

**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
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

February 9, 2012

Rick Chessen
Steven F. Morris
Jennifer K. McKee
National Cable &
Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	2
I. THE COMMISSION SHOULD REJECT INCUMBENT LEC ATTEMPTS TO INCREASE HIGH-COST SUPPORT OR REDUCE OBLIGATIONS	4
A. The Commission Should Do Everything Possible To Keep the Program within the \$4.5 Billion Budget	4
B. Support Should Be Conditioned on a Meaningful Set of Performance and Reporting Obligations.....	8
C. The Commission Should Not Water Down the Waiver Process Established in the <i>CAF Order</i>	10
II. THE COMMISSION SHOULD PRESERVE THE INTERCARRIER COMPENSATION FRAMEWORK ADOPTED IN THE <i>CAF ORDER</i>	11
A. The Commission Should Reject the Rural Associations’ Requests for Additional Cost Recovery	12
B. Carriers Should Not Be Allowed to Charge the Highest Rate for Traffic without Signaling Information.....	13
C. The Commission Should Reject Incumbent LECs’ Call for Asymmetrical Originating VoIP Access Charges.....	14
D. The Commission Should Reject USTelecom’s Request for Changes to Price Cap Incumbent LECs’ Baseline Revenue.....	16
III. THE COMMISSION SHOULD GRANT REQUESTS TO CLARIFY THE <i>CAF ORDER</i> AS NEEDED TO EFFICIENTLY IMPLEMENT THE NEW HIGH-COST SUPPORT AND INTERCARRIER COMPENSATION REGIMES	17
CONCLUSION.....	19

**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
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits these comments opposing petitions for reconsideration filed by incumbent local exchange carriers (LECs) and their trade associations in the above-referenced proceedings.¹ After telling the Commission that it can “no longer afford to delay action” on high-cost support and intercarrier compensation reform and that it should not “let the perfect be the enemy of the good,”² the entire

¹ *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*CAF Order* and *CAF FNPRM*).

² Letter to Chairman Julius Genachowski, Commissioner Michael Copps, Commissioner Robert McDowell, and Commissioner Mignon Clyburn, from Robert W. Quinn, AT&T, et al, WC Docket No. 10-90 at 4 (July 29, 2011) (cover letter for submission of America’s Broadband Connectivity plan) (*ABC Letter*).

incumbent LEC segment of the industry has now either appealed the *CAF Order* or asked the Commission to reconsider many of its key policy decisions.³ For the reasons explained in these comments, the Commission should quickly and decisively reject these requests for reconsideration and move forward with implementing the new regime. It should, however, revise the definition of “unsubsidized competitor” to include all technologies and clarify the process for identifying areas served by such companies.

INTRODUCTION AND SUMMARY

The *CAF Order* laid the groundwork for transitioning an inefficient telecommunications subsidy regime into a more efficient, more equitable broadband support mechanism. The basic policy framework adopted by the Commission includes a number of commonsense elements: (1) constraining total support by establishing a budget; (2) beginning to phase out legacy voice support and phase in broadband support; (3) targeting support to areas not already served by unsubsidized competitors; (4) demanding greater accountability and transparency from high-cost support recipients; (5) transitioning intercarrier compensation to a single, low unified termination rate that applies to all telecommunications traffic and, eventually, to a bill-and-keep regime. Each element of this approach was recommended in the National Broadband Plan, proposed in the February 2011 notice of proposed rulemaking, and debated extensively before it was adopted unanimously by the Commission in the *CAF Order*.

While the general direction of the changes included in the *CAF Order* was entirely foreseeable, it seems that the incumbent LECs are having second thoughts about encouraging the

³ The National Telecommunications Cooperative Association has appealed the order, while the National Exchange Carrier Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance (collectively Rural Associations), the Independent Telephone and Telecommunications Alliance, and USTelecom filed petitions for reconsideration. In addition, numerous incumbent LECs that are members of these associations individually have appealed or sought reconsideration.

Commission to move forward with its reform efforts. As set forth in the various petitions for reconsideration, the incumbents believe that the budget is not as large as it should be;⁴ the phase out of legacy support too fast and the introduction of new support too slow;⁵ the anticipated profit from accepting support too small and the regulatory burden too great.⁶ Consequently, after repeatedly warning that that the Commission “can no longer afford to delay action on these issues that are enormously important,”⁷ the incumbent LECs have essentially asked for a “do-over” on every key issue resolved by the *CAF Order*.

As NCTA explains in these comments, the Commission should promptly reject all of these incumbent LEC requests.⁸ The incumbent LECs largely rehash arguments that the Commission has fully considered and addressed; it is time to move forward with implementation. Absent evidence that the new regime will have significant negative consequences for *consumers* – a fact-specific inquiry better suited to a request for waiver than a petition for reconsideration – the best approach for the Commission is to stick to the decisions it adopted unanimously in the *CAF Order* and to devote its limited time and resources to implementing those decisions (including clarification of the rules as necessary to facilitate that implementation and adoption of further reforms in response to the *CAF FNPRM*.)

⁴ Rural Association Petition at 6-8.

⁵ *See, e.g.*, USTelecom Petition at 5; Rural Association Petition at 3.

⁶ *See, e.g.*, USTelecom Petition at 3-4; Rural Association Petition at 22-25.

⁷ ABC Letter at 4.

⁸ As NCTA has noted previously, Alaska presents special circumstances that require different treatment than other states. As explained by GCI in its petition for reconsideration, the *CAF Order* falls short of what is necessary to properly account for the situation in Alaska. We encourage the Commission to take additional steps to ensure that the interests of consumers in Alaska are reflected in the new regime. GCI Petition at 2-3.

I. THE COMMISSION SHOULD REJECT INCUMBENT LEC ATTEMPTS TO INCREASE HIGH-COST SUPPORT OR REDUCE OBLIGATIONS

The majority of the issues raised by the incumbent LECs regarding the high-cost support regime adopted in the *CAF Order* fall into two buckets – requests for more money and requests for fewer obligations. We address the most significant of these requests below.

A. The Commission Should Do Everything Possible To Keep the Program within the \$4.5 Billion Budget

As explained in the *CAF Order*, one of the most significant issues the Commission hoped to address in reforming the high-cost program was putting an end to the continual growth in the overall program size and the corresponding increases in the contribution factor.⁹ To achieve this objective, the Commission for the first time established an annual budget of \$4.5 billion for the high-cost program.¹⁰ It also made decisions about how the overall level of support should be allocated among different mechanisms and, to help keep the overall program on budget, it took steps to constrain demand for the various mechanisms.¹¹

The incumbent LECs have challenged all of these steps in their petitions for reconsideration. The Rural Associations argue that the budget – both the overall \$4.5 billion budget and the \$2 billion allocated to rate of return (ROR) LECs – violates the Act and will interfere with achieving the goals of Section 254 of the Act.¹² They also argue that it was unlawful and/or irrational for the Commission to cap the amount of operating and capital expenses that are eligible for support, phase out support in areas where 100 percent of

⁹ *CAF Order* at ¶¶ 123-26; see also *Bringing Broadband to Rural America: The Home Stretch on USF and ICC Reform* Julius Genachowski, Michael Copps, Robert McDowell, and Mignon Clyburn, FCC Commissioners (August 8th, 2011) (“we will seek to achieve reform in a comprehensive and legally sustainable way that . . . contains the size of the Universal Service Fund . . .”) at <http://www.fcc.gov/blog/bringing-broadband-rural-america-home-stretch>.

¹⁰ *CAF Order* at ¶ 125.

¹¹ *Id.* at ¶ 126.

¹² Rural Associations Petition at 6.

households are served by an unsubsidized competitor, and take other steps to reduce or limit support.¹³

The price cap carriers also want more money, notwithstanding that the *CAF Order* almost doubles the amount of money allocated to their service areas. They argue that the Phase I mechanism – which allocates \$300 million exclusively to price cap LECs in blatant violation of the principle of competitive neutrality – is unsatisfactory because a \$775 subsidy per location is not enough money¹⁴ and because the Commission did not implement the Phase I mechanism exactly as they had proposed.¹⁵ USTelecom also raises spurious concerns about the supposed “flash cut” reduction of legacy support for carriers that elect not to participate in the CAF mechanism¹⁶ and asserts that the two-year phase out of Safety Net Additive (SNA) support is unlawful and unwarranted because competitive eligible telecommunications carrier (ETC) support is phased out over five years and the Commission is obligated “to ensure equal treatment of ETCs.”¹⁷

All of these arguments should be summarily rejected. It is, of course, not surprising that companies that have been living off ever-increasing government subsidies for years would react negatively to any effort to reform the system in a manner that might constrain the growth of those subsidies. But none of the arguments advanced by the incumbent LECs are remotely compelling and some border on the ridiculous. For example, the assertion by the Rural Associations that the Commission went too far by taking the tiny step of eliminating support in a handful of study areas where 100 percent of households are served by a competitive provider

¹³ *Id.* at 9-19.

¹⁴ Frontier/Windstream Petition at 12-20; USTelecom Petition at 3-4.

¹⁵ Frontier/Windstream Petition at 3-12

¹⁶ USTelecom Petition at 5-8.

¹⁷ *Id.* at 28.

– a step that does not even begin to take effect until the Commission takes further action in the *CAF FNPRM* – illustrates an utter lack of seriousness about the need for meaningful reform.¹⁸

The Commission appropriately found that changes were needed in the legacy regime for ROR carriers and that these changes could, and should, be implemented while maintaining total support levels at the current level of approximately \$2 billion per year.¹⁹ The Commission should move forward with the changes it adopted.

The concerns raised by the USTelecom and the price cap carriers are equally lacking. The Phase I mechanism providing for \$300 million exclusively for price cap LECs, for example, was designed to be a voluntary program that provided a quick financial boost to areas with no broadband service. The Commission specifically adopted a support level – \$775 per unserved household – that was designed to exceed the cost of serving the lowest cost unserved areas, an approach that all but guarantees excess profit for the incumbents.²⁰ Not content to have this \$300 million gift dropped in their laps, the incumbents are asking for major revisions that appear to do nothing but raise the price tag and delay the onset of any broadband service commitments. If the incumbents do not like what the Commission adopted, the Commission should eliminate Phase I and move right to Phase II.

USTelecom’s concerns about the supposed “flash cut” in legacy support are equally unconvincing. The reductions that they find so troubling will not take effect until 2013 at the

¹⁸ Moreover, now that the Commission has established a \$2 billion budget for ROR carriers, the Rural Associations’ continued resistance to reducing support in areas experiencing significant competition primarily has the effect of reducing the amount of money that might be available to their own member companies that operate in areas where there is less competition and support is more critical.

¹⁹ *CAF Order* at ¶ 195.

²⁰ *Id.* at ¶¶ 140-42. As explained in NCTA’s recent comments in response to the *CAF FNPRM*, the combination of the exclusive nature of the Phase I support program and the excessive support levels not only violates the principle of competitive neutrality, it undermines the Commission’s ultimate goal of distributing all support through a competitive bidding process. *See* Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed January 18, 2012) at 10 (NCTA *CAF FNPRM* Comments).

earliest (and possibly much later) and only apply to carriers that choose not to provide supported services. The suggestion that these companies need to keep receiving subsidies for five years after they stop providing the required services should be a non-starter for the Commission.

Perhaps the most outrageous request in any of the petitions is USTelecom's request for a five-year phase down of SNA support. SNA is a program that the Commission found was "no longer meeting its intended purpose."²¹ Rather than supporting companies that were making exceptional investments, it was largely being distributed to companies that qualified because they faced significant line loss.²² USTelecom's suggestion that the Commission preserve for five years a program that "does not provide the right incentives for investment" and "does not ensure that investment is reasonable or cost-efficient" is hard to take seriously.²³

USTelecom's further argument that this five-year phase down is necessary to preserve "equal treatment of ETCs" makes a bad argument worse and merely serves to illustrate that the incumbents are willing to say just about anything to keep the subsidies flowing. NCTA strongly advocated equal treatment of incumbent LECs and competitive providers throughout the proceeding,²⁴ but that advocacy met strong resistance at every turn by USTelecom and its member companies, which insisted that the only possible way to move forward was with a regime in which incumbents were given exclusive or preferred access to virtually every dollar of support. For USTelecom to now espouse the principle that "equal treatment" is required with respect to this one minor aspect of a program that otherwise entirely favors the incumbents (by

²¹ *CAF Order* at ¶ 198.

²² *Id.* at ¶ 249.

²³ *Id.* at ¶ 251.

²⁴ *See. e.g.*, Letter from Steven F. Morris and Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed Oct. 21, 2011).

preserving and expanding support for incumbents while eliminating it for competitors over five years) is beyond the pale.

B. Support Should Be Conditioned on a Meaningful Set of Performance and Reporting Obligations

In addition to putting the high-cost program on firmer financial footing, the Commission also identified two more significant reform goals – transitioning from a voice-based regime to a regime that explicitly supports broadband and improving the accountability of recipients of high-cost support.²⁵ The *CAF Order* includes a number of important steps that are designed to achieve these goals. In particular, the Commission adopted a CAF mechanism for price cap carriers to support broadband in areas not served by unsubsidized providers, required ROR carriers to provide broadband as a condition of receiving support, and adopted new reporting obligations for all high-cost support recipients to better monitor how high-cost support is spent.²⁶

In their petitions for reconsideration, the incumbent LECs ask the Commission to reconsider virtually all of the decisions it made to improve accountability and transition to a broadband-oriented regime. Where the Commission imposed construction requirements, the incumbents want them eliminated.²⁷ Where it imposed build-out timelines, the incumbents want them extended.²⁸ Where the Commission retained state obligations, the incumbents want them preempted.²⁹ Where it imposed reporting requirements, they want them eliminated, delayed, modified or, at a minimum, that they not be made public.³⁰

²⁵ *CAF Order* at ¶ 11.

²⁶ *Id.* at ¶¶ 20, 26, 31.

²⁷ Rural Associations Petition at 2-6.

²⁸ USTelecom Petition at 26-27.

²⁹ *Id.* at 13.

³⁰ Rural Associations Petition at 22-25; USTelecom Petition at 15-22.

These incumbent LEC arguments all proceed from the same flawed premise – that the incumbent LECs need every dollar of legacy support they receive today and therefore the cost of any new obligations must be reimbursed by the new high-cost support mechanisms. But that theory glosses over the serious problems in the legacy regime that the Commission was trying to fix. For the most part, the program has been on auto-pilot for years, particularly with respect to price cap LECs, paying money to incumbents without regard to where they were spending it or what, if anything, they had accomplished. The Commission could have addressed these concerns by immediately reducing legacy support levels and quickly moving to a procurement-based distribution mechanism, as NCTA recommended, but instead it chose a more gradual approach that largely keeps legacy support for incumbents at current levels but imposes a more rigorous set of obligations on companies that choose to continue receiving that support.

In the context of a regime that largely preserves legacy support for incumbents on a transitional basis (while immediately reducing support to competitors), complaints about the burdens of any new obligations ring hollow. As the Commission made clear, participation in this new regime is voluntary and those carriers that are not interested or willing to meet the obligations established by the Commission have options as to whether and how they participate.³¹ If the Phase I timelines are too aggressive, carriers can wait until Phase II. If they do not want to take advantage of the opportunity offered only to incumbents to make the statewide commitment in Phase II, they can take their chances in a competitive bidding process. Any of these options would be preferable to having the Commission revisit every issue in the *CAF Order* until it is precisely as the incumbents envisioned it.

³¹ *CAF Order* at ¶¶ 144, 160.

NCTA is especially concerned about requests to substantially diminish the reporting obligations imposed on recipients or to prevent public disclosure of critical information regarding where, and how, federal subsidies are being used. As the Commission has acknowledged, one of the biggest flaws with the legacy regime is that there were inadequate mechanisms in place to ensure that money was being spent where it was needed and that recipients were achieving the intended results.³² While the incumbents are correct that reporting imposes some cost burden on companies that must report, reporting is an essential element of every government subsidy program. The incumbents' suggestion that the Commission simply hand out billions of dollars every year without imposing corresponding reporting obligations is untenable. If companies are unwilling to be accountable to the public for how they spend the money, they should not participate in the program.

C. The Commission Should Not Water Down the Waiver Process Established in the *CAF Order*

The Commission's basic approach in the *CAF Order* – keeping existing support levels but expecting incumbents to do more with the money – is a sound one. But the Commission recognized that in some cases the combination of increased burdens and reduced support could have negative consequences and therefore it established a waiver process. As explained in the *CAF Order*, the primary purpose of the waiver process is to ensure that the Commission's reform will not have a significant negative effect on consumers.³³ Of course, as with every other area addressed in the *CAF Order*, the incumbent LECs have raised issues with the waiver process as well.³⁴ The Rural Associations assert that the waiver process is unreasonably burdensome and

³² *Id.* at ¶¶ 582-591.

³³ *Id.* at ¶ 540.

³⁴ Rural Associations Petition at 19-22.

“appears to be nothing more than a fig leaf designed to make small companies jump through administrative hoops in futile attempts to pursue relief.”³⁵

Putting aside the Rural Associations’ suggestion that the Commission has some vendetta against small companies, they seem to misunderstand the Commission’s objectives. Because the high-cost regime operates pursuant to general rules that apply to broad classes of companies, there necessarily is a risk that the rules might overcompensate or undercompensate individual providers. In cases where there is alleged undercompensation, the Commission appropriately has established a waiver process that requires a “case-by-case review” based on “detailed information about individualized circumstances” to determine how much is actually needed to achieve the Commission’s objectives in a particular geographic area.³⁶ From the perspective of consumers who ultimately pay for the high-cost program, that is a far more fiscally responsible approach than the legacy regime, which did not require a detailed waiver process because it tended to overcompensate *all* recipients.

II. THE COMMISSION SHOULD PRESERVE THE INTERCARRIER COMPENSATION FRAMEWORK ADOPTED IN THE *CAF ORDER*

The *CAF Order* included significant reforms of the intercarrier compensation regime and the Commission should reject reconsideration requests that seek to reverse or undo these reforms. The Commission adopted bill-and-keep, under which carriers recover their costs from their own end users rather than from other carriers, as the default methodology for all intercarrier compensation.³⁷ As a transition to the ultimate end-state of bill-and-keep, the Commission capped and reduced some intercarrier compensation rates. The Commission adopted one transition path for price cap incumbent LECs and a slightly longer transition for ROR incumbent

³⁵ *Id.* at 20, 21.

³⁶ *CAF Order* at ¶ 539.

³⁷ *Id.* at ¶ 736.

LECs.³⁸ The Commission also adopted a prospective intercarrier compensation framework for VoIP-PSTN traffic.³⁹ As a way to ease the transition for incumbent LECs, the Commission adopted a recovery mechanism that would provide some additional universal service high-cost support to these carriers to replace some of the intercarrier compensation revenue lost as a result of reform.

A. The Commission Should Reject the Rural Associations’ Requests for Additional Cost Recovery

In their petition for reconsideration, the Rural Associations correctly note that the Commission capped and reduced intercarrier compensation rates, but then go on to argue that ROR incumbent LECs should be made whole for the entirety of their lost intercarrier compensation revenue.⁴⁰ Specifically, the Rural Associations request that the Commission either 1) reconsider the cap and reduction of ROR incumbent LEC charges, or 2) impose an additional charge on other carriers that would go to compensate incumbent LECs for their intercarrier compensation “losses.”⁴¹ The Commission should decline the Rural Associations’ request to compensate incumbent LEC intercarrier compensation reductions through the imposition of excessively high access charge rates or through additional charges. As the Commission stated, a significant policy goal of its reforms is to “ensure that consumers pay only for services that they choose and receive, eliminating the existing opaque implicit subsidy system under which consumers pay to support other carriers’ network costs.”⁴² The additional charges that the Rural Associations seek directly contravene this policy goal, as they would impose ROR incumbent

³⁸ *Id.* at ¶ 801.

³⁹ *Id.* at ¶ 933.

⁴⁰ Rural Associations Petition at 29-31.

⁴¹ *Id.* at 30-31.

⁴² *CAF Order* at ¶ 738.

LECs' costs on other companies' consumers. The Commission has already provided ROR incumbent LECs with a longer intercarrier compensation transition and a more favorable recovery mechanism.⁴³ Granting the additional cost recovery requested by the Rural Associations is contrary to the goals of reform and is not warranted.

B. Carriers Should Not Be Allowed to Charge the Highest Rate for Traffic without Signaling Information

The Commission should reject the Rural Associations' request to allow carriers to unilaterally assess the highest available rate to carriers that pass traffic without sufficient call signaling information.⁴⁴ The Commission made clear in the *CAF Order* that parties must pass, and cannot remove or alter, call signaling information.⁴⁵ An entity that fails to comply would be in violation of the Commission's rules and subject to appropriate enforcement action and penalties.⁴⁶ The Commission should reject the Rural Associations' call to allow terminating carriers to self-enforce Commission rules, except when the parties have explicitly agreed to such conditions in an interconnection agreement. As the Commission recognized, "[p]roposals to impose upstream liability or financial responsibility on carriers threaten to unfairly burden tandem transit and other intermediate providers with investigative obligations. . . Moreover, the phantom traffic rules we adopt herein are not intended to ensnare providers that happen to receive incomplete signaling information."⁴⁷ Adoption of the Rural Associations' proposal would encourage terminating carriers to question signaling information and to claim violations where none may exist, and to force entities that have not violated the Commission's rules to pay

⁴³ *Id.* at ¶¶ 801, 851.

⁴⁴ Rural Associations Petition at 38-39.

⁴⁵ *CAF Order* at ¶¶ 719-20.

⁴⁶ *Id.* at ¶ 730.

⁴⁷ *Id.* at ¶ 732.

excessive intercarrier compensation charges. The Commission should again decline to adopt the Rural Associations' approach.

C. The Commission Should Reject Incumbent LECs' Call for Asymmetrical Originating VoIP Access Charges

As the Commission made clear in the *CAF Order*, VoIP-PSTN traffic will be subject to rates equivalent to interstate rates and rate elements for both originating and terminating functions, regardless of whether the call originates or terminates in VoIP.⁴⁸ Some incumbent LECs, however, ask the Commission to ignore this fundamental principle and apply different originating access rates to VoIP-PSTN calls depending on whether they originate or terminate in IP.⁴⁹ According to these incumbent LECs, if a VoIP-PSTN call originates in Time Division Multiplex (TDM) format, then the carrier should be able to assess originating access charges at intrastate rates, but if a VoIP-PSTN call originates in IP, then the carrier could assess originating access charges only at interstate rates.⁵⁰ The Commission should reject calls to apply different rates to VoIP-PSTN traffic based on the technology used by the originating entity.

As the Commission made clear, the prospective intercarrier compensation regime adopted in the order applies to VoIP-PSTN traffic, which the Commission defined as “traffic exchanged over PSTN facilities that originates and/or terminates in IP format. . . . focus[ing] specifically on whether the exchange of traffic between a LEC and another carrier occurs in Time Division Multiplexing (TDM) format (and not in IP format).”⁵¹ With respect to this traffic, the Commission specifically “decline[d] to adopt an asymmetric approach that would apply VoIP-specific rates for only IP-originated or only IP-terminated traffic,” finding that asymmetric

⁴⁸ *Id.* at ¶ 942.

⁴⁹ Frontier/Windstream Petition at 21-29.

⁵⁰ *Id.*

⁵¹ *CAF Order* at ¶ 940.

payments create “marketplace distortions that give one category of providers an artificial advantage in costs and revenues relative to other market participants.”⁵² The Commission adopted the following prospective transitional rates for VoIP-PSTN traffic in the absence of an intercarrier compensation agreement: “Default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates; Default intercarrier compensation rates for other VoIP-PSTN traffic are the otherwise-applicable reciprocal compensation rates.”⁵³ The Commission did not limit these default rates to terminating access rates, nor did it exclude originating access from the default rates. In fact, the Commission specifically stated, “toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates.”⁵⁴ The Commission should reject requests to reverse this decision and to treat originating traffic asymmetrically for VoIP-PSTN traffic.

Similarly, the Commission should reject US Telecom’s request to prohibit carriers that exchange VoIP traffic from assessing originating access charges even at interstate rates.⁵⁵ Without explanation or support of any kind, USTelecom asserts that the Commission would be authorizing VoIP providers to assess originating interstate access charges “for the first time.” To the contrary, local exchange carriers have had the ability to assess originating access pursuant to section 251(g) of the Act on calls exchanged in TDM, regardless of whether the call began with the customer in IP format.⁵⁶ The Commission did not “create a new entitlement” for carriers that exchange VoIP traffic as USTelecom contends, but merely adopted a transitional regime

⁵² *Id.* at ¶ 942.

⁵³ *Id.* at ¶ 933.

⁵⁴ *Id.* at ¶ 961.

⁵⁵ USTelecom Petition at 39.

⁵⁶ *CAF Order* at ¶¶ 956-57.

pursuant to its rulemaking authority to implement Section 251(b)(5).⁵⁷ Accordingly, USTelecom's request should be rejected.

D. The Commission Should Reject USTelecom's Request for Changes to Price Cap Incumbent LECs' Baseline Revenue

In the *CAF Order* the Commission adopted a baseline amount to use in the calculation of recovery mechanism support for price cap incumbent LECs. To provide certainty, the Commission set this price cap baseline at the amount of a price cap incumbent LEC's total switched access revenues that are: 1) being reduced as part of intercarrier compensation reform; 2) billed for services provided in fiscal year 2011; and 3) paid to the incumbent LEC by March 31, 2012.⁵⁸ USTelecom asks the Commission to eliminate the requirement that revenues be paid to be included in the baseline.⁵⁹ However, the Commission made clear that the baseline amount should not include "disputed revenues or revenues otherwise not recovered, for whatever reason."⁶⁰ To do otherwise would allow price cap incumbent LECs to receive universal service support for revenue to which they were not entitled. The Commission correctly found that only undisputed revenue, rather than revenue that may have been erroneously or wrongfully billed by the price cap incumbent LEC, should be included in the recovery mechanism baseline. The fact that it may, as USTelecom claims, require price cap incumbent LECs to employ manual processes to determine the correct amount of collected revenue is no basis for eliminating this condition. Price cap incumbent LECs should not be awarded additional recovery mechanism support simply because it may be inconvenient for them to access information that is fully within their possession and control.

⁵⁷ *Id.* at ¶¶ 955-57

⁵⁸ *Id.* at ¶ 880.

⁵⁹ USTelecom Petition at 30-31.

⁶⁰ *CAF Order* at ¶ 880.

III. THE COMMISSION SHOULD GRANT REQUESTS TO CLARIFY THE *CAF ORDER* AS NEEDED TO EFFICIENTLY IMPLEMENT THE NEW HIGH-COST SUPPORT AND INTERCARRIER COMPENSATION REGIMES

As described in the prior sections, the Commission should reject any requests that it revisit significant policy decisions made in the *CAF Order*. But the petitions for reconsideration also raise a number of issues where clarification of the *CAF Order* or the accompanying rules is needed to facilitate implementation of the new regime and avoid future disputes. NCTA does not object to these sorts of requests and in this section we address a handful of issues where we believe clarification would be helpful to all interested parties.

Of particular concern to NCTA's members are the definition of the term "unsubsidized competitors" and the identification of areas served by those companies. Three petitioners – ViaSat, NTCH, and the Wireless Internet Service Providers Association (WISPA) – raise questions about which entities will be considered unsubsidized competitors for purposes of the Phase I or Phase II price cap mechanisms. Specifically, ViaSat asks that satellite providers be considered unsubsidized competitors when they meet the relevant criteria, NTCH asks that mobile wireless providers be considered unsubsidized competitors when they meet the relevant criteria, and WISPA asks the Commission clarify that support will not be available where one entity offers broadband service and a separate entity offers voice service.⁶¹

NCTA agrees with the basic premise underlying all of these petitions. Support should not be made available in any area where companies are willing to provide the supported services without subsidy, regardless of the technology used by those competitors. As the Commission explained in the *CAF Order*, "[p]roviding universal service support in areas of the country where another voice and broadband provider is offering high-quality service without government

⁶¹ ViaSat Petition at 9-10; NTCH Petition at 13; WISPA Petition at 5.

assistance is an inefficient use of limited universal service funds.”⁶² Devoting limited funds to areas that are served by wireless and/or satellite providers is no less inefficient than spending that money in areas served by cable operators and other fixed terrestrial providers. Nor should it make any difference if the unsubsidized voice and broadband services are provided by a single company or multiple companies.

The Commission also should clarify the issue raised by the Independent Telephone and Telecommunications Alliance (ITTA) regarding the appropriate role of the National Broadband Map in determining whether an area is served by an unsubsidized competitor.⁶³ NCTA agrees with ITTA that mapping data identifying an area as served or unserved should be considered a rebuttable presumption. All interested parties, not just carriers as suggested by ITTA, should have an opportunity to demonstrate that the mapping data understates or overstates the level of service in a particular area.

⁶² *CAF Order* at ¶ 281. As explained in NCTA’s comments in response to the *CAF FNPRM*, it is critical that the Commission move forward with implementing this policy in areas served by ROR incumbent LECs. Until the Commission establishes a process for reducing support in areas that are served by competitors and targeting it to those areas with no competition, the high-cost support regime will continue to be wasting limited subsidy funds and thwarting the efforts of private companies to provide consumers with additional broadband choices. NCTA *CAF FNPRM Comments* at 3-9.

⁶³ ITTA Petition at 5.

CONCLUSION

The *CAF Order* laid the groundwork for transitioning an inefficient telecommunications subsidy regime into a more efficient, more equitable broadband support mechanism. The efforts of the incumbent LECs to modify or delay portions of the order that did not meet their expectations are disappointing, but perhaps not surprising given their historical approach to progress in these areas. NCTA strongly encourages the Commission to continue moving forward with the course established in the *CAF Order*, rather than revisiting settled issues that will only delay achievement of the Commission's public policy objectives.

Respectfully submitted,

/s/ **Rick Chessen**

Rick Chessen
Steven F. Morris
Jennifer K. McKee
National Cable &
Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

February 9, 2012