

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Inquiry Concerning the Deployment of) GN Docket No. 07-45
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.)

**REPLY COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

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I. INTRODUCTION AND SUMMARY

The comments filed in response to the Notice of Inquiry (“Fifth Deployment NoI”) by the Federal Communications Commission (“FCC” or “Commission”) into whether advanced telecommunications services are being deployed in a “reasonable and timely fashion” to all Americans¹ present the Commission with diametrically opposing views on the role government should take to achieve nationwide broadband deployment. In these reply comments, the National Association of State Utility Consumer Advocates (“NASUCA”) responds to these conflicting overarching themes and to some of the specific recommendations set forth in the initial comments.

¹ *In the Matter of 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*, GN Docket No. 07-45, *Notice of Inquiry*, Rel. April 16, 2007 (“Fifth Deployment NoI”), ¶ 1. The NoI was released pursuant to section 706 of the Telecommunications Act of 1996 (“1996 Act”). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” or “the Act,” and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

The industry’s uneven deployment of broadband services and its failure to offer affordable advanced services on a reasonable and timely basis provide compelling evidence of the need for the Commission, in collaboration with local and state policy makers, to design and adopt affirmative measures to promote broadband deployment. NASUCA and others describe specific proposals in initial comments, which merit the Commission’s consideration.

The initial comments diverge substantially on the fundamental issue of the need for government intervention to achieve national broadband goals. For example, through rose-colored glasses, the National Cable & Telecommunications Association (“NCTA”) and others see an efficiently working marketplace, with commendable advances in broadband deployment.² Some insist that a hands-off policy is the advisable course,³ and express concern about the “chilling effect” of regulation on investment.⁴

In sharp contrast, others recognize that “[i]t is past time when the U.S. can sit back and simply ‘let the marketplace work.’”⁵ NASUCA urges the Commission to find, based on the industry’s duopolistic pursuit of the highest-revenue, lowest-cost consumers, that absent regulatory intervention, consumers will pay high rates for yesterday’s technology, deployed unevenly throughout the country.

Many of the comments identify market failures similar to those described in NASUCA’s initial comments, and similarly urge the Commission to intervene to prevent a digital divide and to ensure the timely, reasonable, and affordable deployment of broadband. Others identify additional market failures that impede broadband development, such as incumbent local exchange carriers’ (“ILECs”)

² See, e.g., NCTA at 2-4. See also AT&T, Inc. (“AT&T”) at 2, stating, “[c]ompetition among these providers is flourishing.”

³ NCTA at 2, 24 (recommending that the Commission “maintain a watchful but deregulatory approach”).

⁴ AT&T at 2.

⁵ American Library Association (“ALA”) at 10. See also, generally, comments of New Jersey Rate Counsel (“NJ Rate Counsel”); ConnectedNation, Inc. (“Connected Nation”); Consumers Union, Consumer Federation of America and Free Press (“CU et al.”).

premature retirement of copper plant and ILECs' supracompetitive special access rates. NASUCA urges the Commission to consider the specific recommendations described in its initial comments filed in this proceeding, some of which are discussed later in these reply comments.

Those advocating improved regulatory oversight are not seeking heavy-handed government intervention, but rather judicious government policy that addresses unambiguous market failures and assists the nation in achieving a public good, just as the government intervenes to build and modernize bridges and highways, and to protect open spaces. When government intervention increases total consumer welfare and yields a societal benefit with vast network externalities (not captured by private sector pricing), such intervention is appropriate. Further, access to comprehensive information about deployment bolsters the development of well-considered policy. Without such comprehensive information, regulators are essentially operating in the dark.

Some comments oversimplify deployment gaps by focusing on rural areas.⁶ However, suburban areas may also lack access to broadband services.

NASUCA recommends that the Commission reject efforts to portray deployment failures as limited solely to the country's rural areas. The problem is more widespread than industry would have the Commission believe, with suburban communities also seeking yet lacking access to broadband or lacking affordable access. Further, as numerous commenters demonstrate, reliance on zip codes as a way to measure broadband availability is grossly misleading.⁷

TWT contends that the FCC has essentially abdicated responsibility with respect to encouraging deployment of business-class broadband, noting that deregulation for this segment has led

⁶ See, e.g., Embarq at 1-2, 4-10; OPASTCO at 9-11; Qwest at 3.

⁷ See, e.g., Connected Nation at 3-5; Time Warner Telecom, Inc. ("TWT") at 7-8.

to less competition and higher prices, instead of more competition and lower prices.⁸ According to TWT, the current scheme emphasizes broadband deployed to residential and small businesses, and a more thorough study would include all business-class forms of broadband (*e.g.*, Ethernet).⁹ NASUCA agrees.

II. DEFINING “ADVANCED TELECOMMUNICATIONS CAPABILITY”

The Commission seeks comment on how it should define “advanced telecommunications capability” for the purposes of its inquiry. CU et al. raise significant concerns about broadband speed, which merit the Commission’s attention.¹⁰ Among other things, CU et al. state that the Commission “has largely abandoned its duty to focus on the upload aspect of advanced telecommunications services.”¹¹ NASUCA shares CU et al.’s concern that neglecting to address upload speeds will continue to yield a national network with asymmetrical connections.¹²

Yet inadequate download speeds remain the major concern. CU et al. further recommend that the Commission should “revise the definition of ‘advanced services’ from 200 kbps symmetrical to a more realistic definition” and that “[a]t the very minimum this definition should initially be set at 3 Mbps symmetrical, which reflects the bandwidth needed for standard TV quality transmission.”¹³

⁸ TWT at 3 and 9.

⁹ TWT at 4-5.

¹⁰ CU et al. at 9-17.

¹¹ CU et al. at 11.

¹² CU et al. at 16.

¹³ CU et al. at 17. CU et al. also observe that 3 Mbps symmetrical supports standard TV quality, but that if high definition TV were the chosen benchmark, the Commission should define advanced service as encompassing lines capable of between 12 and 40 Mbps symmetrical transmission. *Id.*

NASUCA reiterates its earlier recommendation that the Commission modify the definition of advanced services to correspond with evolving technology, applications, and consumer demand.¹⁴

The Computer & Communications Industry Association (“CCIA”) recommends that broadband connectivity¹⁵ should be defined as, at a minimum, 2 mbps downstream and 1 mbps upstream.¹⁶ CCIA, like NASUCA and others, also notes that the definition should be evolving, and suggests that the standards be based on speeds widely available in other industrialized nations and in “the best-served U.S. cities and suburbs.”¹⁷ This would continue to advance the ball for advanced services.

By contrast, other commenters apparently do not see a need to alter the definition of advanced services. AT&T states,

[T]he Commission should be careful not to abandon regulatory guideposts that have provided a stable foundation for broadband deployment and penetration. One such guidepost is the Commission’s use of 200 kilobits per second (Kbps) as the threshold for “high speed” service (over 200 Kbps in at least one direction) and “advanced” service (over 200 Kbps in both directions). While some consumers have a desire for higher speed broadband, in general, consumer tastes for broadband have not shifted so completely toward the higher range of available transmission speeds to warrant abandoning the existing 200 Kbps threshold. In fact, a significant number of Internet customers in the U.S. still gain access via dial-up connections today. The Commission should keep in mind these consumer-driven marketplace realities as it evaluates the terms “high speed” and “advanced” services going forward.¹⁸

AT&T ignores “consumer-driven marketplace realities.” The continuing movement in the market for most consumers is toward speeds much faster than the Commission’s current 200 Kbps standard. The fact that a significant number of consumers still use dial-up to access the Internet does not indicate

¹⁴ In initial comments, NASUCA recommended that the Commission establish a speed “of well over one megabyte per second.” NASUCA at 9.

¹⁵ CCIA suggests that telecommunications network facilities used for, or capable of, providing broadband services are facilities, not services, and should not be classified as deregulated information services. CCIA at 2.

¹⁶ CCIA at 2.

¹⁷ CCIA at 2.

¹⁸ AT&T at 3.

whether those consumers have or can afford faster options. Indeed, where there are no broadband options, consumers are relegated to the tortoise-like speeds of dial-up. NASUCA cautions the Commission against relying on AT&T's characterization of "consumer tastes for broadband." Prices and availability affect consumers' demand for broadband services; relying on last year's demand data to set the benchmarks for tomorrow's technology would disserve the nation.

Relying on the current standard, as AT&T proposes, would not be "going forward." It would be standing still.

III. IS ADVANCED TELECOMMUNICATIONS CAPABILITY BEING DEPLOYED TO ALL AMERICANS?

As stated by several commenters, the Commission requires better data and information to design appropriate policy. The Commission should gather detailed data on deployment and on the cost of various technologies.¹⁹ Furthermore, consumer surveys should guide broadband policy.²⁰

NASUCA concurs with Verizon and others that the FCC should collect data about availability and demand for different speeds and similarly with CU et al.'s comment that the Commission fails to "gather the appropriate data that would enable it to assess if services that are capable of originating high-quality voice, data, graphics, and video are being deployed to all Americans in a reasonable and timely fashion."²¹ The information provided in initial comments demonstrates that advanced telecommunications capability is not being deployed to all Americans.²² Information submitted in this

¹⁹ See, e.g., Rate Counsel at 25-26; CU et al. at 50.

²⁰ Connected Nation at 10.

²¹ Verizon and Verizon Wireless ("Verizon") at 32; CU et al. at 11-12; see also, Metropolitan Council of Governments ("MCoG") at 4.

²² See, e.g., NJ Rate Counsel at 21-25; CU et al. at 21-28.

proceeding shows that there are socioeconomic and geographic areas of broadband neglect that merit the Commission's attention.²³

Further, the Commission lacks data that would enable it to assess broadband deployment gaps. Other commenters express concerns similar to those of NASUCA regarding the Commission's and industry's misplaced reliance on zip codes as a way to gauge success in achieving broadband deployment.²⁴

NASUCA urges the Commission, in its related docket concerning data gathering (WC Docket No. 07-38), to improve data collection tools to go further than the zip code. NASUCA reiterates its original recommendation that "[t]he Commission should direct each ILEC and cable company to provide the Commission and state regulators with a geographic information system ('GIS') database showing precisely where broadband access is available, to inform regulators' and policy makers' assessment of the status and future of broadband access."²⁵ NASUCA also supports NJ Rate Counsel's recommendations to require broadband providers to report availability at a zip code "plus 4" basis and also to report the percentages of customers within a zip code that have broadband capability.²⁶

NASUCA also intends to address the issue of data reporting more comprehensively in the Commission's WC Docket No. 07-38.²⁷ Ideas for improving the nation's broadband mapping and data collection are also being considered by Congress. On May 17, 2007, the U.S. House of Representatives

²³ Id.

²⁴ See Verizon at 6, fn 15 (in which Verizon relies on zip code data as a way to describe deployment) and see, e.g., CU et al. at 18-21 (explaining why zip code data overstates broadband deployment progress); Connected Nation, Inc. at 3-5 (explaining that data collection overstates coverage).

²⁵ NASUCA at 7.

²⁶ NJ Rate Counsel at 17-18.

²⁷ *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, FCC WC Docket No. 07-38, Notice of Proposed Rulemaking (rel. April 16, 2007).

Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce held a legislative hearing on broadband mapping and data collection. Also, on May 24, 2007, U.S. Senate Committee on Commerce, Science, and Transportation Chairman Daniel K. Inouye introduced the “Broadband Data Improvement Act,” which “seeks to improve the quality of federal broadband data collection and encourages state initiatives that promote broadband deployment.”²⁸ Among other things, the legislation directs broadband providers to report broadband availability and connections within a 9-digit zip code (consistent with NJ Rate Counsel’s recommendation discussed above) and directs the Census Bureau to include a question in its American Community Survey that assesses levels of residential broadband (versus dial-up) subscribership.

IV. IS DEPLOYMENT REASONABLE AND TIMELY? ARE BROADBAND SERVICES AFFORDABLE?

Various industry members compliment the Commission on its regulatory “hands-off” policy, extolling this purportedly successful policy.²⁹ Contrary to these assertions, the deployment of broadband in the U.S. is not currently reasonable, timely, or affordable.³⁰ Indeed, a just-released study by the Congressional Research Service finds that “[w]hile the number of new broadband subscribers

²⁸ U.S. Senate Committee on Commerce, Science, and Transportation Press Release, “Inouye Introduces Broadband Data Improvement Act,” (May 24, 2007).

²⁹ See, e.g., Verizon at 1, 5, 13, 34, 38; AT&T at 2 (asserting that broadband competition “is flourishing and consumers are reaping the benefits”); Sprint Nextel Corporation (“Sprint”) at 4-6.

³⁰ See NJ Rate Counsel at 21-24, citing United States Government Accountability Office, “Broadband Deployment is Extensive Throughout the United States, But It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas,” GAO-06-426 (May 2006); John Horrigan, Pew Internet & American Life Project, “Home Broadband Adoption 2006,” (May 28, 2006) (available at www.pewinternet.org); “Broadband Everywhere, A Picture Is Worth a Thousand Words: How the Bell Business Model Leaves Much of America Behind,” April 4, 2006, available at www.broadbandeverywhere.org. CU et al. at 22-26 also cite “Technology Adoption and Barriers by Metropolitan and Non-Metropolitan Areas: Results and Analysis from the ConnectKentucky Technology Assessment Study,” ConnectKentucky, 2005; Results of Greenlining’s “Low Income Twenty-first Century Technology Study” as filed with the California Public Utilities Commission, May 24 2006”; “Latinos Online: Hispanics with lower levels of education and English proficiency remain largely disconnected from the Inter Internet” (March 14, 2007).

continues to grow, the rate of broadband deployment in urban and high income areas appears to be outpacing deployment in rural and low income areas.”³¹

NASUCA disagrees with AT&T’s and others’ depiction of “robust” broadband competition, and the depiction of strong competition between cable and DSL.³² As demonstrated in detail in the attachment to NJ Rate Counsel’s comments, the cable-telecommunications duopoly does not offer effective competition.³³ NASUCA also urges the Commission to heed the skepticism articulated by CU et al. about incumbent carriers using 700 MHz licenses “to offer a wireless broadband service that cannibalizes their own market share in DSL” and thus the unlikelihood of 700 MHz providing a competitive “third pipe.”³⁴

The Commission should heed the concerns regarding prospects for competition aptly described by CCIA:

Even the largest Incumbent Local Exchange Carriers generally do not compete out of region with each other. They often speak of competition with the local cable TV operator, yet outside their regions, where they lack an entrenched market position, the ILEC’s are not investing to compete. Is investment in duplicative network facilities just too risky even for a nationwide ILEC in locations where they are starting from nothing? What does this say about the prospects for smaller, newer firms attempting to build out first connections or compete against existing providers?³⁵

The cable-telecommunications duopoly provides only a semblance of competition. Consumers need far more than a duopoly for the beneficial effects of competition to be available for broadband service.

³¹ Congressional Research Service, “Broadband Internet Access and the Digital Divide: Federal Assistance Programs” (April 2007) at 2, accessible at <http://www.nationalaglawcenter.org/assets/crs/RL30719.pdf>.

³² AT&T at 4-9. *See also* Verizon at 1, 13, 15-21; Qwest at 1 (stating that broadband competition is “robust and increasing”); NCTA at 3 (describing “fierce competition”).

³³ NJ Rate Counsel, Attachment A, Susan M. Baldwin, Sarah M. Bosley and Timothy E. Howington, “The Cable-Telco Duopoly’s Deployment of New Jersey’s Information Infrastructure: Establishing Accountability,” White Paper prepared for the Public Advocate of New Jersey Division of Rate Counsel, January 19, 2007 (“Cable-Telco Duopoly White Paper”).

³⁴ CU et al, at 34.

³⁵ CCIA at 7.

V. WHAT ACTIONS CAN ACCELERATE DEPLOYMENT?

A. OPEN ACCESS TO INCUMBENTS' WIRELINE AND WIRELESS INFRASTRUCTURES, AND UNBUNDLED PRODUCTS

As proposed in its initial comments,³⁶ NASUCA continues to support several specific actions that the Commission could undertake to accelerate broadband deployment. Among other things, as NJ Rate Counsel discusses, the Commission should recognize the importance of ensuring that competitors have access to the unbundled elements of incumbent's facilities.³⁷ CU et al. make a persuasive case for the benefit of conditioning the auctioning of spectrum blocks on open access rules, which would require the licensee to sell access to the network on a wholesale basis at commercial rates.³⁸

On the other hand, NASUCA recommends that the Commission reject NCTA's argument that an à la carte requirement would lead to a net loss in consumer flexibility.³⁹ Bundled offerings, whether offered by cable companies or by telecommunications carriers, should be optional for consumers.⁴⁰

B. PREEMPTION

Contrary to Verizon's recommendation, the Commission should not "reiterate that state and local regulation of broadband is preempted."⁴¹ Connected Nation demonstrates the success that can ensue from state leadership on broadband deployment.⁴² The nation can ill afford to discourage state

³⁶ NASUCA at 15-19.

³⁷ Rate Counsel at 13-14 (discussing, among other things, a report by the European Commission which found that access to incumbent's infrastructure is critical to accelerating broadband availability).

³⁸ CU et al. at 35-36, 53; see also Rate Counsel at 13 (discussing importance of open access to incumbents' infrastructure).

³⁹ NCTA at 26.

⁴⁰ The option must be real. That is, the unbundled price should not be so high compared to the bundled price that consumers are "compelled" to take the bundle.

⁴¹ Verizon at 34.

⁴² See generally Connected Nation, discussing successful efforts to deploy broadband in Kentucky, and its specific recommendation at 6 that the Commission encourage public-private partnerships. The Kentucky efforts were also described in NASUCA's comments (at 12-13).

and local efforts to accelerate broadband deployment. Through their access to local- and state-developed detailed geographic information system databases, economic development activities, and regulatory experience, state and local government bring unique expertise to bear, which NASUCA urges the Commission to encourage and embrace.

Although NASUCA disagrees with the MCoG's statement that competitive forces should shape the continued deployment of broadband (because NASUCA does not agree that such competitive forces are yet sufficient), NASUCA concurs with the organization's recommendation that the Commission should encourage municipalities to step in when the private sector fails to deploy broadband services at an adequate level.⁴³ Clearly, the Commission should not preempt such beneficial activity.

C. RETIREMENT OF COPPER PLANT

Several comments identify an opportunity for accelerating broadband deployment and broadband competition that the Commission unfortunately is thwarting through regulatory inattention to the ILECs' premature retirement of the nation's copper infrastructure. Covad Communications Company ("Covad"), among others,⁴⁴ expresses concern regarding ILECs' retirement of copper plant, stating: "Anything which limits the competitive industry's access to copper infrastructure represents a step backwards in terms of ubiquitous availability of advanced service options."⁴⁵ The Commission should analyze carefully (and before the opportunity is lost entirely) how premature copper retirement affects the development of broadband competition, particularly in markets where few, if any, broadband options, if any, are available.

⁴³ MCoG at 5.

⁴⁴ See, also, comments of CCIA and Pacific LightNet, Inc. and Silver Star Telecom, LLC ("PLN/SST"). Another comment states, "[a]s the result of significant advances in technology in recent years, copper facilities now, more than ever, are essential to deploying high speed and advanced services to all Americans, in a reasonable and timely fashion." NuVox Communications and XO Communications, LLC ("NuVox/XO") at 3.

⁴⁵ Covad at 3.

Several CLECs filed a petition for rulemaking with the Commission on January 18, 2007, regarding ILEC retirement of copper loops and copper subloops.⁴⁶ The CLECs assert that:

[t]he rules currently in place for retirement of copper loops and copper subloops do not adequately safeguard against discriminatory and anticompetitive modifications to incumbent LEC networks that effectively eliminate access to unbundled network elements (“UNEs”) used by competitive LECs to provide broadband services to retail consumers and to business customers. The elimination of copper network facilities inhibits network competition and the deployment of competitive and innovative broadband services to millions of consumers over alternative networks. This practice runs counter to the letter and spirit of the Telecommunications Act of 1996.⁴⁷

The CLECs further asserted in their Petition that the ILECs are “gaming” the current rules⁴⁸ and that narrowband transmission, provided by the ILECs over fiber facilities to CLECs, does not allow for the same types and range of services the CLECs can offer over existing copper loops.⁴⁹ The CLEC Copper Petition proposes changes to the FCC’s current rules to address these issues, including a formal process for review and approval by the FCC of any proposed retirement of copper loops and subloops, “including a critical presumption that such retirement does *not* service the public interest.”⁵⁰

Premature copper retirement may be both anti-competitive and anti-consumer. As noted by the

⁴⁶ *In the Matter of Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops*, Petition for Rulemaking, filed January 18, 2007 (“CLEC Copper Petition”). See, also, a similar petition by BridgeCom International, Inc.; Broadview Networks, Inc.; Cavalier Telephone, LLC; Eureka Telecom Inc. d/b/a InfoHighway Communications; Florida Digital Network, Inc. d/b/a FDN Communications; IDT Corporation; Integra Telecom, Inc.; DeltaCom, Inc.; McLeodUSA Telecommunications Services, Inc.; Mpower Communications Corp.; Norlight Telecommunications, Inc.; Pacific Lightnet, Inc.; RCN Telecom Services, Inc.; RNK, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; and U.S. Telepacific Corp. d/b/a Telepacific Telecommunications, Petition for Rulemaking and Clarification, filed January 18, 2007. On May 10, 2007, the United States Small Business Administration Office of Advocacy sent Chairman Martin and the other Commissioners a letter recommending that the Commission open a rulemaking on the copper retirement petitions. The letter was filed in the RM 11358 docket.

⁴⁷ CLEC Copper Petition at 1.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 5, 10.

⁵⁰ *Id.* at 6.

petitioners, the copper facilities in question were “subsidized by monopoly regulation.”⁵¹ The CLEC petition states: “Incumbent LECs cannot be permitted to exercise their control over legacy copper loop facilities unilaterally, in a fashion intended to undermine competition.”⁵² Similarly, in the instant proceeding, CCIA argues that the copper loops have been financed by monopoly ratepayers and that this “valuable infrastructure should not be hastily dismantled without a chance for public input into the continued value of these wires for next generation DSL, and network redundancy for public safety in the event of power outages, for example.”⁵³

The FCC adopted the current rules regarding copper retirement in 2003 in its *Triennial Review Order*.⁵⁴ In considering the issue of incumbent Fiber-to-the-Home (“FTTH”) overbuild deployment whereby the incumbent constructs fiber parallel to, or in replacement of, existing copper plant, a situation the FCC then described as “largely theoretical,” the FCC concluded:

The record indicates that deployment of overbuild FTTH loops could act as an additional obstacle to competitive LECs seeking to provide certain services to the mass market. By its nature, an overbuild FTTH deployment enables an incumbent LEC to replace and ultimately deny access to the already-existing copper loops that competitive LECs were using to serve mass market customers.

⁵¹ *Id.* at 4. The CLECs also raise the public interest argument stating that redundancy in networks is critical from a public safety standpoint and assert that copper loops are not subject to failure during power outages the same way fiber loops are. *Id.* at 15-17. By way of illustration, Verizon’s financial reports indicate that it is retiring copper plant at a higher rate than in the past. Specifically, effective January 1, 2005, Verizon shortened the depreciation life on outside plant: copper cable, from 15-19 years to 13-18 years. Verizon also shortened the asset lives of other plant categories, including digital switches and circuit equipment. This change, according to Verizon, was “based on Verizon’s plans, and progress to date on those plans, to deploy fiber optic cable to homes, replacing copper cable.” Verizon New Jersey, Inc. Consolidated Financial Statements as of December 31, 2005 and 2004 and for the years then ended. Of course, shortening depreciation lives means that the cost of accelerated depreciation potentially could be passed on to consumers. At a minimum, the increased rate of depreciation serves to raise Verizon NJ’s expenses on paper and also lower estimates of rate of return.

⁵² *Id.*, at 12.

⁵³ CCIA at 9.

⁵⁴ *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order and Order on Remand, FCC 03-336 (rel. August 21, 2003) (“*Triennial Review Order*”), at e.g., ¶¶ 281-284 where the FCC modifies its notification of network modification rules.

In this regard, incumbent LECs potentially have an entry barrier within their sole control (*i.e.*, the decision to replace pre-existing copper loops with FTTH).⁵⁵

However, the FCC declined to prohibit the retirement of copper loops or subloops when they are replaced with FTTH, but instead determined that its existing network modification notice rules provided adequate safeguards. Competitors have the right to file objections to the ILEC's notice of retirement, but those oppositions are denied unless the Commission takes specific action within 90 days of the notice of retirement.⁵⁶

NASUCA urges the Commission to reconsider this finding, on an expedited basis. In the current proceeding, the Commission is seeking methods by which it can accelerate broadband deployment. To take action in one proceeding that limits broadband providers' ability to compete in the market and then in this proceeding to seek ways to expand competition is shortsighted. It ultimately harms consumers, by denying them the benefits that the consumer-funded copper network could provide. The Commission should review its current rules that enable the ILECs to limit competitor access to underlying facilities through copper retirement notices and forbearance petitions that often receive no formal review.

The resolution of this issue bears directly on the prospects for competitors in the broadband market, and ultimately, on consumers' broadband options. The ILECs' unilateral actions regarding copper retirement is evidence that they continue to dominate local markets, control market entry, and affect the degree to which suppliers of like or substitute services can exist profitably. As suggested by Covad, "[t]he alternative to maintaining access to the copper network for competitive carriers is

⁵⁵ *Id.*, ¶ 277.

⁵⁶ *Id.*, ¶¶ 282-283.

essentially mandating a mass migration of consumers from copper to ILEC fiber or cable⁵⁷ and would further entrench the emerging digital duopoly.

NASUCA concurs with the conclusion of PLN/SST that “[u]biquitous broadband deployment requires affordable, competitively-neutral access to last-mile broadband facilities.”⁵⁸ PLN/SST make a convincing argument that where customers do not have access to fiber, “the existing copper-based infrastructure still plays a primary role in the delivery of advanced and affordable telecommunications – both as the only game in town and, where fiber may be available, as a technically and economically feasible alternative to fiber.”⁵⁹

NASUCA urges the Commission to prevent ILECs from squandering the nation’s copper infrastructure, a national asset funded over the years by consumers. As was aptly observed in comments:

Consequently, retirements of copper facilities by the incumbent LECs takes place with increasing frequency and with no public interest analysis whatsoever. This alarming phenomenon results in the wasting of America’s most ubiquitous and economical platform for delivering high speed and advanced services to small-to-mid-sized businesses and residential consumers.⁶⁰

The premature retirement of copper is in the incumbents’ interest, not in the public interest.

D. ILECs’ SUPRACOMPETITIVE RATES FOR SPECIAL ACCESS SERVICES

NASUCA recommends that the Commission heed Sprint’s concern about the dampening effect of high special access rates on broadband deployment goals. As explained by Sprint, wireless carriers rely on ILECs’ special access services to connect their cell towers to their switches and to ILECs’

⁵⁷ Covad at 6.

⁵⁸ PLN/SST at 4.

⁵⁹ PLN/SST at 2-3 (footnote omitted).

⁶⁰ NuVox/XO at 8.

networks. NASUCA concurs with Sprint that Commission examination of ILECs' special access rates and profits⁶¹ is long overdue.⁶²

E. UNIVERSAL SERVICE SUPPORT

CTIA – The Wireless Association® (“CTIA”), citing the Federal-State Joint Board on Universal Service’s recommendation that the Commission adopt an interim emergency cap on high-cost universal service support for competitive eligible telecommunications carriers, cautions the Commission against capping universal service funds for competitors, and states that such capping would discourage wireless carriers’ deployment of services in rural areas.⁶³ Capping the fund will not eliminate any current funding. And the issue of whether universal service funding should be available for broadband service is under investigation.⁶⁴ Currently, universal service funds are not supposed to be used for broadband deployment.⁶⁵

NCTA recommends that the Commission consider expanding Lifeline and Link Up programs to make broadband access available to low income households.⁶⁶ NASUCA supports the widespread availability of broadband to all consumers, regardless of income.⁶⁷ However, NASUCA also cautions

⁶¹ *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC WC Docket No. 05-25; RM-10593, *Order and Notice of Proposed Rulemaking*, Released January 31, 2005.

⁶² Sprint Nextel at 6-15.

⁶³ CTIA at 16-17, citing *In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision (rel. May 1, 2007).

⁶⁴ See “Federal-State Joint Board on Universal Service Seeks Comment on Long-Term, Comprehensive High-Cost Universal Service Reform,” FCC 07J-2 (rel. May 1, 2007), ¶ 8.

⁶⁵ See 47 U.S.C. 254(e).

⁶⁶ NCTA at 28.

⁶⁷ Connected Nation determined that in Kentucky affluent households were five times as likely as low income households to have broadband connection. Connected Nation, un-numbered page of attachment.

the Commission against relying solely on support for Lifeline and Link Up participants as a way to achieve widespread affordable broadband services.

F. INTERNATIONAL RANKING

Many commenters discussed the implications and shortcomings of international rankings of broadband deployment.⁶⁸ NASUCA urges the Commission to move beyond the debate about the ranking of the United States among other countries regarding broadband deployment and demand. Instead, the Commission should learn from the programs and policies that other countries are pursuing, to determine which, if any, could be replicated in the United States. Ultimately, the purpose of broadband deployment is not for the sake of policy makers or the industry, but rather the consumer. By way of illustration, a new broadband plan for Ireland announced earlier this month, entitled a “National Broadband Scheme,” focuses on the consumer and is intended to provide broadband services to the areas of Ireland that are currently unserved and “ensure that every reasonable request for broadband in these unserved areas is met.”⁶⁹ Ireland’s Minister for Communications, Marine & Natural Resources stated:

Today’s launch is great news for broadband hungry consumers in rural areas. This Government believes that everyone, irrespective of where they are, should have access to high quality, competitively priced broadband services. This tender will help to make that happen. The knowledge worker cannot be confined by geographic location and should be free to live and work outside of the cities and towns. Our future should require networks to follow the knowledge worker rather than the other way around.⁷⁰

The program recognizes that private markets alone will not yield nationwide broadband deployment.

⁶⁸ See, e.g., NCTA at 15-21; CU et al. at 37-46; AT&T at 16-19.

⁶⁹ “Dempsey Unveils New National Broadband Scheme, Tender will see every reasonable request for broadband met nationwide,” May 2, 2007. <http://www.dcmnr.gov.ie/Press+Releases/Dempsey+Unveils+New+National+Broadband+Scheme.htm>, visited May 24, 2007.

⁷⁰ Id.

As described in a press release:

The National Broadband Scheme is technology neutral but Service Providers must ensure that the option they choose complies with the speed, capacity and latency requirements. The winning Service Provider or Service Providers will be engaged for a period of 5 years and will be required to provide an operational service as soon as possible. A claw back clause will also be put in place to ensure any unanticipated profits from the service are shared between the exchequer and the Service Provider(s).

Given the neutrality of the scheme, it is expected that the winning Service Provider, or perhaps a consortium of Service Providers, will use a combination of several technologies to meet the scheme's requirements.⁷¹

NASUCA encourages the Commission to monitor the successes and pitfalls of programs such as these to determine which aspects of other countries' broadband initiatives may be applicable to the United States.

VI. CONCLUSION

NASUCA supports the Commission's endeavors to refine its broadband policies to encourage the deployment of a national broadband network, with high-speed access provided to consumers in a timely manner at affordable rates. NASUCA urges the Commission not to abdicate its responsibility to design and implement policies to ensure that all consumers have access to affordable broadband services, at a speed that evolves over time. Further, rather than discouraging state and local efforts, NASUCA recommends that the Commission learn from and encourage state and local initiatives to accelerate broadband deployment.

⁷¹ Id.

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