

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

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TABLE OF CONTENTS

Summary.....	iii
I Interest of RICA	
A. Substantive Interests	
1. The NBP and the NOI/NPRM fail to recognize that Rural CLECs have demonstrated their commitment to deployment of broadband service in areas where incumbents would not.....	1
2. Unless small locally owned carriers have adequate opportunities, Support for the financial feasibility gap alone will not assure deployment of broadband in high cost areas	4
B. Procedural Issues	
1. The NBP does not bind the Commission as to the conclusions to be reached in Docket No. 10-90.....	7
2. The NOI/NPRM provides no legal analysis of the Commission’s Authority.....	8
3. The NOI/NPRM puts the Cart before the Horse.....	9
II Comments on NPRM	
A. Phase out of support to CETCs is neither sound policy nor consistent with the law.....	11
B. A total cap on high cost funds is not needed	13
C. Impact Data.....	14
D. “Indirect” funding.....	14
E. Incentive Regulation is not appropriate for small carriers.....	15
F. There is no reason to freeze ICLS.....	16
G. Verizon and Sprint’s voluntary actions should have no consequences for carriers not participating in their mergers.....	16
III Comments on Notice of Inquiry	
A. Any model used to implement the Connect America Fund should be validated and subject to exceptions in areas where it is demonstrably inaccurate.....	17
B. A reverse auction, i.e. competitive bidding, is not a valid means of determining which single provider should obtain support in the area.....	19
C. Support calculations should include revenues, net of the costs of producing them	
D. 11.24% is an appropriate starting discount rate.....	20
E. Geographic areas should be proposed by the carriers seeking support as political and census boundaries have to valid relationship to service areas.....	20
F. Broadband support should be available for both fixed and mobile services.....	21
V Conclusion.....	22

SUMMARY

Consistent with goals of the 1996 Telecommunications Act, the rural CLEC members of the Rural Independent Competitive Alliance have demonstrated their commitment to the widest possible deployment of advanced services. Accordingly, RICA fully supports the overall goal of universal availability of Broadband Internet Access expressed in the National Broadband Plan. Unfortunately, the mechanisms proposed in the NOI/NPRM are unlikely to succeed in accomplishing that goal and may severely damage the small rural carriers, ILEC and CLEC that have lead the way in extending broadband into high cost areas.

If the Commission's regulatory policies had been more favorable, RICA's members were willing and able to accomplish much more than they have. The Commission's *MAG* decision severely limiting their interstate access revenue, and the identical support and state-wide average USF rules made it financially infeasible to extend their broadband networks to all the rural residents who desired their service.

RICA recognizes, however, that even with more favorable regulation, significant rural portions of the large companies' service areas would still be without broadband access. In part this result is attributable to the Commission's statewide average rule for non-rural USF that imposes an implicit subsidy requirement on the non-rural carriers despite the policy of the 1996 Act to the contrary. It is also true, however that the differentials in support between small and large companies were generally adopted with the agreement or at least acquiescence of the large companies. New support programs to bridge the cost-revenue gap for the unserved and underserved rural areas alone will not assure ubiquitous broadband deployment. The support must be reasonably available to carriers that have demonstrated their voluntary commitment to serving rural America.

RICA has procedural concerns with the NOI/NPRM as well. First, it should be recognized that the NBP is a proposal, not binding precedent for this rulemaking. Second, the Commission must resolve its legal authority to make broadband a supported service in the wake of statutory provisions limiting support to telecommunications services provided by telecommunications areas and the *Comcast* decision. Third, the NOI/NPRM puts the cart before the horse, i.e., the NPRM will begin reducing existing USF and access revenues before it has been determined what new mechanisms, if any, to which the existing carriers will transition.

The proposal in the NPRM for a five year phase out of support to CETCs, which includes many RICA members, is neither sound policy nor consistent with the Act. RICA agrees with many of the NPRM's criticisms of the existing CETC USF rules and notes that at least 95% of the CETC goes to mobile wireless carriers. The solution is to limit CETC support to entities that demonstrate cost justification as do rural ILECs, not penalize the few rural CLECs that receive support with which they have deployed broadband capable facilities, or to remove their support at a faster rate than that of the ILECs.

Rather than cap the overall high cost fund, when CETC support is already capped and ILEC support is declining, the Commission should move promptly to eliminate the identical support rule, which should not only make funds available for broadband, but provide hard data as to the actual cost of providing competitive broadband service. Nor should ICLS be frozen, as it represents the distribution costs that are the most sensitive to low density areas. RICA intends to provide the Commission with rural CLEC specific data relevant to the proposed rules.

RICA agrees with the provision of explicit broadband support, assuming the Commission's authority is established, and reiterates that support should be based on the costs of

the ETC. Accordingly, the Part 54 rules should be revised to provide that one year after their effective date, new investment and expenses incurred by an ETC must be for broadband capable facilities. There should be exceptions for high cost areas where support is necessary to maintain existing universal services, and the current LSS support should be maintained. In addition, a completion date such as seven years should be set for recognition of depreciation of existing USF supported investment.

The Commission should not move small carriers to price cap regulation. The individual variations between small companies mean that, even assuming a valid method of determining an industry productivity factor could be established, the results would often be substantially incorrect. In response to the NOI, RICA agrees that a properly constructed and validated cost model could make cost determination more efficient, *provided* the Commission establishes an efficient process by which service providers can demonstrate the model does not accurately predict their costs. The process must include a “deemed granted” provision by which support is distributed based on submitted cost studies unless the studies are modified or rejected within a specific time period not exceeding a few months.

A reverse auction, aka competitive bidding, is not an appropriate mechanism to determine which service provider is supported in an area, for reasons that have been explained at length over several years by many parties. Instead, the process must provide small companies that have demonstrated a commitment to rural service at least a fair opportunity to become the supported carrier in an area. Geographic areas should be determined in reference to actual service areas, not artificial boundaries such as census definitions that bear no relation to efficient network design.

Although support could logically be based upon only the costs allocated to the supported services, to the extent the Commission concludes that all revenues using the supported facilities should be included in the support calculation, then the costs associated with those revenues must also be included. For example, rural carriers that offer video programming incur much higher costs to obtain content than urban carriers, so that the revenues alone are not an indication of the net revenues available to support the facility. These costs and revenues are very company specific and are not subject to accurate modeling.

Finally, RICA agrees with the NBP that “both broadband and access to mobility are now essential” and that both should be supported. The services are complementary however, not full substitutes and with different cost characteristics should have separate support mechanisms. However, given the Commission conclusion that the total fund size should not be increased, it is difficult to conclude that there will be much support available for fixed services. One answer is to move quickly to expand the contribution base with the goal of both increasing the total funds available and reducing the contribution base.

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COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance (“RICA”) files its comments in response to the Notice of Inquiry and Notice of Proposed Rulemaking (“NOI/NPRM”) in the above captioned proceedings, FCC 10-58, released April 21, 2010.

I INTEREST OF RICA

A. Substantive Interests

RICA is a national association of rural Competitive Local Exchange Carriers (“CLECs”) affiliated with rural ILECs that serve less than 100,000 access lines. RICA has actively participated in the major Commission proceedings over the last ten years with respect to Universal Service and Intercarrier Compensation, as well as other issues. As affiliates of rural ILECs, RICA members’ future existence is closely tied to their future. Because the NOI/NPRM proposes to effectively eliminate the current interstate revenue streams of rural ILECs and CLECs in exchange for a vague opportunity to compete against large national carriers with thousands of times their revenues for some as yet undefined future model based Broadband

support system, RICA has significant concerns with both the general proposals in the NOI/NPRM as well as the CLEC specific proposals.

The NBP and the NOI/NPRM fail to recognize that Rural CLECs have demonstrated their commitment to deployment of broadband service in areas where incumbents would not.¹ Instead, the Commission proposes to bring rural carriers, ILECs and CLECs under the very rules that failed to encourage broadband deployment in the rural areas served by the large carriers and in the end leaves the future of these small entities to auctions in competition with large carriers that they cannot possibly win.

RICA fully agrees with the overall goal of universal availability of Broadband Internet Access set out in the National Broadband Plan (“NBP”) and the Joint Statement on Broadband (“JSB”) and has consistently said so on the record for several years.² RICA has long advocated substantial changes in the Universal Service mechanisms and intercarrier compensation. Unfortunately, the mechanisms to achieve the goal proposed in the NBP and the Notice of Inquiry/Notice of Proposed Rule Making (“NOI/NPRM”) are not only unlikely to succeed, but may severely damage if not destroy the rural telecommunications industry that for more than a century has specialized in serving high cost rural areas ignored or underserved by the large carriers.

Essentially, the proposals fail to recognize the strength of the motivation of small, rural carriers to extend service to the maximum degree possible. The motivation cannot be discovered through any net present value financial analysis, but it is very apparent from the performance of this segment of the industry over more than 100 years. The proposals also fail to recognize that

¹ CITE to recognition of more BB in rural ILEC areas

² Federal Communications Commission, *Connecting America: The National Broadband Plan*, (rel. Mar. 16, 2010)(“NBP”); *Joint Statement on Broadband*, GN Doc. No. 10-66, Joint Statement on Broadband, FCC 10-42 (rel. Mar. 16, 2010) (“JSB “).

the most efficient mechanism to obtain ubiquitous broadband deployment is to facilitate the expansion of existing networks into presently unfeasible areas.

In multiple Commission proceedings over the last decade, RICA has explained that the opportunity to provide competitive local exchange service created by the 1996 Act allowed its members to provide modern and advanced telecommunications and information services to rural areas that previously had no hope of receiving such service from the large ILECs serving those areas.³ RICA members extended to these large ILEC areas the high quality service, including Broadband capability that subscribers of their rural ILEC parents had been receiving for many years. The extraordinary percentage of subscribers in rural exchanges that converted to the service of the rural CLECs is powerful evidence of the deplorable level of service offered by the large ILECs in many of these communities.⁴

As the National Broadband Plan (“NBP”) recognizes, substantial portions of the service areas of the ILECs remain without Broadband Internet Access. While there many reasons why these rural areas are without service, the “digital divide” would certainly have been much smaller had not the Commission by action and inaction severely curtailed the financial ability of rural CLECs, such as RICA’s members, to extend their services.

³ See, e.g. RICA Comments, NBP Public Notice #19, GN Docs. 09-47, 09-51, 09-137, Dec. 7, 2009.

⁴ *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to Be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, Report and Order, 21 FCC Rcd 11506 (2006), para. 12 (“Mid-Rivers serves between 85 and 93 percent of the access lines in the Terry exchange....The Mid-Rivers facilities in Terry appear to be technically superior to those of Qwest. Mid-Rivers also appears to provide maintenance and repair operations that are located much closer....”); *Petition of South Slope Cooperative Telephone Company For an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act Declaring that South Slope Cooperative Telephone Company Shall Be Treated as an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon*, Notice of Proposed Rulemaking, 23 FCC Rcd 15046 (2008).

Specifically, the *MAG* decision substantially reduced the level of interstate access revenues of rural CLECs, which the Commission had only months before found to be properly set at the NECA rate level.⁵ Second, the “identical support rule” combined with the state wide average rule for non-rural companies meant that neither rural CLECs or the large ILEC could receive high cost support for the high cost portions of large ILEC service areas in states with average cost below the threshold for support in the non-rural mechanism. Third, the Commission’s Intercarrier Compensation proceeding opened in 2001 suggested the probability that access revenue might be further reduced by conversion to a “bill and keep” system.⁶ Although this proceeding remains unresolved despite enormous efforts by all segments of the industry, the uncertainty it created and which remains is a severe disincentive to any carrier, large or small to invest in the facilities needed to bring Broadband to high cost areas.

2. Unless small locally owned carriers have adequate opportunities, Support for the financial feasibility gap alone will not assure deployment of broadband in high cost

RICA acknowledges that even had the Commission’s policies over the last 10 years been favorable to the deployment of advanced services by rural CLECs, there would still remain significant portions of the large ILEC areas without Broadband. The NBP tends to attribute the lack of service to the fact that the areas without service are generally those for which a feasible

⁵ *Federal-State Joint Board on Universal Service, and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, and Report and Order in CC Doc. No. 00-256, 16 FCC Rcd 11244 (2001); *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Doc. No. 96-262, Seventh Report and Order and Further Notice of Proposed Rule Making, 16 FCC Rcd 9923 (2001). (“CLEC Access Reform Order”) Although this order permitted rural CLECs to charge the NECA rate, it did not allow them to enter the NECA pool so that a rural CLEC with relevant costs above the NECA rate does not fully recover its costs as would a rural ILEC with the same costs.

⁶ *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001)

business case cannot be made in the absence of a support mechanism.⁷ While it is correct that provision of broadband service in high cost areas is generally not financially feasible based on end-user revenues alone, the Commission should not delude itself by concluding that the large companies would have upgraded the rural areas if only the USF rules had been different, or more importantly, that they will rush to invest as soon as the rules creating the Connect American Fund (“CAF”) are adopted.

There are important environmental and corporate reasons why small companies successfully serve rural areas and large companies often do not. Large companies’ service areas generally include large metropolitan areas with both high revenue potential and high attractiveness to competitors. Management’s duty to the company’s shareholders requires that it focus its efforts on serving and retaining both the large scale residential areas and the enterprise customers in those areas. Since at least the 1996 Act, the large companies have had to operate under the contradictory dictates of a statute that encourages elimination of “implicit” support⁸ and the Commission’s state-wide average USF rules that inherently presumes the large companies will use funds from their metropolitan areas to support their rural areas, even though their competitors have no such obligation.

The current regulatory impediments to investment by large carriers in rural areas were largely adopted at the urging or with the acquiescence of the large ILECs, beginning prior to the 1996 Act.⁹ The large companies agreed in 1984 with the initial USF formulas that provided a higher level of support for small companies, and did not object to the Commission’s 1997

⁷ NBP, Chap. 8.1.

⁸ 47 U.S.C. 254(e); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999).

⁹ With the exception of Qwest in some aspects, *see: Qwest Communications Int;l v. FCC*, 398 F.3d 1222 (10th Cir. 2005) Qwest also resisted price cap regulation initially.

decision continuing the bifurcated formulas, statewide averaging, or the use in the formulas of the 1996 Act's company size based definitions of rural and non-rural. In 1987 the Commission adopted rule changes responding to the large companies' objection to the requirement that they participate in the NECA Common Line Pool. The new rule adopted their agreement to support the pool "as if" they still participated.¹⁰

The large companies convinced the Commission they should be relieved of the limitations on their earnings inherent in rate of return regulation in exchange for an "incentive" regulation plan,¹¹ which, in effect, gives them an incentive not to invest in rural areas. By successfully obtaining government permission to partially "put Humpty Dumpty back together again," AT&T and Verizon reintegrated local, long distance and wireless services into two very large carriers. Because these carriers now became both payers and receivers of access charges and received a substantial proportion of their access revenue from themselves, it became in their interest to substantially reduce or eliminate access charges. For small ILECs and CLECs however, those revenues remain a key ingredient to universal service cost recovery and the necessary financial feasibility required to upgrade rural telephone networks to broadband.

In contrast with large publicly traded companies, small rural companies, ILEC and CLEC, are generally under local ownership and control and operate only in rural areas. Small company managers and owners are in direct contact with the people they serve and operate under a corporate philosophy that dictates provision of the maximum possible level of service consistent with financial feasibility. Local ownership, whether in the form of cooperative, family

¹⁰ *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Order, 2 FCC Rcd 2953 (1987), *recon. den.* 3 FCC Rcd 4543 (1988).

¹¹ *Policies and Rules Concerning Rates for Dominant Carriers*, CC Doc. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990).

or community, also means that company decisions are not dictated by Wall Street's reaction to the latest quarterly earnings report but by calculation of the maximum level of service that will have long term financial feasibility. The NBP's focus on modeling the Net Present Value of the rural revenue to cost gap overlooks entirely the significance of the non-financial incentives of owners and managers of rural telephone companies, ILECs and CLECs, to maximize the level of service they can provide to their neighbors in the rural communities.

Since the later part of the 19th Century, locally owned rural companies have sought to bring modern communications and information services to the rural areas ignored or underserved by the large carriers. Where the government has recognized the benefits to the nation of improved rural service, by e.g. establishing the REA (now RUS) loan programs, the Ozark separations rules, the Universal Service Fund and the NECA pools, these companies have consistently demonstrated their ability to provide exceptional service. RICA members and their ILEC parents therefore emphatically reject the statement of a large company in a recent Commission proceeding that: "ILECs did not choose to serve the high-cost areas where cable operators do not provide service. Rather they were required to do so by regulation..."¹²

B. Procedural Concerns

1. The NBP does not bind the Commission as to the conclusions to be reached in Docket No. 10-90.

On March 19, 2010 a Commission News release announced the delivery to Congress of the National Broadband Plan in compliance with the requirement of the American Recovery and Reinvestment Act.¹³ On the same day it released the Joint Statement on Broadband. The former,

¹² Comments of CenturyLink on the National Cable Telecommunications Association's Petition for Rulemaking, RM-11584, Jan. 7, 2010, p.14

¹³ News, FCC Sends National Broadband Plan to Congress, Mar. 16, 2010

was issued under the authority of the Chairman, as was last year's Report on Broadband Strategy for Rural America,¹⁴ but only the JSB was adopted by a vote of the Commission. The JSB makes clear that the NBP is not the result of Commission action: "Although each of us may have differing opinions on some of the specific recommendations set forth in the Plan, we all share the following common beliefs:..."¹⁵ The NOI/NPRM states it is the first in a series of proceedings to implement the vision of the NBP. RICA raises the difference in the status of the NBP, the JSB and the NPRM/NOI here to point out that the NOI/NPRM should be taken as an invitation for public input on the conclusions of the NBP with full recognition that the NBP does not constitute binding precedent controlling any decisions that may be made in the proceeding.¹⁶

2. The NOI/NPRM provides no legal analysis of the Commission's authority.

Despite the extraordinary press, public and Congressional attention to the implications of the *Comcast* decision,¹⁷ and the several rounds of comments in prior proceedings in which the issue was discussed, the NOI/NPRM inexplicably contains no discussion of the issue of whether the Commission has authority to provide Universal Service Support for Broadband Internet Access.¹⁸ Subsequently, however the Commission released a Notice of Inquiry in a new proceeding which directly raises the issue: "Can the Commission reform its universal service program to support broadband Internet service by asserting direct authority under section 254,

¹⁴ News, FCC Acting Chairman Copps Releases Report on Broadband Strategy for Rural America, May 27, 2009. No explicit proceedings were opened by the Commission to implement the recommendations of this report.

¹⁵ JSB at para. 3.

¹⁶ RICA recognizes and appreciates the significant public input that the Commission provided for in the course of developing the NBP. See, e.g. Comments of the Rural Independent Competitive Alliance, NBP Public Notice #19, Dec. 7, 2009.

¹⁷ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010) (*Comcast*).

¹⁸ The issue is discussed in the NBP at 17.3.

combined with ancillary authority under Title I? “¹⁹ The Commission should make clear that the two proceedings will be considered in tandem and the legal conclusions in Docket 10-127 will govern whether or how to proceed with either the NOI or NPRM in Docket 10-90 with respect to support for broadband.

3. Cart before the Horse

Despite assurances of its intent to “preserve[] the connectivity that Americans have today and advance[] universal broadband”,²⁰ the Commission proposes in the NPRM to adopt rules to begin immediate reductions in revenues to rural companies. Apparently the NOI will ultimately lead to a further NPRM, now scheduled for the fourth quarter of this year, that will propose rules for a replacement support system that will assure rural subscribers that Broadband Internet Access service and voice service will continue to be available to them from some provider of services offering a quality of services at rates “reasonably comparable” to those in urban areas.²¹

The proposals in the NPRM, if adopted would have immediate negative impacts on the ability of rural carriers to continue to provide connectivity at current levels as a result of substantial reductions in revenues from sources other than end users. The proposals include capping high cost support at 2010 levels, eliminating “indirect” funding of broadband-capable networks, shifting rate of return carriers to incentive (price cap) regulation, freezing ICLS at a per line amount, eliminating IAS support, reducing the “cap” on ETC support as a result of the Verizon and Sprint “voluntary” actions, and elimination of all high-cost support for CETCs over five years.

¹⁹ *Framework for Broadband Internet Service*, Notice of Inquiry, GN Doc. No. 10-127, rel. Jun. 17, 2010, para. 32 (“*Broadband Framework NOI*”).

²⁰ NOI/NPRM at para. 10. *See also*, para. 53 and NBP at 147.

²¹ 47 U.S.C. 254(b)(3)

Although not addressed directly in the NPRM, the NBP recommends additional reductions in non-end user revenue through reductions in intra- and interstate access charges to a near zero level.²² Because intercarrier compensation and universal service support are simply separate mechanisms for recovering carriers' costs not recovered from end-users, it is the sum of the results of the two mechanisms (as well as any state access and/or USF revenue) that determine whether a carrier can offer services at reasonable cost to consumers. Carriers cannot explain the impact of proposed changes in Universal Service support without also knowing what related changes to intercarrier compensation are contemplated. The Commission, however, apparently does not intend to begin a proceeding on the later until the fourth quarter of this year.²³

In contrast to these specific proposals for immediate reductions, the NOI offers only a broad vision of how the Mobility Fund and the CAF might be structured with neither specifics nor a time line with sufficient detail by which carriers could compute a transition path.²⁴

Especially given the likelihood of litigation over the Commission's authority in the absence of

²² NBP at Recommendations 8.7, 8.11, 8.14. The NBP's objection that terminating access rates are "not uniform despite the uniformity of the function of terminating a call" ignores the obvious point raised throughout WC Docket No. 01-92 that different carriers have different underlying costs.

²³ Broadband Action Agenda at 3.

²⁴ The NBP states that it contemplates an "expedited process to fund broadband infrastructure buildout in unserved areas with savings from the immediate changes in the USF mechanisms proposed. Although there is a forecast of "savings" of \$15.5B over 10 years (in 2010 present value), this forecast is carefully hedged as "depending on the details and timing of implementation" (NBP Reco 8.6) Four Billion of the \$15.5B is predicted to be sufficient to fund the Mobility Fund (Reco 8.3), replacement revenues from intercarrier compensation reform, expanding USF for health care, expanding E-rate support and a pilot broadband lifeline. The remaining 11.5B would fund the CAF. Without some means of applying these gross numbers to their particular situations, carriers cannot demonstrate particular impacts, positive or negative.

Congressional clarification, small carriers are justifiably concerned to begin transitioning off of a system that they can understand in exchange for one that is short on specifics and uncertain of adoption. In short, the new system and the changes to the old should be adopted as a single package so carriers and the public can understand and quantify its impacts. The Commission should follow the precept in the NBP that:

Sudden changes in USF and ICC could have unintended consequences that slow progress. Success will come from a clear road map for reform, including guidance about the timing and pace of changes to existing regulations, so that the private sector can react and plan accordingly.²⁵

II COMMENTS ON NPRM

- A. Phase out of support to CETCs is neither sound policy nor consistent with the law.

Rural CLECs have demonstrated they are ready willing and able to provide broadband service in areas that large carriers will not. RICA explained in Section I, above, that the factor of local ownership and control is a powerful impetus to find ways to make service available and that it is more than just the absence of USF support that accounts for the large carriers' historic practice of minimizing rural investment. Rural carriers can continue to provide state-of-the-art service under wise regulatory policies. The solution to the failure of the large carriers to adequately serve rural areas is not to take support away from the small carriers and give it to the large, because that, at best, just changes the location of the digital divide.

The NPRM, following the NBP, proposes a five year phase out of high cost support to Competitive ETCs.²⁶ CETCs as a category are often equated with wireless carriers, but some

²⁵ NBP, Chap. 8.

²⁶ NPRM at paras. 60,61.

rural CLECs are ETCs and receive a small percentage of the \$1.5B support.²⁷ Under the “identical support” rule Wireless carriers receive at least 95% of the CETC support, much of it because they operate in the areas of rural ILECs and receive the same per line support as the ILEC receives based on its total cost of providing supported services. Rural CLECs generally do not compete with rural ILECs because the rural CLEC business model only works in areas served by large carriers that provide demonstrably poor service, which is not the case with most rural ILECs. A rural CLEC can only successfully overbuild an ILEC if it quickly gains very substantial market share. Because of the statewide average rule applicable to non-rural ILECs, in many of these areas there is no USF to be obtained under the identical support rule.

The NBP criticizes the existing system for providing support to more than a dozen CETCs in an area and to multiple handsets on a single-family plan. RICA agrees with these criticisms,²⁸ but does not agree that the correct solution is to penalize the few rural CLECs that receive support because of the problems caused by the application of the rule to wireless carriers. RICA has argued for many years that all competitive ETCs should be subject to the same requirements as ILECs to demonstrate their cost as a condition of receiving support. If the Commission had made this change five years ago, the CETC portion of the fund would be much smaller today. Two and a half years ago, the Commission proposed eliminating the identical support rule, noting that:

...[N]umerous parties and the Joint Board have recommended that the Commission consider abandoning the identical support rule and replacing it with a requirement that

²⁷ Many RICA member rural CLECs are affiliated with mobile wireless providers that are ETCs, and recognize that those operations should also be subject to a cost-based support system.

²⁸ Although a given ILEC study area may have multiple CLECs, generally these do not overlap each other as do wireless ETCs.

competitive ETCs receive support based on their own costs. Since 2004, several parties have recommended that the Commission make such a change.²⁹

The Commission now proposes to remove CETC support in five years, albeit with a vague indication that CETCs will be eligible to compete for CAF support at some future time. Whatever that timetable, it is clear that CETCs will lose at least some of their existing support prior that time, and that they will lose it faster than will ILECs. Section 214(e) and 254 demonstrate that Congress intended that CETCs will be eligible for Universal Service support, and there is no indication of Congressional intent that the Commission should enact rules that discriminate against CLECs similarly situated to ILECs.

B. A total cap on high cost funds is not needed.

RICA supported the existing cap on CETC support as a necessary interim measure pending reform of the rules by such measures as eliminating the identical support rule and moving to a cost-based system.³⁰ With CETC support capped and ILEC support declining, it would appear that rather than create another cap and expand the scope of arbitrarily shifting support between carriers, the Commission should proceed with elimination of the identical support rule and focus on how best to support broadband. In addition, because of the up to two year delay in recognizing investment in the USF, capping rural ILEC support at 2010 levels will mean that those carriers will not recover costs related to investments made after 2008 in reliance on the rules then in effect.

²⁹ *High Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Doc. Nos. 05-337 and 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008).

³⁰ *High Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Doc. No. 05-337, CC Doc. No. 96-45, Comments of RICA, Jun. 6, 2007.

C. Impact data

The NPRM asks carriers that are concerned that the proposed changes will impact their ability to continue to provide voice service and to deploy broadband to provide data relevant to their investments and “free cash flow.”³¹ Although RICA does not have comprehensive data for the rural CLEC industry, it will work with individual members and the Commission staff to provide appropriate data with respect to the impacts of the proposed rules.

Because they are differently structured means of recovering the same categories of cost, USF and Intercarrier Compensation are closely interrelated and any impact analysis must be based upon analysis of both and an assumption that the Commission will closely coordinate changes in these mechanisms.³²

D. “Indirect” Funding

The NPRM states its purpose is to eliminate the current “indirect” funding of broadband because it is occurring without transparency or accountability.³³ Although it is correct that the current system does not require investments to be broadband capable as a condition of support, it is a well known that nearly all current investment made by rural ILECs and CLECs is, in fact, broadband capable and has been for several years.³⁴ It is thus not correct to say that such funding is not transparent or that the recipients of cost based support are not accountable. Further the NBP proposes to continue funding of facilities capable of providing both voice service and broadband Internet access, so the only conceptual difference for cost based support

³¹ NPRM at para. 53.

³² NPRM at para. 54.

³³ Id.

³⁴ National Exchange Carrier Association, Trends 2009. (Ninety seven percent of NECA TS Pool members offer DSL service).

recipients is that the broadband capability that is now installed voluntarily will become mandatory.

RICA nevertheless agrees that broadband support should be explicit³⁵ and reiterates its previous recommendation that all Universal Service support be based upon the costs of the ETC. The Commission should modify its rules and the definition of universal service, consistent with the requirements of Section 254(c)(1) and (2), to provide that after one year from the effective date, new investment and expense incurred by an ETC and supported by the USF will be limited to investments that are used to provide networks that support broadband service (at speeds and capacities determined by the Commission). Two exceptions would be recognized to ensure the maintenance of universal service in high cost to serve areas:

(a) in high cost to serve rural areas, as defined by cost or density, funding should include the additional investment and ongoing expenses necessary to maintain the basic universal services as currently defined by the Commission's rules and

(b) retention of the current small amount of support for LSS.

In addition, with respect to existing network investment by ETCs, the USF distribution rules should be modified to permit depreciation of the existing investments supported by USF to be completed within an identified time frame (e.g., seven years). An adjustment would recognize the current two-year cost recovery lag in the Commission's existing rules.

E. Incentive regulation is not appropriate for small carriers.

It is ironic that the NBP recognizes that rate of return regulated LECs offer broadband to a significantly higher percentage of their subscribers than do price cap regulated carriers, but then proposes to impose some form of price cap regulation on those small carriers that have

³⁵ Assuming the Commission's authority to provide such support is established.

made the investments in rural broadband facilities that the large price cap carriers were incented not to make. This current price cap regulations are without any accepted theoretical foundation for the productivity factor; it is essentially a number chosen by negotiation with the large companies. Even if a defensible system could be developed for large companies, the significant individual variations between small companies means that the results will often be incorrect. Because RICA proposes that all USF support be based on individual costs, for ILECs and CETCs alike, it is important that an accurate cost determination mechanism remain in effect.

F. There is no reason to freeze ICLS

The proposal of the NPRM to freeze ICLS at a per line amount should be rejected for much the same reason as the overall cap on USF.³⁶ ICLS recovers part of the cost of local distribution, which in turn varies inversely with the subscriber density of the area served. The Commission has identified the major national problem as the 10% of households for which deployment of broadband facilities is beyond the financial reach of providers under current rules. It makes no sense to expect carriers to build out further at increased per subscriber cost, but freeze the support that for that plant as if their costs had not increased.

G. Verizon and Sprint's voluntary actions should have no consequences for non-participating carriers in their mergers

Subsequent to the freeze of CETC support on a state-by-state basis, the Commission approved mergers involving, separately, Verizon and Sprint. The merger approvals were conditioned on their "voluntary" commitments to phase out high cost support. The NPRM asks how implementation of these commitments should be coordinated with reduction in CETC support. RICA explained in Section II A, above, why the CETC phase out should not be

³⁶ NPRM at para. 56.

adopted. In any event, the commitments of Verizon and Sprint should have no effect on other CETCs. First, the actions of the large carriers should not be taken as sound policy for small carriers. Second, the commitments were not, in fact, voluntary but a quid pro quo for approval of their mergers. The frozen amount of support available to small carriers that were not involved in these mergers should not be reduced as a result of the Verizon/Sprint commitments.

Optimally, the Commission will soon replace the “identical support rule” for determining USF distribution to CETCs with rationally cost-based rules for all ETCs that are comparable to the cost-specific rules applicable to rural incumbent LECs. While the identical support rule remains in place subject to the established interim cap, however, it is inequitable to reduce the funding available to CETCs operating in any State where Sprint and Verizon voluntarily agreed to phase out their respective distributions of USF in exchange for consideration related to the approval of their mergers.

III COMMENTS ON THE NOTICE OF INQUIRY

- A. Any model used to implement the Connect America Fund should be validated and subject to exceptions in areas where it is demonstrably inaccurate.

The NOI asks for comment on the use of a model to determine the minimum amount of support necessary to support networks that provide broadband and voice services.³⁷ Although RICA has consistently supported a requirement that Universal Service Support be based on the cost of the carrier receiving support, a properly constructed model could be a useful tool in determining that cost in an efficient manner. There are, however, two very important caveats to this agreement.

³⁷ NOI at paras, 13, 14 et seq.

First, unlike the HCPM, the outputs of any model must be validated. Validation requires performing actual studies of a statistically valid sample and comparing the results with the model's predictions. "Validating" inputs is not validation of a model. The Commission's model may have been sufficiently accurate to develop an estimate of approximate number of households without broadband and a "ball park" estimate of the cost of expanding service to those households, but a very different level of accuracy is required to establish the cost of providing service in any particular location. A large company may be able to tolerate random inaccuracies in a model if the errors in different service areas tend to cancel each other out, but an erroneous cost projection for a single area can either doom a small company or wildly overcompensate it.

Second, even if a model is statistically validated, the great diversity in service areas in the country means that the model's prediction will be materially erroneous in some instances.³⁸ The Commission must establish a procedure for service providers in those areas to demonstrate that the amount of support necessary predicted by the model is inaccurate. This procedure must have clear standards and produce timely answers. Given the Commission's long history of taking many years to act on waiver and ETC designation petitions, the procedure must include a "deemed accepted" provision if the cost study is not modified or rejected within a specified period of no more than a few months.

³⁸ RICA does not agree with the statement at paragraph 17 that a model "could provide a more uniform and equitable basis for determining support than individual carrier cost studies...." Of course cost studies must follow all appropriate rules, but the Rural Task Force demonstrated that the errors in predicting the costs of any particular small rural area are random and in both directions. Such unpredictability means that results will be neither uniform nor equitable.

An unvalidated model is particularly unsuited to the proposed “accelerated funding,” but some non-auction concepts in the “competitive procurement” proposal are consistent with RICA prior proposals.

Forward looking costs are appropriate for comparing alternative proposals in “Greenfield” situations, but may be invalid, either above or below actual cost, when the issue is extension of existing facilities.³⁹ Where used, forward looking costs should be those of the carrier seeking support, not based on some presumed platform which can never be kept current or assured applicable or optimal in the situation.

- B. A reverse auction, i.e. competitive bidding, is not a valid means of determining what single provider should obtain support in an area.

The Commission and the Joint Board have considered various proposals to introduce competitive bidding as a means of determining the identity of the recipient of Universal Service Support and the amount. RICA and others have repeatedly explained why the result would not be consistent with the purpose of the Act. Those comments are incorporated herein by reference.⁴⁰ Nothing in the NBP or Appendices B & C to the NOI/NPRM has resolved those problems.

- C. Support calculation should include revenues

RICA agrees that calculation of support for broadband facilities may properly include consideration of the revenues produced by the various services utilizing those facilities, *provided* that all of the costs properly attributable to those services are included. It would not be valid, for example, to reduce support by the amount of revenue a service provider obtains from providing video programming over a broadband facility without recognizing the costs incurred to obtain

³⁹ NOI, paras. 27. 33.

⁴⁰ RICA Comments on the Joint Board’s May 1, 2007 Public Notice, WC Doc. No. 05-337, pp 3-8; RICA Reply Comments, WC Doc. No. 05-337, Nov. 8, 2006, pp. 2-4.

the programming, market the service, sign up subscribers, transmit the programming, allow for uncollectibles, etc.. Such revenues will be very provider and location specific and so cannot accurately be forecast by a model. Moreover, the proposed consideration of revenues may divert the Commission from its statutorily mandated focus on ensuring that universal service support is sufficient to support the provision of those services that are included in the definition of universal service. To the extent that the Commission may be concerned that universal service support should not subsidize non-universal services, the Commission has at its disposal established rules and regulations to ensure that universal service bears only the appropriate share of joint and common costs of facilities used to provide both universal services and other services.⁴¹

D. 11.25% is an appropriate starting discount rate or rate of return.

Although the 11.25% rate of return prescription was based on very different circumstances than those that exist today, it provides a useful and adequate starting point.⁴² The Commission should not delay developing broadband support mechanisms to resolve this extremely complex issue, especially since at this point it is not clear who the supported recipients will be. The proposed 20 year lifetime assumption is too long however, especially given the Commission's statement that "future-proof" facilities should not be supported.

E. Geographic areas should be proposed by carriers seeking support as political and census boundaries have no valid relationship to service areas.

⁴¹ See, 47 U.S.C. §254(k).

⁴² The statement in Appendix C of the NOI/NPRM that carriers require revenues in excess of cost of capital to be induced to build is not correct. As the Commission has stated elsewhere: "...rate of return is intended to provide a carrier with the opportunity 'to earn a return that is high enough to maintain the financial integrity of the company and to attract new capital to the business.'" *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, CC Doc. No. 89-624, 5 FCC Rcd 7507, 7532 (1990).

The NBP recommends funding only in geographic areas where there is “no private sector business case” to provide broadband and high-quality voice grade service. The most problematic aspect of this formulation is the term “area.” All carriers have cost variations throughout their service areas, but deploy a network design that optimizes efficiency over the entire area. If the USF rules provide support only for arbitrary portions (i.e. US Census-based geographic areas—NBP recommendation 8.2) of the service provider’s service area as determined by a model (whether to calculate support or set the reserve price for competitive bids), the cost of service will certainly be inaccurate, either overstating or understating the costs of service the area. The 1996 Act wisely directed that for rural telephone companies, their service area for support purposes is their study area.⁴³ Because facilities in the area where broadband is currently available will almost always be utilized in providing service to the currently unserved areas, there will be continuing difficulty determining how to allocate that cost if the unserved area is considered as a separate entity.

F. Broadband support should be available for both mobile and fixed broadband services.

The NBP recognizes the need for both mobile and fixed broadband: “both broadband and access to mobility are now essential needs, and America should have healthy fixed and mobile broadband ecosystems.”⁴⁴ RICA agrees with this conclusion; the mobile and fixed services are complementary, and rural (and urban) subscribers want and need both.⁴⁵ However, the support mechanism and cost calculations should be kept separate. Mobile and fixed each have

⁴³ 47 U.S.C. 214(e)(5).

⁴⁴ NBP Recommendation 8.3.

⁴⁵ Cecilia Kang, Going Wireless all the way to the Web, *Washington Post*, Jul 10, 2010, A9, col. 1 (quoting Matt Wood, associate director at Media Access Project: “Wireless devices are a great gateway online for people who don’t have other forms, but its not a replacement for wire-line broadband.”)

advantages and disadvantages to customers, but the technologies have significantly different cost characteristics.

Given the Commission's stated intent to retain the current size of the USF, provide support for extension of broadband service to areas where it is not available, and maintain the current level of connectivity, the amount of support available per unserved household provides a strong indication that there will be little support available for extension of the fixed broadband beyond what currently exists.⁴⁶ Given further the unavoidable spectrum and shared use limitations on mobile broadband, it is difficult to see how reasonable comparability in rates and services between urban areas and rural areas can be achieved.

One answer is that the size of the fund should not be seen as the limitation on the amount of support available; rather, the limitation is the contribution factor. Expansion of the contribution base to include the beneficiaries of expanded broadband availability should allow the Commission to both increase the total amount of support and decrease the current contribution factor.

V CONCLUSION

RICA urges the Commission to proceed expeditiously by developing the CAF concept sufficiently that the industry can evaluate fully the impacts of the transition to a broadband based support system. Simultaneously, it should resolve the questions with respect to its authority to provide support directly to broadband. The Commission need not wait on either of these actions, however, to eliminate the identical support rule and move all ETCs to a cost based support system. If a valid model is subsequently developed together with adequate exception provisions for those areas where it is materially inaccurate, the CETC support can convert to the model.

⁴⁶ See, Joan Engebretson, "Universal Service broadband buildout likely favors wireless," Connected Planet, Jun. 24, 2010.

Finally, the Commission should ensure that its broadband support mechanisms support both mobile and fixed services, with appropriate recognition of their differences.

Respectfully submitted

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