

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC)	

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

The National Cable & Telecommunications Association (NCTA)¹ hereby submits its reply comments in response to the *Notice of Proposed Rulemaking* issued in the above-captioned proceeding.²

NCTA, along with many commenters in this proceeding, supports the Commission's proposal to continue the process of reining in universal service high-cost support by reducing the high-cost support cap in a state when a competitive eligible telecommunications carrier (ETC) relinquishes its ETC designation in that state.³ NCTA also applauds the Commission's

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over \$160 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 22 million customers.

² *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010) (*Notice of Proposed Rulemaking*).

³ *Id.* at ¶¶ 23-24; *see also* Comments of Free Press, WC Docket No. 05-337, CC Docket No. 96-45, at 3 (Oct. 7, 2010); Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No. 96-45, at 4-5 (Oct. 7, 2010); Comments of Sprint Nextel Corporation, WC Docket No. 05-337, CC Docket No. 96-45, at 2-4 (Oct. 7, 2010) (Sprint Comments); Comments of the United States Telecom Association, WC Docket No.

commitment to offset any increases in universal service support mechanisms with reductions in existing programs. But we urge the Commission to collect no more than is immediately needed, and to reduce the contribution factor to the extent warranted by changes in demand for support during this transitional period.

I. THE COMMISSION SHOULD PURSUE FISCALLY RESPONSIBLE REFORM BY REDUCING SUPPORT TO COMPETITIVE ETCs AND INCUMBENT LECS

In 2008 the Commission placed a cap on high-cost support to competitive ETCs to protect consumers from the effects of a rising contribution factor and to ensure that the size of the universal service fund remained sustainable.⁴ Under the cap, total annual competitive ETC support is capped for each state at the level of support that competitive ETCs in the state were eligible to receive in March 2008 on an annualized basis.⁵ The Commission imposed the cap on an interim basis until it adopts comprehensive high-cost reform.⁶

In March, the National Broadband Plan recommended a pathway for comprehensive universal service reform and the Commission has begun the process of seeking comment on proposals to enact those recommendations.⁷ As part of this comprehensive reform process, the

05-337, CC Docket No. 96-45, at 3 (Oct. 7, 2010); Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45, at 2-4 (Oct. 7, 2010) (Verizon Comments).

⁴ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8838, ¶ 6 (2008) (*Interim Cap Order*) (finding that the growth of the fund was “not sustainable and would require excessive (and ever growing) contributions from consumers to pay for this fund growth.”); *aff’d*, *Rural Cellular Ass’n et al. v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

⁵ *Interim Cap Order*, 23 FCC Rcd at 8834, ¶1.

⁶ *Id.*

⁷ *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 135-36, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (National Broadband Plan); *see also Connect America Fund*, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6677-82, ¶¶ 51-62 (Apr. 21, 2010) (*CAF NPRM*) (proposing to cap and cut legacy high-cost support, consistent with National Broadband Plan recommendations); *Universal Service Reform; Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, FCC 10-182 (rel. Oct. 14, 2010) (*Mobility Fund NPRM*) (proposing to create a “Mobility Fund” as recommended in the National Broadband Plan).

National Broadband Plan recommended, and the Commission has proposed, to “eliminate ongoing competitive ETC support for voice service in the legacy High-Cost program.”⁸ Given this proposed aspect of comprehensive reform, it is reasonable for the Commission to begin the process of “ramp[ing] down competitive ETC support under the legacy programs”⁹ by reducing the existing state competitive ETC high-cost support cap when a competitive ETC relinquishes its designation in the state.

Some commenters argue that competitive ETC support should not be reduced because additional support would allow competitive ETCs to provide more or better service to consumers.¹⁰ Such an approach would undermine the fundamental universal service transition that the Commission is proposing to undertake. As recommended in the National Broadband Plan, the Commission is trying to prioritize funding for areas where there is no business case for broadband (or, in the case of the proposed Mobility Fund, where there is no business case for advanced wireless services). To accomplish these goals in a fiscally responsible manner, the Commission must also reduce support disbursed from existing high-cost programs, even where that support has been used in the past to produce positive results. Although competitive ETCs will lose *existing* support, as part of comprehensive universal service reform they also should be eligible to receive *new* support for providing broadband service, where such support is needed, under any future mechanism adopted by the Commission. And the Commission is currently seeking comment in the recently adopted *Mobility Fund NPRM* on a proposal to provide a

⁸ National Broadband Plan at 148; *CAF NPRM*, 25 FCC Rcd at 6681-82, ¶¶ 60-61.

⁹ *CAF NPRM*, 25 FCC Rcd at 6681, ¶ 61.

¹⁰ Comments of MTPCS, LLC d/b/a Cellular One, WC Docket No. 05-337, CC Docket No. 96-45, at 5-6 (Oct. 7, 2010); Letter from Jerome D. Block, Vice Chairman, New Mexico Public Regulation Commission, to Records Clerk, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 96-45, at 4 (Oct. 7, 2010); Comments of Rural Cellular Association, WC Docket No. 05-337, CC Docket No. 96-45, at 3-7 (Oct. 7, 2010) (RCA Comments); Comments of the Public Service Commission of the United States Virgin Islands, WC Docket No. 05-337, CC Docket No. 96-45, at 6-7 (Oct. 7, 2010) (USVI PSC Comments).

limited level of support to fund mobile service deployment in targeted areas where such services currently do not exist, to the extent the record demonstrates that such support is needed.¹¹

In support of their arguments that state caps should not be reduced, RCA and the USVI PSC cite examples where competitive ETCs recently have relinquished their designations.¹² The examples cited by these commenters, however, demonstrate exactly the opposite point – that statewide support to remaining competitive ETCs *should* be reduced – because in each case other providers are serving consumers in the same areas without receiving any high-cost support.¹³ As Verizon correctly noted in its comments, “[A]s a universal service policy matter it does not make sense to increase subsidies to other providers in areas where carriers are willing to serve without support. Government subsidies are clearly not necessary where service is in fact being provided

¹¹ *Mobility Fund NPRM*, FCC 10-182 at ¶ 5. NCTA will comment on the proposals in the *Mobility Fund NPRM* in that proceeding.

¹² RCA Comments at 3-4, 6 (citing competitive ETC relinquishments in Oregon, Maine, Vermont, New Hampshire, and the U.S. Virgin Islands); USVI PSC Comments at 3-4 (citing the relinquishment of Centennial’s competitive ETC designation in the U.S. Virgin Islands).

¹³ *RCC Minnesota, Inc., Notice of Relinquishment of its Eligible Telecommunications Carrier and Eligible Telecommunications Provider Status*, Order No. 09-153, 2009 Ore. PUC LEXIS 136, at *2 (Apr. 29, 2009, Ore. PUC) (stating that the incumbent LEC and other wireless carriers serve RCC’s service area in Oregon, and that RCC will continue to provide service after relinquishing its ETC designation); *RCC Minnesota, Inc., SRCL Holding Co. and Saco River Communications Corp., Notice of Relinquishment of Eligible Telecommunications Carrier Designation*, Docket No. 2009-11, Order Approving Stipulation, 2008 Me. PUC LEXIS 638, at *3 (Mar. 12, 2009, Maine PUC) (after ETC relinquishment RCC/Verizon Wireless will continue to offer and provide wireless service throughout the state of Maine); *Petition of RCC Atlantic, Inc., for extension of designation as an Eligible Telecommunications Carrier throughout the State of Vermont*, Docket No. 7476, Order Closing Docket, 2009 Vt. PUC LEXIS 193, at *2 (Mar. 4, 2009, Vermont PSB) (RCC divested its Vermont operations to AT&T); AT&T Coverage Viewer, <http://www.wireless.att.com/coverageviewer/#?type=voice> (last visited Oct. 15, 2010) (AT&T Wireless Coverage Map) (AT&T provides service in Vermont); Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2010, USAC, at App. HC01, <http://www.usac.org/about/governance/fcc-filings/2010/Q4/HC01-%20High%20Cost%20Support%20With%20Capped%20ETC%20Support%20Projected%20by%20State%20by%20Study%20Area%20-%20Q42010.xls> (Aug. 2, 2010) (showing that AT&T does not receive high-cost support in Vermont); *Federal-State Joint Board on Universal Service; RCC Minnesota, Inc., and RCC Atlantic, Inc.; Petition for Designation as an Eligible Telecommunications Carrier in New Hampshire*, CC Docket No. 96-45, 24 FCC Rcd 2490, 2491, ¶3 (Wireline Comp. Bur. 2010) (“RCC asserts that it will continue providing service to customers within its licensed service area in New Hampshire, but it will do so on a non-ETC basis.”); USVI PSC Comments at 3 (AT&T petitioned to relinquish Centennial’s ETC designation in the U.S. Virgin Islands because “continued participation in the USF support program is no longer consistent with its long term business strategy.”); AT&T Wireless Coverage Map (showing that AT&T provides wireless service in the U.S. Virgin Islands).

by unsubsidized carriers.”¹⁴ Chairman Genachowski has echoed this point, recently stating that the legacy high-cost support mechanisms are “filled with inefficiencies, providing, for example, annual subsidies of more than \$10,000 a line to carriers serving communities where there are unsubsidized competitors.”¹⁵ Increasing support to competitive ETCs when a competitor relinquishes its designation is precisely the type of inefficient use of existing high-cost support that the Commission should curtail. Instead, consistent with NCTA’s recommendations for overall high-cost reform, this support should be repurposed to fund the availability of broadband in unserved areas.¹⁶

While the *Notice of Proposed Rulemaking* focuses on support directed to competitive ETCs, the Commission should pursue a similar approach with respect to incumbent LECs.¹⁷ Some of these incumbent LECs suggest that reductions in competitive ETC support should be shifted to incumbent LECs through the existing high-cost support mechanisms.¹⁸ CenturyLink, for example, suggests that information collected on the Form 477 could be used to identify areas where broadband services are lacking and high-cost support should be targeted.¹⁹ The suggestion to use Form 477 data to better target support is one with which NCTA agrees, but

¹⁴ Verizon Comments at 4.

¹⁵ *Mobility Fund NPRM*, FCC 10-182, Statement of Chairman Julius Genachowski.

¹⁶ See Comments of the National Cable & Telecommunications Association, WC Docket Nos. 10-90, 05-377, GN Docket No. 09-51, at 5-16 (July 12, 2010) (NCTA *CAF NPRM* Comments) (protect consumers by capping high-cost support mechanisms and provide funding for broadband by eliminating legacy high-cost support); Reply Comments of the National Cable & Telecommunications Association, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 3-9 (Aug. 11, 2010) (NCTA *CAF NPRM* Reply Comments) (adopt the proposed common sense reductions to legacy high-cost support and repurpose these funds to support broadband).

¹⁷ See Sprint Comments at 5 (“[T]he Commission should move as aggressively to reduce and eventually eliminate legacy high-cost support to incumbent ETCs as it is for legacy support to competitive ETCs.”).

¹⁸ See Comments of CenturyLink, WC Docket No. 05-337, CC Docket No. 96-45, at 2-3 (Oct. 7, 2010) (CenturyLink Comments) (proposing to increase support to price cap incumbent LECs under the current high-cost mechanism); Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 05-337, CC Docket No. 96-45, at 3-4 (proposing to redistribute competitive ETC support under the legacy high-cost support mechanisms).

¹⁹ CenturyLink Comments at 3.

CenturyLink's proposal doesn't go nearly far enough. Just as broadband data should be used to target where *new* support is needed, it is equally important that the Commission use this data to determine where broadband service is available and *existing* support can be reduced. It is essential that the Commission repurpose and target high-cost funds effectively, rather than simply pouring additional funds into the existing inefficient legacy support mechanisms. The Commission should move forward quickly in transitioning high-cost support to fund broadband as recommended in the National Broadband Plan, for both competitive ETCs and incumbent LECs.²⁰

II. THE COMMISSION SHOULD REDUCE THE CONTRIBUTION FACTOR RATHER THAN HOLDING FUNDS IN RESERVE

The Commission also seeks comment on a proposal to collect and reserve reclaimed high-cost support for future broadband funding, rather than reducing the contribution factor. While we appreciate the Commission's desire to build up a pool of funding that can be used to promote broadband deployment, we agree with the commenters that this proposal is not in the best interest of consumers.²¹ For years there has been widespread recognition that the universal service program is bloated and places a larger than necessary burden on consumers. As the Commission transitions to a new regime, consumers should not be required to make the "down

²⁰ See NCTA *CAF NPRM* Comments at 9-16 (supporting the Commission's proposals to reduce both incumbent LEC and competitive ETC high-cost support); NCTA *CAF NPRM* Reply Comments at 4-5 (the Commission's proposals appropriately spread legacy high-cost support reductions across all types of providers).

²¹ Comments of the Rural Independent Competitive Alliance, WC Docket No. 05-337, CC Docket No. 96-45, at 5 (Oct. 7, 2010) (RICA Comments) (By reserving funds "[t]he Commission is thus telling consumers: 'we could reduce your costs this quarter and several more after it, but they will eventually go back up. You are better off not having to cope with fluctuation than keeping the money in your own pocket.'"); Comments of the Rural Telecommunications Group, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 5 (Oct. 7, 2010) (RTG Comments) ("Assessing carriers, and ultimately consumers, for 'phantom' high-cost support needs is not in the public interest."); Sprint Comments at 5 (reserving funds now, rather than collecting after the contribution mechanism is reformed, will force today's contributors to pay more); Verizon Comments at 5 ("[T]he Commission should use the savings from these reductions to reduce the contribution factor [until new broadband support programs are implemented], which has the benefit of reducing the cost of universal service to consumers.").

payment” on that new regime at the same time that they are still paying the excessive costs of the old regime. In addition, as pointed out by many commenters, the measure proposed here also raises statutory concerns.²²

The Commission is on the right track in attempting to repurpose existing high-cost support that is not being used to its maximum effect today to support broadband deployment in unserved areas. But this transition can, and should, be accomplished in a manner that does not increase the overall burden on consumers. Assessing contributions based on the requirements of existing programs, as opposed to hypothetical, future programs, is an important method of ensuring that the burden on consumers does not become unreasonable.

²² RICA Comments at 5 (“Because the Commission has not established a Broadband support mechanism, it has no authority to require carriers (and thereby their customers) to contribute to a non-existent mechanism [pursuant to section 254].”); RTG Comments at 4 (“The Commission’s proposal to take reclaimed money intended for high-cost support and instead use it for future, undetermined purposes is neither specific nor predictable, as required by the Act.”); Comments of SouthernLINC Wireless and the Universal Service for America Coalition, WC Docket No. 05-337, CC Docket No. 96-45, at 2-3 (Oct. 7, 2010) (collecting funds and holding them in reserve for some unspecified future time would impermissibly turn universal service contributions from a pass-through fee to a tax); Verizon Comments at 5 (“references in Section 254 to ‘specific’ and ‘predictable’ USF programs and support—and contributions collected for ‘established’ universal service mechanisms—counsel against reserving support for mechanisms that do not yet exist.”).

CONCLUSION

Consistent with the National Broadband Plan's recommendations, the Commission should move forward with its comprehensive reform proposals transitioning the legacy high-cost support mechanisms to support broadband availability throughout the nation. Consistent with this comprehensive reform, the Commission should adopt its proposal to reduce the high-cost support cap when a competitive ETC relinquishes its designation in a state, but it should not adopt the proposal to continue collecting contributions as if this reduction had not occurred.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg
Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications
Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

October 21, 2010