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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

JOINT COMMENTS OF

NTCA–THE RURAL BROADBAND ASSOCIATION
and
WTA – ADVOCATES FOR RURAL BROADBAND

Michael R. Romano
Sr. Vice President – Industry Affairs
& Business Development
NTCA-The Rural Broadband Administration
4121 Wilson Blvd, Suite 1000
Arlington, VA 22203
(703) 351-2016 (Tel)
mromano@ntca.org

Derrick Owens
Vice President of Government Affairs
WTA-Advocates for Rural Broadband
400 Seventh Street, NW, Suite 406
Washington, DC 20004
(202) 548-0202 (Tel)
derrick@w-t-a.org

Gerard J. Duffy
Regulatory Counsel for WTA
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street NW, Suite 300
Washington, DC 20037
(202) 659-0830 (Tel)
gjd@bloostonlaw.com

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By Public Notice dated September 8, 2017,[1] the Wireline Competition Bureau ("Bureau") has invited interested parties to update the record on certain issues related to intercarrier compensation ("ICC") reform originally raised in the Commission's *2011 ICC FNPRM*.[2]

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[1] *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transports, and Transit*, Public Notice, WC Docket No. 10-90, CC Docket No. 01-92, 32 FCC Rcd 6856 (2017) (*"Public Notice*"). Comment is specifically sought on (1) the network "edge" for traffic that interconnects with the Public Switched Telephone Network; (2) tandem switching and transport; and (3) transit (the non-access traffic functional equivalent of tandem switching and transport). *Id.*

[2] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18111-13 and 18117, ¶¶ 1297, 1306-13, and 1320-21 (2011) ("*2011 ICC FNPRM*" or "*2011 USF/ICC Order*").

Given the continuing link between ICC mechanisms and universal service policies, NTCA–The Rural Broadband Association ("NTCA")[3] and WTA – Advocates for Rural Broadband ("WTA")[4] (jointly the "Associations") respectfully urge the Commission to move cautiously before proceeding with further ICC reforms, acting only after the Commission addresses existing high-cost Universal Service Fund ("USF") budget shortfalls and collects data on impacts of previous reforms. If, after taking such steps, the Commission elects to proceed with further ICC reforms, such reforms should: (1) create certainty with respect to network "edge" transport obligations, while protecting rural consumers from adverse impacts on the affordability and quality of the voice and broadband services upon which they rely; (2) ensure that RLECs are not compelled to incur substantial new costs to transport traffic on behalf of other providers; (3) facilitate IP-to-IP interconnection by providing stable and clear "rules of the road" governing all underlying network technologies without artificial distinctions; and (4) provide RLECs with reasonable opportunities to recover authorized revenue requirements via ICC charges and/or other support mechanisms that meet the predictability and sufficiency requirements of the Act.

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[3] NTCA represents nearly 850 rural rate-of-return regulated local exchange carriers ("RLECs"). All NTCA's members are full service local exchange carriers and broadband providers, and many also provide wireless, video, satellite, and/or long-distance services.

[4] WTA is a national trade association represents more than 340 rural telecommunications providers offering voice, broadband, and video-related services in rural America. Its members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

I. INTRODUCTION AND SUMMARY

In the *2011 USF/ICC Order*, the Commission adopted a bill-and-keep methodology and a transition for end office switching rates, along with tandem switching and transport rates where the terminating carrier owns the tandem.[5] In reducing rates, the Commission also adopted a recovery mechanism for incumbent local exchange carriers ("ILECs") that was intended to ensure the implicit support from access charges necessary to provide service in rural areas would become explicit support.[6]

The Commission did not, however, adopt reductions for originating switched access, dedicated transport, or tandem switching and tandem transport rates, recognizing such changes could result in significant market disruption to service providers and consumers that could undermine the Commission's overall universal service efforts.[7] Instead, in its accompanying *2011 ICC FNPRM*, the Commission sought comment on potential reductions in remaining rate elements.[8] The Commission also sought input on how best to define the network "edge" for purposes of carrier responsibility for delivering traffic, and on the Commission's determination that the states should establish the network edge pursuant to federal guidance.[9]

In comments, the Associations explained that the Commission must calibrate ICC reform in a manner that ensures sufficiency, predictability, and specificity in universal service mechanisms. Actions to reduce or eliminate additional ICC rates should be done in accordance with the Commission's long-standing "no flash cuts" policy, and only after a robust and fully

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[5] *2011 USF/ICC Order*, ¶ 736 *et seq.*

[6] *Id.* ¶ 863 *et seq.*

[7] *Id.* ¶ 739.

[8] *Id.* ¶ 1297 *et seq.*

[9] *Id.* ¶ 1320.

compensatory recovery mechanism is created to avoid rural consumer rate shock and sustain universal service.[10] With respect to ICC reform, the Associations suggested, among other things, that the Commission clarify that the "rural transport rule" continues to limit an RLEC's financial responsibility for transport of telecommunications traffic to the relevant exchange boundary and that state commissions remain free (and are in fact obligated) to consider fully any request by an RLEC for a suspension of modification of obligations pursuant to section 251(f)(2) to ensure proper definition of "network edges."[11] The Associations also suggested the Commission make clear that exchange of all telecommunications traffic is governed by sections 251 and 252, including voice traffic exchanged via IP arrangements, and that carriers may continue to rely upon tariffs in lieu of interconnection agreements.[12]

Significantly, the instant "refresh the record" Public Notice comes at a time when rural carriers are already finding it difficult to fund new investments in enhanced and expanded services due to declining demand for traditional telephone service, the Commission's prior ICC reforms, and the high-cost support budget shortfall. RLEC budgets are already strained beneath the Commission's existing high-cost support budget cap and prior ICC reforms. Indeed, in recent months it has become increasingly apparent that shortfalls caused by various USF budget mechanisms are endangering the Commission's broadband goals and rural America's chances of bridging the digital divide.[13] In light of these critical marketplace and regulatory developments,

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[10] Initial Comments of NECA, NTCA, *et al*., WC Docket No. 10-90, *et al*., at 7-8 (filed Feb. 24, 2012) ("*Association Comments*").

[11] *Id.* at 25-27.

[12] *Id.* at 37-39.

[13] *E.g.,* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Aug. 15, 2017) ("*NTCA ex parte*"); Letter from Gerard J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Sept. 14, 2017).

any further efforts to eliminate critical ICC revenues without the possibility of sufficient CAF-ICC replacement support that is outside of and does not increase pressure under the existing high-cost support budget cap – or, worse still, to increase costs by forcing RLECs to bear the cost of transport to newly defined "edges" – would jeopardize RLECs' ability to make new investments in broadband-capable networks without raising service rates for rural consumers to even more unaffordable levels than already exist today. Such a result would plainly run afoul of Congress's mandate that consumers in rural and high cost areas have access to advanced telecommunications and information services at "affordable" and "reasonably comparable" rates. Thus, before even considering whether to adopt further ICC reforms, the Commission must address existing shortfalls in high-cost funding mechanisms, and identify in that context how it will make additional, supplemental CAF-ICC replacement funds available without disrupting, siphoning, or otherwise simply repurposing existing CAF-ICC or other high-cost USF support dollars.

Indeed, to ensure further reform serves its intended purposes, the Commission must evaluate carefully the impact of its previous ICC reforms on consumers and carriers before taking any such further actions. In particular, as a matter of sound economic cost-benefit analysis, the Commission must look to see whether its reforms have, in fact, resulted in lower wholesale and retail prices, improved service, and/or new and more innovative services for interexchange carrier ("IXC") and commercial mobile radio service ("CMRS") customers, and whether any such price reductions outweigh the increase in prices to local exchange end users – especially rural American consumers and businesses – and other costs associated with the reforms. Otherwise, further ICC reform may give IXC and CMRS providers windfalls and merely shift the cost of supporting local rural networks from all American consumers onto the backs of the very same rural consumers depending upon such support. Moreover, as it did in 2011 and to avoid making policy "in the

dark," the Commission should also collect data on ILECs' current minutes, revenues, and rates, for use in modeling the likely effects of further reforms on ILECs' ability to deliver service to rural consumers at affordable prices. This will permit the Commission to prescribe properly (and necessarily) an adequate transition period and explicit cost recovery mechanism that meets statutory sufficiency and predictability requirements.

Should the Commission—after studying the impact of its previous reforms and collecting data on current ILEC minutes, revenues, and rates—decide to proceed with implementing reductions for remaining rate elements, it must do so in a manner that: (1) promotes certainty regarding transport obligations to the network edge, while protecting rural consumers and RLECs from substantial new costs—a function currently served by the rural transport rule; (2) facilitates IP-to-IP interconnection by providing stable and clear "rules of the road" governing all underlying network technologies without artificial distinctions; and (3) avoids creating any regulatory "black holes" (*i.e.*, rules that unconstitutionally require RLECs to offer services with no possible means of recovering authorized revenue requirements).

II. THE COMMISSION SHOULD NOT UNDERTAKE ANY FURTHER INTERCARRIER COMPENSATION REFORMS UNTIL IT BOTH ADDRESSES THE CURRENT HIGH-SUPPORT BUDGET SHORTFALLS AND PROVIDES FOR SUFFICIENT, SUPPLEMENTAL CAF-ICC SUPPORT.

In its *2011 USF/ICC Order*, the Commission recognized that ICC rates provide implicit support for rural carriers to offset the cost of maintaining and enhancing networks and providing services, and that a "flash cut" to these rates could jeopardize their ability to make investments to improve and expand service in rural areas (as well as adversely affecting the rates paid by rural consumers).[14] Consequently, the Commission established a recovery mechanism "designed to

[14] *2011 USF/ICC Order,* ¶ 870.

provide predictability to incumbent carriers that had been receiving implicit ICC subsidies, to mitigate marketplace disruption during the reform transition, and to ensure [its] intercarrier compensation reforms do not unintentionally undermine [its] objectives for universal service reform."[15] Specifically, the Commission determined that incumbent carriers would be allowed to recover a portion of their ICC revenues through a combination of end-user Access Recovery Charges ("ARCs") and, where necessary, explicit replacement support from the Connect America Fund ("CAF").[16]

Unfortunately, due to budget control mechanisms established by the Commission first as part of its 2011 reforms and further strengthened last year, the high-cost USF is demonstrably insufficient to meet outstanding universal service commitments, let alone to provide new transition payments. The Bureau has previously noted, for example, that "model-based support and transition payments would exceed the overall 10-year budget set by the Commission by more than $160 million annually."[17] Meanwhile, the impacts of the budget control mechanism applicable to those RLECs that continue to receive actual cost recovery have spiked dramatically in a remarkably short period of time, increasing from an initial 4.5% average "haircut" to 9.1%, and then to 12.3% in less than a year – resulting in $173 million of affirmative reductions in USF support *for investments already made in broadband-capable networks*.[18] And, this trend appears

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[15] *Id.* ¶ 858.

[16] *Id.* ¶ 849.

[17] *Wireline Competition Bureau Announces Results of Rate-of-Return Carriers that Accepted Offer of Model Support*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 11966 (2016) ("*A-CAM Public Notice*"). Of course, the Commission ultimately provided an additional $50 million to the A-CAM budget. *Connect America Fund,* WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775 (2016).

[18] *See* Budget Control Mechanism for Rate of Return Carriers, available at http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx. Of course, it is worth noting the substantial loan commitments that back many of these investments, all of which

to have no end in sight, with the quarterly update for High-Cost Loop Support ("HCLS") most recently indicating application of a budget "haircut" in excess of 14%,[19] meaning that the budget control has increased by 300% on average for carriers within a year.

These shortfalls are already harming consumers in the form of higher broadband rates and reduced new investment, and they threaten the viability of carriers of last resort in the most rural parts of the country.[20] For example, in the case of RLECs receiving model-based support:

- Over 35,000 locations will not receive 25/3 Mbps broadband due to the insufficient budget, while another 36,000 locations that would have received 10/1 Mbps broadband will not due to the shortfall;

- Nearly 25,000 more locations will receive 4/1 broadband than under the original model offer that would have provided them with higher speeds; and

- Another 47,000 locations will now only see any broadband at all if their request for service turns out to be "reasonable" in light of USF support received and the revenues that might be anticipated from the customer.[21]

And, as noted above, for RLECs receiving support via actual cost recovery USF mechanisms, the numbers are even worse because they represent actual cuts in recovery of costs associated with investments already made in broadband-capable networks and ongoing delivery of broadband services. A recent NTCA survey found that out of 183 responding firms:

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presumed some relative measure of predictability in revenues – and certainly could not have predicted this rapid spinning of a budget "roulette wheel."

[19] *Id*, 2017 Fourth Quarter Budget Analysis Update for HCLS.

[20] *NTCA ex parte* at Appendix.

[21] *A-CAM Public Notice*; *see also Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More than $51 Million Annually in Alternative Connect America Cost Model Support and Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 13328 (2016); and *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive $454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 842 (2017).

- Nearly two-thirds intend to scale back network investments over the next 12 months in the face of the ever-escalating budget control and will now have their USF support reduced by $536,000, on average, over the next year;

- While many continue to evaluate specific impacts of the 12.3 percent budget control factor, those respondents that provided financial impact estimates indicated they would reduce their broadband investments over the next 12 months by $943,000, on average, due to the budget control;

- The total estimated investment impact for respondents equals over $44 million in delayed or cancelled broadband investments over the next 12 months. Extrapolated across NTCA members subject to the budget control, this would equate to as much as $300 million in delayed or cancelled broadband investments; and

- Even in the wake of USF reforms intended to achieve reasonably comparable standalone broadband service rates for rural and urban consumers, the average respondent that is not currently offering standalone broadband estimates it would need to charge a customer $126 per month for such service due to the budget control—a rate that is more than twice the urban average.[22]

Compounding the cuts in USF support by eliminating even *more* ICC revenues and/or *increasing* costs by forcing RLECs to bear the cost of transport would only exacerbate the harms noted above and place rural carriers in the untenable position -- presuming they could survive such revenue cuts at all – of having to (a) forgo critical investments in enhanced and expanded service, (b) further raise rates for rural consumers, or (c) both. In any event, the end result would be that rural consumers would be deprived of access to "advanced telecommunications and information services" at reasonably comparable rates to which they are statutorily entitled.[23] Accordingly, it

[22] *Wireline Competition Bureau Announces Results Of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 3393 (2016). It is also worth noting that the reasonably comparability benchmark that rural rates are to aim for is actually two standard deviations higher than the rates paid by the average urban consumer.

[23] 47 U.S.C. § 254(b)(3).

is absolutely imperative that the Commission address the current high-cost support budget shortfall and that it do so *before* undertaking any further reforms.

To this end, the Associations and others have recently presented ideas that, if adopted, could help to mitigate, if not alleviate, the current budget crisis. Specifically, the Commission should undertake the sort of "USF budgetary review" contemplated in the *2011 USF/ICC Order* and as promised to the United States Court of Appeals for the Tenth Circuit three short years later.[24] Then, rather than letting lapse the current directive to the Universal Service Administrative Company ("USAC") to collect the overall $4.5 billion USF budget, the Commission should direct USAC to continue to collect, at a minimum, the current overall high-cost USF budget of $4.5 billion pending completion of the budgetary review. To the extent that this amount would in future periods exceed then-current demand for high-cost USF (as measured including the budget control mechanism that artificially suppresses and reduces RLEC receipts of USF support that the distribution rules would otherwise provide), such additional sums would be used to address the insufficiency in RLEC USF support described above. Once the budgetary review long promised by the Commission were completed, the Commission could then make informed, updated judgments about the "right size" of the high-cost USF budget and its constituent components, and provide revised instructions to USAC regarding the proper level of collections. Finally, paired with this "continue to collect the current budget pending review" approach, the Commission, at a minimum, should use any remaining high-cost USF reserves to help fill the budget shortfalls to the maximum extent possible.[25]

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[24] *See 2011 USF/ICC Order*, ¶ 18; *In re: FCC 11-161*, 753 F.3d 1015, 1060 (10th Cir. 2014).

[25] *NTCA ex parte*.

However, until such proposals or other equally promising solutions can be vetted and implemented, the Commission should not take any further actions to reduce rural carriers' ICC rates. While the Commission processes such solutions, it may wish to consider discrete and targeted measures to address any arbitrage concerns it may have.[26] But, comprehensive reform must by its nature be comprehensively considered, rather than done in piecemeal – and that necessarily includes comprehensive consideration of the broader implications of ICC reform upon statutory universal service goals and mandates.

At bottom, should the Commission—only ***after*** addressing the current USF budget shortfall and (as discussed below) studying the impact of its previous reforms and collecting data on current ILEC minutes, revenues, and rates—decide nonetheless to proceed with transitioning the remaining access rate elements to bill-and-keep, it must make new universal funds available to rural carriers to offset the additional loss of ICC revenues and avoid even further harming rural consumers, as discussed further in Section III.C, *infra*. Under no circumstances should the Commission adopt further reductions to existing USF or CAF-ICC support simply to "wedge in" additional ICC reforms. Otherwise, ICC reform will have achieved nothing more than reshuffling of the deck chairs on a sinking universal service ship.

[26] Comments of Windstream, Frontier and NTCA, WC Docket Nos. 10-90 and 07-135 and CC Docket No. 01-92, at 2 (filed July 31, 2017).

III. BEFORE PROPOSING ANY FURTHER ICC REFORMS, THE COMMISSION MUST CAREFULLY EVALUATE THE IMPACT OF ITS PRIOR ICC REFORMS, AND COLLECT AND ANALYZE DATA ON CURRENT ILEC MINUTES, RATES, AND REVENUES.

The Commission has consistently expressed its commitment to data-driven decisionmaking.[27] Just earlier this year, Chairman Pai, in remarks given at the Hudson Institute, underscored the importance of the Commission making "well-informed, economically sound policy" that is "[g]uided by economists and data experts, using data collected by the FCC and from other sources."[28]

The Associations maintain that it is premature for the Commission to consider any further comprehensive reforms until terminating switched end office and reciprocal compensation have been fully transitioned to bill-and-keep—*i.e.*, until 2020. However, to the extent the Commission proceeds with further reforms at this time, the Commission must take a data-driven approach. This means that, *before* proposing (or certainly adopting) any further specific reforms (including transitions), the Commission should, at a minimum: (a) evaluate the degree to which consumers have actually benefitted from the Commission's earlier rate reductions in the form of lower long distance and wireless rates, improved quality of service, and/or access to new, innovative services;

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[27] *See, e.g.*, *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4721 (2011) ("[W]e emphasize that the Commission intends to use a data-driven process to analyze the proposed reforms."); *FCC Launches Data Innovation Initiative*, News Release (June 29, 2010) (announcing launch of Data Innovation Initiative with the goal of "improving the agency's fact-based, data-driven decision-making").

[28] *The Importance of Economic Analysis at the FCC*, Remarks of Chairman Ajit Pai at the Hudson Institute, at 4 (Apr. 5, 2017), available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0405/DOC-344248A1.pdf.

and (b) collect and analyze relevant data regarding current ILEC minutes, revenues, and rates. Absent such data, the Commission is essentially making policy "in the dark," without reference to information that would guide its way, and has no way to determine the appropriate transition, the size of such revenues, or the impact of such reforms on consumers and providers. Such a result would be arbitrary and capricious in the extreme.[29]

A. The Commission Should Carefully Evaluate the Impact of Its Previous ICC Reforms on Consumers, Businesses and Carriers Before Evaluating Any Further Reductions.

When the Commission adopted the transition for certain terminating access rates in 2011, it predicted that the transition to bill-and-keep would "provid[e] over $1.5 billion annually in benefits for wireless and all long-distance customers" in the form of lower prices, increased service levels at existing prices, and/or more innovative services.[30] The Commission further projected that "the average consumer benefits of [its] reforms [would] outweigh any costs by at least 3 to 1."[31] These estimates were based on a series of predictions regarding the expected revenues of price cap, rate-of-return, and competitive carriers; the likely pass-through rates for ICC savings between long distance carriers and local service providers, as well as between the different types of local exchange carriers and end users; and the likely percentage of ARC increases compared to allowed ARC increases.[32]

The Commission predicted that lower termination rates would lead to other consumer benefits, as well. For example, the Commission surmised that as a result of the substantial

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[29] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (holding that "the agency must examine the relevant data" and explain how its decision is rationally related to the facts found).

[30] *2011 USF/ICC Order*, ¶. 14. *See also id.* Appendix I ¶ 1

[31] *Id.* Appendix I ¶ 17.

[32] *Id.* Appendix I ¶¶ 12-16

elimination of termination charges, "a wide range of IP-calling services [were] likely to be developed and extended."[33] In addition, the Commission anticipated that the elimination of per-minute access charges would facilitate IP-to-IP interconnection and accelerate the transition to all IP networks.[34]

Prior to taking any further actions to reform tandem switching and transport rates, the Commission should analyze whether and to what extent ICC savings have, in fact, been passed through to wireless and long-distance customers in the form of lower prices, improved service, and/or new and more innovative services, or whether, alternatively, they have simply yielded additional profits for the carriers receiving such unconditional relief. Similarly, the Commission should ensure that there have been no negative impacts on rural carriers, but, in fact, such providers have been able to maintain and enhance their networks and rural consumers have improved access to an evolving level of reliable voice and broadband services at reasonably comparable rates, as required by the statute and the Commission's universal service goals.[35] Such data and resulting report will be a critical input when it comes to tackling any further rate reductions and allow the Commission to make any necessary course corrections rather than repeating any past mistakes.

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[33] *2011 USF/ICC Order*, *¶ 750*

[34] *Id*. ¶¶ 783 and 1009-1010

[35] Indeed, early returns in the form of higher rural consumer rates for voice and broadband services would appear to suggest that the Commission's intercarrier compensation reforms are already negatively impacting rural consumers.

B. The Commission Should, As It Did in 2011, Collect and Analyze Data Regarding Carriers' Current Minutes, Revenues, and Rates Before Initiating Any Further Reforms.

To analyze and understand the impact of reforms, the Commission in 2011 collected extensive data from ILECs, including data on minutes, revenues, and local retail rates.[36] The Commission used such data to model the impact of its terminating access reforms on each price cap carrier that submitted data and for rate-of-return carriers, to devise a gradual transition to bill-and-keep[37] and to craft a predictable, stable, and sufficient cost recovery mechanism.[38]

As the Commission acknowledged in the *2011 ICC FNPRM*, transport and tandem switching reform presents many of the same challenges and potential pitfalls as terminating access reform. Questions the Commission seeks to answer include:

- What is the appropriate transition timeframe?
- Should the transition for these rate elements differ based upon the type of carrier?
- Should recovery be made available for these charges?
- Should any recovery for these rate elements differ based upon type of carrier?[39]

To answer these questions, and to ensure a sufficient glide path, transition, and recovery in the event that further reductions in rates are implemented, it is critical that the Commission obtain

[36] *Id.* ¶¶ 851 n.1641, and 852 n.1646.

[37] *Id.* ¶ 801 (concluding that "a six-year transition for price cap carriers and competitive LECs that benchmark to price cap carrier rates and a nine-year transition for rate-of-return carriers and competitive LECs that benchmark to rate-of-return carrier rates to transition rates to bill-and-keep strikes an appropriate balance that will moderate potential adverse effects on consumers and carriers of moving too quickly from the existing intercarrier compensation regimes").

[38] At the same time the Commission also sought to ensure the "transition to a reformed intercarrier compensation and universal service system does not undermine continued network investment – and thus harm consumers." *Id.* ¶ 850-853

[39] *Id.* ¶1309.

up-to-date data regarding the minutes, revenues, and rates of each price cap carrier and for rate of return carriers in the aggregate.

C. If, After Collecting Data and Analyzing the Impacts of Prior Reforms, the Commission Decides to Reform and Transition Additional ICC Rate Elements, the Commission Must Ensure Sufficient CAF-ICC Support.

If the Commission, for any reason, determines to reduce RLEC tandem switching, transport or other rate elements to substantially lower levels or to transition one or more of them to bill-and-keep, then it must also provide a sufficient and additional new revenue replacement mechanism to enable RLECs to recover the investment costs of, and maintain and operate, the local rural network facilities providing the affected services.

The Commission has long recognized that intercarrier compensation rates and revenues not only are necessary to recover the investment, maintenance and operating costs of the critical, expensive and often lengthy "second mile" and "last mile" facilities necessary to reach and serve rural customers, but also that they "include an implicit subsidy because they are set to recover the cost of the entire local network, rather than the actual incremental cost of terminating or originating another call."[40] Hence, starting in 2001 with its replacement of the Carrier Common Line revenue stream with Interstate Common Line Support,[41] the Commission has employed explicit revenue replacement mechanisms as an integral and essential element of intercarrier compensation reform. These mechanisms have been designed to enable RLECs to recover rural network facilities costs that, if intercarrier compensation and/or the mechanisms were not available, would require rural customers to pay local service rates well above the levels that they could afford. The Commission

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[40] *2011 USF/ICC Order,* ¶870.

[41] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, *et al.* CC Docket Nos. 00-256, 96-45, 98-77 and 98-166, 16 FCC Rcd 19911 (2001) ¶128.

has determined that such revenue replacement mechanisms allow RLECs to continue the investment, maintenance and operating activities necessary to provide their high-cost service areas with quality telecommunications services at rates that are affordable and reasonably comparable to those in urban areas.[42]

At paragraph 858 of its *2011 USF/ICC Order,* the Commission emphasized its goal to ensure that intercarrier compensation reforms do "not undermine continued network investment – and thus harm consumers." The Commission proceeded to discuss the nature and needs for predictable and sufficient revenue replacement mechanisms, stating:

> . . . Consequently, our recovery mechanism is designed to provide predictability to incumbent carriers that have been receiving implicit [intercarrier compensation] subsidies, to mitigate marketplace disruption during the reform transition, and to ensure that our intercarrier compensation reforms do not unintentionally undermine our objectives for universal service reform. As the State Members observe, for example, "[b]ankers and equity investors need to be able to see that both past and future investments will be backed by long-term support programs that are predictable." [footnote omitted] Similarly, they note that "abrupt changes in support levels can harm consumers." [footnote omitted] Predictable recovery during the intercarrier compensation reform transition is particularly important to ensure that carriers "can maintain/enhance their networks while still offering service to end-users at reasonable rates." [footnote omitted]

Thus, in addition to addressing the existing USF budget shortfalls discussed in Section II, any action with respect to intercarrier compensation must -- as it did for the 2011 reforms and previous access charge reforms – provide for a stable, predictable and sufficient revenue replacement mechanism that is *supplemental to* a fully-funded universal service budget. To be very precise, *any* revenue replacement mechanism for the reduction of RLEC tandem switching and transport rates and revenues must be a new and distinct revenue stream – that is, must be truly

[42] *Id.*

supplemental to the current Rate of Return budget (*i.e.*, the $2.0 billion annual budget, plus the additional CAF Reserve payable to ACAM Path participants, plus any and all budget increases adopted as part of the promised sixth year review of the *2011 USF/ICC Order*).

The RLEC tandem switching and transport rates and revenue streams at issue pertain to the facilities between an RLEC's meet point or point of interconnection with another carrier and the end office from which the RLEC serves the called party. These tandem switching and transport facilities and services are wholly distinct from the terminating access and reciprocal compensation rates and revenues for which the existing CAF-ICC mechanism was designed, and from the "last mile" facilities for which existing HCLS and Connect America Fund – Broadband Loop Support ("CAF-BLS") were developed. Hence, given the wholly separate and distinct nature of RLEC tandem switching and transport revenue streams, any revenue replacement mechanisms developed in conjunction with any reduction or reform of their rates should also be wholly separate and distinct and must not be rolled into existing CAF-ICC, HCLS or CAF-BLS mechanisms, or otherwise wedged within the existing budget levels.

Absent such a supplemental revenue replacement mechanism, rural carriers will be left in the untenable position of either having to forgo new investments to improve and expand service or to further raise rates on rural consumers. Either option threatens to undermine the Commission's universal service goals.

Reducing or eliminating critical tandem switching and transport revenues -- or, worse, increasing costs by forcing RLECs to bear the cost of transport, without the possibility of revenue replacement dollars that are supplemental to the existing CAF-ICC, HCLS and CAF-BLS mechanisms-- would jeopardize the ability of RLECs to make new investments without raising existing rural service rates to unaffordably high levels.

Thus, it imperative that the Commission ensure that adequate funding for a revenue replacement mechanism exists *before* contemplating any further reforms of tandem switching, transport or other intercarrier compensation. Moreover, to ensure the continued availability of such support, the Commission should place such a revenue replacement mechanism into a separate, truly supplemental fund that is not limited by artificial budget caps and that does not merely siphon away or reshuffle the existing support received by RLECs via the budget control mechanism.

IV. THE COMMISSION SHOULD PROVIDE STATES GUIDANCE THAT, FOR RLECS, THE NETWORK EDGE SHOULD BE AT THE EXISTING INTERCONNECTION POINT WITHIN THE RLEC STUDY AREA.

The *2011 ICC FNPRM* sought comment on various issues relating to defining the network "edge." It preliminarily determined that states should establish the edge pursuant to Commission guidance.[43]

The Bureau now seeks to refresh the record on issues related to the network edge in light of regulatory and market developments since comments were filed in 2012, particularly with respect to state experiences, marketplace developments, and whether proposals raised in the record of the *2011 ICC FNPRM* should be revisited.[44]

Defining the network "edge" is critical to the success of ICC reform. As the Associations previously made clear, ICC reform initiatives that move current usage-based tandem switching and transport charges to bill and keep could create significant incentives for IXCs or other carriers to attempt to compel RLECs and other small providers to deliver and receive traffic only in central locations (such as Chicago or Dallas or New York or Atlanta).[45] This would transfer significant

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[43] *2011 ICC FNPRM*, ¶ 1321.

[44] *Public Notice* at 1.

[45] Association Comments at 20.

transport costs to rural carriers and their small, rural consumer bases, greatly undermining the Commission's universal service policies in other respects.

The Associations continue to agree with the Commission that states should be responsible for defining network edges in the first instance. Indeed, the Tenth Circuit upheld the Commission's decision to adopt bill-and-keep as the default methodology for all interstate and intrastate rate elements against a challenge that it unlawfully preempted state authority in significant part precisely because the Commission decision left network edge determinations to the states.[46]

While the determination of the edge must thus be left to the states as a matter of law, the Associations continue to commend the Commission to provide guidance for states to follow in making such determinations by adopting a default rule to apply where states decline to act. As the Associations previously explained, the "rural transport rule" (which was originally adopted to define the network edge for purposes of delivering non-access traffic between rural LECs and CMRS providers) was considered necessary because the Commission had determined to immediately move certain access traffic to bill-and-keep, and wanted to ensure the universal service mission of RLECs would not be undermined by massive new transport costs.[47] Under the rural transport rule, RLECs are responsible for delivering traffic to the interconnecting carrier's existing interconnection and meet points.[48]

The rural transport rule has provided some degree of certainty regarding transport obligations in the CMRS context. To facilitate such certainty in the face of any additional "bill-

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[46] *In re FCC 11-161*, 753 F.3d 1015, 1128 (10th Cir. 2014) (concluding that the FCC's adoption of bill-and-keep did not violate § 252(c) because "[t]hrough bill-and-keep, state commissions will continue to define the edges of the networks; that role preserves state regulatory authority over the 'terms and conditions' of reciprocal compensation").

[47] *2011 USF/ICC Order*, ¶¶ 998-999.

[48] Association Comments at 25-27.

and-keep-style" reforms and to protect rural consumers from a "piling on" of transport costs in their rates, such a rule must be a critical part of any additional reforms that may be undertaken in this proceeding after the analyses discussed above are completed. By contrast, if the Commission were to fail to reaffirm this proven guidance or were to direct states to determine the edge based on a different methodology, it would invite uncertainty and encourage providers to engage in self-help and even refuse to pay transport. Moreover, RLECs may be forced to bear increased costs to transport traffic to the network edge, jeopardizing their ability to invest and undermining the Commission's universal service efforts. For instance, were the Commission to direct states to adopt instead CTIA's "Mutually Efficient Traffic Exchange" proposal, pursuant to which the originating carrier would be responsible for delivering traffic to a pre-designated point at the terminating carrier's network edge, rural LECs may be forced to pay to transport traffic hundreds of miles outside their study areas.[49] Such a change in the network edge would be especially damaging considering yet again the current shortfall in the high-cost support budget, which is already straining RLECs' ability to pay for network improvements. Forcing carriers that already have constrained budgets to bear additional costs to reach places like Overland Park, Kansas or Dallas, Texas (or even international destinations perhaps) is patently inconsistent with universal service principles set forth in the Telecommunications Act.

Thus, if the Commission moves forward with reforms to transport and tandem switching rates, it should at the same time reaffirm and incorporate the existing guidance that, for RLECs, the network edge will be at the very least at the existing interconnection point within the RLEC study area, and adopt such a rural transport rule as the default where states decline to act.

[49] Initial Comments of CTIA, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 at 5-6 (filed May 23, 2005).

V. IP-BASED INTERCONNECTION SHOULD BE GOVERNED BY THE SAME STATUTORY AND REGULATORY REGIME AS ALL OTHER INTERCONNECTION.

The *Public Notice* invites parties to address other issues raised in the *2011 ICC FNPRM* with respect to developments related to the network edge, tandem switching and transport, or transit that should be considered in the context of further ICC reform.[50]

For the reasons discussed in previous sections, the Associations do not believe the Commission should proceed with additional ICC reform until such time as "sufficient" support mechanisms are in place and the Commission has adequate data to determine whether such reforms would actually serve the public interest. If, however, the Commission elects to move forward with ICC reform at this time, it should take care to provide further clarification regarding the application of its interconnection rules to IP-based networks, so as to assure such arrangements are accomplished in a manner that does not artificially disadvantage RLECs and their rural consumers.

These concerns were addressed in the Associations' 2012 ICC FNPRM comments.[51] Among other things, the Associations at the time urged the Commission to clarify that sections 251 and 252 of the Act govern *all* interconnection arrangements, including IP-to-IP interconnection. As the Associations explained, sections 251 and 252 of the Act do not distinguish between network technologies underlying interconnection arrangements.[52] However, the

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[50] Public Notice at 1.

[51] Association Comments at 9-14.

[52] *Id.* at 38-40. The Commission has more recently made clear that technological distinctions between IP technology and other forms of transmission do not justify disparate regulatory treatment. *See, e.g.*, *Connect America Fund; Developing a Unified Intercarrier Compensation Regime,* WC Docket No. 10-90 and CC Docket No. 01-92, Declaratory Ruling, 30 FCC Rcd 1587 (2015) ¶ 3. ("In this declaratory ruling, we remove a question surrounding the VoIP symmetry rule and confirm that it is technology and facilities neutral. It does not require, and has never required, an entity to use a specific technology or its own facilities in order for the service it provides to be considered the functional equivalent of end office switching.")

interconnection provisions of the Act are expressly limited to circumstances where the requesting entity is a telecommunications carrier. Consistent with the provisions of the Act and earlier Association comments on this issue, the Commission should confirm that entities seeking the benefits of 251/252 interconnection must themselves offer telecommunications services on a common carriage basis.

Moreover, the Associations suggested the Commission clarify that IP-based interconnection arrangements are subject to the same limitations under section 251 as other forms of interconnection. The Associations expressed particular concern that IP interconnection only be required where both parties have the necessary trunking capabilities in place.[53] Since section 251(c)(2) requires access "only to an incumbent LEC's existing network – not to a yet unbuilt superior one,"[54] it should be clear an RLEC need not upgrade its network solely in response to a request for IP interconnection. Further, any party requesting such network upgrade may reasonably be expected to shoulder the costs of compliance.[55]

The Associations also asked the Commission to actively monitor the status of IP interconnection arrangements as ICC reform proceeds, to ensure that IP migration occurs without abuse of market power. RLECs and other small wireline and wireless carriers increasingly need to establish IP-to-IP interconnection arrangements for access to regional, national and international networks, but are potentially at a significant disadvantage with respect to larger backbone providers, who have typically negotiated specialized terms with each other but not with smaller operators. Critical interconnection functions, such as reasonable interconnection points, middle

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[53] Association Comments at 39-40.

[54] *See Iowa Utilities Bd. v. FCC* 120 F. 3d 753, 813 (8th Cir. 1997). at 39-40.

[55] Association Comments at 40.

mile capacity, and middle mile and transit prices are often provided on “take-it-or-leave-it” terms. As part of the overall data gathering effort needed before proceeding with further ICC reforms, the Commission should monitor the establishment of such arrangements between large and small carriers. If necessary, the Commission should then initiate a proceeding to study effective and equitable rules or procedures to re-balance bargaining power disparities between large and small carriers so that the customers of all carriers can enjoy the benefits of a nationwide all-IP network.[56]

Finally, the Commission’s *2011 ICC FNPRM* also sought input on the role of tariffs and interconnection agreements during the transition to a bill-and-keep environment.[57] Given their status as small businesses, it remains in the public interest to permit RLECs to continue to rely on tariffs for establishing terms and conditions for interconnection arrangements, while at the same time providing these carriers with the ability to negotiate individualized agreements where individual circumstances permit and where parties have roughly equal bargaining power. This approach has worked well during the initial stages of ICC reform. For RLECs in particular, it is simply infeasible to negotiate individual interconnection arrangements with the numerous service providers who may individually terminate small amounts of traffic in a particular carrier’s territory, but who collectively impose significant terminating traffic loads on small company networks. Tariff arrangements, in contrast, provide a reasonable and efficient solution for these carriers and should be permitted to continue.[58]

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[56] As the Associations pointed out in initial comments, IP interconnection arrangements may increasingly involve major “edge” providers as well as others, who may seek the benefits of 251/252 interconnection arrangements (presumably as carriers) with smaller carriers or regional consortiums. The Commission may find it necessary to consider ways to adjust its interconnection regime to accommodate such arrangements while recognizing substantial disparities in bargaining power between RLECs and such global entities. Association Comments at 41-42.

[57] *2011 ICC FNPRM*, ¶¶ 1322-1324.

[58] Small carriers also continue to need the option to participate in common revenue pooling arrangements such as those administered by the National Exchange Carrier Association. Revenue

VI. CONCLUSION

For the foregoing reasons, the Associations recommend that the Commission move cautiously before proceeding with further ICC reforms, acting only after tackling and resolving existing high-cost USF budget shortfalls and the collection and analysis of data on impacts of previous reforms. If, after taking such steps, the Commission elects to proceed with further ICC reforms, such reforms should: (1) create certainty with respect to network "edge" transport obligations, while protecting rural consumers from adverse impacts on the affordability and quality of the voice and broadband services upon which they rely; (2) ensure that RLECs are not compelled to incur substantial new costs to transport traffic on behalf of other providers; (3) facilitate IP-to-IP interconnection by providing stable and clear "rules of the road" governing all underlying network technologies without artificial distinctions; and (4) provide RLECs with reasonable opportunities to recover authorized revenue requirements via ICC charges and/or other support mechanisms that meet the predictability and sufficiency requirements of the Act.

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pooling provides substantial administrative savings and risk-sharing benefits, and can be adapted for use under tariffs, certain types of common contracts, or some combination of the two mechanisms. Association Comments at 29-30.

Respectfully submitted,

/s/ Michael R. Romano
Michael R. Romano
Sr. Vice President – Industry Affairs
& Business Development
NTCA-The Rural Broadband Administration
4121 Wilson Blvd, Suite 1000
Arlington, VA 22203
(703) 351-2016 (Tel)
mromano@ntca.org

/s/ Derrick Owens
Derrick Owens
Vice President of Government Affairs
WTA-Advocates for Rural Broadband
400 Seventh Street, NW, Suite 406
Washington, DC 20004
(202) 548-0202 (Tel)
derrick@w-t-a.org

/s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel for WTA
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street NW, Suite 300
Washington, DC 20037
(202) 659-0830 (Tel)
gjd@bloostonlaw.com

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