



PUBLIC NOTICE

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COMMENT SOUGHT ON THE ROLE OF THE UNIVERSAL SERVICE FUND AND INTERCARRIER COMPENSATION IN THE NATIONAL BROADBAND PLAN

PLEADING CYCLE ESTABLISHED NBP Notice # 19

GN Docket Nos. 09-47, 09-51, 09-137

Comment Date: December 7, 2009

Several entities have encouraged the Commission to recommend reforms of universal service and intercarrier compensation as part of the National Broadband Plan.¹ With this Public Notice, the Commission seeks more focused comment on our universal service and intercarrier compensation (ICC) policies and to explore various policy options that would further the goal of making broadband universally available to all people of the United States.²

1. **Size of the Universal Service Fund.** The universal service fund (USF) today consists of high-cost, low-income (including the Lifeline and Link Up programs), schools and libraries (the E-rate program) and rural health care support mechanisms.

- a. Is the relative size of funding for each support mechanism appropriate to achieve the objective of universalization of broadband?
- b. Some commenters have urged the Commission to take actions that would increase the size of one or more of the support mechanisms, while others have suggested the total fund size should remain the same. To the extent commenters believe funding should be significantly increased for one or more of the support mechanisms, they should address whether they believe funding should be reduced in other mechanisms, and if so, how such changes would advance the goal of universalization of broadband?

2. **Contribution Methodology.** Numerous commenters have urged the Commission to modify the current methodology for assessing contributions to the universal service fund.³ For example, commenters have recommended a numbers or connections-based methodology, an expanded revenue-based methodology, or some combination of the two.

¹ See, e.g., AT&T National Broadband Plan Notice of Inquiry (NOI) Comments at 83-93; T-Mobile National Broadband Plan NOI Comments at 23-26.

² See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

³ See, e.g., CTIA NOI National Broadband Plan Comments at 47-49; NCTA National Broadband Plan NOI Comments at 34.

- a. Commenters should explain how their preferred solution would impact end users, who ultimately bear the cost of universal service through carrier pass-through charges. Commenters should identify with specificity all assumptions.
- b. Commenters should specify how any proposed modifications would alter the relative share of contributions borne by residential consumers as opposed to business consumers.
- c. Commenters should address the anticipated impact of universal service pass-through charges under different contribution methodologies on residential households with different consumption characteristics, such as (i) a household with landline voice service, low interstate usage, and no broadband connection, (ii) a household with landline voice service, moderate interstate usage, an average wireless plan, and a broadband connection; and (iii) a household with landline voice service, a wireless family plan with five lines, and a broadband connection. Commenters should specify all assumptions.

3. Transitioning the Current Universal Service High-Cost Support Mechanism to Support Advanced Broadband Deployment. In the past, the Commission and the Federal-State Joint Board on Universal Service have sought comment on various ideas to reform the high-cost mechanism in a manner that would advance broadband deployment.⁴ One potential option would be to supplement the existing high-cost programs with one or more additional programs that would target funding for broadband deployment in unserved areas. Another option would be to gradually reduce funding under the existing high-cost programs over a period of years and to transition that funding into a redesigned mechanism that explicitly funds broadband. We encourage both existing eligible telecommunications carriers (ETCs) (both wireline and wireless companies) and other broadband providers to address the following questions:

- a. One option would be to maintain the existing universal service programs on a transitional basis to support operating expenses of legacy voice-only networks, but that all new investment would be supported from a new broadband fund.
 - i. What would be an appropriate transition plan and path to the new broadband fund?
 - ii. What percentage of overall universal service high-cost support already is being used to upgrade infrastructure that can provide broadband service? For instance, what percentage of funding is being used to extend fiber deeper into networks, condition loops, install soft-switches, deploy advanced wireless technology, and perform other network upgrades to support broadband under the Commission's "no barriers to advanced services" policy?⁵ Conversely, what percentage of existing

⁴ See, e.g., *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (Fed-State Jt Bd 2007) (*Comprehensive Reform Recommended Decision*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support NPRM*); *High-Cost Universal Service Support; 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) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform NPRM*); *High-Cost Universal Service Reform; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008) (*Universal Service Reform and Intercarrier Compensation Further Notice*).

⁵ *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 Interexchange Carriers*, 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, 11322-23, paras. 199-201 (2001) (*Rural Task Force Order*).

support is being used to support voice service over networks that are not broadband-capable?

- iii. Of the carriers that already are using high-cost support to upgrade their networks to be broadband-capable, what percentage of that support is being dedicated to such upgrades? How much funding is used for capital expenditures versus operating expenses? For example, what percentage of high-cost support currently is used for return on investment, depreciation and amortization, operating expenses (not including depreciation), taxes, and other operating expenses (and specify what “other” includes) to equal 100 percent of a carrier’s USF support?
 - iv. What is the total dollar amount of high-cost funding, either by individual carrier or by industry segment such as incumbent local exchange companies (incumbent LECs) or rate of return incumbent LECs, currently supporting the maintenance of legacy networks that are not yet broadband-capable? Identify assumptions and calculations used in estimating the size of this support.
- b. If the high-cost support mechanism is reformed to support deployment of broadband, how should the new mechanism be structured, e.g., a single fund or multiple funds (mobility and/or fixed, middle mile, last mile)? Through what mechanism or by what criteria should funding be awarded? What would be the impact of designing a broadband support mechanism so that a provider’s competitive loss of a subscriber results in the loss of associated funding?
 - c. Would the size of any broadband funding mechanism be appreciably different if support were calculated based on a forward-looking cost model designed to calculate the lowest total cost of ownership on a technology-neutral basis, as opposed to individual provider submission of actual costs? Response should identify all assumptions.
 - d. The current high-cost support mechanism provides a return on net investment (currently 11.25 percent) for rate-of-return carriers, but does not provide direct reimbursement for capital expenditures (capex). Should high-cost broadband funding be limited to supporting a direct one-time reimbursement for new capital expenditures, or should it support both capital and operational expenses? If a new broadband fund did not support broadband operational expenses, how would carriers distinguish between legacy expenses and broadband expenses? If commenters believe support for ongoing operational expenses is necessary, explain why. Responses should also:
 - i. Identify the technology and cost assumptions (and how “cost” is defined, i.e., embedded versus forward-looking) used to develop this answer.
 - ii. Identify the specific infrastructure and facilities that should be supported, such as loops, electronics, backhaul, wireless towers, etc., and why.
 - iii. Indicate whether the answer to this question depends on the technology (i.e., fiber, hybrid-fiber coaxial cable, wireless, satellite). If so, how and why?
 - iv. Indicate the types of operational expenses that should or should not be eligible for support from a high-cost broadband mechanism, and why.
 - e. If a new high-cost broadband mechanism were to consider all revenues derived from the upgraded plant, what would be the impact and how should those revenues be used in the calculation of support?
 - f. In disbursing support under a high-cost broadband mechanism, should the Commission take into account broadband grants issued by NTIA or RUS, and, if so, how?
 - g. One option for a broadband mechanism would be to more narrowly target universal service high-cost support to smaller geographic areas and to areas in which broadband service is not available today from any provider. If the Commission were to develop a new broadband support mechanism that is targeted at such areas, what would be the appropriate geographic area for determining the appropriate amount of support? What would be the impact of basing support on the cost of providing broadband in a wire center, a Census Block, a Census Tract,

or an area defined by the proposed broadband provider? Explain why the proposed geographic area is preferable to alternatives, and how that would impact the overall size of the high-cost fund. Should the presence of one broadband service provider using any technology preclude support to any provider, or might support still be targeted to a provider offering features that are not available from the existing service, e.g., a mobile broadband service provider where only fixed broadband service is available?

- h. What would be the impact of capping the funding available under such mechanisms? How should any such cap be calculated, and should it apply on a per-carrier basis, or to a geographic area, and why?
- i. Certain ETC requirements today are premised on the provision of voice service. If the Commission were to create a new high-cost support mechanism for broadband, should current ETC requirements be revised, and if so, how?

4. **Impact of Changes in Current Revenue Flows.** Some commenters assert that any significant reductions in current levels of universal service high-cost support and/or intercarrier compensation would jeopardize their ability to continue to serve customers and advance the deployment of next generation broadband-capable networks.⁶ Others assert that the current systems of support and compensation have led to regulatory arbitrage and inefficient investment and have undermined the deployment of advanced communications.⁷

- a. What factual analyses should the Commission undertake to test the validity of such arguments?
- b. What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already is at least one competitor offering broadband (using any technology) today that does not receive any high-cost support?
- c. What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already are multiple competitors offering broadband (using any technology), with more than one of those providers receiving high-cost service support.
- d. To what extent are existing ICC revenues and high-cost support being used to pay debt obligations? To what extent do carriers securitize high-cost support and/or ICC cash flows and, if this is occurring, how often and why? Identify lenders who are willing to securitize ICC and high-cost support cash flows.
- e. For individual carriers or groups of carriers, please provide revenue, Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) and capex for study areas that receive high-cost funding.
- f. For individual carriers or groups of carriers, what percentage of free cash flow (defined as EBITDA minus capex) do high-cost support and/or ICC represent?
- g. Please discuss your capital structure, in particular the amount of debt, weighted average interest rate on debt obligations, length of debt obligations, Net Debt/EBITDA and percentage of revenues devoted to paying interest and principal.
- h. The Commission seeks to understand how intercarrier compensation payment flows may impact broadband deployment incentives and how any intercarrier compensation reform may alter or change such incentives.⁸ We are particularly interested in factual information or data

⁶ See, e.g., OPASTCO National Broadband Plan NOI Comments at 26; NTCA National Broadband Plan NOI Reply at 19-21.

⁷ See, e.g., Free Press National Broadband Plan NOI Comments at 186-87; NPM & NCAI National Broadband Plan NOI Comments at 24.

⁸ For purposes of this Public Notice, the term “intercarrier compensation” includes all terminating intrastate and interstate access traffic as well as reciprocal compensation and originating access, but does not include special access or transit traffic.

that addresses the question of how the current intercarrier compensation system either supports or inhibits broadband deployment, rather than conclusory assertions that intercarrier compensation should be reformed. Accordingly, the following information is requested:

- i. Entities that pay or receive intercarrier compensation should submit data on their total intercarrier compensation minutes of use, payments and revenues for the last 3-5 years in the aggregate as well as separating terminating traffic into three categories: intrastate access, interstate access and reciprocal compensation. Responses should separate originating access revenues and payments from terminating access revenues and payments, and identify net payments.
- ii. Identify total intercarrier compensation revenues as a percentage of total revenues (total regulated revenues and as a percentage of overall revenues). Identify total intercarrier compensation expenses as a percentage of total expenses (total regulated expenses and as a percentage of overall expenses). Responses should explain any assumptions and any response should include both revenues and expenses.
- iii. Identify the portion of total intercarrier compensation terminating intrastate, interstate and reciprocal compensation traffic that is subject to dispute due to issues or concerns over the proper classification or jurisdiction of the traffic and billing and record issues. Responses should quantify the amount of disputed traffic as a dollar amount or percentage of the total intercarrier compensation traffic either by entity, groups of entities or for the entire industry.
- iv. Interested parties should identify the total costs that could be avoided if intercarrier compensation reform eliminated or reduced such disputes. In particular, what are the costs associated with the current system of compensation, such as costs associated with billing, traffic monitoring, and dispute resolution, which might be avoided or minimized through unification of compensation rates? Would these costs be avoided if there were some unitary positive rate? Responses should quantify the savings and identify any assumptions and explain how such cost savings were calculated.
- v. What is the total minutes of use (MOU) of transit traffic⁹ for entities that provide or utilize transit services for the past five years? What are the transit traffic revenues and expenses per provider and how has this changed over the last five years?
- vi. What would be the impact, if any, of comprehensive ICC reform on transit voice or data rates? If any concerns are identified, identify why ICC reform is the basis for the concern, and how, if at all, this is relevant to the deployment or adoption of broadband.

5. **Competitive Landscape.** In 1997, the Commission adopted a principle of competitive neutrality to guide its future policymaking, concluding that universal service rules should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly advantage nor disadvantage one technology over another.¹⁰ Today, the high-cost fund provides support to some facilities-based broadband providers, but not

⁹ For purposes of this Public Notice, transiting occurs when two carriers that are not directly interconnected exchange nonaccess traffic by routing the traffic through an intermediary carrier's network. Typically, the intermediary carrier is an incumbent LEC and the transited traffic is routed from the originating carrier through the incumbent LEC's tandem switch to the terminating carrier. The intermediary (transiting) carrier then charges a fee for use of its facilities. See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4737-38, para. 120 (2005).

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-8803, paras. 46-51 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

others. Moreover, virtually all incumbent local exchange companies operating in rural high-cost areas have carrier of last resort (COLR) obligations for voice service, while other providers that are offering voice, video and/or broadband in such areas do not.

- a. How does this disparity in regulatory obligation impact the economics of deploying broadband in rural areas? Should the national broadband plan evaluate whether COLR obligations should be revisited in light of the changing competitive landscape? If so, how and why?
- b. Should the broadband plan recommend that COLR obligations be removed or modified if any entity no longer is receiving universal service support?
- c. What would be the impact of requiring all entities that accept universal service support for broadband to assume some form of COLR obligation for broadband?
- d. What would be the impact of requiring entities that accept universal service support for broadband to offer the underlying transmission on a common carrier basis?
- e. How do the COLR obligations vary by state? Do any states have “best practices” that promote deployment and use of alternative technologies?
- f. Do states permit carriers to satisfy their COLR obligation using wireless or other technologies? If so, which states and should other states be encouraged to do so?
- g. Do states permit carriers to satisfy their COLR obligations using VoIP? If not, should states be encouraged do so?
- h. Quantify cost savings, both in capital expenditures and operating expenses, that could be achieved if we permitted carriers of last resort to meet this COLR obligation through wireless and/or interconnected VoIP service. Responses should explain any assumptions and how the estimated savings was calculated.

6. **High-Cost Funding Oversight.** What appropriate oversight and accountability mechanisms would be needed to minimize waste, fraud and abuse and to ensure that recipients of any broadband high-cost support use the funds as envisioned?

- a. Should the states and/or the federal government adopt new mechanisms to oversee the distribution of any new high-cost funding to support broadband and why?
- b. How should the Commission track a recipient’s progress in deploying broadband-capable infrastructure in whatever geographic area is targeted for support? In particular, should the Commission mandate annual submission of financial documentation, certifications, audits, or other forms of verification such as field inspections?
- c. Identify current “best practices” for state oversight over eligible telecommunications carriers and their use of USF. Explain the benefits of any identified state’s procedures and identify any modifications that would serve our goal of ensuring that funds are used efficiently and effectively to make broadband available to consumers in the relevant geographic area.

7. **Lifeline/Link Up.** The Commission previously has sought comment on extending low-income support to establish a Broadband Lifeline/Link Up program.¹¹ The Commission seeks additional detailed comments on structuring such a program.

- a. How should any devices necessary for a low-income broadband program be supported?
 - i. Who would own such devices, and what would become of these devices should a consumer exit the program or seek to upgrade his/her device?
 - ii. How would consumers purchase such devices – through vouchers, reimbursement, and/or some other means?

¹¹ *Universal Service Reform and Intercarrier Compensation Further Notice*, 24 FCC Rcd at 6725-6736, App. A, paras. 60-87.

- iii. Should the Commission limit the types of devices available to consumers participating in the program? Commenters should identify with specificity any implementation issues.
 - iv. Should the Commission determine some sort of minimum specifications for supported devices? If so, how should these specifications be set initially and how should they change over time as technology evolves? Commenters should identify with specificity any implementation issues.
 - b. Commenters should provide estimates of the anticipated demand for a low-income broadband program.
 - i. How should the Commission determine the appropriate support amounts for devices and for service? Please provide data supporting the proposed support levels and identify all assumptions.
 - ii. Should funding be initially capped for a trial period, and if so, at what level?
 - iii. How much low-income support would be necessary in the aggregate to enable all eligible consumers to participate in a low-income broadband program? Commenters should identify all assumptions.
 - c. What eligibility requirements should apply to consumers participating in a low-income broadband program?
 - i. Should these eligibility requirements be the same as or different from the eligibility criteria in the existing low-income program?
 - ii. If the consumer eligibility requirements should be the same, then should current subscribers in the existing low-income program be automatically enrolled in the low-income broadband program?
 - iii. If the consumer eligibility requirements should be different from those applied in the existing program, what should these different eligibility requirements be?
 - iv. How should the Commission define “household” and “head of household” for purposes of determining eligibility for any low-income broadband program that the Commission might establish?
 - d. How can the Commission provide flexibility to consumers to select the service offerings that meet their needs under a broadband Lifeline/Link Up program?
 - e. One option would be to permit carriers who are not eligible telecommunications carriers (ETCs) to be eligible to participate in a low-income broadband program.
 - i. What would be the impact of allowing non-ETCs to be eligible to participate?
 - ii. Should ETCs currently participating in the existing low-income program automatically be eligible to participate in a low-income broadband program? Why or why not?
 - iii. What would be the impact of having requirements for carriers participating in a low-income broadband program that differ from the requirements imposed on existing ETCs? If commenters believe there should be different requirements, what should these different requirements be?
 - iv. What would be the impact of requiring providers participating in a low-income broadband program to conduct outreach to inform potential eligible consumers about the program? Quantify the impact on carriers and identify any operational issues. If such outreach is required, should the outreach be the same as or different from the outreach requirements in the existing low-income program? Why or why not?
 - f. How could a newly-established federal low-income broadband program work in concert with existing and/or future state low-income broadband programs? Could the cooperation between the states and the Commission regarding the existing state and federal low-income programs serve as a model for federal-state cooperation in the context of a federal low-income broadband program?
 - g. If the Commission establishes a low-income broadband program, what implications would such a program have for existing Lifeline and Link Up programs? For instance, would creation of a new low-income broadband program have any impact on current enrollment levels in the existing Lifeline and Link Up programs?

- h. If commenters believe that corresponding changes should be made to the existing Lifeline and Link Up programs, what would be an appropriate transition timeline and what implementation issues would need to be addressed and why?
- i. How can the Commission protect against waste, fraud, and abuse in any low-income broadband program it establishes?
 - i. Particularly, how can the Commission protect against waste, fraud, and abuse related to any hardware or devices used in the program?
 - ii. How can the Commission ensure that consumers cannot obtain the same supported service from two different providers?

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b).

We understand that some of the information provided in response to this Public Notice may be considered confidential. Responses may be submitted pursuant to the Protective Order released in WC Docket 09-51 on October 8, 2009.¹² Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in 47 CFR § 0.459. Confidential submissions may not be filed via ECFS.

All comments should refer to GN Docket Nos. 09-47, 09-51, and 09-137. Please title comments responsive to this Notice as “Comments – NBP Public Notice #19.” Further, we strongly encourage parties to develop responses to this Notice that adhere to the organization and structure of the questions in this Notice.

Comments may be filed using (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.¹³ Comments can be filed through the Commission’s ECFS filing interface located at the following Internet address: <http://www.fcc.gov/cgb/ecfs/>. Comments can also be filed via the Federal eRulemaking Portal: <http://www.regulations.gov>.¹⁴ Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be

¹² *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Protective Order, DA 09-2187 (WCB, rel. Oct. 8, 2009).

¹³ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

¹⁴ Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

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For further information about this Public Notice, please contact Carol Matthey at (202) 418-3635 or Rebekah Goodheart at (202) 418-1438.

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