

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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**REPLY COMMENTS OF COMCAST CORPORATION**

Comcast Corporation (Comcast) hereby submits these reply comments in response to the Commission’s Notice of Inquiry (*NOI*) regarding the Universal Service Fund (USF) High-Cost Program for non-rural carriers.<sup>1</sup> The record in this proceeding demonstrates the need for comprehensive reform of the High-Cost Program. Only a thorough overhaul of the Program will promote the public policy of providing universal access to broadband Internet services while at the same time rein in the currently unsustainable cost of the Program.

Acting Chairman Copps recently issued a report to Congress which emphasized “the need for comprehensive reform of the universal service fund” as part of a rural broadband strategy.<sup>2</sup> A diverse range of commenters responding to the *NOI* in this proceeding agree with this call for comprehensive reform.<sup>3</sup> As Verizon stated in its

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<sup>1</sup> *High-Cost Universal Service Support*, Notice of Inquiry, 24 FCC Rcd 4281 (2009) (*NOI*).

<sup>2</sup> Acting Chairman Michael J. Copps, FCC, “Bringing Broadband to Rural America: Report on a Rural Broadband Strategy,” at 61, ¶ 138 (May 22, 2009), *available at*: <[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-291012A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf)>.

<sup>3</sup> *See, e.g.*, Comments of the United States Telecom Association at 1; Comments of AT&T Inc. at 5; Comments of Verizon and Verizon Wireless at 3, 5-8 (Verizon Comments); Comments of Time Warner Cable Inc. at 1 (Time Warner Cable

comments, the Commission, in addition to responding to the issues remanded by the court, “should move forward with critical reforms of the fund to bring the universal service program in line with changes in technology and the market to ensure the fund is sustainable in the future.”<sup>4</sup> Comcast agrees that the Commission should overhaul the High-Cost Program to reflect today’s marketplace conditions and to promote universal broadband Internet access. In comments filed today in the Commission’s National Broadband Plan proceeding, Comcast describes key principles that should guide the Commission in achieving these objectives.<sup>5</sup>

Some parties, however, ask the Commission to defer comprehensive reform and instead adopt narrower modifications to the existing High-Cost support mechanism for non-rural carriers in this proceeding.<sup>6</sup> Comcast agrees with Time Warner Cable that the Commission “should avoid making piecemeal revisions to the universal service program.”<sup>7</sup> Such a truncated approach would fail to take into account the broader context of policy issues that must be examined in modifying the current program. As Time Warner Cable stated in its comments, “comprehensive action” is the only means of achieving “rational and enduring reform” because “all of the high-cost programs are

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Comments); Comments of the New Jersey Board of Public Utilities at 3-4 (New Jersey Board of Public Utilities Comments). (Unless otherwise indicated, all comments cited were filed in WC Docket No. 05-337 on May 8, 2009.)

<sup>4</sup> Verizon Comments at 23.

<sup>5</sup> Comments of Comcast Corporation, GN Docket No. 09-51, at 53-62 (June 8, 2009) (Comcast Broadband NOI Comments). Attached hereto as Appendix A are the sections of Comcast’s comments filed in GN Docket No. 09-51 concerning reform of the High-Cost Program.

<sup>6</sup> *See, e.g.*, Comments of Qwest Communications International Inc. at 1 (Qwest Comments).

<sup>7</sup> Time Warner Cable Comments at 1.

plagued by the same core problems.”<sup>8</sup> The failure to examine the broader context of issues raised by the High-Cost Program is one reason the current non-rural carrier mechanism has twice been reversed by the court. Only by examining the bigger picture can the FCC understand whether a specific proposed change to the program will further the public interest.

Moreover, a piecemeal approach would only delay much-needed comprehensive reform and risk distorting the competitive marketplace. For example, some parties argue that the Commission should eliminate the use of statewide average costs in allocating non-rural carrier High-Cost support and retarget support directly to high-cost wire centers,<sup>9</sup> yet ignore broader reform measures such as taking into account *all* revenues generated from a supported network, not just basic local voice service revenues, in calculating support levels. Narrowing the geographic area for determining High-Cost support, by itself, would significantly increase the cost of the Program without justification and continue the practice of subsidizing incumbent local exchange carriers (LECs) in areas that do not need support and providing an unjustified competitive advantage to incumbent LECs.<sup>10</sup>

Some incumbent LECs propose other short-sighted modifications to the non-rural carrier support mechanism, including basing High-Cost Program support on what the incumbent LECs call a carrier-of-last-resort paradigm, but in reality is simply a mechanism to preserve the entire subsidy regardless of the changes caused by

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> *See, e.g.*, Qwest Comments at 5; Comments of Embarq at 2 (Embarq Comments).

<sup>10</sup> *See* Comments of the National Association of State Utility Consumer Advocates at 54-60 (criticizing Qwest proposal to base support on wire center costs rather than statewide average costs and describing increase in the size of the High-Cost Program that would result).

competition in the local marketplace.<sup>11</sup> Under this proposal, an incumbent LEC would continue to receive the same level of support even when it loses customers to competitors. Such a proposal would prop up incumbent LEC operations when more efficient providers are more successful in serving rural customers and runs directly counter to Congressional and Commission policies of encouraging competition and innovation. The incumbent LEC proposal would also only add to the inflated size of the High-Cost Program when the Commission should be exploring reforms to *reduce* costs to make the Program sustainable and lessen the burden on non-rural ratepayers.<sup>12</sup>

As Verizon explains in its comments, wireless carriers and Voice-over-Internet-Protocol providers are increasingly offering voice and broadband Internet service in rural areas, providing rural customers more choice in services and new technologies.<sup>13</sup> The High-Cost Program should not be used to shield incumbent LECs from this competition and the incentive to provide more innovative and efficient service. A workable, comprehensive plan for USF reform must take into account new competition and efficiencies and promote consumer welfare, not establish an entitlement for certain types of carriers.<sup>14</sup>

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<sup>11</sup> See Embarq Comments at 12-13.

<sup>12</sup> See New Jersey Board of Public Utilities Comments at 4-5 (describing proposals that would increase the size of the fund as “unacceptable and unsustainable” and stating that “[i]t is time to reduce the burden on urban states such as New Jersey and its ratepayers, many of whom struggle to pay for their own services, from having to subsidize telephone service for rural consumers.”).

<sup>13</sup> Verizon Comments at 16-20.

<sup>14</sup> *Alenco Commun's, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (“The Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires

Comprehensive reform is also necessary to control the ballooning cost of the High-Cost Program. The Program has reached unsustainable levels and places significant burdens on the consumer of those providers who contribute to the USF pool.<sup>15</sup> As part of the transition to support broadband Internet access, the Program must be reformed to control costs and promote more efficient, targeted distribution of funds. In its comments filed today in the Commission's National Broadband Plan proceeding, Comcast described a number of cost-control measures that should guide the Commission reform efforts: (1) the High-Cost Program should be capped at 2008 levels; (2) High-Cost support should be narrowly targeted to areas that would remain unserved by broadband Internet access service in the absence of USF subsidies; (3) the Commission should take into account all revenues generated by subsidized facilities, as well as new efficiencies and competition, in determining the level of High-Cost support; and (4) the Commission should adopt more efficient, competitively neutral distribution and contribution mechanisms.<sup>16</sup> Comcast urges the Commission to follow these principles, which are described in detail in its Broadband NOI comments attached hereto, in considering reforms of the non-rural carrier High-Cost Program.

This proceeding offers the Commission an opportunity to reform its High-Cost Program for non-rural carriers to better promote Congress's universal service policies. The Commission and a wide range of parties have recognized that the current system is

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sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.") (emphasis in original).

<sup>15</sup> Comcast Broadband NOI Comments at 54-55.

<sup>16</sup> *Id.* at 56-62.

badly out-of-date and has resulted in unsustainable costs. Fundamental reform can place the program on a firm, cost-effective foundation that will promote affordable access to broadband Internet for all Americans.

Respectfully submitted,

/s/ Kathryn A. Zachem

Kathryn A. Zachem

Mary P. McManus

COMCAST CORPORATION

2001 Pennsylvania Ave. NW, Suite 500

Washington, DC 20006

(202) 379-7134

(202) 379-7141

Brian A. Rankin

COMCAST CABLE COMMUNICATIONS, LLC

One Comcast Center, 50th Floor

Philadelphia, PA 19103

June 8, 2009

### **Certificate of Service**

I hereby certify that on this 8th day of June, 2009, I caused a true and correct copy of the foregoing Reply Comments of Comcast Corporation to be mailed by electronic mail to:

Best Copy and Printing, Inc.  
fcc@bcpiweb.com

and

Antoinette Stevens  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
Antoinette.Stevens@fcc.gov

/s/ Ruth E. Holder  
Ruth E. Holder

## Appendix A

Excerpted from Comments of Comcast Corporation  
on  
A National Broadband Plan for our Future  
GN Docket No. 09-51  
Filed June 8, 2009

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of

A National Broadband Plan for Our Future

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GN Docket No. 09-51

COMMENTS OF COMCAST CORPORATION

Kathryn A. Zachem  
David M. Don  
Mary P. McManus  
COMCAST CORPORATION  
2001 Pennsylvania Ave., NW  
Suite 500  
Washington, D.C. 20006  
(202) 379-7134

Joseph W. Waz, Jr.  
COMCAST CORPORATION  
One Comcast Center  
1701 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2838

WILLKIE FARR & GALLAGHER LLP  
1875 K Street, N.W.  
Washington, D.C. 20006

*Attorneys for Comcast Corporation*

June 8, 2009

## EXECUTIVE SUMMARY

The Internet has become a central feature in the lives of hundreds of millions of Americans. It is a hub for information, entertainment, commerce, politics, learning, social and cultural development, and so much more. When Congress passed, and the President signed, the Telecommunications Act of 1996, declaring their faith in competition and their desire to keep the Internet unregulated, they paved the way for an unprecedented private-sector infrastructure boom. The 1996 Telecom Act foresaw that the Internet represented “an extraordinary advance in the availability of educational and informational resources to our citizens” that would “offer users a great degree of control over the information they receive”; provide “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity”; and deliver “a variety of political, educational, cultural, and entertainment services.” That vision is a reality for the more than 70 million American households that have broadband Internet service today – and it is being delivered on competitive broadband networks. But not every American is using broadband Internet service, so tens of millions are still not enjoying the benefits that service has to offer.

In the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”), Congress appropriated hundreds of billions of dollars to stimulate our nation’s flagging economy to create new jobs and preserve existing ones. As a part of that effort, Congress dedicated \$7 billion to advance efforts to make sure that all Americans have access to, and to stimulate adoption of, broadband Internet service. In addition, the Commission was assigned an important mission: to submit to Congress “a report containing a national broadband plan” (the “National Broadband Plan” or the “Plan”). In order to be successful, that Plan should have one paramount goal: making the United States the most connected nation in the world. This is an important undertaking, and one that will require successful collaboration among federal, state, and local government agencies; numerous and diverse private sector companies; and the full gamut of community, educational, cultural, and advocacy organizations.

To determine where we need to go on broadband, and how we should get there, it is essential that we first understand where we are, and how we got here. The pro-competitive, deregulatory policy framework established in 1996 – and the regulatory restraint exercised by Democratic- and Republican-led Commissions – induced cable companies to introduce and widely deploy high-speed cable Internet, a service that has succeeded beyond anyone’s predictions. That service is now available to over 92 percent of American households and subscribed to by over 39 million of those households. The launch of cable Internet service provided the competitive spur that led telephone companies to offer digital subscriber line (“DSL”) service and other high-speed Internet alternatives, which are now available to over 80 percent of American households and subscribed to by more than 30 million households. Americans have embraced broadband Internet service more quickly than they did personal computers, CD players, electricity, or telephones, or practically any other communications technology introduced in the past 150 years.

The success of cable and telco broadband Internet alternatives encouraged expanded investment in wireless broadband, now offered by multiple competing providers across great swaths of America, with coverage areas and provisioned speeds growing rapidly. And the widespread availability of broadband Internet services has made possible, and has benefited from, the growth of broadband content, applications, and services – YouTube, Hulu, Facebook, Wikipedia,

WebMD, HealthCentral, Monster, Expedia, iTunes, Yahoo!, Blogger, Skype, Amazon, Google, eBay, evite, eHarmony, Craigslist, Flickr, Hotmail, LinkedIn, OpenTable, Twitter, My Space, Thumbcast, Snapfish, Ask.com, Peapod, Yammer, Huffington Post, Drudge Report, Jaiku, University of Phoenix online, and thousands upon thousands of others. The relationship between providers of broadband Internet services and the creators of Internet content, applications, and services that benefit from those services is profoundly symbiotic. They are part of the most complex and rapidly evolving economic, social, educational, cultural, and political ecosystem in human history.

But this ecosystem can be greater still. It is a fundamental tenet of networks that the more people that connect to the network, the more valuable it becomes. But, broadband Internet service is not yet accessible to millions of Americans – and *tens of millions* of Americans who do have access to broadband Internet services choose not to use them, either because they do not yet see the utility, do not have the requisite equipment or skills, lack the discretionary income, or for other reasons. The challenge now is to assess this complex ecosystem, in all its dimensions, and then to devise a Plan that encourages continued investment and growth and focuses on real and realistic measures that are consistent with the two key goals: access and adoption.

If the United States is truly to become the connected nation that the President, Congress, the Commission, and others envision, and if all Americans are going to benefit from the Internet's ability to deliver economic, social, educational, cultural, and political enrichment, we must overcome the remaining hurdles to deployment and adoption of broadband Internet services.

The priorities for the National Broadband Plan should be clear: ensuring that broadband Internet services are available everywhere and, more importantly, achieving widespread adoption of broadband Internet service by breaking down barriers to affordability and use.

To accomplish these priorities, the Commission must first identify those areas where broadband Internet service is not available. The Plan should recommend a strategy for assisting, in an efficient and cost-effective manner, the deployment of networks providing access to broadband Internet service to (1) schools, libraries, hospitals, and other public facilities, and (2) homes and businesses in the remaining geographic areas of the country where private sector entry has not been economically feasible.

Second, the Plan should recommend a strategy for promoting use of broadband Internet service by addressing barriers to adoption, including government policies that have failed to encourage all Americans to use broadband services. The adoption challenge is four times as large as the access challenge, and deserves commensurate attention.

To ensure that broadband is deployed to all Americans, the Plan should adopt benchmarks for ubiquitous deployment of a basic level of broadband Internet service by 2011, with more advanced broadband Internet services being deployed to all Americans by 2016. To meet those benchmarks, the Plan should consider a number of policy strategies, ranging from incentives for investment, to removal of barriers to deployment, to direct government investment (potentially in deployment of broadband to schools, libraries, hospitals, and public safety facilities, and as a last resort in remote geographies). To measure success toward these two goals, the Commission should adopt metrics that are meaningful to the United States. It should recognize the shortcomings of international rankings and reports and should be cautious in relying on them.

To ensure that broadband is adopted by as many Americans as possible, the Plan should recommend that Congress and the Administration direct federal departments and agencies to digitize services and incorporate broadband policies into the programs they implement. Every department and agency should be required to determine how its programs can become more valuable and relevant to consumers through the use of broadband Internet service. Promoting digital literacy and better education about the value of broadband will contribute further to adoption. And to the extent that the lowest-income households face the barrier of affordability, the Plan should recommend that Congress provide an efficiently targeted subsidy to those households.

But with all of this, the Commission must remain focused on the task at hand; Congress did not charge the agency to develop a new Internet regulatory regime. Nor did it repeal the policy established in the 1996 Telecom Act “to promote the continued development of the Internet and . . . to preserve the vibrant and competitive free market that presently exists for the Internet . . . , unfettered by Federal or State regulation.” Congress expressly recognized in the Recovery Act that the private sector will continue to play a central role in ensuring widespread broadband Internet deployment and adoption and, consistent with the 1996 Telecom Act, that the Plan should consider how to advance continued private sector investment in broadband. Accordingly, the Commission should eschew radical proposals that may, in the end, cause more harm than good, or create the kind of regulatory uncertainty that could thwart future investment in an already skittish investment climate.

Comcast shares the nation’s excitement about the transformative potential of broadband Internet service. We are privileged to have done as much as any company to deliver high-speed Internet to America: we have built advanced broadband networks that make broadband Internet services available to 99.4 percent of the homes that we pass; we have doubled, and redoubled, and are doubling again the speeds we offer; we are deploying next-generation broadband Internet services with faster speeds throughout our footprint; and we have attracted over 15 million customers in a hotly contested marketplace.

Comcast wants to work with the Commission and all stakeholders to shape a wise, efficient, and investment-friendly Plan that ensures that all Americans have access to high-speed Internet services and achieves the maximum utilization feasible by the American public.

in underserved communities; \$1.5 million to directly subsidize consumers' purchase of broadband Internet service based on its views that "state investment toward digital inclusion allows market demand for broadband services to grow to levels that will compel natural deployment from telecommunications service providers"; and \$1 million to build "Telecenters" – centers that provide broadband Internet service to the public – in two new rural communities.<sup>155</sup>

These approaches represent targeted and potentially cost-effective ways to promote broader deployment of broadband Internet service in unserved areas and to key public institutions. The Commission should explore them further to determine their applicability to the Plan, including by conducting a cost-benefit analysis for each.

- c. *The USF High-Cost Program Can Play an Important Role in Promoting Broadband Internet Access, but Only After Comprehensive Reform To Establish Sustainable Support Mechanisms.*

The Plan should also establish a framework to completely reorient the Commission's USF High-Cost Program (the "High-Cost Program" or "Program") to support the deployment of broadband Internet service in rural areas. The High-Cost Program can play a key role in promoting ubiquitous deployment of broadband Internet service, but only after the Commission undertakes comprehensive reform to make it more efficient and control its ballooning costs.

Much of the current High-Cost Program is based on "outdated regulatory assumptions" that no longer apply in a world of broadband technology and increased competition.<sup>156</sup> The High-Cost Program, which accounts for more than 60 percent of total USF expenditures, is

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<sup>155</sup> e-NC Authority, *2009 Legislative Priorities*, <http://www.e-nc.org/LegislativeAgenda.asp> (last visited June 8, 2009).

<sup>156</sup> *High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, FCC 08-262 ¶ 39 (Nov. 5, 2008).

currently designed for a narrowband world. Broadband Internet service is not an explicitly supported service under the High-Cost Program,<sup>157</sup> and the Program's support mechanisms ignore the efficiencies and additional revenues that broadband technologies and services make possible.

The Commission's priorities for the High-Cost Program should reflect the critical role that access to broadband Internet service plays in our economy and society. The Commission should therefore seek comment on redirecting the entirety of the High-Cost Program to supporting ubiquitous deployment of broadband Internet services. Although, as explained above, the marketplace has been successful in delivering affordable broadband access to the vast majority of Americans, there are rural areas where it is not economically feasible to deploy broadband without government support. Redirecting the High-Cost Program to support broadband Internet – with clear rules and policies to encourage efficient expenditure of capital and technology choices that will require *a minimum of ongoing subsidy* – will align the Program with the high priority the Administration, Congress, and the Commission have placed on universal, affordable access to broadband Internet service. It will also further the universal service principles established by Congress.<sup>158</sup>

Transitioning the High-Cost Program to support broadband Internet access will fail unless it includes comprehensive reform to control the costs to consumers and to promote more efficient, targeted distribution of funds. Both the Commission and the courts have recognized

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<sup>157</sup> Rural carriers, however, have used high-cost support for local telephone service to provide indirect support for the deployment of broadband infrastructure. *See Notice* ¶ 39.

<sup>158</sup> *See* 47 U.S.C. § 254(b)(2) (“Access to advanced telecommunications and information services should be provided in all regions of the Nation.”); *id.* § 254(c)(1) (“Universal service is an evolving level of telecommunications service that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”).

that USF subsidies are a burden on the consumers of those providers who contribute to the USF pool and have indicated that the Commission must take this burden into account in establishing its High-Cost Program support mechanism.<sup>159</sup> The burden on unsubsidized consumers has grown significantly in the past decade. By 2008, the High-Cost Program had risen to \$ 4.4 billion,<sup>160</sup> a 15 percent increase from the 2005 level (\$3.9 billion)<sup>161</sup> and a 126 percent increase from the 2000 level (\$1.95 billion).<sup>162</sup> The contribution factor has tracked these increases, growing from 5.7 percent in 2000, to 10.2 percent in 2005, to 11.4 percent in 2008.<sup>163</sup> As the Commission has stated, the explosive growth of the High-Cost Program “places the federal universal service fund in dire jeopardy.”<sup>164</sup> Modifying the Program to provide explicit support for broadband Internet access without fundamental reform of the Program’s support mechanisms would only exacerbate the excessive burdens on consumers.

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<sup>159</sup> See *Qwest Communications Int’l v. FCC*, 398 F.3d 1222, 1234 (10<sup>th</sup> Cir. 2005) (“*Qwest II*”) (noting that “excessive subsidization arguably may affect the affordability of telecommunications services [for unsubsidized users], thus violating the principle in § 254(b)(1)”; *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Inquiry, 24 FCC Rcd. 4281 ¶ 20 (2009); *Federal-State Joint Board on Universal Service*, Seventh Report and Order, 14 FCC Rcd. 8078 ¶ 69 (1999) (“*Universal Service Seventh Report & Order*”).

<sup>160</sup> See FCC, *Universal Service Monitoring Report*, CC Docket No. 98-202 Table 1.10 (2008) (reporting program totals for the High Cost Program for the first through third quarters of 2008) (“*2008 Universal Service Monitoring Report*”), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-287688A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A1.pdf); Public Notice, *Proposed Fourth Quarter 2008 Universal Service Contribution Factor*, 23 FCC Rcd. 13446, at 2 (2008) (reporting total program collection for the High Cost Program for the fourth quarter of 2008).

<sup>161</sup> FCC, *Universal Service Monitoring Report*, CC Docket No. 98-202, at 1-34, Table 1.10 (2006) (“*2006 Universal Service Monitoring Report*”) (reporting data received through May 2006), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-269251A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269251A1.pdf).

<sup>162</sup> FCC, *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 1.2a (2001) (reporting data received through April 2001), available at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/Monitor/mrs01-0.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mrs01-0.pdf).

<sup>163</sup> *Id.* at 1-6; *2006 Universal Service Monitoring Report* at 1-34; *2008 Universal Service Monitoring Report* at 1-35.

<sup>164</sup> *High-Cost Universal Service Support*, Order, 23 FCC Rcd. 8834 ¶ 6 (2008) (“*2008 High-Cost Fund Order*”).

President Obama has called for federal agencies to exercise fiscal discipline in the programs they administer:

All across America, families are tightening their belts and making hard choices. Now, Washington must show that same sense of responsibility. . . . [W]e must . . . recognize that we cannot meet the challenges of today with old habits and stale thinking. So much of our government was built to deal with different challenges from a different era. Too often, the result is wasteful spending, bloated programs, and inefficient results. It's time to fundamentally change the way that we do business in Washington. To help build a new foundation for the 21<sup>st</sup> century, we need to reform our government so that it is more efficient, more transparent, and more creative. That will demand new thinking and a new sense of responsibility for every dollar that is spent.<sup>165</sup>

The Commission should reflect the President's call for fiscal discipline and efficiency in its reform of the High-Cost Program to promote the deployment of broadband Internet access services based on the following principles.

*i. The Program should be capped at 2008 levels.*

The Commission should ensure that any additional costs created by transitioning the High-Cost Program to support broadband Internet access be offset by savings from reform of the Program. The Commission should accordingly impose a competitively and technologically neutral cap on the High-Cost Program at its 2008 level, which was \$4.4 billion, pending implementation of comprehensive reform. The Commission has previously used caps to control segments of the Program,<sup>166</sup> and various parties have advocated an overall cap on the size of the

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<sup>165</sup> President Barack Obama, *President Obama Announces Steps To Reform Government and Promote Fiscal Discipline*, Weekly Address (Apr. 25, 2009), available at <http://www.scribd.com/doc/14623610/President-Obamas-Weekly-Radio-Address-April-25-2009-Video-and-Transcript>.

<sup>166</sup> See, e.g., *2008 High-Cost Program Order*, 23 FCC Rcd. 8834 ¶ 5 (adopting interim cap on high-cost support for competitive eligible telecommunications carriers); 47 C.F.R. §§ 54.507, 54.623 (imposing annual cap on expenditures under the "E-rate" and rural health care USF programs); see also *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5<sup>th</sup> Cir. 2000) ("The agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.").

Program as it is transitioned to a broadband support mechanism. Free Press, for example, recently testified that a USF reform policy should begin “with the assumption that the size of the high cost fund will be fixed at the 2008 level,” and that “continued fund growth is politically unfeasible.”<sup>167</sup> Indeed, it should be possible to lower the cap over time as the efficiencies created by reformed support mechanisms and new technologies lessen the need for subsidies.

*ii. Support should be narrowly targeted to where it is needed.*

High-Cost support should be limited to those rural areas that truly need it – areas that are unserved today and would remain unserved by broadband Internet service in the absence of USF subsidies. The Commission should also coordinate the distribution of High-Cost support with subsidies granted under the Recovery Act and other government programs to prevent the unjust enrichment that would result if providers were allowed to receive *both* subsidies under those programs *and* the High-Cost Program to deploy the same broadband facilities.<sup>168</sup>

*iii. Support levels should take into account all revenues generated by subsidized facilities.*

Consumers are increasingly subscribing to bundles of both local telephone service, for which they receive High-Cost support, and other services, including voice mail, Internet access, and video services.<sup>169</sup> ILECs provide these service bundles over the same network in rural areas,

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<sup>167</sup> *Universal Service: Reforming the High-Cost Fund: Hearing Before the Subcomm. on Communication, Tech., & the Internet of H. Comm. on Energy & Commerce, 111<sup>th</sup> Cong. 7 (Mar. 12, 2009) (“Free Press Testimony”)* (testimony of S. Derek Turner, Research Director, Free Press), available at [http://energycommerce.house.gov/Press\\_111/20090312/testimony\\_turner.pdf](http://energycommerce.house.gov/Press_111/20090312/testimony_turner.pdf); see also Comments of Verizon & Verizon Wireless, WC Docket No. 05-337, at 24-26 (May 8, 2009) (proposing a \$5 billion overall cap on the High-Cost Program while existing mechanisms are retargeted).

<sup>168</sup> See Recovery Act § 6001(h)(2)(D) (stating that Recovery Act grant programs should avoid “unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area”).

<sup>169</sup> Nearly 60 percent of households subscribed to bundled communications services in 2008, representing a 13 percent increase since 2007, and a growth rate of 9 to 17 percent is predicted for 2009. See Phil Doriot & John (footnote continued...)

yet the Commission's current support mechanisms are based on embedded costs or cost models that fail to allocate much, if any, of the common costs to the non-supported services. This approach has little to do with how carriers operate and make investment decisions, and it ignores the dramatic growth of bundling and the substantial revenues carriers earn from *all* services delivered over a network receiving High-Cost support. As the Commission has recognized, "[r]evenues from [discretionary] services in addition to the supported services should, and do, contribute to the joint and common costs they share with the supported services. Moreover, the former services also use the same facilities as the supported services, and it is often impractical, if not impossible, to allocate the costs of facilities between the supported services and other services."<sup>170</sup> More than ten years ago, the Commission anticipated that competition and new technologies would "lead to the development of new services that will produce additional revenues per line and to reductions in the costs of providing the services generating those revenues."<sup>171</sup> The Commission's expectation has proven correct, as carriers in rural areas increasingly offer bundles of voice, broadband, and video services over USF-supported facilities. The revenues from *all* of these services should consequently be factored into determining the level of High-Cost support a carrier receives.<sup>172</sup>

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(...footnote continued)

Gilbert, CFI Group, *2008 Telecom-Cable Industry Satisfaction Report 6-7* (Sept. 2008), available at [http://www.cfigroup.com/resources/whitepapers\\_register.asp?wp=22](http://www.cfigroup.com/resources/whitepapers_register.asp?wp=22).

<sup>170</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776 ¶ 261 (1997) ("*Universal Service First Report and Order*").

<sup>171</sup> *Id.* ¶ 260.

<sup>172</sup> The Commission, in fact, incorporated a revenue-based benchmark in its initial decision implementing the High-Cost program, *see id.* ¶¶ 257-267, but subsequently replaced it with a cost-based benchmark. *Universal Service Seventh Report & Order*, 14 FCC Rcd. 8078 ¶ 61. Developments in recent years have shown that the Commission's initial decision was correct. The revenues earned by incumbent LECs from broadband and other discretionary services provided over their subsidized facilities should lessen their need for High-Cost support. A reformed High-Cost support mechanism should recognize this economic fact.

iv. *Support levels should take into account new efficiencies and competition.*

The legislative history of the 1996 Telecom Act states that “competition and new technologies will greatly reduce the actual cost of providing universal service over time, thus reducing or eliminating the need for universal service support mechanisms as actual costs drop to a level that is at or below the affordable rate for such service in an area.”<sup>173</sup> But the Commission’s USF program has not accounted for these substantial cost savings, and USF costs have ballooned since the passage of the 1996 Telecom Act. The Commission has failed to design a mechanism that fully accounts for the efficiencies and cost savings from new technologies and competition.

Although the non-rural carrier High-Cost mechanism is based on a forward-looking model, it has not been updated in over a decade. The rural carrier mechanism, which accounts for the majority of High-Cost Program subsidies, is still based on backward-looking costs more than ten years after the Commission stated that it would work with the Joint Board to develop a forward-looking economic cost mechanism for rural carriers.<sup>174</sup>

The telecommunications industry has long been viewed as consistently achieving greater annual productivity gains than the American economy as a whole, and the Commission factored in these gains in establishing its ILEC price cap system in 1990.<sup>175</sup> The development of broadband Internet service and other technologies since 1990 has only made the industry more productive and efficient in providing services to consumers. These developments should *lower*

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<sup>173</sup> S. Rep. No. 104-23, at 26 (1995).

<sup>174</sup> See *Universal Service First Report and Order* ¶ 26.

<sup>175</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd. 6786 ¶ 75 (1990).

any shortfall of revenues relative to the cost of providing the entire panoply of products and services available on broadband networks in High-Cost areas over time – yet by failing to account for these increases in productivity and efficiency, the Commission has permitted support levels to rise dramatically.

The current mechanism also ignores the growth of competition in areas receiving High-Cost support. Many cable operators, for example, are now providing voice, broadband Internet, and video services in many rural areas *without* receiving USF support. The existence of cable voice service in these areas – at prices sufficiently low to win customers away from subsidized ILECs – suggests that support for networks serving those areas is inefficient and competitively biased in favor of ILECs.

In reforming its High-Cost Program, the Commission should design a support mechanism that takes into account new technologies and efficiencies as well as competition from other providers. High-Cost support should not be treated as an entitlement for carriers, but as a means of giving *consumers* the benefit of ubiquitous deployment of broadband Internet service.<sup>176</sup> The Commission should conduct periodic reviews of the continuing need for High-Cost support in rural areas receiving support, and reduce or eliminate the support when it becomes apparent that marketplace forces are sufficient to achieve ubiquitous deployment in an area.

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<sup>176</sup> *Alenco Communs., Inc.*, 201 F.3d at 620 (“The Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.” (emphasis in original)).

v. *The Commission should adopt efficient, competitively neutral distribution and contribution mechanisms.*

The Commission should adopt a more efficient and effective system for distributing High-Cost support to unserved areas. Support should be limited to one provider in an area; subsidizing multiple broadband infrastructures is unnecessary to achieve ubiquitous deployment and would impose excessive burdens on the service providers and customers who fund the Program. The Commission should, after developing a complete record, consider the use of *reverse auctions* to determine eligibility for funding. As Comcast has previously explained, a properly designed reverse auction would reward more efficient carriers and exert downward pressure on the High-Cost Program.<sup>177</sup> However, the Commission must design a reverse auction mechanism to be competitively and technologically neutral and to avoid conditions that create or solidify a single firm's dominant position in an individual geographic market that may be contestable.<sup>178</sup> Allowing incumbents to use a reverse auction to shield themselves from competition would distort the pro-competitive policies set forth in the Telecommunications Act of 1996 and in the Commission's policies.

The Commission should refrain from making broadband Internet services or users subject to USF contributions. Broadband Internet service has been and should remain exempt from USF contributions.<sup>179</sup> Moreover, imposing a contribution burden on the provision of broadband

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<sup>177</sup> Comments of Comcast Corp., WC Docket No. 05-337, at 4-5 (May 31, 2007).

<sup>178</sup> Comments of Comcast Corp., WC Docket No. 05-337, at 6-10 (Apr. 17, 2008).

<sup>179</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501 ¶¶ 73-82 (1998).

Internet service would *discourage* overall broadband subscribership, directly contravening Congress's and the Commission's goals.<sup>180</sup>

The Commission should also take this opportunity to rethink the entire existing subsidy scheme, and should consider whether it can be replaced with a more efficient and less regressive mechanism – one that incentivizes more private sector investment, removes the costs of capital from the subsidy mechanism (leaving capital expenditures to be authorized by legislatures from general revenues), and demands greater accountability and efficiency in the provision of ongoing operating subsidies.

*d. The National Broadband Plan Should Include Benchmarks for Achieving Widespread Deployment of Broadband Networks, as well as Specific Proposals for How Best To Meet Those Benchmarks.*

In order to achieve Congress's goal of ubiquitous deployment, Comcast suggests that the National Broadband Plan include benchmarks for four categories of deployment:

- Deployment to the 100 largest cities in the U.S.
- Deployment to all other cities
- Deployment to rural and other unserved areas
- Deployment to schools, libraries, hospitals, and other public facilities.

These recommendations are based on the fact that a “one-for-all” model is not a logical or practical approach. Different applications need different speeds, and different users will use

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<sup>180</sup> See *Free Press Testimony*, *supra* note 167, at 2 (“Assessments on broadband could lead to a net decline in subscribership, undermining the goals of universal service.”).