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

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

REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA

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I. SUMMARY

The California Public Utilities Commission and the People of the State of California (CPUC or California) respectfully submit these Reply Comments in response to the Federal Communications Commission's (FCC) Public Notice issued December 8, 2009, seeking comments on a petition for rulemaking filed by the National Cable and Telecommunications Association (NCTA) on November 5, 2009.[1] The Petition proposes that the FCC "establish procedures to reduce the amount of high-cost support provided to carriers in those areas of the country where unsupported facilities-based voice competition is flourishing and where government subsidies no longer are needed to ensure that service will be made available to consumers."[2] "Specifically, the petitioner would be required to demonstrate either (1) that wireline competitors offer service to more than 75 percent of the customers in an area without support or (2) that the state has found sufficient competition to substantially deregulate an ILEC's retail rates."[3] "Even where a petitioner cannot demonstrate that an area meets the 75 percent threshold, the Commission also should advance to Step 2 upon a showing that competitive wireline service from a provider that does not receive high-cost support is available to at least 50 percent of the households in the study area and that the portion of the study area with no wireline competition has cost characteristics that

[1] National Cable & Telecommunications Association, Reducing Universal Service Support in Geographic Areas that are Experiencing Unsupported Facilities-Based Competition, Petition for Rulemaking, GN Docket No. 09-51 and WC Docket No. 05-337 (filed Nov. 5, 2009) (Petition).

[2] *Id* at p.1. The proposal would not apply to tribal areas. (See footnote 2 at p.1).

[3] Petition at p.5.

are comparable to the covered portion (*e.g.*, similar terrain and population density)."[4] "If one or both of those triggers is satisfied, the Commission would initiate the second step of the proceeding. In that step, the burden would be on a USF recipient to demonstrate the minimum amount of support necessary to ensure that noncompetitive portions of the area will continue to be served. This process would identify those ILEC costs that cannot be recovered through any of the services (regulated and unregulated) provided in the non-competitive portion of the study area, including costs associated with any applicable provider of last resort (POLR) obligations."[5] The NCTA calls its proposal "a modest first step on the road to USF reform" that "recognizes that the competitive situation in each market is different and that a one-size-fits-all solution may not be feasible."[6]

The CPUC supports reform of the federal high-cost funding mechanism and finds merit in exploring a case-by-case approach to such reform as opposed to a "one size fits all" approach. The CPUC also supports the consideration of unregulated, as well as regulated, communications revenues in calculating a carrier's need for support. However, California has identified some significant concerns with the NCTA proposal. The proposal would unfairly advantage competitive carriers not required to comply with state basic service or service quality requirements; the proposal would discourage state rate deregulation and

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[4] *Id* at p. 13.

[5] *Id* at p.5.

[6] *Id* at p. ii.

punish those states that have deregulated rates; and the proposal shifts costs from the interstate arena to the intrastate arena without approval by the Federal-State Joint Board on Separations.

II. DISCUSSION

A. Merits of the NCTA Proposal

As we have stated in past filings, the CPUC strongly agrees that the current legacy federal high-cost support system is in need of reform to reflect today's market realities. We support the Joint Board's recommendation that the FCC establish a process and a timetable to modernize the current high-cost mechanisms.[7] We therefore welcome the effort of the NCTA to move this process forward by offering this proposal.

California also finds merit in the case-by-case aspect of NCTA's proposal. Attempting to modify the distribution methodology via reforms that apply uniformly across the board to all rural and non-rural carriers is problematic. For example, it would impact the cost of doing business because it would not permit the FCC to take into account the unique aspects of each state and study area. For states such as California, where the geography, weather, and population and other significant factors vary significantly among the study areas in the state, this is a particularly important consideration.

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[7] Comments of the California Public Utilities Commission and the People of the State, FCC NPRM Regarding Recommendations of the Joint Board on Reform of High-Cost Universal Service Support; *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*; WC Dkt. No. 05-337; CC Dkt. No. 96-45; filed April 17, 2008, at p. 11.

The CPUC also supports the NCTA's proposal to consider unregulated, as well as regulated, communications revenues from services provided over a carrier's network in calculating the provider's need for support, "especially when the high-cost program is subsidizing a shared network, particularly for rate-of-return regulated carriers."[8] Increasingly carriers are provisioning broadband facilities which offer both non-voice communications services and voice services and in some cases offer bundled service plans. We agree with Sprint Nextel's recommendation that the current USF system recognize that multiple services are using the local loop and that 100 percent of the cost of this facility need not be attributed to the high-cost fund. Instead, a portion of those costs should be recovered through the alternative revenue streams available to the ILEC through the provision of broadband and other services.[9] It is reasonable and fair to ask subscribers to non-voice communications services to contribute to the costs of these facilities.

B. Deficiencies of NCTA Proposal

Although the CPUC supports some of the basic concepts proffered by NCTA we have some concerns with the proposal which prevent us from supporting it in its current form.

First, the proposal would give an unfair competitive advantage to the competitive wireline carrier in the area because the competitive carrier would not

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[8] *Id* at p.12.

[9] Comment of Sprint Nextel Corporation, filed January 7, 2010, at p. 7.

be required to serve the entire study area, nor provide the same quality of basic voice service required of the Carrier of Last Resort (COLR). The proposal also lacks detail as to how consumers will continue to receive affordable telecommunication service throughout the service area. In addition, the Commission should consider how state and federal officials will monitor the continuation of service over time.

A competitive wireline provider may be a provider of Voice over Internet Protocol (VoIP) service. Given the current unresolved jurisdictional issues surrounding VoIP, such a service is not likely to be subject to state COLR requirements. Thus, under the proposal federal support would be reduced without requiring the competitive offering to meet the state COLR requirement and include certain basic service elements when provisioning voice service.

Nor would the competitive carrier be required to serve an entire study area. As noted in the comments filed by the Independent Telephone & Telecommunications Alliance (ITTA) "[t]he petition's proposals might make sense if all carriers involved in the equation had equivalent obligations -- ILECs, however, are COLRs that are obligated to serve the entire study area, and build their networks to match those obligations. Inasmuch as the petition envisions dramatic support reductions in study areas where the competitive provider may offer service to only 50 percent of the market, the resultant failure of an ILEC forced to price itself out of the market could leave half the market without access to wireline service of any kind. And, where the COLR would survive, steep

reductions in USF support would have a serious detrimental impact on carriers' abilities to maintain or upgrade their networks. Either result is untenable."[10] California agrees with ITTA's concern that "[a] rural COLR incurs costs consistent with its mandated obligations. In any given service area, a COLR it [sic] is required to construct and maintain a network capable of serving the entire service areas, whereas a competitor offering service to only 50 percent of the households in an areas [sic] may size its network, by choice, to meet the needs of only half that area. The Commission must avoid measures that would eliminate USF support for joint-use facilities and jeopardize high-cost COLR networks."[11]

Secondly, the NCTA proposal would unfairly penalize states that have taken steps to promote competition as mandated by Congress in the Telecommunications Act of 1996. The proposal would automatically end federal high-cost support in areas where the state has substantially deregulated an ILEC's retail rates. Thus the proposal would benefit states that have been slow to deregulate retail telecommunications service and reduce federal benefits flowing to states that have substantially deregulated retail services. The proposed rules would, in effect, punish those states that have moved forward to address the dramatic changes in the telecommunications marketplace and work at cross purposes to national policy.

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[10] Comments of the Independent Telephone & Telecommunications Alliance, filed January 7, 2010, at p.10.

[11] *Id* at p. 16.

The NCTA proposal would also shift federal dollars away from states that have adopted reforms in light of competition. California is already the second largest net contributor to the federal universal service fund. In 2008, the last year for which totals are available, California contributed $810,651,000 to the federal Universal Service Fund (USF). The distribution from the USF to California in 2008 was approximately $561,802,000 – a negative net cash flow of $248, 849,000.[12] Because California has substantially deregulated retail rates, the NCTA proposal would only increase California's contribution versus distribution to the USF without permitting carriers operating in California to prove that USF funding was still necessary. It could also discourage other states from adopting deregulation of retail rates.

Finally, the NCTA proposal would unfairly burden state universal service programs by shifting costs from the interstate to the intrastate arena. Further, these cost shifts would occur without review and approval by the Federal-State Joint Board on Separations and modification to the separations rules as required by federal statute.[13]

III. CONCLUSION

The CPUC urges the Commission to reform the universal service support mechanism to meet the changes in the marketplace. We look forward to

[12] Universal Service Monitoring Report, CC Dkt. 98-202, 2009, (Data Received Through August 2009) Prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45.

[13] 47 U.S.C. §410 (c).

continuing to work with the Commission and other parties to meet that goal. The NCTA proposal provides a worthwhile contribution to the reform discussion. However, for the reasons stated above, California cannot endorse the NCTA proposal as written.

Respectfully submitted,

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