

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
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 a 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

**INITIAL COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL
SERVICE-INTERCARRIER COMPENSATION TRANSFORMATION
PROCEEDING**

Charles A. Acquard, Executive Director
NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

August 24, 2011

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND EXECUTIVE SUMMARY	1
A. INTRODUCTION	1
B. THE COMMISSION MUST REJECT THE ABC PLAN.....	3
1. <i>Summary of objections to the ABC Plan</i>	4
2. <i>Legal objections to the ABC Plan</i>	8
3. <i>What is not in the ABC Plan</i>	9
C. THE COMMISSION SHOULD TAKE THE MEASURED (AND LAWFUL) APPROACH PROPOSED BY NASUCA.....	11
D. IF THE COMMISSION MUST ADOPT A “GLOBAL” PLAN, IT SHOULD ADOPT THE STATE MEMBERS PLAN, WITH MINOR CHANGES.....	13
E. THE STRUCTURE OF THE REMAINDER OF THESE COMMENTS.....	14
II. THE COMMISSION MUST REJECT THE ABC PLAN.....	15
A. THE ABC PLAN’S PURPORTED CONSUMER BENEFITS ARE ILLUSORY.....	15
B. THE ABC PLAN’S ABROGATION OF OBLIGATIONS TO SERVE EVISCELERATES THE PUBLIC INTEREST.....	26
C. THE ABC PLAN’S WHOLESALE PREEMPTION OF STATE AUTHORITY LACKS LEGAL BASIS AND SUPPORT IN POLICY.....	28
D. THE ABC PLAN BROADBAND ISSUES	35
1. <i>The ABC Plan’s Broadband “Commitment” is for an Already-Obsolete Level of Service, and contains no provision for enforcement.</i>	36
2. <i>The ABC Plan’s Proposal for an Indefeasible Fixed Level of Support Lasting Ten Years is Nothing More than a Revenue Guarantee for the Carriers that Accept It; and other issues.</i>	38
3. <i>The Proposed Model is Untested and Unreviewed.</i>	40
4. <i>Broadband Infrastructure built with Public Funds should be subject to Net Neutrality and Non-Discrimination Requirements.</i>	50

5.	<i>Providing explicit support to broadband without the findings in 47 U.S.C. § 254(c) violates the law.</i>	50
6.	<i>Other Broadband/CAF-related issues</i>	53
E.	THE ABC PLAN ICC ISSUES	54
1.	<i>The rationale for the ABC Plan’s ICC reductions is inadequate</i>	54
2.	<i>The ABC Plan’s proposed \$0.0007 uniform ICC rate is unjust, unreasonable and not in the public interest</i>	56
F.	THE ABC PLAN REVENUE RECOVERY PROVISIONS	57
1.	<i>The ABC Plan’s proposals for SLC increases must be rejected</i>	57
2.	<i>Using the SLC as a simple revenue replacement violates its original purpose and even the CALLS modification</i>	61
3.	<i>The absence of competition will provide companies with the unfettered ability to raise the SLC</i>	65
4.	<i>The focus on the SLC as a revenue recovery mechanism is economically unjustified</i>	70
5.	<i>Carriers are unlikely to flow through benefits to consumers in the form of reduced wireless rates</i>	73
6.	<i>The SLC increases violate § 254(k) of the Act</i>	76
G.	THE FEW REASONABLE ITEMS FROM THE ABC PLAN	77
III.	THE COMMISSION MUST TAKE A MEASURED APPROACH TO USE/ICC “REFORM”	77
IV.	RESPONSES TO THE PUBLIC NOTICE	79
V.	CONCLUSION	114

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
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 a 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

**INITIAL COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL
SERVICE-INTERCARRIER COMPENSATION TRANSFORMATION
PROCEEDING**

I. INTRODUCTION AND EXECUTIVE SUMMARY

A. Introduction

On August 3, 2011, the Federal Communications Commission (“FCC” or “Commission”) issued a Public Notice¹ that sought comment on how “specific proposals for reform, including a proposal by the State Members of the Federal-State Universal Service Joint Board (State Members), the ‘RLEC Plan’ put forward by the Joint Rural

¹ DA 11-1348 (rel. August 3, 2011).

Associations, and the ‘America’s Broadband Connectivity Plan’ filed by six Price Cap Companies (‘ABC Plan’) ... comport with the Commission’s articulated objectives and statutory requirements.’² The National Association of State Utility Consumer Advocates (“NASUCA”)³ submits these comments in response to the Public Notice.⁴

In these comments, NASUCA shows that the Commission must:

- Reject the ABC Plan;
- Dispense with attempts to address these complex issues in a global, hurried fashion and instead take a more measured approach; but
- If it must adopt a “global” plan, adopt the State Members Plan, with the targeted changes identified by NASUCA.

The July 29, 2011 filing of the ABC Plan was accompanied by a Joint Letter from

² DA 11-1348 at 1-2, citing Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011) (“State Member Comments”); Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011) (“RLEC Plan”); Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (“ABC Plan”). The Public Notice also cited a letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (“Joint Letter”). The Public Notice also sought “comment on specific aspects of the proposals and on additional issues that are not fully developed in the record.” DA 11-1348 at 2.

³ NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members (e.g., AARP, NCLC, TURN) also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁴ These comments benefited substantially from the contributions of consultants Susan Baldwin, David Bergmann, and Dr. Trevor Roycroft. Mr. Bergmann’s and Dr. Roycroft’s contributions were performed *pro bono*. The specific contributions of Ms. Baldwin and Dr. Roycroft are noted herein.

the ABC Plan originators and representatives of three rural carrier associations – the National Telephone Cooperative Association (“NTCA”), the Organization for the Protection and Advancement of Small Telephone Companies (“OPASTCO”), and the Western Telecommunications Alliance (“WTA”). Although the Joint Letter is not entirely clear, it appears that the rural associations have signed on to the ABC Plan – which explicitly covered only price cap carriers – but the parties have included some specific provisions that attempt to fit the rural carriers into the ABC Plan framework. Otherwise, the rural associations maintain their support for the RLEC Plan. Because the RLEC Plan was discussed at length in NASUCA’s May 23, 2011 Reply Comments,⁵ only those aspects of the rate-of-return carriers’ proposals discussed in the Joint Letter will be discussed here.

The Commission’s process by which it has sought comment on this plan invokes substantial due process issues. As discussed below, the timeframe for comments allowed in the Public Notice is unreasonably short, to the disadvantage of those consumer advocacy organizations and others who were not privy to the details of the ABC Plan until the filing of the Plan on July 29, 2011. Indeed, the ABC Plan supporters admit that they have not submitted information adequate to allow truly informed comment on the Plan.⁶

B. The Commission must reject the ABC Plan

The Public Notice gives great weight to the ABC Plan, asking for comment on some, but not all, of its components. It is unclear why the Commission did not request

⁵ NASUCA Reply Comments at 8-17, 56-63, 90-91, 103-104, 150-151, 160-162.

⁶ See ABC Plan ex parte (August 16, 2011).

comment on all aspects of the ABC Plan. If the Public Notice signals Commission acceptance of many key elements of the ABC Plan, without affording the opportunity for comment, this would not only be procedurally improper, it would be a mistake with disastrous consequences for both universal telephone service and the future of broadband deployment in the U.S. If the Commission has already accepted portions of the ABC Plan, the Public Notice would have more appropriately been titled “Telecommunications Policy: Through the Looking Glass.” Unfortunately, the world encountered by Alice upon sliding out of the rabbit hole was far more rational than the telecom policy that would result from adopting the ABC Plan. The ABC Plan will create a new set of economic arbitrage opportunities while abandoning support for basic telephone service for an untold number of customers for a period of time until stand-alone basic service is eliminated entirely.

The ABC Plan is touted as a global solution to telecom policy reform. It is premised upon a dubious economic analysis that purports to show that consumers will benefit from the Plan. NASUCA and other parties provide compelling evidence and analysis showing that the ABC Plan should be rejected in its entirety. If the FCC feels it must adopt a “global” proposal, the country – and its broadband, universal service and ICC regimes – would be far better served by the plan offered by the State Members.

1. SUMMARY OF OBJECTIONS TO THE ABC PLAN

In a nutshell, the ABC Plan is a boon for telephone companies and harmful to consumers.

- The ABC Plan is purported to be a plan to expand broadband deployment. In reality, the large incumbent local exchange companies (“ILECs”) want billion-

dollar subsidies to provide broadband at speeds so slow they are obsolete today.⁷ AT&T and Verizon have largely frozen build-out of their own broadband networks⁸ because they apparently believe they can convince the FCC to provide **public** money to pay for such deployment, to the tune of at least \$2.2 billion.⁹ Funds would be obtained by phasing out a fund that is now used to support telephone service in high cost, rural areas throughout the country, leaving no public support for phone service to the highest cost households who rely on the service now. One highly respected industry analyst estimates that between 700,000 and 1,000,000 households across the country could lose telephone service.¹⁰

- One key goal of the national broadband plan is to extend broadband service to *unserved areas*. Under the ABC Plan, the goal of voice and broadband access in many *unserved areas* would be virtually abandoned and these households and businesses would be forced to rely on satellite “broadband” for both voice and broadband that is so woefully inadequate that the even FCC would be hard pressed to argue it meets the intended objective.¹¹ Rural customers in unserved areas will not only receive a ridiculously inferior form of Internet access, they will also see support for their vitally important telephone service siphoned into the balance sheets of the ILECs.
- The ABC Plan does not contain any requirements that the broadband services provided over facilities built with public funds would be affordable or of high quality, only that such facilities would be built.¹² And the ABC Plan contains no mechanism to ensure compliance with its build-out provisions.
- The ABC Plan does not address the need for requirements that the recipients of funding take steps to foster adoption of broadband service by customers from communities that have low broadband subscription rates (e.g., the elderly, low income, people of color, non-English speaking).
- The implementation of the ABC Plan would rely upon on a highly dubious cost

⁷ ABC Plan, Attachment 1 (“ABC Framework”) at 2. The plan would require fund recipients to provide broadband at a minimum downstream bandwidth of 4 Mb/s and a minimum upstream bandwidth of 768 kb/s.

⁸ <http://www.dslreports.com/shownews/114279> , <http://www.engadget.com/2010/03/27/verizon-shelves-plans-for-future-fios-rollouts-relocations-to-m/>.

⁹ ABC Framework at 5.

¹⁰ <http://www.fastnetnews.com/dslprime/42-d/4552-1000000-homes-let-them-eat-satellite>.

¹¹ Satellite broadband is insufficient even for basic voice over Internet protocol (“VOIP”) and more insufficient for real-time video applications. Such real-time video capability is essential for many Americans, including hearing-impaired citizens who rely on communication by sign language.

¹² ABC Framework at 7.

model that few outside of these companies (and possibly the FCC staff) have seen.¹³ Parties are being asked to comment upon vital elements of a plan without the benefit of being able to fully examine the model and its underlying assumptions, structure, algorithms and inputs. This is procedurally and legally improper and places parties other than the large ILECs at a significant disadvantage.

- Because the model relied upon by the ABC Plan to determine CAF support reverts to a cost benchmark approach, which does not consider revenues from the broadband service, or any service provided over the broadband pipe, the ABC Plan will result in support going to many areas that do not require support.
- The ABC Plan would allow ILECs to further benefit by ratcheting up unavoidable surcharges on telephone bills, ultimately by as much as \$3.75 per month for price-cap ILECs and \$4.50 a month for rate-of-return (“RoR”) ILECs, depending upon the company.¹⁴ The charges that long distance companies owned by AT&T and Verizon pay to local phone companies for completing calls would decrease to levels that **do not even cover the direct cost of the access service (not to mention contributing to joint and common costs)**, and the difference would be made up through subscriber line charge (“SLC”) increases, which customers could not avoid. This would create an improper cross-subsidy in violation of § 254(k) of the Act, and would harm universal service by making telephone service less affordable, contrary to § 254(b).
- In addition to their request for billions of dollars in subsidy funding, the ILECs want the FCC to remove all obligations that phone companies have as Carriers of Last Resort (“COLRs”), i.e., “to provide telephone service, upon request, to all residential and business customers within a designated geographic area.”¹⁵
- The ILECs want the FCC to declare that states cannot require telephone companies to meet COLR public interest obligations unless the state agrees to provide additional funds to “meet the obligation” – i.e., states would pay to build, maintain and operate these phone lines, and the phone company would pocket the cash for providing service. And, the ILEC *would then have to agree to accept the obligations in exchange for funding.*¹⁶ If the ILEC does not agree, there would be no COLR obligation.
- The authors of the ABC Plan also propose that the FCC eliminate all of the obligations associated with being an Eligible Telecommunications Carrier

¹³ ABC Plan, Attachment 2 (“CQBAT Description”).

¹⁴ ABC Framework at 10-12; Joint Letter at 3, n.1..

¹⁵ See for example, California, CPUC G.O. 153.2; ABC Framework at 13.

¹⁶ ABC Framework at 13.

(“ETC”).¹⁷ ETC obligations include, among other things, the requirement to provide functional service during emergencies, and satisfying consumer protection and service quality standards.¹⁸ The FCC has allowed states to take responsibility for enforcing these obligations. California, along with other states, has used this power to enact consumer protection requirements for phone companies and cell phone service providers and has considered wireless service quality requirements. Under the ABC Plan, California and all other states would be stripped of this power.

- Taken together, the elimination of COLR and ETC requirements would mean that **under the ABC Plan, all public service obligations associated with being a telephone company would vanish for the telephone companies serving the vast majority of Americans.** Astoundingly, the Public Notice fails to ask for comment on this issue. The vast preemptive effect advocated in the ABC Plan is in direct contravention of a White House memorandum directing federal agencies to avoid preemptive rules except when explicitly intended by Congress.¹⁹ The preemptive components of the ABC Plan are also in direct contravention of the Communications Act of 1934 and the Telecommunications Act of 1996, which remains the law and provides for a substantial state role in the governance of telephone services.²⁰
- The authors of the ABC Plan want the FCC to declare that VoIP services and broadband services are interstate services, and call for the FCC to “preempt any state regulation of those services that is inconsistent with the federal policy of nonregulation.”²¹ Many different services are provided on telecom networks. As the technology evolves, IP transmission is being increasingly used to provide traditional telephone service – from the customer’s perspective, the service has not changed, just the technical means of transmission. For instance, a customer may be talking on a phone where part of the call is carried on the traditional network, but the call is also carried on a network that uses IP. Under this plan, telecom companies could argue that all phone service would be deregulated. If adopted, the proposal could eliminate any ability of states to regulate any telecommunication service.

¹⁷ Id.

¹⁸ <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=afde418b70dfb6b359b504cbfd4e32cf&rgn=div6&view=text&node=47:3.0.1.1.7.3&idno=47>.

¹⁹ See <http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-preemption>.

²⁰ See, e.g., 47 U.S.C. §§ 151, 214(e), 254(b), (f), (i). Section 254(i) succinctly states “The Commission *and the States* should ensure that universal service is available at rates that are just, reasonable, and affordable.” (Emphasis added.)

²¹ ABC Framework at 13.

- The ABC Plan is devoid of net neutrality and non-discriminatory access requirements, despite the fact that public monies would be used to construct broadband facilities.

2. LEGAL OBJECTIONS TO THE ABC PLAN

As explained previously in NASUCA's (and others') initial and reply comments, numerous aspects of the USF and ICC changes contained in the ABC Plan are unlawful. In its willingness to even consider the ABC Plan, the FCC seems to be proceeding as if the Telecommunications Act of 1996 ("96 Act") has been repealed. It has not. The following portions of the ABC Plan violate the Act and would be subject to likely successful legal challenges:

- The ABC Plan is in violation of 47 U.S.C. § 254(c) and (e) by spending universal service dollars on broadband services that are not included within the definition of universal service.
- The ABC Plan is in violation of 47 U.S.C. § 214(c) because it fails to result in the reclassification of Broadband Internet service as a telecommunications service under Title II of the Act.
- The ABC Plan is in violation of 47 U.S.C. § 254(e) by allowing parties other than ETCs to receive USF funding.
- The ABC Plan is in violation of 47 U.S.C. § 214 because it would allow carriers to abandon services and service territories without regulatory approval and without assurances that a qualified ETC will step in place to exercise the ETC obligations that ensure continued availability of universal service.
- The ABC Plan is in violation of 47 U.S.C. § 254(k) because it requires basic service to bear more than a reasonable share of the joint and common costs of facilities.
- The ABC Plan is in violation of 47 U.S.C. § 254 because it would abandon any requirement that ETCs continue to provide voice grade telecommunications services as a standalone product and would subject millions of existing voice customers to subscribe to a bundled broadband service that many millions of existing customers do not need and do not want.

- The ABC Plan is in violation of 47 U.S.C. § 254(e) because it includes no mechanisms to monitor and insure that universal service would be available at fair, reasonable, affordable and comparable rates.
- The ABC Plan is in violation of 47 U.S.C. § 251 because broadband service supported by universal service funds would not be subject to the interconnection obligations imposed on carriers by the Act.
- The ABC Plan is in violation of 47 U.S.C. § 152(b) by using the federal USF to compensate for intrastate access charge reductions.

By far the longest section of the ABC Plan is the Attachment 5 of the Framework that requires 68 pages to concoct the “legal justification” for the ABC proposals. It would appear that the ABC authors gleaned every single reference they could pull out of context from the heavy FCC universal service archives to provide a legal basis for their proposals that would preempt state regulation of intrastate access charges and allow use of universal service funds for broadband and wireless deployment without changing the definition of supported services as required by the Act. NASUCA need not take that long to provide its own legal review, in Sections II.C. and II.D.5., below.

3. WHAT IS NOT IN THE ABC PLAN

Disturbingly, the ABC Plan and the Public Notice make no mention of two key aspects of telecommunications reform that are absolutely central to any efforts to revamp universal service support: separations reform²² and requiring carriers to report the data that is necessary to permit the FCC, states and independent parties to monitor aspects of the telecom marketplace such as broadband deployment, revenues, earnings, accurate line counts by service and investment (including, but not limited to, the ARMIS reporting

²² NASUCA Comments (April 18, 2011) at 3, 8-9.

data the FCC has forborne from requiring).²³ Separations reform is necessary to determine the costs that need to be supported, for only then will the FCC know how much support is needed for local service and how much for broadband. Moreover, absent separations reform it will be impossible to develop a reasonable access charge structure. Without separations reform and reliable reported data, deploying a massively revamped USF and ICC regime is equivalent to piloting a transcontinental jet liner while wearing a blindfold.

If the FCC proceeds to adopt all or even part of the ABC Plan, it would achieve the dubious outcome of: failing to achieve the presumed objective of providing broadband service to unserved rural areas; while simultaneously shifting billions of dollars into the coffers of the largest telephone companies; and, funding it all through increased rates and charges to the most basic telecommunications service that imposes the least cost upon the broadband network that the ABC Plan purports to support.

The FCC clearly seeks an all-encompassing solution to long-standing problems that have challenged regulators for many years: timely resolution of intercarrier compensation; raising the global broadband position of the United States; and reform of the high-cost universal service program. The ABC Plan, at first blush, might appear to the FCC to solve all these problems. However, the ABC Plan only makes matters worse. To the extent that it addresses the Commission's goals, it does so in a way that is contrary to the public interest and harmful to consumers. The FCC's eagerness to declare victory might overshadow its rational assessment of a flawed proposal that is skewed toward industry interests. Hastily-made policy, in this case, would reflect poor public policy.

²³ Id. at 85-86.

The many flaws in the ABC Plan are further discussed in Section II., below. But it should be pointed out up-front that, despite the ABC Plan's supporters' continual harping on the "difficult compromises" involved in the plan,²⁴ those compromises are among only large and small ILECs and their affiliates. Representatives of other segments of the industry, regulators, and, importantly, advocates for consumers, were not and are not part of the compromise. Since consumer advocates represent Americans as their exclusive constituents, the Commission should pay special attention to those voices when evaluating whether the ABC Plan actually provides any "consumer benefits."

Further, the Commission must not cede its regulatory authority to this industry segment or fall victim to their tactic of warning that "material changes" to the plan will result in individual members' withdrawal of support for the plan. The Commission must exercise its independent judgment as to the merits (and demerits) of individual elements of the plan. If this segment of the industry insists on its "take it or leave it" approach, then the NASUCA recommendation is that the FCC reject the ABC Plan in its entirety.

C. The Commission should take the measured (and lawful) approach proposed by NASUCA.

As discussed more fully in Section III., below, one of the central flaws in the Commission's approach, as well as the ABC Plan, is its confusion and conflation of costs and revenues from the interstate and intrastate jurisdictions. The Commission's approach to jurisdictional separations over the last decade or so has been one of avoidance. The Commission must translate its recognition of the changed (and changing) use of the telecommunications network into recognition of the cost and revenue impacts of those

²⁴ See, e.g., Letter (July 29, 2011) at 1; letter to Congress (August 11, 2011) at 1.

changes.²⁵ Only if the separations process is brought up-to-date (and allowed to recognize the continuing changes) can the Commission determine what is the appropriate and lawful level of intercarrier compensation (“ICC”); only if the proper responsibility of carriers to contribute to the cost of other carriers’ networks is identified can the responsibility of the federal universal service fund (“USF”) to ensure that rates and services in high-cost and rural areas are reasonably comparable to those in urban areas be implemented.

Another step that the Commission and the ABC Plan gloss over is the required finding that broadband is a service that can be supported under 47 U.S.C. § 254. This subject was discussed at length in NASUCA’s initial comments.²⁶

Finally, the ABC Plan as well as the Commission’s CAF NPRM completely ignores the basic issue as to who pays for the costs, especially the broadband deployment costs, associated with the ABC Plan. The most current contribution percentage in support of Federal universal service is 14.4%,²⁷ a number that has been characterized as unsustainable over the long run.²⁸ The diversion of current universal service funding in the support of a future CAF requires that the Commission spread the cost of contributing to the USF to all of the users of the broadband network of the future, regardless of the regulatory classification of the capital investment. Consumers should be fully aware of

²⁵ The lack of recognition of separations is, in fact, one major cause of the Commission’s – and the ABC Plan’s – preemptive approach. The “Legal Authority” white paper submitted with the Plan as Attachment 5 adds little to the arguments submitted primarily by AT&T, and do not refute the objections to preemption raised by NASUCA and by NARUC.

²⁶ NASUCA Initial Comments at 27-35. Again, the ABC Plan “Legal Authority” white paper does not adequately address this necessary step.

²⁷ DA 11-1051 (rel. June 14, 2011).

²⁸ [State Members Comments at 117-118.](#)

not only the amount of the bill for the ABC Plan, but also who will be asked to pay for it.

NASUCA submits that a reasonable approach to these myriad issues has been presented to the Commission – **in NASUCA’s initial and reply comments**. General USF principles were discussed at pp. 8-10 and 22-26 of the initial comments. Specific USF reforms were discussed at pp. 41-47 of the initial comments and pp. 32-64 of NASUCA’s reply comments. The formation of a CAF was discussed at pp. 47-85 of the initial and pp. 64-118 of the reply comments. The necessary principles and processes for ICC were described at pp. 10-11, 87-93, and 96-103 of the initial comments and pp. 118-152 of the reply comments. And the necessary components of any lost revenue recovery mechanism were discussed at pp. 100-116 of the initial comments and pp. 152-164 of the reply comments. These comments provide the Commission with rational, **lawful** solutions to the issues that do not bow to the needs of any industry group.

D. If the Commission must adopt a “global” plan, it should adopt the State Members Plan, with minor changes.

Like the ABC Plan, the State Members Plan is presented as a comprehensive solution to ICC/USF issues. Unlike the ABC Plan, however, the State Members Plan is not presented as a delicate compromise among “competing” interests that is subject to withdrawal if the Commission makes changes to it.²⁹

If the Commission is determined to adopt a global plan, the State Members Plan is the best that has been presented in this proceeding. It hews most closely to the law, and best protects the **public** interest, rather than the interests of one segment or another of the telecommunications industry.

²⁹ See ABC Plan Letter at 1.

The essential ingredients of the State Member's Plan are as follows:

- Three separate funds: Mobility, Wireline Broadband and POLR
- \$4.2 B High-Cost/POLR, \$.5 B Mobility, \$.5 B Wireline Broadband
- Revenue Contribution Base—total revenues (less video)
- Broadband supported service = 4 Mbps/768 Kbps
- No CAF support where there is an unsupported competitor
- Donut & hole model
- POLR support based on total company revenues and costs
- ROR = 8.5%
- No federal preemption
- Carrier-specific access charges; \$0.0007 not compensatory
- Reform ICC mechanism with incentives to states
- No increases in SLC caps
- Continued COLR/POLR obligations

Nonetheless, there were certain aspects of the State Members' Plan to which NASUCA proposed changes – or about which NASUCA raised questions – that would need to be addressed to enhance the State Members Plan's consistency with the public interest. Those aspects were discussed in NASUCA's reply comments.³⁰ It seems possible that NASUCA's concerns could be easily addressed.

E. The structure of the remainder of these comments

As discussed above, these comments focus first (in Section II.) on the many

³⁰ See NASUCA Reply Comments at 4-7, 47-51, 102-103, 116-117, 147-149, 162-163.

unreasonable – and unlawful – aspects of the ABC Plan, which disturbingly appears to be the Commission’s primary focus. Then, in Section III., NASUCA will highlight first, the ways in which the Commission’s **process** so far has prejudiced parties in this vital proceeding,³¹ and second, NASUCA’s proposals for a lawful and reasonable policy result on the issues. Next, in Section IV., NASUCA’s support for the bulk of the State Members Plan will be detailed, along with those few areas that need to be altered.

Finally, in Section V., these comments respond to some of the varied requests set forth in the Public Notice. Rather than attempt to characterize the requests, each paragraph of the Public Notice is quoted in full (in italics), with a response to that paragraph following the quotation.

II. THE COMMISSION MUST REJECT THE ABC PLAN.

The ABC Plan favors the interests of the large ILECs that designed it. The interests of consumers and other segments of the telecommunications industry are largely ignored. Here are some of the reasons why the ABC Plan must be rejected.

A. The ABC Plan’s Purported Consumer Benefits are Illusory.³²

The ABC Plan claims to find support in an analysis by Professor Jerry Hausman, who purports to find numerous and far-reaching consumer benefits from the implementation of the Plan.³³ As shown here, however, those purported benefits are illusory, unlikely and/or vastly outweighed by the **costs** to consumers resulting from the

³¹ This includes discussing the many aspects of the ABC Plan as to which the Public Notice does **not** seek comment.

³² This section of these comments is based on the work of Dr. Roycroft.

³³ ABC Plan, Attachment 4 (“Hausman Consumer Benefits”).

ABC Plan.

Professor Hausman’s approach is based on an analysis of “consumer surplus.” Before turning to Hausman’s treatment of consumer benefits through the application of consumer surplus tools, it is notable that the premise of his analysis – the existence of a lowered ICC rate level – is not based on economic theory: Hausman states, “The Commission should adopt a comprehensive intercarrier compensation policy for a *low, default intercarrier compensation rate*, similar to its decisions to exempt the wireless industry from a substantial portion of the legacy intercarrier compensation regime.”³⁴ Hausman goes on to argue that such an approach would “increase economic efficiency and also consumer welfare.”³⁵ Hausman, does not, however, and cannot support this claim.

Hausman expresses a desire for “low” ICC rates. If competition functions properly, market prices will reflect costs, including opportunity costs, which may be low, high, or somewhere in between. Alternatively, if market forces are not sufficient to ensure that opportunity costs are properly reflected in prices, then economic regulation can be used to set prices. Economic regulation has historically relied on a cost-basis for rates. With regard to intercarrier compensation, there is every reason to believe that different networks, especially last mile networks, will have varying levels of costs.

LECs incur direct costs when terminating interexchange carrier (“IXC”) traffic, and also incur joint and common costs (e.g., local loops) which provide a component of the access input used by IXCs. If a long-distance voice service provider or wireless

³⁴ Id. at. 8.

³⁵ Id.

carrier wants to terminate its voice traffic on the LEC's network, the LEC has economic justification for charging terminating access rates that recognize both direct and joint and common costs. Given that the LEC (especially if it is an ILEC) is likely to have market power, it is reasonable for a regulator to establish a cost-based rate for traffic termination, and to require that the IXC or wireless carrier contribute to the recovery of joint and common costs. Because the LEC incurs costs that are avoidable for the IXC or wireless carrier, the LEC is being economically reasonable to request compensation, and the IXC or wireless carrier will be economically reasonable if it pays the LEC for terminating its traffic (unless of course, the IXC or wireless carrier can self-provide a connection to the end-user more cheaply than the charges proposed by the LEC, or, alternatively, can convince a regulator that it should get something for nothing).

Hausman makes no mention of whether his "low" rate is or should be cost-based. While it is undoubtedly true that any business would like to see its input prices set at "low" levels, if not at zero, market economies do not necessarily deliver such an outcome. If a rate is set below the economic cost of the service provided, then an economic distortion is introduced and resources will be inappropriately allocated. Market participants will receive incorrect price signals, which can distort investment decisions. For example, if an IXC faces an uneconomically "low" rate for switched traffic termination, the IXC will choose switched termination, even if use of a dedicated circuit would be the more efficient alternative.

The "near zero" rates advocated by Hausman will provide incentives for market participants to take actions which may not be desirable. Requiring a cost-based level of terminating compensation will deter other carriers from "dumping" potentially large

amounts of traffic onto ILEC networks. The increase of traffic on the receiving/terminating carrier's network generated by the uneconomically low rate advocated by Professor Hausman could also cause congestion and negatively impact the quality of the services provided by the terminating carrier to its customers.

Carriers that see an opportunity for a "free lunch" with cheap switched termination will take it, leading to potentially inefficient routing and arbitrage schemes. As Verizon has told the FCC "there will always be ways to abuse a free service..."³⁶ The same principle applies to Hausman's non-cost-based "near free" ICC rate. Distorted investments and dynamic inefficiency are the outcome of Hausman's (and the ABC Plan's) policy – over time, investments will be made that are not based on either accurate market price signals or cost-based regulated rates.

If "low" rates are good, would it not be even better to have "zero" rates such as those associated with "bill-and-keep"? Bill-and-keep seems like a simple solution, and it is, as long as carriers have similar cost structures and exchange similar traffic volumes. Under a bill-and-keep arrangement, IXCs that have no end user facilities get the best deal, as they are freed from contributing to last mile facilities on either end of their customers call. Similarly, wireless carriers also benefit as they can avoid any contribution to the costs of terminating traffic on wireline networks. Wireless carriers do not provide ubiquitous service, especially in high cost areas, but wireless callers receive the benefits of being able to reach wireline subscribers served by ILECs in high-cost areas. As the Commission is well aware, even with Internet peering arrangements, traffic imbalances result in cost imbalances, with the outcome either being paid peering, or

³⁶ Verizon Comments in WC 10-90 (April 18, 2011) at 13-14.

severance of the peering relationship.³⁷ Cost-based interconnection rates that address the joint and common cost issue provide a solution superior to the bill-and-keep approach, or to the near bill-and-keep approach advocated by Hausman.

In summary, the starting point of Professor Hausman’s analysis is to advance a non-economic theory, that gains can be achieved by setting a “low” intercarrier compensation rate. Of course setting a “low” and uneconomic rate will generate winners – some market participants will enjoy the “low” and non-economic rates. It also generates losers – this non-cost-based scheme is sustainable only by transferring lost revenues to consumer in the form of unavoidable flat line charges on their basic bills. However, the fundamentals of Hausman’s logic apply equally to any other service that utilizes the ILEC infrastructure – all network users would like to have “low” rates.

Hausman’s “low” rate recommendation violates perhaps the most fundamental economic observation – there is no such thing as a free lunch. Everyone would all like to have a free lunch, but someone has to pay. As will be discussed further below, that “someone” in the ABC Plan is the basic voice service subscriber, who will face increased SLC rates, and the potential to compensate ILECs for lost revenue through a new universal service fund component.³⁸

Consumer Surplus

Hausman provides a discussion of the impact of introducing low “near zero”

³⁷ See, for example, “Peering Dispute Between Cogent, Sprint,” Data Center Knowledge, October 31st, 2008 <http://www.datacenterknowledge.com/archives/2008/10/31/peering-dispute-between-cogent-sprint/> .

See also: “Cogent Unplugs Telia in Peering Dispute,” Data Center Knowledge, March 16th, 2008, <http://www.datacenterknowledge.com/archives/2008/03/16/cogent-unplugs-telia-in-peering-dispute/> ; see also: “ISP spat blacks out Net connections,” InfoWorld, October 6, 2005, <http://www.infoworld.com/t/networking/isp-spat-blacks-out-net-connections-492> .

³⁸ Framework at 12.

intercarrier compensation rates using a “consumer surplus” approach.³⁹ Consumer surplus attempts to measure the difference between what consumers are **willing** to pay for a product and what they must **actually** pay for the product, resulting in a dollar value being attributed to the consumer’s well-being from making the purchase. For example, if a consumer is willing to pay \$100 per month for a wireless plan that delivers a high-end handset and unlimited voice, text, and web usage, but finds that the market price is \$80 per month, this consumer would experience a “surplus” of \$20 per month, i.e., the difference between what they would have paid and what they had to pay.

Consumer surplus has a long and at times controversial history in the economic literature.⁴⁰ For example, determining just what a consumer is willing to pay is a challenging process. Estimation of consumer surplus is heavily dependent on accurate measurement of demand elasticities, which leads to further potential for controversy. As with any economic estimation technique, the strength of the consumer surplus analysis will depend on the assumptions utilized by the analyst, and the quality of the data available. In addition, consumer surplus measures may ignore costs and benefits that are “external” to the transaction that is being directly analyzed, thus leaving out important effects of market or policy considerations. The purpose of this comment, however, is not to offer a critique of the consumer surplus theory, but to consider Professor Hausman’s use of the approach.

Evaluating Hausman’s analysis is made more challenging by the fact that he does

³⁹ Hausman Consumer Benefits at 11.

⁴⁰ See, for example, Dooley, Peter C., “Consumer’s Surplus, Marshall and his Critics,” *Canadian Journal of Economics*, Vol. 16, No. 1, September 1983. See also, Willig, Robert, “Consumer Surplus Without Apology,” *American Economic Review*, Vol. 66, No. 4, Sep., 1976, and the exchange between George W. McKenzie and Robert Willig in the June 1979 issue (Vol. 69, No. 3) of the *American Economic Review*.

not supply workpapers or other supporting documentation. What is clear, however, is that Hausman first assumes that when intercarrier compensation rates are set to their “near zero” level, 100% of the rate reduction will be passed on to either wireless customers or wireline long-distance customers. Hausman states that, even for a monopolist, a 50% pass-through of reduced costs can be expected.⁴¹

Contrary to Hausman’s assumption, it is doubtful that 100% pass through will be achieved, given the increasingly concentrated wireless industry, with the impending AT&T/T-Mobile merger poised to generate a market structure closer to duopoly than to atomistic competition. If something less than 100% of ICC reductions are passed through, then consumer surplus will be reduced by a corresponding amount.

On the other hand, Hausman’s consumer surplus results are also based on the assumption that the ILECs that reduce their ICC rates will not attempt to increase either the SLC or basic rates to recover the lost ICC revenues. But SLC increases are a basic premise of the entire ABC Plan,⁴² and basic service rate increases seem to have Commission support.⁴³

In order to evaluate the change in consumer surplus resulting from implementation of the “near zero” ICC rate advocated by Hausman, the impact on three sets of consumers must be evaluated: (1) consumers in the wireless market, (2) consumers in the wireline long-distance market, and (3) consumers who pay the SLC due to their purchase of ILEC basic service. Hausman calculates consumer surplus impacts,

⁴¹ Hausman Consumer Benefits at 8.

⁴² Framework at 11-12.

⁴³ DA 11-1134 at 7.

however, in only two of the three relevant markets – the wireless retail market and the wireline retail long distance market. To conduct his analysis in the wireless market, he applies elasticity estimates to wireless average revenue per unit (“ARPU”) and average usage data to generate an estimate of consumer surplus resulting from the “near zero” ICC rate for wireless customers – \$1.05 per customer per month or \$12.60 per year.⁴⁴ (It is important to keep in mind Hausman’s level of precision: The alleged increase in consumer surplus resulting from the elimination of intercarrier compensation is calculated down to the penny per month.⁴⁵)

A similar approach is provided for wireline long-distance customers who, according to Hausman, will experience a consumer surplus increase of exactly \$3.64 per month, or \$43.71 per year.⁴⁶ Understanding the scope of this estimate is difficult due to the lack of information provided to support the calculation. For example, with regard to the long distance calculation, Hausman indicates that he relies on minutes per month based on data from the 2006/2007 “Statistics of Common Carriers.”⁴⁷ Given that the source cited does not report intraLATA access billing, it is not clear whether his estimate includes all access minutes that will be affected by the ABC Plan.

One difficulty with consumer surplus calculations in general, and Professor Hausman’s estimate in particular, is the lack of any distributional analysis. For example,

⁴⁴ Hausman Consumer Benefits at 12.

⁴⁵ Given the methodology that Professor Hausman applies, it seems doubtful that a “down to the penny” figure can reasonably be supported. For example, Hausman relies on high-level estimates of the per-user ICC payments for the wireless industry based on information obtained from unnamed industry representatives. *Id.* at 11. The precision with which Hausman reports results for wireless and wireline long distance retail markets is entirely missing for those consumers who pay the SLC.

⁴⁶ *Id.* at 13.

⁴⁷ *Id.*

both residential and business customers could experience toll rate reductions if access charge reductions were passed through. However, toll use by residential and business customers, or even within the respective customer classes, may vary significantly.

Certainly, high-volume toll users stand to gain much more than low-volume toll users.

While Hausman calculates the consumer surplus gains that might be forthcoming as a result of the near-zeroing-out of access charges, he offers no calculation of the loss in consumer surplus that will result from increases in the SLC (or the new “Transitional Access Replacement Mechanism”)⁴⁸ associated with lost ICC revenue recovery, which are contemplated under the ABC Plan. Hausman states in a footnote that the welfare gains experienced by wireline consumers “would be reduced to the extent wireline providers increase end-user prices to make up for lost intercarrier revenue,”⁴⁹ but he does not estimate what decrease in consumer surplus this might generate. Unlike the “down to the penny” estimates that are provided for the alleged consumer surplus gains, there is no estimate provided for the loss of consumer surplus that will result from increased SLC rates. This omission results in an unbalanced presentation. For example, in a given month, some landline customers use no long distance, others use minimal long distance and many more have no selected long distance provider. That large group of customers would clearly incur only consumer losses from a plan that raises the SLC in exchange for lower ICC rates.

Professor Hausman indicates that he believes that “in at least a substantial portion of the country, competitive pressures would likely constrain many firms from increasing

⁴⁸ Framework at 12.

⁴⁹ Hausman Consumer Benefits at 13, footnote 25.

end-user rates by amounts equal to the lost intercarrier compensation revenue.”⁵⁰ It is not clear how Professor Hausman has arrived at this conclusion, especially in light of the fact that ILECs have demonstrated a willingness to raise basic local rates when given the opportunity, even in supposedly competitive markets.

For example, following the lifting of basic service rate caps in California, AT&T and Verizon have increased basic rates each year. AT&T’s basic rate in California has increased from \$10.69 per month to \$19.95 per month during a five-year period, with AT&T most recently imposing basic rate increases for flat-rate service ranging from 14.9% to 21.3% per month.⁵¹

In Ohio, AT&T Ohio increased basic rates by \$1.25 per month in January of 2011.⁵² Cincinnati Bell increased basic rates by \$1.25, also in January 2011.⁵³ And Verizon New Jersey has increased basic rates by \$7.00 per month between 2008 and 2011.

Furthermore, the ILECs that are sponsoring the ABC Plan are asking for the ability to raise the SLC by as much as \$3.75 per month by 2016,⁵⁴ and the RoR carriers want increases up to \$4.50,⁵⁵ which indicates that the ABC Plan proponents maintain

⁵⁰ Hausman Consumer Benefits at 13, footnote 25.

⁵¹ See, AT&T Advice Letter 38685, <http://cpr.bellsouth.com/pdf/ca/filings/appr/CA-10-0094.pdf>; See also: “California Public Utilities Commission: Gaps Emerge in Telephone Consumer Protections,” California Senate Office of Oversight and Outcomes, John Adkisson, John Hill, Dorothy Korber, Nancy Vogel, a report prepared for the Rules Committee of the California State Senate (July 16, 2010).

⁵² See tariff filing materials associated with PUCO Tariff Case 90-5032-TP-TRF.

⁵³ See tariff filing materials associated with PUCO Tariff Case 90-5013-TP-TRF.

⁵⁴ The Commission should take notice that SLC rates are almost never advertised by carriers, allowing them to deceptively market one rate and charge a higher rate. Increasing SLC charges will only exacerbate the effect of this unfair practice.

⁵⁵ Joint Letter at 3, footnote 1.

some degree of optimism regarding their ability to successfully impose these rate increases.⁵⁶ The ABC Plan also cites to the possibility that rate increases will be constrained by “competition,” but the ABC Plan proponents are nonetheless willing to take their chances with rate increases in light of the alleged “competition.” Thus as a result of Professor Hausman’s failure to estimate the impact of the increase in the SLC charges that are inherent in the ABC Plan, his statements regarding consumer welfare gains from the ABC Plan are, at best, incomplete and at worst, directly contrary to the actual likely results of the Plan.

Professor Hausman also mentions that he anticipates that the dynamic efficiency gains that will result from his proposed “low” ICC rate will exceed the static efficiency gains that he calculates using the consumer surplus approach.⁵⁷ However, as discussed above, there is another dynamic that Professor Hausman ignores, and the outcome of the competing dynamic is not likely to generate benefits. Non-cost-based ICC rates will generate economic distortions. Investment incentives will be influenced by unreasonably “low” ICC rates, with the availability of near-zero rates leading to the potential for inefficient call routing and inefficient investment.

In summary, Professor Hausman begins his analysis by abandoning fundamental economic principles. Rather than advocating for cost-based ICC rates, Hausman favors “low” rates. This approach to economics overlooks the long and rich tradition in the economic literature of recognizing costs, either through the operation of market forces, or where market forces fail, the application of economic regulation with the objective of

⁵⁶ Framework at 12.

⁵⁷ ABC Plan, Attachment 4, pp. 13-14. Hausman describes the differences between dynamic and static efficiency. Hausman Consumer Benefits at 3-4.

establishing cost-based rates. Professor Hausman’s consumer surplus analysis is not well documented, and ignores the decrease in consumer surplus that will be experienced by those who pay the SLC. The alleged “consumer benefits” of the ABC Plan are not reasonably supported.

B. The ABC Plan’s Abrogation of Obligations to Serve Eviscerates the Public Interest.

This may be the true Trojan Horse of the ABC Plan: The idea that obligations to serve are eliminated for carriers that do not receive support means that for each carrier it will be an individual economic (business-case) decision whether to accept support or to escape the obligations. And that decision will be enabled on a market-by-market basis, by some of the largest corporations in the Nation.

Under the ABC Plan, the FCC would eliminate “legacy” ETC regulations and requirements imposed ILECs and competitors with ETC designation when support from legacy universal service programs was eliminated. This would occur no later than July 1, 2016.⁵⁸ ETC obligations would continue to apply only in geographic areas that receive federal high cost support. ETC obligations include (among other items) the requirement to provide functional service during emergencies, and satisfying consumer protection and service quality standards.⁵⁹ The FCC has allowed states to take responsibility for enforcing these obligations. States such as California, the largest market in the country, have used this authority to enact consumer protection requirements for phone companies

⁵⁸ Framework at 13.

⁵⁹ <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=afde418b70dfb6b359b504cbfd4e32cf&rgn=div6&view=text&node=47:3.0.1.1.7.3&idno=47>.

and cell phone service providers.⁶⁰

The ABC Plan also calls for the FCC to preempt any state that maintains obligations to serve, including COLR obligations.⁶¹ The only conditions under which COLR obligations could survive would be in situations where *a state agrees to provide additional funds to “meet the obligation” – i.e., states would pay to build, maintain and operate such lines, and the phone company would pocket the cash for providing service.* And, the ILEC must *agree to accept the obligations in exchange for funding.*⁶² If the ILEC does not agree, the obligation cannot be imposed

One result of the ABC Plan is to funnel almost half of current telephone high cost support, currently provided to numerous telephone companies, including rate-of-return carriers, to the large price-cap regulated carriers. The price-cap regulated ILECs are dominated in market size by AT&T and Verizon followed by CenturyLink and Windstream. Together, the ABC Plan proponents provide essential broadband, mobility and telecommunications services to the overwhelming majority of Americans today. Taken together, the elimination of COLR and ETC requirements would mean that **under the ABC Plan, all public service obligations associated with being a telephone company would vanish for the telephone companies serving tens of millions of customers.** Such a sweeping change is far too fundamental to be decided in this Rulemaking.

The ABC Plan proponents are among those that argue, albeit incorrectly, that the

⁶⁰ See for example, California, CPUC G.O. 153.2; ABC Plan, Attachment 1, p. 13.

⁶¹ Framework at 13.

⁶² Id.

Commission could not establish the rules contained in the Open Internet Order⁶³ absent specific contemporaneous Congressional direction. The abrogation of COLR and ETC requirements is a substantially greater deviation from prior policy, and cannot and should not be accomplished without a command from Congress.

The ABC Plan is a one-way street: the large ILECs receive billions of dollars in public funds with no provisions to hold them accountable. And the Joint Letter puts the RoR ILECs firmly in that flow of traffic. There are no provisions in the Plan to address situations where the recipient fails to meet the five-year build-out requirement.⁶⁴ There are no provisions in the Plan to ensure net neutrality and non-discriminatory access, despite the fact that public funds would be used to construct the facilities. There are no provisions in the Plan to ensure that the facilities built with public monies would be affordable or of high quality. This is unacceptable. Contrary to the mythology being propagated by the ILECs, they received their highly desirable market dominance in return for fulfilling public interest obligations. Competition in the local telephone service markets is shrinking, not growing, particularly in high-cost areas. The FCC should not rubber-stamp a plan that would obliterate public interest obligations, and lacks the authority to do so, as discussed in the next section.

C. The ABC Plan's Wholesale Preemption of State Authority Lacks Legal Basis and Support in Policy.

On May 20, 2009, the President issued a memorandum setting the

⁶³ *In the Matter of Preserving the Open Internet*, GN Docket No. 09-191; *Broadband Industry Practices*, WC Docket No. 07-52, FCC No. 10-201 (rel. December 23 16, 2010) (“*Open Internet Order*”).

⁶⁴ Note that there are also no provisions for a recipient to withdraw its acceptance.

administration's policy regarding preemption by federal agencies.⁶⁵ The ABC Plan represents unduly broad and wanton preemption that is highly inconsistent with the policy announced in the White House memorandum. Until Congress enacts legislation that authorizes the Commission to abrogate the long-standing role of the states in the regulation of telecommunications, the Commission is not so authorized.

Adoption of the ABC Plan would likely lead to more years of litigation, given its radical departure from the goals of the 96 Act and the existing delegation of power to the states made by Congress in the 96 Act. Even in the absence of the 96 Act, the states have inherent authority to regulate intrastate communications and that authority is abrogated by potentially unlawful preemptive provisions in the ABC Plan. Regardless of legal considerations, it is poor public policy to preempt the state entities who are expert and knowledgeable with respect to the rates, degree and quality of broadband deployment, financial condition of carriers, and other universal service needs extant in each state.

The ABC Plan claims support in an Appendix setting forth legal analysis.⁶⁶ But the legal analysis claiming that the Commission has the authority to set reciprocal compensation rates that state commissions currently set is flawed, unconvincing and contrary to the legal precedent. The Commission also lacks the statutory authority to “unify” intrastate access charges with interstate access charges or set a uniform rate by reciprocal compensation. The ABC Plan posits that the Commission can bring all telecommunications traffic (intrastate, interstate, reciprocal compensation and wireless) within the reciprocal compensation framework of § 251(b)(5) and the Commission's rule

⁶⁵ See, <http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-preemption>.

⁶⁶ ABC Plan, Attachment 5 (“Legal Authority White Paper”).

making authority under § 201(b).

Section 251(b)(5) specifies interconnection requirements applicable to local exchange carriers in competitive local market.. On its face, it has no applicability to interstate or intrastate exchange access service. Congress specifically distinguished exchange access services from reciprocal compensation transport and termination arrangement required by § 251(b)(5), when it specified that competitive LECs can utilize the facilities and equipment of incumbent's for the transmission and routing of telephone exchange service and exchange access (47 U.S.C. §251(c)(2)(A)). The Commission's authority under Section 201 is expressly limited by § 152(b) of the 96 Act which reserves States authority over intrastate rates and services. Section 152(b) provides, in pertinent part: “[N]othing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classification, practices, services, facilities, or regulations for or in connection with intrastate communications by wire or radio of any carrier.”

NASUCA addressed the Commission's authority under §§ 251(b)(5) and Section 251(g) to set unified rate in its reply comments filed on May 23, 2011 in this proceeding and set forth reasons why the Commission lacks such authority. In particular, NASUCA explained that § 251(b)(5) of the 96 Act identifies the reciprocal compensation obligations on ILECs. However, the implementation of reciprocal compensation is outlined in the § 252(d) pricing standards, which are clearly described as being the responsibility of state commissions.

The ABC Plan attempts to circumvent the provisions of the 1996 Act that place the states in the driver's seat on reciprocal compensation rate-setting by advocating a

“methodology as rate” approach to intercarrier compensation. The ABC Plan posits that that the line drawn by the Supreme Court in the *Iowa Utilities Board*, which limits the FCC’s role to defining a cost methodology, and leaves it to the states to set the actual rates, would not be crossed. However, a rate proposal offered is not the same as specifying a methodology which the Court in *Iowa Utilities Board* sanctioned.

The *Iowa Utilities Board* decision describes a process where the application of the FCC’s methodology results in outcomes that fit the specific circumstances present in the states:

The FCC’s prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory “Pricing standards” set forth in §252(d). It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances. That is enough to constitute the establishment of rates.⁶⁷

Thus, *Iowa Utilities Board* leaves it to the states to determine the “concrete results” in the “particular circumstances” of the state. The FCC’s setting of a unified rate is inconsistent with *Iowa Utilities Board* decision. The ABC Plan would preclude state commissions from making any findings under § 252(d)(2)(A)(i) and (ii):

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

- (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and,
- (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

⁶⁷ *Iowa Utilities Board*, 525 U.S. at 384.

A setting of a unified rate by the Commission would not allow state commission to evaluate the “mutual and reciprocal recovery by each carrier of costs associated with the transport and termination” of traffic, nor would a unified rate allow the state commission to evaluate “a reasonable approximation of the additional costs of terminating such calls.” Thus *Iowa Utilities Board* and the 1996 Act show that a unified rate set by the Commission does not stand on firm legal footing.

Section 252(d)(2)(A) describes a ratemaking approach associated with the reciprocal compensation required by § 251(b)(5) where the “mutual and reciprocal recovery” of the costs of transport and termination must be reflected in the reciprocal compensation charges. Clearly, § 251(b)(5) does not say that reciprocal compensation should result in end-users paying costs that are imposed by an interconnecting carrier.

Further, § 252(d)(2)(B), which describes the “rules of construction” for the reciprocal compensation, states that § 252(d)(2) should not be construed “to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)....” The key statement in § 252(d)(2)(B) is that the arrangement must “afford the mutual recovery of costs through the offsetting of reciprocal obligations.” The proposed unified rate approach is a rate set without any determination that it will result in mutual recovery of costs and its adoption would lead to an economically inefficient outcome, and would unfairly require end-user customers to underwrite the grant of free (or near-free) access to ILEC networks. This violates the central tenet of §

252(d)(2)(B).⁶⁸

The ABC Plan's reliance upon *Core Communications, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010) ("*Core Communications*") is misplaced. The D.C. Circuit upheld the Commission's determination that dial-up Internet access was an interstate service and therefore, the Commission had authority to set a rate for dial-up internet service as an interstate service. The Court did not reach the question of whether the Commission could set a rate rather than establish a methodology for reciprocal compensation generally.⁶⁹

The ABC Plan's reliance upon § 251(g) as a basis for the Commission to regulate intrastate access charges is also misplaced. The essential purpose of § 251(g) was to preserve the enforceability of the terms of the AT&T and GTE Consent Decrees after the enactment of the 1996 Act because § 601 of the Act vacated those consent decrees.⁷⁰ Section 251(g) grandfathered certain existing substantive requirements until the Commission otherwise altered them. But § 251(b) was not an independent grant of jurisdiction to make such alterations, especially with respect to intrastate traffic. Such authority must be found elsewhere. The Commission's plenary power under § 201 does not extend to intrastate matters because § 152(b) directly prohibits regulation of intrastate services without express statutory authorization.⁷¹

The Court in *World Com, Inv. v. FCC*, 288 F.3d 429 (D.C. Cir 2002) rejected the

⁶⁸ See *Talk America, Inc. v. Michigan Bell Telephone Co*, No.10-313, decided June 9, 2011 (confirming that compensation for transport and termination are governed by separate sections than interconnection, slip opinion at 12).

⁶⁹ *Core Communications*, 592 F.2d at 144-145.

⁷⁰ H.R. Rep. 104-458, at 122-23 (1996), U.S. Code Cong. & Admin.News 1996, 10,134.

⁷¹ *Louisiana Pub. Ser. Comm'n v. FCC*, 476 U.S. 355 (1986); *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 446-48 (5th Cir. 1999).

Commission's claim that § 251(g) gave it substantive authority over treating ISP traffic differently than voice traffic under § 251(b)(5). The Court found "[N]othing in § 251(g) seems to invite the Commission's reading, under which (it seems) it could override virtually any provision of the 1996 Act so long as the rule it adopted were in some way, however remote, linked to LECs' pre-Act obligations."⁷²

As a result, § 251(g) does not grant the Commission new jurisdiction to supplement and override intrastate arrangements subject to § 152(b) of the Act. Absent Congress amending the Communications Act of 1934, the Commission has no authority to set a unified rate for reciprocal compensation. That authority rests with state commissions.

The ABC Plan's reliance upon § 332 of the Act is also misplaced. The ABC Plan asserts that the Commission's authority under Section 201 and 332 reinforces its authority under § 251(b)(5) to establish the unified pricing regime proposed. As discussed above, neither § 201 or § 251(b)(5) provide the authority claimed. The claim that § 332 provides additional support ignores the fact that the Commission has found it in the public interest to let state commissions to determine the rate for wireless traffic.⁷³ The Court rejected claims that the Commission policy of allowing states to set wireless rates for intrastate traffic is inconsistent with the dual regulatory scheme of the Act.

In conclusion, there is no legal basis in which the Commission can adopt the unified rate proposal set forth in the ABC Plan.

Further, in the ABC Plan, the ILECs call on the FCC to declare that VoIP services

⁷² *World Com*, 288 F.3d at 433.

⁷³ See *MetroPCS California, LLC v. FCC*, 644 F.3d 410 (D.C. Cir. 2011).

and broadband services are interstate services, and call for the FCC to “preempt any state regulation of those services that is inconsistent with the federal policy of nonregulation.”⁷⁴ Many different services are provided on telecom networks. As the technology evolves, IP transmission is being increasingly used to provide traditional telephone service – from the customer’s perspective, the service has not changed, just the technical means of transmission. For instance, a customer may be talking on a phone where part of the call is carried on the traditional network, but the call is also carried on a network that uses IP. Under the ABC Plan, telecom companies could argue that all phone service would be deregulated. If adopted, the proposal could eliminate any ability of states to regulate any telecommunication service.

D. The ABC Plan Broadband Issues

Although the ABC Plan is presented as a unified whole, in truth the broadband provisions are separate from the ICC provisions (and the lost ICC revenue recovery provisions). Thus they will be discussed separately here.

This seems to be an appropriate point to address the Framework’s statement that “[u]nder the ABC Plan, the Commission will begin to narrow the ‘rural-rural’ divide that has provided rural areas served by price-cap carriers with less support than the rural areas served by rate-of return carriers.”⁷⁵ This claim ignores the fact that the support provided to price-cap has been based in large part on their sheer size – rather than the form of interstate regulation applicable to them – because they were and are able to enjoy

⁷⁴ Framework at 13. Interestingly, the Joint Letter is less definitive on this issue: It states that VoIP traffic “will be subject to interstate rates if interexchange, or *reciprocal compensation if local*.” Joint Letter at 3 (emphasis added). How can all local VoIP traffic also be interstate?

⁷⁵ Framework at 2.

economies of scale and scope that could be shared among all of their exchanges, both urban and rural. Thus the price-cap carriers **needed** less support. By contrast, the RoR carriers lack those economies, given their smaller size, and the support was justified. It should be clear that any “rural-rural” divide has been created by the varying investment decisions of the price-cap carriers – that decided **not** to invest in their rural exchanges – and of the RoR carriers – that decided to invest in their smaller territories. The “rural-rural” divide is not an artifact of differential levels of support.

1. THE ABC PLAN’S BROADBAND “COMMITMENT” IS FOR AN ALREADY-OBSOLETE LEVEL OF SERVICE, AND CONTAINS NO PROVISION FOR ENFORCEMENT.

Under the ABC Plan, the CAF would support construction of broadband facilities capable of providing a minimum actual downstream bandwidth of 4 Mbps and an upstream actual bandwidth of 768 kbps.⁷⁶ There are several points that the Commission should consider regarding this objective. First, the Commission must define the term “actual” prior to proceeding with broadband support. The term “actual” is not defined in either the Global NPRM or the ABC Plan. Given that the large ILECs and cable broadband providers often do not actually provide speeds at the levels they advertise, the lack of definition is troubling. There is no discussion of how bandwidth speed and capacity requirements would be enforced. Second, the goal of 4Mbps/768 kbps is already obsolete. The stated goal of the National Broadband Plan is to have 100 Mbps broadband service available to 100 million households by 2020.⁷⁷ The Akamai Technologies report on Internet access speeds for the third quarter of 2010 shows average

⁷⁶ Framework at 2-3.

⁷⁷ *National Broadband Plan*, p. 9.

download speeds nationwide of 5.0 Mbps.⁷⁸ In urban areas, the Akamai report shows average connection speeds in the fastest urban areas ranging from 6.5 to 8.3 Mbps. This data suggests that the 4/1 standard is already obsolete, and will only reinforce a growing differential between rural and urban areas. A higher and evolving standard must be employed.⁷⁹

Moreover, under the ABC Plan, service to the highest cost areas would be provided via satellite. This proposal ignores a fundamental fact: Broadband service that would be supported by the CAF would be provided over networks that provide both voice and broadband services. The Commission should reject the use of satellite services to provide supported voice services. Current satellite voice services are subject to signal propagation delays that reduce call quality, and interfere with communication. While it may be the case that in competitive markets for products and services, some consumers choose lower quality at a lower price, the market envisioned by the NPRM will continue to be a monopoly market. Consumers subscribing to the supported service will have no choice, and it would not be in the public interest for the Commission to force consumers residing in high-cost areas to subscribe to low-quality voice services.⁸⁰

Further, simply put, there are no provisions in the ABC Plan to address situations where the recipient fails to meet the five-year build-out requirement.⁸¹ Given the shaky

⁷⁸ Akamai Technologies, “State of the Internet, 3rd Quarter 2010,” pp. 19-20.

⁷⁹ NASUCA Initial Comments at 77.

⁸⁰ *Id.* at 70.

⁸¹ Note that there are also no provisions for a recipient to withdraw its acceptance.

history of similar commitments, such provisions are absolutely necessary.⁸² (It is unclear – but of no great importance – whether the imposition of such reasonable controls would be sufficient to trigger the ABC Plan proponents’ threat of withdrawal from – or opposition to – the plan.)

2. THE ABC PLAN’S PROPOSAL FOR AN INDEFEASIBLE FIXED LEVEL OF SUPPORT LASTING TEN YEARS IS NOTHING MORE THAN A REVENUE GUARANTEE FOR THE CARRIERS THAT ACCEPT IT; AND OTHER ISSUES.

The Framework states that “[b]roadband providers that elect to receive support from the CAF will receive a fixed level of support for a term of ten years from the date on which support is awarded. ... A CAF recipient’s support may not be reduced once awarded, provided that the recipient meets the obligations associated with CAF support.”⁸³ Yet the amount of support is determined by a cost model, as discussed in the next section. Thus the ABC Plan assumes that, in this continually-changing broadband world, neither the benchmark cost nor the modeled cost of providing broadband in a currently-unserved area will change. That, frankly speaking, is absurd. The experience

⁸² For example, in 09-51, AT&T touted its broadband accomplishments. See AT&T Comments (June 8, 2009) at i. In reply, NASUCA and the New Jersey Division of Rate Counsel (Reply Comments, filed July 21, 2009, at 7) pointed out that AT&T had promised to provide 100% broadband ubiquity in its territory by the end of 2007! This commitment was no mere aspirational goal; it was one of the commitments AT&T formally agreed to as a condition of the Commission’s approval of the SBC/AT&T merger in 2005. *Review of AT&T, Inc. and BellSouth Corp. Application for Consent to Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189 (rel. March 26, 2009). Appendix F at 147. And in fact, an AT&T official had attested in early 2008 that AT&T was “in substantial compliance” with that condition of the SBC/AT&T merger order, among others. *Id.*, letter from Jacquelyne Flemming (February 6, 2008). In this respect, NASUCA and Joint Advocates could not help but agree with the vituperative, but accurate, reaction of New Networks Institute (“NNI”) to AT&T’s claims about its broadband successes (and proposed goal of 100% broadband by 2014): “Liar, liar... Pants on fire!” New Networks Institute News Analysis, at 1 (June 15, 2009) at 1, accessible at <http://www.newnetworks.com/attbroadband.htm>. NNI’s view was, of course, informed by the recitation of decades of regional Bell operating company (“RBOC”) failures to meet commitments, on the federal and state levels. *Id.* at 2-3

⁸³ Framework at 2. Note that per the Framework (*id.*) the ten-year guarantee will be phased-in, so that the guarantee will last for ten years beyond the date each census block receives support.

with the FCC's HCM over the last ten years shows how unlikely that assumption is to be true.

Thus the ABC Plan's support level are simply a wishful-thinking guarantee to the carriers. Further, the Framework states, "In order to provide the stability that is necessary for CAF recipients to take on broadband service obligations for ten years, the entry of an unsupported broadband competitor after January 1, 2012 does not affect the level of CAF support."⁸⁴ Thus not even if the cost (or revenue) circumstances of the area change so as to allow a competitor to enter, the support will still remain the same. That indeed is a high price to pay to stability (for the carriers).

Particularly, as discussed in the next section, support equals the excess of the modeled cost over the benchmark.⁸⁵ The revenues from the services that are provided are not considered. The ABC Plan is silent on this point, but presumably those revenues would flow to the ILECs, especially the large price-cap ILECs so that they can further enhance their unreported, unaudited earnings. An obvious omission from the ABC plan are the reporting and auditing requirements that are crucial to ensuring that the nation is not needlessly supporting services provided by large telecom companies that need no support.⁸⁶

It should also be noted that according to the Framework, the model "would ensure that over four million homes and businesses in rural areas for which there is no private sector business case will have access to broadband, two million of which will enjoy the

⁸⁴ Id. at 3.

⁸⁵ Id. at 5.

⁸⁶ NASUCA Comments at 40, 71-72.

benefits of broadband for the first time.”⁸⁷ This apparently means that, according to the ABC Plan proponents, there are two million homes (four million minus two million) that currently have access to broadband where there is purportedly no private sector business case for broadband. What will happen to those customers? And on the other hand, the Framework provides no support to unserved areas where the cost of service is below the benchmark. Assuming that those areas remain unserved, what happens then to the consumers living in those areas?

3. THE PROPOSED MODEL IS UNTESTED AND UNREVIEWED.⁸⁸

The ABC Plan provides support for broadband deployment based on a new cost model. That model cannot be used to distribute federal universal service support, for the reasons set forth here.⁸⁹

General Issues with the CQBAT Model

The documentation associated with the CostQuest Broadband Analysis Tool (“CQBAT”) model (Attachment 3 to the ABC filing) states that the CQBAT is “consistent with the FCC’s Broadband Assessment Model (‘BAM’).”⁹⁰ As noted by NASUCA in its comments on the FCC’s BAM, there were many problems with BAM, not the least of which was the fact that BAM is a “black box” which neither NASUCA, nor any other party, has been allowed to examine.⁹¹ CQBAT is also a black box, and thus it has this same fundamental problem.

⁸⁷ Framework at 5.

⁸⁸ Id. at 3-4.

⁸⁹ The analysis of the model is based on the work of Dr. Roycroft.

⁹⁰ ABC Plan, Attachment 3 (“CQBAT Description”) at 4.

⁹¹ NASUCA July 12, 2010 Comments in WC 10-90 at 12.

Furthermore, CQBAT does not appear to be “consistent” with the BAM methodology. Most notably, BAM calculated the cost of delivering both voice and data services,⁹² where the CQBAT only calculates the cost of a broadband data “pipe.”⁹³ This is a fundamental departure from the BAM approach, and eliminates significant economies of scope from consideration, driving up the cost of support.

The second fundamental difference between the CQBAT and the BAM is associated with how the two models treat revenues. The BAM approach considered revenues from voice, data, and, potentially, video services that are provided over the broadband network.⁹⁴ The CQBAT does not consider any revenues, and relies entirely on a “cost benchmark” approach.⁹⁵

Thus, the CQBAT approach is not consistent with the BAM approach. Rather than calculating the needed level of support based on a consideration of both the costs of provisioning the network and the revenues that can be generated from the entire service set, the CQBAT focuses on costs alone, which will generate an inappropriate level of support. The cost benchmark approach is fraught with problems.⁹⁶

While many details regarding the CQBAT model are not available, the information that has been supplied suggests, even ignoring the exclusion-of-revenues issue, an unreasonable approach to modeling the level of support needed to deploy broadband services. When calculating incremental costs, the key question for the analyst

⁹² “The Broadband Availability Gap,” OBI Technical Paper No. 1 at 35.

⁹³ CQBAT Description at 10.

⁹⁴ “The Broadband Availability Gap,” OBI Technical Paper No. 1 at 13.

⁹⁵ Framework at 4-5.

⁹⁶ NASUCA July 12, 2010 Comments in WC 10-90 at 6.

is what increment is appropriate to consider. Once the proper increment has been determined, the least-cost technology choice needed to provide service to unserved, or underserved, areas can be identified.

There are various approaches to defining incremental costs. For example, the State Members Plan has pursued a “donut/hole” approach that considers the incremental costs associated with serving a high-cost area that surrounds a low-cost area.⁹⁷ The State Members Plan explains that the proper approach to estimating the cost of support must avoid subsidizing areas that are low-cost. To do so, the cost analysis can focus on the “avoided costs” of serving the high-cost area:

Technically, it would be equal to the cost of the entire exchange, minus the stand-alone cost of only the low-cost sector(s). In general, the avoided cost is lower than the stand-alone cost of a new network in the high-cost sector, thereby avoiding excessive support payments.⁹⁸

Such an approach is economically reasonable, as it properly addresses the joint and common cost problem. The joint and common cost problem arises because there is a business case to serve the low-cost “hole” associated with any high-cost “donut.” The supported carrier should only receive support to reflect the incremental costs of serving the “donut” area, given that they will serve the “hole” without support. Such a configuration is likely to provide a workable approach to determining the appropriate level of support in high-cost areas.

The CQBAT model does not pursue a “donut/hole” approach. Instead, it develops

⁹⁷ State Members Plan at 33-36.

⁹⁸ *Id.* at 41.

costs on a Census Block basis, and then aggregates these costs to a wire center level.⁹⁹ Key to the development of the support estimate from CQBAT is a sorting process that determines which Census Blocks are eligible for support. The sorting process is based on a “competition test” related to the presence of at least one alternative provider serving residential customers.¹⁰⁰ The ABC Plan indicates that only those areas that do not have a “business case” for broadband will be eligible for support,¹⁰¹ thus “CAF support is not available in any census block in which at least one unsupported broadband competitor is already offering broadband service as of January 1, 2012.”¹⁰²

However, the ABC Plan defines the “unsupported broadband competitor” in a highly restrictive fashion:

A competitor’s service qualifies as “broadband service” if it has the same capabilities as the broadband service supported by the CAF, i.e., it provides customers with a minimum actual downstream bandwidth of 4 Mb/s and a minimum actual upstream bandwidth of 768 kb/s, and also provides robust service that is sufficient for *households* to use education and health care applications specified by the Commission.¹⁰³

The ABC Plan thus defines broadband “competition” in terms of the delivery of 4 Mbps/768 kbps service to *households*. This ignores the fact that the area in question may have facilities-based competitors for business services. As will be discussed further below, the CQBAT model includes the costs of serving large business customers, including the costs of fiber to wireless towers, as services in need of support. It is not

⁹⁹ Framework at 4.

¹⁰⁰ Id. at 3.

¹⁰¹ Id. at 5.

¹⁰² Id. at 3.

¹⁰³ Id., footnote 3 (emphasis added).

reasonable for the CAF to support these large business customers.

Using the Census Blocks that are identified as qualifying by the “competition-based” sorting process, the CQBAT model generates a “forward looking” cost estimate within the Census Block, calculating costs of serving both residential/small business customers and large business customers (including wireless towers).¹⁰⁴ The inclusion of large business customers (including wireless towers) results in problems for the CQBAT model, and results in inappropriate support for broadband provided to large businesses, including wireless mobility operators. The CQBAT approach, by failing to address the business case for large business customers (including wireless towers) separately will also overstate the incremental costs of providing broadband to residential customers.

There are fundamental differences in broadband service demand between large businesses and residential/small business customers. As a result, the business case to supply large-business broadband customers is likely to be very different than the business case associated with serving residential/small business customers. It is likely that large business customers can be served without the need for support. The ABC Plan and CQBAT overlook this fact. Given the economic viability of serving the large business sector, the CQBAT approach will inappropriately support these customers. The problem could be solved if the CQBAT was modified to calculate the incremental cost associated with adding residential/small business customers to a network that served the large business customer locations (including wireless towers) in the Census Blocks. CQBAT does not use this approach, however, given the process described in the CQBAT document, such an approach appears to be within the capabilities of the CQBAT model.

¹⁰⁴ CQBAT Description at 9-10.

The difference between large business and residential/small business is made abundantly clear by the CQBAT's assumptions regarding the type of technology that the modeled network build will use. For residential and "small business" customers (e.g., less than 10 employees for a "technology" company or less than 50 employees for a non-technology company) a twisted-pair copper "broadband pipe" will be built.¹⁰⁵ For larger businesses (including wireless towers), the technology of choice is fiber to the premises.¹⁰⁶ This suggests identifiable market segments that have fundamentally different needs. The deployment of fiber to locations serving large business customers and wireless towers would provide a platform from which residential and small business customers could be added, resulting in a more accurate estimate of the incremental costs of serving customers for which there is no business case for broadband.

Given that the ABC Plan approach awards support to Census Blocks where the average cost per line exceeds \$80,¹⁰⁷ Census Block areas with large business locations receiving fiber deployments could drive the average up, triggering support. As will be discussed further below, the fact that CQBAT treats wireless tower locations as "large businesses" further distorts that modeling results, as wireless towers are likely to be present in Census Blocks that have no alternative broadband supplier.

Other Issues with the CQBAT Model

There are other issues raised by the assumptions and structure of the CQBAT model. For example, the CQBAT and ABC Plan rely on extremely low, and apparently

¹⁰⁵ Id. at 12.

¹⁰⁶ Id.

¹⁰⁷ Framework at 5.

fixed, data speeds that are associated with the supported service, for a ten-year period.¹⁰⁸ The CQBAT model designs a copper-based network to deliver 4 Mbps downstream and 768 kbps upstream to residential and small business customers. There is no mention of how or whether this technology will evolve over time. While the CQBAT model describes its approach as “forward looking,”¹⁰⁹ the 4 Mbps/768 kbps technology build reflects obsolete technology and data speeds for which customer demand is already waning. This “forward looking” approach will ensure that rural areas are cemented into an inferior grade of broadband. In addition, given the ABC Plan’s design to freeze support (and implicitly technology) for a ten-year period, the CQBAT and ABC Plan approach is completely out of synch with the National Broadband Plan’s objective of increasing broadband speeds over time, with 100 million homes receiving 100/50 Mbps download/upload service by 2020.¹¹⁰

The ABC Plan, and the CQBAT model, also ignore the provision of voice services. As noted in the ABC Plan: “The supported broadband service must provide access to voice service, but voice service is not supported by the CAF and CAF recipients are not required to offer voice service.”¹¹¹ The National Broadband Plan recognized, when proposing the CAF, that voice service provision continues to be an integral component of the supported services.¹¹² This critical policy element is absent from the ABC Plan, and the costs of provisioning voice services are also absent from the CQBAT

¹⁰⁸ Id. at 3.

¹⁰⁹ CQBAT Description at 4.

¹¹⁰ National Broadband Plan, p. 9.

¹¹¹ Framework at 2-3.

¹¹² National Broadband Plan, p. xiii.

model.¹¹³ Because the model excludes all revenue sources, including voice, the level of support associated with the CQBAT will be higher than necessary.

The treatment of wireless mobility towers in the CQBAT model is problematic. Without offering any explanation in the accompanying documentation associated with the ABC Plan, the CQBAT model includes fiber to mobility wireless towers as part of the network build. The construction of these facilities will open the door to highly-profitable special access circuits receiving support, and contributing to the overall burden of the CAF. Because the ABC Plan narrowly focuses the identification of areas where there is a “business case” to provide service to an alternative facilities-based provider of residential services,¹¹⁴ the ABC Plan inappropriately ignores the potential for a business case associated with special access – either to large businesses or to wireless mobility towers.

In addition, with regard to the CQBAT’s treatment of wireless mobility towers, further distortion is added as the CQBAT approach does not consider whether any of these tower locations might be used to economically provision fixed wireless broadband services rather than the copper facilities that the CQBAT designates as the preferred technology to served residential and small business customers. Given the very low data speed benchmarks modeled by CQBAT, the failure to explore whether fixed wireless is more economical is all the more egregious, as fixed wireless broadband services (not to mention mobility broadband services) are capable of delivering the data speeds specified in the ABC Plan.

The problems with CQBAT’s deployment of wireless towers do not end with this

¹¹³ CQBAT Description at 10.

¹¹⁴ Framework at 3, especially footnote 3.

optimization issue. Given that AT&T and Verizon also self-provision these backhaul circuits to their wireless subsidiaries, the end result of the CQBAT and the ABC Plan is to enable the subsidization of the wireless mobility operations of these major carriers. Because the revenue streams that are available from providing wireless carrier backhaul, there is no need to subsidize wireless tower fiber feeds. Furthermore, if wireless towers are to be included in the overall planning picture, it would be more appropriate to orient the incremental cost analysis to combine wireless towers with the overall business network (i.e., large business and wireless towers) to represent the modeling baseline from which residential and small business broadband services will be incrementally added.

Information that should be Filed Regarding the CQBAT Model

Even if the fundamental problems of the CQBAT model (e.g., CQBAT's failure to examine both costs and revenues of supported services, CQBAT's reliance on the inappropriate "competition" sorting process) were solved, absent the ability to examine the workings of the model in detail, it is uncertain whether the CQBAT model could be the correct starting point. When considering what materials should be required to be submitted, the process of developing the FCC High-Cost Platform Model ("HCPM") is instructive. To arrive at the conclusions that were ultimately reflected in the *Platform Order*, *Methodology Order*, and *Input Order*, the FCC combined modeling elements of industry-sponsored and Staff models.¹¹⁵ The process of developing the model and its resulting application by the FCC was transparent – the algorithms associated with the model were thoroughly explained, and the model could be downloaded from the FCC's web site and run by any party. Input values could be altered. A similar level of

¹¹⁵ 96-45, et al, Fifth Report and Order (rel. October 28, 1998), ¶ 4.

transparency is currently not available from the CQBAT model. While limited documentation and a brief summary of results have been provided, the operations of the CQBAT model remain unknown. A useful starting point to the process of generating a transparent and “open source” cost model would be a side-by-side comparison of CQBAT and BAM, point-by-point, with all input values, methodology variation, algorithms, mapping differences, etc. be provided.

The more pressing question regarding the CQBAT model is, however, “Why should CQBAT be given any further consideration?” Both the State Members Plan and the Staff’s BAM advocate for the fundamentally superior approach which addresses both costs and revenues (and also seek out the least-cost technology). The CQBAT model’s cost benchmarking approach does nothing to address the most pressing issue with regard to reforming support levels – addressing both the expected revenues from, and the expected costs of, providing the supported services. CQBAT also fails to address alternative technologies. As such, the CQBAT represents a giant step backward from the development of the BAM, which, while not perfect, had the potential to develop support levels that properly considered both revenues and costs.

The recent CQBAT submission

NASUCA has reviewed materials filed by Windstream with the Commission on August 18, 2011, relating to the CQBAT model. While NASUCA has not had the time to fully evaluate these documents, it is notable that one of the documents (identified as “ARPU” on the FCC ECFS website), shows a spreadsheet page from CQBAT containing fields for ARPU values. However, all ARPU values are set to zero. This appears to indicate that CQBAT is entirely capable of adding ARPU to the calculation of needed

support, thus allowing for an accounting of revenues. The proponents of the ABC Plan have chosen to ignore both revenues and the CQBAT model's capabilities. As discussed elsewhere in these comments, accounting for both costs and revenues provides a superior approach to modeling universal service support, as opposed to the cost benchmark approach pursued with the ABC Plan. By accounting for the revenues of services provided over the broadband facility, the size of the fund can be appropriately managed.

4. BROADBAND INFRASTRUCTURE BUILT WITH PUBLIC FUNDS SHOULD BE SUBJECT TO NET NEUTRALITY AND NON-DISCRIMINATION REQUIREMENTS.

As discussed extensively in NASUCA's previous comments,¹¹⁶ CAF support must be accompanied by CAF public interest obligations. These especially include net neutrality and non-discrimination requirements, regardless of whether the Commission's more general Open Internet Order is sustained on appeal. The ABC Plan contains no such requirements, and thus must be modified.

5. PROVIDING EXPLICIT SUPPORT TO BROADBAND WITHOUT THE FINDINGS IN 47 U.S.C. § 254(C) VIOLATES THE LAW.

To assess the fundamental legal error in this aspect of the ABC Plan, one must look first at the original November 20, 2007 recommendation of the State/Federal Joint Board for Universal Service. Why? Because this Joint Board, consisting of three FCC Commissioners, four state commissioners and one consumer advocate from NASUCA, has the primary responsibility for oversight of universal service starting with the implementation of the '96 Act, the definition of supported service, the implementation of the rural and non-rural support mechanisms and for any other related issues that may

¹¹⁶ NASUCA Initial Comments at 75-80; NASUCA Reply Comments at 91-102.

arise. The Commission is required to Act on any recommendation of the Joint Board within 12 months. The 2007 Recommended Decision was prepared by the State Staff under the direction of the State Members of the Joint Board. The recommendation stated in the Introduction: “We further recommend making a formal change to the definition of services supported by Section 254 funding.”¹¹⁷ The recommendation describes “Services Supported by Universal Service and Carrier Eligibility” and the Recommendation states: “The Act explicitly tasks the Joint Board, from time to time, with recommending to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.”¹¹⁸ The Recommendation then proceeded to lay out the reasons why broadband and mobility service met the public interest standards required by the Act to justify (legally) the expenditure of Section 254 universal service funding for broadband and mobility services, including the recommendation that there should be three separately administered funds – Broadband, Mobility and Legacy. The role of the Joint Board in expanding the definition of supported services is statutorily prescribed in 47 U.S.C. 254(c).

Any attempt to circumvent the clear meaning of the Act by hijacking the universal service fund from serving its intended purpose of compliance with section 254 of the Act must clearly fail for multiple legal reasons that need not be repeated here. The 2007 Joint Board determined that the definition of supported services must be changed to accommodate rising broadband and mobility services.

¹¹⁷ Joint Board Recommended Decision (November 20, 2007) at 3.

¹¹⁸ Id. at 55.

The sticking point for the authors of the ABC Plan is if the definition in § 254 is modified, only qualified ETCs that are approved by state commissions are eligible for support, and the services they wish to provide in the future could be subject to regulatory oversight under Title II of the Act (which is obviously where § 254 resides). Any hint of possible regulatory control in the public interest runs afoul of the goals of the ABC perpetrators. It is naïve, however, for them to expect to collect billions of federal dollars in subsidies absent regulatory oversight. The authors of the ABC Plan should have accepted the potential for limited regulatory oversight that comes with ETC status and receipt of USF funding, and they should have recognized the FCC's long-standing commitment to light-handed regulation of the broadband and wireless markets.

Clearly, the Joint Board in 2007 envisioned that universal service would continue to be provided by ETCs approved by the states under § 254 of the Act in order to meet the public interest obligations contained within that same section of the Act. The recommendation passed the board unanimously with three FCC Commissions (a majority of the Commission) voting in favor.

Has anything changed? No. As recently as May 2, 2011, the State Members of the Joint Board, who were intimately familiar with the 2007 Recommendation submitted their comments in this docket, stating at the very first paragraph of their recommendation as follows:

State Members support expansion of the goals and mechanisms of universal service to cover both broadband and mobility services. Specifically, the FCC should define both 'broadband Internet access service' and 'mobility' service as included in the list of services supported by the federal universal service program.¹¹⁹

¹¹⁹ State Members Comments at iii.

Nothing has changed, including the law. The ABC Plan is littered with attempts to circumvent the real meaning and purpose of the Act and the FCC should totally reject the entire ABC Plan and accept the State Member Plan as the starting point for meaningful and effective reform.

6. OTHER BROADBAND/CAF-RELATED ISSUES

There are a few miscellaneous broadband- or CAF-related issues in the ABC Plan that require mention but not extensive discussion. These include:

- The ABC Plan does not address legacy high-cost support mechanisms for RoR ETCs.¹²⁰ Those are at least referred to in the Joint Letter, which basically supports the RLEC Plan on those issues. NASUCA commented on the RLEC Plan at length in the reply comments.
- The basis for the 35% deployment threshold for allowing the ROFR¹²¹ is not at all clear. It may be a compromise among the ILECs, but it still needs support in the record.
- The lack of definition and detail for the ABC Plan's AMF¹²² is troubling and would prevent adoption of the Plan without more inquiry.
- Similarly, the details of the transition for legacy support¹²³ are sketchy. But the idea that an ETC will receive the higher of its legacy support and its CAF support is particularly troubling.

¹²⁰ Framework, n. 1.

¹²¹ Id. at 6.

¹²² Id. at 8.

¹²³ Id. at 8-9.

E. The ABC Plan ICC Issues

1. THE RATIONALE FOR THE ABC PLAN'S ICC REDUCTIONS IS INADEQUATE.

NASUCA notes that many of these points have been made before, but obviously need to be made again. To begin, the Framework states, “Reform of terminating intercarrier compensation rates will advance broadband deployment by reducing the disincentives to deploying IP networks and reducing carriers’ reliance on unstable implicit support mechanisms.”¹²⁴ With regard to the first point, perhaps the best response is the following quotation from the State Members’ July 14, 2011 ex parte: The presumption of the ABC Plan is

that, if there are “carrier specific uniform” but high (or at least higher than .0007) access charges, that this will retard the ultimate transition of the network to soft-switches and IP-based services. Again, there is zero empirical evidence in the record to suggest a causal link. There is no evidence in the record that compares access rates and IP networks. Indeed, the only available evidence suggests the opposite. For example, the Wyoming Commission’s report on universal service in that State shows convincingly that small rural rate-of-return (ROR) carriers, who tend to have much higher access charges, are the only ones to have deployed soft switches. The report suggests that Qwest-CenturyLink-Embarq have zero soft switches. Thus, the linkage between access rates and adoption of IP networks is not supported by the Wyoming experience. Before proposing any revised access rates, the FCC should investigate the relationship between access rates and soft switch deployment.¹²⁵

Further, as a specific example of soft-switch deployment, on August 8, 2011 the FCC received ex parte comments from Bernard Telephone in Bernard, Iowa, a small local exchange company that has less than 500 customers in a 95 square mile service territory.

The company uses soft switch technology to provide local, long distance, cellular,

¹²⁴ Id. at 9.

¹²⁵ State Members ex parte (July 14, 2011) at 2.

broadband, wireless internet and video services to its 468 customers over fiber and wireless facilities thanks to a \$3.6 million load from RUS. One small LEC consultant advised NASUCA that 80% of his clients have installed soft switches already because they are “so cheap.”

NASUCA recommends that the Commission reject any causal connection, such as that suggested by the Framework, between ICC rates and soft-switch and IP deployment. Since soft-switches are capable of operating in traditional legacy telephony or in IP-Protocol modes, the decision to choose the most appropriate network transmission scheme is independent from the economic decision to deploy a soft switch.

With regard to the Framework’s second point (regarding reliance on “unstable implicit support mechanisms”), there is no suggestion that the ABC Plan’s implicit support from the SLC will be more stable than current ICC. And the explicit support from the access recovery mechanism will be more stable, but only because it represents an over-recovery of costs.

The Framework also states that “by eliminating the disparities between intrastate and interstate access rates, and between access rates and rates for other traffic, the plan will end arbitrage schemes and disputes that divert resources from broadband deployment.”¹²⁶ But the Joint Letter shows that the disparities for the RoR carriers – supposedly a big part of the problem – will last much longer than for the price-cap carriers, and the Joint Letter provides for a proceeding during which the Commission may determine **not** to have a nationally unified rate.¹²⁷

¹²⁶ Framework at 9.

¹²⁷ Joint Letter at 3.

“Eliminating disparities,” however, does not need to mean reducing the rate almost to zero. As shown in Section II.A., above, an artificially low ICC rate will induce, not prevent, arbitrage. Again to quote the State Members’ ex parte,

Except for the non-probative and necessarily self-serving statements of interested parties, there is NO record evidence – no empirical data – no actual cost studies – to support imposing a single industry-wide \$0.0007 rate as compensatory. [E]veryone recognizes that access costs both differ based on the underlying technology and are a function of (related to) the size of the exchange and the traffic load on switching equipment.¹²⁸

This point is expanded on in the next section.

2. THE ABC PLAN’S PROPOSED \$0.0007 UNIFORM ICC RATE IS UNJUST, UNREASONABLE AND NOT IN THE PUBLIC INTEREST.

Currently, total interstate and intrastate access charges amount to \$6.5 billion annually. A reduction to a uniform rate of \$.0007 would result in a \$6.2 billion loss to LECs and a \$6.2 billion gain in favor of long distance companies based on 2010 minutes of use of 415.5 billion.¹²⁹ⁱ While the large, vertically integrated ILECs, such as AT&T & Verizon, would have offsetting gains and losses because they own both the landline local companies and long distance entities, the small, rural LECs would lose revenue that could never be replaced (see the Bernard Telephone ex parte). If consumers would be forced to pick up the losses via rate increases in their SLCs, the impact would seriously jeopardize the ability of small LECs to deliver affordable rates for basic service at comparable rates. By contrast, the State Member Plan that is supported by NASUCA would reduce access charges while protecting small, rural telephone companies that have high costs.

¹²⁸ State Members ex parte (July 14, 2011) at 2.

¹²⁹ See Billy Jack Gregg Revenue Scenario 2003-2010, 2010 MOU 415.5 billion

F. The ABC Plan Revenue Recovery Provisions

1. THE ABC PLAN'S PROPOSALS FOR SLC INCREASES MUST BE REJECTED.¹³⁰

The ABC Plan would afford ILECs “the opportunity to adjust their business plans and rely to a greater extent on retail customer revenue,” specifically through increases to federal subscriber line charge (“SLC”) rates.¹³¹ Those price-cap ILECs that opt to receive support from the transitional access replacement mechanism may implement the following *cumulative* increase to their SLCs: \$0.50, effective July 1, 2012; \$1.00, effective July 1, 2013; \$1.50, effective July 1, 2014; \$2.00 effective July 1, 2015; and \$2.50 effective July 1, 2016. Those price-cap ILECs that do not elect to receive support from the transitional access replacement mechanism may implement the following *cumulative* increase to their SLCs: \$0.75, effective July 1, 2012; \$1.50, effective July 1, 2013; \$2.25, effective July 1, 2014; \$3.00 effective July 1, 2015; and \$3.75 effective July 1, 2016. According to the Joint Letter, RoR ILECs will be able to increase their SLC caps by \$0.75 per year for six years, for a total increase of \$4.50.¹³²

Also, the sum of the local residential rate, federal SLC, state SLC, mandatory extended area service (“EAS”) rate, and per-line contribution to the state’s high-cost fund (if one exists) may not exceed a monthly benchmark rate of \$30 per month.¹³³ Under the ABC Plan, the total SLC could increase to \$9.20, for price-cap ILECs.¹³⁴ Pursuant to the

¹³⁰ The bulk of this section is based on the work of Ms. Baldwin.

¹³¹ Framework at 11.

¹³² Joint Letter at 3, n.1.

¹³³ Framework at, at 12. The comparison is based on the local rate, state SLC, and EAS rates that are in effect on January 1, 2012.

¹³⁴ Public Notice at 16.

Joint Letter, RoR ILECs' SLCs could increase up to \$11.00.

The \$30 benchmark is clearly not based on costs and is too high, as is evidenced by states' analysis of the (unseparated) total element long run incremental cost ("TELRIC") of dial tone line (including usage). The following table summarizes TELRIC results of three state investigations. In any event, a *rate* benchmark cannot reasonably be established unless and until the FCC examines the ILECs' cost of providing service (which should include a fair and efficient assignment and allocation of the dial tone line cost to related services).¹³⁵

¹³⁵ Alternatively, the revenues from related services (caller identification, DSL, etc.) need to be included in the benchmark.

**Residential Flat Rate Basic Local Exchange Service
Illustrative Cost Results from Three States¹³⁶**

Selected Wholesale Rates			
	Michigan	New Jersey	California - AT&T
Loop (state-specific)	\$ 21.44	\$ 10.32	\$ 11.64
NID (based on NJ)	\$ 0.57	\$ 0.57	\$ 0.57
Port (based on NJ)	\$ 2.72	\$ 2.72	\$ 2.72
Usage (based on NJ)	\$ 3.83	\$ 3.83	\$ 3.83
Total without usage	\$ 24.73	\$ 13.61	\$ 14.93
Total with usage	\$ 28.56	\$ 17.44	\$ 18.76

Thus a \$30 benchmark for basic service is not based on any cost of that service. Indeed, attributing all of those costs to basic service ignores all of the other services that can be provided using those UNEs. And it also ignores – as clearly shown by the table – that the costs of service vary from state to state and within each state. Historically, rate differentials between states have had a factual basis because they were developed in the course of each state’s extensive examination of telephone company operations. Applying

¹³⁶ The source of the NID (“Network Interface Device”) cost is a New Jersey interconnection agreement. The port cost corresponds with the level that was approved by the New Jersey Board of Public Utilities (“NJ BPU”). New Jersey Board of Public Utilities Docket No. TO00060356, In the Matter of the Board’s Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Decision and Order, released May 7, 2004 (“NJ BPU TELRIC Order”). The usage cost corresponds with Verizon New Jersey’s proposed flat rate residential usage cost in New Jersey Board of Public Utilities Docket No. TX08090830, In the Matter of the Board’s Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates. The NJ BPU-approved loop cost shown is the statewide average. Density Cell 1, 2, and 3 loop costs are \$8.81, \$10.42, and \$11.82, respectively. See NJ BPU TELRIC Order. The California Public Utilities Commission approved loop cost is the basic 2-wire, statewide average for AT&T. AT&T’s Zone 1, 2, and 3 unbundled network element (“UNE”) rates are \$9.41, \$12.69, and \$26.23, respectively. See California Public Utilities Commission Advice Letter, filed by AT&T California, October 1, 2010. The Michigan UNE loop rate is from Verizon’s filing submitted to comply with the Michigan Public Service Commission’s directives. Michigan PSC Case No. U-15210, Verizon Compliance Filing, May 22, 2009, Exhibit A, UNE Cost Results Summary.

the ABC Plan's proposal to utilize an identical rate for every state would clearly not be cost based and would violate fundamental legal rate-making principles. Thus it make no more sense to prescribe a nationally-uniform benchmark for rates than it would be to prescribe a nationally-uniform rate for that basic service.¹³⁷

The purpose of the benchmark is actually somewhat unclear. If it is to be used only as a limit on the SLC increases, or to **require** intrastate rate increases to that level, then it is entirely objectionable. But if it is also to be used as a means to limit the payments an ILEC receives from the USF (by "imputing" that rate level), then it is somewhat less objectionable but still problematic.

The FCC should not seek to solve the thorny problems of ICC/USF/broadband on the backs of consumers: The SLC is a seemingly irresistible source of funding. Nonetheless the FCC should resist.

First, the FCC should take note that a number of states have eliminated regulation of basic local exchange telephone service. The FCC should not only deny universal service support to such states but should also require such states to eliminate the SLC, in order to insure that the federal support mechanisms do not constitute a barrier to effective competition. Where states continue to regulate basic services, the SLC is the last place that the FCC should look for cost recovery. A SLC increase in states subject to state and federal regulation would never pass legal muster absent adequate cost support that would almost certainly fail in the face of a flawed separations methodology, ICC "zero cost" methodology and a contribution methodology that provides a free ride for the very same

¹³⁷ Not to mention the additionally preemptive aspect of requiring states to increase rates when they may lack the authority to do so.

users of the network that, coincidentally are the authors of the ABC Plan. The State Member Plan offers a rational approach based on real facts for reforming Intercarrier Compensation, including the adoption of an expanded contribution base that would require all beneficiaries of the network infrastructure to contribute to its cost.

2. USING THE SLC AS A SIMPLE REVENUE REPLACEMENT VIOLATES ITS ORIGINAL PURPOSE AND EVEN THE CALLS MODIFICATION.

In the *CALLS Order*, the Commission described the SLC, then capped at \$3.50 a month, as “a flat charge that recovers the interstate portion of local loop costs from an end user...”¹³⁸ At that point, the Commission said that the SLC “is subject to a cap that, particularly for residential customers, is often below the level that would enable the LEC to recover the entire interstate cost of the local loop.”¹³⁹ In the *CALLS Order*, the Commission increased the SLC cap for residential customers, from \$3.50 to \$6.50, thus (according to the Commission) “permitting a greater proportion of the local loop costs of primary residential and single line business customers to be recovered through the SLC, rather than through the CCL charge and the multi-line business PICC...”¹⁴⁰ The Commission stated that “the CALLS Proposal reduces, and in most instances removes, the subsidies associated with both of the latter charges. as a means of allowing recovery of revenues lost when interstate access charges were reduced.”¹⁴¹ The Missoula Plan

¹³⁸ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, et al., Sixth Report and Order, et al., FCC 00-193, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”), ¶ 18. (“CALLS” stood for the so-called Coalition for Affordable Local and Long distance Service.) The *MAG Order* accomplished the same thing for rate-of-return carriers. *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, et al., Second Report and Order, et al. FCC 01-304, 16 FCC Rcd 19613 (2001) (“*MAG Order*”).

¹³⁹ *Id.*

¹⁴⁰ *Id.*, ¶ 18.

¹⁴¹ *Id.*

would have increased SLCs up to \$10, for the same reason.¹⁴²

But the ABC Plan has abandoned any pretense of adjusting the SLC as a means of recovering the cost of the local loop or of removing “subsidies.” It will be – if the ABC Plan is adopted – **only** a revenue-shifting mechanism, without any link to the original or the CALLS-modified purpose of the SLC.

Perhaps consumers were supposed to have been happy because Chairman Martin’s Proposal would only have increased the SLC cap for residential and single-line business lines from \$6.50 to \$8.00, the non-primary residential line SLC cap from \$7.00 to only \$8.50, and the multi-line business SLC cap from \$9.20 to only \$11.50.¹⁴³ The ABC Plan (and Joint Letter Plan) increases are even larger. But both the rationale for the recovery and the method are fundamentally wrong.

As explained in a Free Press ex parte,

When the Commission adopted the current \$6.50 SLC cap in the *CALLS Order* it ruled that a further cost review proceeding would have to be undertaken in order to determine if SLCs should rise above \$5.00. Specifically, the Commission stated that in this cost review proceeding it would “examine, forward-looking cost information associated with the provision of retail voice grade access to the public switched telephone network.” When the review proceeding was concluded, it became apparent that very little verifiable actual forward-looking cost information had been submitted to the Commission. In the June 2002 *Order*, the Commission ruled that the \$6.50 cap was reasonable, despite the conclusion that approximately 82 percent of residential and single-line business price-cap lines had forward-looking costs below \$6.50.¹⁴⁴

The representation is made that the SLC increases will be “constrained” because

¹⁴² 01-92, ex parte communication (July 24, 2006) from the NARUC Task Force on Intercarrier Compensation (“NARUC Task Force”), with “Missoula Plan” attached, at 4.

¹⁴³ Chairman’s Draft Proposal, ¶ 298.

¹⁴⁴ Free Press ex parte, Appendix D to FCC No. 08-262, at 6 (footnotes omitted).

competition will prevent SLCs from being placed at the caps.¹⁴⁵ These claims are made in the face of the fact that the current supposedly competitive environment has not prevented the current SLCs from being priced at the maximum allowed for each carrier.

Chairman Martin's Draft Proposal claimed that

there is evidence that incumbent LECs charge rates below even the existing caps in a number of instances. For example, the primary residential and single-line business SLC cap is \$6.50, but the national average SLC for those lines is \$5.93 based on recent Commission data. Similarly, the non-primary residential line SLC cap is \$7.00, but the national average SLC for those lines is \$5.81. Further, the multi-line business and Centrex line SLC cap is \$9.20, but the national average SLC for those lines is \$6.30 -- nearly \$3.00 below the cap.¹⁴⁶

As argued by NASUCA, this "evidence" was completely wrong, ignoring the fact that, although there is a \$6.50 SLC cap on primary residential lines, each carrier's actual SLC is based upon its revenue requirement¹⁴⁷; if the revenue requirement of the carrier produces a rate below the cap, the lower amount is what must be charged. Chairman's Martin's Proposal contained no shred of evidence that shows that competition -- or any other force -- has required an ILEC to charge a SLC below its regulatorily-determined revenue requirement. And none has been presented since.

If the SLC were raised as proposed in the ABC Plan and the Joint Letter, there would be an even greater proportion of lines allowing over-recovery, and an even smaller portion of lines where there might be an under-recovery of costs from the SLC standing on its own. Equally importantly, there is no showing in the ABC Plan, unlike in the *CALLS Order*, that any portion of current interstate (or intrastate) access charges

¹⁴⁵ Framework at 11-12AT&T 7/17/08 ICC filing at 7.

¹⁴⁶ Chairman's Draft Proposal, ¶ 298 (footnotes omitted).

¹⁴⁷ 47 C.F.R. § 69.104(n)(1)(ii) (rate-of return carriers); 47 C.F.R. § 152(d)(1)(i) (price cap carriers).

represents loop costs. And although the previous SLC increases were ostensibly based on costs, the ABC Plan apparently deliberately ignores costs (at least as far as the SLC is concerned).

The ABC Plan also ignores the many sources of other revenues that will offset the lost access charge revenues. It also ignores the cost savings the carriers will enjoy as a result of paying the reduced access charges on all traffic.¹⁴⁸

As noted in a NASUCA ex parte submitted in 2008,

AT&T's and Verizon's plans are explicitly built around AT&T's notion – expressed in a filing made with the Petition addressed in 08-152 – that “comprehensive reform” can only be accomplished in the context of a zero-sum game of only three “interdependent ‘dials’” – terminating intercarrier rates, federal SLCs, and universal service support.¹⁴⁹ Under AT&T's proposal, if intercarrier rates are reduced (“dialed down”), then either SLCs or the universal service fund (“USF”) – or both – must be increased (“dialed up”) to make up the difference. This proposal self-centeredly and simplistically ignores the full array of services from which AT&T (and other carriers) receive revenues – traditional wireline service, broadband services, and, indeed video and other services. Intercarrier compensation, SLCs and the USF are but three of the numerous spigots from which dollars flow to fill up the telephone companies' revenue buckets. All of these “buckets” must be included when addressing lost revenues.¹⁵⁰

The ABC Plan makes no showing of why the SLC should be the first source of revenue recovery for lost access charge revenues.

It is also not clear that the increases to the SLC in a particular ILEC's service territory can only be allowed for the recovery of access revenue **in that territory**.¹⁵¹ This

¹⁴⁸ 01-92, 04-36, NTCA ex parte (September 12, 2008) at 5.

¹⁴⁹ 01-92, et al. AT&T ex parte letter (July 17, 2008) at 4-5; see also id., AT&T filing (July 24, 2008); id., Verizon filing (September 3, 2008).

¹⁵⁰ NASUCA ex parte (September 30, 2008) at 5-6 (footnote omitted).

¹⁵¹ See 01-92, et al., Qwest ex parte (October 28, 2008) at 2 (recommending that the Commission “[p]ermit carriers to average SLC increases under the new plan across states”).

must be made clear, so as to prevent customers in one state from replacing the lost revenue from another state.

The idea of using the SLC as a mechanism as a means of recovering lost ICC revenues makes no sense. This is especially true for the revenues that represent carriers' contribution to the common or joint cost of the loop; replacing those revenues through the SLC represents improperly absolving carriers from that obligation, as discussed in Part Eight above. But the Commission has no idea what portion of carriers' ICC revenues represent such contributions.

Which brings up another issue regarding SLC increases as a means of lost ICC revenue: Only if the increases are limited to areas and carriers where there have actually been lost ICC revenues – as would presumably be the case if the recovery were through the USF/CAF – would there be an assurance that the carriers were actually recovering those lost revenues. The idea of increasing (or deregulating) the SLC for carriers that currently have low inter- and intrastate access charges would add insult to injury for the customers of those carriers.

3. THE ABSENCE OF COMPETITION WILL PROVIDE COMPANIES WITH THE UNFETTERED ABILITY TO RAISE THE SLC.

The ABC Plan proponents contend that competition from wireless carriers, cable companies, over-the-top VoIP providers and other competitors will constrain increases in SLC rates.¹⁵² The ABC Plan also includes a SLC cap and benchmark as “consumer backstops.”¹⁵³ The “backstops” are entirely inadequate, however. The FCC states that “Professor Hausman’s paper indicates that companies are constrained by competition,

¹⁵² Framework at 11-12.

¹⁵³ Id. at 12.

which could mean that companies may not be able to increase SLC rates on consumers.”¹⁵⁴ The ABC proponents have failed to demonstrate that existing market conditions would constrain SLC increases, and, as NASUCA demonstrates below, there is insufficient competition to protect consumers.

The FCC seeks comment on the “actual likely consumer impact of SLC increases.”¹⁵⁵ The impact of the ill-conceived SLC increases would fall hardest on those least able to avoid and least able to afford the increase. The nation’s most vulnerable citizens (the elderly, those living in rural areas with spotty wireless coverage, those with limited incomes) would bear the brunt of the ABC Plan’s proposed increases to basic local exchange service rates.

Based on NASUCA members’ participation in multiple state regulatory proceedings and reviews of detailed local market share data, there is no effective competition for **stand-alone** basic local exchange service. Cable companies’ VoIP service provides the major alternative to ILECs’ basic local exchange service.¹⁵⁶ However, when purchased on a stand-alone basis, the price greatly exceeds that of the ILEC’s basic local service.

For example, in New Jersey, Verizon’s residential basic local exchange telephone service is \$16.45 per month.¹⁵⁷ By contrast, Comcast’s stand-alone voice service ranges

¹⁵⁴ Public Notice at 16.

¹⁵⁵ Id. (citation omitted).

¹⁵⁶ Estimate as of June 2010 from *In the Matter of The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, *Notice of Proposed Rulemaking*, rel. May 13, 2011, at para 2.

¹⁵⁷ Verizon New Jersey Inc., Tariff BPU-NJ-No.2, Exchange and Network Services, page 30, effective December 18, 2010.

from \$39.95 to \$44.95 per month¹⁵⁸ and Cablevision offers phone service for \$34.95 per month.¹⁵⁹

VoIP is viewed by consumers as an economic substitute for basic telephone service **when it is included as part of a broadband bundle**. Indeed, in 84 percent of instances, VoIP is purchased as part of a bundle with broadband Internet access.¹⁶⁰

Wireless is not yet an economic substitute for many consumers. Despite the growing number of cord-cutters, the vast majority of households continue to rely on

¹⁵⁸ Comcast does offer promotional rates that increase after an initial time period. For example, in August 2011 Comcast was offering \$19.99 per month voice service for six months. The offer includes the following fine print: “Unlimited offer ends 9/21/11; Limited to new residential customers satisfying applicable eligibility criteria. Not available in all areas or to customers with unpaid account balances. To qualify for offer, service must be ordered via www.comcast.com. Offer limited to (1) Comcast Unlimited® service; or (2) Digital Starter TV, Performance Internet and Comcast Unlimited® service. After 3 months, monthly service charge for Showtime goes to \$10 for months 4 -12. After promotional period, or if any service is cancelled or downgraded, regular charges apply. Comcast’s current monthly service charge for Comcast Unlimited® is \$39.95 to \$44.95, for Showtime ranges from \$10.95 to \$23.95, depending on your area and other Comcast services (if any) received, and for Starter XF Triple Play is \$129.99. Digital TV and High-Speed Internet service limited to a single outlet. Equipment, installation, taxes, franchise fees, the Regulatory Recovery Fee and other applicable charges extra (e.g., per-call or international charges) extra. May not be combined with other offers. Voice: Carefree Minutes pricing applies to direct-dialed calls from home to locations included in the plan (except mobile numbers, operator services and directory assistance). Unused minutes do not roll over to the following month. Service (including 911/emergency services) may not function after an extended power outage. Call clarity claim based on August 2010 analysis by Tektronix.” Website accessed August 16, 2011. (<http://www.comcast.com/Corporate/Learn/DigitalVoice/digitalvoice.html?lid=3LearnCDV&pos=Nav>).

¹⁵⁹ Cablevision Optimum voice service pricing is available at: <http://www.optimum.com/voice/pricing.jsp> (accessed August 16, 2011). Customers can obtain voice for \$19.95 per month for a promotional period only if they buy a package of other services. “Offer available to iO customers with Family Cable or above plus Optimum Online. Optimum Voice \$19.95 per month pricing based on regular price of \$34.95 per month, less the Optimum Rewards discount of \$15 per month for subscribing to all three Optimum services at the required levels. Customer must maintain all three services at the required levels to be eligible for the Optimum Rewards discount. Upon cancellation of any of these services during the one-year promotional period, or thereafter, any remaining service will be billed at its regular rate. The Optimum Rewards discount includes the \$5 per month discount on Optimum Online with Family Cable or above. Customers on promotional offers will receive the Optimum Rewards discount at the end of the promotional period. Installation fee may apply. Available to residential accounts in good standing only.”

¹⁶⁰ Federal Telecommunications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2010*, rel. March 2011, at Figure 5. There were 28,895,000 total interconnected VoIP subscribers as of June 30, 2010. Of those, 4,663,000 (or 16%) were standalone VoIP. *Id.* Among non-nomadic VoIP subscriptions, only 7% of the VoIP subscriptions are on a stand-alone basis. *Id.*

wireline connections to the public switched telephone network (“PSTN”). In the final six months of 2010, 29.7% of U.S. households had only wireless telephones.¹⁶¹ Even accounting for phoneless households, this means that almost 70% of all households still had a wireline phone.

The FCC seeks comment on the SLC increases’ impact on consumers with “as much granularity ... as possible.”¹⁶² Older adults are much less likely to “cut the cord” and therefore are more vulnerable to SLC increases. Nationally, 53.5% of adults aged 25-29; 43.8% of adults aged 30-34; 30.9% of adults aged 35-44 years; 18.8% of adults aged 45-64 years; and 7.7% of adults aged 65 years and over lived in households that relied solely on wireless telephones in the final six months of 2010.¹⁶³ These data show that at this time few elderly consumers view wireless service as an economic substitute for wireline service (they may own wireless service, but they use wireless service *in addition to* rather than *instead of* wireline service). In addition to the disproportionately adverse impact on the elderly, consumers in rural areas with less reliable wireless coverage are more vulnerable to SLC increases than are their urban counterparts. In rural areas where wireless service is spotty, a landline connection is essential for households to reach emergency services. The number of wireless-only households varies by region as well, which provides evidence of potentially varying impact from the SLC. Approximately 17% of all adults living in the Northeast lived in wireless-only households

¹⁶¹ See, Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July – December 2010*, released June, 2011, available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf>.

¹⁶² Public Notice at 16.

¹⁶³ Id. at 8.

compared to 31.1% of adults living in the South.¹⁶⁴ Nationwide, 29.1% of adults in metropolitan areas have cut the cord compared to 22.9% of adults in non-metropolitan areas.¹⁶⁵

NASUCA emphasizes, however, that *all* consumers would be harmed by the ABC Plan's ill-advised SLC increases. Nationwide, for the customers who seek triple plays, competitive "choice" consists of an entrenched duopoly: the ILEC and the incumbent cable company. The oft-espoused ILEC view that customers who are dissatisfied with the price or quality of an ILEC's basic local exchange service can "vote with their feet" rings hollow.¹⁶⁶ Moreover, cable VOIP providers do not participate in the Lifeline program, precluding even a duopoly choice of landline providers for low-income customers.

¹⁶⁴ Id. at 9.

¹⁶⁵ Id.

¹⁶⁶ Numerous state public utility commissions have been and are continuing to grapple with market failures in local markets that lead to inadequate and unreliable telephone service. See, e.g., *In the Matters of Request of Verizon Maryland Inc. to Reclassify Certain Retail Bundled Services to the Competitive Service Basket as Provided by the Commission's Price Cap Plan; Commission's Investigation of Verizon Maryland Inc.'s Service Performance and Service Quality Standards; Commission's Investigation Into Verizon Maryland Inc.'s Affiliate Relationships; Commission's Investigations into Local Calling Area Boundaries and Related Issues; Appropriate Forms of Regulating Telephone Companies*, Maryland Public Service Commission Case Nos. 9072; 9114; 9120; 9121; and 9133, Order No. 83137, February 2, 2010, at 6; *Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to General Law Chapter 159, Section 16, of the telephone service quality of Verizon New England Inc., d/b/a Verizon Massachusetts, in Berkshire, Hampden, Hampshire, and Franklin Counties*, Commonwealth of Massachusetts, Department of Telecommunications and Cable, D.T.C. 09-1, Order on Joint Motion for Approval of Settlement, February 10, 2011; *In the Matter of Investigating the Service Quality of Verizon Virginia Inc. and Verizon South Inc.*, Commonwealth of Virginia State Corporation Commission Case No. PUC-2010-00064, Notification Order, January 25, 2011. The Maryland PSC found that Verizon MD's service quality provided to basic service had suffered because of a business decision to focus on business customers, deploying FiOS and increasing profits by reducing employment. The Massachusetts Department of Telecommunications and Cable approved a settlement agreement, which, among other things, requires Verizon to submit additional service quality reports and undertake a survey of its outside plant in certain wire centers in Western Massachusetts and complete repair work based on the findings of the survey. The Virginia State Corporation Commission, after a written response by Verizon to a "show cause" order and hearings, issued an order to "notify Verizon of its obligation and need to satisfy provisions" of the service quality rules related to out-of-service and repair.

ILECs' pricing behavior is consistent with a noncompetitive market. When allowed pricing flexibility by state regulators, most companies price at cap, the maximum amount permitted by state regulators – that is, “pricing flexibility” typically connotes one-way pricing movement – *higher rates*.¹⁶⁷ Few companies price below the cap.

4. THE FOCUS ON THE SLC AS A REVENUE RECOVERY MECHANISM IS ECONOMICALLY UNJUSTIFIED.

ILECs seek to “carve out” basic dial tone service and, in that process, to allocate disproportionate costs of the dial tone to local exchange service, while retaining lucrative streams of revenues from discretionary services and unregulated services outside of the reach of the regulated operations.¹⁶⁸ This “cost accounting” approach is then used to support the purported reasonableness of raising the SLC.

In doing so, the ILECs fail to consider the relative costs each service imposes on a common network used to provide voice service (local, toll, and ancillary services), data

¹⁶⁷ For example, Verizon New Jersey's basic local exchange rates are currently regulated under a settlement approved in 2008. See, *In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competition*, NJ BPU Dkt. No. TX07110873; *In the Matter of Application of United Telephone Company of New Jersey Inc. d/b/a Embarq for Approval of a Plan for Alternative Regulation*, NJ BPU Dkt. No. TO08060451, *Order*, August 20, 2008. The settlement terms and conditions included for Verizon's residential basic exchange service: “Verizon shall charge no more than \$11.95 per month for the first year after the effective date of the appropriate tariffs; no more than \$14.45 per month for the second year; and no more than \$16.45 per month for the third year.” *Id.*, at 29. The Stipulation also included a agreement that: “The Board shall initiate a proceeding to re-evaluate the competitiveness of the services identified in paragraph's 1, 2 and 3, within ninety days after the third anniversary of the issuance of the effective date of the appropriate tariffs reflecting the first year increases. The rate caps shall remain in effect until the conclusion of that proceeding.” *Id.*, at 31. Verizon New Jersey's basic local exchange rate is \$16.45. Verizon New Jersey Inc., *Tariff BPU-NJ-No.2, Exchange and Network Services*, page 30, effective December 18, 2010.

¹⁶⁸ NASUCA and Rate Counsel submitted comments on March 28, 2011 and initial and reply comments on April 19 and April 26, 2010, opposing proposals to extend the freeze until June 30, 2011 and June 30, 2012, respectively, and also submitted initial and reply comments on April 29, and June 1, 2010, in support of the State Members' Proposal. NASUCA and Rate Counsel also filed comments in 2009 regarding the FCC's proposed extension of the separations freeze. See also Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate; and Affidavits of Susan Baldwin and Dr. Robert Loube (August 22, 2006); *id.*, NASUCA et al. Reply Comments. See, also Meeting of the Federal-State Joint Board on Jurisdictional Separations, September 24, 2010, “Improving the Separations Process: Consumer Impact,” presentation by Susan M. Baldwin, on behalf of NASUCA and Rate Counsel.

service and video services; and they fail to consider the relationship between cost causation and cost recovery (i.e., pricing) for services provided over networks receiving universal service support. For nearly two decades, ILECs argued that local voice service was the “cost causer” of local telecommunications networks, primarily on the grounds that the network was constructed to provide that service, and every other service that was provided in whole or in part using the local PSTN was an incremental service that should only pay incremental costs. For networks being constructed primarily to provide broadband service, the tables have turned. Voice will also be provided over these networks, but the voice service is no longer the primary cost driver. On a network intended to provide broadband, basic exchange voice telephone service is the incremental service and basic exchange telephone service should not pick up the lion’s share of the tab for cost recovery on such networks.

Furthermore ILECs typically neglect to describe the numerous rate increases to “discretionary” services such as caller identification and three-way calling. ILEC increases to rates for these services belie the notion of competition. For example, Caller ID is typically priced at more than \$8 per month while the incremental cost of providing the service is nearly zero.

Similarly, although the incremental cost of providing custom calling services such as call forwarding, call waiting and three-way calling is minuscule, AT&T charges \$6.00 per month for each of these services in California (as of July, 2010), and Verizon California charges \$3.00 for call forwarding, \$4.75 for call waiting and \$4.00 for three-

way calling.¹⁶⁹ These rates produce revenues far in excess of costs and these revenues should be taken into account when determining whether additional public funds are truly needed to support the deployment of networks used to provide broadband, voice and other services in common.

Therefore, examining the basic dial tone rate in isolation is misleading, whether to gauge competition or to gauge companies' purported revenue needs.

An increase to the SLC represents an increase to the dial tone line rate. It is not economically efficient to raise the rate that customers pay for dial tone because any rate increase would move the price further above cost. Unless and until carriers allocate a reasonable and fair share of the dial tone cost to digital subscriber line ("DSL") service and to discretionary services (or conversely consider DSL and discretionary service revenues when comparing costs and revenues), carriers are providing a distorted view of the dial tone line cost-revenue comparison.

Increases to the SLC would be poor, imprudent and distorted public policy. Consumers view SLCs as a form of government taxation. ILECs can "shrug" and say – "the government made us do it," while refusing to disclose it in advertised rates.

Most ILECs already have pricing flexibility and if they need to raise rates have the ability to do so.

If companies are concerned that they are unable to earn a reasonable return on their regulated investment, they should bear the burden of proving such to state

¹⁶⁹ "California Public Utilities Commission: Gaps Emerge in Telephone Consumer Protections," footnote 51, *supra*.

regulators. The baseline assumption should be that companies do not need to raise rates. The ABC Plan is flawed because it assumes that companies need to be “made whole.”

The FCC seeks comment on “on the proposals that the need for any recovery should be based on the carrier’s showing of need based on its operations more broadly.”¹⁷⁰ In NASUCA’s view, earnings reviews are long overdue. Furthermore, state regulators are in the best position to assess whether increases are needed. By contrast, the FCC-endorsed carte blanche SLC rate increases would further tip the balance toward industry and away from consumers. SLC increases may allow the FCC to “declare victory,” but they would severely shortchange the nation and harm consumers.

Any access rate reductions and their effect on rates should be determined by the respective public service commissions in each state. State commissions need to look at the effect of these changes and whether any rate changes are necessary or warranted based upon the financial position of each affected carrier in a state. In those proceedings, state commissions should look at all revenues and costs. This is no different than the state commissions setting TELRIC wholesale rates and applying the methodology chosen by the FCC.

5. CARRIERS ARE UNLIKELY TO FLOW THROUGH BENEFITS TO CONSUMERS IN THE FORM OF REDUCED WIRELESS RATES.

The ABC Plan proponents have failed to demonstrate that consumers would benefit from the ABC Plan. Instead, consumers are likely to be harmed because they would foot the bill through SLC increases, universal service fees, and over-priced broadband services. Industry would benefit from lower access charges and from higher

¹⁷⁰ Public Notice at 16 (citation omitted).

SLCs. Among other things, NASUCA disagrees with the Professor Hausman's conclusion that the FCC can rely on competitive forces to pass through reduced access charges in long distance and wireless rates. The wireless market has become increasingly concentrated, and, therefore, at best, carriers may pass through an insignificant portion of their intercarrier compensation charge savings to consumers.

On June 27, 2011, the FCC released its 15th Annual Report on Mobile Wireless Competition. In 2010, for the first time since 2003 the FCC refrained from concluding that the wireless market was effectively competitive. The 14th Report stated:

As described in this Mobile Wireless Competition Report, the mobile wireless ecosystem is sufficiently complex that any review or analysis of competitive market conditions must take into consideration a multitude of factors. As a result, rather than reaching an overarching, industry-wide determination with respect to whether there is "effective competition," the *Report* complies with the statutory requirement by providing a detailed analysis of the state of competition that seeks to identify areas where market conditions appear to be producing substantial consumer benefits and provides data that can form the basis for inquiries into whether policy levers could produce superior outcomes. As the mobile wireless marketplace evolves, driven in particular by mobile wireless broadband and data usage, the Commission's analyses and policies with respect to key inputs – such as spectrum – also must evolve in order to ensure a robust level of competition going forward.¹⁷¹

Similarly, this year, the 15th Report concludes:

The *Fourteenth Report* examined, for the first time, competition across the entire mobile wireless ecosystem, including an analysis of the "upstream" and "downstream" market segments, such as spectrum, infrastructure, devices, and applications. Consistent with the Commission's first seven Annual Commercial Mobile Radio Service (CMRS) Competition Reports, the *Fourteenth Report* did not reach an overall conclusion regarding whether or not the CMRS marketplace was effectively competitive, but

¹⁷¹ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66 (Terminated), *Fourteenth Report* (rel. May 20, 2010), ¶ 3 (citation omitted).

provided an analysis and description of the CMRS industry's competitive metrics and trends. The *Fifteenth Report* follows the same analytical framework used in the *Fourteenth Report*, with certain improvements based on responses to that *Report*. Thus, the *Fifteenth Report* makes no formal finding as to whether there is, or is not, effective competition in the industry. Rather, given the complexity of the various inter-related segments and services within the mobile wireless ecosystem, the *Report* focuses on presenting the best data available on competition throughout this sector of the economy and highlighting several key trends in the mobile wireless industry.¹⁷²

The Report notes that at “year-end 2009, the four nationwide service providers accounted for just over 90 percent of the nation’s mobile wireless subscribers (including wholesale subscribers), with AT&T and Verizon Wireless together accounting for 62 percent.”¹⁷³ and the FCC calculated Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) margins of over 18 percent for the seven largest mobile wireless carriers and over 40 percent for the two largest carriers (AT&T and Verizon Wireless).¹⁷⁴ The FCC also reported that the total revenue generated by the mobile wireless industry was approximately \$154.7 billion in service revenues in 2009, comprising 21.8 percent of the total revenues of the U.S. information and communications technology industry, up from 19.9 percent in 2008.¹⁷⁵

The *15th Report* also analyzes how the quantity of facilities-based mobile wireless providers with coverage in a census tract varies based on median income levels. Not surprisingly, the average number of providers increases as income increases. The FCC

¹⁷² *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133 (Terminated), *Fifteenth Report* (rel. June 27, 2011), ¶. 2.

¹⁷³ *Id.*, ¶ 8.

¹⁷⁴ *Id.*, ¶ 2.

¹⁷⁵ *Id.*

reports that “the greatest difference in deployment appears to be between census tracts with median household income levels below and those with income levels above \$50,000 per year.”¹⁷⁶

Finally on this issue, Commissioner Copps states, among other things:

Finally, I cannot ignore some of the darkening clouds over the state of mobile competition. The headline for this Report will be that the FCC neither finds nor does not find effective competition. Dig deeper and, sure enough, we find ongoing trends of industry consolidation. The well-accepted metric for market concentration, the Herfindahl-Hirschman Index, remains above the threshold for a “highly concentrated” market. It also appears that consumers are no longer enjoying falling prices, according to the CPI for cellular services. We know there is a looming spectrum crunch and a growing need for backhaul. There is no doubt that the mobile market is an American success story, and there are many ways to measure industry health. But it would be foolish and decidedly not in the public interest to ignore the facts this Report reveals. If we want Americans to continue to enjoy innovation, affordability and improved mobile coverage, we must heed these facts and continue to examine areas where the Commission can act to encourage mobile competition.¹⁷⁷

6. THE SLC INCREASES VIOLATE § 254(K) OF THE ACT.

The ABC Plan shifts revenue responsibility from ICC (except the limited amount contemplated by the uniform \$0.0007 rate) to the SLC. It cannot be challenged that – for most if not all carriers – a \$0.0007 rate is insufficient to cover any of the joint and common costs of a terminating carrier’s facilities. Thus this revenue responsibility shift violates 47 U.S.C. § 254(k), which requires the Commission (and the states) to “ensure that services included in the definition of universal service bear **no more** than a reasonable share of the joint and common costs of the facilities used to provide those

¹⁷⁶ Id., ¶ 124.

¹⁷⁷ Id., Statement of Michael J. Copps at 308.

services.” (Emphasis added.) The basic service on which the SLC is imposed is, of course, the fundamental service included in the definition of universal service.

G. The few reasonable items from the ABC Plan

While NASUCA fundamentally opposes the ABC Plan, we are not in total disagreement with each and every aspect of the proposal. For instance, NASUCA supports a high-cost fund cap of \$4.5 billion a year.¹⁷⁸

The ABC Plan would not provide CAF support for a service territory where there is already a broadband service provider that is not receiving support and qualifies as an unsupported broadband competitor.¹⁷⁹ NASUCA agrees that the FCC should rely upon a state commission review of these areas, with due process included.¹⁸⁰ (This is obviously proposed in the ABC Plan as a means to protect the interests of the ILEC, but should also result in better protection of the overall public interest.)

Consistent with the State Member Plan, NASUCA supports the concept of an alternative technology threshold, for very high-cost locations.¹⁸¹

III. THE COMMISSION MUST TAKE A MEASURED APPROACH TO USE/ICC “REFORM.”

After receiving tens of thousands of pages of comments and reply comments in the first phase of this proceeding (not to mention the tens of thousands of pages in

¹⁷⁸ Framework at 1. The Joint Letter allocates that amount as \$2.2 billion for the price-cap carriers and \$2.3 billion for the RoR carriers. Joint Letter at 2.

¹⁷⁹ Framework at 3.

¹⁸⁰ Id.

¹⁸¹ Id. at 5.

previous similar proceedings over a number of years¹⁸²), the Commission issued a public notice on August 3, 2011, focusing on requests for comment on a proposal that had been filed all of four days before. Not only that, but the proponents have admitted that the support for their proposal needed supplementation,¹⁸³ presenting commenters with a moving target. And the Commission asked for comment on only some of the issues from the ABC Plan. Nonetheless, the Commission summarily denied reasonable requests for extension of the comment due date.

These concerns with regard to timeframes pale in comparison to other more substantive concerns. These include the fundamental issue of why the ABC Plan, the RLEC Plan and the State Member Plan were singled out for comment, especially now that the ABC Plan and the RLEC Plan have been conjoined. If this represents a Commission inclination toward one of these plans, including the portions on which comment was not solicited, the inclination is certainly not explained – or justified – in the Public Notice.¹⁸⁴

More importantly, there are the many fundamental assumptions of the newly-dubbed “USF-ICC Transformation NPRM” that remain questionable and unresolved. These assumptions were discussed in NASUCA’s initial and reply comments, and include:

- The need to address these issues globally, rather than incrementally;

¹⁸² And the lack of success of the last attempt at a global solution, Chairman Martin’s proposal in 2008.

¹⁸³ See US Telecom ex parte (August 16, 2011).

¹⁸⁴ On the other hand, despite the focus on the State Member Plan, the RLEC Plan and the ABC Plan, other plans and comments are continually referred to in the Public Notice. See, e.g., footnote 4.

- This assumption leads to continuing confusion of the purposes of the CAF¹⁸⁵;
- The classification of broadband as a supportable service;
- The need and rationale for a uniform ICC rate for all companies;
- The lack of cost justification for the \$0.0007 rate;
- The need and rationale for revenue recovery (especially from end-users and the USF.)

Based on these unjustified assumptions, NASUCA must again express support for its proposed gradual iterative approach, where easier issues (like phantom traffic and traffic pumping) are resolved first, and the most fundamental issues (like separations) are addressed before the flow-through issues like ICC and the funds needed for the USF are resolved. The resolution of phantom traffic and traffic pumping will in fact provide additional revenues for the ILECs, reducing the need for revenue replacement; and the correction of the current antiquated separations process will place more costs into the interstate jurisdiction, reducing the need for states to increase local rates to make up for intrastate revenue losses.¹⁸⁶

IV. RESPONSES TO THE PUBLIC NOTICE

As discussed above, the remainder of these comments includes the language from the Public Notice (in italics, in 11-point type), followed by NASUCA's Comments in regular 12-point type. Where necessary, the Public Notice's footnotes are retained, although renumbered and italicized.

I. Universal Service

¹⁸⁵ See "Eliminating support for areas with an unsubsidized competitor," at pp. 6-7 of the Public Notice.

¹⁸⁶ NASUCA also supports the State Members reform of wireless access by eliminating the MTA-wide rates. See State Members Plan at 154.

A. Separate Support for Mobile Broadband.

- *Several parties propose that the Commission create two separate components of the Connect America Fund, one focused on ensuring that consumers receive fixed voice and broadband service (which could be wired or wireless) from a single provider of last resort in areas that are uneconomic to serve with fixed service, and one focused on providing ongoing support for mobile voice and broadband service in areas that are uneconomic to serve with mobile service (i.e., a Mobile Connect America Fund), with the two components together providing annual support under a defined budget.¹⁸⁷ We seek comment on providing separate funding for fixed broadband (wired or wireless) and mobility. How should the Commission set the relative budgets of two separate components?¹⁸⁸ How should the budgets be revised over time?*

NASUCA's expressed position was that mobile broadband was being reasonably deployed without USF support, but that could change in the future.¹⁸⁹ NASUCA maintains that position.

- *In the USF/ICC Transformation NPRM, the Commission sought comment on phasing down high-cost support for competitive eligible telecommunications carriers (competitive ETCs) over 5 years and transitioning such support to the CAF.¹⁹⁰ To what extent would projected savings associated with intercarrier compensation reform for wireless carriers as proposed in the ABC Plan help offset reductions in high-cost support for competitive ETCs? We ask parties to substantiate their comments with data and remind parties that they may file data under the protective order issued in this proceeding.¹⁹¹*

¹⁸⁷ See, e.g., *State Member Comments at 2, 68-73; ABC Plan, Attachment 1 at 8; RLEC Plan at 83; United States Cellular Corp. April 18 Comments at 20; American Cable Association April 18 Comments at 5-6; AT&T April 18 Comments at 86-87, 108-09; Nebraska Pub. Serv. Comm. April 18 Comments at 17.*

¹⁸⁸ *We note the wide range of proposed budgets for a mobility fund. Compare ABC Plan, Attachment 1 at 9 (at most \$300 million) with US Cellular, Letter from David A. LaFuria, Counsel to United States Cellular Corporation, to Marlene H. Dortch, FCC, WC Docket No. 05-337 et al., at 5 (filed July 29, 2011) (US Cellular July 29, 2011 Ex Parte)(at least \$1.3 billion). US Cellular has proposed that we determine appropriate support levels for mobile carriers in targeted high cost rural areas using a model of an efficient level of costs. See Letter from David A. LaFuria, Counsel to United States Cellular Corporation, to Marlene H. Dortch, FCC, WC Docket No. 05-337 et al. (filed June 16, 2011) (US Cellular June 16 Ex Parte); U.S. Cellular July 29 Ex Parte.*

¹⁸⁹ See NASUCA Reply Comments at 115-116.

¹⁹⁰ *USF/ICC Transformation NPRM, 26 FCC Rcd at 4641, para. 248.*

¹⁹¹ *Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; WC Docket Nos. 07-135, 10-90, 05-337; GN Docket No. 09-51, Protective Order, 25 FCC Rcd 13160 (WCB 2010) (Protective Order).*

NASUCA notes that the FCC has not factored the **savings** to carriers as a result of ICC reductions into any of its calculations, especially the calculations of revenue recovery. More directly, **of course** reductions in wireless carriers' ICC would offset the loss of CETC support, especially given the abiding question of the necessity of that CETC support. The FCC should also ensure that the wireless and long distance savings from ICC reductions should be subtracted from any lost revenue recovery calculations when dealing with a vertically integrated company such as AT&T or Verizon.

B. Elimination of Rural and Non-Rural Carrier Distinctions.

- *In the USF/ICC Transformation NPRM, the Commission sought comment on two potential paths for the long term CAF: (1) use a competitive, technology-neutral bidding process to determine CAF recipients; or (2) offer the current voice carrier of last resort a right of first refusal to serve the area for an amount of ongoing support determined by a cost model, with a competitive process if the incumbent refuses the offer.¹⁹² Several parties that jointly filed a letter proposing a path for reform propose a hybrid system in which support would be determined under a combination of a forward-looking cost model and competitive bidding in areas served by price cap companies, while companies that today are regulated under a rate of return methodology would continue to receive support based on embedded costs, albeit with greater accountability and cost controls.¹⁹³ Similarly, the State Members suggest that a forward-looking model be used for price cap companies, while rate of return companies would have the option of receiving support under a model or based on embedded costs.¹⁹⁴ We seek comment on the policy implications of eliminating the current references to rural and non-rural carriers in our rules and of adopting two separate approaches to determining support for carriers that operate in rural areas that are uneconomic to serve, based on whether a company is regulated under rate of return or price caps in the interstate jurisdiction.*

This proposal simply substitutes the price cap/RoR distinction for the non-rural/rural distinction. The difference may not be significant, except that carriers can choose (and have chosen) price cap regulation instead of RoR (so may have gamed that

¹⁹² *USF-ICC Transformation NPRM, 26 FCC Rcd at 4681-90, paras. 417-447.*

¹⁹³ *See Joint Letter at 2.*

¹⁹⁴ *State Member Comments at 38-39.*

distinction); the rural/non-rural distinction was not subject to gaming. The key point is that the larger the carrier, the greater the economies of scale and scope. And despite the continuing complaints about the loss of implicit support in larger carriers' rural service areas, **there has been NO showing of actual effects of that loss, in terms of unreasonably low returns or efforts to increase rates in rural areas because of that loss of support.**

C. CAF Support for Price Cap Areas.

1. *Use of a Model.*

- *Both the State Members and the ABC Plan would use a forward-looking model to determine support amounts for areas where there is no private sector business case to offer broadband.¹⁹⁵ We seek comment on what information would need to be filed in the record regarding the CostQuest Broadband Analysis Tool (CQBAT model) for the Commission to consider adopting it, as proposed in the ABC Plan.*

See Section II.D.3., above. NASUCA also expects to address this issue on reply – another problem with the short reply period in this Notice that will allow only seven days for parties to review all comments and respond to the Commission.

- *The ABC Plan proposes using one technology to determine the modeled costs of 4 Mbps download/768 kbps upload service, while permitting support recipients to use any technology capable of meeting those requirements.¹⁹⁶ Should the amounts determined by a model be adjusted to reflect the technology actually deployed? Is ten years an appropriate time frame for determining support levels, given statutory requirements for an evolving definition of universal service? Should the model reflect the costs of building a network capable of meeting future consumer demand for higher bandwidth that reasonably can be anticipated five years from now?*

¹⁹⁵ See ABC Plan, Attach. 1 (Framework of the Proposal) at 3-6, Attach. 3 (Model Description); State Member Comments at 37-38.

¹⁹⁶ ABC Plan, Attach. 1 at 2, 7.

As discussed in Section II.D.1. above, the ABC Plan’s broadband service level is woefully inadequate. Specifically, NASUCA’s position is that any construction supported by the CAF should be scalable/upgradeable.¹⁹⁷

Moreover, as also previously discussed in Section II.D.I above, the decision by the CQBAT model’s designers to assume one type of technology – twisted pair for residential and small business customers and fiber to large customers – is a poor one. It is a major structural deficiency in the model because the model, by definition, is precluded from using the most least cost, efficient type of technology to include in the construction of broadband networks. For example, in situations where there are both residential and large business customers, fiber might well be appropriate because it could provide a platform to which residential and small business customers could be added. Likewise, the model apparently excludes the possibility of using fixed wireless to serve customers in situations where the cost of deploying lengthy twisted pair might be prohibitive. Given this major deficiency it would be impossible to “adjust the model” to determine appropriate levels of support. Thus the use of the CQBAT model and its reliance on one modeled technology to determine costs should not even be considered. The National Broadband Plan was intended to encourage the expansion of broadband by use of the most forward looking, efficient and cost-effective technologies. Considered in this light, the CQBAT model is not only inadequate, it is a step backwards.

2. *Right of First Refusal (ROFR)*

- *The ABC Plan would give an incumbent local exchange carrier (LEC) the opportunity to accept or decline a model-determined support amount in a wire center if the incumbent LEC has already made high-speed*

¹⁹⁷ NASUCA Initial Comments at 77.

Internet service available to more than 35 percent of the service locations in the wire center.¹⁹⁸ We seek comment on this proposal. Would aggregating census blocks to something other than a wire center be an improvement to the proposal? Is 35 percent a reasonable threshold? Should areas that are overlapped by an unsubsidized facilities-based provider be excluded when calculating the percentage? Is the opportunity to exercise a ROFR reasonable consideration for an incumbent LEC's ongoing responsibility to serve as a voice carrier of last resort throughout its study areas, even as legacy support flows are being phased down? Should any ROFR go to the provider with the most broadband deployment in the relevant area rather than automatically to the incumbent LEC?¹⁹⁹ Alternatively, if there are at least two providers in the relevant area that exceed the threshold, should the Commission use competitive bidding to select the support recipient?

This paragraph mingles/conflates/confuses a wide variety of issues. First, should there be a ROFR? NASUCA's position is that there should be no such right. Second, this seems to ignore that support should go only to broadband-unserved areas. Even if one accepts the (arbitrary) ABC Plan 35% threshold, the ROFR gives an advantage to the ILEC. As with the possibility of (likely unavailing) auctions, this ignores the merits of NASUCA's procurement proposal.

3. *Public Interest Obligations*

- *Last year, the Federal-State Joint Board on Universal Service recommended that the Commission adopt a principle "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services."²⁰⁰ If that recommendation is adopted, how could the CQBAT model be improved to account for the costs of providing both broadband and voice service?*

The first issue is that these public interest obligations **must** be imposed. As evident from over 100 years of U.S. telecommunications history, there are great

¹⁹⁸ See ABC Plan, Attach. 1 at 6.

¹⁹⁹ See Letter from Steven F. Morris and Jennifer K. McKee, National Cable and Telecommunications Association, to Marlene H. Dortch, FCC, WC Docket No. et al., Attach. at 3 (filed July 29, 2011) (NCTA Letter).

²⁰⁰ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 25 FCC Rcd 15598, 15625, para. 75 (2010).

efficiencies to be gained from constructing networks to provide multiple services in common. In high cost areas, the regions this funding is supposed to support, it would be difficult to justify separate networks for voice and broadband. There is no rationale that could support the need to gain separate approval for rights of way, separate conduits, separate trenching, or the failure to maximize the efficiency gained from combining traffic on larger pipes/cables (among other things). The vast majority of Americans still rely on basic wireline voice telephone service. Basic voice service provided over copper networks will function during power outages, when broadband service stops functioning. The continued provision of affordable, reliable basic telephone service is a matter of public health and safety. **Any action taken by the FCC to “reform” universal service must not damage the viability of basic telephone service.** Taking high cost funding used to support voice telephone service, shifting it to broadband and then finding that the recipients of the funding were not obligated to provide voice would cause irreparable harm.

The second issue is the assumption that the CQBAT model should be used, which, as discussed in Section II.d.3., above, and in an earlier answer to the Public Notice questions, it should not be.

- *The State Members propose that recipients of support meet specific broadband build-out milestones at years 1, 3 and 5 of deployment.²⁰¹ A company that exceeded a specified minimum standard, but failed to meet the higher standard at a given milestone would receive a pro rata share of support. We seek comment on what specific interim milestones would be effective in ensuring that carriers receiving CAF support are building*

²⁰¹ See State Member Comments at 62-63. Specifically, a company would lose all of its support if it failed to meet the minimum standard of deploying gradually increasing speeds to increasing percentages of its area over the five-year period. A company would receive full funding if it met or exceeded a higher standard. *Id.*

out broadband at a reasonable rate during the specified build-out period.

Per the discussion above in Section II.D.1., above, regarding the **lack** of any enforcement mechanism in the ABC Plan, NASUCA supports the State Members proposal.

- *The ABC Plan proposes that CAF recipients provide broadband service that meets specified bandwidth requirements to all locations within a supported area, but does not address the pricing of such services or usage allowances.²⁰² Should the Commission adopt reporting requirements for supported providers regarding pricing and usage allowances to facilitate its ability to ensure that consumers in rural areas are receiving reasonably comparable services at reasonably comparable rates?*

The Commission must include not only reporting requirements but enforceable standards for the supported services.²⁰³

4. *Eligible Telecommunications Carrier (ETC) Requirements*

- *The ABC Plan proposes a procurement model, in which recipients of CAF support incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission, and CAF recipients are free to use any technology, wireline or wireless, that meets specified bandwidth and service requirements.²⁰⁴ What specific rule changes to the Commission's rules, including Part 54, Subpart C of the Commission's rules, would be necessary to implement such a proposal?*

As discussed above in Section II.B., above, the key to the ABC Plan is the **evasion** of these service responsibilities – and the preemption of state requirements for those responsibilities – wherever support is **not** received. That is an entirely different subject from the acceptance of responsibility in exchange for support.

²⁰² *ABC Plan, Attach. 1 at 2-3, 7-8.*

²⁰³ See NASUCA Comments at 76-81.

²⁰⁴ *ABC Plan, Attach. 1 at 2, 3, 7.*

The FCC should not adopt this proposal. It is disturbing that the only aspect of this ABC Plan proposal the Notice asks for comment on is the question of what language changes would be necessary to eviscerate important public protections. The Notice **should** have asked for comment on the potential for adverse impacts of such action, but chose to ignore this significant issue.

5. *State Role*

- *The State Members and other commenters propose an ongoing role for states in monitoring and oversight over recipients of universal service support.²⁰⁵ We seek comment on specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework, and invite comments on other suggestions. For example:*
 - *Were the Commission to adopt a ROFR mechanism, could the states determine whether a provider has already made a substantial broadband investment in a particular area, and therefore would be eligible to be offered support amounts determined under a forward-looking model?²⁰⁶*
 - *Should ETCs be required to file copies of all information submitted to the Commission regarding compliance with public interest obligations with the states, as well as with USAC?*
 - *The ABC Plan contemplates that CAF recipients would serve all business and residential locations within a supported area, but does not specifically address the obligation to serve newly built locations within a supported area over the ten-year term of the funding. Should states be charged with determining whether any charges for extending service to newly constructed buildings are reasonable, based on local conditions?*
 - *Should states collect information regarding customer complaints, including complaints about unfulfilled service requests and inadequate service?*

²⁰⁵ *State Member Comments at 139-140; see also Cal. Pub. Util. Comm., April 19 Comments at 10-11; Pub. Serv. Comm. of Mo. April 6 Comments at 9-11; Neb. Pub. Serv. Comm. April 19 Comments; of Wash. Util. and Transp. Comm. April 18 Comments at 5-6.*

²⁰⁶ *ABC Plan, Attach. 1 at 2.*

NASUCA supports all of these requirements generally. As stated previously, it is unclear – but should be of no great importance – whether the imposition of such reasonable additions would be sufficient to trigger the ABC Plan proponents’ threat of withdrawal from – or opposition to – the plan. NASUCA would note the issue of possible conflict with, or gaps in, state law to accomplish these ends.

D. Reforms for Rate-of-Return Carriers.

- *In light of the RLEC Plan and the Joint Letter, as well proposals by the State Members, we seek comment below on specific issues relating to universal service support for rate-of-return companies.*
 - *Re-examining the Interstate Rate of Return. The Joint Letter proposes that CAF calculations for areas served by rate-of-return companies would be calculated using a 10 percent interstate rate of return.²⁰⁷ The State Members recommended that the rate of return for universal service calculations be set at 8.5 percent.²⁰⁸ We seek comment on what data the Commission would need to have in the record to enable it to waive the requirements in Part 65 of the Commission’s rules for a rate of return prescription proceeding, so that the Commission could quickly adopt a particular rate of return.*

Given the two decades since the last full review of RoR, there probably should be a full proceeding for this purpose. But the use of the State Members’ 8.5% would be a reasonable proxy until that proceeding could be concluded.

- *Corporate Operations Expense Limitation Formula. We seek comment on applying the following formula to limit recovery of corporate operations expenses for high-cost loop support (HCLS), interstate common line support (ICLS), and local switching support (LSS).²⁰⁹*

For study areas with 6,000 or fewer working loops, the monthly amount

²⁰⁷ *Joint Letter at 2.*

²⁰⁸ *State Member Comments at 36.*

²⁰⁹ *See NECA, Universal Service Fund Data: NECA Study Results, 2009 Report (filed Sept. 30, 2010), <http://www.fcc.gov/wcb/iatd/neca.html>. 2011 support is based on 2009 cost data, filed on September 30, 2010. The statistical regression techniques for developing the updated limitation formula are the same as used to develop the initial formula. See First Reconsideration Order, 12 FCC Rcd at 10115-17, App. B. The statistical formula produced by our updated analysis, as shown below, includes the allowance of 115% to permit more carriers to fall within the range of reasonableness.*

per loop shall be limited to;

\$42.337 – (.00328 x the number of working loops) or \$50,000/the number of working loops, whichever is greater

For study areas with more than 6,000 working loops, but fewer than 17,888 working loops, the monthly amount per loop shall be limited to;

\$3.007 + (117,990/number of working loops)

For study areas with 17,888 or more working loops, the monthly amount per loop shall be limited to;

\$9.52 per working loop

The Public Notice is not entirely clear, but this formula appears to be based on a regression analysis (see footnote 23). NASUCA has previously commented on some of the issues regarding such analyses,²¹⁰ but has no additional comment.

- *Eliminating Support for Areas with an Unsubsidized Competitor. In responding to the NPRM, the RLEC Plan suggested that the Commission could establish a process to reduce an incumbent's support if another facilities-based provider proves that it provides sufficient broadband and voice service to at least 95 percent of the households in the incumbent's study area without any support or cross-subsidy.²¹¹ We seek comment on such a process, including how to allocate costs to the remaining portions of the incumbent's study area for purposes of determining universal service support. Would a cost model be a way to allocate costs between the subsidized and unsubsidized portion of a rate-of-return study area that overlaps substantially with an unsubsidized competitor?²¹² Could state commissions administer proceedings to consider such challenges, similar to the suggestion in the ABC Plan that state commissions could elect to determine which census blocks served by price cap companies have unsubsidized competitors, and therefore are not eligible for CAF support?*

It is not clear here whether the idea is to reduce or to eliminate such support. As NASUCA has argued, would not the effect of either reduction or elimination simply be to

²¹⁰ See NASUCA Reply Comments at 38-40 and Appendix A.

²¹¹ *RLEC Plan at 51-56.*

²¹² *See NTCA Letter, Attach. at 2.*

shift the support to the areas where there is no competition? NASUCA agrees, however, that if such a process is adopted, the states should administer it.

One fundamental issue to be considered is the question of whether the reduction in support should be “allocated” to other lines at all. The first question, for RoR ILECs, should be whether the ILEC is over-earning. Price-cap carriers that requested and received freedom from price regulation, on the grounds that there was ample competition in the market, should not be made whole. Interstate earnings should also be taken into account, for all ILECs. The next question should be, how have previous funds received for the provision of service in the high cost area in question been spent? Further, in each instance the number of lines previously supported should be considered – if it is a relatively small number of lines, the loss of support would matter very little.

- *Limits on Reimbursable Operating and Capital Costs. We seek comment on limiting reimbursable levels of capital investment and operating expenses for LSS.*

This was the subject of extensive comment in the first part of this proceeding.

NASUCA has no additional comment.

E. Ensuring Consumer Equity

- *Rate Benchmark. In the USF/ICC Transformation NPRM, the Commission sought comment on the use of a rate benchmark to encourage states to rebalance their rates and ensure that universal service does not subsidize carriers with artificially low rates.²¹³ In response to the NPRM, one commenter suggested that we should develop a benchmark for voice service and reduce a carrier’s high-cost support by the amount that its rate falls below the benchmark.²¹⁴ Under such an approach, the Commission would reduce intrastate universal service support (specifically, HCLS for rural carriers and high-cost model support (HCMS) for non-rural carriers) dollar for dollar during the transition to CAF to the extent the company’s local rates do not meet the specified benchmark. These*

²¹³ *USF/ICC Transformation NPRM, 26 FCC Rcd at 4733-34, para. 573. See also id. at 4603, para. 139 and note 223.*

²¹⁴ *Ad Hoc Telecommunications Users Committee April 18 Comments.*

reductions would not flow to other recipients. We seek comment on this proposal and proposed variations on it. Should we set the initial benchmark using the most recently available data that the Commission has regarding local rates? For example, according to the 2008 Reference Book of Rates, the average monthly charge for flat-rate service was \$15.62 per month. Using the same data, the average monthly charge for flat-rate service, plus subscriber line charges of \$5.74 per month, would total \$21.36 per month.²¹⁵ Should the benchmark rise over a period of three years, for instance, with an end point of \$25-\$30 (or some other amount) for the total of the local residential rate, federal subscriber line charge (SLC), state subscriber line charge, mandatory extended area service charges, and per-line contribution to a state's high cost fund, if one exists? Should this benchmark be the same as the ICC benchmark?

NASUCA, reluctantly, supports a benchmark for use in calculating needed support, whether it be directed to SLC or CAF purposes. NASUCA does not support, however, a nationwide rate for basic service, nor does it support mandated increases in basic rates that are the sole responsibility of state commissions. As discussed above, there are cost differences between states and there is no justification for a nationwide rate for basic service. The State Member Plan suggests that an appropriate benchmark for the calculation of support – rather than one requiring rate increases – should be \$25.00.²¹⁶

Because the ILECs continue to complain about competitive losses in residential markets, the conclusion should be that basic rates will **decline** because of increased competition. Therefore, the FCC should reject the proposals for use of higher benchmarks solely for the purpose of calculating needed support. Further, for states that have deregulated the price for basic service, NASUCA would support the use of a zero benchmark, hence zero support based on the assumption that such markets are fully competitive and that market forces are sufficient to protect consumers.

²¹⁵ *Industry Analysis and Technology Division, Wireline Competition Bureau, Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, at Table 1.1 (2008).*

²¹⁶ State Member Plan at 52.

Further, it is not clear why the FCC's focus is just on basic service. An ILEC has ample sources of revenue beyond basic service: vertical services, broadband, video. A benchmark should look at the total revenue per line compared to the total cost per line. (See discussion on next bullet.)

- *Total company earnings review. The State Members recommended that a Provider of Last Resort Fund include a total company earnings review to limit a supported carrier from earning more than a reasonable return.²¹⁷ We seek to further develop the record on the mechanics of conducting an earnings review to ensure that universal service is not providing excessive support to the detriment of consumers across the United States.*
 - *We seek comment on the State Members' recommendation that, at least initially, the support mechanism should not factor in either the revenues or marginal costs of video operations to avoid the risk of subsidizing video operating losses attributable to unregulated programming costs.²¹⁸*

The obvious goal of the State Member Plan was to capture the total costs and revenues associated with the full complement of services that are dependent upon the network and its infrastructure in the delivery of telecommunications, video and information services. NASUCA supports the State Member proposal and shares the concern of the State Members that inclusion of video costs in calculating needed support would lead to the subsidy of a video market that may be desirable for customers but unprofitable due to the high cost of programming. However, basic incremental cost methodology would recognize that any contribution to the network costs above the incremental costs of the service would result in a profitable service in the eyes of most rational economists. Therefore, NASUCA would also suggest that positive net revenues from video operations should be considered for calculating needed USF support

²¹⁷ *State Member Comments at 56-58. The Commission sought comment on including all revenues (including broadband revenues) when evaluating rate of return requirements. USF/ICC Transformation NPRM, 26 FCC Rcd at 4674, para. 392.*

²¹⁸ *State Member Comments at 35.*

- *We seek comment on what total company rate of return should be used, what the mechanism should be for reducing support to the extent that total company rate of return is exceeded, and how often a total company earnings review should be conducted.*

The State Member Plan includes documentation that supports an 8.5% rate of return. NASUCA supports an 8.5% return for near-term calculations of needed support, only because it is on the current record. NASUCA would simply remind the Commission to read the newspapers and initiate a separate proceeding to quantify the current cost of money based on today's actual costs. NASUCA believes, intuitively, that the proposed 8.5% ROR is excessive based on present day economic conditions, for most if not all of our nation's telecommunications and information service providers. A separate proceeding makes sense because it would not only serve to quantify a uniform cost of money (ROR) but it could also reveal any facts that would support ROR differentials that might exist due to the significant size differences among the various service providers. Since the cost of money varies over time, the FCC should contemplate an annual proceeding to recognize such changes.

- *We seek comment on what carriers should be required to submit to USAC, in a standard format, to facilitate a total company earnings review. For example, should we require submission of the audited financial statements for the incumbent LEC, a consolidated balance sheet and income statement for the incumbent LEC and its affiliates, a list of affiliates, a schedule showing dividends paid to shareholders or patronage refunds distributed to members of cooperatives for the last five years, a Cost Allocation Manual, an explanation of how revenues from bundled services are booked, a trial balance of accounts at a Class B accounting level or greater, and the number of retail customers served by the incumbent LEC and its affiliates for voice and broadband service?*

NASUCA would suggest that the above data would be required of any company subjecting itself to an audit of its financial submissions to the SEC. The FCC should

accept no less, in view of the fact that any submission of cost and revenue data could lead to the expenditure of public funds.

F. Highest-Cost Areas.

- *The ABC Plan would rely on satellite broadband to serve extremely high-cost areas.²¹⁹ We seek comment on a proposal by ViaSat to create a Competitive Technologies Fund to distribute support through a combination of a reverse auction and consumer vouchers to enable consumers in highest-cost areas to obtain service from wireless, satellite, or other providers.²²⁰*

The Public Notice is confusing at this point (the term “voucher” does not appear in the ViaSat proposal, but does, of course, appear in the cited NCTA letter). In any event, ViaSat’s proposed auction design contains so many variables and possibilities as to make it difficult to analyze. One thing should be clear, however: Given satellite’s limitations for voice service, satellite should be limited to broadband in extremely high-cost areas, and should not be allowed to take the place of current landline voice service (as suggested by the ABC Plan).

- *We also seek comment on what obligations are appropriate to impose on recipients of funding, as a condition of receiving support, to facilitate provisioning by others in areas the recipients are not obligated to serve. For example, Public Knowledge has proposed to require recipients to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks.²²¹ Should recipients’ Acceptable Use Policies also be required to allow customers to share their broadband connections with unserved customers nearby, for example, through the use of WiFi combined with directional antenna technology?*

²¹⁹ See ABC Plan, Attach. 1 at 4.

²²⁰ See generally Letter from John P. Janka, Counsel to ViaSat, Inc. and WildBlue, Communications, Inc., to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) See also NCTA Letter, Attach. at 2 (recommending that the Commission identify areas that are prohibitively expensive to serve and provide subsidies to consumers living in those areas to subscribe to satellite broadband service).

²²¹ C.f. Public Knowledge and Benton Foundation April 18 Comments, at 5-7; Letter from John Bergmayer, Public Knowledge, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 28, 2001).

See NASUCA’s comments in Section II.C.4. on the public interest obligations that should be met by all recipients of BB support. The Commission should **require** that advanced networks constructed with public money be subject to net neutrality and open access requirements. This is consistent with the requirements applied to infrastructure projects receiving funding from the Broadband Technology Opportunities Program (“BTOP”). BTOP infrastructure projects were subject to the nondiscrimination and network interconnection obligations set forth in section V.C.2.c of the Notice of Funds Availability and in Section 6001(j) of the Recovery Act, and the same requirements should apply to networks funded with USF monies.²²²

G. CAF Support for Alaska, Hawaii, Tribal lands, U.S. Territories, and Other Areas

- *GCI has proposed an Alaska-specific set of universal service reforms that it asserts better reflect the operating conditions in Alaska and the lower level of broadband and mobile deployment in that state.²²³ We seek comment on this proposal for Alaska, and ask whether this, or a similar approach, would also be warranted for Hawaii, Tribal lands, the U.S. Territories, or other particular areas, and how we should consider such proposals in light of the Tribal lands exclusion from the current cap on high-cost support for competitive ETCs. We further seek comment on other proposals relating to Alaska and Hawaii that have been proposed in the record. We further seek comment on how such proposals could be improved, if the Commission were to adopt a plan to constrain the size of the CAF and access restructuring within a \$4.5 billion annual budget, and whether, in the alternative, other modifications are warranted to the national policy to better reflect operating conditions in these areas.*

As a general matter, this paragraph raises the question of where should the FCC stop in identifying areas that deserve special treatment? It would appear that an accurate cost model will include all the factors that make service to Alaska, Hawaii, Puerto Rico,

²²² NASUCA Comments at 36.

²²³ See Letter from Christopher Nierman, GCI, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed Aug. 1, 2011).

etc. more expensive to serve. And an iterative transition plan would help in keeping within a budget.

H. Implementing Reform within a Defined Budget.

- *The ABC Plan recommends a five-year transition for phasing down legacy funding, concomitant with a phase-in of potential CAF support, including potential access recovery associated with intercarrier compensation reform; the Joint Letter suggests several potential measures that could be taken to keep support totals within a budget, such as phasing in funding for mobility, deferring CAF funding for study areas served by particular price cap companies, or deferring reductions in intercarrier compensation.²²⁴ We seek comment on the implications of these and alternative proposals, including variations to the Commission’s prior proposals regarding safety net additive (SNA) and LSS, for ensuring that total funding remains within a defined budget.²²⁵*

The FCC should establish a budget and manage its resources within that budget, subject to the requirements of the Act. Included in its basic responsibilities, the FCC should be actively engaged in evaluating its performance, retargeting of funding and eliminating waste, fraud and abuse. Except for including language in the National Broadband Plan, the FCC has failed miserably over the past decade and a half in actually making decisions to fulfilling its obligations as “USF Manager.” NASUCA continues to support all efforts to reform universal service within a targeted cap in order to achieve the mandates of the Act. Likewise, NASUCA opposes plans such as the ABC Plan that are designed to impose harm on residential consumers and to hijack existing funding for the benefit of the country’s largest broadband providers. The Universal Service Fund must

²²⁴ See ABC Plan, Attach. 1 at 8-9; Joint Letter at 2-3. The Joint Letter states that \$2.2 billion in support would be provided to areas served by price cap companies, and initially \$2 billion in funding would go to areas served by rate-of-return companies, with the opportunity for that funding to increase to \$2.3 billion by 2017. Joint Letter at 2.

²²⁵ For instance, could the Commission allow companies that previously qualified for SNA with a year-over-year increase of total plant in service of 14 percent or more to receive the remaining amounts of SNA for past qualification, while eliminating it immediately for those companies that did not increase total plant in service investment by 14 percent (i.e., that qualified for SNA due to line loss)? What would be the impact of adjusting the formula for LSS so that it only would be available for companies with 15,000 or fewer access lines, as suggested by one commenter. See Alexicon April 18 Comments at 13-14.

be reformed, but for the right reasons and with the proper data, both of which are lacking in the ABC Plan. As discussed earlier in these comments, and at length in many consumer advocate pleadings in many dockets, the first step should be separations reform, followed by an audit of what plant supported by high cost funds has already been deployed. Those two factors, and a reliable cost model, should be used to determine the budget.

I. Interim Reforms for Price Cap Carriers.

- *As an interim step, Windstream, Frontier and CenturyLink suggest that the Commission could immediately target support that currently flows to price cap carriers to the highest-cost wire centers within their service territories, using a regression analysis based on the Commission's existing high-cost model to estimate wire center forward-looking costs for both rural and non-rural price cap carriers.²²⁶ We seek comment on this proposal and how it relates to other proposals in the record for comprehensive reform.*

Without examining the “suggestion” in detail, as a first point, if all you are doing is, e.g., “targeting” the current level of support received by a price cap carrier within a state/study area to its highest-cost areas within that state, why bother? The carriers receiving the support should be capable of allocating the support to the highest-cost areas in their territories.

Such targeting really only makes sense if you are aiming to reduce (or increase) the overall level of support, or redistribute the current level of support among carriers. But the results of such targeting using the proposed regression analysis do not appear to

²²⁶ See *Windstream Communications, Inc. April 18 Comments at 9*; *Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed June 30, 2011)*; *Letter from Michael D. Saperstein, Jr., Frontier Communications, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 26, 2011)*.

appear in the record, and thus cannot be assessed or compared to the current results.²²⁷

- *In addition to combining and distributing HCLS and HCMS, should the Commission also include funds currently provided through LSS and SNA to price cap carriers? Should we also include funds currently provided to price cap carriers through interstate access support (IAS) and frozen ICLS?*

As previously proposed by NASUCA,²²⁸ all of the current high-cost support programs should be combined, especially for price-cap carriers.

- *Should the Commission increase annual HCMS support by an additional amount, such as \$100 to \$200 million, to be repurposed from ongoing reductions in support for companies that have chosen to relinquish universal service funding? Should we impose a cap on the amount of support a carrier is eligible to receive for a wire center? For instance, should that cap be set at \$250 per line per month, similar to the Commission's proposal for a cap in total support for all existing recipients?*

The presumptions behind the first question should be examined in the course of an answer: (1) If the companies that have chosen to relinquish funding are those that are seeking to evade their ETC obligations, then the premise is wrong/misguided. (2) If those companies are those (e.g., wireless) that have given up CETC funding in mergers, then why increase the HCMS for the ILECs?

As for the question of capping support, this (like the idea of designating certain areas as eligible only for satellite BB) may be a recognition that some areas are just too expensive to be served by landline voice service. A better thing than capping support for these areas that cumulatively have a minimal impact on the USF might be to study why the cost is so great. For example, are there cost-efficient technologies available that an ILEC chose not to use for strategic reasons, such as fixed wireless?

²²⁷ The US Telecom August 18, 2011 ex parte refers to a filing of such information, which does not appear to have occurred.

²²⁸ See NASUCA's Comments filed July 20, 2010.

- *What public interest obligations for using funding for broadband-capable networks should apply to carriers receiving support under this approach? Should carriers receiving such support be prohibited from using the funds in areas that are served by an unsubsidized facilities-based broadband provider?*

The first question is too narrow. NASUCA’s position is that the public interest obligations should apply to carriers receiving broadband support under any approach.

The second question assumes that the dollars spent are traceable.

- *Do any special circumstances exist in the states of Alaska and Hawaii, or Territories and Tribal lands generally, or other areas, that warrant a different approach for price cap carriers serving such areas, if the Commission were to adopt this interim measure?*

See discussion under FCC question I.G. above.

II. Intercarrier Compensation

A. Federal-State Roles

1. Federal Framework.

- *The ABC Plan proposes that the Commission set the framework to reduce intrastate access rates, and recovery to the extent necessary for those reduced intrastate access revenues would come from the federal jurisdiction through a combination of federal SLC increases and federal universal service support.²²⁹*
 - *How would this aspect of the ABC Plan affect states in different stages of intrastate access reform – those that have undertaken significant reform and moved intrastate rates to parity with interstate rates, those in the process of reform, and states that have not yet initiated reform?*

Obviously, it would affect states in different ways. This question illuminates one of the practical – as opposed to legal – problems with proposals for the FCC to preempt state action on ICC. In the end – as both a policy and a legal matter – it should be up to the states to decide how and when (and whether) to reduce intrastate access charges, as well as how to respond to the effects of such changes.

²²⁹ *ABC Plan, Attach. 1 at 10-13.*

This question also highlights a related issue that the FCC has avoided. How can recovery come from the interstate jurisdiction for lost intrastate revenues, especially under the continuing separations freeze? This supports NASUCA’s position (see Initial Comments) that the first task should be to reform and update separations to reflect the realities of the current network and its uses.

- *The ABC Plan provides a uniform, consistent framework for reform across all states. We seek comment on whether the ABC Plan could be improved by providing states incentives to increase artificially low consumer rates or create state USFs for example through the use of a consumer monthly rate ceiling or benchmark or by requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions?*

NASUCA must note that no “incentives” are described here, although disincentives/penalties are implied.

- *In calculating access recovery, the ABC Plan proposes a \$30 “rate benchmark” for price cap carriers, and the Rate-of-Return plan proposes a \$25 benchmark, both of which are structured as a ceiling on consumer rate increases (via a federal SLC), to limit increases on consumer rates in states where such rates have already been raised as part of intrastate access reform.²³⁰ Is this ceiling sufficient to mitigate any potential impact on consumers in states that have already begun reforms (and thus are already paying increased local rates and/or state universal service contributions associated with such reform) relative to consumers in states that have not yet undertaken such reforms (for which all recovery would come through the federal mechanism in the ABC Plan)? Should there be different rate benchmarks for different carriers or should there be a single benchmark?*

This question highlights the lack of clarity of the concept of the benchmark. If the benchmark is based on affordability, then of course there should be different benchmarks

²³⁰ *ABC Plan, Attach. 1 at 12; Joint Letter, Attach. at 3 n.1.*

based on the demographics of the customer base,²³¹ which may or may not match carrier’ territories. If the benchmark is intended as an arbitrary figure to ease concerns over revenue recovery from end-users as opposed to carriers that use and benefit from the underlying networks, then perhaps it makes sense, in a Orwellian or Swiftian sort of way.²³² Further, as pointed out earlier in these comments, telecommunications costs are declining, and this should be reflected in any and all benchmarks.

- *In the ABC Plan, in calculating access recovery, the initial consumer monthly rate is taken as a snapshot in time as of January 1, 2012. In lieu of a snapshot, and in order to avoid deterring states from rebalancing local rates and/or establishing state USFs, should the rate used to determine access recovery be the “higher of” (1) the rate as of January 2012 and (2) the rate at future points before annual access recovery amounts are calculated? In this scenario, any increased consumer rates as a result of state reforms,²³³ would count toward the benchmark, more accurately reflecting the actual consumer burden at that time.*

Any access recovery should be based on the latest data on rates, MOUs and revenues. Otherwise, over-recovery is virtually guaranteed.²³⁴

- *A rate benchmark could also be used as an imputation for a certain level of end-user recovery for intrastate rate reductions, rather than as a ceiling on federal SLC increases. For instance, the Ad Hoc Telecommunications Users Committee proposes a*

²³¹ But this also overlooks the fact that even in supposedly “high-income” areas (e.g., Aspen CO) there will be consumers with below-average incomes (who are not eligible for Lifeline) for whom the benchmark rates may not be affordable.

²³² Jonathan Swift, **A Modest Proposal for Preventing the Children of Poor People in Ireland From Being a Burden on Their Parents or Country, and for Making Them Beneficial to the Publick** (1729).

²³³ *This could occur, for example, if the Commission were to reduce HCLS or HCMS if local rates are below a specified threshold. See supra Section I.E. (Rate Benchmark).*

²³⁴ These issues were discussed extensively in comments of the Ohio Office of the Consumers’ Counsel (“OCC”) – a NASUCA member – in an Ohio access charge proceeding. See PUCO Case No. 10-2387-TP-COI, OCC Supplemental Comments at 4, 14-21 (July 1, 2011), accessible at <http://dis.puc.state.oh.us/TiffToPDF/A1001001A11G01B71309117187.pdf>.

local rate benchmark that could be imputed, rather than used as a ceiling,²³⁵ and commenters propose a range of possible benchmarks from \$25-\$30.²³⁶ Would an imputation approach better encourage states that currently depend on long distance consumers to help subsidize local phone service for their local consumers to bring consumer rates to levels more comparable to the national average? What would be the appropriate level for such a benchmark, and should it be phased in over time?

Imputation is probably preferable to a mandatory benchmark, because it gives more flexibility to the states to deal with the issue.

On the other hand, this question's use and assumption of "subsidy" highlights the economic irrationality at the center of most of this discussion. The Commission's apparent acceptance that residential service is subsidized in today's broadband-capable networks simply enforces NASUCA conclusion that basic customers will be harmed by the adoption of the ABC Plan. Determination of subsidy requires the kind of detailed, individualized cost analysis that the FCC has assiduously avoided. Similarly, it could not be clearer – even without such analysis – that a uniform nationwide ICC rate of \$0.0007 **will** subsidize carriers' use of other carriers' networks.

- *Instead of or in addition to a rate benchmark, should states be responsible for contributing a certain dollar amount per line to aid in access recovery? The State Members, for example, suggest that states contribute \$2 per line for purposes of universal service.²³⁷ In this scenario, a state would be responsible for recovery of \$2 per line of reduced intrastate access revenues, which could be imputed to carriers before they become eligible for federal recovery. Does this approach*

²³⁵ See *Ad Hoc April 18 Comments* at 54. For example, a benchmark structured as a ceiling would simply limit the rates assessed on end-users, whereas an imputed benchmark would reduce the eligible recovery by the imputed dollar amount regardless of whether those charges are actually assessed.

²³⁶ See, e.g., *Joint Letter, Attach. at 3 n.1* (\$25 benchmark); *ABC Plan, Attach. 1 at 12* (\$30 benchmark); *AT&T April 18 Comments* at 33 (\$27 initial benchmark that could increase over time, such as to \$30).

²³⁷ Cf. *State Member Comments* at 60 (suggesting that federal universal service support be reduced by \$2 per location, which "States can restore . . . on a 100% matching basis, with funds raised under a high-cost universal service program under Section 254").

appropriately balance the interests of consumers in states that already have implemented some reforms, with the associated burden of reform being born by consumers in those states, rather than federal recovery mechanisms? If so, should states that already have a state universal service fund be exempted completely from this per-line contribution, or only to the extent of, for example, the \$2 per line state contribution to recovery?

Another question that highlights the legal issues of the framework proposed by the FCC (and adopted by the ABC Plan): How can the FCC require the states to create intrastate USFs for this purpose? Especially given the variety of state laws, and the finding of *Qwest II* that the 96 Act did not require states to eliminate implicit support.²³⁸

2. State-Federal Framework.

- *In the alternative, the State Members propose that the states reform intrastate rates and that the Commission facilitate this reform through state inducements rather than a federal framework.²³⁹ We seek comment on this proposal.*
 - *To address concerns that some states may not reform intrastate access charges, we seek comment on a framework, similar to a proposal in the USF/ICC Transformation NPRM,²⁴⁰ under which states have three years to develop an intrastate reform plan. Under this alternative, after three years, the Commission would set a transition for reducing intrastate access rates and deny any further federal recovery to offset reduced intrastate revenue.*

As discussed at length by NASUCA, prior to concluding that intrastate access rates should be lowered, the question of separations reform must be addressed and the cost of all services that rely upon the local exchange network must be examined. Moreover, interstate jurisdiction overearnings must be taken into account. Absent these steps, neither basic rate increases or SLC increases would be warranted. Absent such

²³⁸ *Qwest Communications Internat'l, Inc. v. FCC*, 398 F.3d 1222, 1232-1233 (10th Cir. 2005).

²³⁹ See *State Member Comments at 148*.

²⁴⁰ *USF/ICC Transformation NPRM*, paras. 548-49.

data driven analysis, the default assumption should not be that either basic rates or the SLC must rise in order to “reform” access charges.

The proposal in the Public Notice really only delays the legal issue of whether the FCC has the authority to regulate intrastate access charges. So it might be cleaner to confront it up front. Further, would not an FCC order denying federal recovery for reduced intrastate revenues – when the reduction was the result of a federal order – violate § 254 in a very fundamental way? So this way might be even more illegal.

- *If the Commission adopts the state-federal framework approach advocated by the State Members, how can the Commission best incent states to reform intrastate access rates? Should the Commission match some federal universal service dollars to a state universal service fund for states that are using such a fund to reform intrastate access charges? Such matching could be structured in several different ways, including on a per-line basis (such as \$1-2), as a percentage of the state contribution, or on an aggregate state basis.²⁴¹ We seek further comment on how such a match should be structured to provide adequate inducements and maintain our commitment to control the size of the federal high cost fund.*

If intrastate access reductions must be accomplished under federal mandate, this may be the best way for the reductions to be accomplished. Of course, this assumes that the states have the power to create intrastate USFs (see comment above). And what about the states that have already “reformed” their intrastate access charges?

- *Under the framework of leaving reform of intrastate rates initially to the states, the Commission would begin immediate reforms of interstate access charges. We seek comment on a glide path for the Commission to reduce all interstate access rate elements. Should the length of the rate transition vary, providing three years for price cap carriers and five years for rate-of-return carriers, given that rate of return carriers’ interstate access rates are higher at the outset?²⁴² What should the transition be for competitive LECs?²⁴³ Would an approach that*

²⁴¹ See, e.g., *Nebraska Companies April 18 Comments at 35-36 & App. B.*

²⁴² See, e.g., *Comcast April 18 Comments at 5 (advocating a three year transition).*

²⁴³ See, e.g., *Letter from Karen Reidy, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. at 3 (filed July 27, 2011).*

provides different transitions for different types of carriers, whether competitive, price cap or rate-of-return LEC raise any policy concerns? We also seek comment on whether the Commission should reduce originating interstate access rates and, if so, whether we should require the reductions at the same time or only after terminating rates have been reduced.

The FCC should determine, first, whether it is appropriate to reduce interstate access charges **based on costs**. NASUCA continues to remind the Commission that there is a logical process to follow, starting with separations, actual cost analysis, elimination of phantom traffic, charging for IP traffic, etc., in order to determine that the gap between costs and revenues actually exists. Again, on the assumption that federal ICC “reform” (i.e., reductions) needs to be done now, NASUCA has supported a 5-year transition, but it could be reduced to 3 years for the price cap carriers. CLECs should be 3 years. Given the current disparity of interstate ICC, differential treatment should not be a problem.

On the originating issue, in the Ohio access charge proceeding cited above, arguments were presented about how only terminating access needs to be addressed.²⁴⁴

B. Scope of Reform

- *We seek comment on the approach outlined in the ABC Plan to reform substantially terminating rates for end office switching while taking a more limited approach to reforming certain transport elements and originating access.²⁴⁵ Would any problematic incentives, such as arbitrage schemes, arise from or be left in place by such an approach, and if so, what could be done to mitigate them?*

The Ohio declaration cited in footnote 244 addressed this issue.

²⁴⁴ See PUCO Case No. 10-2387-TP-COI, Supplemental Declaration of Joseph Gillan, ¶¶ 5-14 (July 1, 2011), accessible at <http://dis.puc.state.oh.us/TiffToPDF/A1001001A11G01B53911E74764.pdf>.

²⁴⁵ *ABC Plan, Attach. 1 at 10-11 (proposing to reduce certain rate elements to \$0.0007 per minute with more limited reforms for other intercarrier compensation rates).*

C. Recovery Mechanism.

- *We seek comment on the appropriate recovery mechanism for ICC reform, including the ABC Plan's and the Joint Letter's recovery proposals.²⁴⁶ We also seek comment on the relative merits and incentives for carriers associated with an alternative approach that provides more predictable recovery amounts, such as the alternative described below.*

Again, NASUCA questions the central premise the Commission's (and the ABC Plan's) definition of ICC "reform" being mandated ICC rate reductions. Following from that question that is the issue of revenue recovery. ICC reductions result in reduced carrier responsibility to recover network costs, and the various proposed recovery mechanisms result in increased (and unjust) end-user responsibility.

1. Federal-State Role in Recovery.

- *As noted above, the ABC Plan proposes to shift recovery for reduced intrastate access charge revenues to the federal jurisdiction. Could the Commission achieve more comprehensive reform of intercarrier compensation rate elements if recovery is achieved through a federal-state partnership? We seek comment above on different means by which states could share responsibility for recovery of reduced intrastate access revenues.*

Again, NASUCA questions the premise of this question, and asks why states should share responsibility for recovery of revenues lost as a result of federal orders? Moreover, as discussed above, telephone networks are evolving into networks that are designed to provide broadband and ILECs (and Cable telephone service providers) receive revenue from a wide variety of services. The ABC Plan treats the access charge/revenue issue like a zero sum game in which only two services exist. This is far from the case. All revenue from all services provided over the ILEC networks needs to be taken into account.

²⁴⁶ *ABC Plan, Attach. 1 at 11-13; Joint Letter, Attach. at 2-4.*

2. *Price Cap Carriers.*

- *For price cap carriers electing to receive support from the transitional access replacement mechanism, the ABC Plan's recovery proposal includes annual true-ups to adjust for possible increases or decreases in minutes of use. Although minutes of use for incumbent LECs have been declining,²⁴⁷ the ABC Plan's proposal establishing how VoIP minutes are included in the intercarrier compensation system prospectively and addressing phantom traffic could cause minutes of use to flatten or possibly even increase. In addition, the ABC Plan would treat all VoIP traffic as interstate, which potentially could reduce the minutes billed at intrastate access rates (depending upon existing payment practices). Thus the true-up approach could result in the need for additional recovery, including additional federal universal service funding. We seek comment on alternatives to the true-up process.*

If there is recovery, it must include an annual true-up. To the extent that VoIP traffic is included and phantom traffic is reduced, this will not only increase MOUs, it will offset reductions in revenue. (Which is partly why NASUCA supported resolving VoIP access and phantom traffic first.)

On the other hand, the proposal to treat all VoIP traffic as interstate has legal and policy implications that cannot – and should not – be resolved based on the record here.

Regardless, the FCC should not consider alternatives to a true-up process, especially one that involves basing recovery on outdated MOUs.

- *For example, as an alternative to true ups, we seek comment on a baseline for recovery that would be 2011 access revenues subject to reform, reduced by 10% annually to account for decline in demand (i.e., 90% of 2011 revenues in year one (2012), 81.0% in year two (2013), 72.9% in year three (2014), 65.6% in year four (2015), etc.).²⁴⁸ This (or a similar framework that may be suggested by commenters) would be a brightline, predictable approach that would not include true-ups, regardless of whether demand declines more quickly or more slowly. If carriers reduce costs or are more efficient, this approach would enable carriers to realize the benefits of these savings.*

²⁴⁷ *USF/ICC Transformation NPRM, para. 503, Figure 13 (switched access minutes for incumbent LECs).*

²⁴⁸ *See, e.g., NCTA Letter, Attach. at 4 (advocating that recovery need not be revenue neutral, and should phase out over a period of time). This framework could be used as a recovery mechanism even if we adopted a proposal for reform that includes better state incentives outlined above.*

Since the recovery is coming from end-users, carriers should not benefit from such savings to the detriment of consumers.

3. *Rate of Return Carriers.*

- *We seek comment below on an alternative approach for recovery (or other approaches that commenters might suggest) that would maintain the predictable revenue stream associated with rate of return principles while also providing carriers with better incentives for efficient investment and operations. This option would provide a fixed percentage of recovery (which could be 100%) of all reduced terminating access charges (both intrastate and interstate) based on year 2011 revenues, but without true-ups to reflect changes in the revenue requirement historically used for interstate access charges. This recovery mechanism would lock in revenue streams, including intrastate access revenues, which have been declining annually for many interstate rate-of-return carriers. It thus provides more predictable revenue recovery while also providing incentives for carriers to reduce costs and realize the benefits of these cost savings.²⁴⁹ The eligible recovery amount would be recovered through end-user charges and universal service support as described in the Joint Letter’s proposal. We also seek comment on the duration of recovery funding under this alternative. Should it be phased out over time following the completion of rate reforms, such as with the loss of demand?²⁵⁰*

NASUCA adamantly opposes “lock[ing] in revenue streams,” especially those that have been “declining annually.” This opposition is even stronger when “locking in revenues” requires customers of other carriers (in other states!) to support those guarantees through their USF payments. There is no relation in this to the purposes of the USF in § 254.

There is also a fundamental disconnect in applying this one concept from price-cap regulation (allowing the carrier to take advantage of cost savings) selectively to RoR carriers.

²⁴⁹ *Even carriers that are subject to interstate rate-of-return regulation can be subject to incentive regulation at the state level or some other form of intrastate rate regulation that does not ensure rate increases every time costs increase or demand decreases.*

²⁵⁰ *See ABC Plan, Attach. 1 at 12-13. Another possible alternative would be to use a recovery approach similar to that for price cap carriers, discussed above.*

4. *Reciprocal Compensation.*

- *The ABC Plan's proposal provides recovery for reductions in reciprocal compensation rates to the extent they are above \$0.0007, but the ABC Plan estimates on the impact of the federal universal service fund do not include estimated recovery from reciprocal compensation. We ask whether providing federal universal service support for reductions in reciprocal compensation rates strikes the appropriate policy balance as we seek to control the size of the universal service fund, and whether there are alternatives to such an approach.*

Again, a (nationally) uniform reciprocal compensation rate is contrary to §§ 251 and 252. Such rates must vary according to the carrier's costs. If there are to be uniform reciprocal compensation and access charges, why not uniform end-user rates, for all carriers, in all locations? And uniform returns to investors? These necessary questions (again) really highlight the lack of critical thinking behind all of these proposals.

There are also the questions about why there should be recovery for lost reciprocal compensation revenues at all; how this fits into § 254; and the whole separations issue.

5. *Originating Access*

- *If the Commission were to address originating access as part of comprehensive reform, should the Commission treat originating access revenues differently from terminating access revenues for recovery purposes since, in many cases, the originating incumbent LEC's affiliate is offering the long distance service? For example, is it necessary to provide any recovery for the originating access that an incumbent LEC historically charged for originating calls from the retail long distance customers of its affiliate?²⁵¹*

²⁵¹ *Incumbent LECs typically provide retail long distance service through an affiliate in competition with other long distance providers. If incumbent LEC end-user customers purchase long distance service from the incumbent LEC's affiliate, it is the incumbent LEC's own affiliate that would pay those originating access charges, either directly or indirectly. In particular, where the incumbent LEC's affiliate provided facilities-based long distance service, the affiliate would pay the originating access directly. If the incumbent LEC's affiliate resells long distance service, the wholesale IXC would directly pay the originating access. But it could pass through the originating access it pays to the incumbent LEC in the rates it charges the long distance affiliate for wholesale long distance service (depending upon the extent of any rate averaging), meaning the long distance affiliate would be indirectly paying the originating access. This raises questions about whether the originating access revenues associated with end-user customers of*

Regardless of anything else, there should be no recovery of intracompany/interaffiliate lost revenue, whether for originating or terminating (or reciprocal compensation, if applicable).

- *Alternatively, should recovery for such originating access take the form of a flat per-customer charge imposed on the incumbent LEC's long distance affiliate for each of its presubscribed customers? Should such a flat originating access replacement charge be used for recovery of all originating access revenues more generally? How would any of these approaches be implemented? Should any flat originating access replacement charge differ by end-user customer class (such as residential vs. business), by level of demand, or otherwise?*

See preceding answer. And again, this assumes an entitlement to those revenues, which is wrong for price cap carriers but also (in this instance) for RoR carriers.

- *We seek the following data to help us evaluate originating access reform:*
 - *Separately for price cap and rate-of-return incumbent LECs, the number of (1) long distance minutes that the average customer originates; (2) 8YY minutes that the average customer originates; and (3) long distance and 8YY minutes that the average customer receives (terminating minutes); and*
 - *Whether the ratio of originated long distance minutes to originated 8YY minutes varies materially with the level of the customers' expenditure on telecommunications services.*

NASUCA has no comment at this time.

D. Impact on Consumers.

- *We seek comment on how to ensure that consumers realize benefits of reduced long distance and wireless rates as part of intercarrier compensation reform. The ABC Plan attaches a paper by Professor Jerry Hausman analyzing the consumer benefits of intercarrier compensation reform. Should the potential realization of consumer pass through benefits from intercarrier compensation reform be left to the market, as Professor Hausman asserts, or should any steps be taken to ensure that such benefits are realized by consumers? If so, what steps should be taken?*

the incumbent LEC's own long distance affiliate should be viewed as additional revenue to the incumbent LEC.

Hausman's analysis is addressed in Section II.A., above. But again, there is a fundamental disconnect in relying on the market to ensure consumer benefit from these incredibly regulatory actions (mandating both revenue reductions and revenue recovery **from end-users!**) If there is mandated revenue recovery, there also can and should be mandated price reductions in the services that paid the (now-reduced) ICC charges. This also highlights the fundamental shift in cost/benefit from the customers who use long-distance service (and the companies that provide the service) to those who do not. This is Another underlying but undiscussed aspect of these proposals. Further, as discussed above, contrary to Hausman's assertions, there is no reason to expect the intercarrier compensation changes proposed in the ABC Plan will benefit consumers in any way, shape or form. The wireless industry is becoming ever more consolidated and it is a virtual certainty that if AT&T succeeds in its quest to swallow T-Mobile, the price-competitive incentive for the two dominant national wireless carriers, AT&T and Verizon, will be substantially diminished, with the elimination of a very innovative, relatively low-cost wireless option.

- *The ABC Plan permits incumbent carriers to increase the consumer SLC up to \$9.20 before increasing the multiline business SLC, although multiline business SLCs potentially could increase once consumer SLCs reach that level. To decrease the potential burden on consumers and the federal universal service fund, should multiline business customers also see a modest SLC increase and, if so, how much?*

Again, this assumes away/obscures the fundamental error in using the SLC as a mere revenue-recovery mechanism. As discussed in Section II.F.2., it ignores the original purpose of the SLC, and even the somewhat-altered post-CALLS rationale.

- *The ABC Plan permits incumbent carriers to increase consumer SLC rates \$0.50-0.75 per year for five years or until the consumer's rate reaches the rate benchmark of \$30. Similarly, the Joint Letter permits incumbent carriers to*

increase consumer SLC rates \$0.75 per year for six years or until the consumer's rate reaches the rate benchmark of \$25. Professor Hausman's paper indicates that companies are constrained by competition, which could mean that companies may not be able to increase SLC rates on consumers. We seek comment on the actual likely consumer impact of SLC increases, in the aggregate and with as much granularity (e.g., by company, by type of state, by specific state) as can be provided. We also seek comment on proposals that the need for any recovery should be based on the carrier's showing of need based on its operations more broadly.²⁵²

The extent to which the ABC Plan or the Joint Letter constrain SLC increases by the amount of the revenue loss could be more clear. But the evidence so far is that competition has not constrained previous SLC increases.

- *We seek the following data to help us quantify consumer benefits from intercarrier compensation reform:*
 - *If ICC termination rates that currently exceed \$0.0007 are reduced to \$0.0007, the services where pass through is likely to occur (perhaps, for example, long distance, wireless service, 8YY services and monthly line rentals) and the likely extent of that pass through; and*
 - *Estimates of demand elasticities for those services where pass through is likely to occur.*

NASUCA does not have access to this information.

E. VoIP ICC

- *Implementation. We seek comment on the implementation of the ABC Plan's proposal for VoIP intercarrier compensation.²⁵³ Under that proposal, VoIP access traffic would be subject to intercarrier compensation rates different from rates applied to other access traffic during the first part of the transition.²⁵⁴*

As suggested by many different commenters, including NASUCA, differential treatment of VoIP (i.e., **lower** rates) would only institutionalize arbitrage. Carriers would be incented to label all of their traffic as VoIP, whether it is or not.

²⁵² See, e.g., NCTA Letter, Attach. at 5.

²⁵³ *The ABC Plan's proposal for VoIP ICC would apply not only to traffic to or from customers of interconnected VoIP services, but also to customers of "one-way" interconnected VoIP services—in particular, to those that allow users to terminate calls to the PSTN, but not receive calls from the PSTN, or vice versa.*

²⁵⁴ *ABC Plan, Attach. 1 at 10.*

- *How would VoIP traffic subject to the ICC framework be identified for purposes of the proposed tariffing regime?*

That is precisely the problem: Carriers would identify as much as possible of their traffic as VoIP..

- *Would it be feasible to use call record information²⁵⁵ or factors or ratios to identify the portion of overall traffic that is (or reasonably is considered to be) relevant VoIP traffic, perhaps subject to certification or audits?²⁵⁶*
- *Should the Commission identify a “safe harbor” percentage of VoIP traffic for use in this context? If so, what should be the factual basis for such a safe harbor? For example, Global Crossing estimates “that on average roughly fifty to sixty percent of the traffic [on its network] is VoIP.”²⁵⁷ Would that, or other data, provide a basis for a safe harbor?*
- *Are there alternative mechanisms besides tariffs that could be used to determine the amount of VoIP traffic exchanged between two carriers for purposes of the VoIP ICC framework, and if so, what would be the relative merits of such an approach?*
- *Call Signaling. In the USF/ICC Transformation NPRM the Commission proposed to apply new call signaling rules designed to address phantom traffic to telecommunications carriers and interconnected VoIP providers. Some commenters have expressed concerns about whether and how the proposed rules would apply to one-way interconnected VoIP providers.²⁵⁸ In particular, we seek to further develop the record regarding possible implementation of any new call signaling rules that apply to one-way interconnected VoIP providers.*
 - *If call signaling rules apply to one-way interconnected VoIP providers, how could these requirements be implemented?²⁵⁹ Would one-way interconnected VoIP providers be required to obtain and use numbering resources? If not, how could the new signaling rules operate for originating callers that do not have a telephone number?²⁶⁰*

²⁵⁵ See, e.g., XO Section XV Comments at 33; Vonage Section XV Comments at 13-14.

²⁵⁶ See, e.g., XO Section XV Comments at 33; Verizon Section XV Reply at 24; Comcast Section XV Reply at 11.

²⁵⁷ *Letter from Paul Kouroupas, Vice President, Regulatory Affairs, Global Crossing, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Dec. 17, 2010).*

²⁵⁸ *See Level 3 Section XV Comments at 10-11; AT&T Section XV Reply at 16; Level 3 Section XV Reply at 9.*

²⁵⁹ See, e.g., Level 3 Section XV Comments at 10-11 (seeking clarification that compliance would not require one-way interconnected VoIP providers to obtain numbering resources).

²⁶⁰ *See id.*

- *If one-way interconnected VoIP providers were permitted to use a number other than an actual North American Numbering Plan (NANP) telephone number associated with an originating caller in required signaling, would such use lead to unintended or undesirable consequences? If so, should other types of carriers or entities also be entitled to use alternate numbering?*
- *Would there need to be numbering resources specifically assigned in the context of one-way VoIP services? Are there other signaling issues that we should consider with regard to one-way VoIP calls?*
- *If call signaling rules were to apply signaling obligations to one-way interconnected VoIP providers, at what point in a call path should the required signaling originate, i.e. at the gateway or elsewhere?*
- *To what extent are such requirements necessary to implement the ABC Plan's and Joint Letter's proposals that billing for VoIP traffic be based on call detail information? More broadly, what particular call detail information would be used for this purpose? What are the relative advantages or disadvantages of treating such call detail information as dispositive for determining whether access charges or reciprocal compensation rates apply?*

Especially given the above response on differential VoIP rates, NASUCA has no comments on these questions.

V. CONCLUSION

The simplest conclusion for these comments would be to repeat what was said in the Introduction. The Commission must: Reject the ABC Plan;

- Dispense with attempts to address these complex issues in a global, hurried fashion and instead take a more measured approach; but
- If it must adopt a “global” plan, adopt the State Members Plan, with the targeted changes identified by NASUCA.

Respectfully submitted,

Charles A. Acquard, Executive Director
NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380
