC	PR, VI	No		$300	$300	$ 117.70
Scenario H	PC	PR, VI	Yes		$300	$300	$ 114.37

Note 1 - excludes PC companies (Cincinnati, Consolidated, ACS, Puerto Rico, Vitelco) that at a holding company level resulted in regression funding less than current USF

Current Funding	**AT&T**	**Verizon**	**CenturyLink**	**Frontier**	**Windstream**	**Fairpoint**	**Cincinnati**	**Consolidated**	**ACS**	**HA Tel**	**Puerto Rico**	**Vitelco**	**Micronesia**	**Total**
4Q 2011 Annualized Funding - in millions													(not included)	
Price Cap Study Areas	$180.1	$118.2	$353.4	$132.5	$91.4	$16.5	$.8	$20.9	$19.6	$2.1	$36.8	$16.5		$988.7
PC Average Schedule SAs			$1.2	$24.9	$10.8	$1.3		$4.6						$42.8
PC ROR Study Areas						$23.3								$23.3
Total	$180.1	$118.2	$354.6	$157.4	$102.2	$41.1	$.8	$25.5	$19.6	$2.1	$36.8	$16.5		$1,054.8

Source: USAC Projections - 4th Quarter 2011 - file HC01 annualized

	AT&T	**Verizon**	**CenturyLink**	**Frontier**	**Windstream**	**Fairpoint**	**Cincinnati**	**Consolidated**	**ACS**	**HA Tel**	**Puerto Rico**	**Vitelco**	**Micronesia**	**Total**
													(not included)	
Current Funding - in millions														
Scenario A, B	$180.1	$118.2	$354.6	$157.4	$102.2	$41.1	$.8	$25.5	$19.6	$2.1				$1,001.6
Scenario C, D	$180.1	$118.2	$354.6	$157.4	$102.2	$41.1	$.8	$25.5	$19.6	$2.1	$36.8	$16.5		$1,054.8
Scenario E, F, G, H														
New Funding - in millions														
Scenario A	$225.6	$123.9	$391.6	$278.7	$220.5	$39.3	$.2	$6.2	$10.6	$4.7				$1,301.4
Scenario B	$227.7	$126.6	$394.4	$274.	$221.6	$40.1	$.2	$6.4	$6.1	$4.7				$1,301.7
Scenario C	$234.9	$129.6	$405.5	$287.9	$226.6	$41.2	$.2	$6.5	$10.7	$4.9	$6.6			$1,354.7
Scenario D	$236.7	$132.2	$407.9	$283.	$227.4	$42.	$.2	$6.6	$6.2	$5.	$7.5			$1,354.8
Scenario E	$45.	$19.7	$88.7	$73.9	$59.1	$4.2		$.6	$8.1	$.8				$300.
Scenario F	$45.3	$20.9	$91.1	$70.9	$61.9	$4.4		$.7	$4.1	$.7				$300.
Scenario G	$45.3	$19.9	$89.	$73.9	$59.2	$3.3		$.6	$8.1	$.8	$.1			$300.
Scenario H	$45.6	$21.1	$91.5	$70.8	$62.	$3.3		$.7	$4.1	$.7	$.2			$300.
Net Funding - in millions														
Scenario A	$45.5	$5.8	$37.	$121.3	$118.4	$(1.9)	$(.6)	$(19.3)	$(9.)	$2.6				$299.8
Scenario B	$47.5	$8.4	$39.8	$116.6	$119.4	$(1.)	$(.6)	$(19.1)	$(13.5)	$2.6				$300.1
Scenario C	$54.7	$11.4	$50.9	$130.6	$124.5	$.1	$(.6)	$(19.)	$(8.9)	$2.9	$(30.2)	$(16.5)		$299.9
Scenario D	$56.6	$14.	$53.3	$125.6	$125.3	$.8	$(.5)	$(18.8)	$(13.4)	$2.9	$(29.2)	$(16.5)		$300.
Scenario E	$45.	$19.7	$88.7	$73.9	$59.1	$4.2		$.6	$8.1	$.8				$300.
Scenario F	$45.3	$20.9	$91.1	$70.9	$61.9	$4.4		$.7	$4.1	$.7				$300.
Scenario G	$45.3	$19.9	$89.	$73.9	$59.2	$3.3		$.6	$8.1	$.8	$.1			$300.
Scenario H	$45.6	$21.1	$91.5	$70.8	$62.	$3.3		$.7	$4.1	$.7	$.2			$300.