Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Comment Sought on the Role of the Universal	)	GN Docket No. 09-47
Service Fund and Intercarrier Compensation	)	
in the National Broadband Plan	)	GN Docket No. 09-51
	)	
	)	GN Docket No. 09-137

COMMENTS – NBP PUBLIC NOTICE #19
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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SUMMARY

OPASTCO has developed a broad outline for reforming the High Cost Universal Service Fund (USF) program for rural incumbent local exchange carrier (ILEC) service areas that would hasten progress toward the ubiquitous availability of affordable, high-speed broadband services in these territories. The components of the plan are as follows:

- Create a new Universal High Speed Broadband Fund, which would support all of the major network components of providing high-speed broadband service in rural service areas – last-mile loop costs, second-mile transport costs, middle-mile transport costs, and the cost of access to the Internet backbone. Both capital expenditures and ongoing operational expenses would be supported.

- The plan would support one fixed technology high-speed network provider in each rural service area. It also allows for one mobile wireless provider in each area to be supported. Support amounts are based on a demonstration of actual costs that exceed a qualifying threshold.

- Rural ILECs can "opt in" to the new Fund at any time during a seven-year transition period. Once a rural ILEC opts in, all high-cost support is received via the new Fund. At the time of opt in, a rural ILEC would immediately begin receiving the support amount that they were presently receiving from the existing mechanisms, as a starting point. Those ILECs choosing not to opt in immediately would continue to receive support through the existing mechanisms.

- All intercarrier compensation (ICC) rates transition down to zero over seven years, and the ICC revenues that rural ILECs are receiving at the time they opt in would gradually transition into the support received from the new Fund, as the ICC rates are reduced. Rural ILECs may also elect to immediately reduce their ICC rates to zero at the time they opt in.

- At the end of the seven-year transition period, the existing rural high-cost support mechanisms and ICC regime are eliminated, and carriers would recover their broadband network costs through a combination of affordable end-user rates and support from the new Fund. At that time, the public switched telephone network (PSTN) is fully converted to a broadband network.

- All fixed technology providers receiving support through the new Fund must commit to offering broadband throughout the service area at speeds that are at least equal to the national average broadband speed, and end-user rates that are reasonably comparable to the national average rate. Support recipients must also submit to quality of service oversight.

- The Low Income program is expanded to support broadband Internet access service for qualifying consumers.

- Contributions to all USF programs, including the new High Speed Broadband Fund, would be based on a combination of public network connections and working telephone numbers, including all broadband connections in service, regardless of technology.

Through this plan, rural ILECs would have the necessary resources to serve as fixed broadband carriers of last resort (COLRs), ensuring that all of the residents and businesses in their service territories have ongoing access to advanced broadband capability that is reasonably comparable to what is available in urban areas, and at affordable and reasonably comparable rates. In addition, the plan would help to maximize broadband adoption and utilization for rural carriers, since after a seven-year transition period, the PSTN would be fully converted to an all-broadband network.

OPASTCO's plan would support one fixed broadband service provider in each rural service area. It would also permit one mobile wireless provider to be supported as well. Limiting support to one fixed and one mobile wireless provider would help to sustain the rural High Cost program. At the same time, it recognizes that only fixed technologies are capable of delivering the speeds that consumers will require over the long term in order to gain access to the vast array of bandwidth-intensive applications and services.

The OPASTCO plan would base rural ILECs' support on their actual embedded broadband network costs that exceed a qualifying threshold level. The success so many rural ILECs have had deploying broadband in their service areas thus far is, in large part, attributable to the use of an embedded cost basis of support. The Commission should not jeopardize the proven success of an embedded cost-based support system for rural ILECs

with an untested methodology as it transitions the High Cost program to explicitly support broadband.

OPASTCO's plan would support a fixed broadband provider's capital expenditures *and* operational expenses incurred in the provision of high-speed broadband service. For some rural ILECs, operational expenses can be greater than the revenues that they are able to generate from the provision of broadband at affordable rates. If rural ILECs cannot generate enough revenue to cover their operational expenses, then lenders will be unwilling to provide them financing for capital expenditures.

The OPASTCO plan also recognizes downward trends in rural ILECs' switched access minutes and that ICC revenues are not sustainable. Therefore, instead of attempting to reform ICC for the long term, rural ILECs' ICC rates would be reduced to zero over the seven-year transition period and, most critically, the corresponding revenues would be shifted into the Universal High Speed Broadband Fund. A reduction in the revenues that rural ILECs receive from high-cost support and ICC would eliminate the ability of most of these carriers to provide advanced broadband services at affordable rates throughout their territories and may jeopardize their ability to serve as COLRs.

Finally, OPASTCO's plan would expand the USF contribution base by requiring all broadband Internet access providers to contribute equitably to the Fund. Requiring these providers to contribute is essential to securing the long-term viability of the USF while also allowing for prudent, accountable growth in the rural High Cost program which is necessary to achieve its goals.

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of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the FCC's National Broadband Plan Public Notice #19, in the above-captioned proceedings.[1] The Public Notice seeks comment on the role of the Universal Service Fund (USF) and intercarrier compensation (ICC) in the National Broadband Plan, and explores various policy options that would further the goal of making broadband universally available throughout the United States.

OPASTCO is a national trade association representing approximately 520 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. Almost all OPASTCO members are rural telephone

[1] *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, GN Docket Nos. 09-47, 09-51, 09-137, NBP Public Notice #19, DA 09-2419 (rel. Nov. 13, 2009) (Public Notice).

companies as defined in 47 U.S.C. §153(37). Most OPASTCO members receive the majority of their cost recovery and operating revenues from a combination of high-cost universal service support and ICC. Therefore, the actions the Commission takes to reform its universal service and ICC policies will largely determine the ability of many rural consumers to have access to high-speed, next generation broadband and the wide array of advanced applications and services that it makes possible.

I. THE SIZE OF THE RURAL HIGH COST PROGRAM MUST BE ALLOWED TO GROW IN ORDER FOR THE BROADBAND OFFERED IN RURAL SERVICE AREAS TO BE REASONABLY COMPARABLE IN QUALITY AND PRICE TO WHAT IS OFFERED IN URBAN AREAS

OPASTCO applauds the release of NBP Public Notice #19, which seeks comment on how the USF and ICC rules should be reformed to further the goal of making broadband universally available to all people of the United States. The Public Notice begins by asking questions regarding the necessary size of the USF and its various programs in order to achieve the "universalization" of broadband. The answers to those questions are dependant, in large part, upon how the FCC decides to define "universalization."

As the Commission knows, the Telecommunications Act of 1996 (1996 Act) contains principles upon which its universal service policies must be based. One of those principles states, in part, that consumers in rural and high-cost areas should have access to advanced services that are reasonably comparable to those provided in urban areas and at reasonably comparable rates.[2] This suggests that the FCC should not limit its definition of "universalization" to just making broadband available to those Americans that are presently unserved. Equally important, this principle ultimately directs the

[2] 47 U.S.C. §254(b)(3).

Commission to ensure that consumers in rural service areas have access to robust, high-speed broadband connections that are reasonably comparable in quality and price to what is offered in urban areas. Therefore, the rural High Cost program needs to be sufficiently sized so that this Congressional objective can be achieved.

The existing rural High Cost program has enabled OPASTCO members to successfully deploy broadband – as it is defined today[3] – to a large majority of their customer base. However, the broadband speeds being offered by some rural ILECs are well below those that are generally available in urban areas. These disparities will only grow in number and size under the existing rural High Cost program as broadband applications and services become increasingly bandwidth-intensive and consumers continue to demand faster speeds. To remedy this, rural ILECs need the ongoing ability to invest in high-bandwidth capacity infrastructure (e.g., fiber deployments deeper into the network), and to operate and maintain their networks, while at the same time, continuing to offer broadband at affordable rates. This can only occur if the rural High Cost program is reformed to explicitly support broadband networks and is permitted to grow beyond its current size.

Rural ILECs need the ability to invest in "next generation" broadband technologies in order to accommodate the growing number of bandwidth-intensive applications and services that advance national priorities. These include health care, energy and the environment, education, government operations, economic opportunity,

[3] The FCC's present minimum speed for defining broadband is 768 Kbps in the faster direction. *See*, *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Development of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 Rcd 9691, 9700-9701, ¶20 (2008).

and public safety. In addition, high-bandwidth networks are necessary to enable video entertainment applications which are critical to driving residential adoption. For example, in the September 29, 2009 Status Report from the FCC's Broadband Task Force, it illustrates that applications in existence today, such as HD Telemedicine and Telelearning, individually require speeds of 5–10+ Mbps symmetrical. In addition, HD streamed video, which can be used for a whole host of entertainment and public value applications, requires a download speed of 10+ Mbps.[4] Of course, there are numerous other applications and services already being envisioned that will require far greater speeds.[5]

In May 2009, Commissioner Copps issued a Report on a Rural Broadband Strategy, which wisely advised that rural networks should be able to "…evolve over time to keep pace with the growing array of transformational applications and services that are increasingly available to consumers and businesses in other parts of the country."[6] The Report recognized that the requirements for Internet access are growing,[7] and stated that "…networks deployed in rural areas should not merely be adequate for current bandwidth demands. Instead, they should also be readily upgradeable to meet bandwidth demands

[4] FCC Broadband Task Force, *National Broadband Plan Status Report*, pp. 23, 162 (rel. Sept. 29, 2009) (September 2009 Broadband Task Force Status Report).
[5] The demand for increasingly faster speeds among residents and businesses is as evident in rural service areas as it is in urban areas. For example, Rural Telephone Service, Inc., based in Lenora, KS, serves roughly 13,800 customers spread out across an area equivalent to the states of Rhode Island and Connecticut combined. Rural Telephone Service has informed the Commission that the combined bandwidth requirements for voice, video, and data services used by its customers results in a standard demand of 40 Mbps. *Ex parte* letter from Larry E. Sevier, CEO, Rural Telecom Service Company, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-29, pp. 1-2 (fil. May 14, 2009).
[6] Acting Chairman Michael J. Copps, Federal Communications Commission, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, GN Docket No. 09-29, ¶11(May 22, 2009) (Report on a Rural Broadband Strategy).
[7] *Id.*, ¶80.

of the future."[8] This should be a primary goal of a reformed rural High Cost program that is geared toward supporting high-speed, next generation broadband networks.

The September 2009 Broadband Task Force Status Report correctly states that the utility of the Internet is an important driver of adoption and usage – applications and bandwidth create a virtuous cycle.[9] In other words, if broadband networks have the bandwidth needed to accommodate the applications that consumers demand, then consumers will subscribe to broadband Internet service which, in turn, will incent network and application providers to make further investments. However, another critical driver of adoption and usage is affordability, particularly for rural residents.[10] And, in high-cost rural service areas, rural ILECs would be unable to offer services at rates that are affordable and reasonably comparable to those in urban areas absent high-cost universal service support, which offsets a portion of their network cost recovery.

Therefore, to facilitate the universality of broadband in rural service areas, the rural High Cost program must enable rural ILECs to make the network investments necessary to accommodate the applications and services that consumers demand while allowing the price of a broadband connection to remain affordable. This will maximize adoption of broadband and utilization of the infrastructure and, in turn, encourage continued investment. Obviously, the existing rural High Cost program is not presently sized to support the necessary investments in rural service areas. Thus, to enable the "universalization" of broadband in these service areas, the Commission must permit the rural High Cost program to grow.

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[8] *Id.*, ¶82.
[9] September 2009 Broadband Task Force Status Report, p. 19. *See also, Id.*, pp. 12, 13.
[10] *See, Id.*, p. 84.

OPASTCO recognizes the need to ensure that the USF remains sustainable and that any growth in the Fund is necessary to further universal service goals. However, controlling Fund growth through arbitrary caps on rural ILECs' cost-based support is entirely at odds with the statutory principles that support be predictable and sufficient and that rural areas have access to "reasonably comparable" advanced services and rates.[11] Instead, sustainability of the rural High Cost program could be achieved, in part, by limiting support to one fixed technology broadband provider and one mobile wireless provider in each rural service area, as well as eliminating the identical support rule for competitive eligible telecommunications carriers (ETCs). In addition, the USF contribution methodology should be reformed and, most importantly, require all broadband Internet access providers to contribute equitably. This would significantly broaden the contribution base and accommodate prudent growth in the program.

Finally, while OPASTCO does not take a position on the appropriate size of the Schools and Libraries, Rural Health Care, and Low Income programs, under no circumstance should growth in those programs come at the expense of the rural High Cost program. Doing so would severely thwart the progress rural ILECs have made thus far in deploying broadband-capable infrastructure in their networks and providing broadband services to customers. Furthermore, a successful rural High Cost program is the foundation for the success of the Schools and Libraries, Rural Health Care, and Low Income programs in rural service areas. That is, without the presence of high-speed, next generation broadband networks in rural services areas, the broadband applications and services available to schools and libraries, rural health care facilities, and low income consumers for a discount will be severely limited. Therefore, it is critical that the FCC

[11] 47 U.S.C. §254(b)(3), (5).

ensure that the funding available via the High Cost program is sufficient to achieve its objectives in rural service areas before turning its attention to the other USF programs.

II. THE COMMISSION SHOULD REQUIRE ALL BROADBAND INTERNET ACCESS PROVIDERS TO CONTRIBUTE EQUITABLY TO THE USF IN ORDER TO SUSTAIN THE FUND FOR THE LONG TERM

Regardless of what other changes it makes to the USF contribution methodology, it is vitally important that the Commission require, at a minimum, all broadband Internet access providers, over all platforms, to contribute in a competitively neutral manner to the Fund. This is essential to securing the Fund's long-term viability while also allowing for accountable, prudent growth in the rural High Cost program.

The primary reason for the unsustainability of the current contribution methodology is that it is based solely on end-user interstate telecommunications revenues, which are in a state of decline.[12] The way, then, to establish a contribution base that is sustainable for the long term, and that also allows for needed growth in the rural High Cost program, is to include the segment of the industry that is experiencing rapid expansion – *i.e.*, broadband Internet access providers. The Wireline Competition Bureau's most recent statistics on high-speed services for Internet access illustrate that subscribership to high-speed connections continues to grow at a fast pace. As of June 30, 2008, there were 132.8 million lines in service connecting homes and businesses to the Internet. This is a 32 percent or 31.8 million line increase from one year prior.[13] Therefore, assessing all broadband Internet access providers would establish a stable and sustainable contribution base and one that would experience growth for some time to come.

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[12] *See*, September 2009 Broadband Task Force Status Report, p. 48.
[13] *High-Speed Services for Internet Access: Status as of June 30, 2008*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 2 (July 2009).

Furthermore, it is logical that the contributors to the USF should be aligned with the purpose of the distributions from the Fund. Requiring all broadband Internet access providers to contribute equitably to the USF is harmonious with a High Cost program that supports broadband, as these providers and their customers will all benefit from a ubiquitous broadband network. It is also consistent with the Report on a Rural Broadband Strategy, which recommends "…adding broadband to both the contribution and distribution sides of the ledger…"[14]

It should also be noted that rate of return-regulated (RoR) ILECs are already required to contribute to the USF based on the revenues earned from their stand-alone broadband transmission service.[15] This creates a competitive disadvantage for these carriers vis-à-vis virtually all other broadband providers. By requiring all broadband Internet access providers to contribute equitably to the USF, regardless of technology or regulatory classification, competitive neutrality would be established among broadband providers with respect to contribution obligations.

Beyond requiring all broadband Internet access providers to contribute, the Commission should also seek Congressional authorization to assess intrastate revenues, in addition to interstate, which it is presently not permitted to do. This would be a valuable tool for addressing the sustainability of the USF, and would provide the

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[14] Report on a Rural Broadband Strategy, ¶138.

[15] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 95-20, 98-10, *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. §160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14916, fn. 357 (2005) (Wireline Broadband Classification Order).

Commission with more options on how it structures the contribution methodology. However, until such time as the Commission is permitted to assess total revenues, it would be advisable to base USF contributions, at least in large part, on some combination of public network connections and working telephone numbers. Given that interstate revenues are in a state of decline, the current contribution base can no longer sustain the USF, even at its present size, on a stand-alone basis.

It must be stressed that changes to the contribution system, such as assessing public network connections and/or working telephone numbers, or assessing total telecommunications revenues, by themselves, will only sustain the Fund for the short- to mid-term. Requiring all broadband Internet access providers to contribute equitably is absolutely essential to creating a viable USF for the long term that can accommodate necessary growth in the rural High Cost program. Doing so will also establish a contribution base that is consistent with the purpose of reforming the High Cost distribution system – supporting the deployment and provision of advanced broadband services in high-cost areas.

III. THE COMMISSION SHOULD TRANSITION THE CURRENT HIGH COST PROGRAM FOR RURAL ILEC SERVICE AREAS TO ONE WHICH EXPLICITLY SUPPORTS THE ACTUAL COSTS OF DEPLOYING AND OPERATING AN ADVANCED BROADBAND NETWORK

The September 2009 Broadband Task Force Status Report states that the USF and ICC must be actively redirected from propping up the old (*i.e.*, the public switched telephone network (PSTN)) to encouraging the new (*i.e.*, broadband) in order to accelerate the pace and universality of the transition.[16] In that regard, OPASTCO has developed a broad outline for reforming the High Cost USF program for rural ILEC

[16] September 2009 Broadband Task Force Status Report, p. 77.

service areas that would hasten progress toward the ubiquitous availability of affordable, high-speed broadband services in these territories. The components of the plan are as follows:

- Create a new Universal High Speed Broadband Fund, which would support all of the major network components of providing high-speed broadband service in rural service areas – last-mile loop costs, second-mile transport costs, middle-mile transport costs, and the cost of access to the Internet backbone. Both capital expenditures and ongoing operational expenses would be supported.

- The plan would support one fixed technology high-speed network provider in each rural service area. It also allows for one mobile wireless provider in each area to be supported. Support amounts are based on a demonstration of actual costs that exceed a qualifying threshold.

- Rural ILECs can "opt in" to the new Fund at any time during a seven-year transition period. Once a rural ILEC opts in, all high-cost support is received via the new Fund. At the time of opt in, a rural ILEC would immediately begin receiving the support amount that they were presently receiving from the existing mechanisms, as a starting point. Those ILECs choosing not to opt in immediately would continue to receive support through the existing mechanisms.

- All ICC rates transition down to zero over seven years, and the ICC revenues that rural ILECs are receiving at the time they opt in would gradually transition into the support received from the new Fund, as the ICC rates are reduced. Rural ILECs may also elect to immediately reduce their ICC rates to zero at the time they opt in.

- At the end of the seven-year transition period, the existing rural high-cost support mechanisms and ICC regime are eliminated, and carriers would recover their broadband network costs through a combination of affordable end-user rates and support from the new Fund. At that time, the PSTN is fully converted to a broadband network.

- All fixed technology providers receiving support through the new Fund must commit to offering broadband throughout the service area at speeds that are at least equal to the national average broadband speed, and end-user rates that are reasonably comparable to the national average rate. Support recipients must also submit to quality of service oversight.

- The Low Income program is expanded to support broadband Internet access service for qualifying consumers.

- Contributions to all USF programs, including the new High Speed Broadband Fund, would be based on a combination of public network connections and working telephone numbers, including all broadband connections in service, regardless of technology.

The OPASTCO plan would provide rural ILECs a period of seven years in which to move from receiving funding from the existing high-cost support mechanisms, designed to support voice-grade services, to a new Universal High Speed Broadband Fund that explicitly supports all components of the broadband network. Also, all ICC rates would transition to zero within the same period, with the corresponding revenues transferred into the new Fund.[17] After seven years, the existing high-cost support mechanisms and ICC would be eliminated, and likewise all services would be offered through an all-broadband network.

Through this plan, rural ILECs would have the necessary resources to serve as fixed broadband carriers of last resort (COLRs), ensuring that all of the residents and businesses in their service territories have ongoing access to high-quality, advanced broadband capability that is reasonably comparable to what is available in urban areas, and at affordable and reasonably comparable rates. In addition, the plan would help to maximize broadband adoption and utilization for rural carriers, since after the seven-year transition, the narrowband PSTN would be fully converted to an all-broadband network, and all consumers will receive voice services over a broadband connection. This, in turn, will enable rural ILECs to receive a higher level of revenues from their end users than they otherwise would, thereby creating greater incentives to invest in their networks.

[17] Rural ILECs may also elect to immediately reduce their ICC rates to zero at the time they opt in to the new Fund.

The existing rural High Cost program presently supports investment in broadband-capable, multi-use network infrastructure,[18] which has made it possible for many rural ILECs to deploy broadband to a substantial percentage of their customer base. For instance, the high-cost loop support (HCLS) mechanism supports broadband-capable loop distribution plant, which is a significant part of the underlying facilities that make the provision of broadband possible. It is reasonable to assume that, given the current state of network technology, as well as where the future of telecommunications is headed, that near 100 percent of the network upgrades being made by rural ILECs today are capable of supporting the provision of broadband.

OPASTCO's plan would support one fixed broadband service provider in each rural service area. The plan would also permit one mobile wireless broadband provider to be supported as well. This recognizes that the bandwidth capabilities and functionalities of fixed and mobile wireless broadband technologies are not even remotely comparable.[19] While many consumers enjoy the benefits of mobility, only fixed technologies are capable of delivering the speeds that consumers will require over the long term in order to gain access to the vast array of applications and services that are continually growing in number and bandwidth requirement. Therefore, mobile wireless broadband can serve as a complement to a fixed platform, but it is not a substitute.

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[18] *See*, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 4354, ¶39 (2009) (National Broadband Plan NOI) ("Although the High-Cost program does not explicitly support the provision of broadband…a carrier providing broadband services indirectly receives the benefits of high-cost universal service support when its network provides both the supported voice services and broadband services.").

[19] Fiber-to-the-Premise has a bandwidth capability of 100+ Mbps downstream and 100+ Mbps upstream. Digital Subscriber Line (with a Fiber-to-the-Node upgrade) has a bandwidth capability of 20 Mbps downstream and 2 Mbps upstream. In comparison, 4G wireless has a bandwidth capability of 4 Mbps downstream and 0.5 Mbps upstream. *See*, September 2009 Broadband Task Force Status Report, p. 43.

The OPASTCO plan is intended only for rural ILEC service areas. Separate rural and non-rural high-cost support systems should be retained. Rural ILECs are small and mid-size carriers that serve only a small fraction of the lines served by the largest non-rural carriers. Their territories are, in most cases, entirely rural and lack large, low-cost urban centers. As a result, rural ILECs will necessarily require a greater level of explicit high-cost funding than their non-rural counterparts to achieve the statutory universal service objectives in a particular high-cost area.

The OPASTCO plan would base rural ILECs' support on their actual embedded broadband network costs that exceed a qualifying threshold level. The success so many rural ILECs have had deploying broadband in their service areas thus far is, in large part, attributable to the use of an embedded cost basis of support. This is because the use of embedded costs creates a direct link between rural carriers' actual network investments and expenses and the support amounts they receive which, in turn, provides the necessary incentives for prudent investment in broadband-capable infrastructure. In addition, the embedded cost-based system has been essential to enabling rural ILECs to function as COLRs for voice service, offering high-quality telecommunications services to *all* of the consumers in their territories, no matter how high-cost they may be to serve. In a 2007 Recommended Decision, the Federal-State Joint Board on Universal Service (Joint Board) recognized the effectiveness of rural ILECs' current embedded cost-based support system in maintaining an essential network for COLRs and in deploying broadband.[20]

Furthermore, contrary to the contentions of some, an embedded cost-based support system does not encourage rural carriers to operate inefficiently. High-cost

[20] *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20484, ¶30 (2007) (2007 Joint Board Recommended Decision).

support, while critical to the achievement of universal service in rural service areas, provides only a fraction of the cost recovery necessary to build and maintain a rural broadband network. Rural ILECs operate in a highly competitive environment with threats coming from wireless carriers, voice over Internet protocol (VoIP) service providers, and cable companies, among others. This provides rural ILECs with strong incentives to invest prudently and operate as efficiently as possible in order to create value for consumers and increase demand for their service offerings. Furthermore, rural ILECs face scrutiny and oversight from auditors, regulators, lenders, and shareholders. In short, the Commission should not jeopardize the proven success of an embedded cost-based support system for rural ILECs with an untested methodology as it transitions the High Cost program to explicitly support broadband.

In addition, the Commission should not design a broadband support mechanism for rural ILECs in which the loss of a subscriber would result in the loss of associated funding. Such a mechanism would have a devastating effect on network investment since carriers would be uncertain as to whether they will have the opportunity to recover the costs of those investments. It would also make it impossible for rural ILECs to function as COLRs for broadband, with the ability to offer all consumers in their service areas high-speed broadband at affordable rates.

The high-cost support that rural ILECs receive as COLRs is not designed or intended to support individual lines; it is intended to encourage investment in high-quality *networks* capable of delivering *universal* service throughout high-cost areas.[21] Major components of a rural ILEC's network costs are fixed and, within a reasonable

[21] Indeed, "per-line" support is a construct created to fund other carriers on the basis of the ILEC's costs, a system which has proven disastrous in its application.

range of output, do not go up or down significantly as individual lines are added or disconnected by consumers. Also, rural ILECs have COLR obligations which impose costs, and these obligations exist even in areas where the ILEC faces competition. For example, in many states, ILECs must maintain disconnected lines and reinstate service to a customer within a specified timeframe. Some are also required to provide "soft dial tone," which allows a disconnected customer to make calls to 911 emergency services and to the ILEC's business office. These types of obligations further narrow the difference between maintaining a live or "lost" line, and impose additional costs on ILECs relative to other broadband providers.

The FCC itself has recognized that "…an incumbent carrier's loss of subscriber lines…is unlikely to be offset by a corresponding reduction in its total embedded cost of service."[22] As a result, the Commission previously declined to freeze per-line support, finding that it may have the unintended consequence of discouraging investment in rural infrastructure.[23] The Commission should also consider that a support system that did not provide rural ILEC COLRs with the opportunity to recover a predictable portion of their network costs would make the capital markets far more wary about extending financing to rural carriers for future broadband network investments.

The Commission should also decline to calculate rural ILECs' support amounts using a forward-looking cost model. It is doubtful that a cost model can be adopted that will provide reasonably accurate estimates of costs for all rural telephone companies across the nation and account for the substantial diversity in their operating

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[22] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11294, ¶125 (2001).
[23] *Id.*, 16 FCC Rcd 11296, ¶129.

environments. In addition, even if it is theoretically possible to create such a model, it would be a highly resource-intensive endeavor, both in man-hours and dollars, and significant ongoing resources would have to be allocated to keep the model updated.

Unlike non-rural carriers, rural ILECs typically do not operate on a scale that would enable them to "average out" a model's miscalculations at the wire center or sub-wire center level. Consequently, a model's inability to correctly calculate the cost of providing service to a high-cost area could seriously hinder their ability to continue investing in their networks and offering an evolving level of broadband service at affordable rates to all customers. It is simply not worth risking the availability of universal, affordable high-speed broadband in rural service areas on the use of a forward-looking model when each rural ILEC's actual costs and investments provide the most accurate basis on which to determine support amounts.

OPASTCO's proposed Universal High Speed Broadband Fund would support a fixed broadband provider's capital expenditures *and* operational expenses incurred in the provision of high-speed broadband service. All of the network facilities utilized in the provision of broadband, from the end user to the Internet backbone peering point, would be supported. This includes last-mile loop costs, second-mile transport costs, middle-mile transport costs, and the cost of access to the Internet backbone.

It is important that high-cost broadband funding support operational expenses, in addition to capital expenditures. To begin with, supporting operational expenses is consistent with section 254 of the 1996 Act, which states that support is to be used for "…the *provision, maintenance*, and upgrading of facilities and services…"[24] In addition, the September 2009 Broadband Task Force Status Report recognizes that "the challenge

[24] 47 U.S.C. §254(e).

in rural areas is both capex and opex."[25] In fact, for some rural ILECs, their operational network expenses can be greater than the revenues they are able to generate from the provision of broadband at affordable rates. If a rural ILEC cannot generate enough revenue to cover their operational expenses, then lenders will be unwilling to provide them financing for capital expenditures. In that case, rural carriers would be forced to raise their rates to subscribers, which would then threaten affordability and adoption, contrary to the Commission's goals for the universalization of broadband.

One of many critical operational expenses that rural ILECs incur in the provision of broadband is the cost of middle-mile transport to the Internet backbone. The Broadband Task Force estimates that the transit and transport expense for providing fixed broadband is 25 times higher in rural areas than in urban.[26] In its 2007 Recommended Decision, the Joint Board noted that support for transport costs is presently nonexistent for rural carriers, and that overlooking these costs can be harmful.[27] Indeed, in order for consumers to get the full benefit of high-bandwidth last-mile facilities, rural ILECs must also obtain access to middle-mile facilities with sufficient capacity. But the increased per-mile cost of higher capacity middle-mile facilities, combined with the significant distances from the closest Internet backbone node, makes the business case for offering speeds much beyond "basic broadband" difficult, if not impossible, in some rural service areas. Thus, it is imperative that middle-mile transport costs be supported by a new broadband support mechanism for rural service areas.

It should be noted that because an embedded cost-based system is based on carriers' actual costs, to the extent a particular rural ILEC's overall operational expenses

[25] September 2009 Broadband Task Force Status Report, p. 44.
[26] *Id. See also*, FCC Broadband Task Force, *Broadband Gaps*, p. 9 (rel. Nov. 18, 2009).
[27] 2007 Joint Board Recommended Decision, 22 FCC Rcd 20483, ¶21.

are not above average, then that will factor into their support calculation. Similarly, if operational expenses decline on a fiber-based network, then an embedded cost basis of support will factor that in as well. Therefore, permitting operational expenses to be supported under an embedded cost-based system will not provide unjust enrichment for any rural ILEC whose costs do not qualify for such support.

The Public Notice asks what would be the impact of considering all revenues derived from upgraded plant in a new high-cost broadband mechanism and how should those revenues be used in the calculation of support.[28] The FCC should consider that in an all-broadband environment, it will be challenging for rural ILECs to earn revenues from sources other than their limited customer base, where rates must remain affordable to encourage adoption. For example, in the Commission's recent Notice of Proposed Rulemaking on network neutrality, it proposes to codify a principle of nondiscrimination that would prohibit broadband Internet access providers from charging content, application, or service providers for enhanced or prioritized access to their subscribers.[29]

In addition, rural ILECs have been experiencing losses in their access lines as more and more consumers subscribe to broadband Internet access service. When that occurs, rural ILECs lose local service revenues associated with those customers. Eventually, if OPASTCO's plan is adopted, all customers will receive voice service over a broadband connection after a seven-year transition period, eliminating local exchange service as a revenue source entirely.

With a broadband connection, customers have a plethora of options for meeting their communications service needs. While many rural broadband network providers are

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[28] Public Notice, p. 3.

[29] *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Notice of Proposed Rulemaking, FCC 09-93, ¶106 (rel. Oct. 22, 2009).

likely to offer an "over the top" voice service, customers will have many other options and therefore, rural ILEC broadband providers will not be able to rely on revenues from "over the top" services to the same degree as they were able to with local exchange service. The Commission should take these trends into consideration as it decides how to calculate support for rural ILECs under a new mechanism for supporting advanced broadband.

The Public Notice asks whether and how broadband grants issued by the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) should be accounted for under a high-cost broadband mechanism.[30] Under an embedded cost-based support system, grants would automatically be accounted for as those dollars would offset a rural ILEC's capital expenditures and lower the amount of funding they receive.

For rural service areas, the Commission should reject proposals to merely supplement the existing support program with an additional broadband-specific mechanism that supports deployment in unserved regions. This is a "band-aid" approach that does not fully refocus the purpose of the rural High Cost program to supporting next generation broadband networks. It improperly focuses only on initial deployment and fails to consider the fast evolving nature of broadband and consumer expectations, as well as ongoing operational expenses. It is unlikely that such an approach would enable most rural ILECs to make the ongoing network investments that are necessary to allow the speeds that are available throughout the area to remain comparable to what is available in urban areas.

[30] Public Notice, p. 3

It is premature to determine whether it is necessary to impose a cap on the funding available under a reformed rural High Cost program that explicitly supports the deployment and operation of advanced broadband networks in rural service areas. While it is certainly appropriate for the Commission to ensure that the High Cost program remains sustainable, as discussed previously, there are other, more rational measures that can be taken that will not compromise the ability of consumers in rural service areas to have access to affordable and "reasonably comparable" advanced broadband services. These include limiting support to one fixed broadband provider and one mobile wireless provider per rural service area, eliminating the identical support rule, and requiring all broadband Internet access providers to contribute equitably to the USF.

Any cap placed on rural ILECs' cost-based support will necessarily hinder the level of investment they are able to make in their broadband networks and therefore limit what is achievable. The evolving nature of broadband requires continual investment, and as the services and applications that ride over the broadband infrastructure become more and more bandwidth intensive, carriers will need to greatly expand their broadband network capabilities to make these new tools available to the residents and businesses in their areas. A cap on support will increase the likelihood that the robustness and utility of the broadband available in rural service areas will lag behind what is available in metropolitan areas, contrary to the objectives of the FCC and the 1996 Act. Therefore, the Commission should only consider adopting a cap on the support for these service areas after it has taken other steps to address the sustainability of the Fund. In the event that the FCC decides that it must cap the funding available to rural ILEC service areas, it

should set the requirements for support recipients accordingly. Mandates should not be imposed that exceed what is reasonably achievable under the cap.

Current requirements for ETCs should be revised under a new high-cost support mechanism for broadband. As with the services that are presently supported, recipients of support under a new broadband mechanism should be required to offer broadband Internet access throughout their designated service area to all customers making a reasonable request for service.[31] There should also be requirements concerning the broadband speeds being offered and the rates being charged. For example, under OPASTCO's plan for rural service areas, fixed technology providers receiving support must commit to making broadband speeds available that are at least equal to the national average broadband speed,[32] and offer service at rates that are reasonably comparable to the national average rate.[33] Support recipients would also be required to submit to quality of service oversight. In short, support recipients, at least in rural service areas, should function as broadband COLRs, ensuring that all of the customers in their designated service area have ongoing access to advanced broadband service at affordable rates.

IV. RURAL ILECS MUST BE ABLE TO RETAIN THE REVENUES THEY RECEIVE FROM HIGH-COST SUPPORT AND INTERCARRIER COMPENSATION IN ORDER TO PROVIDE ADVANCED BROADBAND TO RURAL CONSUMERS

Rural ILECs rely heavily on the revenues derived from high-cost universal service support and ICC to: (a) operate and maintain their existing COLR networks, (b) upgrade their networks to make broadband available to as many customers as

[31] *See*, 47 U.S.C. §214(e)(1)(a). *See also*, 47 C.F.R. §54.202(a)(1).
[32] It should be recognized that there will be instances where providing extremely isolated customers with robust broadband services will be economically infeasible, and offering them service via an alternate technology, such as satellite, will be necessary. However, in most cases, this will amount to a very small percentage of a rural ILEC's customer base.
[33] Similarly, mobile wireless providers receiving support should be required to offer speeds and rates that are comparable to the national averages for that technology.

possible, and (c) obtain and repay construction loans necessary to run and improve their networks. In fact, the National Exchange Carrier Association (NECA) estimates that the RoR-regulated ILECs that participate in their revenue pools on average receive about 60 percent of their net telephone company operating revenue from universal service funding and ICC (primarily interstate and intrastate switched access charges).[34] Any reduction in the revenues that rural ILECs receive collectively from these two sources would eliminate the ability of most of these carriers to provide next generation broadband services at affordable rates throughout their territories.

Unfortunately, in recent years, ICC has become increasingly unreliable as a stable source of revenue for rural ILECs. This is due to several factors, including: (1) the arbitrage of disparate access rates, (2) various forms of access avoidance (e.g., unidentifiable and unbillable "phantom traffic," the refusal of many interconnected VoIP service providers to pay access charges), and (3) the proliferation of broadband connections, which has caused a drop in the number of traditional access lines as well as a related decline in minutes that originate and terminate on the PSTN.

Data from NECA's access service tariff filings illustrate that for the RoR ILEC participants in the Traffic Sensitive Pool, both interstate switched access minutes-of-use (MOU) and the traffic sensitive switched revenue requirement have been declining for the past several years.

[34] According to NECA, pool members receive on average about 31 percent of their total net telephone company operating revenue from universal service funding and about 29 percent from ICC. However, for the group of pool members who rely most heavily on ICC (*i.e.*, those in the top 10 percent), reliance on ICC revenues increases to an average of 49 percent of total net operating revenue. NECA comments, CC Docket No. 01-92, p. 4 (fil. May 25, 2005).

	MOU	TS Switched Revenue Requirement[35]
2006 – 2007	-7.8%	-0.1%
2007 – 2008	-8.1%	-4.1%
2008 – 2009	-8.7%	-3.0%

In addition, NECA's weighted average local switching tariff has risen over the same period, in part, to compensate for MOU declining faster than the revenue requirement.

	Weighted Average Local Switching Rate[36]
2006 – 2007	$0.01133
2007 – 2008	$0.01397
2008 – 2009	$0.01588

These trends are not sustainable. As the revenues which rural ILECs earn from ICC continue to decline, it will become increasingly difficult for them to raise the capital necessary to invest in their networks to improve the reach and quality of broadband in their service areas. In addition, if access rates must continue to rise to compensate for the loss of MOU, it will exacerbate the level of access avoidance by service providers that utilize rural carriers' networks, as well as the legitimate migration of traffic off of the PSTN, thereby creating a "death spiral."

Therefore, instead of attempting to reform ICC for the long term, OPASTCO's plan would reduce rural ILECs' ICC rates down to zero over a seven-year transition

[35] National Exchange Carrier Association, Inc., Access Service Tariff F.C.C. No. 5, Transmittal No. 1245 (fil. June 16, 2009).
[36] National Exchange Carrier Association, Inc., Access Service Tariff F.C.C. No. 5, Transmittal No. 1129 (fil. June 16, 2006); National Exchange Carrier Association, Inc., Access Service Tariff F.C.C. No. 5, Transmittal No. 1172 (fil. June 15, 2007); National Exchange Carrier Association, Inc., Access Service Tariff F.C.C. No. 5, Transmittal No. 1214 (fil. June 16, 2008).

period. Most critically, as ICC rates are reduced, the corresponding revenues would be shifted into the Universal High Speed Broadband Fund. Rural ILECs would be able to decide in what year they opt in to the new Fund and begin to transition their rates down, at which time they would "lock in" the revenues they are earning from ICC. Nothing would preclude a rural ILEC from immediately reducing their ICC rates to zero at the time they opt in to the new Fund. Similarly, at the time of opt-in to the new Fund, a rural ILEC would begin to receive the amount of high-cost support they presently receive from today's support mechanisms, as a starting point. This would at least preserve today's revenue levels for these carriers and improve the likelihood that they will have the ability to continue upgrading their networks for the provision of advanced broadband throughout their service areas.

While the ICC regime is unsustainable for the long term, there are two short-term measures that the Commission should take to help preserve the system while it is still in existence and to create equity among all service providers that utilize the PSTN to originate and terminate calls. They are: (1) strengthening the requirements for the provision and transfer of accurate and complete call signaling information, in order to minimize phantom traffic and enable the proper billing of calls,[37] and (2) requiring *all*

[37] In a November 2008 NPRM, the Commission proposed rules which would facilitate the transfer of necessary call identification information to terminating service providers, improving their ability to identify providers from whom they receive traffic. Notably, in the event that network traffic did not contain the information required by the Commission's proposed rules, the terminating service provider would be permitted to charge its highest terminating rate to the service provider delivering the traffic. *See*, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6841-6848, App. C, ¶¶322-338 (2008).

interconnected voice service providers that originate or terminate traffic on the PSTN, regardless of technology, to pay the appropriate ICC rates.[38]

Significant reductions in the revenues that rural ILECs receive from high-cost support and ICC would, in fact, jeopardize their ability to continue to serve customers and advance the provision of next generation broadband. As stated above, high-cost support and ICC, together, comprise approximately 60 percent of RoR ILECs' net telephone company operating revenue, on average. As with any company, investments can only be made if there is adequate cash flow. In the aftermath of the crisis in the nation's financial markets, credit is tight and lenders will simply not provide financing to a small company that does not appear to have sufficient cash flow to sustain its operations and service its debt in a timely manner.

Therefore, if rural ILECs' revenue streams declined significantly, many if not all of these carriers would initially stop upgrading their network. If the losses continued and increased, carriers would begin to default on loan payments, and eventually would be forced into bankruptcy, and likely be sold or dissolved. In each area where this occurred, unless there was another carrier willing and able to assume a rural ILEC's role as COLR, the consumers in that area would have severely diminished communications services.

The Commission should keep in mind that even with the level of revenues that rural ILECs receive today, many have not been able to deploy broadband to 100 percent of their customer base,[39] and in some cases the speeds that are offered are not comparable

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[38] As far back as 2004, the FCC stated its belief that "…any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, an IP network, or on a cable network." *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd, 4863, 4885, 4904, ¶¶33, 61 (2004).

[39] Blair Levin, Executive Director of the FCC's Omnibus Broadband Initiative, recently acknowledged that "…small telephone companies…still control many lines that have not been upgraded to enable broadband service." *TR Daily* (Nov. 18, 2009).

to what is available in urban areas. Thus, if the majority of rural ILECs are unable to offer ubiquitous, robust broadband services with their existing revenue levels, then certainly a significant reduction in those revenues would completely destroy their ability to accomplish this goal going forward.

The FCC should not consider reducing or eliminating high-cost support for rural ILECs (or another fixed broadband provider) in rural service areas where there is already at least one competitor offering broadband that does not receive any high-cost support. Most rural ILECs face competition from at least one other broadband provider, such as a cable company. However, because these competitive providers do not serve as COLRs, as rural ILECs do, they typically only serve a portion of the rural ILEC's territory where there is a rational business case, leaving behind the harder-to-serve regions, where only the ILEC provides service. In addition, in rural service areas where the only other provider of broadband services is a mobile wireless provider, the limited speeds that these carriers can offer prevents them from being a viable substitute for the rural ILEC and meeting the long-term bandwidth needs of rural residents and businesses.

As discussed above, the financial impact of reducing or eliminating high-cost support to a rural ILEC would thwart their ability to continue investing in their ubiquitous networks and provide an evolving level of broadband service at affordable rates throughout their service areas. In some cases, depending on the severity of the support reduction, it would lead to bankruptcies, and absent a suitable replacement, leave the area without a reliable COLR. This would place at risk the ubiquity of even basic wireline voice-grade services, which has serious implications for public safety and national security.

Furthermore, rural ILECs do not just provide wireline communications services directly to end users. As COLRs, they also serve as the backbone for other services, including mobile wireless and Internet protocol (IP)-enabled services (such as VoIP). As a result, if rural ILECs were no longer able to continue investing in their networks, or if their existence was threatened, not only would the quality of their own end-user services be compromised, the availability and/or reliability of these other services would be compromised as well. Therefore, in order to ensure that all residents and businesses in rural service areas have access to evolving, high-quality broadband service at affordable rates, the Commission must be willing to support the actual broadband network costs of the rural ILEC (or another fixed broadband provider that is willing to assume COLR obligations), regardless of the presence of another unsupported provider.

In cases where there are multiple competitors offering broadband in a rural service area, with more than one of those providers receiving high-cost support, it would be appropriate to limit support to one fixed broadband service provider and one mobile wireless broadband provider. In most cases, this will require eliminating the high-cost support presently received by one or more mobile wireless providers, since these carriers comprise the overwhelming majority of competitive ETCs that are present in rural service areas.[40] The Commission is well aware that it is competitive ETCs – mostly mobile wireless providers – and not rural ILECs that have been the cause of all the unnecessary growth in the High Cost program in the recent past.[41] In fact, a 2007 study released by

[40] *See*, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1471, ¶9 (2008) (Identical Support Rule NPRM) ("…[W]ireless carriers, rather than wireline competitive LECs, have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support.").

[41] According to the Commission, while support to ILECs has been flat since 2003, competitive ETC support, in the seven years from 2001 through 2007, has grown from under $17 million to $1.18 billion –

Criterion Economics, LLC, found that more than half of the population in areas where wireless carriers receive high-cost support is covered by two or more supported carriers.[42] This indicates that the majority of funding going to wireless competitive ETCs goes to support duplicative coverage. Furthermore, as a result of the identical support rule, many of these carriers have focused on maximizing their customer counts in areas that they were already successfully serving prior to the receipt of support, rather than building-out their networks in truly high-cost areas. Therefore, eliminating the support for some of these providers will be of great help in maintaining the sustainability of the High Cost program, but in a manner that does not jeopardize the achievement of the universal broadband goals set forth by Congress and the FCC.

V. THE RURAL HIGH COST PROGRAM SHOULD SUPPORT ONE FIXED BROADBAND PROVIDER IN A RURAL SERVICE AREA, AND THAT PROVIDER SHOULD SERVE AS A BROADBAND COLR

Under OPASTCO's plan, only one provider of fixed broadband services would be eligible for support in each rural service area, and that provider would serve as the fixed broadband COLR to the area.[43] Rural ILECs have generally demonstrated great commitment and made significant progress disseminating high-quality, affordable broadband in their service areas. They also continue to invest in their networks to reach

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an average annual growth rate of over 100 percent. *See, High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et. al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8837-8838, ¶6 (2008) (Interim Competitive ETC Cap Order). On May 1, 2008, the Commission adopted an interim cap on competitive ETC support, which capped the total annual competitive ETC support for each state at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. However, the cap remains in place only until the Commission adopts comprehensive high-cost universal service reform. *See generally, Id.*

[42] Nicholas Vantzelfde, "*The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds*," Criterion Economics, LLC, p. 13 (May 29, 2007).

[43] The plan would also permit one mobile wireless provider to be supported in each rural service area as well. This recognizes that consumers view fixed and mobile broadband services as complements, not substitutes.

additional consumers and increase bandwidth to accommodate all of the Internet applications and services that their customers wish to utilize. Providing support to additional fixed broadband providers in a rural service area, where the incumbent is already providing exemplary service, and is already serving as a COLR for voice-grade services, would only serve to threaten the quality and affordability of broadband to those rural consumers and unnecessarily increase the size of the USF.

The COLR obligations for voice service imposed by state commissions create costs for rural ILECs that other carriers do not incur. For example, rural ILECs are required to extend lines throughout the entirety of their service area, and provide service to any potential customer on request. This includes offering service to the highest-cost customers and extending lines to newly built areas. In addition, many states require COLRs to comply with retail service quality standards and consumer protection standards while some states impose other duties such as mandated rate designs and soft dial tone. Moreover, COLRs must also provide certain interconnection and wholesale services needed by other carriers and service providers.[44] These obligations make it more challenging for rural ILECs to deploy their networks than for other carriers that may compete in portions of the incumbent's territory.

When the Commission reforms the rural High Cost program to explicitly support next generation broadband networks, COLR obligations should be revisited as well, and modified to focus on the ubiquitous availability of high-quality broadband services at affordable rates. For example, under OPASTCO's proposal, a fixed broadband provider receiving support from the Universal High Speed Broadband Fund would be obligated to

[44] For example, wireless carriers often rely on ILECs' special access circuits for backhaul from their base stations and cell cites.

offer broadband throughout the entirety of the service area; offer speeds that are at least equal to the national average broadband speed; offer service at rates that are reasonably comparable to the national average rate; and submit to quality of service oversight.

In the National Broadband Plan NOI, the Commission states that "[o]ur goal must be for every American citizen and every American business to have access to robust broadband services."[45] This suggests that ubiquitous access to high-speed broadband services has become at least as important as ubiquitous access to voice service. Therefore, it makes sense that recipients of broadband-directed high-cost support, at least in rural service areas, should be willing and capable of adhering to COLR obligations for broadband service. Rural ILECs, as the COLRs in their service areas for voice service, are well-positioned to assume this role, and in many cases, have made significant progress toward the Commission's broadband goals.

However, rural ILECs can only become the broadband COLR in their service areas if they are sufficiently funded to meet the obligations that come with this designation. If a rural ILEC was to no longer receive any universal service support, all of their COLR obligations should be removed. Certainly, it would be unreasonable for regulators to continue to impose COLR obligations on rural ILECs that do not receive the funding necessary to offer the required services at affordable rates throughout their entire service area. Absent sufficient support, rural ILECs should have the freedom to choose the customers they offer service to, the rates they charge, and the ability to exit the market without prior regulatory approval – no different than any other service provider.

Requiring entities that accept high-cost support in rural service areas to assume some form of COLR obligation for broadband would have a positive impact on the Fund

[45] National Broadband Plan NOI, 24 FCC Rcd 4344, ¶5.

and the success of the rural High Cost program. First, it would force non-ILEC carriers to think seriously before seeking support, because acceptance of the funding would require a very serious commitment to providing high-quality, affordable service throughout the area. Second, the COLR obligations would inject an additional degree of accountability into the program, offering greater assurance that funding is being used to achieve its intended objectives – making high-quality broadband service at affordable rates *universally* available throughout a service area.

Finally, all RoR-regulated carriers (which encompass most rural ILECs) are required to offer broadband transmission on a stand-alone, Title II common carrier basis.[46] This requires them to offer that transmission at specified, non-discriminatory rates, terms, and conditions, including to non-facilities based Internet service providers (ISPs). Therefore, in these service areas, there is nothing to prevent a non-facilities based ISP from availing itself of the ILEC's transmission offering to compete against the incumbent. This is yet another reason to support only one fixed broadband provider in a rural service area, as such a policy would do nothing to preclude competition.

VI. OVERSIGHT MECHANISMS APPLIED TO RURAL ILECS SHOULD FACTOR IN THE INHERENT ACCOUNTABILITY OF AN EMBEDDED COST-BASED SUPPORT SYSTEM AND NOT BE EXCESSIVELY BURDENSOME; ACCOUNTABILITY COULD BE GREATLY IMPROVED IN THE RURAL HIGH COST PROGRAM BY BASING ALL ETCS' SUPPORT AMOUNTS ON THEIR ACTUAL COSTS

High-cost universal service support comprises a significant portion of most rural ILECs' cost recovery and operating cash flow, and is integral to their ongoing ability to make available high-quality broadband services at affordable rates. Thus, rural ILECs are motivated and committed to maintaining the integrity of the High Cost program and

[46] Wireline Broadband Classification Order, 20 FCC Rcd 14927, ¶138.

preventing waste, fraud, and abuse of the funds collected from the nation's ratepayers. It is important, however, that the oversight and accountability mechanisms applied to rural ILECs are not excessively burdensome and factor in the inherent accountability of the embedded cost-based system that is used to determine their support amounts.

The embedded cost-based support system for rural ILECs is highly accountable to the public. The support received by rural ILECs is based mostly on their own past investments and expenses, and they must submit extensive data in order to potentially qualify for support. Furthermore, the data submitted by rural ILECs is subject to multiple layers of review, including NECA reviews of cost study and loop count data, external audits, and the submission of financial reports to state commissions. These various accountability measures provide a very high level of assurance that the high-cost support that each rural ILEC receives is being used for the purposes for which it is intended, under the Commission's rules and the 1996 Act.

In light of the high degree of accountability already built into the support system for rural ILECs, the Commission should reassess the FCC Office of Inspector General's (OIG) audit program of High Cost program beneficiaries, at the very least for these carriers. These audits have been excessively burdensome and costly for rural ILECs, diverting scarce resources from the provision of service to customers. Furthermore, the audit program has been costly to the USF itself, but without a corresponding benefit.

In February 2009, the Universal Service Administrative Company (USAC) released an analysis of the current audit program, which it conducts under the direction of

the OIG.[47] It found that the OIG's use of "compliance attestation" audits to comply with the Improper Payments Information Act of 2002 (IPIA) appears to be unique among federal agencies. The IPIA does not require formal audits, nor does the Office of Management and Budget (OMB) require the use of a particular audit standard such as the "compliance attestation" methodology.[48]

The total cost of Rounds One and Two of the OIG audit program (for all USF programs) exceeded $145 million, and Round Three of the program is estimated to cost over $155 million.[49] However, despite the costs that have been incurred, the OIG has reported no instances of fraud in any of the USF programs, and the results revealed a generally high level of compliance by beneficiaries.[50] USAC finds that recoveries of estimated support payments deemed "improper" for IPIA purposes have been, and will continue to be, minimal in relation to the dollars audited and the cost of the audit program.[51] Clearly, this is not a cost effective use of USF dollars.

USAC anticipates that continuing the current High Cost audit program will yield little new information.[52] It therefore recommends alternate approaches both to assessing levels of program compliance as well as estimating rates of improper payments. Specifically, it suggests that a combination of random and targeted agreed-upon

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[47] Universal Service Administrative Company, *Universal Service Administrative Company Analysis of the Federal Communications Commission Office of Inspector General 2008 Reports on the Universal Service Fund* (Feb. 12, 2009) (February 2009 USAC Analysis).
[48] *Id.*, p. 22.
[49] *Id.*, p. 18.
[50] *Id*. p. 12.
[51] *Id.*, p. 1. This is due to the fact that the OIG's estimates of "improper payments" significantly inflate the estimated error rates and do not provide an accurate reflection of program compliance and the amount that may be recovered from beneficiaries. *Id.*, pp. 1, 11.
[52] *Id.*, p. 11.

procedures or performance audits would enable the FCC to achieve IPIA compliance and improve USF administration.[53]

Furthermore, legislators in both the House of Representatives and the Senate have expressed concern about the current OIG audit program, in reports accompanying FY 2010 financial services and general government appropriations bills. For example, House Report 111-202 accompanying H.R. 3170, which was approved by the full House of Representatives, states that the House Appropriations committee is "…concerned by reports that some recipients of USF moneys have been the subject of unduly burdensome audits…"[54] The Report goes on to "…urge[] the new leadership to re-evaluate the auditing process to make sure that the auditing process is not unduly onerous and that lessons learned from audits get translated into better performance in the future."[55] There is similar language contained in Senate Report 111-043 accompanying S. 1432.[56] The Commission should pursue the recommendations made by USAC and Congress, at the very least for rural ILECs, which are held highly accountable under an embedded cost-based system.

Finally, in order to improve accountability for the use of support received by competitive ETCs, the Commission should adopt the tentative conclusion it reached in 2008 to eliminate the identical support rule for these carriers.[57] Instead, at least in rural service areas, support for competitive ETCs should be based on their actual costs. Under OPASTCO's plan, the support received by any carrier in a rural service area, whether a

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[53] *Id.*, pp. 1, 12.
[54] H.R. REP. NO. 111-202, at 62 (2009).
[55] *Id.*, at 62-63.
[56] S. REP. NO. 111-043, at 80-81 (2009).
[57] Identical Support Rule NPRM, 23 FCC Rcd 1468, 1470, ¶¶1, 5.

fixed broadband provider or a mobile wireless provider, would be based on their own actual costs.

In its Identical Support Rule NPRM, the Commission recognized that the identical support rule bears no relationship to the amount of money competitive ETCs have invested in rural and high-cost areas of the country and provides these carriers with little incentive to invest in, or expand, their facilities in these areas.[58] Instead, the identical support rule has driven competitive ETCs to focus on growing their number of lines – or more typically, active handsets – in households and areas that they were already successfully serving absent any support, rather than improving coverage and capacity in high-cost areas. As a result, the Commission tentatively concluded that basing support for competitive ETCs on their own costs will "…better reflect real investment in rural and other high-cost areas of the country, and…create[] greater incentives for investment in such areas."[59]

As the Commission goes about reforming the High Cost program to explicitly support advanced broadband networks, it should keep in mind that the costs of upgrading wireline and mobile wireless networks to become broadband-capable and improve bandwidth capacity are very different.[60] Consequently, retaining the identical support rule under a new broadband-focused High Cost program will simply exacerbate the perverse incentives that existed under the rule prior to the adoption of the Interim Competitive ETC Cap Order.

Good stewardship of the High Cost program, along with the principle of competitive neutrality, demands that competitive ETCs in rural service areas be held to a

[58] *Id.*, 23 FCC Rcd 1470, 1472, ¶¶5, 10.
[59] *Id.*
[60] *See*, September 2009 Broadband Task Force Status Report, p. 43.

similar standard of accountability as rural ILECs. Cost-based support for competitive ETCs in rural service areas would create true accountability for the funding these carriers qualify for since, like rural ILECs, support would be received only after approved costs have been incurred that exceed a certain threshold. As a result, it would establish far greater assurance that the funding received by *all* ETCs in rural service areas is no more than "sufficient," and is being used for its intended purposes.

VII. THE COMMISSION SHOULD ESTABLISH A BROADBAND LIFELINE / LINK UP PROGRAM

OPASTCO's plan recommends expanding the Low Income program to support broadband Internet access service for qualifying consumers. The American Recovery and Reinvestment Act of 2009 requires the FCC to formulate a strategy for achieving affordability of broadband service and maximum utilization of broadband infrastructure.[61] Expanding the Low Income program to support the provision of broadband Internet access service, so that low-income consumers may qualify for discounts, would help to advance both goals. The ability to access broadband service is critical for low-income consumers for all of the same and numerous reasons that it is for all Americans. Access to broadband is especially important and beneficial to low-income consumers for purposes of education, public health, and public safety. Yet, broadband penetration for households with incomes of under $20,000 is 35 percent, which lags far behind the penetration rate for all American households.[62] By making broadband Internet access service eligible for support under the Low Income program, it would enable ETCs to offer a specified discount for the service to eligible low-income consumers and still

[61] *See*, National Broadband Plan NOI, 24 FCC Rcd 4360, ¶52.
[62] *See*, FCC Broadband Task Force, *Broadband Gaps*, p. 19 (rel. Nov. 18, 2009).

recover the lost revenues via the USF. This would make broadband more affordable for these Americans and help to increase the penetration rate among them.

Also, by enabling more low-income consumers to subscribe to broadband Internet access service, it will have the added benefit of increasing the utilization of the broadband infrastructure. This is particularly beneficial in sparsely populated rural service areas, where the business case for broadband deployment is often weak and untenable absent high-cost support. By making broadband more affordable for low-income consumers in rural service areas, it will likely increase rural ILECs' "take rates" which, in turn, will improve the ability and incentive of these carriers to make further investments in their broadband infrastructure, to the benefit of all the residents and businesses in the area.

CONCLUSION

The FCC's National Broadband Plan should recommend that OPASTCO's plan for a Universal Service High Speed Broadband Fund be used as a starting point for further rulemaking proceedings on USF and ICC reform for rural ILEC service areas. The plan is as follows:

- Create a new Universal High Speed Broadband Fund, which would support all of the major network components of providing high-speed broadband service in rural service areas – last-mile loop costs, second-mile transport costs, middle-mile transport costs, and the cost of access to the Internet backbone. Both capital expenditures and ongoing operational expenses would be supported.

- The plan would support one fixed technology high-speed network provider in each rural service area. It also allows for one mobile wireless provider in each area to be supported. Support amounts are based on a demonstration of actual costs that exceed a qualifying threshold.

- Rural ILECs can "opt in" to the new Fund at any time during a seven-year transition period. Once a rural ILEC opts in, all high-cost support is received via the new Fund. At the time of opt in, a rural ILEC would immediately begin

receiving the support amount that they were presently receiving from the existing mechanisms, as a starting point. Those ILECs choosing not to opt in immediately would continue to receive support through the existing mechanisms.

- All ICC rates transition down to zero over seven years, and the ICC revenues that rural ILECs are receiving at the time they opt in would gradually transition into the support received from the new Fund, as the ICC rates are reduced. Rural ILECs may also elect to immediately reduce their ICC rates to zero at the time they opt in.

- At the end of the seven-year transition period, the existing rural high-cost support mechanisms and ICC regime are eliminated, and carriers would recover their broadband network costs through a combination of affordable end-user rates and support from the new Fund. At that time, the PSTN is fully converted to a broadband network.

- All fixed technology providers receiving support through the new Fund must commit to offering broadband throughout the service area at speeds that are at least equal to the national average broadband speed, and end-user rates that are reasonably comparable to the national average rate. Support recipients must also submit to quality of service oversight.

- The Low Income program is expanded to support broadband Internet access service for qualifying consumers.

- Contributions to all USF programs, including the new High Speed Broadband Fund, would be based on a combination of public network connections and working telephone numbers, including all broadband connections in service, regardless of technology.

Consistent with the goals of the FCC and Congress, adoption of OPASTCO's plan will ensure that advanced, next generation broadband is available and affordable to all residents and businesses in rural service areas, and is reasonably comparable to the advanced services and rates offered in other areas of the nation.

Respectfully submitted,

THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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December 7, 2009

CERTIFICATE OF SERVICE

I, Brian J. Ford, hereby certify that a copy of the comments of the Organization of the Promotion and Advancement of Small Telecommunications Companies was sent on this, the 7th day of December, 2009 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached list.

By: /s/ Brian J. Ford
Brian J. Ford

SERVICE LIST
NBP – Public Notice #19
GN Docket No. 09-47
GN Docket No. 09-51
GN Docket No. 09-137
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