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

A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Reducing Universal Service Support	)	RM-11584
In Geographic Areas That Are	)	
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Facilities-Based Competition	)	

REPLY COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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January 22, 2010

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The National Cable & Telecommunications Association (NCTA) hereby submits its reply comments in response the Commission's Public Notice seeking comment on a Petition for Rulemaking filed by NCTA on November 5, 2009 ("Petition").[1] NCTA's Petition proposes a commonsense, fact-based review process as a modest first step to reducing what virtually every objective observer sees as a bloated high-cost fund. Contrary to arguments made by some commenters, NCTA's Petition does not propose automatic reductions in high-cost support for any provider, nor does it pick winners or losers among providers. For all the reasons explained below, we encourage the Commission to issue a Notice of Proposed Rulemaking seeking comment on NCTA's proposal and to start moving forward with real reform of the high-cost program.

INTRODUCTION AND SUMMARY

Since adopting explicit high-cost support mechanisms in the wake of the Telecommunications Act of 1996, the Commission has distributed *over $32 billion* in high-cost

[1] Public Notice, Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Awarded 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, DA 09-2558 (rel. Dec. 8, 2009).

support.[2] Incumbent local exchange carriers (ILECs) have received the vast majority of that money – *over $28 billion*.[3] AT&T, the largest ILEC in the country and one of the largest companies in the world, has received *over $2 billion* in support for its wireline business.[4] CenturyLink, the fourth largest ILEC following its acquisition of Embarq, has received *over $3.9 billion* in that same period of time.[5]

Having spent more than a decade distributing these massive sums of money to ILECs, it is long past time for the Commission to undertake a critical review of the high-cost program. Such a review would be warranted even if this were a relatively stable industry, but it has become absolutely essential given the fundamental marketplace changes that have taken place during this time period. In particular, as documented in the report of Dr. Jeff Eisenach that was attached to NCTA's Petition, the rollout of cable voice service across large portions of rural America, without government support, heightens the need for closer scrutiny of where high-cost support is going and how much is being distributed.

NCTA's Petition proposed a process by which the Commission could start to engage in the granular review necessary to bring the high-cost program under control given the varying circumstances that exist in different study areas. NCTA proposed fact-based, verifiable triggers

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2 Sprint Comments at 4.

3 *Id.*

4 This figure reflects support distributed to the various ILECs AT&T has acquired, including companies owned by four of the seven Bell Operating Companies (Ameritech, Pacific Bell, SBC, and BellSouth). AT&T also has received an additional $600 million for its wireless business since 2004. *See* Federal-State Joint Board on Universal Service, Universal Service Monitoring Report (2008), *available at* http://www.fcc.gov/wcb/iatd/monitor.html), at Table 3.30. *See also* NECA Overview of Universal Service Fund, Submission of 2007 Study Results, at Appendix E (2008), *available at* http://www.fcc.gov/wcb/iatd/neca.html; Universal Service Fund Data: NECA Study Results for years 1998-2008, *available at* http://www.fcc.gov/wcb/iatd/neca.html.

5 This figure includes support awarded to CenturyTel and Embarq before the merger of those two companies. *See* NECA Overview of Universal Service Fund, Submission of 2007 Study Results, at Appendix E (2008), *available at* http://www.fcc.gov/wcb/iatd/neca.html; Universal Service Fund Data: NECA Study Results for years 1998-2008, *available at* http://www.fcc.gov/wcb/iatd/neca.html.

to identify those areas that have seen the most change – areas with significant competitive entry or significant deregulation – and a process to identify the costs associated with serving the uneconomic portions of those areas.[6] And unlike some other "reform" proposals, NCTA proposed that high-cost support not be treated like an entitlement and that support levels be reduced where a recipient cannot make the case for continued funding.[7]

There is broad support in the record, even among ILECs, for the central premise of NCTA's Petition – that the current system is providing high-cost support in some competitive areas where it no longer is needed. Notwithstanding this agreement, most ILECs oppose the Petition. The ILECs raise two main sets of issues.

First, they complain about the mechanics of the NCTA proposal, *e.g.*, the competitive triggers are too easy to satisfy,[8] the deregulation trigger is not meaningful,[9] and the process for calculating support is too burdensome.[10] We address all of these concerns in detail below, but it is important for the Commission to consider them with a healthy dose of skepticism. Given that the current rules provide no mechanism for reassessing the continued need for high-cost support, ILECs that receive support today have every incentive to discourage the Commission from adopting such a mechanism. Rather, as can be seen from the ILEC "reform" proposals discussed in Section IV below, their immediate priority is to convince the Commission to distribute

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6 NCTA Petition at 12-20.

7 *Id.* at 17-20.

8 *See, e.g.*, National Exchange Carrier Association (NECA) Comments at 3-13; Qwest Comments at 4-6; USTelecom Comments at 4-5; Windstream Comments at 7-13.

9 *See, e.g.*, AT&T Comments at 8-9; Independent Telephone and Telecommunications Association (ITTA) Comments at 10-14; NECA Comments at 13-15; National Telecommunications Cooperative Association (NTCA) Comments at 19-20.

10 *See, e.g.*, ITTA Comments at 16-18; NECA Comments at 22-25; NTCA Comments at 20-21; Windstream Comments at 14-18.

additional support and to defer any consideration of changes to the existing high-cost program as long as possible.

Second, ILECs complain that NCTA has failed to acknowledge or propose solutions for other USF problems that they believe are more important, *e.g.*, lack of support to some extremely high-cost areas,[11] the need for support to compensate for the costs associated with provider of last resort (POLR) obligations imposed by states,[12] and the need to develop a mechanism to support broadband deployment and adoption.[13] The short answer to these concerns is that NCTA made clear in its Petition that the proposal was not intended to be a comprehensive solution to every problem with the current USF regime. Instead, we identified a specific problem with the existing high-cost program and proposed a potential solution to that problem.[14] While there is no doubt that comprehensive reform of the high-cost program is needed, there is no reason for the Commission not to move forward with more targeted reforms, like the one proposed by NCTA, as necessary.

The record confirms that the Commission is at a crucial juncture with respect to universal service policy. With the contribution factor at record levels, there is widespread recognition that the current high-cost program has been on an unsustainable path for years and that changes, like

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[11] *See, e.g.*, CenturyLink Comments at 10-14; Qwest Comments at 3-4; USA Coalition Comments at 6-10.

[12] *See, e.g.*, ITTA Comments at 14-16; NTCA Comments at 5-8; USTelecom Comments at 7-9.

[13] *See, e.g.*, AT&T Comments at 10-12; NTCA Comments at 3-5; Western Telecommunications Alliance (WTA) Comments at 5-7.

[14] That said, in the Petition and in other recent filings, NCTA has addressed all the issues it purportedly ignored. For example, the Petition was clear in explaining that the costs to be considered in establishing the amount of support include "costs associated with any applicable provider of last resort (POLR) obligations." NCTA Petition at 5. NCTA also has advocated elimination of POLR obligations in areas experiencing competition. *See The Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, GN Docket Nos. 09-47, 09-51, 09-137, NCTA Comments at 10 (filed Dec. 7, 2009) (NCTA PN #19 Comments) ("NCTA supports the concept of revisiting the application of COLR requirements in competitive markets, particularly where a provider is not receiving high-cost support."). And NCTA has proposed an innovative plan to spur broadband adoption – the Adoption Plus proposal – targeting low-income middle school age children. *See* NCTA Adoption Plus Program *at* http://www.ncta.com/Resource/Resource/AdoptionPlus.aspx.

the ones proposed by NCTA, are needed to get the program back on track. Yet at the same time, the process of developing the National Broadband Plan has elicited numerous proposals to use federal funding to spur increased broadband deployment and adoption. As discussed below, some parties are encouraging the Commission to take the easy path of spending more on broadband today without doing the hard work of fixing the fundamental problems with the high-cost program. But as the Commission's Broadband team has recognized, the two goals are interrelated: meaningful reform of the high-cost program will help ensure adequate funding for broadband deployment and adoption.[15] Ignoring the pressing need for high-cost reform would be tantamount to abdicating the Commission's responsibility to consumers and ultimately will create more problems than it solves. The time is ripe for real reform of the high-cost program and we encourage the Commission to begin that process by issuing a Notice of Proposed Rulemaking seeking comment on NCTA's proposal.

I. NCTA'S PROPOSAL IS DESIGNED TO BRING THE HIGH-COST PROGRAM INTO THE COMPETITIVE BROADBAND ERA

In its Petition, NCTA demonstrated that cable operators have, over time, expanded the footprint of their voice service offerings to cover a significant portion of rural America. In a report attached to the Petition, Dr. Jeff Eisenach found that cable voice service is available to approximately 80 percent of U.S. households.[16] In rural LEC study areas, the report found that over 6.6 million households, or 43 percent, have access to cable voice services.[17] The report explained that the level of competition varies significantly across study areas, with some study

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[15] *Broadband Gaps*, Presentation to the Federal Communications Commission by the Omnibus Broadband Initiative at 10 (Nov. 18, 2009) (November FCC Presentation), *available at* http://www.fcc.gov/openmeetings/2009_11_18-ocm.html.

[16] NCTA Comments at Appendix B, Jeffrey A. Eisenach, Universal Service Subsidies to Areas Served by Cable Telephony, at 15-16 ("Eisenach Report").

[17] *Id.* at 16.

areas not experiencing any competition from cable operators while others are served ubiquitously by cable.[18] Dr. Eisenach also demonstrated that cable voice coverage continues to expand at a rapid pace.[19]

One consequence of the expansion of cable voice service is that the high-cost program is distributing support to ILECs in hundreds of study areas where market forces have enabled cable to invest without the need for any subsidy. Subsidizing incumbents in markets that have proven to be capable of attracting and supporting competitive investment is an unwarranted use of government funding, particularly as the Commission considers ideas for spending additional money on broadband deployment and adoption programs. Indeed, in the context of proceedings regarding the stimulus programs administered by the National Telecommunications and Information Administration and the Rural Utilities Service pursuant to the American Recovery and Reinvestment Act, incumbent LECs have suggested that it would not be prudent or proper to provide government subsidies to areas where private investments already have been made in broadband networks.[20]

NCTA's Petition proposed a process by which the Commission could identify areas experiencing facilities-based competition and consider whether current support levels are appropriate given changing circumstances on the ground. In the first step, the burden would be on the petitioner to demonstrate that the area meets one of two competition-based triggers. Specifically, the petitioner would be required to demonstrate either (1) that unsubsidized wireline

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18 *Id.* at 19.

19 *Id.* at 14-20.

20 *See, e.g.*, Comments of the US Telecom Association, Dept. of Commerce/Dept. of Agriculture, Docket No. 0907141137-91375-05 (filed Nov. 30, 2009) at 4 ("The agencies also have the responsibility to ensure that the unprecedented, one-time fund is spent properly and prudently, without duplicating investment already in place."), *available at* http://www.ustelecom.org/uploadedFiles/Issues/Filings/USTelecom-Comments-FINAL-091130.pdf.

competitors offer service to more than 75 percent of the customers in an area without support[21] or (2) that the state has found sufficient competition to substantially deregulate the retail rates charged by an ILEC.

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 the recipient of high-cost support to demonstrate the minimum amount of support necessary to ensure that non-competitive portions of the area will continue to be served. In this stage of the process, the Commission (based on material provided by the ILEC and others) would identify any ILEC costs, including costs attributable to any provider of last resort obligations imposed under state law, that cannot be recovered through any of the services (regulated and unregulated) provided over the network in the portion of the study area without competition.

There is strong support for the principles underlying NCTA's proposal. In addition to a number of NCTA member companies that filed comments expressing support,[22] the American Cable Association, which represents hundreds of smaller operators, also "supports the general underlying premise of the NCTA Petition that High-Cost support should not be going to a provider where a competitor is willing to serve the same consumer without relying on USF support."[23] Similarly, Sprint "agrees with NCTA that [ILECs] which face unsubsidized facilities-based competition should not receive a USF subsidy payment for those areas."[24]

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[21] Alternatively, NCTA proposed that the Commission reassess support levels where 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 are comparable to the covered portion (*e.g.*, similar terrain and population density). NCTA Petition at 13.

[22] Charter Comments at 1; Comcast Comments at 1; GCI Comments at 1; Time Warner Cable Comments at 1.

[23] ACA Comments at 9. ACA has submitted a similar proposal to the Commission, but it would exempt ILECs that serve less than 100,000 lines.

[24] Sprint Comments at 1. Sprint also "suggests that the Commission take the next step to that proposed by NCTA, and find that the presence of unsubsidized wireless competitors should also be sufficient to ensure that consumers will have access to reasonably priced service in the absence of USF subsidies to the ILEC." *Id.* at 6.

The support of these non-ILECs may not be particularly surprising, but what perhaps is surprising is that the principles underlying the Petition garnered solid support *even among ILECs*. For example, Qwest ($73 million in 2008 support),[25] "supports the Commission initiating a rulemaking to further consider a process for eliminating high-cost support in areas where a facilities-based, wireline carrier is offering comparable services without universal service high-cost support."[26] AT&T ($426 million in 2008 support)[27] states that "[t]he core of NCTA's petition – that the Commission should reevaluate, on a more disaggregated basis, where and how incumbent local exchange carriers (ILECs) receive high-cost support – is sound."[28] Windstream ($97 million in 2008 support)[29] acknowledges that "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)."[30] And even CenturyLink ($376 million in 2008 support)[31] concedes that "USF reform is necessary and that such reform should include removing support from the lower-cost areas where competition has emerged."[32] If the first step to solving a problem is acknowledging that it exists, NCTA is extremely encouraged by the fact that these four companies (which collectively received almost

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25 *See* Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report* (2008), *available at* http://www.fcc.gov/wcb/iatd/monitor.html), at Table 3.30.

26 Qwest Comments at 1.

27 Letter from Michael J. Copps, Acting Chairman, Federal Communications Commission, to Henry Waxman, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Part 1 (May 4, 2009) (Copps Letter), *available at* http://republicans.energycommerce.house.gov/Media/file/News/050409_FCC_Response_on_USF.pdf.

28 AT&T Comments at 1-2.

29 Copps Letter, Part 1.

30 Windstream Comments at 2.

31 Copps Letter, Part 1.

32 CenturyLink Comments at 2.

$1 billion in high-cost support in 2008) all agree that reducing high-cost support in competitive areas should be an element of a sound universal service policy.

The recognition of this problem by some ILECs is a constructive development, but the record makes clear that most ILECs seem to have little interest in seeing the Commission make any meaningful changes to fix the problem. As an initial matter, many ILECs argue that reform efforts should focus solely on competitive providers, not ILECs, because competitors are causing the growth of the high-cost program.[33] The underlying premise of this argument – that the Commission has no need to reassess the ILEC portion of the high-cost program as long as ILECs are only receiving $3 billion annually – is totally untenable as a matter of sound public policy and illustrates the entitlement mentality that many ILECs have developed. Perhaps the most egregious example of this is CenturyLink, which suggests that adopting rules would not be worth the Commission's effort because it might save only $100 million.[34] While that amount may be inconsequential to a company with the cash flow of CenturyLink,[35] we are confident that the Commission can find better ways to spend that money, just as we are confident that our proposal will produce savings that are far greater than $100 million.

While some ILECs offer constructive suggestions on how to build upon NCTA's proposed process, most ILECs offer a litany of complaints that are all over the map and of little help to the Commission. Some parties accuse NCTA of trying to perpetuate the implicit

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[33] *See, e.g.*, ITTA Comments at 5-6; Texas Statewide Telephone Cooperative Comments at 3-4; WTA Comments at 12-13.

[34] CenturyLink Comments at 10.

[35] Press Release, *CenturyTel Announces Increased Dividend and Acceleration of Share Repurchase Program; Raises Annual Dividend to $2.80 Per Share* (June 24, 2008) (announcing 10-fold increase in quarterly dividend and explaining that it has "returned more than 90% of our cumulative free cash flow – or more than $2 billion -- to shareholders" since 2004), *available at* http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-newsArticle_Print&ID=1168829&highlight=.

subsidies on which the current system depends,[36] while others claim the proposal would cause great harm by eliminating those implicit subsidies.[37] Some parties fear that the proposal would slash the amount of support received,[38] while others suggest it somehow will have the effect of increasing support.[39] Some parties assert that the competitive triggers proposed by NCTA would hardly ever be satisfied,[40] while others fear they will cause the FCC to be overwhelmed by hundreds of administrative proceedings.[41]

One thing that is clear from all these comments is that NCTA has struck a nerve with its proposal. Some might see this as a reason not to consider NCTA's proposal, but in fact the wildly divergent concerns identified above confirm a central premise of the Petition – that facts on the ground vary considerably, from state to state, from carrier to carrier, and from study area to study area. The challenge for the Commission is to develop an approach to high-cost reform that accounts for these varying circumstances without becoming so complex that it is unworkable. We explain below how NCTA's proposal strikes this balance, but we are certainly open to alternative suggestions and we look forward to the opportunity to debate these issues in more detail in the context of a rulemaking proceeding.

II. NCTA'S PROPOSAL OFFERS A REASONABLE MEANS FOR MORE EFFICIENTLY TARGETING HIGH COST SUPPORT

Despite the broad consensus, even among ILECs, that high cost support must be more efficiently targeted, especially in areas experiencing significant competitive entry, commenters lodge a host of misplaced complaints against NCTA's proposal. A number of incumbents,

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36 *See, e.g.*, Rural Independent Competitive Alliance (RICA) Comments at 8.

37 *See, e.g.*, USA Coalition at 2-3; Windstream Comments at 14.

38 ITTA Comments at 7-10

39 AT&T Comments at 5-6; NECA Comments at 15-16.

40 Alexicon Comments at 1; WTA Comments at 8-11.

41 Rural Cellular Association (RCA) Comments at 12-13; Windstream Comments at 15.

particularly rural ILECs, claim that NCTA's process will inevitably result in support levels insufficient to fulfill their obligations as providers of last resort and threaten their ability to upgrade and maintain their networks. As explained below, the scenarios spun by the ILECs are based on mischaracterization or misunderstanding of NCTA's proposal and a refusal to acknowledge the current state of the marketplace.

A. There is Widespread Cable Entry Into Rural Areas

In its Petition and the accompanying study by Dr. Eisenach, NCTA demonstrated that there are a significant number of areas receiving substantial high cost support notwithstanding widespread entry in their service areas by cable companies.[42] In their comments, some ILECs simply assert that widespread entry does not in fact exist or they claim that cable companies invariably engage in "cherry picking" by providing service only in towns, leaving the high cost rural areas to be served by the ILECs.[43]

These claims seem to misunderstand the purpose and significance of the Eisenach Report. The Report did not state that competition in rural areas is ubiquitous, just as the Petition did not suggest that high-cost support should be eliminated everywhere. Rather, both the Petition and the Report made clear that circumstances vary across study areas and there is no uniform assumption that can be made as to where, and how extensive, unsubsidized competition may be in any given area. Many study areas are not yet experiencing widespread facilities-based voice competition and those areas would be unaffected by NCTA's proposal. But the opposite is also true – there are many areas experiencing extensive competition and it is those areas where the Commission should at least consider taking a fresh look at support levels.

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[42] NCTA Petition at 7-8; Eisenach Report at 22-24.

[43] *See, e.g.*, CenturyLink Comments at 16-19; USA Coalition Comments at 8-9; WTA Comments at 10; Windstream Comments at 8-9.

Tellingly, not one commenter disputed Dr. Eisenach's specific examples of widespread cable entry in high cost study areas in Texas and Tennessee.[44] Nor can it be disputed that when cable voice services are available to 95% or more of the households in a study area – as is the case in 83 high cost areas – something more than "cherry picking" is taking place.[45] Dr. Eisenach further compared portions of study areas served by cable companies with those portions not covered by cable and found that, in many cases, cable companies served the high cost portions.[46] He identified 148 study areas in which the area served by the cable company has a lower population density (and thus presumptively is more expensive to serve) than the area served exclusively by the ILEC and 332 study areas in which the average distance of households from the nearest wire center was greater (*i.e.*, less dense) in the area served by cable voice than in the area not served by cable.[47]

In a Supplemental Report prepared by Dr. Eisenach and attached to these reply comments, he proffers additional specific and detailed evidence of widespread entry by cable companies into ILEC study areas.[48] As shown in the Supplemental Report, over $109 million in high-cost support is going to 83 study areas where cable operators offer voice service to at least

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44 Eisenach Report at 25-27.

45 *Id.* at 21.

46 *Id.*

47 *Id.* at 22. Some comments also dispute the use of density and topography as the only ways to determine cost characteristics. As Dr. Eisenach explains in his Supplemental Report "density and topography are universally understood to be the primary drivers of differences in the costs of constructing and operating wireline telecommunications networks." Moreover, density was utilized extensively in the comments of the ILECs as a measure of costs. *See, e.g.*, CenturyLink Comments at 12; Pioneer Communications Comments at 3; RICA Comments at 3.

48 Jeffrey A. Eisenach, *Universal Service Subsidies to Areas Served by Cable Telephony: Supplemental Report*, at Attachment A (Jan. 2010) ("Supplemental Report"), included as an attachment with these Reply Comments. As Dr. Eisenach explains, the tables attached to the Supplemental Report are based on third-party data sources and have not been verified by individual cable operators. The tables are intended to provide the Commission with a sense of the overall state of cable entry in rural areas, rather than singling out particular study areas for reductions in high-cost support.

95 percent of households, including 62 study areas where cable operators offer service to 100 percent of households.[49]

The Supplemental Report also demonstrates that almost $350 million in annual high-cost support is being provided to 178 study areas with more than 50 people per square mile and competitive service available to more than 50 percent of households.[50] For example, as shown in Dr. Eisenach's initial report, Concord Telephone Exchange, Inc. received over $2 million in 2008 to serve an area with a population density of 875 and that is completely served by Charter and Comcast.[51]

Similarly, the Supplemental Report demonstrates that over $250 million in high-cost support is being provided to 122 study areas with a median household income of more than $50,000 and competitive service available to more than 50 percent of households.[52] In one of the more egregious examples, ETS Telephone Co., Inc. received almost $5 million in 2008 to serve an area with a median income of over $100,000 and where unsubsidized service is available to 100 percent of the study area.

Comments challenging Dr. Eisenach's methodology also miss the mark. Several comments challenge his use of existing databases and GIS mapping software to identify areas where rural ILECs face competition from cable companies for voice services.[53] The National Exchange Carrier Association (NECA), in particular, goes to great lengths, utilizing alternative databases, to suggest that Dr. Eisenach has overstated the extent of cable competition – at least in

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[49] *Id*. at 15, Table A-1.

[50] *Id*. at 16, Table A-2.

[51] Eisenach Report at 26-27.

[52] Supplemental Report at 16, Table A-3.

[53] Alexicon Telecommunications Consulting Comments at 1; CenturyLink Comments at 16-19; NECA Comments at 3-12; WTA Comments at 9-10; Windstream Comments at 9-10.

certain areas of New York and Colorado for which NECA presents its results.[54] NECA, however, mischaracterizes or misunderstands Dr. Eisenach's analysis. As Dr. Eisenach explains in his Supplemental Report, the data provide an accurate and highly detailed depiction of the availability of cable voice service.[55]

Both NECA and CenturyLink submitted maps purporting to demonstrate that a more granular mapping methodology would reveal that cable entry is limited to towns or concentrated urban areas. Although these maps appear to reflect more limited cable entry in those specific areas, they provide no basis for rejecting NCTA's petition because they identify only study areas that likely would not meet the competitive triggers proposed by NCTA and thus are of no particular relevance to the merits of NCTA's proposal.[56] NCTA has acknowledged that the majority of study areas currently would not satisfy the triggers.[57] Providing a map of some of those study areas in no way undermines NCTA's proposal to identify study areas where there is widespread cable entry and reassess the need for continued high cost support in such areas.[58]

B. ILEC Concerns Regarding Provider of Last Resort Obligations are Misplaced

As NCTA predicted in its petition,[59] a number of ILECs claim that NCTA has failed to consider the costs of POLR obligations.[60] In assessing these claims, it is important to distinguish

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54 NECA Comments at 3-13.

55 Supplemental Report at 4-7.

56 *See* Supplemental Report at 7-8.

57 NCTA Petition at 13. Some of these areas may, however, satisfy the deregulation trigger.

58 *See* Supplemental Report at 3 ("Criticisms which suggest (for example) that there may be particular study areas where coverage is less ubiquitous than shown on a particular map, miss the point of the analysis, which was *not* to demonstrate precisely which study areas (or how many) should receive reduced (or zero) funding, *but rather to* show that there is a large number of study areas where subsidies are likely to be excessive.") After reviewing the study area maps submitted by NECA and CenturyLink, Dr, Eisenach concluded that the information presented in the NECA and CenturyLink maps is not inconsistent with NCTA's analysis. Supplemental Report at 3-8.

59 NCTA Petition at 19.

60 *See, e.g.*, ITTA Comments at 14-16; NTCA Comments at 5-8; USTelecom Comments at 7-9.

between POLR obligations in competitive areas and POLR obligations in non-competitive areas where the ILEC remains the sole provider. NCTA has advocated that POLR obligations are not needed where competition exists,[61] but to the extent POLR obligations remain in place in competitive areas, high cost support generally should not be necessary to fulfill them. Where an ILEC and a cable company are competing head-to-head, both companies have strong incentives to attract and retain customers, including maintaining their network in good working order. The ILEC does not need the additional incentive of a POLR obligation to maintain its network. As noted in the petition, the cost of maintaining networks in competitive areas is not a cost attributable to POLR obligations, it is a cost of competition – a competitive cost imposed on both the incumbent and the competitor.

Nor do ILECs need continuing subsidies to recover costs in competitive areas. The comments in the proceeding confirm that rural ILECs now provide a myriad of such services over broadband capable networks across the vast majority of their territories, generating revenue streams that are not presently considered in calculating high-cost support. Windstream and the Western Telecommunications Alliance for example, each report that midsized and rural LECs have deployed high speed broadband services to 90% or more of their customers.[62] The Rural ILEC Coalition similarly states that most ILECs provide broadband service throughout a large part, if not the entirety, of their territory, a point echoed by the NTCA.[63] The days in which ILEC revenue was based solely on selling basic voice services are long gone.

Moreover, despite questions about whether universal service funds may be used for broadband support, rural ILECs have used existing high cost support to pay for these network

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61 *See, e.g.*, NCTA PN #19 Comments at 10.

62 Windstream Comments, Attachment at 2; WTA Comments at 2, 5.

63 Rural ILEC Coalition Comments 2; NTCA Petition at 17.

upgrades. As noted by USTelecom, "much of the current universal service funding supports facilities that are jointly used for voice and broadband services,"[64] a point reiterated by a number of other commenters.[65] In truly competitive areas, cable companies are competing with subsidized ILECs in voice, broadband, and, increasingly, video services. The continued subsidization of one competitor at the expense of the other competitor and its customers is untenable.

NCTA has not ignored the possibility that POLR obligations in the remaining non-competitive area may impose costs that necessitate some level of support. The second step of NCTA's proposed review process is specifically designed to permit the ILEC to demonstrate the costs that it cannot recover from its customers in the non-competitive area. NCTA's proposed approach expressly provides that the Commission "shall consider whether a carrier incurs costs in the relevant area that would be not be incurred but for the existence of an obligation to operate as a provider of last resort in that area."[66]

NCTA expects, however, that once a rigorous examination of costs and revenues has been undertaken, the cost of this POLR obligation will prove to be substantially less than suggested by some commenters. Given the extent to which ILECs have built out broadband networks, it is likely that ILECs reap substantial revenue from customers even in non-competitive areas. Based in part on the substantial increase in per customer revenue received by ILECs from non-voice services, a recent study by economist Michael D. Pelcovits found the

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64 USTelecom Comments at 1.

65 *See e.g.*, Rural ILEC Coalition Comments at 11 ("The current high cost mechanism has, to date, allowed the placement of high quality advanced network facilities in difficult-to-serve areas"); NTCA Comments at 4 (high cost rules allow rate-of-return LECs to use high cost voice support to provide affordable broadband service to their high cost communities).

66 NCTA Petition, Attachment A (Proposed Rule) at 2. *See also* NCTA Petition at 5 (explaining that the proposed 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").

significance of POLR obligations to be "vastly overstated."[67] He concludes that "the potential cost of this obligation is much less than the current sources of explicit and implicit subsidies now received by ILECs."[68] Moreover, many states have been reducing the scope of POLR obligations. As Cox Communications reported in a recent filing with the Commission, some states "have moved in recent years to eliminate [P]OLR obligations that have become unnecessary due to the evolution of a competitive marketplace," while "[i]n those states that impose [P]OLR obligations on ILECs, these obligations often are neither absolute nor inherently burdensome."[69]

Commenters nevertheless argue that the proposed bifurcation of their areas into non-competitive and competitive areas, providing support for the network in the former but not the latter, will inevitably result in underfunding POLR obligations in the remaining high cost area.[70] They claim that network and operating costs cannot cleanly be divided and the elimination of support in competitive areas will inevitably lead to a shortfall.[71] The short answer to this complaint is that NCTA's proposal does not preclude support for network facilities located in the competitive area but used to provide service to customers in the non-competitive area if the ILEC can demonstrate that support is warranted.[72] But NCTA has proposed a process where the Commission will make these types of determinations based on evidence provided by the affected

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67 Michael D. Pelcovits, *Debunking the Make-Whole Myth: A Common Sense Approach to Reducing Irrational Telecommunications Subsidies White Paper #3*, 25 (Nov. 17, 2008) (Pelcovits White Paper), *available at* http://www.micradc.com/news/papers.html.

68 *Id*. (emphasis deleted).

69 *The Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, GN Docket Nos. 09-47, 09-51, 09-137, Cox Communications Comments at 8 (filed Dec. 7, 2009)

70 *See, e.g*., ITTA Comments at 14-16; NTCA Comments at 5-8; USTelecom Comments at 7-9.

71 ITTA Comments at 14-16; WTA Comments at 14-15.

72 NCTA Petition at 18, n. 48. NCTA expects this to be the exception not the rule, particularly as rural LECs replace large centralized switches with smaller, more efficient soft switches. *See* WTA Comments at 6 ("Soft switches have been replacing circuit switches . . . .").

companies. The ILECs' hypothetical concerns regarding the effect of NCTA's proposal certainly do not warrant dismissal of the petition for a rulemaking.

C. Geographic Cost Averaging Should be Eliminated Where Extensive Competition Exists

Support levels today are based on per-line costs averaged over the ILEC's entire study area. For rural LECs, this may be a relatively small area. For non-rural LECs, costs could be averaged over an entire state. Where actual costs vary significantly over the study area, the use of averaging results in low cost areas implicitly subsidizing high cost areas.[73] Some ILECs assert that this cost averaging results in lower overall high cost spending in the study area than if just the high cost area was being supported.[74]

According to AT&T and others, the elimination of cost averaging under NCTA's proposal will lead to one of two unwelcome consequences. If the Commission caps per-line costs at pre-existing or lower levels, then the ILEC will be left with insufficient support to serve higher cost areas. If per-line support is allowed to rise to the costs associated with the remaining higher cost area, there may be no overall cost savings and high-cost support funding may actually increase overall.[75]

This argument is wrong for a number of reasons. First, NCTA did not propose capping per-line support as AT&T suggests. To the extent an ILEC can prove that lines in the noncompetitive portion of a study area should receive a higher level of support than they receive today, nothing in NCTA's proposal precludes the Commission from reaching that result.

But the fact that NCTA's proposal would permit per-line support to increase on an appropriate showing does not remotely support AT&T's suggestion that there are no savings to

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[73] CenturyLink Comments at 12-14.

[74] CenturyLink Comments at 13.

[75] AT&T Comments at 4-5; CenturyLink Comments at 12-14.

be derived from the proposal or that it might even result in higher overall support.[76] That argument assumes that the ILEC will invariably be left serving portions of the study area with significantly higher costs than the competitive area covered by a cable company.[77] This assumption is unfounded. As noted above, Dr. Eisenach's Report identified hundreds of study areas where the costs in the area served by cable companies, as measured by factors such as density and topography, may be higher than or very close to the costs in the area where the ILEC is the sole provider.[78] Elimination of cost averaging in such areas would not lead to significantly higher per-line costs in the remaining area and therefore would not necessarily leave the ILEC with insufficient per-line support nor increase the high cost fund outlays.

In addition, even if the non-competitive portion of an ILEC's study area does exhibit higher cost characteristics, it is not necessarily the case that the ILEC will be able to demonstrate that it needs all the support it receives today. The number of supported lines may be small enough that the overall amount of support declines even if per-line support increases. Moreover, to ensure that support is no higher than necessary, NCTA's proposed process will count all of the revenues available to the ILEC from the supported network, which, as explained above, are likely to be substantially higher than the revenue received solely from basic supported services used in the current support calculation.[79]

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[76] AT&T Comments at 4-6. If NCTA's proposal really was expected to produce higher support levels for the ILECs, they would hardly be opposing that proposal in the strident manner reflected in their comments. Indeed, rural ILECs already have the option to disaggregate their study areas. The fact that few have pursued this option suggests that disaggregation is unlikely to lead to higher overall support levels.

[77] These commenters also assume that the cable company would only serve the lowest cost areas, which as explained above, is not a reasonable assumption.

[78] Eisenach Report at 20-24.

[79] CenturyLink's comments include a hypothetical that purports to demonstrate that support would increase under NCTA's proposal. CenturyLink Comments at 13. But that hypothetical uses an unrealistic revenue benchmark that seems to reflect only revenue from basic local service, thereby inflating the amount of support that would be needed.

NCTA's proposal reflects the broad consensus that high cost support should be assessed on a more granular basis and that implicit subsidies of cost averaging should be eliminated.[80] Indeed, even while some commenters oppose NCTA's proposal for a more granular assessment, they offer their own plans for distributing high cost support in more discrete areas. Mid-size LECs such as Windstream and CenturyLink, for example, propose funding based on the costs within individual wire centers.[81] Their primary concern is that geographic cost averaging results in the denial of funding to numerous wire centers with high costs that would qualify for funding under a more granular analysis.[82] Unlike NCTA's proposal, the mid-size LECs seek to *expand* current funding levels to areas not currently receiving support due to geographic cost averaging. But they resist reforms, such as including all revenue sources in assessing need, that would lower support.[83]

Apart from the beneficial financial impact on the size of the high cost fund, NCTA's proposal to eliminate support in competitive areas – and thereby eliminate the implicit subsidies that arise with geographic cost averaging – promotes fair competition. There is no policy or economic reason that facilities-based carriers that have undertaken the expense of building networks in rural areas must continue to compete with an entrenched provider whose network upgrades are subsidized. As noted, ILECs use high cost support to upgrade networks to provide the same suite of services being provided by cable companies with which they compete. As ILECs in this proceeding have acknowledged, the Commission long ago recognized that implicit

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80 *See, e.g.*, AT&T Comments at 1-2; USTelecom Comments at 3; Qwest Comments at 2.

81 CenturyLink Comments at 4-5; Windstream Comments at 19-21.

82 CenturyLink Comments at 13.

83 *See, e.g.*, Qwest Comments at 7 (objecting to proposal to consider all revenues).

subsidies are inconsistent with, and unsustainable in a competitive marketplace.[84] NCTA's proposal offers an effective method to identify discrete areas where such subsidies may be safely removed, while still preserving support demonstrably needed for any remaining high cost area.

D. The NCTA Proposal Identifies a Substantial Pool of Funds From Which Savings Are Likely

A number of commenters claim that NCTA has overstated the amount of savings that would stem from its proposal.[85] As described above, this argument is predicated in large part on the mistaken assumption that the method for calculating high cost support will remain static, leading to substantially higher per line support for non-competitive areas. Others claim that savings will not be significant because relatively few study areas would qualify for review.

Contrary to these claims, Dr. Eisenach's Report found that hundreds of millions of dollars are being provided to rural LECs in areas that would qualify for review under NCTA's proposed competition triggers.[86] His Supplemental Report confirms this finding and provides detailed information on study areas where scrutiny seems to be warranted.[87] This constitutes a substantial pool of funds from which significant savings can be achieved, with additional reductions in support to non-rural ILECs and wireless CETCs potentially providing additional reductions.

Speculation regarding the ultimate level of cost savings should not be determinative of whether to press forward with NCTA's proposal in any event. There is an overwhelming need for a mechanism to review the spending for high cost support. As noted throughout NCTA's

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84 CenturyLink Comments at 3 (citing *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, ¶ 17 (1997)).

85 AT&T Comments at 5 ("[T]he reality is that the 'savings,' if any, that might result from adopting NCTA's proposed rule are likely to be dramatically smaller than advertised."). *See also*, e.g., CenturyLink Comments at 12-14.

86 Eisenach Report at 19.

87 Supplemental Report at 15-16.

petition and the Eisenach Report, current funding levels are predicated on the state of the world thirteen years ago. Since then, voice and broadband services from cable companies have grown dramatically, including in "high cost" areas once thought unsuitable for competitive entry. Networks have become much more efficient and less costly to operate. The demographics of many rural areas have also changed dramatically during this time. As noted by Dr. Eisenach, carriers are still considered "rural" under current high cost program rules "even if their study areas have blossomed into ex-urban meccas complete with shopping malls and tightly-packed town homes."[88] There has been no way to reassess whether these areas still qualify as rural, whether cost and support levels are appropriately calculated, and whether competition has negated the need for support wherever entry has occurred. NCTA's proposal rectifies this problem and, in the course of rationalizing support, creates the potential for substantial cost savings.

III. NCTA PROPOSES A REASONABLE TWO STEP PROCESS FOR REVIEW OF HIGH COST SUPPORT IN COMPETITIVE STUDY AREAS

In addition to the general concerns addressed above, some commenters raised specific issues regarding the triggers for review proposed by NCTA and the Step 2 review process NCTA proposed to determine the amount of support, if any, that may be necessary. As set forth below, none of these concerns warrant rejection of NCTA's petition.

A. NCTA's Proposed Triggers Reasonably Identify Areas with Sufficient Competitive Entry to Warrant Review

1. Penetration Triggers Are Reasonable

NCTA proposed two thresholds for review based on the scope of penetration by competitive, facilities-based wireline providers. Review could be triggered by a showing that either (1) competitive wireline voice service from a provider not receiving high cost support is

[88] Eisenach Report at 10.

available to at least 75% of households in the study area; or (2) competitive wireline voice service from a provider not receiving high cost support is available to at least 50% of households in the study area and the portion of the study area with no wireline competition has cost characteristics (*e.g.*, similar terrain and population density) that are comparable to the covered portion.[89] Some commenters express concern that these triggers would be met by cable companies without having to extend their networks beyond the borders of towns or more urbanized areas, leaving large swaths of sparsely populated areas to be served by the ILEC.

In an extreme example, Qwest describes the Laramie, Wyoming wire center where over 87% of Qwest's lines are in town, in an area of 11 square miles, while 13% of its customers are in the higher cost 2,075 square miles surrounding rural area.[90] This example, Qwest suggests, shows why "[a]bsent a demonstration . . . that unsubsidized wireline providers offer service to every customer location in the high-cost area, high-cost support for the area should not be wholly eliminated."[91]

None of these criticisms provide a basis to preclude the requested rulemaking. ILECs routinely have advocated the presence of facilities-based competitors as the basis for relying on market forces and reducing regulatory intervention in the marketplace, *e.g.*, by granting significant retail pricing flexibility, forbearance from unbundling obligations or relief from special access regulation. NCTA's proposal builds on that same approach by using entry by facilities-based competitors as a trigger for moving toward a regime that relies on market forces to reduce regulatory intervention.

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89 NCTA Petition at 12-13.

90 Qwest Comments at 4-5.

91 Qwest Comments at 5.

The triggers proposed by NCTA fall well within the range of reasonableness. When cable has deployed its voice services, which almost always are provided through a broadband connection, to more than 75% of the households in a study area, there is a reasonable expectation that competitive entry is sufficiently widespread to warrant a fresh look at high-cost support levels. And this reassessment of support is the only thing that is triggered when the standards are met by a petition. The suggestion by Qwest and others that NCTA's triggers for review would automatically result in the loss of high cost support simply misstate the process proposed in the Petition.[92]

These triggers are also conservative in that only facilities-based wireline competition would be measured. A number of commenters suggest that competition from wireless carriers and "over-the-top" VoIP service providers should also be included in the analysis of competition,[93] and the Commission certainly could consider the merits of that approach in a rulemaking. NCTA's proposal is also conservative in that it does not cover tribal areas, which the Commission previously has found to be especially vulnerable to changes in universal service policy.

But whether the triggers are too conservative or too liberal need not be determined at this stage of the proceeding. NCTA is simply asking the Commission to initiate a rulemaking to determine whether its proposal should be adopted. Parties and the Commission will have ample opportunity through the course of that rulemaking to refine these triggers as may be indicated by the record.

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[92] Qwest is also incorrect to the extent it is suggesting that the square mileage of a study area, or portion of a study area, is relevant. As described in the Supplemental Report, much of the "donut" portion of a study area typically is unpopulated, Supplemental Report at 5-6, so plant costs may not be correlated with square mileage. Other factors are likely to be far more relevant, including density, topography, and loop lengths.

[93] NTCH Comments at 2; Sprint Comments at 6.

2. A Review Trigger Based on State Deregulation Is Appropriate

Under NCTA's proposal, a reassessment of high cost support would also occur if the petitioning party demonstrates that a "state has found sufficient competition to substantially deregulate an ILEC's retail rates."[94] Commenters proffer two concerns about this trigger, but neither of these concerns is sufficient to preclude the requested rulemaking.

First, some commenters claim that retail rates may be deregulated for reasons having nothing to do with competitive entry.[95] They identify rural telephone cooperatives as an example.[96] States, they argue, may find that the relationship between customer and provider in cooperatives will result in reasonable rates without regulation.[97] While there may be exceptions, it is generally the case that rate deregulation reflects a determination by a State that competition is sufficient to ensure reasonable prices. In the context of a rulemaking proceeding, the Commission can consider whether an exception to the proposed trigger is warranted in cases where an ILEC can show that deregulation was premised on other factors.

The other concern raised by commenters is that the rate deregulation trigger could be met where voice service is deregulated as part of a bundle, while stand-alone voice service rates remain regulated.[98] But as the Commission recently found, voice services today are increasingly provided in bundles.[99] When regulated local voice service is bundled with unregulated long

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94 NCTA Petition at 4.

95 NECA Comments at 13-15; NTCA Comments at 19-20; RICA Comments at 7; USA Coalition Comments at 9-10; USTelecom Comments at 6-8; WTA Comments at 16-17; Windstream Comments at 13-14.

96 NECA Comments at 13-14; NTCA Comments at 20; RICA Comments at 7; WTA Comments at 16.

97 NECA Comments at 13-14; NTCA Comments at 20; RICA Comments at 7; WTA Comments at 16. On the other hand, such a relationship might result in an agreement on unreasonably low rates with the expectation that Federal or State support will make up the shortfall.

98 Washington Independent Telecommunications Association (WITA) Comments at 9-10; WTA Comments at 17; Windstream Comments at 14.

99 *High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 09-112 at ¶ 17 (rel. Dec. 15, 2009).

distance service, the regulation of the local rate is not a constraint on the price of the bundle. And if the majority of customers purchase bundles, rather than stand-alone local service,[100] this limited rate regulation does not operate as a significant constraint on an ILEC's ability to recover the costs of its network from its customers, just as competitive providers do.

B. NCTA's Proposed Process for Determining Cost Support Is Reasonable and Administratively Workable

Once a competitive study area is identified by one of the two triggers, NCTA's proposal suggests a Step 2 proceeding to "identify the limited subset of ILEC costs that (1) would not be incurred but for the provision of service to customers that do not have a competitive option and (2) cannot be recovered through rates for the services (regulated and unregulated) provided over the network in the portion of the study area with no competition."[101] This represents the heart of the proposal because it is where support is rationalized at efficient levels. The primary concerns expressed by commenters about this aspect of NCTA's proposal are that it will be administratively burdensome, that NCTA's attempt to isolate ILEC network elements required solely to provide service in the non-competitive area is unrealistic, and that the process will create uncertainty. These claims are addressed in turn below.

1. Concerns that the NCTA Proposal is Administratively Unworkable are Overblown and Speculative

Commenters complain that the NCTA seeks to foist on the Commission and the industry an "administratively unworkable,"[102] "ad hoc, [and] standardless"[103] process that will lead to

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[100] While statistics from ILECs are hard to come by, the limited information available suggests that very few people actually purchase these stand-alone regulated offerings. *See, e.g.*, Pelcovits White Paper at 11 ("AT&T, for example, reports that in California only 10.8% of its billed residential revenues were for basic service without additional bundled services from AT&T or its affiliate.").

[101] NCTA Petition at 17.

[102] NECA Comments at 23.

[103] Windstream Comments at 3.

hundreds or thousands of interminable and complex proceedings.[104] As with many of the complaints about the NCTA Petition reflected in comments, such concerns are exaggerated and ignore the process that NCTA actually has proposed.

NCTA readily concedes that the process will entail a rigorous examination of the facts relevant to discrete areas. This is as it should be. As noted above, a handful of ILECs already have received billions of dollars in high-cost support. Carriers receiving such assistance should expect a rigorous review process, both to ensure compliance with existing rules, *e.g.*, audits, as well as periodic review to ensure that support levels are appropriate and necessary to achieve the Commission's policy goals. The high cost program largely has been running on automatic pilot for the last thirteen years, while its support payments have escalated dramatically. It is past time for the Commission to retake the controls. It should not be easy to obtain such sums without establishing precisely the basis of the need for them. Whatever additional administrative burden there might be on the Commission and the industry should be weighed against the necessity for appropriate oversight of a multi-billion dollar government program. Seen in this light, the burden on carriers and the Commission does not seem excessive.[105]

Nor is there any basis to conclude that the end result of the rulemaking will be an "ad hoc," "standardless" process. The fundamental purpose of the rulemaking requested by NCTA is to provide a procedural vehicle for considering the details of the process so as to achieve the goals of Section 254. NCTA welcomes suggestions to streamline the process and develop

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[104] ITTA Comments at 16-18; NECA Comments at 22-25; NTCA Comments at 20; RCA Comments at 12-15; Windstream Comments at 14-18.

[105] While claiming that the NCTA proposal is too unwieldy, NTCA proposes a process in which the FCC would take on the "daunting but essential task" of identifying "market failure" areas throughout the country and determining the appropriate level of USF support for such areas. NTCA Comments at 11. NTCA fails to explain why determining support for a "market failure area" would be any less burdensome than undertaking the Step 2 analysis proposed by NCTA for competitive study areas.

reasonable and appropriate proxies or other relevant elements for such a process. Some parties already have made such suggestions and those should be considered in the rulemaking as well.[106]

Some commenters also claim that the process may be abused, particularly by what they perceive as laxity in the triggers for review coupled with the right of any party to petition for a review of an ILEC's study area.[107] NCTA's expectation, however, is that, in most cases, the facilities-based competitive service provider in the ILEC's study area would submit the petition for review of an ILECs study area, although consumer advocates or other parties should not be precluded from doing so. Certainly such petitions would not be filed lightly, given the burden on the filing party to develop and present statistical data to support a claim that an ILEC study area met the 75% (or 50%) competitive threshold.

There is also a peculiar tension in the comments on this question about how many proceedings may result. Whereas some commenters raise the specter of hundreds or thousands of proceedings, others note that the NCTA only identified a fraction of all study areas as potentially meeting the triggers. As discussed above, NCTA has identified a significant number of study areas where the amount of high-cost support received today appears to be well beyond what is necessary given current circumstances in those areas. Rather than speculate regarding the precise number of potential proceedings that might be generated by implementation of NCTA's proposal, the Commission's primary consideration should be to adopt a reasonable

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[106] We note that there are other pending high-cost reform proposals, such as the one advanced by Free Press, that would avoid the administrative "burdens" that ILECs object to here by implementing across-the-board cuts in support for all providers. *See* Letter from Ben Scott, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-51 (Jan. 19, 2010) (proposing five-year phase-out of support in areas receiving less than $20 per line per month); *see also* Sprint Comments at 8-9 (proposing reduction in per line support to reflect opportunity to offset costs with revenue from broadband and other services). The Commission's rulemaking should solicit comments on these ideas as well.

[107] RCA Comments at 13; WITA Comments at 4-5.

process to bring the high cost program under control and reform the program to reflect the tremendous changes in the industry over the past thirteen years.

2. The Proposal Does Not Ignore ILEC Network Configurations

A number of commenters claim that the NCTA proposal would arbitrarily split ILEC networks and preclude support for network elements in competitive areas that may be required to support services in non-competitive areas.[108] As explained in NCTA's Petition, the appropriate goal of the high-cost fund is to support reasonable and necessary network costs that are required to serve the non-competitive area.[109] Focusing on loop costs, as NCTA suggests, makes sense as those can be allocated between areas and represent the largest source of costs for any communications network.[110] Moreover, NCTA's proposal does not necessarily preclude support for switches or transport in competitive areas, if the ILEC can show that these elements are required for provision of services to the non-competitive areas and the portion of the cost of the element attributed to the non-competitive areas cannot be recovered from revenues for services in those areas.

With developments in technology, network configurations have changed, even in rural areas. RLECs today use soft switches and extensive fiber,[111] significantly reducing the incremental cost of serving an area. There is no reason to believe that costs of basic network

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[108] ITTA Comments at 8; NECA Comments at 20-22; Rural ILEC Associations Comments at 10-11; RICA Comments at 7-8; WTA Comments at 14-15.

[109] NCTA Petition at 18 (The high cost subsidy "should be limited to those additional ILEC costs that are solely attributable to bringing service to the non-competitive portion of the study area and that cannot be recovered through these services.").

[110] NCTA Petition at 18-19. Some comments observe that the Petition incorrectly stated that support from the ICLS and IAS mechanisms is not associated with specific network costs. These parties are correct that these two mechanisms are intended to provide a mechanism for recovery of loop costs. That fact does not, however, lead to the conclusion advocated by some ILECs that ICLS and IAS should be off the table in the context of a petition to reassess support levels. The suggestion that a carrier should continue to receive support merely because it received such support in the past is exactly the mindset that the Commission should be moving away from.

[111] *See* WTA Comments at 6 (noting that soft switches are replacing circuit switches and fiber is replacing copper).

elements (such as switches) should be any higher in non-competitive areas than in competitive areas, where such costs are paid for through basic customer rates. Customer revenues in non-competitive areas should be similarly expected to cover the costs of basic network operation, with subsidy from the high cost program reserved for extraordinary costs, such as higher loop costs resulting from longer loop lengths or low population density and rare cases of other extraordinary network costs that an ILEC may be able to justify in the Step 2 proceeding.

3. The NCTA Plan Will Not Hamper Investment or Create Unpredictability for Carriers

Some commenters claim that the NCTA proposal will create uncertainty for rural carriers, making funding unpredictable or insufficient in violation of Section 254 principles and chilling investment, potentially slowing extension of broadband services to rural areas.[112] These arguments that any reduction in support would violate the predictability and sufficiency requirements of Section 254 represent another example of the entitlement mindset that appears to be endemic among ILECs – apparently the only reforms that would satisfy this interpretation of Section 254 are those that increase support levels.

The new approach advocated by NCTA is fully consistent with the predictability and sufficiency requirements. The fundamental premise of the Step 2 review is to ensure that the support an ILEC receives for serving non-competitive areas is sufficient to meet the task – no more and no less. And as far as predictability, carriers receiving support are well aware of the competitive situation they face and carriers in markets that might satisfy the triggers will be on notice that their support levels could be challenged. In any cases where implementation of NCTA's proposal might create a significant reduction in high cost program funding for a

[112] USA Coalition Comments at 3-5; WITA Comments at 11-12; Windstream Comments at 18.

particular ILEC, the Commission can consider phase-in of the reduction over a reasonable transition period.

Complaints that potential reductions in high cost funding to certain ILECs that could be created by the NCTA proposal will reduce the ability of those ILECs to generate capital for investment in broadband services should be rejected.[113] This argument proves too much because a continuing stream of government subsidies will make any business more attractive to private investors. But in competitive markets, there is no reason for the Commission to be distributing government subsidies to one competitor as an inducement for additional private investment in that competitor. As noted above, ILECs themselves have argued against that exact approach in proceedings before other agencies.

IV. THE CONCEPTS IN NCTA'S PROPOSAL SHOULD BE INCORPORATED INTO THE COMMISSION'S USF REFORM EFFORTS EVEN IF THE ULTIMATE DETAILS ARE DIFFERENT

In addition to the comments discussed above, some parties criticize NCTA's proposal for not comprehensively addressing all of the problems of the high-cost fund and/or not proposing a specific mechanism for directing support to broadband deployment and adoption.[114] Others suggest that there is no need to even conduct a rulemaking on the issues raised in the Petition.[115] For a variety of reasons, these criticisms miss the mark.

NCTA explained in the Petition that its proposal was a "modest first step" that was not intended to be a comprehensive approach to universal service reform.[116] Rather, it was an attempt to address a set of issues that is ripe for consideration by the Commission, but that was

[113] NECA Comments at 24-25; NTCA Comments at 5-9; Rural ILEC Associations Comments at 11; WTA Comments at 22.

[114] *See, e.g.*, CenturyLink Comments at 4-6.

[115] *See, e.g.*, WTA Comments at 5-7.

[116] NCTA Petition at ii.

not explicitly covered by the Commission's current rules and that had not clearly been covered by any then-pending NPRMs.[117] Accordingly, filing a petition for rulemaking was the appropriate procedural vehicle for raising these important issues.

The suggestion that NCTA's proposal is backward-looking (because it focuses on availability of competitive voice service) and should have included details on how to fund broadband is particularly frustrating. NCTA has been an active participant in the National Broadband Plan proceeding and we consistently have expressed support, including in the Petition, for the idea that targeted, competitively-neutral universal service funding can be a part of the strategy for achieving the goal of universal availability of broadband.[118] And while others are just talking about broadband, NCTA's members are doing something about it. Specifically, we created the A+ Adoption program, a comprehensive approach to removing barriers to adoption for millions of low-income families.[119] As noted by Chairman Genachowski, "[t]he cable industry's considerable investment in this program represents an important step in addressing the many broadband adoption challenges we face."[120]

NCTA's proposal does not threaten broadband availability. Because virtually all cable operators provide broadband everywhere they offer voice service, areas that might see reductions in high-cost support under NCTA's proposal are areas where consumers already have access to broadband from an unsubsidized provider. And NCTA's proposal would ensure, in

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117 As to non-rural LECs, the NPRM issued in WC Docket No. 05-337 after the Petition was filed is sufficiently broad that the Commission could adopt elements of NCTA's proposal in the context of that proceeding.

118 NCTA Petition at 21 ("As the Commission considers NCTA's proposal to reduce support where it no longer is needed, it separately should consider whether, and how, it could redirect any savings from NCTA's proposal to provide targeted funding to programs that promote broadband deployment and adoption.").

119 Comments of the National Cable & Telecommunications Association on National Broadband Plan Public Notice #16, GN Docket No. 09-51, *et al*. (filed Dec. 1, 2009).

120 Press Release, *FCC Chairman Genachowski Commends NCTA's Adoption Plus (A+) Program* (rel. Dec. 1, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294940A1.doc.

noncompetitive portions of a study area, that all costs "necessary to continue to provide universal service" would be considered.[121] Even with today's voice-based definition of "universal service" NCTA's proposed rule would consider many costs associated with broadband networks. And if the Commission changed the definition of "universal service" to explicitly cover broadband, then all such costs would be considered.

So while there is no basis for anyone to challenge the cable industry's commitment to delivering broadband or our advocacy in support of government action to help fill the gaps in broadband deployment and adoption, fixing the existing high-cost program cannot be put on hold while these broadband efforts move forward. To the contrary, addressing the problems of the existing high-cost program must be part and parcel of any policy to distribute universal service funding for broadband.

The ILECs, not surprisingly, have advocated a different approach – spending more money now and deferring real reform for as long as possible. The best example of this sort of proposal is the so-called "Broadband Now" proposal advanced by five "mid-sized" ILECs and attached to Windstream's comments.[122] In Phase I of the proposal, high-cost wire centers would be eligible for incremental support in areas that lack access to broadband service at speeds of 6Mbps or more.[123] In Phase II, the Commission would "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."[124]

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121 NCTA Petition, Attachment A (Proposed Rule).

122 Windstream Comments at 19-21 and Attachment ("Broadband Now Proposal").

123 Broadband Now Proposal at 3.

124 *Id*.

Windstream and CenturyLink suggest that Broadband Now achieves the same goal as NCTA has identified – providing targeted support to noncompetitive, high-cost areas – but without the administrative challenges of the NCTA proposal.[125] But the targeted support proposed by Broadband Now is not in lieu of existing support, but in *addition* to existing support.[126] Any consideration of changes to the existing high-cost support mechanisms are deferred until the Phase II rulemaking, which the proposal acknowledges will be a years-long process.[127] With the USF contribution factor already at an all-time high of 14.1 percent,[128] any proposal that adds new funding while indefinitely postponing real reform should be rejected because it would place an excessive burden on consumers.[129]

The proposal advanced by the National Telecommunications Cooperative Association (NTCA) is similar. NTCA vigorously opposes the cable industry's proposal and asks the Commission to preserve the implicit subsidies created by averaging costs across study areas.[130] Yet at the same time, it proposes that the Commission target broadband support to so-called market failure areas (MFAs) that sound exactly like the noncompetitive areas that would be covered by NCTA's Petition.[131] As with the BroadbandNow proposal, this targeted support would be distributed for broadband with no change whatsoever to existing high-cost support

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125 CenturyLink Comments at 2-8; Windstream Comments at 19-21.

126 Broadband Now Proposal at 2.

127 *Id.* at 3.

128 Public Notice, *Proposed First Quarter 2010 Universal Service Contribution Factor*, DA 09-2588 (rel. Dec. 11, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-2588A1.pdf.

129 The Broadband Now proposal purports to address this concern by assessing USF contributions on broadband services, but this does nothing to ameliorate the additional burden the proposal would place on consumers. As NCTA has explained previously, broadband customers already are paying USF contributions on voice services. There is no evidence that assessing broadband will tap into a significant new pool of consumers that are not already paying USF contributions. Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51, NBP Public Notice No. 19 (filed Dec. 7, 2009).

130 NTCA Comments at 15.

131 *Id.* at 11.

mechanisms. "Reform" like this expands the size of the already bloated high-cost program and therefore places an undue burden on American consumers.

NCTA has similar concerns with OPASTCO's proposal to phase out existing support mechanisms and replace them with an entirely new broadband-focused program. The OPASTCO plan would require rural ILECs to opt in to a new broadband fund at any time during a seven year transition period.[132] At the time a LEC opts in, it would receive "the support amount that they were presently receiving from the existing mechanisms, as a starting point."[133]

The key problem with these proposals is that at no point do they consider the competitive situation in a supported area or how much support, if any, really is necessary. The Commission should not endorse any proposal in which every ILEC continues to receive every penny it receives today plus additional new subsidies for broadband. If the Commission is going to administer subsidy programs, it must do so in a fiscally responsible manner that ensures that money is only going where it is needed and only in amounts that are necessary to achieve statutory goals that would not be achieved in the absence of support.

NCTA recognizes the complexity of these issues and that the Commission ultimately may adopt a solution that differs from what was proposed in the Petition. But regardless of how the Commission moves forward with reform of the high-cost program, it will not be doing its job if it does not include in its new regime a mechanism for reassessing where, and how much, support is provided. Even if the Commission adopts one of the ILEC proposals, it can and should add procedures like those proposed by NCTA to ensure that neither existing support nor any new support becomes an entitlement that consumers must pay for long after it is becomes unnecessary.

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[132] OPASTCO Comments at 7.

[133] *Id*.

CONCLUSION

The record confirms the need for the Commission to establish a process for reducing high-cost support in areas experiencing extensive facilities-based competition. NCTA encourages the Commission to expeditiously issue a Notice of Proposed Rulemaking seeking comment on the proposal contained in NCTA's Petition.

Respectfully submitted,

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January 22, 2010

EMPIRIS LLC

UNIVERSAL SERVICE SUBSIDIES TO AREAS SERVED BY CABLE TELEPHONY: SUPPLEMENTAL REPORT

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January 2010

† Chairman and Managing Partner, Empiris LLC and Adjunct Professor, George Mason University Law School. I am grateful to Kevin Caves and Andrew Card for research assistance, and to several commenters for helpful suggestions. Any remaining errors are my own. Support for this paper was provided by the National Cable and Telecommunications Association.

CONTENTS

I. INTRODUCTION

In November 2009, the National Cable and Telecommunications Association (NCTA) filed with the Federal Communications Commission (FCC or Commission) my report on *Universal Service Subsidies to Areas Served by Cable Telephony* (*Initial Report*).[1] The *Initial Report* found that the High Cost Fund (HCF) program of the federal Universal Service Fund (USF) is paying hundreds of millions of dollars to subsidize voice telephone service in areas where cable companies also offer voice service, but without USF subsidies. For example, in 2008, the HCF program paid $229 million to rural local exchange carriers (RLECS) to provide voice service in the 165 study areas where cable companies offered voice service to more than 75 percent of households. In addition, and contrary to the arguments put forth by RLECs in the past, the *Initial Report* showed that in many cases, the areas served by cable operators are no less densely populated or topographically challenging than areas served exclusively by RLECs – i.e., that cable operators are not, as a general matter, serving only the "hole in the donut."

Based in part on the *Initial Report*, NCTA petitioned the Commission to undertake a rulemaking to establish a process whereby competitors in rural areas where incumbent telephone companies receive high-cost support could petition the Commission to review the level of support on a study area-by-study area basis.[2] On December 8, 2009, the Commission issued a notice seeking comment on the NCTA Petition.[3]

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[1] Jeffrey A. Eisenach, *Universal Service Subsidies to Areas Served by Cable Telephony*, Empiris LLC (November 2009)

[2] *Petition of the National Cable and Telecommunications Association for Rulemaking Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition*, GN Docket No. 09-51, WC Docket No. 05-337, and RM-11584 (Nov. 5, 2009) (hereafter, *NCTA Petition*). Briefly, NCTA proposes that the Commission, upon petition by an unsubsidized competitor in a given study area, review the level of HCF support in study areas where either (a) 75 percent or more of households were passed by a competing wireline infrastructure offering voice telephony service, or (b) 50 percent of households were passed by a competing

In response to the Commission's notice, a number of parties submitted comments, some of whom – including CenturyLink,[4] the National Exchange Carrier Association (NECA)[5] and the National Telecommunications Cooperative Association (NTCA)[6] (together, Opposing Commenters) – opposed NCTA's petition. In general, the comments – from Opposing Commenters as well as from commenters who supported NCTA's filing – agree with the primary findings of the *Initial Report*. For example, even NECA, which strongly opposes NCTA's petition, concedes that "there indeed may be some areas where cable coverage is substantially ubiquitous within an RLEC study area."[7] This having been said, some commenters argue that the *Initial Report* overstates the extent of competitive cable voice coverage, that its analysis of the cost characteristics of the portions of study areas served by cable telephony and RLECs is flawed, or that it overstates the amount of savings to the USF likely to result from implementation of the NCTA proposal.

In this brief Supplemental Report, I explain that these criticisms are misplaced and inaccurate. In Section II, I discuss Opposing Commenters' criticisms of the mapping methodology used in the *Initial Report* to estimate the extent of competitive voice coverage provided by cable operators in RLEC territories. In Section III, I address Opposing Commenters' criticisms of the *Initial Report's* economic analysis, including its use of density

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wireline infrastructure offering voice telephony service and the areas covered by the competitor were no less costly to serve than those passed only by the incumbent, or (c) the state regulator has deregulated retail telephone rates.

[3] *Pleading Cycle Established for 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, DA 09-2225, Public Notice (rel. Dec. 8, 2009) (hereafter, *Public Notice*).

[4] *Comments of CenturyLink on the National Cable Telecommunications Association's Petition for Rulemaking*, RM-11584 (January 7, 2010) (*CenturyLink Comments*)

[5] *Comments of the National Exchange Carrier Association*, RM-11584 (January 7, 2010) (*NECA Comments*).

[6] *National Telecommunications Cooperative Association, Initial Comments*, RM-11584 (January 7, 2010) (*NTCA Comments*).

[7] *NECA Comments* at 13.

and topography as proxies for the cost of serving different areas, as well as its analysis of the potential savings from reducing unnecessary subsidies in areas with cable telephone competition. Section IV presents a brief summary.

II. CRITICISMS OF THE *INITIAL REPORT'S* MAPPING METHODOLOGY ARE NOT VALID

Opposing Commenters criticize the mapping methodology utilized in the *Initial Report* on several grounds. While conceding the fundamental point – that the analysis demonstrates there are many of RLEC study areas where unsubsidized cable operators provide voice service to most or all of the households – they seek to demonstrate that the analysis is unreliable or exaggerated, and thus should be ignored by the Commission.

As a preliminary matter, most of Opposing Commenters' criticisms represent classic examples of the "straw man" tactic, arguing, in effect, that because the extent of cable coverage cannot be *perfectly* assessed based on publicly available data, it should not be assessed at all.[8] Criticisms which suggest (for example) that there may be particular study areas where coverage is less ubiquitous than shown on a particular map, miss the point of the analysis, which was *not* to demonstrate precisely which study areas (or how many) should receive reduced (or zero) funding, *but rather to* show that there is a large number of study areas where subsidies are likely to be excessive. As a result, the Commission has a responsibility to investigate further – that is, to undertake a more granular, study area-by-study area process, such as the one recommended by the NCTA petition, which would provide competing wireline providers the opportunity to

[8] When it comes to implementing USF in rural areas, the Commission traditionally has taken the opposite approach. *See* Federal Communications Commission, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256* (May 23, 2001) (hereafter *Rural Task Force Order*) at ¶9 ("We are mindful of the adage 'Let not the perfect be the enemy of the good.'")

demonstrate, using proprietary service area maps and related data, the precise extent of competitive wireline coverage within a given study area.

This having been said, the mapping analysis presented in the *Initial Report* represents a sound, conservative approach to assessing the overall extent to which the RLECs are receiving excessive subsidies, Opposing Commenters' claims notwithstanding.

First, NECA claims that the *Initial Report's* analysis of cable availability is overstated because it relies on the MediaPrints database. While NECA supports this claim with only a single quotation from an obscure (and outdated) 2006 study of Wyoming (stating that "information on cable system boundaries seemed to overstate cable coverage areas"),[9] the more important fact is that the *Initial Report* does not rely on the MediaPrints data.

The methodology utilized in the *Initial Report* is the same basic methodology I have relied upon in previous reports submitted to the Commission and various state regulatory commissions.[10] The underlying proprietary database is constructed based on information on communities served filed by cable operators with the FCC on Form 322.[11] This information is combined with publicly available GIS data (e.g., demographic data from the U.S. Census Bureau), data from *Warren's Cable Factbook*, information from publicly filed franchise agreements (e.g., on buildout and density requirements), and other data to create an accurate

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[9] *NECA Comments* at 5, citing Mark Guttman, *Costs and Benefits of Universal Broadband Access in Wyoming*, (Oct. 24, 2006).

[10] *See* Federal Communications Commission, *In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, Order* (FCC-08-122, Rel. May 1, 2008) at n. 61; and, Jeffrey A. Eisenach, *Application of Verizon Virginia, Inc. and Verizon South for a Determination that Retail Services Are Competitive and Deregulating and Detariffing of the Same, Expert Testimony and Report*, State Corporation Commission of Virginia, Case No. PUC-2007-00008 (January 17, 2007).

[11] *See*, e.g., http://www.fcc.gov/Forms/Form322/322.pdf and http://www.fcc.gov/mb/engineering/liststate.html.

geographic depiction of each cable system's service footprint. Data on the types of services provided by each cable system is taken primarily from Warrens Cable Factbook.[12]

NECA also assumes that the *Initial Report* somehow miscalculates the number of households covered by cable modem because it does not exclude areas where no one lives. NECA claims that it is possible to "provide more accurate assessments of cable availability in particular areas" by "exclud[ing] census block groups where no person actually lives."[13] Based on the MediaPrints database, NECA proffers maps of New York and Colorado which show that, when areas "where no person actually lives" are excluded, the there are fewer areas colored in on the map; and, on this basis, of this finding, it seeks to discredit the *Initial Report's* analysis.[14] But NECA's finding is as unsurprising as it is irrelevant. *Of course*, when one excludes unpopulated census blocks from the analysis, those census blocks no longer get colored in on the map, and the map necessarily looks less full. What does not change, however, is the number (or proportion) of households in each study area covered by cable telephony. Areas with no population, of course, also have no households, and, just as such areas are not passed by cable infrastructures, *they are equally un-served by RLECs*.

The methodology used in the *Initial Report* calculates availability of cable by adding up the total number of households contained in census blocks covered by cable service. It does not include households from unpopulated census blocks because, simply, there are none to include. In fact, excluding unpopulated areas increases the effective density of many of these RLEC study

[12] For purposes of the tables attached to this supplemental report, I have not verified the coverage data with individual cable operators. As explained in the *Initial Report*, it is possible that cable voice coverage in any particular study area could be higher or lower than indicated in the tables. The purpose of the tables is not to single out particular ILECs or study areas, but to make the more general point that there are scores of study areas where conditions on the ground suggest that reassessment of support levels is appropriate.

[13] *NECA Comments* at 6-7.

[14] *NECA Comments* at 11.

areas. For example, the density of rural study areas in New York is 25 households per square mile; however, if one excludes unpopulated census blocks, the remaining areas have an effective density of over 30 households per square mile, an increase of 23 percent. The same analysis for Colorado results in an effective density (for populated census blocks only) in rural study areas that is more than 55 percent higher than for entire study areas (including unpopulated census blocks).

NECA's next effort to critique the *Initial Report's* mapping methodology relies on data from New York State's Broadband Federal Stimulus Website that shows a map containing "predicted" cable modem availability for Chautauqua County, New York, which seems to show that cable modem (and hence cable telephony) capability is less pervasive that indicated in the MediaPrint database.[15] However, the predictive method used by the New York state CIO and OFT offices "involved creation of a GIS predictive model of likely cable-modem build-out based on a cluster analysis of housing address densities." In fact its only source of data to "predict" availability is based on the receipt of partial data in only one of New York's 62 counties.[16]

With respect to Colorado, NECA presents several maps, some of which focus on Southeastern Colorado.[17] The principal conclusion that emerges from its presentation is that maps look different depending on how they are constructed and what data are used. A map based on the MediaPrints data set which shows *different levels* of cable voice availability (based on the proportion of households passed) *by study area* (the map at the top of page 8) looks different than a map showing the *presence or absence* of cable voice availability, by *census*

[15] *NECA Comments* at 7-8.
[16] See http://www.ntia.doc.gov/broadbandgrants/comments/7DE4.pdf.
[17] *NECA Comments* at 9-11.

block, but omitting unpopulated census blocks (the map at the bottom of page 8). Similarly, both of these maps look quite different from topographical maps based on neither study areas nor census blocks, but instead indicating the actual areas where broadband infrastructure is available (the maps at the top of page 10 and page 11). All of this is true: Maps look different, depending on how they are constructed.

On the basis of this "insight," NECA attempts to persuade the Commission that the analysis in the *Initial Report* is unreliable because the maps show cable availability by study area and thus "color in" some areas where cable infrastructure does not actually run, either because there are households but no cable voice availability or, perhaps, no households to begin with.[18] But NECA's criticism is utterly specious: The *Initial Report* shows maps that indicate the extent of cable availability *by study area* because it is upon the basis of study areas that ILEC networks are constructed and, most importantly, because that is how HFC subsidies are calculated and distributed.[19]

For its part, CenturyLink presents maps of various CenturyLink study areas where cable companies appear (based on CenturyLink's analysis) not to be providing voice competition, and arguing that these areas are "typical."[20] But unlike the *Initial Report*, CenturyLink presents no evidence of how "typical" its examples are; and, in any case, the *Initial Report* does not argue that there is substantial cable competition in *every* rural study area, or even in *most* rural study

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[18] *NECA Comments* at 11 ("[t]he fact cable coverage can so easily be shown as 'available' in areas where no service is actually provided, or where no people live, raises a bright red flag."]

[19] It is also worth noting that NECA's analysis of Colorado does not in any way refute the *Initial Report's* findings with respect to the proportion of households with cable voice availability in each study area. Indeed, as it turns out, the map shown in Figure 5 of the *Initial Report* actually *understated* cable voice coverage because it was constructed based on the proportion of the land area of each study area where cable voice is available rather than the proportion of households. As shown in Exhibit B, the effect was to make cable voice coverage appear to be less available than is actually the case.

[20] *CenturyLink Comments* at 16-18.

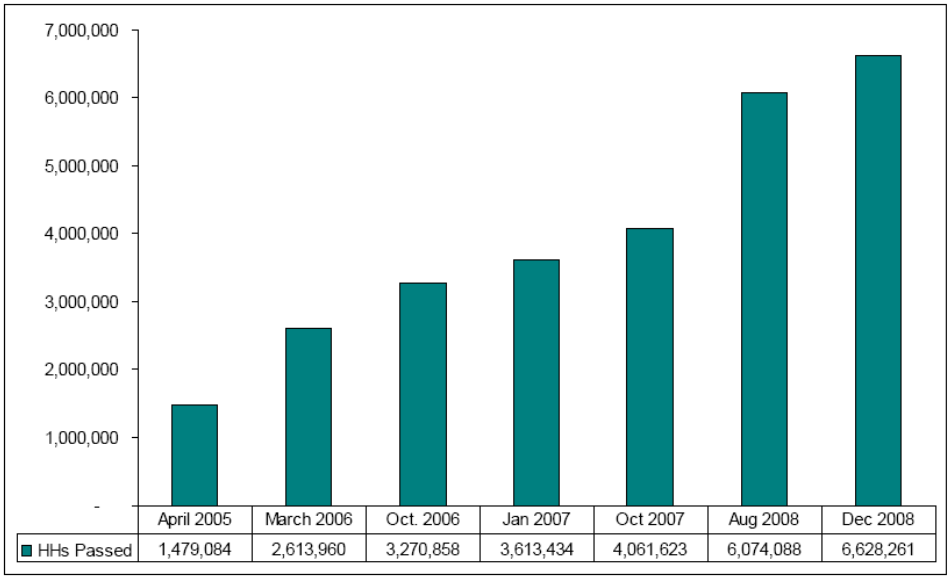
areas; it demonstrates that there is substantial competition in *hundreds* of rural study areas, a finding that CenturyLink's maps do not challenge in any way. In short, CenturyLink's maps do nothing to refute the *Initial Report's* findings.

CenturyLink also argues that the *Initial Report's* findings with respect to overlapping coverage should be discounted based on a study by Balhoff, Rowe and Williams, which was submitted in the Texas universal service proceeding. CenturyLink claims that while the *Initial Report* acknowledged the Texas study, it "attempts to dismiss [the Balhoff, Rowe and Williams report] on the sole basis that its findings are inconsistent with the assertions in the [*Initial Report*]."[21]

To the contrary, the *Initial Report* specifically addressed the Balhoff, Rowe and Williams study, and concluded that its results are "simply obsolete," as they rely on data from 2006, when cable telephony deployment was far less pervasive than at present.[22] Indeed, as shown in Figure 1 below, the number of rural households passed by cable telephony more than doubled between 2006 and 2008, and there is every reason to believe it is continuing to expand – meaning that the analysis in the *Initial Report* is, on those grounds alone, conservative.

[21] *CenturyLink Comments* at 18.
[22] *Initial Report* at n. 42.

Figure 1:
Rural Households with Cable Telephony Coverage, 2005-2008



Source: Warrens Cable Fact Book; Empiris LLC

III. CRITICISMS OF THE *INITIAL REPORT'S* ECONOMIC ANALYSIS ARE NOT VALID

Opposing Commenters also criticize the *Initial Report's* economic analysis, arguing that its approach to estimating differences in the cost characteristics of areas served by RLECs and cable operators is imprecise, and that its estimates of the excess subsidies being paid to RLECs are excessive – or, in any case, that the excessive subsidies that do exist are not worth the Commission's time to review. I address these criticisms below.

A. Density and Topography Are Reasonable Indicators of Cost

Both NECA and CenturyLink argue that the *Initial Report's* showing that there are many study areas where cable operators serve relatively high-cost portions of study areas is either erroneous or irrelevant.[23]

NECA argues that the *Initial Report's* "reliance on topography and density statistics as predictors of the costs of serving RLEC areas is … misplaced," proffers examples of instances (e.g., flat swampy areas) where topography or density alone might not fully capture variations in costs, and asserts that the Commission has, on the basis of such anomalies, rejected "measures such as topography and density" as proxies for rural costs.[24]

As NECA knows well, density and topography are universally understood to be the primary drivers of differences in the costs of constructing and operating wireline telecommunications networks. Indeed, it is precisely these correlations that form the basis for the "hole in the donut" argument at the heart of RLEC efforts to fend off FCC scrutiny of study areas where wireline competition has emerged. Moreover, while the Commission did, in the *Rural Task Force Order,* elect not to utilize a one-size-fits all proxy model for determining RLEC costs, it did *not* reject the undeniable fact that density and topography are the primary determinants of cost differences. For example, in explaining the *Order's* approach to disaggregation, the Commission explained that "The cost of serving the town is significantly lower than the cost of serving the agricultural areas because of differences in population density

[23] The Initial Report finds that there are 148 study areas where the area served by the cable operator is less dense than the area served exclusively by the RLEC, and 112 study areas where the severity of the topography is greater in the cable-served area. See *Initial Report* at 22.

[24] *NECA Comments* at 12. For authority, NECA cites the Joint Board's 2000 *Recommended Decision* on the use of proxy models to determine rural support, though the FCC Record citation to the decision provided in note 24 is actually a citation to a meeting notice.

and the distances of customers from the wire center."[25] Indeed, the disaggregation rules specifically provide for the use of both proxy models (that include topographical variables) and density factors to estimate cost variations within study areas.[26]

CenturyLink's critique on this score takes a somewhat different tack, arguing that the *Initial Report* offers "no support" for its "assertion" that "cable operators actually serve lower density or similar-density areas than the areas they don't serve in hundreds of rural study areas," and that this "is utterly inconsistent with common sense and rational economic behavior" because "if the cost of providing service is lower in areas not served by cable operators … then rational profit-maximizing companies would expand to take advantage of the opportunity."[27]

There are two obvious problems with CenturyLink's argument. First, and most significantly, the *Initial Report's* conclusions on this score are not based on an "assertion" but rather on a description of the empirical data; that is, it is a *simple fact* that there are many study areas where the portion of the study area served by cable is less dense, or more topographically challenging, or both, than the area served only by the RLEC.

Second, it is not in the least surprising that this would be the case. As the *Initial Report* explains,[28] study area boundaries and cable franchise service territories do not coincide. It is commonplace for a multiple cable companies to serve the same study area, and for cable franchise territories to overlap multiple study areas. Further, there are instances in which a

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[25] *Rural Task Force Order* at ¶157.

[26] *Rural Task Force Order* at ¶150 and n. 378 ("Under this path, a carrier could choose among any of the various methods of disaggregation, such as use of a proxy model, long-run incremental cost studies, or the use of density factors to disaggregate support.") Even CenturyLink agrees population density is the "primary" factor affecting cost levels. See *CenturyLink Comments* at 11 ("From these examples, it can readily be seen that there is wide variability in the per-line costs, which is primarily a factor of population density—the lower the density, the higher the cost.")

[27] *CenturyLink Comments* at 18.

[28] *Initial Report* at 17-18.

portion of a study area is not within the franchise territory of any cable operator. Hence, cable operators may simply not be able to expand into more densely populated contiguous areas, even if they would like to do so. Further, even in instances in which the cable operator might possess, or be able to obtain, the necessary franchise authority to expand into a more densely populated neighboring area, it may be dissuaded from doing so by the very existence of ongoing RLEC subsidies in that territory – knowing, for example, that its unsubsidized investment in an upgrade to DOCSIS 2.0 or DOCSIS 3.0 technology would likely be met by the RLEC's *USF-subsidized* deployment of FTTC or FTTH.

A related criticism, proffered by Qwest and others, is that the NCTA's proposed benchmark to initiate an investigation (75 percent coverage of a study area by cable telephony) [29] does not sufficiently screen out study areas where there are in fact large differences between the competitive and non-competitive portions, and would therefore lead to unproductive examinations of areas where subsidies remain necessary. But Qwest's concern is misplaced: In such areas, cable operators will readily be able to determine that they are serving the low-cost portions of the study area and that, if a petition were filed, the ILEC may have a strong case for continued subsidies. (Even in these cases, however, some reduction in support may be warranted where, for example, the ILEC is offering more than just voice service to customers in the more remote portion of the study area, or where population densities have increased over time.) Thus, from an economic perspective, the NCTA proposal aligns the incentives of cable operators to be free of unjustified, subsidized competition from RLECs with the interests of the public to stop paying subsidies in areas where they are no longer needed.

[29] *See*, e.g., *Comments of the Qwest Communications*, RM-11584 (January 7, 2010) at 4.

B. Excess Subsidies to Study Areas with Unsubsidized Wireline Competitors Substantial

A second, broader theme of Opposing Commenters' criticism is that the *Initial Report* is, in effect, much ado about nothing – that the savings to be had are so *de minimis* as to be not worth pursuing. There are several problems with this thesis.

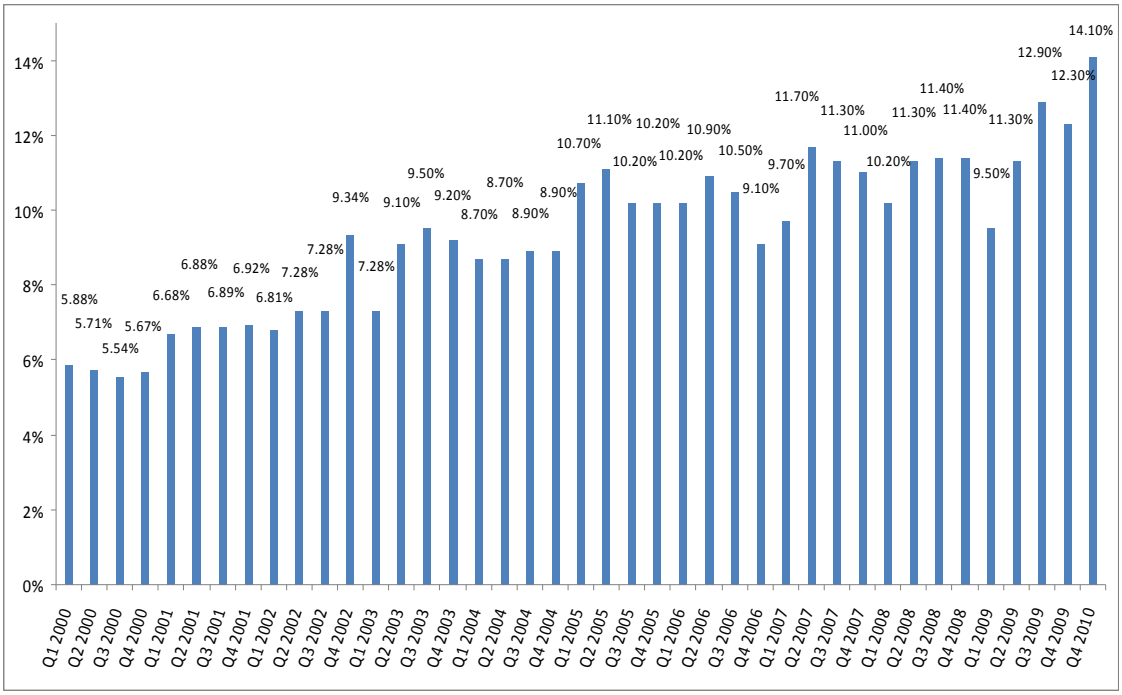
First, and perhaps most importantly, Opposing Commenters take the position, albeit largely tacitly, that the current HCF is not broken – or at least not broken in such a way as to result in excessive subsidies to any RLEC in any study area. Since there is no problem to begin with, they imply, there is no need for a solution.

As the Commission has long recognized, and as the *Initial Report* explains in detail and without refutation by Opposing Commenters, the rules for determining the amount of support received by RLECs are, at best, obsolete. As a result, "there is simply no basis for believing that subsidies paid to RLECs bear any relationship to the amount of assistance that is required to provide 'reasonably comparable" services at 'just, reasonable and affordable rates.'"[30] In this context, the presence of unsubsidized infrastructure-based wireline competition in a study area is not the *reason* to reexamine subsidies in certain study areas, it is an *undeniable signal* that such a reexamination is appropriate. As the *Initial Report* explained, "The existence of unsubsidized cable telephony in these areas is *prima facie* evidence that a significant portion of the subsidies paid to rural telephone companies are no longer necessary to meet the goal of reasonably

[30] *Initial Report* at 11.

affordable service."[31] Partly as a result of these excessive subsidies, the USF Contribution Factor now stands at an all time high of 14.1 percent, as shown in Figure 2.[32]

Figure 2:
USF Contribution Factor Q1 2000 – Q1 2010



As the National Broadband Plan staff indicated in a briefing presented to the Commission at its meeting on September 29, 2009 (see Figure 3), "the High-cost fund has been rapidly growing… driving a higher USF contribution factor" and "faces systematic, structural problems."[33]

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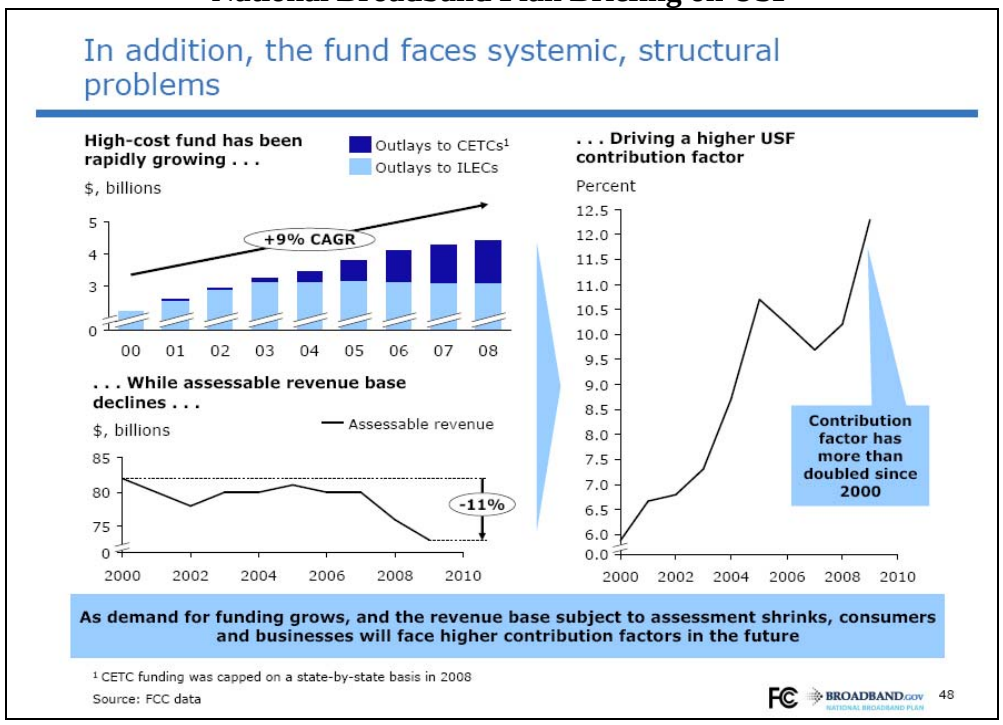
[31] *Initial Report* at 1. See also at 24-5 ("The evidence presented above suggests that a combination of economic change (i.e., growth in once-rural areas) and technological change (i.e., the spread of cable voice service) has eliminated or significantly reduced the need for continuing USF subsidies in a significant number of RLEC study areas.")

[32] It is noteworthy that states have recently made significant reductions in subsidies under their USF programs. *See e.g,.* "Interim Opinion Adopting Reforms to the High Cost Fund-B Mechanism," *Order Instituting Rulemaking Into the Review of the California High Cost FundB Program,* CPUC Rulemaking 06-06-028, Decision 07-09-020 (September 6,2007); see also "Final Order," *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to* PURA 5 56.031 and P.U.C. Subst. R. 26.403, PUCT Docket 34723 (April 25,2008). California, for example, increased the baseline for high-cost support from approximately $20 per month to $36 per month, an increase of 80 percent.

[33] National Broadband Plan, *Presentation to the Federal Communications Commission* (September 29, 2009).

Figure 3:
National Broadband Plan Briefing on USF



The analysis contained in the *Initial Report* provides further evidence of the need to review HCF subsidies in rural study areas, demonstrating that there are literally scores of study areas where population densities and topography suggest no high-cost support should be required.

First, there are many study areas where cable voice coverage is ubiquitous or nearly so, and where arguments about differences in density or topography between "covered" and "uncovered" areas are therefore moot. Table A-1 in Exhibit A lists 83 study areas where cable telephony is available to at least 95 percent of all households. Collectively, the RLECs serving these study areas receive nearly $110 million in subsidies, despite the fact that unsubsidized cable companies are providing telephone service to *virtually their entire study areas*.

There are many more study areas, however, where evidence of high population densities, high income or other indicators suggest existing subsidies are likely excessive. Table A-2, for example, shows 178 study areas where cable telephony is available to 50 percent or more of all households and population density exceeds 50 persons per square mile. HCF subsidies to these areas total nearly $350 million. Similarly, Table A-2 lists 122 study areas where cable telephony is available to 50 percent or more of all households and median income exceeds $50,000. HFC subsidies to these areas total over $250 million. These data demonstrate that the two "case studies" provided in the *Initial Report* are not "outliers" or exceptions, but rather examples of a commonplace phenomenon: Study areas which, though they may once have been both rural and relatively poor, are now densely populated and relatively rich – and where the presence of an unsubsidized, infrastructure-based wireline competitor serving a substantial portion of the area provides *prima facie* proof that subsidies are not required.

To such evidence, Opposing Commenters offer one last line of defense: Costs are so much higher in the areas not served by cable, and their carrier of last resort obligations are so onerous, that re-estimating their subsidy needs will not result in reduced payments, and may even increase them. A detailed and substantive rebuttal to these points is not required. Under the NCTA proposal as offered, cable operators will have every incentive to avoid petitioning for reviews of study areas where this is the case; and, if they do, the RLECs should be grateful for the increased support that will result. The fact that RLECs are so strongly opposing the NCTA petition demonstrates that *they* believe there are many study areas where this variation on the "hole in the donut" theory will prove toothless and, instead, the Commission will in fact find that current subsidy levels are excessive.

IV. CONCLUSIONS

The criticisms of the *Initial Report* put forward by Opposing Commenters are misleading and incorrect. Nothing in their comments refutes the *Initial Report's* conclusions that cable operators offer unsubsidized voice coverage in hundreds of rural study areas, that the cost characteristics of the areas served by cable operators are often comparable to those of the areas served by RLECs, and that a review of the extent of excess subsidies being paid to RLECs in areas where cable telephony is widely available would result in hundreds of millions of dollars in savings.

Exhibit A

Table A-1:
Study Areas with Cable Voice Coverage of 95 Percent or Greater

State	RLEC	Percentage of HHs with Cable Voice	2008 High Cost USF Subsidies	Total RLEC Loops
AR	PRAIRIE GROVE TELEPHONE COMPANY	100%	$3,895,593	9,223
AR	DECATUR TELEPHONE CO INC-ARKANSAS	100%	$323,610	1,100
AZ	SADDLEBACK COMMUNICATIONS COMPANY	100%	$3,496,725	3,855
AZ	SOUTHWESTERN TEL. CO.	100%	$1,711,539	4,340
LA	DELCAMBRE TEL. CO.	100%	$174,066	1,246
MA	GRANBY TEL. & TELE. CO.-MA	100%	$282,282	2,732
MN	FEDERATED UTILITIES, INC. DBA HANCOCK TEL. CO	100%	$215,922	823
NC	PINEVILLE TEL. CO.	100%	$254,079	1,826
NH	MCTA, INC.	100%	$1,211,238	11,500
NH	DUNBARTON TEL. CO.	100%	$294,423	1,724
NY	VERNON TEL. CO., INC.	100%	$298,428	2,286
NY	ORISKANY FALLS TEL. CORP.	100%	$20,058	607
NY	CHAMPLAIN TEL. CO.	100%	$1,088,016	5,291
NY	WINDSTREAM RED JACKET	100%	$114,780	1,594
NY	FRONTIER COMM. OF NY, INC.	100%	$10,065	56,398
NY	FRONTIER COMM. OF SENECA GORHAM, INC.	100%	$564,060	7,982
NY	ONTARIO TELEPHONE COMPANY, INC.	100%	$538,629	3,997
NY	STATE TEL. CO.	100%	$815,850	7,640
NY	NICHOLVILLE TEL. CO.,INC.	100%	$840,438	2,227
OR	CLEAR CREEK MUTUAL TELEPHONE CO.	100%	$1,223,979	3,474
OR	COLTON TELEPHONE COMPANY	100%	$1,089,093	1,130
PA	YUKON-WALTZ TEL. CO.	100%	$215,559	845

PA	IRONTON TEL. CO.	100%	$554,694	5,009
SC	RIDGEWAY TEL. CO., INC.	100%	$369,657	2,162
TX	CENTURYTEL OF LAKE DALLAS, INC.	100%	$1,820,478	10,058
TX	ETS TELEPHONE COMPANY, INC.	100%	$4,918,386	13,314
UT	DIRECTCOMM-CEDAR VAL	100%	$934,563	2,428
WA	ASOTIN TELEPHONE COMPANY - WA	100%	$498,594	1,308
WA	KALAMA TELEPHONE COMPANY	100%	$1,390,587	3,083
WA	MASHELL TELECOM INC.	100%	$1,535,979	3,808
WI	WAUNAKEE TEL. CO.	100%	$645,630	7,179
WI	SOUTHEAST TEL. CO. OF WIS., INC.	100%	$663,918	9,327
LA	EAST ASCENSION TELEPHONE COMPANY, LLC	100%	$26,075,256	35,202
TN	CONCORD TEL. EXCHANGE, INC.	100%	$2,189,946	18,728
NY	WARWICK VALLEY TEL. CO.-NY	100%	$1,726,866	13,452
NY	OGDEN TEL. CO. DBA FRONTIER OGDEN TEL. CO.	100%	$364,740	16,387
WA	YCOM NETWORKS, INC.	100%	$2,467,518	12,726
NY	WINDSTREAM NY-FULTON	100%	$2,457,192	33,112
PA	MARIANNA-SCENERY HILL TEL. CO.	100%	$583,269	2,347
WA	TENINO TEL. CO.	100%	$2,076,180	3,629
PA	SOUTH CANAAN TEL. CO.	100%	$441,648	2,747
NY	CROWN POINT TEL. CORP.	100%	$910,095	1,073
PA	VENUS TEL. CORP.	100%	$220,380	1,335
KY	WINDSTREAM KY WEST	100%	$1,478,364	21,167
PA	PYMATUNING IND. TEL. CO.	100%	$322,995	2,260
OH	DOYLESTOWN TEL. CO.	100%	$360,660	3,445
OH	LITTLE MIAMI COMM. CORP.	100%	$494,112	2,483
AZ	ACCIPITER COMMUNICATIONS, INC.	100%	$2,256,336	269
IA	PALO COOP. TEL. ASSN.	100%	$222,003	558
NY	EDWARDS TELEPHONE CO. INC.	100%	$573,426	2,334

MI	LENNON TEL. CO.	100%	$1,035,390	1,235
WI	MID-PLAINS TEL., INC.	100%	$1,677,420	31,188
MI	PENINSULA TEL. CO.-MI	100%	$239,610	1,340
MA	RICHMOND TEL. CO.	100%	$519,825	1,032
SD	CITY OF BROOKINGS MUNICIPAL TEL. DEPT.	100%	$764,316	12,528
MS	MOUND BAYOU TEL. & COMM., INC.	100%	$500,700	848
TN	HUMPHREY'S COUNTY TEL. CO.	100%	$205,137	1,756
NY	DUNKIRK AND FREDONIA TEL. CO.	100%	$1,036,266	7,151
NY	TOWNSHIP TEL. CO., INC.	100%	$1,012,842	3,581
CA	WINTERHAVEN TELEPHONE COMPANY	100%	$580,749	1,260
NY	CHAUTAUQUA & ERIE TEL. CORP.	100%	$1,233,480	9,550
NY	PATTERSONVILLE TEL. CO.-NY	100%	$370,410	1,153
GA	FRONTIER COMM. OF GEORGIA, INC.	99%	$780,312	21,184
NY	THE FISHERS ISLAND TEL. CO.	99%	$211,359	1,031
WI	CENTURYTEL OF WISCONSIN, LLC	99%	$37,266	41,605
OH	BASCOM MUTUAL TEL. CO.	99%	$181,233	699
OH	GERMANTOWN INDEPENDENT TEL. CO.	99%	$1,438,131	3,699
OK	BIXBY TELEPHONE CO.	99%	$4,870,335	8,783
OH	ARCADIA TEL. CO.	99%	$163,854	672
NY	DEPOSIT TELEPHONE CO. INC.	99%	$693,732	8,036
OH	TELEPHONE SERVICE CO.	98%	$748,260	8,746
NY	CITIZENS TEL CO OF NY DBA FRONTIER COMM	98%	$1,479,864	13,746
MI	ALLENDALE TEL. CO.	97%	$444,384	4,684
ME	SACO RIVER TEL. & TELE. CO.	97%	$871,548	8,531
AZ	VERIZON CALIFORNIA INC. - AZ	97%	$1,076,742	7,115
NH	KEARSARGE TEL. CO.	97%	$891,360	9,176
FL	ITS TELECOMMUNICATIONS SYSTEMS, INC.	97%	$1,759,593	3,576
MN	SCOTT RICE TEL. CO. DBA INTEGRA TELECOM	96%	$1,237,998	17,170

MN	MANKATO CITIZENS TELEPHONE CO DBA HICKORYTECH	96%	$1,772,106	28,990
IN	YEOMAN TEL. CO., INC.	96%	$220,389	926
NY	ONEIDA COUNTY RURAL TEL. CO.	96%	$785,754	3,276
VT	LUDLOW TEL. CO.	95%	$436,020	5,096
TX	CENTURYTEL OF SAN MARCOS, INC.	95%	$2,791,491	19,047
	TOTAL		**$109,299,780**	

Table A-2:
Study Areas With Population Density Greater than 50 Persons per Square Mile and Cable Voice Coverage of 50 Percent or Greater

State	RLEC	Percentage of HH With Cable Voice	2008 High Cost USF Subsidies	Total RLEC Loops	Population Per Square Mile
NC	PINEVILLE TEL. CO.	100%	$254,079	1,826	1,336
TX	CENTURYTEL OF LAKE DALLAS, INC.	100%	$1,820,478	10,058	912
PA	IRONTON TEL. CO.	100%	$554,694	5,009	612
NY	FRONTIER COMM. OF NY, INC.	100%	$10,065	56,398	459
AZ	SADDLEBACK COMMUNICATIONS COMPANY	100%	$3,496,725	3,855	281
PA	YUKON-WALTZ TEL. CO.	100%	$215,559	845	268
NH	MCTA, INC.	100%	$1,211,238	11,500	238
TX	ETS TELEPHONE COMPANY, INC.	100%	$4,918,386	13,314	236
MA	GRANBY TEL. & TELE. CO.-MA	100%	$282,282	2,732	233
WI	SOUTHEAST TEL. CO. OF WIS., INC.	100%	$663,918	9,327	218
WI	WAUNAKEE TEL. CO.	100%	$645,630	7,179	217
OR	CLEAR CREEK MUTUAL TELEPHONE CO.	100%	$1,223,979	3,474	192
NY	WINDSTREAM RED JACKET	100%	$114,780	1,594	180
NY	STATE TEL. CO.	100%	$815,850	7,640	165
NY	ONTARIO TELEPHONE COMPANY, INC.	100%	$538,629	3,997	152
NH	DUNBARTON TEL. CO.	100%	$294,423	1,724	115
WA	KALAMA TELEPHONE COMPANY	100%	$1,390,587	3,083	110
NY	ORISKANY FALLS TEL. CORP.	100%	$20,058	607	109
NY	VERNON TEL. CO., INC.	100%	$298,428	2,286	107
LA	DELCAMBRE TEL. CO.	100%	$174,066	1,246	88
NY	CHAMPLAIN TEL. CO.	100%	$1,088,016	5,291	67
NY	FRONTIER COMM. OF SENECA GORHAM, INC.	100%	$564,060	7,982	66
WA	MASHELL TELECOM INC.	100%	$1,535,979	3,808	66
AR	DECATUR TELEPHONE CO INC- ARKANSAS	100%	$323,610	1,100	65
MN	FEDERATED UTILITIES, INC. DBA HANCOCK TEL. CO	100%	$215,922	823	62
AR	PRAIRIE GROVE TELEPHONE COMPANY	100%	$3,895,593	9,223	58

LA	EAST ASCENSION TELEPHONE COMPANY, LLC	100%	$26,075,256	35,202	213
TN	CONCORD TEL. EXCHANGE, INC.	100%	$2,189,946	18,728	875
NY	WARWICK VALLEY TEL. CO.-NY	100%	$1,726,866	13,452	298
NY	OGDEN TEL. CO. DBA FRONTIER OGDEN TEL. CO.	100%	$364,740	16,387	526
WA	YCOM NETWORKS, INC.	100%	$2,467,518	12,726	104
NY	WINDSTREAM NY-FULTON	100%	$2,457,192	33,112	167
PA	MARIANNA-SCENERY HILL TEL. CO.	100%	$583,269	2,347	94
WA	TENINO TEL. CO.	100%	$2,076,180	3,629	79
PA	SOUTH CANAAN TEL. CO.	100%	$441,648	2,747	102
KY	WINDSTREAM KY WEST	100%	$1,478,364	21,167	269
PA	PYMATUNING IND. TEL. CO.	100%	$322,995	2,260	148
OH	DOYLESTOWN TEL. CO.	100%	$360,660	3,445	446
OH	LITTLE MIAMI COMM. CORP.	100%	$494,112	2,483	91
IA	PALO COOP. TEL. ASSN.	100%	$222,003	558	99
MI	LENNON TEL. CO.	100%	$1,035,390	1,235	146
WI	MID-PLAINS TEL., INC.	100%	$1,677,420	31,188	398
MI	PENINSULA TEL. CO.-MI	100%	$239,610	1,340	119
MA	RICHMOND TEL. CO.	100%	$519,825	1,032	94
SD	CITY OF BROOKINGS MUNICIPAL TEL. DEPT.	100%	$764,316	12,528	805
MS	MOUND BAYOU TEL. & COMM., INC.	100%	$500,700	848	59
TN	HUMPHREY'S COUNTY TEL. CO.	100%	$205,137	1,756	68
NY	DUNKIRK AND FREDONIA TEL. CO.	100%	$1,036,266	7,151	213
NY	TOWNSHIP TEL. CO., INC.	100%	$1,012,842	3,581	51
NY	CHAUTAUQUA & ERIE TEL. CORP.	100%	$1,233,480	9,550	73
NY	PATTERSONVILLE TEL. CO.-NY	100%	$370,410	1,153	95
GA	FRONTIER COMM. OF GEORGIA, INC.	99%	$780,312	21,184	473
NY	THE FISHERS ISLAND TEL. CO.	99%	$211,359	1,031	88
WI	CENTURYTEL OF WISCONSIN, LLC	99%	$37,266	41,605	404
OH	BASCOM MUTUAL TEL. CO.	99%	$181,233	699	53
OH	GERMANTOWN INDEPENDENT TEL. CO.	99%	$1,438,131	3,699	230
OK	BIXBY TELEPHONE CO.	99%	$4,870,335	8,783	233
OH	TELEPHONE SERVICE CO.	98%	$748,260	8,746	191

NY	CITIZENS TEL CO OF NY DBA FRONTIER COMM	98%	$1,479,864	13,746	195
MI	ALLENDALE TEL. CO.	97%	$444,384	4,684	413
ME	SACO RIVER TEL. & TELE. CO.	97%	$871,548	8,531	139
NH	KEARSARGE TEL. CO.	97%	$891,360	9,176	81
MN	SCOTT RICE TEL. CO. DBA INTEGRA TELECOM	96%	$1,237,998	17,170	336
MN	MANKATO CITIZENS TELEPHONE CO DBA HICKORYTECH	96%	$1,772,106	28,990	323
IN	YEOMAN TEL. CO., INC.	96%	$220,389	926	66
NY	ONEIDA COUNTY RURAL TEL. CO.	96%	$785,754	3,276	90
VT	LUDLOW TEL. CO.	95%	$436,020	5,096	50
TX	CENTURYTEL OF SAN MARCOS, INC.	95%	$2,791,491	19,047	357
OH	CENTURYTEL OF OHIO, INC.	94%	$3,516	64,628	946
NY	WINDSTREAM-JAMESTOWN	94%	$1,249,524	36,973	112
MN	CHRISTENSEN COMM. CO. DBA MADELIA TEL. CO.	94%	$215,232	1,506	54
NY	BERKSHIRE TEL. CORP.	94%	$633,240	5,144	267
WI	BURLINGTON BRIGHTON & WHEATLAND TEL.	93%	$561,198	3,424	156
NY	CASSADAGA TEL. CORP.	92%	$219,213	1,225	60
IA	HUXLEY COMMUNICATIONS COOPERATIVE	92%	$331,938	1,527	74
NH	GRANITE STATE TEL., INC.	92%	$2,511,255	9,704	120
OH	THE NOVA TEL. CO.	90%	$636,948	1,321	80
WI	MOUNT VERNON TEL. CO.	90%	$3,067,293	11,833	180
OH	CONNEAUT TEL. CO.	90%	$2,258,310	6,696	268
TX	WINDSTREAM SUGARLAND	90%	$1,132,560	63,186	301
WA	WHIDBEY TEL. CO.	90%	$4,129,794	13,121	217
MI	DRENTHE TEL. CO.	89%	$145,650	728	118
IN	MONON TEL. CO., INC.	89%	$981,462	1,237	50
MN	BRIDGEWATER TEL. CO.	89%	$1,141,626	7,786	203
IA	CLEAR LAKE INDEPEND. TEL. CO.	89%	$1,511,685	5,523	73
MS	CENTURYTEL OF NORTH MISSISSIPPI, INC.	89%	$8,544,246	22,076	161
LA	CENTURYTEL OF SOUTHEAST LA, INC.	88%	$2,160,978	9,517	111
IN	HANCOCK RURAL TEL. CORP. DBA HANCOCK TELECOM	87%	$4,296,438	8,016	102
SC	HARGRAY TEL. CO., INC.	87%	$2,851,026	48,043	182
MI	CENTURY TELEPHONE OF NORTHERN MICHIGAN, INC.	87%	$549,357	2,754	52

MN	WINSTED TELEPHONE COMPANY	87%	$255,513	1,483	96
SC	WINDSTREAM SC	87%	$1,381,716	49,707	164
WI	WOOD COUNTY TEL. CO.	87%	$3,935,466	23,194	106
IA	SWISHER TEL. CO.	86%	$207,639	927	71
NC	THE CONCORD TEL. CO.	86%	$5,583,720	96,765	316
MI	WESTPHALIA TEL. CO.	85%	$239,853	1,042	65
KY	BRANDENBURG TEL. CO., INC.	84%	$1,548,336	24,899	100
AR	CENTURYTEL OF REDFIELD, INC.	83%	$871,638	1,590	54
OH	WINDSTREAM W-RESERVE	82%	$1,655,436	157,491	185
NY	TRUMANSBURG TELEPHONE COMPANY, INC.	82%	$1,369,770	5,772	74
PA	FRONTIER COMM. OF PA, INC.	82%	$621,816	24,752	332
MN	HUTCHINSON TELEPHONE COMPANY	80%	$556,074	11,283	90
WA	LEWIS RIVER TELEPHONE COMPANY INC.	80%	$654,390	5,967	62
TN	CITIZENS TEL OF THE VOL ST DBA FRONTIER COMM	80%	$754,896	18,927	230
WI	MOSINEE TEL. CO.	80%	$520,974	4,942	56
OR	MOLALLA TELEPHONE COMPANY	79%	$3,220,566	6,170	50
MN	KASSON & MANTORVILLE TEL. CO.	78%	$640,296	4,324	71
OH	UNITED TEL. CO. OF OHIO	78%	$5,342,796	410,642	142
NY	FRONTIER COMM. OF SYLVAN LAKE, INC.	78%	$1,169,256	13,221	485
IN	ROCHESTER TEL. CO., INC.	77%	$2,282,298	7,076	84
OH	THE GLANDORF TEL. CO., INC.	77%	$162,537	1,110	102
IA	SOUTH SLOPE COOP. TEL. CO.	77%	$976,665	13,980	89
IA	WILTON TEL. CO.	77%	$203,349	1,782	72
SC	VERIZON SOUTH INC.-SC (CONTEL)	76%	$1,751,484	18,152	139
MI	WOLVERINE TEL. CO.	76%	$496,116	8,252	95
SC	CHESNEE TEL. CO.	76%	$543,030	5,027	193
WI	BLACK EARTH TEL. CO.	76%	$237,234	1,386	68
WI	CENTURYTEL OF THE MIDWEST-WI/NORTHWEST	76%	$2,422,596	62,915	73
NH	MERRIMACK COUNTY TEL. CO.	75%	$977,538	7,545	79
OK	WINDSTREAM SW-OK	75%	$4,673,817	76,831	77
MI	SHIAWASSEE TEL. CO.	75%	$960,966	5,068	111
MN	ZUMBROTA TELEPHONE COMPANY	75%	$233,814	2,144	64

NH	WILTON TEL. CO.-NH	75%	$446,232	3,185	112
WI	CENTURYTEL OF LARSEN-READFIELD, INC.	74%	$315,864	2,276	68
AR	LAVACA TELEPHONE-AR	74%	$2,117,265	1,462	84
TN	TENNESSEE TEL. CO.	74%	$3,196,632	59,347	71
IL	HOME TEL. CO.-ST. JACOB	72%	$2,070,438	1,048	71
IN	WASHINGTON CTY. RURAL TEL. COOP., INC.	72%	$1,054,653	3,506	68
IA	KALONA COOP. TEL. CO.	72%	$723,321	1,965	65
TX	CENTEL OF TEXAS	72%	$2,064,948	163,449	117
IA	MUTUAL TEL. CO.	72%	$662,688	4,489	69
SC	FARMERS TEL. COOP., INC-SC	71%	$19,255,776	53,123	64
ME	STANDISH TEL. CO.	71%	$2,311,041	17,323	81
OR	BEAVER CREEK COOPERATIVE TEL. CO.	71%	$1,722,588	4,398	144
OH	COLUMBUS GROVE TEL. CO.	71%	$195,309	1,674	81
PA	HICKORY TEL. CO.	71%	$202,584	1,351	87
IL	FRONTIER COMM. OF DEPUE, INC.	71%	$177,114	532	90
WI	STATE LONG DISTANCE TEL. CO.	71%	$731,154	9,816	199
SC	HORRY TEL. COOP. INC.	71%	$5,012,928	90,009	150
FL	EMBARQ FLORIDA	71%	$16,113,651	1,670,869	156
PA	NORTH PITTSBURGH TEL. CO.	70%	$2,048,790	60,184	448
SC	PIEDMONT RURAL TEL. COOP.	70%	$8,531,835	12,377	83
NY	CITIZENS TEL CO OF NY DBA FRONTIER COMM	70%	$2,016,816	23,797	54
PA	UNITED TEL. CO. OF PENNSYLVANIA	69%	$5,099,262	311,750	132
FL	SMART CITY TELECOMMUNICATIONS LLC DBA SM.CITY	68%	$6,693,444	13,507	142
SC	UNITED TEL. CO. OF THE CAROLINAS	68%	$1,225,878	82,804	80
NC	SALUDA MOUNTAIN TEL. CO.	67%	$482,634	1,678	94
WI	MOUNT HOREB TEL. CO.	67%	$1,547,316	4,409	91
OK	MCLOUD TELEPHONE CO.	67%	$6,680,460	8,268	146
MN	NEW ULM TELECOM, INC.	67%	$830,262	11,878	81
NY	EMPIRE TELEPHONE CORP-NY	66%	$891,858	6,848	51
TX	CONSOLIDATED FT BEND	66%	$5,969,832	41,592	178
NC	RANDOLPH TEL. CO.	66%	$435,924	4,309	109
NC	LEXCOM TELEPHONE COMPANY	66%	$6,028,020	26,526	306

MN	EMBARQ MINNESOTA	65%	$1,297,731	143,134	88
NY	PORT BYRON TEL. CO.	65%	$582,195	3,080	69
PA	BUFFALO VALLEY TEL. CO.	64%	$984,228	19,459	83
TN	UNITED INTER-MOUNTAIN TEL. CO.-TN	64%	$1,590,006	215,408	199
TX	BRAZORIA TEL. CO.	64%	$3,977,547	5,483	93
SC	CHESTER TEL. CO.-SC	62%	$1,515,834	16,036	50
AL	BLOUNTSVILLE TEL. CO., INC.	62%	$1,264,776	3,350	71
MI	CENTURY TEL. MIDWEST, INC.	61%	$5,420,430	24,163	93
MI	DEERFIELD FARMERS TEL. CO.	61%	$1,948,467	2,287	90
OH	THE CHAMPAIGN TEL. CO.	61%	$666,228	9,706	136
OR	MONITOR COOPERATIVE TELEPHONE CO	61%	$711,444	663	75
WI	UTELCO, INC.	60%	$1,078,308	14,762	52
VT	WAITSFIELD/FAYSTON TEL. CO.	60%	$4,883,040	20,283	54
NC	WINDSTREAM NC	60%	$3,884,412	203,404	181
NC	CENTEL OF NC	59%	$1,541,967	210,040	160
AL	GULF TEL. CO.-AL	59%	$3,002,994	53,572	74
WI	CENTURYTEL OF THE MIDWEST-KENDALL, INC.	58%	$1,222,098	68,402	55
TN	CITIZENS TEL CO - TN, LLC DBA FRONTIER COM TN	58%	$337,197	63,981	104
NC	CAROLINA TEL. & TEL. CO.	58%	$7,757,343	932,534	116
NJ	UNITED TEL. CO. OF NJ, INC.	56%	$260,481	169,892	289
OK	OKLAHOMA COMMUNICATION SYSTEMS INC.	55%	$2,174,871	16,904	53
WI	NORTHEAST TEL. CO.	55%	$932,175	8,590	103
TX	CONSOLIDATED COMM-TX	53%	$11,154,246	104,037	145
IN	CENTURYTEL OF CENTRAL INDIANA, INC.	50%	$1,079,868	2,829	56
	TOTAL		**$347,329,476**		

Table A-3:
Study Areas with Median Income Above $50,000 and
Cable Voice Coverage of 50 Percent or Greater

State	RLEC	Percentage of HH With Cable Voice	2008 High Cost USF Subsidies	Total RLEC Loops	Median Income
TX	ETS TELEPHONE COMPANY, INC.	100%	$4,918,386	13,314	$103,093
NH	MCTA, INC.	100%	$1,211,238	11,500	$102,471
NH	DUNBARTON TEL. CO.	100%	$294,423	1,724	$85,757
TX	CENTURYTEL OF LAKE DALLAS, INC.	100%	$1,820,478	10,058	$81,945
WI	SOUTHEAST TEL. CO. OF WIS., INC.	100%	$663,918	9,327	$73,839
WI	WAUNAKEE TEL. CO.	100%	$645,630	7,179	$71,268
NY	FRONTIER COMM. OF NY, INC.	100%	$10,065	56,398	$69,354
PA	IRONTON TEL. CO.	100%	$554,694	5,009	$68,388
OR	CLEAR CREEK MUTUAL TELEPHONE CO.	100%	$1,223,979	3,474	$63,702
UT	DIRECTCOMM-CEDAR VAL	100%	$934,563	2,428	$63,407
MA	GRANBY TEL. & TELE. CO.-MA	100%	$282,282	2,732	$62,324
OR	COLTON TELEPHONE COMPANY	100%	$1,089,093	1,130	$62,264
WA	MASHELL TELECOM INC.	100%	$1,535,979	3,808	$61,739
WA	KALAMA TELEPHONE COMPANY	100%	$1,390,587	3,083	$52,090
NY	FRONTIER COMM. OF SENECA GORHAM, INC.	100%	$564,060	7,982	$51,384
LA	EAST ASCENSION TELEPHONE COMPANY, LLC	100%	$26,075,256	35,202	$55,652
TN	CONCORD TEL. EXCHANGE, INC.	100%	$2,189,946	18,728	$91,739
NY	WARWICK VALLEY TEL. CO.-NY	100%	$1,726,866	13,452	$74,739
NY	OGDEN TEL. CO. DBA FRONTIER OGDEN TEL. CO.	100%	$364,740	16,387	$63,554
NY	WINDSTREAM NY-FULTON	100%	$2,457,192	33,112	$53,177
WA	TENINO TEL. CO.	100%	$2,076,180	3,629	$54,050
KY	WINDSTREAM KY WEST	100%	$1,478,364	21,167	$53,154
OH	DOYLESTOWN TEL. CO.	100%	$360,660	3,445	$54,320
OH	LITTLE MIAMI COMM. CORP.	100%	$494,112	2,483	$60,100
IA	PALO COOP. TEL. ASSN.	100%	$222,003	558	$78,591
MI	LENNON TEL. CO.	100%	$1,035,390	1,235	$58,888
WI	MID-PLAINS TEL., INC.	100%	$1,677,420	31,188	$67,803
MI	PENINSULA TEL. CO.-MI	100%	$239,610	1,340	$66,260

MA	RICHMOND TEL. CO.	100%	$519,825	1,032	$69,720
NY	PATTERSONVILLE TEL. CO.-NY	100%	$370,410	1,153	$59,073
NY	THE FISHERS ISLAND TEL. CO.	99%	$211,359	1,031	$55,183
OH	GERMANTOWN INDEPENDENT TEL. CO.	99%	$1,438,131	3,699	$60,270
OK	BIXBY TELEPHONE CO.	99%	$4,870,335	8,783	$64,736
OH	ARCADIA TEL. CO.	99%	$163,854	672	$55,870
NY	CITIZENS TEL CO OF NY DBA FRONTIER COMM	98%	$1,479,864	13,746	$59,134
MI	ALLENDALE TEL. CO.	97%	$444,384	4,684	$56,803
ME	SACO RIVER TEL. & TELE. CO.	97%	$871,548	8,531	$53,394
NH	KEARSARGE TEL. CO.	97%	$891,360	9,176	$62,924
MN	SCOTT RICE TEL. CO. DBA INTEGRA TELECOM	96%	$1,237,998	17,170	$91,155
NY	ONEIDA COUNTY RURAL TEL. CO.	96%	$785,754	3,276	$53,040
OH	CENTURYTEL OF OHIO, INC.	94%	$3,516	64,628	$54,765
NY	BERKSHIRE TEL. CORP.	94%	$633,240	5,144	$59,026
WI	BURLINGTON BRIGHTON & WHEATLAND TEL.	93%	$561,198	3,424	$64,826
IA	HUXLEY COMMUNICATIONS COOPERATIVE	92%	$331,938	1,527	$61,791
NH	GRANITE STATE TEL., INC.	92%	$2,511,255	9,704	$73,150
OH	THE NOVA TEL. CO.	90%	$636,948	1,321	$51,242
WI	MOUNT VERNON TEL. CO.	90%	$3,067,293	11,833	$77,106
TX	WINDSTREAM SUGARLAND	90%	$1,132,560	63,186	$83,963
WA	WHIDBEY TEL. CO.	90%	$4,129,794	13,121	$50,080
IA	DANVILLE MUT. TEL. CO.	90%	$228,852	912	$56,611
MI	DRENTHE TEL. CO.	89%	$145,650	728	$59,627
MN	BRIDGEWATER TEL. CO.	89%	$1,141,626	7,786	$58,801
MS	CENTURYTEL OF NORTH MISSISSIPPI, INC.	89%	$8,544,246	22,076	$63,696
IN	HANCOCK RURAL TEL. CORP. DBA HANCOCK TELECOM	87%	$4,296,438	8,016	$68,295
SC	HARGRAY TEL. CO., INC.	87%	$2,851,026	48,043	$70,572
MN	WINSTED TELEPHONE COMPANY	87%	$255,513	1,483	$52,742
SC	WINDSTREAM SC	87%	$1,381,716	49,707	$53,960
IA	SWISHER TEL. CO.	86%	$207,639	927	$79,277
CO	THE RYE TELEPHONE CO. INC.	86%	$3,742,074	2,437	$50,957
MI	WESTPHALIA TEL. CO.	85%	$239,853	1,042	$67,248
OH	WINDSTREAM W-RESERVE	82%	$1,655,436	157,491	$64,004

PA	FRONTIER COMM. OF PA, INC.	82%	$621,816	24,752	$54,170
IA	COLO TEL. CO.	81%	$654,903	653	$50,140
MN	HUTCHINSON TELEPHONE COMPANY	80%	$556,074	11,283	$52,155
WA	LEWIS RIVER TELEPHONE COMPANY INC.	80%	$654,390	5,967	$61,213
IA	VENTURA TEL. CO., INC.	80%	$145,317	420	$53,953
WI	MOSINEE TEL. CO.	80%	$520,974	4,942	$58,555
OH	VANLUE TEL. CO.	79%	$151,314	706	$60,700
OR	MOLALLA TELEPHONE COMPANY	79%	$3,220,566	6,170	$52,658
MN	KASSON & MANTORVILLE TEL. CO.	78%	$640,296	4,324	$63,560
OH	UNITED TEL. CO. OF OHIO	78%	$5,342,796	410,642	$50,714
NY	FRONTIER COMM. OF SYLVAN LAKE, INC.	78%	$1,169,256	13,221	$86,195
OH	THE GLANDORF TEL. CO., INC.	77%	$162,537	1,110	$58,634
IA	SOUTH SLOPE COOP. TEL. CO.	77%	$976,665	13,980	$62,761
IA	WILTON TEL. CO.	77%	$203,349	1,782	$51,640
SC	VERIZON SOUTH INC.-SC (CONTEL)	76%	$1,751,484	18,152	$56,004
WI	BLACK EARTH TEL. CO.	76%	$237,234	1,386	$67,990
WI	CENTURYTEL OF THE MIDWEST-WI/NORTHWEST	76%	$2,422,596	62,915	$61,271
OR	CASCADE UTILITIES INC.	75%	$1,921,923	8,645	$50,732
NH	MERRIMACK COUNTY TEL. CO.	75%	$977,538	7,545	$56,410
OK	WINDSTREAM SW-OK	75%	$4,673,817	76,831	$50,779
MI	SHIAWASSEE TEL. CO.	75%	$960,966	5,068	$61,728
MN	ZUMBROTA TELEPHONE COMPANY	75%	$233,814	2,144	$53,499
NH	WILTON TEL. CO.-NH	75%	$446,232	3,185	$65,072
WI	CENTURYTEL OF LARSEN-READFIELD, INC.	74%	$315,864	2,276	$67,495
CA	CITIZENS TEL CO OF CA INC. DBA FRONTIER COMM	74%	$13,168,584	116,754	$63,939
AR	LAVACA TELEPHONE-AR	74%	$2,117,265	1,462	$50,962
TN	TENNESSEE TEL. CO.	74%	$3,196,632	59,347	$53,073
IL	HOME TEL. CO.-ST. JACOB	72%	$2,070,438	1,048	$65,738
TX	CENTEL OF TEXAS	72%	$2,064,948	163,449	$57,214
IA	MUTUAL TEL. CO.	72%	$662,688	4,489	$52,884
ME	STANDISH TEL. CO.	71%	$2,311,041	17,323	$54,016
OR	BEAVER CREEK COOPERATIVE TEL. CO.	71%	$1,722,588	4,398	$69,114
OH	COLUMBUS GROVE TEL. CO.	71%	$195,309	1,674	$54,503

WI	STATE LONG DISTANCE TEL. CO.	71%	$731,154	9,816	$53,725
PA	NORTH PITTSBURGH TEL. CO.	70%	$2,048,790	60,184	$71,811
WI	STOCKBRIDGE & SHERWOOD TEL. CO.	69%	$461,214	3,007	$65,630
FL	SMART CITY TELECOMMUNICATIONS LLC DBA SM.CITY	68%	$6,693,444	13,507	$56,637
WI	MOUNT HOREB TEL. CO.	67%	$1,547,316	4,409	$70,585
OK	MCLOUD TELEPHONE CO.	67%	$6,680,460	8,268	$53,933
MN	NEW ULM TELECOM, INC.	67%	$830,262	11,878	$51,111
TX	CONSOLIDATED FT BEND	66%	$5,969,832	41,592	$77,933
IL	FRONTIER COMM. OF MT. PULASKI, INC.	65%	$123,468	1,445	$52,556
MN	EMBARQ MINNESOTA	65%	$1,297,731	143,134	$67,892
TX	BRAZORIA TEL. CO.	64%	$3,977,547	5,483	$52,807
IA	WEST LIBERTY TEL. CO.	63%	$748,896	3,871	$52,286
MI	CENTURY TEL. MIDWEST, INC.	61%	$5,420,430	24,163	$55,398
MI	DEERFIELD FARMERS TEL. CO.	61%	$1,948,467	2,287	$63,125
MN	ACE TEL. ASSN.-MN	61%	$2,220,024	10,712	$51,016
OR	MONITOR COOPERATIVE TELEPHONE CO	61%	$711,444	663	$57,835
VT	WAITSFIELD/FAYSTON TEL. CO.	60%	$4,883,040	20,283	$61,094
NC	WINDSTREAM NC	60%	$3,884,412	203,404	$59,095
OH	BENTON RIDGE TEL. CO.	58%	$404,286	1,101	$57,258
NJ	UNITED TEL. CO. OF NJ, INC.	56%	$260,481	169,892	$91,330
WI	NORTHEAST TEL. CO.	55%	$932,175	8,590	$67,319
IA	REASNOR TELEPHONE CO	54%	$47,184	246	$58,141
TX	CONSOLIDATED COMM-TX	53%	$11,154,246	104,037	$56,446
WI	BERGEN TEL. CO.	52%	$147,915	200	$67,661
IN	NEW LISBON TEL. CO., INC.	52%	$152,439	922	$64,343
OH	BUCKLAND TELEPHONE COMPANY	51%	$172,395	583	$55,040
IN	CENTURYTEL OF CENTRAL INDIANA, INC.	50%	$1,079,868	2,829	$53,227
WA	CENTURYTEL OF WASHINGTON, INC.	50%	$21,568,080	151,830	$54,814
	TOTAL		**$251,087,961**		

Exhibit B

Figure 5:
Cable Voice Coverage in Rural Study Areas, 2008

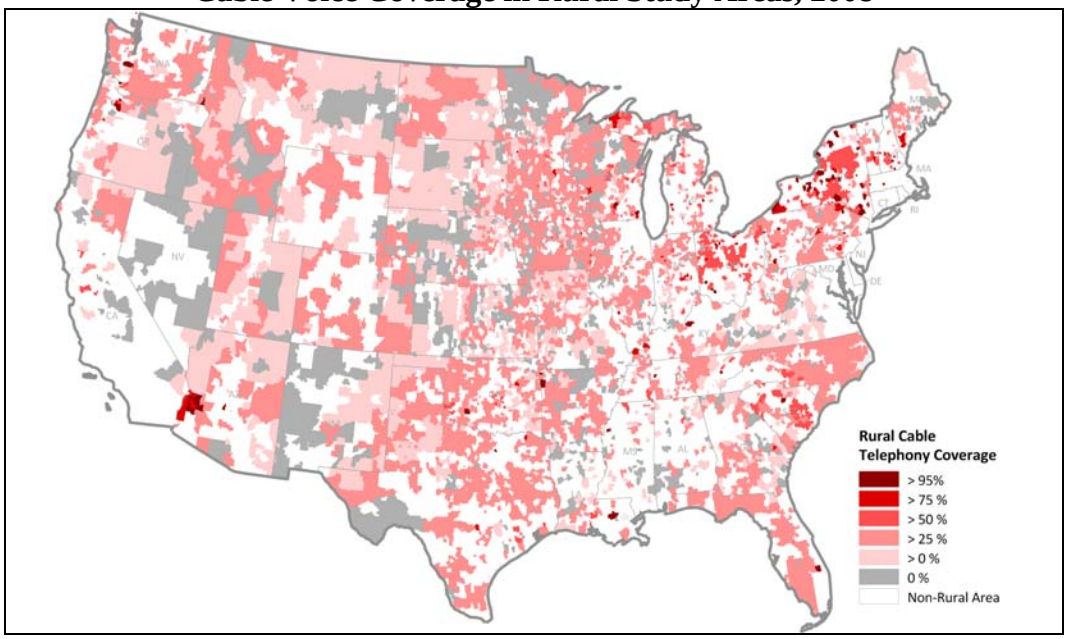


Figure 5-R:
Cable Voice Coverage in Rural Study Areas, 2008
(CORRECTED VERSION)