

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



In the Matter of)	
)	
Inquiry Concerning the Deployment of)	GN Docket No. 09-137
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)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
International Comparison and Survey)	GN Docket No. 09-47
Requirements in the Broadband Data)	
Improvement Act)	

COMMENTS – NBP PUBLIC NOTICE #19

COMMENTS OF ACCESS HUMBOLDT, APPALSHOP, CALIFORNIA CENTER FOR RURAL POLICY, CENTER FOR MEDIA JUSTICE, CENTER FOR RURAL STRATEGIES, MAIN STREET PROJECT, MEDIA ACTION GRASSROOTS NETWORK, MOUNTAIN AREA INFORMATION NETWORK, NEW MEXICO MEDIA LITERACY PROJECT, RURAL BROADBAND POLICY GROUP, TEXAS MEDIA EMPOWERMENT PROJECT, THOUSAND KITES, AND PUBLIC KNOWLEDGE

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SUMMARY

Media Access Project submits the comments that follow on behalf of Access Humboldt, Appalshop, California Center for Rural Policy, Center for Media Justice, Center for Rural Strategies, Main Street Project, Media Action Grassroots Network, Mountain Area Information Network, New Mexico Media Literacy Project, Rural Broadband Policy Group, Texas Media Empowerment Project, Thousand Kites, and Public Knowledge. These organizations (collectively, the “Rural/Urban Commenters”) are not telecommunications carriers receiving support from the federal universal service fund (“USF”), but they continuously advocate for the rights of the intended recipients of USF programs: the users of communications services, particularly in high-cost areas, and among low-income and underserved populations.

These organizations represent the true beneficiaries of USF. They acknowledge the importance of service providers to achieve the goal of extending facilities and services, and commend the Commission for asking providers to submit financial and technical data illustrating the use of USF support and other revenue streams for broadband deployment. Nevertheless, the Commission should not consider USF issues solely from the perspective of carriers currently receiving USF disbursements. The interest that USF must serve is not the parochial interest of any service provider or class of carriers, but the public interest. The fund must promote universal connectivity for all Americans, and that means prioritizing the needs of people that depend on communications services – especially those still waiting for the expansion of modern communications facilities to reach them – over the needs of any particular companies.

In the twenty-first century, universal connectivity must mean broadband connectivity. More and more economic and educational opportunities, as well as civic participation mechanisms and governmental programs, are most readily accessible online. In fact, some of these benefits may no longer be available anywhere but online. As even “basic”

telecommunications services migrate to broadband, utilizing Internet Protocol (“IP”) technology and the Internet to reduce the rates paid by consumers fortunate enough to have broadband access, the Commission can no longer conceive of broadband as a luxury, add-on, afterthought, or complement to the services historically supported by universal service mechanisms.

The Rural/Urban Commenters hold that communications is a fundamental human right, and one that USF legislation seeks to ensure for Americans in all areas of the nation. In our present economy and society, broadband is an essential facility and modern-day utility necessary to protect this fundamental right and achieve Congress’s goals for USF. For those reasons, these comments call upon the Commission to transition USF to a mechanism that would support in streamlined fashion the deployment of open broadband facilities – over which a host of communications services may be readily provided in a far more efficient manner than these services are provided on legacy networks. The Rural/Urban Commenters also support the expansion or adaptation of programs, such as Lifeline and Link Up, that would encourage broadband adoption by those who may not take service or may not be able to afford it in the absence of subsidies that foster demand and facilitate use by low-income individuals.

The Rural/Urban Commenters call upon the Commission to recognize the benefits of expanding broadband, particularly in rural regions, economically disadvantaged areas, and other high-cost service territories unserved or underserved by telecommunications carriers and Internet service providers. The comments briefly recount the overwhelming evidence suggesting that USF is in dire need of reform to meet this goal. At present, USF funds yesterday’s technologies – and does so in inefficient and counter-productive ways – without providing explicit support for the accountable deployment of broadband platforms. The Commission should move expeditiously to reform USF as part of a comprehensive approach in the National Broadband Plan to increase broadband availability and uptake throughout the United States.

TABLE OF CONTENTS

SUMMARY i

INTRODUCTION..... 2

DISCUSSION 3

I. THE COMMISSION SHOULD REVISE CURRENT USF POLICIES AND PRIORITIES TO SUPPORT THE DEPLOYMENT AND ADOPTION OF BROADBAND...... 3

A. The Importance of Improved Access to Broadband, Especially for Unserved and Underserved Rural and Non-Rural Areas, Has Been Demonstrated Conclusively...... 3

B. The Recovery Act Reinforces Provisions in the Communications Act That Should Be Construed to Require the Evolution of USF to Support Broadband. 7

C. Present USF Mechanisms Fail to Promote Broadband and Fail Even to Serve Their Intended Purpose of Supporting Legacy Services, as Demonstrated by the Commission’s Analysis of the Record in This Proceeding...... 10

II. THE COMMISSION CAN RATIONALIZE AND LIMIT THE SIZE OF THE FUND BY TARGETING SUPPORT TO DEPLOYMENT AND ADOPTION OF OPEN BROADBAND PLATFORMS THAT ARE CAPABLE OF DELIVERING BASIC AND ADVANCED SERVICES...... 13

A. The Rural/Urban Commenters Urge the Commission to Control the Size of the Fund by Reforming Its Purposes, Not Arbitrarily Limiting the Amount of Funding Available to Achieve the Goal of Universal Broadband. 13

B. The Commission Should Not Assess USF Contributions on Broadband Connections, and Should In Any Event Protect Low-Income Individuals and Families From Overpaying No Matter the Contribution Methodology. 14

C. Transitioning the Present High-Cost Mechanisms Over a Period of Years to Fund Broadband Explicitly Would Be Preferable to Creation of New Programs Supplementing the Existing Mechanisms. 16

D. The Effect of the Competitive Landscape on Delivery of Supported Services Is Not So Great That It Would Justify Commission Action Preempting State Regulations on COLR Obligations...... 17

CONCLUSION 20

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Media Access Project, counsel to Access Humboldt, Appalshop, California Center for Rural Policy, Center for Media Justice, Center for Rural Strategies, Main Street Project, Media Action Grassroots Network, Mountain Area Information Network, New Mexico Media Literacy Project, Rural Broadband Policy Group, Texas Media Empowerment Project, Thousand Kites, and Public Knowledge (together, the “Rural/Urban Commenters”), respectfully submits these comments in response to the Commission’s National Broadband Plan Public Notice #19 (the “Notice”).¹ In that *Notice*, the Commission sought comment on its universal service fund (“USF”) and intercarrier compensation (“ICC”) policies, and on several entities’ suggestions for

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

reforms of those two mechanisms, in order to “explore various policy options that would further the goal of making broadband universally available to all people of the United States.”²

INTRODUCTION

The Rural/Urban Commenters emphatically and enthusiastically endorse the goal of universal broadband deployment and adoption, as set out for the Commission in the American Recovery and Reinvestment Act of 2009 (“Recovery Act”).³ They also support categorically the proposition that USF monies should be used to promote the “universalization of broadband.”⁴ Although not in a position to provide the type of carrier financial data requested by several questions in the *Notice*, the Rural/Urban Commenters applaud the Commission’s decision to collect this type of data in order to inform policy decisions and rulemaking in this area.

Furthermore, though unable to comment on many questions regarding carrier revenues and expenditures, the Rural/Urban Commenters believe it to be of the utmost importance that the Commission hear from other interested parties in this proceeding – not only from existing, wireline and wireless eligible telecommunications carriers (“ETCs”) and other broadband providers, but also from public interest organizations and consumer advocates. The Rural/Urban Commenters cannot speak directly to the economics of carriers that receive USF support, but the organizations submitting these comments speak *for* the people most impacted by USF rules and policies: current and future telecommunications and broadband end-users in high-cost areas, including unserved and underserved areas of America’s great rural regions and cities.

² *Id.* at 1.

³ *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

⁴ *Notice* at 1.

Part I of these comments provides a brief overview of USF as it relates to the benefits that end-users derive from the fund, highlighting the importance of broadband and the unfortunate fact that USF today fails to provide adequate support for broadband deployment and adoption. Part II thereafter sets forth brief responses to specific inquiries in the *Notice* regarding the proper uses of USF and other revenues, as well as attendant obligations that should be put in place for service providers that receive funding.

DISCUSSION

I. THE COMMISSION SHOULD REVISE CURRENT USF POLICIES AND PRIORITIES TO SUPPORT THE DEPLOYMENT AND ADOPTION OF BROADBAND.

A. The Importance of Improved Access to Broadband, Especially for Unserved and Underserved Rural and Non-Rural Areas, Has Been Demonstrated Conclusively.

A broad range of studies⁵ and commenters in the Commission's National Broadband Plan proceeding,⁶ as well as the Commission itself,⁷ have illustrated convincingly the economic,

⁵ See, e.g., John Horrigan, Pew Internet & American Life Project, "Home Broadband Adoption 2009," at 33 (June 2009), available at <http://www.pewinternet.org/~media/Files/Reports/2009/Home-Broadband-Adoption-2009.pdf> ("Pew Broadband Adoption Report 2009") ("Overall, 55% of broadband users...view a high-speed connection as being very important to the civic or economic fabric of their communities.").

⁶ See, e.g., Comments of the National Cable & Telecommunications Association on NBP Public Notice #16, GN Docket Nos. 09-47, 09-51, 09-137, at 19-20 (filed Dec. 1, 2009) ("[I]n some low-income areas where laptops or netbook-like devices and home broadband connections have been provided to children, and the technology was thoughtfully integrated into learning and instruction, research shows positive effects on student academic performance, engagement, and attitude."); Comments of Public Knowledge, Media Access Project, the New America Foundation, and U.S. PIRG, GN Docket No. 09-51, at 1 (filed June 8, 2009) (the "Public Interest NBP Comments") ("[A]ccess to broadband has become an essential utility.... [B]usinesses large and small can reach new markets and make their enterprises more efficient. Students have at their fingertips educational resources not conceivable a few years ago. Some sources of news and information, once confined to the printed page, are to be found online only.").

⁷ See, e.g., In the Matter of a National Broadband Plan for Our Future, GN Docket No. 09-51, *Notice of Inquiry*, 24 FCC Rcd 4342, ¶ 4 (2009) ("*NBP Notice of Inquiry*") ("Individuals increasingly take advantage of broadband today for everyday communications with family and

educational, and societal benefits of improved access to broadband. Considering the weight of the evidence already submitted and the robustness of the record already developed in the National Broadband Plan docket, the Rural/Urban Commenters will not endeavor to reiterate here all of the obvious and almost universally recognized advantages of increased broadband deployment and adoption.

In a recent speech to the Innovation Economy Conference in Washington, DC, Commission Chairman Julius Genachowski neatly summarized the case for broadband's benefits. The Chairman stated that "broadband can be our platform for economic prosperity and opportunity for all Americans. It can be our engine for enduring job creation and economic growth."⁸ He noted as well that "[o]ur Internet ecosystem has already created millions of jobs, and universal broadband can accelerate that," referencing studies showing "that increases in broadband penetration translate into increases in GDP."⁹ Yet, despite these obvious benefits, Chairman Genachowski could not fail to report that "[m]illions of Americans live in areas where there is no broadband service" and that "[t]hirty-five percent of Americans aren't subscribers to

friends, sharing files with co-workers..., uploading videos and photos, collaborating on articles, blogging about local happenings and world events, creating new jobs and businesses, finding nearby restaurants, shopping, banking, interacting with government, getting news and information...and countless additional applications."); Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, "Innovation in a Broadband World," at 7 (Dec. 1, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294942A1.pdf ("Chairman Genachowski December 1st Speech") (describing the "importance of universal broadband deployment and adoption" for realizing benefits in the fields of energy delivery, healthcare, education, and job training, and noting that "[i]ncreasingly, job postings are online only; if you can't get online, you can't find a job").

⁸ Chairman Genachowski December 1st Speech at 6.

⁹ *Id.* ("Broadband-based innovation is [] an essential part of the solution to almost every major challenge our country faces[,] including education, health care, energy, and public safety. And it can drive robust democratic engagement for decades to come.").

broadband, even where it's available" – with such figures “almost double in some cases [] for certain communities, including low-income and rural Americans, minorities, and the elderly.”¹⁰

Focusing on the problem of limited deployment and low adoption rates in rural areas, for example, commenter Rural Broadband Policy Group has reported that although the rural regions of America are both vast and diverse, these areas do share a common set of concerns and features. These commonalities are based in large part on rural areas’ “geographically dispersed and less densely populated” character, which makes the delivery of public services – including communications services – far more challenging.¹¹ Still, despite the increased costs and challenges of serving these and other high-cost territories, the interdependent nature of the United States economy requires fiscal health and well-being in all regions. Unfortunately, according to the Rural Broadband Policy Group’s research, America’s rural communities are at risk and lagging behind. The group reported earlier this year that “[r]ural Americans are far more likely to be poor, undereducated, sick, and prone to a range of maladies such as drug addiction, depression, and suicide.”¹²

Advanced communications technology such as broadband access can and should be a major part of the solution for addressing these economic and social difficulties. Broadband “would allow rural America to reap the benefits of telehealth, telecommuting, higher education distance learning, improved emergency communications systems, and greater connection to the global economy.”¹³ Rural America lags behind the rest of the nation in broadband penetration,

¹⁰ *Id.* at 7.

¹¹ *See* Rural Broadband Policy Group, “Rural Broadband Principles and Policy Recommendations,” at 2 (Aug. 2009), available at http://www.ruralstrategies.org/sites/all/files/Rural_Broadband_Principles_AUGUST_09.doc.

¹² *Id.*

¹³ *Id.*

however, with less than half of rural residents subscribing to broadband in their homes.¹⁴ Other demographic groups and regions demonstrating below average broadband penetration (and below average growth of subscribership in some cases) include senior citizens, low-income individuals and families, and African Americans.¹⁵ Looking at the nation on a state-by-state basis, broadband penetration rates are at the absolute lowest in rural states with the lowest average income levels.¹⁶ Without more aggressive public policies and public investments designed to promote broadband deployment and adoption in such areas, struggling and impoverished areas and demographic groups will be deprived of the technological tools they might otherwise use to break this cycle of poverty and diminished opportunities.

Rather than accepting the current state of broadband deployment and adoption as somehow inevitable, the organizations joining together to file these comments call upon the Commission to help break this cycle with increased broadband availability. The Rural/Urban Commenters recognize, as have almost all other parties responding to the Commission's

¹⁴ See Pew Broadband Adoption Report 2009 at 4. The Pew study notes that home broadband usage grew rather rapidly for rural Americans in 2009, with a 21% increase reported over rural broadband penetration rates in 2008. See *id.* Nevertheless, despite the relatively rapid rise in rural broadband adoption found by this one study, the figures in the Pew report still indicate that usage rates for broadband in rural areas lag far behind the rates in non-rural areas.

¹⁵ *Id.* at 37 (“Relative to broadband users, dial-up users are older, have lower incomes, have lower levels of educational attainment, are more likely to be African American, and more likely to live in rural areas. For non-internet users, these same factors are also relevant, but in much more pronounced ways.”). Once again, the Pew study contains some encouraging figures on the rate of growth for broadband penetration among groups such as senior citizens and low-income individuals, but notes that African Americans registered below average growth in adoption for the second year in a row. See *id.* at 4.

¹⁶ See Comments of Free Press, GN Docket No. 09-51, at 54-55 & Figures 12-13 (filed June 8, 2009) (“Free Press NBP Comments”) (demonstrating that “[i]ncome, poverty and geography all influence which U.S. states excel and which lag behind in broadband adoption,” with richer and more densely populated states such as New Hampshire, Massachusetts, Connecticut, and California registering significantly higher broadband penetration than poorer, rural states such as Mississippi, West Virginia, Arkansas, Alabama, and Oklahoma).

numerous National Broadband Plan public notices, the salutary effects that increased broadband penetration would have throughout the country – especially in unserved and underserved areas. The current market-driven policies for the build-out of broadband do not adequately provide for these least-served communities and populations, which are predominantly rural, low-income, minority, or otherwise historically disadvantaged.¹⁷ The growth that some of these communities and groups have seen in broadband availability and adoption has only begun to close the broadband gap for these high-cost areas; yet, people in these areas need broadband as much or more than residents in more adequately served regions. Rural residents and members of disadvantaged demographic groups face special barriers and obstacles to obtaining an array of economic, educational, social and civic engagement opportunities. The people represented by the Rural/Urban Commenters need the transformative and connective power of broadband in order to participate fully in the nation’s modern-day democracy, economy, culture, and society.

B. The Recovery Act Reinforces Provisions in the Communications Act That Should Be Construed to Require the Evolution of USF to Support Broadband.

There can be no little or no doubt that USF must be repurposed at *some* point in time to support broadband deployment and adoption. As the Commission’s initial *NBP Notice of Inquiry* in this proceeding reported, the Recovery Act requires the Commission to develop a plan that “seek[s] to ensure that all people of the United States have access to broadband capability.”¹⁸ Clearly, this goal will not be met alone by the stimulus programs created by the recovery Act,¹⁹

¹⁷ *See id.* at 56 (asserting the need for “policies that encourage more rural broadband deployment, lower the monthly cost of broadband, increase the value and perceived utility of broadband, and help the less affluent get and stay connected”).

¹⁸ *NBP Notice of Inquiry* ¶ 13 (quoting Recovery Act § 6001(k)(2)).

¹⁹ *Id.* ¶ 6 (“Congress provided \$7.2 billion for this [broadband stimulus] effort – no small sum. But even this level of funding is insufficient to support nationwide broadband deployment.”).

and will by any account require additional public spending as well as private investment. Reforming USF is essential to supporting deployment and adoption of broadband in high-cost areas and among low-income populations. In the same way that the current fund works to promote telecommunications availability and use in such situations, providing explicit support for broadband will facilitate deployment and adoption in areas where private investment might not otherwise occur at optimal levels to achieve Congress’s universal broadband goals.

Furthermore, the statutory provisions governing USF itself require the Commission to adapt and reform the fund over time as technology and Americans’ uses for it change. Section 254(b)(2) of the Communications Act directs the Commission to base its policies for the “preservation and advancement of universal service” on several guiding principles, including the principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”²⁰ As the Commission is well aware, the statute also establishes as a universal service principle the requirement that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications[,]. . . advanced telecommunications and information services” reasonably comparable in quality and price to such services provided in urban areas.²¹

The universal service provisions in the Communications Act are forward-looking in nature.²² The principle requiring USF to promote advanced telecommunications and information

²⁰ 47 U.S.C. § 254(b)(2).

²¹ *Id.* § 254(b)(3). As noted in the *NBP Notice of Inquiry*, the Commission uses the terms “advanced telecommunications capability,” “broadband,” and “high-speed Internet” at different times, *see NBP Notice of Inquiry* ¶ 16 & n.19, but the references in Section 254(b)(2) and (3) to “advanced telecommunications and information services” cannot reasonably be understood to mean anything other than broadband capability and broadband Internet access – for the present time and foreseeable future.

²² Unfortunately, the design and implementation of the fund has not always matched the forward-looking nature of the governing statute.

services is, quite appropriately, not a static or fixed mandate to provide only certain basic services and bare minimum technological capabilities. Rather, the statute directs the Commission to implement dynamic programs reflecting the fact that “[u]niversal service is an evolving level of telecommunications service’ that should be revisited periodically.”²³

To account for the evolving communications landscape and the tremendous leap forward that broadband represents, the Federal-State Joint Board on Universal Service recommended to the Commission in 2007 the inclusion of broadband as a supported service under USF’s high-cost programs.²⁴ The Joint Board likewise recommended allowing states “to use various methods to allocate available funds for broadband projects to reach unserved areas, including funding broadband projects through a competitive bidding system designed to select the most efficient provider of such service.”²⁵ Although the Commission declined to adopt the recommendations of the Joint Board at that time,²⁶ it has continued to seek comment on proposed rules for using USF to support broadband deployment and adoption. These proposals include requiring high-cost USF support recipients to offer broadband Internet access and authorizing the establishment of a broadband Lifeline/Link Up pilot program.²⁷

²³ *NBP Notice of Inquiry*, Appendix, ¶ 10 (quoting 47 U.S.C. § 254(c)). As Section 254(c)(1) makes clear: “Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.” See Reply Comments of Public Knowledge, GN Docket No. 09-51, at 33 (filed July 21, 2009).

²⁴ *NBP Notice of Inquiry*, Appendix, ¶ 10.

²⁵ *Id.* (citing High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Rcd 20477, ¶¶ 12-15, 55-62 (Fed-State Jt. Bd. 2007)).

²⁶ *Id.* ¶ 10 & n.39.

²⁷ *Id.* ¶ 10.

As described in Part II below, the Rural/Urban Commenters strongly support such proposals to make broadband a supported service in high-cost areas, require that broadband be made available on open and affordable terms throughout USF recipients' service territories, and implement demand-spurring initiatives such as a broadband Lifeline/Link Up program. Catalyzed by the Recovery Act and its universal broadband availability mandate, the Commission cannot condone further delay in reforming the fund to support broadband deployment and adoption, all in accord with the universality, advanced services, and evolving technology directives for USF in the Communications Act.

C. Present USF Mechanisms Fail to Promote Broadband and Fail Even to Serve Their Intended Purpose of Supporting Legacy Services, as Demonstrated by the Commission's Analysis of the Record in This Proceeding.

As the Chairman and the Commission's Omnibus Broadband Initiative team have recognized, USF in its present form is broken. The fund fails to promote greater broadband deployment and adoption. This fundamental failure alone is enough justification for reforming USF, considering the overwhelming evidence regarding the importance of broadband, as well as the Commission's mandate under the Recovery Act and Section 254 of the Communications Act. If the present program were generating countervailing benefits due to some tremendous efficiency in the promotion of legacy services, then perhaps calls to delay reform would have some merit. Because of the current fund's backward-looking nature, its inefficiencies, its limitations, and its lack of accountability for various mechanisms, proponents of delay should hold no sway over the Commission's decision-making.

To paraphrase one of the great speeches of the last century and apply it to USF, rarely if ever in the field of communications policy was so much paid by so many for so few benefits. And the main problem with USF is that it does focus on the last century's technologies and

investments.²⁸ As Chairman Genachowski said in his speech earlier this month, this “biggest pool of money that the FCC administers” is “a multi-billion dollar annual fund that continues to support yesterday’s communications infrastructure.”²⁹ Acknowledging the difficult decisions that reforming the system surely will entail, he nonetheless promised that with the “goal of universality [] as important as ever...to meet our country’s innovation goals, we need to reorient the fund to support broadband communications.”³⁰

The Commission’s preliminary reports on the National Broadband Plan have shown that, while USF provides some support for broadband at present, that support is inconsistent, diffuse, and difficult to measure. Identifying a large number of troublesome gaps in the nation’s deployment and adoption of broadband, the Commission’s staff identified several problems with current USF mechanisms. These include the fact that the majority of USF funding targets the deployment and adoption of voice service, not broadband;³¹ that there is no coordination to address and solve broadband gaps among the four separate USF programs for (1) high-cost areas, (2) Lifeline/Link Up, (3) Schools and Libraries or “E-Rate” funding, and (4) rural healthcare; and that there is limited accountability for use of high-cost funds that support broadband

²⁸ Free Press NBP Comments at 186-87 (“We’re still throwing billions of dollars away each year supporting a legacy technology supplied by companies that have become wholly dependent upon subsidies [as] the digital divide between rural and urban America grows wider.”).

²⁹ Chairman Genachowski December 1st Speech at 7; *see also* Free Press NBP Comments at 190 (“USF as currently administered inefficiently supports redundant legacy technologies and enables private companies to become wholly dependent on the continuance of the old model.”); *id.* (“The fact that the digital divide persists in the face of a \$4.6 billion annual fund to support rural telephony is a glaring testimony to the failures of the current universal service model and the need for modernization.”).

³⁰ Chairman Genachowski December 1st Speech at 7.

³¹ *See, e.g.*, 47 C.F.R. § 54.101 (defining supported services for purposes of the high-cost mechanisms as nine different services that “eligible telecommunications carriers” must provide, including such legacy services as “voice grade access to the public switched [telephone] network,” access to operator and interexchange services, access to telephone directory assistance, and other traditional telephony services).

deployment in *some* cases, but never in systematic or well-documented fashion.³² These problems are compounded by the fact that high-cost funding does not directly pay for middle mile costs, and that the high-cost mechanisms do not encourage least-cost solutions for filling in broadband gaps, with funding decisions based instead on arbitrary or obsolete distinctions between types of service providers rather than the broadband needs of the service territory.³³ All of these problems and inefficiencies have led to a fund that is growing in unsustainable ways. Telecommunications users contribute double what they did to fund universal service in 2000, but see few readily identifiable and measurable outcomes demonstrating the use of support for improving broadband capabilities.³⁴

It must be said in fairness that changes in communications technology have outpaced the evolution that should have taken place in USF to keep up with this changing landscape. When Congress enacted the Telecommunications Act of 1996, “Internet access was an application that used telephony as an infrastructure. Today, telephony is one of many applications supported by broadband infrastructure.”³⁵ The Commission should be fully cognizant of the present and potential benefits of broadband, as well as changes in communications technology that make “broadband connectivity [] capable of providing all the services currently supported by USF,” including voice services, “in addition to the expanded capabilities of an open broadband

³² See Federal Communications Commission Omnibus Broadband Initiative, “Broadband Gaps,” at 10 (rel. Nov. 18, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294708A1.pdf (“NBP Broadband Gaps”).

³³ See *id.*; see also Public Interest NBP Comments at 18 (“Every study and proceeding declares that USF wastes billions of dollars through artificial stovepipes breaking services into irrational categories, each with its own arcane rules and set of incumbents resistant to change.”).

³⁴ NBP Broadband Gaps at 10.

³⁵ Free Press NBP Comments at 189.

connection.”³⁶ Moreover, while sufficient investment in broadband will not be cheap, these networks capable of carrying an array of “basic” and advanced services can deliver such offerings to consumers in more efficient and affordable ways – provided that USF supports deployment in unserved and underserved areas and encourages adoption by subsidizing end-users’ recurring and non-recurring costs for service.

In short, the evolution of USF is an essential adaptation to maintain healthy digital ecosystems for the least-served communities. With these principles in mind, the Rural/Urban Commenters provide answers below to certain questions posed in the *Notice*.

II. THE COMMISSION CAN RATIONALIZE AND LIMIT THE SIZE OF THE FUND BY TARGETING SUPPORT TO DEPLOYMENT AND ADOPTION OF OPEN BROADBAND PLATFORMS THAT ARE CAPABLE OF DELIVERING BASIC AND ADVANCED SERVICES.

A. The Rural/Urban Commenters Urge the Commission to Control the Size of the Fund by Reforming Its Purposes, Not Arbitrarily Limiting the Amount of Funding Available to Achieve the Goal of Universal Broadband.

Controlling the overall size of the fund is important, but no more so than improving the efficiency and coordination of funding mechanisms to promote broadband deployment and adoption via all USF disbursements. The Rural/Broadband Commenters have no strong opinion regarding the relative size of the present-day USF programs and funding mechanisms, because simply retaining and recalibrating the current mechanisms will not go far enough toward reshaping the fund into a coherent support system for the deployment and adoption of broadband. Thus, apart from calling for the eventual extension of USF low-income support to establish a fuller “Broadband Lifeline/Link Up program” under parameters similar to those for the pilot

³⁶ Public Interest NBP Comments at 19.

program proposed by the Commission,³⁷ the Rural/Urban Commenters take no position on the relative size of each funding mechanism in the current, outmoded version of USF.

The Rural/Urban Commenters call upon the Commission to achieve the objective of the universalization of broadband, but not by shifting money between the current mechanisms. Ultimately, the Commission must ensure that all services are supported through a single, coherent, and unified USF that subsidizes the deployment of broadband facilities in unserved or underserved areas, and that also supports consumer connections, equipment, and outreach and education initiatives.³⁸ Controlling the size of the overall fund is important for general efficiency purposes, and for ensuring that end-users do not continue to experience increases in the size of the USF contributions passed through to them by service providers. Yet, comprehensive reform of USF (and of mechanisms such as ICC) would go farther towards reducing the size of the fund than would artificial caps that may prove too low or too high for the purpose of achieving universal broadband aims.

B. The Commission Should Not Assess USF Contributions on Broadband Connections, and Should In Any Event Protect Low-Income Individuals and Families From Overpaying No Matter the Contribution Methodology.

The Rural/Urban Commenters concur with earlier participants in the National Broadband Plan proceeding that, while the contribution methodology must be reformed, residential

³⁷ See *Notice* at 6 (citing High-Cost Universal Service Reform; 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, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6475, ¶¶ 64-91 (2008) (“*Universal Service Reform and Intercarrier Compensation Further Notice*”).

³⁸ See Public Interest NBP Comments at 19.

broadband connections should not be assessed.³⁹ Increasing prices on broadband service (by increasing governmental surcharges that will be passed on to consumers) would directly contradict the goal of promoting broadband adoption by individuals who today cannot afford or cannot yet see the value in taking broadband service.⁴⁰ A numbers-based contribution methodology would be preferable to the current revenue-based methodology, which is based on revenues from legacy services and on incumbent local exchange carrier accounting categories. Nevertheless, the Commission also should take into account the suggestion of wireless carriers that such a system should “be carefully tailored to ensure that low-income and low average revenue per unit customers do not bear an unreasonable share of the contribution obligations” and that it should “treat fairly...wireless prepaid and...wireless family-plan customers.”⁴¹ Furthermore, the Rural/Urban Commenters note that protecting standalone broadband access from contributions to the fund would not necessarily preclude the imposition of fair contribution requirements on interconnected VoIP and other broadband platform uses of numbering resources.

³⁹ See Free Press NBP Comments at 237; Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51, at 34 (filed June 8, 2009) (“NCTA NBP Comments”).

⁴⁰ See Free Press NBP Comments at 237 (“Policymakers should refrain from making broadband services subject to USF contributions for the foreseeable future, even if broadband services are the main recipient of USF.... Because broadband is a developing market, any USF assessment, no matter how small, would likely result in a net decrease in total broadband subscribership nationwide.”); NCTA NBP Comments at 34 (“Assessing contributions on customers purchasing these services raises their prices, which would undermine all the other steps the Commission must take to improve the affordability and adoption of high-speed Internet service.”).

⁴¹ See Comments of CTIA – The Wireless Association, GN Docket No. 09-51, at 49 (filed June 8, 2009).

C. Transitioning the Present High-Cost Mechanisms Over a Period of Years to Fund Broadband Explicitly Would Be Preferable to Creation of New Programs Supplementing the Existing Mechanisms.

The Rural/Urban Commenters cannot address the USF transition from the perspective of an eligible telecommunications carrier, but they can provide the perspective of the fund's true beneficiaries: end-users in high-cost areas and low-income communities. The Rural/Urban Commenters primary incentive for participating in this proceeding is to advocate policies that will ensure the widest possible deployment and adoption of broadband in unserved and underserved high-cost areas, both rural and urban. Among these important goals, the Commission should place the highest priority on supporting broadband deployment in least-served areas that lack adequate broadband facilities of any kind. To the extent that an additional funding mechanism targeting broadband in unserved areas is necessary to meet that priority, the Rural/Urban Commenters are not opposed to the creation of such new, targeted mechanisms. However, as explained in Part II.A above, rationalizing and transitioning USF to a system that coherently and consistently supports broadband deployment and adoption through a single fund – one that might support qualifying wireline and wireless broadband facilities, middle mile projects as well as local loops, and other vital network components – seems more sensible than adding new pieces to the jumbled jigsaw of funding mechanisms.

The key for transitioning USF into a support for future-proof broadband facilities rather than updated versions of legacy telecommunications systems is to fund broadband platforms and open broadband connections, not services in outdated “silos” such as telephony or mobility.⁴² All service providers receiving high-cost USF funding can be required, during the course of an appropriate transition, to provide open broadband connections to subscribers. That would entail

⁴² See Public Interest NBP Comments at 19.

providing both broadband Internet access *and* other services (like voice) that can flow over the same broadband infrastructure.⁴³ In this case, the ETC requirements described in question 3(i) in the *Notice* would need to be revised in a manner requiring USF recipients to construct and maintain open broadband facilities over which both basic and advanced services – whether provided by the network owner or a third-party application provider – can be readily obtained and utilized by end-users.

Whatever transition period the Commission proposes, be it as long as ten years⁴⁴ or some shorter timeframe, the Commission should commence that transition process as soon as possible in order to reinvigorate USF as a program supporting today’s technologies. In answer to question 3(e) in the *Notice*, the Commission should indeed look to control the growth of the high-cost fund by taking into account all revenues that subsidized service providers may derive from upgraded or newly built broadband plant. A forward-looking and comprehensive “modernized regulatory structure” of this sort, taking into account revenues from advanced services offered over the same subsidized broadband infrastructure, would provide sufficient incentives for broadband deployment while reducing the need for ongoing operational support.⁴⁵

D. The Effect of the Competitive Landscape on Delivery of Supported Services Is Not So Great That It Would Justify Commission Action Preempting State Regulations on COLR Obligations.

The *Notice* seeks comment on the disparity between the regulatory obligations of USF recipients with and without carrier of last resort (“COLR”) obligations for the territories they

⁴³ *See id.* (“In other words, plain old telephone (POTS) providers in high-cost areas will only receive funding if they provide POTS service via VOIP, and make the broadband connection available as part of the subsidized service.”).

⁴⁴ *See* Free Press NBP Comments at 255 (suggesting ten-year transition and providing detailed analysis of potential frameworks and support bases for future high-cost fund recipients).

⁴⁵ *See id.*

serve.⁴⁶ Whatever the impact of such regulations may be on the economics of deploying broadband, the Rural/Urban Commenters urge caution before the Commission takes any action to upset COLR obligations imposed by state law and state commissions. There would be a threat of not only failing to deploy broadband, but even losing existing basic voice service in some remote and extremely high-cost rural areas such as tribal lands, if the Commission were to propose changes to USF that purported to diminish or remove COLR obligations based on whether competitive providers receive federal support. Native Public Media and the New America Foundation recently released a report documenting the “deplorable” nature of broadband deployment and communications infrastructure in tribal areas, highlighting the tragic fact that large portions of these tribal lands are unserved even by legacy telephone let alone broadband service offerings.⁴⁷

Rather than recommending removal of COLR obligations in any circumstance, the Commission should reform USF to require that all entities accepting USF be required to “assume some form or COLR obligation for broadband.”⁴⁸ This requirement could of course be subject to the reasonableness and business practicality of fulfilling specific requests for new service in previously unserved regions, but would go a long way towards addressing the deplorable condition of broadband deployment in tribal areas and other high-cost regions. This change should be coupled, as suggested in question 5(h) of the *Notice*, with changes to USF that would

⁴⁶ *See Notice* at 5-6.

⁴⁷ Native Public Media & Open Technology Initiative, New America Foundation, “New Media, Technology and Internet Use in Indian Country: Quantitative and Qualitative Analyses,” at 38 (Nov. 2009), available at <http://www.nativepublicmedia.org/images/stories/documents/npm-naf-new-media-study-2009.pdf> (“[I]mplementing actions that prioritize Tribes in planning, regulation and deployment is a necessary first step in achieving successful and enduring solutions to the deplorable and long standing lack of communications technologies in Tribal communities nationwide.”).

⁴⁸ *Notice* at 6.

permit greater efficiency and savings in the delivery of supported voice services using wireless or VoIP platforms whenever appropriate.⁴⁹

As explained above in Part II.C, the Rural/Urban Commenters believe that the way to preserve existing basic services in high-cost areas while expanding broadband deployment is to support the construction of open broadband facilities over which such services may flow. Service providers, including third-party application providers other than the network owner, would then be able to deliver basic and advanced services more cost-effectively once the initial subsidies are used to construct broadband plant with modern capabilities. Ensuring that USF recipients offer open broadband connections, either by adopting common carrier requirements for underlying transmission⁵⁰ or other open access requirements for facilities constructed using USF monies, would further ensure that residents in high-cost areas receive the benefits of competitive service offerings riding over the top of subsidized broadband facilities. Congress adjudged open access requirements to be proper for recipients of Recovery Act broadband stimulus funding,⁵¹ and the resulting regulation clearly did not deter applicants from seeking the funding available through the stimulus programs. Adopting open access requirements for all providers that utilize a reformed USF system will help to ensure universal broadband deployment and wider adoption of more affordable services running over subsidized, twenty-first century broadband infrastructure.

⁴⁹ *See id.*

⁵⁰ *See id.*, question 5(d).

⁵¹ *See* Recovery Act § 6001(j) (requiring NTIA to “publish [] non-discrimination and network interconnection obligations that shall be contractual conditions of [broadband stimulus] grants..., including, at a minimum, adherence to the principles contained in the [FCC]’s broadband policy statement”).

CONCLUSION

For the reasons set forth above, the Rural/Urban Commenters respectfully submit that the Commission take steps to reform, rationalize, and modernize USF in a manner that will promote universal deployment of broadband service in *all* parts of the United States, including in high-cost service territories and among low-income populations where fostering and supporting demand for service is so vital.

Respectfully Submitted,

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