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

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON NOTICE OF PROPOSED RULEMAKING

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SUMMARY

As in the initial comments, NASUCA questions the Commission's apparent view that high-cost support for voice services can be replaced by support for broadband services. That is not legally possible – especially when broadband has not yet been determined to be a supported service under § 254 of the Act – and would also involve abandoning the voice services that have been the key to the Nation's communications needs for many years.

That being said, there are substantial amounts in the current high-cost fund that are not necessary to ensure that voice service are affordable and are reasonably comparable in rural areas to those available in urban areas. The dollars from the efficiencies that can be squeezed out of the current high-cost fund can indeed be used to provide funding for broadband in unserved and underserved areas. NASUCA reiterates its position that funding for broadband should not increase the burden on consumers from paying into the high-cost fund. The ways in which funding for broadband can be provided are, however, outside the scope of the NPRM, and NASUCA identifies portions of others' comments that are "off-topic" for this NPRM.

On a general level, NASUCA responds in the negative to carriers' assertions that if an incumbent carriers does not receive funding for broadband, the ILEC should be relieved of traditional responsibilities surrounding voice service. NASUCA also disagrees with comments arguing that there is a need to put broadband funding in place before reducing the current high-cost fund.

With regard to the Commission's specific proposals for reducing the HCF, NASUCA first reiterates the lack of need for placing a cap on the overall fund; better to cap the current pieces of the fund that do not currently have caps. And NASUCA shows the numerous errors in the comments of those that oppose such a cap.

One of the most widely discussed topics in the comments was the Commission's proposal to eliminate certain elements of the high-cost fund that represent replacement for lost access charge revenues. The carriers that receive these replacement revenues fairly uniformly oppose further reductions unless there is also replacement for **those** revenues. NASUCA shows how such replacement is not needed, addressing specifically the ILECs' claims that they will suffer financially if these revenues are lost. But NASUCA does agree with carriers' assertions that other aspects of intercarrier compensation should be fixed; the fixes will actually increase the ILECs' revenues.

NASUCA agrees with the carriers that see no necessary connection between the form of regulation – rate-of-return or incentive – under which ILECs' interstate services are regulated, and the amount of high-cost funds they receive. And NASUCA reiterates its opposition to carriers having the choice of their form of regulation; carriers will inevitably choose the form which is in their own self-interest, rather than the form that serves the **public** interest.

NASUCA supports the elimination of support for competitive ETCs, especially the elimination of the support that Sprint and Verizon Wireless agreed to in earlier FCC proceedings. Based on the record, NASUCA shows that the CETCs have not shown how withdrawal of their support will harm consumers. NASUCA also points out the errors in the arguments that CETC support is legally compelled.

NASUCA briefly responds in the negative to those arguing that high-cost support mechanisms should be replaced by reverse auctions, and to those arguing that the current revenue-bases **contribution** mechanism should be replaced. And finally, NASUCA reiterates support for the proposals for reducing the HCF contained in NASUCA's initial comments.

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I. INTRODUCTION

On April 21, 2010, the Federal Communications Commission ("FCC" or "Commission") released a combined Notice of Inquiry ("NoI") and Notice of Proposed Rulemaking ("NPRM").[1] The NPRM – which is the focus of these reply comments – sought "comment on specific common-sense reforms to cap growth and cut inefficient funding in the legacy high-cost support mechanisms and to shift the savings toward broadband communications."[2] The accompanying NoI sought "comment on whether the Commission should use a model to help determine universal service support levels in areas where there is no private sector business case to provide broadband and voice services."[3]

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[1] FCC 10-58 ("NoI/NPRM").

[2] Id.

[3] NoI/NPRM, ¶ 2. The NOI also sought "comment on the best way [for the Commission] to create an accelerated process to target funding toward new deployment of broadband networks in unserved areas, while [it is] considering final rules to implement fully a new [Connect America Fund] CAF funding mechanism that efficiently ensures universal access to broadband and voice services." Id.

Given the significantly different focuses and purposes of the two requests for comment, the National Association of State Utility Consumer Advocates ("NASUCA") filed separate comments on the two requests. It does not appear that any of the other commenters did the same, although some of the comments – despite mentioning both the NoI and the NPRM – focused exclusively on the subjects in the NPRM. And, like NASUCA, many of the other commenters felt the necessity to submit comments that went beyond the four corners of the NPRM. Thus these reply comments, of necessity, respond (although briefly) to issues beyond the NPRM.

In this regard, NASUCA must point to the all-too-typical parochialism evident in many of the comments. This chiefly manifests itself in the industry comments, with various segments of the industry attempting to maximize the amount of the high-cost fund ("HCF") that goes to that segment, while attempting to minimize the amount of support that goes to the competition.[4] Such positions are understandable, but should not be given great weight. But this parochialism also shows in the comments of those in regions of the country complaining about the amount of support that goes to other regions.[5] As NASUCA has stated in other contexts, if each state or region got back from the fund exactly what the state or region put into the fund, there would be no need for a national, federal, **high-cost** fund.[6]

[4] E.g., Comments of the Rural Cellular Association ("RCA") at 6; Comments of the United States Telecom Association ("USTelecom") at 14-15.

[5] E.g., Comments of the New Jersey Board of Public Utilities ("NJBPU") at 4.

[6] Similarly, the assertion/complaint of Time Warner Cable Inc. ("TWCable") (at 3) that "although [it] is a significant contributor to USF, it does not receive any such support…." misapprehends the nature of such a program. If TWCable were willing to undertake carrier-of-last-resort ("COLR") responsibilities, and to offer basic telephone service on a stand-alone basis, it might qualify for high-cost support. But it does not, and thus should not receive support.

There were more than 90 comments filed on the NPRM (and the NoI). These reply comments will not pretend to address all of those comments, or even all of the issues raised by any single commenter.[7]

These reply comments will first address some general issues regarding the HCF, and then will turn to the four proposals raised in the NPRM: capping the HCF; support related to access charges; incentive regulation; and eliminating support for competitive eligible telecommunications carriers ("CETCs"). The reply comments will also address certain "outside the box" subjects discussed in others' comments.

In these reply comments, NASUCA will focus on other parties' positions that are wrong-headed or otherwise contrary to the **public** interest. These reply comments will not seek out comments that support NASUCA's proposals, and thus will not repeat the bulk of those proposals.

But it is important to repeat here two key NASUCA positions: First, that support for broadband services cannot entirely take the place of support for traditional telecommunications services. As stated in NASUCA's initial comments,

[7] Comments responded to here include those from AT&T Inc. ("AT&T"); CenturyLink; Comcast Corporation ("Comcast"); Communications Workers of America ("CWA"); COMPTEL;CTIA – The Wireless Association® ("CTIA"); the five MACRUC state commissions ("MACRUC"); Fred Williamson & Associates ("FWA"); Hughes Network Systems, LLC ("Hughes"); Independent Telephone & Telecommunications Alliance ("ITTA"); Indiana Utility Regulatory Commission (InURC"); John Staurulakis, Inc. ("JSI"); National Cable & Telecommunications Association ("NCTA"); National Exchange Carrier Association, Inc. ("NECA"), et al. ("Rural Associations"); Nebraska Public Service Commission and North Dakota Public Service Commission ("Neb/ND PSCs"); NJBPU; Public Utilities Commission of Ohio ("PUCO"); Qwest Communications International Inc. ("Qwest"); Regulatory Commission of Alaska ("AkRC"); RCA; Rural Independent Competitive Alliance ("RICA"); Sprint Nextel Corporation ("Sprint"); TDS Telecommunications Corp. ("TDS"); Texas Statewide Telecommunications Cooperative, Inc. ("TSTCI"); T-Mobile USA, Inc. ("T-Mobile"); TWCable; the USA Coalition ("USACo"); USTelecom; Verizon and Verizon Wireless ("Verizon"); Vonage Holdings Corporation ("Vonage"); Windstream Communications, Inc. ("Windstream"); Wyoming Public Service Commission ("WyPSC"). A number of small telephone companies (including at least Alma Communications Company; Fidelity Telephone Company; JBN Telephone Company, Inc.; Madison Telephone LLC; Millray Telephone Company; Peoples Telecommunications, LLC; and Wheat State Telephone, Inc.) filed identically-formatted comments. These commenters will be referred to as the "Small Rural Commenters."

> [T]he statutory directives **still exist** for "affordable" basic **telecommunications services**, and for telecommunications services in rural areas that are reasonably comparably priced to those in urban areas; they have not been replaced by the statutory directives regarding advanced services. Thus federal support can and should be required for basic telecommunications services regardless of the "business case" for the services.[8]

Thus NASUCA must adamantly oppose Verizon's characterization that the Commission should "phase out the legacy high cost voice mechanisms and phase in support for broadband…."[9] As the InURC states,

> The FCC is not seeking to revise and reform existing USF programs merely to make them run more efficiently, or to eliminate exploitation and abuse, or even to begin supporting the use of circuit-switched networks and facilities to provide broadband services. Rather, the FCC is seeking to use the universal service process to create *de novo* programs that will support a fundamental paradigm shift – not just of the universal service programs, themselves, but of the communications ecosystem as a whole.[10]

As discussed in NASUCA's comments, this "paradigm shift" is not warranted.

Second, again as stated in NASUCA's initial comments,

> [T]he efficiencies squeezed out of the current fund should represent the absolute maximum contribution of telephone customers toward the funding of broadband; the burden on telecommunications service customers must not be increased. Any additional funding must come from the broadband services whose deployment is being supported.[11]

The suggestions of commenters to the contrary (that the fund must be increased to sup-

[8] NASUCA Initial Comments (July 13, 2010) at 3 (footnotes omitted, emphasis in original). See also ITTA Comments at 2; USACo Comments at 13. This should address MACRUC's concern about losing current support for telephone service. MACRUC Comments at 4. To the extent that such support is needed in order to yield affordable and reasonably comparable rates, the MACRUC states (like all others) should continue to receive it. If the support is not needed, carriers (regardless of their state) should not receive it.

[9] Verizon Comments at 1; see also Sprint Comments at 11. The PUCO's argument about retaining high-cost support (PUCO Comments at 6) acknowledges this need for continuing voice support. This also goes against CWA's assertion that all USF recipients be required "to invest in broadband according to mandatory timetables…." CWA Comments at 1-2.

[10] InURC Comments at 2-3.

[11] NASUCA Comments at 4; see also Verizon Comments at 2. See Section IV., below, for a discussion of other sources of revenue for a broadband fund, such as from broadband service.

port broadband) must be rejected.[12]

One issue that some of the comments avoid is the threshold issue of whether the Commission has the authority under current law to provide support for broadband service.[13] Many other commenters find a lack of such authority, however,[14] which would defeat the Commission's evident purpose here. It would not, however, as discussed below, defeat the goal of reducing current levels of unnecessary support for telecommunications services.

On another issue, TDS asserts that the Commission's target of 4 Mbps upstream/1 Mbps downstream is unjustifiably low.[15] NASUCA tends to agree, but that is a debate for another day. Similarly, Verizon asserts the following general principles for the CAF:

> - Broadband universal service support should be direct and explicit.
> - Subsidies for broadband should be extended only where there is no private sector business case for deployment, and initially targeted to unserved areas.
> - At most, the Commission should subsidize one broadband provider in an area with a sufficient amount of funding that is as efficient as possible.
>
> ….

[12] Vonage asserts that a main task of the Commission should be to reduce the burden of the USF on consumers. Vonage Comments at 3-4; see also Comcast Comments at 2. NASUCA appreciates Vonage's and Comcast's solicitousness towards consumers, but acknowledges that squeezing efficiencies out of the current fund while adding the burden of ensuring broadband deployment may not necessarily **reduce** the overall burden on consumers, even if other sources of contribution are found, as discussed in Section IV. But support for broadband should not increase the contribution level.

[13] See NASUCA Comments at 4, n.16.

[14] COMPTEL Comments at 4-5; PUCO Comments at 8; RICA Comments at 8; USACo Comments at 7-8; WyPSC Comments at 8.

[15] TDS Comments at 4-5; see also Neb/ND PSCs Comments at 3-6.

- Recipients of broadband support should be accountable for its use.[16]

Although slightly off-topic for this specific NPRM,[17] NASUCA generally agrees. And NASUCA has long agreed with CTIA's focus on a separate Mobility Fund for wireless companies.[18]

Also off-topic is the Rural Associations' extensive attack on various portions of the NBP.[19] Although alternatively interesting and infuriating, this portion of the Rural Associations' comments does not address the issues raised by the NPRM.[20] (And also does not address the issues raised in the NoI.)

Finally, USACo's global discussion on the HCF is also off-topic. USACo argues that the Commission cannot move forward on the CAF until the entire HSF is reworked,

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[16] Verizon Comments at 2; see also CenturyLink Comments at 10-20, 31-35; CTIA Comments at 22-23; CWA Comments at 2-3. Verizon and CTIA, like the Commission, also include the principle that "[e]ligibility for broadband support should be provider- and technology-agnostic." Verizon Comments at 2, CTIA Comments at 23. As stated in NASUCA's initial comments on the NoI (at 13-14), it is not clear whether this can (or should) be accomplished.

[17] As NCTA notes, the Commission will presumably seek comment on the CAF in the fourth quarter of 2010. NCTA Comments at 16, n.56; see also InURC Comments at 6; JSI Comments at 3, n.2; RICA Comments at 9.

[18] CTIA Comments at 26; see 05-337/96-45 NASUCA Comments on Joint Board Recommended Decision (April 17, 2008) at 21-23.

[19] Rural Associations Comments at 9-33. See also CTIA's discussion (at 27-28) on the "National Broadband Availability Target." NASUCA does support the Rural Association's position that "the Commission should consider ways to improve broadband adoption rates in [rural local exchange carrier] RLEC areas." Id. at 8; see also id. at 70-72 (the Commission could spur rural broadband adoption by ensuring that RLECs have nondiscriminatory access to video content). Of course, improving broadband adoption **throughout the nation** should be a priority for the Commission. Also see the Rural Associations' discussion (at 59-65) of alternative ways of funding broadband deployment.

[20] RICA asserts that 97% of NECA Traffic Sensitive Pool members offer digital subscriber line ("DSL") service. RICA Comments at 14, n.34. But the Rural Associations also note that 54% of the RLECs that offer DSL under the NECA tariff offer service with speeds below the Commission's 4Mbps target. Rural Association Comments at 35, n.82; see also TSTCI Comments at 9. This clearly shows that although the rural carriers have done more than the larger carriers, they will still need assistance to meet the Commission's goals. This only provides emphasis for the need to squeeze efficiencies out of the current HCF to use for broadband enhancement.

and, of course, reworked as USACo wishes.[21] NASUCA will not attempt to rebut the many flaws in USACo's proposals; the Commission need not address them either.[22] On the other hand, NASUCA agrees with InURC that many (or most) of these issues must be referred to the Federal-State Joint Board on Universal Service.[23]

II. GENERAL ISSUES

One of the most general statements made here is by USTelecom:

> An essential policy objective for a reformed Universal Service Fund must be the avoidance of requiring entities to provide facilities capable of providing particular services without adequately funding such requirements. The Commission must be careful to not impose such unfunded mandates.

[21] USACo Comments at 2-27 (legal requirements for the HCF). USACo also addresses (at 41-54) its proposal for the HCF, which requires a brief response. Under the USA Coalition's approach, funding would be awarded to multiple providers (ILECs and CLECs) serving a high cost area. Thus, USACo's approach is essentially a "subsidize competition" approach. In addition, the foundation of USACo's approach is based on estimating the difference in operating costs and population density. Id. at 52. USACo's approach utilizes a "cost factor" based on the difference in operating costs between a specific high-cost area and a representative "urban area" which has population density equal to the rural area. Id. USACo indicates that this approach would attempt to quantify the difference in the total costs of a provider in the two areas. USACo then presents another point of evaluation – the relative density of the "average urban" and high cost areas – and indicates that another adjustment factor should be created, and ultimately added to the cost factor to create the "reimbursement percentage." Id. at 52-53. Once the overall "reimbursement percentage" is created by adding the "cost factor" with the "density factor," the service provider's expenses (both capex and opex) that the Commission determines are eligible are multiplied by the expense adjustment factor to determine the amount of reimbursement going to the supported carrier. USACo provides an example showing that an assumed $100 in eligible expenses would receive $66.25 in reimbursement. Id. at 54. USACo argues that this "new" approach would create the same incentives for rural carriers as those faced by urban carriers. Id. at iv. Based on the information provided by USACo, the proposal is rife with contradictions and intractable problems. For example, how could one find urban areas that have the same population density as a rural, insular, or high-cost area to develop the cost benchmark? Alternatively, given the ability of multiple providers to serve an area, USACo's approach would result in decreased scale economies, higher costs, and thus higher levels of support. Support would grow at an increasing rate as more firms entered the market area. Costs associated with USACo's proposal would quickly spiral out of control, because the incentive structure described by USACo actually promotes inefficiency. Lastly (but only so to not waste any more time discussing the numerous problems with the proposal), USACo's approach creates its "reimbursement factor" in a fashion that can only lead to double counting, as separating the "density effects" out of the "cost effects" is an impossible exercise. The Commission should disregard the USACo proposal.

[22] Other than to reject USACo's characterization of the Commission's appropriate and reasonable definitions in the *Non-Rural High-Cost Remand Order* [05-337/96-45, Order on Remand and Memorandum Opinion and Order, FCC 10-56 (rel. April 16, 2010) ("*Non-Rural High-Cost Remand Order*")] as "truisms." USACo Comments at 15.

[23] InURC Comments at 7, 8.

> Universal service funding can form the basis for a social contract in which the government provides some funding in exchange for leveraging the private risk capital of providers to fulfill an important social goal by deploying facilities in order to offer services crucial to consumers and economic development – voice and broadband. Unfunded mandates would be an unfair exercise of the government's power in that contractual relationship. They distort competition and broadband investment.[24]

It is hard to know where to begin in responding to this. There is the inherent admission that "adequate" funding can be "some" funding, rather than 100%.[25] And there is the fact that the "social contract" referred to has two parties: the government that provides funding[26] and the providers **that must be held to requirements for deploying facilities.** And there is also the fact that funding itself distorts competition, or, looked at another way, funding is necessary only because the competitive market has not produced the socially-desired result.

NASUCA must point out that commenters fail to acknowledge that if the definition of supported service is modified to include broadband services, then § 214(e)(3) of the Communications Act specifically directs the FCC "to determine which common carrier or carriers are best able to provide such service" to an unserved community or any portion thereof that requests such service. Clearly, the intent of Congress was to ensure that ETCs were obligated to step up to the plate to extend universal service (including broadband if the definition is revised) to unserved areas. Pointedly, there is no mention of carrier funding in that portion of the Act. NASUCA's position is that the FCC has the responsibility and the power to enforce the Act, and when it does so in unserved areas, it has the duty to provide funding, if needed, to guarantee reasonable and affordable rates.

[24] USTelecom Comments at 6.

[25] CenturyLink refers to "additional" support (CenturyLink Comments at 4), and to "commensurate" support (id. at 28) but never specifies how much is needed.

[26] Actually, of course, the funding in this instance comes from customers (rather than taxpayers in general).

Then USTelecom goes on to say that "if a provider is serving an area in which it is not the supported entity, it should be relieved of ETC, carrier-of-last-resort and dominant carrier obligations for voice and broadband in the supported area."[27] If USTelecom is implying that if one provider is given funding for broadband, all other carriers must be relieved of their ETC responsibilities for telephone service (even if they still receive legacy high-cost funding?[28]), relieved of their carrier-of-last-resort obligations (even if they have that obligation under state law?), and relieved of their dominant carrier obligations (even if they are still dominant?), that is a particularly overreaching position. (And also relieved of their obligations under § 251?) If the implication is that there also must be funding in order for **any** carrier to have those obligations, the claim rises to a whole new level of unreasonableness.

The Rural Associations stress the COLR responsibilities of rural carriers.[29] They do not seek to evade them.

But evasion appears to be the thrust of AT&T's comments when it states that "many carriers sought and obtained this [ETC} designation in reliance on the legacy rules, which enabled them to predict, with some accuracy, whether and how much high-cost support they would receive."[30] AT&T makes it sound like the ILEC had to beg for ETC designation; in most states the ILECs were automatically deemed to be ETCs, **whether or not they received any federal HCF dollars**.[31] And the federal COLR obli-

[27] USTelecom Comments at 6; see also AT&T Comments at 17.

[28] And be relieved of the duty to offer Lifeline?

[29] Rural Associations Comments at 6, 28-33 and Appendix C.

[30] AT&T Comments at 17.

[31] See, e.g., 96-45, First Report and Order, 12 FCC Rcd 8776 (1997) ("*Universal Service First Report and Order*"), ¶ 145.

gations cited by AT&T do not preempt state COLR obligations,[32] despite AT&T's attempt to seek such preemption.[33] Further, as NASUCA has stated, the reports of the death of the public switched telephone network ("PSTN") and plain old telephone service ("POTS") are decidedly exaggerated.[34]

USTelecom also states that

> [u]niversal service funding cannot simply fund those areas that are currently unserved by broadband. There are places that have broadband today only because of the existence of USF support for voice, which facilitates deployment of plant capable of providing broadband service.[35]

Indeed, there may be areas where ongoing support for the expenses of broadband will be necessary.[36] But it is not necessarily true that **all** areas where USF support has funded the deployment of broadband will require such ongoing support. And it is also not necessarily true that in all areas that have received USF support, broadband would not have been deployed without the support. Unfortunately, USTelecom gives no basis for distinguishing among these areas.

The implication of ITTA's "guns and butter" argument[37] is that we need and must keep all or most of the traditional HCF guns before we can afford broadband butter.[38] As

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[32] See 47 U.S.C. § 253(b); see also Neb/ND PSCs Comments at 12-13.

[33] AT&T Comments at 19-20. It may be true that the COLR obligations were part of the regulatory compact that included an exclusive franchise, but it is also true that ILECs continue to have means available to them to seek a guaranteed reasonable rate of return. The move away from rate-of-return regulation was at the ILECs' behest; they clearly thought that it was to their financial advantage. And it does not appear that most states where rates are still regulated would be able to prevent an ILEC from filing a rate case if it thought that its returns were less than reasonable. Of course, where rates are deregulated, the ILEC can increase its rates at will for services over which it retains market power.

[34] NASUCA Comments at 3; see also GN Docket No. 09-51, et al., NASUCA Reply Comments (January 27, 2010).

[35] USTelecom Comments at 8.

[36] See Comcast Comments at 10.

[37] ITTA Comments at 6.

[38] Of course, ITTA also asserts that the HCF has been used to bring broadband to rural areas, which is correct. Id. at 4.

argued in NASUCA's comments, however, it has never been shown how much of the armory is really needed in order to ensure affordable and reasonably comparable rates.[39] ITTA, like the other knee-jerk supporters of maximizing their receipts from the HCF, really does not even try to make that showing.[40]

NCTA argues for its proposal that support be eliminated wherever there is "un-subsidized competition," referring to the petition NCTA filed in 2009.[41] This is also a continuing theme throughout NCTA's comments.[42] For the reasons set forth in NASUCA's reply comments on the NCTA petition, this proposal does not work for basic service.[43] It may work for broadband, however. Along the same lines, Comcast focuses on a requirement that recipients of HCF "be required to demonstrate that continued USF support is still necessary despite the presence of an unsubsidized competitor."[44] Proof that funding is necessary to ensure affordable and reasonably comparable rates should be required for all HCF recipients, even where there is no competition.

The Rural Associations argue that the HCF cannot be frozen if broadband expansion is to occur, because this will eliminate the current support that funds broadband.[45] But the Rural Associations seem to have missed the Commission's intention to make

[39] NASUCA Comments at 7-8.

[40] See ITTA Comments at 21-22.

[41] NCTA Comments at 10; see also Comcast Comments at 2. Public Notice DA 09-2558 put the NCTA petition out for comment in GN 09-51, WC 05-337 and RM-11584.

[42] NCTA Comments at 13, 14, 15.

[43] GN 09-51, WC 05-337, RM-11584, NASUCA Reply Comments (January 22, 2010).

[44] Comcast Comments at 9.

[45] Rural Associations Comments at 34-35; see also Comcast Comments at 7-9.

support for broadband explicit, rather than implicit as in the current HCF.[46] As NASUCA argued above, support for voice service should continue **where necessary**, and should be **supplemented** by the CAF.[47]

These are reasons why the Commission need not establish mechanisms for CAF before reducing the HCF, as argued by USTelecom and others.[48] The dollars resulting from HCF reform are not needed to ensure affordable and reasonably comparable basic telephone service rates, and are not properly used for broadband, so these reforms can be undertaken before the CAF mechanisms are in place. Likewise, however, as mentioned above, the Commission need not completely reform the HCF, or establish a detailed transition plan, as argued by USACo,[49] before reducing the HCF where it is appropriate.

Verizon asserts that "to be fair to providers and their customers, reductions in USF support … must be spread equally among all wireline providers and among all wireless providers."[50] This is absurd, because it assumes that **current** USF support is spread equally among all wireline and wireless providers, and that all such providers need the support equally. Such is hardly the case.

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[46] NPRM, ¶ 53. CTIA' s assertion that "the FCC's existing policies allow[] rural incumbent LECs that receive support to invest in dual-use broadband capable facilities" is a reason to allow wireless carriers to use their current support for broadband (CTIA Comments at 8) assumes that the Commission intends that situation – whether allowing implicit support, or allowing CETC support – to continue. JSI's assertion that "the indirect funding of broadband for rate-of-return RLECs must continue before seeking to redirect funding … for another purpose" (JSI Comments at 2) fails to recognize that the purposes are the same. And JSI's argument that the current indirect funding of broadband is "transparent" (id. at 9-11) confuses general accounting and accountability with the specific need to ensure that support for broadband is properly spent.

[47] If it is true that RUS loans would not occur under a frozen USF (Rural Associations Comments at 14) and that rural carriers' free cash flows would go negative under frozen ICLS or HCF (id. at 39-44), then this issue deserves further examination.

[48] USTelecom Comments at 10-11; see also CTIA Comments at 6-9; ITTA Comments at 2; TDS Comments at 5. TDS's analogy that "[i]t is as if the FCC has been told to transform a propeller plane into a jet fighter while flying – and is taking off the propellers before the jet engines are ready to be installed" (TDS Comments at 5) fundamentally misapprehends both the task at hand and the necessary solution.

[49] USACo Comments at 23-27.

[50] Verizon Comments at 1-2.

The MACRUC states assert that

> any recipient of a frozen and reformed [federal USF] FUSF program must, as a precondition to receiving any FUSF support, undertake and demonstrate implementation of local reforms, e.g., local rate increases, access rate reductions, state universal service funds, and demonstrated broadband deployment.[51]

It is not at all clear how, under § 254, the Commission would be able to condition federal support for telecommunications services – even broadband services – on such wide-ranging state regulatory actions.[52] It is equally unclear why these measures are necessary, except as excuses to limit other states' receipts from the HCF.

On a more micro level, USTelecom argues (again) for an end to statewide averaging to determine HCF for non-rural carriers.[53] It is almost as if this principle had not been upheld as long ago as *Qwest I*.[54] As the Commission found, the argument that averaging "limit[s] the ability of the incumbent carriers to implicitly subsidize high-cost rural portions of the study area without suffering a significant competitive disadvantage"[55] lacks support in reality. And the Commission found that eliminating statewide averaging would inflate the current HCF,[56] which goes diametrically against the purpose of the reforms discussed in the NPRM.

As an aside, AT&T argues for the Commission to establish a stand-alone Lifeline ETC designation "that is detached from the Commission's ETC designation…."[57] The

[51] MACRUC Comments at 4.

[52] That these might just be examples – that other conditions might be proposed – is also unclear.

[53] USTelecom Comments at 12, 13; see also CenturyLink Comments at 6, 20-24.

[54] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1202 n.9 (2001) ("*Qwest I*"); see also 96-45/05-337, NASUCA Comments on Notice of Inquiry (May 8, 2009) at 46-49 and Appendix L.

[55] USTelecom Comments at 13.

[56] *Non-Rural High-Cost Remand Order*, ¶ 38.

[57] AT&T Comments at 18.

Commission effectively has done so, and so have states.[58] But that stand-alone designation has not been an unalloyed benefit for low-income customers. And NASUCA must be forgiven for suspecting that AT&T's proposal is in preparation for its eventual attempts to escape all ETC obligations, **including providing Lifeline service**.[59] That is a whole different kettle of fish.

On a related note, Sprint argues for linking the high-cost and low-income mechanisms, especially for broadband, and urges the Commission to "rely heavily on a low-income mechanism to achieve universal broadband service."[60] This overlooks the fact that the universal service provisions of the Act are intended to benefit **all** consumers, not just low-income consumers, and that the mechanisms must be designed to ensure that all customers, not just low-income customers, have access to reasonably comparable telecommunications services at affordable and reasonably comparable rates.[61] Sprint's proposal would simply write those provisions out of the statute. Which is not to say that broadband programs for low-income consumers are unimportant -- especially given the differential between low-income and higher-income adoption rates – but merely that **both** types of program are needed.

[58] E.g., 96-45, *TracFone Wireless International Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al.*, Order, 23 FCC Rcd 6206 (2008). See also AT&T Comments at 18, n.41. This is despite the lack of clear statutory authority to do so.

[59] See AT&T Comments at 18, n.40.

[60] Sprint Comments at 2.

[61] See Neb/ND PSCs Comments at 14.

III. SPECIFIC FCC PROPOSALS (NPRM, ¶¶ 51-61)

A. Overall cap on the high-cost fund (¶¶ 51-52)

In the initial comments, NASUCA argued that – apart from CETC support – the HCF has been stable for years, and did not see much of a need for an overall cap.[62] Some carriers themselves explicitly and adamantly oppose a cap.[63] For example, despite acknowledging that current high-cost support for ILECs has not been growing, ITTA asserts that "a single overall cap would generate adverse consequences, and that the imposition of individual caps could be similarly counter-productive."[64]

JSI argues that a cap will violate the Act's guideline that universal service mechanisms shall be "specific, predictable and sufficient…"[65] without explaining how. A capped HCF will be specific and predictable, and any allegation that it is not sufficient overlooks the actual and effective current caps on segments of the HCF. JSI also argues, it seems, that a capped fund will not require contributions to be equitable and nondiscriminatory,[66] again without explaining how.

But Verizon presents more granular figures on the pieces of the HCF, showing that while overall ILEC funding has been stable, funding has shifted from price cap ILECs to rate-of-return ILECs.[67] This may support an overall cap, but argues more strongly for limits and reductions to individual elements.[68] Notably, Qwest supports a

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[62] NASUCA Comments at 10-12. TWCable's assertion of "the runaway growth of high-cost USF support" (TWCable Comments at 20) is simply not supported by the record (or elsewhere in its comments).

[63] USTelecom Comments at 18.

[64] ITTA Comments at 20. ITTA does recognize that some of the current mechanisms are capped. Id. at 22-24.

[65] JSI Comments at 14, citing 47 U.S.C. § 254(b)(5); see also TSTCI Comments at 4.

[66] Id.

[67] Verizon Comments at 12 and Attachment B.

[68] Verizon proposes methods for imposing a study-area cap. Verizon Comments at 10-11.

cap on each element for each study area.[69]

The PUCO supports making the cap a "per-line" cap on overall support received.[70] Given the continuing loss of wireline access lines – both for rural and non-rural carriers – this would prevent a capped fund from providing increasing support on a per-line basis, which is reasonable. Qwest's opposition to a per-line cap[71] lacks any rationale.

Windstream supports a cap at 2010 levels for each of the five major support mechanisms, for each study area.[72] As Windstream states, "this approach will minimize unintended redistributions among support mechanisms and study areas,"[73] such as those discussed by Verizon as cited above.[74]

COMPTEL argues that a cap should be set at 2010 levels, "minus the most current estimate of improper payments made from the fund."[75] Although this might be a good idea in concept, in reality it appears that most of the supposed determinations of improper payment are based on lack of documentation, rather than lack of merit.[76] COMPTEL's assertions of continued increases to the HCF[77] overlook the fact that the source of the growth was CETCs.

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[69] Qwest Comments at 22-23. This clearly contradicts Qwest's position in the Non-Rural High-Cost proceeding, where it argued for huge increases to the HCF. See *Non-Rural High-Cost Remand Order*, ¶ 38.

[70] PUCO Comments at 25; see also NCTA Comments at 8; T-Mobile Comments at 6.

[71] Qwest Comments at 23.

[72] Windstream Comments at 24. Windstream says the cap should be adjusted for inflation (id. at 22), but does not explain why.

[73] Id. at 24.

[74] Windstream also proposes that the Commission act "to transition" high-cost loop ("HCL") funding **before** addressing other proposals on the HCF. Windstream Comments at 40-44. It is not entirely clear why the proposal is made, or why Windstream gives it such high priority, but it appears that the result would be to prevent rural carriers from deploying fiber to the home. Id. at 43.

[75] COMPTEL Comments at 6.

[76] See Government Accountability Office, "FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program," GAO 08-633 (June 2008) at 6.

[77] COMPTEL Comments at 10.

COMPTEL does correctly point out that if a cap on the total fund is ordered, it should be implemented similarly to the cap placed on CETC support.[78] That is, on a state-by-state basis.[79]

The NJBPU argues that the HCF should be reduced.[80] That is fine. But the NJBPU also says that the CAF should not be funded.[81] Again, this goes against the national goals established by Congress.

B. Relationship with intercarrier compensation (¶¶ 54, 57-58)

USTelecom insists that the Commission must "properly sequence and transition changes to high-cost support and intercarrier compensation mechanisms so as not to abruptly impact revenue flows and create hardships and unnecessary regulatory uncertainty for voice and broadband providers and lead to potential rate shock for consumers."[82] In other words, the Commission must guarantee "adequate" revenue flows for the carriers **before** reducing any of the current mechanisms, whether from the USF or intercarrier compensation. This is based on the huge (and wrong) assumption that the carriers are entitled to 100% (or more) of their past (and current) revenue flows, an assumption that NASUCA has disputed over and over again.[83] The Commission recently found, in the *Non-Rural High Cost Fund Remand Order*, that the carriers asserting they needed more high-cost support to prevent rural rates from becoming not reasonably comparable

[78] Id. at 15.

[79] See NCTA Comments at 8.

[80] NJBPU Comments at 5.

[81] Id.

[82] USTelecom Comments at 8; see also id. at 10. See also CenturyLink Comments at 35; Qwest Comments at 21; Windstream Comments at 24, 38-40.

[83] See, e.g., NASUCA Comments, Appendix A at 5.

to urban rates had totally failed to make their case.[84] Similarly, the Commission should not be concerned about revenue replacement until there is a real and realistic threat of rate increases that would cause rates to be unaffordable or no longer reasonably comparable.[85] USTelecom's complaint about "uncertainty about whether disbursement of new funds will coincide with elimination of existing funds"[86] is based on this notion of a guaranteed level of revenues.[87]

USTelecom states that IAS "directly impacts subscriber rates in that it is intended to offset common line costs that would otherwise be recovered through higher [SLCs]."[88] NASUCA continues to believe that this assertion was incorrect when made in the *CALLS Order*,[89] but it is even more incorrect today, when so much more of the common line costs should be allocated to the unregulated services that are increasingly provided over the lines.[90] AT&T supports the NBP recommendation that where intercarrier compensation is reduced "the Commission permit gradual increases in [SLCs] and 'consider deregulating the SLC in areas where states have deregulated local rates.'"[91] NASUCA will

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[84] *Non-Rural High-Cost Remand Order*, ¶¶ 34-35.

[85] At the very most, the Commission could require, as proposed by NASUCA, a threshold return-on-equity test for eligibility for revenue replacement. See NASUCA Comments at 6; see also CWA Comments at 3; TWCable Comments at 6.

[86] USTelecom Comments at 9.

[87] As noted in NASUCA's initial comments (at 13), the Commission should start by eliminating access charges paid to the incumbents by affiliated companies. For example, AT&T wireless access charge payments to AT&T ILECs represent offsetting transactions. It is unlikely that reductions in access charges will ultimately result in lower costs for consumers, as opposed to a corporate windfall for stockholders.

[88] USTelecom Comments at 16.

[89] *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, FCC 00-193 (rel. May 31, 2000) ("*CALLS Order*").

[90] NASUCA Comments at 14-15. JSI apparently does not consider these unregulated services as sources of revenues. See JSI Comments at 11.

[91] AT&T Comments at 18-19, citing NBP at 148. Later in its comments, AT&T asserts that "increased SLC flexibility should be a prerequisite to the Commission eliminating a price cap carrier's IAS." AT&T Comments at 22. Regardless of how it is accomplished, AT&T's purpose here is guaranteed revenue recovery.

reserve further argument against this NBP proposal for the appropriate time, but must note first, that such deregulation would eliminate any cost basis for SLC (just as it does for other rates), and second, the very idea of a non-bypassable deregulated rate – for basic service that remains, in essence, a monopoly service – is both logically and policy-wise highly inconsistent.

On the other hand, RICA notes the NBP proposal to reduce "access charges to a near-zero level."[92] Again, NASUCA will reserve argument on this issue for the proper time, but would observe that it is unreasonable for the Commission to allow carriers to utilize the networks of other carriers without compensating the other carriers for that use. The rate levels proposed in the NBP do not represent adequate compensation.

As part of this argument, USTelecom asserts that IAS "is an important revenue flow for price cap companies serving as carriers of last resort in high-cost areas and should not be arbitrarily abolished as suggested in the USF NPRM."[93] NASUCA understands that IAS is important to the companies that receive it – in the sense that these are dollars the companies do not want to give up – but abolishing IAS would not be arbitrary. As NASUCA explained in Appendix A to the initial comments,

> In 2000, in the *CALLS Order*, the Commission created [IAS] (as well as SLC increases) to offset reductions in interstate access charges for price-cap companies. The *CALLS* universal service support was supposed to have lasted only five years and have ended July 1, 2005; clearly, that did not happen. Furthermore, unlike the high cost model support, which is based on forward-looking costs, IAS is based on a carrier's embedded costs, and thus does not assess efficient costs.
>
> …. IAS was intended to replace revenues that ILECs lost from the reduction in interstate access charges, and yet interstate minutes of use have declined steadily. IAS --"frozen in time" -- is replacing a declining revenue

[92] RICA Comments at 10.

[93] USTelecom Comments at 16.

> stream. NASUCA reiterates its recommendation that the Commission eliminate IAS.[94]

CenturyLink essentially assumes that the support represented by IAS and ICLS must continue forever.[95] But Verizon correctly notes that access charge replacement funding, "designed to give carriers a soft landing following reductions in intercarrier compensation rates, cannot last forever in a competitive environment."[96] NASUCA agrees.[97] On the other hand, Verizon also asserts that IAS should continue until the CAF is in place.[98] This is totally unnecessary.

The Rural Association's demonstration of the amount of access revenue the rural carriers receive[99] does not demonstrate how much of that revenue is actually needed in order to ensure that rural rates are affordable and reasonably comparable to urban rates.[100] And the revenue pie chart presented by the Rural Associations[101] does not include unregulated revenues – like those from the broadband services the rural carriers boast of.[102] Similarly, CenturyLink's assertion that in a "special study" its rural wire centers yielded

[94] Appendix A at 14-15 (footnotes omitted).

[95] CenturyLink Comments at 36-37.

[96] Verizon Comments at 3; see also Sprint Comments at 13 ("Price cap carriers that have been receiving IAS have had almost a decade to address any remaining shortfalls…"). T-Mobile states that "no funding obtained from the elimination of CETC support should be used for 'potential revenue replacement resulting from intercarrier compensation reform.'" T-Mobile Comments at 10, quoting NBP at 148. NASUCA agrees; the funding from eliminating CETC support should be used for broadband deployment.

[97] But NASUCA does not agree with the assertions of Verizon (which receives only IAS) that IAS and ICLS must be phased out on the same schedule. Id. ICLS may be a more important issue for the smaller carriers receiving ICLS than IAS is for the larger carriers that receive IAS. Verizon's argument that ICLS for medium-sized carrier that have converted to price caps should proceed on the same schedule as IAS reductions (id. at 18) strikes an appropriate balance.

[98] Verizon Comments at 17. This contradicts (in a very-self-interested way) Verizon's assertion that the Commission cannot "bank" HCF savings. Id. at 23.

[99] Rural Associations Comments at 37.

[100] See also RICA Comments at 10.

[101] Rural Associations Comments at 37.

[102] See Comcast Comments at 6; TWCable Comments at 6.

minimal or negative returns[103] is decidedly misleading. The study cited assessed only revenues from supported services.[104]

FWA purports to respond to the Commission's request for data[105] by providing data on "several" of its clients.[106] (The exact number appears to be seven.) This data raises as many issues as it claims to answer: 1) How were the individual companies selected? 2) The focus is on regulated revenues.[107] 3) On the other hand, there is no indication that the "costs to provide the COLR network"[108] were allocated between the regulated and unregulated services. 4) Likewise, there is no indication that the expenses shown ("primarily salaries, depreciation and interest expense"[109]) were allocated. Thus this data shows only part of the picture, and is not useful.[110]

The Small Rural Commenters provide far more extensive data. NASUCA has not been able to examine that data in detail. But the information does not appear to include a key datum: shareholders' return on equity. At most, the Small Rural Commenters' data shows the need for special consideration for the smallest companies (and their customers) in any support mechanism.

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[103] CenturyLink Comments at 7, 37.

[104] Michael J. Balhoff, Robert C. Rowe, and Bradley P. Williams, *Universal Service Funding: Realities of Serving Telecom Customer in High-Cost Regions,"* (Summer 2007), n.156 (*available at* www.balhoffwilliams.com). It also appears that the study allocated most of the costs of the wire centers to the supported services.

[105] See FWA Comments at 2 (citing NPRM, ¶ 53).

[106] FWA Comments at 15.

[107] Id. at 16, 17.

[108] Id. at 17.

[109] Id. at 18.

[110] Chart 4 for each company indicates that it shows "both regulated and nonregulated revenue/expenses related to the ILEC's network." Similarly, Chart 6 indicates that it shows "projected annual increase/decrease in cash flow (regulated + appropriate non-regulated)…." Without examining the data themselves, these charts are also not helpful.

RCA's argument from the wireless side that elimination of IAS should not be a flashcut[111] strains competitive neutrality beyond all bounds. IAS was intended to replace lost interstate access charge revenues for ILECs, revenues that wireless carriers never received.[112] CTIA, however, apparently has no objection to eliminating either IAS or ICLS.[113]

On a related note, USTelecom asserts that "there are several elements of intercarrier compensation reform upon which there is a strong level of consensus that can and should be implemented quickly."[114] Those elements are phantom traffic and traffic pumping, and application of the intercarrier compensation regime to Voice over Internet Protocol ("VoIP") traffic.[115] It is important to note that these measures would **increase** local carriers' revenues, and thus the issue of revenue replacement would not come up.

NASUCA agrees on these issues, but such action need not be taken before, or in conjunction with, the HCF reforms discussed in the NPRM (or the other reforms to the HCF proposed by NASUCA). In addition, for the reasons discussed by NASUCA on many occasions, the Commission cannot (and should not) attempt to move intrastate access charges to interstate levels.[116] (This is an issue as to which, at least with regard to

[111] RCA Comments at 11-12.

[112] RCA's threat that eliminating IAS "would all but shut down new cell site construction in" Virginia (id. at 12) must be disregarded.

[113] CTIA Comments at 18-19.

[114] USTelecom Comments at 9.

[115] Id. at 10; see also AT&T Comments at 19, n.45; CenturyLink Comments at 9; ITTA Comments at 25-27; Rural Associations Comments at 44, 69-70; TSTCI Comments at 6, 22-23.

[116] See, e.g., NASUCA Initial Comments at 12, n.48. AT&T asserts (at 24) that the Commission should consider establishing incentives for states to reduce intrastate access rates to interstate levels. Depending on the structure of the incentives, that would be preferable to the Commission attempting to order such reductions. But the Commission has no authority to order that the lost revenues be recoverable from increased end user [intrastate] retail rates or state explicit funding mechanisms, as AT&T proposes. Id.

the Commission's authority to take such steps, there is no consensus, much less a strong one.)

C. Shifting rate of return carriers to "incentive" regulation (¶¶ 55-56)

USTelecom notes the reason for shifting rate-of-return carriers to incentive regulation as the basis for freezing ICLS,[117] but does not acknowledge the lack of legal or logical connection between the two.[118] USTelecom is, however, clear in challenging the relevance of the precedent of previous carriers' opting-in to price cap regulation: "It is one thing for a carrier to voluntarily agree to receive ICLS on a capped and per-line basis. It is another thing for the entire body of rate-of-return carriers to be required to do so."[119] ITTA acknowledges that for these carriers, it "was determined, individually, to be a viable alternative, along with price-cap election, than remaining subject to rate-of-return regulation."[120] The Rural Associations also adamantly oppose the involuntary conversion to incentive regulation,[121] and specifically (and correctly) point out that "[i]ncentive regulation … has proven to be substantially less successful in encouraging deployment of broadband to uneconomic-to-serve areas."[122] This is not to say, of course, that rate-of-return regulation has been a success in this regard.[123]

CTIA directly equates rate-of-return regulation with carrier support based on embedded costs, and incentive regulation with carrier support based on forward-looking

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117 USTelecom Comments at 17.

118 See also Windstream Comments at 33-37. Verizon sees this as part of broader regulatory reform, as does Sprint. Verizon Comments at 18; Sprint Comments at 12. Again, this is not a necessary part of squeezing savings out of the HCF.

119 USTelecom Comments at 17.

120 ITTA Comments at 27.

121 Rural Associations Comments at 45-52; see also RICA Comments at 15; TSTCI Comments at 7-12.

122 Rural Associations Comments at 46.

123 See footnote 20, supra.

costs.[124] Again, there is no legal or logical connection between the two.[125] Also on the wireless front, T-Mobile says that "[s]hifting rate-of-return ILECs to price caps would spur efficiency by forcing them to reduce costs to retain higher earnings."[126] It is not clear who would benefit from those efficiencies; certainly not the customers who would continue to pay rates that yield those "higher earnings."

COMPTEL proposes forcing rate-of-return ILECs that have used their HCF dollars to fund broadband deployment to move to price cap regulation.[127] It seems that identifying those carriers might be difficult, unless the USF dollars are traceable. COMPTEL's proposal, like the Commission's, does not explain the connection between price caps and USF receipts.

Surprisingly, Windstream asserts that if the Commission does not convert these carriers to incentive regulation – apparently assuming that the conversion will be accompanied by a cap on ICLS – it would "support alternative measures, such as lowering the rate of return or disallowing investment of federal funds toward deployments in excess of the 4 Mbps … target, that would reduce rate-of-return carriers' high-cost support levels in line with what they would receive under an incentive-based regime."[128] Although NASUCA has proposed lowering the ancient federal rate of return,[129] the measures pro

[124] CTIA Comments at 17. CTIA perhaps overlooks the fact that CETC support is based on **ILEC** costs, whether forward-looking or embedded.

[125] NASUCA must respond to CTIA's assertion that "[r]ate-of-return carriers operate in an environment that is frankly unimaginable to any American business outside of the rarified utilities space." Id. No business outside the "rarified utilities space" bears the obligations, like COLR, that are borne by most ILECs, specifically those that remain under rate-of-return regulation.

[126] T-Mobile Comments at 7; see also TWCable Comments at 8.

[127] COMPTEL Comments at 16

[128] Windstream Comments at 37.

[129] See, e.g., NASUCA NoI Comments, Roycroft Affidavit at 17-19.

posed by Windstream appear more punitive than oriented to the goal of squeezing inefficiencies out of the current HCF.

NASUCA argued that whether to shift to incentive regulation should not be up to the carrier, which will logically select whichever form of regulation it deems to be most advantageous for its economic interests (rather than for the interest of the USF).[130] Along the same lines, the Commission should reject USTelecom's proposal that current price cap carriers be allowed to elect to use forward-looking cost to determine their support.[131] Those carriers for which the move will ensure more support will elect to do so. Logically, the others – for which support will be reduced under a forward-looking cost mode – will remain with the current mechanism. As with USTelecom's proposal to end statewide averaging, this will increase the burden on the HCF, contrary to the Commission's intention here.[132] Not only that, but USTelecom seeks the move to forward-looking cost so that the carriers will be able to "make investments in facilities that support advanced services,"[133] which is contrary to the Commission's express desire to eliminate implicit support for broadband in the current HCF.[134]

Regardless of the form of regulation, of course, it is oversight that matters – adequate reporting so that decision-makers can keep track of investment, network deployment and how the dollars are actually spent. Without oversight, neither form of regulation will produce the desired results. If the Commission wishes to address the form of regulation in this context, it should improve the reporting requirements so that the federal

[130] NASUCA Comments at 11.

[131] USTelecom Comments at 13.

[132] See discussion in Section II., supra.

[133] USTelecom Comments at 13.

[134] NPRM, ¶ 53. See also CenturyLink Comments at 38-39; CTIA Comments at 8; RICA Comments at 14.

regulators (including National Telecommunications and Information Administration), the states and public interest representatives can analyze whether the system is in fact producing the expected results – i.e., is the incentive structure (whatever it is) working properly?

With or without a proper level of reporting, it should be clear that changing the form of regulation for all of these small ILECs will create a substantial workload for the states. Every state commission that oversees ROR ILECs would have to launch proceedings to reflect the federal change on the state side. This casts further doubt on the proposition that incentive regulation would actually produce the net benefits envisioned by the FCC.

D. Sprint/Verizon Wireless voluntary commitments (¶ 59)

Verizon asserts that "[f]orcing Verizon Wireless and Sprint to suffer funding reductions ahead of the rest of the wireless industry because of two-year-old merger conditions unfairly disadvantages them and advantages their competitors."[135] The only word for this is "chutzpah." Verizon Wireless and Sprint agreed to these conditions two years ago as conditions on their mergers, with full cognizance of the competitive situation.[136] It is absurd that these conditions have not already been implemented.[137]

Verizon asserts that caps for AT&T and ALLTEL were supplanted by the Indus

[135] Verizon Comments at 4; see also id. at 20-21. See also Sprint Comments at 14.

[136] Verizon asserts that the reductions were agreed to "based on the reasonable assumption that comprehensive reform would, **within a short time**, restore parity to the robustly competitive wireless industry." Id. What regulatory planet has Verizon been living on? Perhaps the better thing would be to rescind the mergers due to the failures of Verizon's expectations.

[137] This makes Verizon's statement that it expressly reserved the right to have a generally-applicable rule replace its commitment all the more indicative of its delay in implementing the merger commitment.

try-wide CETC cap.[138] But a cap is far different than a total phase-out.[139] At the very least, if the Commission adopts an "industry-wide" five year phase-out, Verizon and Sprint should be deemed to have phased out their support as promised, and the amount to be phased out should be that remaining at the time of the order.[140] There has still not been a satisfactory explanation (either from Sprint or from Verizon) as to why their commitment has not been acted on.

E. Elimination of CETC support (¶¶ 60-61)

NASUCA agreed with the Commission's proposal to eliminate CETC support, because such support is unnecessary to meet the goals of § 254.[141] State commissions also support the move.[142] ILECs and their representatives also support eliminating CETC support.[143] Indeed, although USTelecom would make the other reforms contingent on ensuring replacement revenues for the ILECs, it says that eliminating CETC support is something that "need not hinge on implementation of the Commission's goal of this proceeding to reduce high-cost support to free up funding for an interim broadband distribution regime."[144] This is one clear example of the parochialism ("Help me! Hurt the competition!") that NASUCA decried in the Introduction here.

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[138] Id. at 21.

[139] And Sprint claims that AT&T and ALLTEL actually got USF funds in error. Sprint Comments at 14. Clearly, those overpayments should be returned to the USF.

[140] The Verizon wireless merger order was released in November of 2008. If the Commission adopted the industry-wide phase-out in November 2010, Verizon would be deemed to have already eliminated two years (i.e., two-fifths of its support). (That support should be eliminated immediately.) So the five-year industry-wide phase-out would apply to the remaining three-fifths of Verizon's support.

[141] NASUCA Comments at 15-18.

[142] InURC Comments at 4; PUCO Comments at 26.

[143] CenturyLink Comments at 40-42; ITTA Comments at 27-28; Qwest Comments at 23; USTelecom Comments at 14-15. Qwest also supports the NBP's recommendation that the Commission immediately eliminate support for multiple handsets for each wireless account. Qwest Comments at 23. NASUCA agrees that this could precede a phase-out of total CETC support.

[144] USTelecom Comments at 15.

But ITTA correctly notes that "[t]he matter of CETC support (including the basis for calculating support, the obligations of carriers receiving it, and the matter of duplicative support paid to multiple CETCs in a single geographic area) has been addressed in other Commission proceedings."[145] There is a complete record on which the Commission can act to eliminate this support.

RCA, whose members receive CETC support, understandably opposes eliminating the support:

> Carriers that lose customers, lose their revenue, and their universal service support as well. This system, which operates today in the [CETC] world so that CETCs *only* receive support to the extent that they win and retain customers, can work as an efficient driver of consumer benefit, provided the current system is modified to make support fully portable, and to oversee program participants to ensure that all requesting customers are able to access service from at least one facilities-based carrier.[146]

This misses the point that, unless carriers are required to provide service throughout an area – as ILECs are under their COLR obligation – there is no assurance that all requesting customers are able to receive service from a facilities-based provider. And the notion "that universal service mechanisms can and must promote competition in areas where the business case for next generation technology does not exist without USF support"[147] means subsidy for competition, which is not part of the universal service directives under the Act.

CTIA states that "[e]liminating current wireless support will, by definition, change [wireless carriers'] investment decisions and likely decrease investment in low

[145] ITTA Comments at 28.

[146] RCA Comments at 5-6 (emphasis in original).

[147] RCA Comments at 6.

density, rural areas….” and have other negative effects for wireless customers.[148] But the record shows that support to wireless carriers has very little to do with where the carriers invest, meaning that its elimination should have minimal effect.[149] In a similar vein, T-Mobile disputes the FCC's rationale for phasing out CETC support (that it is "inefficient"), stating that it is consumer demand for wireless services (and not regulatory anomalies) that has led to the growth in CETC support."[150] The inefficiency actually lies in supporting wireless carriers where unsupported carriers also provide service.

CTIA further states that the Commission's "proposal to phase out high-cost support to CETCs over five years while merely capping other ETCs' high-cost support … flatly contravenes the equitable treatment that is the hallmark of competitive neutrality."[151] Of course, the proposals do far more than "merely cap" non-CETC funding, but, more importantly, CTIA's view assumes that the current funding mechanisms – like the identical support rule[152] – are "equitable." CTIA follows this statement, and its assertions that CETC support should be maintained, with an argument that ILEC support should be phased out.[153] It is clear that, in this respect, equity is in the eye of the beholder.

NCTA suggests that, if the Commission does not establish the same time frame for reducing ILEC and CLEC support … [the Commission should] focus first on reduc-

[148] CTIA Comments at 7; see also T-Mobile Comments at 10.

[149] See NASUCA Comments at 16-17.

[150] T-Mobile Comments at 9, quoting NBP at 148.

[151] CTIA Comments at 10; see also NCTA Comments at 15, RCA Comment at 10. Especially because the record shows far less reason to believe, for wireless carriers, that support is needed to ensure reasonably comparable services and rates in rural areas.

[152] See, e.g., 05-337/96-45, NASUCA Comments on the Identical Support Rule (April 17, 2008); see also CenturyLink Comments at 40; RICA Comments at 12; Windstream Comments at 29-31.

[153] CTIA Comments at 15.

tions in wireless CETC support."[154] Although this may at first seem excessively parochial – because NCTA is not a wireless carrier – there actually is a rationale for the proposal: "Because there are often multiple wireless CETCs in a market … the wireless segment of CETC support is where the likelihood of unnecessary payments is greatest."[155]

There appears to be very little discussion from the side of those seeking elimination of CETC support as to the legal basis for doing so. Such discussion is obviously necessary.[156] NASUCA would suggest that the growth in CETC support, with the lack of showing of meeting the principles of 47 U.S.C. § 254,[157] means that it has been shown that support for CETCs – particularly wireless CETCs – is not necessary to advance universal service. And despite the provision of 47 U.S.C. § 214(e)(1) that only ETCs are "eligible" to receive high-cost support under § 254, there is no guarantee or requirement that all eligible carriers **receive** the support. Indeed, some ILECs (like Verizon in the District of Columbia) receive no high-cost support of any kind. And wireless ETCs may well be eligible for support from the Mobility Fund.

But there is also little discussion from the wireless side as to why there is a legal requirement that they receive high-cost support. The wireless carriers' citations to *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000) ("*Alenco*") as the reason why wireless carriers must continue to receive support,[158] miss at least two very

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[154] NCTA Comments at 15-16.

[155] Id. at 16. Comcast proposes for some reason that individual CETCs should be able to determine how to implement their support reductions. Comcast Comments at 7. This is another item – like the change from rate-of-return regulation to incentive regulation, as discussed above – that should not be up to the carrier to decide.

[156] Yet the NPRM contains no such discussion.

[157] See NASUCA Comments at 16-17.

[158] See, e.g., T-Mobile Comments at 3, 9, 10; USACo Comments at 9.

important points: First, the statement in the decision that "the program must create all market participants equally – for example, subsidies must be portable – so that the market, not local or federal government regulators, determines who shall compete for and deliver services to customers"[159] was part of the Fifth Circuit's description of the **FCC's** principles,[160] not an independent ruling. More importantly, the "competition" described was that in "local telephone markets"[161] for "local exchange service" provided by "local exchange carriers … that provide local telephone service in a given geographic calling area through monopoly networks or 'exchanges'…."[162] There is no sign that the *Alenco* court ever even considered wireless service as competition. Neither should the Commission.

IV. NASUCA PROPOSALS AND POSITIONS

Rather than burden the Commission with more words in this voluminous record, NASUCA would refer the Commission to the descriptions of previous NASUCA proposals that were contained in the initial comments. Those descriptions were set forth in Section V. of the comments[163] and Appendices A-C.

Before concluding these reply comments, however, NASUCA must respond to some truly "off-topic" points raised in others' comments. This includes those who inappropriately recommend – in response to the NPRM (or the NoI) – that the USF contribution mechanism must be changed.[164] NASUCA has long argued that the current revenue-

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[159] *Alenco*, 202 F.3d at 616.

[160] Id. at 615.

[161] Id.

[162] Id. at 616-617.

[163] At pages 18-19.

[164] E.g., Verizon Comments at 25.

based contribution mechanism should not be changed to a numbers- or connections-based mechanism.[165] NASUCA has also argued that if there is to be a mechanism to support broadband service, broadband service must contribute to that support.[166] As discussed by NASUCA, broadband revenues could provide an adequate base of support for additional broadband deployment.[167] Radical "reforms" of the contribution mechanism are still not needed.[168]

The NJBU proposes replacing all current high-cost support with auctions.[169] As NASUCA has explained on many occasions, auctions will simply not work for carriers with COLR responsibilities.[170] Indeed, NASUCA's NoI comments explain the difficulties with using auctions even to provide broadband service to currently-unserved areas.[171]

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[165] See, e.g., 06-122/05-337/96-45, NASUCA ex parte (July 29, 2010).

[166] See, e.g., 09-51, et al., NASUCA Comments on NBP Public Notice 19: The Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan (December 7, 2009) at 7. Although it appears beneficial that Hughes does not seek any funding from the CAF (Hughes Comments at 4), it does not make sense to exclude satellite broadband from contributing, as Hughes argues (id.), because this ignores network effects. And Hughes glosses over the high cost to customers (and the problems with satellite service, like latency) that reduce the value of the service, and that justifies the broadband cost model's minimal reliance on satellite. See NASUCA NoI Comments at 14; NASUCA NoI Reply Comments at 15-19.

[167] See US Census Bureau, Service Annual Survey (January 2010) at 42, 45, 48 (revenues from DSL, wireless and cable broadband totaled $49 billion in 2008). Mobile broadband revenue is expected to more than double by 2014. See http://viodi.com/2010/07/15/infonetics-mobile-broadband-revenues-to-double-hspa-drives-card-sales/. See also CWA Comments at 3; JSI Comments at 13; Rural Associations Comments at 67-68; Sprint Comments at 17; TSTCI Comments at 21. The MACRUC states' proposal to broaden the contribution base (MACRUC Comments at 11) is unclear as to who will be required to contribute. And the Neb/ND PSCs comment that "[e]very provider using the public switched telephone network should be required to contribute (Neb/ND PSCs Comments at 14) overly limits the funding base: Even broadband providers that do not use the PSTN should be required to help fund the broadband network.

[168] See ITTA Comments at 24; Verizon Comments at 5, 24-26.

[169] NJBPU Comments at 8-9.

[170] See, e.g., NASUCA Comments on the Use of Reverse Auctions to Determine Universal Service Support (April 17, 2008); see also Neb/ND PSCs Comments at 9-11. To imagine that reverse auctions will solve the universal service problems of, e.g., Wyoming or Alaska (see WyPSC Comments; AkRC Comments), is optimistic beyond imagining. See also RCA Comments at 15-19. Likewise, the suggestion that Wyoming be required to provide matching funds for its universal service support (NJBPU Comments at 13-14: MACRUC Comments at 4) is totally unrealistic.

[171] NASUCA NoI Comments at 10-16, NASUCA NoI Reply Comments at 23-40.

V. CONCLUSION

NASUCA agrees with the Commission that much of the current HCF is not needed to ensure that the goals of § 254 for legacy services are met. NASUCA has proposed measures to squeeze efficiencies out of the HCF. NASUCA agrees with most of the proposals in the NPRM to free up dollars to be used for supporting broadband – if and when broadband is found to be a service supportable under the USF.[172] The Commission should adopt these measures in a focused manner, and should disregard, in the context of this NPRM, the many off-topic issues raised in the comments. The goal of squeezing efficiencies out of the HCF must be followed in order to ensure that the overall burden on consumers is not increased as a result of supporting broadband deployment.

Respectfully submitted,

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[172] As discussed above, the one area where NASUCA disagrees with the Commission lies in the conversion of rate-of-return carriers to one form or another of incentive regulation. There is no necessary connection between the form of regulation and the amount of the HCF a carrier receives.