

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN,
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next Generation Networks*, WC Docket No. 14-192.

In Audrey Niffenegger's debut novel *The Time Traveler's Wife*, Clare expresses her frustration about waiting by saying: "It's hard being left behind... It's hard being the one who stays."

For too many in rural America, the long wait for broadband is not only hampering their ability to improve their daily lives, it is curbing the best hope these communities have to be competitive. This is why we have set such an ambitious goal for universal broadband access and remain steadfast in our vision of closing these gaps.

In 2011, I was proud to cast a vote approving comprehensive reforms of our universal service and intercarrier compensation regimes, which put this country firmly on a path to narrow these divides. I must admit that when I voted to approve these reforms in 2011, I had hoped we would have made further progress. Despite the hard work of a diligent, dedicated team, things have taken a bit longer than first anticipated.

Instead of lamenting, however, the Commission has used this lapse of time most efficiently by approving funding to connect unserved areas and by making adjustments based on lessons learned and the changes the industry.

So just what has happened over the past three years? We have authorized funding, to serve over 630,000 locations, or approximately 1.65 million people, in 45 states, plus Puerto Rico, with fixed broadband for the very first time, provided mobile coverage over tens of thousands of road miles, and connected over 50,000 people living on Tribal lands, with access to mobile broadband.

And we are not resting because there is more to do to connect the millions who still lack access. Broadband has the potential to change and improve the daily lives of these Americans, from education, healthcare, economic empowerment to civic engagement, may be life changing. And that is why I am so pleased that today's item takes some final steps to implement the Phase II framework from the 2011 *USF/ICC Transformation Order*.

One key area warranting another look is speed. Remember, the *USF/ICC Transformation Order* called on us to reevaluate speeds periodically. While 4 Mbps may have been reasonable in 2011, it is clear that this level is too slow for consideration now and in the foreseeable future. If our goal remains for rural areas to have services reasonably comparable to urban areas, it is important for us to aim for speeds of 10 Mbps and beyond.

We have also had the opportunity to approve \$100 million for rural broadband experiments to assess interest in serving unserved areas, and to help inform the competitive bidding auction. The process shows the benefit of conducting experiments and learning lessons before investing upwards of \$1.8 billion over 10 years. Provisional winners were announced last week. I'm pleased that the non-winning bidders that proposed to construct networks that provide 100 Mbps will have the opportunity to submit financial and technical information certified by an engineering firm to have these areas excluded from the right of first refusal. As we know, and hear Chairman Wheeler reiterate often, competition more often than not, drives the best prices and services, and could bring about long-term savings, to the universal service program.

I am also pleased that the item addresses the so called "cliff effect" with the current rules for rate of return carriers receiving high cost loop support or HCLS. The *USF/ICC Transformation Order* recognized the perverse incentives this rules creates by enabling only the companies with the highest cost

to receive support, while carriers that invest more incrementally with lower costs left with no support. While this is an important step, the FCC must move forward with permanent reforms for the rate of return carriers that incentivize and reward efficiency, while providing a predictable path for investment.

As I said when the Commission adopted the *USF/ICC Transformation Order*, this is a marathon, not a sprint, and while the progress we are making today will put us ever so close to the finish line, we have more work to do including implementation of the Mobility Fund. I hope to be able to vote on a final Order that adopts the final parameters of the Mobility Fund soon.

While I endorse this item in many respects, there is one aspect that I cannot support.

I believe forbearance from eligible telecommunications carrier (ETC) obligations is premature until incumbent LECs no longer receive the benefits of implicit and explicit subsidies due to their legacy status and we complete reforms to the section 214(a) discontinuance process.

In addition to receiving high cost support including frozen support, and, for some, Connect America Fund-Intercarrier Compensation (ICC) support, incumbents continue to receive implicit subsidies from intercarrier compensation. These are subsidies that the FCC has found were created to recover the costs of the local network to achieve the goal of universal service.¹ The *USF/ICC Transformation Order*, adopted an end point of bill-and-keep for all traffic but did not phase down originating access nor reduce all terminating access charges. Incumbent LECs have had the benefit of these implicit subsidies to recover the costs of building and maintaining their networks long before competitive ETCs existed. Indeed, the difference between incumbent LECs and competitive LECs is part of the reason that only incumbent LECs are eligible to receive explicit support from the FCC's intercarrier compensation recovery mechanism to transition away from these revenues. Incumbents therefore continue to receive such subsidies and will continue to do so in the future, until the FCC completes the transition to bill-and-keep for all traffic. Until such time, these providers continue to receive implicit subsidies as they have for decades, which are designed to further our universal service objectives.

More specifically, the item forbears from ETC obligations for price cap incumbent LECs in three broad areas: (1) census blocks that the cost model determines are "low cost"; (2) census blocks served by an unsubsidized competitor; and (3) census blocks where another ETC receives support likely due to winning the competitive bidding process. I'm particularly concerned about forbearance in areas, where the cost model considers a census block to be "low cost." For one, granting forbearance from this category puts an incredible amount of faith that the cost model's projection that these are in fact low cost areas is accurate. It also potentially puts in jeopardy, the ability consumers in these areas, to have basic voice service from their incumbent provider.

In the spirit of compromise, I proposed modifying forbearance to census blocks where an (1) unsubsidized competitor exists or (2) where a subsidized ETC competitor wins the area in the competitive bidding process. Given the substantial overlap between areas served by unsubsidized competitors and

¹ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, para 45 (2011) (USF/ICC Transformation NPRM) ("Intercarrier compensation and universal service have long been intertwined. Historically, both universal service policies and intercarrier compensation policies worked in tandem to enable companies to provide affordable local phone service to residential consumers"); see also *id.* at 48 ("The access charge rules enabled local carriers to recover their historical costs, including common network costs and overhead, from long distance carriers. These intercarrier payments were one means by which local telephone companies were able to keep residential rates low by recovering some of their network costs from other carriers rather than the telephone companies' own customers.")

“low cost” areas, the difference between my proposal and the forbearance in item is small. The item indicates that “over 90%” of locations have access to a cable provider. But, this still means that a number of consumers lack such access and have only one option even for basic voice service – the incumbent provider. I am concerned about what happens to these customers, they should not be left behind.

In other words, my compromise would have granted forbearance to all areas where consumers have an alternative option. This would have granted forbearance to the vast majority of the country since cable providers offer broadband to nearly 90% of the entire population. Given that the item forbears from low cost areas and leaves certain customers with no alternative provider, I do not see how the item can conclude that forbearance does not harm those customers or that forbearance is in the public interest.

To be fair, the forbearance analysis relies heavily on the section 214(a) process to ensure consumers are protected and the public interest is not harmed. This is cold comfort to me. In last month’s *Technology Transition NPRM and Declaratory Ruling*, the Commission sought comment on changes to the section 214(a) process to ensure that consumers are protected and have adequate substitutes, and that discontinuance does not harm competition. I fear it is premature to rely on section 214(a) until such process is reformed.

I am also concerned about the ability to administer the forbearance because incumbents will have ETC obligations in some areas of a study area but not others. Who has oversight over these obligations? How do we confirm that they are satisfying obligations their ETC obligations in areas without forbearance? The item leaves these questions unanswered, which I find troubling.

Finally, while I am concerned about the potential pressure the decision will place on states as carriers use forbearance as a means to avoid state oversight, I appreciate the clarification that forbearance does not preempt state carrier of last resort obligations.

So, in sum, I am pleased to support the vast majority of this item but I respectfully dissent from the forbearance analysis.

I want to thank the dedicated staff of the Wireline Competition Bureau and Office of Strategic Planning & Policy Analysis for their work on this item.