

**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  
THE MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts  
Department of Telecommunications and Cable

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Universal Service Reform – Mobility Fund	WT Docket No. 10-208

**COMMENTS OF THE MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND CABLE**

The Massachusetts Department of Telecommunications and Cable (MDTC)<sup>1</sup> respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (FCC or Commission) on November 18, 2011, in the above-referenced dockets.<sup>2</sup> The FNPRM accompanies a Report and Order (Order) that substantively reforms two, interrelated systems: intercarrier compensation (ICC) and the

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<sup>1</sup> The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1.

<sup>2</sup> *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 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*CAF/ICC Order and FNPRM*).

high-cost arm (High-Cost Fund) of the federal Universal Service Fund (USF or Fund). The Order creates a new Connect America Fund (CAF) focused on broadband deployment in unserved areas and implements a transition period to phase out the High-Cost Fund over the next several years. Through the FNPRM, the Commission seeks comment on additional details and measures relating to its comprehensive reform efforts set out in the Report and Order. The MDTC responds to the USF portions of the Commission's inquiries.<sup>3</sup>

## **I. SUMMARY**

The FNPRM presents a valuable opportunity for the Commission to receive input from states and other commenters about several aspects of the CAF implementation program. Of critical concern to the MDTC are: (1) the proposed competitive (reverse) auctions for CAF funding and its lack of a backstop provision exclusive of the Remote Areas Fund, (2) broadband public interest obligations and new annual reporting requirements, and (3) Eligible Telecommunications Carrier (ETC) obligations and service areas.

Massachusetts is a net-payor, price cap state, yet it still has gaps in broadband service availability. If implemented responsibly, the CAF should address those gaps. The MDTC eagerly awaits the Commission's list of Massachusetts census blocks that are eligible for CAF Phase II support in its price cap areas. To the extent price cap incumbents do not choose to receive such support, the MDTC is very concerned with how CAF support will be allocated through reverse auctions. The Commission should ensure that the reverse auctions do not create incentives for incumbents to seek excessive support or to avoid state-level service obligations. The current framework creates an incentive for incumbents to cherry-pick the areas to which

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<sup>3</sup> The Commission does not seek comment on the intercarrier compensation and access recovery mechanism portions of the FNPRM until February 24, 2012. *See CAF/ICC Order and FNPRM* at p. 1. Additionally, the MDTC's silence on any particular issue raised in the portion of the NPRM addressed by these comments should not be construed as support or opposition to that issue.

they deploy broadband service, potentially leaving some Massachusetts communities without coverage. In addition, some areas in the Commonwealth may not receive support through the auction mechanism, so the Commission should provide a backstop funding option as part of the reverse auction process. The Commission should also consider imposing conditions upon price cap carriers that wish to participate in reverse auctions for areas where they are already designated ETCs.

The MDTC supports the Commission's use of census blocks as the minimum geographic building block for awarding CAF support. Using census blocks is a very granular approach; Massachusetts has over 157,000 census blocks. The Commission should distinguish, however, between awarding support and determining eligibility to bid for support, because the determination process may need to utilize bidding areas more granular than individual census blocks. Between two proffered bidding processes – the Census Tract Approach and the Bidder-Defined Approach – the Commission should select the latter because bidders could use their economies of scale and avoid creating unnecessary, artificial boundaries. The Commission should review these bidding areas periodically and mandate state approval of the designation of the areas to avoid conflicts with state ETC designation authority.

One component of the CAF, Mobility Fund Phase II, is designed to provide ongoing support for wireless (mobile) broadband. Rather than awarding this support based on the number of road miles, the Commission should award this support on a “cost-per-person” basis. Another component, CAF Phase II auction support in price cap areas, should include a per-subscriber subsidy. Both recommendations will more accurately match geographic build-out to consumer demand.

The Commission's new section 54.313 reporting and irrevocable standby letters of credit requirements should be imposed on all CAF recipients in a technology-neutral manner.

Adopting this recommendation will permit the Commission and the MDTC to ensure the financial stability of ETCs who provide service to Massachusetts' consumers using federal funds in a fair, equitable manner. Furthermore, all CAF recipients should be required to provide IP-to-IP interconnection, and all non-Mobility CAF recipients should be required to extend broadband to future locations (e.g. new construction locations) upon a reasonable request. This will speed broadband deployment by resolving a long-standing interconnection debate between local exchange carriers and IP-based service providers and will extend the reach of federally-funded broadband infrastructure to unserved areas. The Commission should, as it suggests, require Mobility Fund Phase II recipients to offer certain collocation of their infrastructure, a reasonable requirement because it encourages more efficient use of tower space.

The MDTC designates ETCs and their service areas in Massachusetts. It strives to ensure ubiquitous availability of voice telephony services, increase broadband adoption and availability, protect Massachusetts consumers, and prevent fraud, waste and abuse of federal USF support. The Commission recognizes the valuable contribution of states in ETC designations and proposes to require all CAF recipients to hold ETC standing before receiving CAF support. The Commission should realize that revising and defining ETC service areas directly, it affects state ETC designation authority and carrier-of-last-resort requirements. The Commission should not usurp the states' critical ETC designation role where state commissions, like the MDTC, have asserted jurisdiction over ETCs.

**II. THE COMMISSION MUST REFINE ITS COMPETITIVE (REVERSE) AUCTION PROPOSALS TO ENSURE THAT EVERY STATE RECEIVES SUPPORT AND THAT FUNDING IS DISBURSED IN AN EFFICIENT AND EQUITABLE MANNER**

The Commission’s proposals to use competitive (reverse) auctions where price cap incumbents decline model-derived support, and for the Mobility Fund,<sup>4</sup> reflect a significant step forward from the existing inequitable system by which High-Cost Fund money is disbursed. But the proposals also contain several shortcomings that must be addressed to avoid creating a new disparate system of funding. In particular, the Commission must refine its competitive (reverse) auction proposals to ensure (1) that every state receives support, and (2) that funding is disbursed in an efficient and equitable manner.

In the Order, the Commission creates the broadband-focused CAF to extend broadband service to areas where such service is not yet available, replacing the existing, voice-centric High-Cost Fund. The Commission envisions a multipart approach to implementing the CAF, including CAF Phases I and II; Mobility Fund Phases I and II, and a Remote Areas Fund.<sup>5</sup>

Under the Commission’s reform directives, the Wireline Competition Bureau will publish a list of all census blocks eligible for CAF Phase II (non-Mobility Fund) support “associated with each incumbent price cap carrier within each state” and estimate support amounts before the end of 2012.<sup>6</sup> Price cap incumbents will either accept or reject the proffered support amounts. If

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<sup>4</sup> *CAF/ICC Order and FNPRM* at ¶¶ 179, 295-532. The Commission also intends to move to a competitive bidding mechanism after a five-year CAF Phase II period if the incumbent accepts a state-level commitment. *Id.* at ¶¶ 171-172. The MDTC’s comments do not address CAF support in rate-of-return areas.

<sup>5</sup> *Id.* at ¶¶ 20-30. Consistent with the MDTC’s previous recommendations, the Commission caps the CAF budget at \$4.5 billion annually, with up to \$1.8 billion allotted to price cap carrier territories, \$2 billion allotted to rate-of-return carrier territories, \$500 million for the Mobility Fund, and \$100 million for the Remote Areas Fund. MDTC Comments, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, at 16-20 (filed Aug. 24, 2011) (MDTC Aug. 24 Comments); *CAF/ICC Order and FNPRM* at ¶ 126. This cap includes funding for High-Cost Fund support while it is being phased out and may be altered by a full Commission vote. The Commission indicates that it will revisit the amount of this cap in approximately six years.

<sup>6</sup> *CAF/ICC Order and FNPRM* at ¶¶ 171, 192. As of 2010, the Census Bureau indicates that Massachusetts had a total of 157,508 census blocks, an increase from 109,997 census blocks in 2000. *See* U.S. Census Bureau

they accept, they will receive CAF Phase II support for a five-year period beginning in 2013 and be subject to the public interest obligations.<sup>7</sup> If they reject the support, the eligible census blocks will be subject to a reverse auction, open to any companies that have received appropriate ETC designations from the applicable state or federal entity prior to the auction.<sup>8</sup> Through the FNPRM, the Commission seeks comment on certain elements of the auctions’ designs and implementations.<sup>9</sup> While the MDTC supports the reverse auction concept, it recommends that the Commission adopt a number of safeguards to avoid creating incentives for price cap incumbents to reject CAF Phase II funding in the first instance, and instead to utilize the reverse auction process to their advantage.

**A. Every State Should Receive CAF Funding for Its Price Cap Areas**

Many areas of Massachusetts remain unserved by broadband, and the MDTC is concerned that Massachusetts may not receive its fair share of CAF funding for its price cap areas if the price cap carriers refuse CAF Phase II support. Every state deserves CAF funding for its unserved price cap areas. The Commission recognized that “[m]ore than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas,”<sup>10</sup> yet its current proposals fail to ensure that every state will receive sufficient CAF funding for those areas. The Commission’s predictions about its CAF plans may be overly optimistic for states like Massachusetts,<sup>11</sup> in large part because Commission predictions have

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Information Page, “Tallies of Census Blocks By State or State Equivalent,” *available at*: [http://www.census.gov/geo/www/2010census/census\\_block\\_tally.html](http://www.census.gov/geo/www/2010census/census_block_tally.html) (last viewed Dec. 30, 2011).

<sup>7</sup> *CAF/ICC Order and FNPRM* at ¶¶ 171, 192.

<sup>8</sup> *Id.* at ¶¶ 179, 1189-1222.

<sup>9</sup> *Id.* at ¶¶ 1121-1222.

<sup>10</sup> *Id.* at ¶ 127.

<sup>11</sup> *Id.* at ¶¶ 18, 123 (indicating that its “estimates of the funding necessary for components of the Connect America Fund (CAF) and legacy high-cost mechanisms represent our predictive judgment as to how best to allocate limited resources at this time”).

proven imperfect in the past.<sup>12</sup> To minimize a funding disparity, the Commission must guarantee that every state will receive a baseline level of CAF funding for its price cap areas. In addition, the Commission must ensure that it deploys support in a timely manner. Finally, the Commission should create a backstop funding mechanism for price cap areas exclusive of the Remote Areas Fund in the event that the CAF Phase II auction proves unsuccessful.

Massachusetts is a price cap territory except for two towns: Granby and Richmond.<sup>13</sup> Verizon, whose territory covers 99.9% of all households, is the primary price cap incumbent local exchange carrier (ILEC) and the largest recipient of the limited high-cost support that flows to ETCs operating in the state. Only one Massachusetts ILEC, which serves the Town of Gosnold, does not currently receive high-cost support.<sup>14</sup>

Massachusetts has received little high-cost support over the years compared to other states.<sup>15</sup> The Commission should award a baseline level of CAF Phase II support for Massachusetts' price cap areas consistent with the Commission's desire to build on existing BTOP investments<sup>16</sup> and Congress's directive to NTIA regarding allocation of money under the BTOP.<sup>17</sup> Massachusetts has persistent gaps in reliable, affordable broadband service, with many

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<sup>12</sup> See, e.g., *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45, Order, FCC 08-122 (rel. May 1, 2008) (*CETC Cap Order*), at ¶¶ 19-20 (discussing how its predictions involving competitive ETCs and the identical support rule proved erroneous); *Petition of Qwest Corporation for Forbearance*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113 (rel. Jun. 22, 2010), at ¶¶ 33-34 (discussing how its predictive judgments in the *Qwest Omaha Forbearance Order* were not “borne out by subsequent developments”).

<sup>13</sup> See FCC Encyclopedia Page, “Price Cap Resources Regulatory Type at the Holding Company Level by Study Area,” available at: <http://www.fcc.gov/encyclopedia/price-cap-resources> (last viewed Dec. 12, 2011).

<sup>14</sup> Massachusetts does not have any competitive ETCs that receive high-cost support.

<sup>15</sup> In 2009, Massachusetts tied Delaware for second lowest among all states in terms of high-cost support received, amounting to approximately one penny per dollar contributed. MDTC Aug. 24 Comments at 16-17.

<sup>16</sup> *CAF/ICC Order and FNPRM* at ¶ 5.

<sup>17</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 516, § 6001(h) (Recovery Act) (directing NTIA to award grants “to the extent practical ... award not less than 1 grant in each State”).

unserved or underserved areas located in the less densely populated western part of the state. Through the creation and funding of the Massachusetts Broadband Institute (MBI) in 2009, Massachusetts prioritized broadband expansion and access as a part of its overall economic development strategy.<sup>18</sup> In July 2010, the MBI received a \$45.4 million federal stimulus award as a part of BTOP Round 2 to construct the *MassBroadband 123* network – a robust, middle mile project that will deploy approximately 1,100 miles of new fiber-optic cable to expand broadband service to an area with over 300,000 homes and 44,000 businesses, as well as over 1,300 schools, community colleges, public safety institutions, hospitals and libraries.<sup>19</sup> This network will enable partnerships with last-mile providers who will close service gaps remaining in Massachusetts in hard-to-serve areas.<sup>20</sup> While the BTOP grant provided a substantial push to deploy broadband in Massachusetts, additional CAF funding could aid interested providers in completing that deployment goal over last-mile facilities.

The Commission’s current proposals fail to ensure the timely disbursement of CAF Phase II funding to areas in need of support. In particular, the Commission does not indicate when it would conduct the CAF Phase II auction or to establish a timeframe for the auction’s resolution. In addition, those price cap areas that default to support under the Remote Areas Fund after the

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<sup>18</sup> See *An Act Establishing and Funding the Massachusetts Broadband Institute*, Chapter 231 of the Acts of 2008, available at: <http://www.massbroadband.org/legislation/BroadbandActsSigned8408.pdf> (last viewed Jan. 11, 2012). In addition, on May 26, 2009, Governor Patrick designated the MBI “as the Commonwealth’s aggregator for a coordinated filing to the [NTIA] for broadband competitive grants applications [under the Recovery Act] to ensure a balanced portfolio of applications that will meet the Commonwealth’s diverse broadband needs.” Office of the Governor Press Release, “Governor Patrick Takes Steps to Secure Federal Recovery Funding for Broadband Expansion – Holds broadband development forum, unveils interactive mapping tool at New Salem town hall” (May 26, 2009).

<sup>19</sup> MBI Update, “Governor Patrick, Congressional Delegation Announce Massachusetts Will Receive \$45.4 Million in Federal Stimulus Funds to Expand Broadband Access in Western and North Central Massachusetts” (Jul. 2, 2010), available at: [http://www.massbroadband.org/2010\\_eblasts/070210ebblast.html](http://www.massbroadband.org/2010_eblasts/070210ebblast.html) (last viewed Jan. 11, 2012).

<sup>20</sup> The MBI “is working closely with broadband service providers and municipalities to develop last-mile solutions and extend affordable broadband access in western and north central Massachusetts.” See MBI Webpage, “Last Mile,” available at: <http://www.massbroadband.org/Network/mile.html> (last viewed Jan. 5, 2012).

CAF Phase II auction will experience substantial delays in receiving support.<sup>21</sup> These areas might qualify for support beginning in 2013 *at the earliest*, although the MDTC predicts that these areas would not receive support until 2014 or later. This prediction stems from several unknowns, including the Commission’s lack of clarity regarding the auction’s resolution, the Commission’s *estimated* implementation of the Remote Areas Fund, and the limited annual funding set aside for the Remote Areas Fund. The MDTC strongly encourages the Commission to establish concrete timelines and to deploy support to all unserved price cap areas, whether through the CAF Phase II auction, the Remote Areas Fund, or some other mechanism, no later than 2013.

Because the auction may not be successful for many price cap areas, the Commission needs to create a backstop funding mechanism exclusive of the Remote Areas Fund.<sup>22</sup> This backstop funding mechanism should exist for two reasons. First, the Commission created the Remote Areas Fund for hard-to-reach, “extremely high-cost” areas.<sup>23</sup> However, many of the areas that qualify for but do not receive CAF Phase II support may not be “remote” enough to otherwise qualify for support under the Remote Areas Fund. Second, there is no guarantee that the qualified areas will actually receive any Remote Areas Fund support, because these areas will be competing with other qualifying remote areas for a very small portion of available funding. The Commission should take great care not to perpetuate the same discrepancies between net payors and net payees that exist under the current High-Cost Fund disbursement system.<sup>24</sup>

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<sup>21</sup> If certain eligible areas do not receive a bid or designated winners for support through the CAF Phase II auction, only then would those areas be eligible for support under the Remote Areas Fund. *CAF/ICC Order and FNPRM* at ¶¶ 30, 1222.

<sup>22</sup> The Commission recognizes the very real possibility that there will be areas “that do not receive support either via a price cap carrier accepting a state-level commitment or via the subsequent auction.” *Id.* at ¶ 1222.

<sup>23</sup> *Id.* at ¶¶ 30, 534, 1224.

<sup>24</sup> The MDTC reiterates that it recognizes the efficient allocation potential that reverse auctions present when finite resources exist and has previously endorsed the Commission’s proposals to utilize reverse auctions to provide one-

**B. The Commission Should Adopt Certain Measures To Prevent Incumbents From Seeking Excessive Support And Avoiding State-Level Commitments.**

The Commission's current proposals permit and create an incentive for price cap ILECs to reject model-based support and then participate in the CAF Phase II reverse auctions.<sup>25</sup> Not only could such ILECs use their infrastructure and industry knowledge to their advantage in the bidding process, but they could also avoid state-level commitments in favor of building out to only those areas where it is most convenient for and beneficial to the ILEC to do so. This approach is permitted by the Commission's current proposals. Such a result does not meet the Commission's overall objective of using incentive-driven policies to maximize the value of scarce USF resources. The MDTC therefore urges the Commission to adopt certain measures to remove any incentive for these incumbents to abuse the system.

The first problem with the existing auction framework is that it allows carriers to bid in a manner that will permit them to receive a higher level of support than may be necessary. For instance, throughout a substantial portion of high-cost areas deemed eligible for CAF support, price cap carriers are better positioned to build out broadband at the lowest cost due to the presence of their existing infrastructure (i.e., interconnection facilities, middle-mile architecture, pole and conduit ownership, etc.). In contrast, competitors that may not have any infrastructure in the area would need to interconnect to the incumbent's facilities and obtain access to poles, conduits, and rights-of-way. Further, incumbents may likely be able to better estimate the potential costs of their competitors, placing the incumbents at a competitive advantage in the

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time subsidies for deployment of broadband infrastructure in unserved areas. MDTC Comments, WC Docket Nos. 10-90, 05-337; GN Docket No. 09-51, at 10 (filed Jul. 12, 2010) (MDTC Jul. 2010 Comments). However, any reverse auction process must be subject to rules that ensure that one party to the auction does not enjoy an unfair advantage in the bidding process.

<sup>25</sup> *CAF/ICC Order and FNPRM* at ¶ 1201.

bidding process.<sup>26</sup> The Commission's current reverse auction framework creates the incentive for incumbents to obtain more support than is necessary, as they could place their bids at an amount higher than their estimated cost of service, but just under the level at which their closest competitors may be expected to place.

The second problem presented by the current reverse auction proposals is that incumbents could refuse support to avoid state-level commitments to then participate in the auction, thereby limiting the scope of their service obligations. Since the cost of providing broadband to different areas within a state may vary widely with some areas being much more expensive to serve than others, the incumbent has the added incentive to bid for support for only those census blocks or combination of census blocks would be the most profitable. This could leave many areas that are remote and expensive to build out to with no likely interested bidders.

To address these concerns, the Commission should adopt auction rules setting conditions for price cap carrier participation in reverse auctions in areas where they are already designated ETCs. In particular, the Commission should consider the following alternatives:

1. **Require price cap incumbents to have state-level commitments if they choose to participate in the auction.**

The advantage of this approach is that it would permit complete coverage of all high-cost areas in the state, albeit at a potentially higher cost than under the support levels identified for the incumbent's right-of-first-refusal in CAF Phase II through the Commission's cost model. This preferred approach counters the incentive otherwise created by the Commission's reverse auction proposal for incumbents to decline support as part of its right-of-first-refusal and then participate

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<sup>26</sup> Comments of the State Members of the Federal-State Joint Board on Universal Service, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 (filed May 2, 2011) (State Member Comments), at 80-82 (discussing why bids may not be based on a bidder's own costs).

in the auction. In addition, if the ILEC wins support under the auction, then this guarantees that support will flow to all unserved areas served by the ILEC.

2. **Allow price cap carriers to bid on specific census blocks, subject to state commission approval, but cap their bids for support to no higher than associated model-derived support levels.**

The assumption underlying this approach is that incumbents would not place bids on those census blocks that may be economically unviable to serve at model-derived support levels (and which would likely qualify for support under the Remote Areas Fund due to their cost of service). However, the remaining census blocks would obtain broadband coverage based on model-derived support levels. Some bids could actually be lower than the model-derived levels. This approach would lead to better outcomes in terms of utilization of funds. However, this approach would not guarantee complete coverage of all intended areas and, consequently, is less preferable than the first option discussed above.

3. **Penalize price cap ILEC participation in the auction through the use of a demerit point system or bidding credits to non-incumbent participants.**

This approach would help to level the competitive bidding playing field, since non-incumbents do not share the benefits of the economies of scale and size enjoyed by the incumbents. The MDTC prefers this option the least, however, because, not only will some areas continue to be “unserved,” but it may be difficult to adequately quantify the appropriate demerit or credit system between different providers.

- C. **CAF Support Should Be Based on State-Approved ETC Service Areas Where States Assert Jurisdiction.**

The Commission must ensure that it does not override expressly-delegated state authority, and therefore must base CAF support on state-approved ETC service areas where applicable. To accomplish this, the Commission should require that all entities seeking ETC designation with state commissions *must* receive state commission approval for the service area

for which they propose to bid during the ETC designation process. This affirmation will ensure that the existing state roles are retained.

Pursuant to section 214(e), a “service area” is “a geographic area established by a State commission [that asserts jurisdiction] for the purpose of determining universal service obligations and support mechanisms.”<sup>27</sup> Additionally, pursuant to Section 254(e), only ETCs “designated under section 214(e) ... shall be eligible to receive specific Federal universal service support.”<sup>28</sup> Federal law mandates that “it is the commission designating that carrier—not the ETC itself—that establishes an ETC’s service area.”<sup>29</sup> In Massachusetts, the MDTC is the designating entity for carriers seeking ETC designations, yet the Commission’s current auction proposals override that delegated state authority by allowing auction participants and the Commission, not the states, to define service areas through their bids.<sup>30</sup>

In the Order, the Commission authorizes the Wireline and Wireless Bureaus (Bureaus) to establish detailed procedures and rules for each of the auctions,<sup>31</sup> including certain auction bidding approaches contemplated by the Commission.<sup>32</sup> These approaches include using a Census Tract Approach “where the Commission would define a minimum aggregation of

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<sup>27</sup> 47 U.S.C. § 214(e)(5). As the Commission recognizes, “the states have primary jurisdiction to designate ETCs [and] the Commission designates ETCs where states lack jurisdiction.” *CAF/ICC Order and FNPRM* at n.662, citing 47 U.S.C. § 214(e).

<sup>28</sup> 47 U.S.C. § 254(e).

<sup>29</sup> *CAF/ICC Order and FNPRM* at ¶ 1091, citing 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(a).

<sup>30</sup> See, e.g., Docket D.T.E. 97-103, *Investigation by the Department of Telecommunications & Energy on its own motion concerning (1) designation of eligible telecommunications carriers, pursuant to § 102 of the Telecommunications Act of 1996 (“Act”); (2) participation in the Federal Communications Commission’s (“FCC’s”) modified Lifeline program and acceptance of increased federal funding, pursuant to 47 C.F.R. §§ 54.400-54.417 et seq.; and (3) participation in the FCC’s program for discounted intrastate rates for telecommunications services for rural health care providers, pursuant to § 254(h) of the Act*, Order (issued Dec. 23, 1997). The Department of Telecommunications and Energy is the MDTC’s predecessor agency.

<sup>31</sup> *CAF/ICC Order and FNPRM* at ¶¶ 329 (Mobility Phase I), 1153 (Mobility Phase II – *as proposed*), 1209 (CAF Phase II in areas where the price cap declines support – *as proposed*).

<sup>32</sup> *Id.* at ¶¶ 1126-1131, 1156, 1192.

[census] blocks by rule ... so that bidders would bid for support for all eligible census blocks within [the census tract in which they lay]” or a Bidder-Defined Approach where the Commission “would establish package bidding procedures that would allow bidders to group the specific census blocks on which they wanted to bid.”<sup>33</sup> The Commission’s delegation to the Bureaus to define possible service areas without additional safeguards would contravene the express terms of section 214(e).<sup>34</sup>

The Commission needs to account for non-federal default states, such as Massachusetts, that assert jurisdiction over all ETC designations. The Commission and the MDTC agree that federal law requires that only companies designated as ETCs are eligible to receive USF support. The Commission, however, must ensure that it does not override expressly-delegated state authority.<sup>35</sup> The Commission or the Bureaus, as a part of their delegated authority, need to make an affirmative statement requiring that all entities that seek ETC designations with state commissions *must also* receive state commission approval for the service area for which they propose to bid during the ETC designation process.<sup>36</sup>

The State Members of the Federal-State Joint Board on Universal Service (State Members) previously discussed this point:

The [Commission] proposes to allow auction bidders to define their own auction service areas. This is improper under the Act. Subsection 214(e) delegates to the States the role of determining whether a federal subsidy should be provided within their areas and requires them to determine whether granting ETC status is

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<sup>33</sup> *Id.* at ¶ 1127.

<sup>34</sup> 47 U.S.C. § 214(e).

<sup>35</sup> 47 U.S.C. §§ 214(e) and 254(e).

<sup>36</sup> The MDTC recognizes that this requirement may implicate the Commission’s prohibition of applicants from communicating with one another regarding the substance of their bids or bidding strategies and to limit public disclosure of auction-related information. *See CAF/ICC Order and FNPRM* at ¶¶ 431, 1162, 1215. However, since the Commission directs the Bureaus to seek comment during the pre-auction procedures process and decide on the details and extent of information to be withheld until the close of the auction, this will provide interested parties and/or Commission staff the opportunity to flesh out the parameters of this issue.

in the public interest. This delegation is not an antiquated regulatory requirement. Rather, it defines the structure of the working partnership between the States and the Commission as they jointly seek to preserve and advance universal service. It also authorizes and encourages important State work in enforcing ETC public interest obligations.<sup>37</sup>

The MDTC encourages the Commission to issue a Public Notice listing the appropriate ETC-designation and oversight authorities for each state in the near term, and to also publish this list on its Connect America Fund and Universal Service pages, at a minimum.<sup>38</sup> This will alert CAF applicants where they should file their designation petitions. Further, this will assist consumers and others that simply seek the data for informational purposes or wish to file complaints. Such an approach is consistent with existing Commission practice.<sup>39</sup>

**D. The MDTC Endorses Using Census Blocks To Award CAF Support in State Approved, Bidder-Defined Areas Generally but Urges Adoption of a Different Classifier for Service Area Classifications.**

The MDTC agrees, to a point, with the Commission’s proposal to use census block as the minimum geographic building block for defining areas for support for Mobility Phase II auction as well as CAF Phase II.<sup>40</sup> Census blocks are essentially “[s]tatistical areas bounded by visible features such as roads, streams, and railroad tracks, and by nonvisible boundaries such as property lines, city, township, school district, county limits and short line-of-sight extensions of roads,” and “[d]elineated by the U.S. Census Bureau once every ten years.”<sup>41</sup> The MDTC agrees

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<sup>37</sup> State Member Comments at 86-87.

<sup>38</sup> FCC Webpage, “Connecting America,” available at: <http://www.fcc.gov/encyclopedia/connecting-america> (last viewed Jan. 11, 2012); FCC Webpage, “Universal Service,” available at: [http://transition.fcc.gov/wcb/tapd/universal\\_service/](http://transition.fcc.gov/wcb/tapd/universal_service/) (last viewed Jan. 11, 2012).

<sup>39</sup> See, e.g., *Deadline for Annual Lifeline Verification Surveys and Certifications*, WC Docket No. 03-109, Public Notice, DA 11-749 (rel. Apr. 28, 2011), Attachment A at 1 (listing the federal default states under the Lifeline program); *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, DA 10-893 (rel. May 19, 2010); FCC Webpage, “TRS Points of Contact for Complaints,” available at: <http://www.fcc.gov/encyclopedia/trs-points-contact-complaints> (last viewed Dec. 22, 2011).

<sup>40</sup> *CAF/ICC Order and FNPRM* at ¶¶ 171, 179, 1123-1124, 1191-1192.

<sup>41</sup> U.S. Census Bureau *Random Samplings* Blog Post, “What Are Census Blocks?” (posted Jul. 20, 2011), available at: <http://blogs.census.gov/censusblog/2011/07/what-are-census-blocks.html> (last viewed Dec. 30, 2011).

that the census block should be the minimum geographic building block for *awarding* CAF support, since census blocks are small, relatively numerous, and sufficiently granular in order to delineate coverage areas and to more accurately target CAF support. In addition, census blocks are technology-neutral, consistent with the universal service competitive neutrality principle.<sup>42</sup> In determining areas *eligible* for support, however, the Commission should recognize that census blocks in rural areas are typically larger and do not always adequately represent areas unserved by broadband.<sup>43</sup> Further, due to the volume of census blocks that exist, ETC service area classifications need to be represented by a different classifier.

The Commission seeks comment on two possibilities: the Census Tract Approach and the Bidder-Defined Approach.<sup>44</sup> The Commission should select the Bidder-Defined Approach since it gives bidders greater flexibility in aggregating census blocks that leverage their economies of scale and scope. Also, the Census Tract Approach would create unnecessary, artificial boundaries.<sup>45</sup> Any service area bidding proposals, however, should be vetted and approved by any state commission that asserts jurisdiction over the ETC-designation process.<sup>46</sup> To reduce the likelihood that certain census blocks fall within the bids of multiple winning bidders, the Commission should evaluate bids using computer optimization techniques that maximize coverage within the constraint of available funds.

Due to the sheer volume of census blocks that exist and change every 10 years, the MDTC encourages the Commission (and designating states) to tie ETC census block

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<sup>42</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, at ¶¶ 43, 47 (rel. May 8, 1997) (*Universal Service First Report and Order*) (adopting the “Competitive Neutrality” principle).

<sup>43</sup> *CAF/ICC Order and FNPRM* at n.268, ¶ 1068 (noting that “small blocks could be reported as served if as few as one location in that block as service or could have service within a typical service interval”); MDTC Jul. 2010 Comments at 11-12 (urging a definition of “unserved” at the census block or a more granular level).

<sup>44</sup> Discussed *supra* at page 14.

<sup>45</sup> The only artificial bidding area boundaries should be linked to state boundary lines.

<sup>46</sup> Discussed *supra* at pages 12-15.

designations to some form of a larger defined area for administrative ease, as well as occasionally review its census block determinations. For instance, the Census Bureau indicates that Massachusetts had a total of 157,508 census blocks as of 2010.<sup>47</sup> This represents 47,511 added census blocks in the state since 2000. Nationally, census block totals increased by over 2.8 million between 2000 and 2010.<sup>48</sup> While use of census blocks makes sense for designating areas eligible for support and for a base level service area definition, the MDTC believes that service area names and final definitions need to be associated with a separate classification of some form. This will help to account for changes in the 10-year census block delineations, including additions of potentially thousands of blocks in designated service areas.

**E. Mobility Phase II Funds Should Be Based On A “Cost Per Person” Metric, Rather Than a “Number Of Road Miles” Metric.**

The Commission should base Mobility Phase II funds on a “cost per person” metric, rather than a “number of road miles” metric to reflect more user classes. While the Commission seeks comment on basing the number of bidding units and the corresponding coverage requirements on the number of road miles for the Mobility Phase II auction,<sup>49</sup> the “number of road miles” metric is inappropriately limited. It only measures the utility of mobile broadband for a single class of user – that of a person driving in an automobile. In addition, the “number of road miles” metric ignores the number of residents in the census block, who ultimately push demand for mobile broadband. The metric also fails to differentiate between different traffic volumes, with major highways treated on par with sparsely used side or back roads.<sup>50</sup>

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<sup>47</sup> See U.S. Census Bureau Information Page, “Tallies of Census Blocks By State or State Equivalent,” available at: [http://www.census.gov/geo/www/2010census/census\\_block\\_tally.html](http://www.census.gov/geo/www/2010census/census_block_tally.html) (last viewed Dec. 30, 2011).

<sup>48</sup> *Id.*

<sup>49</sup> *CAF/ICC Order and FNPRM* at ¶¶ 1122, 1134, 1184.

<sup>50</sup> The MDTC anticipates addressing this more thoroughly when the Bureaus seek comment on the auction mechanisms.

The Commission should instead adopt a “cost per person” metric as it counts the number of residents who directly benefit.<sup>51</sup> Any population that resides outside of the bidder’s coverage area should be considered “spillover” coverage and should not be counted towards the “covered population.” The Commission should utilize a computer optimization model to award Mobility funds such that the number of persons covered is maximized within the constraints of available funds and to ensure a more efficient use and allocation of USF funds.

**F. The Commission Should Include A Per-Subscriber Approach In The CAF Phase II Auction.**

The Commission can improve CAF Phase II auction efficiency by including a per-subscriber approach. Where the price cap carrier declines support, the Commission proposes to assign bidding units to each eligible census block based on the number of residential and business locations in the block in order to compare bids.<sup>52</sup> A better framework, using a per-subscriber subsidy based on connecting subscribers, would match CAF support with demand more closely than using a framework based on locations. Consistent with the Commission’s proposals, the Commission should provide support to a single provider for a given geographic area through the auction. Eligible providers would place bids seeking a specific amount of support per subscriber per month, and support funds would be awarded for those bidders seeking the lowest support. Bidders would be required to provide broadband connectivity to every location in the census block that seeks a connection. This approach does not reflect indiscriminate build-out to areas where there is relatively less demand. The per-subscriber approach would also promote quicker deployment of broadband networks, since it provides greater incentive to maximize subscriber counts (which can only occur with faster build-out).

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<sup>51</sup> *CAF/ICC Order and FNPRM* at ¶ 1184.

<sup>52</sup> *Id.* at ¶ 1194.

### **III. UNIFORM BROADBAND PUBLIC INTEREST OBLIGATIONS AND ANNUAL REPORTING REQUIREMENTS ARE CRITICAL TO THE CAF'S SUCCESS AND ENTITY OVERSIGHT**

In order to ensure the CAF meets its goals, the Commission imposes upon support recipients an obligation to provide reasonably priced voice and broadband service to consumers, and it identifies in the Order a number of reporting requirements with which CAF recipients must comply. In furtherance of these obligations, the Commission should do three things. First, it should adopt baseline reporting methodologies and formats for all CAF recipients. Second, the Commission should impose uniform collocation and interconnection obligations on CAF recipients. Finally, it should impose an obligation on non-Mobility fund CAF recipients to continue to build out their networks to new areas and locations that may be developed in the future.

In order to ensure that CAF recipients and ETCs meet their voice and broadband obligations,<sup>53</sup> and to strengthen overall accountability and oversight under the program, the Commission implements baseline annual certification and reporting requirements for all High-Cost Fund and CAF recipient ETCs.<sup>54</sup> These requirements are meant to be “a floor rather than a ceiling for the states,”<sup>55</sup> and ETCs must file most of the requisite information with USAC, the

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<sup>53</sup> Consistent with existing requirements for High-Cost Fund recipients, the Commission will require all CAF recipients to offer voice service throughout their designated service areas “at rates that are reasonably comparable to rates charged for similar services in urban areas.” *CAF/ICC Order and FNPRM* at ¶ 81, citing 47 U.S.C. § 254(b)(3). In addition, the Commission mandates that all CAF and transitional High-Cost Fund recipients also offer broadband service in their supported areas. *CAF/ICC Order and FNPRM* at ¶ 86; n.126 (referring “to all existing high-cost USF mechanisms as well as the Connect America Fund, including the Mobility Fund Phase I, unless otherwise expressly noted”). The Commission states that “ETCs must make this broadband service available at rates that are reasonably comparable to offerings of comparable broadband services in urban areas.” *Id.* at ¶ 86.

<sup>54</sup> *CAF/ICC Order and FNPRM* at ¶¶ 109-114, 569-614. Because Mobility Fund support differs in some respects from support received under the other high-cost and CAF mechanisms, the Commission requires Mobility Fund Phase I recipients to file annual reports specific to that program. *Id.* at ¶¶ 471-474, 1117.

<sup>55</sup> *Id.* at ¶ 574, 575, 580-604. The Commission staggers the implementation dates of different reporting requirements.

Commission, and state commissions by April 1 of each year.<sup>56</sup> The Commission intends for these annual filings to assist state commissions such as the MDTC in their monitoring and oversight role of funding recipients.<sup>57</sup> In addition, the Commission “expect[s] that states [that assert jurisdiction] ... will use the information reported in April of each year” by conducting “a rigorous examination” of the data in order to provide their own annual certifications to the Commission by October 1.<sup>58</sup>

Through the FNPRM, the Commission seeks additional comment on the public interest and reporting obligations established in the Order.<sup>59</sup> Because the Commission’s reforms implicate the MDTC’s annual reporting obligations and would apply to all ETCs designated in Massachusetts, the MDTC responds below to particular elements of these inquiries.

**A. The Commission Should Impose Section 54.313 Annual Reporting Requirements Uniformly Across Technologies To Assist USAC, The States, and The Commission With Their Monitoring and Oversight Obligations.**

Beginning in 2012, the Commission imposes section 54.313 annual reporting requirements on all ETCs receiving high-cost or CAF support.<sup>60</sup> In the new section 54.313 annual reports, the Commission requires that ETCs provide, among other things, data and explanatory text concerning outages; unfulfilled requests for service; complaints received; and certifications of compliance with applicable service quality and consumer protection standards.<sup>61</sup>

Beginning in 2013, the Commission also requires ETCs to report on their new broadband

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<sup>56</sup> *Id.* at ¶¶ 575, 581.

<sup>57</sup> *Id.* at ¶ 575.

<sup>58</sup> *Id.* at ¶¶ 609, 612.

<sup>59</sup> *Id.* at ¶¶ 1012-1030, 1117-1120.

<sup>60</sup> *CAF/ICC Order and FNPRM* at ¶ 580, Appendix A at pp. 543-548.

<sup>61</sup> *Id.*

obligations (i.e., rates, speed, latency, capacity, and build-out).<sup>62</sup> The Commission inquires as to whether it should impose on ETCs a uniform methodology and reporting format for measuring broadband obligations performance.<sup>63</sup> Moreover, the Commission asks whether it should revise the 54.313 reporting requirements or adopt new reporting requirements that would apply to an ETC that receives support to provide mobile services.<sup>64</sup>

The MDTC encourages the Commission to implement a baseline uniform reporting methodology and format on all ETCs, regardless of the technology or services that they provide.<sup>65</sup> A uniform level of filing will assist state commissions, USAC, and the Commission with their oversight and reporting obligations. If ETC reporting requirements are relatively uniform, states (and others) will be more easily able to analyze the data filed. State commissions will also be more easily able to determine whether ETCs sufficiently meet their voice and broadband obligations, including pricing and broadband speed and build-out requirements, and provide accurate certifications and reports to the Commission. In addition, such an approach is consistent with the Commission's own data-collection initiatives.<sup>66</sup>

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<sup>62</sup> *CAF/ICC Order and FNPRM* at ¶¶ 585-587, 591-593.

<sup>63</sup> *Id.* at ¶¶ 1013-1015.

<sup>64</sup> *Id.* at ¶¶ 1117-1120.

<sup>65</sup> This is consistent with our previous position regarding the Commission's Part 4 outage reporting requirements and Form 477 data reporting requirements. *See* MDTC Comments, PS Docket No. 11-82, at 5-6 (Aug. 8, 2011); MDTC Aug. 24 Comments at 24.

<sup>66</sup> *See, e.g.*, FCC Press Release, "FCC Launches Data Innovation Initiative" (rel. Jun. 29, 2010) (launching the "Data Innovation Initiative ... [in order] to modernize and streamline how it collects, uses, and disseminates data"), available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-299269A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299269A1.pdf) (last viewed Dec. 23, 2011); *In the Matter of Modernizing the FCC Form 477 Data Program; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Review of Wireline Competition Bureau Data Practices*, WC Docket Nos. 11-10, 07-38, 08-190, 10-132, Notice of Proposed Rulemaking, FCC 11-14, at ¶ 2 (rel. Feb. 8, 2011) (noting that the Form 477 "provides the Commission with 'a set of data of uniform quality and reliability' superior to other publicly available information sources").

The MDTC, however, recognizes that inherent differences may exist between ETC technology types, services, and obligations, and that necessity may require some level of variation between certain reporting obligations (e.g., Mobility Fund recipients versus CAF Phase II recipients). The Commission has previously taken this approach in its outage reporting requirements for different types of voice service providers.<sup>67</sup>

To assist in the review of reasonable comparability of rates and services, the MDTC reiterates its position that the Commission should update the Form 477 reporting obligations applicable to *all* voice and broadband providers.<sup>68</sup> This update should address, at a minimum, deployment, pricing, and subscription data. This will permit states to use this data to assist in ensuring that recipients of high-cost and CAF support offer services that are reasonably comparable to those in urban areas.

**B. The Commission Should Require Collocation In Mobility Phase II and IP-IP Interconnection From All CAF Recipients.**

The Commission requires that all Mobility Phase I recipients provide:

[R]easonable collocation [to] other providers of services that would meet the technological requirements of the Mobility Fund on newly constructed towers that Mobility Fund recipients own or manage in the unserved area for which they receive support. This includes a duty: (1) to construct towers where reasonable in a manner that will accommodate collocations; and (2) to engage in reasonable negotiations on a not unreasonably discriminatory basis with any party that seeks to collocate equipment at such a site in order to offer service that would meet the technological requirements of the Mobility Fund.<sup>69</sup>

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<sup>67</sup> See, e.g., *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-188, at ¶ 50 (rel. Aug. 19, 2004) (recognizing that “although the concept of a uniformly applied common metric is properly based on the number of people potentially affected by, and duration of, an outage, irrespective of the communications system, differences may necessitate variations in developing the metric for these communications networks or even alternative approaches”).

<sup>68</sup> See generally MDTC Comments, WC Docket Nos. 11-10, 07-38, 08-190, 10-132 (filed Mar. 30, 2011).

<sup>69</sup> *CAF/ICC Order and FNPRM* at ¶¶ 376, 1148.

The Commission seeks comment on adopting the same requirements for Mobility Phase II recipients.<sup>70</sup> Similarly, the Commission asks whether *all* CAF recipients (i.e., those receiving support under CAF Phases I and II, Mobility Phases I and II, Remote Areas Fund, etc.) should be expressly required to offer IP-to-IP interconnection for voice services, in particular, under section 251(a)(1), and how such obligations should be enforced.<sup>71</sup> It states that it “expect[s] all carriers [regardless of designation] to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic” and that “[t]he duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.”<sup>72</sup>

The Commission should impose a baseline level of uniform requirements on all ETCs. In this instance, the Commission correctly determines that it should impose collocation and interconnection requirements on ETCs that receive Mobility Fund and other CAF support, especially since these carriers are already subject to the same requirements pursuant to existing federal law. For instance, as the Commission itself notes, all ETCs are “telecommunications carriers,” and the Communications Act imposes on all telecommunications carriers the duty to negotiate interconnection of voice traffic in good faith, without reference to the underlying technology.<sup>73</sup> Furthermore, pursuant to section 251(a)(1), all telecommunications carriers must “interconnect directly or indirectly with the facilities and equipment of other telecommunications

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<sup>70</sup> *Id.* at ¶ 1148.

<sup>71</sup> *Id.* at ¶ 1028.

<sup>72</sup> *Id.* at ¶ 1011.

<sup>73</sup> *Id.* at ¶¶ 1011, 1028.

carriers,” and section 251(b) imposes additional obligations.<sup>74</sup> In addition, ILECs are subject to further requirements under section 251(a)(3), including collocation obligations.<sup>75</sup> All of these statutory obligations apply, regardless of whether a telecommunications carrier is designated as an ETC.

If the Commission imposes collocation and interconnection obligations on CAF recipients, this action will be consistent with existing law under the Communications Act and will appropriately leverage publicly-funded investments to ensure and promote competitive entry in the future by non-ETCs. Further, such an approach is consistent with the *broadband* nondiscrimination and interconnection obligations imposed by the Recovery Act on BTOP recipients.<sup>76</sup> For instance, the MBI’s *MassBroadband 123* network will be an open access broadband network meant to “allow broadband service providers to connect and offer service, which will increase competition, affordability, and service options.”<sup>77</sup>

**C. Non-Mobility Fund CAF Recipients Should Be Required To Extend Broadband Upon A Reasonable Request For Service in Future Locations.**

Similar to state carrier-of-last-resort obligations, all ETCs must offer supported voice services to all locations throughout their designated service areas upon a reasonable request.<sup>78</sup>

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<sup>74</sup> These obligations include resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. *See* 47 U.S.C. § 251(b)(1)-(5).

<sup>75</sup> *See* 47 U.S.C. § 251(c)(6).

<sup>76</sup> *See* Recovery Act, § 6001(j) (mandating “non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the Commission’s broadband policy statement (FCC 05-15, adopted August 5, 2005)”); NTIA BTOP Fact Sheet, “Nondiscrimination and Interconnection Obligations,” *available at*: [http://www2.ntia.doc.gov/files/Interconnection\\_Nondiscrimination\\_11\\_10\\_10\\_FINAL.pdf](http://www2.ntia.doc.gov/files/Interconnection_Nondiscrimination_11_10_10_FINAL.pdf) (last viewed Dec. 26, 2011).

<sup>77</sup> MBI Press Release, “Massachusetts Broadband Institute Announces Grant Awards to Advance Last-Mile Broadband Solutions” (rel. Jun. 29, 2011), *available at*: <http://www.massbroadband.org/MBIGrantAward062911.pdf> (last viewed Dec. 26, 2011).

<sup>78</sup> 47 C.F.R. § 54.202; *CAF/ICC Order and FNPRM* at ¶ 79; *Petition of the Attorney General for a Generic Adjudicatory Proceeding Concerning Intrastate Competition by Common Carriers in the Transmission of Intelligence by Electricity, Specifically with Respect to Intra-LATA Competition, and Related Issues, Filed with the*

Under the CAF, ETCs located in price cap areas will also be required to offer broadband throughout the “eligible” areas of their service territories, subject to build-out obligations.<sup>79</sup>

Rate-of-return ETCs will only be required to extend broadband on “reasonable request.”<sup>80</sup>

Included in its auction inquiries where price caps decline support, the Commission asks about how to account for growth rates within those areas as part of the auction process.<sup>81</sup>

If the Commission envisions voice service to be an application rather than a service in the future,<sup>82</sup> then the Commission should mandate that all non-Mobility CAF Phase I and Phase II recipients offer broadband to all locations throughout their service territories.<sup>83</sup> This will ensure the long-term, universal availability of voice services.<sup>84</sup> The Commission should also require that auction participants take into account growth estimates during the term of support for their bids in order to ensure that ETCs offer broadband on any reasonable request for service. If any locations or developments arise after initial build-out, but during the term of support, i.e., “future” locations, then the Commission, with state oversight, may permit requesting parties to shoulder a portion of the cost of build-out if the build-out exists beyond certain plant location.<sup>85</sup>

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*Department on December 20, 1983*, D.P.U. 1731, Order (rel. Oct. 18, 1985) (D.P.U. 1731), at 71-77 (implementing Massachusetts’ COLR obligations).

<sup>79</sup> *CAF/ICC Order and FNPRM* at ¶¶ 103, 171. For purposes of this sentence, “ETCs” include Mobility Fund and CAF Phase I and II recipients.

<sup>80</sup> *Id.* at ¶ 208.

<sup>81</sup> *Id.* at ¶ 1205.

<sup>82</sup> *Id.* at ¶ 11.

<sup>83</sup> The MDTC omits from this discussion applicability of this requirement to rate-of-return ETCs. The MDTC refrains from commenting at this time on imposing a similar requirement on Mobility Fund support recipients.

<sup>84</sup> Consistent with the Commission’s goal to “preserve and advance universal availability of voice service.” *CAF/ICC Order and FNPRM* at ¶ 48.

<sup>85</sup> *See* State Member Comments at 131, 135 (urging that “[n]o construction charges should be imposed on a [wireline] customer that is a reasonable distance from a maintained public highway” and pointing out that the Commission previously “[e]ncouraged States to fill in gaps in the definitions of federal terms, such as to use State law to determine what constitutes a “reasonable request” for service”).

Cost considerations should include cost of plant; distance from existing plant; and number of potential locations served.<sup>86</sup>

#### **IV. FEDERAL HIGH-COST ETC SERVICE OBLIGATIONS SHOULD NOT INTERFERE WITH STATE ETC DESIGNATION AUTHORITY**

The Commission will be targeting CAF support to areas unserved by broadband, and seeks comment on whether and how to redefine existing ETC service areas and readjust existing voice service obligations.<sup>87</sup> In addition, recognizing that existing ETCs may no longer ultimately receive high-cost or CAF support, the Commission also seeks comment on appropriate measures for carrier relinquishment of ETC status.<sup>88</sup> The Commission must not override existing state authority to designate ETCs and ETC service areas or diminish states' existing carrier-of-last resort requirements.

One subject tied to these inquiries involves the provisioning of Lifeline and Link-Up services to low-income consumers.<sup>89</sup> Many of the Commission's considerations could interfere with state ETC designation authority and may threaten the availability of basic phone service to low-income consumers. The Commission must ensure that any changes to voice-service obligations resulting from implementation of the CAF do not alter low-income service obligations.

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<sup>86</sup> By way of example, in Massachusetts many cable television franchises include provisions requiring the provider to serve newly constructed locations (or areas) within a community provided the location is within a specific distance from existing cable plant. These provisions also include time limits for completion of such construction. For reference, the MDTC posts copies of most of the city and town cable licenses on its website. *See* <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/municipal-info/cable-television-licenses.html> (last viewed Dec. 26, 2011).

<sup>87</sup> *CAF/ICC Order and FNPRM* at ¶¶ 1089-1102.

<sup>88</sup> *Id.* at ¶¶ 1094-1097.

<sup>89</sup> *Id.* at ¶ 1102.

**A. The Commission Should Not Override Clear State Authority.**

Commission action involving ETC service areas, voice service obligations, or ETC status should not apply where state commissions have clear authority and assert jurisdiction. As discussed above, federal law mandates that “it is the commission designating that carrier—not the ETC itself—that establishes an ETC’s service area.”<sup>90</sup> This includes requests for redefinition of existing service areas.<sup>91</sup> Similarly, an ETC seeking relinquishment of its status must petition the commission, federal or state, that asserts jurisdiction for approval.<sup>92</sup> The Commission proposes to adopt a national framework for redefinition of ETC service areas and contemplates use of its forbearance authority “[t]o the extent that carriers find the ETC relinquishment and service area redefinition procedures prove insufficient.”<sup>93</sup> The MDTC encourages the Commission to adopt non-binding federal guidelines for state commissions to use in redefining ETC service areas. Further, the MDTC opposes the Commission’s use of its forbearance authority since such an action would be unnecessary and likely to conflict with the Commission’s own precedent.

It is within the Commission’s authority to redefine a service area or revoke a carrier’s ETC designation upon request *only if a state commission does not assert jurisdiction.*<sup>94</sup> To the extent that the Commission seeks to influence ETC designations or service territories where states do assert jurisdiction, the Commission should not usurp express state authority based only on the convenience that may be afforded to certain providers. If a carrier seeks redefinition or

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<sup>90</sup> *Supra* at page 13.

<sup>91</sup> *CAF/ICC Order and FNPRM* at ¶ 1091 (specifying that “[n]othing in the statute precludes the redefinition of an existing service area”).

<sup>92</sup> 47 U.S.C. § 214(e)(4) (“A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier...”).

<sup>93</sup> *CAF/ICC Order and FNPRM* at ¶¶ 1096-1097.

<sup>94</sup> State Member Comments at 139.

revocation where a state commission asserts jurisdiction, then the carrier would need to petition the state commission to do so.

The State Members of the Federal-State Joint Board on Universal Service observed that:

[I]t is important [for the Commission] to reaffirm and even strengthen State partnership roles in achieving universal service goals. States are uniquely qualified to differentiate the hotspots where competition is vibrant from the less desirable areas where broadband is not available. States are also best able to assess local conditions generally, and service quality in particular. Finally, States are uniquely qualified to identify public benefits and harms that occur when a new ETC is designated. State commissions and consumer advocates have frequent ongoing contacts with residential and business customer populations in many settings. As a practical matter, these State officials are more easily accessible and available to customers than federal telecommunications agencies and staff.<sup>95</sup>

The MDTC agrees wholeheartedly with the State Members' statement.

Finally, the Commission should not use its forbearance authority for voice service obligations. Such an action is unnecessary and may be contrary to the Commission's own precedent. For instance, many carriers have been designated as carriers-of-last-resort for voice services, and this requirement is often exclusive of their ETC designations. In addition, some carriers receive only high-cost support unrelated to the advancement of universal service, and have done so for years. One such mechanism, interstate access support (IAS), was established to offset reductions in interstate access charge revenues.<sup>96</sup> This is the only high-cost support received by Verizon Massachusetts, for example.<sup>97</sup> Finally, when the Commission first implemented the Joint Board's recommendations after the 1996 Telecom Act, it specified that:

The terms of section 214(e) do not allow us to alter an eligible carrier's duty to serve an entire service area. Consequently, we cannot ... modify the requirements

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<sup>95</sup> *Id.* at 88-89 (responding to the Commission's proposal to forbear from the ETC designation requirement for carriers to receive universal service support).

<sup>96</sup> *CAF/ICC Order and FNPRM* at n.207 (citations omitted).

<sup>97</sup> See *Universal Service Monitoring Report (Data Received Through October 2011)*, CC Docket Nos. 98-202, 96-45 (rel. Dec. 29, 2011), Supplemental Report Material, "HC Claims – by Study Area," only available online at: <http://transition.fcc.gov/wcb/iatd/monitor.html> (last viewed Jan. 17, 2012).

of section 214(e) for carriers whose technology limits their ability to provide service throughout a state-defined service area. We note, however, that any carrier may, for example, use resale to supplement its facilities-based offerings in any given service area.<sup>98</sup>

If the Commission attempted to use its forbearance authority with regard to ETC voice service obligations, it would need to align its initial determinations when it first implemented the Joint Board's recommendations with its current proposals.

Consistent with existing practice involving annual state certifications,<sup>99</sup> ETC designations,<sup>100</sup> and state outreach,<sup>101</sup> the MDTC encourages the Commission to draft guidelines for states to use. The guidelines should incorporate the use of technology-neutral definitions for service areas and should move away from designations involving LEC-centric wire centers.<sup>102</sup> The use of guidelines would help to foster, rather than override, the federal-state partnership that currently exists in achieving universal service discussed by the State Members.

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<sup>98</sup> *Universal Service First Report and Order* at ¶ 141 (discussing the statutory construction of section 214(e)).

<sup>99</sup> *See, e.g., CAF/ICC Order and FNPRM* at ¶¶ 576-577 (discussing federal annual reporting requirements adopted in 2005 and noting that “since the Commission adopted the annual reporting requirements, a number of states have established similar reporting obligations for ETCs within their jurisdiction”); MDTC Annual Notice to Rural Carriers and Supplemental Reporting Requirements, “Certification of Rural Carriers for Receipt of High-Cost Funds” (requiring rural carriers seeking state certification to provide the same information required by the Commission).

<sup>100</sup> *See* State Member Comments at 88 (discussing state adoption of federal criteria for evaluating ETC designations).

<sup>101</sup> *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, at ¶¶ 44-49 (rel. Apr. 29, 2004) (adopting outreach guidelines for ETCs and states); *In the Matter of Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, CC Docket No. 96-45; WC Docket No. 03-109, Recommended Decision, FCC 10J-3 (rel. Nov. 4, 2010), at ¶¶ 56-70 (recommending adoption of certain ETC outreach requirements and retention of guidelines for state outreach).

<sup>102</sup> Time Warner Cable Comments, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, at 17-18 (filed Aug. 24, 2011).

**B. Commission Relaxation of ETC Obligations Must Not Override State Carrier Of Last Resort Requirements.**

Because of certain ambiguities in the Order and FNPRM,<sup>103</sup> the Commission should clarify that relaxation of ETC obligations would not override state carrier-of-last-resort (COLR) requirements. States, not the Commission, imposed COLR obligations on their ILECs, and it is left to the states to decide whether to relax those requirements. In addition, COLR obligations are historically state-imposed requirements *distinct from* ETC obligations, often unrelated to a carrier's receipt of USF support.<sup>104</sup> Any Commission relaxation of an ETC's voice service obligations needs to include an affirmative statement that the action does not override state COLR obligations. This will help to prevent carrier misinterpretation of the Commission's

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<sup>103</sup> The Commission indicates that, through its actions, it does "not seek to modify the existing authority of states to establish and monitor carrier of last resort (COLR) obligations ... [and] decline[s] to preempt state [COLR] obligations ... *at this time.*" *CAF/ICC Order and FNPRM* at ¶¶ 15, 82 (emphasis added). However, it encourages states "to review their respective regulations and policies [involving COLR] in light of the changes we adopt here today and revisit the appropriateness of maintaining those obligations for entities that no longer receive either state or federal high-cost universal service funding and where competitive services are available to consumers." *Id.* at n.468; ¶ 83 (recommending that states "consider providing state support directly to the incumbent LEC to continue providing voice service in areas where the incumbent is no longer receiving federal high-cost universal service support or, alternatively, could shift COLR obligations from the existing incumbent to another provider who is receiving federal or state universal service support in the future"). Although the Commission does not address COLR requirements in its redefinition and revocation inquiries, there exists an implicit association between the topics, in part, due to the Commission's indication that it may revisit state COLR requirements at a later time.

<sup>104</sup> Many COLRs, including Verizon Massachusetts, do not receive *any* federal or state universal service funding to serve the state's high-cost areas. As discussed *supra* at page 28, Verizon only receives Interstate Access Support from the High-Cost Fund. Further, Verizon's Massachusetts COLR obligations are offset by the MDTC's "light-touch" regulation. The Department's predecessor imposed COLR obligations on Verizon for "local exchange service and intra-LATA MTS, WATS, and PLS ... to ensure the continuation of universal service in the Commonwealth." D.P.U. 1731, at 75-76. The Department later permitted Verizon to file an Alternate Regulation Plan ("Alt-Reg Plan") for its intrastate services in place of its previous price cap regulation requirements. See *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*, D.T.E. 01-31-Phase II, Order, at 101 (Apr. 11, 2003) ("*Phase II Order*"). In particular, the Department mandated that Verizon's basic local exchange telephone service for residential customers still be regulated at prices set by the Department, but permitted most of Verizon's other rates and services to be subject to market-based pricing. *Id.* at 66-68, 85-86, 92-94. See also *D.T.E. 01-31-Phase I Order*, at 93 (May 8, 2002). This decision ensured that Massachusetts consumers continued to receive affordable basic telephone service throughout the Commonwealth. See *Phase II Order* at 79, 84.

action. To the extent that COLR obligations are reassessed, then states, not the Commission, should make these determinations.

**C. Federal Changes To High-Cost Voice Service Obligations Should Not Automatically Extend To Low-Income Services.**

Commission relaxation of ETC voice service obligations should not extend to the low-income program. Congress directed the Commission to ensure that low-income consumers in all regions of the country have “access to [affordable] telecommunications and information services.”<sup>105</sup> As a result, ETCs that receive high-cost or CAF support must offer Lifeline and Link-Up services to low-income consumers throughout their designated service territories.<sup>106</sup> The Commission appears to recognize that its redefinition and revocation considerations may conflict with federal policy, because it asks whether it would “thwart achievement of the objectives established by Congress [in section 254(b)] to relieve an existing ETC of the obligation to provide Lifeline if there was no other ETC in that particular area willing to offer Lifeline services.”<sup>107</sup> The Commission may violate Congressional directive if it followed this course because it would leave many low-income voice consumers without a Lifeline provider in contravention of section 254(b)(1) and (3). Alternately, if the Commission assesses relaxation of voice service requirements, then it should assess the low-income program requirements separately. The Commission’s determinations should apply only in those areas where state commissions do not assert jurisdiction over ETCs.<sup>108</sup>

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<sup>105</sup> 47 U.S.C. § 254(b)(1) and (3).

<sup>106</sup> *CAF/ICC Order and FNPRM* at ¶ 79; 47 U.S.C. § 214(e)(1).

<sup>107</sup> *CAF/ICC Order and FNPRM* at ¶ 1102.

<sup>108</sup> *Supra* at pages 12-15.

**V. THE COMMISSION SHOULD MANDATE AN IRREVOCABLE STANDBY LETTER OF CREDIT FOR ALL ETCs.**

To ensure greater accountability under the High-Cost Fund and the CAF, the Commission seeks comment on remedies for non-compliance with its public interest obligations.<sup>109</sup> One proposal is to require a financial guarantee in the form of an irrevocable standby letter of credit (LOC), from all ETCs to be filed by January 1, 2013.<sup>110</sup> The MDTC fully supports this proposal.

The Commission indicates that the goal behind the LOC requirement “is to protect the integrity of the USF funds disbursed to the recipient and to secure return of those funds in the event of a default, even in the event of bankruptcy.”<sup>111</sup> Since Massachusetts is a net-payor state and has a heightened sensitivity to wasteful spending of USF/CAF funds, the MDTC supports the Commission’s endeavors in this regard and urges the Commission to mandate that *all* ETCs be required to obtain an irrevocable standby LOC. This requirement should not only apply to High-Cost and CAF recipients, but should also apply to ETCs that seek only low-income support. Further, to assist states with their monitoring and oversight obligations, the Commission should require ETCs to submit a copy of their LOCs to the applicable state commission.

**VI. CONCLUSION**

Universal service has historically been a federal-state partnership. The Commission should not override express state authority and jurisdiction for simple convenience. In addition, the Commission needs to refine its competitive (reverse) auction proposals to ensure that every

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<sup>109</sup> *CAF/ICC Order and FNPRM* at ¶¶ 1103-1116.

<sup>110</sup> *Id.* at ¶ 1105.

<sup>111</sup> *Id.*

state receives support and that funding is disbursed in an efficient and equitable manner as discussed herein.

Respectfully submitted,

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