BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
A National Broadband Plan for Our Future	))	GN Docket No. 09-51
High-Cost Universal Service Support	))	WC Docket No. 05-337

COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON
NOTICE OF PROPOSED RULEMAKING

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SUMMARY

NASUCA agrees that the dollars saved from "cutt[ing] inefficient funding in the legacy high-cost support mechanisms" are appropriately used to support broadband deployment and adoption.[1] But at this point, and in this context, we must raise serious questions about the "long range goal" stated in the NBP to "replace all the legacy High-Cost programs" with the new CAF. Based on the explicit descriptions of the CAF, it appears that its focus is to provide support only "where there is no private sector business case to provide broadband and high-quality voice-grade service…."

Although NASUCA fully supports providing support for broadband, this does not mean that support for broadband can completely replace support for traditional voice services, or that such support can be limited to areas where, in the absence of support, there is no "business case" for supplying "high-quality voice-grade service." The statutory directives **still exist** for "affordable" basic **telecommunications services**, and for telecommunications services in rural areas that are reasonably comparably priced to those in urban areas; they have not been replaced by the statutory directives regarding advanced services.

The goal of a targeted mechanism for broadband deployment is not fundamentally different from the goal of targeting existing universal service mechanisms that has been the primary reform issue before the Commission for the past decade. One should not go forward without the other, even though this NPRM does not appear to recognize the need to reform and retarget existing mechanisms to achieve the goals of the Act.

The FCC should conduct a baseline audit of supported companies that identifies key information on: which supported companies have deployed broadband; the specific investments made that have enabled broadband; the extent of broadband availability within supported companies' service areas; the quality of broadband, as measured in upload and download speeds, available from supported companies; the price of broadband services available from supported companies; current voice and broadband subscription rates and revenues for each supported company, and specific technical impediments that have limited ubiquitous broadband deployment in a supported broadband provider's service area. Adding this information to that currently required by the FCC will allow the FCC to assess the impact of current subsidy disbursements on broadband deployment.

One of the reasons why it is possible to extract substantial efficiencies from the current HCF in order to provide additional funding for broadband is that there has never been a definitive showing that high-cost funds either cause or are necessary to produce rates and services that meet the statutory directives: to be affordable, and to be reasonably comparable in rural areas to those available in urban areas. The efficiencies that can be squeezed out of the current fund should represent the absolute maximum contribution of telephone customers toward the funding of broadband; the burden on telecommunications service customers must not be increased. Any additional funding must come from the broadband services whose deployment is being supported.

Consumers in other areas should not be required to support the operations of companies whose

[1] Citations are omitted from this summary. Citations can be found within the body of the comments.

overall revenues are sufficient, absent the support, to produce a **healthy return** for the shareholders of those companies. "Overall revenues," in this context, consist not just of revenues from the basic service that the federal USF is intended to support, but from other telecommunications services, advanced services and, indeed, video services.

This is particularly relevant in the current regulatory environment, where most telephone company rates – including basic service rates – are deregulated (also referred to as "market-based"). Where a telephone company is permitted to increase its basic service rates due to state regulatory decisions, and those increases have nothing to do with the company's "need" for those increases but lead to rates that are not reasonably comparable, then again it is questionable whether customers in other states should be required to provide support.

With regard to the specific proposals included in the NPRM, given the Commission's rejection of the non-rural carriers' demands for additional funding for telecommunications services, and the continuing lack of support for rural carriers' similar requests, placing a cap on support for the traditional HCF while adding explicit funding for broadband should not have a negative impact on the companies or their customers. It should be noted, however, that if the Commission undertakes the measures identified in ¶¶ 53-61 of the NPRM, the size of the HCF will effectively be controlled.

Interstate Access Support ("IAS") should be eliminated. It was only supposed to last five years, and it has now been a ten-year revenue guarantee for price cap ILECs. The interstate minutes of use on which the IAS was based have continued to decline over the years. Likewise, the Interstate Common Line Support ("ICLS") that is provided to rate-of-return carriers should be eliminated.

The Commission seeks comment on "requiring current rate-of-return companies to convert to some form of incentive regulation." There is currently no necessary connection between the form of interstate rate regulation under which a carrier operates and its receipt of funds from high-cost support. Although a number of companies have voluntarily converted to price cap regulation in the last two years, in such cases, the Commission converted the companies' ICLS to a frozen amount per line." So unless the Commission made the change to incentive regulation overall conditional on such a freeze, it is not clear whether there would be any impact on the USF.

The NBP recommended that the Commission issue an order to implement the voluntary commitments of Sprint and Verizon Wireless to reduce the High-Cost funding they receive as competitive ETCs to zero. Given that these commitments were made in 2008, it is not clear why it should take a Commission order to make the commitments real.

Finally, and most importantly, the Commission should phase out remaining competitive ETC funding under the existing funding mechanisms over a five-year period. NASUCA strongly supports this proposal. The current CETCs are primarily wireless companies who deployed to their services in order to chase universal service funding, who operate in fully competitive markets and who will have ample opportunity to seek justified support as they deploy future wireless service in unserved and underserved market areas.

NASUCA also includes here excerpts from prior filings containing proposals on restraining the USF. These recommendations include:

- Not replacing carriers' lost revenues – whether from competition, reduced access charges, or other causes – from the USF or increases in the SLC.
- As the Joint Board recommended, dividing the high-cost fund into separate funds for broadband, mobility, and carriers of last resort.
- Reforming the separations process so that the joint use of the network – voice, broadband and video – is recognized. This will reduce the cost responsibility of local voice service.
- Restricting support to a single line per household.
- Transitioning rural carriers with more than 100,000 access lines to a support system based on forward-looking costs of a national peer group of carriers.
- Fundamentally reforming the support mechanism for non-rural carriers, as recommended in numerous NASUCA filings.
- Updating the Commission's high-cost model.

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I. INTRODUCTION

On April 21, 2010, the Federal Communications Commission ("FCC" or "Commission") released a combined Notice of Inquiry ("NoI") and Notice of Proposed Rulemaking ("NPRM").[2] The NoI sought "comment on whether the Commission should use a model to help determine universal service support levels in areas where there is no private sector business case to provide broadband and voice services."[3] The accompanying NPRM sought "comment on specific common-sense reforms to cap growth and cut inefficient funding in the legacy high-cost support mechanisms and to shift the savings toward broadband communications."[4] The NoI and NPRM are part of the Com-

[2] FCC 10-58 ("NoI/NPRM").

[3] NoI/NPRM, ¶ 2. The NOI also sought "comment on the best way [for the Commission] to create an accelerated process to target funding toward new deployment of broadband networks in unserved areas, while[it is] considering final rules to implement fully a new [Connect America Fund] CAF funding mechanism that efficiently ensures universal access to broadband and voice services." Id.

[4] Id. As noted below, whether the specified reforms are "common-sense," and especially whether they exhaust the universe of such reforms, are matters of dispute.

mission's implementation of the National Broadband Plan ("NBP").[5]

The National Association of State Utility Consumer Advocates ("NASUCA")[6] files these comments on the NPRM. Despite the NoI and NPRM being published in the same document – and on the same schedule – the significantly different focuses and purposes of the two requests for comment necessitate separate comments.

The NPRM is, on its face, limited to issues regarding controlling the size of the current high-cost fund ("HCF"). These comments will address the issues specifically raised for comment in the NPRM, but will also repeat NASUCA's many previous proposals for that task.

NASUCA agrees that the dollars saved from "cutt[ing] inefficient funding in the legacy high-cost support mechanisms" are appropriately used to support broadband deployment and adoption.[7] But at this point, and in this context, we must raise serious questions about the "long range goal" stated in the NBP to "replace all the legacy High-Cost programs" with the new CAF.[8] Based on the explicit descriptions of the CAF, it appears that its focus is to provide support only "where there is no private sector business case to provide broadband and high-quality voice-grade ser-

[5] See NoI/NPRM, ¶ 2. The NBP was released March 16, 2010 as *Connecting America: The National Broadband Plan*. NASUCA must note at this juncture that the National Broadband "vision" referenced in the NoI/NPRM (¶ 1) is an FCC task force product that was never subjected to a vote by the full Commission and thus it cannot independently support regulatory decisions that will affect the entire nation. As commendable as the NBP is in terms of its scope, it continues to be simply the result of a good staff effort by the FCC. We would caution the FCC not to give undue weight to the findings and recommendations of the NBP task force.

[6] NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.,* the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[7] "The National Broadband Plan recommends that the Commission cut inefficient funding of legacy voice service and refocus universal service funding to directly support modern communications networks that will provide broadband as well as voice services." NPRM, ¶ 50, citing NBP at 147-148. NASUCA's support includes that for increasing the adoption of broadband among underserved – particularly low-income – populations.

[8] NoI/NPRM, ¶ 10.

vice…."[9]

Although NASUCA fully supports providing support for broadband,[10] this does not mean that support for broadband can completely replace support for traditional voice services, or that such support can be limited to areas where, in the absence of support, there is no "business case" for supplying "high-quality voice-grade service."[11] The benefits of the robust traditional telephone network have been described in other NASUCA comments.[12] More fundamentally, the statutory directives **still exist** for "affordable" basic **telecommunications services**, and for telecommunications services in rural areas that are reasonably comparably priced to those in urban areas[13]; they have not been replaced by the statutory directives regarding advanced services.[14] Thus federal support can and should be required for basic telecommunications services regardless of the "business case" for the services.[15] The goal of a targeted mechanism for broadband deployment is not fundamentally different from the goal of targeting existing universal service mechanisms that has been the primary reform issue before the Commission for the past decade. One should not go forward without the other, even though this NPRM does not appear to recognize the need to reform and retarget existing mechanisms to achieve the goals of the Act.

Unfortunately, this is symptomatic of the Commission's development of and implementation

[9] Id.

[10] One of the many questions not addressed in this particular NPRM is whether broadband services should be required to **provide** support as well as receive it.

[11] Id.

[12] *In the Matter of Effects on Broadband Communications Networks of Damage to or Failure of Network Equipment or Severe Overload*, PS Docket 10-92, NASUCA Comments (filed June 25,2010).

[13] 47 U.S.C. § 254(b)(1), (3).

[14] See 47 U.S.C. § 254(b)(2). Indeed, § 254(b)(3) says that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular and high-cost areas, should have access to telecommunications **and** information services … that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban area." (Emphasis added.)

[15] Which is not to say that all areas currently receiving support need such support to maintain affordable and reasonably comparable rates, as discussed below.

of the NBP. Despite the obvious attempt in the NBP to "move the ball forward" on broadband, in many respects the NBP lacks the overall vision and cohesion needed to meet **all** of the goals of universal service.[16]

That said, the key questions that the Commission must consider are, first, how to ensure support for traditional service where needed (and not where it is not needed to ensure affordable and reasonably comparable rural rates), which is the thrust of NASUCA's comments here, and then, second, how to use the savings to fund broadband.[17] The efficiencies that can be squeezed out of the current high-cost fund should be sufficient to make progress on ubiquitous, future-proof broadband… especially when, as noted above, the broadband services themselves are required to help support their deployment.[18] Indeed, the efficiencies squeezed out of the current fund should represent the absolute maximum contribution of telephone customers toward the funding of broadband; the burden on telecommunications service customers must not be increased. Any additional funding must come from the broadband services whose deployment is being supported.[19]

These comments will first address some issues pertaining to the HCF in general. Then the specific questions contained in the NPRM will be addressed. Finally, NASUCA will reiterate its past proposals for constraining and updating the HCF.

[16] As an example, this NPRM looks at removing dollars from the legacy high-cost fund in order to fund broadband service, without the Commission ever having definitively found that broadband is **eligible** for support under 47 U.S.C. § 254.

[17] That is another question that neither the NoI nor the NPRM nor any other Commission comment proceeding yet addresses. Indeed, deployment of broadband is not enough – there must be **adoption**, and that adoption will not occur unless the service is affordable. To paraphrase, "If you build it, they will come only if they can afford it."

[18] It is undeniable that broadband services display the same, if not more significant network effects that were the justification and rationale for the traditional USF system.

[19] Or from general tax revenues.

II. AN AUDIT OF THE HIGH-COST UNIVERSAL SERVICE PROGRAM IS NECESSARY.

There is a critical need for a thorough audit of the current high-cost universal service program, including a detailed inventory of the level of broadband service available from supported providers. As is widely acknowledged, there is insufficient data on current broadband availability, which may be remedied through broadband mapping initiatives. However, mapping does not go far enough. An audit of current high-cost funding recipients can contribute to the accurate assessment of broadband deployment, and better identify funds that can be freed-up to enable new broadband service in unserved areas. The ability of the FCC to manage the size of the fund and to efficiently target support depends on improved verification procedures. The FCC should conduct a baseline audit of supported companies that identifies key information on:

- Which supported companies have deployed broadband;
- The specific investments made that have enabled broadband;
- The extent of broadband availability within supported companies' service areas;
- The quality of broadband, as measured in upload and download speeds, available from supported companies;
- The price of broadband services available from supported companies;
- Current voice and broadband subscription rates and revenues for each supported company, and
- Specific technical impediments that have limited ubiquitous broadband deployment in a supported broadband provider's service area.

Adding this information to that currently required by the FCC will allow the FCC to assess the impact of current subsidy disbursements on broadband deployment. Such an audit will also help the FCC determine the investments necessary to make high-quality broadband universally available, and identify best practices. Support for a unified network platform that delivers voice and broadband can help to ensure high-quality voice and broadband services at lower costs. This approach will also appropriately identify revenue sources that can offset the need for support.[20]

In the accompanying NoI, the Commission also seeks "comment on whether the Commission should consider revenues, as well as costs, in determining CAF support."[21] It is imperative that the Commission consider revenues when determining high-cost support, whether legacy or CAF support.[22] Support for the provision of ILEC "basic voice" service through the existing HCF approach has persisted at relatively constant levels in spite of the fact that the provision of basic voice service is likely to be one of many services that a firm may be able to sell to residential consumers. While the scope economies associated with a firm providing basic voice, vertical features, toll, high-speed data, and video services have grown substantially, the demand for basic service support has not declined. This is an irrational economic outcome. As the supported carriers' scope economies increased, the economically necessary level of subsidy should have declined.

Current funding levels continue to reflect erroneous assumptions that voice services alone are provided over the supported carrier's network. Supported carriers – particularly rural carriers – have updated their networks to provide broadband, using, in part, universal service funds. With these network upgrades they have also gained access to a new revenue source — broadband service revenue. As a result, a beneficial impact on high-cost universal service funding should arise as some supported carriers have generated operating synergies and economies of scope. The network that should be modeled should be as flexible as possible.

Supported carriers have integrated their operations and no longer view themselves as "voice telephone companies." For example, CenturyTel, a company that received $308.3 million in Federal

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[20] See Roycroft Affidavit ("Roycroft") filed with NoI Comments, p. 5.

[21] NoI, ¶ 35.

[22] Roycroft, p. 6.

support in 2009, describes its operations as follows:

> We are an integrated communications company engaged primarily in providing an array of communications services to our customers, including local exchange, long distance, Internet access and broadband services. We strive to maintain our customer relationships by, among other things, bundling our service offerings to provide our customers with a complete offering of integrated communications services.[23]

Similarly, Windstream, which received $124 million in Federal support in 2009 indicates that it is:

> [A] customer-focused telecommunications company that provides phone, high-speed Internet and digital television services. The Company also offers a wide range of IP-based voice and data services and advanced phone systems and equipment to businesses and government agencies.[24]

These supported carriers have broadband connections that amount to about 30% of voice lines, but enjoy broadband and data revenues that are about 70% of voice revenues.[25] These facts point to a deep integration of voice and broadband services and clearly illustrate the need to fully consider the revenue potential associated with broadband, and the relationships between shared costs and the revenues generated from the multiple service families sharing the facilities.[26]

III. GENERAL ISSUES

As part of the effort to put these very important issues into context, it must first be noted that one of the reasons why it is possible to extract substantial efficiencies from the current HCF in order to provide additional funding for broadband is that there has never been a definitive showing that high-cost funds either cause or are necessary to produce rates and services that meet the statutory directives: to be affordable, and to be reasonably comparable in rural areas to those available in ur-

[23] CenturyTel 10-K, March 1, 2010, p. 122.

[24] Windstream 10-K, February 24, 2010, p. 2.

[25] CenturyTel 10-K, p. 55; Windstream 10-K, p. F-7.

[26] The Commission also asks how it should treat the costs of video programming. Id., ¶ 37. Video revenues should be counted, net of programming costs.

ban areas.[27] This is true for the non-rural companies (that nonetheless serve considerable rural territory)[28]; it is also true for the smaller rural companies.[29]

By and large, it does appear that, around the country, rural rates are reasonably comparable to urban rates. It does not appear, however, that there is any necessary connection between the amount of support received by a carrier and the reasonable comparability of its rates. Clearly, the Commission needs to establish an efficient process for dealing with the exceptions.[30]

Specifically, if rural basic service rates are lower than urban basic service rates, due to state regulatory decisions, there is a serious question about whether consumers in other states should be required to support those low rates. On the other hand, where costs are sufficiently high that, absent federal support, rates would not be reasonably comparable, support is warranted under the law.

As the Commission re-examines these issues based on the 21st Century need to ensure that all Americans have access to affordable broadband service, it is also time to reintroduce a 20th – even 19th – Century concept to the federal high-cost universal service fund: Again, consumers in other areas should not be required to support the operations of companies whose overall revenues are sufficient, absent the support, to produce a **healthy return** for the shareholders of those companies. "Overall revenues," in this context, consist not just of revenues from the basic service that the federal USF is intended to support, but from other telecommunications services, advanced services

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[27] See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05-337, CC Docket No. 96-45 ("05-337/96-45"), NASUCA Comments (May 8, 2009) at 34-43.

[28] This is despite the recent FCC finding (based on NASUCA comprehensive [and Verizon selective] evidence) that rural rates of non-rural carriers are reasonably comparable to urban rates. 05-337/96-45, Order on Remand (rel. April 16, 2010) ("*Qwest Remand Order*"), ¶ 41-49. NASUCA's rate census is now five years old; given the passage of time and the increasing deregulation of basic service rates around the country, there is a desperate need for the Commission to update the rate census (especially with recent rate deregulation).

[29] A rate census like that conducted for the non-rural companies is also needed for the rural companies. Such a census would reveal the extent to which rural carrier may have **low** rates compared to urban areas.

[30] One could hardly describe the process that the Commission used to determine that rural areas served by the non-rural carrier in Wyoming as "efficient" – or effective, for that matter. 05-337/96-45, Memorandum Opinion and Order (rel. April 16, 2010).

and, indeed, video services.[31] NASUCA urges the Commission to adopt a threshold return-on-equity test for receipt of support from the high-cost fund.

This is particularly relevant in the current regulatory environment, where most telephone company rates – including basic service rates – are deregulated (also referred to as "market-based"). Where a telephone company is permitted to increase its basic service rates due to state regulatory decisions, and those increases have nothing to do with the company's "need" for those increases but lead to rates that are not reasonably comparable, then again it is questionable whether customers in other states should be required to provide support.

IV. SPECIFIC FCC PROPOSALS (NPRM, ¶¶ 51-61)

As discussed above, the Commission lacks fundamental data about whether the current high-cost USF actually results in rates that meet the statutory directive.[32] Thus in response to its attempts to extract efficiencies from the current high-cost fund, the Commission should not accept the unsupported allegations that incumbent local exchange carriers ("ILECs") need more funding, or that cutting current funding will increase rates.[33] Both the incumbents and competitive carriers are notorious for making unsupported assertions on their need for funding or the effect that removal of funding will have on their customers.

In that context, NASUCA must question the Commission's statement that the intent of the proposals in the NPRM is to "eliminate indirect funding of broadband-capable networks."[34] That may be the intention, but the proposals – e.g., eliminating funding for competitive eligible tele-

[31] NASUCA will not attempt here to define a "healthy return," but would observe that it is likely significantly lower than the Commission's decades-old standard of 11.25%. (See the discussion in NASUCA's comments on the Broadband Cost Model.)

[32] See NPRM, ¶ 53.

[33] *Qwest Remand Order*, ¶ 34, 37.

[34] NPRM, ¶ 53.

communications carriers[35] – are not necessarily moves toward that end. Rather, they should be characterized as attempts to reduce unnecessary funding in the current HCF[36] and to reallocate that funding to broadband deployment, specifically deployment in areas where there is no business case to be made for such deployment.[37]

The NBP identified the following amounts of savings possible from the specific measures identified in the NPRM, calculated over a 10-year span:

Implementing the Sprint/Verizon Wireless commitments: $3.9 billion

+ Freezing Interstate Common Line Support: $1.8 billion

+ Eliminating Interstate Access Support: $4 billion

+ Phasing out high-cost support for competitive ETCs: $5.8 billion

Total: $15.5 billion[38]

The Commission asks generally about issues of when these measures should be implemented.[39] As discussed in the individual proposals below – and in the NASUCA proposals also discussed below – the proposals could well be implemented immediately, with current support phased out over a five-year period. This will avoid flashcuts, but will also permit the funding to be reallocated to broadband in a near-term timeframe.

A. Overall cap on the high-cost fund (¶¶ 51-52)

It first should be clear that – except for high-cost payments to competitive eligible telecommunications carriers ("CETCs") – the current high-cost mechanisms have not been growing in re-

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[35] See id., ¶¶ 60-61.

[36] Unnecessary in the sense that it is not needed to ensure that rates for basic service are affordable or reasonably comparable in rural areas to the services in urban areas.

[37] NoI/NPRM, ¶ 10.

[38] NBP, pp. 147-148.

[39] NPRM, ¶ 53.

cent years.[40] And the Commission has placed a cap on CETC funding.[41] Indeed, some of the components have been subject to explicit caps, and others have been stable.[42] And, given the Commission's rejection of the non-rural carriers' demands for additional funding for telecommunications services,[43] and the continuing lack of support for rural carriers' similar requests, placing a cap on support for the traditional HCF while adding explicit funding for broadband should not have a negative impact on the companies or their customers.

NASUCA should not need to remind the Commission that the responses to the question of how to implement a cap[44] from each of the various carriers will, obviously, represent the methodology that produces the highest amount of revenue for the carrier, or produces the least amount of revenue for the carrier's competitors. The Commission should expect no more. Consumers, however, are those who ultimately pay for the support received by the carriers. The Commission should first recognize the fact that the recent erosion of access lines and their associated revenues has been more than matched by incumbent broadband, wireless and special access revenues, which should not be ignored by the Commission. A freeze of existing support may be fair and reasonable at a moment in time, but a freeze of per-access line support will also be necessary as carriers continue the process of upgrading existing voice services with higher revenue broadband, wireless and special access services.

It should be noted, however, that if the Commission undertakes the measures identified in ¶¶ 53-61 of the NPRM, the size of the HCF will effectively be controlled. Thus there may not be a

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[40] Federal-State Joint Board Monitoring Report (December 2009), Table 3.2 (showing ILEC support of $3.136 billion in 2003 and $3.037 billion in 2009, compared to CETC support of $0.130 billion in 2003 and $$1.420 billion in 2009).

[41] 05-337/96-45, *Order*, 23 FCC Rcd 8834 (2008), aff'd, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

[42] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (rel. May 1, 2007), ¶ 5.

[43] *Qwest Remand Order*, ¶ 34, 37.

[44] NPRM, ¶ 52.

need for an explicit overall cap.

B. Relationship with intercarrier compensation

The Commission seeks "comment on the relationship between such universal service reforms and carriers' rates, including intercarrier compensation rates, under the Commission's current pricing rules."[45] Despite the generality of the request, it is clear that the Commission's focus is on intercarrier compensation.

Some ILECs have asserted that there are only three "dials" or "spigots" for ILEC revenues: basic service (including subscriber line charges ("SLCs")), universal service, and intercarrier compensation.[46] This leads to the notion that decreases in intercarrier compensation must be made up by increasing basic service rates (including the SLC) and the "high-cost" USF. The Commission has, to date, not accepted this proposition.[47] This leads to the inescapable conclusion that there is no necessary connection between intercarrier compensation levels and the USF.[48]

This also means that the Interstate Access Support ("IAS") component of the HCF should be eliminated.[49] It was only supposed to last five years, and it has now been a ten-year revenue guarantee for price cap ILECs. The interstate minutes of use on which the IAS was based have continued to decline over the years.

Likewise, the Interstate Common Line Support ("ICLS") that is provided to rate-of-return carriers should be eliminated. In earlier comments, NASUCA recommended merely that the ICLS

[45] Id., ¶ 54.

[46] See, e.g., 05-337/96-45, et al., letter from Robert W. Quinn, Jr. (July 17, 2008) at 4-5. NASUCA refuted these assertions. See, e.g., id., NASUCA September 30, 2008 ex parte at 5-6.

[47] But see NBP, p. 148.

[48] This is especially true with regard to the **interstate** intercarrier compensation over which the Commission has jurisdiction, and universal service funding, which is supposed to produce affordable and reasonably comparable **local** rates. (See the discussion of separations in Attachment A below.)

[49] NPRM, ¶ 57.

be investigated.[50] But enough time has passed – and the connection between ICLS revenues and affordable and reasonably comparable rates has become so attenuated – that it is time to eliminate this revenue source. Customers of other telephone companies – especially in other states – should not be required to support these revenues.[51]

In addition, NASUCA would take exception to proposal to eliminate ICLS and replace the lost revenue with a frozen amount per line. This proposal totally ignores what has happened in the past decade in the telecommunications industry. Due to the emergence of new conglomerates, the rebirth of the old AT&T and the ongoing evolution of the old customer base to mobility and broadband alternatives, AT&T, and others like it, are losing access lines and revenues **to their own sister companies or their parent companies**. This Commission should require that any calculation of revenue or earnings losses due to the elimination of access charges should be net impact to the carrier, its parent and all of its affiliates. This is the only way to guarantee that consumers do not end up replacing mythical revenues when a local exchange company reduces or eliminates its access charges that result in an equal reduction in costs to a sister company or parent. Indeed, the Commission should seriously consider as a first step in access charge reform, the elimination of all access charge transactions between affiliated and parent companies. Such a move would significantly reduce the level of the ICC "problem" and it would place the focus on the remainder of the companies who may, in fact, face serious negative impacts from the elimination of access charge revenues recovered from third parties.

C. Shifting rate of return carriers to "incentive" regulation

The Commission seeks comment on "requiring current rate-of-return companies to convert

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[50] Appendix A at 16.

[51] Especially where there is no test to determine whether the company needs these revenues, as discussed in Section II.

to some form of incentive regulation."[52] NASUCA would note that there is currently no necessary connection between the form of interstate rate regulation under which a carrier operates and its receipt of funds from high-cost support. As the Commission recognizes, "a number of companies have voluntarily converted to price cap regulation in the last two years" and that "[i]n such cases, the Commission effectively converted the companies' interstate common line support (ICLS) to a frozen amount per line."[53] So unless the Commission made the change to incentive regulation overall conditional on such a freeze, it is not clear whether there would be any impact on the USF.

As the Commission states, the carriers that have switched to incentive regulation have done so voluntarily, presumably because they believed that the shift would be beneficial even with the ICLS freeze. If the change is to be made on a broader scale, it must be mandatory; carriers should not be able to choose which form of regulation that will most benefit them.[54]

In the NPRM, the Commission refers to its existing mechanisms and notes that under those mechanisms, price cap carriers are allowed to increase their price caps if their earnings fall below 10.25%.[55] Not only is that number based on the "ancient" standard return of 11.25%,[56] but is also based on the slightly newer frozen separations factors.[57] It would be totally wrong for this FCC to repeat the past mis-allocations of the cost of basic service that were accepted by prior regulators. If the current FCC were to follow the logic of past commissions, then in fact the fixed costs of basic voice service and the resulting SLC would both be zero. This is because the forward looking cost of

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[52] NPRM, ¶ 55.

[53] Id. (citations omitted).

[54] Some current rate-of-return carriers have opposed the possible shift to incentive regulation. See, e.g., CC Docket No. 96-45, et al., ex parte filing of the Organization for the Protection and Advancement of Small Telephone Companies (May 12, 2010) at 2.

[55] NPRM, n.120.

[56] See footnote 31, supra.

[57] See Attachment A at 11-15.

a universal broadband network would impose the cost causation principle that would shift the entire fixed cost of the network to the cost causer – broadband service. NASUCA has never endorsed such a theory and does not do so now. As the costs of deploying a triple play network – providing video, broadband, and voice – then the starting point is the appropriate allocation of costs, whether they be fixed or variable, based on an up-to-date return.

The Commission also refers to a freeze of ICLS independent of the form of regulation.[58] ICLS has not grown significantly in recent years, as shown above; it is not clear whether such a freeze would free up dollars for the CAF.

D. Sprint/Verizon Wireless voluntary commitments

The NPRM notes the recommendation of the NBP that the Commission "issue an order to implement the voluntary commitments of Sprint and Verizon Wireless to reduce the High-Cost funding they receive as competitive ETCs to zero over a five-year period as a condition of earlier merger decisions."[59] NASUCA responds, that given that these commitments were made in 2008,[60] why should it take a Commission order to make the commitments real? Have these reductions not already occurred?

E. Elimination of CETC support (¶ 60-61)

As the Commission notes, "The National Broadband Plan recommends that the Commission phase out remaining competitive ETC funding under the existing funding mechanisms over a five-year period and target the savings toward the deployment of broadband-capable networks and other reforms in the plan."[61] NASUCA strongly supports this proposal.

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[58] NPRM, ¶ 56.

[59] Id., ¶ 59, quoting NBP at 147.

[60] NPRM, n.130.

[61] NPRM, ¶ 60, citing NBP at pp. 147-148

As NASUCA stated in an earlier round of comments,

> The Commission correctly point[ed] out that, in hindsight, the Joint Board and the Commission erred in 1996 and 1997 when they each recommended the identical support rule to achieve competitive neutrality. The FCC also correctly point[ed] out that the Joint Board and the FCC both erred in assuming that ETCs and incumbent LECs would engage in a vigorous competition to become the sole provider of telecommunications services to customers.
>
> NASUCA agrees with the Commission that both bodies erred in their assumptions regarding competition. NASUCA's view is that the combination of the identical support rule and the support of multiple terminations within the same household provided a built-in magnet for CETCs to engage in uneconomic market exploitation at the expense of the customers who are burdened with the funding of the program. The CETCs who benefited from the identical support rule -- principally wireless carriers -- were simply following the incentives afforded by the regulatory process.[62]

The current CETCs are primarily wireless companies who deployed to their services in order to chase universal service funding, who operate in fully competitive markets and who will have ample opportunity to seek justified support as they deploy future wireless service in unserved and underserved market areas.

NASUCA would remind the Commission that the issue of whether there are consumer benefits from CETC funding has been resolved – in the negative. NASUCA noted "the study in the record of this proceeding, never mentioned in [the Rural Carrier Association's] *Cut the Cap* or otherwise, as far as NASUCA is aware, refuted by RCA or any wireless carrier, that there is no correlation between wireless deployment in rural areas and the receipt of high-cost support by the wireless carriers."[63]

RCA did respond to NASUCA's ex parte, but

> RCA did not respond to NASUCA regarding the Criterion Study. In the interest of a complete record, however, NASUCA would note that there were attempts to refute

[62] 5=05-336/96-45, NASUCA Comments on the Identical Support Rule (April 17, 2008) at 5-6.

[63] 05-337/96-45, NASUCA ex parte (June 19, 2009) at 3, citing Letter from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, Attach. The Effects of Providing Universal Service Subsidies to Wireless Carriers.

> the Study… three in number: Reply comments filed by ALLTEL Corp. ("ALLTEL") on June 21, 2007; an ex parte letter from Rural Telecommunications Group, Inc. ("RTG") on July 12, 2007; and an ex parte letter filed on behalf of U.S. Cellular Corporation ("U.S. Cellular") on July 24, 2007. Among the issues addressed by the carriers in those filings were whether the Criterion Study had considered roaming coverage; the accuracy of the carriers' coverage maps; the timing of CETC entry; and the locations of carriers' receipt of high-cost funding.
>
> NASUCA stands by the assertion that the Criterion Study has not been refuted. On August 30, 2007, Criterion Economics filed a response to the criticisms of the Study. The response states that the Study did not include roaming coverage; that the coverage maps are accurate; that, for the purpose of the Study – to show whether unsubsidized carriers are serving areas also served by subsidized carriers – the timing of entry was simply irrelevant; and that the Study accurately considered where support was received. Based on this response, Criterion reiterated its conclusions that "(1) [I]n study areas where they receive funding, wireless CETCs serve fewer customers than unsubsidized wireless carriers; (2) wireless CETCs provide incremental coverage to only about two percent of households in these study areas; and [most importantly from NASUCA's perspective] (3) there is no statistically significant relationship between the subsidies received by wireless CETCs and either the extent of coverage or the number of choices available to customers in subsidized areas."[64]

Thus support for CETC has not been proven to be needed.. And such support could be eliminated, with the funds being used for the CAF, without any significant harm to the public interest.

It could be argued that eliminating CETC support violates 47 U.S.C. § 214(e)(2), which requires the designation of multiple ETCs in non-rural carriers' service areas (and allows such designation in rural carriers' service areas). But given the Commission's and the law's consistent distinction between wireline service and wireless service,[65] eliminating wireless CETC funding would not violate that principle.[66] And, indeed, there is nothing in § 214 or § 254 that requires funding of every ETC.[67]

It could also be argued that eliminating support for CETCs is in violation of the "competi-

[64] NASUCA ex parte (August 17, 2009) at 3-4 (citations omitted).

[65] See 47 U.S.C. § 332.

[66] Indeed, as the Joint Board has recognized, separate funding for wireless in a Mobility Fund would be appropriate.

[67] 47 U.S.C. § 254(e) states that only ETCs can receive federal funding, but does not say that the Commission is required to fund every ETC.

tive neutrality" principle. But it should be recalled that the principle does not appear in the Act; it was created by the Commission in the *USF First Report and Order*.[68] And again, elimination of support for **wireless** CETCs does not even violate the "competitive" neutrality principle.[69]

The Commission should (in order of diminishing preference) 1) eliminate high-cost support for all CETCs (in order to avoid subsidizing competition); 2) eliminate support for wireless CETCs; or 3) eliminate the identical support rule. These funds could be better used for deployment of broadband in unserved areas.

V. NASUCA PROPOSALS

In the NPRM, the Commission asks for "other proposals to eliminate or reduce funding levels in the legacy high-cost support mechanisms…."[70] The Commission "encourage[s] parties that submit alternative proposals to identify specific rule changes and quantify the impact of such changes."[71]

Attached to these comments are excerpts from prior NASUCA filings, which pretty much cover the map with regard to limiting the size of the high-cost fund.[72] NASUCA has not, however, identified the rule changes required, much as the Commission itself did not identify specific rule changes in its proposals in the NPRM.[73]

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[68] See *USF First Report and Order*, ¶ 47.

[69] Further, the current system is not competitively neutral, because of the "identical support" rule. See NPRM, n.133.

[70] Id., ¶ 62. The Commission states that the purpose of this effort is "to transition to efficient funding levels in the Connect America Fund…." (id.), but it should be clear that gaining efficiencies in the legacy high-cost fund does not guarantee efficient funding for broadband deployment.

[71] Id.

[72] The excerpts themselves cite to other relevant NASUCA filings.

[73] NASUCA would note the lack of Commission response to its prior proposals as another reason not to attempt to embody the proposals in rules.

The first attachment is excerpts from NASUCA's July 2008 response to the Commission's May 2008 request for parties to refresh the record in a number of dockets. NASUCA met the Commission's request, and indeed, added to the list of dockets that should have been considered relevant to the request. The excerpts in the attachment are those that are relevant to the inquiry here. The fact that the proposals are two years old at this point does not make them less relevant, given the lack of change to the elements of the HCF in the interim.

The second and third attachments were submitted to the Commission as part of a NASUCA ex parte filing on April 6, 2007. One (Attachment B here) summarizes NASUCA's specific proposals for constraining the growth of the high-cost fund, as part of broader recommendations for constraining the USF as a whole. Attachment C addresses one specific issue: whether the HCF should support more than a single line per household.[74]

Again, these ideas remain valid because of the lack of fundamental change to the high-cost program since they were submitted to the FCC. In some instances, the submissions have been updated (and the updates are highlighted in the attachments); in other instances, no update has been made.[75]

NASUCA looks forward to reviewing any new ideas submitted by other commenters for extracting efficiencies from the HCF. Given past experience, however, we expect others to do as NASUCA has done: repeat previous proposals in hopes that the Commission will be more receptive than it has been in the past.

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[74] To some extent, this issue is less necessary to address, given the continuing decline in wireline second lines and the Commission's apparent intention to eliminate support for CETCs, most of which are wireless carriers. (See Section III.E., supra.) And Congressional opposition for eliminating support for more than one line per household has continued. But if the latter is removed, and the Commission does not eliminate CETC support, addressing the question of supporting multiple lines per household will need to be considered.

[75] This includes, despite the Commission's request (NPRM, ¶ 62), a lack of updating of the projections of savings from the adoption of NASUCA's proposals for the rural high-cost fund. This has proved to be beyond NASUCA's resource capabilities at this point.

VI. CONCLUSION

NASUCA once again, on behalf of the consumers that its members represent, appreciates the opportunity to make these views known to the Commission. As stated before, the task before the Commission is a daunting one; it is to be hoped that, this time around, the Commission will act on some of these proposals.

Respectfully submitted,

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APPENDIX A
EXCERPTS FROM NASUCA COMMENTS TO REFRESH THE RECORD
(JULY 7, 2008)

(NOTE: CERTAIN UPDATES ARE INCLUDED, IN *BOLD ITALIC TYPE*; FOOTNOTE NUMBERING DOES NOT CORRESPOND TO ORIGINAL DUE TO DELETION OF TEXT.)

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

High-Cost Universal Service Support	)	WC Docket 05-337
Federal-State Joint board on Universal Service	)	CC Docket 96-45
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Comprehensive Review of the Universal service Fund Management, Administration, and Oversight	)))	WC Docket No. 05-195
Lifeline and Link-Up	)	WC Docket No. 03-109
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
Schools and Libraries Universal Service Support Mechanism	))	CC Docket No. 02-6
Intercarrier Compensation Reform	)	CC Docket No. 01-92
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	))))	CC Docket No. 00-256
Access Charge Reform	)	CC Docket No. 96-262
Intercarrier Compensation for IP-Bound Traffic	))	CC Docket No. 99-68
Jurisdictional Separations and Referral to the Federal-State Joint Board	))	CC Docket No. 80-286

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES TO REFRESH THE RECORD

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July 7, 2008

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COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES TO REFRESH THE RECORD

I. INTRODUCTION AND SUMMARY

A. INTRODUCTION

In a press release dated May 2, 2008, the Federal Communications Commission ("FCC" or "Commission"), having just instituted a cap on the amount of federal universal service funding going to competitive eligible telecommunications carriers ("CETCs"), acknowledged that the purpose of the cap was to give the Commission time to consider the breadth of universal service issues. The Press Release also invited interested persons to "refresh the record" on universal service and/or intercarrier compensation reform issues,[1] and urged such refreshing to occur "promptly."[2]

With this filing, the National Association of State Utility Consumer Advocates

[1] "Interim Cap Clears Path for Comprehensive Reform, Commission Poised to Move Forward on Difficult Decisions Necessary to Promote and Advance Affordable Telecommunications for All Americans," FCC Press Release (May 2, 2008) ("Press Release"). Given the magnitude of the issues involved here, it is incongruous that the announcement was made in an informal press release.

[2] Id. Considering the sparseness of comments filed in response to the Press Release thus far, this filing does not seem to be tardy.

("NASUCA")[3] replies to the invitation. NASUCA's principal response is to remind the Commission of NASUCA's positions on numerous as-yet-unresolved issues.[4]

In its Press Release, the Commission identified the following dockets that commenters should address:

- *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 ("01-92);
- *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 ("96-98");
- *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 ("96-45");
- *Universal Service Contribution Methodology,* WC Docket No. 06-122 ("06-122");
- *High-Cost Universal Service Support,* WC Docket No. 05-337 ("05-337"); and
- *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195 ("05-195").

The Commission further stated that other proceedings that raise these and related issues include:

- *Lifeline and Link-Up,* WC Docket No. 03-109 ("03-109")
- *Rural Health Care Support Mechanism*, WC Docket No. 02-60 ("02-60")

[3] NASUCA is a voluntary national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[4] A number of parties have already submitted "refreshments" of the record in the various proceedings. These include filings by the Rural Alliance (June 12 and June 27, 2008), urging adoption of the Missoula Plan; by the Organization for the Protection and Advancement of Small Telephone Companies (May 27, 2008), attaching a white paper on the financial future of rural telephone companies; and by Sprint Nextel (May 12, 2008), including Sprint Nextel's universal service proposal. The latter was addressed by NASUCA in reply comments filed June 2, 2008 in 05-337/96-45. Response to the Rural Alliance filings is found below in the discussion of the Missoula Plan.

- *Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6 ("02-6");

- *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256 ("00-256");

- *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21 ("97-21")

- *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286 ("80-286")

In addition to the dockets that the Commission identifies, NASUCA also recommends that the Commission consider the issues under investigation in *Just and Reasonable Rates for Local Exchange Carriers*, WC Docket 07-135 ("07-135") and *Access Charge Reform*, CC Docket 96-262 ("96-262"), because these two dockets also raise important issues relating to intercarrier compensation and universal service reform.

NASUCA's interest in these proceedings is that its members represent the customers who are intended to be the beneficiaries of universal service programs and of competition, but also are those who ultimately pay for universal service programs, and who, if regulatory reform goes awry, bear an unfair share of the burden of that reform.

B. SUMMARY

In the dozen years since the enactment of the Telecommunications Act of 1996,[5] thousands and thousands of pages of comments have been filed in the Commission's multiple interrelated proceedings by a wide range of interests (including incumbent and competitive local exchange carriers, wireline and wireless carriers, rural and non-rural carriers, price cap and non-price cap companies, state regulators, users, consumer advo-

[5] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). 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.

cates and others). The comments addressed complex economic and regulatory matters such as assessments on telecommunications services to fund universal service, mechanisms for distributing universal service support, ways to measure progress in achieving universal service, and improvements to current Byzantine intercarrier compensation arrangements. The passage of time, however, has not simplified the tasks before the Commission, but has allowed the airing of diverse views and the evolution of various proposals. In that time, markets have also changed, which has not simplified the problems being addressed.

Some flawed ideas persist, especially the supposed need to replace carriers' lost revenues – lost due to competitive forces or other changes in the industry – with non-bypassable payments directly from customers through the subscriber line charge ("SLC") or indirectly though the universal service fund ("USF"). Other ideas have evolved, such as implementing reverse auctions on a pilot basis rather than as a wholesale substitution for the existing High-Cost Fund ("HCF"), and expanding universal service subsidies to support increasingly essential broadband access for all consumers, including Lifeline participants. Meanwhile, some unexpected developments have appropriately caused policy shifts. The Commission recently capped the funds CETCs receive because the identical support rule did not lead to the intended consequence of networks newly serving unserved areas, but instead led, in most instances, to subsidizing duplicative networks at a cost of more than a billion dollars.

NASUCA acknowledges that the Commission's responsibility to craft a rational universal service policy, particularly one that does not cater to parochial interests, is daunting. NASUCA especially supports efforts to consider the interrelatedness of the

Commission's multiple pending dockets as the Commission seeks to establish coherent and cohesive telecommunications policy. For example, a unified intercarrier compensation plan -- which was one of the Commission's express goals[6] -- should include pricing signals that encourage efficient investment decisions by companies (when considering, for example, whether to deploy their own facilities or to interconnect with other carriers) as well as efficient purchasing decisions by consumers (switched access, for example, should not be priced so high as to inappropriately discourage use of the public switched telecommunications network). A unified intercarrier compensation scheme should also be fair, simple and consistent among industry segments.

The reform of intercarrier compensation bears directly on universal service reform. The FCC correctly stated in the Press Release that "[m]any rural carriers currently collect a significant percentage of their revenues from intercarrier compensation in the form of interstate and intrastate access charges."[7] But the Commission then made the premature conclusion that "[i]f intercarrier compensation revenues are decreased, demand on the Fund increases as offsetting support payments go up."[8]

Although this may be true as a general statement, it is not necessarily true for any individual carrier. Whatever the potential impact of intercarrier compensation reform on carriers' revenue streams (and therefore on the rates they charge for local service), NASUCA urges the Commission to reject the implicit premise that carriers require dollar-for-dollar replacement of lost intercarrier revenues as an integral component of intercarrier compensation or USF reform. A myriad of technological and marketplace devel-

[6] NASUCA remains unconvinced of the urgency to adopt an absolutely unified plan, but steps do need to be taken to rein in the diversity in the current system.

[7] Press Release at 2.

[8] *Id.*

opments have altered carriers' cost structures and opportunities for generating revenues, which the Commission should consider in tandem with any plans for reform. By way of illustration, using their common local loop platform, carriers are now generating billions of dollars in digital subscriber line ("DSL") revenues that they did not generate five or ten years ago.[9] This new and growing source of revenues should mitigate the impact of intercarrier compensation reform for rural and other carriers.

Furthermore, NASUCA urges the Commission to reject resoundingly a proposition that industry members have been raising for several years in diverse dockets, which seeks to "solve" challenges to reform by raising the SLC.[10] Industry members may find it appealing to "pass the buck" to consumers as a simple way to resolve thorny regulatory problems, but such a tactic would thwart the goal of universal service and unfairly burden consumers. Also, in its deliberations, the Commission should reject efforts by the industry to be shielded from the inevitable revenue-eroding impact of competition.[11] Rather than repeat the many comments and recommendations it has made previously in the nu-

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[9] 05-337/96-45, NASUCA Reply Comments (June 2, 2008) at 15, n. 63; 05-337/96-45, New Jersey Division of Rate Counsel Reply Comments (June 2, 2008) at 37. ***There were 951,583 asymmetric DSL lines in service as of June 2000 and 30,190,000 asymmetric DSL lines in service as of December 2008 (more than a 30-fold increase). Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, High-Speed Services for Internet Access: Status as of June 30, 2007 (March 2008), at Table 1; Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, High-Speed Services for Internet Access: Status as of December 31, 2008 (February 2010), at Table 1.***

[10] For example, in May 2008, Sprint Nextel proposed to shift the entire high cost fund to the subscriber line charge. 05-337/96-45, Sprint Nextel ex parte (May 12, 2008), Attachment. Similarly, the Missoula Plan for intercarrier compensation reform would raise the subscriber line charge to $10.00. 01-92, NARUC Task Force on Intercarrier Compensation, *The Missoula Plan for Intercarrier Compensation Plan* (July 18, 2006), Appendix C at 20. There is a multi-year history of widespread industry efforts to raise the SLC as an integral component of intercarrier compensation plans: A proposal submitted by Qwest in 2005 would have recovered all revenues lost as a result of elimination of intercarrier compensation rates from an uncapped SLC imposed on end users, and a BellSouth proposal similarly would have raised the SLC as part of intercarrier compensation reform. See 01-92, NASUCA Reply Comments (July 20, 2005) at 66, 68-69; 01-92, NASUCA Reply Comments (November 5, 2001) at 5-10.

[11] NASUCA has raised this concern in numerous pleadings. See, e.g., 01-92, NASUCA Reply Comments (July 20, 2005) at 3; 01-92, NASUCA ex parte (February 13, 2006), Attachment.

merous dockets that the Commission identifies, NASUCA highlights herein its major arguments.[12]

II. INTERCARRIER COMPENSATION REFORM

A. DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME, CC DOCKET NO. 01-92

NASUCA has described the details and merits of its proposed gradual plan for intercarrier compensation reform in various pleadings.[13] The key elements of its plan are as follows:

1. **Recognize Cost Causation.** Any plan for intercarrier compensation plan should recognize that a carrier that originates, transits or terminates traffic on the network of another carrier imposes costs on that carrier.[14] As a result, the cost of intercarrier compensation cannot be zero. Nevertheless, carriers remain free to enter into negotiated bill and keep arrangements.

2. **Address Disparate Rates.** The current widely varying rates for intercarrier compensation create arbitrage opportunities and treat different types of carriers differently. The NASUCA proposal would minimize, but not eliminate these disparities over an interim five year period:

   - Each year a new target interstate intercarrier compensation rate would be established by the FCC. Interstate intercarrier compensation rates above this target would step down to the target level; rates below the target rate would be maintained.
   - The final target rate for the fifth year would be $0.0055 per minute.
   - The FCC could impose a different final target rate for rural carriers, such as $0.0095 per minute.

[12] NASUCA has submitted hundreds of pages of comments in these various dockets. This pleading highlights some of NASUCA's major analyses and recommendations, but should not be construed as a complete presentation of the many, in-depth analyses and recommendations provided previously by NASUCA to the Commission. NASUCA incorporates by reference its numerous filings submitted in the dockets identified at the outset of these comments.

[13] See, e.g., 01-92, NASUCA Reply Comments (July 20, 2005) at 71-72; 01-92, NASUCA ex parte (December 14, 2004); 01-92, NASUCA ex parte (February 13, 2006).

[14] Only with regard to originating traffic is it appropriate for a carrier to recover its costs entirely from its own customers; transiting and terminating traffic both involve one carrier's customers imposing costs upon another carrier.

- States would be encouraged to match the target rate for intrastate rates. However, each state would retain authority to reach the target rate in its own way.
- As the disparity among intercarrier compensation rates is reduced, and as the total amount of revenue at issue declines, carriers will have greater incentive to enter into negotiated bill and keep arrangements. Incentives to bypass the public switched telephone network ("PSTN") will also be reduced.

3. **No Final Solution.** With due respect for the uncertainty of the future of the telecom market and telecom technology, NASUCA believes that the FCC should take steps now to minimize intercarrier compensation as a problem. However, NASUCA does not believe that a final solution is advisable or possible. The FCC should assess the situation at the end of five years to determine if additional measures are necessary with regard to intercarrier compensation.

4. **Maintain Current Edge Definitions and Wholesale/Retail Relationships.** The NASUCA proposal does not require any change in the current definition of network "edges" or wholesale and retail relationships. The reduction in intercarrier compensation target rates over time should also reduce arbitrage opportunities related to network and/or relationship definitions.

5. **Respect State Jurisdiction.** The federal/state jurisdictional dichotomy as set forth in federal law would be respected. The FCC would exercise control over interstate rates and provide guidance to states with regard to annual target intercarrier compensation rates. States would retain control over intrastate local and access rates.

6. **Maintain Current USF Mechanisms.** NASUCA's intercarrier compensation target rates will maintain intercarrier compensation as a revenue source for carriers, although at a reduced level. If the reduction in intercarrier compensation rates creates a demonstrated need for additional interstate funding for rural carriers, it should be recovered through existing universal service mechanisms.

7. **No increase in SLC Caps or Mandatory Increase in Local Rates.** Any demonstrated need for additional intrastate funding created by reduction in intercarrier compensation rates should be recovered through local rates or state universal service funds, as determined by the state.

III. UNIVERSAL SERVICE

A. OVERVIEW

….

NASUCA has participated in the many phases of the Commission's investigation of universal service, and through that participation has submitted voluminous detailed analyses of USF support, local loop costs and local rates as well as specific and comprehensive recommendations for reform. Most recently, the Commission sought comment on comprehensive reform of high cost universal service support,[15] specifically on the November 2007 Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board").[16] NASUCA addressed the Joint Board's recommended decision, and, among other things, indicated its support for the proposed cap on high cost support, and for creation of a three-part fund focusing on broadband, mobility and provider of last resort responsibilities respectively.[17] Rather than reiterate the comprehensive analyses and recommendations from its recent filings, NASUCA incorporates them here by reference.[18]

B. UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY, WC DOCKET NO. 06-122

…

C. HIGH-COST UNIVERSAL SERVICE SUPPORT, WC DOCKET NO. 05-337

NASUCA's very recent comments in response to the *Comprehensive Reform Recommended Decision* comprehensively discussed the issues in 05-337. Thus little re-

[15] 05-337/96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. January 29, 2008) ("*Comprehensive Reform NPRM*").

[16] 05-337/96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) ("*Comprehensive Reform Recommended Decision*").

[17] 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2008) at 5.

[18] Id.; see also 05-337/96-45, NASUCA Reply Comments (June 2, 2008).

freshing is necessary, other than the following brief reiteration: Presently, approximately $4.3 billion in high cost support is distributed to CETCs, non-rural and rural carriers throughout the country,[19] with approximately $1 billion going to wireless CETCs, and the balance going to wireline incumbent carriers. NASUCA commends the Commission for its recent *Comprehensive Reform NPRM* regarding comprehensive HCF reform and supports the recommended overall cap of $4.5 billion on high-cost funding.[20] NASUCA also supports the Joint Board's proposed establishment of new separate funds for broadband, mobility, and providers of last resort.[21] As NASUCA stated, "the framework that has been put before the FCC represents an imaginative, comprehensive, and far-reaching reform that the FCC should adopt."[22] NASUCA also reiterates its recommendations that:

> The goal of all three of the funds should be that support will be available only for high-cost areas where, absent support, the services would not be available at all, would not be available at affordable rates, or would not available at rates comparable to those charged for the services in urban areas. And only a single network should be supported in any specific area.[23]

Furthermore, as much as possible, the HCF should be based on the forward-looking costs of an efficient network, but the funding should not exceed a recipient's embedded costs.[24] The antiquated model that the Commission presently uses desperately requires updating. Further, the Commission should condition distribution of universal service funds based on an appropriate demonstration that the carrier is providing quality

[19] According to USAC, the actual 2007 HCF disbursements were $4.29 billion. USAC 2007 Annual Report at 43.

[20] Comprehensive Reform Recommended Decision, ¶ 26.

[21] 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2008). See id., Appendix 1 for details regarding NASUCA's specific suggestions for a transition from the existing wireless funding under the high-cost mechanism to the Mobility Fund.

[22] Id. at 4.

[23] Id. at 58.

[24] Carriers that have "disinvested" in their networks would have embedded costs below their modeled costs.

services at reasonable rates throughout their supported areas.

Similarly, NASUCA's recent comments on the identical support rule and on the use of reverse auctions to determine high-cost universal service support require no re-freshing.[25] To the extent necessary, NASUCA incorporates those comments here.

D. FEDERAL STATE JOINT BOARD ON UNIVERSAL SERVICE, CC DOCKET NO. 96-45

NASUCA has submitted comments in numerous phases of the Commission's proceedings in 96-45, most recently in its comprehensive filings submitted on April 17, 2008 and June 2, 2008. NASUCA incorporates those comments by reference.

E. COMPREHENSIVE REVIEW OF THE UNIVERSAL SERVICE FUND MANAGEMENT, ADMINISTRATION AND OVERSIGHT, WC DOCKET NO. 05-195

…

F. LIFELINE AND LINK-UP, WC DOCKET NO. 03-109

….

IV. OTHER DOCKETS

A. JURISDICTIONAL SEPARATIONS AND REFERRAL TO THE FEDERAL-STATE JOINT BOARD, CC DOCKET NO. 80-286

Without adequate access to information about carriers' costs and revenues, the Commission cannot assess the impact of high cost and intercarrier compensation reform on the economic viability of the nation's carriers. Furthermore, unless and until the Commission ensures that carriers are assigning and allocating proper amounts of investment and expenses to unregulated services, it would be entirely inappropriate to raise subscriber line charges, whether as a replacement for supposed lost revenues or for any other reasons.

In its detailed comments and supporting documents submitted in 80-286, NASUCA demonstrated, among other things, how the information asymmetry that exists between the Commission and the carriers it regulates harms consumers. NASUCA also demonstrated that carriers largely get a "free ride" over the common network in their deployment of lucrative broadband services. As NASUCA demonstrated, "[c]onsumers of intrastate regulated services are bearing unfairly the cost of **billions of dollars** of carriers' investment in plant and related expenses that should be assigned and allocated to unregulated lines of business and interstate services."[26] NASUCA further explained:

> Carriers' forays into unregulated lines of business, which "free-ride" over a common platform (without bearing a commensurate share of common costs), likely yield excessive interstate regulated rates. Therefore, the Commission should re-initialize interstate rates. In particular, the most immediate impact on consumers would come from reevaluating the subscriber line charge ("SLC"), which is an interstate rate that customers pay as part of their local service bill. **NASUCA submits that if carriers properly allocated and assigned costs to unregulated services, the SLC -- which, for the BOCs and other price cap carriers, is currently based on their CMT revenue requirement -- would likely decline, as the cost of regulated services would decline**.[27]

NASUCA's earlier recommendation continues to be relevant:

> Most importantly, the Commission should reject the proposal, set forth in the 'Missoula Plan' recently filed in CC Docket No. 01-92, to increase SLCs as a means of revenue recovery, unless and until a close examination of carriers' properly allocated costs justify such an increase. Such an assessment depends critically on the Commission's findings about the Bells' exorbitant overearnings in the pending special access proceeding, and a careful review of the Bells' assignment and allocation of costs to unregulated lines of business.[28]

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[25] 05-337/96-45, NASUCA Initial Comments on Reverse Auctions (April 17, 2008); 05-337/96-45, NASUCA Comments on the Identical Support Rule (April 17, 2008).

[26] 80-286, Initial Comments of NASUCA, New Jersey Division of Rate Counsel, and Maine Office of the Public Advocate (August 22, 2006) ("NASUCA, et al. Initial Comments") at 4 (emphasis added).

[27] Id. at 9 (cites omitted; emphasis added).

[28] Id. at 9-10 (cites omitted).

As cited by NASUCA, numerous consumer advocates and state public utility commissions emphasized the need for separations data.[29] Similarly, in an AT&T forbearance proceeding[30] (and the similar Verizon, Frontier, Embarq and Qwest forbearance proceedings[31]), numerous commenters explained the importance of cost and other accounting data.[32] As stated by NASUCA, et al:

> Carriers' efforts to discourage regulators from examining and enforcing proper cost assignment and cost allocation are thinly disguised efforts to protect carriers' unregulated operations from bearing a fair share of the cost of common network facilities and resources. Carriers' economic incentive is to maximize the percentage of the cost of the common network that they recover from regulated, non-competitive services, and to minimize the percentage that they assign and allocate to their unregulated services. Therefore, since carriers lack any compelling reason to comply with existing separations requirements and to contribute to separations reform, Commission and state review and reform of ILECs' cost accounting is essential to protect consumers from anticompetitive and excessive rates.[33]

NASUCA therefore urges the Commission to reject the pending petitions

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[29] See generally, 80-286, Reply Comments of NASUCA, New Jersey Division of Rate Counsel, and Maine Office of the Public Advocate (November 20, 2006) ("NASUCA, et al. Reply Comments").

[30] The FCC granted AT&T forbearance from cost assignment rules in April. In the Matter of Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket 07-21; Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket 05-342, Memorandum Opinion and Order, FCC 08-120 (rel. April 24, 2008). NASUCA has appealed this decision. NASUCA v. FCC, D.C. Cir. Case No. 08-1226. In addition, Sprint Nextel Corporation, Ad Hoc Telecommunications Users Committee, COMPTEL, and Time Warner Telecom Inc. filed a joint Petition for Reconsideration of the FCC's Order on May 27, 2008.

[31] In the Matter of Petition of Verizon For Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; In the Matter of Petition of Embarq Local Operating Companies for Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; In the Matter of Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; In the Matter of Petition of Qwest Corporation for Forbearance From Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c), WC Docket No. 07-204 ("07-273/07-204").

[32] See, e.g., 07-273, Joint Reply Comments of the New Jersey Division of Rate Counsel and NASUCA (March 17, 2008), at 8; 07-21, NASUCA Reply Comments (April 9, 2007) at 3, citing numerous commenters.

[33] 80-286, NASUCA, et al. Reply Comments (November 20, 2006) at 3.

for forbearance from cost accounting and other record-keeping requirements in 07-273 and 07-204.

In its separations reply comments, NASUCA discussed the relationship between high-cost support and separations data:

> - High Cost Loop Support "depends on 'study area average unseparated loop cost per working loop.' This in turn depends upon separations rules (but not the allocation rules) used to categorize outside plant and central office facilities)."
>
> - "The 'Local Switching Support' program depends upon each company's 'projected annual unseparated local switching revenue requirement.' This number, in turn, depends upon the separations rules to categorize plant within central office plant accounts."
>
> - "The 'Interstate Common Line Support' program depends on each carrier's interstate 'Common Line Revenue Requirement.' This in turn depends on the costs assigned to the interstate jurisdiction by separations rules."
>
> Contrary to assertions in industry's initial comments, and as the Idaho PUC aptly explains, separations continues to be relevant and important to enable regulators to achieve various important goals, such as universal service, just and reasonable rates, assessing requests for exogenous treatment, and evaluating price cap plans.[34]

NASUCA also explained the link to interstate access charges:

> For example, the large incumbent carriers have used the exogenous change process to significantly increase their interstate access rates. The CALLS Order reduced the average traffic sensitive rate for the large carriers to $0.0055. Currently only one carrier, Qwest, has a rate that has remained at the level required by the CALLS Order. The other large carriers' current rates are substantially above the CALLS $0.0055 average traffic sensitive rate.[35]

NASUCA demonstrated comprehensively in other pleadings that, if the Commis-

[34] Id. at 19-20, citing and quoting initial comments of Idaho Public Utilities Commission at 8; citing also Iowa Utilities Board at 4, and Joint Comments of Vermont Public Service Board, Vermont Department of Public Service and Nebraska Public Service Commission at 9.

[35] 80-286, NASUCA et al. Reply Comments (November 20, 2006) at 20, citing *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, FCC 00-193 (rel. May 31, 2000) ("*CALLS Order*"), ¶¶140-159; see also 47 C.F.R. §61.3(e) and (qq).

sion decides to abandon the separations process, it is essential that federal and state regulators *first* re-initialize rates. Otherwise, the present interstate and intrastate rate levels and rate structures will perpetuate unfair cost recovery and cross-subsidization by regulated services of competitive offerings.[36] Furthermore, as a matter of law and sound policy, the Commission should reject carriers' attempt to preclude states from assigning and allocating costs to the interstate and to unregulated categories.[37]

B. MULTI-ASSOCIATION GROUP (MAG) PLAN FOR REGULATION OF INTERSTATE SERVICES OF NON-PRICE CAP INCUMBENT LOCAL EXCHANGE CARRIERS, CC DOCKET NO. 00-256/IN THE MATTER OF ACCESS CHARGE REFORM, CC DOCKET NO. 96-262

In 2000, in the *CALLS Order*, the Commission created interstate access support ("IAS") (as well as SLC increases) to offset reductions in interstate access charges for price-cap companies.[38] The *CALLS* universal service support was supposed to have lasted only five years and have ended July 1, 2005[39]; clearly, that did not happen. Furthermore, unlike the high cost model support, which is based on forward-looking costs, IAS is based on a carrier's embedded costs, and thus does not assess efficient costs. Interstate common line ("ICL") support for rate-of-return carriers similarly represents a "revenue make-up" corresponding with the access charge reductions that the *MAG Order* required.[40] ICL support is also based on embedded costs.

IAS was intended to replace revenues that ILECs lost from the reduction in inter-

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[36] 80-286, NASUCA et al. Initial and Reply Comments (August 22, 2006 and November 20, 2006), see also 80-286, NASUCA et al. Reply Comments (November 20, 2006) at 26.

[37] 80-286, NASUCA et al. Reply Comments (November 20, 2006) at 49-54.

[38] CALLS Order, ¶ 2.

[39] Id., ¶ 198.

[40] 00-256, *et al.*, Second Report and Order, *et al.*, FCC 01-304, 16 FCC Rcd 19613 (2001) (*"MAG Order").*

state access charges, and yet interstate minutes of use have declined steadily.[41] IAS -- "frozen in time" -- is replacing a declining revenue stream. NASUCA reiterates its recommendation that the Commission eliminate IAS and consider the purpose and continuing need for ICL.[42] MAG support and CALLS support should be eliminated for the reasons discussed in NASUCA's various filings.[43]

V. CONCLUSION

The Commission's universal service and intercarrier compensation programs undeniably require reform. NASUCA supports timely and rational changes, but urges the Commission:

> Not to burden consumers by allowing the industry to increase subscriber line charges as a way to "remedy" flaws in the universal service system or as a way to make up lost revenues resulting from intercarrier compensation reform.
>
> To reject incumbent carriers' efforts to shield themselves from the impact of competition through "make-whole" revenue proposals.
>
> To consider, as it assesses the impact of reform on carriers, the substantial and increasing source of ILEC revenues derived from broadband services.
>
> To ensure that any reform yields affordable rates for voice service and broadband access for all consumers, including Lifeline participants.
>
> To encourage industry and state efforts to increase Lifeline participation and the quality of basic local telephone service.

Respectfully submitted,

/s/ David C. Bergmann
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Assistant Consumers' Counsel
Chair,
NASUCA Telecommunications Committee

[41] See 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2007) at 49.

[42] Id. at 50.

[43] Id.; see also 05-337, NASUCA Reply Comments (November 8, 2006), at 7-8.

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July 7, 2008

APPENDIX B: SUMMARY OF NASUCA USF POSITIONS
(from NASUCA ex parte 4/6/07)

(NOTE: FOOTNOTE NUMBERING DIFFERS FROM ORIGINAL DUE TO OMITTED TEXT; UPDATES IN *BOLD ITALIC TEXT*)

The key issues for the USF are the current level of the fund contribution factor and the need to restrain the growth in fund levels, while ensuring that the USF is used for the purposes directed by the Telecommunications Act of 1996. In order to preserve and advance universal service,[1] the first task is to preserve it.

A key sub-issue of the level of the fund is the current provisions of the rules that support multiple lines of multiple carriers per customer. NASUCA submits that, consistent with the Act, federal support should go only to a single line per customer. In this regard, NASUCA strongly supported the recommendation of the Joint Board in the February 27, 2004 Recommended Decision.[2] A separate summary of this specific issue is found in Appendix B, which addresses the actions of Congress in various budget bills to take this tool for needed reform out of the Commission's tool belt.

In addition, NASUCA urges the Commission to limit the growth in the USF by, among other things, restraining the support for ETCs generally. Further, NASUCA urges the Commission to adopt NASUCA's proposals for separately improving the high-cost support mechanisms for non-rural carriers and for rural carriers, which recognize the fundamental differences between the two classifications of carriers.

NASUCA also urges the Commission to continue the collection mechanism that is fairest to the customers who ultimately pay for the USF -- a collection mechanism that is based on interstate and international usage, rather than on mere access to the interstate and international networks.[3] There is no need to move to a numbers- or connections-based contribution mechanism.

I. CONTROLLING THE CONTRIBUTION FACTOR

B. Controlling the size of the fund

The total requirements of the fund include those of the high-cost fund (for rural and for non-rural carriers), the schools and libraries fund, the low-income fund and the rural telemedicine fund.

We can look at the plan components in terms of their size. Together, the components make up the current $7 billion fund. The table on the next page shows the growth in the plan segments over time.

[1] 47 U.S.C. § 254(b).

[2] Recommended Decision, FCC 04J-1, 19 FCC Rcd 4257 (2004), ¶¶ 56-71.

[3] It is not necessary at this time to seek the legislative changes that would be required in order to assess intrastate revenues for federal universal service purposes. The members of NASUCA have varying views on whether the use of intrastate revenues for federal universal service purposes would be appropriate.

Components of the Universal Service Fund ($ millions)

Quarterly	Rural High-Cost	Schools and Libraries	Non-rural High-Cost	Low Income Support	Rural Health Care	Total
1Q2000 (a)(b)	$436.9	$491.9	$58.3	$124.4	$2.5	$1,114.0
1Q2001 (a)	$448.8	$527.4	$218.4	$164.4	$1.8	$1,360.8
1Q2002 (a)	$468.7	$559.5	$214.3	$158.7	$4.8	$1,406.1
1Q2003	$605.1	$526.3	$221.0	$186.1	$3.2	$1,541.7
1Q2004	$663.4	$511.7	$226.1	$163.3	$14.7	$1,579.1
1Q2005	$717.2	$822.9	$259.7	$195.9	$11.8	$2,007.5
1Q2006	$769.5	$498.0	$258.7	$234.7	$7.9	$1,768.8
1Q2007	$799.4	$454.9	$266.7	$168.6	$37.7	$1,727.3
1Q2008	$884.8	$513.9	$256.6	$207.1	$21.3	$1,883.7
1Q2009	$827.3	$495.3	$229.5	$186.0	$31.8	$1,769.9
1Q2010	$881.1	$595.0	$225.2	$356.3	$57.2	$2,114.8
Annualized						
Year 2000	$1,747.6	$1,967.6	$233.2	$497.6	$10.0	$4,456.0
Year 2001	$1,795.2	$2,109.6	$873.6	$657.6	$7.2	$5,443.2
Year 2002	$1,874.8	$2,238.0	$857.2	$634.8	$19.2	$5,624.4
Year 2003	$2,420.4	$2,105.2	$884.0	$744.4	$12.8	$6,166.8
Year 2004 (c)	$2,653.6	$2,046.8	$904.4	$653.2	$58.8	$6,316.4
Year 2005	$2,868.8	$3,291.6	$1,038.8	$783.6	$47.2	$8,030.0
Year 2006	$3,078.0	$1,992.0	$1,034.8	$938.8	$31.6	$7,075.2
Year 2007	$3,197.6	$1,819.6	$1,066.8	$674.4	$150.8	$6,909.2
Year 2008	$3,539.2	$2,055.6	$1,026.4	$828.4	$85.2	$7,534.8
Year 2009	$3,309.2	$1,981.2	$918.0	$744.0	$127.2	$7,079.6
Year 2010	$3,524.4	$2,380.0	$900.8	$1,425.2	$228.8	$8,459.2
Growth from 2000 to 2010	101.7%	21.0%	286.3%	186.4%	2188.0%	89.8%

(a) Rural High-Cost Support does not include the Interstate Common Line Support component for these years.
(b) Non-rural high-cost support does not include Interstate Access Support.
(c) On February 26, 2004, the FCC released an Order and Second Further Notice of Proposed Rulemaking that merged Long Term Support with Interstate Common Line Support. As a result, LTS was eliminated effective July 1, 2004.

Source: Contribution Factor Public Notices

In order of size, the components, together with NASUCA's primary recommendations, are:

1. Rural high-cost support ($***3.5 billion for 2010, 41% 0f the total $8.5 billion***) -- NASUCA's primary recommendation for the rural and non-rural high-cost funds has long been to restrict support to a single line per household (see Appendix B).[4] Likewise for both funds, the Commission should apply rigorous tests to the designation of all ETCs, including CETCs (see below). Further, CETC support should be based on the CETCs' costs, not on the embedded costs of the rural carriers as allowed by the current system.[5]

Specific to the rural fund, larger rural carriers with 100,000 or more access lines should be transitioned over five years to a support system based on forward-looking costs. These large rural carriers have much more in common with the smaller non-rural carriers that currently base support on forward-looking costs, using the FCC's Synthesis Model, than they do with the smallest rural carriers. Companies under common ownership within a state should be combined for this analysis.[6]

The current non-rural mechanism supports 76% of a company's costs that are in excess of two standard deviations of the national average of forward-looking costs for non-rural companies. By contrast, the current rural high-cost mechanism begins to provide support at 115% of the national average cost, progressively increasing to cover 75% of the carrier's costs above the benchmark. Such a "stair-step" support function, rather than the simple "on/off" function used for non-rural carriers, would be more appropriate for the larger rural carriers that would use forward-looking costs under NASUCA's proposal. The stair-steps should be the same as those used for the current rural mechanism.

In order to further recognize the distinctions between even the larger rural carriers and the non-rural carriers, the benchmark upon which support is based should be the nationwide average of the peer group of larger rural carriers, those with 100,000 or more access lines within a state, instead of the statewide average benchmark used for the non-rural carriers.[7] Support for rural carriers -- both large and small -- should be determined by comparing each company's costs to the relevant benchmark.

As of 2005, NASUCA calculated that the results of these proposals would be an approximate $200 million decrease in the rural high-cost fund, spread out over five years. The bulk of this change (a net $146 million reduction) results directly from transitioning the larger rural carriers to forward-looking costs. Another $39 million

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[4] Estimates of the cost savings to the rural and non-rural carrier funds from the move to supporting only primary lines are included in Appendix B.

[5] Given the uncertainty over CETC costs, no attempt to estimate savings from these changes has been made.

[6] Due to this combining, some rural carriers will lose local switching support as a result of exceeding the 50,000 access line threshold for that form of support. Similarly, rural study areas of companies that have non-rural study areas within a state should be combined with the non-rural areas and excluded from the rural sample.

[7] The differences between rural carriers as a whole and non-rural carriers are significant, and the Commission should exercise caution in addressing the question of whether and how to combine the two mechanisms. NASUCA Comments (October 15, 2004) at 7-9, 15-19.

comes from combining study areas of rural carriers such that they no longer meet the 50,000 access line threshold for local switching support. And $15 million comes from merging study areas of rural carriers with the study areas of their non-rural affiliates.

2. Schools and libraries support

….

3. Non-rural high cost support (***$901 million for 2010, 10.6% of the total***): As previously noted, the Commission should continue to treat non-rural carriers (and large rural carriers) differently from the smaller rural carriers. Primary line and CETC restrictions should apply for non-rural carriers as well. The Commission should continue the current practice of statewide cost averaging for non-rural carriers. Where statewide average cost for a non-rural carrier is below the relevant federal benchmark,[8] it is appropriate for support, if any, to be an intrastate issue decided by individual states.

NASUCA has presented two alternatives for the Commission's consideration.[9] Both alternatives are based on the fact that the key purpose of the non-rural high-cost fund is to meet the statutory principle that non-rural companies' rates in the high-cost and rural portions of their service territories should be "reasonably comparable" to rates in urban areas. Having this as the key purpose is consistent with the requirement of *Qwest II* that the Commission shall consider each of the principles in 47 U.S.C. § 254(b) in developing universal service policies.[10] Both of NASUCA's proposals replace the current three pieces of the non-rural high-cost USF with a single fund.

In order to determine whether rural rates are reasonably comparable to urban rates, it is necessary to know what current rural and urban rates are.[11] In the NASUCA Non-rural High-Cost Comments, NASUCA presented data to the Commission that encompassed rates as of February 2006 in more than 11,000 wire centers nationwide -- urban, rural, and in between -- served by non-rural carriers. NASUCA did not, however, propose a specific standard for comparability.

NASUCA's first alternative proposal moves in a new direction that simplifies the way in which high-cost support for non-rural carriers is determined. The second alternative proposal retains much of the current mechanism, while attempting to meet the concerns on which the Tenth Circuit based its rejection and remand of prior Commission orders; in that respect it is more complicated than either the current mechanism that was overturned in *Qwest II* or the first NASUCA alternative.

NASUCA's first alternative proposal for non-rural carrier support begins by determining a benchmark based on national urban average per-line **revenue**, being revenue from all sources, not just basic service. This includes basic service, subscriber line charges ("SLCs"), optional/vertical services, access charges, and advanced services, in recognition that the network is constructed to provide multiple services, both traditional and advanced. Then, the basic service **costs** in all wire centers are

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[8] 96-45, Order on Remand, FCC 03-249 (rel. October 27, 2003) ("*Order on Remand*"), ¶¶ 49, 64.

[9] See NASUCA Comments (March 27, 2006) ("NASUCA Non-rural High-Cost Comments").

[10] *Qwest II*, 398 F.3d at 1234.

[11] It is also necessary to define urban "areas" and rural "areas," in order to know which rates are which. NASUCA's proposals did so by using Census Bureau definitions.

compared to that national urban average revenue. Support is then awarded to all wire centers with costs that are higher than the national urban revenue benchmark.[12] The presumption contained in this proposal is that areas with costs that are greater than the urban revenue benchmark **will find it impossible** to have basic service rates that are reasonably comparable to urban rates in the absence of support.

NASUCA's second alternative for non-rural carriers begins and ends by looking at rural rates, which federal support is intended to help make reasonably comparable to urban rates. The mechanism first determines **eligibility** for support through an examination of rates. This follows the law and the Tenth Circuit's rulings. Then, following the current mechanism, the **amount** of support is based on costs. That is the appropriate method for apportioning support from the federal USF, placing the primary responsibility for ratemaking on the states, while assisting with support for areas in states that have -- as a whole -- high costs that otherwise would be accounted for in rates. In the end, the support awarded is again compared to the local service rate, in order to judge whether the support produces reasonably comparable rates.

Backstopping the process throughout is a mechanism where individual states can set forth specific conditions that justify providing support in areas that -- through the standard operation of the mechanism -- would not receive support. Here again, NASUCA's second alternative builds on the current system.[13]

NASUCA's second alternative proposal is designed as a gradual, iterative process where the industry, the Commission, the states and consumers learn as the process is implemented. This is consistent with the evolving nature of universal service.[14]

Under the current system, only ten states receive support for their non-rural companies explicitly based on their high costs. Forty states, the District of Columbia and Puerto Rico receive no funding based on high costs, due to the fact that their statewide average costs do not exceed the Commission's benchmarks. Non-rural ILECs in 45 jurisdictions, however, receive interstate access or interstate common line support, which were designed as revenue replacement mechanisms, but fall under the high-cost rubric.[15]

Only Wyoming has requested additional support under the Commission's supplemental mechanism.[16] The state commissions in the other states have not requested funding under the Commission's supplemental mechanism. It would be safe to assume, then, that those commissions believe their rural rates to be reasonably comparable to urban rates under the current benchmark. That is borne out by the rate data submitted by NASUCA. Support in these states can be presumed to be adequate.

[12] All rural and all high-cost wire centers are eligible for support. 47 U.S.C. § 254(b)(3). If an urban wire center happened to be high-cost enough that its costs were greater than the national urban average per-line revenues, it would likely need support to maintain reasonable comparability of rates.

[13] See Order on Remand, ¶ 93.

[14] 47 U.S.C. § 254(c)(1).

[15] USAC filings for 1Q07, Appendix HC01.

[16] CC Docket No. 96-45, "Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier" (December 21, 2004). The Commission has taken no action on Wyoming's request -- other than requesting public comment -- in the more than two years since the Joint Wyoming Petition was filed.

NASUCA's second alternative proposes that the reform of the non-rural high-cost mechanism begin with states that currently have high rural rates for their non-rural carrier(s) but receive no high-cost funding, and then progress to states that currently receive high-cost funds but still have high rural rates. Then states that have reasonably comparable rates but receive large amounts of high cost funds would be reviewed, to determine whether the funding amount is appropriate. A next step would be to review the states that, without the current high-cost funding, would likely have rates that would nonetheless be reasonably comparable; this support would be deemed not needed and could be eliminated.

Under the Commission's current non-rural mechanism, non-rural carriers receive a total of $730 million in funds paid by consumers without any actual requirement to show that the funds result in reasonably comparable rates or, conversely, that without the funds rates would no longer be reasonably comparable. (The currently-required state certifications[17] that follow the determination of support under the current mechanism do little to provide this assurance.) The mechanism must be fixed so that the statutory connection is made.

4. Low income support

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5. Rural health care support

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[17] Order on Remand, ¶ 89.

APPENDIX C: THE USF SHOULD SUPPORT ONLY PRIMARY LINES (from NASUCA ex parte 4/6/07)

(NOTE: UPDATE PRESENTED IN BOLD ITALIC TYPE.)

In late 2004, Congress passed, as one provision in a voluminous revenue bill, a provision that forbade the FCC from implementing a rulemaking that would limit support to a single line per customer. This provision has continued year-by-year, most recently in a continuing spending bill passed in ***September 2009***.[136] By approving this provision as it did, Congress was clearly not making a final and open determination on this issue. For the reasons set forth here, limiting support to a single line per customer would be in the public interest and consistent with statutory law.

In comments filed in May 2003, NASUCA noted that the then-current impact on the fund of serving only primary lines would be to eliminate $350M with the long-run impact being preventing some $2B in growth in the fund. Under these circumstances, those favoring continuing support for multiple lines per household should bear a heavy burden of persuasion.

Statutory purpose: Fundamentally, providing support for multiple lines per household -- whether those are wirelines or wireless connections -- violates the central purpose of § 254 of the Act: that this Commission establish universal service programs to support the basic services designated under § 254(c)(1), and no other services.[137] Section 254(e) says that federal universal support should be used only for the purposes specified in the Act.

Second lines do not meet the test. This is most obviously true for second wirelines, because they do not meet the § 254(c)(1)(A)-(D) tests. They are not vital for the public interest, and they have not been subscribed to by anywhere near a majority of customers exercising their choices in a competitive environment, per § 254(c)(1)(B).

On the other hand, given the number of wireless subscribers, it might be argued that wireless service meets the test of § 254(c)(1)(B) -- being subscribed to by a majority of customers. As the Commission noted in the *Triennial Review Order*, however, wireless service is most appropriately characterized as a supplement to wireline service.[138] That remains true today, in most cases. The true test under § 254(c)(1) is, therefore, not the 234 million wireless access lines[139] -- most of which are used as supplements to wireline service -- but the small percentage of wireless subscribers who use their wireless phones exclusively.[140] This is no majority of consumers.

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[136] ***H.R. 2918, § 104 (continuing appropriations through October 31, 2010.***

[137] See 47 U.S.C. 254(c)(3), which allows the Commission to add other service for schools and libraries and health care providers.

[138] *In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 et al., Report and Order and Order on Remand, FCC 03-36, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), ¶ 445.

[139] According to the Cellular Telecommunications and Internet Association. See http://www.wow-com.com/.

[140] See http://www.cdc.gov/nchs/products/pubs/pubd/hestats/wireless2006/wireless2006.htm (9.6% of adults have only a wireless phone).

Reasons to support all lines are insufficient: Proponents of supporting all lines of all networks have claimed that such support is necessary for:

- Supporting entire networks
- Upgrading and building out new networks
- Promoting mobility
- Funding competitive entry.[141]
- Funding new investment opportunities
- Maintaining revenue streams (or ensuring total cost recovery) for small telephone companies[142]

Although these arguments may describe secondary benefits of universal service support, none of these issues touch on the real purpose for the federal universal service funds: providing basic access to all Americans to basic telecommunications services.

Interestingly, both incumbents and competitors oppose limiting support to only primary lines. The ILECs say that a primary line restriction would not be competitively neutral because they would be harmed; wireless ETCs say that the restriction would not be competitively neutral because they would be harmed. The fact is that limiting support to primary lines will ensure that the high cost support system is competitively neutral for all parties, and that all ETCs will compete for the universal service support.[143]

As proposed by NASUCA, when a CETC is designated in a rural carrier's territory, there should be a freeze on the level of per-line support. This, coupled with limiting support to primary lines, will ensure that the presence of a CETC will not *increase* universal service funding, as is currently the case.

Reasonably comparable rural rates: Those who argue that the USF must support all lines base much of their argument on the Act's goal that rural services and rates be reasonably comparable to urban services and rates. Because urban customers have access to multiple lines from multiple providers, they argue, so must rural customers.

Many have argued that limiting support to primary lines will automatically or inevitably raise the price of second wirelines in rural areas, resulting in second line prices that are no longer reasonably comparable in price to urban second lines. These arguments overlook a number of key factors:

- Second line service has minimal incremental cost.

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141 *Virginia Cellular* and the FCC order moved away from that purpose.

142 Means such as those recommended by the Joint Board (see Recommended Decision at ¶¶ 73-80) may be used to ease the transition away from support for multiple lines for rural carriers.

143 It must be remembered that there will be no competition for universal service support unless and until an additional ETC is designated within a study area. As discussed above, the states and the Commission should restrict the number of ETCs in rural study areas receiving high levels of support.

- In the *Order on Remand*, the Commission determined that rural rates for non-rural carriers that are within two standard deviations of the national average urban rate will be deemed reasonably comparable to urban rates.[144] Using this standard, rural second line rates that are within two standard deviations of the national urban rate for second lines would also be reasonably comparable to urban second line rates.[145] There has been no showing that the withdrawal of federal support from second lines would produce rural second line rates that are in excess of this standard. Despite the specific standard being overturned in *Qwest II*, it does not appear that any reasonable standard would be different in this respect.

- This is particularly so because the rates for second lines remain within the jurisdiction of ratemaking and universal service efforts within the states.

The Act does not direct that rural rates will be equal to urban rates. Rural rates are supposed to be "reasonably comparable" to urban rates. That's all the law directs.

Others have argued that limiting support to primary lines will limit the growth of wireless service. These arguments are also groundless. First, wireless carriers have historically served rural areas and built out their networks without federal support (as contrasted to ILECs that have always had such support in one form or another).

Second, no one makes the claim that rural wireless customers are entitled to receive service at rates that are reasonably comparable to urban wireline rates. The comparison should be to urban wireless rates. There has been no showing that, if support for second lines is eliminated, rural wireless customers will pay rates that are not reasonably comparable to urban wireless rates. Again, there is no requirement that rural rates be *equal to* urban rates.

Serving a single line per household is competitively neutral. In fact, it appropriately requires carriers to compete in order to receive the universal service support intended for the services defined pursuant to § 254(c)(1).

Practical issues: Opponents of a primary line-only support policy argue that it will difficult to determine which line is primary and which lines are not. NASUCA believes that customers should be allowed to choose which line is primary for universal service purposes. Allowing the customer to choose is the ultimate expression of the consumer sovereignty that is supposed to apply in a competitive market. It should also be recalled that concerns over slamming arise only where customers can choose.

Although there may be practical difficulties in transitioning to a primary line support system, these administrative issues can be overcome. Carriers should be required to submit uniform ballots to customers and retain all returned ballots for future audit. Support for the lines of customers not submitting ballots will default to the incumbent carrier. Customers should be permitted to change primary line designation only once every six months. The primary line for customers submitting

[144] Order on Remand, ¶ 38.

[145] Urban second line rates tend to be equal to primary line rates.

multiple ballots should be the first one postmarked. Carriers would report the number of primary lines to USAC on a quarterly basis.

The difficulties in identifying primary lines -- whatever they might be -- do not justify continuing to support all lines. And no one seriously contends that the cost of identifying primary lines outweighs the cost of continuing to support those lines.

In 1996, the Joint Board originally proposed limiting support only to primary lines. Again in 2004 the Joint Board has recommended basing support on primary lines. It is time for the Commission to finally adopt this position, which best carries out the fundamental promise of the Act: affordable access to the public switched network for all Americans -- even those in rural and high-cost areas.

Conclusion: As noted above, in 2003, NASUCA estimated that restricting support to primary lines would save the high-cost fund $336 million ($293 million in wireline second lines -- being 10% of the wireline total of high-cost support -- and $43 million for wireless-- being all but 4% of the total wireless support).[146]

To update those numbers: According to Trends in Telephone Service, in 2005 non-primary residential lines represented 11.2% of the total 107.7 million access lines.[147] This means that the assumption that 10% of the wireline high-cost fund would be eliminated if there were no funding for non-primary lines still reasonable; 10% of the annualized 2Q07 wireline high-cost USF of $3,106 million would be $310 million.[148] Based on the reports that 90% of wireless service is non-primary,[149] this would mean that some 90% of the CETC high-cost USF funding would be eliminated, or $1,116 million out of the annualized CETC total of $1,240 million.[150] **Combining these numbers, eliminating support for non-primary lines could cut $1,426 million ($310 million + $1,116 million), or 32% of the $4,346 million annualized 2Q07 annualized high-cost fund.** This is just another sign of the unnecessary current support for multiple lines and networks.

For the long run, the impact on the fund would essentially be to prevent the estimated $2 billion in growth that would result from all wireless carriers across the country becoming ETCs. Wireless carriers (and other CETCs) that won the customer’s primary line selection would receive support; support would be removed from wireline carriers that lost the line, with the net result being a $2 billion savings for the fund.

[146] See 96-45 NASUCA Reply Comments (May 16, 2003) at 17-18.

[147] Trends in Telephone Service (February 9, 2007), Table 7.4.

[148] USAC reports.

[149] If 10% of all consumers have wireless service only.

[150] USAC Reports. (This also assumes that most of the high-cost CETC funding goes to wireless carriers.)