

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A Nation Broadband Plan For Our Future)	GN Docket No. 09-51
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

COMMENTS OF COMPTTEL

July 12, 2010

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SUMMARY

The universal service program is broken and unsustainable. COMPTEL urges the Commission to implement comprehensive reform of both the contribution and distribution mechanisms to ensure that the funds ratepayers are assessed for high cost universal service are efficiently distributed and properly used for their intended purposes. COMPTEL also urges the Commission to strengthen the oversight and management of the high cost fund and its administration by the Universal Service Administrative Company (USAC) to reduce or eliminate improper payments and recover amounts that are improperly paid out.

While COMPTEL would prefer that the Commission undertake comprehensive reform at this time, in the absence of such reform, it supports the Commission's proposal to put an interim cap on the legacy high cost fund. Rather than setting the cap at the 2010 level, however, the Commission should set the cap at the 2010 level minus the most current estimate of improper payments made from the fund. The high cost fund is "at risk" as defined by the Improper Payments Information Act due to the high level of erroneous payments. Three years ago, the Commission directed USAC to file quarterly reports of the dollar amount of improper payments, the improper payment rate and the dollar amount of improper payments recovered. To the extent USAC has been providing this information, the Commission should have more than sufficient data to estimate the improper payment amount that should be deducted from the 2010 high cost fund level before it is capped on a going forward basis. If such data is unavailable, the Commission should use the Inspector General's latest estimate of improper payments from the high cost fund – 23.3 percent.

COMPTEL supports requiring rate of return incumbents that receive universal service funding to convert to price cap or some other form of incentive regulation.

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COMPTTEL, through undersigned counsel, hereby responds to the Commission’s Notice of Inquiry and Notice of Proposed Rulemaking in the above-captioned proceedings (collectively “NPRM”).

In its Joint Statement on Broadband released March 16, 2010, the Commission stated that the “nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency. . . .”¹ Over the past ten years, the Commission has opened numerous rulemakings and requested numerous recommendations from the Federal-State Joint Board on Universal Service with the promise of implementing comprehensive universal service reform,² but comprehensive reform

¹ *In the Matter of Joint Statement on Broadband*, Joint Statement on Broadband, GN Docket No. 10-66, FCC 10-42 at 2 (released Mar. 16, 2010).

² *See, e.g., In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) (initiating examination of contribution methodology); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 11, 2002) (asking the Federal-State Joint Board to review the Commission’s rules and make recommendations relating to high cost support in study areas where a CETC provides service); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 06-69 (rel. May 16, 2006) (extending embedded cost rules for rural carriers on an interim basis until Commission adopts changes, if any); *In the*

has remained a pipe dream. Instead, the Commission has adopted various stop gap measures to address specific issues while avoiding taking any comprehensive action.³ The instant NPRM seeks comment not on comprehensive reform, but on proposals to create a new Connect America Fund, expand the distributions of the existing universal service fund to cover broadband as well

Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (rel. June 27, 2006) (making interim modifications to the existing approach for assessing universal service contributions while continuing to examine more fundamental reform); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Recommended Decision, FCC 07J-4 (rel. Nov. 20, 2007) (Federal-State Joint Board recommendation that the Commission address long term reform issues facing high cost support system and make fundamental revisions to structure of existing universal service mechanisms); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 08-122 (rel. May 1, 2008) (adopting interim emergency cap on amount of high cost support available to CETCs pending comprehensive reform of universal service); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (seeking comment on whether Commission should eliminate identical support rule and on methodologies for determining CETCs' relevant costs for universal service support); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 08-05 (rel. Jan. 29, 2008) (seeking comment on whether the Commission should use reverse auctions to determine amount of high cost US support provided to carriers serving rural, insular and high cost areas); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 08-22 (rel. Jan. 29, 2008); (seeking comment on Federal State Joint Board's Recommended Decision regarding reform of high cost universal service program); *In The Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (seeking comment on three different proposals for universal service reform).

³ See, e.g., *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Report and Order and Memorandum Opinion and Order, FCC 10-44 (rel. Mar. 18, 2010) (amending rules to permit ILECs whose line counts drop below certain thresholds to receive additional local switching support); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order on Remand and Memorandum Opinion and Order, FCC 10-56 (rel. Apr. 16, 2010) (determining that existing non-rural high cost support mechanism should remain in place on remand from 2005 order of 10th Circuit invalidating support mechanism); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 08-122 (rel. May 1, 2008) (adopting interim emergency cap on amount of high cost support available to CETCs pending implementation of comprehensive high-cost universal service reform); *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 06-69 (rel. May 16, 2006) (extending embedded cost rules for rural carriers on an interim basis).

as voice service and impose an interim cap on the legacy high cost fund “while the Commission determines how to distribute funds in a more efficient, targeted manner.”⁴

Comment is not sought on reform of the contribution methodology, which means that voice customers will continue to foot far more than their fair share of the bill to bring not only voice, but also broadband, service to all people of the United States. Complicating matters further is the fact that Section 254 of the Communications Act, 47 U.S.C. §254, does not currently sanction the use of high cost funds to subsidize Internet access service. COMPTEL is concerned that the Commission’s decision to proceed again in piecemeal fashion – this time by diverting legacy high cost funds to subsidize broadband deployment and service -- will lead to further unnecessary delays in implementing comprehensive universal service reform and will fail to effectively “rein in the explosive growth in high cost universal service support contributions.”⁵ COMPTEL urges the Commission to take the plunge, strengthen the oversight and management of the high cost fund and revamp both the contribution and distribution methodologies comprehensively rather than continue to apply band-aids under the guise of interim relief.

I. Section 254 Does Not Authorize The Use Of High Cost Funds To Support Information Services

The Commission asks for comment on the creation of a Connect America Fund to support universal access to broadband and voice service, including providing any ongoing support necessary to sustain Internet access service in areas that already have broadband infrastructure.⁶ Section 254(c) of the Act defines universal service as an evolving level of

⁴ NPRM at ¶¶ 2, 51.

⁵ *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 08-122 at ¶ 1 (rel. May 1, 2008).

⁶ NPRM at ¶13.

“telecommunications service.” Because the Commission has classified broadband Internet access service as an information service, it is not a telecommunications service eligible for universal service support. As a result, the Commission cannot use high cost program monies to fund the gap between the incremental cost of providing Internet access service and the expected incremental revenues from such service, as the Commission proposes,⁷ unless and until it reclassifies broadband Internet access as a telecommunications service or the definition of supported services is modified.⁸ While the existing high cost fund has been used by small rural carriers to subsidize the deployment of broadband infrastructure capable of providing both voice and broadband service,⁹ “only voice is a supported service.”¹⁰

The Commission must tackle these preliminary jurisdictional issues before it moves forward with its proposal to make high cost universal service funds available to subsidize broadband Internet access service.

⁷ NPRM at ¶12.

⁸ The Commission itself has raised the question whether Section 254 may be interpreted to give the Commission authority to provide high cost universal service support for broadband Internet service as long as that service is classified as an information service. *In the Matter of Framework for Broadband Internet Service*, GN Docket No. 10-127, Notice of Inquiry, FCC 10-114 at ¶33 (rel. June 17, 2010). Because the statute limits the definition of universal service to telecommunications service, such an interpretation would not be reasonable. Significantly, Sections 254(c)(3) and 254(h)(2) authorize the Commission to designate additional services, including information services, as eligible for support under the schools, health care and library funding mechanisms, but there is no such language authorizing the use of high cost funding for information services.

⁹ See e.g., Government Accountability Office, *FCC Needs To Improve Performance Management And Strengthen Oversight of the High-Cost Program*, GAO-08-633 (June 2008) at 4, 21-22 (“GAO Report”).

¹⁰ NPRM at ¶ 3.

II. Controlling The Size Of The High Cost Fund

No matter how the Commission resolves the jurisdictional issues, it should take immediate action to stem the growth, and ideally cut the size, of the legacy high cost fund. COMPTEL supports the Commission's proposal to cap the high cost support provided to incumbent LECs in an effort to "ensure that the size of the fund remains reasonable."¹¹ The current size of the fund, however, is neither reasonable nor sustainable. Making matters worse is the lack of fiscally responsible management and oversight of the fund and its administrator, the Universal Service Administrative Company ("USAC"). Inadequate oversight has led to unacceptably high levels of erroneous payments and placed the high cost fund "at risk" under the Improper Payments Information Act ("IPIA"). These failings must be remedied sooner rather than later. Congress has entrusted the Commission with guardianship of the billions of dollars it collects from ratepayers every year to subsidize telecommunications service in high cost areas. Those ratepayers deserve better.

A. Calculating The Cap For The High Cost Fund

The Commission asks whether it should impose an overall cap on legacy high cost support for incumbent LECs at 2010 levels.¹² The Commission should impose a cap at 2010 levels, but that cap should not be set at the level of funds actually disbursed in 2010. Rather the Commission should cap the fund at the 2010 level minus the most current estimate of improper payments made from the fund.¹³ To do otherwise would be inconsistent with Executive Order

¹¹ NPRM at ¶51.

¹² *Id.* at ¶52.

¹³ Such a course would be consistent with the Managing Director's direction to USAC to offset improper payment recovery amounts against recipients' current high cost disbursements.

13520, which the President issued on November 20, 2009 to reduce improper payments, intensify efforts to eliminate payment errors and increase accountability for wasteful spending in programs administered by the Federal Government.¹⁴ To the extent that any of the more than \$4.5 billion in high cost funds that will be disbursed this year constitute payments that should not have been made, those dollars must be subtracted from the total and the cap set at the resulting amount. Good cause exists for pursuing such a course.

The GAO concluded two years ago that the Commission's failure to establish specific performance goals¹⁵ and measures for the high cost fund limits the Commission's ability to make informed decisions about the program's future and that the weaknesses in the internal control mechanisms hinder the Commission's ability to ensure cost effective use of program funds and contribute to excessive program expenditures.¹⁶ The Commission's own Inspector General has expressed concern about the possibilities for fraud, waste and abuse in the Commission's high cost universal service program as administered by USAC. The dollar amount and rate of improper payments found by the Inspector General in two rounds of audits of fund recipients put the high cost fund "at risk" of significant erroneous payments under the IPIA.¹⁷ The IPIA

See January 30, 2008 letter from Anthony Dale, FCC Managing Director, to Scott Barash, Acting CEO, USAC.

¹⁴ Executive Order 13520 at 1 (Nov. 21, 2009).

¹⁵ Although the Commission has been doling out high cost support payments for many years, it asserted in 2007 that it did not have "sufficient data to establish goals" for the high cost fund or the administration of the fund. *See, In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration and Oversight*, WC Docket No. 05-195, Report and Order, FCC 07-150 at ¶¶55, 57 (rel. Aug. 29, 2007).

¹⁶ GAO Report at 5.

¹⁷ FCC Office of Inspector General, Semiannual Report to Congress, October 1, 2008 – March 31, 2009 at 19 (July 30, 2009).

defines significant erroneous payments as annual erroneous payments in a program that exceed 2.5 percent of the program's annual payments and \$10 million.

In his Statistical Analysis of data from the Round 2 audits, the Inspector General estimated that the erroneous payment rate for the high cost fund for fiscal year 2006 was a staggering 23.3 percent or almost a *billion dollars*.¹⁸ Although it has had the Inspector General's analysis for over 18 months, USAC has not challenged either the 23.3 percent erroneous payment rate or the billion dollar estimate of erroneous payments for fiscal year 2006. When he submitted his analysis on November 26, 2008, the Inspector General reported that USAC "predicts that final reports and data *should be available on or about December, 2008*."¹⁹ That did not happen. Instead, USAC has been reporting for *over a year* that it is still "assessing" Round 2 of the Inspector General's audits.²⁰ It bears repeating that these audits were for Fiscal Year 2006. It is now 2010. There is something desperately wrong with the oversight, management and administration of the universal service fund when the Administrator

¹⁸ FCC Office of Inspector General, The High Cost Program Initial Statistical Analysis of Data From The 2007/2008 Compliance Attestation Examinations at 2 (Nov. 26, 2008); *see also*, FCC Office of Inspector General, Semiannual Report to Congress, October 1, 2008 – March 31, 2009 at 18-19 (July 30, 2009). The high cost program is "at risk" of significant erroneous payments under the IPIA.

¹⁹ FCC Office of Inspector General, The High Cost Program Initial Statistical Analysis of Data From The 2007/2008 Compliances Attestation Examinations at 21 (Nov. 26, 2008) (emphasis added).

²⁰ *See*, Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Third Quarter 2010 at 5 (Apr. 30, 2010); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Second Quarter 2010 at 5 (Jan. 29, 2010); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For First Quarter 2010 at 5 (Nov. 2, 2009); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Fourth Quarter 2009 at 5 (Jul. 31, 2009); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Third Quarter 2009 at 5 (May 1, 2009).

has been “assessing” for more than a year the Inspector General’s report on audits of monies disbursed four years ago, especially when those audits show close to a billion dollars in improper payments.²¹

And it appears that Fiscal Year 2006 was not a fluke in terms of improper payments from the high cost fund. For fiscal year 2005 (Round 1 of the Inspector General’s audits), the Inspector General estimated the erroneous payment rate for the high cost fund at 16.6 percent.²² In his Semiannual Report to Congress for the period April 1, 2009 through September 30, 2009, the Inspector General noted that USAC issued an analysis in September 2009 that revised downward the Inspector General’s estimated erroneous payment rate for Fiscal Year 2005 from 16.6 percent to 2.74 percent, or a *mere \$103 million*. In other words, it took USAC *two* years to complete its analysis of the Inspector General’s analysis. The Inspector General then promised to evaluate and comment on USAC’s analysis.²³ No such comment was included in the Inspector General’s Semiannual Report to Congress for the period October 1, 2009 through March 31, 2010²⁴ or anywhere else that COMPTEL has been able to find. It has been more than nine months since USAC submitted the analysis with no follow up from the Inspector General.

²¹ Obviously, the more time that passes between the disbursement of the payments and any attempt to recover payments that were improperly made, the less likely it is that recovery will be successful.

²² FCC Office of Inspector General , The High Cost Program, Initial Statistical Analysis of Data from the 2006/2007 Compliance Audits at 1 (Oct. 3, 2007); FCC Office of Inspector General, Semiannual Report to Congress, October 1, 2007 – March 31, 2008 (Apr. 30, 2008), at 21.

²³ FCC Office of Inspector General, Semiannual Report to Congress, April 1, 2009 – September 30, 2009 at 20 (Oct. 30, 2009). *See also*, Universal Service Administrative Company, Final Report and Statistical Analysis of the 2006-2007 Federal Communications Commission Office of Inspector General High Cost Beneficiary Audits at 2 (Sept. 10, 2009).

²⁴ FCC Office of Inspector General, Semiannual Report to Congress, October 1, 2009 – March 31, 2010 (March 31, 2010).

Even if the Inspector General were to agree with USAC's analysis, however, the high cost fund is still "at risk" for erroneous payments under the IPIA. Indeed, USAC's estimate of \$103 million in erroneous payments for Fiscal Year 2005 exceeds the IPIA's "at risk" dollar threshold by a factor greater than 10.

High cost fund spending continued to reach new heights in 2007, 2008, and 2009.²⁵ Although no audit reports have yet been released for these years, there is no reason to believe that the fund does not continue to be at risk for erroneous payments under the IPIA.

The unconscionably high erroneous payment rates found by the Inspector General clearly demonstrate that the size of the high cost universal service fund is bloated, as opposed to reasonable, and that there is significant waste. Unfortunately, voice customers are paying the price for that waste. For the first three quarters of 2010, the FCC has set the universal service contribution factor at 14.1%, 15.3% and 13.6%, respectively.²⁶ The universal service assessment essentially amounts to a tax on an essential service that must be paid by voice service subscribers. That universal service tax is in addition to a host of other fees and surcharges, including the federal excise tax, state and local sales tax, E-911 fees, local number portability fees, right of way fees and TRS fees. It has gotten to the point where the "fees and surcharges" total on the telephone bills of residential subscribers approaches the monthly service charge.

In its review of the high cost universal service program in 2008, the GAO noted that in considering legislation to codify universal service in the Telecommunications Act of 1996, the

²⁵ Federal State Joint Board on Universal Service, *Universal Service Monitoring Report*, CC Docket No. 98-202 at Table 3.1 (rel. Dec. 9, 2009).

²⁶ FCC Public Notice, Proposed First Quarter 2010 Universal Service Contribution Factor, DA 09-2588 (rel. Dec. 11, 2009); FCC Public Notice, Proposed Second Quarter 2010 Universal Service Contribution Factor, DA 10-427 (rel. Mar. 12, 2010); FCC Public Notice, Proposed Third Quarter Universal Service Contribution Factor, DA 10-1044 (rel. June 10, 2010).

Senate Commerce Committee anticipated that competition and new technologies would reduce or eliminate the need for universal service.²⁷ Unfortunately, the opposite has happened. High cost fund spending has almost quadrupled since 1996, increasing from \$1.188 billion in 1996 to \$4.457 billion in 2009.²⁸ During that same period, the percentage of U.S. households subscribing to telephone service increased only slightly -- from 94.4 percent to 95.6 percent—calling into serious question the cost effectiveness of universal service spending.²⁹

The GAO also pointed out that the high cost program’s internal control mechanisms are limited “and exhibit weaknesses that, collectively, hinder FCC’s ability to assess the risk of noncompliance with program rules and ensure cost-effective use of program funds.”³⁰ That conclusion has been validated by the Inspector General’s audit results. Among the weaknesses the GAO identified were the carrier data validation processes:

Lastly, the carrier data validation processes, which USAC and NECA conduct, are used to ensure the reliability of financial data underlying the program. However, these validation processes focus on the completeness of data reported by carriers and do not include processes for ensuring the accuracy of these data. These weaknesses limit FCC’s ability to assess the risk of noncompliance with program rules. Further, these weaknesses could contribute to excessive program expenditures. For example, *these mechanisms are limited in assessing the cost-effectiveness of carriers, the accuracy of carriers’ costs and line count data, and the appropriate use of high-cost program support, each of which could contribute to excessive program expenditures.*³¹

²⁷ GAO Report at 2.

²⁸ Federal State-Joint Board on Universal Service, *Universal Service Monitoring Report*, CC Docket No. 98-202 (rel. Dec. 9, 2009). The GAO has determined that “[t]his significant growth has raised concerns about the program’s long-term sustainability, efficiency and effectiveness, as well as the adequacy of the oversight of carriers’ need for and use of support.” GAO Report at 14.

²⁹ Federal-State Joint Board on Universal Service, 2009 Universal Service Monitoring Report.

³⁰ GAO Report at 5-6.

³¹ *Id.* (emphasis added).

Concerned about the extent and scope of waste, fraud and abuse in the high cost and other universal service programs, the Commission adopted measures in August 2007 to improve the management, administration and oversight of the fund.³² Among other things, the Commission required USAC to provide on a quarterly basis, at the time it makes its contribution factor filings, the amount of high cost payments determined to be improper, the percentage of total payments determined to be improper and the amount of improper payments subsequently recovered.³³ In August 2008, the Commission directed USAC to submit on a quarterly basis, as a separate section of its contribution factor filings, a report on its progress in implementing its proposed actions to prevent or reduce improper payments. The Commission also directed USAC to summarize in its annual report the steps it has taken to prevent and reduce improper payments identified by the Inspector General.³⁴ On September 9, 2009, the Commission and USAC entered into a Memorandum of Understanding which also requires USAC to provide to provide to the Commission on a quarterly basis the amount of high cost payments determined to be improper, the percentage of total payments determined to be improper and the amount of improper payments subsequently recovered. To the extent that USAC has been providing this information to the Commission since 2007, the Commission should have more than two years' worth of data to estimate the erroneous payment amount that should be subtracted from the 2010 high cost fund level before it is capped on a going forward basis.

³² *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration and Oversight*, WC Docket No. 05-195, Report and Order, FCC 07-150, at ¶¶ 1, 56 (rel. Aug. 29, 2007).

³³ *Id.* at ¶¶ 37, 56, 57.

³⁴ August 18, 2008 Letter from Anthony Dale, FCC Managing Director, to Scott Barash, Acting Chief Executive Officer, USAC.

The Commission should also make USAC's quarterly reports on improper payments and amounts recovered accessible to the public. Executive Order 13520, which adopted a policy of transparency and public scrutiny of significant government payment errors, requires nothing less.³⁵ In a Memorandum to the heads of Executive Departments and Agencies regarding finding and recapturing improper payments, the President stated on March 10, 2010 that "[t]horough identification of improper payments promotes accountability at executive departments and agencies; it also makes the integrity of Federal spending transparent to taxpayers."³⁶ There can be no transparency or accountability if USAC's quarterly reports on the dollar value and rate of improper payments and the dollar value and rate of recovery of improper payments are shielded from public view.

USAC, on behalf of the Commission, collects and disburses billions of dollars under the universal service programs every year and it is charged with the prudent management and administration of those monies. Every Federal Universal Service Support Mechanisms Fund Size Projections report filed by USAC since it entered into the Memorandum of Understanding with the Commission contains a section entitled "Efforts to Prevent and Reduce Improper Payments."³⁷ The content of each of these sections is virtually identical from quarter to quarter and contains no information whatsoever with respect to the dollar amount of payments

³⁵ Executive Order 13520 at Section 2.

³⁶ Presidential Memorandum Regarding Finding and Recapturing Improper Payments dated March 10, 2010, available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-finding>.

³⁷ This additional information would appear to be in response to the FCC Managing Director's order to USAC to submit quarterly status reports on its progress in implementing its proposed actions to prevent or reduce improper payments as a separate section of its quarterly Contribution Reports. See August 18, 2008 letter from Anthony Dale, FCC Managing Director, to Scott Barash, Acting Chief Executive Officer, USAC.

determined to be improper, the error rate or the dollar amount of improper payments subsequently recovered by USAC.³⁸ They all do, however, contain the following statement, “USAC is pursuing the collection of all identified High Cost and Low Income Support Mechanism audit recoveries.”³⁹ Identical statements on its efforts to prevent and reduce improper payments appearing in each quarterly report and the lack of any substantive financial information relating to improper payments and recovered amounts promotes neither accountability nor transparency. Consistent with Executive Order 13520, the Commission should make available on its website the current and historical rates and amounts of high cost universal service fund improper payments and the current and historical rates and amounts of recovery of improper payments.⁴⁰ With these numbers accessible to the public, questions about the calculation of the high cost support cap (2010 high cost support level less an appropriate deduction for improper payments) will be minimized.

³⁸ See , Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Third Quarter 2010 at 4-6 (Apr. 30, 2010); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Second Quarter 2010 at 4-6 (Jan. 29, 2010); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For First Quarter 2010 at 4-6 (Nov. 2, 2009); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Fourth Quarter 2009 at 4-6 (Jul. 31, 2009); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Third Quarter 2009 at 4-6 (May 1, 2009); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Second Quarter 2009 at 4-6 (Jan. 30, 2009); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For First Quarter 2009 at 4-6 (Oct. 31, 2008); Universal Service Administrative Company, Federal Universal Support Mechanisms Fund Size Projections For Fourth Quarter 2008 at 4-6 (Aug. 1, 2008).

³⁹ *Id.*

⁴⁰ Executive Order 13520 at Section 2.

B. Implementation Of The Cap On The High Cost Fund

In terms of implementing the cap on the amount of high cost support that incumbent carriers are eligible to receive, the Commission should follow procedures similar to those it followed in implementing the cap on the amount of high cost support that competitive carriers are eligible to receive.⁴¹ The Commission should first determine the amount of high cost funds disbursed in each state during 2010. Each state total should then be reduced by the percentage of improper payments attributable to that state. The resulting numbers would represent the total amount of high cost funds available for distribution to incumbent carriers in each state on a going forward basis.

C. Specific Steps To Cut Legacy High Cost Support

The Commission has asked for comment on specific proposals to cut legacy high cost support. The least controversial way to cut legacy high cost support would be to improve the financial management of the high cost fund and USAC and eliminate wasteful spending. As discussed above, eliminating wasteful spending alone would reduce the size of the high cost fund by almost 25 percent, according to the Inspector General's latest estimate. Inaction on the Commission's part is no longer an option. As long as the Commission fails to take decisive action to reduce improper payments, universal service funds will continue to be wasted and inefficiently used at ratepayer expense and the telephone subscribers that fund universal service will continue to be overassessed on each monthly telephone bill.

1. Shifting Rate of Return Carriers to Incentive Regulation

The Commission has asked whether it should require all rate of return incumbents to convert to price cap or some other form of incentive regulation and whether it should freeze

⁴¹ *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 08-122 (rel. May 1, 2008) at ¶¶ 26-30.

interstate common line support (ICLS) at a set amount per line in an effort to stem growth in the high cost fund.⁴² COMPTTEL submits that the Commission should require rural rate of return carriers that have used, and will in the future use, high cost funds to deploy and operate broadband infrastructure to convert to incentive regulation. The obvious advantage of incentive regulation over rate of return regulation is that it encourages carriers to operate in the most efficient manner possible. Carriers subject to incentive regulation are rewarded with higher earnings when they reduce costs by operating more efficiently. Commission regulation should encourage efficient operation rather than guaranteeing carriers a fixed rate of return and removing any benefits that flow from reducing their costs.

Once rate of return carriers convert to incentive regulation, the Commission should, as it has done in the past,⁴³ freeze the ICLS support they are entitled to receive. The Commission should impose both a per-line cap and a cap on the total amount of ICLS support converting carriers are entitled to receive. Both caps are necessary to ensure that the carriers do not receive increased ICLS payments if the number of lines they serve increases.

CONCLUSION

For the foregoing reasons, the Commission should resolve the issues relating to the eligibility of Internet access services for universal service funding before making plans to divert legacy high cost support to subsidize broadband Internet access service. The Commission should also take affirmative action to eliminate erroneous payments made from the high cost fund and

⁴² NPRM at ¶¶55-56.

⁴³ See e.g., *In the Matter of Windstream Petition For Conversion To Price Cap Regulation and For Limited Waiver Relief*, WC Docket No. 07-171, Order, FCC 08-81 at ¶1 (rel. Mar. 18, 2008); *In the Matter of Petition of Puerto Rico Telephone Co., Inc. For Election of Price Cap Regulation and Limited Waivers of Pricing and Universal Service Rules*, WC Docket No. 07-292, Order, DA08-1026, at ¶¶1-5 (rel. May 6, 2008).

ensure that any cap implemented for the high cost fund excludes an appropriate amount attributable to the most current estimate of improper payments.

Respectfully submitted,

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