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July 29, 2011

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

Re: 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

Dear Ms. Dortch:

The National Cable & Telecommunications Association (NCTA) offers this letter to provide additional insight into the views of the cable industry, which provides broadband to the vast majority of the nation, as the Commission transitions universal service high-cost support and intercarrier compensation from the legacy telephone funding mechanisms of the past to the forward-looking broadband funding mechanisms for the future. As a result of substantial private investment, the cable industry reaches 93 percent of American households with broadband capable infrastructure. While cable operators generally have not relied on government funding in building these networks, we appreciate that it may be difficult, if not impossible, to extend broadband to all Americans without a well-functioning, universal service high-cost support mechanism.

Today a group of large and mid-sized incumbent local exchange carriers (LECs) filed a framework proposal for reform of universal service high-cost support and intercarrier compensation (the Telco Proposal). While we believe that the filing of this plan provides the Commission with new momentum for reform, further comment is necessary to examine the effect of transition rules on all participants in today's competitive broadband marketplace.

On the plus side of the ledger, NCTA believes that this proposal incorporates three key elements that are critical to effective reform and to fulfilling the promise of bringing broadband to those areas where it is not yet deployed.

1. **Fiscally-Responsible Funding**
   The Commission has recognized that it should strive to achieve the goal of ensuring that all Americans have access to broadband services in a fiscally-responsible manner. Consumers contribute the $4.5 billion per year that is currently disbursed in high-cost support and the Commission should ensure that this amount is the upper limit that consumers will be asked to pay. The Telco Proposal appears to be designed to keep funding at this level, although we retain some residual concern that such constraints must be meaningful and enforceable in order to protect consumers.

2. **Targeted Support Mechanisms**
   The Commission has recognized the important role that private sector investment has played in making broadband available to a vast majority of the country. The Telco Proposal generally echoes this principle by providing high-cost support only to those high-cost areas served by price cap companies where there is no unsubsidized provider offering service. We continue to encourage the Commission to extend this principle to all high-cost areas, including those served by rate-of-return regulated incumbent LECs.

3. **Specific, Symmetrical Transition for Intercarrier Compensation**
   The Commission has recognized that intercarrier compensation reform should explicitly adopt a transition period and rate schedule for moving to a unified terminating rate for all traffic that is exchanged between carriers in time division multiplex (TDM) format. In particular, the Telco Proposal calls for decreasing terminating rates to $0.0007 per minute by July 1, 2017, and it would clearly define the compensation that must be paid to, as well as paid by, voice over Internet protocol (VoIP) providers during this transition. During the transition, traffic exchanged in TDM that either originates or terminates in IP format should be subject to symmetrical terminating rates.

NCTA believes that these points are necessary parts of a reform package. Notwithstanding these points of agreement with the Telco Proposal, we believe it is critical that the Commission ensure that any reform it adopts not skew the competitive marketplace experienced by the vast majority of American consumers. As competitors of the incumbent LECs, we may differ on some of the specific issues that should be considered in reforming funding mechanisms for broadband. While we expect to comment on these issues in detail in further proceedings, we believe that certain areas deserve special mention so that the Commission can consider and seek comment on such matters as it proceeds down the road to effective reform. Thus, we believe that the combination of the newly-filed framework and the

additional thoughts submitted by NCTA represent an excellent point of departure for further discussions on these issues. We look forward to working with the Commission as it moves toward enacting needed reform that will respect and reward private investment while efficiently targeting government funds to areas where reasonable subsidies may be necessary to extend access to broadband.

Sincerely,

/s/

Steven F. Morris
Jennifer K. McKee

Attachment

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Universal Service High-Cost and Intercarrier Compensation Reform for a Competitive Broadband Marketplace

Overview

The current universal service high-cost support rules were adopted primarily to fund voice telephone networks at a time when the incumbent local exchange carriers (LECs) were the primary, and in many cases the only, provider of these services within their service areas. As a result, the high-cost rules were geared toward recovery of incumbent LEC costs and incumbent LECs have received the vast majority of universal service high-cost funding. In 2010, incumbent LECs received more than $3 billion, representing 72 percent of total high-cost funding. In addition to these explicit subsidies, federal and state intercarrier compensation rules provide billions of dollars in implicit subsidies by allowing incumbent LECs to charge above-cost rates for the termination of access traffic.

While opinions may vary on the effectiveness of the current regime in achieving its goals, there is a broad consensus that it is time for the Commission to transition high-cost support to fund broadband. In doing so, the Commission must take a fresh approach that accounts for, and builds on, the substantial private sector broadband investment that has been and continues to be made by other segments of the telecommunications industry. Cable operators have invested more than $170 billion over the past 15 years to deploy broadband facilities capable of reaching more than 123 million U.S. households, or 93 percent of total households. Over the same period of time, consumers have embraced mobile wireless services and IP-based services have developed to a point where the Commission's Technology Advisory Council recently recommended that the public switched telecommunications network be phased out by 2018.

In light of these fundamental marketplace changes, preserving incumbent LEC revenues should no longer be the guiding principle of the high-cost support regime. Rather, in today's competitive broadband marketplace, the Commission must distribute support in a manner that rewards efficient providers and focuses on providing support in areas where there are no unsubsidized providers offering service. With that in mind, NCTA sets forth the following principles to aid the Commission in crafting an effective and forward-looking funding mechanism.

Universal Service High-Cost Support for Broadband

NCTA supports the Commission's proposal to transition the existing $4.5 billion per year of high-cost support to fund broadband. To do so, the Commission should ensure the following:

- Cap Total High-Cost Support at $4.5 Billion Per Year

The Commission and most commenters recognize that immediately deploying broadband to all unserved Americans would be prohibitively expensive. Consumers currently pay into a

universal service fund that disburses $4.5 billion per year to support service in high-cost areas. The National Broadband Plan estimated that it would take an additional $24 billion to provide broadband to unserved housing units, and $14 billion of that amount is attributable to less than 2/10 of 1 percent of the total housing units in the country. These highest-cost housing units would cost $56,000 each to serve. This is an unreasonable burden to place on consumers. Instead, the Commission should limit the amount of high-cost support consumers are asked to contribute each year by capping total universal service high-cost funding at $4.5 billion per year and finding alternative, less costly means of providing broadband to extremely high-cost households. This funding should remain focused on maximizing consumer benefit, rather than on attempts to ensure incumbent LEC revenue streams. The Commission should also identify areas that are prohibitively expensive to serve and should provide subsidies to consumers living in those areas to subscribe to satellite broadband service.

To the extent that the Commission chooses to provide any limited support for mobile broadband services, the amount of this support should be included under the $4.5 billion cap.

- Target Support to Areas with No Unsubsidized Competitors

NCTA believes that high-cost support should be focused on providing broadband service to areas that lack such service, or where such service is not economically viable for unsubsidized providers. Consistent with NCTA's prior comments and 2009 petition for rulemaking, high-cost support should not be available in areas where an unsubsidized competitor is providing broadband service. This will eliminate competitive disparities in these areas, opening the door to additional private sector investment, lower prices and more options for consumers.

Since the filing of NCTA's petition in 2009, there have been developments that should enable the Commission to streamline the process of targeting support. In particular, the National Broadband Map and the underlying data collected by the states provide a good starting point for determining whether there are unsubsidized providers in an area, although parties should have the opportunity to demonstrate that the map does not accurately reflect the facts on the ground. To the extent the Commission decides not to use a cost model to determine high-cost areas in rate-of-return LEC study areas, support should be phased out expeditiously where the National Broadband Map shows that a rate-of-return incumbent LEC's entire study area is served by an unsubsidized competitor. Where a substantial majority of customers in the incumbent LEC's study area, but less than 100%, are served by an unsubsidized competitor, the Commission should conduct a competitive bidding process for the unserved census blocks within the study area. If the Commission chooses not to adopt a competitive bidding process for the census blocks that are not served by a competitor, it should use a cost model to determine the amount of support needed to reach those customers. If the model suggests that less support is needed than the incumbent LEC receives under legacy high-cost support mechanisms, support should be reduced accordingly unless the incumbent LEC can make a specific showing to demonstrate why additional funding is warranted.

As the Commission has recognized, a different set of rules may need to apply in Alaska, where the costs and challenges of providing broadband are very different from those in the other 49 states.

- Technology-Neutral Distribution of Support

High-cost support should be disbursed in a technology-neutral manner, with support going to the most efficient providers. It may be appropriate for the Commission to use a cost model to determine a reserve price or upper bound for the support necessary to serve areas that do not have unsubsidized broadband providers. Any such cost model, however, must be made available to the public in an open and transparent manner. The Commission should then conduct a competitive procurement process and award support to the provider that is able to provide the agreed upon level of service in the most efficient and cost effective manner.

There should be no right of first refusal for incumbent LECs serving in or near an area eligible for high-cost support. To the extent the Commission concludes that it would be efficient to give some preference to companies that already serve areas adjacent to the area that is eligible for support, that preference should be awarded on a competitively neutral basis, e.g., by awarding a right of first refusal to the company with the greatest coverage of the adjacent areas.

Similarly, high-cost support should be provided on a neutral geographic basis, such as by census blocks and/or census block groups, that does not advantage any particular type of broadband provider. Support should not be determined or disbursed based on incumbent LEC-specific areas, such as wire centers or study areas.

- Phase Out of Legacy High-Cost Support

The Commission should ensure that any legacy high-cost support is eliminated as quickly as possible after the new broadband funding mechanism is established. Legacy high-cost support should be eliminated immediately in areas where an unsubsidized provider is offering service. To the extent broadband funding has been awarded in an area with no unsubsidized provider, it would be wasteful to allow incumbent LECs to continue receiving legacy high-cost support in excess of the broadband funding amount for any period of time in that area.

Intercarrier Compensation Reform

The Commission is also seeking to reform the related intercarrier compensation payments that companies pay to each other for exchanging traffic on their networks. There is unanimous agreement that the convoluted system of payments must be reformed.

- Single, Unified Terminating Rate

To eliminate arbitrage opportunities and disputes that arise from the current framework, a single, unified terminating per-minute rate should apply to all traffic that is exchanged between carriers

in time division multiplex (TDM) format. The Commission should adopt a transition plan and timeframe for reducing current intercarrier payments to a single terminating rate. Specifically, the Commission should transition to a rate of $0.0007 per minute by July 1, 2017.

- Limited Extension of Transition in Rate-of-Return Areas

NCTA supports the transition to a terminating rate of $0.0007 by July 1, 2017 for all providers. If the Commission determines, however, that a longer transition is warranted in areas served by rate-of-return carriers, then the Commission should make clear that such a transition applies to all carriers (both incumbent and competitive LECs) operating in those areas, and should last no longer than two years beyond the date by which carriers in non-rate-of-return areas transition to a terminating rate of $0.0007.

- Intercarrier Compensation for VoIP

Any reform plan must include: (1) confirmation that carriers that exchange traffic that is originated or terminated on a VoIP network are fully included in the intercarrier compensation regime; and (2) clarification of the precise compensation rights and obligations that apply to such carriers on a prospective basis. As noted in the NPRM, disputes regarding the compensation rights and obligations applicable to carriers that exchange VoIP-originated or VoIP-terminated traffic are increasingly common. Many of NCTA's member companies have encountered problems with carriers exercising self-help by refusing to make payments required under existing compensation rules. In some cases cable operators have filed complaints regarding this self-help and a number of these cases remain pending. Nothing the Commission does in establishing prospective reform should interfere with the resolution of this pending litigation.

With respect to prospective reform, NCTA supports the establishment (after a reasonable transition period) of a low, uniform termination rate that would apply to all traffic exchanged between carriers. A challenge facing the Commission is how such a transition should balance the Commission's interest in promoting deployment of IP technology with its desire to move toward a technologically neutral compensation regime. In resolving this question, the Commission should be guided by two key principles: (1) differences in compensation treatment between TDM and IP technology, if any, should be kept to a minimum, both in duration and scope; and (2) to the extent there is any disparity, the rules should provide for symmetrical treatment of traffic originated by VoIP providers and traffic terminated by VoIP providers.

Limiting the duration and scope of any disparities in compensation treatment based on technology, and incorporating this principle of symmetrical compensation into any transition regime if such disparities exist, should help ensure that there is no undue harm or benefit to any segment of the industry during the course of the transition. For example, an obvious first step in any transition plan is the reduction of intrastate access charges to interstate levels over a reasonable period, e.g., within two years. If the Commission were focused solely on adopting a technology-neutral transition, VoIP providers would be subject to the same transition rules as

TDM-based carriers. But if the Commission instead were focused solely on encouraging the deployment of IP technology, it might decide that VoIP providers should pay lower rates than TDM providers. Applying the symmetry principle would enable the Commission to blend these two approaches, e.g., to find that VoIP providers have no obligation to pay intrastate access rates during this initial phase of the transition, but no right to collect intrastate access rates either. While no approach is likely to satisfy all affected companies, an approach that both limits disparities in compensation treatment between TDM and IP and incorporates the symmetry principle where such disparities exist is likely to provide the best balance between all the competing interests at stake in this proceeding.

- Limitations on Access Replacement Funding

NCTA does not support any incumbent LEC-only access replacement funding as part of intercarrier compensation reform. If the Commission does adopt some limited funding for this purpose, it should be included under the $4.5 billion cap. Any such support should be based on a demonstrated need; should not provide a dollar-for-dollar replacement of revenue; and should be available for only a limited period of time, i.e., it should end by July 1, 2017, consistent with the transition for intercarrier compensation terminating rates. Any calculation of access replacement funding should include any offsetting savings gained by the companies as a result of reform.

- Phase Out of Rate-of-Return Regulation

NCTA believes that rate-of-return regulation should be phased out, particularly in areas where the marketplace is working to attract private sector investment. However, to the extent the Commission determines that rate-of-return regulation should be retained for some period of time, NCTA urges the Commission to adopt a specific date by which such regulation should sunset, and to form a working group or task force to recommend a glide path for the elimination of rate-of-return regulation by the sunset date. In addition, the Commission should take steps to meaningfully reform rate-of-return regulation while it is retained, including reducing the target rate of return that carriers may earn.

- Focus Only on Essential Changes

Transitioning existing high-cost support and intercarrier compensation policies to better reflect today's competitive broadband marketplace is a significant challenge. Given the emerging agreement on the basic elements of this transition (e.g., constraining fund size, targeting support, low unified termination rates), the Commission should not sweep in other policy debates that need not be resolved in this docket. As just one example, the rapid transition from TDM-based networks to IP-based networks has triggered disputes about the jurisdictional status of those networks and the applicability of section 251 interconnection obligations. These are critical issues, but need not be resolved at this time in this proceeding.