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

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

COMMENTS OF RURAL CELLULAR ASSOCIATION

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SUMMARY

The framework established by the Commission in the National Broadband Plan has the potential for significantly advancing the Nation's efforts to realize all the benefits that can be provided by broadband. The Commission's universal service mechanisms provide the agency with an important tool to meet this challenge. *NBP Notice # 19* takes a useful step in seeking comment and in requesting specific information and proposals for reforming universal service and intercarrier compensation to "further the goal of making broadband universally available to all people of the United States."

RCA responds to many of the questions raised by the Commission and summarizes its positions as follows:

- A key priority of the Plan and the Commission's universal service policies should be to transition the existing high-cost funding mechanism into a mechanism used to support the deployment and provision of broadband services.

- The Commission should take action to expand the contribution base in a competitively neutral manner that reflects the accelerating shift from voice to broadband services

- Portability – a core funding policy that RCA has advocated for years – must be a central component of the Commission's plan for revamping existing funding mechanisms because it helps to ensure that scarce universal service funds are not disbursed to inefficient service providers.

- The Commission should abandon any embedded cost funding model, and instead should rely on a technologically-neutral forward-looking cost mechanism, in part because such a mechanism would reduce the level of disbursements from USF funding mechanisms.

- RCA opposes placing any cap on broadband funding, in part because imposition of a cap would amount to a concession that the Commission will not fully accomplish all of its defined broadband goals.

- The Commission should avoid a "rate case" actual cost analysis of universal service support, and should instead rely on cost models to maximize the efficient operation of funding mechanisms.

- The Commission should require geographic disaggregation of support, which would more accurately target support where it is most needed in areas served by rural telephone companies.

- The Commission's goal should be to ensure that multiple carriers, including new competitors, receive enough support so that, when they combine this support with their own funding, they are able to serve consumers in rural areas.

- The Commission should acknowledge that ILECs are not uniquely burdened by COLR obligations and that wireless ETCs effectively carry the same service obligation.

- RCA supports competitively neutral broadband high-cost funding oversight and accountability mechanisms that can be based on existing Commission rules and rules adopted by numerous state commissions rejects more burdensome regulatory schemes, such as dollar-for-dollar accounting, trend-line analyses, or the reporting of incremental spending

- The Commission's goal in devising a low-income broadband program, should be to empower consumers so that they can select services that best serve their needs.

The Commission's National Broadband Plan is likely one of the most resource-intensive projects ever undertaken the Commission. It is imperative that in fulfilling its quest to reform the nation's universal service and intercarrier compensation policies in order to further its goal of making broadband universally available to all people of the United States, the Commission do so in a way that upholds the pro-competitive, competitively neutral statutory directives provided by Congress. If the Commission takes action consistent with the recommendations herein provided by RCA, it will be sure to do just that.

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COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA"),[1] by counsel, hereby responds to a Public Notice issued by the Commission regarding the role of the Universal Service Fund ("USF") and intercarrier compensation in the National Broadband Plan ("Plan").[2]

I. INTRODUCTION.

The Commission currently finds itself at a juncture laden with opportunity. The agency faces the challenge of developing a National Broadband Plan that lives up to the commitment

[1] RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the nation and licensed to serve more than 80 percent of the country. Most of RCA's members serve fewer than 500,000 customers. Several of RCA's members have received eligible telecommunications carrier ("ETC") status and are currently receiving high-cost support in numerous states, including Wisconsin, Nebraska, Oklahoma, Illinois, North Carolina, Wyoming, Montana, Texas, Iowa, Missouri, Kansas, Mississippi, Alabama, and Kentucky.

[2] FCC Public Notice, "Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan," DA 09-2419, rel. Nov. 13, 2009 ("*NBP Notice # 19*" or "*Public Notice*"). The deadline for comments is December 7, 2009. Only one round of pleadings was established by *NBP Notice # 19*.

made 75 years ago to ensure that "communication by wire and radio [is] available . . . to all the people of the United States . . . ."[3] As the Commission has noted, "[h]igh-speed ubiquitous broadband can help to restore America's economic well-being and open the doors of opportunity for more Americans, no matter who they are, where they live, or the particular circumstances of their lives. It is technology that intersects with just about every great challenge facing our nation."[4] The framework established by the Commission in the Plan has the potential for significantly advancing the Nation's efforts to realize all the benefits that can be provided by broadband.

The Commission's universal service mechanisms provide the agency with an important tool to meet this challenge. *NBP Notice # 19* takes a useful step in seeking comment and in requesting specific information and proposals for reforming universal service and intercarrier compensation to "further the goal of making broadband universally available to all people of the United States."[5] RCA welcomes the opportunity to participate in this process by responding to specific questions posed in *NBP Notice # 19* in the following sections.

A key component of the National Broadband Plan must be to devise effective means of bringing broadband to rural America. In this regard, broadband is the same as plain old telephone service: The Commission has long recognized that the goal must be to provide "all the people" with telephone service, because the Nation as a whole benefits from the ubiquitous deployment of the service. The same is true, of course, for broadband. The Nation's economy, as well as its educational institutions, health care facilities, public safety agencies, governmental

[3] Section 1 of the Act, 47 U.S.C. § 151.

[4] *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 4343 (para. 1) (2009) ("*Broadband Notice of Inquiry*").

[5] *NBP Notice # 19* at 1 (citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009)).

organizations, and cultural centers, will be the beneficiaries if the Commission is successful in crafting a plan that accomplishes the wide-scale deployment of high-speed broadband.

One of the central challenges faced by the Commission with respect to its universal service policies is how to go about redesigning universal service mechanisms so that they can be used effectively to promote the Commission's broadband goals. The core of this challenge is to shift the focus of universal service support away from a copper wire, voice-centric telecommunications infrastructure, and toward a broadband, IP-based network.[6]

There can be little doubt that the world of communications is now undergoing this quantum shift to broadband systems.[7] As the Commission has observed, "[t]oday, the majority of U.S. businesses and households have broadband connections, and access to the Internet through a variety of technologies . . . is an integral and critical part of American life."[8] Another significant development is playing out in tandem with the shift to broadband: More and more consumers are "cutting the cord" and relying upon wireless as their exclusive source for telecommunications services. According to a recent National Health Interview Survey ("NHIS") conducted by the National Center for Health Statistics, 20.2 percent of all households in the United States are using wireless phones exclusively. This represents a 2.7 percent increase from its previous survey, which is the largest increase since NHIS began collecting data on wireless-only households in

[6] *See, e.g.*, Ben Charny, "FCC Head Reiterates Backing of Subsidies to Build Broadband," WALL ST. J., May 30, 2008, at B6 (reporting former Chairman Martin's view that "[w]e need to switch our focus from a voice world to a broadband world.").

[7] *See, e.g.*, Industry Analysis & Tech. Div., FCC, "*High-Speed Services for Internet Access: Status as of December 31, 2007*, at Table 2 (rel. Jan. 2009) (there were 80 million Internet connections with speeds exceeding 200 kbps in both directions in 2007, an increase from 4 million in 2000).

[8] *Broadband Notice of Inquiry*, 24 FCC Rcd at 4343 (para. 2).

2003.[9] In addition, 14.5 percent of all American homes "received all or almost all calls on wireless telephones, despite having a landline telephone in the home."[10] One reason for this remarkable trend toward the use of wireless phones is that, especially in rural areas, wireless services provide important public safety and other benefits.[11]

Wireless technology is also making dramatic advances in the provision of broadband services. CTIA has reported that, since 2005, mobile wireless providers have been the fastest-growing category of providers of both high-speed lines and advanced service lines. Subscriber counts for high-speed lines more than doubled, and advanced service lines more than tripled, in the most recent year measured by the Commission. Consumers have access to more than 40,000 wireless broadband applications, with 20,000 additional applications scheduled to be launched by the end of this year. In addition, the United States has a higher percentage of consumers utilizing mobile Internet capabilities than any other country for which such measurements are made.[12]

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[9] *See* Stephen J. Blumberg & Julian V. Luke, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, July-December 2008*, at 1 (May 5, 2009).

[10] *Id*.

[11] For example, CTIA–The Wireless Association™ ("CTIA") has noted that "'[i]f one of the drivers behind universal service is to insure that people have telephone access in a health or safety emergency, the phone of choice for the vast majority of Americans—young and old, male and female, poor and rich—is a cell phone.'" CTIA Comments on *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008), at 4 (quoting New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys* (Apr. 2008) at 16).

[12] Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, Ex Parte Communication, RM-11361, GN Docket No. 09-51, WC Docket No. 07-52, May 12, 2009, at 2.

An important consideration for the Commission, as it seeks comment in *NBP Notice # 19* on its universal service policies and on policy options for making broadband universally available, is that, while this shift to broadband—by both wireline and wireless customers—is rapidly changing the face of telecommunications in America, it is proceeding much more rapidly in urban areas, with rural areas lagging behind the Nation as a whole. Commissioner Copps has summed up the problem:

> [W]e have not succeeded in bringing broadband to everyone. For years, large parts of rural America have languished on the sidelines of the digital revolution. Home to the homesteaders, pioneers, and the rich and diverse Native American cultures that contribute so much to our national identity, rural America has for most of our history been deemed too remote, too sparsely populated, or too inaccessible to be fully connected with our nation's infrastructures.[13]

The fact is, as Commissioner Copps goes on to observe, that "[r]ural communities have long been unserved or underserved by broadband technology, but the full implication of this divide has only emerged as the Internet has become less and less a novelty, and more and more a necessity."[14]

The growing shift toward reliance on broadband technologies to meet the Nation's telecommunications needs, coupled with the fact that rural America is lagging behind as this shift continues,[15] underscores the importance of the Commission's developing universal service policies that can meet the challenge of deploying broadband in rural areas. The Commission's reform of its universal service mechanisms must provide for a transition from using high-cost sup-

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[13] Michael J. Copps, Acting Chairman, FCC, BRINGING BROADBAND TO RURAL AMERICA, REPORT ON A RURAL BROADBAND STRATEGY, 2009 WL 3362778 (para. 1) (2009).

[14] *Id*. at para. 15.

[15] Recent surveys have shown that only 31 percent of rural Americans have broadband connections, and that only 31.3 percent of farms in rural counties have broadband connections. "Broadband Connection Highs and Lows Across Rural America," DAILY YONDER, accessed at http://www.dailyyonder.com/print/1921 (citing a survey conducted by the Pew Internet and American Life Project).

port for fixed voice services toward using this support for both fixed and mobile broadband services.

II. SUMMARY OF RESPONSES TO QUESTIONS IN NBP NOTICE # 19.

1. Size of the Universal Service Fund.

1.a. *Is the relative size of funding for each support mechanism appropriate to achieve the objective of universalization of broadband?*

At the outset, we note that Section 254 of the Act[16] requires the USF to be "sufficient" to achieve the universal service objectives. That is, the FCC must adjust fund size to meet program goals. Recent FCC decisions have improperly attempted to add the word "sustainable" to the statute.[17] Congress gave the Commission a set of goals and ordered that support be sufficient to achieve them. If sufficient support threatens sustainability—if contribution mechanisms cannot raise sufficient funds to meet Congressional goals—then Congress must step in and amend the statute to sustain or do away with the program. It is with this backdrop in mind that we urge the FCC to reform the contribution methodology as its first step in modifying universal service mechanism. Without a contribution methodology that evolves to collect an amount of support, consistent with how consumers are using the telephone network, to provide sufficient support to achieve the goals set forth in Section 254, the success of all other reforms is threatened. We discuss contribution reform in Section 2 below.

(1) ***High-Cost Support Mechanism.*** The high-cost fund must be transitioned over time to support broadband. Initially, it may not be possible to repurpose existing support from mobile and fixed voice services to broadband, because of limitations faced by existing carriers

[16] 47 U.S.C. § 254.

[17] This is a gravamen of RCA's challenge to the FCC's interim cap on support to competitive ETCs. *See High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*"), *appeal docketed, Rural Cell. Ass'n v. FCC*, Nos. 08-1284 & 08-1285 (D.C. Cir. Aug. 29, 2008).

with respect to issues such as plant depreciation or commitments made to state public utility commissions to build out networks in rural areas. However, in the short-term, the fund should grow to accelerate broadband investment, especially by mobile wireless carriers. The biggest near-term investment for mobile wireless broadband is towers and related infrastructure, which have a relatively long lifespan. In the long-term, the overall size of the fund may be reduced because operations and maintenance expenses are lower than the initial construction expenses being incurred at the outset. Accordingly, the overall size of the fund should be looked at from the perspective of how quickly the Commission seeks to achieve a robust build out of new infrastructure in rural America. From RCA's perspective, the fund needs to get bigger before it gets smaller, to accelerate new investment of more efficient plant that can be operated and maintained at lower levels in out years.

If the Commission simply permitted competitive ETCs to use support for broadband investments, it would only accelerate the investment curve of these competitive ETCs in the most remote areas where it is using support to construct cell sites. Put simply, new cell sites in high-cost areas, constructed with support, would all have modern broadband infrastructure included in the initial construction package, so that rural consumers may have immediate access to mobile broadband.

(2) ***Lifeline and Link Up Programs.*** RCA supports new Lifeline support for broadband. RCA also supports setting aside universal service funding for consumer education, to ensure that low-income users understand the value of broadband and increase their participation in our society. In particular, mobile broadband applications are going to become a larger part of American life and ever widening gaps between haves and have-nots present significant challenges to employment, health care, and basic safety. Many RCA members are active participants

in the current Lifeline/Link Up programs and RCA understands fully how vital a modern telecommunications link can be to low-income Americans, many of whom depend on a cell phone for a lifeline much more than high-income citizens. The current programs must include broadband and it should be increased significantly to drive broadband adoption.

2. Contribution Methodology.

RCA agrees with the general industry notion that the Commission must significantly modify the currently methodology for assessing contributions to the universal service fund. In doing so, it is absolutely critical that any new contribution mechanisms be competitively neutral – that is, contribution reforms must not favor or disfavor any technology or class of carrier – and reflect the accelerating shift from voice to broadband services. What cannot be allowed to happen is for the Commission to be limited to assessing interstate revenues that are melting away, as the distinction between voice and data traffic vanishes in an all IP world.

Perhaps, most importantly, the contribution base must expand. Today, the FCC collects support contributions from carriers through a mechanism based entirely on a percentage of revenues. A decade ago, when voice minutes made up the vast majority of carrier revenues, this mechanism was fine. Now, it is apparent that the days of per-minute voice dominating carrier revenues are behind us. Wireline voice minutes have been declining with the introduction of wireless and cable competition, as well as from consumers choosing Voice over Internet Protocol ("VoIP") service on their broadband connections. In addition, wireless consumers are increasingly using VoIP services that will reduce carrier revenues for voice services dramatically in the coming years.[18]

[18] *See, e.g.*, *Forbes* Magazine, "The $10 Phone Bill." (Nov. 16, 2009).

As consumer preferences shift toward data functions, including VoIP, text messaging, e-mail, and other means of communicating, the bulk of carrier revenues are going to come from IP services, with voice bits traversing networks in the same manner as any other data bits. As the Commission recently acknowledged, less efficient circuit switched voice revenues will continue to decline, and will eventually be phased out.[19] Following the transition, consumers may spend more overall than they do today on telecommunications services, but their dollars will be spent on data platforms, applications, and vertical services, with voice being one of many data applications. The networks that deliver all of these new services, along with IP voice, are no less challenging to construct, operate and maintain in rural America. Therefore, the contribution mechanism must adapt, so that a sufficient level of support can be generated to advance the core universal service goal that rural consumers have access to affordable and high-quality advanced services that are reasonably comparable to those available in urban areas.

The FCC's assessment of interstate telecommunications services draws from a shrinking pool of consumer revenues for a number of reasons. Some carriers use the FCC's "safe harbor" which pegs interstate revenues at 37.1% of a consumer's bill. The safe harbor results in wireless consumers contributing about 5.27% of their total phone bill. Other carriers are measuring traffic and discovering that interstate usage is much lower than the safe harbor, which dramatically reduces contributions. For example, if a carrier measures only 20% of its traffic as interstate, the contribution factor applies to that amount, while the remaining 80% of the bill is deemed intrastate and exempt from federal universal service support assessment. This results in a lower universal service charge for the consumer, and correspondingly, less support available in the system.

[19] *See Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Public Notice #25, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2517 (rel., Dec. 1, 2009).

In addition, the nation's economic recession is also playing a factor in shrinking the revenue pool. Consumers are looking everywhere possible to cut expenses and deciding "cut the cord" and/or shifting to lower priced wireless plans.

The end result of this shrinking revenue pool is that the USF contribution factor has now risen to over 14% of a customer's interstate bill. While RCA – unlike the Commission – does not consider the current contribution factor nor the general upward movement of the contribution factor to constitute an "emergency," the Commission's first step in reforming USF should be to expand the pool of USF contributors. By taking such action, the Commission will facilitate the needed near-term growth of USF for the deployment of broadband, spread USF contributions over a larger and more equitable contribution base, and reduce the contributions made by those Americans primarily reliant on a more traditional phone service (*e.g.*, wireline, wireless, inter-connected VoIP providers, MVNOs) for making interstate calls.

3. <u>Transitioning the Current Universal Service High-Cost Support Mechanism To Support Advanced Broadband Deployment</u>.

3.b. ***What would be the impact of designing a broadband support mechanism so that a provider's competitive loss of a subscriber results in the loss of associated funding?***

In examining the issue of portability, *i.e.*, providing that, if a carrier loses a subscriber, then it also loses universal service support associated with service provided to that subscriber, it is important to note that the Commission has long taken the view that funding portability is an important element of universal service funding mechanisms. The Commission endorsed portability based upon its conclusion that "[i]f the CLEC can serve the customer's line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC. The presence of a

more efficient competitor will require that ILEC to increase its efficiency or lose customers."[20] The *Alenco* court also pointed to the importance of portability, stressing that:

> the [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.[21]

In the early years of the universal service program, the Commission's policies were successful in promoting both universal service and local competition. Wireless competitive carriers began qualifying as eligible telecommunications carriers ("ETCs") and entering rural markets. Their ability to deploy infrastructure quickly, and at less cost, than wireline facilities, began to bring services (including highly sought after mobile services) to rural areas that previously had been unserved or underserved.

Importantly, this was accomplished in a cost-effective manner because of the efficiencies inherent in wireless infrastructure. Moreover, competitive entry not only placed some pressure on incumbents to operate more efficiently, but it also brought private investment into rural and high-cost areas, a result of the fact that many wireless competitive carriers combined their high-cost support with their own investments in order to provide competitive services in their newly-entered markets.

Although the Commission endorsed the policy of making universal service support fully portable, it chose to delay the implementation of this policy with respect to high-cost fund support received by rural incumbent local exchange carriers ("LECs").[22] The resulting protection

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[20] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8933 (para. 289) (1997) ("*First Report and Order*") (subsequent history omitted).

[21] *Alenco Communications v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) ("*Alenco*") (emphasis added).

[22] *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*,

that has been afforded to rural incumbent LECs (by allowing them to retain per line universal service support, even after they lose the line to a competing carrier) cannot be justified in the current universal service regime and certainly deserves no place as part of the new support mechanisms tailored by the Commission to the broadband world. Today, support among *competitive ETCs* is fully portable, and this policy not only promotes competitive entry[23] but also provides incentives to a competitive ETC to operate efficiently in order to avoid losing customers to a more efficient competitor.

In this regard, a strong advantage of portability is that it has the effect of taking universal service support away from inefficient carriers, thus lowering the overall level of disbursed support, as well as ensuring that support is provided to carriers that will use the support efficiently. Had portability been in place in connection with the disbursement of support to rural incumbent LECs, the growth in the size of the high-cost support mechanism (which the Commission has been so concerned about in recent years) would have been reduced considerably. Stated another way, if portability had been in effect, it would have paid for the growth in the high-cost funding mechanism resulting from competitive entry by wireless ETCs, since the disbursements to the wireless ETCs would have been offset by reductions in the level of support to rural incumbent LECs.

In sum, designing a broadband support mechanism so that a provider's competitive loss of a subscriber results in the loss of associated funding would have two important impacts. First,

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Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11294-95 (para. 125) (2001) (holding the portability requirement in abeyance to permit rural incumbent LECs to transition to a fully portable mechanism).

[23] *See First Report and Order*, 12 FCC Rcd at 8788 (para. 19) (finding that "universal service [should] be sustainable in a competitive environment; this means both that the system of support must be competitively neutral and permanent and that all support must be targeted as well as portable among eligible telecommunications carriers").

it would decrease upward pressure on the size of the broadband fund. Given the reasonable expectations that substantial funding levels will be necessary to effectively administer a national broadband plan designed to bring broadband services to rural and remote areas of the country, requiring funding portability would serve as an important check on broadband fund growth. Second, portability encourages competitive entry, and competitive entry benefits consumers. To the extent feasible, American consumers—including consumers in rural and high-cost areas—should have the benefits of a competitive marketplace that drives down price and encourages technological innovation and the development of services that meet consumer demand. Portability delivers these benefits by removing subsidies to incumbents to the extent the incumbents are ineffective in competing for customers based on price and service.

3.c. ***Would the size of any broadband funding mechanism be appreciably different if support were calculated based on a forward-looking cost model designed to calculate the lowest total cost of ownership on a technology-neutral basis, as opposed to individual provider submission of actual costs? Response should identify all assumptions.***

In RCA's view, there can be little doubt that the size of a universal service broadband funding mechanism would be smaller if disbursements from the fund are based on a technologically-neutral forward-looking cost mechanism, instead of being based on carriers' actual, or "embedded," costs. There are two principal reasons for this: a forward-looking cost mechanism, especially if structured in a technologically neutral manner, would result in the disbursement of funds to carriers able to design efficient and cost-effective broadband deployment mechanisms; and, at the same time, such a funding mechanism would eliminate carriers' incentives to inflate their actual costs as a means of receiving a greater level of broadband funding disbursements.

Reliance on an embedded cost funding model, in RCA's view, has long been a problematic aspect of the universal service high-cost funding mechanism. Rural incumbent LECs currently are permitted to receive high-cost support based upon the "embedded" costs they incur in

connection with their provision of funded services. The Commission knows, however, that this funding mechanism is the wrong policy. The embedded cost funding mechanism creates incentives that point in the wrong direction. The Commission itself has expressed the view that "a support mechanism based on . . . a carrier's embedded costs . . . provides no incentives for ETCs to provide supported services at the minimum possible costs . . . ." [24] Even more pointedly, the Commission has observed that, "[i]n many cases, support [provided through the embedded cost mechanism] is used to offset the increasing revenue losses to . . . incumbent carriers as the gap between legacy technology and more efficient technologies has widened."[25] Given the Commission's concerns about the growth in the size of the high-cost funding mechanism, the survival of the embedded cost mechanism is a surprising lapse in the Commission's policymaking efforts. The mechanism is a perverse incentive that rewards rural incumbent LECs for operating inefficiently, thus placing upward pressure on the size of the high-cost fund.[26]

The issue of forward-looking cost models and embedded costs is an important one because attempting to achieve ubiquitous deployment of broadband in rural and high-cost areas is an expensive proposition. Resources to accomplish the task will be limited. The Commission's objectives must be to direct resources toward efficient and relatively less expensive broadband infrastructure, and to provide incentives for the efficient use of this infrastructure in providing

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[24] *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1495, 1500 (para. 11) (2008).

[25] *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6656 (App. B) (2008) ("*USF Reform Further Notice*") (acknowledging that the embedded cost methodology is serving to protect incumbent rural LECs from their own inefficient technologies, investments, and operations).

[26] *See* Don J. Wood, Ex Parte Filing in WC Docket No. 05-337, Oct. 28, 2008, at 2.

broadband services. The embedded cost mechanism—which is still in use for rural incumbent LECs receiving high-cost support—does not pass the test. As RCA has discussed, the Commission itself is a strong critic of the embedded cost methodology because the perverse incentives it creates result in inefficiencies in carrier operations that unnecessarily gobble up high-cost support.

A key component of the Commission's transition to universal service mechanisms that support broadband deployment should be establishing a replacement for the rural incumbent LECs' embedded cost methodology. The search for a replacement should focus on costing mechanisms that identify the costs involved in building and maintaining an efficient network. Fortunately, this is not uncharted territory. The Commission has previously concluded, for example, that "[s]upport based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs."[27]

In light of the Commission's earlier findings regarding the advisability of using forward-looking costs, particularly in a competitive environment, RCA urges the Commission to adopt such a methodology in connection with the transition of its universal service mechanisms to support broadband deployment. Doing so would promote competitive entry by efficient carriers. Competitive entry promoted by a forward-looking cost methodology—coupled with the Commission's adoption of a requirement that broadband funding must be portable—will drive down

[27] *Federal-State Joint Board on Universal Service; Access Charge Reform*, Seventh Report and Order and Thirteenth Order on Reconsideration, Fourth Report and Order, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8103 (para. 50) (1999) (footnote omitted) (adopting a costing methodology for non-rural carriers). *See Verizon Communications v. FCC*, 535 U.S. 467 (2002).

the size of the fund because competitive success will depend in part upon the cost effective deployment of broadband infrastructure and delivery of broadband service.

RCA also suggests that the Commission consider the use of cost models in connection with the calculation of forward-looking costs. The sophistication of computer models for estimating network costs has advanced significantly during the past ten years, suggesting that the Commission would be well-served by exploring whether models have been developed that would have particular relevance in the context of estimating broadband infrastructure costs.

3.h. ***What would be the impact of capping the funding available under such mechanisms? How should any such cap be calculated, and should it apply on a per-carrier basis, or to a geographic area, and why?***

Placing a cap on the broadband fund, in RCA's view, would run the risk of contradicting and undercutting the purposes for which the fund would be established in the first place. The Commission's goal is "for every American citizen and every American business to have access to robust broadband services… [and] for the United States to be a model for the world in creating a partnership between government and industry to ensure that all citizens have access to broadband."[28] Therefore, the Commission's plan should be to determine, through the use of measures and analyses that achieve as much precision as possible, the size of the broadband fund necessary to accomplish these goals, and then devise the means that fairly and effectively generate contributions to the fund sufficient to meet these goals. Capping the broadband fund, almost by definition, would mean that the Commission has decided to forego any full accomplishment of its defined broadband goals. That, in short, would be the impact of a cap.

If the Commission decides, however, that there is some need to cap broadband funding, then two principal considerations should govern the structure and application of the cap. First,

[28] *Broadband Notice of Inquiry*, 24 FCC at 4344 (para. 5).

the cap should be applied in a competitively and technologically neutral fashion, so that no particular class of broadband service providers is unfairly advantaged or disadvantaged by the cap. Second, the cap should avoid, as much as possible, interfering with the ability of carriers to meet their pre-existing commitments regarding the deployment of broadband infrastructure. Any such interference would disadvantage consumers in rural and remote areas where this deployment would be targeted.

The "interim" cap imposed by the Commission in 2008 on the disbursement of high-cost funds to wireless competitive ETCs provides a useful example of how the Commission should not impose a cap.[29] A significant problem with the Commission's action was that it failed even to consider imposing a cap on all high-cost support recipients—incumbent rural LECs as well as competitive carriers—even though incumbents receive the lion's share of the support.[30] Further, the Commission's refusal to apply the cap across the board to all support recipients was a clear violation of the agency's own core principle of competitive neutrality.

The wireless cap has had, and continues to have, a significant effect on the flow of high-cost support into rural and high-cost areas. A few examples illustrate this point. First, prior to imposition of the cap Virginia had been receiving uncapped high-cost disbursements of just over $26 million annually. The cap has reduced Virginia's disbursements to just over $15 million. Second, North Carolina has experienced similar reductions, with estimates that the state will lose

[29] *See Interim Cap Order*.

[30] RCA has pointed out, for example, that:

> of the approximately $6.96 billion in total Fund disbursements in 2007, 44.70 percent ($3.11 billion) was received by incumbent LECs in the form of high-cost support, compared to only 16.95 percent ($1.18 billion) received by competitive ETCs. Incumbent LECs thus received about 2.6 times as much high-cost support as competitive ETCs.

RCA, "Cut the Cap: The Commission Should Repeal the Interim Cap on High-Cost Universal Service Support Received by Wireless Carriers," Position Paper (May 1, 2009), at 13, accessed at http://www.rca-usa.org/displaycommon.cfm?an=1&subarticlenbr=227.

more than $23 million annually in high-cost disbursements because of the cap.[31] Third, seven states—Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Ohio, and Rhode Island—are not eligible to receive any high-cost funding because they had not designated any competitive ETCs to provide service in their jurisdictions before the March 2008 cut-off date established by the Commission in the *Interim Cap Order*.[32] These examples lend support to RCA's conclusion that "[t]he harm that the CETC 'interim' cap is causing to rural America is *real* and is getting worse as long as it remains in place."[33]

The Commission's precipitous action in imposing an interim cap on high-cost funding mechanism disbursements to wireless competitive ETCs lacked any reasonable or persuasive factual underpinnings or policy justifications, was fashioned in a manner that disregarded competitive and technological neutrality, and has resulted in unnecessary and harmful funding disruptions in many states. Thus, if the Commission considers capping its broadband fund, it should not lose sight of the lessons to be learned from the wireless high-cost cap.

4. Impact of Changes in Current Revenue Flows.

4.a. ***What factual analyses should the Commission undertake to test the validity of such arguments?***

Some have argued for years that virtually any reduction in support will jeopardize their ability to continue to serve customers. Yet private companies have never been required to pro-

[31] *See* Letter from David A. LaFuria & Todd B. Lantor, Counsel for RCA, to Julius Genachowski, Chairman, FCC, July 23, 2009 ("RCA July 23 Letter"), at 2. The RCA letter observes that:

> As a result [of the cap], wireless carriers serving [North Carolina] are being forced to cancel or delay plans for new cell site construction. By way of example, Carolina West Wireless . . . has canceled plans to build eight new cell sites in its licensed service area. As a result, 20 communities in western North Carolina served by Carolina West will continue to have limited or no cellular service.

Id.

[32] *See* Letter from Eric C. Peterson, Executive Director, RCA & David L. Nace, Counsel for RCA, to Michael J. Copps, Acting Chairman, FCC, May 1, 2009, at 5.

[33] RCA July 23 Letter at 2 (emphasis in original).

duce hard evidence of when such dire consequences will occur. Other public companies are paying dividends at a rate of over 10%, providing massive excess cash flows to shareholders.

RCA believes the Commission should first explore whether the use of a cost model can wring efficiencies out of the universal service mechanism. RCA urges the Commission to consider the following points regarding cost modeling:

- Cost models have been used for non-rural carriers, covering some of the most remote rural areas in the country. It can be done.
- The current Business Planning and Cost Model is outdated and does not provide support equitably.
- Computing power in 2009 is light years ahead of where it was in 1996. The ability of models to operate on very granular levels eliminates many objections that a model is a one size fits all solution that does not work for smaller carriers.
- Mapping software is light years ahead of where it was in 1996. Current commercial programs such as, for example, MapInfo, provide designers with the ability to target support more accurately and estimate costs with much greater precision than thirteen years ago.

A model which provides support at an efficient level eliminates all need to pull data from carriers and to regulate market behaviors with respect to issues such as related party transactions. If a carrier receives an efficient level of support and is required to offer service throughout a supported area, then there is little or no room for support to be wasted.

There is precedent for RCA's views. This Commission has previously struggled with the issue of analyzing carrier cost data, rejecting that approach in favor of a cost model:

> The use of a carrier's book costs, by contrast, would not allocate support in a competitively neutral manner among potentially competing carriers. Instead, such

> a system would tend to distort support payments because current book costs are influenced by a variety of carrier-specific factors, such as the age of the plant, depreciation rates, efficiency of design, and other factors. Support based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.[34]

In sum, undertaking the exercise of testing the validity of arguments that carriers are over- or under-compensated by existing support mechanisms can be avoided by determining carrier costs based on a model.

4.b. ***What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already is at least one competitor offering broadband (using any technology) today that does not receive any high-cost support?***

This question presumes that a competitor is providing relatively perfect competition in terms of quantity and quality of service. In the wireline world, if a competitor strings a wire to every home and business in a high-cost area, then reducing or eliminating support to both carriers can be explored. The quantity of service, that is, whether every house is passed, is relatively easy to measure. In the wireless world, measuring coverage levels throughout an area at a granular level to determine the quantity and quality of service is a much more complex undertaking.

We note for example the proposal made by the National Cable and Telecommunications Association ("NCTA") to reduce or eliminate support in areas when a competitor serves 75% of the customers in an area without support.[35] Without providing detailed comment on NCTA's proposal here, we are constrained to note that most carriers can provide service to 75% of the

[34] *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8103 (para. 50) (1999) ("*Seventh Report and Order*") (footnotes omitted).

[35] *See* National Cable and Telecommunications Association, Petition for Rulemaking, Reducing Universal Service Support in Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition, RM- —, filed Nov. 5, 2009.

customers in an area without support. In RCA members' experience, it is the high cost of providing service to the last 25% of the population that generates the need for support. Accordingly, RCA believes NCTA's proposal would eliminate support just as an NCTA member company succeeds in cream skimming the highest-density and easiest to serve portions of a particular service area. NCTA's petition would be more credible if support reductions occurred when a competitor's facilities pass 100% of a service area. Moreover, there are easier ways to accomplish much of what NCTA seeks. For example, the current rules, which permit but do not require disaggregation of support, could be used to more accurately target support in areas served by rural telephone companies.[36] This would more clearly identify high-cost areas requiring support and reduce support to competitors who only serve low-cost areas.

4.c. ***What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there are already multiple competitors offering broadband (using any technology), with more than one of those providers receiving high-cost service support.***

This question requires a short examination of how support is provided to competitive ETCs. Today, the FCC supports one competitive network throughout each incumbent LEC service area. One unit of support is provided to each competitive ETC customer in a service area. Support is portable, that is, the carrier that gets the customer also gets one unit of support. Over the years, RCA has consistently advocated that portable support, no matter what methodology is used to determine the level of support, is an essential component of competitive neutrality, which aligns with the FCC's holding: "We agree with the Joint Board that competitive neutrality is a fundamental principle of universal service reform, and that portability of support is necessary to ensure that universal service support is distributed in a competitively neutral manner."[37]

[36] *See* 47 C.F.R. § 54.315.

[37] *Seventh Report and Order*, 14 FCC Rcd at 8113 (para. 73).

When a competitive ETC takes a customer from another competitive ETC, it gains customer revenue and support, while the other competitive ETC loses customer revenue and support. This is as it should be, because each carrier's incentives to offer high-quality service, lower prices, and gain customers is aligned with the awarding of support. Accordingly, the number of carriers in a particular area is driven by the marketplace which, again, is as it should be.

Rural consumers must be empowered by providing choices in the marketplace, and areas where only one carrier (or no carrier) can survive without some level of support are precisely those areas where support should be provided. Some recent Commission pronouncements stepped away from this concept, questioning the wisdom of providing support as a means of promoting artificial competition.[38] RCA believes such an approach interpreted the statute exactly backward—that is, support must be provided only in areas that do not support competition on their own, to avoid the FCC's promoting or sustaining artificial monopolies.

Jack Rooney, the Chief Executive Officer of United States Cellular Corporation, has testified before the Senate Commerce, Science, and Transportation Committee on the importance of portability in empowering consumers.[39] He noted that one of the biggest problems with the current mechanism is that incumbent carriers do not lose support when they lose customers.[40] Before the FCC decided to allow incumbents to retain 100% of their support, it properly ruled:

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[38] *See Interim Cap Order*, 23 FCC Rcd at 8841-42 (para. 15), 8843-44 (para. 20).

[39] *See* Statement of John E. Rooney, Chief Executive Office, United States Cellular Corporation, before the U.S. Senate Committee on Science, Commerce and Transportation (June 12, 2007), accessed at http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=37f1f667-9824-460f-a4b6-c678b6c815d0&Witness_ID=a559f153-f278-4787-bd26-dd01d1e96c32.

[40] *Id*. ("Why should wireline carriers get subsidized even when they lose customers? Wireline carriers in rural areas have lost 10% of their access lines over the past three years; however, they continue to draw $3 billion annually. When we lose customers, we lose support, and that's the way it should be. As consumers increasingly choose wireless for their voice needs, we should be receiving an increasing share of the fund so we can provide rural consumers with the high-quality service they deserve. If any one sector deserves heightened scrutiny, I would argue it's the landline providers that continue to benefit from the program while being insulated from financial and market realities.").

> Moreover, it would eviscerate the concept of "portable" support if the loss of customers to a competitor did not change the incumbent's support amounts. We conclude, therefore, that incumbent LECs will not be held harmless for reductions in their federal high-cost support amounts that result from competitive LECs capturing that incumbent LEC's customers.[41]

Some argue that the current "per-line" mechanism is inefficient because wireless carriers have more lines than wireline networks, since every person can carry a handset while normally only one or two access lines run to a home. Such arguments assume that a wireless phone is used in the same fashion as a wireline phone. Wireline carriers provision service at a home and no place else. Wireless carriers must provision service throughout a wide area. That is, when five adults, each of which has a wireless handset, live in one household, they do not use the wireless network exclusively at that one point. Each day they may scatter throughout the community and expect service to be provided everywhere they live, work, and travel.

The proper answer is not to limit the number of handsets or lines that can be supported, but to right-size the fund so that all consumers have access to a high-quality network that provides service throughout the service area. If support is provided at an efficient level, accurately targeted to high-cost areas, and portable to the carrier that gets the customer, then multiple carriers can enter to compete for customers and support. The government sets support amounts but does not micromanage the marketplace. This is a vastly superior system than one which picks a single winner and requires monopoly-era regulation of a dominant carrier, or one which props up antiquated technology long after consumers are expressing their clear desire to move to modern platforms.

With this as background, RCA unequivocally agrees with the concept that support mechanisms should not pay to construct multiple overlapping networks. Rather, support mecha-

[41] *Seventh Report and Order*, 14 FCC Rcd at 8114 (para. 74).

nisms should be properly sized so that multiple carriers receive enough support, when combined with their own funding, to enter an area to provide rural consumers with choices and service quality that are reasonably comparable to that which is available in urban areas. Support should flow with a consumer's choice so that newcomers who have a better service, a lower cost structure, or higher quality, are encouraged to enter and not be shut out by monopoly constraints.

In sum, RCA believes that an efficient level of support, accurately targeted to high-cost areas and portable to the carrier that wins the customer, can fulfill the goals set forth in Section 254 of the Act. If the Commission makes this the focus of its universal service reform, rural consumers who need improved service, as well as urban consumers who pay into the high-cost fund, will both be well served.

5. <u>Competitive Landscape</u>.

The *Public Notice* reflects the Commission's fundamental misunderstanding about carriers of last resort. Carrier of Last Resort ("COLR") obligations do not justify a preferential level of support. In the *Public Notice*, the Commission claims that "virtually all incumbent local exchange companies operating in rural high-cost areas have [COLR) obligations for voice service, while other providers that are offering voice, video and/or broadband in such areas do not."[42] This assertion is reflective of an archaic ideology at the Commission—created by incumbent LEC interests[43] who are increasingly relying on their COLR "obligation" as the rationale for

[42] *Public Notice* at 6.

[43] *See e.g.,* Statement of Leslie Greer, Chief Executive Officer, DTC Communications, Alexandria, Tennessee, before the United States House of Representatives Committee on Energy and Commerce's Subcommittee on Communications, Technology, and the Internet (Nov. 17, 2009) (testifying on behalf of the National Telecommunications Cooperative Association) ("…[T]he competitors' costs are usually far less because they have not been required to serve all customers throughout the market area as incumbents have."; *see also* Reply Comments of OPASTCO, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4, 08-5, 08-22 ("[R]ural ILECs are subject to many stringent state and federal regulations that competitive ETCs are not required to adhere to, including COLR obligations…"), at 18.

make-whole payments"[44] despite a complete lack of merit to their argument—that must change as it explores competitively-neutral policy options to further the Commission's "goal of making broadband universally available to all people of the United States."[45]

While the Commission expressly rejected proposals to impose COLR obligations as a condition of ETC designation in the *First Report and Order*,[46] all ETCs—*including wireless ETCs*—have an obligation to respond to reasonable requests for service—effectively a COLR equivalent.[47] In addition, Section 214(e)(3) of the Act,[48] which gives the Commission (with respect to interstate services) or a State commission (with respect to intrastate services) authority to order a common carrier to provide service to an unserved community or portion thereof, is equally applicable to both wireline and wireless carriers. Similarly, Section 214(e)(4) of the Act gives State commissions authority to apply COLR obligations to wireless carriers in situations where a wireless ETC becomes the only ETC in an area.[49] Moreover, several states require a

[44] *See e.g.*, Michael D. Pelcovits, Ph.D., Microeconomic Consulting & Research Associates, Inc., *Debunking the Make-Whole Myth: A Common Sense Approach to Reducing Irrational Telecommunications Subsidies, White Paper #3* (Nov. 17, 2008), at 25, 29 ("[T]he potential cost of [the COLR] obligation is much less than the current sources of explicit and implicit subsidies now received by the ILECs. . . . The make-whole model does not apply anymore and there is no evidence that failure to apply this model will sacrifice consumer welfare or limit the ability of the ILECs to invest in new infrastructure. It is time for reform—and a reform without apology.").

[45] *Public Notice* at 1.

[46] *See First Report and Order*, 12 FCC Rcd at 8862-70 (paras. 154-168).

[47] *See* 47 U.S.C. § 214(e)(1) (requiring all ETCs to "offer the services that are supported by Federal universal service mechanisms" "throughout the service area for which the designation is received"); *see also* 47 C.F.R. § 54.202(a) (requiring any common carrier in its application to be designated an ETC to "commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service."); 47 C.F.R. § 54.202(a)(1)(i).

[48] 47 U.S.C. § 214(e)(3).

[49] 47 U.S.C. § 214(e)(4).

wireless ETC, as a condition of designation, to be COLRs in the event that it is the last ETC serving a particular area.[50]

Incumbent LECs have historically argued that the FCC and State commissions should not reduce their high-cost support because doing so will allegedly undermine their ability to comply with their COLR obligations. This argument is bogus. COLR obligations are rarely the reason why a carrier builds out its network to reach new customers. An incumbent LEC—and, in a competitive market, a competitive LEC—will build facilities to a new residential development because the revenue opportunity from serving the new units justifies the investment. In a market with facilities-based, last-mile competition, the incumbent LEC has a market incentive to extend its network so that it can have the opportunity to serve these customers, rather than ceding that opportunity to a competitor. Build-out in these cases is clearly not attributable to COLR requirements.

Even when the incumbent LEC must extend its network pursuant to its COLR obligations, the requirement to do so often is limited by the terms and conditions of its line extension tariff, which mitigate substantially any burden—economic or otherwise—on the incumbent LEC.[51] In fact, COLR obligations are generally cash generators for incumbents, because wire-

[50] *See e.g.*, RCC Minnesota, Inc., Docket No. UM-1083 at p. 10 (Or. PUC, June 24, 2004); PSC 160.13(1)(a) (Wisconsin Administrative Code) (" [An ETC] is eligible to receive universal service funding under both applicable federal and state universal service programs for an area, if it," among other things, "holds itself ready to offer service to all customers in the area.").

[51] *See*, *e.g.*, Reply Comments of General Communication, Inc., CC Docket No. 96-45 (filed Dec. 14, 2004), at 17-19 (explaining that the line extension tariffs of an incumbent LEC competitor require any customer that is more than 1,000 feet away from existing facilities to pay the full cost of extending those facilities beyond 1,000 feet. The incumbent LEC customer must also agree to pay, in advance for four years of basic local service, which is offset against construction fees. In addition, the customer moves or otherwise drops service for any reason, the customer loses the prepaid service fees. Moreover, the cost of the first 1,000 feet of a line extension is further offset by other revenue the COLR receives from the customer during its four years of prepaid basic local service, as well as enhanced services such as vertical feature revenue or toll calling.)

line carriers are not required to forgo a fair return on investment when fulfilling COLR obligations. In contrast, competitive ETCs have COLR obligations with no such guaranteed return on investment. Thus, rather than imposing a substantial net burden on incumbent LECs, COLR provides the rural incumbent LEC with a significant competitive advantage over wireless ETCs.

In short, in the entire universal service debate, perhaps no other argument has been so shamelessly used and abused as the COLR obligation. Every new wireless entrant that seeks ETC status statutorily accepts that it might be asked to serve all customers within its service territory at some future date. Therefore, because wireless ETCs face effectively the same service obligations as incumbent LECs, there is absolutely no reason to provide incumbent LECs with a preferential level of high cost support. Any USF reform measures should reflect this reality, particularly if the Commission wants to uphold its guiding policymaking principle of competitive neutrality.

6. <u>High-Cost Funding Oversight</u>.

The Commission should adopt competitively neutral oversight and accountability mechanisms modeled after the current ETC reporting and compliance rules of the Commission and many states. Under Section 214(e)(2) of the Act,[52] a state has exclusive jurisdiction to designate competitive ETCs unless it expressly cedes jurisdiction to the FCC. State commissions have discretion under that section, subject to other constraints imposed by Congress, including the requirement to impose competitively neutral rules and preempting rate and entry regulation of Commercial Mobile Radio Service carriers. Although not required by the statute, the vast majority of states have conducted extensive fact-finding, witness testimony, evidentiary hearings, and legal briefing over the span of a year or longer before a final decision is reached. States have also

[52] 47 U.S.C. § 214(e)(2).

generally been thoughtful in considering and adopting rules governing ETC designation, ongoing compliance, and certification. Other states have attempted to extend wireline-style rules to competitors, with adverse consequences for the deployment of telecommunications infrastructure and the availability of high-quality service to consumers in rural areas.

Competitive neutrality is a core universal service principle,[53] and the Commission has made competitive neutrality the cornerstone of its current ETC compliance rules. The Commission should similarly adopt competitively neutral rules governing the use of high-cost support for the deployment of broadband service. To reduce the burdensome rules and regulatory uncertainty, the Commission itself should take full responsibility for reviewing and approving the cost data for high-cost funding purposes. Given the fact that the high-cost fund is a federal program that disburses federal dollars, it would be inappropriate for the Commission to delegate cost data review functions to the state regulatory commissions. In addition, such a step would place substantial burdens on state commissions as well as competitive carriers, and would inevitably lead to conflicting precedents and decisions regarding the treatment of cost data that would impose further burdens on wireless competitive ETCs and hamper the efficient operation of the fund disbursement process. This burden would be extraordinary for carriers providing services in multiple states.

Alternatively, should the dual federal-state system of overseeing USF compliance be preserved, RCA urges the Commission to continue to encourage states to adopt rules and to refrain from imposing legacy regulations from the monopoly era on wireless carriers.

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[53] *First Report and Order*, 12 FCC Rcd at 8801 (para. 47) ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

A competitively neutral tracking mechanism could follow the approach of many states that require ETCs to provide detailed annual reports demonstrating how they are using their high-cost support. Carriers are typically required to report the amount of high-cost support received during the previous year, the various types of capital and operational expenditures for which the support was used during the previous year, and the planned uses of high-cost support for the next year. Several states have adopted such a requirement after thorough consideration of alternatives.[54]

Proposals to require competitors to throw open their books and provide dollar-for-dollar accounting, "trend-line analysis", or demonstrate "incremental" spending, have been properly rejected when given proper consideration at the state level, and should similarly be excluded from any final rules the Commission adopts as a result of this inquiry. The FCC should take note of the reasoned decisions many state commissions have issued, after due consideration of differing proposals, to require ETCs to report USF receipts and expenditures in a way that is detailed enough to give the regulator an idea of how the money is being spent, yet not so burdensome as to be tantamount to a ratemaking proceeding.[55]

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[54] *See, e.g.*, Eligibility, Certification, and Reporting Requirements for Eligible Telecommunications Carriers [199 IAC 39], Docket No. RMU-06-1 (Iowa Util. Bd., Oct. 6, 2006), *recon. denied*, Nov. 20, 2006) ; Staff Investigation to Establish Requirements for Initial Designation and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support, Docket No. UM-1217, Order No. 06-292 (Or. PUC, June 13, 2006); In the Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible Telecommunications Carrier Designations for Receipt of Federal Universal Service Fund Support, Case no. TX-2006-0169, Order of Rulemaking (Mo. PSC, March 7, 2006), *reh'g and clarif. denied*, Apr. 14, 2006); In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, to add rules for designating eligible telecommunications carriers in Nebraska for the purpose of receiving federal universal service support, Rule and Regulation No. 165, Certificate of Adoption (Neb. PSC, Sept. 21, 2005); In the Matter of Amending WAC 480-120-399, Adopting WAS 480-123-020 through WAC 480-123-080, and WAC 480-123-999, Relating to Designation and Certification of Eligible Telecommunications Carriers (ETCs), Docket No. UT-053021, Order Amending and Adopting Rules Permanently (Wash. Util. & Transp. Commn., June 28, 2006).

[55] In addition to the examples noted in footnote 53 above, the annual ETC certification review by the Maine Public Utilities Commission is another good example of a rigorous examination that is sensibly focused on how an ETC's investments have benefited consumers.

7. Lifeline/Link Up.

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

7.a.i. ***Who would own such devices, and what would become of these devices should a consumer exit the program or seek to upgrade his/her device?***

7.a.ii. ***How would consumers purchase such devices—through vouchers, reimbursement, and/or some other means?***

RCA believes support for devices should be done through a grant that provides a certain level of support not more than once every two years. Support would be in the form of a coupon that a consumer may spend on an eligible device. For example, a $100 coupon for a netbook would enable a consumer to purchase any netbook that suits his/her needs with a $100 coupon. Under this proposal, it would be unlikely that the cost of tracking devices and having them returned by consumers exiting the program would be less than the cost of simply allowing customers to keep the device once purchased. As for customers upgrading devices, a limit of one coupon every two years would allow upgrades at reasonable intervals.

7.a.iii. ***Should the Commission limit the types of devices available to consumers participating in the program? Commenters should identify with specificity any implementation issues.***

7.a.iv. ***Should the Commission determine some sort of minimum specification for supported devices? If so, how should these specifications be set initially and how should they change over time as technology evolves? Commenters should identify with specificity any implementation issues.***

Consumers should be able to purchase any device that enables broadband access. The FCC should not determine minimum specifications, other than that the device be capable of accessing the Internet through any broadband provider. Consumers are in the best position to determine which device and at which price point works best for them, and they should not be limited to low-end devices.

7.b. ***Commenters should provide estimates of the anticipated demand for a low-income broadband program.***

7.b.i. ***How should the Commission determine the appropriate support amounts for devices and for service? Please provide data supporting the proposed support levels and identify all assumptions.***

7.b.ii. ***Should funding be initially capped for a trial period, and if so, at what level?***

7.b.iii. ***How much low-income support would be necessary in the aggregate to enable all eligible consumers to participate in a low-income broadband program? Commenters should identify all assumptions.***

RCA does not have the means to provide estimates as to how much Lifeline funding will be needed to fully enable low-income consumers to access broadband. Accordingly, RCA suggests that a pilot program be implemented to make the requisite informed determinations. Support levels for devices and demand for various devices can be measured more accurately and extrapolated nationwide if a one-year pilot program were immediately implemented.

7.c. ***What eligibility requirements should apply to consumers participating in a low-income broadband program?***

7.c.i. ***Should these eligibility requirements be the same as or different from the eligibility criteria in the existing low-income program?***

7.c.ii. ***If the consumer eligibility requirements should be the same, then should current subscribers in the existing low-income program be automatically enrolled in the low-income broadband program?***

7.c.iii. ***If the consumer eligibility requirements should be different from those applied in the existing program, what should these different eligibility requirements be?***

7.c.iv. ***How should the Commission define "household" and "head of household" for purposes of determining eligibility for any low-income broadband program that the Commission might establish?***

RCA favors using the same or similar eligibility requirements that are used in the existing Lifeline and Link Up programs, however, the list of eligible programs and income thresholds

should be comprised of a single nationwide standard. Currently eligible households should automatically qualify for participation in the new broadband Lifeline program.[56]

7.d. ***How can the Commission provide flexibility to consumers to select the service offerings that meet their needs under a broadband Lifeline/Link Up program?***

Consumers must be empowered to select services that best meet their needs. The best way to do this is to continue the current Lifeline program requirement, which is that an eligible low-income consumer is entitled to service from a single provider, and it may receive a discount from any qualifying provider. In this fashion, providers will have an incentive to serve low-income markets, and low-income consumers will find the best service for them, just as any other customer.

7.e. ***One option would be to permit carriers who are not eligible telecommunications carriers (ETCs) to be eligible to participate in a low-income broadband program.***

7.e.i. ***What would be the impact of allowing non-ETCs to be eligible to participate?***

7.e.ii. ***Should ETCs currently participating in the existing low-income program automatically be eligible to participate in a low-income broadband program? Why or why not?***

7.e.iii. ***What would be the impact of having requirements for carriers participating in a low income broadband program that differ from the requirements imposed on existing ETCs? If commenters believe there should be different requirements, what should these different requirements be?***

7.e.iv. ***What would be the impact of requiring providers participating in a low-income broadband program to conduct outreach to inform potential eligible consumers about the program? Quantify the impact on carriers and identify any operational issues. If such outreach is required, should the outreach be the same as or different***

[56] The term "household," for Lifeline and Link Up purposes, should be defined in a manner that ensures that low-income residents of homeless shelters, other group living facilities, and multiple-family dwellings are not lumped together and treated as members of a single household.

from the outreach requirements in the existing low-income program? Why or why not?

The advantage of having only ETCs participate in such a program is that regulator concerns about fly-by-night operators accessing such a program would be minimized.

ETCs currently eligible should be automatically eligible to participate in any new program because they have shown their qualifications to take on the public trust associated with being an ETC, they are familiar with the program generally, and in rural areas they are building broadband networks that consumers participating in a new broadband Lifeline program will use.

The requirements for participating in the Lifeline broadband program should be the same as the existing program. There is no reason to extend new qualification requirements beyond those currently in place for being an ETC.

Many RCA members currently do Lifeline and Link Up outreach and the methods they use can also be effective in increasing consumer awareness about a broadband Lifeline program. RCA member carriers advertise the availability of Lifeline and Link Up discounts and they place information in their stores to inform low-income consumers of Lifeline. The Commission could also require display ads in department stores selling broadband devices to make consumers aware of the availability of discounts on devices and services for qualifying customers, referring them to carriers for further information. Such efforts would undoubtedly lead to collaborative actions by carriers and stores to inform consumers of discounts on both devices and broadband services.

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?***

There is no reason why a newly-established broadband Lifeline/Link Up program cannot be operated in concert with state programs, similar to cooperation that exists today in the existing programs. It is RCA's view that current federal and state Lifeline programs work fairly well, and that the biggest issue is ensuring that eligible consumers are aware of program discounts.

7.g. ***If the Commission establishes a low-income broadband program, what implications would such a program have for existing Lifeline and Link Up programs? For instance, would creation of a new low-income broadband program have any impact on current enrollment levels in the existing Lifeline and Link Up programs?***

While it is difficult to tell, RCA is aware of survey data indicating that rural consumers value mobility as much as, or more than, their broadband connection. The link to family and friends, as well as the safety aspect of a mobile handheld device, is a must-have in today's world. Accordingly, RCA does not believe that low-income consumers are going to give up their handset in exchange for a broadband laptop or netbook. Generally, they are going to want to have both.

Any consumer education efforts will likely increase enrollment in existing Lifeline and Link-Up programs in areas where enrollment is well below the level of eligible households.

7.h. ***If commenters believe that corresponding changes should be made to the existing Lifeline and Link Up programs, what would be an appropriate transition timeline and what implementation issues would need to be addressed and why?***

The existing Lifeline program should be updated to reflect the fact that many households do not use wireline telephony and when there are two working adults, both of whom live in a household that is Lifeline-eligible, discounted telephone service should be available to both adults. The Commission should grant the clarification sought by TracFone,[57] which would en-

[57] *See* Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule As Applied to Group Living Facilities, WC Docket No. 03-109, Public Notice, DA 09-2257, 2009 WL 3393068 (rel. Oct. 21, 2009).

sure that consumers in homeless shelters each have access to Lifeline service, as well as residents of tribal lands, who sometimes live in multi-family dwelling units.

7.i. ***How can the Commission protect against waste, fraud, and abuse in any low-income broadband program it establishes?***

7.i.i. ***Particularly, how can the Commission protect against waste, fraud, and abuse related to any hardware or devices used in the program?***

7.i.ii. ***How can the Commission ensure that consumers cannot obtain the same supported service from two different providers?***

While guarding against waste, fraud, and abuse in any low-income broadband program is a legitimate concern and should be given careful consideration by the Commission as it works to develop broadband Lifeline and Link Up programs, RCA would caution the Commission against developing requirements that could risk undermining the effectiveness of the programs. If low-income consumers are weighed down in paperwork and subjected to restrictive and burdensome requirements, they could become reluctant to participate in the programs. Similarly, if carriers are faced with costly and burdensome reporting requirements, or are assigned the *de facto* role of policing the way in which consumers seek to participate in the programs, then carriers may not have sufficient incentives to utilize the low-income broadband programs.

The current Lifeline and Link Up programs rely upon various certification, self-certification, and verification requirements[58] to protect against waste, fraud, and abuse, while at the same time avoiding more burdensome requirements that could prove to be counter-productive. RCA encourages the Commission to consider these mechanisms as an enforcement model for low-income broadband programs.

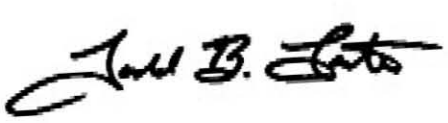
[58] *See* 47 C.F.R. §§ 54.410, 416.

III. CONCLUSION.

RCA applauds the Commission and the Chairman[59] for initiating this Public Notice and welcomes the opportunity to participate in this process. By taking reform initiatives consistent with the recommendations provided herein by RCA, the Commission will ensure its adherence to the statutory direction provided by Congress.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION



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[59] *See "Innovation in a Broadband World*," Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, The Innovation Economy Conference, Washington, D.C. (Dec. 1, 2009) ("The goal of universality is as important as ever -- and to meet our country's innovation goals, we need to reorient the fund to support broadband communications. This is a thorny issue, with no shortage of practical and statutory challenges. We need to wring savings out of the system, protect consumers, avoid flashcuts, while ultimately moving USF in the direction it needs to go to support our 21st century platform for innovation.").