

**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
)	
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 No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	

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

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

The National Cable & Telecommunications Association (NCTA)¹ hereby submits its reply comments in response to the *FNPRM* in the above-referenced proceedings.² As the initial comments demonstrate, the Commission should act quickly to modernize and reform universal service high-cost support and the intercarrier compensation system in a fiscally responsible manner to promote the availability of broadband services.

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 \$170 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 23 million customers.

² *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (*FNPRM*).

INTRODUCTION

In our initial comments in response to the *FNPRM* we set out a timeline for the Commission to begin the process of rationalizing and reforming high-cost support. Specifically, we proposed that the Commission should 1) protect consumers who contribute to universal service by capping the annual total size of the Universal Service Fund and the amount of high-cost support at 2010 levels; 2) eliminate existing interstate access support (IAS), local switching support (LSS), and wireless competitive eligible telecommunications carrier (ETC) support over a three-year transition period to support broadband; 3) use the approximately \$2 billion in savings from these cuts to begin funding broadband deployment in unserved areas through the Connect America Fund; and 4) adopt additional reforms to ensure efficient use of remaining legacy high-cost support, including reexamining the 11.25 percent rate of return applicable to some incumbent local exchange carriers (LECs) and target support only to areas where the market is not working to attract investment in broadband networks.

Adopting these reforms would set the Commission on the path to a fiscally responsible and sustainable universal service fund that will provide broadband to consumers in areas that lack the service today, while ensuring that consumers in other areas are not overburdened by ever increasing contributions to the fund. In addition, the timeline of the reforms we propose will ensure that consumers are not harmed by any flash cut changes in support.

The Commission also proposes to reform and rationalize the current intercarrier compensation system. We support the Commission's goal of reducing above-cost access charge rates and the implicit subsidies they represent. We agree with many commenters in the proceeding that, ultimately, terminating rates should be low and uniform for all types of voice traffic. We strongly disagree, however, with commenters that seek to recover 100 percent of any reduced intercarrier compensation revenue through additional high-cost support. Consistent with

the Commission's efforts to reduce waste and inefficiency, providers seeking access replacement support must first demonstrate that such funding is necessary.

The Commission also seeks comment on measures that would promote the deployment of Internet protocol (IP)-based broadband networks. One issue of vital importance to the operators of local broadband networks is their right to exchange telecommunications traffic that originates or terminates as voice over IP (VoIP) with incumbent LECs. Interconnection among telecommunications carriers is critically important in the delivery of voice communications, regardless of technology, and the Commission must continue to preserve certain key rights and obligations for competitors. To ensure that customers of VoIP providers are able to make and receive calls to any customer of any other provider, the Commission should reiterate that section 251 of the Act applies to telecommunications traffic that originates or terminates as VoIP. The Commission also should preserve the right of competitors to interconnect at a single point of interconnection (POI) per local access and transport area (LATA), rather than allowing incumbent LECs to require interconnection at multiple POIs per LATA. Finally, the Commission should ensure that transit services are available to competitive carriers at cost-based rates.

I. THE RECORD SUPPORTS THE COMMON SENSE REFORMS ADVOCATED BY NCTA

Several commenters agree with NCTA that, to achieve the Commission's goals of transitioning high-cost support from funding voice networks to funding broadband, while also ensuring that consumers are not overburdened by an ever-increasing universal service fund, the Commission should cap the size of the fund.³ Once the fiscal restraint of a cap is in place, the

³ See, e.g., Comcast Comments at 11-12; Free State Foundation Comments at 9-13; NASUCA Comments at 10; Verizon Comments at 55-57.

Commission should, over a three-year period, eliminate some legacy support mechanisms, i.e., IAS, LSS, and wireless competitive ETC high-cost support, and use the savings to fund a new Connect America Fund.⁴ As proposed by the Commission, the Connect America Fund should be targeted to areas that currently do not have broadband at speeds of 4 Mbps downstream and 1 Mbps upstream.⁵ Connect America Fund support should be limited to no more than \$3000 per line per year, and consumers in areas where per line costs exceed this amount should receive vouchers or discounts to offset a portion of the cost of receiving satellite service.

Even if the Commission did nothing but take these three steps – capping the Fund, eliminating IAS, LSS and wireless competitive ETC support, and creating the Connect America Fund – it would be making significant progress toward achieving the goal of universal broadband availability. Under NCTA’s approach, the Commission would be able to begin distributing support for broadband in unserved areas in 2012, and by 2015, it would have roughly \$2 billion per year to award for such projects. Moreover, because this program would be funded by cuts in existing support that are widely spread across providers, any negative impact from the cuts should be minimal.⁶

Our approach is premised on the notion that “[t]he purpose of universal service support is to benefit the customer, not the carrier.”⁷ In contrast, rural incumbent LEC proposals in the

⁴ As we noted in our initial comments, the Commission has recognized the need for high-cost support in tribal areas and Alaska Native regions; therefore the Commission should exempt providers serving these areas from reductions in high-cost support. NCTA Comments at 5, 7 n.20.

⁵ See *FNPRM*, FCC 11-13 at ¶ 261; Cox Comments at 4-6.

⁶ To ensure that consumers are not adversely affected by these changes, carriers could seek a waiver of these rules if they can demonstrate that the reductions would cause them to have to discontinue service and consumers would have no alternative service provider in the area.

⁷ *Alenco Communc’s, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000); see also *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier*, WC Docket No. 05-337, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4092, ¶ 36

record seem designed to maintain existing support levels for these carriers, without regard to how many customers they serve, what services they provide, what revenue streams are available to them, or how competitive their service areas have become.⁸ Beyond a limited transition period, this is not an acceptable approach for a modern universal service regime.

After this initial phase of reform is completed, the Commission should adopt its proposals to reform and rationalize high-cost loop support (HCLS) and interstate common line support (ICLS). Specifically, the Commission should eliminate HCLS for incumbent LECs with more than 200,000 working loops, and should reduce the percentage of costs that incumbent LECs may recover from HCLS. The Commission also should eliminate support for corporate overhead expenses and cap the amount of operating and capital expenses that are reimbursable through high-cost support. These reforms should become effective after a three-year period, on January 1, 2015. After the three-year period, the Commission should repurpose high-cost model support and disburse this support to providers through the Connect America Fund. As explained in the *FNPRM*, these proposals are designed to ensure that limited resources are being put to their most effective use.⁹

The Commission should also examine the amount of high-cost support that is currently going to areas that are unserved with 4/1 Mbps broadband service, and to areas that do not have

(2010); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 05-337 and 03-109, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, 4155, ¶ 31 (2010); *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, 8842, ¶ 18 (2008).

⁸ Compare *NECA et al.* Comments at 5 (noting that the RLEC Plan reflects “that, over at least the next decade or so, RLEC high-cost program support costs (adjusted for likely levels of inflation) would remain roughly the same as under existing rules.”) with *Trends in Telephone Service*, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf, at 7-3 (Wireline Comp. Bur., Indus. Analysis Div., 2010) (showing that incumbent LEC lines have decreased by 1/3 between 1998 and 2008).

⁹ *FNPRM*, FCC 11-13 at ¶ 162.

any unsubsidized providers offering 4/1 Mbps service, and it should commence a proceeding to reexamine and reduce the 11.25 percent rate of return applicable to incumbent LECs regulated under this method. These steps will enable the Commission to better target high-cost support to areas where there is no private sector business case to offer broadband service and to ensure that the amount of support is no more than necessary and appropriate to accomplish the goal of universal broadband availability.

II. ACCESS REPLACEMENT FUNDING SHOULD ONLY BE AVAILABLE IN LIMITED AREAS

In transitioning the intercarrier compensation regime to a low unified rate for all traffic, the first step in most proposals has been to reduce intrastate access charges, which are generally the highest rates, to lower interstate access rate levels. In discussing these reductions, some carriers have argued that the Commission should adopt an explicit access charge replacement mechanism, similar to the IAS and ICLS mechanisms adopted when interstate access rates were lowered in 2000 and 2001.¹⁰

While NCTA does not agree that such access replacement support is necessary, if the Commission nevertheless adopts such a mechanism it should be limited in scope and duration. Any access replacement support should be limited to a very small number of truly rural providers that are subject to rate-of-return regulation, and should not be available to make all incumbent LECs whole for every dollar of access charge revenue that is eliminated.

As a first step for access replacement, the Commission should raise the cap on interstate subscriber line charges (SLCs) as an overall means for carrier recovery prior to any relief from the Connect America Fund.¹¹ The Commission should also adopt a revenue benchmark as an

¹⁰ See, e.g., GVNW Comments at 23, NECA *et al.* Comments at 13-15.

¹¹ See, e.g., Cox Comments at 14-16; Time Warner Cable Comments at 10.

estimate of the amount of total revenue, from both regulated and unregulated sources, available to providers.¹² There is no justification – particularly in competitive markets – for providing additional subsidies to carriers that are able to recover their costs directly from end users.

Any mechanism adopted by the Commission should be available only for rate-of-return regulated providers that have reduced their intrastate access rates to interstate levels and increased end user rates to the level of an affordability benchmark; there is no reason to provide a subsidy where end user rates are well below rates charged in other areas. To the contrary, section 254(b) of the Communications Act establishes a principle of reasonably comparable rates, not of preferential rates in rural and high-cost areas.¹³ Federal access replacement would not be available to providers in states that have adopted state-level access replacement mechanisms to reimburse incumbent LECs for the full cost of reducing intrastate access rates. Moreover, it should be available only for a limited period of time. For example, the Commission should examine whether to adopt such a limited access replacement mechanism that would be available only for a three-year period.¹⁴ After that three-year period, this access replacement mechanism would terminate automatically without further Commission action.

Rate-of-return providers would not automatically be eligible to receive this funding. To receive any access replacement funding, rate-of-return providers should be required to affirmatively demonstrate a need for this supplemental support. The requesting provider would have to affirmatively demonstrate that it has no ability to recover additional costs from customers of its services. The requesting provider would also have to demonstrate that there are no

¹² For example, a \$60 revenue benchmark might be appropriate. Michael D. Pelcovits, *Debunking the Make-Whole Myth: A Common Sense Approach to Reducing Irrational Telecommunications Subsidies* (2008), available at http://www.micradc.com/news/publications/pdfs/MP/White_Paper_3_FINAL.pdf; see also Comcast Comments at 19-20; Time Warner Cable Comments at 9.

¹³ 47 U.S.C. § 254(b)(3).

¹⁴ Time Warner Cable Comments at 9.

unsubsidized providers competing in its service area. Access replacement would not be available where such unsubsidized competition exists.¹⁵

III. THE COMMISSION SHOULD CLARIFY INTERCARRIER COMPENSATION AND INTERCONNECTION REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS HANDLING TRAFFIC ORIGINATING AND/OR TERMINATING IN IP FORMAT

The record demonstrates agreement that the end result of intercarrier compensation reform should be a uniform rate applicable to all traffic.¹⁶ As part of the transition to a new compensation regime, the Commission has solicited comment on the need for changes to the rules governing interconnection of telecommunications carrier networks. As NCTA has explained previously, regulation of network interconnection among telecommunications carriers has been a critical foundation for the development of voice competition.¹⁷ Given the increase in the number of VoIP subscribers and the importance of VoIP services to consumers, as part of any transition to a new compensation regime the Commission should take steps to preserve and affirm the obligations of incumbent LECs to interconnect with carriers that handle traffic originating and/or terminating in IP format.¹⁸

¹⁵ Competitive facilities-based providers would also be subject to access revenue reductions resulting from intercarrier compensation reform. Permitting incumbent LECs in areas with an unsubsidized competitor to obtain support from an access replacement fund would provide incumbent LECs with an anticompetitive advantage over competitive facilities-based providers without access to such funding.

¹⁶ See, e.g., Comcast Comments at 4-5; COMPTTEL Comments at 32-33; Cox Comments at 12; CTIA Comments at 37; Time Warner Cable Comments at 5; Verizon Comments at 11-13.

¹⁷ See Comments of the National Cable & Telecommunications Association, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, CC Docket Nos. 96-45, 99-20, 96-98, 01-92, 99-68, at 12 (Nov. 26, 2008) (NCTA 2008 USF-ICC Comments).

¹⁸ As NCTA has previously explained, there is no need for the Commission to adopt a specific classification of VoIP services. See *id.* at 11.

A. Section 251 of the Act Applies to Telecommunications Traffic that Originates or Terminates as VoIP

The Commission should affirm that the interconnection provisions of section 251 of the Act apply to carriers exchanging telecommunications traffic that originates or terminates as VoIP.¹⁹ Specifically, the Commission should clarify that telecommunications carriers that handle VoIP originated or terminated traffic may interconnect pursuant to section 251 regardless of whether they provide VoIP service themselves as certificated telecommunications carriers, or they provide telecommunications services to affiliated or unaffiliated VoIP providers. Although telecommunications carriers associated with VoIP calls may negotiate interconnection agreements with incumbent LECs, the Commission should make clear that the obligations of section 251 serve as a regulatory backstop to preclude incumbent LECs from refusing to interconnect with carriers handling traffic that originates from or terminates to a VoIP provider's network.

B. The Commission Should Affirm the Single POI Per LATA Requirement

Pursuant to section 251(c)(2)(B) of the Act, incumbent LECs are required to allow requesting carriers to interconnect at any technically feasible point, and the Commission has found that this means a competitive LEC may interconnect at a single POI per LATA.²⁰ The

¹⁹ See *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, As Amended, To Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (Wireline Comp. Bur. 2007) (*Time Warner Cable Order*) (finding that wholesale telecommunications carriers that provide service to VoIP providers are entitled to interconnect with incumbent LECs pursuant to sections 251(a) and (b) of the Act); see also *Bright House Networks, et al. v. Verizon California, et al.*, File No. EB-08-MD-002, Memorandum Opinion and Order, 23 FCC Rcd 10704, 10718, ¶ 39 (2008) (*Retention Marketing Order*) (finding that wholesale carriers that solely served VoIP providers were common carriers for purposes of section 222(b) of the Act).

²⁰ 47 U.S.C. § 251(c)(2)(B); *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region Long Distance Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, ¶ 78 n.174 (2000).

Commission should make clear that this single POI per LATA continues to apply to carriers handling traffic that originates or terminates as VoIP. As Charter notes in its comments, the establishment of a single POI per LATA allows providers to aggregate traffic and create efficiencies that reduce costs, allowing resources to be spent in deploying and upgrading facilities.²¹ The Commission should reject proposals that would allow incumbent LECs to increase competitors' costs by requiring multiple POIs in each LATA.

C. The Commission Should Ensure Reasonable Transit Rates, Terms and Conditions

The Commission also seeks comment on the treatment of transit services, and whether there is a need for the Commission to regulate these services. Although in the *NPRM* the Commission asserts that there may be a competitive market for transit services, this is not true in many areas of the country, including in smaller and rural areas.²² Transit services have been and remain essential in providing consumers with competitive choices for voice services. Competitive providers of telecommunications services rely on incumbent LEC transit services to indirectly connect with other carriers – including incumbent LECs, competitive LECs and wireless carriers – and incumbent LECs are required to provide access to transit services pursuant to section 251(c) of the Act.²³ Given the importance of these services to a competitive voice marketplace, the Commission should affirm this statutory requirement and make clear that incumbent LECs are required to provide transit services at TELRIC rates pursuant to section 252(d) of the Act while the Commission transitions the intercarrier compensation regime to a more modern approach.²⁴

²¹ Charter Comments at 3-5.

²² Charter Comments at 9-10.

²³ 47 U.S.C. § 251(c)(2)(A).

²⁴ 47 U.S.C. § 252(d); Cox Comments at 16-17.

CONCLUSION

NCTA urges the Commission to adopt common sense reforms to the high-cost support and intercarrier compensation systems to ensure that funding is disbursed in a fiscally responsible manner that appropriately targets areas in need of broadband facilities. Limited access replacement funding should be provided only upon a demonstration of necessity, and certainly should not be available to all providers with lower intercarrier compensation revenue as a result of reform. Finally, the Commission should affirm that its rules require incumbent LECs to offer interconnection and transit at economically and technically efficient rates, terms and conditions.

Respectfully submitted,

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