Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Reform -- Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF VERIZON

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I. INTRODUCTION AND SUMMARY.

The Commission is on the right path to implement its necessary overhaul of the Universal Service Fund (USF) this year. In the current round of this continuing proceeding, the Commission seeks guidance on the mechanics of the new Connect America Fund (CAF) and how to structure the new high cost USF programs to successfully deliver the promise of broadband to all Americans. In order to achieve that objective, the Commission should make sure that outdated regulatory obligations are not a drag on the transition to new, more efficient technologies and to participation in the CAF programs. Specifically, in any area where a particular carrier does not receive either legacy high cost finding or new CAF support, the Commission must, consistent with its Section 254 obligations, eliminate any remaining eligible telecommunications carrier (ETC) voice service obligations. Alternative proposals to rely on case-by-case state proceedings, or federal forbearance proceedings if necessary, are not workable and will take years to complete, leaving the industry in a state of investment-deterring limbo. And in any areas where legacy service obligations remain, the Commission should permit providers maximum flexibility in terms of both the technology and business arrangements used to satisfy the requirements.

In addition, rather than setting up new data collection mechanisms to monitor broadband and wireless retail pricing in connection with the CAF and the new Mobility Fund, the Commission should look first to existing data and publicly available information, as well as draw on the substantial efforts from the SamKnows process to measure and analyze broadband speed

[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc., and Verizon Wireless ("Verizon").

and other metrics. In any event, the Commission should not over-condition CAF support in a way that would discourage robust participation – and competition – in these programs. Moreover, in designing the new USF competitive bidding mechanisms, the Commission should not attempt to micro-manage broadband network coverage and deployment in funded areas. The Commission should also have realistic expectations about how many unserved (or underserved) locations can be reached and how quickly networks can be deployed. And the Commission should allow competitive bidding participants to have flexibility in submitting package bids and defining service territories.

II. ELIMINATING LEGACY COMMON CARRIER OBLIGATIONS MUST GO HAND IN HAND WITH NEW UNIVERSAL SERVICE PROGRAMS AND BROADBAND REQUIREMENTS.

The CAF and the Commission's broader universal service reforms are in large part designed to facilitate the transition from the legacy public switched telephone network (PSTN) and traditional voice services to broadband infrastructure and IP-enabled communications. Adjusting federal policy to allow companies to migrate efficiently and more quickly to an all-IP space is one of the Commission's most important priorities. But the Commission and carriers cannot complete the PSTN-to-IP transition – meaning consumers cannot fully realize the benefits of all-IP infrastructure – if a few among many competitors continue to be saddled with legacy voice service obligations such as the federal ETC requirements and state carrier of last resort (COLR) mandates. Where they apply, these twin regulatory mandates (unfunded mandates in an increasing number of places) require incumbent providers to offer legacy voice service, with or without support, throughout large territories. Even with the flexibility to use any technology in satisfying these requirements, which carriers have, the obligations divert resources away from broadband deployment and do not make sense in an environment where consumers have access to voice services from multiple providers over different platforms. These service obligations were originally imposed on telecommunications carriers as a means of ensuring universal service in a monopoly environment, which is long gone. To achieve its broadband goals and to effectively implement the CAF, the Commission must, at a minimum, eliminate federal ETC obligations for companies that do not receive either legacy USF high cost support or new CAF support in particular areas.

A. The Commission Must Relieve Carriers From Legacy Federal ETC Service Obligations Where No USF High Cost Support Is Provided.

In the *USF-ICC Transformation Order and FNPRM*, the Commission asks if reductions in support to ETCs in existing service areas should be accompanied by a relaxation of Section 214(e)(1) voice services obligations.[2] The Commission also asks if there should be a corresponding adjustment in affected ETCs obligations to offer service throughout their service areas in areas where carriers either do not receive any federal high cost support today or no longer receive support as a result of CAF reforms. *See id*. It is critical for the Commission to relieve ETCs of their legacy ETC obligations in those geographic areas in which they do not receive either legacy high-cost support or CAF support. As Verizon and other companies discussed previously in the context of the America's Broadband Connectivity Plan ("ABC Plan"), the Commission cannot sensibly or lawfully maintain existing federal voice service obligations, which require ETCs to offer legacy voice service throughout their designated ETC service areas – with or without funding as it phases in the new USF regime. *See* 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.101(a).

[2] *See Connect America Fund*; *A National Broadband Plan for Our Future*; *Establishing Just and Reasonable Rates for Local Exchange Carriers*; *High-Cost Universal Service Support*; *Developing an Unified Intercarrier Compensation Regime*; *Federal-State Joint Board on Universal Service*; *Lifeline and Link-Up*; *Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337 & 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 & 96-45; WT Docket No. 10-208, ¶ 1095 (Nov. 18, 2011) ("*USF-ICC Transformation Order and FNPRM*").

First, by definition, the purpose of the "eligible telecommunications carrier" designation is to identify those carriers that are, in fact, *eligible* to receive universal service funding. As Section 214(e)(1) directs, a "common carrier designated as an eligible telecommunications carrier . . . *shall be eligible to receive universal service support*." 47 U.S.C. § 214(e)(1) (emphasis added). The current regime more or less satisfies this requirement (except where carriers are already forced to offer service without funding) because it enables more than one carrier to become an ETC and to qualify for support in a given geographic area. But the new regime will entitle just *one* provider to qualify for support in a given area in exchange for offering both legacy voice service and broadband. Under this new framework, many existing ETCs will not be *eligible* to receive universal service funding and, in fact, will be categorically barred from receiving it. The Commission, therefore, would violate Section 214 by perpetuating ETC service obligations and designations for carriers that receive no legacy high cost support or CAF support.

Many ETCs will lose their existing universal service funding under the new regime. The lack of eligibility for CAF funding does not, of course, mean that ETCs will be forced to exit any particular market, though the burden to the company without CAF support may be substantial. The Commission therefore cannot rationally compel these carriers to continue providing service to all comers throughout these areas, and regardless of the circumstances, with zero funding. Such an unfunded mandate would contravene Section 254, which requires the Commission to design its universal service programs so that support is "sufficient" to enable providers to offer the services deemed "universal." *Id*. § 254(b)(5), (e)-(f).

Second, the Commission could not lawfully force any ETC, whether funded today or not, to continue providing service in any high cost area where it is not the CAF recipient. Under the new regime, only the CAF recipient will be entitled to universal service funding. And forcing an unsupported competitor to provide service at a loss in competition with a CAF recipient would violate both the Takings Clause and Section 254's mandate that universal service policies be "equitable and nondiscriminatory." *Id.* § 254(b)(4), (d), (f). Such a service obligation would also violate the Commission's competitive neutrality principle, which requires that universal service policies "be competitively neutral . . . [and] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[3]

B. The Commission Has The Authority To Act On Legacy ETC Obligations When A Carrier Does Not Receive Support.

As Verizon and other companies have discussed previously, the Commission also has ample authority to address existing ETC obligations and designations – and the Commission both can and should eliminate these obligations now without the need for further proceedings where carriers no longer receive USF support.

First, the Commission could adopt a rule based on its Section 201 rulemaking authority providing that an ETC's "service area" should be limited to those specific geographic areas (e.g., wire centers) where the ETC is receiving universal service support. For existing ETCs, such a rule would ensure that legacy service obligations and designations would apply only in those portions of state-defined service areas where the ETC actually receives support. And going forward, states would be bound by the Commission's rule when defining ETC service areas. Although Section 214(e)(5) provides that an ETC's "'service area' means a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms," Section 201(b) of the Communications Act – as

[3] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 43-55 (1997) ("*First Universal Service Order*").

interpreted in *Iowa Utilities Board* – authorizes the Commission to adopt rules guiding the states' exercise of the duties allocated to them elsewhere in Title II of the Act. 47 U.S.C. § 214(e)(5).[4] Just as the Commission may adopt a pricing methodology that cabins the states' discretion and determines what costs may and may not be included to "establish . . . rates" for unbundled network elements,[5] the Commission could establish a methodology for defining service areas that is binding on the states with respect to both existing and future service area designations.

Second, Section 254(f) separately authorizes the Commission to adopt a rule that limits ETC "service areas" for purposes of determining where legacy obligations and designations apply. This conclusion follows from existing precedent, including the *First Universal Service Order*, in which the Commission cited Section 254(f) as a basis for invalidating state service-area designations that are "unreasonably large."[6] Section 254(f) prohibits states from adopting universal service policies that (i) are "inconsistent with the Commission's rules to preserve and advance universal service" *or* (ii) do not require "[e]very telecommunications carrier that provides intrastate telecommunications services [to] contribute, on an equitable and nondiscriminatory basis . . . to the preservation and advancement of universal service in that

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[4] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-86 (1999). Section 201(b) authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of" the Communications Act. 47 U.S.C. § 201(b).

[5] 47 U.S.C. § 252(c)(2); *see Iowa Utils. Bd.*, 525 U.S. at 384-85.

[6] *See First Universal Service Order*, ¶¶ 184-85. *See also Federal-State Joint Board on Universal Service*, Recommended Decision,12 FCC Rcd 87, ¶¶ 176-77 (1996) (noting that excessively large ETC service areas "could potentially violate section 254(f)" by undermining the Commission's efforts to preserve and advance universal service); *Federal-State Joint Board on Universal Service*; *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, ¶ 31 (2000) (relying on Section 254(f) in preempting a state ETC requirement); *Lifeline and Link Up Reform and Modernization*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, ¶ 258 & n.458 (2011) ("[S]ection 254(f) . . . bars states from adopting regulations that are inconsistent with the rules established by the Commission to preserve and advance universal service.").

State." 47 U.S.C. § 254(f). Here, perpetuating existing ETC service-area designations in the new regime would violate both prohibitions. First, that approach would be "inconsistent with" federal universal service policy. As discussed in the ABC Plan Legal Analysis, unfunded ETC service obligations hinder the deployment of broadband.[7] In addition, as discussed above, perpetuating existing service area designations would contravene a number of principles on which the Commission's universal service policies are based, including sufficiency and competitive neutrality. Second, retaining existing service area designations would contravene Section 254(f)'s directive that all providers "contribute, on an equitable and nondiscriminatory basis . . . to the preservation and advancement of universal service in that State." 47 U.S.C. § 254(f). Unless the areas where ETCs retain legacy obligations are limited to where they receive support, *all* ETCs will be required to offer legacy services in high cost areas, even though only one provider – the CAF recipient – will receive the funding necessary to offset the costs of providing service. As discussed above, that outcome would be neither equitable nor nondiscriminatory.

Third, the Commission could exercise its authority under Section 10 of the Act to forbear from Section 214(e) to the extent the latter requires ETCs to offer service in areas where they receive no universal service support. 47 U.S.C. § 160. ETC service obligations arise from Section 214(e)(1), which provides that ETCs "shall, *throughout the service area for which the designation is received* . . . offer the services that are supported by Federal universal service support mechanisms under section 254(c)[.]" 47 U.S.C. § 214(e)(1) (emphasis added). With respect to ETCs that receive no high cost or CAF support for some or all locations within their

[7] *See* ABC Plan at Attachment 5: Legal Authority White Paper, 7-8, 49-53 (July 29, 2011) ("ABC Plan Legal Analysis").

designated "service areas," the Commission should forbear from any requirement that those ETCs offer services "throughout the service area for which the [ETC] designation is received." *Id*. Such forbearance plainly satisfies the statutory requirement that forbearance authority be limited to "telecommunications carriers" or "telecommunications services." *Id*. § 160. All ETCs are telecommunications carriers, and all of the existing "supported" services are telecommunications services. In addition, the Act authorizes the Commission to tailor forbearance relief to "any or some of [telecommunications carriers'] geographic markets." *Id*. § 160(a).

There is ample precedent for this approach. In *TracFone* and many later orders, for example, the Commission has forborne from the requirement in Section 214(e)(1) that an ETC must offer services using at least some of its own facilities.[8] This statutory requirement appears in the same sentence as the requirement that ETCs offer supported services throughout their service areas, and there is no reason that the Commission could forbear from the former but not the latter. Forbearance here would also meet the Commission's mandate under Section 706 of the 1996 Act to forbear from obligations that frustrate broadband deployment,[9] as legacy ETC obligations do today.[10]

Fourth, the Commission could address these issues by reinterpreting the language of Section 214(e)(1). This Section provides that ETCs "*shall be eligible to receive universal*

[8] *See, e.g., Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i),* Order, 20 FCC Rcd 15095, ¶ 1 (2005).

[9] *See*, *e.g.*, *Ad Hoc Telecomms. Users Comm. v. FCC*, 572 F.3d 903, 907 (D.C. Cir. 2009) ("As contemplated by § 706, the FCC has utilized forbearance from certain Title II regulations as one tool in its broadband strategy.").

[10] For a discussion of the ways in which legacy ETC obligations hinder the deployment of broadband, *see* ABC Plan Legal Analysis at 7-8, 49-53.

service support in accordance with section 254 and shall, throughout the service area for which the designation is received . . . *offer the services that are supported by Federal universal service support mechanisms* under section 254(c)[.]" 47 U.S.C. § 214(e)(1) (emphasis added). The Commission has previously interpreted this provision as requiring an ETC to provide certain "supported services" throughout its service area, regardless of whether the ETC receives any support to offset the costs of providing those services in high-cost areas. But this is not the only permissible interpretation of the statutory language. Instead, Section 214(e)(1) also can be read to mean that a carrier's obligation to offer service applies *only* in those geographic areas where the carrier is receiving support – *i.e.*, where the services "are supported." This interpretation of the statutory language appropriately focuses on the text italicized above, which makes clear that service obligations should not be imposed without regard to whether a carrier is "eligible" for support and whether the services it provides "are supported."

C. Widespread Access To Voice Services Makes Legacy ETC Service Obligations Unnecessary.

Apart from the Commission's obligation to eliminate legacy ETC obligations in areas where carriers receive no high cost funding, these service obligations are simply not necessary to ensure that consumers have access to voice service. As an initial matter, as part of the CAF the Commission intends to continue funding at least one ETC in high cost areas, and that ETC will have an obligation to offer both voice and broadband service. *See USF-ICC Transformation Order and FNPRM* ¶ 86; 47 C.F.R. § 54.101. In some cases the CAF recipient will likely be the incumbent local exchange carrier (ILEC). And in situations where the ILEC is not the CAF recipient, the ILEC will in many instances likely continue to provide voice and other services in certain areas.

Regardless, even if there are areas where voice service from a traditional wireline LEC may not be available in the future (for whatever reason), voice services offered by intermodal providers are now unquestionably prolific. For instance, more and more wireline voice subscribers now receive service from a VoIP provider. These VoIP companies – including cable VoIP providers, among others – for the most part have never received universal service support.

Cable companies who originally provided mass-market voice telephone service over their networks using circuit switches are now aggressively offering VoIP service to customers in their service territories. For example, according to four of the five largest cable companies (Comcast, Time Warner Cable, Charter and Cablevision), voice service is available to more than 95 million homes and businesses passed, which represents approximately 80 percent of U.S. households.[11] Of course, when more than just the five largest companies are considered, the number of homes and businesses with access to cable voice service is even higher. And customers are using this alternative. The Commission's own data show that in December 2010 there were 117 million traditional switched access lines in service and 32 million interconnected VoIP subscriptions

[11] *See* Comcast, "Cable Communications: Customer Metrics," *Trending Schedule*, at 4, http://files.shareholder.com/downloads/CMCSA/1635080845x0x514123/80dd657c-ce17-4c7a-ad46-809e18b7a651/3Q11%20Trending%20Schedule.pdf (9.196 million voice customers, representing a 17.6% penetration of homes and businesses passed, as of 3Q 2011); Time Warner Cable, "Subscriber Metrics," *2011 Trending Schedules, Reconciliations and Other Financial Information*, at Schedule 3, http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTEyNjk4fENoaWxkSUQ9LTF8VHlwZT0z&t=1 (27.114 million voice service-ready passings as of 3Q 2011); Charter Press Release, *Charter Third Quarter 2011 Results*, at 3 (Nov. 1, 2011), http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=1624131&highlight= (last visited Jan. 18, 2012) (10.8485 million estimated homes passed by phone service as of 3Q 2011); Cablevision Press Release, *Cablevision Systems Corporation Reports Third Quarter 2011 Results*, at 2 (Oct. 28, 2011), http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTEyODg4fENoaWxkSUQ9LTF8VHlwZT0z&t=1 (5.572 million "[s]erviceable [p]assings" as of 3Q 2011); Craig Moffett et al., BernsteinResearch, *The Long View: The Battle for Broadband Supremacy*, at 7, Exhibit 8 (Dec. 14, 2011) (estimating 118.562 million U.S. households at the end of 2011).

nationwide.[12] Interconnected VoIP subscriptions continued to increase at a consistent annual rate, by 22 percent during 2010 (from 26 million to 32 million subscriptions). And traditional retail switched access lines continued their rapid decline, decreasing by another 8 percent from 127 million lines to 117 million lines (this follows a 10 percent decline the previous year, similar to prior years). In December 2010 nearly one-third of wireline residential connections were interconnected VoIP subscriptions (28.2 percent were non-ILEC interconnected VoIP subscriptions, and 2.9 percent were ILEC interconnected VoIP subscriptions).

In addition, wireless voice service is widely available as an alternative to legacy wireline voice services. The growth in the number of wireless-only households continues to set new records. The latest data indicate that nearly one-third of all households have now cut the cord entirely.[13] That number will continue to rise steadily because young adults are the most likely to rely on communication alternatives. Nearly 60 percent of households in this demographic (individuals ages 25-29) are wireless-only. The Commission's own data also confirm that access to wireless service is truly universal. Fully 99.8 percent of the total U.S. population is covered by at least one facilities-based wireless provider; 97.2 percent of the population is covered by at least three mobile voice providers; and 94.3 percent of the population is covered by at least four mobile voice providers.[14] Even assuming some fraction of wireless coverage is made possible

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[12] *See Local Telephone Competition: Status as of December 31, 2010*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 1-4 (FCC October 2011), http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-310264A1.pdf.

[13] *See Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2011*, Center for Disease Control, Division of Health Interview Statistics, National Center for Health Statistics, at 1 (Dec. 21, 2011), http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.pdf .

[14] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*; *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, 26 FCC Rcd 9664, ¶ 44 (2011)

only because of legacy federal ETC subsidies, per-line wireless CETC support has effectively been declining since the Commission capped this funding in 2008. And there is no evidence that wireless carriers have exited markets in any material way since that time.

Consumers have even more voice service options from over-the-top VoIP providers such as Vonage (which has 2.4 million subscribers)[15], Internet video and other calling services, and satellite voice service providers, and these voice services are available over any broadband connection, not just those of legacy ILECs and ETCs. If legacy ETC voice service obligations were ever truly necessary in areas where carriers receive no high cost support, those obligations are clearly not necessary today and must be eliminated.

D. Proposals To Push Legacy ETC Obligation Decisions Off To Later, Case-By-Case Proceedings Are Unworkable.

Proposals in the *USF-ICC Transformation Order and FNPRM* to rely on later state ETC relinquishment and service area redefinition proceedings, as well as case-by-case Commission forbearance proceedings, to address legacy ETC voice service obligations must be rejected. *See USF-ICC Transformation Order and FNPRM* ¶ 1097. For the reasons discussed above, the Commission should have eliminated legacy ETC voice service obligations where carriers do not receive support as part of the broader USF reforms in the *USF-ICC Transformation Order and FNPRM*. Adopting the *USF-ICC Transformation Order and FNPRM* proposals would push ETCs off into myriad additional state and federal proceedings would amount to a Commission

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("*Fifteenth CMRS Competition Report*"). For a complete discussion of the robustly competitive wireless marketplace *see also* Comments of Verizon Wireless, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*; *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 11-186 (Dec. 5, 2011).

[15] *See* Vonage, About Us, http://www.vonage.com/corporate/index.php?lid=footer_about&refer_id=WEBAU0706010001W1 (last visited Jan. 18, 2012).

decision never to resolve these issues in a timely way that would actually facilitate the PSTN-IP transition. These proceedings would undoubtedly take years to resolve – even assuming a successful outcome, which is far from certain – merely to relieve ETCs from unfunded voice service mandates. This approach is inconsistent with the Commission's broader, publicly-stated desire to reduce regulatory burdens generally and to pave the way for all-IP infrastructure and retirement of the PSTN.[16]

As a practical matter, state ETC relinquishment proceedings can often be contentious and often can languish for many months, or longer, despite a clear statutory requirement to liberally allow ETCs to relinquish their designations. Section 214(e) requires the states and the Commission to "permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier" upon advance notice. 47 U.S.C § 214(e)(4). Nonetheless, in Verizon's experience attempting to relinquish wireless ETC designations, some states delay action on relinquishments and attempt to condition approval. In Maine, for example, Verizon Wireless' relinquishment was conditioned on a stipulation with the Maine Public Advocate requiring Verizon to provide free handsets to certain consumers, construct new cell sites, continue to provide "Lifeline-like" discounts, and to

[16] *See, e.g.*, Public Notice, "FCC Workshops on the Public Switched Telephone Network in Transition," 26 FCC Rcd 15704 (2011); Public Notice, "FCC Workshops on the Telephone Network in Transition," DA 11-1958 (Nov. 30, 2011); *see also* News Release, *FCC Chairman Genachowski Continues Regulatory Reform to Ease Burden on Businesses; Announces Elimination of 83 Outdated Rules* (Aug. 22, 2011) ("Our extensive efforts to eliminate outdated regulations are rooted in our commitment to ensure that FCC rules and policies promote a healthy climate for private investment and job creation…. I have directed each bureau at the FCC to conduct a review of rules within their areas with the goal of eliminating or revising rules that are outdated or place needless burdens on businesses….We will continue on this regulatory reform track – ...to meet our statutory obligation and mission in a way that grows our economy, creates jobs and benefits all Americans.").

file an additional report.[17] And wireless ETC relinquishment petitions are a known quantity to state regulators. If an ILEC were to attempt to relinquish its ETC status in state, to Verizon's knowledge this would be a case of first impression, which presents additional uncertainty.

Individual forbearance proceedings at the federal level are no better answer. Despite a clear statutory mandate to forbear from applying any regulation or any statutory provision that is unnecessary, forbearance petitions regularly take the full one-year period set out in the statute or are extended even further for an additional 90 days longer and often draw opposition from those merely seeking a competitive advantage. *See* 47 U.S.C. § 160(a). For example, price cap ILECs struggled for years, beginning with a 2005 petition filed by the former BellSouth, merely to get relief from certain recordkeeping, reporting, and other accounting requirements that the Commission itself repeatedly acknowledged were useless once federal rate-of-return regulation was replaced with incentive-based regulation for large wireline carriers.[18] In fact, to this day petitions for reconsideration and an appeal of these decisions remains pending.

In addition to certain delay and conditional approvals involved with state relinquishment and federal forbearance proceedings, suggesting that relief from legacy ETC obligations should be left to these venues when high cost funding is eliminated suggests that there is indeed something more to decide in further proceeding. There is not. For the reasons discussed above, the Commission has a statutory obligation to eliminate legacy ETC service obligations when it eliminates funding for particular carriers in certain areas.

[17] *See* Order Approving Stipulation, *RCC Minnesota, Inc., et al*, Docket No. 2009-11 (Me. Pub. Utils. Comm'n Mar. 12, 2009).

[18] *See, e.g., Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. 160 From Enforcement of Certain of the Commission's Cost Assignment Rules,* Petition for Forbearance, WC Docket No. 05-342 (Dec. 6, 2005).

E. In Areas Where Legacy ETC Voice Service Requirements Remain Providers Must Have Flexibility To Satisfy Those Obligations In Efficient Ways.

Wherever, and for however long, legacy ETC voice service requirements remain providers will also need flexibility to adapt to rapidly changing technological, financial, and other marketplace dynamics in provisioning voice services. In particular, as discussed above, many LECs have lost more than half of their wireline subscriptions in recent years and continue to lose lines at or near double-digit rates annually. Indeed, many LECs are struggling to survive and are losing a significant amount of money year-over-year. As a result, traditional wireline providers have no choice but to rethink how they deliver services to end-users, including reliance on more efficient technologies, new partnerships, joint ventures, and agency and affiliate arrangements. These and other fresh approaches are essential in order for many providers to remain viable going forward—particularly if these providers continue to face regulatory service mandates such as legacy ETC requirements in some instances. To facilitate these types of efficient arrangements, the Commission should make clear that carriers may satisfy any continuing ETC voice service obligations through joint ventures, joint marketing or other business arrangements.

The Commission has long permitted carriers to use any technology to meet their legacy ETC voice service obligations. For example, it has been clear that wireless service is sufficient to satisfy statutory voice service obligations as wireless carries have been eligible to receive federal subsidies for US subscribers for over a decade. The latest order makes carrier flexibility to use any technology even more explicit.

The Commission revised the list of supported services that an ETC must offer to include only "voice telephony service." *USF-ICC Transformation Order and FNPRM* ¶ 77. This new service is defined in a way that the Commission envisions fitting with voice service offered over any technology. 47 C.F.R. § 54.101(a) ("The functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part)."). This definition eliminates TDM-centric requirements such as single-party service, and access to operator and directory assistance services. "We agree with commenters that urge the Commission to focus on the functionality offered, not the specific technology used to provide the supported service." *USF-ICC Transformation Order and FNPRM* ¶ 77.

More broadly, the Commission envisions providers as indeed having significant flexibility to use the most efficient technology to satisfy voice service requirements. "[T]he modified definition simply shifts to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks. . . .ETCs may use any technology in the provision of voice telephony service." *Id*. ¶¶ 77, 80. Going forward, a flexible approach to voice service provisioning arrangements and carrier efforts to satisfy legacy ETC requirements wherever they remain will be even more important in order for the new USF regime to "benefit both providers (as they may invest in new infrastructure and services) and consumers (who reap the benefits of the new technology and service offerings)." *Id*. ¶ 77.

The FCC also has long permitted substantial flexibility in the business arrangements that underlie how carriers provision service, and should make clear that joint ventures, joint marketing arrangements, and other common business arrangements can be used to take advantage of the flexibility to use the most efficient technology in high cost areas. Historically, the Commission has taken an expansive view of what it means under the Act for an ETC to offer service "using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier)." 47 U.S.C. § 214(e)(1)(A). Because the term "own facilities" is not defined in either the statute or the legislative history, the Commission has concluded that it "is a 'generic term' that varies in its significance according to its use' and 'designate[s] a great variety of interests in property," including not only "legal title holders" but also those "enjoying the beneficial use of property."[19] In so doing, the Commission has found, for example, that the use of unbundled network elements qualifies as a carrier's "own facilities" for 214(e)(1) purposes. By the same token, the term "resale" should not be read overly narrowly, but should be fairly read to include a variety of business arrangements such as joint ventures or joint marketing arrangements.

In addition, the Wireline Competition Bureau has determined that Section 214 facilities and service requirements do not require rigid adherence to traditional corporate parent, subsidiary, or affiliate structures. In 2010 the Bureau addressed five petitions by Virgin Mobile seeking designation as an ETC for the purpose of receiving Lifeline support.[20] In granting the petitions, the Bureau held that Virgin Mobile satisfied the Section 214 "own" requirement, even though it provided service through the facilities ultimately owned by its parent, Sprint Nextel.

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[19] *First Universal Service Order* ¶ 158; *see also id*. ("property may have more than one 'owner' at the same time, and "such 'ownership' does not merely involve title interest to that property"); *Federal-State Joint Board on Universal Service*, First Report to Congress, 13 FCC Rcd 11830, ¶ 165 (1998) ("the ordinary meaning of the word 'own' includes not only title holders, but those enjoying beneficial use of property ...").

[20] *Telecommunications Carriers Eligible for Universal Service Support*, Order, 25 FCC Rcd 17797, ¶¶ 15-16 (2010) ("*Virgin Mobile Designation Order*").

> We disagree with comments suggesting that Virgin Mobile cannot treat its parent's facilities as its own because the two are distinct legal entities or because Virgin Mobile has a distinct brand and customer base from Sprint. The Commission has previously rejected a formalistic definition of what constitutes a carrier's 'own facilities' under section 214(e) in favor of a more flexible approach that meets the goals of universal service. We also disagree with the suggestions of some that the definitions of 'facilities-based carrier' or 'reseller' found elsewhere in federal law must apply here. . . .[T]he section 214(e) facilities requirement must be construed in light of the goals of the Act. Thus, while we may look to the definitions used in other contexts, those definitions do not bind or constrict our interpretation.

Virgin Mobile Designation Order, ¶¶ 15-16. As far as the Section 214 "facilities" requirement itself, the Commission interprets the term "to mean any physical components of the telecommunications network that are used in the transmission or routing of" supported services. *First Universal Service Order* ¶ 151. The Commission adopted this interpretation to narrowly exclude (without forbearance, which as discussed above, the Commission also liberally grants in the ETC context) "a 'pure' reseller that claims to satisfy the facilities requirement by providing facilities through its own billing office or some other facility that is not a 'physical component' of the network ...." *Id*. Going forward, the Commission should allow ETCs even greater leeway to provision service in the most efficient way possible, either in interpreting the Section 214 "own facilities" or "resale" provisions.

III. THE COMMISSION SHOULD CAREFULLY EVALUATE WHAT BROADBAND AND VOICE PRICING AND OTHER DATA IS ACTUALLY NECESSARY TO ADMINSTER THE CAF AND NARROWLY TAILOR ANY INFORMATION COLLECTION.

A. Substantial Broadband Data Is Already Available From Existing Sources.

The Commission seeks comment on how it should collect data about pricing in order to compare urban and rural voice and broadband rates. *See USF-ICC Transformation Order and FNPRM* ¶¶ 1018-1019. As Verizon has previously explained, the Commission should not collect data concerning broadband pricing from providers, but instead should rely on available third-party sources that collect and analyze such data.

The specific broadband prices that consumers pay, however, vary based on factors such as promotions, bundled discounts, term commitments, and the unique circumstances of prospective customers. Moreover, broadband prices change quickly and repeatedly throughout the year. Other parties, including private analysts, are in a better position to collect data regarding the prices that customers pay for broadband service and in fact already provide reports on exactly that information.[21] The reports of private analysts show that overall prices for broadband services have dropped in the intensely competitive broadband marketplace. With the existing robust competition for broadband services, the Commission should not force broadband providers to expend significant financial resources and personnel to report on constantly varying subscription prices.

Requiring broadband providers to report prices would also be bad policy. As the Commission has recognized previously, such tariff-like requirements are not only unnecessary in a competitive marketplace, they are affirmatively harmful. By mandating that broadband providers "provide advance notice of changes in their prices, terms, and conditions of service for

[21] *See, e.g.*, www.broadband.com (providing searchable map that includes broadband pricing); Jonathan Atkin, et al., RBC Capital Markets Wireless Update, at 4-5, 13-24 (March 1, 2011); Simon Flannery, et al., Morgan Stanley Research North America, at 2 (Nov. 3, 2010); John C. Hodulik, et al., UBS Investment Research: Telecommunications, at 24-28, 30 (March 15, 2011); HSBC Global Research, Global Telecoms, Media & Technology, "SuperFrequonomics," at 19, 21-24 (Sept. 2010); David W. Barden, et al., Bank of America Merrill Lynch Wireline & Wireless Telecom Services, "Battle for the Bundle: Cable Keeps the Pressure on Telco," at Tables 5-8 (July 20, 2010).

these services," a tariffing-like regime would allow competitors "to counter innovative product and service offerings even before they are made available to the public."[22]

Due to the variety of offers and pricing plans available and the dynamism of broadband pricing, consumers and third-party data sources – rather than providers – are the best sources of information on pricing and, in particular, its impact on broadband demand and adoption. To the extent that there is particularized need for pricing information in the context of certain CAF services or consumers groups then the Commission should limit its reporting obligation to those providers participating in those programs and rely on existing third-party and public sources for purposes of comparison. And, in any event, any data collection should be streamlined and narrowly tailored to what the Commission actually needs to administer the CAF. If, for instance, the Commission does move ahead with a broadband "rate survey," that survey should be coordinated with existing reporting mechanisms.

B. Wireless Pricing Data Is Already Available In Industry Competition Reports.

The Commission also asks if it should collect data on mobile telephony rates to determine reasonable comparability of voice services for universal service purposes. *See USF-ICC Transformation Order and FNPRM* ¶¶ 1018-1019. The Commission has identified no need to collect any additional wireless pricing information. The Commission already collects and analyzes pricing trends in its Wireless Industry Competition Reports.[23] The complexity of wireless pricing data would also make it extremely burdensome to gather more granular data

[22] *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements*; *Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 19478, ¶ 32 (2007).

[23] *See, e.g., Fifteenth CMRS Competition Report*, ¶¶ 81-102.

from individual carriers, and ultimately, in the fiercely competitive wireless industry, hopelessly out-of-date by the time it could be analyzed.

Moreover, since wireless service generally is a more "personal" service, each member of a household, or each corporate employee, may have one or more individual lines of service, but pricing for those lines of service may be based on account-level rates and discounts. Adding to the complexity are offerings based on device type (smartphone, notebooks, aircards, etc.), optional features (VZ Navigator, Usage Controls, etc.), and postpaid versus prepaid lines of service. The Commission offers no insight into how additional pricing data would be used or useful. The Commission should continue to seek input on general pricing trends in the context of the Wireless Industry Competition Reports and should not attempt to impose an industry-wide data collection on individual carriers.

IV. BROADBAND SPEED MEASUREMENTS AND ANAYSIS SHOULD PATTERN THE PROCESS DEVELOPED BY THE COMMISSION WITH SAMKNOWS.

The Commission asks several questions about how to measure and analyze broadband speeds in order to administer the new CAF. *See USF-ICC Transformation Order and FNPRM* ¶¶ 1013-1017. Again, the Commission should rely to the greatest extent possible on procedures already developed in partnership with the industry as part of the SamKnows effort. The Commission recently released its "Measuring Broadband America Report," which includes the details of a careful study undertaken to measure broadband speed and latency among the 13 largest Internet Service Providers (ISPs) in the country.[24] This was the first nationwide

[24] *See Measuring Broadband America: A Report on Consumer Wireline Broadband Performance in the U.S.*, Office of Engineering and Technology & Consumer and Governmental Affairs Bureau (FCC Aug. 2, 2011), http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-308828A1.pdf ("Measuring Broadband America Report").

performance study of residential wireline broadband service. The objective of the study was to measure broadband performance as delivered by an internet service provider to the home of a customer. Both the Commission and the industry expended considerable resources to develop the metrics and other process details that informed the SamKnows process. The Commission should follow the same procedures to measure broadband speeds and carrier performance for CAF purposes, modified as necessary to, for instance, account for wireless provider participation in the CAF and mobility funds.

Specifically, data in the SamKnows survey was based upon submissions from volunteers from across the country who use three major broadband technologies: DSL, cable, and fiber to the home. Volunteers were recruited from the four census regions: Northeast, Midwest, South and West. The volunteers installed SamKnows "whiteboxes" in their homes. The whiteboxes are measurement devices that included custom testing software which was designed to perform "a periodic suite of broadband measurements while excluding the effects of consumer equipment and household broadband activity." Measuring Broadband America Report, at 10. The tests were conducted every two hours, at 30 second intervals in increments of five seconds, and metrics included sustained download speed, sustained upload speed, burst download, and upload speed latency. *See id*. at 13. The tests were measured from the consumer "gateway—the modem used by the consumer to access the Internet—to a nearby major Internet gateway point." *Id*. at 10. The whitebox software was programmed to automatically perform a periodic suite of broadband measurements while excluding the effects of consumer equipment and household broadband activity.

A similar process could work for the CAF. ETC funding recipients or a third-party could distribute whiteboxes to a sample customer set in funded areas. That could then be collected and reported by the ETC to the Commission, or potentially fed directly to the Commission or USAC.

V. THE COMPETITIVE BIDDING PROCESS IN AREAS WHERE PRICE CAP CARRIERS DECLINE THE STATE-LEVEL COMMITMENT AND FOR PHASE II OF THE MOBILITY FUND SHOULD BE STREAMLINED AND FLEXIBLE.

For more than five years Verizon has urged the Commission to transition away from traditional USF high cost entitlements in favor of a funding distribution mechanism that is based primarily on competition bidding. The Commission's decision to ultimately distribute most or all high cost support through a competitive bidding mechanism in the *USF-ICC Transformation Order and FNPRM* is a step in the right direction. Initially, the Commission seeks comment on how to administer a competitive bidding process in areas where price cap carriers decline a state-level commitment to offer broadband throughout their designated territories, and for the next phase of the Mobility Fund. *See USF-ICC Transformation Order and FNPRM* ¶¶ 1189-1222. Verizon has offered its views on the best way to design these and other reverse auctions many times. Overall, the Commission should design the mechanisms to maximize participation by providers. If there are more bidders, the Commission will see lower bids, which will in turn free up CAF resources that can be spent in other areas and on other important priorities.

To maximize provider participation in any competitive bidding process, the Commission should keep three things in mind. First, over-conditioning funding will keep bidders away. The Commission, of course, has a legitimate need to ensure that public funding is used efficiently and as intended. But the Commission simply cannot expect to micro-manage broadband network coverage and deployment in funded areas through, for example, unreasonably complex and burdensome reporting requirements. Second, the Commission should have realistic expectations about how many unserved (or underserved) locations can be reached and how quickly networks can be deployed. Almost all—approximately 95 percent—of Americans already have access to broadband.[25] Reaching the last 5 percent will be expensive, and will take time. And third, the Commission should allow competitive bidding participants to have flexibility in submitting package bids and defining service territories. Inviting carriers to, through the bidding process, tell the Commission what they "can do" (versus predefined requirements), where they are willing to serve, and for what amount of subsidy is the most efficient way to extend the reach of broadband networks.

Where the Commission does impose conditions on CAF recipients in exchange for the receipt of funding, those requirements should be narrowly tailored to avoid discouraging participation—and in all events should apply only to funding recipients. The Commission, for example, largely deferred questions regarding the transition to IP interconnection arrangements to later briefing on intercarrier compensation issues but asks whether CAF recipients should have unique IP interconnection requirements. *See USF-ICC Transformation Order and FNPRM* ¶¶ 1335-1398. Verizon will provide a more extensive discussion of these matters in response to the *FNPRM*, and the Commission should deal with these issues in that context, not here. But Verizon and other providers have market-based incentives to expand IP interconnection for voice services and more from the PSTN to ubiquitous IP networks, and the technical requirements and standards issues that must be addressed should be resolved through industry bodies and negotiated commercial agreements between providers, no different from the voluntary standards and agreements that govern the Internet today. In the absence of *any* regulation, owners of the networks that comprise the public Internet have entered into countless commercial, voluntarily negotiated agreements that specify where and how traffic will be exchanged, and whether and

[25] *See Connecting America: The National Broadband Plan*, at 20 (FCC 2010), http://download.broadband.gov/plan/national-broadband-plan.pdf.

how compensation will be paid for the exchange of that traffic. *See* Comments of Verizon and Verizon Wireless, at 12-13 (April 1, 2011). The same is already true of negotiated, commercial agreements for IP interconnection that already control a significant portion of voice traffic that is handed off from carrier to carrier today.

With respect to design of the competitive bidding mechanism there are any number of ways to structure a successful reverse auction. And the Commission should be prepared to learn and adjust as competitive bidding is introduced into the universal service program for the first time. For more specific auction mechanic recommendations, attached hereto at Attachment A is Verizon's detailed cost-proxy auction proposal, originally submitted in 2007. The recommendations in that proposal reflect the thinking of auction experts, some of which have advocated for a competitive bidding-based USF for more than a decade. In addition, attached hereto at Attachment B are Verizon's comments and reply comments from early last year, when the Commission last proposed to implement a new Mobility Fund using a competitive bidding process. The recommendations in these comments reflect the thinking of Verizon Wireless spectrum experts who have substantial experience over the last decade in managing spectrum auction issues. To minimize administrative complexity for both the Commission and participating carriers, Verizon also encourages the Commission to keep all competitive bidding rules consistent – to the extent possible – across the various new programs, including the new Phase II CAF and the mobility funds.

VI. CONCLUSION.

The Commission should move forward with implementation of the CAF and other universal service reforms consistent with the recommendations discussed herein.

Respectfully submitted,

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