

SUPPLEMENTAL BRIEF FOR RESPONDENT FEDERAL COMMUNICATIONS COMMISSION

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-1094

RURAL CELLULAR ASSOCIATION AND UNIVERSAL SERVICE
FOR AMERICA COALITION,

PETITIONERS,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND UNITED STATES OF AMERICA,

RESPONDENTS.

ON PETITION FOR REVIEW OF AN ORDER OF THE
FEDERAL COMMUNICATIONS COMMISSION

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GLOSSARY

ETC

eligible telecommunications carrier

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SUPPLEMENTAL BRIEF FOR RESPONDENT FEDERAL COMMUNICATIONS
COMMISSION

By order dated November 2, 2011, the Court directed the parties to “file supplemental briefs regarding the impact, if any, on the instant Petition for Review of the recent announcement by the Federal Communications Commission that it has voted to approve a new ‘Connect America Fund.’” When the Commission made that announcement on October 27, 2011, it issued an executive summary of its order adopting a comprehensive plan that reforms and modernizes the FCC’s universal service and intercarrier compensation systems. A copy of the executive summary is attached to this

supplemental brief.¹ Although the text of the order has not yet been released, the Commission expects to issue the order in the near future.²

ARGUMENT

The Commission recently adopted the Connect America Fund, a comprehensive new mechanism that will replace all of the current mechanisms for distributing universal service subsidies under the FCC's existing high-cost support program. The agency's adoption of this plan to reform universal service is pertinent to this case in two respects:

First, consistent with respondents' arguments in this case, the FCC has decided to replace the identical support rule with a new Mobility Fund, which is part of the Connect America Fund. Executive Summary at 3-4. Under the identical support rule, competitive eligible telecommunications carriers ("ETCs") received "support for each line based not on their own costs, but

¹ We also attach to this brief a copy of the news release announcing the Commission's action and copies of statements issued by the FCC Chairman and Commissioners regarding the order.

² The rulemaking order will contain greater detail about the Connect America Fund and the FCC's plans for reforming the universal service system. The full text of the recently announced order may shed light on additional issues presented by this case. In order to meet the Court's briefing schedule, the parties had to submit their supplemental briefs on November 10, 2011, relying only on information contained in the executive summary, since the order had not yet been released. Accordingly, the Court may wish to invite the parties to file supplemental briefs after the order is released, addressing how that order affects this case.

rather on the same per-line support [incumbent local exchange carriers] in the relevant service area receive[d].” *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1099 (D.C. Cir. 2009). As respondents explained in their brief (at 10-12, 40-44), the Commission reasonably declined to redistribute high-cost support relinquished by a competitive ETC to other carriers (such as petitioners) because the rule underlying that subsidy system – the identical support rule – was not working as intended. In that respect, the *Order* on review was fully consistent with the Commission’s *Interim Cap Order (High-Cost Universal Service Support*, 23 FCC Rcd 8834 (2008) (JA 51)).

In the *Interim Cap Order* – which this Court affirmed in *Rural Cellular Ass’n*, 588 F.3d 1095 – the Commission decided to impose an interim cap on universal service funding to competitive ETCs because it determined that the identical support rule was creating skewed investment incentives and promoting explosive – and unwarranted – growth in the amount of high-cost universal service subsidies. *Interim Cap Order*, 23 FCC Rcd at 8844 ¶ 21 (JA 61); *see also* Resp. Br. 10-12. In light of its earlier findings concerning the shortcomings of the identical support rule, the Commission in the *Order* on review reasonably determined that redistributing relinquished funds to other ETCs would only exacerbate the inefficiencies produced by the rule. The Commission’s decision in the recently announced order to eliminate the

identical support rule confirms the wisdom of the agency's approach in this proceeding.

The Commission has replaced the flawed identical support rule with the new Mobility Fund, which will “provide up to \$300 million in one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas” and “up to \$500 million per year in ongoing support.” Executive Summary at 3-4. All competitive ETCs that provide mobile service, including petitioners, will be eligible to receive support from the Mobility Fund. And that fund, which is a component of the Connect America Fund, will be financed in part by the temporary reserve. This removes any doubt that “wireless carriers will benefit from the diverted contributions” that were used to create the temporary reserve. *See* Pet. Rep. Br. 15.

Under the Mobility Fund, wireless ETCs “will not be allowed to receive redundant support for the same service in the same areas.” Executive Summary at 3, ¶ 12. This constraint on the Mobility Fund was reasonably designed to cure a defect in the old universal service regime that the Commission identified in the *Order* on review: the tendency of the identical support rule to “simply subsidize duplicative voice service” rather than promote deployment of service in unserved areas. *Order* ¶ 5 (JA 146); *see*

also Resp. Br. 10-12, 16-17, 35, 41-44. In the Commission's considered judgment, the Mobility Fund should provide more effective and appropriate incentives for making cutting-edge broadband services available to unserved and underserved areas.

Second, by announcing the creation of the Connect America Fund, the Commission confirmed what it has maintained throughout this proceeding: that it will use the temporary reserve funds to support universal service. The agency created the temporary reserve "as a fiscally responsible down payment on proposed broadband universal service reforms." *High-Cost Universal Service Support*, 25 FCC Rcd 12854, 12862 ¶ 20 (2010) ("*Corr Wireless Order*") (JA 82). It anticipated that it would adopt new broadband universal service support mechanisms that would require additional funding; and it established the temporary reserve to guard against "unnecessary volatility in the contribution factor, which would otherwise decline and then increase" precipitously "as the universal service fund transitions to support broadband." *Id.*

The Commission's recently adopted rulemaking order establishes the Connect America Fund, a new mechanism for distributing support under the FCC's existing high-cost universal service program. Executive Summary at 1-4. This is precisely the type of mechanism that the Commission had in

mind when it created the temporary reserve in the *Corr Wireless Order*. See Resp. Br. 17-18, 22-23, 49-50. The agency will use funds maintained in that reserve to support the Connect America Fund. Thus, there is no basis for petitioners' speculation that the agency might use the reserved funds for purposes unrelated to universal service (*e.g.*, "financing the construction of a new wing at [FCC] headquarters" (Pet. Br. 40) or purchasing "a new fleet of vehicles" for the agency's use (Pet. Br. 47)). Moreover, in light of the Commission's recent adoption of the Connect America Fund, petitioners cannot plausibly claim that the agency in this case might "assess contributions in *any* amount, so long as it *eventually* – perhaps 10, 20, or 50 years later – distributes the money pursuant to a support mechanism that preserves and advances universal service." Pet. Rep. Br. 8.

CONCLUSION

The Commission's recent announcement of the creation of a Connect America Fund reaffirms the reasonableness of the Commission's action in the *Order* on review here. For the reasons discussed above and in respondents' brief, the Court should deny the petition for review and affirm the *Order*.

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November 10, 2011

Connect America Fund & Intercarrier Compensation Reform Order and FNPRM

Executive Summary

Universal Service Reform

1. *Principles and Goals.* We begin by adopting support for broadband-capable networks as an express universal service principle under section 254(b) of the Communications Act, and, for the first time, we set specific performance goals for the high-cost component of the Universal Service Fund (USF) that we are reforming today, to ensure these reforms are achieving their intended purposes. The goals are: (1) preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service; (4) ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and (5) minimize the universal service contribution burden on consumers and businesses.

2. *Budget.* We establish, also for the first time, a firm and comprehensive budget for the high-cost programs within USF.¹ The annual funding target is set at no more than \$4.5 billion over the next six years, the same level as the high-cost program for Fiscal Year 2011, with an automatic review trigger if the budget is threatened to be exceeded. This will provide for more predictable funding for carriers and will protect consumers and businesses that ultimately pay for the fund through fees on their communications bills. We are today taking important steps to control costs and improve accountability in USF, and our estimates of the funding necessary for components of the Connect America Fund (CAF) and legacy high-cost mechanisms represent our predictive judgment as to how best to allocate limited resources at this time. We anticipate that we may revisit and adjust accordingly the appropriate size of each of these programs by the end of the six-year period, based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving our goals.

3. *Public Interest Obligations.* While continuing to require that all eligible telecommunications carriers (ETCs) offer voice services, we now require that they also offer broadband services. We update the definition of voice services for universal service purposes, and decline to disrupt any state carrier of last resort (COLR) obligations that may exist. We also establish specific and robust broadband performance requirements for funding recipients.

4. *Connect America Fund.* We create the Connect America Fund, which will ultimately replace all existing high-cost support mechanisms. The CAF will help make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband, including mobile voice and broadband networks in areas that do not, or would not otherwise, have mobile service, and broadband in the most remote areas of the nation. The CAF will also help facilitate our intercarrier compensation (ICC) reforms. The CAF will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible.

¹ While we recognize that over time several of our existing support mechanisms will be phased down and eliminated, for purposes of this budget, the term “high-cost” includes all support mechanisms in place as of the date of this Order, specifically, high-cost loop support, safety net support, safety valve support, local switching support, interstate common line support, high cost model support, and interstate access support, as well as the new Connect America Fund, which includes funding to support and advance networks that provide voice and broadband services, both fixed and mobile, and funding provided in conjunction with the recovery mechanism adopted as part of intercarrier compensation reform.

5. *Price Cap Territories.* More than 83 percent of the approximately 18 million Americans that lack access to residential fixed broadband at or above the Commission's broadband speed benchmark live in areas served by price cap carriers—Bell Operating Companies and other large and mid-sized carriers. In these areas, the CAF will introduce targeted, efficient support for broadband in two phases.

6. *Phase I.* To spur immediate broadband buildout, we will provide additional funding for price cap carriers to extend robust, scalable broadband to hundreds of thousands of unserved Americans beginning in early 2012. To enable this deployment, all existing legacy high-cost support to price cap carriers will be frozen, and an additional \$300 million in CAF funding will be made available. Frozen support will be immediately subject to the goal of achieving universal availability of voice and broadband, and subject to obligations to build and operate broadband-capable networks in areas unserved by an unsubsidized competitor over time. Any carrier electing to receive the additional support will be required to deploy broadband and offer service that satisfies our new public interest obligations to an unserved location for every \$775 in incremental support. Specifically, carriers that elect to receive this additional support must provide broadband with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream,² with latency suitable for real-time applications and services such as VoIP, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas. In addition, to ensure fairness for consumers across the country who pay into USF, we reduce existing support levels in any areas where a price cap company charges artificially low end-user voice rates.

7. *Phase II.* The next phase of the CAF will use a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband service for five years. We expect that the CAF will expand broadband availability to millions more unserved Americans.

8. We direct the Wireline Competition Bureau to undertake a public process to determine the specific design and operation of the cost model to be used for this purpose, with stakeholders encouraged to participate in that process. The model will be used to establish the efficient amount of support required to extend and sustain robust, scalable broadband in high-cost areas. In each state, each incumbent price cap carrier will be asked to undertake a “state-level commitment” to provide affordable broadband to all high-cost locations in its service territory in that state, excluding extremely high cost areas as determined by the model. Importantly, the CAF will only provide support in those areas where a federal subsidy is necessary to ensure the buildout and operation of broadband networks. The CAF will not provide support in areas where unsubsidized competitors are providing broadband that meets our definition. Carriers accepting the state-level commitment will be obligated to meet rigorous broadband service requirements—with interim buildout requirements in three years and final requirements in five years—and will receive CAF funding, in an amount calculated by the model, over a five-year period, with significant financial consequences in the event of non- or under-performance. We anticipate that CAF obligations will keep pace as services in urban areas evolve, and we will ensure that CAF-funded services remain reasonably comparable to urban broadband services over time. After the five-year period, the Commission will use competitive bidding to distribute any universal service support needed in those areas.

9. In areas where the incumbent declines the state-level commitment, we will use competitive bidding to distribute support in a way that maximizes the extent of robust, scalable

² Upon a showing that the specified support amount is inadequate to enable build out of broadband with actual upstream speeds of at least 1 Mbps to the required number of locations, a carrier may request a waiver.

broadband service subject to an overall budget. In the Further Notice of Proposed Rulemaking (FNPRM) that accompanies today's Order, we propose a structure and operational details for the competitive bidding mechanism, in which any broadband provider that has been designated as an ETC for the relevant area may participate. The second phase of the CAF will distribute a total of up to \$1.8 billion annually in support for areas with no unsubsidized broadband competitor. We expect that the model and competitive bidding mechanism will be adopted by December 2012, and disbursements will ramp up in 2013 and continue through 2017.

10. *Rate-of-Return Reforms.* Although they serve less than five percent of access lines in the U.S., smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve. Rate-of-return carriers' total support from the high-cost fund is approaching \$2 billion annually. We reform our rules for rate-of-return companies in order to support continued broadband investment while increasing accountability and incentives for efficient use of public resources. Rate-of-return carriers receiving legacy universal service support, or CAF support to offset lost ICC revenues, must offer broadband service meeting initial CAF requirements, with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, upon their customers' reasonable request. Recognizing the economic challenges of extending service in the high-cost areas of the country served by rate-of-return carriers, this flexible approach does not require rate-of-return companies to extend service to customers absent such a request.

11. Alongside these broadband service rules, we adopt reforms to: (1) establish a framework to limit reimbursements for excessive capital and operating expenses, which will be implemented no later than July 1, 2012, after an additional opportunity for public comment; (2) encourage efficiencies by extending existing corporate operations expense limits to the existing high-cost loop support and interstate common line support mechanisms, effective January 1, 2012; (3) ensure fairness by reducing high-cost loop support for carriers that maintain artificially low end-user voice rates, with a three-step phase-in beginning July 1, 2012; (4) phase out the Safety Net Additive component of high-cost loop support over time; (5) address Local Switching Support as part of comprehensive ICC reform; (6) phase out over three years support in study areas that overlap completely with an unsubsidized facilities-based terrestrial competitor that provides voice and fixed broadband service, beginning July 1, 2012; and (7) cap per-line support at \$250 per month, with a gradual phasedown to that cap over a three-year period commencing July 1, 2012. In the FNPRM, we seek comment on establishing a long-term broadband-focused CAF mechanism for rate-of-return carriers, and relatedly seek comment on reducing the interstate rate-of-return from its current level of 11.25 percent. We expect rate-of-return carriers will receive approximately \$2 billion per year in total high-cost universal service support under our budget through 2017.

12. *CAF Mobility Fund.* Concluding that mobile voice and broadband services provide unique consumer benefits, and that promoting the universal availability of such services is a vital component of the Commission's universal service mission, we create the Mobility Fund, the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking. Mobile broadband carriers will receive significant legacy support during the transition to the Mobility Fund, and will have opportunities for new Mobility Fund dollars. The providers receiving support through the CAF Phase II competitive bidding process will also be eligible for the Mobility Fund, but carriers will not be allowed to receive redundant support for the same service in the same areas. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

- *Phase I.* We provide up to \$300 million in one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction, which we expect to

occur in third quarter 2012. Eligible areas will include census blocks unserved today by mobile broadband services, and carriers may not receive support for areas they have previously stated they plan to cover. The auction will maximize coverage of unserved road miles within the budget, and winners will be required to deploy 4G service within three years, or 3G service within two years, accelerating the migration to 4G. We also establish a separate and complementary one-time Tribal Mobility Fund Phase I to award up to \$50 million in additional universal service funding to Tribal lands to accelerate mobile voice and broadband availability in these remote and underserved areas.

- *Phase II.* To ensure universal availability of mobile broadband services, the Mobility Fund will provide up to \$500 million per year in ongoing support. The Fund will expand and sustain mobile voice and broadband services in communities in which service would be unavailable absent federal support. The Mobility Fund will include ongoing support for Tribal areas of up to \$100 million per year as part of the \$500 million total budget. In the FNPRM we propose a structure and operational details for the ongoing Mobility Fund, including the proper distribution methodology, eligible geographic areas and providers, and public interest obligations. We expect to adopt the distribution mechanism for Phase II in 2012 with implementation in 2013.

13. *Identical Support Rule.* In light of the new support mechanisms we adopt for mobile broadband service and our commitment to fiscal responsibility, we eliminate the identical support rule that determines the amount of support for mobile, as well as wireline, competitive ETCs today. We freeze identical support per study area as of year end 2011, and phase down existing support over a five-year period beginning on July 1, 2012. The gradual phase down we adopt, in conjunction with the new funding provided by Mobility Fund Phase I and II, will ensure that an average of over \$900 million is provided to mobile carriers for each of the first four years of reform (through 2015). The phase down of CETC support will stop if Mobility Fund Phase II is not operational by June 30, 2014, ensuring approximately \$600 million per year in legacy support will continue to flow until the new mechanism is operational.

14. *Remote Areas Fund.* We allocate at least \$100 million per year to ensure that Americans living in the most remote areas in the nation, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access through alternative technology platforms, including satellite and unlicensed wireless services.³ We propose in the FNPRM a structure and operational details for that mechanism, including the form of support, eligible geographic areas and providers, and public interest obligations. We expect to finalize the Remote Areas Fund in 2012 with implementation in 2013.

15. *Reporting and Enforcement.* We establish a national framework for certification and reporting requirements for all universal service recipients to ensure that their public interest obligations are satisfied, that state and federal regulators have the tools needed to conduct meaningful oversight, and that public funds are expended in an efficient and effective manner. We do not disturb the existing role of states in designating ETCs and in monitoring that ETCs within their jurisdiction are using universal service support for its intended purpose. We seek comment on whether and how we should adjust federal obligations on ETCs in areas where legacy funding is phased down. We also adopt rules to reduce or eliminate support if public interest obligations or other requirements are not satisfied, and seek comment on the appropriateness of additional enforcement mechanisms.

³ We note that satellite broadband providers and wireless Internet service providers (WISPs) are not confined to participating only in this component of the CAF; they are eligible to participate in any CAF program for which they can meet the specified performance requirements.

16. *Waiver*. As a safeguard to protect consumers, we provide for an explicit waiver mechanism under which a carrier can seek relief from some or all of our reforms if the carrier can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.

Intercarrier Compensation Reform

17. *Immediate ICC Reforms*. We take immediate action to curtail wasteful arbitrage practices, which cost carriers and ultimately consumers hundreds of millions of dollars annually:

- *Access Stimulation*. We adopt rules to address the practice of access stimulation, in which carriers artificially inflate their traffic volumes to increase ICC payments. Our revised interstate access rules generally require competitive carriers and rate-of-return incumbent local exchange carriers (LECs) to refile their interstate switched access tariffs at lower rates if the following two conditions are met: (1) a LEC has a revenue sharing agreement and (2) the LEC either has (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year. These new rules are narrowly tailored to address harmful practices while avoiding burdens on entities not engaging in access stimulation.
- *Phantom Traffic*. We adopt rules to address “phantom traffic,” *i.e.*, calls for which identifying information is missing or masked in ways that frustrate intercarrier billing. Specifically, we require telecommunications carriers and providers of interconnected VoIP service to include the calling party’s telephone number in all call signaling, and we require intermediate carriers to pass this signaling information, unaltered, to the next provider in a call path.

18. *Comprehensive ICC Reform*. We adopt a uniform national bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC. Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary. Bill-and-keep has worked well as a model for the wireless industry; is consistent with and promotes deployment of IP networks; will eliminate competitive distortions between wireline and wireless services; and best promotes our overall goals of modernizing our rules and facilitating the transition to IP. Moreover, we reject the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call. As a result, we now abandon the calling-party-network-pays model that dominated ICC regimes of the last century. Although we adopt bill-and-keep as a national framework, governing both inter- and intrastate traffic, states will have a key role in determining the scope of each carrier’s financial responsibility for purposes of bill-and-keep, and in evaluating interconnection agreements negotiated or arbitrated under the framework in sections 251 and 252 of the Communications Act. We also address concerns expressed by some commenters about potential fears of traffic “dumping” and seek comment in the FNPRM on whether any additional measures are necessary in this regard.

19. *Multi-Year Transition*. We focus initial reforms on reducing terminating switched access rates, which are the principal source of arbitrage problems today. This approach will promote migration to all-IP networks while minimizing the burden on consumers and staying within our universal service budget. For these rates, as well as certain transport rates, we adopt a gradual, measured transition that will facilitate predictability and stability. First, we require carriers to cap most ICC rates as of the effective date of this Order. To reduce the disparity between intrastate and interstate terminating end office rates, we next require carriers to bring these rates to parity within two steps, by July 2013. Thereafter, we require carriers to reduce their termination (and for some carriers also transport) rates to bill-and-keep, within six years for price

cap carriers and nine for rate-of-return carriers. The framework and transition are default rules and carriers are free to negotiate alternatives that better address their individual needs. Although the Order begins the process of reforming all ICC charges by capping all interstate rate elements and most intrastate rate elements, the FNPRM seeks comment on the appropriate transition and recovery for the remaining originating and transport rate elements. States will play a key role in overseeing modifications to rates in intrastate tariffs to ensure carriers are complying with the framework adopted in this Order and not shifting costs or otherwise seeking to gain excess recovery. The FNPRM also seeks comment on interconnection issues likely to arise in the process of implementing a bill-and-keep methodology for ICC.

20. *New Recovery Mechanism.* We adopt a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo*. Although carriers will first look to limited increases from their end users for recovery, we reject notions that all recovery should be borne by consumers. Rather, we believe, consistent with past reforms, that carriers should have the opportunity to seek partial recovery from all of their end user customers. We permit incumbent telephone companies to charge a limited monthly Access Recovery Charge (ARC) on wireline telephone service, with a maximum annual increase of \$0.50 for consumers and small businesses, and \$1.00 per line for multi-line businesses, to partially offset ICC revenue declines. To protect consumers, we adopt a strict ceiling that prevents carriers from assessing any ARC for any consumer whose total monthly rate for local telephone service, inclusive of various rate-related fees, is at or above \$30. Although the maximum ARC is \$0.50 per month, we expect the actual average increase across all wireline consumers to be no more than \$0.10-\$0.15 a month, which translates into an expected maximum of \$1.20-\$1.80 per year that the average consumer will pay.⁴ We anticipate that consumers will receive more than three times that amount in benefits in the form of lower calling prices, more value for their wireless or wireline bill, or both, as well as greater broadband availability. Furthermore, the ARC will phase down over time as carriers' eligible revenue decreases, and we prevent carriers from charging any ARC on Lifeline customers or further drawing on the Lifeline program, so that ICC reform will not raise rates at all for these low-income consumers. We also seek comment in the FNPRM about reassessing existing subscriber line charges (SLCs), which are not otherwise implicated by this Order, to determine whether those charges are set at appropriate levels.

21. Likewise, although we do not adopt a rate ceiling for multi-line businesses customers, we do adopt a cap on the combination of the ARC and the existing SLC to ensure that multi-line businesses do not bear a disproportionate share of recovery and that their rates remain just and reasonable. Specifically, carriers cannot charge a multi-line business customer an ARC when doing so would result in the ARC plus the existing SLC exceeding \$12.20 per line. Moreover, to further protect consumers, we adopt measures to ensure that carriers must apportion lost revenues eligible for ICC recovery between residential and business lines, appropriately weighting the business lines (*i.e.*, according to the higher maximum annual increase in the business ARC) to prevent carriers that elect not to receive ICC CAF from recovering their entire ICC revenue loss from consumers. Carriers may receive CAF support for any otherwise-eligible revenue not recovered by the ARC. In addition, carriers receiving CAF support to offset lost ICC revenues will be required to use the money to advance our goals for universal voice and broadband.

⁴ The maximum theoretical ARC for customers of price cap carriers would be \$2.50 after 5 years and for customers of rate-of-return carriers would be \$3 after 6 years, although we expect the average actual ARC to be less than half of those totals.

22. In defining how much of their lost revenues carriers will have the opportunity to recover, we reject the notion that ICC reform should be revenue neutral. We limit carriers' total eligible recovery to reflect the existing downward trends on ICC revenues with declining switching costs and minutes of use. For price cap carriers, baseline recovery amounts available to each price cap carrier will decline at 10 percent annually. Price cap carriers whose interstate rates have largely been unchanged for a decade because they participated in the Commission's 2000 CALLS plan will be eligible to receive 90 percent of this baseline every year from ARCs and the CAF. In those study areas that have recently converted from rate-of-return to price cap regulation, carriers will initially be permitted to recover the full baseline amount to permit a more gradual transition, but we will decline to 90 percent recovery for these areas as well after 5 years. All price cap CAF support for ICC recovery will phase out over a three-year period beginning in the sixth year of the reform.

23. For rate-of-return carriers, recovery will be calculated initially based on rate-of-return carriers' fiscal year 2011 interstate switched access revenue requirement, intrastate access revenues that are being reformed as part of this Order, and net reciprocal compensation revenues. This baseline will decline at five percent annually to reflect combined historical trends of an annual three percent interstate cost and associated revenue decline, and ten percent intrastate revenue decline, while providing for true ups to ensure CAF recovery in the event of faster-than-expected declines in demand. Both recovery mechanisms provide carriers with significantly more revenue certainty than the *status quo*, enabling carriers to reap the benefits of efficiencies and reduced switching costs, while giving providers stable support for investment as they adjust to an IP world.

24. *Treatment of VoIP Traffic.* We make clear the prospective payment obligations for VoIP traffic exchanged in TDM between a LEC and another carrier, and adopt a transitional framework for VoIP intercarrier compensation. We establish that default charges for "toll" VoIP-PSTN traffic will be equal to interstate rates applicable to non-VoIP traffic, and default charges for other VoIP-PSTN traffic will be the applicable reciprocal compensation rates. Under this framework, all carriers originating and terminating VoIP calls will be on equal footing in their ability to obtain compensation for this traffic.

25. *CMRS-Local Exchange Carrier (LEC) Compensation.* We clarify certain aspects of CMRS-LEC compensation to reduce disputes and address existing ambiguity. We adopt bill-and-keep as the default methodology for all non-access CMRS-LEC traffic. To provide rate-of-return LECs time to adjust to bill-and-keep, we adopt an interim transport rule for rate-of-return carriers to specify LEC transport obligations under the default bill-and-keep framework for non-access traffic exchanged between these carriers. We also clarify the relationship between the compensation obligations in section 20.11 of the Commission's rules and the reciprocal compensation framework, thus addressing growing concerns about arbitrage related to rates set without federal guidance. Further, in response to disputes, we make clear that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Finally, we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception.

26. *IP-to-IP Interconnection.* We recognize the importance of interconnection to competition and the associated consumer benefits. We anticipate that the reforms we adopt will further promote the deployment and use of IP networks, and seek comment in the accompanying FNPRM regarding the policy framework for IP-to-IP interconnection. We also make clear that even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.



NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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October 27, 2011

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FCC CREATES ‘CONNECT AMERICA FUND’ TO HELP EXTEND HIGH-SPEED INTERNET TO 18 MILLION UNSERVED AMERICANS; CREATING JOBS & INCREASED CONSUMER BENEFITS

Agency delivers bipartisan vote to modernize America’s communications infrastructure and expand broadband throughout the nation

Washington, D.C. – In the most significant policy step ever taken to connect all Americans to high-speed Internet, wherever they live, the FCC voted unanimously to comprehensively reform its Universal Service Fund and intercarrier compensation systems. Those systems have been widely viewed as broken, and long overdue for reform. Efforts to expand high-speed Internet to rural America over the next six years will increase economic growth by \$50 billion over that period, the FCC estimates.

These reforms create a new Connect America Fund with an annual budget of no more than \$4.5 billion, which will extend broadband infrastructure to the millions of Americans who currently have no access to broadband. As a result, today’s action has the potential to be one of the biggest job creators in rural America in decades. The FCC estimates that approximately 500,000 jobs will be created over the next six years by expanding high-speed Internet access to over 7 million Americans living in rural areas. And by increasing the overall size of the U.S. marketplace, small Main Street businesses across the country will benefit from the opportunity to sell to new customers.

As part of this reform, the FCC recognizes the growing importance of mobile broadband and makes it an independent universal service objective for the first time in history. Dedicated support to expand mobile broadband nationwide will be provided through a new Mobility Fund.

The Connect America Fund will put America on the path to universal broadband and advanced mobile coverage without increasing costs to consumers. By eliminating waste and targeting support where it is most needed, these reforms put universal service funding on a firm budget, and they will impose strict new accountability on fund recipients.

The Order and Further Notice of Proposed Rulemaking reflect broad input received by the FCC in over 2,700 comments from a diverse array of stakeholders. Further details are provided in the attached [Executive Summary](#). The outlines of this comprehensive reform are as follows:

- **INCREASED CONSUMER BENEFITS:** The FCC estimates that, over the next six years, the Connect America Fund will expand broadband access to over 7 million residents of rural areas who are currently unserved, and will put the country on the path to universal broadband within a

decade. The Mobility Fund will expand advanced mobile broadband access to tens of thousands of road miles, where millions of people work, live, and travel, and will include dedicated support for Tribal areas. Intercarrier compensation reform will eliminate hidden costs in consumer bills, providing economic benefits to long distance and wireless consumers across the nation of \$2.2 billion annually in the form of lower prices, better value for the money, or both. Expanded broadband access will generate approximately 500,000 jobs over the next six years. As part of this reform, some consumers may pay, on average, an additional 10 to 15 cents a month on their bills; but for every dollar in cost, reform will provide \$3 in benefits for consumers. And no additional charges can be imposed on consumer phone bills that are at or above \$30 a month (inclusive of most fees consumers pay on their bills), nor can such charges be imposed on low-income consumers served by the FCC's Lifeline program. Any new charges will begin to decline after six years.

- **COMMIT TO FISCAL RESPONSIBILITY**: A firm annual budget set at current levels—\$4.5 billion—will prevent growth in the Fund and help protect consumers from increased contribution fees. Programs that provide subsidies where they are not needed are eliminated, and compensation for corporate overhead expenses is reduced. Market-based mechanisms, including competitive bidding, will be used to distribute money more efficiently.
- **DEMAND ACCOUNTABILITY**: In order to receive Connect America Fund support, carriers must demonstrate they are deploying broadband to their customers. These networks must meet performance criteria that enable the use of common applications such as distance learning, remote health monitoring, VoIP, two-way high quality video conferencing, Web browsing, and email.
- **ENCOURAGE DEPLOYMENT OF MODERN NETWORKS**: Intercarrier compensation distorts investment in technology and discourages investment in modern Internet Protocol networks. It is also unfair to consumers, forcing wireless and long distance customers to provide billions of dollars per year in hidden subsidies to phone companies. Reform will ensure fairness to consumers, promote competition, and foster innovation in communications services. In addition, the Order takes immediate action to end wasteful and costly gaming of the intercarrier system, including schemes such as phantom traffic and traffic pumping.

Action by the Commission, October 27, 2011, by Report and Order and Further Notice of Proposed Rulemaking (FCC 11-161). Chairman Genachowski, Commissioners Copps and Clyburn, with Commissioner McDowell approving in part and concurring in part. Separate statements issued by Chairman Genachowski, Commissioners Copps, McDowell, and Clyburn.

Docket Nos.: 10-90, 09-51, 07-135, 05-337, 01-92, 96-45, 03-109, 10-208

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**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *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

Today, we take a momentous step in our efforts to harness the benefits of broadband Internet for every American.

I am tremendously grateful to each of my colleagues for working hard and working together to get us here.

This is a once-in-a-generation overhaul of universal service, keeping faith with the nation's long commitment to connecting all Americans to communications services.

We are taking a system designed for the Alexander Graham Bell era of rotary telephones and modernizing it for the era of Steve Jobs and the Internet future he imagined.

We are reaffirming for the digital age the fundamental American promise of opportunity for all.

We are furthering our national goal of connecting the country to wired and wireless broadband.

And we are helping put America on its proper 21st century footing, positioning us to lead the world in a fiercely competitive global digital economy.

Infrastructure has always been a key pillar of American economic success, with telephone and other infrastructure connecting consumers and businesses, facilitating commerce, and unleashing innovation. Broadband is the indispensable infrastructure of our 21st century economy.

Recognizing this fact, for years, respected voices have called universal broadband an essential ingredient for American economic competitiveness and job creation. In its 2007 report *Rising Above the Gathering Storm*, the National Academy of Sciences said that “[a]ccelerating progress toward making broadband connectivity available and affordable for all is critical” and urged government to “take the necessary steps to meet that goal.” Our National Broadband Plan correctly called extending wired and wireless broadband to all Americans the “great infrastructure challenge of the 21st century.” And last year, IBM CEO Sam Palmisano expressed a view from CEOs, governors, mayors, and consumers. He implored policymakers to “fix the bridges, but don’t forget broadband,” and said that “a pervasive broadband infrastructure would be a powerful generator of new jobs and economic growth.”

Today, building on years of hard work by the FCC and on Capitol Hill, this Commission is acting unanimously – and on a bipartisan basis – to meet this critical national challenge, and bring the Universal Service Fund and intercarrier compensation system into the broadband age.

Our action will enable millions more Americans to work, learn and innovate online. It will open new vistas of digital opportunity, and enhance public safety. It will create jobs in the near term, and lay the foundation for enduring job creation, economic growth, and U.S. global competitiveness for years to come.

Today's reforms of the multi-billion dollar Universal Service Fund will bring real benefits to consumers and communities in every part of the country.

Over the next year, the Connect America Fund will bring broadband to more than 600,000 Americans who wouldn't have it otherwise. Over the following five years, millions more rural families will be connected. And today's Order puts us on the path to get broadband to every American by the end of the decade – to close the broadband deployment gap which now stands at close to twenty million Americans.

We are also extending the benefits of mobile broadband coverage to tens of thousands of unserved road-miles, areas where millions of Americans work, live, and travel. These are areas of frustration and economic stagnation for so many people – where mobile connections are needed but unavailable, where small businesses lose out on customers and productivity, and where people in traffic accidents can't reach 9-1-1.

Today, we make mobility an independent universal service objective for the first time, providing dedicated support through the world's first Mobility Fund. Over the next three years, we will provide almost \$1 billion in funding per year for universal mobility.

Mobile is one of the fastest-growing and most promising sectors of our economy, and having the world's largest market for 3G and 4G subscribers will be a key competitive advantage enabling us to lead the world in mobile innovation.

New wired and wireless broadband will be a lifeline for rural communities currently being bypassed by the Internet revolution. Young people who didn't see a future in their small hometowns will now be able to access a new world of opportunity. Entrepreneurs in small towns won't need to move to the big city to live their dreams; instead, small business owners doing everything from selling beef to starting hunting lodges – like residents I met in Nebraska wanted to do – will be able to reach customers in the next town, city, state or country, and boost their efficiency and productivity through cloud-based services.

Today's action will empower small businesses that otherwise couldn't exist in small-town America, and create new jobs in those communities.

This includes farmers, who need broadband to access commodity pricing, crop information, real-time weather reports, and online auctions. During our process, we heard this directly from farmers in rural America.

Today's action will help connect anchor institutions, which can play a vital role – for example, in expanding basic digital literacy training – in a world where broadband skills are necessary to find and land jobs.

Today's action has the potential to be one of the biggest job creators in rural America in decades. We estimate that the Order as a whole will unleash billions in private sector broadband infrastructure spending in rural America over the next decade, creating hundreds of thousands of jobs. And by empowering millions more Americans to engage in e-commerce – as buyers and sellers – the Order will grow the size of our overall online marketplace and provide a boost for Main Street businesses across the country.

Today's action will change the landscape for students who are now unserved by broadband – providing educational opportunity that would otherwise be denied.

In now-unserved areas, it will change the landscape for seniors and people with illnesses – providing remote diagnostics and treatment to people who would otherwise have no access or would have to travel for hundreds of miles to get care.

And it will enable parents in now-unserved areas to finally connect with their children in military service overseas through video chat or other modern communications means that require broadband.

By constraining the growth of existing programs, today's reforms will also minimize the burden those programs place on all consumers, keeping hundreds of millions of dollars in consumers' pockets over the next several years. Our overhaul of the intercarrier compensation system will gradually eliminate the billions of dollars in hidden subsidies currently paid by consumers across the country through their wireless and long distance phone bills. Our staff estimates that the consumer benefits of ICC reform will be more than \$2 billion annually. Consumers will get more value for their money and less waste.

These material benefits flow directly from the policy principles and structural reforms that we've embraced in this Order.

The reforms implement the idea that government programs should be modernized to focus on the strategic challenges of today and tomorrow, not yesterday. Starting today, USF will be transformed into the Connect America Fund, which will directly take on our country's 21st century infrastructure challenge by enabling the private sector to build robust, scalable, affordable broadband to homes, businesses, and anchor institutions in unserved communities.

Our ICC reforms will also advance the deployment of modern Internet Protocol networks. And as the telephone network transitions to an IP network, the Order affirms our expectation that carriers will negotiate in good faith on IP-to-IP interconnection for voice traffic.

Today's Order also recognizes the growing importance of mobile broadband. As I mentioned, today for the first time we make mobility an independent universal service objective, and take significant concrete steps to meet that objective.

Also a first, today's Order brings market-based competitive bidding into universal service support. In a series of ways, including auctions, we have structured distribution of public funds to ensure real efficiency and accountability in the Connect America Fund.

For the first time, our Order puts the Fund on a firm budget. Fiscal responsibility was a principle we announced on Day One, and we've adhered to that in this Order, protecting the interests of the millions of consumers who contribute into the Fund. And we put in place a series of reforms to eliminate duplicative funding and other funding where it's not needed and can't be

justified. We also end arbitrage schemes that take advantage of gaps, closing loopholes in our rules.

Faced with many complex and nuanced policy questions, I believe this Commission has reached the right solutions because we've approached these issues the right way.

We did not rubber stamp or adopt wholesale the proposals of any stakeholder or group of stakeholders. Instead, we made our decisions on what's right for the American people and our economy based on facts and data gathered in one of the most extensive records in FCC history, including hearings and workshops across the country, and more than 2,700 substantive comments totaling tens of thousands of pages.

We have focused on putting consumers first, calibrating the policies we adopt to maximize consumer benefit. We have been careful to ensure that affected companies have predictable and measured transition paths so they can keep investing in their networks to better serve consumers and support our economy. And we have brought increased clarity to areas of uncertainty created by tensions between new communications services, like VoIP, and old rules.

Getting to this point wasn't easy. It required us to make some tough choices about what the Connect America Fund – and consumers – could and could not support.

Some proposals would have required consumers to pay a greater share of the costs of reform, or increased the size of the Fund. That would have put too much of a burden on consumers during these difficult economic times.

Some said that we should dramatically reduce the size of the Fund – but that would have left behind the millions of Americans being bypassed by broadband and with no prospect of broadband connectivity.

Some would have had us operate as if we were writing on a blank slate – but that would have risked needless consumer disruption, build-out delays, and other unintended and undesirable consequences.

Getting to this point not only required tough choices, it required the engagement of many stakeholders around the country, of our partners in the federal government, the states, Tribal communities, the private sector, and the non-profit and consumer advocacy community. I appreciate the broad level of constructive engagement. That very much includes the many members of Congress, on both sides of the aisle, who have worked for years to reform and improve universal service, and whose ongoing and constructive input is reflected in our action today. There are too many to thank individually, but I am grateful to all of the members of Congress who provided input and guidance.

The President has been a consistent leader on broadband and the opportunities of technology, and our actions today help meet national goals of universal access to wired and wireless broadband.

I also want to thank our state partners, who pioneered many of the reforms we adopt today. Moving forward, I am pleased that the states will continue to play a vital role, including a role in ensuring that consumers are well served by our universal service program.

I'm deeply grateful to my fellow Commissioners, who have worked tremendously hard to make today possible. Commissioners Copps and McDowell have been fighting to fix these programs for years, and Commissioner Clyburn's strong experience at the state level in South Carolina has been invaluable in our efforts. From top to bottom, today's Order reflects the seriousness of purpose and thoughtful input of each of my colleagues on the Commission. It is a better Order as a result, and I thank each of you.

At a time when citizens want solutions, not gridlock, I'm proud that this Commission is approving bipartisan reform of a broken system, reform that will deliver massive benefits for the American people.

This would not have happened without the tremendous work of the staff, without whom we would not have been able to finally accomplish a goal that's been elusive for many years: making reform a reality. Our staff has not only worked hard, they have performed brilliantly – crunching numbers, mastering complex technologies, and operating at a world-class policy level. Today's Order is the product of that tremendous effort. I particularly want to thank the leadership team that managed this process: Sharon Gillett, Ruth Milkman, Carol Matthey, Rebekah Goodheart, Jim Schlichting, Michael Steffen, and many others in our Wireline and Wireless Bureaus, our General Counsel's office, and throughout the agency. I also want to acknowledge the work of the team that developed our National Broadband Plan for laying the groundwork for these reforms. And I want to particularly salute and applaud Zac Katz in my office, the quarterback of our USF and ICC modernization effort. Without your leadership, persistence, and savvy, these reforms simply could not have happened.

Of course, our work is not yet done. We have implementation work ahead, and there will continue to be intensive engagement with all stakeholders in response to the Further Notice of Proposed Rulemaking we adopt today, and in the months to come.

And we still face a tremendous challenge in increasing broadband adoption, an ongoing barrier to opportunity in both rural and urban areas. While there's no silver bullet, the Lifeline portion of USF is part of the solution – including a significant investment in broadband adoption pilot programs. I've asked the staff to gear up Lifeline reform for action this year.

But wait, there's more. As my colleagues have also noted, there's work to do on the contribution side. That's another important USF topic the Commission will address.

I'll leave you with a closing thought. In the 1930s and 1950s, when Presidents Roosevelt and Eisenhower directed federal funding to roads, tunnels, bridges, and the national highway system, they were investing in then-current technologies to connect our people and our communities. The same was true for electricity and telephone service, also key 20th century universal service achievements. These investments have paid tremendous dividends for our economy and our country.

Broadband Internet truly is the information superhighway – the key connective infrastructure of the 21st century. It's what will drive our competitiveness, our economy, and broad opportunity for decades to come.

Our action today is firmly rooted in sound principles that have served our country well in the past, and I'm confident it will help deliver a bright future for all Americans.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: 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 Linkup (WC Docket No. 03-109) and Mobility Fund (WT Docket No. 10-208)

A lot of folks bet we couldn't get here today. They said Universal Service was too complicated and Intercarrier Compensation too convoluted ever to permit comprehensive reform. Universal Service was sadly out of step with the times, Intercarrier Comp was broken beyond repair. Yet here we are this morning, making telecommunications history with comprehensive reform of both Universal Service and Intercarrier Compensation. The first thing I want to do is congratulate Chairman Genachowski for the leadership he brought to bear in getting us to a place where no previous Chairman has managed to go. Today, thanks to his leadership, we build a framework to support the Twenty-first century communications infrastructure our consumers, our citizens and our country so urgently need. So mighty praise is due the Chairman, and even those who may take exception to parts of what we approve today will join me in thanking him for his commitment, courage and herculean effort to make this happen.

In the face of the complex systems we modernize today, it is all too easy to forget the simple, timeless goal behind our policies: all of us benefit when more of us are connected. The principle of Universal Service is the life-blood of the Communications Act—a clarion call and a legislative mandate to bring affordable and comparable communications services to *all* Americans—no matter who they are, where they live, or the particular circumstances of their individual lives. So it is altogether fitting as we move away from support designed primarily for voice to support for broadband, that we bear witness to the accomplishments USF has made over the years to connect America with Plain Old Telephone Service. The Fund has achieved truly laudable success. Thanks to both high cost support and low income assistance, we now have voice penetration rates in excess of 95% nationally. No other infrastructure build-out has done so much to bind the nation together. Additionally it has enabled millions of jobs and brought new opportunities to just about every aspect of our lives. Some stark challenges remain, of course, particularly in Native areas. The shocking statistic in Indian Country is a telephone penetration rate that at last report hovers in the high 60th percentile. Getting voice service and broadband to Indian Country and other Native areas is a central challenge to implementing the reforms we launch today. Bringing Universal Service into the Twenty-first century is the only way we can extend the full range of advanced communications services to places those services will not otherwise go.

The big news here, of course, is that Universal Service is finally going broadband. This is something I have advocated for a long, long time. It is something a decade and more overdue and a step that the Joint Board on Universal Service strongly backs. These new tools of advanced communications technologies and services are essential to the prosperity and well-being of our country. They are the essential tools of this generation like the hoe and the plow, the shovel and the saw were to our forebears. No matter if we live in city or hamlet, whether we work in a factory or on a farm, whether we are affluent or economically-disadvantaged, whether we are fully able or living with a disability—*every citizen* has a need for, and a right to, advanced communications services. Access denied is opportunity denied. That applies to us as individuals and as a nation. America can't afford access denied—unless we want to consign ourselves and our children to growing, not shrinking, digital divides. We are already skating around the wrong side of the global digital divide in many ways, when we should have learned by now that the rest of the world is not going to wait for America to catch up. But here's the good news. If we seize the power of this technology, and build it out to every corner of the country and make it truly accessible to every American, there's no telling what we can accomplish. America would be back at the front of the pack.

The current system, for all the good it accomplished, has outlived its time. It has strayed from what Congress intended and consumers deserve. Inefficiencies and waste crept in where efficiency and ongoing oversight should have been standard operating procedure. As problems arose they were too often minimized or allowed to compound. At best, we settled for band-aids that never managed to stanch the hemorrhage. Sometimes we didn't even try band-aids. And the Commission more than once made things worse by calling communications technologies and services things that they were not, engaging in linguistic exegesis with a fury that even the most intense biblical scholars of old were incapable of achieving. In sum, we lost sight of the original purposes of both the Telecommunications Act of 1996 in general and the Universal Service Fund in particular.

Whatever the causes, and we could debate them for hours, our current USF and Intercarrier Compensation regimes are broken. Legacy access rates encourage carriers to maintain yesterday's technology instead of reaping the benefits of today's IP based networks. The hidden manipulations of intercarrier payments cost consumers billions of dollars each year. We reimburse some carriers for whatsoever they choose to invest in certain parts of their networks, regardless of whether a lesser amount was all that was needed to provide service to their customers. In some areas of the country, we subsidize four or more wireless carriers based on the costs of a wireline network. All of this excess is reflected in inflated monthly rates that consumers pay. The old saying is, "If it ain't broke, don't fix it." Well, it's broken. And we are left with no real option short of a major fix. No tinkering around the edges is capable of putting these systems back on a solid footing.

Some will claim we attempt too much today. But we would not have to overhaul these programs so fundamentally had the Commission been attentive to its duty to address these problems as they arose and worsened through the years. It's not that we

didn't see the writing on the wall. Many people did. Years ago, as just one example, I proposed putting Universal Service funds to work supporting broadband build-out, like other countries were doing. Four years ago, four of my colleagues here were ready to vote to put USF on a new broadband footing, including a pilot program for competitive auctions. On Intercarrier Compensation, we four were ready to vote at the same time for lowered rates and an end to traffic pumping and phantom traffic. Commissioner McDowell will remember this well because we worked closely together on it.

What we are doing today is repairing two broken systems and putting in place a more credible and efficient framework that will benefit consumers, carriers and the country. We are approving a framework for allocating limited resources to mitigate serious communications shortfalls. It is a framework that should give all stakeholders a clearer picture of how these systems will work going forward and that will provide predictability for rate-payers, businesses and policy-makers. I would have much preferred a higher budget for the Fund—a budget that I believe consumers would accept because of its importance to putting the nation back to work and providing our kids with the tools they need for their futures. That being said, we set out down a good and welcome road here with steps that will make a huge difference, and that is why I am able to approve the item even though it is not, in several respects that would come as a surprise no one, the precise item I would have written.

Our focus is on support targeting the unserved areas that need it most. There is much to be said for this approach at this time because of the harsh budget realities the nation faces and because of the perceived need to limit Universal Service, but I hope and expect that our actions today will have spill-over effects in *under-served* areas, too—because America won't be broadband-sufficient until the under-served become fully-served, too. Inner cities can be just as handicapped as more remote regions. Here, too, access denied is opportunity denied. So I welcome the new approach that takes us from scatter-gun support of voice based largely on the size of carriers and focuses instead on where private investment for broadband refuses to go. This means targeting money for areas where consumers would not otherwise have service, and I believe this is the first time we can really say that about the Fund.

Acting on another long standing recommendation of the Joint Board, we are for the first time creating a specific funding mechanism to support mobility. This is an historic accomplishment. Clearly there are areas—many areas—where mobile broadband providers are doing very well in delivering services and profiting handsomely and where support isn't needed. But there are other areas that are strangers to reliable mobile voice coverage and where the market will otherwise not go.

The mechanism through which we propose to do this—reverse auctions—is a new tool for the Commission. While we have considerable experience with spectrum auctions, this is in many ways a new species of auction and we will need to be very careful in how we approach and evaluate it. I hope it will live up to the high expectations parties have for it and truly become an efficient way to expend our limited USF dollars to reach unserved areas. I expect we will learn a lot from the first such auction and apply

those lessons to the future. Let me also say how much I appreciate the item's prohibition on nation-wide package bidding in the Mobility Fund. I believe this is an important safeguard against gamesmanship and even further consolidation in the industry and that it can only redound to the benefit of rural consumers.

I am also pleased that we are adopting another safeguard to encourage stability during the transition to the new regime for mobile support. The course we adopt today has two auction phases, with the second installment of mobility support dependent upon further Commission decision-making. Understanding the need for maximum predictability throughout these transitions, we will halt reductions in legacy support if for some unlikely and unanticipated reason the second auction phase does not take place as planned.

Given the financial constraints we impose on USF, I also am pleased we were able to grow the Mobility Fund from the initial proposal. I would have supported, and I actively encouraged, a larger number given the scope of the challenges we face, but the increase can at least be seen as an important down-payment on further deployment. I appreciate the Chairman's support for this and particularly commend the leadership of my friend Commissioner Clyburn.

I am also encouraged that we launch a Tribal Mobility Fund specifically to target support for mobile service in Tribal areas. The state of broadband in Indian Country is a national disgrace—somewhere in the embarrassingly low single digits. Again, getting this right will take more money than is being proposed in today's proceedings, but it also hinges on more than money alone. It hinges also on the Commission taking prompt action on other proceedings and spectrum issues pending before us. Even in addition to all this, there are a host of confidence-building and cooperation-building challenges confronting us. I do believe the current Commission is on the right path to rebuilding our consultative mechanisms with Native Nations. We have new dialogues taking place, new inputs being shared, and new commitments to work together. We are also moving toward a fuller appreciation of what tribal sovereignty means and of the need to accord tribes the fuller and more active role they must have in order to ensure the best and most appropriate deployment and adoption strategies for their areas and populations. I feel encouraged that we are at long last positioning ourselves to make progress by working more closely and creatively together. The sad history here, as we all know, is many promises made, many promises broken. We need to turn the page, and I think we are beginning to do that now.

I also applaud the strong-build out benchmarks that will be a condition of receiving Mobility Fund dollars, and indeed support from any of our new programs, with meaningful enforcement and clawback consequences if providers do not meet their obligations to consumers. This injects much-needed discipline into the system. It is another really important component of our actions today and, strongly enforced, one that will inspire more confidence in the new system than we ever had in the old.

Today is also historic because we finally take on the challenge of Intercarrier Compensation. We take meaningful steps to transform what is badly, sadly broken. This item puts the brakes on the arbitrage and gamesmanship that have plagued ICC for years and that have diverted private capital away from real investment in real networks. By some estimates, access stimulation costs nearly half a billion dollars a year, and phantom traffic affects nearly one fifth of the traffic on carriers' networks. Today, we say "no more." We adopt rules to address these arbitrage schemes head on. And, very importantly, we chart a course toward a bill-and-keep methodology that will ultimately rid the system of these perverse incentives entirely.

My enthusiasm here is tempered by the fact that end-user charges (under the label of "Access Recovery Charges") are allowed to increase, albeit incrementally, for residential consumers. My first preference was to prevent any increase. Alternatively, we could require individual carriers to demonstrate their need for additional revenues before imposing the ARC. Perhaps some of the largest and most profitable companies should not be able to charge the ARC. However, the Commission does adopt some important measures to protect consumers even as it allows additional charges. In particular, consumers already paying local phone rates of \$30 or more cannot be charged the ARC. The use of this ceiling recognizes that some early adopter states have already tackled intrastate access rates, and their citizens may already be footing a reasonable part of the bill. In the end, I am grateful that, at the very least, additional charges to end-users are not as great as they might have been, are spread over a longer period of time, and should be offset (and hopefully more than matched) by savings and efficiencies realized because of the more rational programs we begin to put in place. And I am hopeful the Commission will do everything it can to assure that these savings are passed on to consumers, although I continue to lament that the fact that we don't have a more competitive telecommunications environment that would better ensure consumer-friendly outcomes.

While "The Inside-the-Beltway" crowd and the armies of industry analysts and assorted other savants will be parsing today's items with eyes focused exclusively on which company or industry sector is up or down, who gains the most or least, and on all the other issues that will cause forests to be chopped down and vats of ink drained, I hope we can keep the focus on the consumer benefits of what we are doing. I would not—could not—support what we do today unless the expected consumer benefits are real enough to justify the effort—and, yes, the risks—of so sweeping a plan. Much will depend upon our implementation and enforcement—and I am sure some mid-course corrections—but I believe there are real and tangible consumer benefits in the framework items before us. More broadband for more people is at the top of the list. As just one example, we anticipate significant new investment with over seven million previously-unserved consumers getting broadband within six years. That means more service, more jobs, more opportunities.

Building critical infrastructure—and broadband is our most critical infrastructure challenge right now—has to be a partnership. The states are important and essential partners as we design and implement new USF and ICC programs. I have been a strong

advocate for closer federal-state regulatory partnerships since I arrived here more than ten years ago. I have had the opportunity to serve on the Joint Boards with our state colleagues, to be a part of their deliberations, to appreciate the tremendous expertise and dedication they bring to their regulatory responsibilities, and to have learned so much from them. It is just plain good sense to maximize our working relationships with them. More even than my personal preference, which is deeply-held, this is the mandate of the law. Section 254 of the Act is clear—the states have a critical role in the preservation and advancement of Universal Service. While I understand the need for predictability in an ICC regime, I am pleased that my colleagues have retained a key role for states, including arbitrating interconnection agreements; monitoring intrastate access tariffs during the transition to bill-and-keep; and helping to implement our Universal Service Fund as well as, in many cases, their own state universal service funds. State regulators are by definition closer to the needs of their consumers than federal regulators ever can be, and they retain their role as the likely first venue for consumer complaints. Additionally, I have urged the entire team here, and all stakeholders, to think creatively about how to *expand* the state role as we implement the new systems. I would hope that carriers would see the benefits of this federal-state cooperation, too. But it is unfortunate, and highly counter-productive to consumers, when some companies exercise their huge lobbying machines to encourage state legislatures to effectively cut state public utility commissions out of telecommunications oversight. This makes everyone's job—except the industry giants'—more difficult. And it harms the nation.

On the legal front, some of the calls made in this item are unnecessarily and unfortunately more circuitous than I believe they need to be. We ought to be long past declaring that IP-to-IP interconnection obligations are required under the Act. We had the chance to do this and to declare that VoIP is a telecommunications service back in 2002 and 2005, and our failures to do so have had tangibly perverse consequences. Avoiding action not only harms competition and delays the more efficient build-out of our information infrastructure—it ensures that America will continue to be down the global broadband rankings in a world where that just doesn't cut it for us. We need to *lead* the world not so we can pin a medal on our chest. We need to lead the world to regain our prosperity, our competitiveness and our capacity to provide jobs and opportunity to every one of our citizens.

Broadband adoption is as great, or greater, a challenge than deployment. I will continue to push for doing more on adoption, but we are limited here by the reality that today's emphasis is on reforming infrastructure deployment in high cost areas. That said, I have worked to include adoption in this proceeding. I am pleased that carriers that receive funding will be expected to connect community anchor institutions that they pass. These entities are often the places where unconnected consumers get their first exposure to broadband and learn how to use it. I am similarly pleased that all Universal Service programs now include a real and enforceable requirement for affordability. It is only logical, and indeed consistent with the mandate of section 254, that carriers whose networks are funded by federal Universal Service support should be required to offer service at affordable rates. That said, much of the important adoption items are still ahead

of us. We have an imminent opportunity to update our Lifeline and Link-Up programs, and I expect we will be able to accomplish that before the sun sets on the year 2011.

So there is still much work to be done. The success of today's framework depends heavily on the Commission getting related and integral policy calls right. We must revisit our long-overdue special access proceeding, something critical to small businesses and anchor institutions. This is a situation with huge spill-over effects on the excessive rates consumers are forced to pay. It is a problem that needs to be resolved by Report and Order in the next few months because it has simply waited years too long.

Similarly, we must act on contributions methodology. The *distribution* of funds is only part of the broadband challenge. Of equal importance is the *contribution* of funds going into USF. I would have preferred to see such an item in front of us today. There is inherent inequity in a system that funds the deployment of broadband off of assessments on interstate telephony. Once we ensure that double, triple and quadruple play services that benefit from Universal Service bear their fair share, we will not be subject to the unnecessary financial constraints that our current approach imposes. We also need spectrum management decisions that avoid putting still more spectrum in too few hands. Among other good results, that would drive better mobility auctions.

Successful implementation of the steps we present today will demand a degree of stakeholder cooperation that we have not seen in many years. Consumers, states, businesses, the FCC, Congress and the Administration each has a vital role to play. But, as you have heard me say before, stakeholder partnering is how we managed to build America's infrastructure over the past two-and-a-quarter centuries, from those early post roads, bridges and canals right up through our super-highways and rural electricity. Now is the time to practice that American Way one more time. I believe the process has started off commendably. Everyone has had an opportunity for input. When we approved the NPRM in February, I remarked that everyone would be asked to give up a little so that the country could gain a lot. That spirit of shared sacrifice has made today's action possible. The process has generally—if not perfectly—worked. Stakeholders stepped up to the plate. Their analyses were important, many of their suggestions creative and helpful. Discussions were held between not only likely players, but some unlikely ones, too, and I applaud that process. I have no illusions about what perils may await us, but I do want to suggest how much better off we will all be if our efforts going forward focus on working together to implement these new frameworks, and working constructively to make changes where they may be called for, rather than spending precious time that the country doesn't have on litigation or legislative end-runs that seek to advantage single private interests at the expense of the greater public good. If the generally cooperative spirit of the past several months serves as our guide going forward, we can avoid those pitfalls.

Lots of people made heroic efforts to get us today's historic achievement. I've already mentioned the leadership of Chairman Genachowski. Our internal team, put together by the Chairman, worked mightily and expertly on a whole host of unbelievably complex issues. Zac Katz and the dedicated experts in the Wireline and Wireless

Bureaus, Sharon Gillett, Carol Matthey, Rebekah Goodheart, Ruth Milkman, Rick Kaplan and Jim Schlichting, spent many hours answering our questions and discussing our requests, and they were backed up by dozens of our typically brilliant and dedicated FCC Team. My Commissioner colleagues spent weeks and months immersed in the tall weeds, taking hundreds of meetings, talking with one another and developing constructive proposals, and the Eighth Floor advisers, including Angie Kronenberg on Commissioner Clyburn's staff and Christine Kurth on Commissioner McDowell's, worked long days, nights and week-ends to make this happen. In my own office, Margaret McCarthy and Mark Stone provided not only great analysis but creative suggestions for getting us to better outcomes. And, I should note, **ALL** my staff felt the weight of this and all performed at the stardom level. It has been a highly professional effort by a world-class agency of which I am proud to be a member.

**STATEMENT OF COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, CONCURRING IN PART**

Re: 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 Linkup (WC Docket No. 03-109) and Mobility Fund (WT Docket No. 10-208), Report and Order and Further Notice of Proposed Rulemaking

The feat of modernizing the high cost portion of the Universal Service subsidy program to support next-generation communications technologies, while keeping a lid on spending, is monumental. Thus, our action today is a vital first step in reforming USF while ensuring that rural consumers benefit from needed advanced services.

As I have said several times before, the communications needs of rural America is personal to me. My family deep roots in rural America. My father spent part of his boyhood during the Great Depression on a ranch on the Tex-Mex border without electricity, running water or phone service. With that background in mind, I am committed to carrying out Congress's intent of ensuring the most remote parts of our country are connected.

The challenge of solving the seemingly intractable Universal Service and intercarrier compensation puzzle, however, has cast a long shadow over the FCC for more than a decade. In my nearly five and a half years here, I have traveled across America to learn more about the practical realities of the program. I have held productive policy roundtable discussions with multiple stakeholders in the least populated state, Wyoming, as well as its neighbor South Dakota. I have traversed Tribal lands and some of the least densely populated areas of our country, including Alaska. I've also learned from consumers in urban and suburban areas who pay rates above costs to subsidize rural consumers. And I know that my colleagues have diligently conducted similar field investigations.

In trying to encapsulate what the FCC is accomplishing today, I've turned to one of North America's best telecommunications policy minds, none other than the Great One, Wayne Gretzky. Without any of us realizing it, by implication he predicted what we would do today when he said, "A good hockey player plays where the puck is. A great hockey player plays where the puck is going to be." Today, the FCC is repurposing the high cost program to support unserved consumers' use of communications technologies from where they *are* to where they are *going to be* – in both a technological and geographical sense.

October 27, 2011, is a date that marks a dramatic departure from nearly a century-old policy of opaquely subsidizing analog, circuit-switched voice communications services, to using the efficiencies of market-based incentives to support broadband connectivity in those areas where economic realities have stalled market penetration. Under both Republican and Democratic administrations, the High Cost Fund has become bloated and inefficient. Today, a Republican and three Democrats are taking a giant leap together to fix that. I commend the

Chairman for his leadership and fortitude throughout this process. I also thank Commissioners Copps and Clyburn for their thoughtfulness, graciousness and collegiality during this proceeding.

Since I arrived at the Commission in 2006, I have been calling for the FCC to achieve five primary goals when focusing on USF reform, the most important of which is to contain the growth of the Fund. While our efforts are not perfect, today we are largely achieving this goal in a town otherwise known for its *inability* to control spending.

While I'm on that subject, some have suggested that we scrap the USF program altogether. Others can have that debate. In the meantime, we are mindful that Congress created this program and its ultimate survival is a matter only for Congress to determine. We are duty bound to operate within the statutory constructs handed to us.

In the spirit of being fiscally responsible, however, we are mandating that the high cost program of the Universal Service Fund live under a *definitive budget* for the first time in history. Functionally, the budget serves as an annual cap through 2017. Until then, the Fund may not rise higher than \$4.5 billion per year, on average after true-ups, without Commission approval. After that time, it is my hope that competitive forces will flourish and the development of new technologies will create additional efficiencies throughout the system. If so, much of the vacuum will have been filled and the need for future subsidies will have declined substantially. Perhaps the day will come when Congress can determine that subsidies are no longer needed.

Of course, there is nothing we can do to prevent future Commissions from voting to comprehensively alter what we have done and spend more money later. That would be true as a matter of law whether we called our fiscally prudent action today a "definitive budget," "cap," "beret" or "sombbrero." If the FCC of tomorrow wants to undo what we have done today, however, good luck with that. You're going to need it. If history is our guide, the alacrity with which the Commission can accomplish comprehensive USF reform is nothing short of glacial. Nonetheless, I hope future Commissions will keep their caps *on* out of respect for fiscal responsibility and the consumers who pay for these subsidies.

Also, today we are only addressing the high cost program of the distribution side of the Universal Service Fund. We are not addressing the entire Universal Service Fund, which currently distributes over \$8 billion per year. To put that figure in context, USF is larger than the annual revenues of Major League Baseball. In separate proceedings, we will also reform the other USF spending programs. I cannot stress enough that all of the fiscal efficiencies that we will realize in the wake of today's reforms will be lost if similar fiscal discipline is not applied to all Universal Service programs as well.

Moreover, we are only addressing part of the distribution, or spending, side of the Universal Service program. In fact, despite all of the exhaustive efforts to get to this point, our work on comprehensive Universal Service reform is not even half finished. Equally important is the need to reform the contribution methodology, or how we are going to pay for all of this. It is no secret that for years I have been pushing for contribution reform to be carried out at the same time as distribution reform. Obviously, that is not happening today; therefore we must act quickly. The contribution factor, a type of tax paid by consumers, has risen each year from

approximately 5.5 percent in 1998 to an estimated 15.3 percent in the fourth quarter of this year. This trend is unacceptable. We must abate this automatic tax increase without further delay. Accordingly, I strongly urge that we work together to complete a proceeding to reform the contribution methodology in the first half of the year.

In the meantime, today we are undertaking significant reforms. Although time does not allow me to discuss each one, I'd like to mention a few of my favorites.

- It may surprise some observers the vigor and breadth to which we give life to competitive bidding, a market-based approach to distributing subsidies, otherwise known as reverse auctions. This is more than I could have hoped for in 2008, when a Republican-controlled FCC teetered on the cusp of comprehensive reform before our efforts were scuttled. Supporting these provisions was likely not easy for some of my colleagues and I thank them for their spirit of compromise.
- We are eliminating the inefficient identical support rule. The wasteful era of subsidizing multiple competitors in the same place has come to an end.
- We are finally giving consumers the benefit of more transparency by phasing out hidden subsidies, albeit 15 years after Congress told us to do so in the Telecommunications Act of 1996. Better late than never, I suppose. As the veil is lifted, however, industry and government alike will have to do their best to keep consumers properly educated on what they will see on their phones bills and what it all means. For the vast majority of consumers, rates should decline or stay the same, so I will look with skepticism on any news stories that claim the FCC is raising rates. The simple truth is: We are not.
- We are creating a frugally-minded, but reasonable, waiver process for highly unlikely cases where carriers are definitively experiencing extreme hardship due to our reforms.
- In the further notice, we propose means testing to identify qualified recipients in remote areas. Such a screening process could save money and maximize the effectiveness of the Fund.

As a legal matter, some question whether the Commission has the authority to use Universal Service funds to support broadband directly. As I have said many times before, I believe the Commission *does* have broad authority to repurpose support to advanced services as handed to us by the plain language of section 254.

In section 254(b), Congress specified that “[t]he Joint Board and the Commission *shall* base policies for the preservation and advancement of universal service on [certain] principles.”¹ Two of those principles are particularly instructive: First, under section 254(b)(2), Congress sets forth the principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”² Second, with section 254(b)(3), Congress

¹ 47 U.S.C. § 254(b) (emphasis added).

² 47 U.S.C. § 254(b)(2).

established the principle that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and *information services* . . .”³

Also, section 254(b)(7) instructs the Commission and Joint Board to adopt “other principles” that we “determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with” the Communications Act. In that regard, in 2010 the Federal-State Board on Universal Service recommended to the Commission that we use our authority under section 254(b)(7) to adopt a principle to “specifically find that universal service support should be directed where possible to networks that provide advanced services.”⁴

As part of this order today, we agreed with the Joint Board recommendation and adopted “support for advanced services” as an additional principle. Moreover, even if any of the statutory language in section 254 appears to be ambiguous,⁵ the Commission’s reasonable interpretation would receive deference from the courts under *Chevron*.⁶

It should come as no surprise, however, that I cannot support the view that section 706 provides the Commission with authority to support broadband through Universal Service funds. As I have said many times before, section 706 is narrow in scope and does not provide the Commission with specific or general authority to do much of anything. We respectfully agree to disagree on that analysis in this order.

Finally, given the breadth and magnitude of today’s actions, the effects will not be fully apparent in the near term. Certainly, there will be varied opinions regarding what we have accomplished. That said, Universal Service reform is an iterative process. We will constantly monitor its implementations and quickly make adjustments, if needed.

In sum, I would like to thank all of the people who have sacrificed countless family dinners, weekends, vacations, birthday and anniversary celebrations and such over the past many months to make this day possible. While Sharon Gillett, Carol Matthey, Rebekah Goodheart, Trent Harkrader, Amy Bender, Steve Rosenberg, Brad Gillen, Victoria Goldberg and Marcus Maher of the Wireline Bureau and Rick Kaplan, Margie Weiner and Jim Schlichting of the

³ 47 U.S.C. § 254(b)(3) (emphasis added).

⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, WC Docket No. 03-109, *Recommended Decision*, 25 FCC Rcd 15598, 15625 ¶ 75 (2010).

⁵ Some contend that the definition of universal service under section 254(c)(1) muddies the water because it does not include “information service.” Instead, that provision states that “[u]niversal service is an evolving level of *telecommunications services* . . . taking into account advances in telecommunications and information technologies and services.” But, it is also relevant that the term “telecommunications service” is qualified by the adjective “evolving.” Even if section 254 were viewed as ambiguous, pursuant to the well established principle of *Chevron* deference, the courts would likely uphold the FCC’s interpretation as a reasonable and permissible one. *See Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

⁶ *Chevron*, 467 U.S. 837; *see also* Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999) (relying on *Chevron* deference in affirming FCC authority to implement universal service provisions set forth in the Telecommunications Act of 1996).

Wireless Telecommunications Bureau deserve high praise, we all know that legions more dedicated public servants have shed their blood, sweat, toil and tears to make this endeavor possible today. I also commend the Chairman's Chief Counsel, Zac Katz, for his tireless efforts, patience and leadership during this process. Furthermore, I thank Commissioner Copps's legal advisor Margaret McCarthy and Commissioner Clyburn's legal advisor Angie Kronenberg for your collegial efforts during this process. And from my office, Christine Kurth deserves a special mention. When I hired her over two years ago from the Senate I said, "Your main mission is to fix Universal Service." She accepted my offer anyway, and has completed half of that mission today. Many, many thanks to all of you for your incredibly hard work.

**STATEMENT OF
FCC COMMISSIONER MIGNON L. CLYBURN**

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 Linkup (WC Docket No. 03-109) and Mobility Fund (WT Docket No. 10-208)

We are taking a momentous step today—moving ever so close to fulfilling the goal Congress set forth for universal service in the 1996 Telecommunications Act—to ensure that *all* Americans have access to affordable voice and advanced communications services. We would not be here, but for the incredibly hard work of the FCC staff, under the direction and leadership of Chairman Genachowski and his office, as well as significant input from Congress, our State partners, industry, and consumer representatives.

I believe that we have drawn from many competing sources, to form a balanced framework that will promote significant broadband deployment, as quickly as possible, to those consumers that are currently unserved. The painful truth of the matter is that there are 18 million Americans who have not fully benefitted from our current universal service policies, and that is unacceptable. They remain the “have nots” of the broadband world who I am determined will benefit the most from our action today. As I have considered these reforms, it is those unserved consumers who are first and foremost in my mind. This plan provides for speedy broadband deployment to many of these consumers, with an injection of capital in 2012, for both fixed and mobile technologies.

In addition to these immediate needs, I carefully considered how much those consumers are being asked to shoulder, when it comes to the costs of Intercarrier Compensation reform, as well as the impact on those consumers who already have service. It also shouldn't surprise anyone that it was similarly important to me, that we give service providers and their investors time to adjust to our proposed reforms, because from day one, I made a firm commitment to no flash cuts. A reasonable transition period will help ensure that providers can navigate these reforms successfully. But for those providers who require additional time to adjust, we have in place a waiver process that is firm, predictable, yet fair. Another benefit of this waiver process is that it provides this Commission with a safety net—so that we can adjust support as needed, in order to avoid inadvertently harming the success we have already achieved through our legacy system.

Overall, I believe the Chairman's proposal, carefully balances these interests and will result in a meaningful difference for many Americans, and I want to commend him and my colleagues, for the significant progress that is reflected in this Order. Accordingly, I offer my full support for the actions we take today.

As you all know, I have a deep connection to rural America. Without comparable modern communications services enjoyed by their urban counterparts, those citizens will never adequately compete in our global economy. They need and deserve reliable fixed as well as mobile broadband in order to thrive. Without this critical broadband infrastructure, rural Americans would be forever left behind. We are aware that the financial needs to provide advanced services in these areas are significant, and yes, I appreciate the fact that setting a budget for the high-cost program will provide overall certainty and predictability. However, it is equally important that we have the flexibility to adjust, as needed, within, and between these high-cost programs. I want to thank my good friends and colleagues, for working with me, to ensure that we have not unduly limited our ability to revisit our current estimates of the funding that's needed, for the high-cost programs in the future.

An underlying theme of today's reforms is shared sacrifice for the common good. After all, we are talking about the people's money. We are accountable to them, and I am confident that the adjustments being made to the legacy USF support, and the funding mechanisms being adopted for the new Connect America Fund, are sensible. These reforms will put both the USF and ICC regimes on a sounder footing, so we may better accomplish our goal and Congress' mandate, to serve more Americans with advanced communications networks—no matter where they live, work, or travel in this great nation.

For a number of years, the Federal-State Joint Board on Universal Service and its state and federal members, have called for this Commission, to provide for the direct funding of broadband. Early on, they recognized the importance of both broadband and mobility service. I am proud that this Commission has heeded this call and is formally adopting the principle advanced by the Joint Board last year in its Recommended Decision that "universal service support should be directed where possible to networks that provide advanced services, as well as voice services." Moreover, upon the advice and counsel of our State Members and colleagues, we are adopting a Mobility Fund to infuse \$300 million in capital to extend 3G and 4G networks to more Americans in 2012. In addition, we are adopting a Mobility Fund II, to ensure that consumers have access to mobile broadband services by providing ongoing support to providers in hard-to-serve areas, and we are eliminating our identical support rule.

We owe a debt of gratitude to our State Members. They have been a significant resource for this Commission in our reform process. We sat through numerous workshops and meetings together, hashing out ideas and concepts. They spent countless hours drafting a proposal for our consideration, and they have been more than generous with their time and advice. I want to sincerely thank them for their good counsel in this proceeding and for their service to our nation.

The FCC has heavily relied on the suggestions in their plan. We are requiring USF recipients to meet interim broadband build out milestones, to annually report on their build out and service requirements, and to file those reports jointly at the FCC and the state utility Commissions. We also are implementing a cap on total per-line support, and other fiscally responsible measures, to eliminate waste and inefficiency in the system.

In addition, we are clarifying in our Order that we expect all carriers, to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. Not only did we hear from the states about how important it is to ensure that IP interconnection occurs, we also received significant comment from competitive voice providers that the lack of IP interconnection is impeding the development of IP networks, including VoIP services. As such, the Order confirms that the duty to negotiate in good faith, does not depend upon the network technology underlying the interconnection, whether it is TDM, IP, or otherwise, and that we expect good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic.

Another topic that I spent a great deal of time on with my state colleagues, was the Intercarrier Compensation regime. Today's decision sets forth a national approach for ICC reform, for both intrastate and interstate access rates. It's probably not surprising that I naturally gravitated to the proposal in our NPRM, that would have had the states reform their own intrastate access rates, and left the interstate reform to this Commission. But after much discussion and consideration, I will accept the Chairman's proposal that a federal approach is the right outcome in this instance. A multi-state process for reform would be long and arduous, costly and demanding on the states, with unpredictable and perhaps inconsistent results. In the meantime, the pressure would continue to build for us to intervene and stabilize the ICC regime to provide the companies the predictability and certainty they need to continue to invest and innovate for the benefit of consumers.

However, I think it is only appropriate that our actions today carefully preserve and recognize the reforms that some states already have undertaken. Most importantly, we have provided for replacement funding as intrastate access rates decline as a result of our reform which relieves the financial burden that would have been on states in their own attempts at reform. To that end, we also have carefully balanced ICC revenue replacement for providers, with the important goal of not burdening consumers with significant increases in their bills or overburdening the USF which is ultimately paid for by consumers. As indicated by our staff's analysis, we believe that the overall benefits that will flow to consumers as a result of this reform will far outweigh the minimal price increases they will experience on their phone bills due to ICC reform.

I also want to be quite clear that states will continue to have an important role with respect to the arbitration of interconnection agreements and in the operation of USF. With respect to USF, states will continue to designate Eligible Telecommunications Carriers for USF purposes and will continue to protect consumers through their carrier of last resort regulations. As technology evolves, so too must the role of the regulators.

We are experiencing a significant technological evolution as networks are transitioning to Internet Protocol, and consumers are using multiple modes of communications (sometimes simultaneously). Indeed, the underlying cause of the reforms we implement today is due to the enormous technological shift that has occurred in the last ten years. One constant that I have seen, however, is that consumers expect that their state regulators will serve and protect them. Moreover, those of us at the FCC need the states' expertise and knowledge on the ground, to properly execute and operate our new universal service funding mechanisms. For instance, we need the state's assistance in identifying those areas that currently are unserved by broadband. We want to target our limited resources to those consumers who do not have any broadband provider offering them service. Likewise, we will need the states' help assessing that those providers who receive funding meet their public interest obligations to build and serve. As such, I am confident that these reforms are an opportunity for us to continue working hand-in-hand with our state colleagues, to ensure that broadband is available throughout the country, and I look forward to our continued partnership with the states in this important endeavor.

The communications marketplace has changed dramatically, and one significant reason is the explosion of mobile services in the U.S. More and more Americans are relying upon their smartphones to access the Internet, and almost 30% of Americans have cut their telephone cord when it comes to home service. I have worked closely with my colleagues, to ensure that we are providing significant support for mobile services, particularly in rural America. Certainly, rural consumers and those who travel in non-urban areas expect that they will have access to mobile services that are comparable to anywhere else in this nation. We want and expect our devices to work wherever we are. As such, I believe that a budget which reflects the growing importance of mobility to Americans is significant, and that we should offer ongoing support for those areas that would not be served otherwise. I am grateful that the fund for ongoing mobility fund support—Mobility Fund II— has been increased 25% more than what was originally proposed in the circulated draft, reflecting the fact that mobility for rural areas is a priority.

I also want to thank the Chair for agreeing with me that while the identical support should be phased out, we need to ensure that Mobility Fund II is operating and funded before the phase down is completed for wireless CETCs. The pause in the phase down I proposed, is now fully reflected so that wireless carriers can have some confidence that they won't lose more than 40% of funding before they know what support they may qualify for in Mobility Fund II.

While deployment of networks to reach individual consumers has been the paramount purpose of the high-cost program, it also has provided for service to community anchor institutions, including schools, libraries, health care facilities, and public safety agencies. In order to ensure that these vital institutions can obtain the modern services that are essential for service to their communities, we have

provided them an opportunity to engage with USF recipients in the network planning stage. As such, their communications needs are fully considered by the providers. Similarly, recipients will detail in their annual reports to the FCC and the state Commissions those community anchor institutions that have received service as a result of the Fund. Accordingly, we will be able to fully account for all of the benefits that local communities' receive as a result of USF support.

Although the reforms we adopt today are extremely important for ensuring that basic and advanced communications services are physically available to all Americans, those services cannot be *truly available*, if consumers cannot afford to purchase them, the devices they need to access them are not available, or if they cannot attain the skills they need to know how to use these services. I appreciate those who have called for us to address these consumer needs today, and I agree with you that we need to do more in this area. Our broadband adoption task force is working diligently to find solutions to these issues, and I fully expect that we soon will be addressing the proposal in our Lifeline proceeding to adopt pilot projects for broadband adoption to benefit low-income Americans who qualify for the Lifeline program. I look forward to our continued work with our task force, including finishing the Lifeline proceeding before the end of the year, so that we can make more headway on this significant issue for low-income consumers.

To our Bureaus and their staffs, I thank you for your tremendous and Herculean efforts throughout this proceeding. I know you have made many personal sacrifices to help us reach this moment, and I wish to commend you for the results. You planned and conduct workshops, reviewed our record, listened to the numerous interested parties in this proceeding, balanced all concerns, crafted the Order and accompanying Further Notice, and put up with our office. Please know how much we appreciate all of you.

I wish I could say that we were at the finish line, but this, indeed, is a marathon. And like those who will compete in this Sunday's race, you have been preparing for months for this milestone that we've reached today, but we are at mile 20—we have a little further to go. I for one look forward to our continued engagement on the implementation of these reforms.

I also want to congratulate the Chairman and my fellow Commissioners on today's vote. The task before us has not been an easy one, but it is certainly one for which I am proud that this Commission has *finally* achieved. Commissioner Copps and Commissioner McDowell, I know you both have witnessed past attempts at USF and ICC reform, and you must be especially proud today. Thank you for your diligence and hard work. And Mr. Chairman, I also want to express my gratitude for your leadership, engagement, willingness to listen to and address my concerns, and your honest attempts to reach consensus.

I also want to express my sincere gratitude for my Wireline Legal Advisor, Angie Kronenberg, who led our office in this endeavor, as well as Louis Peraertz, my Wireless Legal Advisor, who provided his expertise on the mobility issues. Both ensured that the principles I care most about—that we are serving consumers—are truly reflected throughout this item. I also am appreciative for the contributions that Margaret McCarthy, from Commissioner Copps' office made to our deliberations, and to the ringleader on this significant reform today, Zac Katz. Thank you.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Rural Cellular Association, et al., Petitioners

v.

**Federal Communications Commission and United States of America,
Respondents.**

CERTIFICATE OF SERVICE

I, Maureen K. Flood, hereby certify that on November 10, 2011, I electronically filed the foregoing Supplemental Brief for Respondent Federal Communications Commission with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Some of the participants in the case, denoted with asterisks below, are not CM/ECF users. I certify further that I have directed that copies of the foregoing document be mailed by First-Class Mail to those persons, unless another attorney at the same mailing address is receiving electronic service.

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