Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Inquiry Into Certain Issues in the	)	WC Docket Nos. 10-90, 07-135, 05-337, 03-109
Universal Service-Intercarrier	)	CC Docket Nos. 01-92, 96-45
Compensation Transformation	)	GN Docket No. 09-51
Proceeding	)	

COMMENTS of the NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.; NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION; ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and the WESTERN TELECOMMUNICATIONS ALLIANCE

August 24, 2011

TABLE OF CONTENTS

I. THE RLEC PLAN, AS MODIFIED WITHIN THE CONSENSUS FRAMEWORK, REPRESENTS A CAREFULLY-CONSIDERED COMPROMISE AMONG A WIDE VARIETY OF INDUSTRY PARTICIPANTS AND SHOULD BE ADOPTED EXPEDITIOUSLY AS FILED. 3

II. THE RLEC PLAN AS MODIFIED BY THE CONSENSUS FRAMEWORK ACCOMPLISHES THE COMMISSION'S GOALS FOR UNIVERSAL SERVICE REFORM. 10

A. The Consensus Framework Correctly Recognizes the Complementary Nature of Fixed and Mobile Broadband Services. 10

B. The Consensus Framework Addresses Key Differences Between Price Cap and RoR Carriers. 13

C. The Commission Should Waive its Part 65 Rules to the Extent Necessary to Permit Implementation of the Consensus Framework. 17

D. The RLEC Plan's Proposals for Constraining Recovery of Capital and Operating Expenditures Are Reasonable and Should be Adopted as Proposed. 21

E. The Commission Should Study Further Methods to Reduce USF Support in So-Called "Competitive" Portions of RLEC Study Areas Prior to Any Adoption or Implementation. 24

F. The Commission Should Reject Proposals To Include Non-Regulated Revenues in High Cost Support Calculations. 28

G. The Commission Should Not Seek to Apply a Rate Benchmark Adjustment to Existing/Legacy High Cost Mechanisms. 31

H. States Should Continue to Play a Key Role in Assuring Quality Services Remain Available to Rural Consumers. 32

III. THE CONSENSUS FRAMEWORK WILL ACHIEVE THE COMMISSION'S GOALS FOR ICC REFORM, WHILE ASSURING CONTINUED PROVISION OF QUALITY, AFFORDABLE SERVICES IN RLEC AREAS. 33

A. The Consensus Framework Provides A Reasonable Transition For Reforming RLEC Terminating ICC Rates And Should Be Adopted As Proposed. 35

B. Budgetary Constraints and Other Considerations Necessitate a More Limited Approach to Reform of RoR Carriers' Transport and Originating Access Rates; However, the Commission Should Issue a Further Notice That Commits To Reforming RoR Carriers' Originating Rates In The Near Future. 39

C. The RM Calculation In The RLEC Plan And Agreed To in the Consensus Framework Is Essential To Ensuring That Rural Consumers In RLEC Service Areas Continue To Have Access To Quality Voice And Broadband Services At Affordable Rates And Should Be Adopted Without Modification. 42

D. The $25 Rate Benchmark For Residential Voice Service For RoR Carriers Included In The Consensus Framework Is Appropriate For The Rural Consumers

In These Areas While Also Mitigating Any Potential Impact On Consumers In States That Have Undertaken ICC Reform. 46

E. **Prompt, effective action to resolve access avoidance problems is critical to the success of ICC reform efforts**.. 47

IV. CONCLUSION. 52

Summary

The reform plan submitted by rural local exchange carriers in April 2011 (the "RLEC Plan"), as modified by the Consensus Framework described in the *Joint Letter* submitted in this proceeding on July 29, 2011, advances the Commission's articulated objectives for reform in this proceeding while also adhering to the principles for universal service mandated by the Telecommunications Act of 1996.

The Consensus Framework reflects extensive discussions and development efforts among representatives of the nation's largest and smallest telecommunications service providers. Participants sought to balance many competing objectives, including contributors' desire to keep the overall Universal Service Fund (USF) at targeted levels, unify and reduce Intercarrier compensation (ICC) rates to the extent possible, transition existing USF mechanisms to support broadband, ensure reasonable opportunities for recovery of costs through predictable and sufficient support mechanisms, and resolve various "access avoidance" issues while also avoiding unreasonable rate increases and service disruptions for rural consumers and businesses.

The updated RLEC Plan achieves all these objectives. If implemented as proposed, consumers and businesses in the rural areas served by rural rate-of-return local exchange carriers (RLECs) will see continued access to high-quality, affordable broadband services, without loss of access to quality voice services or unreasonable increases in rates. Yet, the Consensus Framework is both robust and fragile. Modifications to the RLEC Plan as captured within that framework, even seemingly minor ones such as those that might "blend" aspects of the RLEC Plan and the ABC Plan designed for price cap carriers, could easily undermine carefully-constructed industry solutions. Accordingly, the Rural Associations urge the Commission to adopt the proposed RLEC Plan as modified within the Consensus Framework.

In these comments, the Rural Associations also address specific issues and questions raised in the *Public Notice*, particularly insofar as they relate to the RLEC Plan component of the Consensus Framework. The Rural Associations detail how the Consensus Framework correctly recognizes key differences in the marketplace roles played by fixed and mobile broadband services, as well as differences in regulatory status between price cap and RoR ILECs. The comments also explain why it would be reasonable for the Commission to waive application of its Part 65 rules to permit prescription of the 10.0 percent rate of return agreed to under the Consensus Framework, but that such a waiver would not be justified in the event the Commission wishes to prescribe a different rate independent of the Consensus Framework.

The Rural Associations also show herein that the Commission should adopt the limitation on recovery of corporate operations expenses set forth in the RLEC Plan rather than the alternative formula set forth in the *Public Notice*. The Commission should not, however, attempt to limit recovery of switch-related investment via the Local Switching Support (LSS) mechanism, as doing so would impede continued conversion of analog networks to more efficient IP-based digital technology and increase funding requirements for the proposed access Restructure Mechanism (RM).

Furthermore, the Commission should examine further any mechanism that seeks to reduce support in "competitive" portions of RLEC study areas. The practical and legal difficulties associated with implementing a "donut and hole" mechanism in RLEC areas would undermine USF reform efforts, and may in fact prevent the achievement of the funding targets outlined in the Consensus Framework. Instead, at most, the Commission should consider specifically how such a mechanism might be adapted for RLEC service areas in the future as part of a Further Notice of Proposed Rulemaking.

The Commission also should not consider proposals to include total company earnings as part of a new CAF support calculation. These approaches are legally unsound, administratively unworkable, and directly contrary to long-standing Commission precedent regarding the separation of regulated and non-regulated accounts (as well as more recent decisions where the Commission has been careful not to venture into regulation of non-regulated activities and services). Similarly, the Commission should not adopt a proposal to reduce legacy USF support for voice services on a dollar-for-dollar basis depending on local rate levels at a time when it is also undertaking massive transitions in USF and ICC support mechanism. As explained herein, the Consensus Framework incorporates a more reasonable approach to promoting and assuring rate equity between consumers in states at differing stages of rate rebalancing.

With respect to ICC reform, the Rural Associations illustrate that the proposals included in the Consensus Framework establish a reasonable transition path for reforming RLEC terminating ICC rates and should be adopted as proposed. However, the proposed RM calculation incorporated in the RLEC Plan is essential to successful ICC reform. Also, the RLEC Plan's use of a $25 rate benchmark for residential voice service is appropriate for rural consumers in areas served by these companies, and also mitigates any potential impact on consumers in states that have undertaken ICC reform.

Finally, the Commission should promptly address (and then enforce) the various issues impeding collection of access charges. Resolution of current disputes over the treatment of VoIP calls, "phantom traffic," and access stimulation can reasonably be expected to slow the current downward trend in billable switched minutes of use. This trend appears to be in danger of worsening as providers invent new ways to disguise ordinary long-distance calls as "enhanced service" or "local" traffic, and claim exemption from access charges on that basis. Allowing

these problems to fester will only increase pressure on the RM, likely causing it to rise beyond estimated levels. This, in turn, will undermine chances of accomplishing USF and ICC reform within targeted levels.

For all the above reasons, the Rural Associations strongly urge the Commission to adopt the USF and ICC reforms described in the RLEC Plan, as modified by the Consensus Framework, without any further modification or delay.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Inquiry Into Certain Issues in the	)	WC Docket Nos. 10-90, 07-135, 05-337, 03-109
Universal Service-Intercarrier	)	CC Docket Nos. 01-92, 96-45
Compensation Transformation	)	GN Docket No. 09-51
Proceeding	)	

COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.; NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION; ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and the WESTERN TELECOMMUNICATIONS ALLIANCE

By Public Notice issued August 3, 2011,[1] the Commission has requested comment on Universal Service Fund (USF) and Intercarrier Compensation (ICC) reform proposals submitted by several parties in the above-captioned proceedings. These proposals include the "RLEC Plan" submitted by the above-named Rural Associations in their April 18, 2011 comments and modified by the "Consensus Framework" submitted on July 29, 2011; [2] the "ABC Plan"

---

[1] *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, Public Notice, DA 11-1348 (rel. Aug. 3, 2011) (*Public Notice*).

[2] *See* Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90, *et al.* (filed April 18, 2011) (*Rural Association April 18 Comments*). The RLEC Plan is intended to apply to incumbent local exchange carriers (ILECs) operating under rate of return (RoR) regulation. Modifications to the RLEC Plan were developed based on discussions between RLEC representatives and price cap carriers. *See* Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, 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,

submitted by a group of large and mid-size price cap ILECs on July 29, 2011;[3] and a Plan submitted by the State Members of the Federal-State Universal Service Joint Board in May 2011 (State Members' Plan).[4]

The Rural Associations[5] support the Consensus Framework discussed in the *Joint Letter*, and urge the Commission to adopt the amended RLEC Plan described therein "as filed." As extensively discussed in the *Joint Letter* and subsequent ex partes,[6] the Consensus Framework reflects a delicate balance of compromises made among a number of industry participants with diverging interests, a balance which will likely not survive if individual portions are modified in any significant respects.

Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (*Joint Letter*).

[3] *See* 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*).

[4] *See* 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).

[5] The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally,* 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural RoR regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 460 small ILECs serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

[6] *E.g.,* Letter from Joshua Seidemann, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Aug. 15, 2011); Letter from Jill Canfield, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Aug. 9, 2011); Letter from Glen Post, CenturyLink, *et al*. to Chairman Genachowski, FCC, WC Docket No. 10-90, *et al.* (filed Aug. 10, 2011).

In these comments the Rural Associations respond to specific questions raised in the *Public Notice* relating to the RLEC Plan.[7] Overall, these comments demonstrate that the RLEC Plan as amended by the *Joint Letter* advances the Commission's articulated objectives in this proceeding and is consistent with the Telecommunications Act of 1996. The Commission should accordingly adopt the amended RLEC Plan as part of implementing the overall Consensus Framework.

I. THE RLEC PLAN, AS MODIFIED WITHIN THE CONSENSUS FRAMEWORK, REPRESENTS A CAREFULLY-CONSIDERED COMPROMISE AMONG A WIDE VARIETY OF INDUSTRY PARTICIPANTS AND SHOULD BE ADOPTED EXPEDITIOUSLY AS FILED.

The Consensus Framework represents a landmark agreement among parties whose individual views of USF and ICC reform diverge greatly. Difficult and meaningful compromises were made in the negotiating process, as parties sought to promote broadband deployment and support network maintenance in a way that would meet Commission goals and restore regulatory certainty. Adopting the Consensus Framework will restore investor confidence in the telecommunications industry and better enable carriers to deploy and provision broadband. [8]

From the perspective of consumers and the industry, the seminal achievement of the Consensus Framework is to find a carefully balanced path toward predictability and stability for universal service across rural America after years of delay and uncertainty. The amended RLEC

[7] The Rural Associations do not take positions on particular aspects of the separate ABC Plan that it also part of the Consensus Framework, except to observe that the record does not support applying reforms developed for larger price cap companies as part of the ABC Plan, such as the "CQBAT" model, to RLECs. Furthermore, any application of such reforms to RLECs would seriously jeopardize the provision of universal service in RLEC service areas.

[8] The importance of restoring certainty and confidence cannot be overstated. *See, e.g.,* Comments of CoBank, WC Docket No. 10-90, *et al.* (filed Apr. 18, 2011); Letter from Jonathan Adelstein, Rural Utilities Service, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.* (July 29, 2011), Attachment (*RUS Letter*); Letter from C. Douglas Jarrett, Rural Telephone Finance Cooperative, to Marlene H. Dortch, FCC, CC Docket No. 01-92, *et al.* (Aug. 10, 2011).

Plan, in particular, will provide RLECs with greater clarity how their investments in and costs of operating broadband-capable networks will be recovered.[9] It will also provide a clearer roadmap with respect to ICC restructuring and the proper ICC treatment of traffic terminating on RLEC networks. From the perspective of the Commission and other policymakers, the additional benefit of the Consensus Framework is its adherence to the Commission's oft-stated interest in constraining growth in the size of the USF High Cost program. The funding targets indicated by the Commission were based upon current High Cost program funding levels,[10] though not necessarily related to actual projected costs of achieving sustainable broadband availability throughout the Nation, much less rural broadband networks and services that are reasonably comparable to those available in urban areas.[11] Nevertheless, the Rural Associations committed to stringent funding targets that endeavor to achieve the greatest level of quality, affordable broadband possible in RLEC service areas within the limits articulated by the Commission.

The RLEC Plan submitted in April 2011 already included significant departures from the *status quo* in the way that high-cost support would be distributed to rural carriers. Still, the Rural Associations offered additional adjustments in the *Joint Letter* that aim to achieve the

[9] For purposes of supporting networks under the RLEC Plan, "broadband" is defined as those services that are at least equal in capability to the DSL services set forth in [NECA Tariff No. 5].

[10] *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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ¶ 413 (*NPRM*), citing Connecting America: The National Broadband Plan, FCC (rel. Mar. 16, 2010) at *inter alia* 149-150 (*NBP*).

[11] *NBP* at Section 8.1, Exhibit 8-B, estimating present value of "broadband availability gap" is $24 billion (2010 dollars).

Commission's desired funding targets while also helping to ensure that USF mechanisms remain predictable and stable for the companies that rely upon them to deliver affordable, high-quality services. Those modifications yield a path forward for the Commission that is supported by the industry and promotes broadband availability while helping to sustain current service levels. [12]

In attempting to meet the funding target identified by the Commission, the Consensus Framework establishes a budget period of 2012-2017 during which high-cost support would be targeted to meet an annual $4.5 billion target. This is to include:

> ***Mobility:*** The framework contemplates an annual funding target of $300 million for mobile broadband services;
>
> ***RoR carriers:*** The framework proposes an annual funding target of $2 billion for areas served by RoR carriers. To the extent necessary to enable access restructuring, promote further broadband build-out (to the extent supported by increases in universal service/Connect America Fund (CAF) funding above current levels), and provide a reasonable opportunity to recover the costs associated with existing investments in broadband-capable plant, this amount is projected to increase by $50 million per year for six years (*i.e.,* increasing by $300 million, or a total annual funding target of $2.3 billion, in the sixth year). This potential incremental funding for rate-of-return carriers would not be available to other providers. In addition, rate-of-return carriers would be subject to a 10 percent authorized interstate rate-of-return, an annual intrastate regulated earnings test, and other parameters as set forth in the RLEC Plan.
>
> ***Price-cap carriers:*** The framework proposes an annual funding target of $2.2 billion for areas served by price cap carriers.

To be clear, these funding targets should not be considered "caps" to be adopted and implemented by rule. Rather, the Commission can and should evaluate the proposed mechanisms to ensure they are calibrated to meet the desired funding targets during the budget

---

[12] The Commission may want to consider some additional short-term transition process to help in sustaining maintenance of current service levels and ensuring a reasonable opportunity to repay loans taken out in reliance upon existing support mechanisms. This could take the form of a "hold harmless" support mechanism or some other vehicle that could, for a defined and limited period of time, "smooth out" any funding shortfalls resulting from the recalibration of the prescribed interstate rate of return or other aspects of the reforms that may be adopted by the Commission.

period – but it should not and cannot adopt a rule that treats these funding targets as absolute caps that artificially constrain whatever funding is necessary under the support mechanisms that are adopted. Moreover, the individual funding targets described above may be modified by the Consensus Framework's recognition that sufficient funding must be available for, *inter alia,* access restructuring mechanisms. Accordingly, under the Consensus Framework, the Commission would defer funding of the CAF for the study areas of AT&T and Verizon for up to two years if necessary and redirect those amounts for other funding needs, including those of RoR carriers, which would enable adherence to the overall annual $4.5 billion funding target. If, however, sufficient funding is not expected for any reason to be available to provide the necessary levels of high-cost support and/or ICC restructuring for carriers in any given year, reductions in RLEC ICC rates would be deferred until sufficient funding is confirmed to be available. Put another way, ICC rates would not be reduced at each step under the Consensus Framework unless and until explicit support is available for those who act as carriers of last resort for the areas they serve.

The Consensus Framework proposes to reduce certain terminating switched access and reciprocal compensation rate elements to $0.0007 per minute.[13] To avoid rate shock, these reductions would be phased in over a period of eight years for areas served by RoR carriers.[14] However, during the fifth year, the Commission would conduct a proceeding to determine whether the remainder of the transition should be slower or faster.

Finally, the Consensus Framework would require Commission action on the appropriate compensation for Voice over Internet Protocol (VoIP) traffic that originates or terminates on the

---

[13] Intercarrier compensation rate reductions for RoR companies are described in detail in section III, *infra*.

[14] As noted above, each step of the rate transition for RoR carriers would be subject to available funding.

Public Switched Telephone Network (PSTN), phantom traffic, and access stimulation. Indeed, any possibility of achieving the aforementioned funding targets will depend on positive action by the Commission in these areas as well as in all other aspects of the Consensus Framework. In particular, with respect to VoIP, the Consensus Framework signatories urge the Commission to order that traffic exchanged over PSTN facilities that originates and/or terminates in IP format will be subject to access charges at interstate rates if non-local[15] or reciprocal compensation if local. ICC determinations will be based on the origination and termination points of a call as determined by true, unaltered call detail information associated with the actual telephone numbers of the calling and called parties, on an "end to end" basis.

The Consensus Framework does not envision any automatic extension of specified targeted funding limits beyond the budget period ending in 2017, but assumes the Commission's statutory obligation to ensure sufficient, predictable, and specific funding for universal service will need to be fulfilled *irrespective of any desired budget number*. Indeed, those mandates exist independently of the Consensus Framework agreement, and upon expiration of the budget period, the Commission would simply fund universal service obligations as necessary to meet those obligations. To the extent the Commission comes to believe that any funding target limitations are necessary in the future, it would be required prior to the end of the current budget period to make an affirmative determination of the new level of high cost funding needed to satisfy in all respects the objectives and requirements of universal service after 2017. This would provide greater assurance that the Commission's reform initiatives are consistent with

[15] In this context, "non-local" traffic includes all interexchange calls other than those required to be rated as local pursuant to state or federal regulatory requirements (e.g., Extended Area Service (EAS) offerings).

Congressional mandates, and that no carrier will be placed in the position of complying with unfunded mandates to deliver universal service.

The Consensus Framework reflects the parties' recognition that a unified industry voice would facilitate and speed conclusion of the instant proceedings, leading to conditions that will encourage and facilitate greater investment in broadband networks. All parties made difficult compromises to achieve this objective – compromises they would not necessarily have agreed to outside the Consensus Framework. For example, the Rural Associations and their members would be unlikely to support in other contexts any reductions to the authorized interstate RoR or the ICC rate reductions included in the framework. Similarly, price cap carriers would be unlikely to support certain constraints on the use of the forward-looking cost model described in the ABC Plan.

These concessions, made in the interest of achieving regulatory certainty and promoting sustainable broadband networks, were crafted carefully and in concert with the concerns and concessions of other parties. Material changes to individual components of this framework would likely cause parties to withdraw their support for other components, negating the Consensus Framework as a whole and returning the industry and the Commission to a state of regulatory gridlock. In particular, the Commission should recognize that solutions suitable to one sector are unlikely to be acceptable or applicable to another, and therefore it should not seek to impose (for example) the CQBAT model or other aspects of the ABC Plan on RLECs. Experience gained with prior modeling efforts, such as through the Rural Task Force proceeding, has repeatedly demonstrated that forward-looking cost models do not work for RLECs. This is due to a variety of factors, including sparsely populated service areas that do not have an urban or metropolitan "core," significant variations in study area sizes, construction costs, customer

densities, substantially fewer customers from which to recover high fixed network costs, and high plant-specific and operations costs.[16]

In short, the Consensus Framework hangs on a delicate balance. It seeks to preserve and promote the core tenets of universal service, but it also compels RLECs to adjust further their operations for a broadband-based environment and to accommodate challenges arising out of the current economic climate. Any changes to the RLEC Plan or the Consensus Framework may very well upset this delicate balance, and leave some RLECs unable to pay for investments made in good faith under existing rules. As a useful point of reference, the Rural Utilities Service (RUS) of the U.S. Department of Agriculture recently filed data showing the impacts on borrowers in its loan portfolio based upon specified reductions in USF and/or ICC revenues.[17] The data filed by RUS confirm the need to proceed with caution in reforming these important mechanisms, and to avoid either flash-cuts or substantial longer-term changes that lead to dramatic reductions in support for individual companies. The RLEC Plan, as modified in the Consensus Framework, represents a good faith attempt to avoid tipping points such as those defined by RUS-provided data, while also seeking to achieve the Commission's budgetary objectives for the high-cost fund over the next several years. But any further changes to the RLEC Plan that deviate from those in the Consensus Framework would render the plan unworkable, and could leave rural consumers and the carriers committed to serve them without the revenues needed to deliver service in those markets.

---

[16] *See Federal-State Board on Universal Service,* CC Docket No. 96-45*,* Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, (Sept. 29, 2000). The CQBAT model cannot be evaluated in any event for application to RLECs because it remains licensed only to a select group of carriers.

[17] *RUS Letter,* Attachment (filed July 29, 2011).

II. THE RLEC PLAN AS MODIFIED BY THE CONSENSUS FRAMEWORK ACCOMPLISHES THE COMMISSION'S GOALS FOR UNIVERSAL SERVICE REFORM.

A. The Consensus Framework Correctly Recognizes the Complementary Nature of Fixed and Mobile Broadband Services.

The *Public Notice* initially requests comment on providing separate funding for fixed (wired or wireless) and mobile broadband services, including how relative funding levels should be set and revised over time.[18] The universal service principle of "reasonable comparability" in section 254(b)(3) of the Communications act of 1934, as amended, requires high-cost support for both fixed and mobile broadband services because they are complements, not substitutes. To the greatest extent possible within the confines of the Consensus Framework and associated funding targets, consumers in high-cost rural areas should have access to both fixed and mobile broadband services that are reasonably comparable to the fixed and mobile broadband services provided in urban areas at reasonably comparable rates.

Businesses and households in rural high-cost areas have the same needs for higher-capacity, larger-screen fixed broadband services and lower-capacity, smaller-screen mobile broadband services as their urban counterparts. Fixed and mobile broadband services utilize different equipment and technologies, and are used by consumers for different purposes at different times and places. For example, a business person may need to use higher-capacity and larger-screen fixed broadband services at work and at home, but be satisfied with lower-capacity, smaller-screen mobile broadband services while traveling, commuting or attending the activities of his or her children on the weekend. Users make trade-offs regarding speed, capacity, file size, screen size and mobility as their needs and circumstances change, sometimes many times within

[18] *Public Notice* at 2.

a given day. In both urban and rural areas, fixed and mobile broadband facilities and services play separate but complementary roles now and will likely continue to do so in the future.

In addition to providing essential service flexibility for consumers, the complementary nature of fixed and mobile services allows wireline and wireless carriers to construct and operate more reasonable and efficient networks. High-capacity wireline special access services provide essential interconnection and backhaul functions for wireless carriers. In addition, wireline networks offload much of the high-volume data and video traffic that can cripple wireless networks if they were required to carry it.[19] The Commission is well aware of the congestion and call completion problems caused by emerging devices on wireless networks, as well as the similar problems arising when events or emergencies cause congestion in the limited network capacity shared by wireless users. By carrying substantial amounts of high-volume and high-bandwidth traffic, fixed wireline networks prevent mobile wireless carriers from having to construct and maintain thousands of additional towers and transmission facilities (if they could acquire and obtain easements and environmental approval for the sites). The Commission should not rely solely or even primarily on wireless technologies that are normally only as good as the wireline networks to which they connect. If wireline networks are not adequately supported and maintained, wireless network capabilities, especially those in rural areas, will also deteriorate.

[19] "Wireless networks inherently have far lower capacity than wireline networks. One fiber optic cable has greater data capacity than the entire RF spectrum. A shared, inherently unreliable medium like radio simply cannot match what wire can bring. . . . . The point is not that the wireless network cannot deliver extremely useful and valuable services, since it can, but rather that wireless capacity is inherently limited compared to wireline capacity." *Mobile Broadband Constraints and the Need for Optimization*, Rysavy Research (Feb. 24, 2010) at 4, 11 (available at http://www.rysavy.com/Articles/2010_02_Rysavy_Mobile_Broadband_Capacity_Constraints.pdf (*Rysvay*). *See also Rural Association April 18 Comments* at 85, note 158 (quoting similar public statement by CTIA President & CEO Steve Largent).

Accordingly, the Rural Associations support the Consensus Framework proposal for a separate high-cost support mechanism and funding target for mobility objectives. A separate support mechanism and funding target is necessary because of the substantial differences in network design, investment requirements, equipment and bandwidth needs, congestion and maintenance issues, and service quality expectations between fixed and mobile networks and services. It will be far more efficient and effective for the Commission to adopt separate fixed and mobile support mechanisms than to seek a "one-size-fits-all" mechanism that is likely to be too unwieldy to address successfully the needs of either rural wireline or wireless carriers, or their customers.

The Rural Associations further agree that the separate mobile broadband support mechanism should have an initial funding target of $300 million per year. This is consistent with (and is in fact superior to) the $100 million to $300 million Mobility Fund under consideration by the Commission for one-time support for the construction of 3G or better mobile networks in unserved areas.[20] The Rural Associations have focused upon the upper $300 million bound of the Commission's proposed target range because the mobile broadband mechanism proposed in the Consensus Framework contemplates continuing operational support in addition to initial construction support. At the same time, continuing expansion of wireless 3G/4G networks such as those operated by AT&T, Verizon Wireless and Sprint, as well as the voluntary, merger-related commitments made by Verizon Wireless and Sprint to phase out their wireless universal service support[21] (and the likely similar commitment made by AT&T as it seeks approval of its

---

[20] *See Universal Service Reform; Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) ¶ 13.

[21] *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd

proposed merger with T-Mobile), mandate a cautious approach to conserve limited public funding until the nature, extent and needs of the areas remaining "unserved" by mobile broadband become more clear. [22]

B. The Consensus Framework Addresses Key Differences Between Price Cap and RoR Carriers.

The *Public Notice* correctly notes that the Consensus Framework (as well as the State Members' Plan) proposes a hybrid system in which support would be determined using a forward-looking cost model and competitive bidding for areas served by price cap companies, while RoR carriers would continue to receive support based on embedded costs, albeit with greater accountability and cost controls.[23]

17444 (2008) ¶¶ 196-97; *Sprint Nextel Corporation and Clearwire Corporation*, WT Docket No. 08-94, Memorandum Opinion and Order, 23 FCC Rcd 17570 (2008) ¶¶ 107-08.

[22] Along these lines, the Commission should not at this point use any of the funding dedicated for mobility objectives to support satellite operations until it has examined the need for such funding. As an initial matter, it is highly questionable whether satellite services are capable of delivering affordable voice and broadband services of a quality comparable to either fixed terrestrial or mobile wireless services. *See, e.g., USF Reform- Their Two Cents: Satellite Broadband Providers,* JSI Capital Advisors (June 13, 2011) (available at http://www.jsicapitaladvisors.com/the-ilec-advisor/2011/6/13/usf-reform-their-two-cents-satellite-broadband-providers.html). Second, scarce USF resources should not be reserved or advanced toward any marketing promises from satellite providers as to what they might be able to do with "just one more satellite." Instead, these USF dollars should go toward proven, affordable technologies that can deliver both voice and broadband to customers today. Third, it is also unclear why – even if these promises are true – additional high-cost funding is needed when it would seem the cost of providing satellite service in even the most remote rural locations may not differ all that much from the cost of providing the same service in Manhattan. If the Commission wants to investigate further to what extent USF resources should be put toward support of satellite services, it can and should do so in a Further Notice of Proposed Rulemaking where it can more fully consider the true and complete nature of the need and capabilities of such offerings and consumer demand for them. In such a Further Notice, the Commission could and should also consider any additional funding needs (beyond the initial $300 million per year) for wireless carriers who offer service in high-cost, rural areas, particularly to the extent that their existing support may phase down over the next several years.

[23] *Public Notice* at 3.

In this regard, the Consensus Framework reasonably and accurately recognizes the substantial and extensive differences between price cap and RoR carriers. These two classes of ILECs vary substantially in most significant respects, including: (1) the numbers of exchanges and customers they serve; (2) the nature, density, geography and size of their service areas; (3) the dollar amounts and sources of their revenues, profits and liquid assets; (4) the nature and amounts of their investments in plant and equipment; (5) the local versus regional, national and international scopes of their operations; (6) their access to regional, national and international banks, stock exchanges and bond markets; (7) the sizes and compositions of their work forces; (8) their ability to generate and take advantage of economies of scope and scale; and (9) demographics of their customers, including average income and the size and quantity of businesses served. The resulting critical variations in financial resources, investment incentives, cost structures and operating conditions mandate the continued use of separate mechanisms for the distribution of high-cost support.

The primary change that will occur from moving from the current "rural carrier /non-rural carrier" delineation for high-cost support purposes to the proposed price cap carrier /RoR carrier delineation is that rural price cap carriers presently receiving high-cost loop support (HCLS) will no longer receive high-cost support based on embedded costs. Instead, they will receive their high-cost support from the model-based price cap mechanism proposed as part of the ABC Plan.

RoR carriers include over 1,100 RLECs that serve nearly 40 percent of the land area of the United States. These service areas are generally more rugged, more remote, more sparsely populated and/or more expensive to serve than the rural portions of many price cap carriers'

service areas.[24] RoR carriers are typically small companies that have only a fraction of the revenues, assets, profits, cash flows and economies of scale of most price cap carriers. Most RoR carriers are not able to list and trade their stock and bonds on the New York Stock Exchange or other international, national or regional stock exchanges, borrow from Wall Street and other large banks, or otherwise access the resources of international, national and regional capital markets. Rather, RoR carrier options for the financing of significant infrastructure investments are generally limited to loans from the RUS, the Cooperative Bank (CoBank), the Rural Telephone Finance Cooperative (RTFC) and small local banks (which more often than not merely provide revolving lines of credit rather than network development financing).

In light of their challenging operating conditions and limited financial resources, RLECs have long and successfully relied upon RoR regulation for the opportunity to recover their regulated embedded investment and operating costs, repay their outstanding infrastructure loans, and provide potential lenders and investors with the assurances of repayment necessary to obtain additional financing and make further investments. They still rely upon RoR regulation for these same purposes today, and this business model – although perhaps "antiquated" or "outdated" to some – is the only proven framework to date for encouraging deployment of affordable, high-quality broadband in hard-to-serve rural areas. As the Universal Service Joint Board declared in its November 2007 *Recommended Decision*,[25] RLECs have done a "commendable job" under existing RoR-based high-cost support mechanisms of deploying basic levels of broadband

[24] In fact, most current RoR carriers started out as cooperatives or local family-owned companies that were formed to serve isolated high-cost rural areas that the former Bell System and the larger independent telephone companies did not want to serve.

[25] *High-Cost Universal Service Support*, WC Docket No. 06-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007) ¶¶ 30, 39.

service to nearly all of their customers while maintaining essential Carrier of Last Resort (COLR) networks.

In stark contrast, forward-looking cost models would dampen and discourage further RLEC investment in broadband by creating substantial uncertainty with regard to the ability to recover costs and repay loans. Although the Rural Associations have not yet been able to access and analyze the specific CQBAT model proposed in the ABC Plan, they recognize that such models only work when applied to large carriers serving large numbers of Census Blocks, wire centers and exchanges. For a price cap carrier serving hundreds or thousands of these areas, a model is likely to work because substantial variations in actual costs vis-a-vis the costs estimated by the model are likely to occur in both directions, and thus "average out" when spread over the large number of areas served by the company. For a RoR carrier serving only a handful of such areas, significant variations may not be offset and can result in unexpected and disruptive reductions in high-cost support. Moreover, even if the CQBAT model may work by aggregating Census Blocks into wire centers and targeting support to those relatively small areas, there is no basis in the record to adopt and apply that model or any other model to RLECs. The Commission should not cast aside a proven, effective framework such as RoR regulation on the gamble that any model *may* work to promote universal service in RLEC service areas.

Models are not needed to control RLEC costs or make these carriers more "efficient." Notwithstanding unsupported allegations to the contrary, RoR carriers have a long and established record of effective and efficient operation and utilization of high-cost support without significant waste, fraud or abuse.[26] Stringent RUS, CoBank and RTFC loan review processes

[26] *See* Universal Service Administrative Company, Final Report and Statistical Analysis of the 2007-08 FCC OIG High Cost Program Beneficiary Audits (Dec. 15, 2010) (finding the 2008 High Cost Program Beneficiary Audits report issued by the Office of Inspector General significantly erred when it determined the high-cost program had an improper payment rate of 23

have played substantial roles in ensuring that RLEC business plans and investment projects are reasonable and prudent. Moreover, as part of the Consensus Framework, the Rural Associations have proposed limitations upon future capital investment, and the extension of the existing cap on corporate operations expense in the HCLS mechanism to all existing and proposed RoR carrier high-cost support mechanisms.

For all the above reasons it is essential the Commission adopt the "hybrid" approach proposed in the Consensus Framework.[27]

C. The Commission Should Waive its Part 65 Rules to the Extent Necessary to Permit Implementation of the Consensus Framework.

In connection with development of the Consensus Framework, the Rural Associations agreed to reduce, from 11.25 percent to 10.0 percent, the authorized rate of return applicable to RLEC interstate regulated services. The Rural Associations would not have taken this step outside the Consensus Framework negotiations, but nonetheless voluntarily agreed to such a reduced authorized interstate rate of return in order: (a) to reach agreement upon the Consensus Framework with other segments of the telecommunications industry; (b) to permit implementation of the Consensus Framework without the delays and complexities inherent in a

---

percent. USAC's final report showed the correct estimated improper payment rate to be 2.7 percent). As the Rural Associations have previously pointed out, RLEC receipts from high-cost USF support have been increasing at only about 2.5 to 3 percent per year on average in recent years – even as RLEC receipts from ICC have declined over the same period and RLECs have edged out digital subscriber line (DSL)-speed broadband availability to over 92 percent of their customers, albeit at varying speed. *See, e.g., Rural Association April 18 Comments* at 8, note 6.

[27] The Rural Associations recognize that existing RoR carriers have the option to convert to price cap regulation pursuant to section 61.41(a)(3) and related provisions of the Commission's rules. However, conversions must be initiated by carriers, and may not be mandated by the Commission or other authorities. The Commission may also, as part of any Further Notice of Proposed Rulemaking, wish to examine whether it would be appropriate or desirable to permit a carrier converting from RoR regulation to price cap regulation to retain recovery under the RLEC mechanism and/or whether and to what degree a RoR-regulated carrier might be able to elect to receive support via the model defined by the ABC Plan.

Part 65 prescription proceeding; and (c) to serve as one of the significant devices for maintaining future RLEC high-cost support (including explicit support for replacing lost access charge revenues) within the funding target desired by both the Commission and the Consensus Framework.

The *Public Notice* recognizes correctly the extraordinary nature of this agreement, and requests comment on whether it may implement the proposed Consensus Framework via a waiver of its Part 65 rules, which generally establish procedures for represcribing the interstate authorized rate of return. The Commission may, of course, waive its rules where particular facts and circumstances make strict compliance inconsistent with the public interest.[28] In so doing, the Commission may take into account considerations of hardship, equity, or more effective implementation of public policy.[29] In considering whether a waiver is justified in the present circumstances, the Commission should recognize that the current authorized 11.25 percent interstate rate of return was prescribed in 1990, and was based upon an overall cost of capital "zone of reasonableness" which, at the time, was 10.85 percent to 11.4 percent for the then-seven Bell Regional Holding Companies (RHCs).[30] Much has changed during the intervening 21 years, including the transformation of the PSTN from predominately a voice network to an increasingly broadband network, the decreased relevance of the capital structures of the few

---

[28] *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[29] *WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[30] The embedded cost of debt for the RHCs was then 8.8 percent, the average RHC capital structure was 44.2 percent debt and 55.8 percent equity, and the interstate access cost of equity was in the 12.5-13.5 percent range. *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507, 7529, 7532 (1990).

remaining RHCs as surrogates for RLEC rate-of-return calculations, completely different levels of risk due to competition, and the volatility of today's capital markets.

At this time, however, there is far too much uncertainty and volatility in the overall domestic and global economies, as well as in the U.S. telecommunications industry itself, to permit a Part 65 prescription proceeding to determine accurately the costs of equity and debt necessary to prescribe a new authorized rate of return for a reasonable period. Sovereign debt crises, the lingering effects of the 2008 economic recession, stock market and currency fluctuations, inflationary pressures, structural unemployment, aging populations and other demographic changes, ongoing wars and civil unrest and terrorism, and similar disruptive factors have made it exceedingly difficult for anyone to make reliable calculations and predictions of the cost of equity and/or debt over the next few years.

In addition to these general uncertainties, the telecommunications industry itself is immersed in the ongoing evolution of the voice network into a broadband network, leading to many unanswered questions regarding content, demand, costs, pricing and other aspects of Internet Protocol (IP)-based services. Uncertainty regarding customer demand and broadband adoption rates are likely to render debt and equity cost estimates even more volatile.

Due to these ongoing changes and uncertainties, the Rural Associations do not believe that a lengthy, complex and expensive Part 65 prescription proceeding is necessary or practicable at this time. The Commission could use its resources far more effectively and efficiently by waiting several years until national and international economies stabilize, and the nature and economics of the developing broadband network become more certain. Whereas the Commission does not need to repeat the current 21-year time horizon, it should strive for an

RLEC rate of return that is likely to remain reasonable and reliable for at least five to seven years, which would justify the time, effort and expense of a Part 65 prescription proceeding.

At the same time, the Commission cannot wait several years to implement universal service and ICC reform. That is why the Rural Associations have agreed, as part of the Consensus Framework, to a reduction of the authorized interstate rate of return from 11.25 percent to 10.0 percent without a Part 65 prescription proceeding. To the extent necessary, the Commission can waive its Part 65 rules to accept the interstate rate of return reduction in the Consensus Framework in order to implement the important public policy of universal service and ICC reform.

The 10.0 percent authorized interstate rate of return proposed by the Rural Associations is intended as a transitional measure. It was set to help fit RLEC high-cost support within the overall funding target for the High Cost program under the Consensus Framework over the next six years, while trying to avoid destabilizing flash cuts in the high-cost support and ICC received by individual RLECs. At the time it adopted the Multi-Association Group Plan (MAG Plan) in 2001, the Commission terminated its ongoing CC Docket No. 98-166 prescription proceeding and stayed the effectiveness of section 65.101 of its rules, which would otherwise have required the initiation of a new Part 65 prescription proceeding immediately.[31] Citing the changed telecommunications environment between 1995 (when the current Part 65 Rules were adopted) and 2001, the Commission found that it would be counterproductive to delay implementation of

---

[31] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket Nos. 96-45, 98-77, 98-166, 00-256,* Second Report and Order and Further Notice of Proposed Rulemaking Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ¶¶ 208-210.

the MAG Plan and initiate a new prescription proceeding without a complete review of the Part 65 procedures to determine whether they were still appropriate and workable.[32] The logic of the Commission's 2001 waiver of the Part 65 requirements is even more relevant and applicable ten years later, when reform of the USF and ICC rules to reflect the ongoing transition to a broadband network should not be delayed by a review and/or initiation of the now 16-year-old Part 65 procedures.

The Rural Associations emphasize that waiver of the Part 65 rules can only be justified in the context of the proposed agreement specifying represcription of a 10.0 percent authorized interstate rate of return implemented in concert with the Consensus Framework. Should the Commission, for any reason, desire to reduce the interstate rate of return further, it would need to conduct a full Part 65 prescription proceeding. Prior to conducting such a proceeding, however, the Commission would need to conduct the review proceeding it indicated was necessary as part of the MAG proceeding ten years ago.

D. The RLEC Plan's Proposals for Constraining Recovery of Capital and Operating Expenditures Are Reasonable and Should be Adopted as Proposed.

The RLEC Plan proposed extending the current corporate operations expense cap formula applicable to HCLS to interstate common line support (ICLS) and local switching support (LSS).[33] The *Public Notice* also appears to favor applying a corporate operations expense limitation to all three mechanisms, but proposes an alternative formula that differs in several respects from the current HCLS limitation formula.[34] In particular, by incorporating lower

---

[32] *Id.* ¶ 210.

[33] *Rural Association April 18 Comments* at 11.

[34] *Compare Public Notice* (at 6) *with* 47 C.F.R. § 36.621(a)(4).

numerical coefficients and by failing to include a growth component, the formula in the *Public Notice* would, if adopted, significantly restrict recovery of corporate operations expenses for most companies beyond levels contemplated in the RLEC Plan.[35] No explanation is provided for these proposed changes.

The Rural Associations believe that straightforward application of the existing limitation formula used in the HCLS mechanism to ICLS and LSS reasonably addresses concerns regarding recovery of excessive levels of corporate operations expenses through the High Cost program. Since the *Public Notice* does not contain any explanation for proposing a different formula, it is difficult for the Rural Associations to comment on the merits of the proposed approach, except to observe that the Commission cannot rationally change an existing formula without providing a reasoned basis for doing so.[36] It is also unreasonable to adopt a formula that fails to account for the effects of normal growth in expenses, if that is what is intended by the *Public Notice*. Accordingly, the Rural Associations strongly urge the Commission to maintain the corporate operations expense cap formula as set forth in the current rules for HCLS and extend it across ICLS, LSS, and the new CAF as proposed in the RLEC Plan, without any further modification.[37]

The RLEC Plan also included a reasonable and practical method for limiting recovery of future capital expenditures (CapEx) associated with loop plant, based on analyses of depreciation

---

[35] For example, the formula proposed in the *Public Notice* for companies with less than 6,000 lines would cause many of the smallest companies (*i.e.*, those with fewer than 1,665 lines) to experience reductions of approximately 24 percent in allowable expense recovery, compared to levels permitted under the current HCLS limit.

[36] Indeed, between the lack of an explanation for the changes to the formula and the lack of clarity surrounding the exclusion of a growth factor as set forth in the current rule, the proposal in the *Public Notice* lacks the fundamental clarity needed to satisfy basic tenets of administrative procedure. *See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983).

[37] *See supra* pp. 6-7.

reserves. The RLEC proposal, included in the *Rural Association April 18 Comments* as Appendix A, addresses concerns regarding potential recovery of "race-to-the-top" investments in broadband loop plant. By basing the level of CapEx recovery from high-cost support on the degree to which loop plant has reached the end of its economic life, the RLEC Plan's CapEx constraint assures that limited high cost funds available for incremental investment will go where they are most needed and will be distributed fairly. The RLEC Plan also assures that funding levels remain manageable, stable, and predictable by spreading out future investment over time.[38]

The *Public Notice* does not specifically address the RLEC Plan's proposed CapEx limitation, but instead seeks comment on limiting reimbursable levels of capital investment and operating expenses for LSS.[39] However, there is no need to do so. Investment levels in switching equipment have generally been trending downward over the past , as companies replace expensive Time Division Multiplexing (TDM) central office switching equipment with far more efficient IP-based "softswitches." The Commission should strongly encourage, not limit, these investments if it wishes to speed the conversion of remaining analog networks to faster, more efficient IP-based broadband networks.

Moreover, under the Commission's rules, investment-related expenses associated with local switching plant not recovered via LSS are recovered via increases in local switching rates. Thus, any shortfall in LSS due to proposed reimbursement limitations would simply place upward pressure on federal Restructure Mechanism (RM) funding requirements for RLECs. For these

[38] The proposed constraint set forth in the RLEC Plan would apply only to future network investments made after the new rules take effect. RLECs would continue to be able to recover the costs of existing investments, including committed investments such as the non-grant portions of stimulus fund projects arising from the American Recovery and Reinvestment Act (ARRA). In addition, investments made to serve Greenfield areas would also be exempted from the proposed CapEx constraint.

[39] *Public Notice* at 7.

reasons the Rural Associations urge the Commission not to implement mechanisms designed to constrain recovery of capital-related or operating expenses via LSS.

E. The Commission Should Study Further Methods to Reduce USF Support in So-Called "Competitive" Portions of RLEC Study Areas Prior to Any Adoption or Implementation.

The *Public Notice* seeks further input regarding how the Commission might address purportedly "competitive" areas, where one or more facilities-based competitors might operate without high-cost support. In the NPRM, the Commission asked for guidance on how this so-called "donut and hole" concept would operate, under which a supported carrier might see its support levels reduced because an unsupported provider operates in a portion of the first carrier's serving area.[40] In response, the Rural Associations suggested that this concept required further development and practical consideration prior to possible implementation, identifying among other questions:

- How would the Commission identify precisely where the competitor operates (*i.e.*, the "hole" of the study area surrounded by the non-competitive "donut")?
- Who would administer any disaggregation exercise (*e.g.*, the state commissions or this Commission)?
- What standards would govern any disaggregation exercise (*e.g.*, allocation of actual costs?), and how would they be developed and implemented? Could the supported carrier choose the methodology by which it shows what costs it continues to incur and that need recovery?
- What would happen if there were a "finding" of unsubsidized competition – what kinds of reductions would this create with respect to USF support in the "hole"? If there is a reduction in support, how is funding in the "hole" reduced? If support is reduced, what are the impacts on COLR and other obligations in the "hole"? Is a carrier required to bear the "unfunded mandate" of COLR obligations without any support therefor? How can the Commission implement such a process when COLR requirements are typically imposed pursuant to state jurisdiction?

[40] *NPRM* ¶ 391.

- How would a reduction of USF support in the "hole" affect the ability of RLECs to recover prior investments made under current rules? Can the reduction or elimination of support with respect to prior investments that were recoverable under rules in place at the time they were made be squared with the statutory requirement that USF support be predictable and sufficient?

Beyond these substantial legal and jurisdictional considerations and the many practical hurdles still to be resolved, rapid implementation of a "donut and hole" concept without careful forethought could also undermine or even defeat one of the Commission's primary reform objectives – constraining growth in the size of the High Cost program. The Commission itself noted in the NPRM that disaggregation may very well *increase* the need for support, as the benefits of study area-wide averaging would be lost when costs are disaggregated and support is targeted.[41] Indeed, given the substantial likelihood that any competitor will operate in the most densely populated (*i.e.*, lowest-cost) "hole" of any given study area, disaggregation will almost certainly increase an RLEC's support needs, as the higher costs of serving the "donut" must then be taken fully into account on a stand-alone basis. By contrast, the Consensus Framework is premised in significant part upon an attempt to constrain growth in the High Cost program during a six-year budget period based on total study area calculations for RLECs. Disaggregating study areas in ways that cannot yet be foreseen, through methods not yet developed, for competitors not yet identified, could place significant upward pressure on the USF and all but eviscerate efforts to satisfy any specific funding targets over the next six years.

The Commission should therefore not adopt a "donut and hole" mechanism in areas served by RLECs at this time, in the midst of much broader reform. Instead, it should take a separate, narrower look at the legal, practical, and economic considerations involved in such an exercise. The framework for implementation suggested by the Rural Associations in their April

---

[41] *See id.* ¶ 388.

2011 comments[42] may serve as a good *starting point* for such an examination *if* the Commission desires to take up this inquiry further, but it by no means represents a complete solution to the issues that must be resolved.[43]

Indeed, the remaining record in this proceeding provides few, if any, answers to any of the critical outstanding questions. In particular, those who favor redrawing study areas based upon the presence of "unsubsidized" competition have provided no hard evidence or meaningful input regarding the relative costs and benefits of such a proposal or how any such proposal would actually work. Sprint, for example, made the cursory assertion in its comments that it is "both inefficient and anti-competitive to provide subsidies to incumbent carriers that allow them to undercut the market-based rates charged by unsubsidized competitors in that market."[44] Sprint and other advocates, however, have failed to explain *how* one would carry out the extraction of this support. These proponents also ignore that just because a provider may be

[42] *See Rural Association April 18 Comments* at 51-65. There, the Rural Associations suggested a process by which the Commission could attempt to implement a "donut and hole" review if it chose to do so. Specifically, the Rural Associations recommended that this process would only be initiated by the petition of a competitor establishing that: (a) it is a state-certified carrier or ETC (to ensure some minimum level of service quality); (b) it can deliver, as of the date of the filing of the petition, both broadband (as defined by the Commission for support) *and* quality voice services to at least 95 percent of the households in the specific area through use of its own facilities and in a manner comparable to the relevant high-cost support recipient (*i.e.*, fixed or mobile service, as applicable); (c) it offers each of those broadband and voice services on a stand-alone basis at rates that are reasonably comparable to those offered by the ILEC or mobile provider, as applicable (to ensure affordability of rates for consumers); and (d) it neither receives high-cost support of any kind *nor* cross-subsidizes its operations in the specific, affected census block (by delivery of credible financial statements showing that the area itself is truly "economic" of its own accord). *Id*. at 52-53. The ILEC or other high-cost support recipient should also be provided with a reasonable and meaningful opportunity to evaluate the claims made in any petition, and to present evidence refuting any of the facts averred therein. *Id.* at 54.

[43] Indeed, other issues that must be considered include how any caps or limits on recovery adopted in the reform process might be applied (or recalibrated) in the context of a disaggregated study area, and also the appropriate transition path from study area-wide support to a new level of support based upon disaggregation.

[44] Comments of Sprint Nextel, WC Docket No. 10-90, *et al.* (filed Apr. 18, 2011) at 35.

operating without high-cost support does *not* translate into a conclusive determination that the area in question is in fact "economic" to serve, that the competitor is truly "unsubsidized," or that the rates charged by the competitor in that area are in fact "market-based." Bald assertions about the need for reform without any suggestions on a roadmap to reach the desired result or thoughtful discussion of the bumps in the road required to get there must be dismissed; they do not provide sound guidance on how to tackle the next stages of reform.

The *Public Notice* asks if a model might be used to achieve disaggregation of study areas, but, as noted above, the means of disaggregation – *e.g.*, model vs. allocation – is but one of many questions left to resolve with few, if any, answers on the record. Moreover, even if all of these other questions had been answered (which they have not), there is no model in the record of this proceeding that has been presented or could possibly be used for such a purpose.[45] Thus, if the Commission believes there is a need to address "unsubsidized competition" in areas served by RLECs, then it should do so in a manner that tackles *all* of the questions presented – both substantive and procedural. The Commission should therefore undertake at most a further examination that compels those who believe such an approach to be good public policy to come forward with *specific* recommendations and *comprehensive* solutions that go beyond mere declarations of policy desire. This further analysis would also help ensure that the Commission

---

[45] Even if a model or other analysis might provide some means of disaggregating an area on the basis of density, that feature alone is insufficient. The disaggregation sought here is based upon the presence of competition rather than density. There may perhaps be some correlation between the two, but they are not directly linked. Likewise, it remains unclear whether any model applied to RLEC areas can adequately account for the disaggregation/reallocation of key categories of expenses, such as operating costs, which would necessarily be "split" in such an exercise. Thus, more needs to be done before any model could be used to facilitate disaggregation for purposes of shifting support based upon the presence of "unsubsidized competition." Indeed, given substantial concerns with the accuracy of models as applied to entire RLEC study areas, errors will likely increase many fold as attempts are made to apply such models at the sub-study area level.

does not create any unintended consequences (such as massive increases in funding levels) by racing to implement a “donut and hole” concept without sufficient consideration in the course of much broader, far-reaching reforms.

F. The Commission Should Reject Proposals To Include Non-Regulated Revenues in High Cost Support Calculations.

The *Public Notice* seeks comment on the State Members' recommendation that a Provider of Last Resort Fund “include a total company earnings review."[46] The Rural Associations reiterate their opposition to these sorts of proposals,[47] and urge the Commission to reject the most recent manifestation as offered by the State Members. A total company earnings test is administratively unwieldy, legally unsound, and contrary to years of Commission precedent. Blending regulated and non-regulated revenues would result in a miasma that would blind rational attempts to support and facilitate the deployment and ongoing provision of broadband.

The Commission has long insisted on a clear separation between regulated and non-regulated accounts for ratemaking purposes.[48] Rules requiring allocation of costs were primarily intended to protect consumers of regulated services from the burden of supporting non-regulated services. These consumer-oriented principles are implemented by the Universal Service Administrative Company (USAC), which counts among its primary audit missions the

[46] *Public Notice* at 7-8.

[47] *See Rural Association April 18 Comments* at 18-19.

[48] *See FPC v. United Gas Pipe Line Co.*, 386 U.S. 237, 243 (1967) (“Ratemaking is, of course subject to the rule that the income and expense of unregulated and *regulated activities should be segregated.”*). *See also Michigan Bell Tel. Co. v. Engler,* 257 F.3d 587, 594 (6th Cir. 2001). That case held, *inter alia*, an ILEC cannot be “required to subsidize [its] regulated services with income from rates either deemed to be competitive, or with revenues generated from unregulated services.”

investigation of whether the wall between regulated and non-regulated accounts has been preserved.[49]

In contrast, the morass into which the Commission would wade if it crashed through the wall separating regulated and non-regulated revenues is extensive. Would all non-regulated revenues and expenses, such as those associated with alarm monitoring or computer services, be deducted? If associated expenses exceed revenues, would this cause an increase in USF funding requirements?[50] What would be the penalty for failing to account for non-regulated expenses in a manner deemed "reasonable" by the Commission? Would the Commission really want to be in the position of deciding how an operator should "reasonably" reflect, say, computer sales revenues? Would such action tend to encourage or discourage providers' exploration of new and innovative programs?

The Commission would be compelled to undertake a painstaking and ongoing analysis to determine what sort of enterprises would be subject to inclusion in the earnings portfolio, and which would be excluded. At day's end, the Commission would place itself squarely in the self-

---

[49] *See, e.g., Prevalent Audit Issues: High Cost Audits' "Greatest Hits,"* presentation by Rob Binder, USAC High Cost/Low Income Division, at 7 (describing as one of the audit processes' "Greatest Hits" the examination of whether Part 64 separations have been properly performed, whether adequate documentation has been maintained to support cost allocations between regulated and non-regulated operations, and whether expenses have been properly assigned and applied to different accounts) (available at: http://www.usac.org/_res/documents/hc/pdf/training-2010/Audits-Compliance-Common-Findings.pdf).

[50] It is telling in this regard that the Commission would consider excluding revenues or marginal costs on video operations "to avoid the risk of subsidizing video operating losses attributable to unregulated programming costs." *Public Notice* at 8, *citing* State Members Comments at 56-58. The State Members also seem to recommend, without explanation, that the Commission take account of *all* broadband Internet access revenues but only *some* non-regulated broadband Internet access expenses (*i.e.,* transmission costs) in determining support needs. *Id.* at 33-34, 47-48.

contradictory position of attempting to quasi-regulate non-regulated services.[51] With years of confusion over "enhanced" and "basic" and "telecommunications" and "information" services behind it, it would seem the last thing the Commission would want to do in simplifying and streamlining the universal service system is create multiple new categories of service revenues and expenses to monitor.

The ministerial tasks associated with these efforts would create a compounding set of difficulties. As the "accountant" for high-cost support, USAC would be strained to oversee proper treatment, allocations, and accounting; at the least, USAC's ranks of professionals would require expansion to address the proper accounting of a broadened set of revenue sources and costs. Although these hurdles are presumably surmountable, the proposal to dismiss decades of successful, rational, and legally sound regulatory policy begs reason.[52] Particularly at a time when so many other parts would be moving as well, this attempt to reshuffle the entire deck of revenues and expenses subject to some form of "regulation" would be both ill-advised and potentially dangerous. Rather than scuttle the structure that has worked to ensure reasonable and well-monitored cost recovery for decades, that system should serve as a model and foundation for fundamental reform. Doing so will ensure fiscal integrity and avoid the legal and administrative mess that would emerge from attempting to determine which, and to what degree, certain non-regulated revenues and expenses should be included within any high-cost support calculation.

---

[51] Moreover, to ensure that high-cost support is distributed in a nondiscriminatory and competitively neutral manner, the Commission would need to apply any such broader review of net regulated *and* non-regulated revenues for USF/CAF support to *all* potential recipients to determine the true "need" for support of each. This includes large LECs, mid-sized LECs, and any other ETCs.

[52] *See supra* note 26.

G. The Commission Should Not Seek to Apply a Rate Benchmark Adjustment to Existing/Legacy High Cost Mechanisms.

The *Public Notice* seeks comment on the Ad Hoc Telecommunications Users Committee's suggestion that the Commission develop a benchmark for voice service and reduce a carrier's high-cost support by the amount that its rate falls below the benchmark.[53] The Ad Hoc approach would reduce HCLS for rural carriers dollar for dollar to the extent the company's local rates do not meet the specified benchmark, presumably set at some national or regional average. The stated purpose of the Ad Hoc approach is to encourage states to rebalance their rates and ensure that universal service does not subsidize carriers with artificially low rates.[54]

The Ad Hoc approach is artificially appealing in its simplicity. However, it is backward looking. Its sole purpose is to reduce support from the legacy voice-based mechanisms and fails to address rate comparability for broadband services. The RLEC Plan is more comprehensive and constructive in its approach.[55] Rate benchmarks exist in the RLEC Plan, but they are consistent with universal service principles and are tied to the Commission's broadband goals. Under the RLEC Plan, a company first determines a broadband network transmission cost incorporating last mile, second mile and middle mile costs associated with providing broadband service. From the broadband network transmission cost, the RLEC CAF mechanism subtracts out a broadband wholesale benchmark. This approach assures that CAF support is directed to high-cost areas and will allow broadband rates for end users in such areas to be reasonably comparable to rates paid by urban customers for comparable broadband services. It also assures "consumer equity" while simultaneously decreasing legacy support mechanisms, including HCLS.

---

[53] *Public Notice* at 7.

[54] *Id.* at 7.

[55] *Rural Association April 18 Comments* at 33-35.

Further, the RLEC Plan includes a residential voice rate benchmark of $25 that is used in conjunction with ICC reform for RoR carriers. This benchmark is intended to recognize that it is appropriate for RLECs with below-average rates for residential voice service to first look to their end users for a portion of the recovery of lost revenues due to the lowering of ICC rates.

If the Commission were to adopt the RLEC Plan and also adopt the Ad Hoc benchmark approach, it would create the potential for a "double whammy" for rural carriers and their customers. There would be two benchmarks with separate and distinct revenue reductions tied to a single rate charged to each customer, dramatically upsetting the careful balance of revenue reductions and support mechanisms crafted by parties participating in the Consensus Framework. As described above, it is imperative that the Commission recognize the co-dependent nature of each provision in the Consensus Framework and not adopt additional revenue restraints that will call into question the viability of rural carriers. Reducing HCLS on a dollar-for-dollar basis to meet a voice service rate benchmark, in addition to the support transitions contemplated in the Consensus Framework, would substantially undermine the operating mechanics of the RLEC Plan, harm rural carriers who are in the process of migrating away from these historical support mechanisms, and undermine chances for successful reform. Rather than penalizing carriers as they undertake a difficult transition away from legacy support mechanisms, the Commission should focus more directly on getting the new mechanisms right – particularly when the legacy support mechanisms have not been growing unreasonably and given that there are other tools at the Commission's disposal as described above to promote rate rebalancing by states.

H. States Should Continue to Play a Key Role in Assuring Quality Services Remain Available to Rural Consumers.

Commenters, including the State Members, propose an ongoing role for states in monitoring and overseeing recipients of universal service support. The Commission seeks

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.[56]

The RLEC Plan supports the imposition of strict, but reasonable and well-defined, federal COLR obligations that are monitored and enforced by the states. COLR functions render substantial service availability and service continuity benefits that are essential to public health, safety and welfare. The essence of COLR obligations is consistent with universal service principles – the requirement for the carrier to construct facilities and provide service to customers whose remote locations, high costs of service and/or minimal profit potential would not normally induce a profit-maximizing entity to offer service at readily affordable rates. COLR-type obligations also promote a high level of accountability from support recipients.

It is appropriate for CAF recipients to be required to comply with federally created, uniform COLR-type obligations.[57] However, partnership with the states is essential. While the service obligations should be uniform and federally created, the enforcement of the federal obligations should be a function of the states.[58] The states are in the best position to determine whether individual CAF recipients are complying with the requirements and manage any complaints.

III. THE CONSENSUS FRAMEWORK WILL ACHIEVE THE COMMISSION'S GOALS FOR ICC REFORM, WHILE ASSURING CONTINUED PROVISION OF QUALITY, AFFORDABLE SERVICES IN RLEC AREAS.

The Consensus Framework sets forth a path for ICC reform for RoR ILECs that is consistent with the Commission's reform goals. It reforms terminating per-minute ICC rates for

[56] *Public Notice* at 5.

[57] *See generally Rural Association April 18 Comments* at 74-75. Available funding must be factored into any calculation of coverage or service requirements.

[58] The states should not have the ability to dismiss or expand upon the federal obligations.

these carriers while meeting the FCC's objectives for constraining the size of the High Cost program. Most importantly, however, the framework would enable the continued provision of quality, affordable voice and broadband services to the rural consumers in RLEC service areas. Among other things, the Consensus Framework for RoR carrier ICC reform would:

- Establish an annual High Cost program funding target for RoR carriers that begins at $2 billion and grows modestly to $2.3 billion over six years.[59] In combination with the annual funding targets established for price cap carriers and mobility objectives under the Consensus Framework, this would help with the objective of constraining the annual funding target for the total High Cost program to $4.5 billion per year for this six-year period.

- Upon the effective date of an order in this proceeding, require VoIP providers whose traffic originates and/or terminates on the PSTN to pay established interstate switched access rates if the traffic is non-local, or reciprocal compensation if it is local. At the same time, positive action would be taken to address phantom traffic and access stimulation.

- At the start of year one of rate reform, cap interstate originating and terminating switched access rates to prevent further increases, with any shortfall in carriers' interstate revenue requirements recovered through the proposed RM.[60]

- Over two steps, unify RoR carriers' terminating intrastate access rates with capped interstate rate levels.

- Over the next three steps reduce RoR carriers' terminating end office rates to $0.005 per minute. Then (unless that timeframe is modified by the Commission), reduce these carriers' terminating end office rates to $0.0007 per minute over three more steps. RoR carriers' transport and tandem switching rates would remain unchanged from the interstate rate level at the end of step 2.

---

[59] This includes amounts associated with the proposed RLEC access RM.

[60] The RLEC RM is intended to offset each year's revenue reductions associated with reform of ICC rates. For interstate, the RLEC RM equals interstate access revenue requirements in excess of revenues from capped interstate access rates. Intrastate RM amounts for each RLEC are determined by first establishing a base year terminating revenue requirement (including intrastate terminating switched access and net reciprocal compensation revenues, adjusted each year by the percent change in carrier's interstate switched access revenue requirements) and then deducting the carrier's annual terminating access revenues (which include net reciprocal compensation payments, certain increases in the federal Subscriber Line Charge (SLC) if required, and any intrastate regulated overearnings determined by reference to the proposed 10 percent RoR.).

- The above reductions in ICC rates would be deferred if sufficient funding is not expected to be available to provide the necessary levels of high-cost and/or RM support for carriers in any given year.

- Through the adoption of a sufficient and sustainable RM, provide RoR carriers with the necessary certainty, stability, and sufficiency in their support streams to: (1) maintain and operate their multi-use networks, (2) provide customers with reasonably comparable basic and advanced services at reasonably comparable rates, (3) continue to operate as COLRs, (4) provide wholesale services to other carriers that rely on ILEC networks for the provision of service, (5) repay outstanding infrastructure loans, and, (6) to the extent permitted under program constraints, make additional broadband network investments to extend and improve service to customers.

- In conjunction with the RM, establish an affordable and "reasonably comparable" $25 residential voice service rate benchmark for RoR carriers. In order for carriers with residential rates below that level to reach the benchmark, increases in the monthly residential interstate SLC cap would occur at a rate of $0.75 per year, subject to a maximum of six increases (or $4.50). The SLC increases could either be assessed or imputed at the discretion of each RoR carrier, but that choice would have no impact on the size of the RM or the overall High Cost program.

In short, the Consensus Framework for ICC reform for RoR carriers would serve the public interest, both for the rural consumers in these territories as well as nationwide. It is critical, however, that the Consensus Framework be adopted as proposed. The multiple, interlaced elements work in concert with each other to ensure proper outcomes for all participants. The modification of any element could disrupt the balanced mechanisms and produce devastating results. The Commission should adopt the consensus RoR carrier ICC reform proposal (along with the rest of the RLEC Plan, as amended by the *Joint Letter*) without further modification.

A. The Consensus Framework Provides A Reasonable Transition For Reforming RLEC Terminating ICC Rates And Should Be Adopted As Proposed.

Under the Consensus Framework, RoR carriers' interstate originating and terminating switched access rates would immediately be capped at the outset of an eight-step rate transition. This cap on both originating and terminating interstate switched access rates is important, because it will prevent them from increasing as a result of any continuation of recent downward

trends in minutes-of-use that outpace related declines in carriers' traffic sensitive switched access revenue requirements. At the same time, consistent with the principles of RoR regulation, carriers will be permitted to recover via the RM any shortfall in their interstate revenue requirement that occurs as a result of the caps on interstate rates.

The revenues lost from succeeding access rate reductions would be recovered through an RM that is designed specifically for RoR carriers, coupled with a $25 residential voice rate benchmark.[61] In order to make available the needed funding for RLEC high-cost support including the RM, the Commission would establish an annual funding target for RoR carrier areas[62] that begins at $2 billion and would increase by $50 million a year for six years, resulting in a total annual funding target of $2.3 billion in year six. The $50 million annual increase in the funding target for six years recognizes that RoR carriers will have increasing funding needs for both high-cost support and the RM, as their originating and terminating interstate access rates are first capped and then their terminating intrastate and interstate switched access rates are reduced to progressively lower levels. The *Joint Letter* makes clear this potential incremental funding for RoR carriers would not be available to other carriers.[63]

The Consensus Framework seeks to constrain the total High Cost program toward a $4.5 billion annual target through 2017, consistent with the objectives of the Commission and the recommendations of the National Broadband Plan (NBP).[64] To make every effort that this target is not exceeded, the Consensus Framework proposes the Commission manage the phase-in of

---

[61] *See supra* note 60.

[62] The funding target would include all High Cost Program support for RoR carriers, including support from the CAF, transitional support from legacy high-cost mechanisms (*i.e.*, HCLS, ICLS, LSS, etc.), and the RM.

[63] *Joint Letter* at 2.

[64] The NBP (at 149- 150) recommended that the Commission take steps to manage the fund so that its total size remains close to its current level.

model-based support for price cap carrier areas to ensure there is sufficient funding for all other purposes, including high-cost support and the RM for RoR carriers. Furthermore, as explained earlier, AT&T and Verizon have agreed to have CAF support deferred for their study areas for up to two years, if necessary, to accommodate other funding needs within the overall target, including the necessary high-cost support and RM funding for RoR carriers.

It is important to note, however, that if sufficient funding is not expected for *any reason* to be available to provide the necessary levels of high-cost support and/or ICC restructuring for carriers in any given year, then any and all further reductions in ICC rates during that period would be deferred until sufficient funding does become available. If a top priority is to constrain the size of the USF, then the Commission must be willing to suspend and/or extend the scheduled ICC rate transition for RoR carriers if sufficient funding is not available for high-cost support and the RM. Otherwise, RoR carriers would not have the necessary revenues to provide quality services at affordable rates, and ICC reform would wind up harming rather than helping rural consumers.

Under the Consensus Framework, the transition for the reduction of RoR carriers' terminating rates would take eight steps until completion (unless that timetable was modified by the Commission), whereas the transition for the reduction of price cap carriers' terminating rates would be completed in five steps. A longer transition for RoR carriers, including an intermediate reduction in terminating end office rates to $0.005 per minute, is entirely appropriate since, as the *Public Notice* recognizes, RoR carriers' switched access rates are higher at the outset.[65] This means they have greater reductions to incur to reach the final $0.0007 end office rate. Making the transition longer for these carriers, with an additional intermediate step, will help moderate

[65] *Public Notice* at 13.

RM growth from one year to the next and provide greater assurance that the $4.5 billion annual target for the total High Cost program will not be exceeded.

As noted above, the Consensus Framework represents a significant compromise on the part of the Rural Associations and the members they serve. In particular, the agreed-upon framework for RoR carrier ICC reform deviates in several substantial ways from the ICC reform proposal included in the original version of the RLEC Plan. For instance, under the original RLEC Plan, both terminating *and originating* intrastate access rates would be brought into parity with interstate rates, whereas in the Consensus Framework, only terminating switched access rates are lowered. In addition, under the original RLEC Plan, intrastate access rates would be reduced to interstate levels at the discretion of state commissions while rates for other traffic would be examined in a further stage of this proceeding, in three to five years. In contrast, under the Consensus Framework, RoR carriers' terminating end office rates are initially reduced to $0.005 per minute and then to $0.0007 over eight steps. Finally, under the Consensus Framework, the authorized interstate rate of return is lowered to 10 percent and an annual intrastate regulated earnings test takes place, both of which are intended to reduce the necessary size of the RM. Under the original RLEC Plan, the interstate authorized rate of return remained at 11.25 percent and there was no intrastate regulated earnings test.

Each of these modifications to the original RLEC Plan was made with the recognition by the Rural Associations of the need to reach agreement on a framework that would meet the Commission's reform goals and also address the needs of rural consumers throughout the country – both in price cap carrier areas as well as RoR carrier areas. Nevertheless, it was difficult for the Rural Associations to make these concessions and they were agreed to only with the stipulation that certain other provisions in the framework be included that are essential to

providing quality, affordable service to consumers in RLEC areas. For this reason, the Rural Associations again urge the Commission to adopt the Consensus Framework as proposed, without modification. As stated in the *Joint Letter*, what may appear to be an immaterial change to policymakers or another party may in fact disrupt a delicate balance of interests and collapse a breakthrough compromise.

B. Budgetary Constraints and Other Considerations Necessitate a More Limited Approach to Reform of RoR Carriers' Transport and Originating Access Rates; However, the Commission Should Issue a Further Notice That Commits To Reforming RoR Carriers' Originating Rates In The Near Future.

The *Public Notice* seeks comment on the approach outlined in the Consensus Framework to reform terminating end office rates, while taking a more limited approach to reforming transport rates and originating switched access rates.[66]

With regard to RoR carriers' rates for transport, there are at least two reasons that justify not reducing those rates to $0.0007 along with end office rates. First, since special access and switched transport services are potentially substitutes for one another, reducing transport rates to a near-zero level such as $0.0007 would incent service providers to use "free" switched transport instead of purchasing special access services, distorting network usage patterns and increasing rate arbitrage. Keeping interstate and intrastate transport rates at the capped interstate rate level at the end of step two of the transition will help avoid creating this arbitrage opportunity.

Second, RLEC costs for providing transport services are typically greater than price cap carriers' costs due to longer distances and lower traffic volume per mile of transport facility. If transport rates were lowered to $0.0007 per minute along with end office rates, the resulting revenue losses would be substantial and would increase pressure on the RM. This would force

[66] *Public Notice* at 13.

the $4.5 billion target for the High Cost program to be exceeded, inconsistent with the Commission's goals.

With regard to originating access, the Rural Associations would have much preferred to reduce originating access rates along with terminating rates, as reflected in the original RLEC Plan.[67] However, it would not be possible for RLECs to agree to reduce terminating local switching rates to $0.0007 *and* reduce originating rates as well while remaining within the $4.5 billion target. While reducing both terminating and originating rates simultaneously would have been ideal, it makes sense that of the two, reducing terminating rates should take priority. One reason is that the large majority of VoIP providers' usage of the PSTN occurs when their customers' calls terminate to customers of traditional circuit-switched phone service. By reducing terminating access rates to much lower levels, the Commission will have a stronger case for confirming that these providers are subject to the payment of ICC which, in turn, will slow the loss of billable minutes-of-use on RLECs' networks.

Another reason for prioritizing the transition for terminating rates concerns the variance between those rates and the rates for reciprocal compensation. Specifically, as reciprocal compensation rates decline (*e.g.,* when rates are renegotiated), the gap between those rates and the rates for terminating access widens, creating greater arbitrage incentives to disguise interexchange traffic as local. By reducing this disparity between the rates, it reduces arbitrage incentives and provides a greater likelihood that RLECs will be properly compensated for the use of their networks.

Prioritizing reform for terminating rates should not be read to suggest that reform of originating access rates is unimportant or can be delayed indefinitely. Without a transition path

[67] *Rural Association April 18 Comments* at 13.

for the reform of originating rates coupled with a sufficient RM, it will become increasingly difficult for RLECs to provide quality services at affordable rates, make payments on existing loans, and make new investments to extend and improve service. Moreover, if originating access rates are not reduced along with all other ICC rates, then the interexchange carriers (IXCs) upon which RLECs rely to provide retail toll service will likely increase their wholesale rates. This reaction would force RLECs to either increase their retail toll rates to rural consumers or simply absorb the costs. If the latter is chosen, it may force some RLECs to provide this service at a loss, given the already very thin profit margins that most RLECs have for retail toll service. Another likely outcome is that some IXCs may choose to simply exit rural markets and no longer provide wholesale services to RLECs. If that were to occur, it is not clear how (or at what cost) customers in rural areas would be able to access interexchange services.

Accordingly, in the wake of any instant decision on the Consensus Framework now under consideration, the Commission should issue a Further Notice of Proposed Rulemaking that undertakes a prompt examination of originating access charge reform. It should also monitor the wholesale toll market to ensure that the imbalance of reform between originating access and terminating access rates does not create perverse incentives for IXCs or result in adverse consequences for rural consumers.[68]

Finally, to help protect against these concerns and provide at least some level of protection against substantial new costs for rural consumers and RLECs, the Commission should adopt a "Rural Transport Rule." This rule, which would resemble similar initiatives considered

[68] *See* 47 U.S.C § 254(g); 47 C.F.R. § 64.1701 (requiring geographic rate averaging and rate integration by IXCs).

in prior reform proposals,[69] would govern the exchange of calls between rural and non-rural carriers and seek to maintain the status quo with respect to the ways in which networks interconnect even as the rate structures involved in doing so are subject to one degree or another of reform. Specifically, a "Rural Transport Rule" would provide that a RLEC would be responsible for transport only to a non-rural carrier's point-of-presence (POP) when that POP is located within the RLEC's service area. The rule would also provide that where the non-rural carrier's POP is outside of the RLEC's service area, the RLEC's transport and provisioning obligation ends at its existing meet-point within the RLEC service area and the non-rural carrier is responsible for any remaining transport to its own POP. (The RLEC would, of course, continue to be entitled to charge switched access charges on all non-local traffic as well, based on the same rate elements it is able to bill today.) This would help to ensure that any immediate ICC rate reforms that affect only "half" of the equation (*i.e.*, terminating access only) do not undermine existing interconnection and traffic exchange arrangements and well-defined transport responsibilities.

C. The RM Calculation In The RLEC Plan And Agreed To in the Consensus Framework Is Essential To Ensuring That Rural Consumers In RLEC Service Areas Continue To Have Access To Quality Voice And Broadband Services At Affordable Rates And Should Be Adopted Without Modification.

There is no dispute that the reform of per-minute ICC rates is important to industry participants that charge and/or pay them. However, the *only* way in which ICC rate reform can ultimately be beneficial to rural consumers in RLEC service areas is in concert with a fully sufficient and sustainable RM that is specifically designed to address the unique circumstances

[69] *See, e.g.*, Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, (filed July 24, 2006) (attaching Missoula Plan), Attachment "The Missoula Plan for Intercarrier Compensation Reform" (at 33-35).

of RoR carriers. The RM calculation proposed in the RLEC Plan and agreed to as part of the Consensus Framework[70] would achieve these objectives and should be adopted by the Commission without modification.[71]

On average, interstate and intrastate access charges represent approximately 29 percent of RLECs' regulated revenues.[72] Along with universal service support and end-user rates, these revenues have been an essential component to enabling RLECs to serve as COLRs for voice service and provide advanced services to substantial portions of their territories.

A recent *ex parte* presentation submitted by the RUS[73] underscores the importance of ensuring that RoR carriers are able to fully recover their lost ICC revenues through a sufficient and sustainable RM (along with a reasonable rate benchmark for residential voice service). RUS states that it scrutinizes all revenues when examining the financial stability and credit worthiness of any loan applicant.[74] Applicants must demonstrate that incoming revenues are stable, continuing, and sufficient throughout the term of the loan to pay back RUS with interest.[75] Most notably, *the reduction or loss of revenue not otherwise replaced by another source will affect the ability of the agency to make loans and manage the security of its loan portfolio*.[76] It is reasonable to assume that other lenders to RLECs, such as RTFC, CoBank or any other

[70] *See supra* note 60 and associated text.

[71] The RoR carrier RM is different than the price cap RM in several respects, including in particular the fact it includes on-going support and is not phased-out over time.

[72] Joint Comments of NECA, NTCA, OPASTCO, WTA, and Rural Alliance, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (filed July 12, 2010) at 37.

[73] *RUS Letter*, Attachment (filed July 29, 2011).

[74] *Id.* at 14.

[75] *Id.* at 15.

[76] *Id.*

privately-funded investor, would take a similar approach when evaluating loan applications. Discouraging private investment will cripple carriers' ability to deploy and maintain networks.

Overall, if RoR carriers are not able to fully recover their lost access revenues through a sufficient and sustainable RM (coupled with a reasonable benchmark rate for residential voice service), then, at the very least, any potential for further network investment in these areas will be eliminated. Consequently, RLECs will be unable to extend broadband service to remaining unserved consumers and businesses or continue to improve broadband speeds to existing customers in order to achieve and maintain "reasonable comparability," as well as complete the transition to an all-IP network.

In addition, depending on how great a revenue loss was incurred, some RLECs may no longer be able to: (1) maintain a high level of service quality for basic and/or advanced services; (2) maintain affordable and "reasonably comparable" end-user rates; (3) meet their COLR obligations throughout the entirety of their service area – particularly in the highest-cost regions where competitive alternatives are likely to be limited; and (4) make payments on outstanding infrastructure loans. In the worst case, some RLECs may be forced to exit the market entirely, leaving both rural end-users and other competitive service providers without access to a reliable, ubiquitous wireline network. Clearly, none of these outcomes would serve the public interest. Therefore, it is critical that ICC rate reform for RoR carriers be coupled with a sufficient and sustainable RM, using the calculation described above.[77]

Finally, it is important to recognize that unlike the RM for price cap carriers under the ABC Plan, which is transitional and eliminated entirely in 2020, *the RM for RoR carriers agreed upon in the Joint Letter is not transitional and has no phase-down or sunset date*. This

---

[77] *See supra* note 60.

difference in approach is warranted and in the public interest for a number of reasons. First, RoR carriers recover a greater percentage of their regulated revenues from ICC than price cap carriers – 29 percent on average, as noted above – and they rely heavily on these revenues to maintain and operate their networks, serve as COLRs, and simply remain solvent. Second, price cap carriers have much larger service territories than RoR carriers, and a significant portion of those territories are typically low-cost urban and suburban areas in which they can earn substantial profit margins that offset the higher costs of their rural areas.

In contrast, a typical RoR carrier's service territory has a relatively small customer base and is mostly, if not entirely, *rural*, with no urban core that can counterbalance the high cost of serving their rural customers. Similarly, price cap carriers have a far greater percentage of high-volume business customers than RoR carriers, which are more lucrative than residential customers. Third, price cap carriers have pricing flexibility for regulated services such as special access which enables them to restructure contracts with large corporate customers. RoR carriers do not have this opportunity. Instead, RoR regulation provides carriers with a reasonable opportunity to recover their costs for the provision of regulated services, but with their rates set at levels that are expected to earn within a close range of the authorized rate of return over the long run. Thus, while RoR regulation provides an opportunity for carriers to earn a return on their regulated services, it is also designed to limit the profits they earn on those investments as well.

For all of the foregoing reasons, the Commission should recognize the distinct differences between price cap carriers and RoR carriers and *not* adopt a phase-down or sunset date for the RoR RM. This will provide RoR carriers with the stability they require to continue serving as COLRs and provide quality voice and broadband services to rural consumers at

affordable rates, consistent with the goals of the Commission and the universal service mandates of the 1996 Act.

D. The $25 Rate Benchmark For Residential Voice Service For RoR Carriers Included In The Consensus Framework Is Appropriate For The Rural Consumers In These Areas While Also Mitigating Any Potential Impact On Consumers In States That Have Undertaken ICC Reform.

The *Public Notice* asks a number of questions on rate benchmarks that may be adopted in conjunction with ICC reform and, in particular, the rate benchmarks included in the Consensus Framework.[78] For RoR carriers, the Consensus Framework includes a $25 rate benchmark for regulated residential voice service (*i.e.*, plain old telephone service). The $25 benchmark rate includes the residential basic local exchange rate, intrastate and interstate SLCs, mandatory EAS, and per-line contributions to a state USF. In order for study areas with residential voice service rates below $25 to reach that level, the monthly residential interstate SLC cap would increase by $0.75 per year, subject to a maximum of six annual increases, or $4.50 in total. Carriers would be permitted to assess those increases or impute them in support calculations.[79]

The $25 benchmark rate is designed to mitigate any potential impact on consumers in states that have already taken action to reform intrastate ICC rates by including per-line contributions to a state USF as well as intrastate SLCs. Since states that have undertaken ICC reform are more likely to have a state USF, the fact that a carrier's per-line contribution to a state fund counts toward the $25 benchmark means they will be closer to reaching the benchmark rate than states without a fund, *ceteris paribus.* Likewise, for states that have undertaken ICC rate

---

[78] *Public Notice* at 11.

[79] This gives carriers the flexibility to weigh the potential competitive impact from assessing the SLC increase against the effect that imputing the increase (and therefore foregoing associated revenues) will have on their particular circumstances. Regardless of what a carrier chooses, its revenue recovery from the RM will be the same and will therefore have no impact on the $4.5 billion annual High Cost program target.

reform that do not have a state USF, they have likely had to increase their basic local exchange rate and/or intrastate SLC, both of which count toward reaching the rate benchmark. Therefore, consumers in states that have pursued intrastate access rate reductions are generally more likely to experience smaller local rate increases than consumers in states that have not.[80]

It is appropriate for a residential voice rate benchmark for RoR carriers to be different than the benchmark for price cap carriers. First, RLECs typically have much smaller local calling scopes than price cap carriers. This means that RLEC customers typically must make a greater number of toll calls to reach family, friends, and essential services, such as doctors, schools, government services, and stores. Therefore, to the extent that RLEC customers pay lower local service rates than the customers of price cap carriers, they are also more likely to have higher long distance bills, on average. Second, rural consumers have lower incomes, on average, than urban consumers. This can potentially make a rate that is generally affordable for consumers in price cap carrier areas unaffordable for consumers in RoR carrier areas. In light of these facts, a very modest $5 differential between the RoR and price cap carrier benchmarks ($25 vs. $30) is entirely reasonable and warranted.

E. Prompt, effective action to resolve access avoidance problems is critical to the success of ICC reform efforts

Another critical component of the Consensus Framework, as noted earlier, is that, upon the effective date of an order in this proceeding, VoIP providers would be subject to the payment of ICC when their traffic originates or terminates on the PSTN. Specifically, VoIP traffic would

[80] An analysis of individual state impacts shows there is no clear pattern to these results, however. RM amounts are generally higher for states with high access rates and for states with local service rates below the $25 benchmark. Since both factors affect the RM, one can outweigh the other, *i.e.*, a state may be above the $25 benchmark but have access rates that are well in excess of the interstate rate producing a larger RM. Conversely, a state may be below the $25 benchmark but have access rates very close to or below the interstate rate, producing a smaller RM.

be subject to established interstate access rates if the traffic is non-local, and reciprocal compensation rates if the traffic is local. Commission action in this regard should diminish greatly the "self help" schemes that are presently occurring in the absence of an affirmative clarification that VoIP providers are required to pay ICC,[81] and should also help create greater competitive neutrality among all voice service providers, regardless of technology.

The Commission has repeatedly found that interconnected VoIP services are substitutes for, and indeed are "indistinguishable" from traditional local and long-distance services from the customer's perspective.[82] As such, there is no basis for allowing interconnected VoIP providers to avoid payment of access charges. In addition, clarifying that VoIP providers are subject to ICC payments is essential to meeting the Consensus Framework funding target and to relieve pressure on the size of the RM. Indeed, the ICC revenue projections used in establishing the funding target for RoR carriers assumed that they would begin receiving ICC payments from VoIP providers at the start of transition. Were this not to occur, and if the Commission declined

---

[81] These problems appear to be getting worse as providers develop new schemes to disguise ordinary long distance calls as enhanced services. *See, e.g., Alma Communications, et al. v. Halo Wireless*, Complaint, Docket No. IC-2011-0385 (Missouri PSC June 1, 2011). Providers are increasingly utilizing various "least cost routing" methods that appear to cause service degradation for consumers living in rural areas. *See* Letter from Michael R. Romano, NTCA, *et al.*, to Theresa Z. Cavanaugh and Margaret Dailey, Enforcement Bureau, FCC (June 13, 2011).

[82] *E.g.*, *IP Enabled Services*, WC Docket No. 04-36, Report & Order, 24 FCC Rcd 6039 (2009) ¶ 12 ("interconnected VoIP service is functionally indistinguishable from traditional telephone service."); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Docket No. 96-115)*, IP-Enabled Services,* WC Docket No. 04-36*,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) ¶ 56 ("the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, . . . from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable."); *See also Assessment and Collection of Regulatory Fees for Fiscal Year 2007,* MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 (2007) ¶ 18 ("interconnected VoIP providers offer a service that is almost indistinguishable, from the consumers' point of view, from the service offered by interstate telecommunications service providers."). *See also* Comments of NECA, *et al.*, WC Docket No. 10-90, *et al.* (filed Apr. 1, 2011) at 10-11.

to affirmatively rule that VoIP providers are required to pay ICC (or rule that they are subject to lower "VoIP-specific" rates), then the necessary funding target for RoR carriers would need to be considerably higher to achieve the proposed ICC rate reductions and/or the transition would need to be halted at a much higher rate level.[83] If VoIP is not addressed in a stringent manner consistent with the Consensus Framework, the estimates set forth in that framework are all but irrelevant and impossible to meet.

In connection with rules regarding the treatment of VoIP traffic for purposes of assessing access charges, the Commission must also adopt rules designed to assist in the proper identification of calls, as proposed in the *ICC/USF Transformation NPRM.*[84] In particular, service providers should be required to include in signaling streams information needed to bill calls properly, including for example their Carrier Identification Code (CIC) or Originating Company Number (OCN), as well as the Jurisdiction Information Parameter (JIP) on mobile wireless calls.[85] As a default mechanism, origination and termination points should be used to determine the jurisdiction of all calls using "true, unaltered call detail information."[86] Providers

[83] Absent Commission action, revenues that can be derived from access minutes will almost certainly continue (if not accelerate) their current precipitous decline, further increasing pressure on the RM beyond estimated levels.

[84] *NPRM*, Section XV, 26 FCC Rcd 4554 (2011).

[85] The JIP identifies the first switch a mobile wireless call encounters in the PSTN and would function as the origination point of the call. Joint Reply of NECA, NTCA, OPASTCO, WTA, ERTA, and the Rural Broadband Alliance, WC Docket No. 10-90, *et al.* (filed Apr. 18, 2011) at 10-11. The inclusion of CIC, OCN, and JIP information will be critical to the resolution of phantom traffic issues. Indeed, as rate reductions are phased in and rates unified, the jurisdiction of any given call – which is discernable by CPN or CN – becomes much less important than the identity of the party responsible for the call.

[86] *Joint Letter* at 3.

should be explicitly prohibited from stripping or replacing information identifying a call's actual origination point with a number representing an intermediate switch, platform, or "gateway."[87]

The *Public Notice* recognizes correctly that the Consensus Framework would subject VoIP access traffic to different ICC rates than those applied to other traffic, at least for a transitional period, and accordingly questions how such traffic might be identified for billing purposes (*i.e.*, by use of call record information, factors, ratios, a "safe harbor" or some other method.)[88] Similarly, the *Public Notice* asks how proposed call signaling rules designed to address billing issues associated with interconnected VoIP services would apply to one-way VoIP services, which typically do not utilize traditional telephone numbers.[89]

These issues may pose short-term implementation problems but should not stand in the way of prompt, positive action on the Consensus Framework.[90] Over the years, carriers have developed reasonable methods for distinguishing between calls for billing purposes where adequate call detail information is lacking, and can be expected to do so here once the Commission confirms that access charges are, in fact, due for non-local VoIP traffic. Although one-way interconnected VoIP services may present particularly challenging issues, attempts to develop perfect solutions for all such traffic should not be allowed to delay dealing with the

[87] The Commission's newly enacted Caller ID rules require providers to correctly identify a call's origination point. *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket. No. 11-39, Report and Order, FCC 11-100 (rel. June 22, 2011).

[88] *Public Notice* at 17. The ABC Plan indicates that VoIP traffic "will be rated at interstate access rates if the call detail indicates an 'access' call, or at reciprocal compensation rates if the call detail indicates a 'non-access' call. All 'toll' traffic that originates in IP or terminates in IP will be subject to current interstate access rates. *ABC Plan*, Attachment 1 at 10.

[89] *Public Notice* at 17-18.

[90] Under the Consensus Framework, rates for terminating access calls will be unified in 12 months of rate transitions (*i.e.*, by 7/1/13).

much larger problems associated with access avoidance by interconnected VoIP providers and others offering services that are indistinguishable from services offered by traditional IXCs.[91]

The Commission should also consider methods to assist RLECs in the enforcement of their tariffs, as providers increasingly refuse to pay lawful charges based on "disputes" that have no factual basis at all. In this regard, the Commission should consider revisiting a rule it proposed in 2008 that would have permitted terminating carriers to charge their highest terminating rate, or perhaps a penalty rate, to the service provider responsible for delivering unidentified traffic to their networks. [92] Charging premium rates for traffic not in compliance with signaling rules will likely serve as a strong motivation for carriers to transmit all billing and signaling parameters properly.

---

[91] As noted above, *supra* note 83, problems with access avoidance schemes continue to worsen. Recently, RLECs have reported receiving millions of calls from carriers that, upon examination, have been found to originate from ordinary wireline phones. Yet, these providers claim that, because they offer wireless services which permit customers in some areas to originate calls in IP format, the traffic is "enhanced" and therefore exempt from access charges. Disputes over these claims have resulted in a rash of state commission investigations. *See, e.g., Alma Communications, et al. v. Halo Wireless*, Complaint, Docket No. IC-2011-0385 (MO PSC June 1, 2011); *Complaint of TDS Telecom*, Docket No. 34219 (against Halo Wireless) (GA PSC June 14, 2011); *Complaint of Concord Telephone Exchange*, *et al.,* Docket No. 11-00108 (against Halo Wireless) (Tenn. Reg. Auth. July 7, 2011).

[92] *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2009) ¶ 326. (*2008 Further Notice of Proposed Rulemaking*). The proposed rule also allowed an intermediate service provider to charge the rate it was charged to the provider that delivered the improperly labeled traffic to it. *Id.*

IV. CONCLUSION.

The Consensus Framework should be adopted as proposed without further modification. As shown above, this approach satisfies the Commission's articulated objectives in this proceeding in a manner that is consistent with the Communications Act of 1934, as amended, and is in the interest of consumers nationwide.

Respectfully submitted,

August 24, 2011

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By:
Richard A. Askoff
Linda A. Rushnak
Its Attorneys
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION
By: /s/Jill Canfield
Jill Canfield
Director , Legal and Industry
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS
COMPANIES
By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy and
Business Development
2020 K Street, NW, 7th Floor
Washington, DC 20006
(202) 659-5990

WESTERN TELECOMMUNICATIONS
ALLIANCE
By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel for Western
Telecommunications Alliance
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
(202) 659-0830

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 24th day of August, 2011 by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com

Charles Tyler
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Charles.Tyler@fcc.gov