

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Jonathan J. Frankel
STEESE, EVANS & FRANKEL
The Army and Navy Club Building
1627 I Street, N.W. Suite 850
Washington, DC 20006
(202) 293-6841 (phone)
(202) 293-6842 (fax)

Eric N. Einhorn
Jennie B. Chandra
WINDSTREAM COMMUNICATIONS, INC.
1101 17th Street, N.W. Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

January 7, 2010

Its Attorneys

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	2
I. THE CURRENT UNIVERSAL SERVICE RULES DO A POOR JOB OF TARGETING HIGH-COST SUPPORT TO WHERE IT IS MOST NEEDED	5
II. THE PETITION’S PROPOSED SOLUTION IS SERIOUSLY FLAWED.....	6
A. NCTA’s Proposed Triggers for Initiating Support Reduction Cases Do Not Provide a Reasonable Assessment of Whether a Reduction Is Warranted.	7
1. <u>Competition trigger</u> : The presence of a competitor in <u>one</u> portion of a study area is not evidence that high-cost support throughout the whole study area should be reduced.	7
2. <u>Deregulation trigger</u> : State deregulation of certain ILEC rates says nothing about whether a carrier of last resort’s support levels are too high.	13
B. NCTA’s Call for Multiple Study-Area Specific Proceedings Is Unduly Burdensome and Threatens the Sufficiency and Predictability of the Federal Support Mechanism.	14
III. THE MID-SIZED CARRIERS’ BROADBAND NOW PLAN WOULD BETTER ADDRESS THE PROBLEMS IDENTIFIED IN THE PETITION WITH FAR LESS ADMINISTRATIVE COST.	19
CONCLUSION.....	22
ATTACHMENT	

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

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

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

In response to the Commission’s December 8, 2009 Public Notice, Windstream Communications, Inc. (“Windstream”) respectfully submits these comments on the National Cable & Telecommunications Association (“NCTA”) Petition for Rulemaking (“Petition”) that proposes reforms of the Commission’s universal service support mechanisms. As detailed in its comments filed over the last several years in the Commission’s various universal service dockets, Windstream supports the goal of comprehensive universal service reform.¹ But yet another separate rulemaking proceeding on the subject is unnecessary. NCTA had (and continues to have) ample opportunity to present its proposal in the Commission’s open dockets.

¹ See, e.g., Comments of CenturyLink, Consolidated Communications, Frontier Communications Corporation, Iowa Telecommunications Services, Inc., and Windstream Communications, Inc., GN Dkt. No. 09-51 (Dec. 7, 2009) (in response to National Broadband Plan Public Notice #19 - The Role of Universal Service and Intercarrier Compensation in the National Broadband Plan), Comments of Windstream Communications, WC Dkt. No. 05-337 (May 8, 2009), Comments of Windstream Communications, WC Dkt. No. 05-337 (Apr. 17, 2008).

Windstream, therefore, respectfully requests that the Commission deny NCTA's Petition. To the extent the Commission does consider the merits of the Petition, however, it should decline to adopt NCTA's proposal for the reasons described below.

INTRODUCTION AND SUMMARY

The value of the NCTA Petition lies in its description of the problems plaguing the current universal service regime. As the Petition points out, the communications marketplace has changed drastically since 1996, while the support rules have stayed largely the same.² At a time when there is a consensus that achieving our national broadband deployment goals will require the expenditure of substantial additional funds,³ the present system misdirects support to some locations where the costs of providing service are not inordinately high (as evidenced by the ability of unsubsidized competitors to enter the market), while underfunding some of the most expensive places to serve.⁴ Windstream has made these points in multiple filings in the universal service reform dockets.⁵

But starting yet another universal service rulemaking is not necessary; and, in any event, the changes proposed in the Petition are not the answer to the problems with the present system. The Petition fails to recommend changes to the rules most responsible for the current misallocation of funds, such as the rule that averages costs across study areas to determine support. Instead of *targeting* support to granular areas where it is most needed (and thereby do more to further universal service goals in Section 254 of the Communications Act of 1934, as

² Petition at 2-3.

³ *Id.* at 4.

⁴ *Id.* at 5-6, 9-10.

⁵ *See, e.g.*, Windstream comments cited in *supra* note 1.

amended (“the Communications Act”), the Petition would have the Commission continue to distribute support based on conditions across overly large, legacy study areas that, at least for mid-sized and large carriers, encompass huge, diverse, and non-contiguous geographic areas. The Petition further proposes a one-way downward-only ratchet for support.

This Petition would create a nightmare of an administrative process that relies on ad hoc, standardless, study-area-by-study-area adjudications to decide — and presumptively slash — federal support. Such a system would violate the Communications Act’s command that federal support mechanisms be “specific,” “predictable,” and “sufficient . . . to preserve and advance universal service.”⁶ Parties could drag Eligible Telecommunications Carriers (“ETCs”) and the Commission into multiple and complex cost proceedings simply by satisfying a set of minimal triggers that fail to provide any reasonable assessment of whether high-cost support is needed to serve a particular locale. As for the “competition” trigger, the fact that a cable company (or other facilities-based competitor) serves limited areas containing 50 or 75% of households in a study area says nothing about the costs of serving the remaining territory — particularly since that remaining area is likely to contain the highest cost, hardest to serve portions of the territory, contrary to what NCTA suggests. Similarly, the “substantial deregulation” trigger is defined in a meaningless fashion. The trigger is met whenever a state allows even one rate-deregulated service to be bundled with basic local exchange service — even if the state continues to impose a cap on the price of basic local exchange service as a standalone offering, and regardless of the basis for the rate deregulation. These triggers are set so low that the Commission could be flooded with hundreds of petitions for study-area specific cost cases.

⁶ 47 U.S.C. § 254(b)(5).

As part of their “Broadband Now Plan,”⁷ Windstream and other mid-sized incumbent local exchange carriers (“ILECs”) have already proposed a better solution that attacks the problem more directly and without creating an administrative nightmare. The Broadband Now Plan would address the current misallocation of funding by calculating and targeting support on a wire-center basis, and by making it possible for price-cap carriers to have all of their high-cost loop and high-cost model support determined under a single, consistent regime. With these reforms, the Broadband Now Plan would move significantly closer toward the competitive neutrality to which NCTA’s Petition purports to aspire, with much less administrative cost: Data from Windstream’s exchanges demonstrate that the Plan’s benchmark would do a far better job than the current rules of limiting high-cost support to those wire centers without cable entry or other facilities-based competition.

And unlike the NCTA proposal, the Broadband Now Plan would make near-term progress on the Commission’s goal of bringing broadband to unserved consumers while the Commission develops wide-ranging reforms. The Broadband Now Plan would require carriers receiving the targeted incremental high-cost support to use the funds to deploy high-speed (6 Mbps or greater) broadband in their unserved and underserved service territories and to make a significant investment of their own capital as well. By contrast, NCTA’s proposal would simply redirect some indeterminate fraction of whatever support reductions may (or may not) result from each of the many study-area-specific cost cases its proposal will generate. Whether NCTA’s plan will generate funding for broadband deployment, and how much funding there might be, are impossible to predict.

⁷ See Comments of CenturyLink, Consolidated Communications, Frontier Communications Corporation, Iowa Telecommunications Services, Inc., and Windstream

I. THE CURRENT UNIVERSAL SERVICE RULES DO A POOR JOB OF TARGETING HIGH-COST SUPPORT TO WHERE IT IS MOST NEEDED.

Windstream agrees with NCTA that the current high-cost support mechanism is out-of-date and in dire need of reform. The Petition correctly highlights that the present system results in misdirection of support. At the same time, Windstream disagrees with NCTA that the problem with the universal service regime is simply that support for carriers is too high, and that the Commission's only task is to find ways to cut it.

As Windstream has detailed in its prior filings,⁸ separate from the question of what the right overall level of support is, the Commission's current rules contain anomalies and irrational distinctions that result in a serious *misallocation* of support — meaning that whatever dollars are spent do not yield the maximum benefit to those customers most in need. For example, the rules treat so-called “rural” and “non-rural” ILECs very differently, which can result in two carriers that serve similar-cost areas (even adjacent ones) receiving vastly different amounts of support.⁹ Similarly, the universal service rules deny support even to the *highest*-cost areas of a state (in the case of the non-rural mechanism) or a study area (in the case of the rural mechanism) if the average cost per line *across* that state or study area is below a national benchmark.¹⁰

In the words of one member of the Federal-State Joint Board on Universal Service, these various anomalies in the current universal service support regime have “resulted in a vast

Communications, Inc., GN Dkt. No. 09-51 (Dec. 7, 2009), Attachment (“Broadband Now Plan”). The full text of the Broadband Now Plan is attached to these comments.

⁸ See, e.g., Windstream comments cited in *supra* note 1.

⁹ See Comments of Windstream Communications, WC Dkt. No. 05-337 (Apr. 17, 2008) at 4-7.

¹⁰ See *id.* at 7-11; 47 C.F.R. § 54.309(a).

misallocation of public dollars to the benefit of only a small portion of rural consumers, and to the detriment of the rest.”¹¹ Specifically, non-rural carriers in most states do not receive any High Cost Model (“HCM”) support at all, even though they may serve exchanges that are much more costly to serve than supported exchanges in states that do receive HCM funding.¹² And rural mid-sized carriers like Windstream that serve extremely large study areas¹³ are forced to cross-subsidize higher-cost areas with revenues from serving lower-cost areas, even though the Commission, courts, and Congress have recognized that such implicit subsidies are unsustainable in a competitive marketplace.¹⁴

Part III of these comments describes a package of universal service reforms recently proposed by Windstream and four other mid-sized ILECs that directly addresses these problems, unlike NCTA’s proposal to simply ratchet down support. Moreover, this alternative plan accomplishes this reform without creating an unworkable administrative process. The same cannot be said for the NCTA Petition, as described next.

II. THE PETITION’S PROPOSED SOLUTION IS SERIOUSLY FLAWED.

The NCTA Petition would create an administrative nightmare for the Commission and a wasteful, costly, and burdensome mess for carriers. The proposed triggers for launching support

¹¹ Statement of Commissioner Ray Baum, *Federal-State Joint Board on Universal Service*, FCC 07J-4, WC Dkt. No. 05-337, at 26 (Nov. 20, 2007).

¹² See Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report* (2009), at 3-22 (Table 3.9).

¹³ For example, Windstream Southwest’s Texas study area, which serves extremely rural areas (including the least populous county in the United States), stretches from near El Paso to Texarkana — approximately the distance from Washington, D.C. to Florida.

¹⁴ See, e.g., *Qwest Communications Int’l v. FCC*, 398 F.3d 1222, 1226-27 (10th Cir. 2005) (“*Qwest I*”); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1195-96 (10th Cir. 2001).

reduction cases do not accurately assess the need for carrier-of-last-resort support. They would allow parties to initiate literally hundreds of separate cost dockets at the Commission. Moreover, the ad hoc, standardless adjudications that NCTA proposes — in addition to potentially swamping the Commission — would not constitute the “specific,” “predictable,” and “sufficient” support mechanism that the Communications Act requires.¹⁵

A. NCTA’s Proposed Triggers for Initiating Support Reduction Cases Do Not Provide a Reasonable Assessment of Whether a Reduction Is Warranted.

The triggers described in the Petition are not simply procedural “gatekeepers”; they create a *presumption* that high-cost support in a study area should be reduced. Once a trigger is met, “the burden shall shift to recipients of support to demonstrate the level of support, if any, that is necessary to continue to provide universal service . . . to consumers in the portions of the study area where service is not provided by any competing facilities-based wireline provider.”¹⁶ But as described below, the triggers are seriously flawed, and they do not warrant this presumption that existing levels of carrier-of-last-resort support are unnecessary.

1. *Competition trigger: The presence of a competitor in one portion of a study area is not evidence that high-cost support throughout the whole study area should be reduced.*

The Petition’s competition trigger focuses on universal service study areas and treats them for the most part as a uniform whole. But as noted above, study areas can be extremely large and typically comprise multiple wire centers. Mid-sized and large carriers’ study areas

¹⁵ 47 U.S.C. § 254(b)(5).

¹⁶ Proposed Rule 54.317(b)(1) (attached to Petition at Attachment A).

often encompass many different (and often non-contiguous) regions featuring different cost of service characteristics.

Universal service support is intended to enable a carrier of last resort to provide affordable service in locations that otherwise are uneconomic to serve. The fact that a competitor has established a presence in *one* part of a service area — even a substantial part — says nothing about whether the carrier of last resort is receiving too much support to serve the remainder, let alone establish a presumption that the carrier *is* over-supported. Nor does the competitor’s presence in one part of a study area support the assumption that it (or another entity) could or would extend service to cover the remainder.

Although NCTA trumpets it for the opposite proposition, the Eisenach Study actually demonstrates just how rare it is for cable providers to offer voice telephony *ubiquitously* throughout a rural study area. According to the study, only 6 percent of rural study areas, covering only 4 percent of the rural population, have cable telephony available to 95 percent or more of households in the study area.¹⁷ (Even that coverage may not entail true ubiquity: Cable systems traditionally have focused on residential areas, meaning that businesses may still be unserved even if most households have the option of cable telephony.) And while more study areas — though still *far* from a majority¹⁸ — may have 50 or 75 percent cable telephony coverage, there is little reason to think that the cable provider could or would extend service to the remaining households that it does not serve.

¹⁷ Jeffrey A. Eisenach, “Universal Service Subsidies to Areas Served by Cable Telephony” at 19 (Nov. 2009) (attached to Petition as Attachment B) (“Eisenach Study”)

¹⁸ According to the Eisenach Study, only 7 percent of rural study areas have between 75 and 95 percent cable telephony coverage; and only 8 percent of rural study areas have between 50 and 75 percent cable telephony coverage. *See* Eisenach Study at 19.

Despite NCTA's attempts to suggest otherwise, cable network deployment predominantly does follow the expected pattern: Cable entry is mostly likely to occur in, and be limited to, the lower-service-cost portions of a given area. Just like any other facilities-based network provider, cable companies are more likely to concentrate their investments in areas of higher customer density, lower construction costs, and more hospitable terrain. For example, Dallas Clement, Executive Vice President and Chief Strategy and Product Officer for Cox Communications, testified at the Commission's August 12, 2009 National Broadband Plan workshop that Cox's systems on average have 95 customers per mile of deployed network. For Cox to make the decision to spend an additional \$50,000 per mile to extend its network, customer density has to be between 40 and 50 households per mile.¹⁹ This density still is well above the subscriber densities in areas that carriers of last resort are routinely required to serve.²⁰

It is true, as the Eisenach Study points out, that there are counterexamples to this general pattern of cable network deployment. But even that study shows that these instances are far from common. In considering such counterexamples, it is important to note that it is unclear how that study determined which parts of a universal service study area are "covered" by cable voice in order to compare loop lengths and terrain in the areas served and unserved by cable.²¹ (For example, the study appears to use Commission wire center data that can be difficult to

¹⁹ See Transcript of National Broadband Plan Workshop: Deployment – Wired, 63:1 – 64:3 (Aug. 12, 2009) (testimony of Dallas S. Clement).

²⁰ Windstream has an *average* subscriber density of 18.68 access lines per square mile across its entire service territory, dropping as low as 0.1 access line per square mile in its highest-cost wire centers in Texas and New Mexico. By contrast, the average subscriber density of a Windstream wire center that has *some* entry by cable telephony providers (not necessarily ubiquitous coverage) is 43.33 access lines per square mile.

²¹ Eisenach Study at 22-23. It is also unclear why the Eisenach Study uses only certain inputs to the Commission's Hybrid High Cost Proxy Model (average customer difference to the central office and terrain), but not the final model-calculated wire center costs themselves.

disaggregate any further. If the study assumes that an entire wire center is “covered” by cable telephony simply because that service is offered *somewhere* in the wire center, then the study will grossly exaggerate the extent of cable penetration into less dense areas.) But even if the Eisenach Study’s numbers are taken at face value, they indicate that in only 11 percent of rural study areas (148 out of 1314) does the cable system serve an area that, on average, exhibits a lower population density than the area served by the region’s carrier of last resort, and that in only 8.5 percent of study areas (112 out of 1314) does the cable system serve an area that, on average, encompasses a more difficult topography.²² NCTA may characterize these examples as “numerous,”²³ but it is clear that they still are relatively minor exceptions to the general pattern of cable systems choosing the lowest-cost areas to serve.

Data from Windstream’s service territory confirm this assessment. The following table ranks Windstream’s 1,085 wire centers²⁴ from the highest cost per line to the lowest (as determined by the Commission’s current high-cost model) and groups them into ten equal cohorts. For each cohort, the table lists the average monthly cost per line, the average subscriber density (in access lines per square mile), and the percentage of wire centers in each cohort that have *any* entry by cable telephony providers. (This approach, by looking only at whether there is some entry in a wire center, will exaggerate the degree of cable penetration *in favor of* NCTA’s argument.)

²² *Id.* at 23.

²³ Petition at 7.

²⁴ The data in the text and chart do not include Windstream’s recently acquired operations from Concord, D&E Communications, and Lexcom.

Cohort	Average Proxy Cost per Line (plus total range)	Average Density (lines/sq. mi)	% of Wire Centers with Some Cable Telephony Entry
1	\$ 231 (\$1,176-\$166)	1.04	0.9% (1/108)
2	\$ 139 (\$164-\$123)	3.60	1.9% (2/108)
3	\$ 114 (\$123-\$106)	6.28	7.3% (8/109)
4	\$ 99 (\$106-\$92)	7.21	7.4% (8/108)
5	\$ 85 (\$92-\$78)	9.71	14.8% (16/108)
6	\$ 71 (\$78-\$65)	15.09	36.7% (40/109)
7	\$ 59 (\$65-\$54)	14.34	38.0% (41/108)
8	\$ 49 (\$54-\$44)	25.35	42.2% (46/109)
9	\$ 38 (\$44-\$34)	40.62	56.5% (61/108)
10	\$ 27 (\$34-\$20)	73.77	67.3% (74/110)
All wire centers	\$ 45	18.68	27.4% (297/1085)

The pattern is clear. In Windstream’s territory, the provision of cable telephony services is highly correlated with — and largely, though not exclusively, limited to — areas having higher densities and lower per-line costs of building a network. Indeed, a more granular breakdown of the wire center data demonstrates that it is not until costs drop to about \$41 per line per month, and subscriber density rises to about 30 access lines per square mile, that a wire center in Windstream’s territory has even a 50% chance of possessing any degree of cable telephony entry.

NCTA also cites statements from Embarq (now CenturyLink) and others regarding the fraction of their total lines that face competition from a cable telephony provider.²⁵ Such numbers – while important indicators of the overall level of competition across a state or service territory – are not the relevant measure for determining the need for universal service support. As explained above, cable telephony remains concentrated in the exchanges with the highest access line density and lowest cost per line. Windstream wire centers where a cable competitor is present represent just 25% of the square miles in Windstream’s total service area, but those wire centers represent 58% of Windstream’s access lines. By serving just those high-density areas, a cable system may pass a significant fraction of the households in a study area (and compete for a large fraction of the ILEC’s lines), but still leave large geographic areas and large numbers of exchanges and communities completely unserved – contrary to the universal service goal of ensuring that these remaining, difficult-to-serve communities can obtain service.

Moreover, the fact that a cable provider may have *some* kind of telephony offering in an area does not mean that the provider offers an affordable level of service that would enable most consumers to purchase voice service. To ensure the greatest number of consumers have a low-cost option for service, state commissions typically require carriers of last resort to provide the minimum package of services in the current definition of “universal service” as a standalone package. Such requirements do not apply to cable telephony offerings, which are not regulated and many cable providers make available only as a part of a bundle including high-speed data service and/or digital multichannel video service.

In short, simply because an unsubsidized competitor can serve *part* of a study area, it does not follow that a carrier of last resort can serve the remainder of the study area without the

²⁵ Petition at 7 n.19.

necessary level of support, or that consumers in the study area have the opportunity to purchase standalone service offerings from entities other than the carrier of last resort. It is no answer to say that the carrier has the opportunity in Step 2 of the proposed process to prove that support is still necessary. The Petition's competitive trigger creates the presumption that support should be decreased and force the carrier into numerous, expensive cost cases simply to preserve the status quo, which already is deficient in many places. It makes no sense to impose these significant administrative and litigation costs on carriers — or to impose the legal and policy risks of inconsistent adjudications on the Commission — when the assumptions behind the competitive trigger holds true in at most only in a very limited number of cases.

2. *Deregulation trigger: State deregulation of certain ILEC rates says nothing about whether a carrier of last resort's support levels are too high.*

The Petition's second proposed trigger would throw *every* study area in a state into play if the state deregulates the price of *any* service that can be bundled with basic local exchange service, even if the state still requires the carrier of last resort to provide a stand-alone local exchange offering at a regulated price.²⁶ As with the competition trigger, this trigger offers an insufficient basis for establishing a presumption that current support levels are too high. It does not warrant imposing the expense of multiple cost cases on carriers and the Commission.

First, it is wrong to assume that state “deregulation” necessarily entails a finding that cost conditions permit voice competition to thrive in all areas of a state, or that high-cost support is no longer needed. Certainly the states themselves have not made this judgment. Fifteen of Windstream's sixteen states have deregulated local exchange service at least in part. Not one of these states, however, has lifted Windstream's obligation to serve as the carrier of last resort in

its service areas. And none have withdrawn state universal service support as a condition to move to a deregulated status.

Second, the Petition defines “deregulation” in a meaningless way. NCTA’s trigger is met if a state has deregulated the price of *any* service that can be sold as a bundle with voice local exchange service, such that the total price of the bundle is not regulated.²⁷ As discussed more below, Windstream offers bundles of services that include at least one non-regulated service to at least some customers in all of its states; hence, the trigger would be deemed satisfied in all of Windstream’s service areas. Yet in all of Windstream’s states, the carrier of last resort is still required to offer standalone voice service at a regulated price that — at least in high-cost areas — must be implicitly or explicitly subsidized. NCTA’s proposal would presumptively determine that current levels of support are too high in *all* of Windstream’s study areas, even though Windstream is still required to provide service to all comers at a price that *requires* some degree of support in the highest-cost areas.

B. NCTA’s Call for Multiple Study-Area Specific Proceedings Is Unduly Burdensome and Threatens the Sufficiency and Predictability of the Federal Support Mechanism.

Once either of NCTA’s proposed triggers is satisfied for a given study area, the Commission would be required to conduct a cost proceeding to “decid[e] the necessary level of support” for each “particular carrier” in each “particular study area.”²⁸ After the minimal showing required by the parties submitting the reduction request, “the burden shall shift to recipients of support to demonstrate the level of support, if any, that is necessary to continue to

²⁶ Proposed Rule 54.317(a)(2)(B).

²⁷ *Id.*

²⁸ Proposed Rule 54.317(b)(2).

provide” the package of services deemed to constitute “universal service” in the parts of the study area that facilities-based entrants have declined to serve.²⁹

The proposed triggers are so weak that right off the bat, parties could initiate literally hundreds of separate dockets at the Commission, each requiring the presentation and evaluation of carrier-, marketplace-, and area-specific evidence, including cost and revenue data, as well as policy-oriented information on “the effect on all providers, and on consumers, if high-cost support were reduced or eliminated.”³⁰ As noted above, a state’s deregulation (or non-regulation) of *any* service that can be bundled with local exchange service is enough to throw every single study area in that state into play, regardless of whether another entrant is present in the study area or not.³¹ In all of its states, Windstream provides bundles of services, typically including basic local exchange service, unlimited nationwide calling, vertical calling features, broadband service, installation and technical support services for broadband, and resold DISH Network digital television service.³² However, of the services listed above, state commissions only regulate basic local exchange service and vertical features, so there could be a claim of “deregulation” in every one of Windstream’s sixteen states, potentially leading to thirty-four support reduction dockets for Windstream alone, one for each of its study areas.

²⁹ Proposed Rule 54.317(a)(2)(B).

³⁰ Petition at 17. Cable companies may seek to leverage this position in intercarrier negotiations that are unrelated to universal service. For example, a cable company could threaten to file a petition challenging the ILEC’s support level if the cable company does not receive benefits like interconnection to which it would otherwise not be entitled, attachments to the ILEC’s utility poles at special rates, or other private benefits not shared with the contributors to USF as a whole.

³¹ Proposed Rule 54.317(b)(2)

³² See <http://www.windstream.com/residential/bundles.aspx>.

Likewise, the competition trigger is indiscriminating. Based on application of the competitive trigger alone, NCTA’s own numbers demonstrate that on day one, cable companies would automatically be entitled to initiate *at least* 165 separate cases to reduce high-cost support — one for each of the 165 rural study areas in which cable telephony is available to at least 75% of households.³³ There are another 112 study areas in which 50% of households can subscribe to cable telephony,³⁴ and parties could initiate additional cases for those study areas upon making a minimal showing that the “population density” or other “cost characteristics” of the areas served and not served by cable are somehow “similar.”³⁵ And there still could be even more cases, since the presence of *non-cable* competitive wireline providers can also trigger a support reduction case.³⁶

Even the Petition tacitly acknowledges the administrative nightmare this would create. While NCTA insists that “a rigorous, fact-based process” is necessary, it then backtracks, suggesting that the Commission can adopt “proxies” in place of individualized fact-finding “that could be used to streamline the process.”³⁷ As an example of such a proxy, NCTA proposes “a sliding scale” that would *automatically* “reduce support by a certain percentage that varies with the level of competition in an area.”³⁸ Effectively then, to make its proposal even vaguely

³³ See Eisenach Study at 19. Cf. Proposed Rule 54.317(a)(2)(A).

³⁴ See Eisenach Study at 19.

³⁵ Proposed Rule 54.317(a)(2)(A).

³⁶ *Id.*

³⁷ Petition at 20.

³⁸ *Id.*

administrable, NCTA proposes the same kind of automatic support reductions that it elsewhere purports to disavow.³⁹

NCTA's proposal also leaves important questions about the substance and conduct of these proceedings unanswered. What will the standard be for judging the extent to which high-cost funds are warranted — that is, what is the definition of the “necessary” level of support? How is this standard tied to the statutory requirement that federal support be “sufficient to achieve the purposes of” 47 U.S.C. § 254,⁴⁰ which include ensuring that rates are “affordable”⁴¹ and “reasonably comparable” in rural and urban areas?⁴² What evidence must the carrier provide, and what will the process and standards be for presenting, testing, and evaluating that evidence? Other than throwing out a handful of costs that it believes should not be factored into support, as well as a list of support mechanisms that it believes should be eliminated entirely,⁴³ NCTA does not provide answers to these questions.

³⁹ *Cf. id.* at 13 (“[P]roviders in those areas that do qualify [under the triggers] would not automatically lose support, but instead would have the opportunity to demonstrate the level of support that is needed to ensure continued provision of service to all consumers in the area.”).

⁴⁰ 47 U.S.C. § 254(e).

⁴¹ *Id.* § 254(b)(1).

⁴² *Id.* § 254(b)(3).

⁴³ Although it is focusing on the Petition's more fundamental flaws, Windstream also disagrees with NCTA's particular suggestions to eliminate IAS and ICLS support and exclude switching costs. First, NCTA argues that the elimination of IAS and ICLS support is warranted, because it claims that these forms of support are not associated with loop plant. Petition at 19. This claim is incorrect. Both IAS and ICLS are designed to recover common line elements, which include loop and non-traffic sensitive switching investments that are not recovered through the subscriber line charge. These support elements are explicit and help assure affordable rates for consumers. Second, NCTA calls for the elimination of switching support where a competitor exists. *Id.* at 18. This proposal, however, suffers from the flaws similar to those found in NCTA's proposal to eliminate high-cost loop and high-cost model support. Eliminating all switching support for *all* wire centers in a study area just because a cable operator is present in a few wire centers would be contrary to statutory requirements that support be

Just as importantly, with potentially hundreds of cases being adjudicated on an ad hoc basis, how will the Commission be sure that it is awarding funds consistently across study areas? This is an extremely significant concern, not just for good policy making and consistency with the Administrative Procedure Act, but because the Communications Act requires that the federal universal service mechanism be “specific” and “predictable.”⁴⁴ A standardless, ad hoc, study area by study area process makes it impossible for a carrier of last resort to predict what funding it will receive, which in turn seriously compromises the carrier’s ability to continue to provide service in high-cost areas.

Finally, NCTA’s proposal could impede progress toward the Commission’s broadband deployment goals. Uncertainty stemming from the possibility that current support could be dramatically reduced could cause ILECs to delay “business as usual” investment planning and deployment while waiting for long and litigious cost proceedings to conclude. This delay is the opposite of what reform needs to accomplish. And while NCTA suggests that savings that arise from its proposal could be redirected toward broadband deployment,⁴⁵ the magnitude and timing of such savings (if any) will not be known until parties file support reduction petitions and the Commission adjudicates a substantial number of the resulting cost cases to their conclusion. The national broadband deployment initiative requires a specific and predictable source of funding, but the funds that might be generated from NCTA’s proposal are too speculative (and their timing too uncertain) to count on. That initiative is too important to delay until the study-area-by-study-area process could shake itself out and its results would be known.

“specific,” “predictable,” and “sufficient . . . to preserve and advance universal service.”
47 U.S.C. § 254(b)(5).

⁴⁴ 47 U.S.C. § 254(b)(5).

⁴⁵ *See* Petition at 21.

III. THE MID-SIZED CARRIERS' BROADBAND NOW PLAN WOULD BETTER ADDRESS THE PROBLEMS IDENTIFIED IN THE PETITION WITH FAR LESS ADMINISTRATIVE COST.

On December 7, 2009, Windstream and four other mid-sized ILECs submitted their Broadband Now Plan, designed to accelerate deployment of broadband by providing targeted, incremental support that would be dedicated to the building of necessary facilities in unserved or underserved areas of the Nation. Included in that Plan are a number of universal service and intercarrier compensation reforms that could be adopted in the short term and would address some of the worst deficiencies in the current rules.⁴⁶ The Plan proposes a two-phased approach, which includes short-term phases that can be implemented immediately (“Phase I”) while the Commission considers long-term, more sweeping reforms (“Phase II”). The full text of the Plan is attached to these comments.

The Broadband Now Plan would do more to solve the problems identified in the NCTA Petition with far lower administrative costs. Whereas NCTA’s Petition never addresses the fundamental problem it identifies head-on — the *mistargeting* of high-cost support — the Broadband Now Plan takes that issue on directly. In Phase I, the Plan would eliminate the statewide averaging that misdirects non-rural high-cost support away from the highest-cost exchanges and toward a very limited number of states; instead, it would distribute support on an individual wire center basis wherever the forward-looking cost per line in a wire center (as determined by the Commission’s current high-cost model) exceeds 2.75 times the national average. It would enable the Commission to reduce costs by constraining competitive ETC support and allowing companies that can serve an area with less support than the current carrier of last resort to assume that carrier’s responsibilities in its place. And it would permit price-cap

ILECs to elect to place all of their study areas under the forward-looking support mechanism, which would further correct some of the current anomalies that yield wildly different support amounts for carriers serving similarly situated (or even adjacent) areas.

Data from Windstream's territory indicate that the Broadband Now Plan would further the same pro-competitive goals cited by the Petition by curtailing support to the majority of exchanges where there is cable telephony (or other facilities-based entry). Because the pattern of cable entry largely *does* follow the forward-looking cost per line of providing service in a given wire center, choosing the right benchmark and redirecting support to the highest-cost wire centers regardless of statewide average costs has the effect of directing support to those areas that are less likely to support cable or other facilities-based competition. For example, applying the criteria in the Broadband Now Plan to Windstream's 1,085 wire centers would result in retargeting support to Windstream's 649 highest-cost wire centers. Of these 649, only 11 percent (74 wire centers) have a cable telephony provider present *somewhere* in the wire center (which does not necessarily mean that the provider offers telephony *throughout* the exchange area). By contrast, of the 436 lower-cost wire centers that would not receive support under the Broadband Now Plan, fully 51 percent (223 wire centers) have entry by a cable telephony provider.

The Broadband Now Plan achieves this targeting while avoiding the huge litigation costs, regulatory uncertainty, and other problems that would be created by NCTA's proposal. The Broadband Now Plan's benchmarking mechanism — which simply compares currently calculated wire center costs against a national benchmark to determine support — is easily administrable and does not require the Commission to hold any individualized evidentiary proceedings or complex cost cases, let alone hundreds of them simultaneously. Just as

⁴⁶ See Broadband Now Plan.

significantly, the mechanism will yield “specific” and “predictable” support amounts, as the Communications Act requires.⁴⁷ A carrier will know what it would receive under the Broadband Now Plan using readily available data and without having to await the unpredictable outcome of numerous, standardless, ad hoc adjudications.

Finally, the Broadband Now Plan would be a significant step toward achieving the Commission’s broadband deployment goals. In Phase I, the Plan would require carriers receiving the targeted incremental high-cost support to use the funds for increasing the availability of high-speed (6 Mbps or greater) broadband in their unserved and underserved service territories. It also would require these carriers to make a significant investment of their own capital — \$800 per household without access to any broadband service, and \$50 per household where broadband has been deployed but at speeds below 6 Mbps — to receive these funds. Unlike NCTA’s proposal, the Broadband Now Plan would result in the immediate targeting of specific and predictable stream of funding toward broadband deployment, without having to wait for the uncertain outcome of hundreds of complicated administrative adjudications.

⁴⁷ 47 U.S.C. § 254(b)(5).

CONCLUSION

Windstream respectfully asks the Commission to deny the Petition. While the Petition identifies important problems with the current universal service rules, the solution it proposes does not resolve those problems and risks running afoul of statutory requirements. A far better alternative would be for the Commission to adopt the Broadband Now Plan proposed by Windstream and four other mid-sized carriers. This Plan would directly address the problems identified by NCTA with far fewer costs and much greater predictability, as required by the Communications Act. Moreover, unlike NCTA's proposal, the Broadband Now Plan would enable near-term broadband deployment in otherwise unserved and underserved rural areas.

Respectfully submitted,

/s/ Jennie B. Chandra

Jonathan J. Frankel
STEESE, EVANS & FRANKEL, P.C.
The Army and Navy Club Building
1627 I Street, N.W. Suite 850
Washington, DC 20006
(202) 293-6841 (phone)
(202) 293-6842 (fax)

Eric N. Einhorn
Jennie B. Chandra
WINDSTREAM COMMUNICATIONS, INC.
1101 17th Street, N.W. Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

Its Attorneys

January 7, 2010

ATTACHMENT

December 7, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Response to NBP Public Notice No. 19

International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, GN Dkt. No. 09-47; A National Broadband Plan for Our Future, GN Dkt. No. 09-51; Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Dkt. No. 09-137; Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45; High-Cost Universal Service Support, WC Dkt. No. 05-337; Lifeline and Link Up, WC Dkt. No. 03-109; Universal Service Contribution Methodology; WC Dkt. No. 06-122; Numbering Resource Optimization, CC Dkt. No. 99-200; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dkt. No. 96-98; Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92; Intercarrier Compensation for ISP-Bound Traffic, CC Dkt. No. 99-68; IP-Enabled Services, WC Dkt. No. 04-36

Dear Ms. Dortch,

In response to National Broadband Plan Public Notice No. 19, the undersigned mid-sized incumbent local exchange carriers submit the "Broadband Now Plan." The attached document includes the Plan and describes the rationale behind its key provisions.

If you have any questions concerning this filing, please do not hesitate to contact Eric Einhorn at 202-223-7668. We urge the Federal Communications Commission to take prompt action in this Docket so that the Plan can be implemented in early 2010.

Sincerely,

David C. Bartlett
Jeffrey S. Lanning
CenturyLink
701 Pennsylvania Ave., N.W., Suite 820
Washington, DC 20004

Michael J. Shultz
Consolidated Communications
350 S. Loop 336 W.
Conroe, Texas 77382

Kenneth F. Mason
Frontier Communications Corporation
180 S Clinton Ave.
Rochester, NY 14646

D. Michael Anderson
Edward B. Krachmer
Iowa Telecommunications Services, Inc.
403 W. 4th St. N.
Newton, IA 50208

Eric N. Einhorn
Jennie B. Chandra
Windstream Communications, Inc.
1101 17th Street, N.W., Suite 802
Washington, DC 20036

DESCRIPTION OF BROADBAND NOW PLAN

The undersigned mid-sized incumbent local exchange carriers – CenturyLink, Consolidated Communications, Frontier Communications, Iowa Telecom, and Windstream Communications (collectively, the “mid-sized ILECs”) – are at the front lines of deploying broadband Internet access to millions of Americans in rural areas, while continuing to provide essential telecommunications services to consumers in areas where no other provider invests capital to deploy alternative networks and services. Collectively we provide communications and entertainment services to more than 12 million voice lines and 4 million broadband connections. Our experience and track record of success in deploying voice and broadband services to high-cost areas – precisely the types of areas that present the greatest challenges in achieving the ubiquitous availability of broadband Internet access service – provide us with a unique vantage point in understanding and assessing how to surmount those challenges.

In this filing, we propose a plan that would take immediate, significant strides toward fulfilling the Commission’s broadband deployment goals, while paving the way for more fundamental reforms in the future. In particular, the Broadband Now Plan would

- Jump-start further broadband deployment by providing targeted, incremental support that would be dedicated to deployment of broadband facilities in high-cost areas that are currently unserved or have access only to service at speeds slower than 6 Mbps;
- Unlock private sector investment that would not otherwise be made by conditioning receipt of incremental support on making private investment equal to at least \$800 per household without access to broadband (and \$50 per household with access to broadband, but at less than 6 Mbps throughput);
- Increase the efficiency of universal service by calculating support on a more granular wire center level and awarding that wire center support in a competitively neutral manner that would permit a provider that required less targeted support to step forward and receive support in place of the incumbent (while then assuming carrier of last resort obligations for that wire center);
- Result in approximately 95% of our voice connections having access to broadband service delivering at least 6 Mbps throughput within 5 years and the creation of a robust, fiber-rich, second mile and middle mile transport network that would facilitate the provision of *mobile* broadband service through shared, more efficient backhaul¹; and
- Reform intercarrier compensation by reducing terminating switched access and reciprocal compensation rates and eliminating loopholes and regulatory arbitrage opportunities, while replacing a portion of the lost revenue with explicit, predictable support that would

¹ This estimate is based on (a) the signatories’ existing service territories as of the date of this filing and does not include any areas that might be acquired in any pending or future transactions since they may have different levels of existing broadband availability than the signatories’ current operations; and (b) adoption of the Broadband Now Plan in its entirety.

increase carriers' ability to attract private investment capital needed for increased broadband deployment.

As the Commission has noted in connection with development of a National Broadband Plan, it has "not yet met the challenge of bringing broadband to everyone" and its "goal must be for every American citizen and every American business to have access to robust broadband services."^{2/} The *Rural Broadband Strategy Report* found in particular that "[n]o national broadband strategy can be undertaken without due consideration to the rural broadband infrastructure."^{3/} The mid-sized ILECs agree that policymakers must focus on and address obstacles to further broadband deployment in high-cost, rural areas. We have deployed high-speed broadband service to the vast majority of our customers in rural and small communities – approaching 90% of our customers. The challenge, however, is to make such investments economically viable where the business case does not support deployment. Despite aggressive deployment, the mid-sized ILECs, in aggregate, still have approximately 1.3 million customers who lack access to our broadband service. But with sufficient government funding, we are committed to deployment of broadband infrastructure to the remainder of our customer base by leveraging our existing infrastructure and making necessary investments.

While some would argue the Commission should first create new broadband-based policy and rules from whole cloth, such extensive reform would require new rounds of notice and comment, resulting in a substantial delay in transitioning the Universal Service Fund from a mainly voice-oriented model to one that can support both broadband and voice. The Commission is not limited to such a binary choice. Rather, the Broadband Now Plan offers a framework of reforms to the Commission's universal service and intercarrier compensation regimes for the near term as a way to make quick progress on deploying extensive broadband networks at speeds of 6 Mbps or higher, while embarking on the longer and more difficult journey to further modernize the universal service and intercarrier compensation systems.

I. The Universal Service Regime Should Be Reformed to Provide Incremental Support That Would Be Tied to Increased Private Investment and Dedicated to Broadband Deployment in Areas Lacking Access to 6 Mbps Service.

As the Commission's broadband team has recognized, the current universal service system suffers from structural problems that present a significant hurdle to ubiquitous broadband deployment.⁴ With reforms, universal service can serve as a critical component of a national broadband strategy for the simple reason that additional, targeted support is needed to fund deployment of high-speed broadband service in areas lacking access to broadband service of at least 6 Mbps.

² A National Broadband Plan for Our Future, *Notice of Inquiry*, 24 FCC Rcd 4342, ¶ 5 (2009).

³ See FCC Report, "Bringing Broadband to Rural America: Report on a Rural Broadband Strategy," at ¶ 8 (May 22, 2009).

⁴ Staff Presentation, "Broadband Gaps," at Nov. 18, 2009, FCC Open Meeting.

A. Reform Would Proceed in Two Phases That Permitted Immediate Progress on Broadband Deployment While Setting the Stage for More Fundamental Changes.

As set forth in more detail in the attachment, we propose to create a system that would reform high-cost universal service support in two phases to aid broadband deployment. In Phase I, universal service support would be determined on a more granular level based on the highest cost wire centers (rather than broad study areas or states that qualify for support). Eligible wire centers would qualify for additional support beyond current levels; that incremental support would be devoted to broadband deployment in areas lacking access to 6 Mbps service. Carriers that elect to receive this incremental support would be required to invest \$800 per household of their own funds to deploy broadband facilities if the household is unserved (and \$50 per household in areas with access to broadband at speeds less than 6 Mbps). In other words, a carrier would be required to invest \$800 of the amount needed to bring broadband to an unserved household in connection with its draw on incremental universal service funding. Carriers would receive this incremental high-cost model support until they completed deployment of 6 Mbps to 98 percent of their lines. To help provide the necessary incremental funding, the Commission would change the Universal Service Fund (“USF”) contribution methodology to include all connections—broadband and voice—in a competitively neutral fashion.

Upon implementation of Phase I, the Commission would launch Phase II by beginning a proceeding to determine the mechanism for future high-cost funding for existing broadband and voice services and the extent to which further funding is needed for new broadband deployment. This proceeding would specifically address, among other items, how the broadband standard should evolve over time and how the universal service fund should be sized and directed to achieve chosen policy objectives. The Commission also would consider what, if any, updates should be made to the forward-looking cost model to better identify high-cost areas where support for broadband and voice services are needed.

Phase II would take significant time, including various rulemakings, reasonable transition periods, and related steps. Although these steps likely will be necessary, we do not believe reform should await their completion given that Phase I can be implemented in the short term based on rulemaking proceedings the Commission already has, in some cases, had open for years and will facilitate meaningful progress toward universal broadband deployment. Further, some of the measures proposed for Phase I (e.g., determining support on a more granular basis) will be necessary elements of implementing Phase II reform and thus will move us closer to fundamental reform. And proceeding in stages will result in less disruption and uncertainty – factors that would otherwise discourage large, long-term private investments in broadband deployment and upgrades.

B. The Plan Would Provide Effective and Efficient Support for Increased Broadband Deployment.

This proposal rapidly and effectively addresses many of the structural problems in the current universal service system identified by the Commission’s broadband team. It would dedicate incremental universal service funding exclusively to the deployment of broadband and create a higher level of accountability for the use of universal service support for that purpose.

This new targeted funding would significantly improve the availability of broadband Internet access. Under our proposal, the Commission would support a robust offering of 6 Mbps throughput, which would require carriers to deploy fiber deeper into their networks (requiring a 12,000 foot carrier serving area).⁵ We estimate the Broadband Now Plan could deliver broadband service at speeds of 6 Mbps to approximately 95 percent of the voice connections of the signatory mid-sized ILECs within a span of just 5 years.⁶

The investments that would be supported by the incremental universal service funding would enable not only wider provision of wireline broadband Internet access service, but also would facilitate the provision of *mobile* broadband service using Long Term Evolution (“LTE”) and similar technologies. In those areas where we do not yet offer broadband service, the critical needs are to deploy fiber deeper into the network – the so-called “second-mile” problem – and in some cases to overcome the cost of backhaul to the Internet – the so-called “middle mile” problem. By expanding and enhancing the second mile and middle mile infrastructure already used by both wired and wireless providers, the cost of providing (and increasing capacity of) both fixed and mobile broadband will be reduced. It is more efficient for multiple networks to share the same backhaul infrastructure in areas that cannot economically support more than one deployment, and this deployment will ensure spectrum can be maximized for end user connectivity, its highest value purpose. Absent some form of predictable and sufficient support, the business case for deploying infrastructure to support broadband in these high-cost areas does not exist.

Further, the Plan would achieve increased broadband deployment by using universal service funding in a more efficient and effective way. First, the Plan would calculate support on a more granular basis (i.e., wire centers) that more accurately identifies the highest cost areas than the current system, which allocates funding based on average costs of broader areas that sometimes encompass a mix of high-cost and lower-cost wire centers. Second, under the Broadband Now Plan, carriers that accept an incremental increase in universal service support for broadband deployment in areas lacking 6 Mbps service would have to match support they receive with their own private investment up to the level of investment they generally make in areas that are economic to serve. By eliciting such private investment as a condition of receiving support, the Plan would multiply the effect of limited universal service dollars. Moreover, once the Commission determines that sufficient broadband coverage and speeds have been achieved, it could revisit the size of the fund and reduce or eliminate support for new broadband deployment, while leaving funding in place for operating and maintenance capital expenditures.

⁵ The Commission alternatively could choose to support a higher throughput option. The higher throughput option would take longer and cost more in the short-run to deploy than would the 6 Mbps option, but it likely would save substantially on future upgrades by minimizing the need to reconfigure last-mile facilities.

⁶ As mentioned above, this estimate is based on (a) the signatories’ existing service territories as of the date of this filing and does not include any areas that might be acquired in any pending or future transactions since they may have different levels of existing broadband availability than the signatories’ current operations; and (b) adoption of the Broadband Now Plan in its entirety.

Third, the Plan would award incremental support in a competitively neutral way to the carrier that would be able to provide service at the lowest cost, thus ensuring that no more universal support than necessary was used to increase broadband support in an area. In particular, if a carrier other than the incumbent could demonstrate that its own costs of providing service would require less targeted support than would otherwise be needed based on the forward-looking model, that carrier would receive the lower amount of support in place of the incumbent, provided that it agreed to assume exclusive carrier of last resort (“COLR”) obligations for offering facilities-based voice service to all lines in the wire center. Of course, that carrier – like any incumbent recipient of support – would have to use the incremental additional support for purposes of deploying broadband in areas that lack 6 Mbps service and meet the same private investment thresholds.

Finally, the Plan recognizes that even as the focus of universal service support increasingly shifts to expanding broadband network availability and speed, there continues to be a need to provide support for current voice services and the network investments already made by carriers. Entirely shifting existing support to new high-speed broadband services would leave some customers behind and create new problems. Universal service funding in uneconomic areas is critical to fulfilling COLR obligations, particularly as implicit subsidies are rapidly being eliminated due to competitive pressure and questionable traffic routing and compensation schemes. The signatory companies, in aggregate, make capital expenditures of nearly \$1.7 billion each year, which amount to annual per customer investments in the range of approximately \$100-\$140.⁷ Universal service support has played and continues to play an important role in deploying carrier of last resort infrastructure, and it would not be prudent to strand consumers where support is needed to continue existing service. Moreover, focusing universal service support only on new broadband deployment could have the perverse effect of undermining private sector broadband investment: Investors would be less willing to provide capital to carriers serving high-cost areas – capital that could be used to invest in broadband deployment – if those carriers were forced to bear the economic burden of COLR obligations without sufficient support for existing services.

II. A Broadband Solution Requires Reasonable Reforms of Intercarrier Compensation That Virtually Eliminate Incentives for Arbitrage and Loopholes that Currently Distort the Marketplace.

In addition to changes to the universal service regime, a broadband solution requires that the Commission enact reasonable intercarrier compensation reform. The need for such reform is well-documented and acknowledged by a wide variety of stakeholders. The current intercarrier compensation regime has created opportunities for arbitrage, produced numerous disputes, and done little to prevent unlawful non-payment and evasion, all of which result in competitive distortions and unfair burdens on some consumers and providers as compared to others. The resulting regulatory uncertainty, disputes, and increased costs discourage broadband investment and create regulatory barriers to broadband deployment.

⁷ In 2008, CenturyLink’s total annual capital expenditures were approximately \$973 million, Windstream’s were approximately \$318 million, Frontier’s were approximately \$288 million, Consolidated’s were approximately \$48 million, and Iowa Telecom’s were approximately \$28 million. These figures are on a pro forma basis for any acquired properties.

Under the Broadband Now Plan, intercarrier rates would be reduced, with the lost revenues addressed in part through opportunities to rebalance end-user rates and the elimination of certain loopholes and arbitrage opportunities (e.g., phantom traffic and failure to pay approved rates for use of switched access services). Reduction in intercarrier rates will help transition the industry from relying on implicit subsidies from access charges. At the same time, replacement of some of the lost access revenue with explicit, predictable support would recognize the higher costs of providing service in rural areas and lead to reduction in carriers' cost of capital as investors perceive risks lower than those inherent in today's intercarrier compensation system. The Broadband Now Plan couples these measures with reform that would eliminate equal access obligations on a going forward basis, while preserving the status quo for existing customers as a way to wind down the originating access system.

A clear and enforceable system of intercarrier compensation will produce conditions that facilitate carriers' ability to attract private investment capital needed for widespread deployment under the National Broadband Plan. Carriers, however, would not be made whole for lost intercarrier compensation revenue. The intent is to create a fair and workable set of reforms that equitably spread the burdens among the relevant stakeholders.

* * *

The Broadband Now Plan does not purport to address every issue and problem with the current universal service and intercarrier compensation rules. Rather, our goal is to present a reasonable and achievable framework that will rapidly modernize the existing universal service and intercarrier compensation regimes in a way that will support achievement of the Commission's broadband goals. The Broadband Now Plan supports the immediate deployment of broadband in unserved areas, provides material regulatory reform, and establishes a clear transition plan for further comprehensive reform.

ATTACHMENT

BROADBAND NOW PLAN*Universal Service Fund Reform.**Phase I*

- **Reform high-cost model support and permit rural price-cap carriers to elect on a one-time basis to receive this support.** A price cap-regulated carrier would be allowed to make a one-time request for increased Non-Rural High-Cost model support through a mechanism that would provide support for each *wire center* where the forward-looking cost of universal service per line (determined by the Synthesis Model) was greater than 2.75 times the national average cost per line. To provide continuity, we propose that Interstate Access Support and Interstate Common Line Support would be excluded from this discrete change to the current USF mechanisms, as these funds would continue to be used in part for maintenance-related operating and capital expenditures to help meet existing COLR obligations. Carriers would receive the incremental high-cost model support until they complete deployment of broadband service at speeds of 6 Mbps to 98% of their lines.
- **Dedicate the incremental forward-looking high-cost support to broadband deployment.** A service provider that elected to receive increased universal service support would be required to dedicate the incremental funding, combined with its private investment (described below), to increase the availability of high-speed broadband Internet access to households in areas in its service territory that lack access to 6 Mbps service.
- **Require the recipient of incremental forward-looking high-cost support to invest its own capital in support of broadband deployment.** For each household for which a provider uses incremental universal service funding under this proposal to support network expansion, the carrier would be required to invest (using private funding) at least \$800 where no high-speed broadband access service exists today and \$50 where broadband has been deployed but available speeds are less than 6 Mbps. Put another way, a provider would be required to invest \$800 of the amount needed to bring broadband to an unserved household in connection with its draw on incremental universal service funding.
- **Award the incremental high-cost model support in a competitively neutral fashion.** Any broadband provider could apply for wire center support so long as it would be willing (1) to assume exclusive COLR responsibilities for offering facilities-based voice service to all lines throughout the entire wire center; (2) to use the incremental support, above and beyond current funding levels, to deploy broadband in areas lacking 6 Mbps service; and (3) to meet the investment thresholds noted above. The incumbent serving as the COLR would receive the model support unless a lower cost provider stepped forward to assume these commitments; such a new entrant would have to demonstrate based on its own costs and network that it would require less targeted support than would

otherwise be needed as determined by the forward-looking model and would become the COLR for that wire center. If such a new entrant were awarded support, the incumbent would be relieved of any and all COLR obligations including, but not limited to, unbundling, resale, and pricing regulations, but it could engage in commercial arrangements at its discretion.

- **Revise the USF contribution methodology to include all connections.** To facilitate the transition to supporting broadband and help provide the necessary incremental funding, the Commission would change the USF contribution methodology to include all connections—broadband and voice—in a competitively neutral fashion. The Commission also may consider other measures to help offset the cost of the incremental funding, including, for example, eliminating access replacement for Competitive Eligible Telecommunications Carriers.

Phase II

- Upon implementation of Phase I changes, the Commission would launch a proceeding to determine (1) the mechanism for future high-cost funding for existing broadband and voice services and (2) to what extent, if any, further funding is needed for new broadband deployment.
 - The Commission would consider whether to transition to a new mechanism that provides support for capital expenditures for specific broadband deployment projects, with recurring support limited to operating and maintenance capital expenditures, as well as how it will continue to support voice services in high-cost areas.
 - New broadband funding may be dedicated to expanding broadband access to any areas that have not been addressed by 6 Mbps service yet or increasing speeds in areas where 6 Mbps service is already offered but not by more than one provider.
- In that same proceeding, the Commission also would consider what, if any, updates should be made to the forward-looking cost model to better identify high-cost areas where support for broadband and voice services is needed.

Intercarrier Compensation Reform.

- **Eliminate loopholes and arbitrage opportunities.** Some providers improperly divert significant amounts of lawfully compensable traffic away from intercarrier compensation mechanisms under the current regime. This creates competitive distortions, regulatory uncertainty, and disincentives to invest in network facilities, including those used for broadband. The Commission would eliminate these loopholes and arbitrage opportunities by:
 - Explicitly confirming that all traffic that terminates on the PSTN – including in particular IP-originating traffic – is subject to existing access charge and reciprocal compensation mechanisms. Access rate arbitrage is increasing and undermines a key revenue stream used to support the COLR system and promote network stability to advance broadband deployment. For example, the inappropriate questioning of whether VoIP-originated traffic is subject to terminating access charges has generated a raft of disputes among carriers, leading to significant regulatory uncertainty, litigation costs, investment risks, and a patchwork of interim solutions. The Commission would finally act to eliminate any questioning and make clear that all non-local traffic that terminates on the PSTN is subject to terminating access charges throughout and subsequent to the transition periods contemplated in this proposal. The principles and regulations should be clear and enforceable.
 - Implementing rules for the elimination of “phantom traffic.” Phantom traffic consists of traffic that is sent without signaling information, or with improper information, and that inappropriately escapes the application of intercarrier compensation rules.
- **Reduce price cap carriers’ terminating switched access and reciprocal compensation rates.** Initial reductions would occur in two phases. First, interstate and *intrastate* terminating switched access rates and reciprocal compensation rates would be reduced to the CALLS target rate of \$0.0065 in three equal installments over a period of three years. Second, in years four and five, the unified terminating switched access and reciprocal compensation rates would be reduced in two equal adjustments to the lower CALLS target rate of \$0.0055 per minute.
- **Establish local service benchmark rate and permit capped annual increase of retail rates to reach that benchmark for mid-sized price cap carriers.** This proposal would establish a local service benchmark rate that would ultimately be \$23.50 for residential service, including the basic service rate, subscriber line charges, and mandatory EAS charges. This local benchmark rate contemplates an increase in the current residential subscriber line charge from \$6.50 to \$8.00 per line. The benchmark would be used to determine the appropriate amount of funding needed to replace a portion of the lost access and reciprocal compensation revenues due to the rate reductions described above. No carrier would be required to increase its rates, but a carrier would be imputed revenue equal to the benchmark rate for each customer for purposes of this calculation, even if the actual rate charged was lower. There would be

a five-year transition phase. During that time, a carrier would be permitted to increase its total retail rate (including the subscriber line charge) by no more than \$1.50 per year until it hit the final \$23.50 benchmark rate; the carrier would be imputed revenue equal to that amount regardless of whether it actually increased rates by \$1.50. Because carriers in many cases would be unable to raise rates by the imputed amount due to competitive pressures, the effect would be that carriers would not fully recover their lost revenues due to the access and reciprocal compensation rate reductions. If a carrier cannot increase its local rates because it does not have retail pricing flexibility at the state level, and the state has an existing high-cost fund in place that could be utilized for rate rebalancing, then the Network Advancement Mechanism (described below) would not be reduced due to the imputation of a local rate benchmark.

- **Establish a Network Advancement Mechanism to recover a portion of revenues lost as a result of terminating access and reciprocal compensation rate reductions.** Under this proposal, the Commission would set up a Network Advancement Mechanism (“NAM”) under the USF, the purpose of which would be to compensate carriers for a portion of the revenues they will lose as a result of the mandatory reductions in terminating switched access and reciprocal compensation rates. The size of this fund would be equal to the amount of the intrastate switched access and reciprocal compensation revenue reductions for the first three years, and 50% of the reductions for the remaining two years of the transition period; as a result, during those last two years, carriers would recover only half of the total lost revenues from the rate reductions (or less if their retail rates were below the local service benchmarks for those years). After the transition period, the NAM would be calculated on a per-connection basis, and support from the NAM likewise would be based on the number of connections.
- **Eliminate equal access obligations to harmonize the treatment of all competitors.** The Commission would remove the Equal Access obligations for new customers. Equal Access scripting requirements have been lifted already for even the Bell Operating Companies. Under this proposal, the scripting requirements would be lifted for all other providers, and the other Equal Access rules would be eliminated for new customers, which will result in a measured phase out of the rules over time.
- **Open a further proceeding at the end of year five to assess the need for and options for further reform.** The Commission would institute a proceeding to consider further reform at the end of year five. Specifically the Commission would seek comment on, among many other items, whether to establish one unitary rate for all intercarrier compensation or unified rates by carrier, state, or track; and the proper role of state Commissions, the Federal-State Separations and Universal Service Joint Boards, and the Federal-State Joint Conference on Advanced Telecommunications Services. The Commission also would refer relevant issues to the Federal-State Separations and Universal Service Joint Boards relevant issues, including the following: whether to set a rate benchmark to constrain SLC increases in high rate states; whether a mechanism is needed to replace access or reciprocal compensation revenues during the next stage; and the impact of any changes or transitions on the separations process.