BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Options to Promote Rural Broadband in	)	
Rate-of-Return Areas	)	WC Docket No. 10-90

COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTelecom")[1] respectfully submits these comments in response to the Public Notice ("*Notice*")[2] of the Wireline Competition Bureau ("Bureau") seeking comments on options to promote rural broadband in rate-of-return areas. Uncertainties resulting from implementation of the USF/ICC Transformation Order ("*Order*")[3], particularly the cap on high-cost loop support (HCLS) resulting from application of the Quantile Regression Analysis (QRA), has discouraged rate-of-return ILECs (RLECs) from investing in the improvement and extension of rural broadband service. The most immediate step the Commission could take to promote rural broadband in rate-of-return areas would be to

[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

[2] Public Notice DA 13-1112, Wireline Competition Bureau Seeks Comment on Options to Promote Rural Broadband in Rate-of-Return Areas, WC Docket No. 10-90 (rel. May 16, 2013).

[3] *See 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 a 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, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, (*USF/ICC Transformation Order or Order*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

constructively address the various applications for review that have been filed with respect to the QRA.

With respect to the first of the two discrete issues raised in the *Notice*, the Commission should treat loops on which broadband is subscribed as "joint use" facilities even if the voice offering is declined by the subscriber, and therefore provide universal service funding for those loops. The Commission should adopt any rule changes that are needed to permit this treatment. Second, rate-of-return carriers should be permitted to opt into Connect America Phase II ("CAF II") without converting to price caps, and the CAF II funding attributed to carriers making this one-way election should remain in the amount budgeted for rate-of-return carriers.

I. Loops Upon Which Broadband is Subscribed and Voice is Offered but Not Subscribed Should Continue to be Characterized as Joint-Use Facilities

Whether an RLEC's customer subscribes to voice and broadband or just to broadband does not change the fact that the loop must be provisioned for both services. The *Order* mandates that rate-of-return eligible telecommunications carriers (ETCs) offer voice telephony in their designated service area[4] and also mandates that rate-of-return carriers provide broadband service upon reasonable request.[5] RLECs also retain their status as carriers of last resort. Costs for such provisioning thus cannot be avoided by the RLEC. Because of those network and regulatory realities, such plant should be characterized as a joint use facility, regardless of whether only one or both services are purchased by a consumer.

Loop plant is not traffic sensitive, so whether or not a voice subscriber actually makes voice calls during a month, or even whether the voice service is subscribed to or not, does not impact the RLEC's loop costs. Variable costs, such as those of central office facilities, billing

[4] *See Order* at ¶ 80.

[5] *Id* at ¶ 208.

and maintenance are all present when the line is in use either by a voice and broadband service, or just a broadband service. The purpose of universal service high-cost funding is to support the ubiquitous availability of network infrastructure, including infrastructure supporting advanced services, in low-density rural areas, and denying such support when it is in use by a rural customer, even if only for standalone broadband, fails to fulfill that purpose.

II. Good Public Policy Demands Support of Standalone Broadband Loops

Funding to providers and associated obligations for those funded providers should and must match for the universal service program to meet the Commission's policy objectives. It is unfortunate and ironic that the *Order,* which aims to modernize the high-cost universal service program to ensure availability of voice and broadband service,[6] and imposes a broadband obligation on rate-of-return carriers, is the very same *Order* that denies funding to RLECs for providing broadband service when it is on a standalone basis. Does this mean that the broadband obligation is not applicable to locations in an RLEC's service area which are not currently subscribing to voice service?

The Commission's current policy of not supporting standalone broadband offered by RLECs is contrary to its goal to remove barriers to evolution to an all IP network, and the deployment and adoption of broadband facilities and services. As noted by NTCA, "[a]ny system that ultimately perpetuates an incentive to sell plain old telephone service (POTS) lines to obtain cost recovery for operations in high-cost areas potentially deters the desired technological evolution of networks, undermines the purported objective of reform – the stimulation of broadband deployment and adoption – and ultimately runs directly contrary to the Commission's expressly stated vision of supporting the offer of voice telephony service rather than continuing

---

[6] *Id* at ¶ 1.

to support only the sale of POTS."[7] Moreover, while RLECs are encouraged under the current policy to sells POTS lines (as noted above by NTCA), they are also prohibited from creatively pricing POTS lines to encourage their subscription by the Order's requirement of a minimum local rate of $14 per month to avoid the loss of USF support.

The current policy inhibits consumer choice. By not supporting standalone broadband loops, a consumer's rates for broadband in an RLEC area will increase merely because the consumer chooses to subscribe to voice service from another provider. The Commission is creating uneconomic incentives for consumers to elect to receive both broadband and voice services from the same provider. This is certainly not an unreasonable market outcome, but such a choice by the consumer should not be skewed by Commission policy. So, for example, a consumer wishing to purchase a wireless voice service because of its mobility and a fixed broadband service because of its greater speed and usage allowance would be penalized by the current Commission policy which would unnecessarily increase the consumer's rates for the wireline broadband offering. A customer may choose to purchase standalone broadband and an over-the-top voice service such as Vonage or any of a variety of single or bundled services from various providers. Discouraging rural customers from fully accessing all the choices today's communications market offers is not only nonsensical; it arguably violates the principle of Sec. 254(b)(3) of the Communications Act which calls for consumers living in high-cost areas to have access to telecommunications and information services, that are available at rates that are reasonable comparable to rates charged for similar services in urban areas since the current treatment of RLECs' broadband-only loops increases prices for consumers.

[7] *See* Letter of Michael R. Romano, Senior Vice President – Policy, National Telecommunications Cooperative Association, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al* (filed January 28, 2013), at n. 3.

There is no need to alter the current budget for the RLEC portion of the high-cost universal service fund to treat loops on which subscribers have not subscribed to a voice offering but are subscribing to a broadband offering from the RLEC as joint use facilities. Such treatment can and should be accommodated within the $2 billion budgeted for rate-of-return areas not associated with price cap companies.[8]

III. RLECs Should be Permitted to Elect CAF II Model-Based Support Without Converting to Price Cap Regulation

RLECs should be permitted to elect CAF II model-based support without converting to price cap regulation. The Commission already actually mandates that rate-of-return study areas affiliated with price cap companies calculate support under the CAF II process. Such study areas are not required to convert to price cap regulation. Why should rate-of-return companies not affiliated with price cap carriers be treated any differently? The Commission does not appear to have cost-shifting concerns with these companies, whether it is shifting of costs between rate-of-return and price cap areas or between different access services offered by the rate-of-return affiliates. Independent rate-of-return companies should not be forced to meet a different standard than rate-of-return affiliates of price cap companies.

Smaller RLECs have voted with their feet that price cap regulation does not work for them because of the greater risks involved in serving an isolated geographic area and because of their typically lumpy patterns of investment. Restricting election of CAF II model-based support to RLECs that convert to price cap regulation will, in effect, give them no election at all. If the Commission truly believes that model-based support provides superior incentives to traditional rate-of-return costing, it should be facilitating election of such support, not creating roadblocks to it by requiring election of price cap regulation.

---

[8] *See Order* at ¶ 126.

The proposal to require rate-of-return carriers to convert to price caps[9] is contrary to the Commission's statement that "Facilitating a path for carriers to opt in to Connect America Phase II … is consistent with the Commission's longstanding goal of providing support to all carriers through incentive-based mechanisms."[10] Carriers should not have to decide between "the potential benefits of receiving a steady, model-derived support amount for a multi-year period, combined with an incentive-based structure that allows carriers to capture the benefits of efficiency…." First, many RLECs are on the average schedule system of settlements, which is a form of an incentive regulation. Second, if model-based USF support provides additional incentives for efficiency, would not actions taken in response to those incentives carry over into reducing costs reflected in rates established under traditional rate-of-return regulation? The Commission should be encouraging this result.

For some RLECs, model-based support could potentially provide a level of stability and predictability lacking in the current mechanism applied to such carriers, particularly with the well-documented problems with the Quartile Regression Analysis caps on high-cost loop support (HCLS). The Commission has historically supported use of model-based support by rate-of-return companies without concerns about cost shifting. Such a model was not adopted because of concerns about model accuracy, not issues with potential cost shifting.[11] The multiple levels of auditing – state, federal, and Rural Utilities Service (RUS) – which RLECs undergo should be more than sufficient assurance to the Commission that there is no cost-shifting. Furthermore, 337 RLECs base their rates on average schedules, which are a form of incentive regulation and make the issue of cost-shifting irrelevant.

[9] *See Notice* at ¶ 12.

[10] *Id* at ¶ 8.

[11] *See Rural Task Force Order*, 26, FCC Rcd at 11264, ¶ 25.

Model-based support for RLECs should be transitioned in the same way as such support is designed to supplant legacy universal service high-cost support for price cap companies. Clearly RLECs should not receive duplicative support, and should only receive both legacy support and model-based support as part of a transition to full model-based support; if it is determined that such a transition is necessary. When an RLEC is receiving model-based support and is no longer receiving HCLS, HCLS should be rebased as it was when the rate-of-return affiliates of price cap carriers were mandated to receive support pursuant to Connect America.

The funding for model-based support elected by carriers currently regulated under rate-of-return at the federal level should continue to be included in the rate-of-return budget, if the RLEC continues under rate-or-return regulation. If the RLEC elects price cap regulation, the respective budgets for the price cap and rate-of-return portions of the Connect America Fund should be adjusted to reflect such an election. The amount of support calculated for the rate-of-return carrier converting to price caps should be added to the $1.8 billion price cap portion of the fund and subtracted from the rate-of-return budget which is set at $2 billion. Absent such an adjustment, it would be fundamentally unfair for a company electing CAF II support to draw from the price cap portion of the Connect America Fund when the budget was set with the assumption that such a company was a rate-of-return carrier. The overall Connect America Fund budget should not be affected by making these adjustments.

Similarly, any mechanical issues with the development or application of the model that are raised by permitting rate-of-return carriers to receive model-based support should neither impact the calculation nor the application of the model to price cap carriers. Any such issues also should not impact the $1.8 billion allocated to USF support for price cap carriers.

IV. Term for CAF II Support for RLECs

In order to encourage RLECs to elect CAF II support, the Commission should provide a term longer than the five years provided to price cap carriers in the USF/ICC Transformation Order. That extended term need not be based on or coincide with the intercarrier compensation transition for rate-of-return carriers. Because of the risks inherent in making sunk investments in small geographic areas that could be inordinately impacted by external events not under the control of the RLEC (e.g.; an extreme weather event, closure of a facility of a large business customer), RLECs require greater certainty than is provided by a five-year term. Carriers electing CAF II support, either concurrently with the price cap carrier election or at some later point, should have the same extended term for the support to be in place.

V. Conclusion

The most immediate step the Commission could take to promote rural broadband in rural areas served by rate-of-return carriers would be to constructively address the various applications for review that have been filed with respect to the QRA. Uncertainties resulting from implementation of the *USF/ICC Transformation Order*, particularly the cap on high-cost loop support resulting from application of the QRA, has discouraged RLECs from investing in the improvement and extension of rural broadband service.

The Commission should treat loops on which broadband is subscribed as "joint use" facilities even if the voice offering is declined by the subscriber, and therefore provide universal service funding for those loops. The Commission should adopt any rule changes that are needed to permit this treatment.

Rate-of-return carriers should be permitted to opt into CAF II without converting to price caps, and the CAF II funding attributed to carriers making this one-way election should remain in the amount budgeted for rate-of-return carriers.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: ______________________________

David Cohen
Jonathan Banks

Its Attorneys

607 14th Street, NW, Suite 400
Washington, D.C. 20005
202-326-7300

June 17, 2013