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

In the Matter of: Comment Sought On The Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan Comments – NBP Public Notice #19	Docket No. GN 09-47 GN 09-51 GN 09-137

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA COMMENTS – NBP PUBLIC NOTICE #19

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The California Public Utilities Commission and the People of the State of California (CPUC or California) respectfully submit these comments in response to the above-referenced Public Notice released November 13, 2009, in which the Federal Communications Commission (FCC or Commission) seeks more focused comment on the role of the Universal Service Fund and Intercarrier Compensation (ICC) in the National Broadband Plan (NBP). Many of the CPUC's comments made in this filing are discussed in greater detail in CPUC comments filed in other related FCC proceedings.[1]

I. SUMMARY

Federal universal service and intercarrier compensation policies can play an important role in the promotion of broadband deployment and adoption but only if the current universal service programs and intercarrier compensation schemes are modified to meet the needs of a competitive, broadband–centered communications world. However, any revisions to these important elements of communications policy must be carried out in a deliberate and thoughtful manner to ensure that policy objectives are met in the most effective and least costly manner. With these concerns in mind, California recommends that the FCC take the following actions:

[1] See Comments of the California Public Utilities Commission and the People of the State of California, *In the Matter of Federal-State Joint Board On High-Cost Universal Service Support,* WC Docket No. 05-337, CC Docket No. 96-45, April 17, 2008 (CPUC Comments on Joint Board Recommended Decision) and Reply Comments of the California Public Utilities Commission and the People of the State of California, *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337*; Federal -State Joint Board on Universal Service*, CC Docket No. 9645; 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 in 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; December 22, 2008 (CPUC Comments on FNPRM on USF/ICC Reform).

- ▹ As part of the National Broadband Plan, establish a pilot program or programs to provide Lifeline/Link-up and equipment support for broadband Internet access service;
- ▹ Adopt high-cost support mechanisms for broadband deployment in unserved areas, but only after the need for such support is informed by results from grants awarded by the National Telecommunications and Information Administration (NTIA) Broadband Technology Opportunities Program (BTOP) and the Rural Utilities Service (RUS) Broadband Initiatives Program (BIP) and only where mapping of broadband deployment is available;
- ▹ Adopt reforms to the Intercarrier Compensation scheme as part of the open proceedings on this issue, but within six months of completion of the National Broadband Plan.

II. DISCUSSION

TOPIC NO. 3. TRANSITIONING THE CURRENT UNIVERSAL SERVICE HIGH-COST SUPPORT MECHANISM TO SUPPORT ADVANCED BROADBAND DEPLOYMENT

3. a. One option would be to maintain the existing universal service programs on a transitional basis to support operating expenses of legacy voice-only networks, but that all new investment would be supported from a new broadband fund. i. What would be an appropriate transition plan and path to the new broadband fund?

California supports establishment of a separate limited-term high cost support fund for broadband deployment as recommended by the Federal-State Joint Board on

Universal Service (Joint Board) in November 2007.[2] However, it is important to specifically target support where there is true need. Therefore, the CPUC urges the Commission to wait until all BTOP and BIP grants are awarded and mapping of broadband deployment is available before the Commission initiates such funding. Ensuring that monies are targeted to areas where there is still a need will both improve the efficacy of the program and control its costs.

As noted by NTIA Administrator Lawrence Strickling in recent testimony before Congress, at this moment no federal agency has collected the comprehensive and reliable data necessary to answer the question, what is the current state of broadband deployment in rural America.[3] Therefore, if the FCC creates a high-cost support mechanism for broadband as part of the National Broadband Plan, such support should be limited to states that have thoroughly mapped the availability of broadband services until the national map of broadband availability is released as required by the Recovery Act[4]

3. b. If the high-cost support mechanism is reformed to support deployment of broadband, how should the new mechanism be structured, e.g., a single fund or multiple funds (mobility and/or fixed, middle mile, last mile)?

As stated in earlier filings,[5] the CPUC strongly supports the Joint Board's 2007 recommendation for the establishment of a new limited Broadband Fund to be tasked

[2] *Recommended Decision, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (Recommended Decision). See CPUC Comments on *Joint Board Recommended Decision*, at pp. 4-9.
[3] Testimony of the Honorable Lawrence E. Strickling, Assistant Secretary of Communications and Information, National Telecommunications and Information Administration, United States Department of Commerce, before the Subcommittee on Rural Development, Biotechnology, Specialty Crops, and Foreign Agriculture of the Committee on Agriculture, United States House of Representatives, November 19, 2009, p. 3.
[4] American Recovery and Reinvestment Act of 2009, Pub.L. No.111-5, 123 Stat.115 (2009) (Recovery Act).
[5] CPUC Comments on *Joint Board Recommended Decision*, at pp. 4-9.

primarily with providing grants for construction of facilities for new broadband Internet services to unserved areas, and secondarily to underserved areas.

If the Commission decides to establish the Broadband Fund, the CPUC recommends that the Commission require all broadband service providers to contribute to the fund. Furthermore, if the Commission adopts a state matching grant requirement, the Commission should delegate to the states the authority to seek contributions from intrastate broadband providers. States that generate matching funds should be awarded supplemental funding. If a state does not provide matching funds, than it should only receive a base funding level. Moreover, if the state matching grant requirement is adopted, states should be permitted to require the grantee to provide a percentage of the state matching requirement. [6]

The CPUC also agrees with the Federal-State Joint Board's recommendation to allow the states to administer the new Broadband Fund grant program. However, the Commission should allow the states to set the specific guidelines for awarding of projects. In setting guidelines states should follow broad Commission guidelines/standards, including those regarding accountability safeguards. Allowing each state to develop its own criteria and methodology for granting both state and federal monies to support broadband would ensure the consideration of factors specific and unique to the state. States should look at the present state of broadband service in the

[6] *Id.,* at pp. 8-9.

state, the states' broadband policies and plans, and the states' demographic profile and topography. [7]

The CPUC also supports the Joint Board's recommendation that states be permitted to award Broadband Fund grants to only one provider in any geographic area. Such a restriction is necessary to limit the draw on the fund and is consistent with the competitive neutrality principle adopted by the Commission.[8]

3. f. In disbursing support under a high-cost broadband mechanism, should the Commission take into account broadband grants issued by NTIA or RUS? If so, how?

As we noted above, if the FCC decides to adopt a high-cost support mechanism for broadband deployment, the FCC should wait until all BTOP and BIP grants are awarded so that it is better informed regarding what high-cost areas of the country remain unserved, and hence what funding needs will still exist after the BTOP and BIP projects are completed.

3. g. One option for a broadband mechanism would be to more narrowly target universal service high-cost support to smaller geographic areas and to areas in which broadband service is not available today from any provider. If the Commission were to develop a new broadband support mechanism that is targeted at such areas, what would be the appropriate geographic area for determining the appropriate amount of support?

Any high cost support mechanism for broadband should be targeted to unserved areas and be limited to funding for construction of new facilities. Regarding disaggregation of support, the CPUC does not support a uniform, national disaggregation

[7] *Id.,* at pp. 5-6.
[8] *Id.,* at p. 9.

requirement. This issue should be addressed at the state level. [9]

3. i. Certain ETC requirements today are premised on the provision of voice service. If the Commission were to create a new high-cost support mechanism for broadband, should current ETC requirements be revised, and if so, how?

The CPUC agrees that the ETC requirements need to be different for a broadband high cost support program then for the current high cost support program.[10] However, until more details are provided by the FCC as to the parameters of a broadband mechanism, the CPUC has no recommendations to offer.

TOPIC NO. 4. IMPACT OF CHANGES ON CURRENT REVENUE FLOWS

4. h. The Commission seeks to understand how intercarrier compensation payment flows may impact broadband deployment incentives and how any intercarrier compensation reform may alter or change such incentives.

The California Commission recommends that the FCC not address intercarrier compensation reform as part of the National Broadband Plan because the issues raised in the ICC proceeding are too complex to be addressed in the National Broadband Plan due in February 2010. Instead the CPUC urges the Commission to address intercarrier compensation reform in the current open rulemakings on ICC reform. At the same time, in recognition of the importance of ICC reform and its impact on the provision of universal broadband service, California urges the FCC to include in the National

[9] Opening Comments of the People of the State of California and the California Public Utilities Commission, *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform,* WC Docket No. 05-337, CC Docket No. 96-45 (May 31, 2007), pp.5-7.
[10] CPUC Comments on *Joint Board Recommended Decision,* at p 15.

Broadband Plan a statement of its overarching goals for ICC reform and to set a definite timetable for resolution of this matter within six months after issuance of the Plan.

TOPIC NO. 5. COMPETITIVE LANDSCAPE

5. e. How do the COLR obligations vary by state? Do any states have "best practices" that promote deployment and use of alternative technologies?
5. f. Do states permit carriers to satisfy their COLR obligation using wireless or other technologies? If so, which states and should other states be encouraged to do so?
5. g. Do states permit carriers to satisfy their COLR obligations using VoIP? If not, should states be encouraged do so?

See Appendix A of this filing for a list of carrier-of-last-resort (COLR) obligations in California. Carriers in California may satisfy their COLR obligations using wireless or VOIP.

The CPUC here emphasizes that COLR obligations should continue to be determined by the states, and that the FCC should make an explicit finding that this matter continues to be a state issue.

TOPIC NO.7. LIFELINE/LINK-UP

7. The Commission previously has sought comment on extending low-income support to establish a Broadband Lifeline/Link-Up program. The Commission seeks additional detailed comments on structuring such a program.

The CPUC supports creation and adoption of a Lifeline/Link –Up pilot program or programs for broadband Internet access service as recommended in the FCC's *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*

(Order;FNPRM), FCC 08-262, Released: November 5, 2008.[11] This new program would be separate from the current Lifeline/Link-Up program.

As proposed by the FCC in Appendix A of the above-noted Order, all eligible telecommunications carriers (ETCs) participating in the existing low-income programs would be eligible to participate, provided ETCs' certify that they will comply with all program requirements. Such certification must identify the service area in which an ETC plans to offer Lifeline/Link-Up broadband services, the costs of the service(s) and broadband device, and all costs, both recurring and nonrecurring, to the customer participating in the program. The ETC must offer services supported in the Pilot Program throughout the identified service area(s).

If an ETC provides Lifeline service to an eligible customer, the Pilot Program would support 50 percent of the cost of broadband Internet access installation, including a broadband Internet access device, up to a total amount of $100. The device could be a laptop computer, a desktop computer, or a handheld device, so long as the equipment has the capability to access the Internet at the speeds established per the FCC's order,[12] and the equipment carries a warranty.[13] The device subsidy would be one-time, and would be limited to one unit per qualified household. Using the same process currently employed for the Link-Up program, Universal Service Administrative Company (USAC) would

[11] *See*, CPUC Reply Comments on FNPRM on USF/ICC Reform, at pp. 5-7.
[12] ETCs participating in the pilot program must offer broadband Internet access service with download speeds equal to or greater than 678 kbps and upload speeds greater than 200 kbps. *See FNPRM*, Appendix A, ¶ 84.
[13] Where the device costs $100 or less, the pilot program will support 90% of the cost of the broadband Internet access device. Appendix A, ¶ 81, fn. 196.

pay the subsidy amount to the participating ETC providing the device and the service to the customer.[14]

In addition, the pilot program would double, up to an additional $10, the household's current monthly Lifeline subsidy to offset the cost of broadband Internet access service.[15] Universal service support for Internet access service would be limited to one subsidy per household. The pilot program would be exempt from fees and taxes consistent with the current Lifeline program. There would be no state or carrier matching requirements.[16]

Although California is concerned about the cost of adding broadband Internet access service to the services subsidized by the federal universal service fund, we support this limited pilot proposal. This pilot program will provide valuable information on the need and demand for such subsidies and the potential impact on the universal service fund should such a program be extended permanently to all Lifeline customers. If the Commission adopts this pilot program, the CPUC recommends that the program be evaluated at the beginning of the third year for possible expansion at the end of the three-year pilot. [17]

Thus, the CPUC urges the FCC to include in the National Broadband Plan an initiative to establish such a pilot project or projects, with funding caps that would provide a limited number of low-income subscribers with broadband support for installation, equipment and monthly Internet access service.

[14] *FNPRM*, Appendix A, ¶ 81.
[15] *Id.*, ¶ 82.
[16] *Id.*, ¶ 80.
[17] CPUC Reply Comments on FNPRM on USF/ICC Reform, at pp. 6-7.

7. a. How should any devices necessary for a low-income broadband program be supported?

The CPUC recommends that devices necessary for a low-income broadband program be supported first through pilot programs. Through such programs information can be gathered which will permit the FCC to gauge the cost of such a program and to determine the best way to provide low-income consumers with equipment (smart phones, wireless laptops, *etc*.) necessary for broadband Internet access.

Many issues are raised by the proposal to include equipment or subsidies for equipment as part of an Internet access universal support program. For example, in response to consumer demand, the CPUC initiated a pilot program to provide a wireless texting device to hard-of-hearing individuals in California as an offering of our state universal service Deaf and Disabled Telecommunications Program. The CPUC initially chose a specific mobile device to be provided to qualified individuals under the pilot program. However, we found that by the time we completed our contracting process for this mobile device, the device was no longer being distributed by wireless carriers. The CPUC's experience with this pilot program demonstrates that government funding of communications equipment must strive to accommodate the current marketplace in which rapid advances in technology are common.

Several different pilot programs would permit the Commission to experiment with various ways to provide equipment or support for equipment, and to determine what type of, and how, Internet access devices should be supported if a permanent program were to be adopted.

7. f. How could a newly-established federal low-income broadband program work in concert with existing and/or future state low-income broadband programs? Could the cooperation between the states and the Commission regarding the existing state and federal low-income programs serve as a model for federal-state cooperation in the context of a federal low-income broadband program?

In order for any new low-income support program for broadband to work in concert with similar state programs, the FCC needs to make it clear that it has not preempted States from requiring VOIP service providers to offer state lifeline service. Further, VOIP service providers should be required to contribute to state universal service programs, and to be subject to all state regulations governing such programs.

7. i. i. How can the Commission protect against waste, fraud, and abuse related to any hardware or devices used in the program? ii. How can the Commission ensure that consumers cannot obtain the same supported service from two different providers?

Cooperation and data sharing between state commissions and the FCC would be necessary to prevent fraud and abuse. In particular this cooperation would be needed to ensure that low-income subscribers are not "double-dipping" – i.e., receiving low income support from more than one provider of Internet access service.

III. CONCLUSION

California urges the FCC only to consider a high cost support mechanism for broadband deployment after evaluating the awardees of the BTOP and BIP grants and to provide support for broadband deployment only to areas where mapping has been completed. California also recommends that the Commission adopt as part of National Broadband Plan a Lifeline/Link-Up pilot program(s) for broadband Internet access service. Finally,

the CPUC strongly recommends the FCC address intercarrier compensation reform separate and apart from the National Broadband Plan, but within six months of its issuance.

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Appendix A

California Rules Regarding Carriers of Last Resort
D.96-10-066, Appendix B

D. Carrier of Last Resort

1. All incumbent LECs will be designated as the COLR in all their service areas at least until such time that another carrier or carriers are designated as the COLR.
2. Other qualified providers may seek to become a designated COLR, or to compete in a GSA without being designated a COLR.
3. Only designated COLRs will have access to the high cost voucher fund subsidy.
4. Those carriers seeking to be designated a COLR shall file a Notice of Intent to be Designated a COLR (Designated COLR NOI). The Commission will consider the following factors when evaluating whether COLR status should be granted: a.the facilities the carrier has in place or the arrangements that the carrier plans to enter into in order to provide local service; b.the financial ability of the carrier to undertake the COLR obligation; c.the ability of the carrier to promote the goals of universal service in low income and non-English speaking communities.
5. A designated COLR will be required to serve the entire GSA.
6. A designated COLR may opt out of its obligations in a GSA by advice letter, unless it is the only carrier remaining in the GSA, in which case it must file an application to withdraw as the COLR, and continue to act as the COLR until the application is granted or a new COLR has been designated as a result of an auction.

E. Competitive Bidding to serve as the COLR

1. If there is only one carrier in a GSA and that carrier has filed an application to withdraw as the COLR in that GSA, and no other provider is willing to assume the COLR responsibility at the current subsidy level: a.The Commission will initiate an auction whereby service providers bid to be the COLR. b. Providers will bid for an amount, over and above the previously established per-line subsidy. The lowest bidder would become the subsidized COLR prepared to provide service to all customers for three years. Competitive entry would be allowed, but only 1/2 of the subsidy would be available.

2. A COLR who loses the bid shall have the option to sell its facilities in the area to any interested party at book value.

3. 180 days prior to the expiration of the three-year COLR obligation, other carriers desiring to become a designated COLR in the GSA shall file a Designated COLR NOI. The Commission will then determine whether the same designated COLR should be retained, whether multiple carriers of last resort should be permitted, or if another auction should be held.