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

In the Matter of	)	
	)	
A National Broadband Plan for Our Future	)	WC Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
NCTA Petition for Rulemaking to Reduce High-Cost Support in Competitive Rural Areas	)	RM-11584

REPLY COMMENTS OF FREE PRESS

As consumer advocates with a strong desire to see the goals of Universal Service as articulated in the Communications Act reached in a manner that is fair and efficient to all ratepayers, we welcome NCTA's offering of constructive ideas on how to better allocate the scarce resources of the High Cost Fund. It is important to note that petition was noticed not only in the 2005 High Cost Reform proceeding, but also in the National Broadband Plan NOI proceeding. This reflects a reality the Commission obviously knows quite well: that USF reform and the policy framework for achieving universal deployment and adoption of affordable broadband Internet access services are inextricably linked. Because of this, we feel that NCTA's petition is premature given the high likelihood that the Commission will take up the issue of comprehensive USF reform later this year.

However, the petition does contain very important ideas that we feel the Commission should pursue in the context of broader USF reform: 1) that areas subjected to effective competition or where rates are not regulated, may be areas that do not require subsidies in order to ensure that supported services are available at reasonable quality and rates; and 2) that the

USF should be subsidies should flow in a more disaggregated basis to those lines that truly need support.

Ultimately, the Commission must recognize that we no longer live in the 20th century POTS world; we are in the converged broadband era. With this recognition comes the responsibility to launch a complete overhaul of the old regulatory model, which was built for carriers whose main income streams were earned in monopoly markets from price-regulated services. We believe the Commission can and should rationalize its regulatory structure in a manner that protects consumers and fosters the universal deployment of affordable advanced information and telecommunications technologies.

We suggest that the Commission must approach universal service in a manner that abandons the old school regulatory approach. This will consist of two major components; recognition of the enhanced revenue generating potential of converged broadband networks and therefore the upheaval this causes to the traditional ongoing support models; and recognition that the existing resources *already* deployed may completely change in some areas the rationale for subsidies.

First, the Commission will have to rationalize and modernize its entire regulatory model if it wishes to efficiently promote universal service in the broadband era. This will require a total reevaluation of the appropriateness of the current rate-of-return and price cap regulatory models in today's convergence market. This means for example, as the Joint Board has suggested, "considering unregulated revenues in calculating carriers' need for support."[1] The need to consider all revenues does not in any way require an imposition of the rate-of-return regulatory

[1] See *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531, (2008), at 31.

regime on all revenue streams. But it does point to the need for a rational and coherent regulatory model that accounts for carriers' newfound ability to earn substantially higher revenues on the same basic infrastructure that just a decade ago was only capable of providing basic telephone service. In our initial Comments in the National Broadband Plan *Notice*[2] we suggested that the Commission adopt a support model where a broadband network's ongoing support would be based on the gap between what revenues such a network could theoretically earn less the cost of such a network. We believe that many existing USF-supported networks that have advanced capabilities are currently capable of being self-sufficient, without the need to raise end-user rates on regulated or unregulated services.

Second, the Commission must recognize the reality that in many high cost areas, other unsubsidized providers are offering services with enhanced functionality at lower *actual* cost than those offered by subsidized carriers. This means that subsidies in some areas are potentially distorting the market and sending the wrong price signals to investors and consumers. Further, as detailed in our *Broadband Plan* comments, the large majority of lines receive only marginal per line support, questioning the need for the support to keep the price of these services "reasonably comparable."[3] A new regulatory paradigm must accounts for these realities; it must account for the increased revenue streams that modern technology has brought to traditional carriers-of-last-resort (COLRs); and it must rethink the entire COLR concept in today's marketplace. We have outlined a potential new approach to high cost support in our initial

[2] See e.g., Comments of Free Press, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future*, WC Docket Nos. 09-137, 09-51 (2009), at p. 228.

[3] The median per line support cost in the HCF is 31 cents. In rural study areas, the median line receives just over $5 in per month support. See *Free Press NBP Comments* at Figures 40-41.

Comments in the National Broadband Plan *Notice*. We feel that the Commission is going to have to move to a disaggregated and targeted system of support that is primarily focused on providing narrowly targeted support for initial construction costs, and move away from the ongoing support model.

One final point; support should go only to those lines where it is needed to keep services at reasonably comparable rates and quality. This holds true regardless what the list of supported services is. Some commenters criticized NCTAs petition, because in their view, reducing the income streams for HCF-supported LECs might reduce their ability to provide broadband Internet access services.[4] In other words, rural LECs are using USF funds to support broadband services. But as the Commission knows, broadband Internet access services are not currently on the list of Section 254 supported services. NCTA's petition seeks to rationalize support for voice not broadband Internet access services, because *voice services are supported and broadband Internet access is not*. NCTA's petition is perfectly consistent with the *current* rules; the petition might ignore broadband, and that might be viewed by LECs as impacting their broadband businesses, but until the Commission makes broadband infrastructure the supported service, or adds broadband Internet access to the list of supported services, under the law it still has a responsibility to "to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those

[4] *See e.g.* Comments of The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), "NCTA's petition is backwards looking. It focuses solely on the extent of competition for *voice* service in rural areas, and the minimum support needed to continue providing voice service to those customers without access to a competitive alternative. However, it fails to consider the support that rural ILECs will need to make robust broadband services available and affordable to every resident and business throughout their service areas, which is the goal of policymakers and the FCC's National Broadband Plan, in particular."

services,"[5] and to ensure that ratepayer funds are used in the most efficient manner to meet the purposes of Section 254.

Of course, we strongly believe that making broadband infrastructure the supported service under Section 254(c) is consistent with the principles of Section 254(b) to use USF to ensure that "access to advanced telecommunications and information [is] provided in all regions of the Nation,"[6] and to ensure that "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas […] have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."[7] But the point is, the Commission has to *do something* to change the rules before this can happen, and we certainly eagerly await such action.

In short, a bold paradigm shift is needed in order to efficiently realize the universal service goals of the Act. NCTA's petition might not be the exact right answer to this puzzle, but the underlying ideas do contain merit and we certainly hope that as the Commission moves forward on USF reform, that it does devote effort to what lies at the heart of NCTA's petition -- finding those areas that need subsides, and efficiently targeting scarce ratepayer subsidies to those areas that need them in order to keep rates and quality reasonably comparable.

[5] 47 U.S.C. 254(k).
[6] 47 U.S.C. 254(b)(2).
[7] 47 U.S.C. 254(b)(3).

Respectfully submitted,

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