

**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

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

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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The Massachusetts Department of Telecommunications and Cable (MDTC) respectfully submits these reply comments in response to initial comments filed on January 18, 2012, to the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (Commission) on November 18, 2011, in the above-referenced dockets.¹

¹ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, WC Docket 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).*

I. SUMMARY.

This reply focuses on comments regarding four issues that the MDTC identified during the first round: (1) incumbents' state-level commitments; (2) state authority over eligible telecommunications carrier (ETC) designations and carrier-of-last-resort (COLR) requirements; (3) IP-to-IP interconnection; and (4) updated reporting requirements for voice and broadband providers. Taken as a whole, the comments submitted demonstrate why the MDTC's views on these issues are reasonable and should be adopted by the Commission.

First, several commenters agreed with the MDTC that the Commission needs to discourage incumbents from avoiding their state-level commitments and from seeking excessive CAF support. The current CAF Phase II provides incentives for waste and avoidance. The MDTC's approach, requiring a state-level commitment as a condition of funding while bidding for support that exceeds the modeled level, helps avoid a continued dearth of service to Massachusetts customers in unprofitable areas. This approach may help mitigate, but does not eliminate the need for a backstop funding mechanism to service unprofitable areas.

Second, other state commissions and consumer advocacy groups provided compelling reasons why the Commission should not change state authority over ETC designations and service territories as well as COLR requirements. States can best determine ETC obligations and local customer needs. Rather than preempt state authority, the Commission could propose federal guidelines to provide states with the best tools to address ETC designation issues.

Third, comments provided by state commissions, Consumer Advocates and certain cable providers support the MDTC's view that consumers will benefit if the Commission requires Internet Protocol (IP) to IP interconnection. Existing marketplace incentives are not strong

enough to discipline broadband providers into voluntarily reaching IP-to-IP interconnection agreements absent a federal directive. Requiring interconnection will foster competition.

Finally, no commenter provides any reason for the Commission not to adopt the MDTC's proposal to implement a baseline uniform reporting format on all ETCs to assist state commissions, Universal Service Administrative Company (USAC), and the Commission with their oversight and reporting obligations. The Commission should also update Form 477 reporting obligations to include deployment, pricing, and subscription data to assist in the review of reasonable comparable rates and services. The existing Form 477 confidentiality requirements will minimize carrier concerns, while allowing states access to uniform data on speed, pricing and deployment.

II. COMMENTERS AGREED WITH THE MDTC THAT THE COMMISSION SHOULD DISCOURAGE INCUMBENTS FROM AVOIDING STATE-LEVEL COMMITMENTS OR SEEKING EXCESSIVE CAF SUPPORT.

The Commission's current proposals for CAF Phase II permit and create an incentive for price cap Incumbent Local Exchange Carriers (ILECs) to reject model-based support and then participate in the CAF Phase II reverse auctions.² By adopting this approach, the Commission has created an incentive for ILECs to avoid state-level commitments or to seek support to build out only to areas where it is most convenient and profitable.³ This approach also could provide an unfair competitive advantage in the bidding process to ILECs due to their existing infrastructure.⁴ The MDTC identified two specific problems⁵ with the current reverse auction proposals and presented three alternatives to address the raised concerns.⁶ The MDTC focused

² *CAF/ICC Order and FNPRM* at ¶ 1201.

³ MDTC Comments at 10.

⁴ *Id.*

⁵ The first problem identified is that the existing auction framework allows carriers to bid in a manner that will permit them to receive a higher level of support than may be necessary. The second problem identified is that under the current proposals, incumbents could refuse model-based support to avoid state-level commitments.

⁶ MDTC Comments at 10-12.

its comments on customer effects caused if carriers acted on the incentive created by the Commission to leave areas unserved through excluding unprofitable areas from their CAF auction bids.⁷

Some commenters supported the goal of MDTC's recommendations to allow incumbents to participate in the reverse auction to ensure fair and neutral auctions, but also minimize incumbents' competitive advantages.⁸ For example, the Public Utilities Commission of Ohio (Ohio Commission) recognized that allowing incumbents to participate in the competitive bidding process may discourage incumbents from accepting the state-level commitment and encouraged the FCC to take action to assure "a truly competitive bidding process."⁹ The Nebraska Public Service Commission (Nebraska Commission) questioned the current design of the competitive bid process viewing the use of the current process as "a 'race to the bottom' in terms of service quality and will not advance universal service."¹⁰ Even an ILEC agreed with this assessment. Frontier Communications Corporation (Frontier) agreed, stating, "the obligations associated with CAF funding should not change regardless of whether the incumbent declines support for its area."¹¹

Contrasting the MDTC's position, other commenters argued that the FCC should allow carriers to avoid their state-level commitments and build out only to the areas where they have won CAF support. The US Telecom Association (US Telecom), for example, encouraged the Commission to permit ETCs to refuse statewide model support yet still participate in the reverse

⁷ *Id.*

⁸ National Cable & Telecommunications Association (NCTA) Comments at 10-11; RCA-The Competitive Carrier Association (RCA) Comments at 6-7; Coalition for Rational Universal Service and Intercarrier Reform (CRUSIR) Comments at 5; Satellite Broadband Providers Comments at 16-17; AT&T Comments at 34-35; Public Utility Commission of Ohio (Ohio) Comments at 7-8; Nebraska Public Service Commission (Nebraska) Comments at 8-9; Frontier Communications Corporation (Frontier) Comments at 14-15.

⁹ Ohio Comments at 8-9.

¹⁰ Nebraska Comments at 8.

¹¹ Frontier Comments at 15.

auctions.¹² The Independent Telephone & Telecommunications Alliance (ITTA) urged the Commission to reduce carrier service obligation boundaries to match CAF-supported areas.¹³ CTIA suggested the Commission modify the state-level commitment performance requirements “to better reflect the broader group of eligible entities in the bidding process.”¹⁴

The Commission should reject the above comments as circumventing the goals of universal service, especially towards those Massachusetts consumers who reside in census block areas deemed “unserved” and not eligible for CAF support. If incumbents reject model-based support in good faith, it may be because the amount of support proffered would otherwise be insufficient for a state-level commitment to provide supported services in all census blocks deemed eligible by the Commission.¹⁵ Under the MDTC’s preferred proposal, incumbents would have to bid based on state-level commitments but could seek levels of support in the bidding process higher than model-based support proposed by the Commission. This step may help ensure that customers receive service in areas otherwise likely to be unserved, which could then help reduce the need for an additional backstop funding mechanism under the Commission’s current proposal.

Without a state-level commitment by the incumbent or other successful bidder, some areas may not receive support unless the Commission awards support in the area through the Remote Areas Fund. The chances of support going to all of these areas are minimal, however, because those areas compete for a limited pool of support with other “remote” areas.¹⁶ The Commission should revise the current reverse auction proposals to require incumbents to retain

¹² US Telecom Association (US Telecom) Comments at 22-23.

¹³ Independent Telephone & Telecommunications Alliance (ITTA) Comments at 9.

¹⁴ CTIA – The Wireless Association (CTIA) Comments at 13-14.

¹⁵ Frontier Comments at 14.

¹⁶ MDTC Comments at 9.

their state-level commitments as a condition of funding, but allow incumbents to bid to obtain higher-than-modeled support level to ensure universal service.

III. STATE COMMISSIONS AND CONSUMER ADVOCATES JOINED THE MDTC IN URGING THE COMMISSION NOT TO ALTER STATE ETC AND COLR AUTHORITY.

The Commission sought comment on whether and how to redefine existing ETC service areas, adjust existing voice service obligations, and on appropriate measures for carrier relinquishment of ETC status for carriers that lose some or all support.¹⁷ The MDTC asserted that the Commission should not diminish existing state authority over ETC and COLR obligations.¹⁸ Many state commissions and Consumer Advocates¹⁹ agree with the MDTC. They recommended that the Commission forego additional forbearance considerations; retain the current levels of state and federal authority over ETC designation and service area definition; and not diminish ETC and COLR obligations.²⁰

For example, the Consumer Advocates maintained, “under no circumstances” should reduced support lead to a relaxation of voice service obligations, as such action would be contrary to the Commission’s service goals.²¹ They also questioned whether the Commission could assure access to Lifeline service if it uses the forbearance process to reduce the obligations

¹⁷ *CAF/ICC Order and FNPRM* at ¶¶ 1089-1102.

¹⁸ MDTC Comments at 26-31. COLR obligations have existed in Massachusetts since 1983. MDTC’s predecessor organizations adopt the obligations by order in *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 Department on December 20, 1983*, D.P.U. 1731, Order (rel. Oct. 18, 1985) (D.P.U. 1731) at 71-77. A carrier subject to COLR obligations is required to continue service to a particular area or exchange, or to provide service to such an area or exchange, if a particular area or exchange is either left without or not provided with telephone service.

¹⁹ Consumers Advocates refers to the National Association of State Utility Consumer Advocates (NASUCA), Maine Office of the Public Advocate, The New Jersey Division of Rate Counsel, and The Utility Reform Network (TURN) who jointly filed comments in the above referenced dockets.

²⁰ NASUCA, Maine Office of the Public Advocate, The New Jersey Division of Rate Counsel, and TURN (collectively, Consumer Advocates) Comments at 57-58; Nebraska Comments at 6-7; Ohio Comments at 3-6; Alaska Comments at 8-9; Vermont Public Service Board (Vermont) Comments at 5-6; Indiana Utility Regulatory Commission (Indiana) Comments at 4-5.

²¹ Consumer Advocates Comments at 57-58.

of carriers.²² The Nebraska Commission emphasized that the Commission should not relax or eliminate obligations of ETCs designated by the state commissions.²³ The Regulatory Commission of Alaska (Alaska Commission) questioned the appropriateness of a nationwide ETC status solution, asserting that states have the local knowledge needed to assess a provider's commitment and capability to provide the services proposed and can more effectively review ETC adherence to obligations imposed during the designation process.²⁴ The Ohio Commission expounded that ETC designation is not merely eligibility to receive high-cost funding, but that it also comes with an obligation to provide service without regard to where consumers reside.²⁵

With regard to forbearance from existing ETC requirements, the state commissions generally agreed that use of the forbearance process would not appropriately balance state and federal roles.²⁶ Further, the forbearance process lacks sufficient notice and fails to provide an adequate voice for individual consumers.²⁷ The MDTC concurs that the Commission must not override or diminish existing state authority over ETC and COLR obligations.²⁸ If the Commission relaxes some ETC obligations, the Commission must clearly indicate that state COLR requirements will remain unchanged.²⁹

Several service providers, however, opposed the retention of ETC service obligations, though not expressly advocating proposals to eliminate states completely from the process. For instance, AT&T and Verizon advocated the complete sunset of current ETC obligations and

²² *Id.* at 57-58.

²³ Nebraska Comments at 6.

²⁴ *Id.* at 8.

²⁵ *Id.* at 6.

²⁶ Vermont Comments at 5-6; Indiana Comments at 5; Nebraska Comments at 7; Ohio Comments at 5-6; Alaska Comments at 8-9.

²⁷ Nebraska Comments at 7.

²⁸ MDTC Comments at 26-31.

²⁹ *Id.* at 30-31.

designation requirements.³⁰ Satellite providers, the Wireless Internet Service Providers Association (WISPA), and Clearwire sought the creation of a national ETC model to create ETC eligibility for broadband providers that are currently ineligible.³¹ The National Cable and Telecommunications Association (NCTA) wanted assurances that the ETC designation process does not become a barrier to participation.³² US Telecom, Windstream, and other commenters encouraged the Commission to reduce service obligations in areas where there is a reduction in support.³³

Although these proposals do not explicitly recommend that the Commission eliminate states from the ETC designation and obligation setting processes, they do recommend changes to the existing ETC designation structure.³⁴ Eliminating state ETC and COLR authority, however, is not the appropriate mechanism to address any changes. ETC designation is a commitment by a provider to meet specific obligations. When current ETCs (or their certifying state or federal authority) find themselves incapable of meeting their obligations, the ETCs can use the existing statutory process to redefine their service areas or relinquish their ETC designations.³⁵ States have and should retain express oversight authority over the definition of service areas and the relinquishment of ETC designation processes.³⁶ The states are also the appropriate entities for these processes given their unique qualifications and ease of identifying public benefits and harms within those areas that fall in their territories.³⁷ The Commission can mitigate concerns

³⁰ AT&T Comments at 6-8; Verizon Comments at 2-3.

³¹ Satellite Broadband Providers Comments at 10; Wireless Internet Service Providers Association (WISPA) Comments at 12; Clearwire Corporation (Clearwire) Comments at 7-8.

³² NCTA Comments at 12.

³³ United States Cellular Corporation (US Cellular) Comments at 49-50; United States Telecom Association (US Telecom) Comments at 6-7; Windstream Communications (Windstream) Comments at 32-34; CenturyLink Comments at 9-10; Frontier Comments at 9; ITTA Comment at 9-10; AT&T Comments at 3-5.

³⁴ The Commission should address the legal implications of designating broadband-only providers as ETCs.

³⁵ 47 U.S.C. § 214(e).

³⁶ Except as otherwise provided in 47 U.S.C. § 214(e).

³⁷ Ohio Comments at 6; Regulatory Commission of Alaska (Alaska) Comments at 8.

over potential conflicts with statutory directives if it follows the MDTC's encouragement to provide guidelines for states to use during the ETC designation and review process.

IV. LIKE THE MDTC, STATE COMMISSIONS, CONSUMER ADVOCATES, AND CABLE PROVIDERS BELIEVE THAT REQUIRING IP-TO-IP INTERCONNECTION WILL FOSTER COMPETITION.

The Commission sought comment on whether all CAF recipients should be expressly required to offer IP-to-IP interconnection for voice services.³⁸ The MDTC recommended that the Commission should impose IP-to-IP interconnection requirements for CAF recipients, especially since these carriers are already subject to the same requirements pursuant to existing federal law.³⁹

Supporters of IP-to-IP interconnection insightfully argued that such requirements would foster additional competition in the provision of new and advanced services, as well as, aid the development of additional broadband networks.⁴⁰ They also noted benefits to basing the interconnection requirements on Section 251.⁴¹ Cable Providers,⁴² in particular, focused on the issue of IP-to-IP interconnection as they will and do rely heavily on interconnection agreements to bring broadband to their customers.⁴³ They asserted requiring IP-to-IP interconnection on CAF recipients would help bring some ILECs into compliance with Section 251, promote the transition to an advanced IP architecture, facilitate the deployment of Voice over Internet Protocol (VoIP) services in unserved areas, and ultimately reduce the outlay of CAF funds necessary to provide supported voice services.⁴⁴

³⁸ *CAF/ICC Order and FNPRM* at ¶¶ 1028, 1148.

³⁹ MDTC Comments at 23-24.

⁴⁰ Public Service Commission of Wisconsin (Wisconsin) Comments at 7; Consumer Advocates Comments at 20; New America Foundation, Public Knowledge, and Benton Foundation (Public Interest) Comments at 6-7.

⁴¹ Wisconsin Comments at 7.

⁴² Cable Providers refers to Cablevision System Corporation, Charter Communications, and Time Warner Cable.

⁴³ Cablevision Systems Corporation and Charter Communications (Cablevision and Charter) Comments at 1-6; Time Warner Cable Comments at 3-8.

⁴⁴ *Id.*

Commenters who oppose IP-to-IP interconnection requirements urged the Commission to rely on marketplace solutions to govern the transition to IP-based interconnection.⁴⁵ ITTA and Verizon, for example, claimed that providers already have incentives to expand IP interconnection for voice services, and that any technical requirements and standards issues should be resolved through industry bodies and negotiated commercial agreements between providers, rather than regulatory requirements.⁴⁶

The Commission should decline to follow this marketplace advice in this instance as ill-conceived. Imposing interconnection obligations on CAF recipients is consistent with the Communications Act,⁴⁷ appropriately leverages publicly-funded investments to promote competitive entry in the future, and does not impose additional burdens on CAF recipients beyond statutory requirements.⁴⁸ In practice, the requirement would ensure recipients negotiated reasonable rates, terms, and conditions in good faith, while also supporting growth into areas, which would not likely experience competition without reasonable interconnection requirements. Consequently, the Commission should follow the MDTC recommendation and impose an IP-IP interconnection requirement.

V. NO COMMENTERS PROVIDED A COMPELLING REASON NOT TO ADOPT THE MDTC'S VIEW THAT REPORTING REQUIREMENTS SHOULD BE RELATIVELY UNIFORM AND SHOULD ALIGN WITH UPDATED FORM 477 REPORTING OBLIGATIONS.

The Commission queried whether it should impose on ETCs a uniform methodology and reporting format for measuring broadband obligations performance.⁴⁹ The MDTC encouraged the Commission to implement a baseline, uniform reporting format and methodology on all

⁴⁵ ITTA Comments at 6-7; Verizon Comments at 24-25.

⁴⁶ *Id.*; Verizon Comments at 35-36.

⁴⁷ 47 U.S.C. § 251.

⁴⁸ MDTC Comments at 22-24.

⁴⁹ *CAF/ICC Order and FNPRM* at ¶¶ 1013-1015

ETCs, recognizing that inherent differences between ETCs may require some level of variation between reporting obligations.⁵⁰ In addition, the MDTC reiterated its position that the Commission should update the Form 477 requirements to include, at a minimum, deployment, pricing, and subscription data in order to assist in review of reasonable comparability of rates and services.⁵¹ The existing Form 477 confidentiality requirements will minimize carrier concerns, while allowing states access to uniform data on speed, pricing and deployment.⁵²

Supporters of uniform reporting requirements concurred.⁵³ In particular, the California Public Utilities Commission and the People of the State of California (California Commission) asserted that a uniform reporting requirement will help USAC and state commissions audit the measurement reports.⁵⁴ Other commenters did not oppose reporting requirements, but varied as to whether the reported information should be uniform across all providers. CTIA and RCA-The Competitive Carrier Association (RCA) opposed uniform requirements, arguing that the unique nature of mobile broadband networks require reasonable variations in reported information and metrics.⁵⁵ Some commenters opposed the adoption of additional reporting requirements arguing the current reporting requirements of Form 477 and to the *Open Internet Order*⁵⁶ are extensive and include the majority of the information the Commission is seeking to collect.⁵⁷

The MDTC's recommendation ensures the collection of necessary data without imposing a significant reporting burden. If the Commission updates Form 477 reporting requirements, the

⁵⁰ MDTC Comments at 21-22.

⁵¹ *Id.* at 22.

⁵² *Id.*

⁵³ California Public Utilities Commission and the People of the State of California (California) Comments at 2; Consumer Advocates Comments at 14-15; US Telecom Comments at 11-13.

⁵⁴ California Comments at 2.

⁵⁵ CTIA Comments at 9-10; RCA Comments at 17.

⁵⁶ *Preserving the Open Internet: Broadband Industry Practices*, GN Docket No. 09- 191, Broadband Industry Practices, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17970, FCC 10-201, (2010).

⁵⁷ CenturyLink Comments at 4-6; ITTA Comments at 2-4.

Commission will assist the USAC and states in verifying that recipients of support offer services that are reasonably comparable to those in urban areas.⁵⁸ If the Commission implements uniform reporting requirements on all ETCs, it will permit state commissions, USAC, and the Commission to compare and analyze the data more easily, assisting with their oversight and reporting obligations.

VI. CONCLUSION.

For these reasons, the Commission should adopt certain measures to prevent incumbents from gaming the system by avoiding state-level commitments or seeking excessive CAF support. In addition, the Commission should not alter state ETC and COLR authority; should require IP-to-IP interconnection; should update its Form 477 and require a relatively uniform level of reporting from all ETCs.

⁵⁸ MDTC Comments at 22.

These recommendations maintain the important federal-state partnership for universal service. Commenters agree that CAF recipients need fair and, where possible, uniform requirements, as the MDTC advocates.

Respectfully submitted,

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