

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

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
)	

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

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SUMMARY

The Independent Telephone & Telecommunications Alliance (ITTA) supports the National Broadband Plan (NBP) recognition that supplemental support mechanisms will be necessary to ensure the continued deployment of broadband in rural America. ITTA submits that regulatory reform must result in equitable outcomes for all providers. Proposals to eliminate or otherwise limit the availability of existing high-cost support to carriers that are providing broadband in supported areas should be suspended until the Connect America Fund is defined and poised for implementation. Toward that end, the NBP models the Commission proposes must be made available for thorough testing by the industry; otherwise, meaningful comment and input cannot be obtained. In the interim, the Commission should act now to address phantom traffic, access stimulation, and obligations of VoIP providers to pay access for calls terminated on the public switched telephone network. These reinforcements, coupled with achievable efficiencies in the current Universal Service Fund, as described above, will enable greater resources for broadband deployment without increasing burdens on end-users.

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I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments in the above-captioned proceedings. ITTA is an alliance of mid-size telephone companies which collectively serve approximately 23 million access lines in 44 states. ITTA members offer subscribers a broad range of high-quality wireline and wireless voice, broadband, and video services. ITTA members serve predominately rural areas with low-population densities, are governed variously by price-cap and rate-of-return regulations, and have, on average, deployed broadband to approximately 85 percent of their respective service areas. In light of its members' varied regulatory positions and strong deployment achievements, ITTA is positioned to offer a balanced view of comprehensive Universal Service Fund (USF) reform to support the provision of broadband communications.¹

¹ See, *Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support: Notice of Inquiry and Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, FCC 10-58, at para. 1 (2010) (NOI/NPRM).

At the threshold of reform, the Commission must ensure that any regulatory reconfiguration end with predictable and sufficient support for carriers serving high-cost areas,² and include a reasonable and manageable transition period. Each element of the reform process must account for economic realities, consumer expectations, and social/regulatory obligations shouldered by providers. Moreover, any regulatory reform must result in equitable outcomes for all providers. Proposals to eliminate or otherwise limit the availability of existing high-cost support to carriers that are providing broadband in supported areas should be suspended until the Connect America Fund (CAF) is defined and poised for implementation. In the interim, ITTA urges the Commission to implement easily obtainable efficiencies in current USF mechanisms, and to only implement any reductions in existing high-cost support when those changes can be engaged concurrent with adequate CAF mechanisms. Further, ITTA urges the Commission to act now on interim measures to address phantom traffic, access stimulation, and obligations of VoIP providers to pay access for calls terminated on the public switched telephone network (PSTN). As described below, action on these items will provide momentum for further reform and increase provider stability by ensuring the cost recovery called for by current rules.

² *See, i.e.,* 47 U.S.C. §254(b)(5).

II. NOTICE OF INQUIRY

A. BACKGROUND

1. Current High-Cost Support Programs

The Communications Act of 1934, as amended (Act)³ is intended to “make available . . . to all people of the United States . . . a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges” Universal service principles were enhanced by Congress in the Telecommunications Act of 1996, which codified specific mandates to ensure availability of services throughout the Nation. Those mandates recognized that the value of communications networks is enhanced when the community of those who can reach, and be reached, is increased. Universal service programs have, in the Commission’s words, “achieved considerable success.”⁴

The success of the USF is not limited to telephone connectivity, which has exceeded 95 percent.⁵ Within a rational and logical approach, USF has facilitated broadband deployment, as well. In 2006, the Federal-State Joint Board for Universal Service observed,

³ Communications Act of 1934, 47 U.S.C. § 151, *et seq.* The Communications Act of 1934 was amended by the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act). Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as the Act, and citations to the Act will be to the codified Sections in the U.S. Code.

⁴ NOI/NPRM at para. 3.

⁵ “Trends in Telephone Service,” Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, at Table 16-3 (2008) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf (last viewed Jul. 9, 2010, 11:05)).

A significant portion of the High Cost Loop fund supports the capital costs of providing broadband-capable loop facilities for rural carriers. Under this system, rural LECs (RLECs) have done a commendable job of providing broadband to nearly all their customers. While this program may need adjustments, we recognize its effectiveness in maintaining an essential network for POLRs [providers of last resort] and in deploying broadband.⁶

The USF has enabled deployment of voice networks that can be leveraged to provide broadband. Rather than discard a program that has generated “commendable” results, the Commission should extend its successful principles to enable greater broadband deployment.

The Commission has recognized that “a lower population density generally indicates a higher cost area.”⁷ This observation is consistent with the low-population densities of ITTA member service areas. The characteristics of high-cost areas impose similar impacts whether the deployed infrastructure is intended to support narrowband or broadband services. More than four years ago, the Government Accountability Office (GAO) found that “[t]he most frequently cited cost factor affecting broadband deployment was the population density of a market.”⁸ Low population densities require greater network investments as average loop lengths are greater and there are fewer

⁶ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337. CC Docket No. 96-45, FCC 07J-4, at para. 30 (2007) (2007 Joint Board Recommendation).

⁷ *Federal-State Joint Board on Universal Service; North Carolina RSA 3 Cellular Telephone Company; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina: Order*, CC Docket No. 96-45, DA 06-1628, at para. 23 (2006).

⁸ GAO, *Broadband Deployment Is Extensive throughout the United States, But it is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, at 19 (May 2006) (“GAO Report”).

subscribers over which to share the costs of fixed investments (which also occurs when subscription rates decline). Increased capital expenditures on a per unit basis, however, are not the only factor that drives higher costs in rural America. In addition, the average cost of installation and repair visits (“truck rolls” and “windshield time”) often is materially greater, as are many other categories of operating expense, such as per-unit transport/backhaul costs. The conditions that drive high rural telephone costs remain active factors as providers deploy greater broadband capabilities to meet consumer demand.

Accordingly, ITTA finds promise in the National Broadband Plan (NBP) recognition of need for supplemental support mechanisms to ensure the continued deployment of broadband in rural America. The Commission now seeks to “develop mechanisms to support broadband in areas that would be unserved absent such support, or which require support for maintenance of on-going broadband service.”⁹ ITTA concurs with the NBP finding that “USF resources are finite, and policymakers need to weigh tradeoffs in allocating those resources so that the nation ‘gets the most bang for its buck.’”¹⁰ The NBP assessment of “finite” resources, however, must not presage limitations that conflict with the Congressional mandate that “advanced telecommunications and information services should be provided in all regions of the nation.”¹¹ The Act specifies that consumers in high-cost areas should have access to “advanced communications and information services” that are reasonably comparable to

⁹ NOI/NPRM at para. 1.

¹⁰ NBP at 143.

¹¹ 47 U.S.C. 254(b)(2).

those services provided in urban areas.¹² The Commission must also hew to the mandate of Section 706, to “encourage the deployment of on a reasonable and timely basis of advanced telecommunications capability to all Americans.”¹³ A rational balancing of interests, coupled with logical efficiencies in current and future high-cost support, can bridge the gap between the “guns and butter” choice between managing fund size and contributions on the one hand, and providing adequate support for reasonably comparable broadband for all consumers, including all rural consumers without regard to the area in which they may live. At the outset, however, the Commission must avoid decreasing current high-cost support for incumbent providers before the parameters of the CAF have been defined, tested, and implemented.

2. The Commission’s Hybrid Cost Proxy Model

In establishing the backdrop for the current inquiry, the Commission describes the criteria and process employed when developing the Hybrid Cost Proxy Model (HCPM).¹⁴ The HCPM was developed and vetted in a multi-year “open and deliberative process in which industry experts, state commissions, staff of the Federal-State Joint Board on Universal Service, and other interested parties provided valuable assistance.”¹⁵ The Commission now concludes that the model inputs are out-of-date, and that the technology

¹² 47 U.S.C. 254(b)(3).

¹³ Section 706 of the 1996 Act was reproduced in notes to the Act, 47 U.S.C. §157 nt, and subsequently amended by the Broadband Data Improvement Act, Pub. L. 110-385, 122 Stat. 4096 (2008), and is now codified in Title 47, Chapter 12 of the United States Code. See 47 U.S.C. §1301, *et seq.*

¹⁴ NOI/NPRM at paras. 5-8.

¹⁵ NOI/NPRM at para. 6.

assumed by the model has been surpassed by newer, more efficient technologies.¹⁶ ITTA concurs that application of the HCPM to a broadband-oriented environment would necessarily require adjustments, but submits that the Commission should draw upon the criteria and process used to develop the HCPM when addressing the needs of a broadband-centric effort. These will be addressed in detail below.

3. National Broadband Plan

As noted above, ITTA concurs with the NBP recognition that supplemental support mechanisms will be necessary to achieve greater National broadband deployment than private investment alone would support. Policy-makers, however, must establish clearly and affirmatively their commitment to provide the necessary resources. Capital markets must see sufficient predictability in the Commission's rules in order to fuel their confidence to provide necessary inputs of private investment. As outlined above, current USF mechanisms have enabled a strong record of infrastructure deployment and reasonable rates in the rural areas where they have provided adequate support; those mechanisms must remain in place while the CAF is developed. Failure to do so will create unpredictability in capital markets and hamper the flow of capital for broadband deployment.¹⁷ The NBP concludes correctly that "private investment alone is unlikely to extend broadband in some areas of the country with low population density."¹⁸ The ability to obtain private capital is critical, and the NBP should not obstruct those opportunities.

¹⁶ NOI/NPRM at para. 7.

¹⁷ *See, e.g.*, NBP at 144, recognizing need to "minimize regulatory uncertainty for investment."

¹⁸ NOI/NPRM at para. 11.

The following principles should attend development of the CAF and any other mechanisms intended to support broadband deployment in high-cost areas:

1. The Act's Universal Service principles of "reasonably comparable" should apply to broadband.
2. An evolving definition of broadband should apply, but should be weighted with some type of time-determined certainty so that outcomes based upon that definition do not become functionally erratic and unpredictable.
3. The size of the fund is best controlled by rational collection and allocation policies, rather than an arbitrary cap that is not related to actual costs.
4. Contribution policies should compel those that benefit from broadband networks to support those networks.
5. Recipients of high-cost broadband support must meet defined service standards, including, but not limited to, provider-of-last-resort obligations.
6. Eligibility for support should be based upon the cost of providing service, and the demonstrated ability to meet the service standards required of providers-of-last resort.
7. Limitations on the number of supported providers should apply in any geographic region.
8. The supported broadband provider must also provide voice service throughout the area.

The NBP has recognized certain of these principles,¹⁹ which should guide the Commission's development of the CAF and other NBP-related measures.

4. The National Broadband Plan Model

The NBP concludes correctly that "private investment alone is unlikely to extend broadband in some areas of the country with low population density."²⁰ The Commission

¹⁹ See, NBP at 135 (resetting broadband speed target every four years); 141, 149 (reforming contribution methodologies); 145 (discussing provider-of-last-resort obligations); and, 145 (discussing single supported broadband provider).

explains that the National Broadband Plan team developed an economic model to estimate the amount of support needed to fill the gap between current and ubiquitous broadband deployment, while recognizing that the model does not include the additional support needed for some networks in that are providing broadband today where it is not economical to do so without support.²¹ ITTA comments on the NBP model below.

B. DISCUSSION

1. Model

a. Use of a Model

The Commission seeks comment on whether it should use the NBP model as the “starting point” for developing a model to determine support for broadband networks that support voice services.²² Although a model can be an “important tool”²³ in determining support amounts (by definition, models are imperfect tools), the variables of rural areas can create specificities that reach beyond the general assumptions generated by modeling efforts that draw from a comparably limited range of inputs. Models require adequate testing, and the outcomes can be only as good as the modeling system and the inputs. . By contrast, inaccessibility of a model to industry participants renders interested parties unable to test or otherwise evaluate properly the numerous assumptions and results relied upon by the Commission. Consequently, an adequate evaluation of the model, its results, and its potential impact cannot be provided at this time. In sum, a prerequisite for

²⁰ NOI/NPRM at para. 11.

²¹ NOI/NPRM at para. 12.

²² NOI/NPRM at para. 14.

²³ NOI/NPRM at para. 22.

evaluating any regulatory regime based on a model is the proper evaluation of the model itself in a manner that is accessible by stake-holders.

The afore-mentioned HCPM was the result of “an open and deliberative process in which industry experts, state commissions, staff of the Federal-State Joint Board on Universal Service, and other interested parties provided valuable assistance.”²⁴ The Commission’s HCPM was vetted in an arduous, multi-year process. The Commission articulated ten criteria for the HCPM when it was being developed, and those criteria should be considered as the Commission considers modeling for broadband-oriented purposes. For example, the model was intended to reveal the least cost, most efficient, reasonable technology.²⁵ In a broadband-oriented environment, efficient and reasonable technologies are those that are robust, scalable, secure, and reliable. The HCPM sought to determine the cost of providing service to all businesses and homes in a geographic region.²⁶ Likewise, the instant effort to deploy broadband must not be constrained by limiting availability at select institutional locations. The HCPM was also intended to enable a reasonable allocation of joint and common costs to supported services. Likewise, the Nation’s next stage of communications infrastructure deployment and maintenance must not result in the foisting of excessive obligations upon end-user consumers. The HCPM was to include an ability to modify critical assumptions and,

²⁴ NOI/NPRM at para. 6.

²⁵ *See, also, Federal-State Joint Board on Universal Service: Report and Order*, CC Docket No. 96-45, FCC 97-157, at para. 250 (1997) (USF First Report and Order).

²⁶ USF First Report and Order at para. 250.

similar to ITTA advocacy for targeted USF support, was to de-average support calculations to lower levels.²⁷

When discussing the usefulness of a model, the Commission asks whether a model should be used to set reserve prices for a “market-based mechanisms to determine CAF support,”²⁸ and proposes to use modeled outcomes rather than current support levels to set reserve prices.²⁹ Before addressing the matter of reserve prices, ITTA addresses the matter of “market-based mechanisms” for served areas: however support is allocated for existing obligations, it should not take the form of reverse auctions or other similar proposals that implicate risks described in previous ITTA comments on this topic. These include, but are not limited to, management of stranded investment, deteriorated service in the final years of a “bid,” failure of the auction winner and consequent abandonment of consumers, and preclusion of access to new services.³⁰

Notwithstanding the general hazards of reverse auctions, ITTA has also advocated previously that “one size fits all” solutions are not suited to high-cost support solutions. In that regard, there is a difference between served and unserved areas. In served areas, the actual costs are known and have been incurred in reliance of ongoing support, so market-based mechanisms should not be invoked to re-calculate and adjust support. In unserved areas or places where new support will be provided for new levels of service, by

²⁷ USF First Report and Order at para. 250.

²⁸ NOI/NPRM at para. 21.

²⁹ NOI/NPRM at para. 21.

³⁰ *See, Federal-State Joint Board for Universal Service: Comments of Balhoff-Rowe, LLC, on Behalf of the Independent Telephone & Telecommunications Alliance, WC Docket No. 05-337, CC Docket No. 96-45, at pp. 32-44 (filed Oct. 10, 2006).*

contrast, a market-based mechanism might be utilized. In that instance, a model could be used to set an appropriate reserve price but, as outlined above, that model must be proven capable of producing reasonably accurate cost estimates. In addition, the Commission must recognize that many price-cap carriers currently do not receive adequate support for the voice networks they have been required to deploy and which would provide the platform for further broadband deployment. Therefore, the Commission must recognize that current support levels may not be a reasonable guide for future support levels.

To summarize, a model is an imperfect tool for estimating costs. To the extent a model is used, it must be made available for thorough testing and evaluation by stakeholders. Market-based mechanisms may be appropriate for unserved areas, but should not be employed in served areas. In served areas that require support, actual costs, rather than historic support levels, are appropriate starting points for support levels if market-based mechanisms are, in fact, employed. The Commission must recognize that it is not axiomatic that all carriers are receiving sufficient support.

b. Cost Basis for Support

The Commission seeks comment on whether it should base any new CAF support on forward-looking costs, rather than historic embedded costs.³¹ ITTA submits that the Commission must tread carefully before dismantling historically successful regulatory mechanisms. As noted above, the Commission should be wary of “one size fits all” solutions. Certain of ITTA members are historically price-cap carriers; others are subject to rate-of-return regulation; and, others petitioned to transition voluntarily from rate-of-return to price-cap regulation. These decisions have been based upon individual analyses

³¹ NOI/NPRM at para. 23.

of respective carrier operations, and a determination that one form of regulation enables greater efficiencies than another without sacrificing carrier commitments to deploy and maintain networks in high-cost areas. While ITTA supports regulatory flexibility, it does not imply support for a regulatory “free for all” in which any number of self-tailored regulatory schemes are permitted. Rather, the Commission should build upon the record of “considerable success”³² achieved within the current dual-path approach in USF.

The Commission expresses concerns that “embedded costs . . . lead to inefficient subsidization of carriers and could create disincentives for carriers to operate efficiently.”³³ Notwithstanding the need to consider options that could lead to *more* efficient results, the notion that current ILEC high-cost programs are entirely *inefficient* should be set aside. The Commission must not be encouraged to action on the basis of imprecise premises. Rather, the drive for greater efficiency should arise from the mandate that public resources must be used rationally and efficiently. If current processes can be improved, then such improvement should be imposed. The characterization of current processes as entirely inefficient, however, risks wholesale disposal of generally successful mechanisms, without creating an opportunity to refine what exists today.

The Commission seeks comment on what technology platforms should be included in the model.³⁴ ITTA agrees that the Commission’s inquiry in this regard

³² NOI/NPRM at para 2.

³³ NOI/NPRM at para. 23.

³⁴ NOI/NPRM at para. 24.

should be technology agnostic. All technologies may be included in the cost model,³⁵ and the outcome of the modeling exercise should demonstrate the provider best suited to provide the service that meets the standards of “reasonably comparable.” While the model may focus on quantitative aspects related to costs, the Commission must not lose sight of qualitative aspects related to service quality, including capacity, scalability, and other factors as described previously by ITTA.³⁶ The description in the NOI/NPRM does not appear to factor intangible matters such as quality of service and user experience (which factors may flow from the type of technology most likely to provide the most robust and dependable service). By way of example, broadband has been defined as a “sustainable data rate . . . that will be experienced by individual subscribers with at least 99 percent probability, even during times of heavy usage.”³⁷ The use of shared or “joint use” networks in the last mile affect that standard. As explained previously by CTIA,

This impact on service is further complicated on wireless networks by the fact that spectrum is shared between users and between services, which means that, not only are data users sharing the same amount of network capacity, data users must share the limited capacity with voice users, particularly as carriers move to IP-based platforms.³⁸

³⁵ NOI/NPRM at para. 24.

³⁶ See, e.g., *A National Broadband Plan for Our Future: Reply Comments of the Independent Telephone & Telecommunications Alliance*, GN Docket No. 09-51, at pp. 12-19 (filed Jul. 21, 2010).

³⁷ *The Commission's Consultative Role in the Broadband Provisions of the Recovery Act: Ex Parte Filing of ADTRAN*, Docket No. 09-40, Attachment: “Defining Broadband Speeds: an Analysis of Peak vs. Sustained Data Rates in Network Access Architectures,” at 1 (Apr. 13, 2009) (ADTRAN Data Rates White Paper).

³⁸ See, *A National Broadband Plan for Our Future: Comments of CTIA*, GN Docket No. 09-51, at 28 (filed Jun. 8, 2009) (internal citation omitted).

Verizon elucidates that on wireless networks, “since the radio link to the user must compensate for interference from other users and noise, which are not present in a fiber optic line, the attainable throughput for wireless broadband is significantly less than fiber even on comparable bandwidths.”³⁹ The National interest in broadband deployment is hardly served if the result is a constricted, unstable service that cannot be scaled to meet future growth. The public interest is best served by including service quality, reliability, and scalability in its evaluation of various broadband technologies.

As the Commission determines modeling costs of networks, it seeks comment on the extent to which the Commission should consider existing plant.⁴⁰ The Commission should assume that switch locations will remain as presently deployed (“scorched node”), as opposed to “green field” approach.⁴¹

ITTA does not offer comment at this time on modifications to the NBP that would be appropriate to estimate wireless costs,⁴² but again urges the Commission to ensure that factors such as capacity, reliability scalability, and other qualitative aspects are considered when devising models.

³⁹ See, *A National Broadband Plan for Our Future: Comments of Verizon*, GN Docket NO. 09-51, at 105 (filed Jun. 8, 2009).

⁴⁰ NOI/NPRM at para. 27.

⁴¹ See, NOI/NPRM at para. 27.

⁴² NOI/NPRM at para. 28.

c. Types of Models

(i) HCPM vs. New Model

The Commission seeks comment on whether it should develop a new model for determining support levels, or whether it should update the HCPM.⁴³ As discussed above, ITTA respects the open and collaborative process in which the HCPM was developed. Updates to the inputs to reflect current conditions could be an acceptable process; ultimately, the success of any model depends on whether its results match actual costs. By contrast, there is insufficient information about the NBP model at this time to enable reasonable comment as to whether it would be a reasonable alternative to the HCPM. The NBP's reliance on existing roads and rights-of-way for deployment routes, for example, is useful, but commenters must be given access to the model before they can be said to have had the opportunity to offer the level of input required by the Administrative Procedure Act. Licensing agreements and work-shops would be appropriate first steps toward enabling third-party review of the model. The Commission's description of the model reveals the inclusion of certain useful elements, but absent additional specificity and industry opportunity to investigate, there is insufficient basis to accept the NBP model at this time.

(ii) Total Costs vs. Incremental Costs

The FCC seeks comment on whether it should determine support for broadband on the basis of total costs or the incremental costs of upgrading the existing network.⁴⁴

⁴³ NOI/NPRM at para. 31.

⁴⁴ NOI/NPRM at para. 33.

ITTA submits that the Commission should rely upon total costs should be used, since on-going costs implicate total actual costs that are not revealed by incremental costs alone. The Commission identified as a “critical issue[] . . . what ongoing support is necessary to sustain areas that already meet the National Broadband Availability Target due to current USF subsidies.”⁴⁵ This statement seems to imply that areas built-out to 4/1 will receive no future cap-ex support. Apart from the debate surrounding the difficulty in reconciling the “4/1” target⁴⁶ with the wider “100 x 100” goal,⁴⁷ and the mandate to provide reasonably comparable services, the Commission should not forsake on-going operating expenses. These may include, by way of example, the cost of leasing backhaul across long distances. Transport facilities are leased from other carriers in bandwidth increments; associated costs do not grow in a linear fashion. If a carrier has a small customer base in a remote exchange, it may need to lease excess capacity in order to serve those customers. For carriers such as ITTA members that serve predominantly rural areas with low population density, this factor is of paramount concern when analyzing costs.⁴⁸ The Commission should not summarily dismiss the need for op-ex in

⁴⁵ NBP at 149.

⁴⁶ NBP at 135.

⁴⁷ See, *Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, “Broadband” Our Enduring Engine for Prosperity and Opportunity,* NARUC Conference, Washington (Feb. 16, 2010) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296262A1.pdf (last viewed Jul. 9, 2010, 13:38)).

⁴⁸ See, *i.e., High-Cost Universal Service Support, Federal-State Board on Universal Service: Comments of Windstream,* WC Docket No. 05-337, CC Docket No. 96-45, at 12-15 (Apr. 12, 2008).

many areas. The Commission must ensure that an “incremental cost” methodology does not preempt reasonable cost recovery.

(iii) Cost vs. Cost and Revenue

The Commission seeks comment on whether it should consider revenues, as well as costs, when determining CAF support.⁴⁹ The NBP model estimates incremental revenues arising out of new broadband deployment,⁵⁰ and recommends that support should be based upon the “net gap” between forward-looking costs and these incremental revenues. The NBP definition of revenues includes “all revenues earned from broadband-capable infrastructure, including voice, data, and video revenues, and take[s] into account the impact of other regulatory reforms that may impact revenue flows, such as ICC and funding from other sources, such as Recovery Act grants.”⁵¹

A net-revenues approach risks unpredictability and implicates several questions that must be addressed. For example, does the Commission intend to model revenues, or rely upon actual revenues? What sort of revenue-reporting filings would carriers be required to make, and what services would be gathered into the revenues basket? If video revenues are included, would programming and similar costs be included? Inasmuch as support levels must be sufficient to motivate investment, reliance upon uncertain revenue streams injects damaging uncertainty. Additionally, the breaking out of revenues derived solely from the incremental broadband investment contemplates a complicated, if even feasible, process. Moreover, the NBP makes the unsubstantiated assumption that rural

⁴⁹ NOI/NPRM at para. 35.

⁵⁰ NOI/NPRM at para. 35.

⁵¹ NOI/NPRM at para. 36, *quoting* NBP at 145.

take-rates will be similar to urban take-rates where demographics are similar.⁵² Such threshold matters must be resolved before a thorough analysis can be completed.

d. Geographic Areas

Costs should not be estimated on a county-wide basis. Counties are broad areas that deprive opportunities for sufficiently granular analysis. Basing costs on counties could force green-field entrants to overbuild networks. By contrast, census blocks offer a more accurate perspective. In all events, however, even on a census block basis, the Commission must consider differences between the town center and outlying areas, and, averaging should be avoided.

2. Expedited Process for Providing Funding to Extend Networks in Unserved Areas

The Commission seeks comment on a “fast track” method to provide funding to unserved areas, presumably after Broadband Data Improvement Act mapping is completed in February 2011.⁵³ This line of inquiry reveals the infirmity of endeavoring to deploy future broadband while removing current support. It also demonstrates that current support levels and allocations are not sufficient to bring broadband service to unserved areas. If current support levels and allocations were sufficient to bring broadband to unserved areas, then a “fast track” approach would not be necessary. Efficiencies gained by modifications to current programs, however, can be used to achieve more rapid broadband deployment in certain areas.

⁵² NOI/NPRM at para. 38.

⁵³ NOI/NPRM at para. 43.

In October 2008, ITTA filed a USF proposal that would have obtained efficiencies in current USF while enabling broadband deployment.⁵⁴ Rather than implement a fast-track program *ex nihilo*, the Commission should draw upon the model submitted by ITTA. This model (a) eliminates access replacement support from wireless carriers and (b) redistributes those funds in a targeted fashion to carriers that need it most (c) at a wire-center or lower level. This approach would quickly and efficiently deliver needed support to unserved areas, and would benefit from economic efficiencies by building upon existing network infrastructure. It would be a swift and efficient way to deliver funding, with minimal regulatory change.

III. NOTICE OF PROPOSED RULEMAKING

A. BACKGROUND

The Commission states that the NBP recommends that the Commission “cut inefficient funding to legacy voice service and refocus universal service funding to directly support modern communications networks that will provide broadband as well as voice services.”⁵⁵ The Commission asks whether it should impose any of a variety of caps on current high-cost support.⁵⁶ ITTA submits that a single overall cap would generate adverse consequences, and that the imposition of individual caps could be similarly counter-productive. The question of whether current high-cost support for ILECs should be capped implies incorrectly that high-cost support for ILECs has been

⁵⁴ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service Support: Ex Parte of Independent Telephone & Telecommunications Alliance*, Docket No. 05-337, Docket No. 96-45 (Oct. 10, 2008).

⁵⁵ NOI/NPRM at para. 51, *citing* NBP at 147, 148.

⁵⁶ NOI/NPRM at para. 52.

growing when, in fact, it has been relatively stable overall and declining for many recipients. As the Commission itself acknowledged when it took remedial steps to rein in uncontrollable growth in CETC funding, support to RLECs has remained steady or decreased over nearly all of the past decade.⁵⁷ Implications that USF growth is attributable to ILECs, portray an inaccurate image of the facts on the ground, and risk preempting sensible, rational, and equitable measures that could relieve political and consumer pressures. Indeed, the primary reason the contribution rate is generally increasing is because of natural market phenomena, including decreases in telecommunications lines in service, minutes of use, and interstate revenues.

Characterization of the current USF as “inefficient” does not reflect the record of USF achievement. First, the USF is a remarkably efficient program with numerous auditing processes: USF for incumbent rural wireline carriers supports only costs that have been incurred and accounted for under regulatory scrutiny; costs must be supported by the audited financials of the entity incurring the costs and are reconciled to all other regulatory reported costs through the elaborate and effective control mechanisms implemented by the National Exchange Carrier Association (NECA), the Universal Service Administration Company (USAC), and often state commissions. For many carriers, the existing mechanisms provide incentives necessary for the deployment of infrastructure in the most remote rural areas of the country. The term “inefficient” may be applicable to CETC support mechanisms: as stated by the Joint Board, “the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act’s universal service goal of

⁵⁷ 2007 Joint Board Recommendation at para. 39.

improving the access to telecommunications in rural, insular, and high-cost areas.”⁵⁸ The term “insufficient” may characterize the support tendered to many price-cap carriers: after a decade, the Commission’s most recent action on support for non-rural carriers is not poised to deliver sufficient support.⁵⁹ The notion that current high-cost support mechanisms for ILECs are inefficient, however, should be set aside.

B. DISCUSSION

1. Controlling the Size of the High-Cost Program

The Commission asks whether it should impose a cap on the USF.⁶⁰ This inquiry implies that there is on-going growth in high-cost support that must be capped. In the first instance, the high-cost support fund for LECs is effectively capped with a series of contained indexed mechanisms. Moreover, high-cost support to ILECs has been declining over recent years. The Commission must ensure that any type of new cap does not constrain high-cost support for voice and broadband providers. In a Fund covered by an overall cap, there is risk that increases in schools and library or low income support could wreak unintended adverse consequences on broadband providers’ ability to deploy and maintain networks by undermining the availability of support for those providers. Support for ILECs has not been growing; the imposition of cap should not bear adverse effects upon ILECs.

⁵⁸ 2007 Joint Board Recommended Decision at para. 10, *citing* 47 USC § 254(b)(3).

⁵⁹ *See, 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 Universal Service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier: Order on Remand and Memorandum Opinion and Order*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 10-56 (rel. Apr. 16, 2010).

⁶⁰ NOI/NPRM at para. 51.

The proposal to impose a cap on the USF risks perpetuation of a myth that the high-cost portion of the Fund is growing; assertions that the Fund is inefficient insinuate that carriers are receiving *excessive* support, while in fact the current cap and its adjustable components *exclude* carriers from support on an annual basis. Currently, high-cost loop support (HCLS) for incumbent rural carriers is provided where the average line costs in a study area are more than 115 percent of the National average cost per loop (NACPL).⁶¹ The total amount of HCLS available to all carriers is capped,⁶² and adjusted annually by the Rural Growth Factor.⁶³ Upward adjustment in the NACPL however, can have the effect of eliminating some carriers from eligibility for support, since the threshold of “greater than 115 percent of the NACPL” consequently increases. From 2002 to 2008, the “115 percent of NACPL” threshold rose from \$295.08 to \$389.05.⁶⁴ Accordingly, if a carrier’s cost-per-line did not increase similarly during that period, it lost support. And, since the Rural Growth Factor can reflect decreases, the *total* amount

⁶¹ 47 CFR § 36.631.

⁶² Carriers may receive “safety net additive” where a carrier’s per loop investment exceeds 14 percent, *see* 47 CFR § 36.605.

⁶³ 47 CFR § 36.604.

⁶⁴ The 2002 NACPL as calculated from 2002 data was \$256.59, yielding a 115 percent threshold of. 295.08. *See* “National Exchange Carrier Association, Inc., Overview and Analysis of 2003 USF Submission” (Oct. 2002), <http://www.fcc.gov/wcb/iatd/neca.html> (last viewed Jul. 12, 2010, 10:13). In 2008, the NACPL was \$412.54, yielding a 106 percent threshold of \$389.05. *See*, “National Exchange Carrier Association, Inc., 2009 Submission of 2008 Study Results, at 4, 5 (Sep. 30, 2009),, <http://www.fcc.gov/wcb/iatd/neca.html> (last viewed Jul. 12, 2010, 10:17).

of HCLS to rural LECs can decrease. This is particularly potentially damaging since not all carrier costs are directly proportional to the number of loops served.⁶⁵

A more suitable alternative to capping the fund is to reform contributions. The Commission seeks to enable broadband deployment using a minimum amount of support.⁶⁶ The Commission explains that its efforts are intended to ensure “that the contribution burden that ultimately falls on American consumers is limited.”⁶⁷ Sufficient resources for broadband deployment, however, need not wreak such adverse impacts on consumers. Resources may be obtained more readily, and without burdensome impacts on consumers, by reforming the contributions mechanism.⁶⁸ Resolution of contributions is a broader approach that would reduce the burden on consumers, thereby easing pressures that can limit unnecessarily and inappropriately limit support for high-cost areas.

2. Specific Steps to Cut Legacy High-Cost Support

The Commission asks for comment on the relationship between USF reforms and carriers rates, including ICC, under current rules, seeking information on the rate impact

⁶⁵ Accordingly, if a cap is retained, it should be re-based to reflect current actual costs.

⁶⁶ NOI/NPRM at para.13.

⁶⁷ NOI/NPRM at para. 13.

⁶⁸ CenturyLink estimates that an \$11 billion USF fund could be supported for approximately \$1.50 per connection per month. *See, International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act* (GN Docket No. 09-47); *A National Broadband Plan for Our Future* (GN Docket No. 09-51); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act* (GN Docket No. 09-137): *Comments of CenturyLink*, at 14 (filed Dec. 7, 2009).

of the NPRM proposals.⁶⁹ ICC is an integral part of carriers' revenue streams. These and USF revenues counter-balance rates and enable ITTA members to deploy and maintain networks while meeting the statutory mandate to provide service to end-users at "reasonably comparable rates." ITTA members primarily serve rural areas and are particularly sensitive to the need to ensure adequate support for networks deployed in areas with low population densities. ITTA members face high costs because they lack economies of scale that are available to larger carriers serving urban areas, and generally rely greatly upon access compensation for cost recovery.

Strengthen Existing Mechanisms

A survey of ITTA members revealed that approximately 12% of member carrier revenues are obtained via ICC. Rather than *reduce* ICC, the Commission should act now to *reinforce* ICC by taking immediate action to implement enforceable standards to address phantom traffic, reduce arbitrage enabled by access stimulation ("traffic pumping"), and affirm the obligation of VoIP providers to pay access for calls terminated on the PSTN. Resolution of these issues will ensure that appropriate compensation is paid to providers of service, enabling providers to direct additional resources to network development, without increasing the burden on existing mechanisms.

Phantom traffic is access avoidance. The Commission has a complete evidentiary record that includes actionable proposals submitted by industry over the past half-decade.⁷⁰ Similarly, access stimulation misuses sound Commission policies in a manner

⁶⁹ NOI/NPRM at para. 54.

⁷⁰ See, e.g., *Establish Just and Reasonable Rates for Local Exchange Carriers: Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 07-135 (filed Dec. 17, 2007).

unintended by policy-makers. ITTA and others have recommended solutions that would reduce incentives for arbitrage and restore the rational intended operation and results of these rules.⁷¹ Finally, there is no reason for interconnected-VoIP providers to be free of obligations that apply to others who use identical termination services provided by LECs. The Commission has not hesitated to include VoIP providers within vital regulatory constructs, including CALEA, E-911, and USF contributions,⁷² and it must not hesitate to attach remunerative obligations to tangible benefits that interconnected-VoIP providers receive from LECs.⁷³ Rather than take action to reduce support, the

⁷¹ See, e.g., *Developing a Unified Intercarrier Compensation Regime: Ex Parte Presentation of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 01-92 (filed Mar. 27, 2008).

⁷² See, i.e., *Universal Service Fund Contribution Methodology* (WC Docket No. 06-122); *Federal-State Joint Board on Universal Service* (CC Docket No. 96-45); *1998 Biennial Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms* (CC Docket No. 98-171); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990* (CC Docket No. 90-571); *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size* (CC Docket No. 92-237); *Number Resource Optimization* (CC Docket No. 99-200); *Telephone Number Portability* (CC Docket No. 95-116); *Truth in Billing Format* (CC Docket No. 98-170); *IP-Enabled Services* (WC Docket No. 04-36): *Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518 (2006) at para. 2, and *Communications Assistance for Law Enforcement Act and Broadband Access and Services: First Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 04-295, RM-10865, 20 FCC Rcd 14989 (2005) at para. 8.

⁷³ The Commission has articulated support for this principle: “[W]e believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.” *IP-Enabled Services: Notice of Proposed Rulemaking*, WC Docket No. 04-36, FCC 04-28, at para. 33 (2004). Additionally, all PSTN originated traffic, regardless of whether it will terminate on a TDM or IP platform,

Commission should take this opportunity to ensure proper cost recovery by carriers whose networks are used by others.

ICC

The Commission should refrain from limitations on ILEC ICC support. The Commission notes that where rate-of-return carriers have converted to price-cap, ICLS has been frozen on a per-line basis, and asks whether this should be done for all carriers.⁷⁴ ITTA notes that price-cap election has been a voluntary process that individual carriers have pursued based upon the unique impact that change would have on their respective operations; the freezing of ICLS in those circumstances was determined, individually, to be a viable alternative, along with price-cap election, than remaining subject to rate-of-return regulation. Overall, the matter of reductions or changes to ICC mechanisms, whether ICLS or IAS, should be effected with concurrent implementation of revenue replacement mechanisms. The appropriate glide path must ensure that providers are not left bereft of necessary resources to advance and maintain broadband deployment.

CETC Support

The Commission seeks comment on the elimination of CETC support and possible redirection of it to broadband.⁷⁵ ITTA has previously advocated for a single wireline and mobile wireless provider per geographic area. ITTA has also advocated for

should be subject to originating access charges. Absent equivalent treatment of VoIP and PSTN traffic, there arises the possibility that entities sending traffic to or from the PSTN will be encouraged to declare *all* traffic as VoIP, thereby avoiding the payment of any access charges.

⁷⁴ NOI/NPRM at para. 55.

⁷⁵ NOI/NPRM at paras. 60, 61.

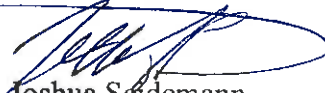
the elimination of access replacement support from CETC funding, and suggested that those savings could be directed toward supporting price-cap carriers in rural areas. Redirection of CETC support to broadband should not be considered a comprehensive solution. The matter of CETC support (including the basis for calculating support, the obligations of carriers receiving it, and the matter of duplicative support paid to multiple CETCs in single geographic areas) has been addressed in other Commission proceedings. The evidentiary records there can be relied upon to implement efficiencies in USF support. Efficiencies gained there should be directed in a targeted fashion to areas that are receiving insufficient support today.

IV. CONCLUSION

Regulatory reform must result in equitable outcomes for all providers. Proposals to eliminate or otherwise limit the availability of existing high-cost support to carriers that are providing broadband in supported areas should be suspended until the CAF is defined and poised for implementation. The NPB models must be made available for thorough testing by the industry; otherwise, meaningful comment and input cannot be obtained. In the interim, the Commission should act now to address phantom traffic, access stimulation, and obligations of VoIP providers to pay access for calls terminated

on the public switched telephone network. These reinforcements, coupled with achievable efficiencies in the current USF, as described above, will enable greater resources for broadband deployment without increasing burdens on end-users.

Respectfully submitted,



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