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 RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA") files its Reply Comments with respect to the Comments of other parties filed July 12, 2010 in the above captioned proceeding. RICA filed Comments opposing phase out of support to eligible rural CLECs, capping the existing fund, the use of auctions to determine eligible support recipients; and proposing that any model use be validated and provide a means for providers to demonstrate its inaccuracy in their service area. RICA urged the Commission to provide support for both fixed and mobile broadband services.

I OVERVIEW

The positions of the more than ninety parties that filed comments span a wide range from agreement with the objective of providing Universal Service Support for broadband but not, in varying degrees, the process;[1] to total rejection of providing support for broadband.[2] The latter

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[1] *See, e.g.,* National Exchange Carrier Association, et al. ("Associations"), Qwest, NASUCA.

[2] New Jersey Board of Public Utilities at 9-10.

position was that of a small minority, although many others pointed out the apparent conflict between the Commission's classification of Broadband Access as an Information Service and the Act's requirements that support may only be provided to Eligible Telecommunications Carriers ("ETCs") for telecommunications services.[3]

The most striking differences among the varied and competing interests commenting were the extent to which the parties were willing to address head-on the over-riding issues, the elephants sitting quietly in the back of the room. It is now apparent that progress in developing a sustainable mechanism to support broadband in high-cost areas is dependent on facing these issues and resolving them. A partial list includes:

1. In order to both support substantial new broadband deployment and maintain the current levels of broadband and voice services additional funding is required because sufficient funds cannot be obtained from "reform" without unavoidably impairing existing services.

2. The analysis described in 1, above, requires an accurate calculation of the costs and revenues of both new and existing broadband and voice services and the amount of support required for both. The comments make clear however, that the limitations, contradictions and biases in the computations and the model underlying the National Broadband Plan are so significant that accurate computations cannot be made.

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[3] *See, e.g*. Louisiana Telephone Association at 4, ICORE at 12. Many parties refer to *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) in which the court upheld the Commission's decision to provide support for Internet Access provided to schools and libraries. The court noted that although Section 254(c) does not limit additional services that may be designated for schools and libraries, the best reading of the statute and legislative history did not support the inclusion of Internet access. Nevertheless, it found there was sufficient ambiguity to require *Chevron* deference. 183 F.3d at 443. The decision thus provides little support for the Commission's authority outside of the schools and libraries context. The Commission's argument in that case that schools and libraries are treated differently in the Act, could preclude it from now arguing that support is generally not limited to telecommunications services.

3. The proposed performance requirement of 4/1 Mbs for supported services in high cost rural areas is so far below the unsupported performance expected in urban areas of 100/50 Mbs that the statutory principle of reasonable comparability between urban and high cost and rural areas cannot be met except by a fund level many times the current size or a plan that funds facilities capable of being upgraded as demand grows and funds are available.[4]

4. The principle of "no flash cuts" and the intent to begin immediate support of broadband in unserved areas are not reconcilable.

5. Many of the proposed regulatory reforms believed needed to ensure funding of broadband, such as elimination of the identical support rule, have been fully vetted before the Commission for many years and are not dependent on resolution of the Commission's authority.

II COMMENTS ON NPRM

Many parties agreed with RICA that to rationally determine the parameters of a broadband support system to be funded solely from revenues available under the current system the Commission must have an accurate quantification of both the amount of funds needed and the amount of funds available from a "reform" of the current system including expansion of the contribution base. The calculation necessarily involves determining which "reforms" do not impair the ability of the voice and broadband end user customers to continue to receive those services, and that allow the capacities of those services to evolve. To avoid harm to subscribers

[4] 47 U.S.C. 254(b)(3). This section was drafted in 1995 and implemented in 1997 by the Commission at a time when voice telephone service was nearly ubiquitous and only comparatively minor differences in capability existed. *Federal-State Joint Board on Universal Service,* First Report and Order, CC Doc. 96-45, 12 FCC Rcd 8776 (1997) The Commission subsequently reduced the minimum bandwidth from 3.5khz to 3khz. *Federal-State Joint Board on Universal Service,* Fourth Order on Reconsideration, 13 FCC Rcd 5318 (1997).

only truly unnecessary support[5] should be eliminated and the new system providing comparable support should be phased in at the same time the old system is phased out.[6]

The central specific concern of RICA is the proposal in the NPRM to phase out current support to CETCs, including eligible rural CLECs over a five year period, without any suggestion of transition to a different mechanism during that period and with only the vaguest discussion of what support might be eligible after the five years.[7] It is abundantly clear from the comments describing the complexities of developing and implementing a new system that even assuming CETCs ultimately have a reasonable opportunity to obtain support from the CAF, that support mechanism will not be available in time to replace the support being phased out. ILECs however will gain a real competitive advantage however because a 10 year phase out is proposed for them. Neither the NOI/NPRM nor the comments supporting the proposal provide any satisfactory reason why the Commission should so blatantly violate the principle of competitive neutrality that it adopted.

Significantly, little justification is found in the NOI/NPRM or the comments for removing the Universal Service Support from the few rural CLECs that actually qualify for it.[8]

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5 Support provided under the current identical support may or may not be necessary, there is no way to judge; nor is there any way under that rule to determine where support is needed but is not provided. Although the CETC cap order permitted the filing of individual cost studies, the Commission has failed to authorize USAC to accept those studies that have been submitted.

6 The new system may replace revenues provided under the old system, and/or expand the contribution base to include "other providers of interstate telecommunications" in addition to telecommunications carriers. 47 U.S.C. 254(d). There is, however, wide agreement in the comments that the Commission should expect the gap between savings from reform of the present system and funds needed to support broadband throughout the country to be substantial.

7 The Massachusetts Department of Telecommunications and Cable, at 5, opposes elimination of CETC support as does American Cable Association for wireline CETCs with less than 100,000 lines.

8 NASUCA at 15, Qwest at 23, Alexion at 19, NECA et al. at 35, Comcast at 6, CWA at 4, New Jersey Board of Public Utilities at 6, Pennsylvania PUC at 14.

Just as the dozens of comments of small ILECs explain that their customers will be harmed by removal of USF without a satisfactory replacement, the customers of rural CLECs will unquestionably experience degradation if not elimination of the voice and broadband services they now have, except it will happen quicker for the rural CLEC customers than the rural ILEC customers.

CenturyLink, for example, supports the proposal to eliminate support for CETCs, but its stated reasons focus mainly on issues relating to mobile wireless carriers. CenturyLink points to the well-known problems with the identical support rule. RICA has long been in agreement that the rule is seriously flawed and should be replaced with a cost based system for both wireless and wireline ETCs. CenturyLink also supports removal of "access replacement" support (IAS and ICLS) for the reason that wireless carriers didn't have access revenues to begin with. Rural CLECs, however, have had access charges from the beginning of the industry following the 1996 Act.[9]

Similarly NASUCA's support for elimination of support for all CETCs appears focused on wireless issues. NASUCA discusses at length a Criterion study previously filed that purports to show no correlation between *wireless* deployment and receipt of high-cost support.[10] The Criterion study is consistent with RICA's position that wireless mobile ETCs eligibility for support for mobile broadband should be based on the carrier's costs, but also notes the study is not relevant to high-cost support for rural wireline CLECs such as RICA's members.

Many parties agreed with RICA's initial comment that it is irrational for the Commission to propose switching the rate of return carriers to price cap regulation after noting on the record

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9 *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order, 16 FCC Rcd 9923 (2001) para. 21.

10 NASUCA NPRM Comments at 15-18.

that small rural rate of return regulated carriers have done a much better job of providing broadband service than the large price cap carriers.

III COMMENTS ON NOI

A. The Comments Identify Serious Flaws in the NBP's Quantitative Conclusions

Several parties filed extensive, credible engineering analysis of the quantitative conclusions underlying the recommendations of NBP and the NOI.[11] These comments demonstrate convincingly that some of the underlying assumptions regarding the extent of unserved areas, the costs of serving such areas, and the proposed supported bit rate level have serious deficiencies. Further, the comments demonstrate that neither the NBP model nor the existing high cost model can be validated as sufficiently accurate to be used to set an auction reserve price, or to distribute support to individual service providers[12]

B. The Comments Demonstrate The Substantial Flaws In The NBP's Proposal To Initially Fund Non-Scalable Mostly Wireless Technology.

The NBP proposes an initial supported broadband speed of 4Mbs download/1Mbs upload, and presumes that in the majority of instances wireless technology will be used.[13] The comments provide extensive, credible explanation that (1) the 4/1 Mbs standard will quickly become obsolete, perhaps as early as the current year;[14] (2) wireless technology capable of

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11 Nebraska Rural Independent Companies, Pennsylvania Public Utilities Commission, NASUCA, NECA.

12 NASUCA NOI Comments at 36: "the NBP model has serious deficiencies that prevent it from being used by the Commission to determine broadband support, or reform universal service funding mechanisms."

13 RICA members often provide wireless mobile service because their customers need both the capabilities of wireline service and the mobility of wireless. RICA urges support for both types of service, based on the service provider's cost, not under the identical support rule.

14 Nebraska Independent Companies at 45, Blooston Rural Carriers at 8. Thus facilities built to meet that standard will become obsolete long before they are fully depreciated.

offering service meeting the 4/1 Mbs standard is not capable of actually offering that speed simultaneously to more than a small percentage of the users expected to be served by a single site. (3) the prudent, most cost effective use of USF funding for fixed facilities is to encourage deployment of facilities that can be upgraded as demand increases, rather than incurring the cost of substantial replacement every few years. The Comments of the Blooston Rural carriers noted that the 2009 Report on Broadband Strategy for Rural America, released by then Acting-Chairman Copps made exactly this point, but was not mentioned in the NBP:

> Given the high fixed costs of constructing broadband networks, once built, they are not likely to be replaced, especially in rural areas that are unserved today. As a consequence, we believe that networks deployed in rural areas should not merely be adequate for current bandwidth demands. Instead, they also should be readily upgradeable to meet bandwidth demands of the future.[15]

As NASUCA correctly states, supporting only least cost facilities and not supporting upgradeable facilities will quickly leave consumers in high cost areas "riding at the back of the cyber-bus."[16]

Although its ultimate speeds are limited in comparison to wireline technology, mobile broadband service is a necessary complement to the higher ultimate capacity fixed services, RICA therefore advocates that the Commission separately fund both fixed and mobile .

C. If CAF Support calculations include all revenues; all costs must also be included

From at least the time of the "Ozark" separations rules, the Commission and the states have recognized that increasing the federal portion of the total cost of service reduces the amount of cost to be recovered through intrastate charges, especially local service charges.[17]

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15 Report on Broadband Strategy for Rural America, released May 27, 2009, para. 82. *See also,* CWA at 3.

16 NASUCA at 17.

17 *See,* F. Henck and B. Strassburg, A Slippery Slope, Greenwood Press, 1988, p. 120. The adoption of federal subscriber line charges did not change this relationship, but did establish that

Subsequent adoption of the original USF and the post-1996 USF followed this pattern. The current USF does not directly examine rates or revenues for intrastate service, although recognizing that its purpose is to achieve comparable and affordable local rates. [18] The NBP and the NOI/NPRM do not discuss jurisdictional separations or whether a Joint Board recommendation will be required, the implication is that the Commission considers all broadband services to be interstate and not subject to state regulation. [19]

A significant change in direction proposed by the NBP and the NOI is to determine support requirements as the difference between the cost of operating broadband facilities and all the revenues received from services provided over those facilities. RICA's comments accepted this change, recognizing that other than voice service, the broadband services are likely to be unregulated at either the state or federal level. RICA, notes however, that the inclusion of such revenues in the support calculation necessarily means that the costs of those services must also be included. [20] Many parties also noted that for rural service providers, these costs are often substantially higher than in urban areas. For Internet service, rural providers incur very substantial middle mile charges to connect to the Internet. For video services providers unaffiliated with the vertically integrated media companies that control both content and distribution, per subscriber costs are significantly higher.[21]

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the FCC without state or Joint Board action can increase the effective rate that end users pay in order to be connected to the network.

18 The Commission initially decided to use a revenue benchmark, but reconsidered and adopted a purely cost based mechanism. *Federal-State Joint Board on Universal Service,* Seventh Report and Order, 14 FCC Rcd 8078 (1997) at para. 61.

19 Whatever the jurisdiction of intrastate VOIP calls, in a ubiquitous broadband world with a multitude of VOIP providers it is not clear that voice service can be expected to provide any contribution to the cost of operating broadband facilities.

20 *See also,* CenturyLink at 54.

21 Rural companies expect this problem will be exacerbated if the Commission approves the pending application of Comcast/NBC universal without proper conditions, strictly enforced.

IV CONCLUSION

The comments demonstrate that a significant period of time will be required to establish a broadband support mechanism, especially if the Commission determines that a model should be developed to either establish auction reserve prices or determine the distribution of funds. RICA urges the Commission to proceed to resolve issues for which it already has a sufficient record and for which the proper direction is clear. These include: elimination of the identical support rule and replacement with cost based support for CETCs and resolution of the traffic pumping and phantom traffic issues. The Commission should not begin to reduce support for rural CLECs until an alternative is in place that will assure the continued provision of broadband and voice service to the subscribers, both fixed and mobile, and a means to extend service to those currently without broadband service.

Respectfully submitted

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