

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

In the Matter of)	
)	
The Role of the Universal Service Fund and)	
Intercarrier Compensation in the National)	GN Docket Nos. 09-47, 09-51, 09-137
Broadband Plan)	
)	
NBP Public Notice # 19)	

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION
ON NBP PUBLIC NOTICE # 19**

The United States Telecom Association (USTelecom)¹ is pleased to provide comments in response to NBP Notice # 19 on the role of the universal service fund and intercarrier compensation in the national broadband plan. These two mechanisms represent significant revenue flows for companies using the wireline platform for provision of broadband to Americans, and serving the most economically challenging areas to build out broadband facilities, the high-cost rural areas of our nation. The mechanisms also support other platforms exchanging traffic with wireline companies or receiving support based on their status as competitive eligible telecommunications companies. For these reasons, it is entirely appropriate and necessary that the Commission examine the role of these mechanisms in the context of improving and extending the availability and adoption of broadband services in our nation. Additionally, both mechanisms constitute particularly important support for the facilities over which both broadband and narrowband services are provided in the most economically challenging areas of our nation. In short, a credible strategy for the deployment and adoption of broadband throughout the United States must include proposals for reforming the intercarrier

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

compensation and universal service regimes by reinforcing the appropriate business fundamentals for network investment. Accordingly, we strongly urge the Commission to move forward in the National Broadband Plan by making recommendations based upon the tremendous amount of learning and consensus building that have resulted from the Commission's previous proceedings on these issues.

Discussion

Although well on its way, broadband has not yet reached everyone, and adoption rates lag behind build out. The timing of ubiquitous broadband access is unknown, but certainly the policy recommendations made in the National Broadband Plan can have a positive effect on accelerating that advancement. However, to present the optimal recommendation to Congress, the Commission must consider intercarrier compensation and universal service issues essential to sustaining and deploying networks operated by local exchange companies.

As much as USTelecom, policy makers and providers wish that broadband service be ubiquitously available and universally adopted, reality intrudes. Under current conditions, it is not financially viable for providers in some areas to build out broadband facilities. And as noted in USTelecom's comments to NTIA and RUS on their Request for Information, even grants of up to 50 percent may be inadequate to support a viable business case for build out of broadband facilities.²

The universal service fund today supports deployment of the public switched network upon which a great number of consumers receive broadband services. As providers entrusted with the historic responsibility and burden of carrier of last resort, USTelecom urges the

² See, Comments of the United States Telecom Association, November 30, 2009, submitted in response to, *Joint Request for Information*, 74 Fed. Reg. 58940 (Nov. 16, 2009), pp. 12-13 (available at: <http://www.ustelecom.org/uploadedFiles/Issues/Filings/USTelecom-Comments-FINAL-091130.pdf>) (visited December 7, 2009).

Commission to adopt reforms recognizing that the evolution of both intercarrier compensation and universal service support to a broadband world must not ignore consumers who will continue to rely on today's network for vital services at reasonable rates for the foreseeable future.

While some may discount the impact of current regulations and regulatory certainty on future investment, provision of broadband service requires a high level of long-term fixed-cost investment. Investors will be unwilling to fund such investment without an expectation of an opportunity for a reasonable future return. In highly-regulated industries such as the provision of voice service by ILECs, uncertainties created by the marketplace and technological changes are multiplied by the regulatory uncertainty. At present that uncertainty is intensified by the retention of outdated regulatory policies which create and amplify market distortions. The Commission has the opportunity to substantially ameliorate that uncertainty with prompt action that will enhance the atmosphere for broadband investment in the short and medium term.

In particular, access charges and especially high intrastate access charges contain support for the network in high-cost areas. That support is quickly eroding due in no small part to arbitrage enabled by the current intercarrier compensation system. Reforming intercarrier compensation by providing opportunities for carriers to replace those revenues will allow the continuation of support for networks, particularly those that are jointly used to support broadband and voice services in high-cost rural areas.

USTelecom does not underestimate the challenge of developing a fair policy roadmap that acknowledges the delicate balance involved in weighing policy choices impacting compensation and support for voice and broadband. Discussions of reforming intercarrier compensation and universal service have been ongoing for many years – in the case of intercarrier compensation, the Commission began its latest reform effort in 2001. Yet on many occasions the perfect has become the enemy of the good and substantial steps that could have

moved policy in the direction of a fairer and more economically rational system have not been adopted because of disagreement on end-game scenarios many years hence.

Today a group of mid-sized U.S. broadband providers filed a plan with the commission to reform intercarrier compensation and the universal service fund. Their plan, known as the Broadband Now plan, builds upon industry consensus and is an important contribution to a pivotal ongoing policy dialogue for our nation's broadband future. This filing is an example of constructive proposals that make clear the unequivocal connection between doing the hard work of stabilizing and modernizing intercarrier compensation and universal service and our nation's ability to succeed in its critical efforts to advance America's broadband investment and deployment.

While it should offer broad goals of reforming universal service and intercarrier compensation for a fully broadband world, the National Broadband Plan most constructively should suggest concrete steps forward that could be undertaken in the next twelve months or less. The Commission has several open proceedings with voluminous records that could serve as the basis for substantial progress in the very near term and begin the necessary transitions to more comprehensive reforms in the future.

I. Intercarrier Compensation Reform

The uncertainty and declining support for the network resulting from the current archaic system by which companies pay each other for handling calls is a substantial hurdle to maintaining and increasing broadband investment. By pricing similar functions at very different levels depending on artificial regulatory categories, it distorts competition and investment while promoting arbitrage and sometimes outright fraud. And by failing to account for rapidly declining access revenue support for carrier of last resort service in high-cost areas, it

undermines the provision of service in these areas and efforts to build and operate the modern broadband networks needed by the public.

The broad consensus that today's system is broken and needs to be fixed, and the consensus on the first steps to fixing this system, should be translated into prompt action by the Commission. Rule changes moving intrastate access rates to interstate rates, not unduly burdening consumers, providing carriers a reasonable opportunity to recover revenues lost through mandated rate cuts by implementing a recovery mechanism could and should be quickly adopted and implemented. So should solutions addressing arbitrage such as phantom traffic, access pumping and compensation for IP-originated traffic. And these two sets of recommendations act synergistically. Properly capturing and charging for the minutes now not contributing to network upkeep would reduce the amount of support required from a recovery mechanism. And harmonizing interstate and intrastate rates would reduce some of the incentive for arbitrage.

- **Reduction of terminating switched access and reciprocal compensation rates.**

Intrastate access revenues now account for a majority of access charge revenues collected, and in many instances are significantly higher than interstate charges, thus creating incentive for arbitrage.³ The Commission should set as a goal the reduction of intrastate terminating switched access and reciprocal compensation rates to interstate levels. Rates for price cap companies could be based on the lower end of the rates set in the CALLS Order. Rate of return company rates could be set based on average NECA pool rates.

³ See Table 5, Revenues from Telecommunications and Interconnected VoIP Service Provided for Resale: 2007 (Total All Filers column). http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293261A2.pdf

A fund should be established to recover revenues lost as a result of the terminating access and reciprocal compensation rate reductions. This fund, which as an intercarrier compensation support mechanism would not be portable to other providers, would advance the Commission's network investment goals. For example, price cap carriers could be provided the opportunity to recover mandated rate reductions, in whole or in part, based on a number of factors. Because of the nature of rate of return regulation, such carriers would have the opportunity to receive compensation for all access charge and reciprocal compensation revenues lost due to reform. At the completion of the transition, fund support would be calculated on a per-connection basis.

To control the size of the fund and ensure that it did not support unreasonably low retail rates, a local service benchmark rate should be established and capped annual retail rate increases should be permitted. The benchmark rate would be used to determine the proper funding to replace a portion of the lost intercarrier compensation revenues. While no carrier would be required to increase retail rates, carriers would impute revenue equal to the benchmark rate for each customer for purposes of the calculation, whether or not the actual rate charged was lower. Over a multiyear period, the current cap on the subscriber line charge (SLC) should be increased from \$6.50 to \$8.00 and carriers should be permitted to increase retail rates, including the SLC, by no more than \$1.50 per year until the local service benchmark rate is reached. It is expected that competitive pressures would restrain, in many cases, a carrier's ability to raise rates by the imputed amount. Thus carriers would not fully recover revenue lost due to the reductions in intercarrier compensation.

There is substantial consensus on the above steps relating to reform of intercarrier compensation rate structure and levels.⁴ Prompt adoption and implementation of these proposals would meet the Commission's goals of having a more economically rational system of

⁴ Joint Statement of commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Nov. 5, 2008.

intercarrier compensation, reducing dependence of carriers on legacy revenue flows which can serve as a deterrent to movement to a broadband platform (for voice as well as other services), while permitting the certainty that is so necessary for planning and investment.

USTelecom acknowledges that this proposal is not necessarily the final step in reform of intercarrier compensation. However, it represents a substantial constructive movement forward, and could be adopted and implemented quickly. At the conclusion of the transitions contemplated under this proposal, the Commission could open a further proceeding to assess the need for further reform and assess the options available at that time. Much more information will be available at that time, particularly as to the scope and pace of the movement to providing voice services on an IP platform. The Commission could explore whether to establish one unitary rate for all intercarrier compensation or unified rates by carrier, state or track and the methodology for setting rates and establishing “additional cost” under Section 252(d)(2).

- **Elimination of loopholes and arbitrage**

Significant levels of regulatory arbitrage are an indictment of a poorly constructed or enforced regulatory regime and an unproductive use of financial and intellectual capital. It results in a great deal of resources of both communications providers and state regulators and courts being devoted to brokering and litigating disputes stemming from this archaic system. Unfortunately, such arbitrage has been permitted to fester and grow in the intercarrier compensation arena for several years. In particular, some providers improperly divert significant amounts of properly compensable traffic away from intercarrier compensation under the current regime. This creates competitive distortions, regulatory uncertainty and disincentives to invest in network facilities. Access rate arbitrage is increasing and undermines a key revenue stream used to support the Carrier of Last Resort (COLR) obligation and promote network stability to advance broadband deployment. It also diminishes the credibility of the current rules and

structure encouraging and even greater search for loopholes and arbitrage opportunities. The Commission should eliminate these loopholes and arbitrage opportunities by quickly establishing and implementing rules in the following areas:

1. Explicitly confirming that all traffic that terminates on the PSTN – including, in particular, IP originated traffic – is subject to existing access charge and reciprocal compensation mechanisms. This issue has generated a host of disputes among carriers, leading to significant regulatory uncertainty, litigation costs, investment risks, and a patchwork of interim solutions.
2. Adopting USTelecom’s proposal for the elimination of “phantom traffic” (traffic sent without signaling information, or with improper or incomplete information) that accordingly escapes the application of intercarrier compensation rules.⁵
3. Address “access pumping,” which at its best is a pure arbitrage that uses rates established to fairly compensate ILECs and CLECs in rural high-cost areas serving low volumes of traffic to obscenely overcompensate arbitrageurs.
4. Reduce access charges in a fair, equitable and deliberate way as recommended above.

II. Universal Service Reform

Again, there is a substantial amount of agreement on reform of the universal service mechanisms that could be quickly adopted and implemented and add impetus to the drive for greater broadband availability and adoption.

- **Universal service contributions should be based on numbers and connections**

Assuring a sustainable, sufficient and affordable universal service fund has been one of the most pressing issues before the Commission for the last several years. Its importance is now

⁵ See *ex parte* letter and attachment from Glenn Reynolds, USTelecom, to Marlene Dortch, dated February 12, 2008.

compounded by the expectation of a record high quarterly contribution factor and the desire to include broadband in the universal service funding regime. There is widespread agreement in the industry that the current contribution methodology, which assesses interstate and international telecommunications service revenues, is badly broken. While the existing base for contributions continues to erode, the demand for universal service funding increases, whether it be Lifeline support under the current system or support for broadband service in the future. After years of comment and consideration, there is widespread agreement that quickly moving to replace this system with one based on numbers and connections is the best solution. Prompt implementation could support a coordinated transition to further reforms involving intercarrier compensation and USF distribution reform.

A system based on numbers and broadband connections would stabilize the universal service system, provide simplicity and consistency to consumers, more fairly distribute the contribution burden among providers regardless of technology or platform, and significantly reduce administrative expenses and burdens for the FCC, USAC and contributors. Consumers would recognize the following considerable benefits:

1. USF assessments would be more stable and predictable.
2. USF assessments would be easier for consumers to understand.
3. Residential consumers would avoid spikes in USF assessments based on varying interstate usage by consumers.
4. Customers in rural areas will no longer be penalized with higher federal USF fees when they make interstate calls beyond their local calling areas.

Additionally, collecting USF fees based on telephone numbers and connections is easier to administer, levels the playing field among competitors, and recognizes the role of broadband in the future of universal service. Flat fees based on working telephone numbers and broadband

connections would minimize incentives and opportunities for carriers and customers to avoid contribution obligations. It would broaden the contribution base, thereby making funding for the USF more stable and secure.

- **Distribution of Universal Service High-Cost Funding**

Building communications facilities to support consumers' use of voice and broadband services in low-density areas of our nation is expensive. Thus universal service plays an important role in both the availability and affordability of services in high-cost rural areas. While clearly universal service funding must be expanded to include broadband, and while much of the current universal service funding goes for facilities that are jointly used for voice and broadband services, modifying the current mechanisms must be done with great care. Ignoring the health of the current mechanisms in order to focus on funding solely broadband service could be enormously destabilizing for providers that, as the carriers of last resort for their customers, may provide the only service available. Although universal service funding should eventually evolve from supporting voice to supporting both voice and broadband access, this reform cannot be done overnight and it should not be done by placing unfunded mandates for broadband build out on carriers.

There are many changes that should be made to the current funding mechanisms in order to make them more efficient and effective. Many of the concepts underlying these changes should also apply to the construction of a new broadband high-cost funding mechanism.

1. Reforms to the fund can and should be accomplished within a budget. Universal service funding is a scarce resource and should be allocated as such. Necessary changes to the portion of the fund supporting high-cost voice service should require no greater than a modest increase over today's amount, exclusive of the additional funding that would be required to accomplish USTelecom's proposals

for intercarrier compensation reform. Such changes will substantially increase the effectiveness and efficiency of the fund, providing both stability and a funding source for expansion of joint use facilities. Any further reforms requiring broadband build out by universal service recipients would need to be accompanied by additional funding needed to support new deployments.

2. Substantial savings can be realized by eliminating excessive payments to mobile competitive ETCs now receiving funding based on the identical support rule. Competitive processes such as reverse auctions are an appropriate mechanism for determining the proper level of support for mobile competitive ETCs, and while they are being developed and implemented, the Commission should immediately begin to phase out the portion of identical support attributable to access replacement mechanisms from the universal service high-cost funding provided to CETCs. In particular, IAS and ICLS, which were created to replace access revenue lost through the reduction of interstate access charges, were specifically designed for incumbent LECs that were, and continue to be, subject to pervasive Commission regulation as to either their interstate access prices or earnings. CETCs have basically no economic regulation and, in the case of wireless carriers, do not assess access charges. There is no reason to provide access replacement support to competitive ETCs when access reform did not result in a diminution of their revenues.
3. Substantial savings can be achieved by eliminating the support for multiple mobile competitive ETCs and replacing identical support with a competitive bidding process. Competitive bidding is a superior method of determining the proper level of high-cost support provided to mobile competitive ETCs. Direct

market signals are a far superior methodology to either historical or forward-looking costs models when applied to providers that operate relatively unconstrained by either price or profit regulation, as mobile competitive ETCs do. Competitive bidding should be used to reduce the number of mobile ETCs to one per geographic area. Supporting multiple mobile providers with universal service support in any geographic area is a luxury ratepayers cannot afford, especially considering both the limited amount of universal service funds available and other unmet universal service needs. During the transition to a competitive bidding process, fund size can be constrained by removing support for multiple wireless lines per household. Offering support for multiple lines in a household produces further rewards for carriers that focus on increasing the number of subscribers in the lower-cost parts of areas receiving high-cost support, rather than encouraging such carriers to expand the geographic scope of their networks.

4. High-cost support for fixed-line ETCs should be better targeted on a geographic basis, either at or below the wire center level. The implicit support inherent in study area averaging is no longer sustainable and should be promptly addressed. This would qualify many rural price cap carrier study areas that today receive little or no support for additional universal service funding. New entrants often compete only in densely populated areas that have relatively low costs. Competitive pressures prevent incumbent LECs from charging higher rates in their low-cost densely populated areas to help offset some of the costs of serving their high-cost, more remote areas. Although competitors increasingly are serving consumers in rural towns where costs are lower, competitors generally do not serve consumers outside of those towns where costs are higher and appear

unlikely to offer services to those regions in the foreseeable future. Competitors are making the financially rational choice to avoid serving high-cost areas altogether, but carriers of last resort are compelled to serve the areas outside of the rural towns, often at a significant loss. These problems are especially significant for carriers serving high-cost rural areas that are part of large study areas encompassing regions where the cost to deploy varies significantly. Although the costs in some pockets of the study area may be quite high, the average cost to serve all regions of the study area may not qualify the carrier for much, if explicit support for its high-cost areas. Further problems are posed by the “non-rural” mechanism’s classification of entire state as either eligible or non-eligible, based on statewide average costs. It is not unreasonable to expect that if the high-cost portions of larger study areas received a proper level of universal service support through improved targeting, then carriers in those regions would be better able to deploy and enhance a platform of joint use facilities conducive to the deployment of broadband services.

5. All ETCs should adhere to the same carrier of last resort (COLR) requirements. Those should include the current Federal requirements as well as the additional federal guidelines, including provisions stipulating that ETCs have adequate financial resources to fulfill COLR obligations, remain functional in emergencies and be subject to all relevant consumer protections statutes and regulations.

- **Distribution of Low Income support**

Clearly the Lifeline portion of the current universal service fund low income support needs reexamination. It is based on a regulatory mandated structure intended to offset ILEC’s implementation of subscriber line charges for low-income subscribers, but it is now growing at

an accelerating pace due to the designation of new non-facilities based CETCs offering prepaid wireless service. The Commission should review the purposes of Lifeline support and determine an appropriate structure that fulfills those purposes, is administratively simpler and better targets support.

- **Low income support for broadband**

Development of a low income support program for broadband should occur concurrently with other reforms intended to promote expansion of broadband service. Some low-income consumers may not be able to afford broadband service and support for broadband service can help overcome that barrier. With respect to proposals to fund devices as opposed to transmission, the Commission should examine options such as the DTV coupon program where the government directly supports at least a portion of the cost of device acquisition rather than looking to the universal service fund as a source of support.

III. Conclusion

The universal service fund and intercarrier compensation represent significant revenue flows for companies using the wireline platform for provision of broadband to Americans, and serving the most economically challenging areas to build out broadband facilities, the high-cost areas of our nation. It is entirely appropriate and necessary that the Commission examine the role of these mechanisms in the context of improving and extending the availability and adoption of broadband services in our nation. To present the optimal recommendation to Congress, the Commission must consider reforming these key mechanisms that are essential to sustaining and deploying networks operated by local exchange companies. While it should offer broad goals, most constructively the National Broadband Plan should suggest concrete steps forward that could be undertaken in the next twelve months or less. There is substantial consensus on these steps and several open proceedings with voluminous records that provide the Commission the

ability to implement these steps, seize the opportunity for substantial progress in the very near term and begin the necessary transitions to more comprehensive reforms in the future.

Respectfully submitted,

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