STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

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

Thank you Mr. Chairman. Fifteen years ago today, President Clinton signed into law the landmark Telecommunications Act of 1996. It took almost twelve years for Congress to pass that legislation, but when it did, it garnered overwhelming bipartisan support, passing 91 to 5 in the Senate, and 414 to 16 in the House. A key component of that legislation is section 254 which outlines broad powers and duties for the FCC to structure the universal service subsidy program. The Act also defined our authority to modernize our complex intercarrier compensation rules.

The universal service fund's original mission was to make traditional analog, circuit-switched, voice service available and affordable to as many Americans as possible. Congress also called upon the Commission, however, to ensure that we refine the program from time to time to ensure affordable access to "advanced services." In the fall of 2008, four commissioners, two Democrats and two Republicans (myself included), agreed in principle on many fundamental reforms of the universal service and intercarrier compensation regimes. Unfortunately, four votes were not sufficient to carry the day. Nonetheless, I remain optimistic that the five of us can rekindle that positive and constructive spirit as we take the first steps on the next segment of this long journey.

As I have said since I first arrived here at the Commission, the universal service fund's growth, from $4.9 billion in 2000 to over $8 billion, is troubling. Equally problematic has been the unbridled growth of the contribution factor. In its early stages in 1998, this "tax" to support the fund, which is derived ultimately from consumers, stood at 5.53 percent of interstate revenues. Today, that "tax rate" skyrocketed to an all time high of more than fifteen percent last year. As with many government programs in general, the trends on both the spending and the taxing sides of this equation are simply unsustainable. As a 21st century program, the universal service fund should evolve away from subsidizing inefficient 20th century systems and support the efficiencies of current technologies as brought about by competitive pressures.

As I have stated many times, my first priority has always been to restore fiscal responsibility to this program. Accordingly, I have long advocated for *comprehensive* reform of the entire universal service and intercarrier compensation regimes. It's like fixing a watch; it is impossible to tinker with one component of the mechanism without affecting all of its parts at the same time. Today, the Commission is choosing to take the piecemeal route again by not addressing the contribution mechanism at the same time. While not ideal, in my view, piecemeal reform is better than no reform at all. As such, I commend the Chairman for taking on this complex but important effort. I also thank him for his willingness to work with all of his colleagues to achieve consensus.

As we go forward, I will work to ensure that we contain the growth of the fund, or preferably, *reduce* the size of the fund. And, when I refer to the size of the fund, I mean the *entire* universal service fund, not just the high cost program which we address in this proposed rulemaking. It would not be fiscally responsible if the FCC found savings in one universal

service program, such as the high cost fund, but then expanded other universal service programs. In the same vein, as technology offers consumers more efficiencies resulting in reduced costs, I challenge my colleagues to work toward actually *reducing* the size of the fund over time to reflect the savings brought about by competition and innovation. Ultimately, competition supplants any ostensible need for regulation and subsidies. In that spirit, I am delighted that we are seeking comment on ways to transition to market-driven policies such as exploring reverse auctions.

Of course, to undertake serious universal service reform, the Commission must have the legal authority to do so. As such, I am pleased that this notice asks for comment on our statutory authority to support broadband with universal service funds. My opinion is that the Commission *does* have such authority through 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." 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." Second, with section 254(b)(3), Congress 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* . . ." If other language appears to be ambiguous, it is ambiguous in a classic *Chevron*[1] deference sense and the Commission's reasonable interpretation of it would be upheld by the courts.[2]

I am concerned, however, that some lobbying groups are pushing for us to impose Internet network management conditions on recipients of universal service funds. Such policies are unnecessary and would be counterproductive.

In sum, all stakeholders, especially American consumers, should be on notice that the five of us are determined to go forward with honest reform as soon as possible. While today marks the beginning of the latest installment of the universal service and intercarrier compensation reform saga, we will do all that we can to write the last chapter with great haste and care. I look forward to working with my colleagues, Members of Congress and all stakeholders on these issues. Consensus can and should be found this time.

Finally, many thanks to the legions of dedicated professionals in both the Wireline and Wireless Bureaus for your seemingly endless hours of hard work on this notice. You've done an outstanding job.

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[1] *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984); s*ee 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).

[2] 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.