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

REPLY COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (Pa. PUC) files these initial Reply Comments on the Comments filed on January 18, 2012 to the FCC's comprehensive order addressing the reform of the federal universal service fund and intercarrier compensation, and the associated FCC Further Notice of Proposed Rulemaking (FNPRM). The Comments addressed several substantive issues to the FCC's *Connect America Fund Order (CAF Order)* released on November 18, 2011,and published in the Federal Register at Vol. 76, No. 229 on Tuesday, November 29, 2011, at pp. 73830 through 73882 (the *CAF Order).* The *CAF Order* contained an initial Notice of Proposed Rulemaking (*CAF NPRM)* set out in Section XVII.

The Pa. PUC appreciates this opportunity to file initial Reply Comments responding to the comments filed in the *CAF NPRM*. These include, Broadband Public Interest Obligations, Rate of Return Revision, Supported Areas With an Unsubsidized Competitor, Revisions in Capital and Operating Expense Formulas, IP to IP Interconnection, Call Signaling Rules, ETC Designations, and Verizon's Clarification of CETC Wireless Support. The Pa. PUC encourages the FCC to seek more detailed analysis and input on these issues given the responses to date.

The Pa. PUC is filing these initial Reply Comments given the likelihood that additional filings on the substantive issues may be submitted (e.g., on an *ex parte* "permit but disclose" basis) following the formal close of the Reply Comment period. Those supplemental filings may necessarily modify the general conclusions set out in these Pa. PUC Reply Comments.

As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter before the Pa. PUC. Moreover, these Pa. PUC Reply Comments could change in response to subsequent events, including Ex Parte filings or the review of other filed Reply Comments and legal or regulatory developments at the state or federal level.

Broadband Public Interest Obligations. The Pa. PUC appreciates the reluctance of some providers to expend resources submitting information on public interest obligations. They suggest that current reporting requirements are sufficient to address new voice and broadband programs now supported by the federal fund. Those comments, however, are unpersuasive. They do not recognize that there are no standard and transparent reporting rules on broadband speeds, latency, and usage let alone pricing, quality of service, customer satisfaction, or rate comparability for urban and rural areas.

These reporting rules could be addressed through an expanded Form 477 as contemplated in Docket No. 11-10. In that proceeding, voice filing requirements are under consideration. The Pa. PUC reiterates its comments from that proceeding. The concerns about providing more granular data and on a state-by-state basis are equally applicable here, albeit with revisions needed to incorporate the *CAF Order* mandates.

The Pa. PUC reiterates some of the concerns it has already expressed during the original NPRM process that resulted in the Commission's landmark *CAF Order*. The *CAF Order* does not adequately recognize Pennsylvania's early adopter efforts in deploying broadband network facilities and services pursuant to a Commonwealth-specific statutory mandate (flexible price cap regulation coupled with concrete broadband deployment obligations at the 1.544 Mbps downstream standard). This deployment for the Pennsylvania incumbent local exchange carriers (ILECs) has been funded through substantial incentive retail intrastate revenue increases for the ratepayers of regulated telecommunications services as well as from other investor capital provided sources inclusive of low-cost loans from the Rural Utility Services (RUS), U.S. Department of Agriculture (U.S. DOA).

The Pa. PUC remains concerned whether the FNPRM's proposed CAF mechanism will: (1) Encourage carriers that operate in Pennsylvania to upgrade their retail broadband access network facilities to the FCC standard of 4 Mbps downstream / 1 Mbps upstream especially in high-cost rural areas that they serve and (2) financially *sustain* the future operation and potential upgrade of retail and wholesale broadband access network facilities and services for smaller rural carriers (usually federal rate of return or ROR carriers) that have already met or even exceeded the 4 Mbps / 1 Mbps new FCC standard.

The Pa. PUC is also concerned whether the CAF mechanism can be reconciled with carrier of last resort (COLR) obligations under applicable Pennsylvania law and

related pronouncements of the *CAF Order*. For example, providing the federal price cap ILECs with a "right of first refusal" regarding whether to accept CAF support and the parallel federal broadband deployment commitments is not coincident with the COLR obligations that these carriers already have.[1] Nor can this situation be effectively cured through the FCC's contemplated CAF support auction mechanism, when the uncertainty in this mechanism could collide with the existing carrier COLR obligations and operations and create risks of stranded investment.[2] Such an outcome would undermine the laudable goals of the *CAF Order*, and could undermine the availability of mobile broadband services in high-cost rural areas through the efficient use of wireless spectrum, where such efficient use largely relies on the presence of upgraded landline broadband wholesale access facilities with sufficient transmission and switching capacity. The initial NASUCA Comments already point out "that the right-of-first refusal approach adopted by the FCC for distributing CAF subsidies will further promote the evolution of a two-tier broadband national network" and that "the right-of-first refusal rewards price cap carriers that have failed to invest properly in their networks."[3]

The Pa. PUC also reiterates its previously stated concerns — shared by many other commenters — that the FCC's CAF (and overall federal USF) funding mechanism is simply unsustainable within its adopted budgetary constraints in view of the demands that are being placed upon it (e.g., future extension of supported retail broadband access services to Lifeline service eligible end-users). Thus, broadening the contribution base of the federal USF must be an immediate priority for the FCC and for the statutorily framed and advisory role of the Federal-State Joint Board on Universal Service. It is indeed an anomaly when the FCC's broadband availability initiatives contemplated in its *CAF Order* and the FNPRM must be funded through a shrinking base of federal USF

[1] *CAF Order*, ¶ 166, at 64-65.
[2] The Pa. PUC notes that most likely it will be state utility regulatory commissions that will be called to adjudicate issues of carrier stranded investment and associated effects on end-user ratepayers.
[3] Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, The New Jersey Division of Rate Counsel, and The Utility Reform Network, WC Docket No. 10-90*et al.*, filed January 18, 2012, at 12 (NASUCA Comments).

contribution assessments on conventional wireline and wireless telecommunications services revenues and end-users.[4]

Like other commenters, the Pa. PUC supports the FCC's adoption of a uniform methodology for measuring retail broadband access speeds and performance and uniform reporting measures.[5] Furthermore, such measurement requirements should not exclude broadband service providers of a smaller size.[6] Similarly, the Pa. PUC agrees with commenters that urge the FCC not to rely on publicly available advertising materials regarding the pricing of retail broadband access services, but instead conduct more in depth surveys of "a la carte" and bundled telecommunications and retail broadband service pricing.[7] This is an endeavor where individual States and their respective utility regulatory commissions can play a constructive and collaborative role because of the information and knowledge that they already possess or can acquire regarding local market conditions and pricing.

The Pa. PUC also echoes the well placed initial comments in the FNPRM that emphasize the urgent need for reform in the jurisdictional separations process. It is intuitive that the FCC cannot implement its contemplated federal USF reforms without at the same time addressing the jurisdictional misalignment of capital investment, costs, and revenues that relate to the provision of retail broadband access services by regulated carriers. Simply put, 100% of retail xDSL broadband access revenues cannot be assigned to the federal jurisdiction while 75% of the copper loop plant that jointly supports the provision of xDSL services is still classified as intrastate. This misalignment creates artificial distortions that will obstruct the effective implementation, enforcement and the

[4]NASUCA Comments, at 5.
[5]NASUCA Comments, at 14.
[6]NASUCA Comments, at 15.
[7]NASUCA Comments, at 16-19.

federal-state joint policing of the federal USF reforms that are contemplated in the *CAF Order*. The Federal-State Joint Board on Separations can play the appropriate statutorily framed advisory role in this regard.[8]

The Rate of Return Revision. Revisions in the Rate of Return (ROR) that carriers can earn is the most important component in ensuring that broadband deployment envisioned for rural America will occur. While revisions may be necessary, any revision must not be so drastic that it undermines the capability of CAF support recipient carriers to attract capital at reasonable cost rates in order to finance and sustain on a continuous basis the broadband deployment that is envisioned by the *CAF Order*, especially in high-cost rural areas. This is especially true for merger or state-mandated commitments that the FCC's *CAF Order* may not support. The Pa. PUC supports those comments that put forward conventional and well-based methods for deriving the cost of common equity capital (or ROE), and the weighted average cost of capital (WACC or overall ROR). In particular, the Pa. PUC supports an appropriate differentiation between regulated carrier categories for the derivation of the ROE and WACC estimates. For example, proxy company groups that are composed by mid-size carriers that are subsidiaries of publicly traded holding companies without wireless operations should be utilized for the derivation of the ROE estimates applicable to the operations of wireline carriers that primarily serve higher cost rural areas.[9] Following the selection of such proxy groups, the application of widely accepted methods that are widely and frequently used in the context of state regulatory proceedings (e.g., the discounted cash flow or DCF and the capital asset pricing model or CAPM method) can be utilized for the derivation of the ROE and WACC estimates. The FCC can and should periodically adjust and publicize relevant ROE and WACC figures as both the Commission and the Federal Energy Regulatory Commission (FERC) used to do in the more distant past. It is beyond doubt

[8]NASUCA Comments, at 24.
[9]*See generally* NASUCA Comments, at 34.

that the dated interstate ROR figure that is still in use today must appropriately be revised downwards consistent with current and prospective economic and financial market realities.

The Pa. PUC also notes with approval that the necessary jurisdictional cost separation reforms also impact the issue of the WACC. The current misalignment of jurisdictional cost and revenue separations also creates artificial distortions of the relevant jurisdictional ROR figures that are purportedly attained by regulated wireline carriers. Since the revenues associated with retail broadband access services are customarily assigned to the interstate jurisdiction while the plant-specific operational and capital costs are disproportionately assigned to the intrastate jurisdiction, such services exhibit inflated interstate ROR results.[10] Such artificial distortions may have unintended and undesirable results in the future application of the contemplated CAF support mechanisms.

Finally, the Pa. PUC is concerned whether the overall FCC federal USF and ICC reforms will permit regulated wireline carriers with ongoing COLR obligations to have a realistic opportunity to earn the applicable and re-prescribed WACC or ROR for their interstate operations. This concern is based on the limited budget for the CAF, a gradual switch to a bill and keep regime for switched carrier access (a zero rate), and the existence of continuous service and broadband deployment obligations, especially for the federal ROR ones that serve high-cost rural areas.

The Comments of the Ad Hoc Telecommunications Users Committee point to an issue the Pa. PUC already raised and now reiterates, in these Reply Comments.[11] The fact is that 83% of the nation's exchanges without broadband are in the study areas of three major carriers while other rural carriers with similar exchanges deployed

[10]NASUCA Comments, at 34-35.
[11] Comments of the Ad Hoc Telecommunications Users Committee, WC Docket No. 10-90 *et al.*, filed January 18, 2012.

broadband. This suggests the failure of a regulatory paradigm more than a failure of a market. Bidding auction terms and conditions, reductions in rates of return, or new reports will not remedy that apparent paradigm failure. Seen from that vein, the *CAF Order* remedies a problem for the few carriers without broadband by removing support for many carriers with broadband.

How To Identify Areas Where An Unsubsidized Competitor's Presence Warrants No Support. The Pa. PUC supports those comments, particularly of Yukon Waltz, asking the FCC to impose a 100% complete service prerequisite before support is withdrawn. The Pa. PUC also supports having states conduct the proceeding to identify those areas even though the issue of resources to do that task must be addressed, possibly using a limited but ongoing assessment on interstate revenues in a state. The Pa. PUC disagrees that state proceedings would be too long. The rigorous examination needed is necessary because the impact to universal service from a wrong decision would be negative in the extreme and, possibly, not be reversible. Furthermore, exclusive reliance on commercial geographic data bases that are based on imprecise census block information regarding the actual presence of and deployment by the unsubsidized competitor can and will produce undesirable results.[12] In contrast, States are well versed in testing such information in an actual evidentiary context that includes sworn testimony and adversarial cross-examination. This process provides a better and far more robust testing of facts at issue that is superior to the simple submission of unsworn assertions in purely paper proceedings. The Pa. PUC also disagrees with comments suggesting that something less than 100% service is sufficient to withdraw support. A 1% variation that causes the loss of all federal support to a wireline carrier with continuous COLR obligations has very real impacts to the entire area at issue, particularly where the excluded 1% area has most of the significantly higher costs.

[12]*See generally* NASUCA Comments, at 47-49.

Revisions in Capital and Operating Expense Formulas. The Pa. PUC supports the FCC's attempt to limit high-cost expense by reformulating the methodology but not before remedying the weaknesses in the independent and dependent variables of the regression methodology. The Pa. PUC supports the FCC conducting a more granular series of comments and replies before deciding on the criteria for a regression methodology. The Pa. PUC's own internal analysis of the role that High Cost Loop Support (HCLS) and Interstate Common Line Support (ICLS) play in supporting reasonable local rates reinforces the Pa. PUC's position that the FCC should proceed carefully and slowly in developing benchmark peering rates or a regression model.

Credible comments that have been so far submitted by both carriers and other parties strongly and persuasively suggest that the linear regression methodology and equations that have been utilized by the FCC in addressing this particular issue area are seriously flawed. This linear regression methodology and equations appear to lack in adequate specification and predictive ability. For certain carrier categories the statistical R-square (R^2) values associated with the utilized linear regression analysis average at 0.41. This does not speak well for the predictive capabilities of the utilized linear regression methodology and equations.[13]

IP to IP Interconnection. The Pa. PUC supports development of a process governing Internet Protocol (IP) interconnection. This is premised primarily on Pennsylvania's VoIP Freedom Act Law, 73 Pa. C.S. §§ 2251.1,*et seq.*, authorizing the Pa. PUC to ensure that VoIP and IP provide enhanced 911, Telecommunications Relay Service, universal service support and that those providers remit switched access rates or other intercarrier compensation. The Pa. PUC supports the FCC's agreement with our General Assembly's earlier determination that IP is the technological wave of the future. The Pa. PUC disagrees that IP interconnection standards would distract from reforming USF and intercarrier compensation (ICC), particularly when it currently plays a crucial

[13]NASUCA Comments, at 45-49.

role and may assume a greater role in the future for 911/E911 (including next generation 911), TRS, USF, and ICC in Pennsylvania under both Pennsylvania and federal law. Furthermore, the Pa. PUC maintains adequate statutory authority under the federal Telecommunications Act of 1996 (TA-96) and applicable Pennsylvania law to mediate, arbitrate, or otherwise adjudicate IP-to-IP interconnection requests, agreements, or disputes.

Call Signaling Rules. The Pa. PUC agrees with the FCC's call signaling rules because they are critical to preventing phantom traffic. The FCC's solutions resolved the matter in a manner that did not upset the current joint federal-state role. The Pa. PUC is surprised that major supporters of the *CAF Order* claim that providing Calling Party Numbers (CPNs) is burdensome. There were multiple and voluminous filings on the issues by these parties, refuting claims that the CPN rules were not adequately vetted. Nevertheless, the Pa. PUC supports consideration of those concerns before the rules are finalized because, like state proceedings identifying where support is no longer appropriate, the harm caused by an error warrants a slow and deliberate approach. The Pa. PUC does not support any result that increases phantom traffic, dumps traffic on the networks of various telecommunications carriers without appropriate compensation, or provides inadequate or nonexistent compensation for the eventual handling and termination of that traffic.

ETC Designations and Obligations. The Pa. PUC does not support any attempt to invoke general authority in Section 201 or Section 251(f) to trump the states' express role in Section 214(e)(5) requiring the states to designate the supported study area. This novel interpretation may support a short-term policy but it will engender more litigation. Furthermore, the Pa. PUC advocates the position that even if there are reductions in federal support levels under the new CAF mechanisms to ETCs, such reductions should not "be accompanied by a relaxation of voice service obligations."[14] For example, a large

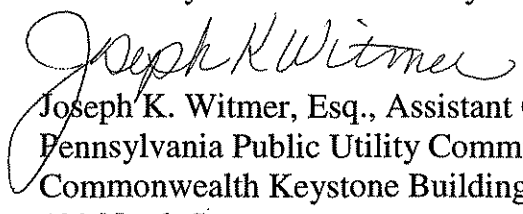
[14]NASUCA Comments, at 57.

number of these ETCs are conventionally regulated wireline carriers that continue to have COLR obligations (including the provision of basic voice services) under both individual State and federal law.

Verizon's Clarification of CETC Wireless Support. Given Verizon's need for the support, the Pa. PUC agrees with Verizon's position that a loss of CETC support for wireless services, which provides all but $23M of the $2.5B in CETC support to wireless carriers, should come within the orderly transition of that support in the *CAF Order.*

Respectfully Submitted On Behalf Of,

The Pennsylvania Public Utility Commission



Joseph K. Witmer, Esq., Assistant Counsel,
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-3663
Email: joswitmer@pa.gov

Dated: February 17, 2012