
McLean & Brown

ISSUE UPDATE

January 22, 2012

FCC Receives Comments on the USF Reform Components of the FNPRM

On January 18, 2012, the Federal Communications Commission (FCC) received comments in response to the Universal Service portion its Further Notice of Proposed Rulemaking (FNPRM). The FNPRM was issued in conjunction with the Report and Order on comprehensive Universal Service Fund (USF) and Intercarrier Compensation (ICC) reform Order released November 18, 2011. Comments on the ICC portion of the FNPRM are due to be filed February 24, 2012. As of Friday January 20, comments from 80 parties were posted on the FCC's web site. The comments came from the following industry segments:

	<u>Number of Filings</u>
RLECs	40
States	9
Consumer	2
Price Cap Carriers	8
Cable	4
Wireless and Satellite	10
Other Parties	<u>7</u>
	80

Following is a high-level summary of some of the major points made in these filings. While every effort has been made to accurately reflect the key points made in each filing, this document is by no means a complete summary of all of the points made in the comments. Interested readers are encouraged to read the full text of the comments, which can be found on the FCC's web site at www.fcc.gov. Due to the large number of comments from the RLEC industry, this summary is organized as follows. The first set of comments summarized is the joint filing made by the national RLEC associations – NECA, NTCA, OPASTCO and WTA. This filing captures the major concerns and policy recommendations from rural Rate-of-Return (RoR) regulated Incumbent Local Exchange Carriers ("RLECs"). Next the comments from the other industry segments are summarized, followed by summaries of the remaining 39 RLEC comments. This will allow the reader to understand the full spectrum of opinions presented to the FCC without having to go through all 40 of the RLEC filings first.

RLEC

NECA, NTCA, OPASTCO, WTA

- The FCC must act to define a sufficient and predictable CAF for RLECs. To date, "reforms" adopted in this proceeding for USF and ICC mechanisms have consisted entirely of caps, cuts and phase-outs, despite record evidence demonstrating that *additional* funding is needed to realize the FCC's broadband goals.
- The RLEC Plan provides the FCC with a reasonable template for a new broadband-focused RLEC CAF. The RLEC Plan satisfies statutory principles of universal service, is sensible and practical, and can be accomplished within a reasonable budget.

- If the FCC does not adopt the RLEC Plan, at a minimum it should develop mechanisms that provide RLECs with sufficient and predicable CAF support for standalone broadband offerings, for middle mile costs, and for conversions and upgrades to IP-enabled switching.
- The FCC should not to impose broadband-specific public interest obligations, service measuring and reporting requirements, or other new burdensome “accountability” mandates, particularly in the absence of funding mechanisms designed to sustain broadband services.
- The FCC should not place new broadband network interconnection obligations on RLECs, as no need exists for such new regulations.
- The FCC should defer further action with respect to represcribing the interstate authorized RoR until it establishes clear and contemporary procedures governing the represcription process, and until its USF and ICC reforms are implemented.
- The FCC should reconsider its premature decision to employ quantile regression methods to limit reimbursements of capital and operating expenses. In addition to concerns previously raised regarding unfair and unlawful retroactive application of such models to prior investments, errors in the proposed regression models will lead to serious distortions in universal support payments.
- The FCC should proceed with substantial caution in phasing out support in areas with unsubsidized competition or otherwise seeking to “carve up” study areas. Treading down this path without addressing ongoing COLR obligations threatens the sustainability and affordability of services for consumers in the most expensive and difficult-to-serve areas.
- If the FCC pursues this path, it should rely on state expertise and data-driven judgment, rather than inaccurate national maps, to make factual determinations regarding the extent of competition in a particular area.

Summaries of the remaining 39 RLEC comments begin on Page 13.

States

Regulatory Commission of Alaska

- The importance of high-cost support to maintaining existing services and improving access to broadband service in Alaska cannot be overstated.
- Although well intentioned, the recent CAF Order substantially decreased the high cost support in Alaska.
- A partnership between the FCC and state commissions is essential in formulating the transition to and implementation of the CAF.
- Satellite facilities are not sufficient as the technology of last resort to bring broadband services to Alaska.
- The FCC should not preempt state authority to designate and define obligations of Carriers of Last Resort (COLRs) and Eligible Telecommunications Carriers (ETCs).
- The Connect America Fund significantly cuts funding for these carriers while dramatically increasing their obligations.
- State Commissions are in the best position to determine areas of overlap between carriers and need to be involved in decisions regarding elimination of support for areas with an unsubsidized competitor.
- Fair administration of the Mobility Fund is important for broadband deployment in Alaska.

California PUC

- The FCC should adopt a uniform reporting format to facilitate the tracking and review of the broadband speed, latency and capacity requirements.
- The FCC staff should conduct the initial evaluation of whether there is 100% study area overlap by and unsubsidized competitor, and then give the relevant state commission time to review and comment.
- If the FCC determines that states should conduct the original overlap evaluation it must mandate that all terrestrial voice and broadband service providers provide the necessary data to make this determination, and federal funding should be made available to ensure that states have the necessary resources to perform this function.

Indiana URC

- Any reasonably comparable range standard for urban and rural rates should only be established after data on current rates for broadband service in rural and urban areas has been collected and analyzed.
- The FCC should guard against situations in which USF support could be lost by a carrier that has overlap by an unsubsidized competitor in a town or village but that same carrier is the sole carrier in the areas outlying that town or village.
- The state commissions must have the opportunity to provide a second review after the FCC has conducted its overlap analysis.
- In adjusting ETC service obligations, standards for voice telephony should not be relaxed beyond the more flexible standards contained in the Order.
- Remedies and penalties should be used to ensure accountability of recipients of USF support, but must be used prudently and only for true violations, not inadvertent or incidental lapses or those caused by hardships or unforeseen circumstances.

MA DTC

- The FCC must refine its competitive auction proposals to ensure that every state receives CAF support for its price cap areas, and that funding is distributed in an efficient and equitable manner.
- Uniform broadband public interest obligations and annual reporting requirements are critical to the CAF's success and entity oversight.
- Federal high-cost ETC service obligations should not interfere with state ETC designation authority.
- The FCC should mandate an irrevocable standby letter of credit for all ETCs.

Nebraska PSC

- The FCC should place more emphasis of tying the CAF to a predictable and sufficient funding mechanism which encourages long-term investment.
- Although the FCC recognizes the significant role states should play in the continued enforcement of COLR obligations, the FNPRM seemingly diminishes that role by proposed reliance on national accountability standards, competitive bidding and the proposed modifications governing ETC obligations.
- Rather than attempting to determine areas with an unsubsidized competitor, a more administratively efficient course of action would be to identify high-cost areas using density and cost characteristics and targeting high-cost support to those areas.
- States are able to identify and prioritize areas where broadband availability is needed, where vital community anchor institutions and businesses without broadband can be identified, and where these gaps can be filled.
- The CAF for RoR carriers must ensure that operating costs for existing broadband networks are sufficiently funded, and should also have specific and predictable build-out objectives for areas where broadband is not yet available to consumers.
- The use of a competitive bidding process will result in a "race to the bottom" in terms of service quality and will not advance universal service.

Ohio PUC

- Where an ETC accepts Phase I support, Section 214(e)(1) voice service obligations should not be relaxed or eliminated, and where an ETC accepts one-time incremental support, it continues to be required to meet its 214(e)(1) voice service obligations for some period of time even if that carrier does not receive ongoing support.
- Should an ETC find the relinquishment and/or service area redefinition provisions of Section 214 to be insufficient, forbearance, handled on a case-by-case basis, provides an appropriate remedy.
- Each ETC seeking to receive support through a competitive bidding process should certify that it is financially and technically capable of providing service within a specified timeframe.
- Price cap carriers that decline the state-level of commitment should be allowed to participate in the competitive bidding process.

- The same service performance requirements should be imposed on carriers that receive support through the competitive bidding process as those electing to receive model-determined support.
- CAF support in remote areas under the RAF should be limited to one subsidy per residence/household, similar to the Lifeline program.

Pennsylvania PUC

- The PA PUC will be filing its comments on the issues in the FNPRM in the reply comment round.

Vermont PSB

- There should be separate benchmarks for fixed and mobile voice services for purposes of determining reasonable comparability, and any examination of comparability must be based on actual measurement and encompass both rural and urban areas.
- The fundamental flaw in setting the comparability rate benchmark at two standard deviations above the urban rate is that it is self-forgiving. In lieu of that approach, the FCC should adopt a rate comparison allowing a rate differential of no more than 125% from the average urban rate for the same service.
- Support should not be extended to serve locations where an unsubsidized landline competitor has already deployed and offered service, however the FCC should adopt a methodology that adjusts support at a granular level, not based on existing broadband mapping data.
- The existing balance between state and federal roles on ETC issues should be retained, and there should be no forbearance from existing ETC requirements, such as the mandate that an ETC offer service throughout their service territory.

Wisconsin PSC

- Proper implementation of the USF reforms is dependent on a strong state role in monitoring and evaluating the results to assure that performance meets promise. Many decisions are best made by the state regulators and officials since they are closer to the people and entities impacted by those decisions.
- While preemptive action may be necessary to carry out the goals of ICC reform, USF reform requires the identification of a strong state role in the development of new and more robust broadband networks.
- This partnership may be best highlighted in an expanded state role with respect to the support provided from the CAF for broadband deployment. States are in a particularly good place to identify areas where broadband dollars will be best spent to get the most effective results for each USF dollar.
- Also, in an effort to avoid fraud or misuse of limited resources, states could be given a stronger and clearer role in policing the use of support funds and to identify quickly where remedial actions need to be taken.
- The PSCW is well aware of the importance that rural carriers have to the economic development and prosperity of rural areas. With that said, reforms are necessary to ensure that policies relating to rural RoR companies are keeping pace with the reality of the marketplace (e.g., the 11.25% RoR should be lower).
- The PSCW has heard that the amount of high-cost support provided to rural carriers may be insufficient to both maintain existing networks and build out new networks to unserved areas. With this in mind, to the extent there are savings in other areas of the CAF, those savings should be diverted to the rural fund for additional support to rural networks.

Consumer

Ad Hoc Telecommunications Users Committee

- The FCC should represcribe a lower interstate RoR since the current RoR is far too high.
- Rather than expend scarce resources sifting through conflicting models and multiple opinions searching for the perfect “rate of return,” the Commission should rely on documented, publicly available data to determine the Weighted Average Cost of Capital for providers who will receive CAF funds.

- The FCC should also closely monitor rates for Internet service. The important objectives that the FCC seeks to serve by facilitating the availability of broadband service will be frustrated if Internet service is not made available at reasonable rates.

NASUCA, Maine Office of Public Advocate, NJ Division of Rate Counsel, and TURN (Consumer Advocates)

- The FCC should establish baseline public interest obligations for any provider that receives support, and there should be uniform measurement and reporting requirements.
- Since broadband speed and capability requirements will evolve over time it is essential that carriers deploy facilities that are scalable and able to evolve over time.
- The FCC should reject the Rural Association Plan because it is arcane, cumbersome, and is not transparent or supported by complete workpapers. Consumer Advocates recommend the adoption of the State Members' plan.
- If the FCC adopts the Rural Assn. Plan, it should seek recommendations from the Separations Joint Board due to the massive changes proposed to separations procedures and also address middle-mile and Internet transport costs of service issues through the regulation of special access rates.
- The FCC should reset the benchmark RoR last reviewed in 1990, and long overdue.
- Consumer Advocates welcome the FCC's elimination of support for areas with an unsubsidized rival or a combination of unsubsidized rivals. Rules should be established to ratchet down support in study areas as the percentage of overlap with non-subsidized rivals increases.
- Consumer Advocates fully support the FCC's goal of allowing carriers to recover only prudent capital and operating costs, but disagree with the specific regression analysis used. The FCC should conduct an extended series of comments and reply comments to develop a more accurate and better informed regression process.
- Under no circumstances should reduced support be accompanied by a relaxation of voice service obligations.
- Consumer Advocates recommend that all data, information, and communication regarding ETC's compliance with the FCC public interest obligations be public and also be provided to state commissions.
- The FCC should adopt comprehensive, ARMIS-like reporting requirements for mobile service providers.

Price Cap Carriers

AT&T

- The FCC's failure to relieve carriers of their ETC obligations in areas where the carriers receive no high-cost support violates statutory requirements and should be corrected immediately, not after completion of the instant rulemaking.
- Continuing to apply legacy ETC, COLR, and other regulatory requirements is a recipe for failure, and guarantees that the FCC will have to rely on significantly greater CAF support amounts, rather than private investment, to close the current gap between served and unserved areas.
- CAF recipients should be given the flexibility to measure broadband performance in accordance with certain FCC-defined criteria and not mandate a uniform broadband measurement methodology.
- The FCC should jettison its existing 2 standard deviations measurement of reasonable comparability for voice services in favor of a more valid measurement tool and it should conclude that it is not required to perform any reasonable comparability review for broadband service.
- The proposed additional CAF obligations are unnecessary, unlawful or premature, and the FCC should revise its proposal to require all ETCs to obtain letters of credit.

CenturyLink

- As the FCC moves forward with implementing and further designing its USF reforms to promote broadband service availability throughout the country it should ensure that:
 - A provider's high-cost universal service obligations are limited to the geographic areas for which the provider is receiving that high-cost support.
 - There is parity in high-cost universal service obligations, and
 - High-cost areas with an unsubsidized competitor are eligible for CAF support if the unsubsidized competitor is unable or unwilling to provide the required level of broadband service to all or almost all of the locations in the area.
- The FCC should adopt a uniform measuring methodology while utilizing existing reporting mechanisms to monitor industry performance.
- The FCC should not specifically require CAF recipients to provide IP-to-IP interconnection for voice service, but instead address IP-to-IP interconnection for all providers.
- Publicly traded ILECs should not need to provide financial guarantees such as a letter of credit to ensure that they will be accountable for any failure to comply with their CAF obligations.
- In designing CAF Phase II, the FCC should focus its efforts on ensuring that the model-determined support and corresponding deployment timelines properly incent price cap carriers to assume the state-level commitment

Frontier Communications

- While the FCC should take steps to ensure that the broadband testing methods used are sound, it should allow ETCs some flexibility in the actual methodology used.
- Frontier does not object to negotiating with municipal networks in good faith for interconnection and backhaul capacity so long as it does so on the same basis that it treats every other carrier utilizing its network.
- The FCC should narrow the area over which service obligations are required so that unsupported territories are not subject to further obligation. The FCC should use either its statutory authority or forbearance authority to grant the requisite relief, and do so at the wire center level.
- The FCC should not require ETC to post a letter of credit in order to receive funds as it unnecessarily diverts resources away from broadband deployment.
- The FCC should ensure that funding levels are adequate to cover the often substantial initial costs of deploying sufficient backhaul capability to meet the needs of mobile service providers that receive funding through the Mobility Fund.

ITTA

- Because existing broadband reporting obligations provide detailed information on broadband services offered by specific providers in specific locations, including speed and latency measurements, it should be sufficient for CAF recipients to certify their broadband service offerings meet the minimum performance metrics for CAF eligibility.
- Similarly, existing regulatory safeguards, such as the ETC designation process, ensure accountability of CAF recipients, thus the FCC's proposal to adopt additional measures, such as requiring ETCs to issue a letter of credit, is unduly burdensome.
- The FCC should permit competitive bidders to partner with other providers to meet their public interest obligations, allow ETCs that decline statewide funding to participate in the competitive bidding process, and refrain from requiring CAF recipients to finance a portion the build-out in CAF supported areas with private funds.
- The service obligation of CAF recipients should be proportional to the amount of support received. Should CAF support be completely eliminated, a provider's voice service obligations should also cease. Where support is reduced, ETCs should be allowed to seek relief from their service obligations on a case-by-case basis.

USTelecom

- Since the Order establishes a high-cost USF budget different than that proposed in the Joint Framework, to ensure sufficiency the FCC must be careful to align the obligations of both price cap and RoR ETCs with the funding made available.
- Modifications to the Rural Association proposal is the proper direction for the FCC to take when designing a CAF for areas served by RoR carriers. It is vitally important that such modifications conform to the principle of sufficiency and not impose unfunded mandates.
- The FCC should be sure to provide additional, sufficient support to address middle-mile and broadband backbone costs.
- ETCs should be relieved of their legacy ETC obligations in those geographic areas in which they do not receive either legacy high-cost support or CAF support.
- The transition period for phase-out of support to ILECs in areas served by an unsubsidized competitor should be five years – the same as that adopted for ETCs receiving support under the identical support rule.
- CAF recipients should not be required to offer IP-to-IP interconnection for voice services beyond what the FCC adopts more broadly.
- The FCC retains the statutory responsibility to have a fair and thorough RoR prescription proceeding. It should not try to have its cake and eat it too – a lower RoR and a less than thorough prescription proceeding.

Verizon

- In any area where a particular carrier does not receive either legacy high-cost funding or new CAF support, the FCC must, consistent with its Section 254 obligations, eliminate any remaining ETC voice service obligations.
- Rather than setting up new data collection mechanisms to monitor broadband and wireless retail pricing in connection with the CAF and the new Mobility Fund, the FCC should look first to existing data and publicly available information.
- In any event, the FCC should not over-condition CAF support in a way that would discourage robust participation – and competition – in these programs.
- In designing the new USF competitive bidding mechanism, the FCC should not attempt to micro-manage broadband network coverage and deployment in funded areas, and should have realistic expectations about how many unserved locations can be reached and how quickly networks can be deployed.

Windstream

- Public interest obligations should be technology-neutral and narrowly tailored to achieving the FCC's goal of universal broadband availability.
- The FCC should apply the same public interest obligations to all CAF recipients (wireline and wireless) and apply any broadband measurement methodology uniformly across all CAF Phase II recipients – both wireline and wireless – as well as any unsubsidized competitors whose presence precludes support in a high-cost area.
- The Phase II CAF for price cap carriers should incorporate a viable model, a targeted and efficient competitive bidding process, and alignment of support and obligations.
- The FCC should refrain from imposing additional, unnecessary ETC obligations, particularly heightened IP-to-IP interconnection requirements and provisions mandating new interconnection points and backhaul capability for underserved high-cost communities to deploy their own broadband networks.
- It would be contrary to the Commission's long-term goals to direct savings realized in other components of the CAF to increase funding for RoR carriers and away from price cap areas where the greatest need for broadband funding is evident.

Cable

American Cable Association

- The FCC should use a competitive process to award high-cost support for the deployment of wireline broadband service, and such process should be focused on clear goals, transparent, and based upon objective, relatively straightforward and well-defined and measurable criteria.
- To attract as many competitive bidders as possible, it is essential that the FCC revise the current ETC designation process, which is onerous and acts as a barrier to participation by longstanding , leading providers of broadband service.
- If a winning bidder certifies that it will comply with the FCC's public interest requirements, there is no policy rationale for not designating the bidder as an ETC, nor is there any legal impediment.
- Evidence continues to mount indicating that the proposed 4/1 speed is not adequate to meet the current and future needs of consumers or to fulfill the requirements of the Communications Act for access in high-cost areas.
- Winning bidders should be required to provide service to 95% of locations within two years.

Cablevision and Charter

- Current law requires ILECs to offer IP-to-IP interconnection, but many ILECs nevertheless refuse to make it available.
- Conditioning CAF support on offering IP-to-IP interconnection would promote the transition to advanced IP architecture that the FCC has expressly identified as an important objective of USF and ICC reform.
- By enhancing the efficient exchange of IP voice traffic, IP-to-IP interconnection will facilitate the deployment of VoIP services in unserved areas, and reduce the outlay of CAF funds necessary to provide supported voice services.

NCTA

- While the FCC was right to establish a strict USF budget, unfortunately it generally chose not to make use of market-based mechanisms to distribute funding and instead is providing ILECs with exclusive or preferred access to virtually all high-cost funding.
- The FCC must take great care to ensure that any support provided to those carriers is appropriately sized and targeted to areas not served by competitive providers and that appropriate mechanisms are established to improve accountability by all recipients.
- In areas served by RoR carriers, the FCC must ensure that support is appropriately targeted to areas not served by competitors, the RoR must be represcribed, an a process must be developed for reassessing the amount of legacy support provided in areas where there has been a significant level of competitive entry.
- In price cap areas, the FCC must develop a bidding process that facilitates bidding by all interested parties and provides no artificial advantage to ILECs beyond the advantages already provided in the CAF Order.
- The FCC should streamline the process for designating ETCs so that it does not operate as an artificial barrier to participants in competitive bidding, and make support available on the basis of a neutral geographic area, such as census blocks, rather than ILEC-specific study areas or wire centers.
- The FCC should ensure that the public has complete and timely access to information regarding where, and how much, support is distributed, as well as how that money was spent and what recipients were able to accomplish with it.

Time Warner Cable

- Rather than treating USF as an ILEC entitlement, the FCC should use the FNPRM as a vehicle to identify additional ways of reducing excessive subsidization and promoting efficient competition for the benefit of consumers.
- The FCC should condition the receipt of CAF support on an ETC's commitment to provide nondiscriminatory interconnection to competing providers.

- The FCC should adopt the FNPRM's proposals to reduce excessive support to RoR ILECs by lowering the prescribed RoR and limiting reimbursements for certain cost items, among other measures.
- The FCC should carry out plans to eliminate, or at least reduce, high-cost support where an ETC faces competition from one or more unsubsidized competitors.

Wireless and Satellite

Clearwire

- The FCC can best achieve its goal of maximum deployment of 3G or better wireless service by maximizing the ability of potential broadband providers to participate in the fund.
- Recipients of Phase II Mobility Fund Support should be allowed to partner with other providers to fulfill the public interest obligations.
- Procedures should be established to enable unclassified broadband providers to participate in auctions on a competitively neutral basis and to be designated as ETCs on a nationwide basis.

C Spire Wireless

- As the FCC is laboring to transform its universal service program to facilitate the build-out of broadband networks it is ignoring a transformation that is rapidly progressing in the American marketplace.
- The Order and FNPRM are replete with conclusions that the limitations in the programs it is fashioning to support mobile broadband networks are driven by the boundaries of the "available budget."
- The FCC's budget is not only short-sighted, but it also short-changes mobile broadband and makes a disproportionately high allocation of support to RoR carriers, preserving their funding, and ignoring the fact that this funding will be used to protect an outmoded technology.
- The FCC should adopt a forward-looking cost model, rather than a single-winner reverse auction mechanism, for use in disbursing Mobility Fund Phase II support.
- The FCC should consider combining the use of a model with a consumer coupon system as the mechanism for disbursing Phase II support. The FCC would provide coupons directly to consumers who would be free to apply their coupons to the service provider of their choice in a truly market-based mechanism.

CTIA

- The FCC should begin implementation of the Mobility Fund and conduct the Phase I auction as soon as possible. The lessons learned from Phase I will be critical to determining the appropriate structure and operation of Phase II.
- The FCC should calibrate its reporting and performance obligations carefully so that they adequately ensure accountability while not discouraging participation in the new universal service mechanisms, and recognize the particular characteristics and benefits of mobile wireless networks.
- The FCC should ensure that the competitive bidding component of the CAF for price cap areas is competitively neutral and provides broadband to as many Americans as possible with the budgeted funds.
- The FCC should shift all remaining legacy high-cost support for RoR carriers to the CAF and adopt a schedule for this transition as quickly as possible, and in the interim adopt the FCC's additional reform proposals – including reducing the authorized RoR.

GCI

- In developing Mobility Fund Phase II, the FCC must recognize Alaska's uniquely high-cost areas and quantify and set aside support sufficient to achieve reasonably comparable service.
- The Remote Areas Fund features positive distribution concepts, but as proposed, will not be sufficient to ensure reasonably comparable mobile or fixed broadband services in rural Alaska.

- The middle-mile is a cost that must be covered by the supported broadband provider, rather than a target for direct support of facilities construction or an inclusion in the RoR database.
- The long-term RoR LEC CAF plan should enable competition and foster efficient use of USF dollars.

NTCH

- NTCH has previously submitted a PFR to consolidate the Phase I and Phase II Mobility Funds into a single support process and to rationalize the sequence of pre-auction events and requirements so that all interested parties could intelligently assess the business case for providing service to unserved or underserved areas with a given level of initial and ongoing support.

PCIA-The Wireless Infrastructure Association

- Consistent with the public interest obligations for Phase I of the Mobility Fund, the FCC should continue to encourage the efficient use of wireless support structures since efficiencies are achieved when wireless providers share the underlying physical support structure for wireless antennas.
- To maximize competition, flexibility and efficiencies, the FCC should require that recipients of Mobility Fund Phase II support allow for reasonable collocation by other providers on newly-constructed, Phase II-funded wireless support structures.

RCA – The Competitive Carriers Association

- The CAF Order establishes an overall budget for high-cost support that inexplicably would direct nearly ten times more support to wireline carriers than to wireless carriers, notwithstanding business and residence consumers' demonstrated preference for increasingly fast mobile wireless services.
- The FCC should determine that where a price cap carrier declines to exercise its statewide RoFR with respect to Phase II CAF support, the relevant amounts that would have been distributed to that price cap carrier will instead be transferred to the Mobility Fund.
- The FCC should take aggressive action to minimize the wasteful dedication of excessive USF funding to RoR ILECs by reducing the prescribed RoR and limiting reimbursable expenses, with savings devoted to ameliorating the substantial underfunding of wireless ETCs.
- Meaningful public interest obligations should be imposed on all recipients of high-cost support, but at the same time those obligations should account for the particular circumstances of various ETCs and should be no more burdensome than necessary.

Satellite Broadband Providers

- FCC actions should be guided by the need to extend quality broadband service to “unserved” households in the most efficient and cost-effective manner possible – without disrupting market forces or the undermining the benefits of competitive and technological neutrality.
- The FCC should thus:
 - Establish a Remote Areas Fund that is structured as a portable consumer subsidy;
 - Streamline the ETC process by designating satellite broadband providers as ETCs at the federal level;
 - Utilize competitive, market-based mechanisms to distribute CAF support in areas served by RoR incumbents;
 - Utilize reverse auctions to distribute “secondary” CAF support;
 - Implement strong accountability measures for providers receiving CAF support; and
 - Collect data with respect to actual network usage to facilitate the implementation of the “reasonable comparability” standard.

T-Mobile USA

- The FCC and the industry will learn a great deal from the results of the Mobility Fund Phase I auctions to be held later this year, and those lessons can usefully be applied in determining whether and how reverse auctions should be used in distributing Mobility Fund Phase II next year.
- Depending on the outcome of its ongoing analysis, T-Mobile may submit a forward-looking 4G wireless cost model in this proceeding.
- Rather than the single-winner reverse auctions proposed in the FNPRM, support determined by a forward-looking model could be distributed in a competitively neutral manner that satisfies the requirements of Section 254.
- The FCC should not expend the significant effort that would be required to create a new CAF mechanism for RoR carriers, but should eliminate inefficient RoR regulation and apply the same CAF support mechanism in all incumbent wireline service areas.
- If RoR regulation is retained, the FCC should reduce the RoR to market levels.

US Cellular

- The FCC should proceed with implementing its Mobility Fund Phase I single-winner reverse auction, and disbursing Phase I support, before making any decisions regarding the disbursement mechanism for Phase II, reserving judgment regarding whether to use a forward-looking economic cost model or a single-winner reverse auction for Phase II.
- Restricting support to a single carrier in each service area is not competitively neutral, erects barriers to competitive entry, is detrimental to consumers, and fails to comply with statutory mandates to promote competition in conjunction with universal service policies.
- If the FCC ultimately decides to use a single-winner reverse auction for Phase II support, U.S. Cellular respectfully urges the Commission not to award support based upon a comparison of all bids across all geographic areas, since such an approach would unfairly penalize economically efficient projects designed to serve higher-cost areas.

Wireless Internet Service Providers Association

- The FCC should adopt rules requiring CAF recipients to make interconnection points and backhaul capacity available for fixed broadband service in unserved high-cost areas that do not receive support.
- The FCC should ensure that support provided under the Remote Areas Fund is available to non-ETCs and is administered efficiently.
- The FCC should require support recipients to provide performance bonds.
- Distribution of CAF support in price cap areas should consider the presence of unsubsidized competition, not merely an unsubsidized competitor.

Other Parties

ADTRAN

- It would be premature, and possibly inefficient, to require that “SamKnows-type white boxes” be installed at every fixed broadband consumer location.
- The FCC should use restraint in imposing additional requirements on support recipients under the guise of the “public interest,” as additional burdens will add cost, which will reduce the number of currently unserved locations that will obtain broadband.
- The FCC should take account of the non-uniformity of costs when adjusting support for providers that partially overlap with unsubsidized competitors.
- ADTRAN supports the establishment of a separate Mobility Fund, since fixed and mobile broadband services are largely complementary, however the FCC should adopt more comprehensive performance standards than those in the Order and FNPRM.

California Emerging Technologies Fund

- The FCC should work in partnership with state entities and states with successful, result oriented broadband plans or initiatives in place.
- The FCC should focus resources to targeted neighborhoods/low-income communities, or subsidy programs.
- Reform of USF should be coupled with an expanded eRate program for parents of students in low-performing schools.

Coalition for Rational USF and ICC Reform

- The FCC should adopt rules to limit the CAF subsidies given to incumbent providers in areas that already have unsubsidized competition.
- Middle mile circuits should be covered by CAF subsidies if required, but the benefits should accrue to both the CAF recipient and its wholesale customers.
- Backhaul can be addressed by policies that lower the price of special access and other middle-mile “wholesale” circuits needed for these networks to operate.

Information Technology Industry Council

- The FCC should develop separate performance benchmarks for mobile broadband networks independent of fixed or wireline networks.
- The FCC should use reverse auctions to determine recipients of Mobility Fund Phase II support, and performance metrics should be more advanced.
- Evolution of Phase II requirements should be based on current usage trends.

New America Foundation, Public Knowledge and Benton Foundation

- The FCC should structure the Remote Areas Fund to enable community and local broadband providers the opportunity to participate in the fund.
- An interconnection obligation on providers receiving fund support is critical to ensure that communities have access to backhaul capacity, particularly if the FCC uses a portable consumer subsidy to disburse benefits to remote areas.

Nexus Communications

- The FCC should recognize that prepaid wireless is the ideal service to ensure that low-income consumers who only want to subscribe to voice service continue to have the ability to receive Lifeline benefits and should adopt rules and policies that further this objective.

USA Coalition

- Despite the FCC's frequent statements concerning the vital role played by mobile services in today's economy and the need for widespread competition, the reforms that the FCC is now considering, not to mention the reforms that the FCC has already adopted, will cause irreparable harm to the communications market in the United States, which ultimately harms consumers who increasingly rely upon wireless services.
- Unless the FCC immediately takes concrete a steps to redress the fatal flaws in its current plans for reform, the FCC will condemn rural areas to become monopolistic communications backwaters that offer consumers only limited options for service, a far cry from the Act's requirement that consumers in rural, insular, and high-cost areas have access to wireless services that are reasonably comparable to those available to consumers in urban areas at reasonably comparable prices.

Other RLEC Comments

Accipiter Communications

- The FCC's Order could result in a severe financial impact on the company that would endanger the only source of telecommunications services to a number of rural Arizona residents and businesses.
- Two elements of the FNPRM that will have grave impact are:
 - Eliminating support for areas with less than 100% overlap of an unsubsidized competitor, and
 - The limitations placed upon costs by the FCC's proposed regression methodology

ACS

- New pricing rules, new rules governing federal support, new reporting requirements and new record-keeping requirements all place substantial burdens on ACS, create uncertainty about future revenues, and affect the highly competitive market for voice and broadband services in Alaska.
- ACS supports a number of the Commission's proposals, and offers some Alaska-specific refinements to reflect the realities facing ACS and other Alaska service providers.

Alaska Rural Coalition

- The reforms in the FCC's CAF Order have left rural RoR carriers with stranded investments in their networks, and no specific, predictable support mechanism available to help maintain them.
- The RoR in Tribal areas should remain at 11.25%.
- Limits on reimbursable capital and operating costs for RoR carriers must reflect the reality of Alaska's extreme high-cost areas.

Alexicon

- An exhaustive analysis of the financial impacts of the Order and FNPRM on RLECs demonstrates that the impacts would be disastrous to the goal of bringing quality broadband services to rural areas.
- The FCC's decision to eliminate support in areas where an unsubsidized carrier overlaps 100% is problematic at best. The proposal to extend this policy to areas with less than 100% overlap is illogical, and should be rejected.
- The FCC's decisions and proposals have the potential for far-reaching negative impacts on Tribes and Tribally-owned carriers.

Blooston Rural Broadband Carriers

- The FCC should not use quantile regression analysis to limit high-cost support, and retroactive application of such limits is a violation of well-settled administrative law precedent.
- The proposal to use forbearance to allow an ETC to not provide service in all or part of its service area is contrary to the Act which confers on state commissions the primary authority to designate ETCs and their service areas.
- The FCC's proposal to require a letter of credit from RoR high-cost fund recipients is a violation of due process.

Blooston Rural Carriers

- The FCC should restrict the ability of Tier I carriers to participate in Phase II of the mobility fund.
- The reverse auction procedures proposed in Phase II will create a "race to the bottom" that will not serve the public interest.
- In the event that the FCC chooses reverse auctions, a mechanism must be implemented that assures that a significant portion of the Mobility Fund goes to small, rural wireless carriers.

Blue Valley Telecommunications

- The FCC should not adopt a quantile regression analysis as a method to limit capital and operating costs that will be reimbursable through either HCLS or ICLS.
- If the regression analysis as proposed in the FNPRM is adopted, Blue Valley will be cash flow negative and unable to service its debt in less than two years.

Carriers for Progress in Rural America

- In imposing caps on capital and operating expenses, the FCC should:
 - Minimize the uncertainty that has been injected in to reimbursable capex and opex;
 - Ensure that the methodology used to determine the caps adequately accounts for all important cost drivers; and
 - Not adopt a similarly ill-advised framework with respect to ICLS, a mechanism far different in design and purpose than HCLS.
- The framework adopted by the FCC introduces a level of uncertainty and variability that will make it nearly impossible for a carrier to plan its network upgrades and expense outlays.

Central Texas Telephone Cooperative

- The FCC's regression model, in its current form, leads to erroneous, arbitrary, and confiscatory results when applied to Central Texas.
- The model does not take into account legitimate cost factors such as loop length and rocky terrain.
- The model's conclusion that Central Texas' capital expenses and operating expenses lack "prudence" is demonstrably false, lacks any rational connection to the facts, and is contrary to the Communications Act.

Copper Valley Telephone Cooperative

- Communications companies operating in Alaska provide service to customers in some of the most remote and challenging areas of the country.
- Three factors exacerbate the challenge: sparse population, lack of highway infrastructure, and topography and climatic conditions.
- Changing to another set of rules and applying those rules to legacy investment is grossly unfair, especially in light of the operating challenges faced in Alaska.

Eagle Telephone System

- Eagle is a COLR designated by the Oregon PUC, which legally obligates the company to provide telecommunications service to all requesting customers within its service territory.
- Eagle is one of the largest employers in the company's rural service territory, providing jobs and financial stability in rural areas of North Eastern Oregon.
- Eagle is very concerned with the potential financial implications of the Order and FNPRM and the impact they will have on Eagle's ability to continue to provide high quality voice and broadband service a the public interest standards established by the FCC.

Gila River Telecommunications

- The FCC should create a fund for a Technology Opportunities Program and set aside 20% of funds for Tribal entities.
- It should adopt a Tribal Carrier Risk Premium to add to the authorized RoR for Tribally-owned and operated ILECs.
- The FCC should allow Tribally-owned and operated ILECs to receive USF legacy support at 2011 levels, or, in the alternative, allow RoR Tribally-owned and operated ILECs to recover reimbursable capital and operating costs at the 100th percentile.

Guadalupe Valley Telephone Cooperative

- The FCC should:
 - Focus its immediate effort in obtaining appropriate long-term Independent Variables;
 - Suspend the implementation of the regression model until appropriate Independent Variables are established;
 - Recognize its current regression model will stifle investment;
 - Recognize relatively minor reductions in SACPL can lead to dramatic reductions in USF and adjust its strategy accordingly; and
 - Eliminate depreciation caps for those companies whose investments did not exceed the cap.

GVNW

- The FCC's effort to date fails to meet the statutory test of providing sufficient and predictable support as is required by the tenets of the 1996 Act.
- The FCC's premature conclusion of a 9% interstate RoR appears to totally ignore the increased regulatory risk – driven in large part by the FCC's own *Transformation Order*.
- The entire network for each rural carrier was deployed under a set of rules prior to December 29, 2011 that created a reasonable expectation that recovery of costs would be allowed – changing the rules at this time is retroactive ratemaking.
- The proposed quantile regression approach does not utilize two important attributes of topology and geology for companies that operate in some of the harshest operating conditions in the United States.

Hopi Telecommunications

- Changing the existing 11.25% RoR for Tribally owned and operated ETCs is not warranted.
- Record evidence demonstrates that Tribally-owned and operated carriers have unique characteristics.
- Exemption from benchmarks for capital and operating costs is warranted for Tribally-owned and operated carriers.
- Benefits and obligations in Phase I of the Mobility Fund pertaining to Tribal Lands should be extended in other contexts where auctions are utilized.

Laurel Highland and Yukon-Waltz Telephone Companies

- The FCC should adopt a state commission-based process for determining whether a competitive carrier can cover 100% of a specific RLEC's service area.
- The FCC should abandon its proposal to reduce support in areas where the unsubsidized competitor, or competitors, covers less than 100% of an RLEC's service area.

Mescalero Apache Telecom

- The ICC/USF *Transformational Order* threatens MATI's ability to continue providing and expanding vital services to the Mescalero Apache Reservation
- The FCC should adopt a different RoR for Tribally-owned and operated carriers by adjusting the return on equity, or the overall RoR, upward to reflect the risks faced by such carriers.

Moss Adams

- Capital and operating expense limitations should be delayed by at least one year to resolve current flaws in the regression analysis, underlying data and computations must be made available, loop length and terrain must be considered, and the FCC should not apply capital expense limitations retroactively.
- The FCC should utilize savings from other components of the CAF to increase funding for RoR carriers to best achieve the broadband mandate in rural America.
- The FCC should include the cost of 2nd mile and middle-mile transport in the calculation of CAF support.
- The CAF must be fully funded to accomplish both universal service, for voice and broadband, and ICC reform.

- Moss Adams also assisted in filings for client companies providing facts and data regarding the impact of the FCC's proposals in the Order and FNPRM. Companies for which such filings were made include:
 - ATC Communications
 - Calaveras Telephone Company
 - Cambridge Telephone Company
 - Chillicothe Telephone Company
 - InterBel Telephone Cooperative
 - Midvale Telephone Exchange
 - Northern Telephone Cooperative
 - Penasco Valley Telephone Cooperative
 - Scio Mutual Telephone Association

Nebraska Rural Independent Companies

- NRIC continues to endorse the concept of using regression-based caps as part of an overall system, but only where the application of the regression formula meets the statutory standard of sufficient and predictable support and the FCC's stated goal of encouraging transparency.
- The regression analysis proposed by the FCC is overly complex, and the caps proposed in the FNPRM are not predictable and will not promote investment, they fail to provide sufficient support, and they should not be adopted as proposed.
- To create predictable and sufficient support, caps should be set at a higher percentile, and only two separate caps should be established for RLECs – one for total investments and one for expenses.
- Middle-mile transport costs should be recoverable from the CAF since they are an integral component of the service for which a RoR ETC is now responsible.
- Additional certainty with the CAF disbursement process will enhance deployment of broadband in RoR ETC areas.

NTTA

- The FCC has an opportunity to solve the historic underservice to Native communities through a series of strategic and unique policies.
- By giving a sovereign nation the choice of its ETC provider, the FCC honors its special trust relationship to Tribal sovereign nations.
- By supporting the decision of Tribal governments to form their own regulatory service, the Commission promotes self sufficiency of Tribes to solve their own telecommunications needs.
- By promoting ETC "engagement" with Tribes, the FCC promotes quality of service consultation that protects the public interest of Tribal consumers and alters the legacy of leaving service outcomes to chance on Tribal lands.
- Preserving the incumbent level of support and reducing the level of harm to Tribal telcos, preserves the public interest obligations of Tribal governments to its own previously unserved communities.
- The Commission must minimize the uncertainty of service providers and quality of service on Tribal lands from competitive bidding in price cap "unserved areas"—by giving Tribes the option to serve themselves.
- The FCC must ensure that mobility fund dispersals for Tribal lands benefit tribes with the greatest need and whenever possible permit Tribes to become their own providers

Parish, Blessing & Associates

- PBA and many of its small RoR clients are concerned that the FCC's preliminary conclusion calls for reductions in support while simultaneously requiring significant upgrades and build-outs of small LEC networks.
- The FCC's conclusion that current market conditions indicate that the authorized RoR should be no greater than 9% errantly focuses on the reduction in the cost of U.S. Treasury debt while it ignores the ever increasing risks face by small LECs.
- The FCC should not alter the current weighted average cost of capital of 11.25%.

Rural Telephone Service Company

- At the encouragement of the President, RLEC have recently invested millions of dollars through the ARRA to bring broadband infrastructure to rural America, and in the process have created jobs and strengthened the economy to promote survival of these remote, rural areas.
- The FCC's proposals in the Order and RNPRM blatantly ignore the Act's mandate for a sufficient and predictable universal service mechanism and will only kill incentives for investment and innovation in the rural areas it claims it wants to assist.
- RTSC would certainly have made different decisions regarding its broadband infrastructure investments had it known the FCC would drastically and retroactively change the way broadband investment is supported
- The FCC's actions also present a real danger to the ability of RUS borrowers to repay loans.

Rural Telecommunications Group

- The FCC must craft rules that allow existing ETCs who have long served rural areas and have infrastructure in place to serve their rural customers.
- Bidding credits for small businesses, sparsely populated areas, and for long-term service providers are several ways the FCC can ensure mobile coverage continues and that 4G mobile services are extended to these and other rural areas.
- The FCC should craft a rule that mandates other carriers to utilize the rural networks that are available in rural and remote areas. The practice of blocking urban consumers from accessing rural networks when they are in such areas is not in the public interest and harms all consumers.
- Only carriers with an ETC designation should be eligible for Mobility Fund support.

Sacred Wind Communications

- The outcome of the FCC's proposed reform, specifically the regression analysis, is fundamentally flawed and will have disastrous unintended impacts on many RLECs.
- The FCC erred in reporting Sacred Wind's study area, number of exchanges and census blocks. The map in Tele Atlas' data base is terribly flawed, showing Sacred Wind's study area to be smaller than it is by a magnitude of more than 1500%.
- Most grievous to Sacred Wind, the FCC has changed the rules of the USF game just as the Company has completed its network and is now focused on reaching its unserved customers in the most remote areas.
- The amount of reduction of USF support contemplated by the FCC would absolutely destroy Sacred Wind's ability to provide service to its Tribal customers.

Section D Rural Carriers

- The FCC's proposed process for identifying 100% overlap with an unsubsidized competitor is fatally flawed and should be abandoned. This process should be delegated to the state commissions for a factual review of the evidence and due process for all parties.
- Foremost among the problems of extend the overlap policy to less than 100% is the allocation of costs among subparts of a study area. RLECs record their costs at the study area level and any attempt to assign costs to specific geographic areas is difficult if not impossible without facing the risk of being arbitrary.
- Expanding the overlap policy to areas smaller than the study area abandons the concept of a study area and will likely cause unintended consequences.

Section E Rural Carriers

- The FCC's proposal to limit expenditures violates the principle of "specific, predictable and sufficient" support to "preserve and advance universal service" established in the 1996 Act.
- The proposed regression method has serious policy and technical flaws that the FCC should fix before adopting the Bureau method to limit HCLS and ICLS for rural carriers.
- Reliance on a waiver process provides insufficient due process for rural carriers facing severe reductions in support because there is no certainty the Bureau will address critical waivers in a timely manner.

SureWest Communications

- Given the proposal to withdraw federal high cost support in areas where there are unsupported competitors, any analysis of the overlap of competing broadband service areas must be based on detailed and reliable data.
- If the FCC elects to reduce support in areas partially overlapped by unsupported competitors, then a nine year phase-down for RoR areas is necessary to maintain stability and service of essential RoR networks during the transition period.
- In allocating costs between supported and competitive areas, the actual cost of providing service should be used, rather than a cost model.

Tanana Chiefs Conference

- The FCC should make special consideration for rural Alaska to level the playing field and reduce the likelihood of serious unintended consequences.
- The FCC should consider a specific rule that requires consultation between the Enforcement Bureau and the affected Tribal organization before any enforcement action on a telecommunications carrier serving Tribal lands.
- The 25% bidding credit in the Tribal Mobility Fund auctions may not be enough to ensure Tribal ownership in some areas of the nation.
- The FCC should allow for short-term performance waivers for providers relying on satellite back-haul. However, continued support should be contingent on meaningful Tribal consultation and provider obligations to build-out high-speed middle-mile networks where technically and economically feasible.

TCA

- The FCC should immediately adopt the RLEC Plan as proposed by the Rural Associations as the long-term method of supporting broadband service in areas served by RoR LECs.
- The FCC should abandon the use of quantile regression analysis for limiting reimbursable capital and operating expenses as this will undermine broadband deployment in areas served by RoR LECs.
- The FCC should not reduce support to RoR LECs with unsubsidized competition in less than 100% of their service area.

Washington Independent Telecom. Assn., Oregon Telecom. Assn., Idaho Telecom Alliance, Montana Telecom. Assn., and Colorado Telecom. Assn.

- The regression analyses as proposed in Appendix H are defective, and without substantial revision should not be used for any purpose;
- Caps should not be applied to investment that has already been made or where investment is being made to replace aging and outdated plant;
- The FCC should support middle mile and Internet backbone costs where those costs are an impediment to accomplishing the Commission's goals for broadband deployment, and such support should be above and beyond the current \$2.2B budget for RoR carriers;
- The request by Public Knowledge and the Benton Foundation should be denied; and
- The FCC should not engage in RoR represcription at the present time since the FCC's Report and Order creates additional substantial risk that has not yet been taken into account.

McLean & Brown is a telecommunications consulting company specializing in universal service and access reform issues. To learn more about our services and publications, please visit our web site at www.mcleanbrown.com.