

**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 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 THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA ON THE
FURTHER NOTICE OF PROPOSED RULEMAKING (SECTIONS A – K)**

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I. INTRODUCTION

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these brief comments in response to the Federal Communications Commission's (FCC or Commission) Further Notice of Proposed Rulemaking (FNPRM) seeking comments on a variety of issues still to be determined to implement the FCC's *USF/ICC Transformation Order (Order)*. The Order transitions the federal high cost universal service support mechanism away from support of legacy wireline networks to support of broadband deployment.¹ The CPUC reserves the right to file reply comments on Sections A through K issues of the FNPRM not addressed in these comments.

II. DISCUSSION

A.1. Measuring Broadband Service

The *USF/ICC Transformation Order* requires that the broadband service provided by eligible telecommunications carriers (ETCs) receiving high cost support (both legacy support and support from the new Connect America Fund) meet new speed, latency and capacity requirements. Among these new mandates is the requirement that such ETCs measure the actual speed and latency on their access networks from the end-user interface to the nearest Internet access point. The ETCs must certify to and report the results of

¹ *In the Matter of 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*, 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, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-162 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

their measurements to the Universal Service Administrative Company (USAC) on an annual basis. In the FNPRM, the FCC seeks comment on whether it should adopt a specific measurement methodology beyond what is described in the Order and on the format in which ETCs should report their results.² The FCC also asks if it should specify a uniform reporting format.³

The CPUC strongly recommends that the FCC adopt a uniform reporting format to facilitate the tracking and review of these measurement reports. A uniform reporting requirement will facilitate USAC and state commission audit of these reports to determine if the provider is meeting the minimum speed and latency requirements. We also urge the Commission to require carriers to provide the information in Geographic Information System (GIS) format. The GIS information will facilitate updates to the national and state mapping of broadband availability.

D. Eliminating Support for Areas with an Unsubsidized Competitor

The FCC plans to “phase out over three years support in study areas that overlap completely with an unsubsidized facilities-based terrestrial competitor that provides voice and fixed broadband service, beginning July 1, 2012.”⁴ Regarding the phase out of all high-cost support received by an incumbent rate-of-return carrier where an unsubsidized competitor, or combination of unsubsidized competitors, serves 100 percent of the residential and business locations in the incumbent’s study area, the FCC in the FNPRM seeks comment on a proposed methodology for determining the extent of overlap, a

² *USF/ICC Transformation Order* FNPRM, at para. 1013.

³ *Id.*, at para. 1015.

⁴ *USF/ICC Transformation Order* at paras. 27, 200, 280-284.

process for preliminary determinations of such overlap, a process for the affected ETC to challenge the accuracy of the purported overlap, with input from the relevant state commission and the public, and how to adjust support levels in situations with less than 100 percent overlap.⁵ The FCC notes that several commenters supported state involvement in a process to determine areas of overlap. The FCC asks “how could state commissions play a role in determining the extent of overlap?”⁶ The FCC also asks if state commissions should be given a period of time to comment on any analysis by the FCC bureaus and if so what would be a reasonable time frame to request an evaluation from a state commission regarding such overlap?⁷ Alternatively, the FCC asks if it “could establish a process in which state commissions advise [the FCC], by a date certain, which study areas served by rate-of-return carriers have unsubsidized facilities-based competitors, and therefore should be subject to potential adjustments in high-cost support?”⁸

California recommends that the FCC staff conduct the initial evaluation of whether there is 100 percent study area overlap and then give the relevant state commission time to review and comment. First, the FCC has the authority to require all broadband providers to provide the FCC with reports of their broadband deployment, as well as their relevant performance metrics. Second, an initial review by the FCC will establish a process that provides some uniformity and equity among the states in making these critical determinations.

⁵ *USF/ICC Transformation Order* FNPRM, at para. 1061.

⁶ *Id.*, at Para. 1072.

⁷ *Id.*

⁸ *Id.*

However, if the Commission determines that states should conduct the initial evaluation and advise the FCC which areas are served by unsubsidized competitors, the Commission must mandate that all facilities-based terrestrial entities that offer voice and fixed broadband service be required to report to the relevant state commission the extent of their service availability in the state, as well as any other information necessary for the state commissions to make the determination. Currently, information collected by the National Telecommunications Information Administration (NTIA) state broadband mapping grantees provides the CPUC, which is California's mapping grantee, with information that would help the CPUC make this determination. However, under the current NTIA program, the provision of information to the state mapping grantee is purely voluntary. Also, that mapping project ends September 2014.

In addition, states required to conduct the initial evaluations may need new resources to fulfill this mandate. The NTIA federal grant now provides funding for the staff and other resources necessary to collect, evaluate, map and report to the NTIA the broadband availability in the state. However, that mapping project and the federal funding end September 2014. If the Commission requires states to determine if there is 100 percent overlap by unsubsidized competitors under the new high cost scheme, federal funding should be made available to ensure that the state commissions have the necessary resources to make the determinations.

Further, should the FCC require states to conduct the initial evaluations, service providers should have the ability to initiate, via a mandated process, state review of competitive service provider overlap. States have little incentive to challenge federal

subsidies benefiting their state. It would be more effective if the unsubsidized provider initiated a proceeding to show that it provides unsubsidized service to 100 percent of a study area.

H. Annual Reporting Requirements for Mobile Service Providers

The *USF/ICC Transformation Order* requires ETCs receiving federal high cost support to include in their annual reports detailed information on outages that meet certain minimum criteria described in the new rule, including the geographic areas affected and the number of customers affected. The Commission seeks comment on how the number of affected customers should be counted for mobile service providers. The FCC asks “should the number of affected customers be the number of customer billing addresses within the affected areas, the average number of customers served by the towers that are out-of-service during the outage, or some other measure?”⁹

The CPUC opposes the use of customer billing addresses to determine the number of affected customers. It is not appropriate to base the number of affected customers on the number of customer billing addresses in the affected areas because some prepaid wireless providers may not have billing addresses for their customers. Predicating reporting thresholds on billing addresses would likely undercount the number of wireless customers affected by an outage. At this time, California does not recommend an alternative method to determine the number of affected customers. However, the FCC may want to consider call-completion volumes as a possible additional measure-- requiring carriers following an outage event to report the tower’s previous average hourly

⁹ *Id.*, at para. 1119.

volumes as a method to gauge customer impact. We reserve the right to comment further in the reply cycle.

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