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

In the Matter of	)	
	)	
The National Cable & Telecommunications	)	
Association Petition for Rulemaking to	)	GN Docket No. 09-51
Reduce Universal Service High-Cost Support	)	WC Docket No. 05-337
Provided to Carriers in Areas Where There is	)	RM-11584
Extensive Unsubsidized Facilities-Based	)	
Voice Competition	)	

COMMENTS
OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] is pleased to comment on the Petition for Rulemaking of the National Cable & Telecommunications Association (NCTA) to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There is Extensive Unsubsidized Facilities-Based Voice Competition ("Petition").[2] Rather than adopt the NCTA Petition, the Commission should focus on reforming the high-cost universal service system in a comprehensive manner.

Building communications facilities to support consumers' use of voice and broadband services in the low-density areas of our nation is expensive. Thus universal service plays an important role in both the availability and affordability of services in high-cost rural areas. While clearly universal service funding must be expanded to support broadband directly, and while much of the current universal service funding supports facilities that are jointly used for voice and broadband services, modifying the current mechanisms must be done with great care.

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[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.
[2] See Public Notice DA 09-2558 released December 8, 2009.

Ignoring the health of the current mechanisms in order to focus on funding solely broadband service could be enormously destabilizing for providers that, as the carriers of last resort for their customers, may provide the only voice and broadband services available. Although universal service funding should evolve from supporting voice to supporting both voice and broadband access, this reform must properly size and target the correct amount of support that is needed, and should not reduce current levels of support by the over-simplified elimination of support where some competition may exist (as the NCTA Petition recommends). The transition to supporting next generation communications services must be carefully managed.

There are many changes that should be made to the current funding mechanisms in order to make them more efficient and effective. Many of the concepts underlying these changes could also apply to broadband funding. Geographic targeting of support to high-cost areas is one of the most significant concepts that would improve high-cost mechanisms and support direct funding of the construction and improvement of broadband facilities in high-cost areas. While the Petition correctly observes that the current system provides too much support in some areas, it does not provide a solution to determine how much support is needed in the truly high-cost areas where support is required, a solution that USTelecom has advocated for quite some time now. The NCTA Petition should be rejected in favor of comprehensive reform of the universal service high-cost mechanism.

The Petition correctly identifies a key problem with high-cost support (most apparent in larger study areas) -- *i.e.*, the lack of direction of support to granular, truly high cost areas. But NCTA's proposal raises significant implementation issues.

I. USTelecom Strongly Supports Rational Geographic Targeting of High-Cost Universal Service Support.

USTelecom has long supported improvement in the geographic targeting of high-cost universal service support and if comments on the Petition focus the Commission's attention on that issue, the Petition has served a worthwhile purpose. Geographic targeting should be based on either actual costs or a reasonable proxy for costs. In addition to geographic targeting of support, USTelecom has proposed that rates be taken into account in determining high-cost universal service support through the establishment of a national rate benchmark.

High-cost support for fixed-line ETCs should be better targeted on a geographic basis, either at or below the wire center level. The implicit support inherent in study area averaging is no longer sustainable and should be promptly addressed. New entrants often compete only in densely populated areas that have relatively low costs. Competitive pressures and state rate regulation prevent incumbent LECs from charging higher rates in their low-cost densely populated areas to help offset some of the costs of serving their high-cost, more remote areas. Although competitors increasingly are serving rural consumers in town centers where costs are lower, competitors generally do not serve consumers outside of those town centers where costs are higher and appear unlikely to offer services to those regions in the foreseeable future. According to Table 2 of the Empiris Report attached to the Petition[3], only 83 study areas out of over 1300, with only $109 million in USF support amounting to 5 percent of the total payments to LECs, and a lower percentage of the total high-cost fund, have cable voice coverage of at least 95 percent of households. There is no category in the report showing areas with complete coverage. Competitors are making the financially rational choice to avoid serving high-cost areas altogether.

In contrast, carriers of last resort are compelled to serve the areas outside of rural towns, often at a significant loss. These problems are especially significant for carriers serving high-cost rural areas that are generally part of large study areas encompassing regions where the cost to deploy and provide service varies significantly. Although the costs in some pockets of the study area may be quite high, the average cost to serve all regions of the study area may not qualify the carrier for much, if any, explicit support for its high-cost areas. Further problems are posed by the "non-rural" mechanism's classification of an entire state as either eligible or non-eligible, based on statewide average costs. It is not unreasonable to expect that if the high-cost portions of larger study areas received a proper level of universal service support through improved targeting, then carriers in those regions would be better able to deploy and enhance a platform of joint-use facilities conducive to the deployment of broadband services.

Including mechanisms that reasonably constrain the size of the universal service fund while ensuring compliance with Act mandates is good public policy. Exposing the truly high-cost rural areas within study areas now receiving inadequate support due to averaging need not unduly increase the size of the high-cost fund. Even absent comprehensive reform, the commission has numerous mechanisms at its disposal to control the size of the fund.

II. The Petition Proposes Solutions that Raise Implementation Issues.

While geographic targeting of high-cost support is a goal shared by USTelecom, the solutions proposed by the Petition raise serious implementation issues.

- **Cable voice coverage is overstated.**

The Petition points to a study that claims cable telephony is available in 57% of rural study areas representing 87% of the rural population. As an initial matter, to derive this figure,

[3] See page 20 of "Universal Service Subsidies to Areas Served by Cable Telephony", Jeffrey A. Eisenach, Ph.D., Empiris LLC.

the study includes “rural study areas with *at least some* cable telephony availability” [emphasis added]. So, a study area with cable telephony available to a minimal portion of the population within a study area would be reflected as having 100% availability. Yet, according to the same study, cable telephony was only available to 43% of households in ILEC rural study areas. Furthermore, cable telephony was only available to 95% or more of households in 6% of study areas representing 4% of the rural population and was available to 75% or more of households in only 13% of study areas representing 14% of the population (i.e., an additional 7% of rural study areas representing an additional 10% of the rural population).

This means that for all ILEC rural study areas across the United States, cable telephony was unavailable to 57% of households; and in 87% of rural study areas representing *at least* 86% of the rural population, cable telephony was available to less than three-quarters of the population. But for the 10% of the rural population for whom cable — according to the data relied upon in the study — serves between 75% and 95% of the households, there very well may be a substantial gap from *universal* availability of competitive unsubsidized cable voice service. Even for the 4% of the rural population where cable serves 95% or more of the households, competitive unsubsidized service is not necessarily *universal*. As discussed below, it is these households not served by cable competitors that are likely to represent the largest proportion of costs. Yet the Petition proposes a process that could lead to the reduction or elimination of subsidies intended to achieve the long standing policy goal of *universal* service for *all* Americans in areas where cable telephony serves as little as 75% of households.

- **Cable voice coverage is not necessarily an accurate proxy for cost.**

As mentioned above, the Petition sets a threshold of 75 percent of the customers in an area having unsupported service available as a trigger for demonstrating the support necessary for the LEC to provide universal service. Costs are not driven solely by the number of households served but rather by the number of households served over a particular geographic area. Households clustered in a town or urbanized areas are relatively inexpensive to serve, while even a small number of households spread out over a rural area can be extraordinarily expensive to serve. It would not be unusual for a wire center to have 75 percent of households within or very near the town limits, while the remaining 25 percent of the households are scattered over many square miles, requiring feeder lines with less than 20 households per mile and even drops measured in miles. Thus the 75 percent threshold bears little relation to the need for high-cost support for universal service.

Also, for the 75 percent threshold to be triggered, presumably the Commission would want more than the mere assertion of such coverage. As we have seen from broadband mapping efforts undertaken recently, companies are reluctant to publicly expose their footprint at such a high level of specificity for competitive reasons. Would cable companies be willing to provide household level data for their voice coverage?

The Petition goes further to suggest that even areas with only 50 percent coverage be subject to the competitive trigger if the costs in the uncompetitive area are the same as those in the competitive area. Yet this argument clearly contradicts what the Petition asserts is the goal of the proceeding – to identify the subset of ILEC costs that would not be incurred but for the provision of service to customers that do not have a competitive option. Half of the customers in such areas where support is challenged would not have a competitive option.

- **Deregulation of ILEC Retail Rates Is Not Necessarily Indicative of the Presence of Wireline Competition.**

There are many flavors of "retail rate deregulation." True retail rate deregulation would mean that all retail rates are unconstrained for all retail services. But many states have "deregulated" rate bundles while retaining rate regulation for basic residential service, the very service at issue here. Footnote 43 on page 16 of the Petition specifically notes that rates within a state would count as "deregulated" even if basic local rates remain regulated. Other states have "deregulated" service unless a certain proportion of the customer base complains to the state Commission, which then triggers a possible reregulation or a rate case. Another group of states has "deregulated" rates at some time in the future while imposing rate freezes for a period of years, or has "deregulated" rates for a set number of years with reregulation possible at the conclusion of the term.

Furthermore, a state evaluation for the purpose of rate "deregulation" is not the same as an evaluation of whether a carrier requires support to serve as the COLR in an individual high-cost area. Many states have deregulated rates by taking into account competition from mobile voice providers which NCTA would not consider.[4] Other states have deregulated retail rates of cooperatives based on the theory that the retail ratepayers are also the owners and so are self-regulating their rates. And some states have deregulated retail rates of small ILECs because of the cost of rate regulation on a per customer basis and the social pressure faced by the ILEC as a member of the community when considering rate increases.

II. <u>If the Petition is Granted, the ILEC Should Be Totally Relieved of COLR Obligations.</u>

The Commission must acknowledge that the expense to the ILEC of fulfilling historic COLR obligations and those associated with ETC status. Such obligations vary by state but generally include a variety of standards and reporting requirements that typically apply only to ILECs. COLR obligations can include:

- Installation of primary services within X days

[4] Petition page 12

- Out of service restored within X hours
- Less than X troubles per hundred per month
- Fewer than X held orders in a month (usually tied to construction of new facilities to serve customer locations, often in a remote portion of the exchange)
- Less than X repeat trouble reports per month
- Dial tone/local call completion of a certain percentage of all calls
- Operator assistance – X% answered within X seconds
- Call center answer time – X% of customers within X seconds
- Warm line provision

ILECs receiving universal service are also subject to the list of current services required to become ETC eligible. These include:

- Voice grade access to the public switched network
- Local usage
- Dual Tone Multifrequency (DTMF) signaling or its functional equivalent
- Single-part service or its functional equivalent
- Access to emergency services, including 911 and enhanced 911
- Access to operator services
- Access to interexchange services
- Access to directory assistance
- Toll limitation for qualifying low-income customers

In addition to the nine services listed above supported by the federal universal service support mechanisms, the federal guidelines for ETC designations added the following:

- Adequate financial resources
- Commitment and ability to provide the supported services
- Ability to remain functional in emergencies
- Consumer protection
- Local usage

In areas where high-cost support is eliminated as envisioned by NCTA, ILECs should be relieved of any remaining state COLR obligations and be free to relinquish their ETC status and attendant obligations under the federal rules.

IV. Support for Current Categories of Costs Should be Continued.

Based on arbitrary allocations or a misunderstanding of how high-cost universal service operates, the Petition proposes to reduce or eliminate support for various categories of costs associated with the provision of voice service. Contrary to the Petition, ICLS and IAS *are* associated with installation and maintenance of plant, specifically loop plant and the non-traffic sensitive portion of switches (commonly referred to as common line investment) continue to warrant support. Both funds are the results of access reform (MAG and CALLS respectively) that reduced common line per minute access charges to zero and replaced that revenue flow with an opportunity for recovery from higher subscriber line charges and these high-cost support funds. The costs those funds were established to compensate were tied to the specific network costs of loop and switching plant which had previously been recovered through per minute access charges.

USTelecom members would much rather recover costs from customers than from support flows that are subject to regulatory risk and uncertainty. However, customers can only provide sufficient revenues for such cost recovery when the resulting rates are reasonably comparable and affordable and not constrained by regulation. The determination of ICLS and IAS is the residual of what the Commission has previously deemed appropriate to be recovered directly from customers in the form of subscriber line charges.

The Petition also suggests elimination of support for high-costs that the Commission has identified as possible barriers to broadband deployment. For example, the Petition would not consider support for interoffice transport. As an initial matter, transport costs are not supported by existing universal service support mechanisms. However, as the Commission has learned in its deliberations on the National Broadband Plan, middle-mile and second-mile facilities represent significant costs for rural and remote exchanges, and can be a barrier to broadband deployment and provision of faster speeds.

The Petition also unjustifiably recommends elimination of support for switching. The suggestion that since a cable company can provide switching without support means that an ILEC can do the same is inaccurate. In many rural areas, cable companies could add the revenues associated with voice service to their basic video business for merely the incremental cost of switching. On the other hand, without switching ILECs could not provide their basic service. Merely because a cable company can provide voice service in a manner enabled by its dominant market position in video is no reason to eliminate the switching support provided to the LEC.

V. The Identical Support Rule Should Be Eliminated

The Petition rightly criticizes the identical support rule for determining the proper level of support for CETCs. The interim cap has reduced the negative impact of the rule, but comprehensive universal service reform is the only real solution. The Petition acknowledges the adoption of the interim cap but goes on to make arguments supporting its plan as if the cap was not in place.

VI. **Conclusion**

Building communications facilities to support consumers' use of voice and broadband services in the low-density areas of our nation is expensive. Thus universal service plays an important role in both the availability and affordability of services in high-cost rural areas. There is consensus that there are many changes that should be made to the current funding mechanisms in order to make them more efficient and effective. Many of the concepts underlying these changes should also apply to the construction of a new broadband high-cost funding mechanism. Geographic targeting of support to high-cost areas is one of the most significant improvements that can be made to support the direct funding of construction and improvement of broadband facilities in high-cost areas. Rather than adopting the NCTA Petition, the Commission should focus on comprehensively reforming the high-cost universal service system in this manner.

Respectfully submitted,

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