

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified 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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**COMMENTS OF TIME WARNER CABLE INC.**

Steven N. Teplitz  
Terri Natoli  
TIME WARNER CABLE INC.  
901 F Street, NW  
Suite 800  
Washington, DC 20004

Matthew A. Brill  
Brian W. Murray  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004

Julie P. Laine  
TIME WARNER CABLE INC.  
60 Columbus Circle  
New York, NY 10023

*Its Attorneys*

January 18, 2012

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
DISCUSSION.....	3
I. THE COMMISSION SHOULD CONDITION THE RECEIPT OF CAF SUPPORT ON AN ETC'S COMMITMENT TO PROVIDE NONDISCRIMINATORY INTERCONNECTION TO COMPETING CARRIERS.....	3
II. THE COMMISSION SHOULD TAKE AGGRESSIVE STEPS TO REDUCE WASTEFUL SUPPORT FOR RATE-OF-RETURN CARRIERS .....	9
III. THE COMMISSION SHOULD ADOPT A REALISTIC AND PRACTICAL APPROACH TO REDUCING USF SUPPORT BASED ON THE PRESENCE OF UNSUBSIDIZED COMPETITION .....	13
CONCLUSION.....	14

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified 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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**COMMENTS OF TIME WARNER CABLE INC.**

Time Warner Cable Inc. (“TWC”) hereby submits its opening comments in response to the issues raised in Sections XVII.A-K of the Further Notice of Proposed Rulemaking in the above-captioned proceedings.<sup>1</sup> The FNPRM seeks to implement and build on the various reforms to the high-cost universal service fund (“USF”) mechanisms adopted in the accompanying Report and Order. As a steadfast supporter of eliminating the waste and competitive distortions that have long been associated with the distribution of such support, TWC commends the Commission for its efforts to introduce increased fiscal discipline and accountability to the high-cost program. While the Commission’s initial reforms make some

---

<sup>1</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.* (rel. Nov. 18, 2011) (“Report & Order” and “FNPRM”).

progress in that respect, they fall short of correcting some of the most pressing problems with the legacy regime and unfortunately establish unwarranted preferences for incumbent local exchange carriers (“ILECs”). Rather than treating USF as an ILEC entitlement, the Commission should use the FNPRM as a vehicle to identify additional ways of reducing excessive subsidization and promoting efficient competition for the benefit of consumers. Although the principal flaws associated with the Report and Order—such as the grant of a right of first refusal to price cap LECs to receive \$1.8 billion in annual support during Phase II of the Connect America Fund (“CAF”)—will require correction through reconsideration or appellate proceedings (and thus are not addressed herein), the Commission has an opportunity to use this continued rulemaking to give consumers more effective relief from the financial burdens of the high-cost program while facilitating the transition of the universal service system to the broadband era.

As a leading competitive provider of voice services to nearly 5 million residential and business customers, TWC has extensive experience with the inefficiencies and competitive distortions that have resulted from legacy USF support mechanisms. Indeed, TWC competes head-to-head with ILECs that enjoy guaranteed revenue flows through their receipt of high-cost support and, in some cases, rate-of-return regulation. In these comments, TWC focuses on three actions the Commission should take to promote its goal of improving and modernizing the USF mechanisms. First, the Commission should condition the receipt of CAF support on an eligible telecommunications carrier’s (“ETC’s”) commitment to provide nondiscriminatory interconnection to competing providers. Second, the Commission should adopt the FNPRM’s proposals to reduce excessive support to rate-of-return ILECs by lowering the prescribed rate of return and limiting reimbursements for certain cost items, among other measures. Finally, the

Commission should carry out plans to eliminate, or at least reduce, high-cost support where an ETC faces competition from one or more unsubsidized providers.

## DISCUSSION

### I. THE COMMISSION SHOULD CONDITION THE RECEIPT OF CAF SUPPORT ON AN ETC'S COMMITMENT TO PROVIDE NONDISCRIMINATORY INTERCONNECTION TO COMPETING CARRIERS

Under the Commission's revised universal service framework, support will be conditioned on compliance with various public interest obligations.<sup>2</sup> TWC agrees that attaching these strings to public funding will help to hold the recipients accountable for how they use it, while also putting the Commission in a better position to meet its broadband deployment goals.<sup>3</sup> The FNPRM seeks comment on whether the Commission should impose any additional conditions—including, in particular, requiring companies that receive support to comply with the interconnection obligations set forth in Section 251 of the Communications Act of 1934, as amended (the "Act").<sup>4</sup> Such a requirement is important as a general matter and is particularly salient in the universal service context, and the Commission should not hesitate to adopt it as an express funding condition.

The Commission's high-cost support mechanisms are premised on an understanding that, in some areas, market forces may be inadequate to encourage private investment in communications networks and to ensure the availability of high-quality services. Accordingly, the Commission properly has prioritized making support available in "areas that are unserved

---

<sup>2</sup> See generally Report & Order ¶¶ 74-114.

<sup>3</sup> See Opening Comments and Reply Comments on Section XV of Time Warner Cable Inc., WC Docket No. 10-90 *et al.*, at 27-28 (filed Apr. 18, 2011) ("TWC CAF NPRM Comments") (advocating the adoption of public interest obligations for all funding recipients).

<sup>4</sup> FNPRM ¶¶ 1028-29; *see also* 47 U.S.C. § 251.

through the operation of market forces.”<sup>5</sup> Because the presence of unsubsidized competitors indicates that funding is not necessary to support universal service, the Commission has taken specific steps to limit funding where such competition exists,<sup>6</sup> although TWC believes that the Commission can significantly expand on those limitations as described below.<sup>7</sup>

The absence of existing competition involving an unsubsidized competitor, however, does not necessarily reflect the lack of a private-sector business case supporting deployment, nor should it be considered *per se* evidence of a need for funding. To the contrary, and as the Commission already is well aware, many small ILECs create artificial barriers to competition by refusing to interconnect and exchange traffic with would-be competitors that are poised to deploy service on an unsubsidized basis in rural communities. For example, TWC has described at length how a group of rural ILECs in Maine have consistently refused to permit interconnection, first by invoking their rural exemptions pursuant to Section 251(f)(1) and then—after the Commission confirmed that their rural exemptions did not apply to requests for interconnection under Sections 251(a) and (b) of the Act<sup>8</sup>—by seeking an unprecedented blanket suspension of *all* of their Section 251(b) obligations pursuant to Section 251(f)(2).<sup>9</sup> A number of

---

<sup>5</sup> Report & Order ¶ 116.

<sup>6</sup> *See, e.g., id.* ¶ 103.

<sup>7</sup> *See infra* Section III.

<sup>8</sup> *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al.*, Declaratory Ruling, 26 FCC Rcd 8259 (2011) (“*CRC Declaratory Ruling*”).

<sup>9</sup> *Petition for Suspension or Modification of the Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding CRC Communications of Maine’s Request*, Joint Petition for Suspension or Modification Pursuant to 47 U.S.C. § 251(f)(2), Docket Nos. 2011-294-297 (filed Aug. 30, 2011); *Petition for Suspension or Modification of the Application of the Requirements of 47 U.S.C. § 251(b), Pursuant to 47 U.S.C. § 251(f)(2) regarding CRC Communications of Maine, Inc.’s Request for Interconnection*, UniTel, Inc. Petition for Suspension or

rural ILECs in South Carolina—with the blessing of state regulators—likewise have refused to interconnect with TWC, on the specious grounds that TWC, despite being recognized as a telecommunications carrier under state law, is not entitled to the interconnection rights such carriers enjoy under federal law.<sup>10</sup> Most recently, TWC was forced to seek arbitration against an ILEC in Ohio that flatly refused to negotiate interconnection terms with TWC until the state commission ruled on the applicability of its rural exemption, notwithstanding this Commission’s unequivocal decision in the *CRC Declaratory Ruling* confirming the inapplicability of the rural exemption to any request for interconnection under Sections 251(a) and (b).<sup>11</sup>

Such anticompetitive conduct not only thwarts the public interest in promoting facilities-based competition but also threatens to undermine the Commission’s universal service goals. As a general matter, the Commission has recognized that a failure to comply with basic interconnection duties impedes the deployment of both voice and broadband services, and it has reaffirmed the importance of interconnection specifically to promote investment and competition

---

Modification of the Application of the Requirements of 47 USC 251(b), pursuant to 47 USC 251(f)(2), Docket No. 2011-301 (filed Aug. 30, 2011); *Petition for Suspension or Modification of the Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine), LLC’s Request*, Joint Petition for Suspension or Modification pursuant to 47 U.S.C. § 251(f)(2) with regard to TWCIS Interconnection Requests, Docket Nos. 2011-380-383 (filed Oct. 18, 2011); *Petition for Suspension or Modification of the Application of the Requirements of 47 U.S.C. § 251(b), Pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine), LLC’s Request for Interconnection*, UniTel, Inc. Petition for Suspension or Modification of the Application of the Requirements of 47 USC 251(b) pursuant to 47 USC 251(f)(2), regarding Time Warner, Docket No. 2011-389 (filed Oct. 18, 2011).

<sup>10</sup> Order No. 2011-765, Docket Nos. 2011-243-C *et al.* (South Carolina Pub. Serv. Comm’n Oct. 21, 2011), *appeal filed, Time Warner Cable Information Services (South Carolina), LLC v. South Carolina Pub. Serv. Comm’n et al.*, Case No. 3:11-cv-03094-MBS (D.S.C. filed Nov. 11, 2011).

<sup>11</sup> *Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (Ohio), LLC, doing business as Time Warner Cable, and Minford Telephone Company*, Case No. 12-184-TP-ARB (Ohio Pub. Utils. Comm’n filed Jan. 11, 2012).

for the benefit of consumers.<sup>12</sup> It is clear, however, that certain ILECs are continuing to pursue a scorched-earth policy of refusing to interconnect and exchange IP-originated or IP-terminated traffic with competitive carriers in spite of the Commission’s repeated efforts to clarify the applicability of Section 251 obligations in these exact circumstances. The most effective means of ensuring compliance with Congress’s and the Commission’s procompetitive market-opening duties is to make it a condition on the receipt of CAF support.

The Commission’s efforts to reduce wasteful USF expenditures in areas that can be served without subsidies further underscore the need for such action. The Commission has already determined that eligibility for CAF support should take into account the presence of any “unsubsidized competitor,” defined as a “facilities-based provider of residential terrestrial fixed voice and broadband services.”<sup>13</sup> By refusing to interconnect and exchange traffic, however, an ILEC can unilaterally stymie this reform, as its denial of interconnection to a facilities-based competitor will prevent the unsubsidized competitor from offering service and thereby preserve the ILEC’s subsidy flow. In other words, the Commission’s laudable efforts to eliminate unnecessary support inadvertently will *increase* the economic incentives that ILECs already have

---

<sup>12</sup> See, e.g., *CRC Declaratory Ruling* ¶ 26 (noting that a failure to enforce interconnection “would impede . . . broadband investment and deployment” as well as competition among voice services); *id.* ¶ 87 (finding that requiring ILECs to interconnect and exchange traffic “will promote competition and spur investment, particularly in rural areas, by encouraging the deployment of facilities-based voice services”); Omnibus Broadband Initiative, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 49 (2010); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 8 (WCB 2007).

<sup>13</sup> Report and Order ¶ 103.

to refuse to interconnect.<sup>14</sup> The resulting harm is twofold: Not only will ILECs be able to shut out competition and the many consumer benefits it entails, but they will be financially rewarded for doing so in the form of continued federal subsidies.

To prevent such anticompetitive conduct, the Commission should expressly condition the receipt of universal service funding on compliance with statutory interconnection obligations. In particular, the Commission could terminate funding to ILECs that refuse to honor interconnection requests made pursuant to Sections 251(a) or (b). The Commission has made clear that all LECs, including rural ILECs, “are obligated to fulfill all of the duties set forth in sections 251(a) and (b) of the Act,”<sup>15</sup> and any refusal to comply with the basic interconnection requirements under those sections should cause the ILEC to forfeit its public funding for the service area at issue. The Commission likewise should prohibit ILECs that receive CAF support from seeking to modify or suspend their core duties to interconnect and exchange local voice traffic pursuant to Section 251(f)(2). In light of the Commission’s recognition that ubiquitous interconnection is necessary to achieve Congress’s paramount goal of promoting competition, relieving an ILEC of such core obligations would be at odds with the public interest and thus should not be permissible in any circumstances,<sup>16</sup> but especially not for those carriers that seek federal USF support. The Commission also should consider barring ETCs from invoking the rural exemption from the duties set forth in Section 251(c) of the Act. Although interconnection and the exchange of traffic under Sections 251(a) and (b) should be sufficient to enable the

---

<sup>14</sup> See, e.g., FNPRM ¶ 1337 (“In some circumstances, network owners may have incentives to refuse reasonable interconnection to other network operators.”).

<sup>15</sup> *CRC Declaratory Ruling* ¶ 2.

<sup>16</sup> 47 U.S.C. § 251(f)(2)(B) (stating that any suspension of a requirement under Sections 251(b) or (c) must be “consistent with the public interest, convenience, and necessity”).

development of competition in rural areas, there is no reason why ILECs receiving federal USF support should obtain an exemption from the more specific requirements in Section 251(c).

There is ample evidence that such a condition is necessary. In several proceedings, the Commission has amassed evidence of interconnection disputes such as those mentioned above, and the FNPRM alludes to the prospect that ILECs will not be sufficiently motivated to interconnect absent strong legal requirements.<sup>17</sup> Adopting an express condition here would be consistent with the FNPRM’s reaffirmation of the Commission’s “longstanding view regarding the essential importance of interconnection of voice networks.”<sup>18</sup> And as noted above, failure to condition support on compliance with interconnection requirements would enable ILECs to thwart procedures designed to withdraw support where market conditions can enable unsubsidized competitors to deliver high-quality services throughout the service area in question.

The condition also would be consistent with obligations imposed in related circumstances. In particular, an interconnection condition would be comparable to the wholesale obligations, such as data roaming and collocation requirements, that the Commission has imposed on Mobility Fund recipients in order to “minimize anticompetitive behavior” by funding recipients, notwithstanding the existence of generally applicable requirements.<sup>19</sup> As the Commission explained: “Making compliance with these rules a condition of universal service support will mean that violations can result in the withholding or clawing back of universal service support—sanctions based on the receipt of federal support—that would be in addition to

---

<sup>17</sup> See, e.g., FNPRM ¶¶ 1337-38.

<sup>18</sup> *Id.* ¶ 1011 (citations omitted); see also *id.* ¶ 1009 (“Interconnection among communications networks is critical given the role of network effects. Historically, interconnection among voice communications networks has enabled competition and the associated consumer benefits that brings through innovation and reduced prices.”).

<sup>19</sup> Report & Order ¶ 230; see also *id.* ¶¶ 375-82.

penalties for violation of our generally applicable data roaming rules.”<sup>20</sup> The same reasoning applies to an interconnection condition. In fact, Congress already has endorsed the imposition of interconnection requirements on entities that accept public funding. In the American Recovery and Reinvestment Act, Congress mandated that “non-discrimination and network interconnection obligations” be made “contractual conditions on grants.”<sup>21</sup> Applicants for that funding thus were required to commit to “offer interconnection . . . at reasonable rates and terms to be negotiated with requesting parties” in order to permit “the exchange of traffic;” any failure to comply would result in the “suspension of award payments of termination of the award.”<sup>22</sup>

The same approach is warranted here. By making the choices to receive CAF support or to deny interconnection mutually exclusive, the Commission would promote competition and broadband deployment, while ensuring that funding is not wasted on entities that are unwilling to adhere to their basic legal obligations.

## **II. THE COMMISSION SHOULD TAKE AGGRESSIVE STEPS TO REDUCE WASTEFUL SUPPORT FOR RATE-OF-RETURN CARRIERS**

The Commission generally has acknowledged the importance of reducing existing support levels and redirecting funding to those areas where it is needed. But these critical guiding principles of reform seem to fall by the wayside whenever the discussion turns to funding for rate-of-return carriers. In fact, the FNPRM sets the stage for rate-of-return carriers to lock in the inflated revenue streams to which they have become accustomed under the broken legacy regime—a preservation of the status quo that is antithetical to the Commission’s reform

---

<sup>20</sup> *Id.* ¶ 380.

<sup>21</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 6001(j) (2009).

<sup>22</sup> Department of Commerce, National Telecommunications and Information Administration, *Broadband Technology Opportunities Program: Notice of Funds Availability*, 75 Fed. Reg. 3792, 3800-01 (2010).

goals. Rather than reflexively endorsing these carriers' apparent view that they are entitled to funding levels pegged to historical subsidy flows that lack empirical support, even in the midst of a comprehensive reform effort, the Commission should subject them to the same standards that apply to other funding recipients and critically examine their claimed need for ongoing support.

The Commission has established a "budget target" for rate-of-return carriers of \$2 billion-plus for the next six years, which reflects the aggregate amount of funding that such carriers are expected to receive under the legacy system.<sup>23</sup> While TWC has supported capping legacy high-cost support at current levels as an initial step toward curbing growth,<sup>24</sup> the Commission's new framework treats the budget target as if it were not just a ceiling but a floor. The FNPRM threatens to make the problem worse, asking how the Commission could "best accommodate" the Rural Associations' self-serving proposal for a budget of \$2.05 billion—with the prospect of further increases up to \$2.3 billion—within the budgetary framework the Commission already has established.<sup>25</sup>

TWC urges the Commission not only to reject any proposed increase to funding for rate-of-return carriers but also to reconsider its ill-conceived \$2 billion budget target. Indeed, there is nothing sacrosanct about current support levels. To the contrary, TWC and many others have explained that current support levels are based on inflated costs without any empirical showing that funding is even needed.<sup>26</sup> The Commission itself notes that rate-of-return carriers have been receiving funding even if they have "high costs due to imprudent investment decisions,

---

<sup>23</sup> Report & Order ¶ 195 (noting that the budget of \$2 billion per year is "approximately equal to current levels").

<sup>24</sup> Comments of Time Warner Cable Inc., WC Docket No. 10-090 *et al.*, at 5-6 (filed July 12, 2010) ("TWC CAF NOI Comments").

<sup>25</sup> FNPRM ¶ 1034.

<sup>26</sup> *See, e.g.*, TWC CAF NOI Comments at 6-7.

unwarranted corporate overhead, or an inefficient operating structure.”<sup>27</sup> Moreover, as TWC has explained (and as the Commission acknowledges), such carriers have other significant revenue sources on which to draw.<sup>28</sup>

The FNPRM’s apparent inclination to protect rate-of-return carriers’ revenue flows is particularly troubling given the stark contrast in the treatment of lower-cost competitive providers. The Report and Order budgets only \$500 million annually for all wireless carriers and satellite providers (including to support the most remote areas of the nation)—in contrast to the nearly \$4 billion slated for ILECs—without any plausible basis to assume that ILECs will better advance universal service objectives. To the contrary, making all support available to whichever provider can build out the requisite facilities and provide quality service at affordable rates would both advance competition and prevent excessive support. Yet despite slashing the support available to competitive ETCs by some two-thirds,<sup>29</sup> the Commission acknowledges that even with its new budget target in place, 34 percent of rate-of-return carriers will experience “no reductions whatsoever” in their high-cost universal service receipts, while more than 12 percent will actually see an *increase*.<sup>30</sup> Such disparate treatment plainly is contrary to the principles of technological and competitive neutrality by which the Commission has pledged to be guided as it reforms universal service. Rather than continuing to prop up rate-of-return carriers by preserving their universal service revenues, the Commission should be actively searching for ways to reduce their support in order to redirect the savings to consumers.

---

<sup>27</sup> Report & Order ¶ 287.

<sup>28</sup> *Id.* ¶ 291.

<sup>29</sup> *Id.* ¶¶ 494, 501 (explaining that wireless ETCs will be allocated approximately \$400 million under the reformed framework outside tribal areas, as compared to the approximate \$1.2 billion they currently receive).

<sup>30</sup> *Id.* ¶ 290.

In addition to lowering the inflated budget for providing explicit subsidies to rate-of-return carriers, the Commission should follow through with its longstanding interest in reforming rate-of-return regulation itself. While TWC supports elimination of that form of regulation entirely in light of its well-established inefficiencies, in the near term the Commission can take several steps to mitigate its harmful effects.<sup>31</sup> First, the Commission should lower the authorized rate of return of 11.25 percent.<sup>32</sup> That figure has persisted without any meaningful reexamination for over two decades, and the FNPRM finds “compelling evidence” that it is significantly inflated.<sup>33</sup> The Rural Associations’ proposal of a reduction to 10 percent clearly is insufficient to reflect current economic conditions. The State Members of the Joint Board more appropriately propose a reduction to 8.5 percent, citing the enormous changes that have occurred since 1990.<sup>34</sup> TWC supports the adoption of the lowest figure that can be justified by the record, as no provider in today’s communications marketplace should receive regulatory guarantees of profitability that undermine incentives to operate efficiently.

By the same token, the Commission should adopt the FNPRM’s proposals concerning limits on reimbursable costs.<sup>35</sup> As long as carriers receive regulatory assurances of a positive return, their asserted costs must be carefully scrutinized using the benchmark proposals reflected in the FNPRM, audit controls, and related mechanisms to prevent over-recovery. The

---

<sup>31</sup> See, e.g., TWC CAF NPRM Comments at 32-33 (explaining that transitioning rate-of-return carriers to incentive-based regulation is the only way to ensure a fiscally sound and sustainable universal service system).

<sup>32</sup> FNPRM ¶¶ 1045-60.

<sup>33</sup> *Id.* ¶ 1047.

<sup>34</sup> *Id.* ¶ 1046.

<sup>35</sup> *Id.* ¶¶ 1079-88.

Commission's express and ongoing goal should be to curtail, and not encourage, the wasteful spending that it acknowledges has occurred under the legacy regime.

### **III. THE COMMISSION SHOULD ADOPT A REALISTIC AND PRACTICAL APPROACH TO REDUCING USF SUPPORT BASED ON THE PRESENCE OF UNSUBSIDIZED COMPETITION**

As discussed above, a core goal of universal service is to provide funding in areas where market forces cannot ensure the delivery of high-quality services to consumers. Accordingly, TWC has long supported phasing out support in areas where competitors *are* able to provide service without subsidies,<sup>36</sup> and the Commission's embrace of the same basic policy is a positive step. Specifically, the Commission has determined that support should not be provided to price cap areas where an unsubsidized competitor offers the requisite level of broadband service.<sup>37</sup> But it permits rate-of-return carriers to remain eligible to receive support in any study area unless an unsubsidized competitor provides voice and broadband services at the requisite levels for 100 percent of the residential and business locations in that study area.<sup>38</sup>

Insisting on such complete network overlap will prevent the desired reforms from having any meaningful effect, however, especially in light of the historical differences between the service areas of ILECs and of cable operators, wireless carriers, and other competitors. In other contexts, the Commission has not required complete overlap in its competitive analyses. For instance, in awarding forbearance relief, the Commission has taken into account competition from companies whose networks only partially overlap with that of the carrier requesting

---

<sup>36</sup> See, e.g., Comments of Time Warner Cable Inc, WC Docket No. 10-90 *et al.*, at 24-25 (filed Aug. 24, 2011) ("TWC CAF PN Comments").

<sup>37</sup> Report & Order ¶¶ 149-50.

<sup>38</sup> *Id.* ¶ 283.

forbearance, granting relief in those areas where the competitor’s network “sufficiently overlaps.”<sup>39</sup>

The FNPRM provides an opportunity to expand on this overly timid approach by seeking comment on how to adjust support levels in areas with less than 100 percent overlap.<sup>40</sup> TWC continues to support NCTA’s proposal, under which an area would be deemed eligible for full support only if it has no unsubsidized provider that offers the requisite level of broadband service to 75 percent or more of all households.<sup>41</sup> As TWC has explained, under such an approach, areas that already are substantially served instead would be eligible for partial support only, to benefit those customers located in the highest-cost portions of the service area; providers could petition for support in these areas, but only on a highly disaggregated basis (*e.g.*, at the level of individual census blocks) and only upon a showing of actual need.<sup>42</sup> By limiting support in areas where competitors have proven willing and able to deploy networks and services without subsidies, the Commission would free up funding and reduce the financial burdens for consumers.

## CONCLUSION

The FNPRM offers an important opportunity to expand on the positive aspects of the Report and Order and to take more meaningful steps to include rate-of-return carriers within the reform process. TWC urges the Commission to adopt conditions that ensure ETCs’ compliance with interconnection obligations, both to promote competition and to ensure that the planned

---

<sup>39</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 ¶ 65 n.170 (2005).

<sup>40</sup> FNPRM ¶ 1061.

<sup>41</sup> *See, e.g.*, TWC CAF PN Comments at 20-21, 24-25; *see also Reducing Universal Service Support in Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition*, Petition for Rulemaking, GN Docket No. 09-51 (filed Nov. 5, 2009); FNPRM ¶ 1075 (seeking specific comment on NCTA’s proposals).

<sup>42</sup> TWC CAF PN Comments at 25.

withdrawal of unnecessary support is not evaded. In addition, the Commission should follow through with proposals to eliminate excessive support to rate-of-return carriers by lowering the prescribed rate of return and limiting expense recovery, while also implementing proposals to eliminate or reduce support in areas that can support unsubsidized competition.

Respectfully submitted,

**TIME WARNER CABLE INC.**

*/s/ Matthew A. Brill*

Steven N. Teplitz  
Terri Natoli  
TIME WARNER CABLE INC.  
901 F Street, NW  
Suite 800  
Washington, DC 20004

---

Matthew A. Brill  
Brian W. Murray  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004

Julie P. Laine  
TIME WARNER CABLE INC.  
60 Columbus Circle  
New York, NY 10023

*Its Attorneys*

January 18, 2012