Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	:	
	:	
Connect America Fund	:	**WC Docket No. 10-90**
	:	
A National Broadband Plan of 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**

COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

April 18, 2011

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ACRONYM
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ARF	Access Reform Fund
BIP	Broadband Initiatives Program
CAF	Connect America Fund
CETC	Competitive Eligible Telecommunications Carriers
CLEC	Competitive Local Exchange Carriers
CMRS	Commercial Mobile Radio Service
COE	Corporate Operations Expenses
COLR	Carrier of Last Resort
DSL	Digital Subscriber Line
ETC	Eligible Telecommunications Carriers
FCC	Federal Communications Commission
HCLS	High-Cost Loop Support
IAS	Interstate Access Support
ICC	Intercarrier Compensation
ILEC	Incumbent Local Exchange Carrier
IXC	interexchange carrier
LSS	Local Switching Support
MTA	Major Trading Area
NACPL	National Average Cost Per-Loop
NANP	North American Number Plan
NBP	National Broadband Plan
NPRM	Notice of Proposed Rulemaking
POI	Points of Interconnection
POLR	Provider of Last Resort

ACRONYM
TABLE OF CONTENTS (cont'd)

PSTN	Public Switched Telephone Network
PUCO	Public Utilities Commission of Ohio
ROFR	Right of First Refusal
RUS	Rural Utilities Service
SLC	Subscriber Line Charge
USF	Universal Service Fund
VoIP	Voice over Internet Protocol

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COMMENTS SUBMITTED ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION AND SUMMARY

On February 9, 2011, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (collectively, NPRM) intended to facilitate the modernization and streamlining of the FCC's universal service fund and intercarrier compensation policies with the stated goal of bringing "affordable wired and wireless broadband – and the jobs and investment they

spur – to all Americans while combating waste and inefficiency."[1] Following four core principles,[2] the NPRM proposes several near-term and long-term reforms designed to achieve this goal. The FCC established two comment cycles for the NPRM. Comments regarding the issues raised in Section XV of the NPRM were due by April 1, 2011, with comments for all other sections due by April 18, 2011. The Public Utilities Commission of Ohio (Ohio Commission) previously filed comments pertaining to Section XV. The Ohio Commission is pleased to now submit its comments concerning the NPRM's remaining sections for consideration by the FCC.

DISCUSSION

I. LEGAL AUTHORITY TO SUPPORT BROADBAND

A. Additional Section 254(b) Principle

As the FCC points out in the NPRM, Section 254(b) of the Act requires that the FCC base its universal service policies on six enumerated principles.[3] Recently, under

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1 Federal Communications Commission, *FCC Proposes Modernizing and Streamlining Universal Service* (News Release) (rel. February 8, 2011).

2 *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing and Unified Intercarrier Compensation Regime, Federal State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-50, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 (Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 7-8, ¶ 10) (rel. February 9, 2011) (NPRM). The four principles include modernizing the FCC's universal service fund (USF) and intercarrier compensation (ICC) system for broadband; exercising fiscal responsibility to control the size of the USF; requiring accountability of companies receiving support, and; transitioning to market-driven policies.

3 *Id.* at 22, ¶ 56.

Section 254(b)(7), the Federal-State Joint Board on Universal Service (Joint Board) recommended adoption of an additional principal "that universal service support should be directed where possible to networks that provide advance services, as well as voice services."[4] Additional principles must be necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the Act.[5] The principle set forth by the Joint Board meets this test.

The Ohio Commission shares the FCC's belief that the principle proposed by the Joint Board strikes a reasonable balance between the dual goals of preserving and advancing universal service, consistent with section 254(b)(5) of the Act, and increasing access to advanced telecommunications and information services consistent with section 254(b)(3). Additionally, the Ohio Commission agrees that adopting this additional principle will further clarify federal universal service objectives.[6] As such, the Ohio Commission believes that the proposed principle is not only consistent with section 254, but is also necessary and appropriate for the protection of the public interest, convenience and necessity and should be adopted by the FCC.

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[4] NPRM at 22, ¶ 55.

[5] 47 U.S.C. 254(b)(7) (2010).

[6] *See* NPRM at 23, ¶ 59.

B. Commission Authority to Support Broadband

i. Section 254

The FCC seeks comment on its authority under section 254 to support broadband services.[7] In support of this authority, the FCC notes that section 254(b) requires that it promote access to "advanced telecommunications and information services," which, according to the FCC, requires supporting broadband networks.[8] While section 254(c)(1) defines "universal service" as "an evolving level of telecommunications services, the FCC asserts that Congress "expressly contemplated that this definition would evolve over time based on 'advances in telecommunications and information technologies and services.'"[9] The FCC further notes that section 254(c)(2) does not limit the Joint Board to telecommunications services in making recommendations to the FCC regarding the definition of supported services.[10] Nonetheless, the FCC has stated that its authority to support broadband service under section 254 is ambiguous.[11]

Section 254(c)(1) sets forth four requirements that a telecommunications service must meet to be a supported service.[12] If the FCC's argument that section 254 encompasses more than simply telecommunications services is accepted, the Ohio Commission

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[7] NPRM at 24, ¶ 61.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *See id.* at 23, ¶ 59.

[12] 47 U.S.C. 254(c)(1)(A)(B)(C)(D) (2010).

believes that broadband service likely meets the section 254(c)(1) four-part test. This has been recognized by the Ohio Commission in prior comments.[13] Nevertheless, the FCC's interpretation of its authority to support broadband service under section 254 is not a settled matter. As the Ohio Commission has also recognized, the result of maintaining the classification of broadband service as a Title I information service will be time consuming litigation that threatens the Congress' overall goal to universally deploy and fund this service.[14] In the wake of the *Comcast* decision, [15] it will be difficult for the FCC to provide support for broadband services through its Title I ancillary authority, whether it is reasonably ancillary to section 254(b) or section 706, as this authority will frequently be called into question. Consequently, the Ohio Commission reiterates its belief that reclassifying broadband service as a Title II telecommunications service with forbearances is the most efficient way for the FCC to achieve the Congressional goals related to the National Broadband Plan (NBP).

As the FCC points out, section 254(e) limits universal service support to eligible telecommunications carriers (ETC) designated as such pursuant to section 214(e).[16] As

13 *See In the Matter of Framework for Broadband Internet Service*, GN Docket No. 10-127 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 5) (filed July 14, 2010) (Third-Way Comments). "[T]he FCC, in all probability, has authority to provide Universal Service Fund (USF) support for broadband Internet service under its current classification of broadband service as a Title I information service by way of Sections 254 and 214 of the [Act]."

14 *See id.*

15 *See Comcast Corp. v. FCC*, *et. al*, 600 F.3d 642 (D.C. Cir. 2010).

16 NPRM at 25, ¶ 62; 47 U.S.C. 254(e), 214(e) (2010).

such, section 254(e) establishes a second restraint on the FCC's ability to provide support for broadband service. It is not sufficient for the service itself to be designated as a supported service. In addition, the provider of the supported service – and the recipient of the support – must be eligible to receive the support. As this requirement operates independent of section 254(c), the justification for supporting broadband service is not relevant to who receives that support. Whether authority for support is found in section 254(c) or from some other source, all recipients of this support, including all broadband service providers who receive support, must be designated as ETCs.

Authority to designate a carrier or service provider as an ETC is granted to the states.[17] If a state does not act under this authority, the FCC may designate ETC status.[18] Expanding the number of supported services to include broadband service in no way abrogates the states' authority to designate carriers and service providers as eligible to receive broadband service support even if a particular state does not otherwise have authority over broadband service providers. Consequently, the FCC should continue to recognize the important role of the states in designating those carriers and service providers eligible to receive universal service support regardless of the service being supported or the classification of that service.

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[17] 47 U.S.C. 214(e)(2) (2010).

[18] *Id*.

ii. Section 706

The FCC seeks comment on whether sections 706(a) and (b) of the Act, either alone or in concert with sections 254 and 214, grant it authority to provide universal support for broadband information services.[19] As the basis of this authority, the FCC points to the charges set forth in paragraphs (a) and (b) of section 706.[20] The Ohio Commission agrees that providing universal service support for broadband service deployment would "remove barriers to infrastructure investment" as required in section 706(b) and believes that providing support under authority granted in section 706 is consistent with both the definition of universal service in section 254(c) and the support limitations set forth in section 254(e).[21] Nonetheless, the Ohio Commission believes that the FCC's authority to provide universal service support for broadband service is far from clear. Paragraph (c)(1) of section 706 defines advanced telecommunications capability as "high speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphic and video using any technology," without regard to any transmission media or technology.[22] Not all high-speed, switched, broadband

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[19] NPRM at 26, ¶ 66.

[20] *Id*. at ¶ 6. Paragraph (a) of section 706 states that the FCC "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans…by utilizing…methods that remove barriers to infrastructure investment" while paragraph (b) states that the FCC "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market" if it finds that advanced telecommunications capability is not be deployed in a reasonable and timely manner. 47 U.S.C. 706 (a)(b) (2010).

[21] *See* NPRM at 26, ¶ 67.

[22] 47 U.S.C. 706(c)(1) (2010).

capabilities are telecommunications as presently recognized.[23] Those high-speed, switched, broadband capabilities that are telecommunications meet the definition of advanced telecommunications capability set forth in section 706(c)(1). However, broadband capabilities that are not telecommunications have not yet been recognized as meeting this definition. The Ohio Commission does not believe that the FCC can separate the authority granted in sections 706(a) and (b) from the scope of that authority as defined in section 706(c)(1). Consequently, in the Ohio Commission's opinion, the FCC's authority to provide support for all broadband services is open to challenge to the extent that it solely relies upon section 706 for this authority, unless the FCC also reclassifies broadband service as a Title II telecommunications service. Accordingly, to the extent that the FCC chooses to base its authority on section 706, the Ohio Commission recommends that it do so in concert with sections 254 and 214.

iii. Conditional Support

The Ohio Commission agrees with the FCC that neither it nor the FCC is prohibited from imposing additional eligibility conditions on ETCs as part of the designation process under section 214(e).[24] The Ohio Commission has done so when designating carriers and service providers as ETCs for purposes of providing Lifeline service. Furthermore, the FCC's established precedent of requiring rural carriers that receive

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[23] See 47 U.S.C. 153(53) (2010). "Telecommunications" is defined as the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

[24] *See* NPRM at 28, ¶ 71.

high-cost loop support to build infrastructure capable of supporting both voice services and advanced services under the FCC's "no barriers' policy provides a solid foundation imposing additional conditions as part of the ETC designation process. As such, the Ohio Commission agrees that it would be a logical extension of the "no barriers" policy to require that carriers receive high-cost or Connect America Fund (CAF) support invest in modern broadband-capable networks.

iv. Classifying Interconnected VoIP

The FCC seeks comment as to whether it should classify interconnected voice over Internet protocol (VoIP) service as a telecommunications service or an information service. The Ohio Commission has long held that interconnected VoIP service should be classified as a telecommunications service.[25] In taking this position, the Ohio Commission has recommended a four part test to determine those VoIP services that should be classified as a telecommunications service.[26] The Ohio Commission reaffirms this position and believes that classifying qualifying interconnected VoIP services as telecommunications services would better enable the FCC to provide universal service support to broadband networks used to provide interconnected VoIP.

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25 *See In the Matter of IP Enabled Services,* WC Docket No. 04-36 *(Comments of the Public Utilities* Commission of Ohio at 4) (filed May 28, 2004).

26 *See id.* In order to determine when a particular service is a telecommunications service, the Ohio Commission recommends the following factors be used: (1) the provider offers fee-based voice telephony to mass market, either stand-alone basis or bundled with other services, that is a functional substitute to local telephone service; (2) the service transmits information of the user's choosing by originating or terminating calls over the PSTN; (3) the information is received without a net change in form or content; and (4) the NANP is used to route the call.

II. NEAR-TERM REFORMS

Pursuant to its long-term vision, the FCC has proposed to transform the existing high-cost fund into the CAF to promote and support broadband deployment and service.[27] In the near term, FCC has proposed reforms to its exiting high-cost program to eliminate waste and inefficiency, improve incentives for rational investment and operation by companies operating in rural areas and set rate-of-return companies on the path to incentive-based regulation.[28]

Among the FCC's proposals are modifying high-cost loop support (HCLS) reimbursement percentages and eliminating loop support known as "safety net"; eliminating local switching support (LSS) as a separate funding mechanism; eliminating the reimbursement of corporate operations expenses (COE); imposing caps on reimbursable capital and operating costs; capping total high-cost support at $3,000 per line per year ($250 per line per month); and, eliminating Interstate Access Support (IAS) over a "few years" and "rationalize" competitive eligible telecommunications carriers (CETC) support over five years, eliminating the identical support rules not later than 2016.[29] The Ohio Commission appreciates the FCC's effort to ensure that the size of the universal service fund is controlled, and it generally supports the FCC in this regard.

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27 NPRM at 56, ¶ 157.

28 *Id*.

29 *Id*. at ¶¶ 158, 160.

A. Rationalizing Loop Support, Local Switching Support, and Interstate Common Line Support

The FCC recognizes that some of the changes it has proposed could impact firms that receive public funding from other governmental agencies, such as Rural Utilities Service (RUS), a department of the United States Department of Agriculture.[30] As such, to the extent these proposals in the aggregate would impact company cash flows to repay outstanding loans, the FCC seeks comment regarding how it should take that into account while balancing its commitment to fiscal responsibility.[31] The Ohio Commission understands the problem this presents for many rural incumbent local exchange carriers (ILECs). In Ohio, many rural carriers have received RUS loans through the Broadband Initiatives Program (BIP)[32] as well as the more traditional RUS loans or other loans over the years. Through these programs, these ILECs have received millions of dollars for the deployment of broadband service. As is expected with any loan, it is expected that these carriers will repay these loans. In fact, approval for these loans is conditioned on a carrier's ability to repay the loan after reviewing a carrier's business history and revenue forecast.

Rural ILECs receive revenue from three primary sources: local end-users telephones rates, access revenues and Universal Service Funding support. Each of these sources comprise approximately one-third of a rural ILEC's total telephone service reve-

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30 *See* NPRM at 57, ¶ 163.

31 *Id*.

32 The Broadband Initiative Program (BIP) was created in response to the American Recovery Act of 2009 and is administered by RUS.

nues. It is quite possible, and perhaps even likely, that USF support funds are included in the total revenue calculation when evaluating a carrier's ability to repay a BIP or traditional RUS loan. Consequently, the Ohio Commission does not believe that it would be in the best interests of the carriers that rely on these loans, the loan agents that provide the loans or the taxpayers who have provided the funding for these loans to eliminate USF support for the rural ILECs. Otherwise, it is unlikely that the rural ILECs would be able to honor their loan commitments. Such a scenario would be devastating for the rural ILECs and at the least problematic for RUS and the federal government. The Ohio Commission strongly urges the FCC to carefully consider this significant predicament and, as necessary, to allow exceptions for the rural ILECs as the CAF is further developed.

B. Modification of High-Cost Loop Support

The FCC has proposed reducing the reimbursement percentages for HCLS to promote a more equitable distribution of the limited HCLS funds.[33] The FCC notes that as some rural carriers have experienced an increase in access line loss, their investments in net plant have continued to increase as well.[34] The FCC suggests that this increased investment may not be *prudent* for a company that is losing customers.[35] While the Ohio

[33] NPRM at 62, ¶175.

[34] *Id.* at 63, ¶ 178.

[35] *Id.*

Commission appreciates the FCC's position, it respectfully offers a different view for consideration.

Clearly, not all carriers are alike. Each rural ILEC is different from all other rural ILECs, which as a group are much different from non-rural ILECs. Several years ago, many of these rural carriers began positioning themselves for a competitive market. In an attempt to minimize the number of customers leaving their networks as well as to offset their expected corresponding revenue losses, these rural carriers invested in their networks to allow them to offer a variety of services and packages that they had not previously been able to make available. In doing so, these carriers were able to remain focused on their provider of last resort (POLR) obligations. Some of the smallest ILECs, however, have struggled with their POLR obligations as their customer levels and revenues declined. For all of the rural ILECs and specifically, the smallest ILECs, USF support is essential to maintaining and improving their networks as well as providing affordable service offerings as the provider of last resort.

In today's competitive telecommunications environment, most ILECs have lost a sizeable percentage of working loops to alternative and intermodal competitors including those rural carriers that positioned themselves for competition. If not for their *prudent* network investments, these carriers would be in a much worse financial predicament today and some customers would simply not be served. Because of the network improvements made possible by USF funds, many rural ILECs are presently able to offset some lost revenue and access line losses through their ability to provide all of their customers with state-of-the-art service offerings, including broadband coverage over their entire net-

work. The Ohio Commission believes that this is precisely how the USF was intended to be used.

Ohio has experienced a 20 to 30 percent decrease in access lines over the last few years according to the telecommunications industry.[36] Logically, this results in a corresponding loss in revenue. Nonetheless, most carriers have been able to continue to meet their POLR obligations as well as offer new and innovative services, including broadband, to *all* customers due to their *prudent* business decision to invest in their respective networks. As it considers modifying HCLS, the Ohio Commission strongly encourages the FCC to consider that rural carriers have invested in their networks, usually on a project-by-project basis, to meet their POLR obligations by maintaining the network and making service available to all customers in their service territories, even to those customers that have left the network for a competitor and may never return.

The FCC has proposed to modify the distribution of HCLS funds by decreasing the current support percentages by ten percent, from 65 percent to 55 percent, for those carriers with costs in excess of 115 percent of the National Average Cost Per-Loop (NACPL) and from 75 percent to 65 percent for carriers with costs in excess of 150 percent of the NACPL.[37] Although the Ohio Commission understands the FCC's intent to encourage ILECs to "invest and expend funds more efficiently and effectively" with the

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[36] *See* Ohio Telecom Association, *Membership Directory,* 2007-2010 (OTA Membership Directory).

[37] NPRM at 66, ¶ 180.

"modest reduction,"[38] it is the Ohio Commission's belief that the proposal will not achieve the desired effect. There is no reason to believe that reducing needed support will make an ILEC more efficient than it currently is. Rather, the reduction may have the unintended consequence of causing undue financial hardship for rural carriers and their customers while making only a diminutive impact on the overall amount of the funds to be repurposed to the CAF. The Ohio Commission believes instead that the FCC should instead consider reducing the threshold size for a qualifying ILEC from 200,000 working loops to a more reasonable number that better reflects a rural carrier's size. In Ohio, there are 35 small rural ILECs with the largest having a total of 26,600 working loops.[39] The next two largest rural ILECs each have 8,000 working loops and the remainder all have less than 5,000 working loops.[40] Twenty-eight of those have fewer than 2,000 working loops and, of those, eleven have less than 1,000 working loops.[41] The Ohio Commission believes that the FCC should reduce the threshold to a level that both preserves the funding for the truly small rural carriers, at a holding company level, and provides the same percentage of funding that FCC had calculated for repurposing to the CAF in its percentage reduction proposal in paragraph 180.

The FCC notes that for a carrier having more than 200,000 working loops, the current reimbursement percentage is 10 percent when the carrier's cost per loop exceeds 115

38 NPRM at 66, ¶ 180.

39 2010 OTA Membership Directory.

40 *Id.*

41 *Id.*

percent of the NACPL.[42] The FCC further notes that there are no rural carriers with over 200,000 working loops currently receiving HCLS based on actual costs and asks if this threshold should be eliminated.[43] The Ohio Commission agrees with this proposal and believes that the threshold of more than 200,000 working loops should be eliminated. It makes little sense to continue funding a program for which no carrier qualifies. The idleness of such funds serves no public purpose.

C. Local Switching Support

The FCC has proposed eliminating LSS and using the savings to direct support through the CAF to areas that are unserved with broadband.[44] The FCC points out that the LSS was created to ensure that small companies would be able to purchase expensive hardware-based switches.[45] In the evolving IP-based environment, the need for these switches is becoming much less necessary as small carriers are purchasing smaller, cheaper soft switches.[46] Furthermore, the only requirement that a carrier must meet to receive funding through LSS is having 50,000 or fewer access lines.[47] There is no high-cost qualifying threshold.[48] Consequently, the Ohio Commission believes that the FCC

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42 NPRM at 66, ¶181.

43 *Id*.

44 *Id*. at 68-69, ¶¶ 186, 190.

45 *Id* at 68, ¶ 187.

46 *See Id.*

47 *See id* at ¶ 188.

48 *See id.* at 69, ¶ 189.

has raised a valid point regarding LSS and it agrees that the fundamental reason for LSS no longer matches reality or the original intent of the program for the largest of the rural ILECs. As noted above, the only qualifying threshold for a carrier to receive LSS support is having fewer than 50,000 access lines in a study area. The Ohio Commission believes that this threshold is too large and should be modified.[49] Because of their size, the truly rural carriers still have the same economic burdens, regardless of the switch technology that they employ. Additionally, the public expects these rural carriers to provide the same advanced and enhanced services as their larger counterparts as well as their competitors. For these reasons, the Ohio Commission believes that there is still a very real need to continue the funding provided by LSS.

While a percentage of the funding that goes to the LSS could be repurposed to the CAF, this should only happen following a reform of LSS. The Ohio Commission agrees that the current LSS funding eligibility criteria lacks the cost calculations necessary to determine actual funding requirements. For this reason, the LSS should be reformed to include a new "high-cost qualifying threshold." Given the FCC's discussion in paragraphs 186 through 193, it appears that companies receiving funding through LSS have followed the FCC's rules in qualifying for support on a multiple study areas basis. As such, the Ohio Commission disagrees with the implication that these companies are

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[49] In prior comments, the Ohio Commission suggested that 10,000 or less subscribers as the appropriate threshold for applying the principal of competitive neutrality. *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, high-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 12) (filed July 19, 2010) (NBP Comments).

somehow gaming the system by choosing to operate through multiple study areas. It is well understood that ILECs do not choose their services areas. In Ohio, as in most states, ILECs still have POLR requirements and cannot simply choose to modify their respective service areas. Given that, it would seem clear that the problem with LSS is not with the carriers, but instead results from the lack of a reasonable high-cost threshold. Accordingly, the Ohio Commission recommends that the FCC not fully eliminate LSS, but rather amend its rules to establish a reasonable high-cost threshold. This will ensure that small carriers who truly rely on LSS continue to receive needed support while also providing a savings that can be directed to the CAF.

The FCC seeks comment on how swiftly LSS should be eliminated.[50] Specifically, the FCC asks if LSS should be eliminated in one year or should it be eliminated over a transitional period, such as three years.[51] The FCC also asks if the eliminated or the transition period should be base on the specified number of lines at the holding company level.[52] As discussed above, the Ohio Commission believes that LSS should be reformed – not eliminated. If, however, the FCC chooses to move forward with the elimination of LSS, the Ohio Commission strongly recommends that the funding previously provided through LSS be repurposed to the CAF using a transition mechanism that includes a revision to the study-area threshold. The Ohio Commission suggests that the first step would be to revise the study-area calculation by continuing to provide LSS for

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[50] NPRM at 69, ¶ 190.

[51] *Id.*

[52] *Id.*

those companies that have less than 50,000 access lines at the holding company level for each state during the transition period. Doing so will provide those carriers that truly rely on LSS with funding during a transition period yet also incent these same carriers to wean themselves from this support mechanism. The Ohio Commission suggests that the FCC immediately implement a new study-area threshold, but refrain from establishing an end date for the transition period until a final determination has been made concerning the full implementation of the CAF or for no less than seven years, whichever is greater.

Alternatively, the FCC has proposed combining LSS and HCLS into one high-cost mechanism.[53] The FCC asserts that it may be appropriate to merge the two support mechanisms since conventional telecommunications network architecture is evolving toward an IP-based environment.[54] Doing so, may reduce incentives for carriers to design network architecture or to classify equipment in a way merely to maximize high-cost support.[55] The Ohio Commission agrees that combining the two mechanisms would provide little incentive for LSS supported carriers to become more efficient in designing their networks. This is due to the fact that, going forward, it is likely that engineering practices will continue to dictate that forward looking network designs be IP based. This is equally true with or without LSS funding. Therefore, if given a choice, a carrier would have an incentive to classify equipment in a manner that maximizes high-cost support. Furthermore, it does not make sense to combine the LSS and HCLS mechanisms in the

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[53] NPRM at 69, ¶ 191.

[54] *See id.*

[55] *Id.*

near term to simply later eliminate the LSS portion of the combined mechanism due to a lack of need. If the FCC proceeds with combining the LSS and HCLS mechanisms, the Ohio Commission recommends that it do so only after creating an LSS high-cost threshold and then only for the transition period following which LSS would be removed from the combined mechanism.

D. Corporate Operations Expenses

The FCC seeks comments on the elimination of support for "corporate operations expenses" (COE) available to carriers through HCLS, LSS and ICLS.[56] At the very least, the Ohio Commission believes that the FCC should place limits on the COE component of the LSS. The FCC points out that COE includes expenses for overall administration and management, accounting and financial services, legal services and public relations.[57] With respect to HCLS, the FCC estimates the 2011 support level at approximately 13 percent of the HCLS fund, but does not provide corresponding percentages for LSS or ICLS.[58] Unlike HCLS, LSS and ICLS are not capped.[59] As such, it is logical to assume that an equal or greater amount of LSS and ICLS are attributable to COE than the 13 percent of HCLS. As such, the Ohio Commission believes that COE should be reformed and treated in the same manner as that recommended by the Ohio Commission for LSS.

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[56] NPRM at 71, ¶ 198.

[57] *Id*. at 70, ¶ 195.

[58] *See id.* at 70, ¶ 196.

[59] *See id.*

Further, to the extent that COE is not eliminated or repurposed, its recovery should be capped and limited to prudent facility joint expenses that are directly attributable to the deployment and maintenance telecommunications networks at the corporate level and not to common overhead expenses.

E. Limits on Total per Line High-cost Support

The FCC has proposed the adoption of a cap on total support per line for all companies operating in the continental United States.[60] Currently, while capped in the aggregate, there is no limit on the amount of HCLS that ILECs may receive.[61] Furthermore, neither LSS nor ICLS is capped in the aggregate or on an ILEC-specific basis.[62] Of the 1,442 ILECs that receive high-cost universal support, fewer than 20 carriers receive support of more that $250 per line per month.[63] While *some* rural ILECs with fewer than 500 access lines receive USF support for working loops, switching, and other costs that ranges between $8,000 and $23,000 per line per year. The *average* amount of USF support received by rural ILECs with fewer than 500 access lines is $1,148 per line annually.[64] Given this backdrop and the FCC's acknowledged recognition that rural carriers may be subject to unique circumstances in high-cost areas that justify higher levels of support, the FCC nonetheless asks whether it would be consistent with fiscally responsi-

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60 NPRM at 73, ¶ 208.

61 *Id*. at ¶ 209.

62 *Id.*

63 *Id.*

64 *Id*. at 74, ¶ 210.

ble universal service reform to continue to have American consumers and small businesses, whose contributions support universal service, pay to fund support levels of more than $250 per month.[65]

The Ohio Commission fully appreciates the positive impact of the USF for the citizens of this country, and particularly Ohioans. Without USF support it is difficult to envision how thousands of Ohio's rural customers would have been able to obtain the most basic of telephone services. Through USF these customers have access to an array of services including quality local and toll voice service, DSL broadband, and vertical services, all at affordable rates.[66] While regulators may not have anticipated USF reaching its current level of support, the fact that it has demonstrates that USF high-cost support has accomplished exactly what regulators and Congress intended. Based on current market practices, it is clear that the large telecommunications carriers have no interest in servicing this country's rural customers, particularly those in high-cost markets. Certainly some large carriers may wish to "cherry-pick" the best customers from the rural ILECs; however, the Ohio Commission is not aware of a single large carrier willing to serve all rural customers at affordable, reasonable rates. In Ohio, none of the competing carriers have proven willing to take on the POLR obligations presently met by the small, rural ILECs who, over many generations, have built businesses serving their communities by making service available to those least likely to receive telecommunications ser-

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[65] NPRM at 74, ¶ 210.

[66] Ohio Commission staff survey of small LEC websites conducted March 29, 2011.

vice otherwise. As regulators and elected officials shift their focus from traditional telephone service to broadband service, it is possible that alternative service providers will endeavor to serve all customers. It is unlikely, though, that these providers will voluntarily assume the POLR obligations traditionally met by the rural ILECs or provide service at affordable reasonable rates. That being said, the Ohio Commission strongly believes that consumers and small businesses, as well as all other consumers that contribute to the USF, have received a fair and reasonable return on their collective investment in universal service. They should receive no less from the CAF. Accordingly, the Ohio Commission recommends that the funding mechanism be capped at levels sufficient to provide the support necessary for every rural carrier to continue to make available quality services at affordable prices to meet the needs of all customers.

The FCC seeks comments on whether an ILEC whose current per-line support is above a proposed cap should be able to make a showing that additional support is in the public interest and if such a showing is permitted, should it include the supporting documents and studies that the FCC has as is outlined in the prescriptive list of criteria set forth in paragraph 214.[67] Rather than commenting on each of these criterions, the Ohio Commission's comments speak to the reasonableness and rationale for requiring the documentation. The Ohio Commission believes that it is good public policy to allow an ILEC whose per-line support requirements are higher than the proposed cap to demonstrate a need for support. While anything that the FCC can do to prevent unneeded fund-

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[67] NPRM at 75, ¶ 214.

ing is clearly going to be in the public interest, the FCC should use caution and weigh the necessity of requiring the proposed documentation against the cost to be incurred by the small rural carriers to provide this documentation. Rural ILECs will undoubtedly incur additional costs associated with documentation, studies and consulting. As this will only add to a rural ILEC's support requirement, the Ohio Commission believes that there must be a clearly demonstrated benefit before placing this additional burden on these carriers.

F. Rationalizing Competitive ETC Support through Elimination of the Identical Support Rule.

The FCC has proposed to eliminate the identical support rule. The rule requires that competitive eligible telecommunications carriers (competitive ETCs) receive the same level of support as incumbent ETCs.[68] According to the FCC, this rule "no longer adequately furthers the universal service principles in sections 254(b)."[69] In past com-

[68] *See* NPRM at 85, ¶ 242.

[69] *Id.* at 88, ¶ 247.

ments, the Ohio Commission has called for the elimination of the rule and accordingly supports the FCC's proposal.[70]

In 2007, the Ohio Commission reported that state commissions, incumbent wireline carriers, and even some wireless carriers support the elimination of the identical support rule.[71] At that time, the Ohio Commission noted that many proponents of the identical support rule were simply the beneficiaries of a significant windfall.[72] The arguments for continuing the rule centered on the sensitivity of technological and competitive neutrality, contending that "all else being equal," the amount of support should not differ based on the technology or a carrier's status as an ILEC or competitive local exchange

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70 *See, e.g., In the Matter of Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45, (Reply Comments of the Public Utilities Commission of Ohio at 3-6) (filed July 10, 2007) (Interim Cap Comments); *In the Matter of High Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 (Comments of The Public Utilities Commission of Ohio Regarding High-Cost Universal Service Reform at 3-5) (filed April 18, 2008) (Identical Support Comments); *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for IP-Bound Traffic, IP-Enabled Services*, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 3 - 5) (filed November 26, 2008) (Comprehensive Reform Comments).

71 Interim Cap Comments at 3-4.

72 *See id.*

carriers (CLEC).[73] As was pointed out then, "all else is never equal."[74] Unlike competitive ETCs, incumbent ETCs, particularly the rural ILECs, have various regulatory burdens including POLR and interconnection obligations. Furthermore, from experience, the Ohio Commission knows the difficulties that rural ILECs have in negotiating traffic termination agreements with wireless carriers and transit traffic providers as well as in collecting fees for terminated traffic. Clearly all things are not equal.

The Ohio Commission has further noted that at some point, the vast majority of calls, be they wireline or wireless in origin, depend on an ILEC's network.[75] Consequently, if an ILEC receives high-cost support, then part of the efficiency that a competitive ETC experiences would be as a direct result of the high-cost support afforded to the ILEC.[76] It makes little sense, then, to provide a competitive ETC with the same level of support that has been provided to an incumbent ETC, i.e., the ILEC, when the competitive ETC has already benefitted from the support provided to the incumbent ETC. The Ohio Commission supports and encourages the elimination of the identical support rule.

The FCC seeks comments on two high-level approaches to rationalizing funding for competitive ETCs.[77] Specifically, the FCC has proposed redirecting all available competitive ETC funding to the CAF over a five-year period for redistribution through

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[73] Interim Cap Comments at 3-4.

[74] *Id.*

[75] *See id.* at 4; Identical Support Comments at 4-5.

[76] *See id.*

[77] NPRM at 85, ¶ 242.

new market-driven funding mechanisms to provide support for mobile and fixed broadband.[78] Second, the FCC has proposed generally redirecting available competitive ETC support to the CAF to be distributed through new mechanisms over five years, but allowing individual mobile providers to demonstrate that some level of continuing support under the current high-cost program is necessary on a transitional basis.[79] As it has previously expressed, the Ohio Commission strongly believes that the identical support rule should be eliminated[80] and the reclaimed funds repurposed for the CAF. Additionally, the Ohio Commission recommends that there not be any transition period for eliminating competitive ETC support. If, however, the FCC elects to establish a transition period, it should extend for no more than three years, with a shorter period for those competitive ETCs that are unwilling or unable to meet the additional support criteria that the FCC has proposed for the ILECs.[81]

The Ohio Commission questions to what extent wireless carriers actually require support. There are unserved areas within the United States, and in Ohio, where a business case cannot be made for deploying wireless or wireline broadband network is difficult to make. It is questionable, though, whether this will always be the case. Commenting on the proposed AT&T/T-Mobile merger, an AT&T representative indicated that "as part of the deal, it would expand its next-generation wireless service, known as 4G, to

[78] NPRM at 85, ¶ 242.

[79] *Id*.

[80] *See* Interim Cap Comments at 3-6; Identical Support Comments at 3-5.

[81] *See* NPRM at 75, ¶ 214.

46.5 million more customers than planned – among them, T-Mobile's 34 million subscribers. The service would reach *95% of the U.S. population, including rural communities and small towns*, thus helping achieve goals set by [President] Obama and Federal Communications Commission to connect 'every part of America to the digital age.'"[82] Perhaps the FCC should allow the market to reduce the "digital divide" or possibly even require the large carriers such as AT&T to serve presently unserved areas as a condition of their pending merger approvals. Such an approach would allow the reclaimed competitive ETC high-cost support to be applied toward deploying and providing telephone and broadband services to the highest-cost areas.

G. CAF Phase I

i. Legal Authority to Establish a Competitive Process for CAF

The FCC seeks comment on its authority to establish a program under which non-recurring support would be provided, based on a competitive bidding process, to a single entity to deploy and provide broadband service.[83] In the *Universal Service First Report and Order*, the Joint Board's concluded "that competitive bidding is consistent with section 254 and comports with the intent of the 1996 Act to rely on market forces to minimize regulations."[84] The Ohio Commission agrees with the Joint Board's conclusion.

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[82] Jim Puzzanghera, *AT&T Merger Puts Obama in a Bind*, L.A. Times, March 22, 2011 available at http://articles.latimes.com/2011/mar/22/business/la-fi-obama-att-20110322.

[83] NPRM at 91, ¶ 262.

[84] *Id.*

The Ohio Commission also agrees with the FCC, that much has changed since the FCC's initial determination declining to adopt competitive bidding due to a lack of competition in a significant number of rural, insular, or high-cost areas.[85] With the advent of cable and wireless internet, the Ohio Commission believes that using a competitive bidding process will yield best results. As such the Ohio Commission believes it is appropriate at this time to use a competitive bidding process for awarding non-recurring support to a single entity to deploy and provide broadband service in this first phase of the CAF.

ii. Overall Design of Phase I CAF

The FCC asks whether it should limit eligibility for CAF support in this first phase to states that have engaged in access charge reform and/or prioritize support to states that have established high-cost universal or other broadband support mechanisms.[86] In past comments the Ohio Commission supported the concept that all states would be entitled to a base funding level.[87] Ohio has already begun its own initiative towards the goal set forth in the CAF through Connect Ohio, a public-private partnership that will expand broadband services across the state by working with local communities and service providers to identify and fill gaps in broadband access. As discussed in greater detail

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85 NPRM at 91, ¶ 263.

86 *Id*. at 93, ¶ 270.

87 *See In the Matter of High-Cost Universal Service Support*, *Federal-State Joint Board on Universal Service,* WC Docket No. 05-337, CC Docket No. 96-45 (Comments of the Public Utilities Commission of Ohio Regarding High-Cost Universal Service Reform at 8)(filed April 22, 2008) (Ohio Commission High-Cost Universal Reform Comments).

later in these comments, the Ohio Commission initiated intrastate access charge reform when it opened an investigation into the matter on November 3, 2010.[88] However, many states like Ohio that do not have a state universal service fund nonetheless provide broadband support and should be given the opportunity to obtain funds during the first phase of the CAF implementation. In other words, the present availability of a state-sponsored initiative or support fund should not be the determining factor of whether a state is eligible to receive support.

In addition, the FCC seeks comment on its proposal to allow satellite broadband providers to partner with terrestrial broadband providers that bid for support, but not permit satellite broadband providers to bid for their own support.[89] In prior comments, the Ohio Commission agreed with the NBP's principle that eligibility for obtaining support under the CAF should be technology neutral.[90] As such, the Ohio Commission disagrees with this FCC proposal. Although the Ohio Commission's prior comments regarding technology-neutrality pertained largely to the NBP cost model, the Ohio Commission nonetheless believes the same argument holds for including satellite broadband providers

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88 *See In the Matter of the Commission Investigation into Intrastate Carrier Access Reform Pursuant to Senate Bill 16*2, Case No. 10-2387-TP-COI (Entry) (November 3, 2010).

89 NPRM at 93, ¶ 272.

90 *See* NBP Comments at 11.

in the bidding process of the first phase of the CAF.[91] The Ohio Commission maintains that categorically excluding any broadband provider from the bidding process raises questions about whether the most efficient provider will be selected to provide broadband service at the lowest cost and would contradict the NBP's stated principle of technology-neutrality.[92] Satellite broadband providers should be permitted to bid on their own as well as in partnership with a terrestrial broadband provider.

iii. One CAF Provider per Unserved Area

The FCC has proposed permitting only one service provider per supported area to receive CAF support during the initial phase of the CAF, but to also allow the subsidized provider to partner with others to satisfy the public interest obligations associated with the CAF.[93] The Ohio Commission agrees that only one provider in any supported area should receive support during the first phase of the CAF. As expressed in past comments, the Ohio Commission has long held that it makes little business sense to provide multiple high-cost subsidies in those areas in which a business case cannot even be made for offering service without a single subsidy.[94] As stated by former Chairman Martin, it

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[91] NBP Comments at 11. The Ohio Commission pointed out that "today's cutting-edge technology will likely seem antiquated at the end of [the ten-year transition] period as advancements are made in the deployment and delivery of broadband service. Such advances will most likely certainly include satellite service."

[92] *Id*.

[93] NPRM at 95, ¶ 282.

[94] *In the Matter of Universal Service Reform, Mobility Fund*, WT Docket No. 10-208 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 9) (filed December 15, 2010) (Mobility Fund Comments).

makes little sense to provide support for multiple suppliers of a service in markets that are "prohibitively expensive for even one carrier."[95]

iv. Identifying Unserved Areas Eligible for Support – Offering Support by Census Block

The FCC seeks comment on its proposal that geographic areas for a competitive bidding process should be based on census blocks, which bidders could aggregate together as part of a package bid to cover larger areas.[96] In prior comments regarding reverse auctions, the Ohio Commission generally agreed with the FCC's tentative conclusion that the wireline ILEC's study area was the appropriate area on which to base reverse auctions.[97] As stated in those comments, the Ohio Commission believes that disaggregation into smaller areas, such as census blocks, in many instances, will only add cost and delays and increase the opportunity for bidders to engage in "cream skimming" or structure their bid so as to maximize their opportunity for a windfall.[98] However, the Ohio Commission indicated its belief that there is a benefit in identifying subsets of a

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[95] FCC Chairman Martin's reply to Representative Edward J. Markey's April 2, 2007 letter regarding Universal Service issues. Both Representative Markey's letter and Chairman Martin's reply are available at: http://markey.house.gov/index.php?option=com_content&task=view&id=2825&Itemid=46.

[96] NPRM at 98, ¶ 294.

[97] *High-Cost Universal Service Support, Federal-State Joint on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 (Comments of the Public Utilities Commission of Ohio Regarding Reverse Auctions at 6, § D) (filed April 17, 2007) (Reverse Auction Comments).

[98] *Id.*

larger ILEC's service territory.[99] In Ohio, a large ILEC serves both large urban and rural areas. In such diverse areas, it may be exceedingly difficult to develop a comprehensive bid that does not eliminate some smaller, but highly efficient providers from the bidding process.[100] For such instances, the Ohio Commission encourages the FCC to permit the states to make reasonable subdivisions as necessary.

v. Public Interest Obligations for Phase I CAF

The FCC has proposed employing an FCC-established coverage requirement.[101] Alternatively, it has proposed allowing bidder-established coverage requirements.[102] The Ohio Commission does not support either of the FCC's proposals. The Ohio Commission believes that any ETC receiving CAF support should be required to provide service to all customers with in the supported area. Regardless of the service area, the Ohio Commission believes when submitting a bid, the bidder should be required to commit to providing service throughout that area under the same rates, terms, and conditions.[103]

The FCC has proposed that support recipients be required to deploy broadband networks with speeds of at least 4Mbps (actual) downstream and 1 Mbps (actual) upstream during the first phase of the CAF, with the possibility of requiring alternative

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[99] Reverse Auction Comments at 6, § D.

[100] *Id.*

[101] NPRM at 103, ¶ 310.

[102] *Id.*

[103] Reverse Auction Comments at 7.

speeds, such as 3 Mbps (actual) downstream and 768 kbps (actual) upstream.[104] As the Ohio Commission pointed out in its July 2010 comments, many Ohio broadband providers would not meet these higher minimum speed thresholds.[105] For many Ohioans access to terrestrial fixed broadband is only available through DSL service, which is likely to provide basic service with slower download and upload speeds.[106] While the Ohio Commission does not believe that it is in the position to propose any one speed over another, it nonetheless recognizes that advocating for the higher speed would classify more of Ohio as unserved and make Ohio eligible for more first phase CAF support. However, the Ohio Commission is mindful of the FCC's goal to control the size of the CAF. However, the Ohio Commission remains concerned that Ohio carriers that have used existing legacy high-cost support to deploy broadband networks, which meet the proposed speed of 4 mbps downstream and 1 mbps upstream at a 100% availability rate in their service areas, continue to receive support to maintain these networks.[107] As support is diverted away from existing high-cost programs to the CAF, it is essential that these carriers maintain support for their networks.

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[104] NPRM at 103, ¶ 311.

[105] NBP Comments at 3.

[106] *Id*.

[107] *Id*. at 5.

vi. Support Eligibility Requirements – ETC Designation and Service Area

The FCC asks whether service providers that have applied for designation as ETCs in the relevant area should be permitted to participate in a reverse auction prior to receiving ETC designation or alternatively, whether they should be permitted to apply for ETC status on a contingency basis.[108] With regard to its alternative proposal, the FCC states that applicants could identify areas for which they will seek designation only if they win support for those areas.[109] In support for this proposal, the FCC indicated that applicants filing a conditional application would be protected from finding themselves designated as an ETC in areas where they do not win support.[110] The Ohio Commission supports the alternative proposal and agrees with the FCC's underlying reasoning for it. As the FCC is undoubtedly aware, the Ohio Commission had elected, for public interest and other reasons, not to designate competitive carriers and service providers as ETC for the purpose of receiving high-cost support.[111] Since there must be multiple bidders to conduct an auction, states like Ohio that have not designated multiple high-cost ETCs in a high-cost area may not be able to adequately conduct reverse auctions during the first phase of the CAF. By requiring ETC designation before a service provider may bid in a reverse auction, the FCC effectively limits the number of potential bidders to one for states like

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108 NPRM at 105, ¶ 319.

109 *Id.*

110 *Id.*

111 Mobility Fund Comments at 9.

Ohio and thereby, renders reverse auctions ineffective.[112] As such, the Ohio Commission encourages the FCC adopt its alternative proposal to require ETC designation only after the service provider has won the reverse auction.

H. Competitive Award Process

i. Auction Process

In Section VI of the NPRM, the FCC proposes rules for and seeks comment regarding a competitive award process, including the application and bidding processes. The FCC proposes rules that establish a basic framework for conducting an auction; however, the FCC notes that the rules, by themselves, do not necessarily establish the specific procedures that will govern any auction process.[113] Instead, the FCC envisions that after establishing the proposed program and auction rules, it will release a Public Notice announcing an auction date, identify areas that are eligible for support, and seeking comment on the specific auction procedures to be used.[114] The Ohio Commission recognizes the need for better structure regarding the competitive bidding process and supports the FCC's efforts to ensure that certain information is gathered before and after the actual bidding occurs.

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112 Mobility Fund Comments at 9.

113 NPRM at 107, ¶ 325.

114 *Id*.

Under its proposed rules, the FCC recommends a two-stage application process generally modeled after the rules that govern its spectrum license auctions.[115] The first stage requires that entities interested in participating in an auction submit a detailed pre-auction "short form" application,[116] while the second stage requires the FCC to conduct an extensive review of the winning bidders' qualifications through a "long-form" application.[117] The Ohio Commission believes that the proposed two-stage process will provide a more advanced framework that will procure essential information from both the potential bidders and the eventual winning bidders, which, in the Ohio Commission's opinion, is vital to conducting a successful auction process. Therefore, as noted above, the Ohio Commission supports the FCC's effort to implement a more structured auction process.

ii. Basic Auction Design

The FCC also seeks comment on the best specific auction design to maximize the deployment of broadband to housing units without broadband service.[118] The FCC notes that a reverse auction offers a relatively quick, simple, and transparent method for selecting services providers for the lowest subsidy amount and establishing the level of support these providers will receive.[119] In prior comments, the Ohio Commission has supported

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115 NPRM at 107, ¶ 326.

116 *Id*.

117 *Id*.

118 *Id*. at 108, ¶ 331.

119 *Id*.

the use of reverse auctions and believes that, in appropriate geographic areas, the use of such a market mechanism could be beneficial in determining supported entities and support levels.[120] Additionally, the Ohio Commission has previously recommended that the FCC consider the cost of conducting a reverse auction into its decision to hold such an auction.[121] Furthermore, in those areas where a single carrier or provider is undoubtedly dominant, the Ohio Commission recommends that the FCC take steps to ensure that the costs of conducting a reverse auction do not outweigh its benefits since the outcome of the auction would not likely be in doubt.[122] Nonetheless, the Ohio Commission believes that a reverse auction is the best design available to maximize the deployment of broadband services to unserved areas.

iii. Bidding Process

The FCC seeks comment on whether its proposal to establish minimum coverage requirements for support recipients should be used rather than allowing bidders to establish their own coverage requirements by specifying the number of housing units to be passed in areas on which they bid.[123] The Ohio Commission recommends that the FCC adopt its proposal to establish minimum coverage requirements. Allowing bidders to establish their own coverage requirements would often result in a waste of time and

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[120] NBP Comments at 13.

[121] *Id*.

[122] *Id.* at 13-14.

[123] NPRM at 108, ¶ 332.

resources if the FCC could ultimately reject a bidder's coverage requirement only to impose its own level of minimum coverage. While allowing bidders to establish their own coverage requirements may take advantage of economies of scale, the end result may be the subsidization of facilities in an area that is already served. Although the FCC alluded to the fact that a bidder's own coverage area would probably be smaller than its minimum coverage area, the possibility of a bidder selecting a larger area is still possible and in turn could lead to overlap in coverage and additional expenses.[124] Consistent with its prior comments, the Ohio Commission strongly believes that service providers that submit a bid for a given area must stand ready to serve any customer within that area who requests service.[125]

iv. Reserve Prices

Lastly, the FCC has proposed that it reserve the discretion, prior to an auction, to establish area-specific reserve prices, separate and apart from any maximum opening bids, and to elect whether or not to disclose those reserves before opening bids.[126] The Ohio Commission agrees that the FCC may reserve discretion regarding the disclosure of reserve prices and suggests, as it has in the past, that the reserve price not be revealed prior to bidding, if it at all.[127] The Ohio Commission believes that if the reserve price is

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[124] *See* NPRM at 108, ¶ 332.

[125] Comprehensive Reform Comments at 30.

[126] NPRM at 110, ¶ 342.

[127] NBP Comments at 14.

disclosed prior to the bidding process, then bidding may be discouraged or excessive support may be allocated to a particular area.[128]

As the Ohio Commission has noted in prior comments, if the reserve price is disclosed, bidding may be discouraged to the point that there are no bidders or no acceptable bids.[129] If this happens, support should be provided to the ILEC with the carrier of last resort (COLR) obligation for the area in question. While the right of first refusal (ROFR) is designed to allow ILECS with the COLR obligation for voice service to receive CAF support without a competitive bidding process, it must also allow for the possibility that an ILEC could refuse CAF support. This approach, however, may render the FCC's proposal to establish a ROFR[130] meaningless unless support is provided for costs above the reserve. As such, the FCC encourages the FCC to allow for an adjustment of the benchmark as suggested in the NPRM.[131]

If the COLR obligation is extended to the ILEC where an auction has proven unsuccessful, the Ohio Commission recommends that the FCC also impose a broadband POLR obligation on the ILEC as a default. This would result in the lowest incremental cost and be the most efficient means for deploying broadband and allocating support

128 NBP Comments at 14.

129 *Id*.

130 *See* NPRM at 131, ¶ 431.

131 *See id*. at 132, ¶ 432.

where there may be no other bidders since the ILEC has, among other advantages, an existing network upon which to build and access to rights-of-way.[132]

III. LONG-TERM VISION FOR THE CONNECT AMERICA FUND

A. Supported Providers

The FCC has proposed that, during the second stage of its comprehensive reform package, all funding to provide ongoing support to enable Americans to access robust, affordable IP-based networks capable of providing both high-quality voice service and broadband internet access service be provided through the CAF.[133] In furtherance of this proposal, the FCC seeks comment on how many providers the CAF should support and on alternative approaches for determining appropriate amounts of ongoing CAF support that would replace all existing high-cost funding.[134] Specifically, the FCC asks whether there should be at most one subsidized provider of broadband service per geographic area regardless of whether provided through a fixed or mobile network.[135] The Ohio Commission believes that limiting support to one provider per high-cost area will ultimately result in reducing the total amount of funding required through the CAF, which, in turn, will place less of a financial burden on consumers. Subsidizing two or more service providers in a geographic area where a business case cannot be made for providing broadband

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[132] NBP Comments at 14-15.

[133] NPRM at 124, ¶ 398.

[134] *Id*. at ¶ 399.

[135] *Id*. at ¶ 402.

makes little sense when the goal is to support affordable service. Alternatively, limiting support to only one service provider per unserved high-cost area would aid in achieving this objective as providers would be required to compete for the available support. Although the Ohio Commission has previously recommended that broadband support levels be determined using a "cost/cost" model rather than a "cost/revenue model," it also recognizes that some portion of the incremental revenue associated with providing support to only one service in a high-cost area should reduce the bid amounts received by the FCC through a competitive bidding process. Accordingly, the Ohio Commission opposes proposals to support, in a given area, both fixed and mobile broadband networks under the CAF.[136] To be clear, it is the Ohio Commission's position that support in a given geographic area should be limited to only one service provider without regard to one network platform or technology over another.[137]

The FCC seeks comment on whether any funding is appropriate in areas where both high-quality voice and broadband Internet access service are provided by a carrier or service provider without the assistance of universal service support.[138] The Ohio Commission does not believe CAF support should be provided in areas where the existing carriers or service providers have previously made business cases for offering service without universal service support. To do so would have the detrimental effect of increas-

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136 *See* NPRM at 124-125, ¶ 403.

137 The Ohio Commission believes that support should be provided on a technology-neutral basis and should not favor fixed or mobile technology over the other.

138 *Id*. at 126, ¶ 409.

ing the size of the CAF, and corresponding burden on consumers, while creating an unequal playing field between service providers. The incumbent provider's business case to offer service would undoubtedly be harmed as a certain percentage of the provider's customers would defect to the CAF-supported competitor. Nonetheless, the Ohio Commission does not believe that the existence of unsubsidized broadband service today serves as any reliable indicator that future funding will not be necessary.[139]

B. Alternative Approaches for Targeting and Distribution of CAF Funds

The FCC notes that the NBP recommended that by 2020, all existing high-cost support be replaced by CAF support.[140] Accordingly, the FCC seeks comment on alternative approaches for determining ongoing CAF support. Specifically, the FCC proposed using a competitive bidding mechanism to award funding to one provider per geographic area in all areas designated to receive CAF support.[141] The Ohio Commission has previously expressed its support for the use of reverse auctions to determine recipients of one-time CAF support for the purpose of deploying broadband service in unserved areas.[142] Consistent with this position, the Ohio Commission generally believes that a competitive bidding process to determine recipients of ongoing CAF support is appropriate and would lead to a reduction in the size of the CAF. Nonetheless, the Ohio

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139 *See* NPRM at 126, ¶ 409.

140 *Id* at 128, ¶ 417.

141 *Id*. at ¶ 418.

142 *See, e.g.,* NBP Comments at 13.

Commission notes that competitive bidding may not always be in the best public interest where small, rural ILECs are involved. For instance, the Ohio Commission does not favor competitive bidding in those areas where a small, rural ILEC would be at an inherent disadvantage when competing against large ILECs and intermodal competitors such as cable TV providers. As such, the Ohio Commission supports the FCC's previously discussed ROFR approach.

The FCC has proposed use of a green-field, "scorched node" approach in developing a broadband cost model if it adopts the ROFR in all areas, followed by competitive bidding where necessary, as an alternative in determining CAF support.[143] Specifically, the FCC asks whether revenues, as well as cost should be considered in determining CAF support and seeks comment on possible difficulties in accurately estimating and modeling revenues.[144] The Ohio Commission reiterates its position set forth in prior comments that there are several problems associated with estimating and modeling revenues:[145]

> Such revenues must include not only revenue for voice service, but also for other services such as internet access and cable TV, including programming revenue. In other words, much of the revenue would not be directly attributable to broadband service itself, but would be a by-product of other services which rely on the underlying broadband availability. Of course, there would be varying levels of demand for these applications driven in large part, one may presume, by promotional offerings. Using a cost/revenue model, it would

143 *See* NPRM at 134, ¶ 438.

144 *See id* at ¶ 439.

145 NBP Comments at 9.

> be difficult to account for price fluctuations that result from these promotional offerings. Estimating the demand for each application further adds an additional level of complexity. For instance, several factors such as the minimum number of channels that must be purchased will affect the calculation of costs and revenues for video service. As one might expect, then, revenue would fluctuate over time as services, service offerings and technologies change causing difficulty and unreliability in its estimation using a cost/revenue model.[146]

Further, using a cost/revenue model would provide little or no incentive for a carrier to maximize revenue. "Since support would only be provided in those areas where no business case can be made for offering broadband service, it is a reasonable assumption that a carrier's revenue for that area will not, in the long term, exceed its costs, otherwise support would not be necessary. Since increased revenue would actually reduce the amount of support a carrier receives, there may be an incentive to actually keep revenue down so as not to jeopardize the carrier's support level. This result runs counter to the NBP's goal of keeping high-cost support in check."[147] Therefore, the Ohio Commission recommends using the "cost/cost" approach in establishing CAF support.

IV. CONCEPTS TO GUIDE INTERCARRIER COMPENSATION REFORM

A. Criteria to Guide Sustainable Reform

The Ohio Commission believes there are four key elements to successfully reform intercarrier compensation: a) a transition from a per-minute rate to a capacity-based [*i.e.* bandwidth-based] rate; b) the use of a cost-based unified rate that is both competitively

146 NBP Comments at 9.

147 *Id*. at 10.

and technologically neutral and does not distinguish between the provider originating traffic, the technology or the jurisdiction of traffic; c) a rate design that recovers the carriers' costs for providing transport and termination o telecommunications traffic; and d) predictability in the transition over a reasonable period of time.

B. Intercarrier Compensation Methodology for All-IP Networks

The FCC seeks comment on possible intercarrier compensation arrangements that it might adopt as an end-point for comprehensive reform.[148] Specifically, the FCC seeks comment on the merits of a bill-and-keep arrangement.[149] Although a bill-and-keep arrangement seems to offer a simplified framework for reform, it involves a myriad of problems. As a threshold matter, the Ohio Commission believes, as it has expressed in prior comments, that a bill-and-keep arrangement is, in fact, a rate setting process. As the FCC is well aware, responsibility for establishing rates is reserved to states under the Act.[150] Consequently, the Ohio Commission does not believe that the FCC has authority

[148] NPRM at 164, ¶ 529.

[149] *Id*. at 165, ¶ 530.

[150] *See* 47 U.S.C. § 252 (2010).

to mandate that any carrier or service provider adopt a bill-and-keep arrangement.[151] Nonetheless, a bill-and-keep arrangement should always be an option left for the carrier's negotiations.

In its *First Report and Order Decision*, the FCC acknowledged that traffic balance is a critical aspect of any bill and keep arrangement.[152] If traffic is not in balance, under such an arrangement a unified reciprocal compensation rate may be necessary. This is true not only for traditional wireline networks, but for all IP-networks as well, without regard to whether the traffic is VoIP traffic or another type of IP-based traffic. Furthermore, under a bill-and-keep arrangement, it is unclear how reciprocal compensation would operate for a transit traffic provider(s) involved in the completion of the traffic routing to the destination or for traffic between a LEC and interexchange carrier (IXC). Finally, adopting a bill-and-keep arrangement would lead to unnecessary disputes between interconnecting carriers when deciding on the appropriate points of interconnection (POI) as well as diminish the value of long-established interconnection arrangements that were agreed upon using different economic factors. In the Ohio Commission's

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151 *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing and Unified Intercarrier Compensation Regime, Federal State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-50, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 5) (filed March 31, 2011) (Section XV Comments).

152 *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, CC Docket No. 95-185 (First Report and Order Decision at 63 – 64, ¶¶128-130) (rel. August 8, 1996).

estimation, such an outcome will have stifling effect on the FCC's goal of increasing broadband deployment as carriers will be apprehensive to invest in and extend their facilities if they do not believe that they will be able to adequately recover their costs.

As an alternative to bill-and-keep, the Ohio Commission recommends that the FCC consider a flat-rate pricing arrangement. As carriers transition from the public switch network to IP-based networks and customers move to bundled services markets, the focus will shift to the capacity available on the network and the capacity required by every interconnecting carrier. Accordingly, a flat-rate arrangement based on capacity[153] enjoys support from both a policy and technical perspective where it comports with the cost recovery requirements of section 252(d)(2). Additionally, a flat-rate capacity-based reciprocal compensation arrangement would be easier for carriers and service providers to administer and would provide the incentives necessary for carriers to move to all-IP networks. The Ohio Commission believes that, the FCC has the jurisdiction to establish the pricing methodology (i.e. flat-rated capacity-based methodology), while leaving the task of establishing rates to the states.

V. LEGAL AUTHORITY TO ACCOMPLISH COMPREHENSIVE REFORM

A. Sections 201 and 332

The FCC requests comments on its authority under sections 201 and 332 of the Act to take measures to reduce wireless termination charges for both intrastate and inter-

[153] As an example, a carrier or service provider could charge a flat-fee for a certain amount of bandwidth much like the data plans mobile service providers offer to their customers.

state traffic. Section 201(a) of the Act establishes the common carrier obligations of both wireline and wireless carrier, while section 201(1) requires that all charges be "just and reasonable."[154] Section 332 of the Act applies exclusively to mobile services. Specifically, section 332(c)(3)(A) preempts the states from regulating "the entry of or the rates charges by any commercial mobile radio service."[155] Relying almost exclusively on a single footnote found in *Iowa Utilities Board v. FCC*,[156] the FCC argues that these sections grant it authority to reduce wireless termination charges. In this footnote, the Eighth Circuit Court reasoned that since section 152(b) of the Act[157] was amended to preclude state regulation of commercial mobile radio service (CMRS), *i.e.*, wireless, rates through its exemption of section 332(c)(3)(A), and because section 332(c)(1)(B) grants the FCC authority to require LECs to interconnect with wireless service providers, the provisions of rules 51.701. 51.703, 51.709(b), 51.711(a)(1) and 51.715(d) "remain in full force and effect with respect to the CMRS providers." The FCC interprets the Iowa Utilities Board Court's interpretation of the 332(c)(3)(A) exemption as sufficient to provide exercise its authority under section 201 to ensure that intrastate wireless access

[154] 47 U.S.C. § 201 (2010).

[155] 47 U.S.C. § 332(c)(3)(A) (2010).

[156] *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21(8th Cir., 1997).

[157] Section 152(b) states that except as provided in section 332, among others, nothing in that chapter "shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier."

termination charges are "just and reasonable" as required by section 201(b). The Ohio Commission respectfully disagrees.

Notwithstanding the Court's reasoning in footnote 21, the *Iowa Utilities Board* decision, in the main, stands for the proposition that the FCC lacks authority to set prices pursuant to the local competition provisions of section 252.[158] The Ohio Commission recognizes that while section 152 may preserve state preemption found in section 332(c)(3)(A), that preemption applies only to the regulation of *retail* rates and not to access or other non-retail rates. The language supports such a result:

> …shall exempt providers of commercial mobile radio Services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from the requirements imposed by a State commission on all providers of telecommunications service necessary to ensure universal availability of telecommunications service at affordable rates.[159]

Discussing wireless service in terms of a substitute for wireline service for purposes of universal availability at affordable rates implies a customer perspective and thus that the rates at issue in this section are retail rates. Accordingly, the Ohio Commission does not believe that section 332(c)(3)(A) is intended to nor does it apply to intrastate wireless access rates. This notwithstanding, the Ohio Commission takes no issue with outcome resulting from the Iowa Utilities Board Court's determination as the rules preserved by the *Iowa Utilities Board* Court simply establish the criteria and parameters by

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158 *See Iowa Utils. Bd*. at 797.

159 47 U.S.C. § 332(c)(3)(A) (2010).

which the states may establish access rates. Accordingly, the Ohio Commission does not believe that the argument propounded by the FCC in the NPRM to reduce wireless termination charges is persuasive.

B. Section 251(b)(5)

The FCC seeks comment on its authority to determine a methodology for establishing rates for all telecommunications traffic (intrastate, interstate, reciprocal compensation and wireless).[160] The FCC believes that it has authority to determine a methodology for establishing the rates applicable to the exchange of reciprocal compensation traffic and, accordingly, states that it could apply section 251(b)(5) of the Act to all telecommunications traffic exchanged with LECs, including intrastate and interstate access traffic.[161]

Section 251(b)(5) requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[162] The FCC contends that the Act broadly defines "telecommunications"[163] and, had Congress intended to exclude certain types of telecommunications from the reciprocal compensation framework, it could have used a more restrictive term to define the traffic subject to section

160 NPRM at 158, ¶ 512.

161 *Id.*

162 47 U.S.C. §251(b)(5) (2010).

163 47 U.S.C. §153(43) (2010). The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

251(b)(5).[164] In its *2008 Order and ICC/USF FNPRM*, the FCC concluded that because Congress used the broad term "telecommunications," section 251(b)(5) is not limited only to the transport of certain types of telecommunications traffic.[165] In its Order, the FCC concluded that section 252(b)(5) is not limited to traffic exchanged between LECs.[166] Accordingly, the FCC contends that it could apply the duty to provide reciprocal compensation under section 251(b)(5) to all telecommunications traffic exchanged with LECs. The FCC further contends that section 251(g) authorizes it to apply the section 251(b)(5) framework to all telecommunications, including access traffic.[167] Pursuant to this section 251(b)(5) authority, augmented by section 251(g), the FCC claims that it has authority impose a bill-and-keep pricing arrangement for all access traffic.[168] The FCC points to the Supreme Court's *AT&T v. Iowa Utilities Board* holding as granting authority to impose a bill-and-keep pricing arrangement.[169]

As explained in its recently-filed comments pertaining to Section XV of this NPRM, the Ohio Commission agrees that the FCC has the authority to bring intrastate access traffic under the section 251(b)(5) framework; however, authority for establishing

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164 NPRM at 159, ¶ 513.

165 *Id*.

166 *Id*.

167 *Id*. at ¶ 514.

168 *Id*. at 160, ¶ 516.

169 *Id.* at 160, ¶ 516 citing *AT&T v. Iowa Utils. Bd*. 525 U.S. 366, 385 (1999).

the actual rates is still reserved to the states under section 252 of the Act.[170] The jurisdiction recognized by the Court in *Iowa Utilities Board* is the jurisdiction to establish a *pricing methodology*, which would include the parameters and criteria for establishing rates, but not the actual rates themselves. Accordingly, the FCC may determine the parameters and criteria by which the states may establish intrastate access rates. Nonetheless, as rate determination is reserved for the states, the FCC may not impose a bill-and-keep pricing arrangement, which is a form of rate setting under any pricing methodology that the FCC may adopt.[171]

VI. SELECTING THE PATH TO MODERNIZE EXISTING RULES AND ADVANCE IP NETWORKS

A. Reform Based on Existing Jurisdictional Framework

i. Reforms Undertaken by the FCC

The FCC has proposed elimination of per-minute rates, including any necessary cost or revenue recovery that might be provided through the CAF, before it implements the long-term CAF reform.[172] In addition, the FCC has proposed creating a new methodology for reciprocal compensation, without change to the scope of traffic encom-

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170 *See* Section XV Comments at 8-9.

171 *See id*.

172 NPRM at 168-169, ¶¶ 538, 540.

passed by the reciprocal compensation framework.[173] For reasons discussed later in these comments, the Ohio Commission supports both proposals.

The FCC asks whether the transition for wireless termination charges should be subject to distinct transition timing so that the resulting cost savings gained by wireless ETCs is realized in parallel with the elimination of competitive ETC support. It is unclear to the Ohio Commission what reciprocal compensation rate would apply once the wireless carrier is transitioned or whether the FCC would be able to establish the pricing methodology early in the transition period as it has proposed.

The FCC points out that the timing of the transition could vary depending upon the type of terminating carrier, given that some carriers' rates are higher at the outset.[174] Specifically, rate-of-return carriers' access rates are higher than those of price-cap carriers.[175] Accordingly, the FCC asks how it should administer the transition of the rate-of-return carriers.[176] The Ohio Commission recommends that within the first phase of the transition period, the FCC should adopt a new cost-based pricing methodology for reciprocal compensation that would ultimately implemented by the states to establish a unified intercarrier compensation rate on a per-provider basis in each state. This is necessary to determine the amount of access revenue recovery to be addressed during the transition period and will be discussed in greater detail later in these comments.

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173 NPRM at 168-169, ¶ 538.

174 *Id*. at 170, ¶ 542.

175 *See id.* at 170, ¶ 542

176 *See id*.

ii. Reforms Undertaken by the States

The FCC acknowledges that some states have undertaken access charge reform using various approaches to account for the unique characteristics of their respective states and the impact each state's local consumers in setting a glide path for reform.[177] On Nov. 3, 2010, the Ohio Commission undertook access charge reform when it opened an investigation into the matter pursuant to the state's recently-enacted telecommunications reform law.[178] This law authorizes the Ohio Commission to reduce ILEC intrastate switched access rates on a revenue-neutral basis under terms and conditions that it establishes.[179] As part of the investigation, the Ohio Commission has issued a staff-proposed reform plan for comment by all stakeholders.

Under the Ohio staff's proposed reform plan, the intrastate access rates for each ILEC whose rates are not presently at parity with its interstate access rates (eligible ILECs) would be reduced to a level that does not exceed its interstate access rates as of the effective date of the reform plan.[180] Additionally, the proposed plan would establish an intrastate access reform fund (ARF) from which eligible ILECs would be entitled to receive monthly disbursements to offset the reduction in the intrastate access rates.[181]

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177 NPRM at 170, ¶ 543.

178 *See* Sub. S.B. 162 (2009) codified at Ohio Rev. Code Ann. § 4927.15(C).

179 Ohio Rev. Code Ann. § 4927.15(B) (West 2011).

180 *In the Matter of Intrastate Carrier Access Reform Pursuant to S.B. 162*, Case No. 10-2387-TP-COI (Entry at App. A) (issued November 3, 2010) (Ohio Commission Staff Plan).

181 Ohio Commission Staff Plan.

Support for the ARF would be received through mandatory monthly contributions paid by ILECs, CLECs, wireless service providers, telephone toll providers *(i.e.*, IXCs) and carriers providing telecommunications service to providers of interconnected voice-over-Internet-protocol services.[182] The contribution amount would be based on each contributing carrier's intrastate retail telecommunications revenue.[183] Over time, the size of the ARF would decrease through a biennial recalculation until the a final non-appealable decision reforming the intercarrier system is received from the FCC or the Ohio Commission establishes a state high cost support fund pursuant to Ohio law, whichever occurs earlier.[184] In recalculating the size of the ARF for price cap eligible ILECs, a reduction by $0.50 per access line served by the eligible ILEC as of the end of year preceding the recalculation, which may be recovered through an end-user fee, as well as any projected change in access revenue based on changes in both access rates and access minutes would be taken into account.[185] In recalculating the ARF size for non-price cap eligible ILECs, the percentage change of access line served by the eligible ILEC as of the end of year preceding the recalculation as well as any projected change in access revenue based on changes in access rates only while maintaining the level of access minutes at the 2009 level would be taken into consideration.[186] Earlier this year, the Ohio Commission

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182 Ohio Commission Staff Plan.

183 *Id.*

184 *Id.*; *see* Ohio Rev. Code Ann. § 4927.15(c) (West 2011).

185 Ohio Commission Staff Plan.

186 *Id.*

requested and received comments and reply comments from interested stakeholders. Relevant data has since been requested from all eligible and contributing carriers. Following the filing of this data, interested parties will be afforded an opportunity to file supplemental and reply comments.

The Ohio Commission strongly believes that the FCC, in collaboration with the states regarding reform of intrastate access rates, should establish the general parameters of the transition period and encourage the states to reduce their intrastate access rates to mirror the interstate access rates during the initial transition phase. As intrastate access rates are reduced mechanisms to offset this reduction will most certainly be introduced. However, the Ohio Commission does not believe that a mandatory interstate subscriber line charge (SLC) is the appropriate mechanism to offset the reduced revenues that will result from intrastate access reform. The implementation of such a mechanism will only shift intrastate revenue to the interstate side. While this approach should be an option for states to consider, it should not be mandated. Instead, states should maintain the flexibility to decide how and to what extent reduced intrastate access revenues are recovered. The Ohio Commission believes that clear direction from the FCC on universal service fund and intercarrier compensation reform may provide the best encouragement for states to initiate intrastate access reform. Therefore, clarity with regard to the phases, sequencing and timing of the transition period will be of great importance to this process.

iii. Reform Based on the 1996 Act Framework

The FCC has proposed using the mechanism established in section 251 to work with the states on intercarrier compensation reform.[187] Specifically, the FCC would bring all traffic within the section 251(b)(5) reciprocal compensation framework at the beginning of the transition while setting a glide path toward the elimination of per-minute charges.[188] The FCC would then adopt a pricing methodology that would be implemented by the states.[189] Recognizing the FCC's authority under section 251, the Ohio Commission believes that the emphasis under the FCC's proposal should be placed on section 251(d)(3), which preserves states access regulation. While all traffic would be subject to the section 251(b)(5) framework and the pricing methodology adopted by the FCC, states would establish rates for traffic pursuant to this methodology while retaining their regulatory jurisdiction of (local and intrastate) traffic of all carriers as it is today. Additionally, in setting a glide path toward the elimination of per-minute charges, the FCC should, as a first step, ensure that the states are given sufficient time to reduce intrastate access rates to mirror interstate rates.

The FCC asks how rate reductions should be structured and implemented if all traffic is brought under the section 251(b)(5) framework, suggesting that the reductions may be negotiated by the carriers and providers.[190] The Ohio Commission does not

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[187] NPRM at 173, ¶ 550.

[188] *See id.*

[189] *Id.*

[190] *See id.* at 174, ¶ 554.

believe that simply leaving reductions to the negotiations of carriers and providers would be productive. While carriers and providers should have the option to negotiate reductions, doing so may not be practical. As the FCC is well aware, section 252(i) requires local exchange carriers to make any interconnection, service or network element provided under an agreement approved pursuant to section 252 available to any requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.[191] The Ohio Commission believes that]\the FCC's proposal to leave reductions to the negotiation process would act as a disincentive to negotiate access rate reductions. Instead, the Ohio Commission recommends that the FCC adopt its alternative proposal to establish a default glide path for access rate reductions that establishes a timeframe for gradual rate reduction using a mechanism such as the proposed percentage per year for certain number of years.[192]

VII. DEVELOPING A RECOVERY MECHANISM

As the FCC correctly notes, the telecommunications industry is transitioning from the public switch network to all-IP networks that provide an array of services, regulated and non-regulated alike.[193] In this environment, non-regulated services have become an increasingly important source of revenues that derived from these multi-purpose net-

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191 47 U.S.C. § 252(i) (2010).

192 *See* NPRM at 174, ¶ 554.

193 *See id*. at 176, ¶ 531.

works.[194] As such, the Ohio Commission agrees that any analysis regarding reductions in intercarrier compensation should encompass more than a voice-centric approach.[195] Consistent with the National broadband Plan, recovery objectives should focus on providing incentives for carriers to transition to broadband while ensuring that these carriers retain the ability to provide voice service.

A. Determining the Type and Amount of Recovery

In determining the type and amount of any potential recovery for the reduced access revenue, the FCC discusses two alternative approaches: "cost recovery" and "revenue recovery."[196] For purposes of the transition period, the Ohio Commission believes that the "cost recovery" approach is overly complicated and, if adopted, would require addressing several highly contested subjects such as cost standards,[197] network platform and its associated cost,[198] and cost model. Each of these controversial issues must be resolved and implemented during the transition period.

The Ohio Commission is of the opinion that the "revenue recovery" approach is the more administratively practical approach for purposes of a transition period, and one that provides the FCC with more flexibility to consider different aspects of the

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194 NPRM at 176, ¶ 531.

195 *See id.*

196 *Id.* at 177-180, ¶¶ 564-572.

197 Incremental v. average cost.

198 A hybrid of IP and circuit switched networks v. an all IP network.

telecommunications market and its dynamics as it determines the appropriate access reduction recovery method.[199] As recognized by the FCC and noted above, the Ohio Commission has opened an intrastate access proceeding to address these same issues. Accordingly, the Ohio Commission may at this time only provide limited input on this aspect of the recovery mechanism. Nonetheless, the Ohio Commission encourages the FCC adopt a recovery mechanism and set a glide path that preserves state regulatory authority over traffic and revenue and provide the states with the needed flexibility to implement the FCC's reforms.

B. Criteria for Recovery from the CAF

For the purposes of long-term reform, the Ohio Commission recommends that under competitive bidding, all bids should include all explicit universal service support necessary to provide affordable service in a particular geographic area. Such a requirement will eliminate the need for separate universal service funding mechanisms to address recovery for intercarrier compensation reform. Similarly, under a right of first refusal, funding should include all explicit universal service support necessary to provide affordable service in a particular geographic area. The Ohio Commission believes that the recovery mechanisms adopted as part of the transition period should be eliminated at the end of this period should the FCC require competitive bidders to include all explicit universal service support necessary to provide affordable service in their bids.

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[199] NPRM at 178-180, ¶¶ 567-572.

The Ohio Commission recommends that the FCC establish a clear transition period that ends prior to any competitive bidding or recognition of a right of first refusal. To ensure that providers adhere to the established transition period, those carriers that have not reduced all of their intercarrier compensation rates prior to any competitive bidding or recognition of a right of first refusal, should, as a condition of receiving new CAF support, be required to reduce all rates to the a rate levels anticipated at the end of the transition period. Furthermore, the Ohio Commission recommends that these carriers not be permitted to include the support that they would otherwise have been eligible to receive had they timely reduced the rates in the bidding price. The Ohio Commission believes that this approach provides a sufficient enforcement mechanism and an incentive for all carriers to follow the established process.

VIII. INTERCONNECTION AND RELATED ISSUES

The FCC seeks comment on interconnection-related issues including steps to promote IP-to-IP interconnection, network edges and points of interconnection (POIs), transiting and disputes concerning technical issues in intercarrier compensation rules and carrier practices.[200] With regard to these issues, the FCC asks if they should be addressed as part of comprehensive intercarrier compensation reform and, if so, how and when this should be accomplished.[201]

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200 NPRM at 220, ¶ 678.

201 *Id*.

A. IP-to-IP Interconnection

With regard to interconnection for IP-to-IP traffic, the FCC notes that, historically, there have not been rules governing IP interconnection for the exchange of Internet traffic.[202] The FCC posits that as networks evolve, it makes little sense for providers to maintain different interconnection arrangements for the exchange of VoIP and other forms of internet traffic.[203] The Ohio Commission agrees with the FCC that it makes little sense for carriers to maintain different interconnection agreements based on the type of traffic exchanged by telecommunication carriers.[204] As discussed more fully in its recent Section XV comments, the Ohio Commission agrees that interconnected VoIP traffic should be classified as "telecommunications" traffic and, as such, may be brought under the existing section 251(b)(5) framework, which requires the establishment of reciprocal compensation arrangements for the transport and termination of telecommunications traffic.[205] Thus, using the existing framework of the Act, carriers should be able to negotiate one interconnection agreement to cover all telecommunications traffic exchanged between the parties, regardless of technology used.

Having one, as opposed to multiple, interconnection agreement is not only a better use of the parties' resources, but also provides a mechanism whereby disputes between the parties can be efficiently resolved. As the FCC is aware, in the years following the

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202 NPRM at 220, ¶ 679.

203 *Id.*

204 *See id.* at 220, ¶ 679.

205 *See* Section XV Comments at 5-7.

passage of the Act, state commissions have been involved in numerous disputes regarding the establishment of interconnection agreements and have acted within the Act's timeframes to expeditiously resolve these disputes.[206] If this process had not been in place, the FCC and the courts would have been overwhelmed with complaints and litigation that would have taken much longer to resolve. This would have resulted in competitive barriers to new entrants delaying their entrance into the marketplace. Since the FCC has appropriately defined interconnected VoIP traffic as telecommunications traffic, the Ohio Commission believes that the current regulatory structure should govern these forms of telecommunications traffic.[207]

B. Points of Interconnection and Network Edges

The FCC seeks comment on treating traffic under a bill-and-keep arrangement for purposes of intercarrier compensation.[208] Bill-and-keep arrangements typically assume a network "edge" or a point beyond which terminating carriers cannot charge other carriers to transport and terminate their traffic and originating carriers must perform all network functions necessary to deliver their traffic to the network edge of the terminating pro-

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206 *See, e.g., In the Matter of the Establishment of Terms and Conditions of an Interconnection Agreement Amendment Pursuant to the Federal Communications Commission's Triennial Review Order and Its Order on Remand*, Case No. 05-887-TP-UNC (Arbitration Award) (issued November 9, 2005); Ohio Admin. Code § 4901:1-7-09 (2011).

207 *See* NPRM at 195, ¶ 615.

208 *Id*. at 221, ¶ 680.

vider.[209] The FCC specifically asks whether the network edge concept should be addressed as part of its comprehensive intercarrier compensation reform. Additionally, if the FCC adopts a bill and keep arrangement as part of this concept, what specific network facilities, functions and services would be subject to that arrangement.[210] Furthermore, the FCC notes that the question of mandatory POIs has been raised previously with it finding that CLECs have the option to interconnect at a single POI per LATA. Accordingly, the FCC asks whether such a requirement is affected by the transition from circuit-switched to IP-based networks as well as the extent to which the location of a POI should be defined in a competitively neutral location for all networks.[211]

The Ohio Commission notes that the FCC has previously requested comment on the concept of a network edge.[212] In its comments regarding the Missoula Plan, the Ohio Commission stated that the Plan's proposed edge for network interconnection was a concept, which if adopted, would give an ILEC the unilateral right to designate a network edge without regard to the impact on the network of its competitors, the efficient use of network resources or the associated increase in costs of interconnection to be born by the

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209 *See* NPRM at 221, ¶ 680.

210 *Id*. at 221-222, ¶¶ 660-681.

211 *Id*. at 221, ¶ 682.

212 *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (Access Reform Plan at 45-46) (filed July 24, 2006).

competitor.[213] As it did then, the Ohio Commission believes that such a proposal is inconsistent with section 251, paragraphs (a) and (c)(2) of the Act and will result in the construction of additional uneconomic facilities by all carriers that replicates the ILEC network. Additionally, applying the concept of a network edge in the context of interconnection would likely generate numerous disputes regarding the multitude of existing interconnection agreements. Furthermore, the network edge concept does not provide any overriding benefit to justify departing from the well-established interconnection standards that have been adopted and refined over the last 15-plus years.

Since the network edge concept has not been proven to be an effective form of interconnection in a circuit switched environment, the Ohio Commission sees little reason to recommend it for an IP environment. Once again, the Ohio Commission recommends that the existing interconnection standards remain in place regardless of the technology used by the parties. Even if the parties agree to a bill-and-keep arrangement, the network edge concept is not necessary to that form of compensation. Both the FCC and the Ohio Commission presently allow parties to mutually agree to use a bill-and-keep arrangement for the compensation of 251(b)(5) traffic without mandating the network edge concept. To date, the Ohio Commission is unaware of any difficulties that the network edge concept may have prevented. As the Ohio Commission has previously noted, the network

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[213] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (Comments of the Public Utilities Commission of Ohio at 23-24) (filed October 25, 2006) (Missoula Plan Comments).

edge concept is a solution in search of a problem and its use should not be required by the FCC.[214]

C. Mandatory Points of Interconnection

The FCC notes that the issue of mandatory points of interconnection (POI) has been raised with some support in prior proceedings and revisits this issue in the context of an IP network.[215] Some parties, including ILECs, have argued that carriers should be required to establish a minimum number of physical POIs, or, alternatively, to establish a physical POI in the geographic area it intends to serve.[216] The FCC notes that it has interpreted section 251(c)(2)(B) of the Act to allow CLECs the option to interconnect at a single POI per LATA.[217] The FCC asks whether the transition from circuit-switched to IP networks may affect its rules concerning POIs and, if so, whether the POI should be located where interconnecting carriers have competitive alternatives to transport traffic to the terminating carrier's network.[218]

As the Ohio Commission advocated in prior comments, the FCC should continue to require, at a minimum, one POI per LATA as the general default rule, but should also require additional POIs as traffic to specific switching routing points within the LATA

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214 Missoula Plan Comments at 24.

215 NPRM at 222, ¶ 682.

216 *Id*.

217 *Id*.

218 *Id*.

exceeds certain capacity thresholds.[219] Additionally, the Ohio Commission recommended that the carriers retain the ability to negotiate a mutually agreed upon location for the required POI(s) as well as the establishment of interconnection facilities.[220] In the Ohio Commission's opinion, these existing interconnection requirements allow for efficient interconnection arrangements without the need to duplicate the ILEC network. Unlike the network edge concept, the requirement of a mandatory POI per LATA has served the carriers well over the last 15-plus years and should be retained in an IP environment. Furthermore, since the parties have the ability to negotiate a mutually agreed upon location for the required POI(s), an interconnecting provider can use a POI where it is able to use competitive alternatives to transport traffic to the terminating carrier's network.[221] For example, companies such as Neutral Tandem and Level 3 have developed a market as "carriers' carriers" who provide competitive transport and termination traffic for CLECs. Accordingly, the Ohio Commission does not believe that existing interconnection agreements should be modified or additional POIs mandated. Rather, current interconnection standards should be used with those carriers, whether circuit-switch or IP, continuing to have the option to negotiate further alternatives.

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[219] Missoula Plan Comments at 13-14.

[220] *Id*.

[221] NPRM at 223, ¶ 682.

D. Transiting

As the FCC explained, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediate carrier's network.[222] The FCC has previously sought and received comment on whether there is a statutory obligation to provide transit under the Act, and if so what rules should the Commission adopt to advance the goals of the Act.[223] Recent comments indicate that a competitive market for transit services exists.[224] The FCC now asks for comment to refresh the record on whether there is a need for the FCC to regulate transit service and whether it has authority to do so. [225]

The Ohio Commission has previously commented on the FCC's authority to regulate transit services and stated its belief that transit traffic is a statutory obligation of all carriers under the Act as "indirect" interconnection pursuant to paragraphs (a)(1) and(b)(5) of section 251.[226] The Act applies to all interconnection agreements and, as such, it is appropriate for the FCC to affirm that transit traffic is an obligation of all carriers under section 251 as well as require carriers that originate and terminate traffic to enter into compensation agreements that set forth the rates and terms and conditions for carrying such traffic. The Ohio Commission has adopted a similar rule requiring carriers

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222 NPRM at 223, ¶ 683.

223 *Id*.

224 *Id*.

225 *Id*.

226 Missoula Plan Comments at 28 -29; Comprehensive Reform Comments at 54.

that originate and terminate traffic in a transit traffic arrangement to establish a transport and termination agreement.[227] While the Ohio Commission acknowledges that the transit market may have become more competitive in recent years, it does not believe that such competition overrides the Act's requirement to establish interconnection agreements for transit traffic. Regardless of whether a carrier or service provider uses a competitive option or an ILEC for transit services, paragraphs (a)(1) and (b)(5) of section 251 require the establishment of a compensation agreement that sets forth the rates and terms and conditions of service.

E. Remaining Technical Issues

In addition to the issues raised above, the FCC seeks comment on various technical issues pertaining to its intercarrier compensation rules and carrier practices. Specifically, the FCC seeks comment on the elimination of the intra-MTA (i.e., Major Trading Area) rule used by wireless carriers and LECs when exchanging reciprocal compensation traffic; disputes regarding the proper rating and routing of traffic; and, the effect of the FCC's proposals on existing interconnection agreements.[228]

Consistent with previous comments, the Ohio Commission supports eliminating the existing "carve-out" of commercial mobile radio service (CMRS) originated intraMTA reciprocal compensation traffic from other LEC originated traffic.[229] As the

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[227] Ohio Admin. Code § 4901:1-7-13(F) (West 2011).

[228] NPRM at 224, ¶¶ 684-689.

[229] Missoula Plan Comments at 30-31.

Ohio Commission has observed, it would be more equitable for the FCC to determine that wireline local calling areas are the appropriate geographic scope for the exchange of local traffic subject to reciprocal compensation, since those MTA areas are much larger than the local calling areas currently authorized by state commissions for the exchange of wireline traffic.[230] Accordingly, the Ohio Commission does not believe that the CMRS carve out is warranted and encourages the FCC to eliminate it.

Issues regarding the proper rating and routing of traffic have developed because the current system encourages some carriers to engage in arbitrage opportunities due to the classification of various types of traffic and to obtain telephone numbers that do not relate to the actual geographic end points of the traffic in order to receive intercarrier compensation that would not otherwise apply to such traffic. This practice is commonly known in the industry as obtaining “virtual” NXX codes/telephone numbers.[231] In its comments pertaining to Section XV of the NPRM, the Ohio Commission supported the FCC’s effort to curb such arbitrage opportunities and suggested additional steps the FCC could take to assist in this regard.[232] As alluded to it those comments, should the FCC adopts a uniform regime for intercarrier compensation, such opportunities would likely be eliminated.[233] To the extent that the scope of Section XV and the comments provided in response are insufficient to eliminate arbitrage opportunities, the Ohio Commission

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[230] Missoula Plan Comments at 30-31.

[231] NPRM at 224, ¶ 684, n. 1099, 1100.

[232] *See* Section XV Comments at 13-16.

[233] *See id.* at 14.

recommends that all traffic be rated based on its actual geographic end points rather than relying exclusively upon the telephone number associated with it.

The FCC seeks comment on the effect of its proposed intercarrier compensation reforms on certain types of interconnection agreements.[234] The FCC states that it does not intend for these reforms to disturb the processes established by section 252 of the Act and asks whether such reforms would constitute a change in law that would trigger the change of law provisions found in many interconnection agreements that allow for renegotiation or some other mechanism to resolve disputes about new agreement language implementing new rules.[235] The Ohio Commission appreciates that the FCC does not intend to disturb the processes established by section 252 of the Act as that section governs the negotiation, arbitration and approval of interconnection agreements and provides states with a significant role in this process.[236] Nonetheless, the Ohio Commission believes that it is likely that the FCC's proposed reforms would result in a change in law triggering, as past reforms have, change-in-law provisions that require the renegotiation of interconnection agreements. The Ohio Commission has experience with such matters and recommends using existing dispute resolution processes to, facilitate the renegotiation of existing interconnection agreements where necessary.

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[234] NPRM at 226, ¶ 688.

[235] *See id*.

[236] *See* 47 U.S.C. § 252 (2010).

CONCLUSION

The Ohio Commission appreciates the FCC's effort to reform the intercarrier compensation system and universal service high-cost reform. Clearly, addressing these issues is of utmost importance in pursuing the objectives of the National Broadband Plan, in facilitating the transition to IP-based networks and in protecting our nation's small, rural carriers that have often been at the forefront of technology and innovation. In pursuing reform, the Ohio Commission encourages the FCC to be mindful of these carriers and the states' role in determining the access rates that will affect them. The Ohio Commission appreciates the opportunity to comment in this proceeding.

Respectfully submitted,

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01-92	Developing a Unified Intercarrier Compensation Regime.
96-45	FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE
03-109	In the Matter of Lifeline and Link-Up

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