Before the
Federal Communications Commission
Washington, D.C. 20544

In the Matters of	)	
	)	
Connect America	)	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

REPLY COMMENTS OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

South Dakota Public Utilities Commission
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The South Dakota Public Utilities Commission ("SDPUC") submits these reply comments regarding the Federal Communications Commission's ("FCC" or "Commission") Report and Order and Further Notice of Proposed Rulemaking[1] in the above referenced dockets.

With the FNPRM, the FCC sought comment on a number of issues regarding the further implementation of its changes to the universal service and intercarrier compensation systems. The SDPUC provides comments on two areas – the elimination of support for areas with an unsubsidized competitor and eligible telecommunications carrier ("ETC") service obligations.

I. ELIMINATING SUPPORT FOR AREAS WITH AN UNSUBSIDIZED COMPETITOR

In its *Order*, the FCC adopted a rule that phases out, over three years, all high-cost support received by incumbent rate-of-return carriers in study areas where an unsubsidized competitor or competitors offer voice and broadband service to 100 percent of the residential and business locations within the incumbent rate-of-return carrier's study area.[2] These voice and broadband services must meet the FCC's performance obligations.[3] In its *FNPRM*, the Commission seeks comment on its proposed methodology for determining which rate-of-return study areas have 100 percent overlap by an unsubsidized carrier.[4] As part of this discussion, the

[1] 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*Order* or *FNPRM*).

[2] *Order* ¶ 283.

[3] *Id.*

[4] *FNPRM* ¶ 1061.

Commission posed questions regarding state involvement in this process, including whether a state commission should be given a time period to comment on an overlap analysis completed by the FCC or, in the alternative, whether state commissions should advise the FCC as to which study areas served by rate-of-return carriers have unsubsidized facilities-based competitors.[5]

With respect to the proposed methodology for determining the areas with 100 percent overlap by an unsubsidized carrier, the Commission seeks comment regarding whether it should rely on the use of two sets of data, namely, the TeleAtlas Wire Center Boundaries and the State Broadband Initiative ("SBI") administered by the National Telecommunications Information Administration ("NTIA"). In its FNPRM, the FCC recognized that reliance on these data sets has "several potential limitations."[6] For example it was noted that, with respect to SBI data, small blocks could be reported as served even if just one location in that block has service, or could have service, within a typical service interval. The FCC sought comment on whether, as a result of this limitation, areas will be counted as served by an unsubsidized competitor even if a number of locations are not actually served.[7] For the TeleAtlas data, the FNPRM stated that this data "may not represent the actual incumbent local exchange carrier footprint in all instances."[8]

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[5] *FNPRM* ¶ 1072.

[6] *FNPRM* ¶ 1066.

[7] *FNPRM* ¶ 1068.

[8] *FNPRM* ¶ 1066.

Initial comments received in this proceeding have also expressed concerns with reliance on these data sets.[9] The SDPUC shares these concerns and urges the Commission to carefully consider the adverse effects of relying on incomplete or erroneous data to determine the extent to which an unsubsidized competitor offers service within an incumbent rate-of-return carrier's study area. The reason for our concerns is readily apparent given that in South Dakota our rate-of-return carriers' study areas cover around 80 percent of our state. As we have stated in prior comments, it is difficult to overstate the challenges that our carriers face in providing voice and broadband services to their customers in South Dakota. South Dakota is the 17th largest state but is ranked 46th in population density. Universal service support is crucial for these carriers and eliminating support for a rate-of-return carrier based on an *erroneous* finding that a study area is served by an unsubsidized carrier is likely to lead to South Dakota's rural consumers lacking access to affordable voice *or* broadband services. This is hardly the result intended by the FCC given its goal of ensuring robust and affordable voice and broadband services.[10]

In order to avoid these unintended results, the SDPUC joins with other commenters in advocating for state commission involvement in determining whether the 100 percent overlap

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[9] *See* Initial Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance ("Rural Associations") at 76-78; Comments on Further Inquiry of the Vermont Public Service Board at 4-5 ("Existing mapping data through the broadband mapping initiative provides a very inaccurate picture of broadband availability and speeds. Census blocks with only a single broadband connection are considered served, even though most customers have no access to those services.").

[10] *Order* ¶ 1.

is met.[11] The SDPUC is well-positioned to take on this responsibility. Throughout the years, the SDPUC has closely monitored the emergence of competitive providers in South Dakota. In addition, we receive annual reports from all of our telecommunications companies in which they report the areas where they serve, how many customers they currently serve, and how they serve their customers. Further, our annual certification process for ETCs requires progress reports from each ETC regarding its service improvement plans. As noted by the Rural Associations, "[s]tate commission are by nature and proximity better equipped than the federal government to make local competition determinations."[12]

The Commission also seeks comment on whether it should adjust support levels in areas where there is less than 100 percent overlap by unsubsidized fixed voice and broadband service providers.[13] We strongly urge caution regarding proceeding with adjusting support levels with less than 100 percent overlap. In the *Order*, the Commission states that "there are instances where an unsubsidized competitor offers broadband and voice service to a significant percentage of the customers in a particular study area (typically where customers are concentrated in a town or other higher density sub-area), but not to the remaining customers in the rest of the study area, and that continued support may be required to enable the availability of supported voice services to those remaining customers."[14] The Commission must take care not to minimize or underestimate this likely scenario.

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[11] *See* Comments on Further Inquiry of the Vermont Public Service Board at 5; Initial Comments of Rural Associations at 78-80.

[12] Initial Comments of Rural Associations at 79.

[13] *FNPRM* ¶ 1073.

[14] *Order* ¶ 282.

The simple fact is that if an unsubsidized carrier is serving a portion of a rural South Dakota carrier's study area, that unsubsidized carrier will *more than likely* be serving within the towns located in that study area, not in the more expensive to serve rural areas. To the extent the rural carrier loses its customers in town to an unsubsidized carrier, the rural carrier's costs to serve its remaining customers in its study area will increase since it will be left with the customers who are more expensive to serve. Decreasing support may lead to the rural carrier being unable to continue to serve those rural customers or may lead to non-affordable voice and broadband services. As stated in the Order, "[t]he universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access – in addition to basic voice service – where they live, work, and travel."[15] The FCC needs to be vigilant in ensuring that its reforms meet this challenge. The SDPUC emphasizes that its concern is not only that access to voice and broadband services be *increased*, but that current access to these services is not *decreased* due to a lack of universal service funding necessary to maintain existing networks.

II. ETC SERVICE OBLIGATIONS

In light of the changes the FCC has made to the funding mechanisms, the FNPRM also discusses possible revisions to an ETC's service obligations. Specifically, the FCC seeks comment on "what Commission action may be appropriate to adjust ETCs' existing service obligations as funding shifts to these new, more targeted mechanisms. We aim to ensure that obligations and funding are appropriately matched, while avoiding consumer disruption in access to

[15] *Order* ¶ 5.

communications service."[16] The *FNPRM* notes that under the new funding mechanisms, "ETCs may receive reduced support in their existing service areas, and ultimately may no longer receive any federal high-cost support."[17] The FCC asks whether, due to these reductions, ETCs' voice service obligations should be relaxed or even eliminated.[18] In addition, the FCC asks whether it should adopt a "federal framework" for redefining service areas.[19] The *FNPRM* discusses the use of existing ETC relinquishment and service area redefinition procedures, backstopped by forbearance, as providing an appropriate case-by-case framework to address these issues.[20] The *FNPRM* also discusses limiting an ETC's service area to those specific areas where an ETC is receiving universal service support.[21]

As noted by the FCC at the beginning of its discussion of these issues, section 214 of the Act gives to the *states* the authority to designate ETCs and set service areas.[22] The FCC's authority is limited to those cases in which the state commission lacks the jurisdiction to designate a carrier as an ETC.[23] The imposition of new funding mechanisms by the FCC does not, and should not, affect the continued ability of a state commission to designate ETCs. The SDPUC agrees with the Nebraska Public Service Commission that the ETC designation should continue to be a "fact-finding process performed at the state level to determine the

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[16] *FNPRM* ¶ 1089.

[17] *FNPRM* ¶ 1095.

[18] *Id.*

[19] *FNPRM* ¶ 1096.

[20] *FNPRM* ¶ 1097.

[21] *FNPRM* ¶ 1098.

[22] *FNPRM* ¶ 1090; *see* 47 U.S.C. § 214(e).

[23] 47 U.S.C. § 214(e)(6).

qualifications, business plans, and service areas of carriers asking to be eligible for high-cost support."[24]

Nor should the new funding mechanisms affect the continued ability of a state commission to determine whether to allow an ETC to relinquish its ETC designation. The SDPUC has handled, and granted, relinquishment requests in the past. State commissions are in the best position for making relinquishment decisions. As they have done in the past, state commissions should be allowed to continue to consider the facts specific to relinquishment requests and make timely decisions regarding such requests.

CONCLUSION

The SDPUC respectfully requests that the Commission take our views in to consideration when deciding these issues and give due regard to the role of state commissions.

Respectfully submitted,

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February 17, 2012

[24] Nebraska Public Service Commission Comments at 7.