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

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

REPLY COMMENTS OF GVNW CONSULTING, INC.

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EXECUTIVE SUMMARY

GVNW respectfully recommends that the Commission reject the NCTA petition for the following reasons: (1) There are significant defects in the NCTA petition; (2) The NCTA petition and its advocates ignore the regulatory reality faced by some cooperatives and carriers; and (3) The NCTA petition ignores the importance of Network Construction in rural areas.

Universal service support from viable and sustainable federal programs is a necessity for rural areas to maintain current service, as well as eventually realize the promise of a broadband future. It is also the law. Section 254(b) (3) of the Telecommunications Act of 1996 requires that consumers in rural and high-cost to serve areas should have access to advanced services that are reasonably comparable in both price and quality to the services that are available in urban areas.

NCTA's proposal fails to provide predictable, specific, and sufficient universal service support as required by the Act. Any such proposal cannot be reconciled with the Commission's obligation to establish universal service support mechanisms that are "predictable, specific, and sufficient" as long as ILECs continue to be subject to COLR and other service requirements.

The identical support rule for competitive ETCs should be replaced, at least in rural areas, with a support system based on the carrier's own costs. We recommend that the support amounts be based on a demonstration of actual costs that exceed a qualifying threshold. The GVNW-developed WiPan, and its predecessor WiCAC I and WiCAC II costing modules, is the only proposal for a cost-based alternative to the identical support

paradigm that is replicable and auditable and includes a set of proposed Commission rules for review.

The motive behind NCTA's Petition appears to be to allow their large cable operators to attack the support received by rural ILECs and eventually force those rural ILECs out of the market. The costs of individual RLEC customer lines do not decrease when a customer terminates service to move to a competitor. Most state COLR requirements mandate that RLECs and other COLRs maintain individual customer lines in place even after the customer terminates his or her service.

We hope, as this important work continues, the Commission will indeed be able to meet the stated objective of working closely with small telcos in creating "a competitive telecommunications marketplace that leaves no one behind and keeps all of America connected." We agree with the [former] Chairman that small and rural LECs are 'vitally important' to our national telecommunications future as they "are building the infrastructure that will keep rural America connected." If this is to be realized, it will be important for the Congress and the FCC to recognize specific data impacts that GVNW and others have placed on the record in this and other FCC proceedings. The negative impacts for certain rural customers are not reflected if policy makers examine only the industry average impact.

INTRODUCTION AND BACKGROUND

The purpose of these reply comments is to respond to the Commission's Public Notice pertaining to the National Cable & Telecommunications Association Petition for Rulemaking that proposes changes to the rules for universal service high-cost support. In simplest terms, NCTA proposes new procedures that would reduce the amount of high-cost support[1] provided to an ILEC in study areas where there is extensive unsupported facilities-based voice competition, or where the ILEC's rates for local exchange services have been deregulated.

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

GVNW respectfully recommends that the Commission reject the NCTA petition for the reasons offered in our comments and replies. We discuss in further detail specific problems with the NCTA petition in the following pages.

[1] Commissioner Baker accurately portrayed the challenges policy makers face in dealing with the thorny issue of universal service reform in her recent statement (November 23, 2009) airing on C-Span's "The Communicators" in observing that: "*it's impractical to think that we're going to solve universal service within the plan*" and referencing the twin issues of universal service and intercarrier compensation as a "*decade-old problem*" that may hold the key to enabling successful broadband deployment. It is not time, however, to throw the incumbent providers "under the bus" in a desire to try something different simply for the sake of change, which is precisely what NCTA requests in its instant Petition for Rulemaking.

THERE ARE SIGNIFICANT DEFECTS IN THE NCTA PETITION

Numerous commenters pointed out the flaws in the Petition filed by NCTA. Some of the more egregious shortcomings include:

Violates provisions in Section 254 of the Act

As we stated in our comments:

Universal service support from viable and sustainable federal programs is a necessity for rural areas to maintain current service, as well as eventually realize the promise of a broadband future. It is also the law. Section 254(b) (3) of the Telecommunications Act of 1996 requires that consumers in rural and high-cost to serve areas should have access to advanced services that are reasonably comparable in both price and quality to the services that are available in urban areas.

AT&T agreed with this assertion, as stated at page 3 of their filing with reference to Section 254(b)(5): "*NCTA's proposal fails to provide predictable, specific, and sufficient universal service support as required by the Act*." AT&T continues further at page 6 with the statement: "*Any such proposal cannot be reconciled with the Commission's obligation to establish universal service support mechanisms that are 'predictable, specific, and sufficient' so long as ILECs continue to be subject to COLR*[2] *and other service requirements* (original footnote omitted)."

[2] AT&T further states at page 6 that "*NCTA is therefore mistaken when it seeks to trivialize the cost of maintaining facilities throughout those, perhaps, large geographic areas of an ILEC's study area where there happens to be a competitive wireline voice provider by asserting that such costs are merely 'incremental.'*" GVNW submits that the Commission should bear in mind that not supporting a carrier of last resort network for rural carriers could have unintended consequences, including an inability to raise capital and evolve appropriate levels of service. Rural carrier telecommunications networks necessitate investing large amounts of capital in inherently long-lived plant assets.

NCTA overstates the benefits of its proposal

The NCTA petition offers a "red herring" claim with respect to purported savings from its proposal. AT&T offers perhaps the cleverest turn of phrase in the opening round of comments with its statement at pages 4 and 5: "*NCTA's press release accompanying its petition garnered much attention by proclaiming like an infomercial that the Commission can save 'up to $2 billion in wasteful universal service spending' by adopting its proposal, but the reality is that the 'savings,' if any, that might result from adopting NCTA's proposed rule are likely to be dramatically smaller than advertised*."

Definitional Issues

Carriers of all sizes commented on problems with the NCTA proposal proposed triggers. Small rural carrier Pioneer Communications, Inc. of Kansas cited an example at page 3 of their filing with respect to how only "*19 percent of the customer base, located outside the areas of competition, uses 86 percent of the total fiber network.*" This view is similar to the Qwest Communications International Inc. filing at pages 2 and 4, where Qwest stated in part: "*Unfortunately, the NCTA proposes an inaccurate and unreasonable means of identifying those areas where subsidies would be – and would not be – provided. The nature of many rural areas with most customer locations in or near a town and fewer locations much further out of town suggests that a 75% threshold is actually likely to identify areas where the competitor only serves lower-cost areas. For example, in one of Qwest's high-cost wire centers, Laramie, Wyoming, it is the case that over 87% of Qwest's lines are in the lower-cost in-town area of 11 square miles, while the remaining 13% of customers are in the higher-cost 2,075 square miles of out-of-town area. Assuming that this wire center is typical for the study area, a competitor could*

trigger the 75% threshold without having incurred any costs to serve the outlying higher costs areas." The United States Telecom Association concurs at page 6 with the statement: "*It would not be unusual for a wire center to have 75 percent of households within or very near the town limits, while the remaining 25 percent of the households are scattered over many square miles, requiring feeder lines with less than 20 households per mile and even drops measured in miles. Thus the 75 percent threshold bears little relation to the need for high-cost support for universal service*."

AT&T points out issues with the lack of proposed changes to Parts 36 and 54 rule language at page 10 of its filing. Having been involved with the WiCAC and WiPan proposals, referenced in the last section of these replies, which both included all of the requisite rule changes at the time the proposal was offered to the Commission, we understand fully the effort required to meet AT&T's objection. However, NCTA should be considered to have submitted a deficient petition absent including all necessary rule change language.

THE NCTA PETITION AND ITS ADVOCATES IGNORE THE REGULATORY REALITY FACED BY SOME COOPERATIVES AND RURAL CARRIERS

The proposal from NCTA is based on assumptions that do not reflect the regulatory reality facing a large number of cooperatives. In states such as Montana and Oregon, the state commissions have determined that as a matter of law, they do not have the authority to regulate local service rates of cooperative entities.

Time Warner Cable Inc. grossly misstates the lengthy and detailed federal universal service record at page 3 of its filing when it states that "*the Commission has not*

examined whether or to what extent rates would increase if support were withdrawn or reduced." Time Warner Cable demonstrates a lack of institutional memory as it is apparently not familiar with the extensive record developed by the Commission over the last 15 years. The various universal service dockets over the last decade and a half contain a great deal of information that refutes Time Warner's specious claims, including data provided by GVNW Consulting. We have included with this reply comment filing an Attachment A that draws from our archives and provides price-out data from 1996, 1997 and 1998, the early days of post TA-96 implementation.

The purpose of this attachment is to show that there is a long history of data being placed in the record at the Commission by rural carrier advocates with respect to the issue of what is the financial impact of changes to universal service support levels on individual carriers. We have included small portions of these GVNW data filings that are illustrative of our filings dating back to the time period surrounding the Telecommunications Act of 1996. For a party to state that the Commission has not had a chance to review such data is simply not true, as we have been submitting this type of data for the last 15 years[3]. We are in the process of providing an update for the record based on current period data, and will do so soon with an ex parte filing.

[3] We believe that each of the Commission's since the TA 96 period have understood to varying degrees the significance of this price out data, and that it has contributed to what we referenced in footnote 1 above with respect to Commissioner Baker accurately portraying the challenges policy makers face in dealing with the thorny issue of universal service reform in her recent statement (November 23, 2009) airing on C-Span's "The Communicators": "*it's impractical to think that we're going to solve universal service within the[national broadband] plan*" and referencing the twin issues of universal service and intercarrier compensation as a "*decade-old problem*" that may hold the key to enabling successful broadband deployment. The Martin Commission, as well as the NARUC community, missed a huge opportunity to implement some form of restructure mechanism, such as the one proposed as part of the Missoula plan. Such bold action then would have ameliorated some of the current level of concern with respect to solving the universal service conundrum.

One reason we included the 1998 filing is that its conclusion is still relevant in 2010. As we stated at page 12 of that filing 12 years ago: "*We hope, as this important work continues, the Commission will indeed be able to meet Chairman Kennard's stated objective of working closely with small telcos in creating 'a competitive telecommunications marketplace that leaves no one behind and keeps all of America connected.' We agree with the Chairman that small and rural LECs are 'vitally important' to our national telecommunications future as they 'are building the infrastructure that will keep rural America connected.' If this is to be realized, it will be important for the Congress and the FCC to recognize specific data impacts that GVNW and others have placed on the record in this and other FCC proceedings. The negative impacts for certain rural customers are not reflected if policy makers examine only the industry average impact.*"

THE NCTA PETITION IGNORES THE IMPORTANCE OF NETWORK CONSTRUCTION IN RURAL AREAS

The NCTA Petition appears to be self-serving. As stated by OTA, WITA and CTA at page 4: "*the motive behind NCTA's Petition appears to be to allow their large cable operators to attack the support received by rural ILECs and eventually force those rural ILECs out of the market*."

With this behavior, the NCTA Petition ignores some important fundamentals of providing service in rural areas. As correctly stated by the filing of the Western Telecommunications Alliance (WTA) at pages 14-15: "*The critical flaws in the logic of NCTA's 'no support for lost lines' argument is that it ignores the facts that: (1) RLECs*

and other carriers invest in, build and operate networks rather than individual customer lines….the costs of individual RLEC customer lines do not decrease when a customer terminates service to move to a competitor. Most state COLR requirements mandate that RLECs and other COLRs maintain individual customer lines in place even after the customer terminates his or her service."

The Independent Telephone & Telecommunications Alliance adds the following thoughts at pages 2, 3, and 8 of its filing: "*The proposed reallocations do not account appropriately for the manner in which rural networks are constructed, and would threaten the viability of carriers of last resort serving rural areas at a time when those networks and carriers will play critical roles in National broadband deployment….ILEC networks are built in a manner that enables the carrier to meet its COLR obligations throughout the entire study area. Under the NCTA proposal, however, a carrier would not be able to seek USF support …in both the competitive and non-competitive areas…This outcome must be avoided."*

The Commission should consider as a part of its national broadband policy the differentiation it used in adopting the Rural Task Force rules for universal service. Simply stated, the prescription to keep communications in rural areas viable[4] is to continue the principles that serve as the foundation of the earlier Rural Task Force rules.

[4] Rural areas provide benefits to the entire society through the provision of agricultural, energy and recreational resources that are enjoyed by both urban and rural residents.

The rural difference is a valid consideration in developing broadband public policy in 2010[5]. Any viable broadband policy for rural carriers must reflect the diversity of cost between rural and non-rural carriers, and among the subset of rural carriers.

COMMENTERS RECOMMEND THE ELIMINATION OF THE IDENTICAL SUPPORT RULE

The NCTA petition attempts to shift the focus away from one of the major drivers of the increase in USF payments[6] over the last several years, the identical support rule. As OPASTCO recommends at page 2 of its filing, the Commission should consider "*abandoning the identical support rule and, at least in rural service areas, basing support for competitive eligible telecommunications carriers (ETCs) on their own costs*."

The GVNW-developed WiPan proposal[7], which combined the GVNW WiCAC proposal with a parallel proposal from Panhandle Telephone Cooperative, and its predecessor WiCAC I and WiCAC II costing modules, is the only proposal for a cost-based alternative to the identical support paradigm that is replicable and auditable and includes a set of proposed Commission rules for review.

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[5] Rural carriers exist because larger carriers chose not to serve the areas that were most costly to serve. The recent large carrier sales of entire states prove this is still the case in 2010.

[6] USF Contribution reform is also overdue. Numerous advocates have urged the Commission to modify the current methodology for assessing contributions to the universal service fund. Recommendations have included a numbers or connection-based methodology, an expanded revenue-based methodology, or some combination or permutation of the two methods. At some point, we believe that the Commission will find it necessary for contributions to all Universal Service Fund programs, including any type of High Speed Broadband Fund, to be based on a combination of working telephone numbers and public network connections, including all broadband connections in service, regardless of technology. OPASTCO discussed such an approach in its ex parte dated November 30, 2009.

[7] Ex parte filing in WC Docket No. 05-337 and CC Docket No. 96-45, GVNW Consulting, August 8, 2008.

Respectfully submitted,

Submitted via ECFS

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January 22, 2010