

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
INQUIRY CONCERNING THE DEPLOYMENT	)	
OF ADVANCED TELECOMMUNICATIONS	)	
CAPABILITY TO ALL AMERICANS IN A	)	
REASONABLE AND TIMELY FASHION AND	)	
POSSIBLE STEPS TO ACCELERATE SUCH	)	GN Docket 09-137
DEPLOYMENT PURSUANT TO SECTION 706	)	
OF THE TELECOMMUNICATIONS ACT OF 1996,	)	
AS AMENDED BY THE BROADBAND DATA	)	
IMPROVEMENT ACT	)	
	)	
A NATIONAL BROADBAND PLAN	)	GN Docket 09-51
FOR OUR FUTURE	)	
	)	
INTERNATIONAL COMPARISON AND SURVEY	)	
REQUIREMENTS IN THE BROADBAND DATA	)	GN Docket 09-47
IMPROVEMENT ACT	)	

COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE  
PN NBP #19 (DA 09-2419)

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## **SUMMARY**

The goals of the National Broadband Plan, as articulated by Congress and Commissioners, cannot be realized in the absence of policy-makers' commitment to stand firmly in support of mechanisms that will be commensurate with National goals. It is critical that policy-makers establish clearly and affirmatively their commitment to provide the necessary resources. Moreover, a viable National Broadband Plan (NBP) cannot be implemented successfully without meaningful reformation of Universal Service Fund (USF) and Intercarrier Compensation (ICC) mechanisms. Deployment of a communications network to provide full broadband capability will be a cost-intensive endeavor that will require time to achieve and will only be possible if sound public policies are in place to allow providers to deploy infrastructure in an economic manner. Policy-makers must ensure that capital markets see sufficient predictability in the Commission's rules in order to ensure adequate capital is available.

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To the Commission:

**I. INTRODUCTION**

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits these comments in response to the Commission’s “National Broadband Plan Public Notice #19.”<sup>1</sup> ITTA is an alliance of mid-size telephone companies that collectively serve approximately 30 million access lines in 44 states, and offer

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<sup>1</sup> “Comments Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan,” Public Notice DA 09-2419, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Nov. 13, 2009) (Public Notice).

subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. The Public Notice is part of the Commission's on-going efforts to submit to Congress "a report containing a national broadband plan," pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA);<sup>2</sup> the report is intended to play an integral role in the process of "ensur[ing] that all people of the United States have access to broadband capability."<sup>3</sup>

The Public Notice evinces an approach that ITTA has advocated previously: a viable National Broadband Plan (NBP) can neither exist nor be created in a vacuum apart from meaningful reformation of Universal Service Fund (USF) and Intercarrier Compensation (ICC) mechanisms. Nor can the goals of the NBP, as articulated thus far by Congress and Commissioners, be realized in the absence of policy-makers' commitment to stand firmly in support of mechanisms that will be commensurate with National goals. It is critical that policy-makers establish clearly and affirmatively their commitment to provide the necessary resources. Deployment of a communications network to provide full broadband capability will be a cost-intensive endeavor that will be possible only if sound public policies are in place to allow providers to deploy infrastructure in an economic manner. Policy-makers must ensure that capital markets see sufficient predictability in the Commission's rules in order to ensure adequate capital is available; the Commission's vision of an NBP must incorporate a complete long-term view of network viability in order to encourage capital opportunities.

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<sup>2</sup> American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat. 115, 42 U.S.C. sec. 6001(k)(1) (2009) (ARRA).

<sup>3</sup> *A National Broadband Plan for our Future: Notice of Inquiry*, Docket No. 09-51, FCC 09-31, at para. 9, *citing* ARRA sec. 6001(k)(2) (2009).

## II. DISCUSSION

### A. SIZE OF UNIVERSAL SERVICE FUND

#### 1. Relative Size of Fund

The Commission asks whether the relative size of funding for each of the existing USF mechanisms is sufficient to achieve universal broadband.<sup>4</sup> ITTA submits that a future broadband fund could operate generally well within a construct similar to the existing programs, directing support variously to carriers serving high-cost regions; schools and libraries; rural health care providers; and low-income users. The required size of each mechanism, however (and, ultimately, the entire fund), will depend upon several factors: the type of network to be deployed; the duration within which that network is to be deployed; and policy-makers' commitment to schools and libraries, rural health care, and comparable and affordable rates.

The size of the fund will depend, in part, upon the type of network that policy-makers view as consistent with the goals of the NBP. At a workshop in September 2009, Commission Staff presented a comprehensive range of costs for ubiquitous broadband deployment, contemplating various network capabilities and housing units requiring upgrades. The low end of the range was \$20 billion; the high-end was \$350 billion (these costs are estimated “(f)or one access network,” *i.e.*, not funding dual networks).<sup>5</sup> It is clear that achievement of National broadband goals will occur only with a formidable and

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<sup>4</sup> Public Notice at 1.

<sup>5</sup> “September 29, 2009: 141 Days Until Plan is Due,” Staff Presentation to Federal Communications Commission, at slide 45 ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-293742A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf) (last viewed Dec. 2, 2009, 14:49) (2009).

express commitment among policy-makers to ensure the availability of the resources necessary to complete the job. ITTA members have already demonstrated their commitment to broadband deployment, achieving deployment in approximately 85% - 90% of their respective service areas. ITTA members have proven their interest, willingness, and ability to deploy where they can under existing constraints and with available resources. The final frontiers for broadband deployment, however, namely, remote unserved areas, will be the most expensive, and additional deployment will require adequate support mechanisms. Accordingly, policy-makers must ensure that universal broadband goals are supported with mechanisms that will encourage carriers to deploy broadband, particularly to unserved areas.

**(a) Type of network to be deployed**

In defining the size of the fund, the Commission must first focus its attention on the type of network that will meet NBP imperatives. ITTA submits that the NBP must ensure that consumers in sparsely populated and high-cost areas are able to obtain access to networks capable of supporting core applications. As noted above, the report due to Congress is intended to play an integral role in the process of “ensur[ing] that all people of the United States have access to broadband capability.”<sup>6</sup> Accordingly, the primary purpose of the NBP is to promote access in areas where access does not exist today, and efforts to define the NBP must contemplate not only last mile deployments, but middle and second mile facilities, as well.

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<sup>6</sup> *A National Broadband Plan for our Future: Notice of Inquiry*, Docket No. 09-51, FCC 09-31, at para. 9, *citing* ARRA sec. 6001(k)(2) (2009).

The level of service that should be provided will determine whether current USF mechanisms are sized sufficiently. As noted above, Staff's presentation indicates that the costs of even basic broadband deployments will far exceed amounts currently available in the USF high-cost fund. To place those numbers into perspective, it is worthwhile to review visions of National broadband deployment as articulated by Chairman Julius Genachowski:

"A small business in Gettysburg will be able to connect and compete with businesses in Pittsburgh, or even Johannesburg.

"An elderly person in Georgia will be able to get remote medical monitoring from a specialist at Georgetown, better health care at lower cost.

"A struggling eighth grader in Columbia, South Carolina, will be able to get tutoring from a student at Columbia University.

"And parents in Baltimore will be able to connect with live video to their son or daughter serving in Baghdad or Afghanistan."<sup>7</sup>

Achievement of these goals throughout the Nation can be realized only through the deployment of robust networks capable of supporting, *inter alia*, streaming video and applications necessary to provide telemedicine. (ITTA has previously filed comments describing the parameters of various network technologies, and commends review of those and other similar comments in this regard.)<sup>8</sup> Historic National goals must be accompanied by rational recognition that adequate resources are required: referring to the goal of landing a man on the moon by the end of the 1960s, President John F. Kennedy

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<sup>7</sup> Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission (Jun. 30, 2009) ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-291834A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291834A1.pdf) (last viewed Jul. 14, 2009 13:50)).

<sup>8</sup> *A National Broadband Plan for Our Future: Reply Comments of the Independent Telephone & Telecommunications Alliance*, Docket No. 09-51, at 11-16 (Jul. 21, 2009).

observed, “I think that we must pay what needs to be paid. I don't think we ought to waste any money, but I think we ought to do the job.”<sup>9</sup> Similarly, the instant effort calls for efficiency, but not at the expense of short-changing a vital National initiative.

**(b) Duration of transition**

The appropriate duration of transition is discussed in greater detail below, Section II.C.2. Generally, the duration of the transition will depend upon the goals to be achieved, the resources available to be applied to those goals, and logistical aspects of network deployment.

**(c) Treatment of ICC**

The Commission seeks comment on the treatment of ICC, which is an integral part of carriers’ revenue streams that ultimately enable deployment and maintenance of networks that support broadband. ITTA members primarily serve rural areas and are particularly sensitive to the need to ensure adequate support for networks deployed in areas with low population densities. ITTA members face high costs because they lack the ability to achieve economies of scale that are available to larger carriers serving urban areas. Since ITTA members have fewer customers from which to recover high per-customer local exchange costs, as compared to the Nation’s largest carriers, ITTA members generally rely greatly upon access compensation for cost recovery. A survey of ITTA members revealed that approximately 12% of member carrier revenues are obtained via ICC. There is little, if any, question that a comprehensive reformulation of

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<sup>9</sup> President John F. Kennedy, Address at Rice University, Houston, TX (Sep. 12, 1962) (<http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/003POF03SpaceEffort09121962.htm>) (last viewed Dec. 2, 2009, 16:16).

ICC must be constructed in order to meet the needs of mid-sized carriers serving rural America.

Proper treatment of ICC relies upon several steps: first, affirmation of the community of ICC participants, including providers of IP-enabled (voice) services that originate and/or terminate calls to the PSTN; second, resolution of phantom traffic and other steps to reduce arbitrage; third, a framework that, together with the first two steps and a properly restructured universal service mechanism, provides the necessary framework to encourage carriers to continue deploying broadband.

The Commission must, as a first step, clarify that terminating access charges apply to IP-originated traffic that terminates to the PSTN. There is no reason for interconnected-VoIP providers to be free of obligations that apply to others who use identical termination services provided by LECs. The Commission has not hesitated to include VoIP providers within vital regulatory constructs, including CALEA, E-911, and USF contributions,<sup>10</sup> and it must not hesitate to attach remunerative obligations to

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<sup>10</sup> See, i.e., *Universal Service Fund Contribution Methodology*, WC Docket No. 06-122; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *1998 Biennial Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, *Number Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth in Billing Format*, CC Docket No. 98-170, *IP-Enabled Services*, WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) at para. 2, and *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005) at para. 8.

tangible benefits that interconnected-VoIP providers receive from LECs. The Commission has articulated support for this principle:

[W]e believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.<sup>11</sup>

The Commission should order unequivocally that interconnected-VoIP providers are obligated to pay access charges in accordance with the Commission's rules when those providers use the PSTN; all network users should pay fairly for the benefits they enjoy. In addition, all PSTN originated traffic, regardless of whether it will terminate on a TDM or IP platform, should be subject to originating access charges. Absent equivalent treatment of VoIP and PSTN traffic, there arises the possibility that entities sending traffic to or from the PSTN will be encouraged to declare *all* traffic as VoIP, thereby avoiding the payment of any access charges. The Commission must also address phantom traffic in order to eliminate arbitrage and stop the accumulation of unrecoverable costs.

After affirming the entities obligated to compensate other carriers for the use of the PSTN, the Commission should reform the rate structure. In November 2008, ITTA filed a comprehensive proposal to reform ICC. It included the following transition phase for price-cap companies:

- \* Years 1-3: A price-cap carrier's intrastate terminating access rates shall be unified to its CALLS target rate in equal increments over three years by study area. If the local reciprocal compensation rate is above the CALLS rate it will be reduced to the CALLS level over the same transition.

<sup>11</sup> *IP-Enabled Services: Notice of Proposed Rulemaking*, WC Docket No. 04-36, FCC 04-28, at para. 33 (2004).

- \* Years 4-5: Beginning in year four and continuing through year five, the unified interstate/intrastate/local rate shall be reduced to lesser of the current rate for such service or the carrier's next lower interstate CALLS target by study area pursuant to 47 C.F.R. § 61.3(qq) (*i.e.*, \$0.0095, \$0.0065, or \$0.0055). By way of example, if a study area's current CALLS target is \$0.0095, then it would move to \$.0.0065 in years 4-5; if current CALLS target is \$0.0055 it would stay at this level.
- \* The Commission shall issue a FNPRM after year 4 to determine whether additional measures are necessary. This FNPRM shall include a referral to the Federal-State Joint Board on Universal Service to address separations and other relevant matters.

The plan also included a mechanism for subscriber line charge (SLC) increases to partially offset the scheduled rate reductions described above and an alternative recovery mechanism (ARM), which is integral to any form of ICC reform. The size of the ARM will reflect imputed SLC increases, and ARM distributions will reflect the explicit subsidy for high cost areas, replacing the implicit subsidies now reflected in access charges. Working in tandem with other mechanisms, these steps will ensure that shortfalls do not occur as carrier obligations increase.

**(d) Treatment of high-cost areas**

A universal broadband program must recognize the unique challenges of rural areas, which include low population densities, high deployment costs, and challenging future broadband deployment demographics. In most instances, shortening long loops represents the greatest portion of broadband deployment costs. By way of example, ITTA member companies provide broadband to the vast majority of the wire centers in their service areas. Most often, however, customer locations that do not have broadband lack that service because they are located far from the wire center facility or a remote fiber terminal, not because the wire center *itself* is unserved. The distances between

individual end-users and the carrier's concurrent need to aggregate a critical mass of traffic in a switch often necessitate the use of particularly long loops, a technical barrier to providing broadband service.<sup>12</sup> The Commission has recognized these challenges, noting, "a lower population density generally indicates a higher cost area."<sup>13</sup> The Government Accountability Office (GAO) found that "[t]he most frequently cited cost factor affecting broadband deployment was the population density of a market," and that "the cost of building a broadband infrastructure in areas where people live farther apart is much higher than building infrastructure to serve the same number of people in a more urban setting."<sup>14</sup> These high-costs areas, however, must be addressed in a focused manner that delivers support with specificity. Accordingly, ITTA has consistently called upon the Commission to discard statewide averaging and instead deliver support in a targeted fashion where it is needed most (*see* Section II.C.5, below).

In addition to population density factors that affect capital cost requirements in sparsely populated areas, other unique costs arise in rural areas. ITTA members have described instances in which pedestals and cabinets require repair due to damage from farm equipment. Moreover, rural areas are more vulnerable to cable cuts or road moves due to the sheer volume of route miles, and companies face increased easement and crop

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<sup>12</sup> This is also an impediment to wireless broadband service, which is limited by the coverage area of transmitters, among other factors.

<sup>13</sup> *Federal-State Joint Board on Universal Service; North Carolina RSA 3 Cellular Telephone Company; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina: Order*, CC Docket No. 96-45, DA 06-1628, 21 FCC Rcd 9151, at para. 23 (2006).

<sup>14</sup> GAO, *Broadband Deployment Is Extensive throughout the United States, But it is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, at 19 (May 2006) ("*GAO Report*").

damage costs for cable placement. ITTA members serve areas of the Nation marked by broad agricultural fields, mountain ranges, National Forests, deserts, and even islands. One ITTA member describes areas where plant can be buried for miles without encountering a rock, and places where it is impossible to dig without hitting obstructions. In addition to these rural considerations, ITTA members frequently face unjust discriminatory conditions when seeking pole attachments. Certain of ITTA members have been subject to pole attachment rates as high as 500 percent more than the rate paid by cable in the same area local area, and 300 percent more than the competitive local exchange carrier (CLEC) rate.<sup>15</sup> The discriminatory treatment, however, does not end only at exorbitant rates. ITTA members describe a catalogue of heavy-handed tactics employed by pole owners, including: expectations that ILECs shoulder 50 percent of liability; forcing ILECs to bear the costs of larger poles where increases in size are not necessary to meet the needs of the ILEC, and; permitting ILEC use of only one side of a pole in order to facilitate line-crew work, but without concomitant reduction in the rate. ITTA members serve communities in rural areas of the Nation where trenching for underground fiber is often uneconomical. Aerial cable remains the most cost-effective means of deploying standard and advanced services. High rates and discriminatory terms and conditions, however, reduce the incentive to invest in broadband network where some or all of the deployment depends on aerial cable.<sup>16</sup> Policy-makers must address

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<sup>15</sup> *Petition of the United States Telecom Association for a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures: Notice of Ex Parte of CenturyTel*, RM-11293 (filed Feb. 21, 2007).

<sup>16</sup> The Commission has pending dockets concerning this matter. *See, e.g., Implementation of Section 224 of the Act: Amendments of the Commission's Rules and*

these issues when factoring the resources that will be required in order to deploy broadband Nationwide.

### (e) Conclusions

Universal broadband can be achieved if sufficient resources are available. Currently, the USF model evinces recognition that regular economic parameters in rural and high-cost areas are not sufficient to support telephone service absent external support. As demonstrated by Staff, the deployment of broadband at levels consistent with visions such as those described by the Chairman will require resources commensurate with those goals. The proper allocation of resources will speed deployment, while limiting resources will lengthen the transition phase toward a ubiquitous National broadband network. Policy-makers must not impose upon carriers that serve rural and high-cost areas an unfunded mandate packed with obligations but without support that is commensurate to the task of meeting those goals. A review of *ex parte* filings in the docket reveals that carriers, including ITTA members, have provided to Staff detailed information regarding network costs. That information should inform the *quantitative* analysis necessary to determine the level of support, while the intent of the ARRA should inform the *qualitative* analysis necessary to gird the conclusion that adequate support must be available in order to bring broadband to unserved areas.

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*Policies Governing Pole Attachments*, WC Docket No. 07-245, RM-11293, RM-11303. See, also, *Petition of American Electric Power Service Corporation, Duke Energy Corporation, Southern Company Services, Inc., and Excel Energy Services, Inc. for a Declaratory Ruling*, WC Docket No. 09-154. ITTA's comments in Docket No. 09-154 attached hereto as Attachment A.

## 2. Form and Size of Support Mechanisms

The Commission asks whether total USF support should remain the same, whether total USF should increase, or whether support in some programs should increase while compensated by decreases in other programs. ITTA reiterates that Staff's presentation demonstrated clearly the level of resources required to achieve National broadband goals. For the reasons set forth above, policy-makers must enable the realization of National goals by making available resources that are commensurate to the task at hand. Propositions that adequate support can be obtained simply by shifting amounts from one existing USF program to another are untenable since the current entire sum may well be insufficient.

The goal of universal broadband deployment can be achieved by modeling upon, but not mimicking, current USF mechanisms. For example, as outlined below, ITTA supports a change in the current USF distribution for rural price cap carriers to a mechanism that does away with study area and statewide averaging and targets support on a wire center basis. By making such a change, a more rational reflection of costs and support in high cost areas will be achieved. As described below, obligations may attend universal broadband support; modeling may be used to determine support levels; accountability of recipients may be assured through audits, albeit implemented differently than currently. At the same time, certain aspects beg reformation: ITTA has called for a reevaluation of support provided to competitive eligible telecommunications carriers (CETCs), including, but not limited to, reducing the number of supported competitive

carriers and the elimination of access replacement-based support received by those carriers.<sup>17</sup>

## **B. CONTRIBUTION METHODOLOGY**

The contribution methodology must be revised. Philosophically, the NBP must approach the proposition of ubiquitous National broadband deployment in a holistic manner, and that approach necessarily requires a reassessment of contribution policies as distribution policies are reformed. Practically, policy-makers must wrestle with the axiomatic need to amass resources while ensuring that the burden on consumers is not increased. Some proponents of USF reform frequently call for an overall cap on the USF as a way to ensure that burdens on contributors are contained. It is difficult, however, to reconcile evolving needs for advanced networks with a limited source of support. Accordingly, ITTA recommends that the Commission adopt as a guiding principle the recognition that there is no need to restrict the amounts collected so long as those amounts are collected in a competitively neutral manner that burdens no provider or user differently than another. From an implementation standpoint, contribution obligations should apply to connections, with all providers of broadband required to contribute.

The Commission asks commenters to address the respective impacts on various types of users, including low-volume users and those with “wireless family plan[s].” ITTA submits that, in the first instance, any contribution mechanism that relies upon a static, “non-consumption-based-factor,” *e.g.*, non-revenues basis, should not be perceived as engendering inequity as low-volume users may pay proportionally more than high-

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<sup>17</sup> See, *e.g.*, *Federal-State Joint Board on Universal Service: Comments of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 96-45, WC Docket No. 05-337, at pp. 41-48 (May 31, 2007).

volume users. The aim of the methodology is to broaden the base of contributors. The equal charge assessed upon all users irrespective of their individual consumption reflects a fair contribution to support the network to which those users connect. In essence, the fee reflects the ability to connect; and, as a lower amount than currently charged, it reflects, as well, the concern to reduce end-user burdens. Following that reasoning, equivalent fees based upon different users of a “family plan” reflect each user’s ability to access the network from that user’s connection. Accordingly, ITTA recommends that so-called “family plans” be treated no differently than other instances where fees for multiple numbers or connections, such as different telephone lines into a home, are billed to a single entity. To the extent the Commission determines that contributions should continue to be based upon revenues, then all revenues, rather than only Title II revenues, should be considered in order to achieve the twin goals of contributions reform, namely, the reduction of burdens on end-users while ensuring amounts necessary to build and maintain broadband networks.

**C. TRANSITIONING THE CURRENT UNIVERSAL SERVICE HIGH-COST SUPPORT MECHANISM TO SUPPORT ADVANCED BROADBAND DEPLOYMENT**

**1. Whether a transition should occur**

The Commission seeks comment on transitioning the current USF high-cost support mechanism to support advanced broadband deployment. Among the possibilities proposed by the Commission is to maintain existing support mechanisms on a transitional basis to support on-going expenses of “legacy voice-only” networks, while new broadband investment is covered by a broadband fund. ITTA submits that the goal of the Commission should be to enable broadband build-out in regions where broadband is currently not deployed. Changing USF distribution for price cap carriers to a targeted

wire center approach will better align support provided with cost and will provide needed funding to be able to shorten loops in unserved areas. This change alone may not be adequate to fund the shortening of all loops to be able to provision broadband to all unserved areas, so supplemental mechanisms may be required. Shortening of loops is achieved by deploying digital nodes closer to user locations and upgrading related electronics. This cost is compounded in rural areas where lower population densities result in increased costs of distribution facilities that are necessary to connect consumers. Overall, policy-makers must weigh the desire to bring broadband soon against the availability of resources necessary to achieve that task.

A successful transition should accommodate a time frame of five-to-seven years. The level of broadband to be achieved during that period will depend, as noted above, upon the level of resources available to deploying carriers. Generally, and consistent with ITTA's prior filed USF proposal, carriers receiving adequate support under the new broadband fund would be required to serve the entire area over their own facilities within five years, providing speeds capable of supporting core applications at rates that are reasonably comparable to National average rates.

## **2. The appropriate manner of transition**

The appropriate transition path is one that contemplates realistically the resources available to support broadband deployment in areas where it is not otherwise economical. This analysis may rely upon adoption data that would affect provider revenue streams that, when combined with support, informs the carrier's build-out schedule; the analysis must also contemplate the ultimate outcome of ICC reform. The transition plan must accommodate reasonable abilities to acquire and deploy equipment, as well as the

manner in which support is collected and distributed. Policy makers must determine the cost of the total job, and the annualized resources available. Once those factors are determined, the length and manner of the transition can be determined.

### **3. Structure of new fund**

The Commission seeks comment on the structure of new high-cost broadband mechanism, as well as the criteria for obtaining support. The Commission also seeks comment on the impact of designing a broadband support mechanism that results in loss of associated funding when a provider loses a subscriber to a competitor. In the first instance, funding should be structured to emanate from a single fund toward various programs, similar to the manner in the current USF is collected and distributed. Funding should be awarded quantitatively based on actual (for rate of return carriers) and modeled cost (for price cap carriers) to serve, as compared against National average costs; distribution, for the reasons described below, Section II.C.5, should be accorded on the basis of study areas for rate of return carriers and wire center for price cap carriers.

Support should be based upon total network costs. Therefore, support should neither increase as subscribership increases, nor decrease as subscribership decreases, unless those changes in subscription rates affect the costs of the underlying network that provides service to end-users; the loss or acquisition of a subscriber does not affect network costs until the loss or acquisition of a subscriber affects network deployment characteristics. As noted above, funding should be conditioned upon the fulfillment of build-out and network capabilities.

### **4. Role of broadband grants issued by NTIA and RUS**

NTIA or RUS grants should not be factored as mitigating on-going operating expenses, which are a major cost component of providing broadband in rural areas.

Therefore, an NTIA or RUS grant that enabled or otherwise facilitated build-out should not preclude support for on-going costs where necessary.<sup>18</sup>

## 5. Targeting and the role of competitors

Targeting of support is integral to realizing the goals of ubiquitous broadband deployment because it resolves inadequate funding occasioned by study area and statewide averaging. Study area averaging balances lower-cost areas within city or town centers against the higher cost outlying areas. Problematically, however, carriers frequently face competition in the lower-cost areas, and are accordingly not able to earn in those locations revenues that can be used to offset the high-cost areas where those carriers have COLR obligations; rate averaging in some rural study areas does not produce enough contribution margin to cover the cost of service in the less densely-populated parts of those study areas. Accordingly, study area averaging does not always work as a methodology for calculating the need for high-cost support for price cap carriers that generally have many wire centers in a study area and often spread across differing geographic regions of the state. This inclusion of the low-cost areas in cost calculations diminishes the likelihood of carriers obtaining support sufficient to extend networks capable of providing advanced services. Accordingly, ITTA recommends the administration of support on a wire center basis. This approach, as compared to census

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<sup>18</sup> The NTIA and RUS issue is clouded by the eventual tax treatment of those monies, which could be reduced to after-tax amounts such as 60%, raising the question of whether Congress and the President really intended to recover approximately 40% of the \$7.2 billion via taxes on the grants. There remains an open question as to whether funds received under ARRA are subject to income tax pursuant to Internal Revenue Code (“IRC”) Section 61 or excludable from taxable income pursuant to IRC Section 118 or another provision of the IRC.

block or census tract, is an appropriate basis because carriers' internal processes are currently aligned in that manner; carriers do not keep customer location records on census block or census tract basis. Nevertheless, a methodology for compiling data on a sub-wire center basis may emerge in the future, and more granular distribution of support need not be foreclosed. In the foreseeable future, however, distribution on a wire center basis best matches the manner of record-keeping and calculations carriers currently employ.

The presence of an alternative provider should not preclude support to the incumbent provider. In many areas, competitive providers select fertile regions of the market, leaving the more outlying areas to the COLR. Severing the low-cost supported areas from the high-cost areas ignores the realities of the manner in which networks are deployed: carriers cannot "cabin off" the high-cost areas and separate the facilities used to serve them from those used to maintain service in the lower-cost areas.

In all events, the Commission must amend the manner in which it distributes support to duplicative carriers. Moreover, a potential recipient of broadband support should not even rise to the level of "duplicative carrier" if it is not charged with the same obligations and liabilities as the COLR. For example, ITTA included in its 2008 USF proposal<sup>19</sup> a condition that recipients serve their entire service area over their own facilities within five years. To the extent specific public interest benefits of mobile broadband access are identified, support for mobile broadband may be provided via a

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<sup>19</sup> *Federal-State Board on Universal Service: Ex Parte of Independent Telephone & Telecommunications Alliance*, CC Docket No. 96-45, WC Docket No. 05-337, at 1 (Oct. 10, 2008).

complementary mobility program, conceptually similar to proposals offered previously by the Federal-State Joint Board for Universal Service.<sup>20</sup>

## **6. Impact of capping support**

Policy-makers must be aware that deployment to unserved areas will be directly proportional to the amount of support available. Capping support necessarily decelerates deployment. Capping support at unrealistically low levels would be inconsistent with the stated goals of furthering robust broadband deployment. As noted above, ITTA members stand ready and willing to deploy broadband further; their respective abilities rely upon available resources. In all events, policy-makers must identify the goals of the NBP and provide supporting resources accordingly.

## **7. Impact of competitor offering broadband without support**

The Commission seeks comment on the impact of reducing or eliminating high-cost support in areas in which competitors provide service, either with or without support. ITTA submits that the nature of the COLR must be contemplated within the context of this inquiry. The COLR obligations that attach to ILECs require those companies to stand ready to serve all consumers in their area. The fact that a second entity, of any technology, may serve consumers in *part* of that service territory generally does not diminish the cost of the incumbents' network that is designed, sized, and maintained in order to provide service to the entire area. Accordingly, as carriers stand ready as the COLR as part of the "social compact" that attends receipt of high-cost support, carriers

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<sup>20</sup> *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, WC Docket No. 96-45, FCC 08-5 (rel. Jan. 29, 2008) (Joint Board NPRM). The Joint Board NPRM contained as an appendix the November 2007 Recommended Decision of the Joint Board, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4 (2007).

would similarly need to be absolved of COLR obligations should that support cease. That result, however, risks the prospects of National broadband deployment, because portions of a network cannot be carved off and left to wither with an expectation that other portions will thrive. This is especially true in service areas of ITTA members, where competition exists in the town center but is absent in the far-flung outlying areas. Policy-makers must not ignore the great “stand ready” costs of the COLR.

**D. COMPETITIVE LANDSCAPE**

**1. COLR in a broadband world**

COLR obligations arise out of a determination that the provision of voice-service to all areas of the Nation is in the public interest, and should be supported in a manner consistent with that interest. Accordingly, to the extent Congress has identified a public interest basis to the further deployment of broadband, policy-makers must ensure that entities are in place to carry forth that objective. In markets capable of supporting numerous competitors (or, alternatively, in areas in which a natural profitable monopoly can emerge), the concept of a COLR need not emerge because sufficient market incentives exist to maintain the presence of a goods or service provider. On the cusp of a broadband future, policy-makers must incorporate into the NBP the recognition that entities charged with COLR obligations must be given proper incentives to accept that responsibility; as in the voice environment, those incentives include mechanisms that mitigate the otherwise overwhelming expense of standing ready and providing service to those areas. COLR obligations should be accordingly waived if an entity no longer receives high-cost support. It would be fundamentally unfair to charge a carrier with an

unfunded mandate to provide service where other providers have found conditions uneconomical.

**2. Impact of requiring recipient entities to provide underlying transmission on a wholesale basis**

The Commission seeks comment on the impact of requiring high-cost recipients to provide underlying transmission on a wholesale basis. ITTA submits that policy-makers should resist the false choice between assuring availability and facilitating competition. The former is a statutory imperative of the ARRA; the latter could impair providers gravely if critical retail margins are lost when providing transmission at a wholesale level. The Commission should not be misled into repeating CETC-oriented inefficiencies that arose as the USF was directed to multiple competitive providers. As noted above, the goal of the NBP is the further deployment of broadband throughout the Nation; to the extent obligations are placed on recipients of high-cost broadband support, those obligations should be limited to build-out and network performance characteristics, rather than “unbundling-type” requirements. Support for universal broadband should not be conditioned upon open network/interconnection obligations. The Commission must stay the course of the primary statutory intent, which is to bring broadband to unserved areas. The Commission has found previously that

excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology. The effect of unbundling on investment incentives is particularly critical in the area of broadband deployment, since incumbent LECs are unlikely to make the enormous investment required if their competitors can share in the benefits of these facilities without participating in the risk inherent in such large scale capital investment.<sup>21</sup>

<sup>21</sup> *Review of the Section 251 Unbundling Obligations of Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications*

Stringent unbundling-type requirements for broadband providers will reduce natural incentives for investment and deployment that may exist when encouraged by Federal support, and should be rejected. High-cost support is necessary where normal economic forces do not support a provider. By contrast, the perverse results of cannibalizing providers in the hopes of achieving impossible self-supporting competition is described aptly in an academic journal:

If in the face of more competitors, broadband providers are forced to amortize the fixed costs of their networks over significantly fewer customers, total broadband costs will rise – and prices will almost certainly have to rise as well, even if profits are squeezed and efficiencies maximized. The only way this situation could be averted would be if a new entrant was not successful in gaining any broadband customers. In this case, overall broadband costs would still increase but the costs would be borne by the new entrant’s bondholders and stockholders. If all new entrants gained customers, however, then the incumbents by definition would have fewer customers and hence less revenue to amortize the costs of their networks.<sup>22</sup>

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*Capability: Report & Order and Order on Remand and Further Notice of Proposed Rulemaking*, Docket Nos. 01-338, 96-98, 98-147, FCC 03-36, at para. 3 (2003).

<sup>22</sup> Robert Atkinson, “*The Role of Competition in a National Broadband Policy*,” *Journal of Telecommunications and High Technology Law*, at 10 (Oct. 2007), at 10 (*available at* <http://www.itif.org/files/JTHTL.pdf> (last viewed Dec. 5, 2009, 16:35)).

A recent study examined the effect of European unbundling requirements on investment. Scott J. Wallsten and Stephanie Hausladen, *Net Neutrality, Unbundling, and Their Effects on International Investment in Next Generation Networks*, Technology Policy Institute, Washington, DC (Mar. 2009) (Wallsten/Hausladen). The study relied upon data from 27 European countries, including the United Kingdom, France, Netherlands, Germany, South Korea, and Japan, with datasets representing DSL, cable, fiber, and wireless local loop. The study concluded, “the more a country relies on unbundled local loops or bit stream unbundling to provide DSL service, the less incumbents and entrants invest in fiber.” Wallsten/Hausladen at 107. One finding proposed by the study was that “firms with the ability to invest in equipment are more likely to use local loops instead of building new platforms if the option is available to them.” Wallsten/Hausladen at 106. This result is inconsistent with the premise of efforts

The Commission should refrain from imposing unbundling-type obligations on supported providers. Support is necessary to extend networks where natural competitive forces would not support them; the imposition of regulations intended to introduce secondary competitors where the market cannot maintain a single provider absent support defies logic. The Commission must ensure that the primary goal of the National Broadband Plan, namely, the provision of broadband across the Nation, is not impeded by saddling the market with unnecessary, inefficient, and costly regulations. The dampening effect of forcing competition into areas where it cannot emerge naturally augurs ill-effects for the market.

**E. HIGH-COST FUNDING OVERSIGHT**

Oversight modeled upon current mechanisms would be appropriate.

Confirmation of carrier compliance, however, should take a more rational route than the current audits process, which has been plagued by several strains of inefficiencies.<sup>23</sup>

**F. LIFELINE/LINK-UP**

Policymakers may consider subsidies for qualifying low-income individuals that could be applied to qualifying devices used for broadband access. ITTA would support

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to bring broadband to unserved areas, since it does not foster extended deployment, and moreover introduces risks where service is already available.

<sup>23</sup> See, e.g., *See, Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight: Reply Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 05-195 (Dec. 15, 2008); *Request for Review by AT&T Inc. of Decision of Universal Service Administrator: Comments of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 96-45, WC Docket 05-337 (Aug. 20, 2009); *Request for Universal Service Fund Policy Guidance Requested by the Universal Service Administrative Company: Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 05-337, WC Docket No. 06-122, CC Docket No. 06-45 (Oct. 28, 2009).

mechanisms that would enable, but do not compel, carrier participation in programs within which broadband providers could either sell government-subsidized computers directly to low-income consumers, or partner with hardware manufacturers for the same purpose. Inasmuch as Link-Up subscribers are not required to “repay” discounts if their eligibility criteria change subsequent to initiation of service, consumers who qualify for this subsidized equipment would likewise own their equipment outright.

ITTA could support eligibility requirements that are the same as the eligibility criteria in the existing low-income program. These eligibility standards have been vetted and found acceptable. If the broadband consumer eligibility requirements are the same as existing annual Lifeline certification requirements, then ineligible subscribers will be readily identified.

Subsidized broadband services should be limited to offerings capable of supporting core applications, including those providing remote conferencing and distance education.

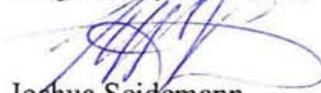
Regarding potential carrier obligations to publicize low-income offerings, the Commission must not micromanage marketing by private entities already competing vigorously in the broadband marketplace. It is in private entities’ interest to experiment with and conduct outreach most likely to increase broadband subscribership. Commission-imposed advertising requirements are not necessary and, as evidenced by ITTA members’ collective experience with existing low-income programs, such requirements could impose significant costs on participating providers. If the Commission decides special publicity is needed for new low-income programs (above and beyond what private entities will no doubt voluntarily conduct), then the Commission

should focus its time and attention on government efforts to promote these programs. Would-be eligible applicants could be best informed of Lifeline programs by entities overseeing programs in which those individuals participate. For example, an applicant for “food coupons” could be informed of Lifeline/Link-Up during that application process; similarly, families of students eligible for school lunch programs discounts could be informed by the relevant entity of discounted communications services.

### III. **CONCLUSION**

For the reasons stated herein, policy makers must ensure adequate incentives and mechanisms to encourage broadband in high-cost areas where general economic models will not support deployment. ITTA members, who serve with COLR obligations, have deployed broadband widely across their service territories. Bringing broadband to the final unserved areas will require a commitment of resources commensurate with National goals, and ITTA looks forward to working with the Commission to ensure broadband deployment throughout the Nation.

Respectfully submitted,



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DATED: December 7, 2009

**ATTACHMENT A**

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

<b>PETITION OF AMERICAN ELECTRIC</b>	)	
<b>POWER SERVICE CORPORATION,</b>	)	
<b>DUKE ENERGY CORPORATION,</b>	)	<b>WC DOCKET NO. 09-154</b>
<b>SOUTHERN COMPANY SERVICES,</b>	)	
<b>INC. AND EXCEL ENERGY SERVICES,</b>	)	
<b>INC. FOR A DECLARATORY RULING</b>	)	

**COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments in the above-captioned proceeding. ITTA is an alliance of mid-size telephone companies that collectively serve approximately 30 million access lines in 44 states, and which offer subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. ITTA members are committed to providing their end-users with affordable access to communications services.

In the instant proceeding, American Electric Power Service Corporation, Duke Energy Corporation, South Company Services, Inc., and Xcel Energy Services, Inc. (Petitioners) seek a declaratory ruling on what rate formula should apply when cable attachments are used to provide interconnected Voice over Internet Protocol (VoIP) service. Pole attachment rate regulation, however, should not address cable providers in isolation from all other broadband providers. Rather, consistency in rate regulation is needed to increase regulatory parity, diminish disruptive market signals, and preempt inappropriate regulatory advantages. Accordingly, ITTA asks that the Commission not

act on the Petition, and, instead, refresh the general record and address pole attachment regulation in a comprehensive fashion within Docket No. 07-245

Currently, cable owners pay attachment fees at a rate that is generally lower than that which is charged to competitive providers of telecommunications services. Exacerbating this discrepancy in the broadband arena is the fact that the Commission has not yet reconciled its rules to reflect the statute that guarantees incumbent local exchange carriers (ILECs) just and reasonable rates, terms and conditions for their pole attachments.<sup>1</sup> This regulatory chasm frustrates broadband deployment by enabling utility pole owners to levy exorbitant rates on ILECs.

In the absence of clear Commission guidance regarding an ILEC rate formula, ILECs may have difficulty refusing a pole owner's "final offer" during negotiations, and accordingly must include within their broadband costs the high fees paid for pole attachments. In instances where deployment depends on aerial cable, unreasonable rates, terms, and conditions that are imposed on ILECs by pole owners serve as formidable disincentives to deployment absent means by which the carrier can recover its pole attachment costs. ILECs consequently are placed at a competitive disadvantage as different rate formulae are applied to similar facilities based largely on the entity that is affixing the attachment. As noted above, cable providers pay one, lower rate; competitive local exchange carriers (CLECs) pay a higher rate; and, ILECs, lacking Commission rule protection afforded by a rate formula, are subject to rates that vary

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<sup>1</sup> See *Implementation of Section 224 of the Act: Amendment of the Commission's Rules and Policies Governing Pole Attachments: Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 07-245, RM-11293, RM-11303 (Mar. 7, 2008). See, also, *Reply Comments of the Independent Telephone & Telecommunications Alliance* (Apr. 22, 2008).

frequently range far upward. This discrepancy perpetuates regulatory disparity and demands regulatory redress.

To further the Commission's stated intent to "promote the pro-competitive and deregulatory goals of the Act . . . ,"<sup>2</sup> the Commission should remove such regulatory mechanisms that impose on providers varying cost obligations that are not substantially related to actual costs. The Commission's current pole attachment regulatory regime, which enables different rate formulae for identical attachments, is no longer appropriate as intermodal competition increases:

[T]he Commission has recognized that once-clear distinction between 'cable television systems' and 'telecommunications carriers' has blurred as each type of company enters markets for the delivery of services historically associated with the other. The Commission has identified cable operators as market participants in both the enterprise and mass market for telecommunications services. The Wireline Competition Bureau has recently clarified that wholesale telecommunications carriers that provide services to other service providers, including cable operators providing Voice over Internet Protocol (VoIP) services, are indeed 'telecommunications carriers' for the purpose of Section 251 of the Act, and are thus entitled to interconnect with incumbent LECs.<sup>3</sup>

A Time Warner Telecom, Inc., White Paper characterizes the different rates among cable and telecommunications providers as promoting "regulatory bias . . . [in] investment decisions regarding deployment of broadband and other services."<sup>4</sup>

<sup>2</sup> *Implementation of Section 224 of the Act: Amendment of the Commission's Rules and Policies Governing Pole Attachments: Notice of Proposed Rulemaking*, WC Docket No. 07-245, RM-11293, RM-11303, FCC 07-187, at para. 36 (2007) (Pole Attachments NPRM) at para. 2.

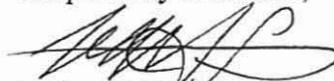
<sup>3</sup> Pole Attachments NPRM at para. 14 (internal citation omitted).

<sup>4</sup> Letter from Thomas Jones, Counsel for Time Warner Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, RM-11293, RM-11303, Attach. at 11-12 (filed Jan. 16, 2007) (TWTC White Paper).

Rather than act in a piecemeal fashion by addressing only rates paid by cable broadband providers, the Commission should, instead, address pole attachment rate regulation in a comprehensive manner within Docket No. 07-245. That open docket should be refreshed with comments on pole attachment rates charged to all broadband providers. Reforms then should be considered in conjunction with development of recommendations included within the National Broadband Plan.

The issues raised in the instant Petition are best resolved by a proceeding that addresses rate formulas for *all* broadband pole attachments, and which concludes in the elimination of inappropriate competitive advantages. Comprehensive resolution of pole attachment issues is necessary to facilitate continuing deployment of affordable broadband and satisfy the Commission's desire to achieve regulatory parity. Therefore, for the reasons stated herein, ITTA recommends the Commission to defer consideration of the instant petition to Docket No. 07-245, and to within that docket address the proper rate formula for all providers of broadband services.

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