

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments in response to the Notice of Proposed Rulemaking issued by the Commission in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

In the *Further Notice*, the Commission solicits comment on issues regarding the non-rural high-cost mechanism that were remanded by the 10th Circuit in the *Qwest II* case.² The Commission tentatively concludes that it should hold off on any major reforms to the non-rural mechanism until a future proceeding to implement recommendations arising out of the National Broadband Plan.³ NCTA agrees that the Commission should avoid interim steps that would increase the size of the non-rural high-cost support mechanism and instead pursue

¹ *High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 09-112 (rel. Dec. 15, 2009) (*Further Notice*).

² *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*); see also *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) (*Qwest I*).

³ *Further Notice* at ¶¶ 12-13.

comprehensive reform, including proposals advanced by NCTA, expeditiously upon completion of the National Broadband Plan.

I. THE COMMISSION’S TENTATIVE CONCLUSION TO AVOID TAKING STEPS THAT INCREASE THE SIZE OF THE NON-RURAL HIGH-COST MECHANISM IS SOUND

NCTA has long advocated reform of the Commission’s high-cost support mechanisms, including the non-rural mechanism. As the *Further Notice* explains, there have been significant changes in the marketplace since the non-rural high-cost support mechanism was created and those changes are not reflected in the Commission’s rules.⁴ In particular, as proposed in NCTA’s pending Petition for Rulemaking, the Commission should amend its rules so that high-cost support mechanisms reflect the presence of unsubsidized competition and the additional revenue streams that are available to ILECs in today’s competitive, broadband marketplace.⁵

NCTA agrees with the justification offered by the Commission for its tentative decision. The National Broadband Plan proceeding has made clear how important it is for the Commission to conduct a fundamental overhaul of the entire universal service regime, not just the non-rural high-cost mechanism, in conjunction with any effort to expand the USF program to explicitly include broadband deployment.⁶ Because many of the proposals for reforming the non-rural portion of the program could have the effect of significantly increasing the size of the non-rural mechanism, the Commission is correct that adopting such proposals at this time could unduly limit its options for more comprehensive reform.⁷ Moreover, with the contribution factor already

⁴ *Further Notice* at ¶ 10.

⁵ National Cable & Telecommunications Association Petition for Rulemaking, RM-11584 (filed Nov. 5, 2009) (Petition).

⁶ *Further Notice* at ¶ 12.

⁷ *Id.* at ¶ 13 (“If carriers were to receive significant additional high-cost support on an interim basis as a result of this proceeding, it likely would be more difficult to transition that support to focus on areas unserved or underserved by broadband, if called for in future proceedings.”).

at a record high,⁸ adopting any of these proposals would place an intolerable burden on consumers.

This is not to say that the Commission must address all universal service issues simultaneously. To the contrary, while the Commission's overall approach to USF reform should be cohesive, some reforms are easier to implement and/or more urgently needed, and the Commission should not wait to implement those reforms while it considers other issues that are more difficult and/or less pressing. In particular, as explained in the reply comments we filed last week,⁹ NCTA's proposed reform of rural and non-rural high-cost mechanisms should be considered by the Commission on an expeditious basis.

II. ANY CHANGES TO THE NON-RURAL HIGH-COST MECHANISM SHOULD REFLECT MARKETPLACE REALITIES

In addition to tentatively concluding that it should not increase support under the existing non-rural support mechanism, the Commission solicits comment on three related sets of issues – how to determine whether rates in rural areas are reasonably comparable to urban rates, what rates to consider in such an analysis, and what role costs (and cost models) should play in answering these questions.

A. The Commission Should Consider Whether Rates For Bundled Voice Services Are Comparable In Urban And Rural Areas

In considering whether urban and rural rates are comparable, the Commission should compare the rates for bundles of local and long distance service. As the Commission explained in the *Further Notice*, consumers no longer purchase stand-alone local service in any meaningful

⁸ 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.

⁹ Reply Comments of the National Cable & Telecommunications Association, WC Docket No. 05-337, *et al.* (filed Jan. 22, 2010).

way.¹⁰ According to the Commission, as of mid-2008, at least 69 percent of consumers were purchasing local and long distance service from the same provider.¹¹ The shift to a marketplace in which multiple providers offer bundled services is producing significant benefits for consumers and there is every reason to expect this trend to continue.¹²

Changing the focus of the comparability analysis to bundled service offerings would not harm low-volume users.¹³ The fact that substantial portions of the population have embraced multi-service bundles demonstrates that there is limited demand, or need, for a service that only enables customers to call within their local community. Indeed, the National Broadband Plan is based on precisely the opposite view – that all Americans benefit from, and should be encouraged to take advantage of, the nearly limitless communication that is made possible by the broadband Internet.

In addition to better reflecting marketplace realities, focusing on the comparability of the rates for bundles has the added benefit of eliminating the need for the Commission to depend solely on comparisons of cost data as the basis for deciding whether, and how much, support is needed. Contrary to the Commission's tentative conclusion,¹⁴ NCTA has explained previously why an ILEC's costs may not be a reasonable proxy for rates and should not necessarily form the

¹⁰ *Further Notice* at ¶ 17.

¹¹ *Id.* at n.42.

¹² In the Commission's *Video Competition* proceeding, NCTA submitted a paper prepared by Dr. Michael Pelcovits documenting the significant consumer benefits attributable to cable operators bundling of voice, video, and data services. M. Pelcovits & A. Ferguson, *Benefits to Consumers from the Transformation of the Cable Industry*, attached to Further Comments of the National Cable & Telecommunications Association, MB Docket No. 07-269 (filed July 29, 2009), available at <http://www.ncta.com/PublicationType/RegulatoryFiling/NCTA-Further-Comments-07-29-09.aspx>.

¹³ *Further Notice* at ¶ 19.

¹⁴ *Further Notice* at ¶¶ 21-22.

basis for distributing universal service support.¹⁵ And even where reliable cost data exists, there is no need to use cost as a proxy for rates if those rates are unconstrained by regulation, as is the case with bundled offerings. Because long distance rates are not subject to regulation, any remaining regulation of local rates (including the Commission's SLC cap) has little effect on a carrier's ability to recover its costs from customers.¹⁶ Put differently, if bundled rates in a rural area are comparable to the rates for a similar bundle in urban areas, as is the case in most areas of the country,¹⁷ the Commission can conclude that the comparability requirement of Section 254 is satisfied without any need to consider an ILEC's costs.

B. Where Rural Rates Are Not Comparable, The Calculation Of ILEC Support Levels Should Consider Costs And Revenues Of Supported And Non-Supported Services

The cost of providing service may still be a key factor in determining the amount of support, if any, that is needed in areas that are not experiencing facilities-based competition. As NCTA proposed in its Petition, the amount of support needed in these areas should reflect all the potential revenues that a provider can generate from the supported network.¹⁸ Section 254(k) makes clear that supported services should "bear no more than a reasonable share of the joint and common costs of the facilities used to provide those services"¹⁹ and section 254(e) requires that support be used only for supported services.²⁰ Because there is no objective way to allocate joint

¹⁵ Comments of the National Cable & Telecommunications Association, WC Docket No. 05-337 (filed May 8, 2009) (NCTA NOI Comments) at 10-11.

¹⁶ In addition, many states have adopted significant deregulation of local rates and those still subject to regulation generally are governed by price caps, not cost-based regulation.

¹⁷ NCTA explained previously that many cable operators, as well as many other providers, generally offer service at rates that do not vary between urban and rural areas. NCTA NOI Comments at 8-9.

¹⁸ Petition at 20. The Joint Board made a similar recommendation in 2007. *High-Cost Universal Service Support*, WC Docket No. 05-337, Recommended Decision, 22 FCC Rcd 20477, 20485, ¶ 31 (2007).

¹⁹ 47 U.S.C. § 254(k).

²⁰ 47 U.S.C. § 254(e).

and common costs among services provided over the same network,²¹ the Commission should look at the total cost of providing all services over the network and compare this to the total revenues available from these services. Certainly there is no basis for continuing the current practice of assuming that all network costs are attributable to supported telecommunications services.

Given that cost data will continue to be relevant to the determination of high-cost support levels in at least some cases, the Commission should move forward with updating the cost model used for this purpose. As explained in the *Further Notice*, the Commission's existing cost model is woefully out of date and should not serve as the basis for major reform of the non-rural high-cost mechanism. As a starting point in developing a new model, the Commission should make public the model it has developed in the National Broadband Plan proceeding.

²¹ ILECs themselves readily concede this to be the case. *See, e.g.*, Comments of Qwest Communications Int'l, WC Docket No. 05-25 at 45 (filed Jan. 19, 2010) ("As the Commission has long explained, that [cost] allocation process is inherently arbitrary, because there is no definitive way to apportion common and shared costs among different services or between the interstate and intrastate portions of particular investments.").

CONCLUSION

The Commission's tentative conclusion to pursue comprehensive universal service reform rather than taking interim steps that might increase the size of the non-rural high-cost support mechanism is sound. Upon completion of the National Broadband Plan, the Commission should expeditiously begin that comprehensive reform process. In particular, the Commission should move forward with NCTA's proposed rules for reducing support in areas experiencing extensive unsubsidized facilities-based competition.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg
Steven F. Morris
National Cable &
Telecommunications Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431

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