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

In the Matter of	)	
	)	
Role of The Universal Service Fund And Intercarrier Compensation In The National Broadband Plan	)	GN Docket No. 09-51
	)	
Federal -State Joint Board on Universal Service High-Cost Universal Service Support.	)	WC Docket No 05-337
	)	
National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High Cost Support	)	RM-11584

COMMENTS

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Bruce E. Beard
Jeremy M. Kissel
Scott C. Friedman
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Attorneys for the American Cable Association

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SUMMARY

The American Cable Association ("ACA") strongly supports Universal Service Fund reform. To that end, the ACA recently set forth in the National Broadband Plan proceeding a proposal to evolve and reform Universal Service to fund broadband service in unserved and underserved areas.

In these Comments, the ACA again sets forth the key components of its proposal to reform Universal Service. The ACA agrees with the underlying premise of the NCTA Petition that High-Cost funding in competitive areas should be reformed to eliminate inefficiencies. While the NCTA proposal applies equally to all carriers receiving universal service support, in contrast, the ACA believes it is necessary to strike a balance between the need to improve the efficiency of the fund with the objective of ensuring a fair opportunity for smaller, potentially more vulnerable providers. Thus, a primary difference between the ACA proposal and the NCTA proposal is that the ACA's proposal allows for small carriers of 100,000 lines or less to continue to draw from the fund as they do today. While reform is obviously necessary, the FCC should proceed cautiously as it relates to small service providers, as the ACA did by including the 100,000-line exemption in its proposal.

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COMMENTS

I. Introduction.

The American Cable Association ("ACA") files these Comments in response to the Commission's Public Notice inviting comments on the National Cable and Telecommunications Association ("NCTA") Petition for Rulemaking to reduce Universal Service High-Cost Support to carriers in areas where there is extensive unsubsidized facilities-based voice competition.[1]

[1] *Comments Sought on the National Cable & Telecommunications Association Petition for*

In the ACA's recent filing regarding the role of the Universal Service Fund ("USF") in the National Broadband Plan, the ACA set forth a proposal to evolve and reform Universal Service to fund broadband service in unserved and underserved areas, including by distributing funds more efficiently.[2] A key premise behind the ACA proposal is the same as the NCTA proposal: to improve the efficiency of problems with the current Universal Service program by targeting funding to consumers that truly require support. However, unlike the NCTA proposal, the ACA proposal seeks to balance important competing legal and policy considerations.

The NCTA proposal applies equally to all carriers receiving universal service support. In contrast, the ACA's proposal provides that smaller, more rural incumbent wireline providers – those entities most reliant on current funding to support consumers – can continue to access funding. The ACA is concerned that the fundamental change in policy proposed by the NCTA would have a disproportionately grave impact on smaller providers if it were implemented as proposed. Thus, the ACA believes it is necessary to strike a balance between the need to improve the efficiency of the fund with the objective of ensuring a fair

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Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where there is Extensive Unsubsidized Facilities-Based Voice Competition, Public Notice, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (rel. Dec. 8, 2010); National Cable & Telecommunications Association Petition for Rulemaking, Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition, RM-11584 (filed Nov. 5, 2009) ("*NCTA Petition*").

[2] *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, NBP Public Notice #19*, Pleading Cycle Established, GN Docket Nos. 09-47, 09-51, 09-137, Comments of the American Cable Association (filed Dec. 7, 2009) ("*ACA NBP USF Comments*").

opportunity for smaller, potentially more vulnerable providers.

About ACA. The ACA, given its diverse membership with a long history of serving rural areas, is uniquely qualified to assist the Commission in addressing proposals to reform Universal Service policy. In essence, the ACA membership is a microcosm of the telecom and broadband universe. Small markets and rural areas across the country receive video services from nearly 900 small and medium-sized independent operators represented by the ACA. More than half of ACA's members serve fewer than 2,000 subscribers. The ACA's diverse membership is comprised of traditional cable and phone providers that operate as corporations, cooperatives, and municipalities. All ACA members provide video services, and most deliver other traditional and advanced services, including high-speed Internet access and VoIP services, to more than 7 million households and businesses.

Not only does the ACA membership cover the spectrum of the telecommunications industry, but also with specific regard to the USF, the ACA membership includes:

- Cable operators that provide high-speed broadband service in rural areas and that do not draw from the fund;
- Cable operators that provide high-speed broadband and VOIP services in rural areas and contribute to the fund but do not draw from the fund;
- Cable operators that provide high-speed data and VoIP services in metropolitan non-high cost areas and that contribute but do not draw from the fund;

- Incumbent telephone operators in rural areas that also provide video service and high-speed broadband services and currently draw from the fund as eligible telecommunication carriers;
- Competitive telephone operators that also provide video service and high-speed broadband service and currently draw from the fund as competitive eligible telecommunications carriers, both as for wireline and wireless services.

About the ACA Proposal. The diverse makeup of the ACA membership necessitated a balanced approach to developing a proposal to reform and reorient the USF for the broadband era – one that required it to weigh different interests through numerous discussions, committee work and one-on-one interviews with members who provide service as cable, phone, and wireless operators, and who contribute and may receive funding from the USF in all sorts of combinations. After months of study and intense debate, the ACA developed its proposal to reform and evolve Universal Service for the broadband era in an efficient, competitively-neutral manner that best serves the consumer, who ultimately funds Universal Service.

The ACA plan benefits the consumer by capping the USF and High-Cost fund at the December 31, 2009 funding level and targeting funding to where it is needed.[3] The plan suggests changes that will allow funds to be reoriented to broadband services through a more targeted funding approach, thus providing a fund for broadband expansion.[4] At the same time, the plan provides small

[3] *ACA NBP USF Comments* at 16-20.

[4] *Id.* at 34-46.

Eligible Telecommunications Carriers with continuing support for their traditional voice services and in other instances where it is truly needed.[5]

II. USF Reform is Necessary.

A. USF Support Has Burgeoned and Funding in Competitive Areas Should be Reformed.

The ACA agrees with the basic premise behind the NCTA Petition that USF reform is warranted because of the recent dramatic growth in the size of the fund and burden this has placed on consumers. In 2007, the Joint Board warned the Commission that the growth of the USF and, in particular, the High-Cost Fund threatened the stability of the USF program and urged the Commission to take measures to rein in the size of the fund.[6] While the Commission did take the first step toward stability by imposing an interim cap on CETC support under the program, it is clear that more must be done.[7] Since the Joint Board first raised the alarm, the High-Cost Fund has continued to grow, and consumers have continued to bear a greater percentage of the costs of the USF program. In 2000, the High-Cost program support fund was $2.2 billion.[8] By 2008, the

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[5] *Id.* at 42.

[6] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Recommended Decision, 22 FCC Rcd 8998, ¶ 1 (2007) ("*Joint Board November 2007 Recommended Decision*").

[7] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, *AllTel Communications, Inc., et al.*, Petition for Designation as Eligible Telecommunications Carries, 23 FCC Rcd 8834, ¶ 1 (2008) ("*CETC Cap Order*").

[8] Federal and State Staff for the Federal-State Joint Board on Universal Service; *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 3.1 (2002).

amount had doubled to $4.4 billion.[9] While consumers contributed to the fund at rates of 5.5% to 5.8% in 2000,[10] by the 4th quarter of this year the contribution rate climbed to 12.3%,[11] and the proposed contribution rate for the next quarter is 14.1%.[12] The Congressional Budget Office has warned that the fund will become increasingly bloated unless significant changes are made.[13] The continuing expansion of the fund and the increasing burden on ratepayers of interstate telecommunications actually serves to undermine the goal of making services available ubiquitously at affordable prices. USF reform is necessary to correct this serious problem.

B. Greater Competition Means Funding Can Be More Targeted.

The ACA agrees with the underlying premise of the NCTA Petition that High-Cost funding in competitive areas should be reformed to eliminate inefficiencies. In the mid-1990s, the USF correctly focused on expansion of voice services to all Americans. By March 2008, the Commission reported that

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[9] Federal and State Staff for the Federal-State Joint Board on Universal Service; *Universal Service Monitoring Report*, CC Docket No. 98-202 (2008).

[10] *See Proposed First Quarter 2000 Universal Service Contribution Factor*, Public Notice, DA 99-2780 (rel. Dec. 10, 1999); *Proposed Third Quarter 2000 Universal Service Contribution Factor*, Public Notice, DA 00-1272 (rel. June 9, 2000).

[11] *See Proposed Fourth Quarter 2009 Universal Service Contribution Factor*, Public Notice, DA 09-2042 (rel. Sept. 14, 2009).

[12] *See Proposed First Quarter 2010 Universal Service Contribution Factor,* Public Notice, CC Docket 96-45 (rel. Dec. 11, 2009).

[13] *Factors That May Increase Future Spending from the Universal Service Fund: A CBO Paper*, Congressional Budget Office, at 1 (rel. June 2006).

over 95% of all Americans have access to voice services.[14] The FCC's most recent report on local telephone competition found that, as of June 30, 2008, competitors accounted for approximately 20 percent (30 million) of the nation's access lines, of which 9.4 million were provided over coaxial cable connections. Most of these cable connections are provided to residential customers. In addition, competitors served customers in 82 percent of the nation's zip codes, which contain about 97 percent of the nation's households.[15]

These statistics are echoed and elaborated upon in the NCTA's Petition, which noted that cable operators currently provide voice service to between 74 and 84 percent of households overall and 43 percent of households (6.6 million) in rural LEC study areas.[16] The Petition further noted that cable voice service is available in most rural study areas and in 21 percent of the study areas, coverage exceeds 50 percent.[17] It is thus evident that the competitive landscape has developed considerably since 1996 when Congress enacted the new universal service provision in the Telecommunications Act and a decade ago

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[14] *See Local Telephone Competition: Status as of June 30, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, March 2008 (rel. Mar. 20, 2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.doc (last visited Jan. 7, 2010).

[15] *Local Telephone Competition: Status as of June 30, 2008*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, July 2009, at 2-3 (rel. July 23, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf (last visited Jan. 7, 2010).

[16] *NCTA Petition* at 6-7, n.17.

[17] *NCTA Petition*, Attachment B, Jeffery A. Eisenach, *Universal Service Subsidies to Areas Served by Cable Telephony*, at 19.

when the Commission implemented this law.

There is little doubt that the dramatic growth of USF has been exacerbated by the unnecessary distribution of funds to carriers that do not need support. The presence of competition strongly suggests that support for an incumbent's services is no longer necessary to ensure that rates for its services remain at affordable and reasonably comparable levels.[18] The entry of competitors in a market has always been seen as a means of increasing consumer choice and potentially decreasing the price for those services. Unfortunately, competitive entry has yet to be employed as a rationale to make the fund more efficient. Instead, competitive carriers have been permitted to obtain USF support even though the carriers previously provided service in the same market without utilizing Universal Service support.[19] The fact that carriers are able to provide services without relying on USF funds shows that the continued distribution of USF High-Cost support in these situations is not necessary to ensure consumers have access to telecommunications services.

Even the Federal-State Universal Service Joint Board ("Joint Board") has stated that it "is no longer in the public interest to use federal universal service support to subsidize competition and build duplicate networks in high-cost

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[18] *See* 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates") and 47 U.S.C. § 254(b)(3) ("reasonable comparability").

[19] *See, e.g.*, *In the Matter of Federal-State Joint Board for Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Comments of the Independent Telephone and Telecommunications at 8 (filed June 6, 2007); Comments of CenturyTel, Inc. at 4 (filed June 6, 2007).

areas."[20] With advancements in technology and competition, the need for Universal Service awards should be declining for voice services.

The current rules governing the USF High-Cost fund simply do not account for changed circumstances. Frequently, cable operators and other facilities-based providers are providing services in non-urban areas without USF support in competition with incumbent carriers receiving support. The rules inadequately address the changed conditions from when USF funds were first made available to incumbents in these areas, focusing woodenly on the high costs of incumbent carriers rather than the rates for the services they provide, hampering the success of the incipient competition. In other words, support is still allocated based on a presumption of need rather than a demonstration that USF funding is needed to ensure affordable and reasonably comparable rates for consumers.

Thus, the ACA supports the general underlying premise of the NCTA Petition that High-Cost support should not be going to a provider where a competitor is willing to serve the same consumer without relying on USF support. Without regulatory mechanisms forcing carriers benefiting from the fund to wean themselves from support when competition has been introduced, the fund will remain inefficient and lack competitive and technological neutrality.

[20] *Joint Board November 2007 Recommended Decision*, ¶ 35.

C. USF Reform Must Take into Account the Effect on Small Carriers.

A primary difference between the ACA proposal and the NCTA proposal is that the ACA allows for small carriers of 100,000 lines or less to continue to draw from the fund as they do today. ACA believes that the Commission should proceed cautiously in regard to the small carriers and explains below the rationale used by ACA in developing its proposal.

The Communications Act, in general, provides that Universal Service funding shall ensure that all consumers have access to telecommunications services that are "reasonably comparable" and at rates that are "reasonably comparable."[21] The ACA used this mandate (and the specific directives of the statute) in crafting the principles for its proposal. When taken together, the principles should ensure that no consumer suffers lapses in service quality or rate increases as providers diminish their access to the current funding mechanism. Moreover, the principles should ensure that those providers most dependent on the current fund do not see precipitous declines in funding that would threaten their viability or the sustainability of their provision of voice services. The ACA's recommended policy principles are:

- Smaller, more rural incumbent wireline providers – those entities most reliant on current funding – should be permitted to continue to access funding under the current High-Cost fund unless and until they decide to access funding under the new broadband fund.

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[21] 47 U.S.C. § 254(b).

- Any provider seeking to access funding from the new broadband fund for a service area should not be permitted to draw funding from the current High-Cost fund for that same area.

- Larger providers should not be permitted to access funding under the current High-Cost fund if the consumer in a study area can obtain service from another provider that does not draw from the fund or if a regulator has deregulated the provision of retail service to that consumer or area.

- No provider may access funding to serve an area or consumer not currently supported by funding.[22]

Accordingly, in implementing the policy principles specified above, ACA included the following guidelines as to wireline ETCs:

- Current wireline ETCs with fewer than 100,000 access lines on a holding company basis would be permitted to continue to draw from the High-Cost Fund as they do today (by area) for the provision of voice service unless they choose to access funding from the new broadband fund to serve that area (other than access to the fund for purposes of funding middle mile infrastructure), in which case the new broadband funding mechanism would replace the current High-Cost funding mechanism.

- Current wireline ETCs with more than 100,000 access lines on a holding company basis would continue to draw from the fund based on the "current high cost differential" per access line multiplied by the number of voice access lines in service annually. No such wireline ETC may draw from the fund for an access line if (1) the user can obtain voice service from another wireline provider who is able to serve the user without drawing from the fund, (2) the state regulator has deregulated the wireline ETC's provision of voice telephone service for the user, or (3) the wireline ETC accesses funding from the new broadband fund to serve the user

[22] As part of its proposal, the ACA supports continuation of the "interim" cap on funding for competitive eligible telecommunications carriers ("CETCs'). To ease the strain on CETCs already drawing from the fund, a CETC entering a new service area would not be able to draw from the fund. *See ACA NBP USF Comments* at 43, n.75.

(other than access to the fund for purposes of funding middle-mile infrastructure).

Thus, the critical difference between the NCTA proposal and the ACA's proposal is the exemption for small carriers. The exemption – which would apply to each ETC by study area on a holding company specific basis – was included by the ACA in an effort to create a fair, balanced and administratively efficient plan. The ACA is aware that as a general matter smaller ETCs receive a significantly higher percentage of revenue from the current High-Cost Fund than larger ETCs. The fear was that for many of these carriers, a mandatory cessation of this funding could lead to rate shock that could significantly impair their ability to continue to provide service. Consequently, it is both logical and equitable to permit these smaller ETCs a measure of control by permitting them to continue to access the current High-Cost Fund until they determine the appropriate time to begin accepting money from the new broadband fund. The 100,000 access line exemption was also chosen because it would permit the Commission to implement a new mechanism to transition from funding of voice service to broadband service in a measured manner. Exempting smaller ETCs from mandatory participation would also allow the Commission to more easily make adjustments to the plan if unforeseen circumstances arise upon initial implementation.

III. Conclusion.

The Commission should reform the current High-Cost Fund by better targeting support where it is truly needed. In implementing such reforms, however, the FCC should proceed cautiously as it relates to small service providers, as the ACA did in including the 100,000-line exemption in its proposal.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By: ____________________________

Bruce E. Beard
Jeremy M. Kissel
Scott C. Friedman
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Attorneys for the American Cable Association

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

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Certificate of Service

I, Scott C. Friedman, Attorney with the law firm of Cinnamon Mueller, hereby certify that copies of the foregoing ***Comments*** in reference to GN Docket No. 09-51, WC Docket No. 05-337, and RM-11584 were served via e-mail and USPS mail, respectively, on this 7th day of January, 2010 to the following:

Electronically

Best Copy and Printing, Inc.
fcc@bcpiweb.com

Gary Seigel
Telecommunications Access Policy Division
Wireline Competition Bureau
Gary.Seigel@fcc.gov

Katie King
Telecommunications Access Policy Division
Wireline Competition Bureau
Katie.King@fcc.gov

Theodore Burmeister
Telecommunications Access Policy Division
Wireline Competition Bureau
Theodore.Burmeister@fcc.gov

USPS Mail

Rick Chessen
Neil M. Goldberg
Steven F. Morris
National Cable and Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, DC 20001-1431

Scott C. Friedman