PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: http://www.fcc.gov

DA 11-1348
Release Date: August 3, 2011

FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE-INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING

WC Docket Nos. 10-90, 07-135, 05-337, 03-109;
CC Docket No. 01-92, 96-45
GN Docket No. 09-51

Comment Date: August 24, 2011
Reply Comment Date: August 31, 2011

In order to comprehensively reform and modernize the universal service fund (USF) and intercarrier compensation (ICC) system in light of recent technological, market, and regulatory changes, on February 9, 2011, the Commission released the *Universal Service and Intercarrier Compensation Transformation Notice of Proposed Rulemaking* (*USF-ICC Transformation NPRM*).[1] The NPRM sought public comment on reforms to modernize USF and ICC for broadband, control the size of the USF as it transitions to support broadband, require accountability from companies receiving support, and use market-driven and incentive-based policies that maximize the value of scarce program resources for the benefit of consumers. Previously, on October 14, 2010, the Commission released the *Universal Service Reform – Mobility Fund Notice of Proposed Rulemaking* (*Mobility Fund NPRM*), which proposed to expand mobile voice and data service availability by using a market-based mechanism to award one-time support from accumulated USF reserves.[2] In response to the *USF-ICC Transformation NPRM*, a number of parties have offered specific proposals for reform, including a proposal by the State Members of the Federal-State Universal Service Joint Board (State Members), the "RLEC Plan" put forward by the Joint Rural Associations, and the "America's Broadband Connectivity Plan" filed by six Price Cap Companies ("ABC Plan").[3] We seek comment on how these proposals comport with the Commission's articulated

[1] *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*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011).

[2] *Universal Service Reform – Mobility Fund*, Notice of Proposed Rulemaking, 25 FCC Rcd 14,716 (2010).

[3] Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011) (State Member Comments); Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011) (RLEC Plan); Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (ABC Plan). *See also* Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn,

objectives and statutory requirements. We invite comment on specific aspects of the proposals and on additional issues that are not fully developed in the record.

I. Universal Service

A. Separate Support for Mobile Broadband.

- Several parties propose that the Commission create two separate components of the Connect America Fund, one focused on ensuring that consumers receive fixed voice and broadband service (which could be wired or wireless) from a single provider of last resort in areas that are uneconomic to serve with fixed service, and one focused on providing ongoing support for mobile voice and broadband service in areas that are uneconomic to serve with mobile service (*i.e.*, a Mobile Connect America Fund), with the two components together providing annual support under a defined budget.[4] We seek comment on providing separate funding for fixed broadband (wired or wireless) and mobility. How should the Commission set the relative budgets of two separate components?[5] How should the budgets be revised over time?

- In the *USF/ICC Transformation NPRM*, the Commission sought comment on phasing down high-cost support for competitive eligible telecommunications carriers (competitive ETCs) over 5 years and transitioning such support to the CAF.[6] To what extent would projected savings associated with intercarrier compensation reform for wireless carriers as proposed in the ABC Plan help offset reductions in high-cost support for competitive ETCs? We ask parties to substantiate their comments with data and remind parties that they may file data under the protective order issued in this proceeding.[7]

B. Elimination of Rural and Non-Rural Carrier Distinctions.

Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (Joint Letter).

[4] *See, e.g.,* State Member Comments at 2, 68-73; ABC Plan, Attachment 1 at 8; RLEC Plan at 83; United States Cellular Corp. April 18 Comments at 20; American Cable Association April 18 Comments at 5-6; AT&T April 18 Comments at 86-87, 108-09; Nebraska Pub. Serv. Comm. April 18 Comments at 17.

[5] We note the wide range of proposed budgets for a mobility fund. *Compare* ABC Plan, Attachment 1 at 9 (at most $300 million) *with* US Cellular, Letter from David A. LaFuria, Counsel to United States Cellular Corporation, to Marlene H. Dortch, FCC, WC Docket No. 05-337 et al., at 5 (filed July 29, 2011) (US Cellular July 29, 2011 *Ex Parte*)(at least $1.3 billion). US Cellular has proposed that we determine appropriate support levels for mobile carriers in targeted high cost rural areas using a model of an efficient level of costs. *See* Letter from David A. LaFuria, Counsel to United States Cellular Corporation, to Marlene H. Dortch, FCC, WC Docket No. 05-337et al. (filed June 16, 2011) (US Cellular June 16 *Ex Parte*); U.S. Cellular July 29 *Ex Parte*.

[6] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4641, para. 248.

[7] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; WC Docket Nos. 07-135, 10-90, 05-337; GN Docket No. 09-51, Protective Order, 25 FCC Rcd 13160 (WCB 2010) (*Protective Order*).

- In the *USF/ICC Transformation NPRM*, the Commission sought comment on two potential paths for the long term CAF: (1) use a competitive, technology-neutral bidding process to determine CAF recipients; or (2) offer the current voice carrier of last resort a right of first refusal to serve the area for an amount of ongoing support determined by a cost model, with a competitive process if the incumbent refuses the offer.[8] Several parties that jointly filed a letter proposing a path for reform propose a hybrid system in which support would be determined under a combination of a forward-looking cost model and competitive bidding in areas served by price cap companies, while companies that today are regulated under a rate of return methodology would continue to receive support based on embedded costs, albeit with greater accountability and cost controls.[9] Similarly, the State Members suggest that a forward-looking model be used for price cap companies, while rate of return companies would have the option of receiving support under a model or based on embedded costs.[10] We seek comment on the policy implications of eliminating the current references to rural and non-rural carriers in our rules and of adopting two separate approaches to determining support for carriers that operate in rural areas that are uneconomic to serve, based on whether a company is regulated under rate of return or price caps in the interstate jurisdiction.

C. CAF Support for Price Cap Areas.

1. *Use of a Model.*

    - Both the State Members and the ABC Plan would use a forward-looking model to determine support amounts for areas where there is no private sector business case to offer broadband.[11] We seek comment on what information would need to be filed in the record regarding the CostQuest Broadband Analysis Tool (CQBAT model) for the Commission to consider adopting it, as proposed in the ABC Plan.

    - The ABC Plan proposes using one technology to determine the modeled costs of 4 Mbps download/768 kbps upload service, while permitting support recipients to use any technology capable of meeting those requirements.[12] Should the amounts determined by a model be adjusted to reflect the technology actually deployed? Is ten years an appropriate time frame for determining support levels, given statutory requirements for an evolving definition of universal service? Should the model reflect the costs of building a network capable of meeting future consumer demand for higher bandwidth that reasonably can be anticipated five years from now?

2. *Right of First Refusal (ROFR)*

---

[8] *USF-ICC Transformation NPRM*, 26 FCC Rcd at 4681-90, paras. 417-447.

[9] *See* Joint Letter at 2.

[10] State Member Comments at 38-39.

[11] *See* ABC Plan, Attach. 1 (Framework of the Proposal) at 3-6, Attach. 3 (Model Description); State Member Comments at 37-38.

[12] ABC Plan, Attach. 1 at 2, 7.

- The ABC Plan would give an incumbent local exchange carrier (LEC) the opportunity to accept or decline a model-determined support amount in a wire center if the incumbent LEC has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center.[13] We seek comment on this proposal. Would aggregating census blocks to something other than a wire center be an improvement to the proposal? Is 35 percent a reasonable threshold? Should areas that are overlapped by an unsubsidized facilities-based provider be excluded when calculating the percentage? Is the opportunity to exercise a ROFR reasonable consideration for an incumbent LEC's ongoing responsibility to serve as a voice carrier of last resort throughout its study areas, even as legacy support flows are being phased down? Should any ROFR go to the provider with the most broadband deployment in the relevant area rather than automatically to the incumbent LEC?[14] Alternatively, if there are at least two providers in the relevant area that exceed the threshold, should the Commission use competitive bidding to select the support recipient?

3. *Public Interest Obligations*

- Last year, the Federal-State Joint Board on Universal Service recommended that the Commission adopt a principle "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services."[15] If that recommendation is adopted, how could the CQBAT model be improved to account for the costs of providing both broadband and voice service?

- The State Members propose that recipients of support meet specific broadband build-out milestones at years 1, 3 and 5 of deployment.[16] A company that exceeded a specified minimum standard, but failed to meet the higher standard at a given milestone would receive a pro rata share of support. We seek comment on what specific interim milestones would be effective in ensuring that carriers receiving CAF support are building out broadband at a reasonable rate during the specified build-out period.

- The ABC Plan proposes that CAF recipients provide broadband service that meets specified bandwidth requirements to all locations within a supported area, but does not address the pricing of such services or usage allowances.[17] Should the Commission adopt reporting requirements for supported providers regarding

[13] *See* ABC Plan, Attach. 1 at 6.

[14] *See* Letter from Steven F. Morris and Jennifer K. McKee, National Cable and Telecommunications Association, to Marlene H. Dortch, FCC, WC Docket No. et al., Attach. at 3 (filed July 29, 2011) (NCTA Letter).

[15] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 25 FCC Rcd 15598, 15625, para. 75 (2010).

[16] *See* State Member Comments at 62-63. Specifically, a company would lose all of its support if it failed to meet the minimum standard of deploying gradually increasing speeds to increasing percentages of its area over the five-year period. A company would receive full funding if it met or exceeded a higher standard. *Id.*

[17] ABC Plan, Attach. 1 at 2-3, 7-8.

pricing and usage allowances to facilitate its ability to ensure that consumers in rural areas are receiving reasonably comparable services at reasonably comparable rates?

4. *Eligible Telecommunications Carrier (ETC) Requirements*

   - The ABC Plan proposes a procurement model, in which recipients of CAF support incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission, and CAF recipients are free to use any technology, wireline or wireless, that meets specified bandwidth and service requirements.[18] What specific rule changes to the Commission's rules, including Part 54, Subpart C of the Commission's rules, would be necessary to implement such a proposal?

5. *State Role*

   - The State Members and other commenters propose an ongoing role for states in monitoring and oversight over recipients of universal service support.[19] We seek comment on specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework, and invite comments on other suggestions. For example:

     - Were the Commission to adopt a ROFR mechanism, could the states determine whether a provider has already made a substantial broadband investment in a particular area, and therefore would be eligible to be offered support amounts determined under a forward-looking model?[20]

     - Should ETCs be required to file copies of all information submitted to the Commission regarding compliance with public interest obligations with the states, as well as with USAC?

     - The ABC Plan contemplates that CAF recipients would serve all business and residential locations within a supported area, but does not specifically address the obligation to serve newly built locations within a supported area over the ten-year term of the funding. Should states be charged with determining whether any charges for extending service to newly constructed buildings are reasonable, based on local conditions?

     - Should states collect information regarding customer complaints, including complaints about unfulfilled service requests and inadequate service?

D. Reforms for Rate-of-Return Carriers.

---

[18] ABC Plan, Attach. 1 at 2, 3, 7.

[19] State Member Comments at 139-140; *see also* Cal. Pub. Util. Comm., April 19 Comments at 10-11; Pub. Serv. Comm. of Mo. April 6 Comments at 9-11; Neb. Pub. Serv. Comm. April 19 Comments; of Wash. Util. and Transp. Comm. April 18 Comments at 5-6.

[20] ABC Plan, Attach. 1 at 2.

- In light of the RLEC Plan and the Joint Letter, as well proposals by the State Members, we seek comment below on specific issues relating to universal service support for rate-of-return companies.

  - *Re-examining the Interstate Rate of Return.* The Joint Letter proposes that CAF calculations for areas served by rate-of-return companies would be calculated using a 10 percent interstate rate of return.[21] The State Members recommended that the rate of return for universal service calculations be set at 8.5 percent.[22] We seek comment on what data the Commission would need to have in the record to enable it to waive the requirements in Part 65 of the Commission's rules for a rate of return prescription proceeding, so that the Commission could quickly adopt a particular rate of return.

  - *Corporate Operations Expense Limitation Formula.* We seek comment on applying the following formula to limit recovery of corporate operations expenses for high-cost loop support (HCLS), interstate common line support (ICLS), and local switching support (LSS).[23]

    For study areas with 6,000 or fewer working loops, the monthly amount per loop shall be limited to;

    > $42.337 – (.00328 x the number of working loops) or $50,000/the number of working loops, whichever is greater

    For study areas with more than 6,000 working loops, but fewer than 17,888 working loops, the monthly amount per loop shall be limited to;

    > $3.007 + (117,990/number of working loops)

    For study areas with 17,888 or more working loops, the monthly amount per loop shall be limited to;

    > $9.52 per working loop

  - *Eliminating Support for Areas with an Unsubsidized Competitor.* In responding to the NPRM, the RLEC Plan suggested that the Commission could establish a process to reduce an incumbent's support if another facilities-based provider proves that it provides sufficient broadband and voice service to at least 95 percent of the households in the incumbent's study area without any support or

---

[21] Joint Letter at 2.

[22] State Member Comments at 36.

[23] *See* NECA, Universal Service Fund Data: NECA Study Results, 2009 Report (filed Sept. 30, 2010), http://www.fcc.gov/wcb/iatd/neca.html. 2011 support is based on 2009 cost data, filed on September 30, 2010. The statistical regression techniques for developing the updated limitation formula are the same as used to develop the initial formula. *See First Reconsideration Order*, 12 FCC Rcd at 10115-17, App. B. The statistical formula produced by our updated analysis, as shown below, includes the allowance of 115% to permit more carriers to fall within the range of reasonableness.

cross-subsidy.[24] We seek comment on such a process, including how to allocate costs to the remaining portions of the incumbent's study area for purposes of determining universal service support. Would a cost model be a way to allocate costs between the subsidized and unsubsidized portion of a rate-of-return study area that overlaps substantially with an unsubsidized competitor?[25] Could state commissions administer proceedings to consider such challenges, similar to the suggestion in the ABC Plan that state commissions could elect to determine which census blocks served by price cap companies have unsubsidized competitors, and therefore are not eligible for CAF support?

- *Limits on Reimbursable Operating and Capital Costs.* We seek comment on limiting reimbursable levels of capital investment and operating expenses for LSS.

E. Ensuring Consumer Equity

- *Rate Benchmark.* In the *USF/ICC Transformation NPRM*, the Commission sought comment on the use of a rate benchmark to encourage states to rebalance their rates and ensure that universal service does not subsidize carriers with artificially low rates.[26] In response to the NPRM, one commenter suggested that we should develop a benchmark for voice service and reduce a carrier's high-cost support by the amount that its rate falls below the benchmark.[27] Under such an approach, the Commission would reduce intrastate universal service support (specifically, HCLS for rural carriers and high-cost model support (HCMS) for non-rural carriers) dollar for dollar during the transition to CAF to the extent the company's local rates do not meet the specified benchmark. These reductions would not flow to other recipients. We seek comment on this proposal and proposed variations on it. Should we set the initial benchmark using the most recently available data that the Commission has regarding local rates? For example, according to the 2008 Reference Book of Rates, the average monthly charge for flat-rate service was $15.62 per month. Using the same data, the average monthly charge for flat-rate service, plus subscriber line charges of $5.74 per month, would total $21.36 per month.[28] Should the benchmark rise over a period of three years, for instance, with an end point of $25-$30 (or some other amount) for the total of the local residential rate, federal subscriber line charge (SLC), state subscriber line charge, mandatory extended area service charges, and per-line contribution to a state's high cost fund, if one exists? Should this benchmark be the same as the ICC benchmark?

- *Total company earnings review.* The State Members recommended that a Provider of Last Resort Fund include a total company earnings review to limit a supported carrier

[24] RLEC Plan at 51-56.

[25] *See* NTCA Letter, Attach. at 2.

[26] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4733-34, para. 573. *See also id.* at 4603, para. 139 and note 223.

[27] Ad Hoc Telecommunications Users Committee April 18 Comments.

[28] Industry Analysis and Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service*, at Table 1.1 (2008).

from earning more than a reasonable return.[29] We seek to further develop the record on the mechanics of conducting an earnings review to ensure that universal service is not providing excessive support to the detriment of consumers across the United States.

- We seek comment on the State Members' recommendation that, at least initially, the support mechanism should not factor in either the revenues or marginal costs of video operations to avoid the risk of subsidizing video operating losses attributable to unregulated programming costs.[30]

- We seek comment on what total company rate of return should be used, what the mechanism should be for reducing support to the extent that total company rate of return is exceeded, and how often a total company earnings review should be conducted.

- We seek comment on what carriers should be required to submit to USAC, in a standard format, to facilitate a total company earnings review. For example, should we require submission of the audited financial statements for the incumbent LEC, a consolidated balance sheet and income statement for the incumbent LEC and its affiliates, a list of affiliates, a schedule showing dividends paid to shareholders or patronage refunds distributed to members of cooperatives for the last five years, a Cost Allocation Manual, an explanation of how revenues from bundled services are booked, a trial balance of accounts at a Class B accounting level or greater, and the number of retail customers served by the incumbent LEC and its affiliates for voice and broadband service?

F. Highest-Cost Areas.

- The ABC Plan would rely on satellite broadband to serve extremely high-cost areas.[31] We seek comment on a proposal by ViaSat to create a Competitive Technologies Fund to distribute support through a combination of a reverse auction and consumer vouchers to enable consumers in highest-cost areas to obtain service from wireless, satellite, or other providers.[32]

- We also seek comment on what obligations are appropriate to impose on recipients of funding, as a condition of receiving support, to facilitate provisioning by others in areas the recipients are not obligated to serve. For example, Public Knowledge has proposed to require recipients to make interconnection points and backhaul capacity available so that

---

[29] State Member Comments at 56-58. The Commission sought comment on including all revenues (including broadband revenues) when evaluating rate of return requirements. *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4674, para. 392.

[30] State Member Comments at 35.

[31] *See* ABC Plan, Attach. 1 at 4.

[32] *See generally* Letter from John P. Janka, Counsel to ViaSat, Inc. and WildBlue, Communications, Inc., to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) *See also* NCTA Letter, Attach. at 2 (recommending that the Commission identify areas that are prohibitively expensive to serve and provide subsidies to consumers living in those areas to subscribe to satellite broadband service).

unserved high-cost communities could deploy their own broadband networks.[33] Should recipients' Acceptable Use Policies also be required to allow customers to share their broadband connections with unserved customers nearby, for example, through the use of WiFi combined with directional antenna technology?

G. CAF Support for Alaska, Hawaii, Tribal lands, U.S. Territories, and Other Areas

- GCI has proposed an Alaska-specific set of universal service reforms that it asserts better reflect the operating conditions in Alaska and the lower level of broadband and mobile deployment in that state.[34] We seek comment on this proposal for Alaska, and ask whether this, or a similar approach, would also be warranted for Hawaii, Tribal lands, the U.S. Territories, or other particular areas, and how we should consider such proposals in light of the Tribal lands exclusion from the current cap on high-cost support for competitive ETCs. We further seek comment on other proposals relating to Alaska and Hawaii that have been proposed in the record. We further seek comment on how such proposals could be improved, if the Commission were to adopt a plan to constrain the size of the CAF and access restructuring within a $4.5 billion annual budget, and whether, in the alternative, other modifications are warranted to the national policy to better reflect operating conditions in these areas.

H. Implementing Reform within a Defined Budget.

- The ABC Plan recommends a five-year transition for phasing down legacy funding, concomitant with a phase-in of potential CAF support, including potential access recovery associated with intercarrier compensation reform; the Joint Letter suggests several potential measures that could be taken to keep support totals within a budget, such as phasing in funding for mobility, deferring CAF funding for study areas served by particular price cap companies, or deferring reductions in intercarrier compensation.[35] We seek comment on the implications of these and alternative proposals, including variations to the Commission's prior proposals regarding safety net additive (SNA) and LSS, for ensuring that total funding remains within a defined budget.[36]

I. Interim Reforms for Price Cap Carriers.

---

[33] *C.f.* Public Knowledge and Benton Foundation April 18 Comments, at 5-7; Letter from John Bergmayer, Public Knowledge, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 28, 2001).

[34] *See* Letter from Christopher Nierman, GCI, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed Aug. 1, 2011).

[35] *See* ABC Plan, Attach. 1 at 8-9; Joint Letter at 2-3. The Joint Letter states that $2.2 billion in support would be provided to areas served by price cap companies, and initially $2 billion in funding would go to areas served by rate-of-return companies, with the opportunity for that funding to increase to $2.3 billion by 2017. Joint Letter at 2.

[36] For instance, could the Commission allow companies that previously qualified for SNA with a year-over-year increase of total plant in service of 14 percent or more to receive the remaining amounts of SNA for past qualification, while eliminating it immediately for those companies that did not increase total plant in service investment by 14 percent (i.e., that qualified for SNA due to line loss)? What would be the impact of adjusting the formula for LSS so that it only would be available for companies with 15,000 or fewer access lines, as suggested by one commenter. *See* Alexicon April 18 Comments at 13-14.

- As an interim step, Windstream, Frontier and CenturyLink suggest that the Commission could immediately target support that currently flows to price cap carriers to the highest-cost wire centers within their service territories, using a regression analysis based on the Commission's existing high-cost model to estimate wire center forward-looking costs for both rural and non-rural price cap carriers.[37] We seek comment on this proposal and how it relates to other proposals in the record for comprehensive reform.
    - In addition to combining and distributing HCLS and HCMS, should the Commission also include funds currently provided through LSS and SNA to price cap carriers? Should we also include funds currently provided to price cap carriers through interstate access support (IAS) and frozen ICLS?
    - Should the Commission increase annual HCMS support by an additional amount, such as $100 to $200 million, to be repurposed from ongoing reductions in support for companies that have chosen to relinquish universal service funding? Should we impose a cap on the amount of support a carrier is eligible to receive for a wire center? For instance, should that cap be set at $250 per line per month, similar to the Commission's proposal for a cap in total support for all existing recipients?
    - What public interest obligations for using funding for broadband-capable networks should apply to carriers receiving support under this approach? Should carriers receiving such support be prohibited from using the funds in areas that are served by an unsubsidized facilities-based broadband provider?
    - Do any special circumstances exist in the states of Alaska and Hawaii, or Territories and Tribal lands generally, or other areas, that warrant a different approach for price cap carriers serving such areas, if the Commission were to adopt this interim measure?

II. Intercarrier Compensation

A. Federal-State Roles

1. *Federal Framework.*

- The ABC Plan proposes that the Commission set the framework to reduce intrastate access rates, and recovery to the extent necessary for those reduced intrastate access revenues would come from the federal jurisdiction through a combination of federal SLC increases and federal universal service support.[38]
    - How would this aspect of the ABC Plan affect states in different stages of intrastate access reform – those that have undertaken significant reform and

[37] *See* Windstream Communications, Inc. April 18 Comments at 9; Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed June 30, 2011); Letter from Michael D. Saperstein, Jr., Frontier Communications, to Marlene H. Dortch, FCC, WC Docket No. 10-90et al. (filed July 26, 2011).

[38] ABC Plan, Attach. 1 at 10-13.

moved intrastate rates to parity with interstate rates, those in the process of reform, and states that have not yet initiated reform?

- The ABC Plan provides a uniform, consistent framework for reform across all states. We seek comment on whether the ABC Plan could be improved by providing states incentives to increase artificially low consumer rates or create state USFs for example through the use of a consumer monthly rate ceiling or benchmark or by requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions?

  - In calculating access recovery, the ABC Plan proposes a $30 "rate benchmark" for price cap carriers, and the Rate-of-Return plan proposes a $25 benchmark, both of which are structured as a ceiling on consumer rate increases (via a federal SLC), to limit increases on consumer rates in states where such rates have already been raised as part of intrastate access reform.[39] Is this ceiling sufficient to mitigate any potential impact on consumers in states that have already begun reforms (and thus are already paying increased local rates and/or state universal service contributions associated with such reform) relative to consumers in states that have not yet undertaken such reforms (for which all recovery would come through the federal mechanism in the ABC Plan)? Should there be different rate benchmarks for different carriers or should there be a single benchmark?

  - In the ABC Plan, in calculating access recovery, the initial consumer monthly rate is taken as a snapshot in time as of January 1, 2012. In lieu of a snapshot, and in order to avoid deterring states from rebalancing local rates and/or establishing state USFs, should the rate used to determine access recovery be the "higher of" (1) the rate as of January 2012 and (2) the rate at future points before annual access recovery amounts are calculated? In this scenario, any increased consumer rates as a result of state reforms,[40] would count toward the benchmark, more accurately reflecting the actual consumer burden at that time.

  - A rate benchmark could also be used as an imputation for a certain level of end-user recovery for intrastate rate reductions, rather than as a ceiling on federal SLC increases. For instance, the Ad Hoc Telecommunications Users Committee proposes a local rate benchmark that could be imputed, rather than used as a ceiling,[41] and commenters propose a range of

---

[39] ABC Plan, Attach. 1 at 12; Joint Letter, Attach. at 3 n.1.

[40] This could occur, for example, if the Commission were to reduce HCLS or HCMS if local rates are below a specified threshold. *See supra* Section I.E. (Rate Benchmark).

[41] *See* Ad Hoc April 18 Comments at 54. For example, a benchmark structured as a ceiling would simply limit the rates assessed on end-users, whereas an imputed benchmark would reduce the eligible recovery by the imputed dollar amount regardless of whether those charges are actually assessed.

possible benchmarks from \$25-\$30.[42] Would an imputation approach better encourage states that currently depend on long distance consumers to help subsidize local phone service for their local consumers to bring consumer rates to levels more comparable to the national average? What would be the appropriate level for such a benchmark, and should it be phased in over time?

- Instead of or in addition to a rate benchmark, should states be responsible for contributing a certain dollar amount per line to aid in access recovery? The State Members, for example, suggest that states contribute \$2 per line for purposes of universal service.[43] In this scenario, a state would be responsible for recovery of \$2 per line of reduced intrastate access revenues, which could be imputed to carriers before they become eligible for federal recovery. Does this approach appropriately balance the interests of consumers in states that already have implemented some reforms, with the associated burden of reform being born by consumers in those states, rather than federal recovery mechanisms? If so, should states that already have a state universal service fund be exempted completely from this per-line contribution, or only to the extent of, for example, the \$2 per line state contribution to recovery?

2. *State-Federal Framework.*

- In the alternative, the State Members propose that the states reform intrastate rates and that the Commission facilitate this reform through state inducements rather than a federal framework.[44] We seek comment on this proposal.

  - To address concerns that some states may not reform intrastate access charges, we seek comment on a framework, similar to a proposal in the *USF/ICC Transformation NPRM*,[45] under which states have three years to develop an intrastate reform plan. Under this alternative, after three years, the Commission would set a transition for reducing intrastate access rates and deny any further federal recovery to offset reduced intrastate revenue.

  - If the Commission adopts the state-federal framework approach advocated by the State Members, how can the Commission best incent states to reform intrastate access rates? Should the Commission match some federal universal service dollars to a state universal service fund for states that are using such a fund to reform intrastate access charges? Such matching could be structured in several

[42] *See, e.g.*, Joint Letter, Attach. at 3 n.1 (\$25 benchmark); ABC Plan, Attach. 1 at 12 (\$30 benchmark); AT&T April 18 Comments at 33 (\$27 initial benchmark that could increase over time, such at to \$30).

[43] *Cf.* State Member Comments at 60 (suggesting that federal universal service support be reduced by \$2 per location, which "States can restore . . . on a 100% matching basis, with funds raised under a high-cost universal service program under Section 254").

[44] *See* State Member Comments at 148.

[45] *USF/ICC Transformation NPRM*, paras. 548-49.

different ways, including on a per-line basis (such as $1-2), as a percentage of the state contribution, or on an aggregate state basis.[46] We seek further comment on how such a match should be structured to provide adequate inducements and maintain our commitment to control the size of the federal high cost fund.

- Under the framework of leaving reform of intrastate rates initially to the states, the Commission would begin immediate reforms of interstate access charges. We seek comment on a glide path for the Commission to reduce all interstate access rate elements. Should the length of the rate transition vary, providing three years for price cap carriers and five years for rate-of-return carriers, given that rate of return carriers' interstate access rates are higher at the outset?[47] What should the transition be for competitive LECs?[48] Would an approach that provides different transitions for different types of carriers, whether competitive, price cap or rate-of-return LEC raise any policy concerns? We also seek comment on whether the Commission should reduce originating interstate access rates and, if so, whether we should require the reductions at the same time or only after terminating rates have been reduced.

B. Scope of Reform

- We seek comment on the approach outlined in the ABC Plan to reform substantially terminating rates for end office switching while taking a more limited approach to reforming certain transport elements and originating access.[49] Would any problematic incentives, such as arbitrage schemes, arise from or be left in place by such an approach, and if so, what could be done to mitigate them?

C. Recovery Mechanism.

- We seek comment on the appropriate recovery mechanism for ICC reform, including the ABC Plan's and the Joint Letter's recovery proposals.[50] We also seek comment on the relative merits and incentives for carriers associated with an alternative approach that provides more predictable recovery amounts, such as the alternative described below.

1. *Federal-State Role in Recovery.*

- o As noted above, the ABC Plan proposes to shift recovery for reduced intrastate access charge revenues to the federal jurisdiction. Could the Commission achieve more comprehensive reform of intercarrier compensation rate elements if recovery is achieved through a federal-state partnership? We seek comment

[46] *See, e.g.,* Nebraska Companies April 18 Comments at 35-36 & App. B.

[47] *See, e.g.*, Comcast April 18 Comments at 5 (advocating a three year transition).

[48] *See, e.g.*, Letter from Karen Reidy, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. at 3 (filed July 27, 2011).

[49]ABC Plan, Attach. 1 at 10-11(proposing to reduce certain rate elements to $0.0007 per minute with more limited reforms for other intercarrier compensation rates).

[50] ABC Plan, Attach. 1 at 11-13; Joint Letter, Attach. at 2-4.

above on different means by which states could share responsibility for recovery of reduced intrastate access revenues.

2. *Price Cap Carriers.*

- For price cap carriers electing to receive support from the transitional access replacement mechanism, the ABC Plan's recovery proposal includes annual true-ups to adjust for possible increases or decreases in minutes of use. Although minutes of use for incumbent LECs have been declining,[51] the ABC Plan's proposal establishing how VoIP minutes are included in the intercarrier compensation system prospectively and addressing phantom traffic could cause minutes of use to flatten or possibly even increase. In addition, the ABC Plan would treat all VoIP traffic as interstate, which potentially could reduce the minutes billed at intrastate access rates (depending upon existing payment practices). Thus the true-up approach could result in the need for additional recovery, including additional federal universal service funding. We seek comment on alternatives to the true-up process.

- For example, as an alternative to true ups, we seek comment on a baseline for recovery that would be 2011 access revenues subject to reform, reduced by 10% annually to account for decline in demand (i.e., 90% of 2011 revenues in year one (2012), 81.0% in year two (2013), 72.9% in year three (2014), 65.6% in year four (2015), etc.).[52] This (or a similar framework that may be suggested by commenters) would be a brightline, predictable approach that would not include true-ups, regardless of whether demand declines more quickly or more slowly. If carriers reduce costs or are more efficient, this approach would enable carriers to realize the benefits of these savings.

3. *Rate of Return Carriers.*

- We seek comment below on an alternative approach for recovery (or other approaches that commenters might suggest) that would maintain the predictable revenue stream associated with rate of return principles while also providing carriers with better incentives for efficient investment and operations. This option would provide a fixed percentage of recovery (which could be 100%) of all reduced terminating access charges (both intrastate and interstate) based on year 2011 revenues, but without true-ups to reflect changes in the revenue requirement historically used for interstate access charges. This recovery mechanism would lock in revenue streams, including intrastate access revenues, which have been declining annually for many interstate rate-of-return carriers. It thus provides more predictable revenue recovery while also providing incentives

---

[51] *USF/ICC Transformation NPRM*, para. 503, Figure 13 (switched access minutes for incumbent LECs).

[52] *See, e.g.*,. NCTA Letter, Attach. at 4 (advocating that recovery need not be revenue neutral, and should phase out over a period of time). This framework could be used as a recovery mechanism even if we adopted a proposal for reform that includes better state incentives outlined above.

for carriers to reduce costs and realize the benefits of these cost savings.[53] The eligible recovery amount would be recovered through end-user charges and universal service support as described in the Joint Letter's proposal. We also seek comment on the duration of recovery funding under this alternative. Should it be phased out over time following the completion of rate reforms, such as with the loss of demand?[54]

4. *Reciprocal Compensation.*

- The ABC Plan's proposal provides recovery for reductions in reciprocal compensation rates to the extent they are above $0.0007, but the ABC Plan estimates on the impact of the federal universal service fund do not include estimated recovery from reciprocal compensation. We ask whether providing federal universal service support for reductions in reciprocal compensation rates strikes the appropriate policy balance as we seek to control the size of the universal service fund, and whether there are alternatives to such an approach.

5. *Originating Access*

- If the Commission were to address originating access as part of comprehensive reform, should the Commission treat originating access revenues differently from terminating access revenues for recovery purposes since, in many cases, the originating incumbent LEC's affiliate is offering the long distance service? For example, is it necessary to provide any recovery for the originating access that an incumbent LEC historically charged for originating calls from the retail long distance customers of its affiliate?[55]

- Alternatively, should recovery for such originating access take the form of a flat per-customer charge imposed on the incumbent LEC's long distance affiliate for each of its presubscribed customers? Should such a flat originating access replacement charge be used for recovery of all originating access revenues more generally? How would any of these approaches be implemented? Should any

[53] Even carriers that are subject to interstate rate-of-return regulation can be subject to incentive regulation at the state level or some other form of intrastate rate regulation that does not ensure rate increases every time costs increase or demand decreases.

[54] *See* ABC Plan, Attach. 1 at 12-13. Another possible alternative would be to use a recovery approach similar to that for price cap carriers, discussed above.

[55] Incumbent LECs typically provide retail long distance service through an affiliate in competition with other long distance providers. If incumbent LEC end-user customers purchase long distance service from the incumbent LEC's affiliate, it is the incumbent LEC's own affiliate that would pay those originating access charges, either directly or indirectly. In particular, where the incumbent LEC's affiliate provided facilities-based long distance service, the affiliate would pay the originating access directly. If the incumbent LEC's affiliate resells long distance service, the wholesale IXC would directly pay the originating access. But it could pass through the originating access it pays to the incumbent LEC in the rates it charges the long distance affiliate for wholesale long distance service (depending upon the extent of any rate averaging), meaning the long distance affiliate would be indirectly paying the originating access. This raises questions about whether the originating access revenues associated with end-user customers of the incumbent LEC's own long distance affiliate should be viewed as additional revenue to the incumbent LEC.

flat originating access replacement charge differ by end-user customer class (such as residential vs. business), by level of demand, or otherwise?

- We seek the following data to help us evaluate originating access reform:

  - Separately for price cap and rate-of-return incumbent LECs, the number of (1) long distance minutes that the average customer originates; (2) 8YY minutes that the average customer originates; and (3) long distance and 8YY minutes that the average customer receives (terminating minutes); and

  - Whether the ratio of originated long distance minutes to originated 8YY minutes varies materially with the level of the customers' expenditure on telecommunications services.

D. Impact on Consumers.

- We seek comment on how to ensure that consumers realize benefits of reduced long distance and wireless rates as part of intercarrier compensation reform. The ABC Plan attaches a paper by Professor Jerry Hausman analyzing the consumer benefits of intercarrier compensation reform. Should the potential realization of consumer pass through benefits from intercarrier compensation reform be left to the market, as Professor Hausman asserts, or should any steps be taken to ensure that such benefits are realized by consumers? If so, what steps should be taken?

- The ABC Plan permits incumbent carriers to increase the consumer SLC up to $9.20 before increasing the multiline business SLC, although multiline business SLCs potentially could increase once consumer SLCs reach that level. To decrease the potential burden on consumers and the federal universal service fund, should multiline business customers also see a modest SLC increase and, if so, how much?

- The ABC Plan permits incumbent carriers to increase consumer SLC rates $0.50-0.75 per year for five years or until the consumer's rate reaches the rate benchmark of $30. Similarly, the Joint Letter permits incumbent carriers to increase consumer SLC rates $0.75 per year for six years or until the consumer's rate reaches the rate benchmark of $25. Professor Hausman's paper indicates that companies are constrained by competition, which could mean that companies may not be able to increase SLC rates on consumers. We seek comment on the actual likely consumer impact of SLC increases, in the aggregate and with as much granularity (*e.g.*, by company, by type of state, by specific state) as can be provided. We also seek comment on proposals that the need for any recovery should be based on the carrier's showing of need based on its operations more broadly.[56]

- We seek the following data to help us quantify consumer benefits from intercarrier compensation reform:

[56] *See, e.g.*, NCTA Letter, Attach. at 5.

- If ICC termination rates that currently exceed $0.0007 are reduced to $0.0007, the services where pass through is likely to occur (perhaps, for example, long distance, wireless service, 8YY services and monthly line rentals) and the likely extent of that pass through; and

- Estimates of demand elasticities for those services where pass through is likely to occur.

E. VoIP ICC

- *Implementation.* We seek comment on the implementation of the ABC Plan's proposal for VoIP intercarrier compensation.[57] Under that proposal, VoIP access traffic would be subject to intercarrier compensation rates different from rates applied to other access traffic during the first part of the transition.[58]

  - How would VoIP traffic subject to the ICC framework be identified for purposes of the proposed tariffing regime?

  - Would it be feasible to use call record information[59] or factors or ratios to identify the portion of overall traffic that is (or reasonably is considered to be) relevant VoIP traffic, perhaps subject to certification or audits?[60]

  - Should the Commission identify a "safe harbor" percentage of VoIP traffic for use in this context? If so, what should be the factual basis for such a safe harbor? For example, Global Crossing estimates "that on average roughly fifty to sixty percent of the traffic [on its network] is VoIP."[61] Would that, or other data, provide a basis for a safe harbor?

  - Are there alternative mechanisms besides tariffs that could be used to determine the amount of VoIP traffic exchanged between two carriers for purposes of the VoIP ICC framework, and if so, what would be the relative merits of such an approach?

- *Call Signaling.* In the *USF/ICC Transformation NPRM* the Commission proposed to apply new call signaling rules designed to address phantom traffic to telecommunications carriers and interconnected VoIP providers. Some commenters have expressed concerns about whether and how the proposed rules would apply to one-way interconnected VoIP providers.[62] In particular, we seek to further develop the record regarding possible

[57] The ABC Plan's proposal for VoIP ICC would apply not only to traffic to or from customers of interconnected VoIP services, but also to customers of "one-way" interconnected VoIP services—in particular, to those that allow users to terminate calls to the PSTN, but not receive calls from the PSTN, or vice versa.

[58] ABC Plan, Attach. 1 at 10.

[59] *See, e.g.*, XO Section XV Comments at 33; Vonage Section XV Comments at 13-14.

[60] *See, e.g.*, XO Section XV Comments at 33; Verizon Section XV Reply at 24; Comcast Section XV Reply at 11.

[61] Letter from Paul Kouroupas, Vice President, Regulatory Affairs, Global Crossing, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Dec. 17, 2010).

[62] *See* Level 3 Section XV Comments at 10-11; AT&T Section XV Reply at 16; Level 3 Section XV Reply at 9.

implementation of any new call signaling rules that apply to one-way interconnected VoIP providers.

- o If call signaling rules apply to one-way interconnected VoIP providers, how could these requirements be implemented?[63] Would one-way interconnected VoIP providers be required to obtain and use numbering resources? If not, how could the new signaling rules operate for originating callers that do not have a telephone number?[64]

- o If one-way interconnected VoIP providers were permitted to use a number other than an actual North American Numbering Plan (NANP) telephone number associated with an originating caller in required signaling, would such use lead to unintended or undesirable consequences? If so, should other types of carriers or entities also be entitled to use alternate numbering?

- o Would there need to be numbering resources specifically assigned in the context of one-way VoIP services? Are there other signaling issues that we should consider with regard to one-way VoIP calls?

- o If call signaling rules were to apply signaling obligations to one-way interconnected VoIP providers, at what point in a call path should the required signaling originate, i.e. at the gateway or elsewhere?

- o To what extent are such requirements necessary to implement the ABC Plan's and Joint Letter's proposals that billing for VoIP traffic be based on call detail information? More broadly, what particular call detail information would be used for this purpose? What are the relative advantages or disadvantages of treating such call detail information as dispositive for determining whether access charges or reciprocal compensation rates apply?

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference **WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket No. 01-92, 96-45, and GN Docket 09-51** and may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- ▪ Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- ▪ Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

---

[63] *See, e.g.*, Level 3 Section XV Comments at 10-11 (seeking clarification that compliance would not require one-way interconnected VoIP providers to obtain numbering resources).

[64] *See id*.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

In addition, one copy of each pleading must be sent to each of the following:

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, D.C. 20554; e-mail: Charles.Tyler@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[65] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.[66] Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.[67]

For further information, please contact Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-7400 or TTY (202) 418-0484, Daniel Ball, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1520, and Sue McNeil, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau at (202) 418-0660.

- FCC -

[65] 47 C.F.R. §§ 1.1200 *et seq*.

[66] *See* 47 C.F.R. § 1.1206(b)(2).

[67] 47 C.F.R. § 1.1206(b).