

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

High-Cost Universal Service Support

WC Docket No. 05-337

A National Broadband Plan for our Future

GN Docket No. 09-51

Reducing Universal Service Support In
Geographic Areas That Are Experiencing
Unsupported Facilities-Based Competition

RM-11584

REPLY COMMENTS OF THE USA COALITION

The Universal Service for America Coalition (“USA Coalition” or “Coalition”),¹ by its attorneys, hereby submits these reply comments in opposition to the Petition of the National Cable & Telecommunications Association (“NCTA”) to reduce universal service high-cost support available in rural, insular and high-cost areas.² The USA Coalition urges the Federal Communications Commission (“FCC”) to reform the Universal Service Fund in a comprehensive manner that efficiently ensures the ubiquity of our nation’s communications network in a competitively and technologically neutral manner rather than grant NCTA’s proposal, which controls Fund size by implementing arbitrary, piece-meal measures that would

¹ The USA Coalition consists of four of the nation’s leading rural providers of wireless services, and is dedicated to advancing regulatory policies that will enable Americans to enjoy the full promise and potential of wireless communications, regardless of where they live and work. The members of the USA Coalition include Carolina West Wireless, Mobi PCS, SouthernLINC Wireless, and Thumb Cellular LLC.

² *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*, Public Notice, GN Docket No. 09-51, WC Docket No. 05-337 DA 09-2558 (rel. Dec. 8, 2009).

prevent this Commission from achieving the goals of the Act and that would fail to protect consumers.

I. THE NCTA PROPOSAL FAILED TO RECEIVE SIGNIFICANT SUPPORT

Most commenters generally recognized the need for the Universal Service Fund to evolve into a more efficient form that offers broadband support and reduces wasteful spending, but few – *if any* – actually endorsed the NCTA Petition. For example, the incumbent LECs opposed the proposal practically en masse, with AT&T, CenturyLink, Qwest, and Windstream all independently voicing their opposition, and an additional 250 small rural ILECs also opposed NCTA’s proposal through the comments submitted by the Rural ILEC Associations.³ In addition, the plan was also opposed by groups representing rural wireless carriers such as RCA and the USA Coalition, as well as by competitive wireline carriers represented by the Rural Independent Competitive Alliance.⁴ Given the opposition to the NCTA Petition by so many key stakeholders in the provision of universal service in rural, insular, and high-cost areas, along with its failure (as discussed below) to protect consumers and promote the goals of the Act, any further consideration of the NCTA Petition by the FCC would be unproductive.

³ AT&T Comments at 3 (“NCTA’s proposal fails to provide predictable, specific, and sufficient universal service support as required by the Act.”); CenturyLink Comments at 2 (“Unfortunately, the NCTA Petition appears to be based on badly misinformed assumptions regarding USF, with several of its assertions falling short in logic or the facts.”); Qwest Comments at 1 (“Qwest does not support the specific rule that NCTA proposes.”); Windstream Comments at 2 (“[The Commission] should decline to adopt NCTA’s proposal.”); Rural ILEC Ass’n Comments at iii (“the Commission should deny the petition filed by the [NCTA]”).

⁴ RCA Comments at i (“RCA believes that the approach proposed by NCTA to address this funding issue would create a host of problems.”); RICA Comments at 1 (“The adoption of the proposal, in the absence of modifications proposed by RICA both below and in other proceedings, would neither result in meaningful USF reform, nor advance the underlying public policy foundation of the universal service program.”).

Even members of NCTA failed to offer any meaningful support for the proposal. For instance, although Comcast “applauds the Bureau’s decision to seek comments on NCTA’s innovative proposal,” Comcast stops short of endorsing the Petition itself. Instead, Comcast tepidly supports the Commission “issu[ing] an NPRM in response to NCTA’s reform proposal and encourag[ing] other interested parties to submit similarly innovative plans for ensuring a more stable and sustainable high-cost program.”⁵ Indeed, even NCTA members Time Warner Cable and Charter Communications, while voicing somewhat stronger support for the plan, declined to expand upon the statutory basis for the proposed plan, neglected to offer any concrete examples of how this proposal would positively affect either the customers in the service areas where they provide service, and failed to explain how the plan would reduce USF expenditures in the ILEC study areas they serve where the reduction in support would be triggered. Given this general lack of endorsement and explanatory support even from members of the NCTA that participated in the docket, it seems clear nearly all parties have significant reservations regarding the Proposal.

II. NCTA’S PROPOSAL WOULD RESULT IN INSUFFICIENT SUPPORT IN SOME RURAL, INSULAR, AND HIGH-COST AREAS AND INCREASE THE NEED FOR USF SUPPORT IN OTHERS

Several parties also commented that adoption of the NCTA Petition could reduce support levels below those needed to ensure the ubiquity of the network. For instance, as ITTA explains, an ETC’s network is built in a manner that enables the carrier to meet its ETC obligations throughout an entire study area.

Under the NCTA proposal, however, a carrier would not be able to seek USF support for switches, equipment, overhead, or other expenses that support consumers in both the competitive and non-competitive areas. ...

⁵ Comcast Comments at 7.

This outcome must be avoided, as cost-recovery for major expenses through USF would be proscribed and substantial burdens would be foisted upon consumers, who would then suffer the effects of either diminished network investment or increased rates.⁶

Furthermore, as RCA notes, even in areas where support remains available, “[the] proposed process presents the risk that the Commission’s calculations could result in funding reductions that are unnecessarily excessive ... which would leave the incumbent in the position of receiving a level of support that is not adequate to sustain the deployment of facilities and provision of service in the highest-cost portions of the incumbent’s study area.”⁷ The NCTA Proposal fails to provide adequate details as to how to address these concerns.

The comments also indicate that the triggers for the withdrawal of support are poorly calibrated. As Windstream demonstrated in its comments, “cable telephony remains concentrated in the exchanges with the highest access line density and the lowest cost per line.”⁸ By serving just those areas, a cable system can pass a significant fraction of the households in a rural study area (including a sufficient percentage of carriers to trigger the withdrawal of support) but still but still leave large geographic areas and large numbers of exchanges and communities completely unserved.⁹ Eliminating support for all customers in the rural ILEC study area because of the presence of facilities-based competition in the most densely-packed portion of the study-area (usually a small city or town) could leave those customers living in the highest-cost areas without sufficient support to ensure that they are served. This concern is heightened by USTA’s call for removal of ETC and carrier-of-last-resort obligations from

⁶ ITTA Comments at 7-8.

⁷ RCA Comments at 6.

⁸ Windstream Comments at 12.

⁹ Windstream Comments at 12; *see also* CenturyLink Comments at 19.

carriers upon adoption of the NCTA proposal.¹⁰ Without ETC or COLR obligations, all carriers in a study area will be free to refuse service to unprofitable consumers – an outcome that contravenes the intent of the universal service programs.

The record also reflects opposition to the NCTA Petition’s use of rate deregulation as the second trigger for withdrawal of support. As the National Telephone Cooperative Association explains, “the decision whether to permit deregulation, or not rate regulate, lies with the state public service commissions, and each state uses different rules, procedures and standards to determine whether ... to award deregulation status.”¹¹ For instance, in some cases, states do not regulate cooperative telecommunications providers because the customers control their own rate increases – not because competition exists.¹² USTA points out that in other cases “states have ‘deregulated’ service unless a certain portion of the customer base complains to the state commission.”¹³ Additionally, as Qwest notes, “[e]ven if a local exchange provider is *allowed* to charge a rate high enough to cover the cost of serving a high-cost area, it does not mean that customers will be able or willing to pay that high rate.”¹⁴ The existence of a deregulated market does not necessarily indicate that rates, if unsupported, will be affordable or reasonably comparable to those found in urban areas – USF support may still be required to achieve that goal.

Furthermore, the provisions in the NCTA Petition to continue support in the portions of currently-supported ILEC study areas without facilities-based competition may

¹⁰ USTA Comments at 7-8.

¹¹ Nat’l Tel. Coop. Assn. at 20.

¹² Nat’l Tel. Coop. Assn. at 20.

¹³ USTA Comments at 7.

¹⁴ Qwest Comments at 6.

actually increase the need for USF support in some areas and offset any potential savings for the Universal Service Fund as a whole. As several commenters note, by eliminating rate averaging over the lower-cost and higher-cost portions of the ILEC study area, the high-cost of serving the most expensive consumers no longer is subsidized by the lower-cost of serving the least expensive consumers.¹⁵ As AT&T explains:

If the Commission were to recalculate an ILEC's high-cost support to remove the cost of serving those parts of a study area with competition, and to provide support based on the per-line costs of serving those areas without competition (which are likely to be the highest cost lines in the study area), the amount of support necessary to meet universal service objectives likely would remain the same, or even go up.¹⁶

Indeed, as CenturyLink demonstrates in its comments, the amount required for USF support could double, treble, or even quadruple depending on how the NCTA proposal is implemented.¹⁷

III. NOTHING IN THE RECORD LINKS THE NCTA PROPOSAL TO THE PRINCIPLES OF SECTION 254

Neither the NCTA Petition nor the comments filed in support thereof reconcile NCTA's proposal with the requirements of section 254 of the Act which governs universal service. As the Rural ILEC Associations explain, "Section 254 requires the Commission to base policies for universal service on a number of principles," including the principle that services and rates in rural areas be "reasonably comparable to those services provided in urban areas."¹⁸ However, "NCTA's petition does not demonstrate, or even allege, that this principle could be

¹⁵ AT&T Comments at 4-5; CenturyLink Comments at 13.

¹⁶ AT&T Comments at 5.

¹⁷ CenturyLink Comments at 13 (explaining how implementation of the NCTA plan could cause USF in a hypothetical area to increase from \$144K per month to \$489K per month).

¹⁸ Rural ILEC Ass'n Comments at 3-4 (quoting 47 U.S.C. § 254(b)(3)).

met under its proposal.”¹⁹ In fact, nothing in the NCTA Petition even references the rates paid by end users in supported areas. Instead, it focuses solely on one of two metrics: (1) the availability of facilities-based competition and (2) whether the state has chosen to deregulate ILEC retail rates within the ILEC study area. Neither of these metrics, however, is tied to any of the principles enumerated in section 254; rather, their use is promoted solely as a means to reduce arbitrarily the overall size of the high-cost fund. This single-minded focus is inconsistent with the requirement that the Commission “balance the principles [of section 254] against one another.”²⁰

AT&T also recognizes that the NCTA proposal “cannot be reconciled with the Commission’s obligation to establish universal service support mechanisms that are ‘predicable, specific, and sufficient.’”²¹ Indeed, as RCA notes, “The NCTA proposal risks the prospect that [rural, insular, and high-cost] areas will be left with insufficient universal service support, or no support at all.” Such an outcome contradicts the Act’s promise of universal service, “a goal that requires sufficient funding of customers”²² and that cannot be ignored in favor of arbitrary market metrics.

IV. NCTA’S PROPOSAL IS ADMINISTRATIVELY UNWORKABLE

The USA Coalition also joins its voice to the many commenters who believe that the NCTA Petition would result in a burdensome and unworkable system. As Windstream states, the “[NCTA] Petition would create a nightmare of an administrative process that relies on

¹⁹ *Id.* at 4.

²⁰ *Qwest Corp. v. FCC*, 258 F.3d 1191, 1202 (10th Cir. 2001) (*Qwest I*).

²¹ AT&T Comments at 6; CenturyLink Comments at 20; NECA Comments at 24 (“NCTA’s proposal would make universal service funding inherently unpredictable, in clear violation of section 254 of the Act.”).

²² *Alenco Commc’ns v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

ad hoc, standardless, study-area-by-study-area adjudications to decide ... federal support.”²³

Furthermore, the triggers for the withdrawal of support “are set so low that the Commission could be flooded with hundreds of petitions for study-area specific cost cases.”²⁴ As ITTA explains, the end result is “an administrative morass of case-by-case adjudications, competition studies, and consequent individualized cost studies, all of which arrive with the threat of litigation as carriers and petitioners become mired in costly fact-finding exercises.”²⁵

Furthermore, as NECA points out,

no standards exist for such determinations, and answers to questions raised would likely vary from region to region and indeed may be different in every case. As a result, the Commission and interested parties might find themselves embroiled in complex “trial-type” adjudicatory proceedings potentially involving cost studies, presentations by expert witnesses, cross-examinations, and other time-consuming (and expensive) processes.²⁶

This outcome serves neither consumers living in rural, insular, and high-cost areas nor the FCC.

Instead of adopting reforms that increase regulatory requirements, the Commission should instead focus its efforts on the creation of a new streamlined and easily auditable method of distributing universal service support.

²³ Windstream Comments at 3; see also NECA Comments at 22-24.

²⁴ Windstream Comments at 3.

²⁵ ITTA Comments at 16.

²⁶ NECA Comments at 23-24

CONCLUSION

For the reasons set forth above and in its initial set of comment, the USA Coalition urges the FCC to reject the NCTA Petition and adopt universal service reform and a Broadband Plan that operates on fair and technologically neutral basis. Such policies will ensure that all consumers receive the benefit of all types of technologies, regardless of where they live and work.

Respectfully submitted,



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