



May 6, 2011

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92

Dear Ms. Dortch:

On Thursday, May 5, 2011, John Rose and Stuart Polikoff from the Organization for the Promotion and Advancement of Small Telecommunications Companies, Derrick Owens and Gerry Duffy on behalf of the Western Telecommunications Alliance, Jim Frame and Jeff Dupree from the National Exchange Carrier Association, Paul Cooper from Fred Williamson Associates, and Joshua Seidemann and the undersigned on behalf of the National Telecommunications Cooperative Association (collectively, the “Rural Representatives”), met with the following representatives of the Federal Communications Commission: Zac Katz, Sharon Gillett, Carol Matthey, Amy Bender, Randy Clarke, Victoria Goldberg, Rebekah Goodheart, Patrick Halley, Katie King, Kevin King, Steve Rosenberg, Michael Steffen, and Victoria Wiener.

The Rural Representatives provided to the Commission staff the attached summary of the universal service fund (“USF”) and intercarrier compensation (“ICC”) reform proposals for rural rate-of-return incumbent local exchange carriers (“RLECs”) described in greater detail in the comments filed by the Rural Representatives and a number of regional and state associations on April 18, 2011. The Rural Representatives underscored that this proposal was intended to achieve the reform objectives set out by the Commission in terms of fiscal responsibility (by including constraints on prospective capital investment and corporate operations expense recovery), accountability (by encouraging the adoption of strict, but reasonable, carrier-of-last-resort obligations), and modernization (by transitioning support from legacy USF mechanisms to a broadband-focused Connect America Fund (“CAF”)) – while at the same time preserving the core tenets of a rate-of-return framework that has proven strikingly effective and efficient in enabling substantial rural broadband penetration (and upgrades to existing plant) in recent years at a minimal (3%) annualized growth rate in support.

In this regard, the Rural Representatives explained that their plan would both enable the *deployment* of broadband deeper into the unserved portions of RLEC service areas, and ensure that currently-served rural consumers in these territories do not suffer *loss or degradation of service* or otherwise fall behind in terms of receiving reasonably comparable broadband services – all at cost increases that are no greater than the rate of inflation. Indeed, the Rural Representatives noted that pursuant to the statutory mandate for universal service, any USF reforms must not only address the commendable desire to make broadband available in unserved areas, but also ensure how thereafter *every customer will continue to receive reasonably comparable services at reasonably comparable rates.*

The Rural Representatives also discussed with the Commission staff potential legal and practical complications associated with providing USF support for non-regulated services and taking account of the net revenues derived from non-regulated services in calculating such support. Given that the Commission has previously concluded that broadband Internet access services are non-regulated and thus not subject to Title II requirements, a host of legal and practical complications would arise in attempting to identify and address non-regulated costs and revenues without any structure to define the proper accounting of them or to ensure the just and reasonable nature of them – which, by definition, means they will need to be in some form “regulated.” The Rural Representatives also observed that it was unclear which non-regulated services might be included within any such USF support determinations. By contrast, the Rural Representatives highlighted that their plan would establish a support mechanism for broadband-capable networks that works within and is entirely consistent with the plain language of Section 254, the Title II regulation of transmission networks, and the Commission’s prior determination to classify broadband Internet access service as a non-regulated service.

The Rural Representatives further described the mechanics of their proposal with respect to USF and ICC reform. They noted that “pause points” within the proposal were built in precisely to take account of market developments (consistent with the Commission’s desire for market-driven reforms), and they urged that reform be planned in stages rather than in large sweeping motions that may fail to consider fully (or be able to adjust for) all of the potential short-term and longer-term consequences. The Rural Representatives observed, for example, that when the Commission initiated ICC reform in 2001, the impact of such reform on “broadband” was hardly considered at all. To this end, the Rural Representatives encouraged the Commission to take prudent, sensible steps toward ICC and USF reform precisely because it is so difficult to predict where the market and technology will lead. Specifically, the Rural Representatives asked the Commission to coordinate ICC reform with the states to ensure that there can be sufficient recovery through a combination of explicit support and *reasonably comparable* end-user charges. Similarly, the Rural Representatives explained how their plan contains a series of built-in transitions that will provide a smooth “glide path” from legacy USF mechanisms to a new RLEC-specific component of the CAF that reflects and supports increasing use of networks for broadband services in these areas.

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Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Copies of the materials distributed at the meeting are enclosed with this letter. If you have any questions, please do not hesitate to contact me at (703) 351-2016 or mromano@ntca.org.

Sincerely,

/s/ Michael R. Romano

Michael R. Romano

Senior Vice President – Policy

MRR:rhb

Enclosure

cc: Zac Katz
Sharon Gillett
Carol Matthey
Amy Bender
Randy Clarke
Victoria Goldberg
Rebekah Goodheart
Patrick Halley
Katie King
Kevin King
Steve Rosenberg
Michael Steffen
Victoria Wiener
John Rose
Stuart Polikoff
Derrick Owens
Gerry Duffy
Jim Frame
Jeff Dupree
Paul Cooper
Joshua Seidemann

RLEC-Specific USF and ICC Reform Proposal

The RLEC Plan proposes measured and reasonable alternative approaches to USF and ICC reform for RLECs. It seeks to accomplish the FCC's broadband deployment and universal service reform goals and provide a smooth transition from today's support mechanisms to tomorrow's broadband focused mechanisms. The Plan also seeks to provide RLECs who have made investments in network plant under current rules with a reasonable opportunity to recover those costs consistent with current rules. In addition, the RLEC Plan provides clear and predictable rules for recovery of future investment costs.

Step One: Implement short-term ICC reform measures that confirm intercarrier compensation is due for all traffic originating from or terminating to the PSTN regardless of technology, address "phantom traffic" problems, and deter artificial and uneconomic traffic stimulation.

Step Two: Effective January 1, 2012, implement short-term USF Reform measures on a prospective basis.

- Impose a limitation on recovery of prospective RLEC capital expenditures based on analyses of booked study area costs, to determine the portion of a carrier's loop plant that has reached the end of its useful life.
- Cap recovery of corporate operations expenses by applying the current HCL corporate operations expense cap formula to all federal high cost support programs.

Step Three: Promptly adopt rules encouraging States to move intrastate originating and terminating access rates for rural ROR carriers to interstate levels, by using incremental federal CAF funding in conjunction with a federal local service rate benchmark for access rebalancing.

Step Four: Design and implement an RLEC-specific CAF mechanism designed to re-focus existing RLEC USF support on broadband. Support under existing high-cost mechanisms including HCLS and ICLS decline as broadband-focused support phases in.

1. Start with today's interstate revenue requirements.
2. Add support for "Middle Mile" facilities.
3. Revise the separations rules so as to gradually increase last-mile interstate cost allocations based on each company's individual broadband adoption rates, transitioned in over eight years.
4. Compute RLEC CAF broadband funding amounts by subtracting the product of an urban broadband transmission cost benchmark times broadband lines in service, from actual RLEC network broadband transmission costs. Broadband transmission costs include last mile, second mile, middle mile and Internet connection costs.
5. Recover remaining interstate costs (i.e., those not recovered via RLEC CAF support, transitional ICLS, and current LSS or its CAF replacement) via a combination of end user and other customer charges. These would include today's SLCs, switched access charges (to the extent these charges continue to apply under ICC reform), and special access charges, including charges for wholesale broadband services.

Following initial implementation of the RLEC Reform Plan, the Commission should revisit results and consider the need for further modifications in 3 to 5 years.

RLEC Plan Implementation Notes

Modification of Category 1.3 and 4.13 Loop Costs Assigned Interstate

The Base Allocation Factor in section 36.2(b)(3)(iv) becomes the “Broadband Allocation Factor,” which assigns common line costs to interstate based on the study area’s broadband adoption rate. It is calculated on an individual study area basis, reflecting the ratio of that company’s broadband lines to its total lines in service. Increases in allocations above the current 25% are phased in over eight years. For example, if in year one the study area adoption rate is 65%, one eighth of the additional 40% is added to the original 25% to produce a 30% allocation factor in year one. In year two, if the study area’s adoption rate is 70%, two eighths of the additional 45% is added to the original 25% to produce a 36.25% allocation factor. The allocation factor does not go below the current 25%.

Loop costs assigned interstate are then assigned to the RLEC’s Broadband Network Transmission Cost by taking the original 25% of common line costs assigned interstate times the study area broadband adoption rate plus the additional loop costs assigned interstate based on the above (*e.g.*, additional 5% in year one example above). All naked DSL loop costs are also assigned to the Broadband Network Transmission Cost.

Transitional ICLS

The original 25% of common line costs assigned interstate times the reciprocal of the study area broadband adoption rate (*i.e.*, 1 minus adoption rate) is assigned to transitional ICLS, which declines as the broadband adoption rate increases.

High Cost Loop Support

High Cost Loop Support (HCLS) in section 36.631 is transitioned down as additional loop costs are assigned interstate based on the Broadband Allocation Factor. Each year HCLS is calculated based on current rules and compared to the additional loop costs assigned interstate based on the broadband adoption rate. For example, in a given year if an additional \$100 is assigned interstate based on the adoption rate and HCLS produces \$120, the study area receives \$20 from the HCLS grandfathering provision. This amount reflects transitional HCLS for each carrier operating in high-cost areas that qualify for HCLS under current rules; this grandfathered support will phase down over time as the carrier assigns more loop costs to the interstate jurisdiction based on broadband adoption by its customers.

RLEC Broadband Benchmark Calculation

The urban benchmark used in the RLEC broadband calculation represents urban broadband transmission costs and is intended to achieve two key policy objectives: assuring reasonable comparability of rural broadband services and reasonably constraining funding levels. The benchmark includes a fixed and a variable line component; the line component increases as additional loop costs are assigned interstate based on the study area’s broadband allocation factor. This increase is in proportion to the current SLC relationship used in ICLS. Using the above example, if the study area’s broadband allocation factor is 30% in year one, the line component would be \$7.80 (30 divided by 25 equals 1.2 times \$6.50 equals \$7.80).