

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Inquiry Concerning the Deployment of)	
Advanced Telecommunications Capability)	
to All Americans in a Reasonable and)	
Timely Fashion, and Possible Steps to)	GN Docket No. 09-137
Accelerate such Deployment Pursuant to)	
Section 706 of the Telecommunications)	
Act of 1996, as amended by the Broadband)	
Data Improvement Act)	
)	
A National Broadband Plan)	GN Docket No. 09-51
For Our Future)	
)	
International Comparison and Survey)	
Requirements in the Broadband)	GN Docket No. 09-47
Data Improvement Act)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
ON NBP PUBLIC NOTICE #19**

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interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

In the *Notice*, the Commission seeks comment on its universal service (USF) and intercarrier compensation (ICC) policies and how they might be adapted to further the goal of making broadband universally available.² NCTA explained in its opening comments in this proceeding that USF reform should be a critical component of the National Broadband Plan and we applaud the Commission for seeking additional comment on these important issues.³

The record in this proceeding makes clear that government financial support will be necessary to achieve universal availability and adoption of broadband. But the Commission cannot simply add new broadband funding on top of its existing USF programs. With the USF contribution factor expected to rise to record levels, the Commission must strive to eliminate the “USF Gaps” identified by the Omnibus Broadband Initiative team⁴ without placing additional financial burdens on American consumers.

To that end, NCTA filed a Petition for Rulemaking last month asking the Commission to establish a process by which it could reduce high-cost support levels to providers in areas experiencing extensive unsubsidized competition.⁵ By adopting a mechanism to reduce the amount of high-cost support that is distributed to providers in areas where it no longer is needed, the Commission could reduce the contribution factor and begin to develop proposals for

² *Notice* at 1.

³ Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51 (filed June 8, 2009) at 32-34 (NCTA Broadband Plan Comments).

⁴ *Broadband Gaps*, Presentation to the Federal Communications Commission by the Omnibus Broadband Initiative at 10 (Nov. 18, 2009) (November FCC Presentation), available at http://www.fcc.gov/openmeetings/2009_11_18-ocm.html.

⁵ Petition for Rulemaking of the National Cable & Telecommunications Association (NCTA Petition), attached to Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-51, *et al.* (filed Nov. 5, 2009).

supporting broadband deployment in unserved areas and adoption by underserved populations through the USF program.

Under NCTA's proposal, the Commission would establish a two-step process by which any party may request that the Commission reassess the level of high-cost support provided to a particular study area. In the first step, the burden would be on the petitioner to demonstrate that the area meets one of two competition-based triggers.⁶ If one or both of those triggers is satisfied, the Commission would initiate the second step of the proceeding. In that step, the burden would be on a recipient of high-cost support to demonstrate the minimum amount of support necessary to ensure that non-competitive portions of the area will continue to be served.⁷ This process would identify those ILEC costs that cannot be recovered through any of the services (regulated and unregulated) provided in the non-competitive portion of the study area, including costs associated with any clearly defined carrier of last resort (COLR) obligations.

NCTA's proposal is not intended to be a complete solution to closing the USF gap. Rather, it is a modest, but critical, first step to rationalizing a program that is on an unsustainable path. As demonstrated by the breadth of the *Notice*, there are many other USF-related issues that must be resolved if the USF program is to realize its full potential with respect to broadband deployment and adoption. We address these issues below.

1. Size of the Universal Service Fund

As the Broadband team has demonstrated in its presentations to the Commission, the current high-cost program is unsustainable.⁸ For a variety of reasons, the overall size of the USF

⁶ *Id.* at 12-17.

⁷ *Id.* at 17-20.

⁸ November FCC Presentation at 10 ("Current system unsustainable; contribution factor more than doubled since 2000"); *September Commission Meeting*, Presentation of the Omnibus Broadband Initiative at 48 (Sept. 29, 2009) (September FCC Presentation), available at http://www.fcc.gov/openmeetings/2009_09_29-ocm.html.

program continues to increase over time, notwithstanding significant improvements in technology and competition that should have the effect of reducing the need for government support.

As the overall size of the program has increased, so has the burden on consumers. The Commission requires providers to contribute a percentage of their revenue from interstate and international telecommunications services to pay for the USF program, but those contributions are passed through to customers of those services. With the contribution factor expected to rise to 14 percent next quarter, the Commission should assume that consumers are “maxed out” and that any new broadband initiatives must be offset by reductions in the current high-cost program.

Moreover, as discussed in more detail in the next section, “broadening the base” of contributors should not be used as an excuse to increase the overall size of the USF program. Even if new services, like broadband, are assessed (an approach that NCTA does not support), those assessments ultimately fall on the very same consumers that are paying for the fund today. Accordingly, real reform of the existing program is a prerequisite to using the USF program to support broadband deployment and adoption programs.

2. Contribution Methodology

The *Notice* seeks comment on potential changes to the USF contribution methodology.⁹ In earlier comments filed in this proceeding, NCTA expressed support for a numbers-based approach to USF contributions.¹⁰ A numbers-based contribution scheme, if properly structured and implemented, holds out the prospect of providing a more stable, predictable and nondiscriminatory funding mechanism.

⁹ *Notice* at 1-2.

¹⁰ NCTA Broadband Plan Comments at 34.

A numbers-based approach can be structured to ensure that it does not place an undue burden on any particular set of customers. For example, the proposal submitted last year by AT&T and Verizon would have exempted Lifeline and LinkUp customers from being assessed.¹¹ The Commission also could structure such a regime to properly balance the burdens placed on residential customers versus business customers. And to avoid creating loopholes, a numbers-based regime could include a connection-based contribution requirement on the sale of high-capacity telecommunications services that are not associated with telephone numbers.

Any contribution methodology should provide similar treatment for similarly situated customers. For example, proposals to apply lower assessments to wireless family plans benefit that particular group of customers at the expense of all other customers. Unlike the exemption described above for low-income customers, it is not clear what public policy justification there is for granting special treatment to this subset of wireless customers.

NCTA opposes the assessment of USF contributions on broadband services. Although some argue that a USF contribution requirement should be imposed on broadband providers on the theory that it would broaden the base of contributors, that is not the case. There is simply no evidence that a significant number of customers are abandoning services that are subject to USF or that there is an untapped pool of non-contributors that would be brought into the system through a broadband assessment. Rather, an assessment on broadband service likely would be paid almost exclusively by people that already contribute on their voice services.

In addition, assessing USF contributions on broadband providers would raise the cost of broadband service for consumers of those services and detract from the congressional goal of improving broadband penetration. While subscription levels for local telephone service appear

¹¹ See Letter from Mary Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene H. Dortch, WC Docket No. 06-122, Attachment at 3 (Sept. 11, 2008).

to be relatively unaffected by changes in the price of service,¹² there is evidence that at least some portion of the population has not adopted broadband due to concerns about the price of broadband equipment and services.¹³ Given these consumer concerns, adding to the cost of broadband by assessing USF contributions would seem to undermine the goal of increasing broadband adoption.

3. Transitioning to Support Advanced Broadband Deployment

The *Notice* solicits comment on a variety of issues related to the possible transition of the high-cost support mechanism from a program that supports voice services to a program supporting broadband services.¹⁴ The transition to supporting broadband is one of a number of key steps the Commission must take to modernize the high-cost program. As the Broadband team has recognized, most consumers already have access to broadband services.¹⁵ But reaching the 3-6 million households that do not have broadband available today will require at least some government funding.

As the Commission considers how to adapt the high-cost program to the broadband era, it also must adapt it to the competitive era. Cable operators today provide voice service to over 20 million customers, often offering it in rural areas throughout the country.¹⁶ Already, cable's

¹² See, e.g., Testimony of Gregory L. Rosston and Bradley S. Wimmer, Before the Committee on Energy and Commerce, Subcommittee on Communications Technology and the Internet (Nov. 17, 2009) at 4 (“Empirical research has shown that local telephone service is extremely inelastically demanded. This means that subscription decisions are not very sensitive to price. It would take a large increase in price to cause people who were subscribing to the network to drop telephone service, or a large decrease in price to get people to subscribe.”), available at http://energycommerce.house.gov/Press_111/20091117/rosston-wimmer_testimony.pdf.

¹³ September FCC Presentation at 84.

¹⁴ *Notice* at 2-4.

¹⁵ November FCC Presentation at 8.

¹⁶ Many cable operators offer these services at national rates that are the same in rural areas as they are in urban areas. See Comments of the National Cable & Telecommunications Association, WC Docket No. 05-337 (filed May 8, 2009) (NCTA NOI Comments) at 8-9. Cable voice services generally are available on a stand-alone basis or as part of a bundle with high-speed Internet service and/or multichannel video service.

entry into the voice market has produced tens of billions of dollars in consumer benefit and promises even greater benefits in the future.¹⁷ Similarly, in most areas, cable operators are providing broadband services in competition with services offered by an ILEC, as well as multiple wireless providers and, in some cases, satellite providers.

The proposal contained in NCTA's Petition for Rulemaking should be an important part of the Commission's effort to update the high-cost program for the competitive broadband era. NCTA has proposed a process that should, over time, enable the Commission to reduce the amount of support that is distributed to areas where the private sector is investing in competitive networks capable of providing voice and broadband services without subsidies. The proposal is premised on the principle that government support should be distributed in a targeted, competitively neutral, manner.

This same principle should guide all of the Commission's efforts to reform the high-cost program. The Commission should not, for example, provide high-cost support for broadband infrastructure projects that are receiving funding from NTIA or RUS. With limited resources available to support broadband deployment and adoption efforts, there is no basis for allowing any provider to engage in "double dipping" of this sort.

Any support that is provided for broadband deployment or adoption should be available on a competitively neutral basis. All qualified broadband providers should be eligible to receive funding. The Commission can and should place appropriate requirements on those entities that receive such funding, but requiring them to operate as common carriers under state regulation is unnecessary and potentially counterproductive.¹⁸ Similarly, the Commission should not use

¹⁷ Michael Pelcovits and Daniel Haar, *Consumer Benefits from Cable-Telco Competition* (updated Nov. 2007), available at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf.

¹⁸ To the extent the Commission conditions receipt of such support on some type of COLR obligation, competitors must have the opportunity to accept those obligations as well.

ILEC study areas as the basis for distributing broadband support. A smaller, more neutral, area, such as census blocks or census block groups, should be used.

4. Impact of Changes in Current Revenue Flows

The *Notice* seeks comment on the effect that changes in intercarrier compensation or USF support would have on the ability of providers to deploy and operate broadband networks.¹⁹ As a general matter, the Commission can assume that policies that reduce expenses and/or increase revenues should facilitate additional investment. For example, NCTA has proposed that the Commission enable all broadband providers to attach facilities to poles under the cost-based regime that applies to cable attachments, which should enable providers to invest more than would be invested if attachment rates were higher.

But with respect to intercarrier compensation, the analysis is far more complex because changes generally are a zero-sum game among competitors. Increasing revenues for one set of providers invariably results in increased costs for a different set of providers. As illustrated by continuing concerns over “traffic pumping” abuses committed by certain rural CLECs, even well-intentioned policies designed to achieve particular results can lead to unintended, but very harmful, consequences.²⁰ Thus, the Commission should proceed with extreme caution to the extent it tries to use intercarrier compensation reform as a vehicle for implementing broadband policy.

Rather than relying on the types of implicit subsidies inherent in the current intercarrier compensation regime, any government support for broadband should be explicit and targeted to where it is most needed. Whether support is provided through direct appropriations (*e.g.*, ARRA

¹⁹ *Notice* at 4-5.

²⁰ *See, e.g.*, Letter from Brian Benison, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-135 (filed Dec. 3, 2009) (explaining how rural exemption policy for CLEC access charges failed to include adequate safeguards against arbitrage).

funding for NTA and RUS programs) or through a USF program, it should be targeted to those specific areas of the country where broadband networks have not yet been deployed.

In looking at the economics of providing broadband, the Commission also must keep in mind the efficiencies that arise when a provider of telecommunications service (or video service) starts providing new services over its existing network. Even in high-cost rural areas, companies provide multiple services over a single network because it is more efficient than building stand-alone networks for each service they provide. There is no reason for the Commission to ignore the efficiencies and revenues produced by adding services and look solely at the costs and revenues attributable to voice services. Rather, in determining whether providers are receiving the “right” amount of high-cost support or access charges to recover their costs, the Commission must take into account the fact that costs also can be recovered from services other than local exchange service.²¹

5. Competitive Landscape

The *Notice* asks a variety of questions about COLR obligations and their effect on the provision of broadband service in rural areas.²² COLR obligations are state-imposed obligations to provide telephone service upon request to any customer in an area.

The suggestion in the *Notice* that there is a huge disparity between ILECs, that always are subject to COLR requirements, and other providers, who never bear such obligations, is inaccurate. There are many states that do not impose COLR obligations at all, on incumbent or

²¹ As explained in a paper by Dr. Michael Pelcovits, “there is no reason to subsidize an ILEC to serve an area where revenue from voice, data and video service is sufficient to offset the costs of providing service.” Michael D. Pelcovits, *Debunking the Make-Whole Myth: A Common Sense Approach to Reducing Irrational Telecommunications Subsidies*, White Paper #3 (Nov. 17, 2008).

²² *Notice* at 5-6.

competitive LECs. Conversely, there are some states that impose COLR obligations on both incumbent and competitive LECs.

The suggestion that COLR requirements are inherently burdensome is overstated as well. While a COLR typically will be obligated to provide service at tariffed rates, in most cases COLRs are permitted to impose special construction charges to recoup some or all of the cost of installing facilities in remote locations that are very expensive to serve. Most states also permit providers to take reasonable steps, such as requiring deposits, to reduce the credit risk that may exist when extending service pursuant to a COLR requirement. In short, the burden of a COLR obligation depends on the specific requirements imposed by the state.

The *Notice* asks whether COLR obligations should be revisited in light of the changing competitive landscape and, in particular, whether those obligations should be removed or modified if any entity no longer is receiving universal service support.²³ NCTA supports the concept of revisiting the application of COLR requirements in competitive markets, particularly where a provider is not receiving high-cost support. As NCTA explained in its Petition for Rulemaking, competition eliminates the need for mandatory requirements by providing incentives for companies to take the same actions voluntarily:

In an area where a cable operator or other unsubsidized wireline competitor has built facilities and offers voice services, each provider's cost of operating and maintaining facilities is a cost attributable to *competition*. For example, any suggestion that the only reason an ILEC would maintain its facilities in a competitive area is because of a POLR obligation is based on a warped view of how competitive markets operate. One of the great benefits of facilities-based competition is that both incumbents and entrants have strong incentives to act in ways that will help attract and retain customers, *e.g.*, by maintaining their plant in good condition, independent of any legal obligations to do so.²⁴

²³ *Notice* at 6.

²⁴ NCTA Petition at 19-20.

Because of the positive incentives provided by facilities-based competition, NCTA does not see any need to extend mandatory state COLR requirements to cable operators or other competitive facilities-based providers. Once a provider has constructed facilities to serve a particular location, that provider generally has every incentive to serve all potential customers in its service area. To avoid unduly tipping the scales in favor of competitive providers, a state that chooses to retain a COLR requirement on the ILEC in a competitive area should ensure that the ILEC is able to recover any costs directly attributable to complying with that obligation through line extension tariffs, customer contributions, or other means if necessary.

6. High-Cost Funding Oversight

The *Notice* asks a number of questions regarding the appropriate oversight and accountability mechanisms needed to avoid waste, fraud, and abuse with respect to high-cost support that is used for broadband.²⁵ Problems with waste, fraud, and abuse in the existing high-cost program have been well-documented.²⁶ To the extent the Commission decides to provide support for construction or operation of broadband facilities, it must establish more stringent oversight to ensure that recipients of these limited financial resources are achieving the intended results.

7. Lifeline/LinkUp

The *Notice* solicits comment on how the Commission might structure a Lifeline/LinkUp program for broadband equipment and services.²⁷ Although NCTA does not have specific views on how to structure a broadband Lifeline/LinkUp program if the Commission chooses to pursue

²⁵ *Notice* at 6.

²⁶ Government Accountability Office, *FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, GAO-08-633 at 5 (June 2008) (“While some internal control mechanisms for the high-cost program exist, these mechanisms are limited and exhibit weaknesses that, collectively, hinder FCC’s ability to assess the risk of noncompliance with program rules and ensure cost-effective use of program funds.”).

²⁷ *Notice* at 6-7.

such an approach, our member companies are strong believers in the need for programs that reduce the barriers to adoption that are faced by many segments of the population.²⁸ In particular, NCTA recently announced the creation of an innovative nationwide public-private partnership that combines digital media literacy training with discounted broadband service and computers. The *Adoption Plus (A+)* pilot program is a proposed two-year public-private partnership to promote broadband adoption for up to 3.5 million middle school-aged children eligible for the National School Lunch Program in approximately 1.8 million low-income households that do not currently receive broadband services.²⁹ To the extent the Commission decides to direct funding to broadband adoption programs, programs like the A+ pilot are worthy of that support.

²⁸ Cox, for example, has expressed strong support for establishing a Lifeline broadband program. See Letter from J.G. Harrington, Counsel for Cox Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-40 (Apr. 13, 2009).

²⁹ Comments of the National Cable & Telecommunications Association on National Broadband Plan Public Notice #16, GN Docket No. 09-51, et al. (filed Dec. 1, 2009).

CONCLUSION

As NCTA has stated throughout this proceeding, USF reform should be a critical component of the National Broadband Plan. To that end, NCTA's Petition for Rulemaking proposed a modest, yet important, step the Commission should take to modernize and rationalize the high-cost program. Along with other proposed reforms, such as adoption of a numbers-based contribution mechanism, the USF program can realize its potential to help achieve the congressional goal of universal broadband availability.

Respectfully submitted,

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