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

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| In the Matter of | ) | |
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| International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act | ) ) | GN Docket No. 09-47 |
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| A National Broadband Plan for Our Future | ) | GN Docket No. 09-51 |
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| 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 – NBP Public Notice #19**
**Charter Communications, Inc.**

Charter Communications, Inc. submits the following comments in response to Public Notice #19 to support the inclusion of significant measures to reform the federal Universal Service Fund as part of the National Broadband Plan.

## I. Eliminating Unnecessary High-Cost Support in Competitive Areas

When the federal Universal Service Fund was created in 1996, there was no obvious way for the Commission to determine whether an area could economically be served by unsubsidized competitors because facilities-based local telephone competition generally did not yet exist. Thus, the Commission had to invent a temporary proxy to guess where subsidies were needed, for example by providing subsidies to areas with loop costs significantly higher than the national average. However, thirteen years later, the Commission no longer needs to guess whether unsubsidized, affordable service is theoretically viable; instead, it can simply observe where such competition exists. This approach was not available in 1996, but is obviously a more accurate indicator, now that it is.

Therefore, the Commission should adopt a simple rule proposed by Charter,[1] NCTA,[2] and public interest organizations[3] that no carrier could receive high-cost support to serve an area where any other private, facilities-based service provider offers both telephone and broadband service without a FUSF high-cost subsidy, at prices reasonably comparable to those services provided in urban areas. By eliminating high-cost support where it is unnecessary, this change offers by far the Commission's best opportunity to secure as much as $2 billion or more in new support for universal broadband without increasing the burden of USF on consumers.[4]

Extracting these savings from the existing program is essential if the Commission is to use the fund to implement a national broadband plan. Charter agrees with Chairman Genachowski that "we have to find a way to reform universal service in a way that wrings out efficiencies, that saves money, and that doesn't increase the burden on consumers."[5] The contribution rate is already on track to rocket to record new levels next year. These USF charges are paid out of the same consumer pockets that are used to buy broadband, so every increase in USF makes broadband that much less affordable for consumers. Therefore, Charter recommends

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[1] Docket 09-51, Letter from Megan M. Delany, Charter Communications, to Marlene H. Dortch, FCC (Sept. 16, 2009) (attaching "Reforming the Universal Service Fund to Ensure Universal Broadband Availability").

[2] See *Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition*, RM-____, Petition for Rulemaking filed by the National Cable & Telecommunications Association (Nov. 5, 2009) ("NCTA Petition").

[3] Docket 09-51, Comments of Free Press at 29 (Jun. 8, 2009) ("the FCC throws almost $5 billion per year down the drain by inefficiently supporting legacy telephone technologies while 20 million rural Americans live in areas unserved by any broadband provider").

[4] See NCTA Petition (presenting study by Dr. Jeffrey A. Eisenach showing that as much as $2 billion in high cost support is paid unnecessarily to carriers whose rates have been deregulated (evidencing sufficient competition in the market) and/or that are serving markets served by an unsubsidized competitor).

[5] Interview with C-SPAN "The Communicators," aired Nov. 21, 2009.

that the Commission seek to limit new broadband spending to the amount saved from reductions in high-cost support.

## II. Transitioning the Current Universal Service High-Cost Support Mechanism to Support Advanced Broadband Deployment

One-size-fits-all funding formulas are not the answer for delivering broadband infrastructure to unserved areas. These areas vary widely, as would the costs of serving them. Mechanical application of cost averages, rate of return guarantees, or other autopilot methodologies would inevitably miss the mark more often than they would be on target and would waste millions of dollars in the process. This is not mere speculation – one only need look at the existing high-cost program for confirmation. The last place the Commission should start in building a new twenty-first century universal broadband program is the twentieth-century model that everyone agrees is outdated and broken.

If the Commission instead considers the alternative of individualized funding awards to serve specific unserved areas over a multi-year period, as has been proposed by other parties, Charter recommends that the Commission scale its allocations to match the reductions achieved from the high-cost fund. This would assure that the burden on the fund and on middle-income consumers is not increased. A project approach would enable to Commission to prioritize applications that would deliver broadband service to the greatest number of now-unserved homes per public dollar invested. Unlike the present system, which rewards higher costs, a case-by-case system would enable the Commission to reward efficiency, the use of lower-cost technologies, high levels of private matching investment, and the use of broadband networks to offer additional services that would enable providers in only marginally high-cost areas to recoup a portion of their investment.

**Subissue from PN Question 3(g): Geographic Units**

The Public Notice asks whether support should be measured by smaller geographic areas such as a wire center serving area, a Census Block, or a Census Tract in order to tailor support to areas where it is needed. A standard geographic area is needed for two purposes: (1) measuring the areas in which to withdraw existing high-cost telephone support if there is an existing service provider, and (2) defining an area for new broadband support.

In both cases, the most effective and reasonable method would be to use census blocks or block groups, which are neutral, rather than study area or wire center areas that are biased toward the incumbent LEC. However, the most important objective is to move toward the use of smaller geographic areas, even if that means the use of wire center serving areas that are based on ILEC networks. Smaller areas would better enable the Commission to pinpoint the precise areas where support is needed to assure universal broadband. Study areas can cover vast distances with varying terrain, economics, and demographics, and it makes no sense to continue to fund ETCs for an entire study area that is partly served by unsubsidized competitors; instead, support could be reserved for the portions of the study area that are not so served.

At the same time, the use of smaller geographic units should not be allowed to become a backdoor that is used to provide new funding to areas where actual deployment shows that new subsides are not needed. At the recent House subcommittee hearing on the Boucher-Terry bill, every witness who answered agreed that calculating support at a wire center level would increase, rather than decrease, the size of the fund. The Commission should not allow such growth where it is not necessary to assure broadband availability. If any existing ETC or other service provider already offers broadband in the wire center or other standard area, the rules should not permit any carrier to receive new broadband funding for the first time as a result of the change in geographic measurement.  For example, there are areas today where the incumbent LEC could qualify for high-cost support for certain wire center or census block areas if those areas were its entire study area, but does not qualify because the study area as a whole includes lower-cost areas.  If the ILEC has nonetheless already deployed telephone and broadband to the area, it should not now receive an unnecessary windfall in new high-cost support.  On the other hand, if no service provider is offering broadband in the area, then it is reasonable to conclude that the prior USF rules that foreclosed funding to the ILEC in that area may have been a barrier to broadband investment.  In that case, the area could be eligible for new broadband funding.

**Subissue from PN Question 3(g): Providing Overlapping Subsidies for Different Technologies**

The Public Notice asks whether the presence of one broadband service provider using any technology should preclude support to any provider, or whether support still be targeted to a provider "offering features that are not available from the existing service, such as a mobile broadband service provider where only fixed broadband service is available."  Given that broadband technologies and services change much faster than could the Commission's rules, the Commission should not attempt to differentiate based upon the offering of different "features." Moreover, the Commission should first dedicate itself to completing the task of delivering at least one broadband connection to all homes before it considers whether to fund two or more different "types" of broadband service providers in the same area.

**Subissue from PN Questions 4 and 5:  Impact of Changes in Current Revenue Flows and Carrier of Last Resort Obligations.**

The Public Notice asks how the Commission can test the validity of rural ETC arguments that a loss of support would jeopardize their viability.  The best answer is an easy one.  The presence of actual unsubsidized competitors shows that service is possible in an area without a

USF subsidy. If an unsubsidized provider can offer service, so too can the ETC by making timely changes in its choice of technology, pricing, and other arrangements. If the Commission is providing service to multiple ETCs in an area that has an unsubsidized provider, that means that even more money is being spent unnecessarily. *In any event, the Commission's proper focus should be on the effect of changes on consumers, not on individual carriers that may have committed to inefficient business plans that depend upon unnecessary subsidies*. Carrier of last resort obligations can and should be left be left to the states. States are free to provide their own subsidies or change COLR obligations as they deem necessary to protect their consumers in individual circumstances.

## III. Lifeline/Link Up

Numerous reports have shown that the single greatest barrier to broadband adoption in the United States today is affordability, not availability.[6] Few readily-achievable Commission policies could boost broadband adoption as quickly and significantly as new subsidies to support the ability of broadband providers to offer discounted service and computers or other broadband access devices to low-income consumers. Charter therefore supports the expansion of Lifeline to for broadband service and Link-Up to cover service provider installation costs for broadband services.

These subsidies will not alone be sufficient to assure universal broadband to low-income consumers. Charter urges the Commission to solicit participation by the private sector, state and local governments, and non-governmental agencies to help fill in gaps with innovative new programs. In particular, NCTA recently announced the creation of an innovative nationwide

[6] *See, e.g.*, Docket 09-51, Comments of One Economy Corp. at 16 (Jun. 8, 2009) (using data from Pew Report to show that "In the aggregate, a remarkable 86% people who do not use broadband attributed their not using broadband at home to adoption barriers, not deployment programs.").

public-private partnership that combines digital media literacy training with discounted broadband service and computers. The Adoption Plus (A+) program is a proposed two-year public-private partnership to promote broadband adoption for up to 3.5 million middle school-aged children eligible for the National School Lunch Program living in approximately 1.8 million low-income households that do not currently receive broadband services. The Commission should consider means of offering federal support to such worthy programs, and it should indicate that it expects other private industry segments to similarly step up their own commitments to bridging the digital divide.

Direct federal subsidies of consumer purchase of computers could also be considered, but the Commission should be cautious of any program that may require a substantial percentage of its resources to be spent on administration and measures to protect against waste, fraud, abuse, and the resale of subsidized computers. It may be more efficient to simply allocate more funding to Lifeline for broadband service rather than create a program for consumer hardware purchases, because such subsides would be a more efficient means of reducing the overall cost of broadband to low-income consumers.

**Subissue from PN Question 7(e): Non-ETC Participation**

Low-income consumers should not be limited to service only from traditional telephone companies and not other broadband service providers. As AT&T explained, permitting non-ETCs to participate in a broadband low-income program "would encourage participation by many new providers, including some cable operators and wireless companies" and that "[p]ermitting participation by wider range of providers will expand the scope of the Lifeline program and promote wider adoption of service by eligible consumers."[7]

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[7] GN Docket 09-51, Comments of AT&T at 49-50 (June 8, 2009).

Therefore, rather than having to become an ETC, service providers should be allowed to participate by filing a registration with the Commission in which they agree to comply with the requirements of the broadband Lifeline program. These requirements could include compliance with Section 54.405 of the Commission's rules,[8] except that state termination rules should not apply if the state is not providing matching funding for the service. Beyond that, it would be unnecessary to apply existing ETC rules to broadband Lifeline participants because those rules were written specifically in a telephone context.

## IV. Contribution Methodology

Contribution reform is much less important than distribution reform, but is nonetheless meritorious and long overdue. Charter supports a numbers-based contribution system. Numerous parties have previously explained and espoused the benefits of such a change.

Charter opposes the alternative of a "connections-based" methodology unless it maintains the existing exemption for residential broadband services. Increasing the contribution burden on residential broadband services would undermine Congress' direction to ensure the affordability of such services. It is not necessary to start taxing broadband simply because the fund would now subsidize it, any more so than it is necessary to specially tax low-income telephone users in order to support Lifeline. Nearly all residential broadband users have at least one telephone number, and it would disincent additional broadband adoption and innovation if they were forced to pay more in USF based upon the capacity of their connection.

[8] The PN asks about the impact of requiring providers participating in a low-income broadband program to conduct outreach to inform potential eligible consumers about the program. Charter believes that additional outreach requirements beyond those provided for in Rule 54.305 are unnecessary. Service providers would have sufficient incentive to inform eligible consumers in order to win their business and subsidy. Detailed mandates would therefore be unnecessary and would add to the cost of providing service to low-income consumers.

## V. Conclusion

Charter's proposals in tandem would provide billions of additional funding to wire unserved America and subsidize broadband adoption by underserved low-income consumers, without requiring any long-term increase in the size of the fund. This reform is therefore a long overdue, critical component of a national broadband plan.

Respectfully submitted,

*/s/ Megan M. Delany*

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