

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act) GN Docket No. 09-47
)
A National Broadband Plan for Our Future) GN Docket No. 09-51
)
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act) GN Docket No. 09-137
)
)
TO: The Commission)

REPLY COMMENTS – NBP PUBLIC NOTICE #30

WESTERN TELECOMMUNICATIONS ALLIANCE

Gerard J. Duffy
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW (Suite 300)
Washington, DC 20037
Phone: (202) 659-0830
Facsimile: (202) 828-5568
Email: gjd@bloostonlaw.com

Dated: January 27, 2010

Table of Contents

Summary.....ii

REPLY COMMENTS – NBP PUBLIC NOTICE #30..... 1

A. The Emerging National Broadband Network.....2

B. Predominately Fiber Optic Network.....2

C. Interstate Highway System Model.....4

D. Flexible and Evolving Definition of “Broadband Capability”.....5

E. Definition of “Access to Broadband”.....6

F. Broadband Record of RLECs.....7

G. Size of Universal Service Fund.....8

H. USF Contribution Mechanism.....9

I. High-Cost Mechanisms in the Broadband World.....10

J. RLEC COLR High-Cost Mechanisms in the Broadband World.....12

J. Conclusion.....18

Summary

Members of the Western Telecommunications Alliance (“WTA”) and other rural incumbent local exchange carriers (“RLECs”) have been leaders in the provision of the current version of “broadband” services to their rural customers, and are eager to participate in the “broadband” network of the future.

WTA recognizes that the existing public switched telecommunications network (“PSTN”) is rapidly becoming a national broadband network. WTA understands that existing wireline and wireless networks will need to be extended and upgraded during the foreseeable future to carry larger and larger volumes of existing, projected and not-yet-envisioned “broadband” services at speeds and capacities likely to reach Gigabits per second (“Gbps”) levels. Their experience to date with “broadband” has convinced WTA members that a predominately fiber optic network is the only way to meet future “broadband” capacity and transmission speed demands, and that fiber also is the most economical long run solution due to its scalability, reliability, security, useful life and environmental advantages. To the extent that fiber may be expensive to deploy initially, flexible approaches such as the proven Interstate Highway System model can produce steady and substantial progress toward a fiber network at a pace consistent with consumer demands as well as financial and technical constraints. This effort will also be rendered more viable by a definition of “broadband capability” in terms of evolving guidelines and ranges that can be modified over time in response to changing circumstances.

For WTA members and other small Carriers of Last Resort (“COLRs”), a critical key to future “broadband” progress is continued sufficient and stable federal high-cost support. WTA members and other RLEC/COLRs have made excellent progress in bringing current “broadband”

facilities and services to approximately 90 percent of their rural customers, but still face major and expensive tasks to extend “broadband” to their remaining customers as well as to keep pace with the fiber extensions and other upgrades necessary to continue offering their rural customers access to “broadband” services, speeds and capacities reasonably comparable in quality and price to those available in urban areas. As the Commission adapts high-cost mechanisms to the broadband world, it needs to recognize that many RLEC COLRs rely upon federal high-cost support for approximately 30-to-40 percent of their regulated revenue streams, and that continued sufficient and stable cost-based support for RLEC COLR networks and operating expenses is needed both to enable them to participate in the future “broadband” network and to preserve their substantial progress to date toward that end.

Because of very substantial differences in critical factors such as size, financial resources, access to capital markets, service areas, customer bases, economies of scale, cost structures, investment incentives and type of regulation, WTA believes that there should be separate broadband high-cost mechanisms for at least: (1) RLECs and other small wireline COLRs; (2) Regional Bell Operating Companies (“RBOCs”) and other large wireline COLRs; and (3) wireless and other carriers providing mobility and other desired services that complement or supplement the broadband services of COLRs. The broadband high-cost mechanism for RLECs and other small wireline COLRs: (a) should support broadband loop and “middle mile” transport costs above a specific standard (e.g., 135 percent) above national average broadband costs; (b) should be initially funded, at minimum, at the same approximate annual \$2.4 billion amount that has enabled RLEC COLRs to successfully deploy current “broadband” services over their existing multiple use networks; (c) can be transitioned at a pace dependent upon the

Commission’s required timelines for extending “broadband” facilities to all rural customers and for upgrading “broadband” facilities to certain minimum transmission speeds and capacities; (d) should be based upon the readily ascertainable and verifiable actual costs of constructing and operating rural networks pursuant to COLR responsibilities; (e) should support rural operating expenses as well as rural infrastructure costs; and (f) should not be capped (particularly, to the extent that the Commission retains existing caps while requiring substantial additional RLEC investment for the extension of fiber lines to upgrade transmission speeds of existing hybrid fiber-DSL plant and to reach the remaining RLEC customers currently without access to “broadband” services).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
International Comparison and Consumer Survey) GN Docket No. 09-47
Requirements in the Broadband Data Improvement Act)
)
A National Broadband Plan for Our Future) GN Docket No. 09-51
)
Inquiry Concerning the Deployment of Advanced) GN Docket No. 09-137
Telecommunications Capability to All Americans in a)
Reasonable and Timely Fashion, and Possible Steps to)
Accelerate Such Deployment Pursuant to Section 706)
of the Telecommunications Act of 1996, as Amended)
by the Broadband Data Improvement Act)
)
TO: The Commission	

REPLY COMMENTS – NBP PUBLIC NOTICE #30

The Western Telecommunications Alliance (“WTA”) submits its reply comments in response to the Commission’s Public Notice (*Reply Comments Sought in Support of National Broadband Plan*), GN Docket Nos. 09-47, 09-51 and 09-137, DA 10-61, released January 13, 2010 (“*NBP Public Notice #30*”).

WTA, a trade association that represents more than 250 rural incumbent local exchange carriers (“RLECs”) operating within the twenty-four states located west of the Mississippi River (including Alaska and Hawaii) has participated actively in the captioned proceedings, including the filing of: (a) comments on June 9, 2009 in GN Docket No. 09-51; (b) comments on September 4, 2009 in GN Docket Nos. 09-137 and 09-51; (c) comments on November 4, 2009 in GN Docket Nos. 09-47, 09-51 and 09-137 (NBP Public Notice #11); (d) comments on December 7, 2007 in GN Docket Nos. 09-47, 09-51 and 09-137 (NBP Public Notice #19); and (e) an

opposition on January 7, 2010 to the petition for rulemaking in GN Docket No. 09-51, WC Docket No. 05-337 and RM-11584.

Rather replying individually to specific commenting parties in these proceedings, WTA desires to use these Reply Comments to restate briefly the essence of its proposals and recommendations regarding the National Broadband Plan.

A **The Emerging National Broadband Network**

WTA recognizes that the existing public switched telecommunications network is rapidly becoming a national broadband network. Existing wireline and wireless telecommunications networks are distributing rapidly increasing amounts of data and video traffic as well as voice traffic at the present time, and will need to be extended and upgraded during the next decade or so to carry larger and larger volumes of existing, projected and future telecommunications and information service traffic at speeds and capacities likely to reach Gigabits per second (“Gbps”) levels. These emerging broadband services include cloud computing, ultra high definition video, advanced videoconferencing, telepresence, real-time collaboration, smart appliances, home security, virtual sports, online gaming, virtual laboratories, telesurgery, remote diagnosis and medical imaging, as well as a host of services that are not yet even envisioned.

B **Predominately Fiber Optic Network**

In comparing broadband alternatives, fiber optic networks have the preeminent advantage of virtually unlimited capacity. Fiber can accommodate not only the tens or hundreds of Megabits per second (“Mbps”) of transmission capacities and speeds that will be demanded by increasing numbers of customers within the next few years, but also the Gbps transmission capacities and speeds that will be required long before the end of the 25-to-30 year useful life of

the fiber plant that has already been deployed. WTA notes that ultra high definition video applications (which have up to sixteen times the resolution of high definition television and require capacities of as much as 120 Mbps per channel) are already on the drawing board.

Whereas fiber optic facilities can be costly to deploy initially, they are much more economical to operate and upgrade in the long run. First, fiber lines are readily scalable, and can readily and rapidly be increased in capacity as service needs change, merely by switching out the electronics at each end. Second, fiber lines (and particularly buried fiber facilities) have a proven record of reliability, durability and safety. Aside from an occasional line cut, both inter-city fiber trunks and fiber loops have proven records of service with minimal outages and maintenance, and have expected useful lives of 25-to-30 years or more. In an increasingly dangerous world, buried fiber optic facilities are less vulnerable to sabotage, terrorist attack and severe weather. Finally, buried fiber facilities are environmentally friendly, and have virtually no perceptible adverse impacts upon scenic beauty or wildlife.

Fiber optic facilities also furnish backhaul services that enable wireless networks to be much more efficient and effective. Wireless broadband networks can and should play a significant complementary and supplementary role in the National Broadband Network, particularly by providing mobility options in business districts, shopping malls, restaurants, coffee shops, parks, campuses, highway rest areas and other places where people congregate and need connections for their portable broadband devices. Fiber optic facilities can provide both high-capacity service to fixed locations and efficient wireless backhaul services that permit wireless broadband service providers to focus their coverage and capacity upon areas where mobility needs and usage are the greatest.

C

Interstate Highway System Model

WTA believes that the Interstate Highway System provides a useful model for dealing with the costs of moving to a National Broadband Network. Back in the 1950s, when the nation was connected by a network of predominately two-lane U.S. highways, state routes and local roads, it looked like an impossibly expensive and laborious task to construct a network of four-or-more-lane divided highways and beltways traversing the vast area and varied topography and demography of the United States. However, rather than trying to build an entirely new highway system and to incur massive construction costs at the outset, the project was approached gradually with emphasis upon priority routes and the use of as much existing highway infrastructure as practicable.

Likewise, in proceeding along the path to a National Broadband Network, the Commission should keep in mind that it will not be an entirely new network, but rather an enhancement of the existing Public Switched Telecommunications Network (“PSTN”). In significant portions of the nation, including most rural areas served by RLECs, the PSTN is already a multiple use network with substantial amounts of fiber and hybrid fiber facilities that are currently capable of transporting and delivering “broadband” services as well as traditional voice services.

The Commission can and should leverage available infrastructure and financial resources by making as much use as possible of existing intercity and interexchange fiber optic transport facilities, fiber and hybrid fiber-DSL [digital subscriber line] loop distribution plant, softswitches and other broadband-compatible wireline and wireless facilities. The current multiple use network can deliver certain “broadband” services today, and provides a ready and economically feasible base for the fiber extensions and capacity upgrades necessary to deliver the “broadband”

services of tomorrow. The Commission can proceed gradually and steadily with these future extensions and upgrades so as to allow “broadband” speeds and facility upgrades to evolve as customer demands and service options change.

D
Flexible and Evolving Definition of “Broadband Capability”

Whereas the National Broadband Network will ultimately be a predominately fiber network capable of Gbps-level speeds, “broadband” is still in the early stages of its development, and the manner and pace at which “broadband” networks, bandwidth needs and desired services will evolve is not yet certain. Therefore, WTA recommends that “broadband” definitions and requirements should initially be flexible guidelines and ranges that can be modified over time in response to customer demands, service options, technological advances and economic constraints.

WTA recommends that the Commission initially define “broadband” in terms of a range of transmission speeds above a marginally acceptable minimum speed – for example, the current definition could be “768 (or 516) kbps and above.” This approach has the advantage of allowing carriers and service providers to remain in compliance with “broadband” requirements and eligibility criteria in areas where customers remain satisfied with lower transmission speeds and/or where higher transmission speeds are not yet technically or economically feasible, while not limiting or slowing the deployment of increased transmission speeds in other areas.

The Commission should also define “broadband” differently for wireline “broadband” services and for wireless “broadband” services. The substantial majority of American businesses and households currently subscribe to both wireline and wireless services, and use them for

different purposes at different times and places.¹ These differences, as well as the trade-offs that customers are willing to make regarding features such as speed, capacity, file size, screen size and mobility, mean that wireline and wireless facilities and services will play separate but complementary roles in the future National Broadband Network. Consequently, wireline “broadband” and wireless “broadband” should be defined differently.

E **Definition of “Access to Broadband”**

WTA proposes that “access to broadband” should be defined to mean that a customer can obtain “broadband” service at his or her residence, business and other desired locations, both at an acceptable transmission speed and at an affordable rate. In rural areas, this definition also must encompass the universal service principle of Section 254(b)(3) of the Communications Act that consumers in all regions of the nation should have access to advanced telecommunications and information services that are reasonably comparable in nature, quality and price to those available in urban areas.

Initially, the key factor will be the availability and proximity of network facilities from which “broadband” services can be obtained. Unless and until adequate “broadband” network facilities are deployed in an area, neither the high-income nor the low-income residents of the area can access desired “broadband” services. The Commission and other federal and state agencies should focus upon financial and regulatory incentives (such as sufficient Universal Service Fund support, grants, loans, loan guarantees, and service quality standards) to encourage and enable service providers to continue investing in the upgrade of their infrastructure (for example, by extending fiber and hybrid fiber-DSL loops and fiber middle mile and backhaul

¹ For example, a businessman may use wireline services at work and at home, and wireless services while traveling and commuting and while attending the activities of children on the weekend.
Western Telecommunications Alliance, Reply Comments – NBP Public Notice #30, GN Docket Nos. 09-47, 09-51 and 09-137, January 27, 2010

facilities) so that the evolving level of “broadband” services can be made available to more and more customers in rural as well as urban areas.

As progress is made toward ubiquitous “broadband” infrastructure deployment, the pricing and affordability of “broadband” services will become an increasingly important concern. WTA understands “affordability” as comprising the following two interrelated issues: (a) whether the above-average per-customer costs of constructing, operating and maintaining “broadband” networks in remote, rugged and/or sparsely rural populated areas can be recovered in a manner that permits customer rates to remain reasonably comparable to the rates for substantially similar “broadband” services in urban areas; and (b) whether particular urban and rural households can pay the applicable monthly service rates for “broadband” service. The first issue will require the availability of High-Cost support mechanisms for the “broadband” sector while the second issue will require mechanisms similar to Lifeline and Link-Up programs.

F Broadband Record of RLECs

The great success story of the federal USF program is the progress to date by RLECs in deploying broadband-capable facilities and offering “broadband” services in many of the nation’s most costly and most difficult-to-serve rural areas. The typical WTA member presently offers broadband service to more than 90 percent of its rural customers via DSL and hybrid fiber-DSL facilities at speeds ranging from 516 kbps to 3 Mbps or more. WTA members have been deploying fiber optic facilities further and further out into their distribution networks in order to extend the range of their DSL services, and some are beginning to offer fiber-to-the-home (“FTTH”) service as they construct “green field” facilities to serve new developments and replace degrading copper loops in existing service areas.

The existing “broadband” facilities and services of WTA members have enhanced the economic development of their rural service areas by attracting new businesses and jobs, by enabling local residents to continue living in their communities while telecommuting to work elsewhere, and by permitting existing local businesses to expand the scope of their markets and vendors. These same “broadband” facilities and services have also contributed significantly to improved local health care and educational options, and have permitted both local governments and local residents to participate more actively in a variety of federal, state and county programs.

However, the task of RLECs in deploying and operating “broadband” is far from complete as “broadband” services continue to evolve rapidly and required “broadband” capacities and speeds continue to increase. RLECs will need to make major additional infrastructure investments and to incur substantial operating expenditures if they are to continue providing their rural customers with access to “broadband” services reasonably comparable in quality and price to those available in urban areas. Given that WTA members and other rural telephone companies rely upon federal high-cost support for 30-to-40 percent of their regulated revenue streams, predictable and sufficient USF support will remain a necessity for the foreseeable future.

G

Size of Universal Service Fund

The ultimate size of the USF, as well as the relative sizes of the high-cost mechanisms and other individual components thereof, will depend upon the composition, additional infrastructure requirements and costs of the National Broadband Plan that is ultimately adopted.

The predominately fiber optic network recommended by WTA will be expensive to construct, but will be the most functional, flexible, economical and reliable “broadband” network in the long run. The Interstate Highway System model enables the Commission to prioritize and

adjust “broadband” deployment and costs in accordance with the presence and capacity of existing infrastructure, customer needs and demands, the rate of growth of “broadband” services, and the availability of public and private financial resources.

WTA notes that the size of the three high-cost programs applicable to RLECs -- the High Cost Loop support (“HCL”), Local Switching Support (“LSS”) and Interstate Common Line Support (“ICLS”) mechanisms -- has remained relatively stable during the past five years while RLECs were continuing to upgrade their multiple use networks to include “broadband” capabilities. Specifically, aggregate HCL, LSS and ICLS support for RLECs was \$2.395 billion in 2005, \$2.382 billion in 2006, \$2.411 billion in 2007 and \$2.406 billion in 2008, and is expected to be \$2.412 billion in 2009 and \$2.353 billion in 2010.²

WTA does not believe there is enough information available currently to evaluate the optimal or relative sizes of high-cost, low-income, E-rate and rural health care support programs. However, the basic broadband-capable infrastructure supported by the existing high-cost mechanisms (and that should be supported by future broadband high cost mechanisms) is a prerequisite for the effective and efficient operation of the low-income, E-rate and rural health care support programs in high-cost rural areas. If adequate “broadband” network facilities are not deployed in the area where a low-income household, school, library or health-care institution is located, that entity is not likely to be able to utilize desired “broadband” services effectively no matter how much support is available from the specific USF programs dedicated to such entities.

H USF Contribution Mechanism

WTA does not believe that a USF program supporting “broadband” deployment in high-cost areas can be sustained by a contribution mechanism based upon a narrow and shrinking base

² Source: USAC Quarterly Federal Universal Service Support Mechanism Fund Size Projections, Appendix HC01. Western Telecommunications Alliance, Reply Comments – NBP Public Notice #30, GN Docket Nos. 09-47, 09-51 and 09-137, January 27, 2010

of interstate and international end user revenues. In the absence of a statutory change allowing assessment of USF contributions upon intrastate end user revenues, WTA supports a connections and/or numbers-based methodology which should include contributions by the service providers for all end users that utilize and benefit from the National Broadband Network. Such contribution mechanism must discourage gaming and arbitrage by requiring USF contributions for the connections, numbers and/or equivalents not only of customers of all ILECs, competitive local exchange carriers (“CLECs”), wireless carriers, Internet service providers, voice over Internet Protocol providers, cable providers of telecommunications services and satellite carriers, but also of customers of existing and future providers of all substantially similar and competing services.

WTA would support the assessment of a larger per-customer contribution, based upon revenue or bandwidth, upon high-capacity lines and services. It would also support a very slight discount (limited to 5-to-10 percent) for contributions relating to multiple cell phones purchased under bona-fide family wireless plans.

I High-Cost Mechanisms in the Broadband World

In addition to revising its current definition of supported services to include an evolving level of “broadband” services, the Commission must develop a reasonable transition from existing high-cost mechanisms to high-cost mechanisms that will focus upon the upgrade, operation and maintenance of higher and higher capacity “broadband” networks in high-cost areas. Because of very substantial differences in critical factors such as size, financial resources, access to capital markets, service areas, customer bases, economies of scale, cost structures, investment incentives and type of regulation, WTA believes that there should be separate broadband high-cost mechanisms for at least: (1) RLECs and other small wireline carriers of last

resort (“COLRs”); (2) Regional Bell Operating Companies (“RBOCs”) and other larger wireline COLRs; and (3) wireless and other carriers providing mobility and other desired services that complement or supplement the broadband services of COLRs.

The focus of high-cost broadband support upon COLRs is important and necessary because COLRs have long borne substantial obligations and responsibilities over and above those of other carriers to invest in, construct, operate and maintain network facilities to serve all customers within their service area boundaries who request service. The essence of COLR status is the requirement to disregard normal business and economic considerations, and to construct facilities and provide service anyway 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. In addition to general requirements to make the investments and expenditures necessary to serve all customers, COLRs are subject to a host of associated regulatory requirements that include quality of service standards and federal and state oversight of their rates, costs, accounting methods, record keeping and customer relationships.

WTA has not taken a position as to how large wireline COLR and wireless/non-COLR broadband high-cost support mechanisms should be designed. For example, WTA recognizes that the potential size, funding priorities and construction requirements of a broadband support mechanism for large wireline COLRs entail difficult and complex considerations, and does not state a position: (a) whether the mechanism should provide support on a wire center or other non-study area basis; or (b) whether it should support construction costs or capital expenditures only, in a manner similar to proposed AT&T pilot programs. Likewise, WTA takes no position as to whether a wireless/non-COLR mechanism should support a single carrier or multiple carriers in a given service area.

J**RLEC COLR High-Cost Mechanisms in the Broadband World**

Existing federal high-cost support mechanisms have been essential to the successful deployment of the current version of “broadband” service by WTA members and other RLECs to approximately 90 percent of their rural customers. However, the task and cost of keeping pace with the burgeoning demands for “broadband” services and speeds is far from over. Among other things: (a) the costs of constructing rural “broadband” networks to serve the remaining 10 percent or so of outlying rural customers may be equal to or greater than the construction costs for the first 90 percent due to terrain, climate, distance, population density and other factors; (b) the increase of “broadband” speeds from the current levels to tens, hundreds and thousands of megabits per second will require the extension of fiber facilities further and further into RLEC networks until most or all households have FTTH service or something very close to it; (c) the availability, capacity and costs of “middle mile” transport over the long distances from many RLEC networks to and from the Internet will become increasingly important as broadband services become more predominant; and (d) factors such as distance, terrain, weather, population density and lack of economies of scale will continue to make it difficult and expensive to operate and maintain RLEC “broadband” networks.

Nature and Size of RLEC Broadband High-Cost Mechanism. A broadband high-cost mechanism for RLECs and other small wireline COLRs should support broadband loop and broadband “middle mile” transport costs that exceed some specified level of costs (for example, 135 percent) above the national average costs for such loops and transport services. At a minimum, such mechanism should be funded initially at the same approximate \$2.4 billion annual amount that has proven so successful in encouraging and enabling RLECs to deploy current “broadband”-capable facilities. Whereas increasing softswitch deployment is likely to

reduce switching support needs, substantial additional investment and high-cost loop support will be needed to deploy fiber and hybrid fiber-DSL facilities further into rural networks.

Looked at from another perspective, the existing \$2.4 billion high-cost mechanisms for RLEC COLRs comprise approximately 30-to-40 percent of the regulated revenue streams of most WTA members, and can not be reduced or reallocated significantly without severe adverse consequences. The dependence of many RLECs upon high-cost support is not an ideal situation, but their small size, lack of substantial financial resources and access to capital markets, and inability to generate significant economies of scale have given them few viable alternatives as they have worked to meet their COLR responsibilities and to bring reasonably comparable “broadband” services to their rural customers at affordable rates. Under present circumstances, the inescapable fact is that very few public or private entities can maintain their operations if 30-to-40 percent of their revenues disappear or are rendered uncertain. For RLECs, the consequences would include a substantial reduction in the quality of their existing services due to inability to repay their outstanding infrastructure loans and obtain future financing, cancellation or postponement of infrastructure construction and upgrade plans, temporary and permanent staff reductions or furloughs, maintenance cut-backs and delays, cut-backs in purchases of goods and services from vendors, and/or local rate increases.

Length of Transition Period. Because RLECs have already extended “broadband”-compatible facilities to many of their rural customers, the length of the transition period to the ultimate broadband high-cost support mechanism for small wireline COLRs does not need to be very long. Its specific length should depend in major part upon: (a) the time period during which the Commission or other regulators require “broadband” service to be extended to 100 percent (or some lower minimum percentage) of the households in rural study areas; and (b) the nature

and timing of Commission-required increases in the minimum transmission speeds of the facilities used to provide supported “broadband” services. The transition period also will need to allow cost recovery to be completed for prior investments made in reliance upon the current high-cost mechanisms and associated eligible telecommunications carrier (“ETC”) and COLR requirements.

Support for “Middle Mile” Costs. The broadband support mechanism for small COLRs will also need to address above-average costs of the “middle mile” and “second mile” transport facilities and services that carry broadband traffic between “last mile” networks and the Internet. In many rural areas, these transport facilities extend for 50-to-100 miles or more, and are becoming more and more expensive as broadband traffic and capacity needs increase. Many WTA members are currently paying “middle mile” transport costs of \$100 or more per Megabit per month (with one member paying a whopping \$8,000 per Megabit per month), and such costs are very likely to increase in the future. Without sufficient support for above-average broadband transport costs, broadband services will become unaffordable or economically non-viable in many rural areas.

Impact of Potential Competition. Rugged terrain, high costs, sparse populations and lack of scale economies have discouraged most entities from offering telecommunications services in major portions of the Rural West. From the time that they first commenced operations (often in the early or mid 1900s), most WTA members have been the only entities showing a sustained interest in serving most of their rural town and village population centers, and the only entities that have served the broad expanses of most of the unincorporated outlying portions of their rural exchanges.

Whereas “last mile” competition is far from a fact of life in the Rural West, it can impact some of the larger population centers relied upon by some RLECs. WTA opposes the inclusion in broadband COLR support mechanisms of features that take away the “per-line” support associated with a customer upon the customer’s shift to a competitor. The critical flaw in the logic of such features is that RLECs and other COLRs invest in, build and operate networks rather than individual customer lines. Even though the costs of common network facilities are allocated on a per-line basis for high-cost mechanism reporting purposes, such common network facilities remain in place and their costs do not decrease or disappear when individual customers initiate service or terminate service to move to the networks of competitors. Moreover, most state COLR requirements require ILECs to maintain individual customer lines in place even after the customer terminates his or her service.

RLEC Support Based Upon Actual Costs. Actual costs have proven to be a very accurate, effective, efficient and readily auditable mechanism for calculating and distributing high-cost support to RLECs without significant inefficiency or waste. RLECs are small companies with limited financial resources and access capital markets that must detail and justify their investment and business plans to the Rural Utilities Service (“RUS”) and/or private lenders before they can obtain financing for substantial investments. Moreover, the Commission, state commissions, the National Exchange Carrier Association (“NECA”) and the Universal Service Administrative Company (“USAC”) all have authority to investigate or audit the investments and operating expenses of RLECs, and to disallow costs and expenses that were not reasonably and prudently incurred.

In contrast, forward-looking cost and other theoretical models are very difficult to develop and apply to the many very different RLECs without adversely impacting the investment

incentives, cost recovery and financial health of substantial numbers of these small COLRs. First, the more than 1,000 RLECs have different developmental histories, different ownership and management structures, different equipment and network designs, different climates and terrains, and different customer densities and cost structures that are not conducive to “one-size-fits-all” models. Second, forward-looking cost models create uncertainty that discourages substantial new investment by carriers and their investors and lenders who need assurances of cost recovery and loan repayment in a broadband industry where technology, service offerings and customer demands are rapidly changing. Finally, forward-looking cost models afford little or no margin for error to RLECs and other small companies that are not able to offset inadequate model support in some study areas with more than sufficient model support in others.

Inclusion of Operating Expenses in RLEC Mechanism. In the rural West, the expenses of operating and maintaining hybrid fiber-DSL and other broadband-capable facilities are far above the national average. Where “last mile” facilities as long as 20-to-50 miles are common, it frequently takes hours merely to drive to and from a rural customer’s home to investigate an initial trouble report, and additional hours of driving and back-tracking through areas with and without paved roads (as well as gallons of fuel) to locate and repair the problem. In addition to long distances, RLEC operational and maintenance staffs must deal with rough terrain, extreme weather, and a lack of economies of scale. If the broadband service rates charged to their rural customers are going to remain affordable and reasonably comparable to those charged in urban areas, RLECs and other small COLRs will continue to need support with respect to the above-average portion of their maintenance and other broadband operating expenses.

Other Revenue Sources. WTA members would love to reduce their dependence upon high-cost support, and generate substantial revenues and profit from video, Internet access, toll

and other services. They have been pursuing “triple play” and similar diversification strategies for much of the past decade. However, most RLECs lack the economies of scale needed to generate significant profits or positive cash flows from video, Internet access and toll services. Rather they generally have broken even or lost money on such ventures, and do not see the situation changing significantly for the better during the foreseeable future.

BTOP and BIP Grants. There is no need for broadband mechanisms to take into account grants made to support recipients by the Broadband Technologies Opportunity Program (“BTOP”) of the National Telecommunications and Information Administration (“NTIA”) or by the Broadband Initiatives Program (“BIP”) of the RUS. Such grants ultimately constitute no investment by or cost to the recipient, and therefore no broadband high-cost support is needed to recover costs funded by such grants. On the other hand, the loan portions of BIP loan-grant combinations that must be repaid, as well as any required matching funds, constitute investments and/or expenses that may be recovered from broadband mechanisms under appropriate circumstances if they are encompassed within supported costs that are above the applicable high-cost threshold.

Caps on RLEC Mechanisms. WTA notes that existing high-cost mechanisms for RLECs have been subject to caps since 1993, with the current caps having been adopted in the 2001 *Rural Task Force* order. WTA recognizes that the Commission has never been convinced by WTA’s arguments to eliminate or increase the existing caps, but notes that the pace at which the Commission determines to require small wireline COLRs to increase the percentage of their customers with access to broadband services, as well as minimum Commission-required speeds of supported broadband services, can significantly increase RLEC broadband costs and require substantial increases in the broadband support distributed to them. Any broadband support

funding level or cap established by the Commission needs to reflect the fact that it has considerable flexibility in the setting of broadband access requirements and minimum supported broadband speeds, and that higher access requirements and faster minimum speeds are likely to require (and should be accompanied by) increases in the level of broadband support.

K Conclusion

WTA members and other RLECs have been leaders in the provision of the current version of “broadband” services to their rural customers, and are eager to participate in the “broadband” network of the future. Their experience to date with “broadband” has convinced WTA members that a predominately fiber optic network is the only way to meet future “broadband” capacity and transmission speed demands, and that fiber also is the most economical long run solution due to its scalability, reliability, security, useful life and environmental advantages. To the extent that fiber may be expensive to deploy initially, flexible approaches such as the proven Interstate Highway System model can produce steady and substantial progress toward a fiber network at a pace consistent with consumer demands as well as financial and technical constraints.

For WTA members and other small COLRs, a critical key to future “broadband” progress is continued sufficient and stable federal high-cost support. RLECs have made excellent progress in bringing current “broadband” facilities and services to approximately 90 percent of their rural customers, but still face major and expensive tasks to extend “broadband” to their remaining customers as well as to keep pace with the upgrades necessary to continue offering their rural customers access to “broadband” services, speeds and capacities reasonably comparable in quality and price to those available in urban areas. As the Commission adapts high-cost mechanisms to the broadband world, it needs to recognize that many RLEC COLRs

rely upon federal high-cost support for approximately 30-to-40 percent of their regulated revenue streams, and that continued sufficient and stable cost-based support for RLEC COLR networks and operating expenses is needed both to enable them to participate in the future “broadband” network and to preserve their substantial progress to date toward that end.

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW (Suite 300)
Washington, DC 20037
Phone: (202) 659-0830
Email: gjd@bloostonlaw.com

Dated: January 27, 2010

Respectfully submitted,
**WESTERN TELECOMMUNICATIONS
ALLIANCE**

By _____
Gerard J. Duffy

Its Attorney