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
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

JOINT REPLY
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.; NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION; ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; WESTERN TELECOMMUNICATIONS ALLIANCE; and THE RURAL ALLIANCE

CONCURRING ASSOCIATIONS*

California Independent Telephone Companies
Carolina-Virginias Telephone Membership Association
Colorado Telecommunications Association[2]
Eastern Rural Telecom Association
Idaho Telecom Alliance
Illinois Independent Telephone Association
INDATELgroup™
Indiana Exchange Carriers Association
Iowa Telecommunications Association[3]
Kansas Fiber Network
Kansas Telecommunications Industry Association
Louisiana Telecommunications Association[2]
Minnesota Independent Coalition[2]
Minnesota Telecom Alliance[2,4]
Missouri Small Telephone Company Group
Montana Independent Telecommunications Systems
Montana Telecommunications Association[2,3]
National Tribal Telecommunications Association
Nevada Telecommunications Association[2]
New Hampshire Telephone Association
North Carolina Telephone Cooperative Coalition, Inc.
North Dakota Association of Telecom Cooperatives
NYSTA Smaller Rural ILEC Members[4]
Oklahoma Rural Telephone Coalition
Oklahoma Telephone Association[1]
Oregon Telecommunications Association[2]
Rural Arkansas Telephone Systems
Rural Iowa Independent Telephone Association
Rural Telephone Management Council
South Dakota Telecommunications Association
State Independent Telephone Association of Kansas
Telecommunications Association of Michigan[1,2,3]
Telecommunications Association of the Southeast[2,4]
Telephone Association of Maine
Telephone Association of New England
Telephone Association of Vermont
Tennessee Telecommunications Association
Utah Rural Telecom Association
Washington Independent Telecommunications Association[2]
Wisconsin State Telecommunications Association
Wyoming Telecommunications Association[2,5]

*Concurrence by marked associations does not include the participation or concurrence of one or more member companies as identified by numeric code: (1 = AT&T, 2 = CenturyLink, 3 = Frontier, 4 = Windstream, 5 = Qwest).

Summary

Comments filed in this proceeding make abundantly clear that the various universal service reform proposals described in the Commission's *Notice of Inquiry* (NOI) and *Notice of Proposed Rulemaking* (NPRM) are, at best, premature and should not be pursued.

From across the spectrum, rural rate of return local exchange carriers (RLECs), mid-size and large carriers, wireless providers, state commissions and numerous others express strong concern about the NPRM's proposal to impose additional caps on existing high-cost support mechanisms without clearly identifying how future broadband mechanisms, such as the Connect America Fund (CAF), will actually work.

Already, uncertainty caused by the NOI and NPRM has begun to cause RLEC financing for broadband investment to dry up. Investors recognize that proposals to cap existing funding mechanisms may soon cause many RLECs to experience negative cash flows, jeopardizing both existing and future broadband commitments. Numerous commenters express bewilderment as to why the Commission would propose replacing rate of return regulation, which has a proven track record of success in fostering broadband deployment in some of the hardest-to-serve areas nationwide, with incentive regulation (which has a proven track record of failure in this regard). The few commenters who favor this idea breeze past the complexities of attempting to make mandatory incentive regulation work for RLECs providing service in 1100+ very diverse study areas.

The comments also demonstrate the Commission should not continue to devote resources to developing economic models for determining broadband support in RLEC

areas. Many commenting parties complain about the lack of transparency in the development of the economic model described in OBI Technical Paper #1 and related documentation (the NPB Model or Model). Commenters that did attempt to analyze the NBP Model expose numerous flaws in its assumptions and outputs. They question whether a nationwide model can ever account for the divergent operating environments, engineering requirements, and cost considerations experienced by RLECs.

The record also makes clear reverse or procurement auction mechanisms will likely never be workable, particularly in circumstances where carriers, such as RLECs, are subject to carrier of last resort (COLR) obligations. By emphasizing cost minimization over all other factors—such as quality of service or coverage areas—reverse or procurement auctions would place rural service providers and the customers who rely upon them at risk.

To avoid further damage, the Commission should immediately make clear that changes in existing programs will not be implemented at the present time. The Commission should then direct its full attention to developing a comprehensive plan that includes well-designed broadband support mechanisms that fully incorporate the service and funding objectives of the 1996 Act and a smooth transition path that will assure affordable, high-quality service continues to be provided to customers without disruption. Such broadband mechanisms need to provide specific, predictable, and sufficient support that achieves reasonably comparable services and rates, as called for in the 1996 Act. The comments provide several examples of alternative approaches to achieve these goals that deserve further study.

The comments also strongly encourage the Commission to move quickly to address Universal Service Fund (USF) contribution and intercarrier compensation (ICC) reform problems, including expanding the USF contribution base to include broadband services and providers. By basing universal service support on a growing rather than shrinking revenue base, and by drawing contributions from the same kind of broadband services that it seeks to support, promote, and expand, the Commission will put itself in a position to address the realistic costs of making available affordable, robust broadband services to all consumers throughout the Nation.

The Commission should continue to work with the rural Associations to develop transformational reforms to the high cost universal service mechanisms that are consistent with the requirements of the 1996 Act. While there remain numerous issues to resolve, the Associations have every confidence that workable alternatives to the NBP's proposals can be developed that will promote ongoing broadband network investment while also minimizing the burden on consumers that contribute to the USF.

TABLE OF CONTENTS

Before the
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	)	
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The Associations and other organizations listed above (herein, the "Associations")[1] hereby file their Joint Reply to comments submitted with respect to the Commission's Notice of Inquiry (NOI) and Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.[2]

I. UNIVERSAL SERVICE REFORM MUST BE ACCOMPLISHED IN A COMPREHENSIVE MANNER

Nearly all commenters agree the Commission must take a *comprehensive approach* to reforming existing universal service mechanisms. From across the spectrum, RLECs, mid-size and large carriers, wireless providers, state commissions and numerous others expressed strong concern about the NPRM's proposal to impose additional caps on existing high-cost support mechanisms without clearly identifying how

[1] The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, collection of certain high-cost loop data, and administering the interstate Telecommunications Relay Services (TRS) fund. *See generally,* 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The Rural Alliance is a group sponsored by over 300 rural telephone companies organized to advocate for effective Universal Service and Intercarrier Compensation reform that will benefit rural consumers and the companies that serve them. The 41 associations listed as concurring in this filing also represent RLECs in their respective states, tribal areas or regions. As noted on the cover page of these comments, concurrences by some state associations does not include the participation or concurrence of one or more member companies as indicated by numeric code.

[2] *See, 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, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) (*NOI and NPRM*).

future broadband mechanisms, such as the Connect America Fund (CAF), will actually work, and before those new mechanisms are implemented.

In their initial comments, the Associations suggested the Commission first focus efforts on addressing concerns relating to the National Broadband Plan's (NBP or Plan) overall approach to broadband high-cost funding reform rather than implementing any of the specific universal service reform recommendations described in the NOI and NPRM.[3] In a similar vein, AT&T suggested that "by requesting detailed comment on modeling issues without determining whether a model is even necessary, and proposing to eliminate legacy high-cost support without indicating how this transitioned support will be distributed via the CAF, if at all, the Commission has essentially jumped the gun."[4]

TDS provides more colorful (and apt) analogies:

> The NBP and NOI/NPRM . . . propose to begin disassembling the current structure *before* the mechanism that will replace it is known. This approach — which puts the cart before the horse — not only will create uncertainty (and thus ironically curtail rather than promote the investment needed to build and sustain broadband networks for a class of providers that are vital to meeting the Commission's goal of universal broadband) but also could cause the entire system to crash. *It is as if the FCC has been told to transform a propeller plane into a jet fighter while flying — and is taking off the propellers before the jet engines are ready to be installed.*[5]

Even wireless providers agree. CTIA, for example, warned that any cuts to existing competitive eligible telecommunications carrier (CETC) support "should not be implemented prior to development of an alternative mechanism for support of mobile

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[3] NECA, NTCA, OPASTCO, WTA, and the Rural Alliance Comments, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51 (filed July 12, 2010) at 5 (Associations).

[4] AT&T at 3. *See also*, ITTA (at 2) likewise recommended "[p]roposals to eliminate or otherwise limit the availability of high-cost support to carriers that are providing broadband in supported areas should be suspended until the CAF is defined and poised for implementation."

[5] TDS at 5 (emphasis added).

wireless services . . . ."[6] T-Mobile likewise suggested that, because sudden changes in universal service fund (USF) and intercarrier compensation (ICC) could have unintended consequences that slow progress, "the Commission should be careful not to remove support flows before new broadband funds are operational."[7]

Other comments emphasized the need to take a "holistic" approach to USF and ICC reform. CenturyLink, for example, highlighted the interdependence of the current USF and ICC system, which in its view "must be restructured as a whole to ensure that support continues for building out rural networks that are capable of providing broadband and voice services."[8]

The Commission's desire to tackle universal service reform in piece-by-piece fashion is certainly understandable, given the complexity of the overall task. Yet, as the comments demonstrate, such a piecemeal approach will only undermine the Commission's ultimate objective of promoting ubiquitous broadband availability.

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[6] CTIA at 5.

[7] T Mobile at 2-3. Ironically, Verizon and Verizon Wireless (Verizon) (at 17) enthusiastically support imposition of immediate caps on RLEC support mechanisms but recommend Interstate Access Support (IAS) for price cap carriers "should continue to operate as it does today until the rules for the new CAF are in place and the CAF begins to distribute funds in areas currently supported by IAS funding."

[8] CenturyLink at 35. *See also,* Indiana URC at 5-6. Many comments also warn of the need for the Commission to include transition plans in its blueprint for change. For example, USTelecom (at 8-9) suggested the Commission must "properly sequence and transition changes to high-cost support and intercarrier compensation mechanisms so as not to abruptly impact revenue flows and create hardships and unnecessary regulatory uncertainty for voice and broadband providers and lead to potential rate shock for consumers." TIA (at 6) warned the Commission "should be especially careful to ensure that elimination of support from existing mechanisms is coordinated with establishment of new support mechanisms. In particular, the Commission should ensure that its transition to a new, more explicit broadband support mechanism is orderly, that it does not impair any existing broadband service, and that the resulting support system is clearly sufficient to ensure the achievement of national broadband goals."

Indeed, regulatory uncertainty created by the NBP, and exacerbated by the NOI and NPRM, is already having an adverse impact on broadband deployment. In the wake of the NBP and the Commission's further consideration of USF reform, some lenders have now indicated they are unwilling to finance broadband deployments for fear that their loans may not be repaid.[9] RLECs report they have had to delay or even cancel planned network investments. For example, Home Telephone Company stated that while it had originally budgeted over $7 million in broadband network upgrades in 2010, mostly to increase broadband speeds,

> proposals contained in the National Broadband Plan and in this NPRM to cap or freeze existing high-cost support undermine our ability to confidently project recovery of cost due to the proposed changes in current recovery mechanisms. This realization has led to postponement of budgeted projects pending resolution of the national funding issues.[10]

Uncertainty due to the Commission's funding proposals also appears to be undermining broadband deployment programs instituted under the American Recovery and Reinvestment Act of 2009 (ARRA).[11] For example, Smithville Telephone Company in Ellettsville, Indiana, which was awarded a $38 million loan under the Rural Utilities Service (RUS) Broadband Initiatives Program (BIP), has decided to decline this

[9] *E.g.,* Blooston Rural Carriers at 19, North Dakota Rural Telephone Group (ND Telcos) at 8, Farmers Telecommunications Cooperative, Inc. at 7, JSI at 12, Fiber-To-The-Home Council (FTTH) at 2. *See also*, Letter from Sarah Tyree, CoBank, to Marlene H. Dortch, FCC, GN Docket No. 09-51 (filed Dec. 16, 2009).

[10] Home Telephone at 7. Such concerns are far from unique. *E.g.*, Border Companies at 12, Pioneer Communications at 6.

[11] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009).

opportunity due to concerns about the effect NBP proposals will have on its ability to repay.[12]

In short, "[t]he very plan that was intended to bolster rapid deployment of broadband is instead constraining rural broadband deployment."[13] The Commission should accordingly refrain from pursuing the piecemeal and harmful initiatives described in the NPRM, and should instead focus its efforts on developing a comprehensive plan that fully incorporates the service and funding requirements of the Telecommunications Act; recognizes the essential nature of existing COLR obligations; and retains the stability that has been the hallmark of existing, successful high-cost support mechanisms.[14]

As discussed below, several alternatives for such approaches have been suggested in comments submitted in response to the *NOI and NPRM*, as well as in prior phases of this proceeding. The Associations stand ready to work with the Commission to design

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[12] *See,* Letter from Darby A. McCarty, President/CEO Smithville Telephone Company to Kenneth Kuchno, Director Broadband Division Telecommunications Program, Rural Utilities Service (June 28, 2010).

[13] Home Telephone at 7.

[14] While virtually all commenters, including the Associations, recognize the need to update existing support mechanisms, many commenters also explain how existing USF and ICC revenues, coupled with rate-of-return regulation, have been highly successful in deploying broadband Internet access services to significant numbers of rural consumers, albeit at varying speeds. *See, e.g.,* Pennsylvania Public Utility Commission (PAPUC) at 11-12; Warriner, Gesinger, & Associations (WGA) at 6, CoBank at 3, Utah Rural Telecom Association (URTA) at 4, TCA at 10, JSI at 5, South Dakota Telecommunications Association (SDTA) at 4-6, Texas Statewide Telephone Cooperative, Inc. (TSTCI) at 3, Alaska Telephone Association (ATA) at 5, Kentucky Telephone Association (KTA) at 2, Blooston Rural Carriers at 16. By providing sufficient, stable and predictable support, today's mechanisms also encourage RLECs to invest in providing service to low-density, high-cost rural service areas, where there would otherwise be no business case to do so, and give lenders reasonable assurance the considerable costs of deploying broadband networks in high cost areas will be recovered. *See, e.g.,* CoBank at 5-6, Nebraska PSC and North Dakota PSC at 10.

workable broadband support mechanisms that are consistent with the requirements of the Telecommunications Act of 1996 (the Act). While there remain numerous issues to resolve, the Associations have every confidence reasonable alternatives to the NBP's proposals can be developed that will promote broadband deployment and adoption while also minimizing the burden on consumers that contribute to the USF.

II. THE COMMISSION MUST NOT CAP EXISTING RLEC FUNDING MECHANISMS OR REQUIRE RLECS TO SHIFT TO INCENTIVE REGULATION.

Most commenters particularly object to proposals in the NPRM to impose additional caps on universal service support mechanisms and to require RLECs to shift to incentive regulation. The record shows these actions, by themselves, will have dramatic adverse impacts on RLECs, their customers, the ability to continue providing high-quality services to those customers, and the prospects for additional further broadband service improvements, deployment, and adoption in rural America.

A. Imposing Additional Caps on RLEC Support Mechanisms Will Seriously Threaten Broadband Network Investment and Adoption In RLEC Areas.

The Associations' comments explained in detail how the NPRM's proposals to cap and then phase out existing support mechanisms will undermine continued investment in RLEC broadband networks and the provision of affordable broadband services to existing customers.[15]

In proposing to cap and ultimately reduce funding to RLECs, the Commission appears to have conflated short-run and long-run financial analyses. That is, the Commission's NBP largely focuses on a long-run incremental build-out plan for

[15] Associations at 34-45.

expanding broadband availability. At the same time, the Plan incorporates a short-run assumption that existing plant will somehow remain in place, unaffected when funds are redirected to areas that lack access to broadband at the proposed target speeds.

In fact, RLECs today rely heavily on the high-cost support they receive simply to operate and maintain their existing networks, let alone to make capital improvements. The Commission cannot simply assume these companies will be able to maintain their networks and continue delivering services to customers in these hard-to-serve areas if the support used to do so is reduced or eliminated altogether. Existing plant, and the provision of ongoing broadband services, would likely deteriorate without continued support.[16] Therefore, in attempting to solve the problems of "unserved areas," the Commission must be mindful of unintended consequences and avoid any steps that would harm those rural residents and businesses who are served today *precisely because of* existing support.

To help quantify the potential impacts of additional caps on RLEC high-cost support mechanisms, the Associations described the results of a recent NECA study that demonstrated USF and access revenues (switched and special) account for the majority (70 percent) of the typical RLEC's income streams.[17] Obviously, a decision to cap and/or phase out such programs will have significant adverse impacts on these companies, their customers, and the Commission's NBP.

The Associations also demonstrated why proposals to freeze or cap current support amounts on a per-line basis would represent an especially poor policy choice,

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[16] The Commission's Plan also seems to ignore the importance of existing RLEC financial obligations, such as paying interest and principal on existing loans.

[17] Associations at 36-37.

insofar as these funds directly support broadband deployment in rural America.[18] An analysis by NECA, included in the Associations' comments, showed that freezing interstate common line support (ICLS) on a per-line basis would cause free cash flow from regulated services to turn negative for the average RLEC by 2015, with average free cash flows sinking to negative $49 per line per month by 2020. Fully 86 percent of the study areas included in the analysis are estimated to have negative regulated free cash flow by 2020 from this proposal alone.[19]

These findings are confirmed by comments from consultants and individual RLECs. Comments filed by Fred Williamson & Associates Inc. (FWA), for example, described the results of a study projecting changes in free cash flow for seven of its clients stemming from implementation of the Commission's proposals. This analysis showed that all seven companies had projected negative free cash flows that persisted after a breakeven year.[20] FWA's analysis also confirms the Association's point that Commission proposals to redistribute existing support from RLECs to other carriers would make it impossible for its clients to pay expenses and salaries, continue investments necessary to upgrade networks, and continue to maintain existing networks.

Warinner, Gessinger & Associates L.L.C. (WGA), another consulting group, performed a similar free cash flow analysis for eleven of its clients. Its analysis shows projected free cash flow for the group turning negative in 2014, with nine of the fourteen

[18] *Id.* at 37.

[19] *Id.* at 40.

[20] However, the first year when projected free cash flow turned negative varied by company. For example, one company would experience negative free cash flow by 2013, another in 2014, two more in 2015, two more in 2016, and one more in 2019. *See,* FWA at 15-19.

expected to be unable to make debt payments by 2016.[21] Several individual companies, including Wheat State Telephone Inc. (WST) and Madison Telephone Inc., describe how their plans to update outdated rural plant have been put in jeopardy because cash flow projections turn negative "for the indefinite future" assuming proposals described in the NPRM are implemented.[22]

As the Associations' comments explained, shortfalls in regulated cash flows must be recovered either through rate increases, service cutbacks, and/or by eliminating new investments.[23] New investments would be unlikely in any event, since companies facing such cash flow shortages would be in no position to qualify for loan financing. The Associations' comments demonstrated in this regard that proposals to freeze universal service support on a per-line basis at 2010 levels would cause over half of RLEC study areas to fail basic RUS loan qualification tests by 2020.[24]

Parties who favor Commission proposals to impose additional caps on RLEC funding mechanisms offer little in the way of support for these actions. Some assert new caps are justified based on growth statistics in individual funding mechanisms. Verizon, for example, points to per-line growth data over selected periods for individual RLEC support mechanisms, and claims such increases in individual "legacy" support funds is "incompatible with the downward support trend that the NBP and *NOI/NPRM* recognize

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[21] Warinner, Gessinger & Associates (WGA) at 3, 30-31.

[22] Wheat State Telephone (WST) at 2, Madison Telephone at 9-10. *See also*, Alma Communications at 8-9, Peoples Telecommunications at 8-9, JBN at 7-9, Millry Telephone at 8-9. & Oregon & Wash. Tel. Association (OTA and WITA) at 34-38.

[23] Associations at 43.

[24] *Id. See also,* CoBank at 4-5.

is needed to promote greater broadband deployment and competition throughout the United States."[25]

By focusing on percentage increases in per-line support amounts, however, Verizon presents a distorted picture. In fact, *total* support provided via high-cost loop support (HCLS), local switching support (LSS), and ICLS (the three primary mechanisms designed to support RLEC networks) has grown by only about 2 percent per year since 2005 (*i.e.*, from $1.75 billion in 2005 to $1.98 billion in 2010).[26] In any event, as the Associations explained at length, funds from existing "legacy" programs are almost entirely devoted to supporting multi-use, broadband capable networks. The mere fact these funds are growing at modest levels is good news for the Commission's broadband plan, because this growth demonstrates continued investment in broadband facilities in rural areas.

Again, the Associations strongly agree existing legacy programs need to be adapted to the broadband environment. However, the Commission will cause serious harm to broadband service quality, affordability, and availability in many RLEC territories if it institutes such caps or reductions in existing mechanisms before implementing new programs specifically designed to promote broadband networks and services in high-cost RLEC areas.

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[25] Verizon at 13.

[26] References in Verizon's comments to higher percentage increases in per-line Safety Net Additive and Safety Valve support amounts are ironic, as these programs are specifically designed to provide rural carriers with "above the cap" support as an incentive to invest in network infrastructure serving their communities, or to carriers that acquire high-cost rural exchanges (typically from price cap companies such as Verizon) and make substantial post-transaction investments to enhance these exchanges. *See*, 47 C.F.R. § 36.605 (Safety Net Additive), 47 C.F.R. § 54.305 (Safety Valve Support).

Some parties, as expected, see proposals to cap and/or phase out RLEC support as "fair" insofar as the NPRM also proposes to phase out or eliminate current support for CETCs, as well as eliminate the IAS mechanism for price cap carriers.[27] But as the Associations explained in comments, the Commission may not cut, freeze or cap needed universal service support for RLECs simply on the basis that other programs are also being cut.[28]

Policymaking of such national significance must rise above the level of a regulatory "horse-trade" – each piece of the puzzle must be evaluated independently to determine how it satisfies and furthers the Commission's stated policy objectives. In particular, as many commenters in addition to the Associations pointed out, RLECs bear unique and significant cost burdens as rural carriers of last resort (COLRs). These regulatory differences must be given great weight in any USF reform analysis.

The Commission must also consider that RLECs are presently losing significant amounts of support under the cap that already exists on HCLS.[29] As the Associations also explained in their comments, HCLS collectively received by RLEC participants in the NECA Common Line pool is projected to decrease by 34 percent between 2010 and 2020, from $816.50 million to $556.30 million, assuming current trends continue.[30] RLECs also continue to lose significant amounts of revenue from ICC due to: uneconomic rate arbitrage; frivolous disputes; unidentifiable and unbillable "phantom traffic;" refusals to pay access charges where interconnected VoIP traffic uses facilities

[27] *E.g.,* T-Mobile at 5, 8, Verizon at 15, TWC at 5, 9, NCTA at 5-8.

[28] Associations at 35.

[29] *Id.* at 44-45.

[30] *Id.*

and services provided by RLECs to terminate to the PSTN; and overall declines in traffic traversing the public switched network.

As the NBP also proposes phasing out per-minute ICC rates by 2020,[31] with no guaranteed replacement for this critical revenue stream for RLECs, local voice and broadband service rates and/or the interstate Subscriber Line Charge (SLC) may need to be increased significantly for some RLECs. In light of the revenue losses RLECs are already incurring in HCLS and ICC, further caps or freezes on the high-cost support received by these carriers simply cannot be justified and would have the ironic consequence of undermining the Commission's broadband policy objectives.

B. The Record Provides No Basis for Proposals to Shift RLECs from Rate-of-Return to Incentive Regulation.

Comments filed by numerous parties demonstrate that RLECs operating under rate of return (RoR) regulation have consistently done a better job of investing in their rural exchanges and of serving their rural customers than the much larger and financially powerful regional Bell Operating Companies (RBOCs) and mid-size carriers that operate in rural areas pursuant to price cap regulation.[32] RLECs have established this outstanding record of service to rural customers despite serving the most remote, rugged and sparsely populated (and least economically attractive) rural exchange areas – in many cases, rural

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[31] Connecting America: The National Broadband Plan, FCC (rel. Mar. 16, 2010) at 149-150 (*NBP*).

[32] *See, e.g., High-Cost Universal Service Support,* WC Docket No. 05-337, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007) at ¶¶ 30, 39 (*e.g.* "RLECs have done a commendable job of providing broadband to nearly all their customers."). *See also,* PA PUC at 4, SD PUC at 7.

exchange areas that were rejected outright or subsequently sold off by the larger price cap carriers.[33]

As CoBank has indicated, "[i]ncentive regulation awards profit taking, it does not reward serving high-cost rural areas."[34] In contrast, RoR regulation has a long and established record of providing effective and efficient incentives to invest in communications networks and services in high-cost rural areas. By providing reasonable assurance that RLECs can recover their reasonable and prudent investment costs and operating expenses, RoR regulation (in association with federal and state high-cost support, ICC, and the NECA pools) has enabled RLECs to overcome the disadvantages of their high-cost service areas, limited financial resources and lack of access to capital markets. RoR regulation has also been a critical factor in convincing the small pool of

[33] The Commission's study area waiver files are replete with rural exchange transactions showing: (a) the substantial disparities in the network facilities and service quality of the rural price cap exchanges being sold vis-à-vis the existing rural exchanges of the RLECs acquiring them; as well as (b) the strong support by rural communities and state commissions for the acquisition and upgrade of long-neglected rural price cap exchanges by neighboring RLECs subject to RoR regulation. *See, e.g., Sully Buttes Telephone Cooperative, Inc. and Qwest Corporation*, CC Docket No. 96-45, Order, 15 FCC Rcd 18810 (2000); *Alpine Communications, L.C. et al. and US West Communications, Inc.,* Memorandum Opinion and Order, AAD 96-94, 12 FCC Rcd 2367 (1997); *Golden Belt Telephone Association, Inc. et al. and United Telephone Company of Kansas,* AAD 96-26, Memorandum Opinion and Order, 11 FCC Rcd 10165 (1996); *GTE Southwest, Incorporated and Cap Rock Telephone Company, Inc.,* AAD 94-109, Memorandum Opinion and Order, 10 FCC Rcd 7602 (1995); *US West Communications, Inc. and Eagle Telecommunications, Inc.,* AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771 (1995); *US West Communications, Inc. and Triangle Telephone Cooperative Association, Inc. et al.,* Memorandum Opinion and Order, 9 FCC Rcd 202 (1993); *US West Communications, Inc. and South Central Utah Telephone Association, Inc.,* AAD 93-55, Memorandum Opinion and Order, 9 FCC Rcd 198 (1993).

[34] CoBank at 9.

RLEC lenders, vendors and investors that loans necessary for rural infrastructure upgrades will be repaid.[35]

It is therefore both puzzling and distressing to RLECs and their customers that the Commission would consider requiring RLECs to move from RoR regulation, with its long and proven record of success, to either (1) a price cap system that has had a very poor record of stimulating rural infrastructure investment by much larger and financially powerful entities, or (2) some other form of incentive regulation that has not yet been implemented and tested in the real world. While various rationales are advanced by commenters supporting this proposal, none stands up to scrutiny:

RoR Regulation Is Not Inefficient. Parties supporting abolition of RoR regulation claim it is "inefficient"[36] but fail to submit evidence to support these claims. They also ignore key facts: First, RLECs serve remote, rugged, and sparsely populated rural areas that are very expensive to serve under any circumstances, and bear the additional costs imposed by COLR obligations to maintain a network ready to serve the most unprofitable customers within these high-cost areas. Second, in order to obtain the necessary loan financing for infrastructure investments and upgrades RLECs are typically required to demonstrate proposed investments are prudent and efficient.

The Commission is aware that RLECs serve approximately 37 percent of the land area of the United States, territory that is often so remote, rugged, sparsely populated and/or expensive to serve that the Bell System and other larger carriers declined to serve

[35] As noted above, *see supra* pp. 7-10*,* questions and concerns regarding continuation by the Commission of rate-of-return regulation and sufficient high-cost support for RLECs have significantly increased the reluctance of RTFC, CoBank and other lenders to make RLEC infrastructure loans, and has caused some RLECs to cancel or postpone broadband infrastructure investments (and some even to consider turning down BIP loan/grants).

[36] *E.g.,* Time Warner Cable at 8, T-Mobile at 7, CTIA at 16-17, and Verizon at 18.

it or sold their exchanges as soon as they could. The inherent high costs of serving these areas are exacerbated by COLR obligations. As explained in the initial comments of the Associations, the essence of COLR status is the requirement to disregard normal business and economic considerations by constructing facilities and providing service to customers whose remote locations, high costs of service and/or minimal profit potentials would not normally induce a non-COLR to offer them service at affordable rates.[37] In addition to the substantial investments and recurring expenses necessary to serve unprofitable customers, COLRs are subject to a host of additional and expensive regulatory obligations, including service quality standards, requirements to maintain "warm lines" or "soft dialtone" in households that have terminated service, and adherence to federal and state rules regarding rates, costs, accounting methods, recordkeeping and customer relationships.

Because they have limited financial resources and lack access to capital markets, RLECs must justify their investment projects and business plans to RUS, Rural Telephone Finance Cooperative (RTFC), CoBank and other potential lenders, as well as to their owners and investors, before they can get approval and funding for significant infrastructure upgrades and operating budgets. These extensive loan and budget review procedures ensure that RLEC investment projects are prudent. Contrary to claims, most RLECs have not been deploying fiber-to-the-home (FTTH) to maximize their high-cost support. Rather, RLECs are using fiber effectively to extend their Digital Subscriber Line (DSL) services to rural customers located farther and farther from their central offices and to increase the speeds and capacities of their existing DSL services in

[37] *See,* Associations at 28-33. *See also*, TCA at 9, The Small Company Committee of the Louisiana Telecommunications Association at 11-12 (SCCLLA).

response to customer demands and cost considerations.[38] FTTH is being used predominately for greenfield and similar applications (*e.g.*, some exchange rebuilds) where RLECs have been able to demonstrate to their lenders and investors that fiber lines are less expensive to deploy than copper lines or other technologies, and have the ability to be upgraded more easily in the future to higher speeds.

RoR Regulation Does Not Discourage Innovation. Commenting parties supporting abolition of RoR regulation claim it "discourages innovation" but again fail to provide supporting evidence.[39] In fact, during the twenty years since price cap regulation was implemented, RLECs have far surpassed and outpaced their larger price cap counterparts in bringing innovative facilities and services to their rural customers and exchange areas. During the 1990s, RLECs led the way in deploying digital switches in their rural exchanges, burying lines to limit weather damage and outages, and offering custom calling options. As the Internet grew and developed, RLECs have been pioneers in the use of fiber optic trunks to extend the availability of DSL service far beyond their initial 12,000-foot (from the central office) range, and to offer a variety of higher-speed fiber-DSL services such as symmetrical digital subscriber line service ("SDSL"), high data rate digital subscriber line service ("HDSL"), and/or very high speed digital subscriber line service (VDSL) to more and more of their rural customers. The RLEC record of bringing some form of broadband service to approximately 90 percent of their

[38] *See*, Associations, Appendix B, *Good Engineering Practices Relative to Broadband Deployment in Rural Areas*, The Association of Communications Engineers (ACE) (*ACE Report).*

[39] *E.g.,* Time Warner Cable at 8, T-Mobile at 7, CTIA at 16-17. Verizon (at 18) asserts that RoR regulation "impedes the innovation and broadband expansion that the Commission seeks to promote" but only cites the *NBP* in support. As the Associations explained in comments, the NBP record provides no basis for such statements. *See also,* Associations at 45-48.

rural customers would not exist if they had been subject to incentive regulation, as is demonstrated by the absence of extensive broadband deployment in the rural exchanges owned by existing price cap carriers.

RoR Regulation Does Not Frustrate Competition. CTIA likewise offers no evidence for its assertion that RoR regulation frustrates competition.[40] As indicated previously, RLECs generally serve remote, rugged and/or sparsely populated territories whose geography, demographics and economics by themselves discourage competitive entry *throughout the entirety of* a service area. However, in those portions of RLEC service areas where there is a sufficient customer base, RLECs do face competition from cable providers, wireless carriers, VoIP providers, and others, and RoR does nothing to discourage it.[41]

A Single Incentive Regulatory System Won't Work for the Diversity of RLECs. The Associations note that parties supporting mandatory incentive regulation for RLECs[42] fail to address the fact the Commission has consistently rejected such proposals in the past because they lacked sufficient evidence of the appropriate productivity factor(s) for small LECs. The Commission so concluded in both the *AT&T*

[40] CTIA at 17.

[41] In September 2009, OPASTCO conducted a survey of its members regarding the state of the marketplace for broadband Internet access services. Surveys were sent to 243 members, and it was completed by 50 respondents, or just over 20 percent of recipients. The survey results indicate that there is robust competition for broadband Internet access service in portions of many rural service areas. Specifically, 90 percent of respondents indicated that they face competition from *at least* one other non-satellite broadband Internet access service provider, and 61 percent stated that they face competition from two or more. OPASTCO Comments, GN Docket No. 09-191, WC Docket No. 07-52 (filed. Jan. 14, 2010) at 5.

[42] *E.g.,* T-Mobile at 7-8, Comptel at 15-16, Sprint Nextel at 12-13, Verizon at 18-19.

Price Cap Order[43] and the *BOC Price Cap Order*;[44] and has not altered those conclusions in the 20 years that have since passed. No new evidence today supports a different result.[45]

The fact some states have adopted alternative forms of regulation for RLECs provides no basis for imposing a single incentive regulatory system on all RLECs.[46] This is reflected in the comments, where some PUCs (*e.g.*, Ohio and Missouri) argue for mandatory price cap regulation, while others (*e.g.*, Pennsylvania and South Dakota) argue the contrary position. Neither Ohio nor Missouri address differences among in RLECs among the various states and within individual states. A price cap plan that works well in Ohio might well fail in South Dakota or for specific RLECs operating in South Dakota. This diversity among States should caution the Commission against pursuing a mandatory federal incentive regulatory mechanism.

RoR Is Not An Outmoded Relic. The relevant question is not when RoR regulation was first implemented, but whether it still works effectively today. Under the theory that RoR regulation is "a relic of a bygone regulatory era,"[47] the Commission itself should be abolished because it was established during the 1930s to regulate

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[43] *Policy and Rules Concerning Rates for Dominant Carriers*, Report & Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989) at ¶ 698 (*AT&T Price Cap Order*) (tentatively concluding small and mid-size companies had fewer opportunities than large companies to achieve cost savings and efficiencies).

[44] *Policy and Rules Concerning Rates for Dominant Carrier*s, Second Report & Order, 5 FCC Rcd 6786 (1990) at ¶107 (*BOC Price Cap Order*) (finding found there was insufficient record evidence "from which to determine whether a different productivity factor was appropriate, and if so, how to calculate it and to whom to apply it.").

[45] None of the commenters supporting this proposal provide productivity studies or any other details as to how the Commission might develop appropriate factors for RLECs.

[46] Associations at 47-48.

[47] *E.g.*, Verizon at 19.

primarily AM radio and the Bell System at a time long prior to the development and diffusion of FM or satellite radio; analog, digital or high-definition television; personal computers, the Internet and broadband; wireless telephony; or the availability of wireline telephone service in many rural communities. The critical fact is not that RoR regulation was first implemented during an earlier era, but rather that RoR regulation continues to play a key role in enabling RLECs to bring an evolving level of basic and advanced communications services to many of the nation's most remote, sparsely populated and expensive-to-serve rural areas.

RLECs Cannot Achieve Productivity Gains Comparable to Large ILECs.

Sprint Nextel's claim that it is not unreasonable to expect current RLECs to achieve productivity gains similar to those achieved by price cap LECs during the past two decades[48] ignores the concepts of size and economies of scale. The typical RLEC is a very small company that measures its staff in the single or double digits. Companies of this size are not able to generate productivity gains comparable to those of RBOCs and other, larger ILECs having thousands or tens of thousands of employees. For this reason, the recent experience of Windstream Communications, Inc. ("Windstream") in converting voluntarily to price cap regulation[49] is not remotely relevant or applicable to the typical RLEC. Windstream, a Standard & Poor 500 company which has 9,500 employees, serves 3.4 million access lines in 23 states, and generates $4 billion in annual revenues,[50] has a size and scale that dwarf those of RLECs. Whether or not Windstream can increase the productivity of its large staff, realize other economies of scale and/or

[48] Sprint Nextel at 12.

[49] Windstream at 33.

[50] *See*, www.windstream.com/about/overview.aspx (viewed 7/27/2010).

reduce the amount of high-cost support it receives has no relevance to the circumstances faced by much smaller RLECs.[51]

The Commission is not writing on a clean slate. As noted above, it rejected mandatory price cap regulation for RLECs for more than 20 years because it had no record evidence of the correct productivity factor for those carriers. While the Commission is free to change course, it must first provide a reasoned explanation for the policy reversal and supply adequate record evidence in support of the change.[52] Conclusory assertions to the effect that RoR regulation is "outmoded", "encourages inefficiency" or "discourages innovation" cannot by themselves provide a factual basis for this proposal – they must be backed up with evidence. On the basis of the current record, those claims are directly contradicted by evidence RoR regulation is, in fact, far more effective in accomplishing the NBP's goals in hard-to-serve rural areas than incentive regulation. Under the circumstances it is difficult to see how the Commission could rationally justify adopting proposals to require RLECs to convert to incentive regulation as proposed in the NPRM.

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[51] Proponents of mandatory RLEC price cap regulation simply do not explain how fixed costs can be reduced, while still preserving traditional voice services and expanding the availability of broadband services. T-Mobile, for example, presumes RLECs can simply cut costs to improve earnings, but fails to address any specific costs or the fact that RLECs have a higher percentage of fixed costs than do larger carriers. *See, e.g.*, *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Fifth Report & Order, 13 FCC Rcd 21323 (1998) at ¶ 53 ("In low-density rural areas, it is likely that fixed costs will be the most significant cost driver.").

[52] *Southern Co. Services, Inc. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002); *Greater Boston Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970).

III. THE COMMISSION SHOULD ABANDON EFFORTS TO DEVELOP MODELS AND REVERSE AUCTION MECHANISMS FOR RLEC AREAS.

A. Commenters Overwhelmingly Oppose Commission Proposals To Use Economic Cost Models To Determine Universal Service Support Funding For Broadband, Particularly In Areas Served By RLECs.

Many parties object to the lack of transparency in the development of the model described in OBI Technical Paper No. 1 (the "NBP Model" or "Model"), pointing out the difficulty of offering meaningful evaluations at this stage.[53] Others suggest it may not make sense to expend further resources developing or evaluating new economic cost models for broadband because it is not clear such models will ever be of use in determining broadband support funding. The South Dakota PUC points out, for example, that even the current HCPM model used for price cap companies has not been shown to be effective.[54] Still other commenters express concern over the practical difficulties of maintaining an economic model even assuming one could be developed initially. Models need to be reevaluated, updated and improved almost continuously, a process that will likely consume far more resources than can be justified.[55] These basic problems led many parties to refrain from even attempting to analyze the NBP Model in any depth.[56]

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[53] *E.g.,* Qwest at 14, CenturyLink at n. 138, NASUCA at ii; AT&T at 14-15, Qwest at 12-13, ITTA 9-10, Comcast at 11-13, WGA at 14-15; USTelecom at 20-21, PA PUC at 18, CTIA at 21, T-Mobile at 11-20, Home Telephone at 3-5, Nebraska Telecom Assn at 37, RICA at 17-19, NASUCA, e*t al.* at 17.

[54] South Dakota PUC at 4-5. *See also*, TCA at 13-15 (models have been shown to fail when used with market mechanisms). WGA (at 14-15) comments that the record has not shown that a model would be an improvement for RLEC areas.

[55] Home Telephone at 3-5, ICORE at 7, WGA at 15, and JSI at 7.

[56] Telephone Association of Maine at 5, Missouri Small Telephone Group (MoSTG) at 3, CenturyLink at 18, Alexicon at 40, Fidelity Tel at 3, TSTCI at 13, FWA at 21, RCA at 3, TCA at 13.

Other commenters, however, sought to provide the Commission with preliminary analyses of the NBP Model. The Associations, for example, undertook an examination of each component of the Model and determined overall that the Model does not satisfy any of the key performance criteria identified by the Commission. Because the NBP Model relies on extremely limited data, for example, the Associations showed it cannot adequately take into account the details of the rural networks it proposes to augment.[57] The Associations' Comments also showed the Model fails to simulate prudent business practices of companies serving rural areas, who face many "real world" technical and business conditions that are beyond the scope of this, and perhaps any, model.[58]

Following are key concerns with the NBP Model, as identified by a cross-section of commenting parties:

The Model does not accurately capture costs in rural areas. Many commenters point out that models in general cannot be relied upon to reflect costs accurately in the extreme or specialized conditions in which RLECs often operate.[59] This is a key reason why the Commission has previously found that models should not be used to determine costs for the highly individualized territories served by RLECs.[60] Small

[57] *See,* Associations, Appendix A.

[58] Associations at 54, 58.

[59] *E.g.*, CenturyLink at viii, ITTA at 9, ATA at 1, 6-7, San Carlos Apache at 10-11, TSTCI at 13, SDTA at 27, TCA at 14. RCA of Alaska (at 4) observes that much of Alaska does not even have roads, a basic building block of the NBP Model.

[60] Associations at 53.

"misses" in a model that wouldn't impact a larger carrier will inevitably cause hardships in the provision of service in areas served by smaller carriers.[61]

The Model's estimate of broadband coverage is inaccurate. Comments show the Model substantially overestimates wireless and cable broadband coverage.[62]

The Model is based upon questionable assumptions. The Associations' analysis shows the Model includes many erroneous assumptions and leaves out critical variables, including middle mile capacity – a key constraint in providing broadband services in rural areas.[63]

Many other parties question the basic assumptions used to produce the Model,[64] particularly as they relate to the relative costs and technical capabilities of wireline and wireless broadband technologies.[65] For example, the Nebraska Rural Independent Companies (Nebraska RLECs) conducted a detailed analysis of the Model and found, as did the Associations, the Model underestimates significantly the costs of providing wireless broadband services at the proposed 4/1 Mbps availability target.[66] Such errors

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[61] *Id.*, Appendix A at 5. Similarly, the PA PUC (at 21) points to the model's heavy reliance on Pennsylvania data and suggests this cannot be extrapolated to other areas, as Pennsylvania has a statute mandating broadband build-out.

[62] Associations, Appendix A at 1-2. Similarly, the Wyoming PSC (at 10) notes specifically the model shows 100% broadband availability in some very sparsely populated counties that actually have very low coverage. *See also,* US Cellular at 22, SDTA at 25, Nebraska Rural Ind. Companies at 8, 13.

[63] Associations at 55-56, Appendix A. *See also*, CenturyLink at 50, PA PUC at 27.

[64] *E.g.,* Comcast 11-13, WGA at 10, AT&T at 16.

[65] *E.g.,* CTIA at 22, Adtran at 3.

[66] Nebraska RLECs at 13-15. AT&T (at 16) mentions spectrum costs, for example. Furthermore, while the model purports to reflect costs of 4G wireless broadband service, that service and data is not yet available, and the model assumes availability in whole counties where a carrier has merely announced plans to deploy. *See also,* CenturyLink at 48-49, SDTA at 24-25.

cause the Model to underestimate substantially the relative costs of providing wireless broadband services and contribute significantly to an apparent bias towards wireless technologies in the Model.[67]

The Model underestimates the costs of keeping existing networks functional. Another concern expressed by several commenters is the fact the NBP Model does not consider the costs of maintaining existing wireline facilities.[68] Since broadband networks, including wireless broadband networks, are heavily dependent on the continued existence of such facilities, estimated "gap" results obtained by the Model are significantly misstated as a result of this oversimplification. Similarly, several parties point out the need to include costs associated with providing service on a "last resort" basis.[69] Other parties point out the need to reflect total costs in the Model, not incremental costs, to reflect the ongoing operational costs associated with networks in rural, high-cost areas.[70]

The Model's use of revenues is problematic. Comments also explain the difficulties of using revenues in the Model. Several risks and complications associated with including revenues in a model are identified by ITTA and USTelecom, for example.[71] Other commenters point out that if revenues are to be included in generating "gap" estimates, all the costs associated with generating those revenues also need to be

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[67] *See infra* pp. 36-38.

[68] STDA at 26, TSTCI at 5, SDPUC at 1, CenturyLink at 32-35, Windstream at 14. *See also*, Associations, Appendix A at 13-14.

[69] CenturyLink at 12, Windstream at 11, PA PUC at 36.

[70] *E.g.,* ITTA at 16-17, SD PUC at 4-5.

[71] USTelecom at 24, ITTA at 18.

included.[72] The fact is, many RLECs offer certain non-regulated services, such as video, at a net loss, just so they can offer a "triple play" and generate customer loyalty.

The use of a model may not be satisfactory for lenders. Finally, some commenters point out that using a model to determine support amounts would likely undermine the ability of rural providers to obtain financing. CoBank, for example, explains that a model would not provide the basic financial assurance needed by lenders to support extension of credit for new investments in rural, high-cost areas.[73]

Even those who consider the Model potentially useful suggest only very limited applications, and argue against general application.[74] As the Associations' comments make clear, under no circumstances should the NBP Model be used to determine support levels for RLEC areas, as support levels based solely on its outputs would result in a reduction of high-cost support for RLECs of 85 percent or more compared to current levels – with devastating impacts on consumers in rural America.[75]

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[72] *E.g.,* PAPUC at 27, WA UTC at 4-5, NASUCA at ii.

[73] CoBank at 5. *See also*, Texas Statewide at 11, TCA at 18 (explaining how carriers would have difficulty with model based support in audits and in obtaining loans.)

[74] *See e.g*., USTelecom at 20-23, NCTA at 16-20, Comcast at 11, Time Warner Cable at 13.

[75] Associations, Appendix A at 1-3, 10. Further, as explained in Appendix A of the Associations' comments, even if the model is only used to determine incremental support and remaining support under a fund capped at 2010 levels is distributed in the same proportion as current funding, RLECs would experience cuts of over 50 percent compared to current levels. *Id.*, Appendix A at 23-24.

B. The Comments Reflect Widespread Agreement That Market-Based Mechanisms Such as Reverse or Procurement Auctions Will Not Work for RLEC COLRs.

As in previous proceedings related to reverse auctions,[76] the overwhelming majority of commenters oppose using reverse or procurement auctions to determine who should receive broadband support, and at what level. Many of the commenters cited specific problems inherent with the use of reverse auctions: auctions will trigger a "race to the bottom," rewarding those providers who are able to minimize expenditures on service quality and customer service;[77] auctions are, by their very nature, administratively complex and difficult to implement;[78] and, reverse auctions impose the dangers of stranded investment and ignore the need for specific, predictable and sufficient support for ongoing network projects;[79]

The few commenters who support reverse auctions make claims that are dubious at best. Time Warner Cable, for example, asserts "reverse auctions would eliminate the tremendous waste that is built into the high-cost program."[80] In reality, reverse auctions would threaten the overall quality of service received by consumers in high cost and

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[76] *See, e.g.*, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rule Relating to High-Cost Universal Service Support,* Public Notice, WC Docket No. 05-337, CC Docket No. 96-45, 21 FCC Rcd 9292 (2006); *High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008).

[77] *See, e.g.,* RTG at 14, MoSTG at 9, Rural Telecom Service Providers Coalition at 9, TCA at 16, TSTCI at 18, Utah Rural Telcom Association at 3.

[78] *See*, Associations at 21-28. *See also*, CoBank at 6.

[79] *E.g.,* Alexicon Consulting at 36, Fidelity Telephone Company at 4, Telephone Association of Maine at 4, MoSTG at 8, TCA at 17.

[80] Time Warner Cable at 10.

remote areas; any waste in the program could be adequately addressed by eliminating the identical support rule.[81]

NTCH, Inc. similarly claims reverse auctions or similar subsidy award methodologies "would properly incent providers to seek only the bare minimum subsidy that they really need to sustain profitable service."[82] NTCH even suggests reverse auctions might result in zero subsidy level.[83] It is puzzling to consider what might compel a provider to suddenly begin offering service at a zero subsidy level in an area where there is not a business case for any provider merely because a reverse auction has been implemented. Clearly, providers seeking to serve customers in the most remote, hard-to-reach areas will require ongoing support. As the Alaska Telephone Association astutely notes, "the reality is that high-cost areas are not market-based areas where the market will successfully provide access to quality broadband service any more than it does to voice grade service today."[84]

Perhaps the most relevant opinion in this matter belongs to CoBank, a leader in the field of rural telecommunications financing. As CoBank, notes, "a sufficient and sustainable cost recovery mechanism is imperative to support the financing of ubiquitous rural broadband. There is no silver bullet to avoid this reality."[85] The use of reverse

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[81] A more significant concern with reverse auctions is the increased risk of waste if a low-bidding carrier is ultimately unsuccessful in deploying service, thereby rendering any funding received by the carrier useless. Associations at 25. The financial collapse of the prior incumbent would mean substantial additional funds would have to be spent finding replacement providers, an entirely avoidable expense.

[82] NTCH at 3.

[83] *Id.*

[84] ATA at 8.

[85] CoBank at 3. (emphasis added)

auctions would create uncertainty, and "the uncertainty surrounding [the] process would negatively affect the incumbent's ability to obtain capital, thereby impeding its ability to deliver broadband to its subscribers in a timely manner."[86] CoBank believes that "the notion of competitive auctions to allocate CAF support is essentially a solution in search of a problem that does not exist."[87]

If organizations such as CoBank see reverse auctions as a source of uncertainty, they will be less likely to extend financing in the future, threatening the ongoing improvement of RLEC networks and harming the consumers who rely upon them for service.

IV. REASONABLE ALTERNATIVES TO THE NBP's UNIVERSAL SERVICE FUNDING PROPOSALS SHOULD BE CONSIDERED.

Virtually all commenting parties, including the Associations, agree existing high-cost support mechanisms require some reform in order to shift their focus from supporting the provision of voice-grade services to supporting the provision of broadband services. The record provides the Commission with several suggestions for alternative approaches that should be considered in planned USF "transformation" proceedings.[88] Among these proposals several key themes are readily apparent.

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[86] *Id.* at 7.

[87] *Id.*

[88] *See,* Associations at 59-65 (explaining both the federal Administrative Procedure Act and the Regulatory Flexibility Act require the Commission to give adequate consideration to alternative proposals in the course of rulemaking proceedings). *See, id*. at 63-65.

A. The NBP's Proposed 4/1 Mbps Target Must Be Replaced With One that Ensures Reasonably Comparable Broadband Services for Rural Customers.

Many commenters make clear the NBP's proposal to adopt a broadband availability target of 4/1 Mbps will fail to ensure the availability of services in rural areas that are "reasonably comparable" to services in urban areas. As the Associations noted, the 4/1 Mbps target will result in a considerable disparity between urban and rural broadband speeds only one year after the 2012 implementation of the CAF.[89] TCA likewise points out that if rural areas are locked in at this inadequate speed for the next four years, "these areas will forever be playing catch up and will never truly enjoy the same quality of broadband as the rest of the country."[90]

The NBP's 4/1 Mbps target is particularly troubling considering the NBP devotes seven chapters to the many "National Purposes" that could be furthered by the availability of robust broadband connections. These include telemedicine applications such as remote patient monitoring. Included as well are educational and energy applications that can revolutionize the way students learn and improve the efficiency of our nation's energy delivery system. Yet as one commenter states, "efforts like

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[89] The NBP states that it is likely that 90 percent of the country will have access to advertised peak download speeds of more than 50 Mbps by 2013. Since actual download speeds are approximately 40 – 50 percent of the advertised "up to" speeds, 90 percent of the country will likely have access to actual download speeds of at least 20 mbps (50 times 40 percent) within three years time. Associations at 15-16. *See also,* Nebraska Rural Companies at 55 ("[g]iven explosive recent increases in broadband speeds, especially in urban areas, a universal target of 4/1 Mbps is likely to be outmoded by the end of this year…."); Blooston Rural Carriers at 8 (in light of the projected growth in broadband speeds over the next decade, "4.0 Mbps will be too slow by the time that the first wave of the *National Broadband Plan* rules are implemented during 2012 and 2013, and will become increasingly inadequate and outmoded by the time a revised "target" can first be adopted and implemented sometime in 2015 or thereafter.").

[90] TCA at 4.

broadband enabled healthcare would be 'severely hamstrung' in the long run if they had to rely solely on a few megabits of capacity."[91]

The NBP similarly found "[b]roadband can provide significant benefits to the next generation of American entrepreneurs and small business – the engines of job creation and economic growth for the country."[92] But as the record makes clear, the 4/1 Mbps broadband availability target will very likely prevent rural areas from leveraging their broadband infrastructure to improve their economies or create new jobs. As the Washington and Oregon state telecommunications associations note, the 4/1 Mbps target is not sufficient "to meet the objectives and the needs for a vibrant American economy in rural areas."[93]

The 4/1 Mbps standard also fails to consider the effect that broadband speeds have on consumer adoption. As the September 2009 status report from the Commission's Broadband Task Force correctly recognized, the utility of the Internet is an important driver of adoption and usage.[94] Consumers' ability to access and utilize various content, applications, and services depends upon the speeds they have access to. A rural consumer whose broadband connection fails to adequately support the increasingly bandwidth-intensive content, applications, and services available over the Internet may become frustrated and discontinue service, or choose not to subscribe in the first place.[95]

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[91] TDS at 11.

[92] *NBP* at 266.

[93] OTA and WITA at 30.

[94] FCC Broadband Task Force, *National Broadband Plan Status Report* (Sept. 29, 2009) at 19.

[95] As a February 2008 report from the Congressional Research Service noted, many of the applications found in the NBP's discussion of "National Purposes" can only function well at speeds of 10-100 Mbps. Patricia Moloney Figliola, Angele A. Gilroy, and

Thus, it is critical that deployment of broadband networks in rural service areas must "evolve over time to keep pace with the growing array of transformational applications and services that are increasingly available to consumers and businesses in other parts of the country."[96]

The Associations understand that in refocusing USF mechanisms, the Commission must meet the challenges of supporting robust broadband networks and services without overly burdening consumers. However, first, and foremost, reforms to the High Cost program for RLECs must adhere to the section 254 requirement that support mechanisms be "specific, predictable, and sufficient" to "preserve" and "advance" universal service. They should ultimately ensure that rural consumers have access to broadband Internet access services that are reasonably comparable to those available in urban areas, and at reasonably comparable rates. This will spur broadband adoption in rural service areas and, in turn, provide RLECs with the additional end-user revenues and incentives to continue improving the quality and reach of their broadband services.

B. New Funding Mechanisms Must Be Sufficient to Accomplish the NBP's Goals.

Many commenters, including the Associations, strongly questioned whether it is realistic for the Commission to expect a national broadband network to be deployed and

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Lennard G. Kruger, *The Evolving Broadband Infrastructure: Expansion, Applications, and Regulation*, Congressional Research Service, R40230 (Feb. 19, 2009) at 3, Table 1.

[96] Acting Chairman Michael J. Copps, FCC, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, GN Docket No. 09-29, 24 FCC Rcd 12791 (2009) at ¶11.

maintained while keeping USF funding locked-in at current (2010) levels.[97] The Associations recognize, as do nearly all commenters, that funding available for supporting rural broadband networks and services "is not unlimited." But it appears extremely unlikely high-cost support kept at current levels can possibly be sufficient to accomplish the goals of the NBP, particularly if the Commission seeks (as it should) to assure consumers in rural areas have access to services that are "reasonably comparable" to those available to their urban counterparts.

In the first place, as numerous commenters point out, the majority of rural consumers considered to be "unserved" under the NBP's analysis live in areas served by large and mid-sized price cap carriers.[98] Therefore, if the Commission finds it necessary to provide additional support to non-rural carriers in order to spur broadband deployment of broadband infrastructure and services in the rural portions of their rural service areas, available funding for RLEC high cost support mechanisms as well as other universal service programs would presumably be reduced significantly if the size of USF is constrained to 2010 levels – leading to catastrophic consequences for RLECs and their customers.

Other commenters express concern about the impact of rapid growth in federal low-income support mechanisms (*i.e.*, Lifeline, Link-Up, and Toll Limitation Support) on available broadband support. In recent years, an increasing number of wireless carriers, most notably prepaid wireless providers, have been granted ETC status for "Lifeline-only" services. The result has been an explosion in funding for Lifeline programs,

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[97] Associations at 12. *See also,* FWA at 10-12, Border Companies at 9-10, Farmers Telecommunications Cooperative at 5, JSI at 11-12.

[98] *NBP* at 141.

increasing overall from $763 million in 2004 to over $1.4 billion in 2010.[99] In fact, according to USTelecom, "right now, the greatest source of growth in the Universal Service Fund is in the low-income program."[100] NASUCA states that the potential impact of Lifeline growth on broadband funding "cannot be exaggerated."[101] As an increasing number of eligible consumers take advantage of offers for steeply discounted prepaid services, the current expansion in Lifeline funding levels may soon seem small in comparison.[102] The Commission clearly needs to address this issue soon; otherwise, it is unlikely any significant funds will be available for broadband services.[103]

The Associations also pointed out that funding shortfalls for RLECs will grow even worse over time if the Commission phases out existing "legacy" support mechanisms and per-minute ICC charges, as recommended by the NBP, without simultaneously phasing in sufficient replacement funding for broadband.[104]

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[99] Funding for lifeline services has grown by 54 percent (from $912 million to $1.4 billion) *in the past year alone*.

[100] USTelecom at 19.

[101] NASUCA Comments, CC Docket No. 96-45 (July 15, 2010) at 3.

[102] *Id., citing Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079 (2010) ("In 2004, the low income program disbursed $763 million. … According to preliminary USAC disbursement figures, low-income Support total outlays were $930 million in FY 2009. Based on USAC's most recent quarterly filing, total outlays for the low-income programs are forecast to be approximately $1.4 billion in calendar year 2010).

[103] Other parties have expressed concerns over increasing demands on the fund from E-Rate and rural healthcare initiatives. *See, e.g.,* Letter from Geoffrey A. Feiss, General Manager, Montana Telecommunications Association, to Marlene Dortch, FCC, WC Docket No. 10-90 (filed July 30, 2010).

[104] Associations at 12.

As the Blooston Rural Carriers suggest, "barring a recurrence of the New Testament miracle of loaves and the fishes,"[105] the Commission cannot rationally expect to provide adequate support to meet broadband infrastructure and service goals outlined in the NBP while simultaneously holding the overall size of the Fund at 2010 levels. The annual amounts of universal service support needed to meet these goals "simply add up to far more than $8.7 billion."[106]

As many commenters point out, the interstate contribution factor has risen to historic levels in recent years, and the Commission is understandably reluctant to increase the contribution factor if doing so would overburden consumers. With this in mind, the Associations and many other commenters strongly urged the Commission to immediately take action to reform the USF contribution mechanism itself, specifically by broadening the base of USF contributors to include all providers of broadband Internet access services, over all technological platforms.[107]

Expanding the contribution base in this manner spreads the cost of the Fund more equitably among consumers nationwide. In addition, because broadband Internet access services are growing both in terms of connections and the revenues they generate, it will help to minimize the USF fee that is passed through on each of the communications services that are subject to a contribution requirement. Likewise, it assures the process is more equitable, is consistent with the view of the increasing significance of broadband in our nation's communications infrastructure, and will make more feasible the Fund growth necessary to enable the Commission to satisfy the competing goals identified above.

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[105] Blooston Rural Carriers at 14.

[106] *Id.* at 14-15.

[107] Associations at 65-66. *E.g.,* JSI at 13-14, SCCLTA at 10, MACRUC States at 10.

In addition, the Commission should strengthen its call signaling rules to mitigate phantom traffic and confirm that traffic originated by VoIP providers and terminated on the PSTN is subject to the appropriate ICC. As shown in comments from several parties, the Commission has an ample record upon which to immediately act on each of these issues without conducting further rulemaking proceedings,[108] and doing so would provide at least some greater degree of certainty in the interim as the Commission undertakes the delicate process of reforming USF and ICC on a broader scale.

C. Alternative Funding Approaches Must Reflect Realistic Network Design Principles.

Commenting parties raise significant questions about some of the critical engineering assumptions underlying the NBP. The Associations, for example, provided as an Appendix to their comments a report prepared by the Association of Communications Engineers (ACE) regarding deployment of broadband networks in rural areas.[109] The ACE Report expressed particular concern with the Plan's apparent focus on short-term network deployments, finding that the 4/1 Mbps speed targets proposed by the NBP "fall short of reasonable network design criteria and do not align with responsible long term planning."[110] Other commenters raised similar concerns.[111]

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[108] Associations at 66. *E.g.,* TSTCI at 6, 22-23, USTelecom at 9-10, ITTA at 25-26, CenturyLink at 9.

[109] *See, ACE Report.* ACE member firms employ professional engineers "dedicated to the improvement and advancement of telecommunications technologies throughout the United States" and are thoroughly familiar with the challenges faced by rural carriers in deploying both wireline and wireless networks in high-cost areas.

[110] *Id.* at 5.

[111] *E.g.*, TCA at 3, Alexicon Telecommunications Consulting at 22-23.

Another significant area identified in the ACE Report is the NBP's over-optimistic reliance on wireless technology for the provision of broadband services in rural areas. The ACE Report recognizes the benefits of wireless distribution systems, particularly in terms of mobility and portability, but suggests that good engineering practices require consideration of the maximum capacity of a wireless system in a real-world environment.[112] It documents many significant constraints affecting wireless systems in rural areas, including signal strength limitations, terrain problems, interference issues, lack of "real world" testing, and lack of available spectrum. The Report finds, in effect, that wireless systems are unlikely to be able to provide the broadband speeds that consumers in rural areas will require in the near future. The Report points out that increasing data traffic is already causing wireless networks in urban areas to slow to a crawl.[113] The same problem is expected to occur in rural networks built to the 4/1 Mbps availability target recommended by the Plan.

Other commenters provide evidence tending to show that wireless technology will not be able to meet actual capacity demands for broadband services.[114] For example, a study by Vantage Point Solutions, appended to the Nebraska RLECs' comments, provides compelling evidence as to why wireline technology is actually preferable to wireless for the provision of broadband in rural areas over the long term. In particular,

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[112] *ACE Report* at 5-7.

[113] *See, e.g.,* Roben Farzad, *AT&T's iMess*, Bloomberg Business Week (Feb. 15, 2010) at 34.

[114] Associations at 20-21, and Appendix B.

the study shows how wireless costs increase far more rapidly than wireline costs as broadband speed increases.[115]

Finally, new funding approaches need to recognize the degree to which wireless networks depend on wireline networks, particularly in rural areas.[116] Wireless networks by themselves are "not viable substitute[s]"[117] because most depend upon wireline networks for backhaul, as well as for network redundancy.[118] Demand for backhaul services will only become more pronounced as data-intensive wireless applications increase in popularity.[119] This interdependence of networks underscores the need to treat fixed and mobile services as complementary when designing rural broadband funding mechanisms.

D. Alternative Mechanisms Should Incorporate Incentives That Promote Broadband Investment And That Reflect the Costs of Providing End-to-End Broadband Services.

Several commenters support alternatives to the NBP's proposals that deserve serious consideration by the Commission. For example, the comments strongly suggest the Commission should consider using different support mechanisms that are designed

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[115] Even wireless providers recognize the inherent limitations of this technology to handle consumer demands for broadband services. *E.g.*, Sprint Nextel at 7 ("It is more difficult to engineer a mobile broadband network to achieve the National Broadband Plan's aggressive (and rising) "actual" minimum speeds than is the case for fixed broadband networks.").

[116] *E.g.*, Windstream at 11, Border Companies at 11.

[117] Border Companies at 11.

[118] *Id.*

[119] OTA and WITA at 5 ("Where in the past some wireless carriers could use microwave transmission for backhaul of traffic in some locations, the data loads are quickly outstripping microwave capacity. This means the wireless carriers are relying even more often on the wireline network.").

for different types of carriers. This would be more effective in spurring carriers with very different resources, incentives, and technological characteristics to deploy and operate broadband networks in diverse high-cost areas than a "one-size-fits-all" approach.

The Blooston Rural Carriers[120] proposed in this regard the Commission develop and implement two separate broadband high-cost support mechanisms: one for RLECs to support the capital and operating expenditures necessary to enable small carriers with limited financial resources to continue furnishing reasonably comparable broadband services to their rural customers, and a different mechanism designed to encourage RBOCs and mid-sized price cap carriers to make the capital expenditures necessary to deploy broadband in the rural portions of their territories. A capital expenditures mechanism for large carriers might provide the Commission with the flexibility to balance the speed of broadband deployment with the size and growth of the High Cost program, as capital expenditure grants can be increased or decreased when circumstances and conditions change and can be supplemented by Congressional appropriations.[121]

A third broadband high-cost support mechanism could be developed and implemented to encourage and enable wireless carriers to provide complementary broadband mobility services in rural areas.[122] Such a separate wireless mobility mechanism would recognize that it is not effective or efficient to support the very

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[120] Blooston Rural Carriers at 22-25.

[121] *See, e.g*. US Cellular at 21, WGA at 21, Nebraska and ND PSCs at 8, NASUCA, *et al*. at 10. *See also,* Comments by CTIA at 1-2, and 10-11, T-Mobile at 21, 25, Rural Cellular Association at 11, Preserving the Open Internet, GN Docket No. 09-191 (filed Jan. 14, 2010).

[122] *See, High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007).

different bandwidth capabilities, service requirements and costs of rural wireless carriers from the same mechanism as large or small wireline carriers. Like their urban counterparts, most rural customers want high-speed and high-capacity broadband services in their homes and offices, as well as complementary mobile messaging and web access when they are out and about in their cars, trucks and tractors.

In contrast to the "multiple mechanisms" approach, a number of commenters contend that only a single mechanism can address disparities between support for broadband services provided in the rural areas served by price cap companies and areas served by RLECs. Qwest, CenturyLink, and Windstream, for example, argue the new CAF should employ the same method to determine high cost support for rural territories regardless of the ownership structure or regulatory requirements of the parent company.[123] Otherwise, as CenturyLink asserts, consumers in neighboring rural areas served by smaller geographic territories enjoy the benefits of universal service funding—greater investment, service, and affordable pricing—than do similarly-situated consumers in rural high-cost wire centers in larger companies' study areas."[124]

The Associations agree rural consumers should neither be advantaged nor disadvantaged based on the regulatory classification of the provider that happens to serve as COLR in their particular areas. The Associations further agree any new broadband support mechanism should not replicate and perpetuate known problems found in existing non-rural high cost USF support mechanisms, which are state-wide averaging

[123] CenturyLink at 6-7, Qwest at 5, 14-15, Windstream at 13-16.

[124] CenturyLink at 7.

and an unsound, outdated cost model.[125] These problems cannot be fixed, however, by shortchanging high cost support for RLECs or by eliminating RoR regulation.[126]

There is nothing intrinsically unlawful, inequitable or inefficient with having separate high-cost broadband support mechanisms based on carrier size or regulatory classification. Separate mechanisms may be much more effective in promoting broadband deployment and use because they can better focus upon critical factors such as company size, financial resources, investment incentives, COLR obligations, technical characteristics, network designs, scalability of upgrades, and customer expectations and demands. Given the substantial differences between RLECs, RBOCs, mid-size carriers, wireless carriers, satellite carriers and others, a flexible set of separate high-cost broadband support mechanisms will be much more effective (and very likely also much more efficient) than trying to force everything into a single mechanism or model. The solution should be to develop high-cost support mechanisms that incent all carriers serving rural areas to invest in their broadband Internet access services, not to undermine or abandon successful approaches that have enabled RLECs to achieve progress in building-out broadband services in their areas.[127]

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[125] *See*, Vermont PSB, *et al.* v. FCC, No. 10-1184 (D.C. Cir., filed July 12, 2010) (filing a petition for review of Order on Remand and MO&O, 25 FCC Rcd 4072 (2010)).

[126] Qwest at 13-16.

[127] Differences between rural and non-rural carriers, and among rural carriers themselves, were exhaustively studied and documented by the Rural Task Force (RTF) years ago. *See generally, Federal-State Joint Board on Universal Service, Multi Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchage Carriers*, CC Docket Nos. 00-256, 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) (*RTF Order*). To a significant degree, factors that led the RTF to conclude "rural is different" a decade ago remain important today.

Another fruitful area for Commission inquiry would be the incorporation of well-defined deployment rewards and penalties in any new broadband high-cost support mechanisms. Such mechanisms would recognize the importance of a COLR's performance, encourage the delivery of high-quality broadband services for customers, and can be designed to operate within RoR regulation for RLEC service areas.

For example, the Pennsylvania Public Utility Commission[128] has proposed a system of incentives that would incorporate both speed and availability standards. Under this proposal, a carrier who exceeds the maximum availability standard would retain its current support. Carriers who fail to meet the minimum availability standard would lose support, and carriers operating between the minimum and maximum standards would receive a *pro rata* share of their current support.[129]

The Associations and other parties noted the importance of relying on actual costs in any new RLEC broadband mechanism.[130] These commenters point to the many benefits associated with reliance on actual costs as opposed to model-based support for RLEC areas, and strongly dispute oft-repeated claims that cost-based support mechanisms and RoR regulation necessarily encourage inefficient investment.[131]

The Associations also pointed to concepts submitted in earlier phases of the NBP proceeding, which suggested the Commission adopt an "end to end" approach to funding

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[128] PA PUC at 16.

[129] In future years, these incentives may perhaps be expanded to encompass efforts to increase broadband adoption rates, as well as to encourage and enable broadband network construction, upgrades, operation and maintenance.

[130] Associations at 61. *E.g.,* Fidelity Telephone at 4, Telephone Association of Maine at 6, MoSTG at 4-5.

[131] *E.g.,* FWA at 21, MoSTG at 4, OTA and WITA at 22, CoBank at 5.

broadband Internet access services in RLEC areas.[132] Such approaches would permit the Commission to address the high cost of obtaining middle mile transport between RLEC areas and the Internet backbone, a key impediment to deployment of higher-speed broadband services in rural areas.[133]

Commenters provided a number of other suggestions for reform. For example, several parties echoed the Associations' view that RLECs should be permitted to continue providing broadband transmission services on a Title II common carrier basis, as they do today.[134] As the Associations explained, Title II regulation provides the Commission with key regulatory oversight tools and assures consumers access to services "upon reasonable request therefor" and at "just and reasonable" rates.[135] Title II provisions also require carriers to provide services without "unjust or unreasonable discrimination" and encompass COLR obligations as well.

In addition, several parties agree the Commission should strengthen its call signaling rules to mitigate phantom traffic and confirm that traffic originated by VoIP providers and terminated on the public switched telephone network (PSTN) is subject to

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[132] Associations at 60, *citing, e.g.,* NECA Comments on NBP Public Notice # 19, GN Docket No. 09-51 (filed Dec. 7, 2009).

[133] The TSTCI (at 10) commented favorably on the end-to-end benchmark approach suggested in NECA's December 7, 2009 comments, pointing out how alternative proposals that revise rate of return regulation by placing limits on certain expense factors or establishing benchmarks that can be adjusted if required "would be much more workable and practical than eliminating rate of return regulation entirely."

[134] Associations at 61. *E.g.,* ATA at 14.

[135] 47 U.S.C. § 201.

the appropriate ICC. The Commission has an ample record upon which to immediately act on each of these issues without conducting further rulemaking proceedings.[136]

Finally, the Commission should continue to work with the rural Associations to develop transformational reforms to the high cost universal service mechanisms that are also consistent with the requirements of the 1996 Act. The Associations and a number of their member company representatives have met with Commission staff on many occasions to discuss the NBP.[137] While there remain numerous issues to resolve, the Associations have every confidence that workable alternatives to the NBP's proposals can be developed that will promote ongoing broadband network investment while also minimizing the burden on consumers that contribute to the USF.

V. CONCLUSION.

Virtually all parties agree on the need to reform existing high-cost universal service mechanisms to encourage investment in broadband networks and services. However, this must be done in a comprehensive fashion. The Commission should not, for example, implement proposals in the NOI and NPRM to begin dismantling existing universal service mechanisms through the imposition of additional caps without clearly identifying how future broadband mechanisms, such as the Connect America Fund, will

[136] Associations at 66. *E.g.,* TSTCI at 6, 22-23, USTelecom at 9-10, ITTA at 25-26, CenturyLink at 9.

[137] *E.g.,* Letter from Gerald Duffy, Blooston, Mordkofsky, Dickens, Duffy and Prendergast (on behalf of WTA and TCT) to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Aug. 3, 2010); Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed July 28, 2010); Letter from Gerald Duffy, Blooston, Mordkofsky, Dickens, Duffy and Prendergast, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed June 23, 2010); Letter from Karlen Reed, NTCA, to Marlene H. Dortch, FCC, GN Docket No. 09-51, WC Docket No. 10-90 (filed June 17, 2010); Letter from Joseph A. Douglas, NECA, to Marlene H. Dortch, FCC, GN Docket No. 09-51 (filed June 4, 2010).

work. The comments also demonstrate the Commission should not continue to devote resources to developing economic models or "procurement" auction mechanisms for determining broadband support in RLEC areas.

The comments provide several suggestions for alternative approaches that should be considered. Key elements of these alternatives include the incorporation of broadband speed and availability incentives and a smooth transition path that will assure service continues to be provided to customers without disruption. Well-designed broadband support mechanisms need to meet the Act's requirements for availability of specific, predictable, and sufficient support and ensure reasonably comparable services and rates. The comments provide several examples of alternative approaches to achieve these goals that deserve further study. The Associations look forward to working with Commission staff to develop these ideas into support programs that fully satisfy the Act's requirements and the goals of the NBP.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Reply Comments was served this 11th day of August, 2010 by electronic filing and e-mail to the persons listed below.

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