

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

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

**COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON NBP PUBLIC NOTICE NO. 19:
THE ROLE OF THE UNIVERSAL SERVICE FUND AND INTERCARRIER
COMPENSATION IN THE NATIONAL BROADBAND PLAN**

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INTRODUCTION

On November 13, 2009, the Federal Communications Commission (“FCC” or “Commission”) sought “more focused comment on our universal service and intercarrier compensation (ICC) policies and to explore various policy options that would further the goal of making broadband universally available to all people of the United States.”¹ As

¹ Public Notice DA 09-2419 (rel. November 13, 2009) at 1.

indicated above, this is the nineteenth set of comments requested on the National Broadband Plan, and may be one of the broadest. Further, as previously noted by the National Association of State Utility Consumer Advocates (“NASUCA”)², this request for comment in many respects duplicates requests previously made by the Commission.³ Nonetheless, given the importance of these issues, NASUCA will respond as completely as possible, but will refer, whenever appropriate, to previous comments in other dockets.⁴ These comments will follow the structure of the Public Notice, with the Commission’s request in **bold type**.⁵

1. **Size of the Universal Service Fund.**

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

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

² NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions 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). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

³ See 09-51, 09-137, NASUCA Comments (September 4, 2009) at 2.

⁴ It is of significant concern that there is no opportunity for reply on these important issues. The Public Notice asks for much opinion and many pieces of data; stakeholders should have the opportunity to respond to others’ assertions.

⁵ Footnotes from the text of the Public Notice are omitted.

**so, how such changes would advance the goal of
universalization of broadband?⁶**

The *relative* size of the four support mechanisms is determined by the different purposes of each mechanism; what is more important, actually, is the **absolute** size of the program. In those terms, the high-cost fund is by far the largest, the schools and libraries fund second-largest, and low-income third, with rural telemedicine coming in a distant fourth.

According to the 2009 Annual Report of the Universal Service Administrative Company (“USAC”), the total USF disbursements for 2008 were \$7.106 billion, as broken down in the following table. On the other hand, based on USAC’s projections for the first quarter of 2010 annualized, the 2010 total may be \$8.426 billion.

Program	2008 (000s)	2010 annualized (000s)
High-cost	\$4,478	\$4,392
Schools and libraries	\$1,760	\$2,380
Low-income	\$819	\$1,425
Rural health care	\$49	\$229
TOTAL	\$7,106	\$8,426

The projected \$8.4 billion fund will create a USF contribution mechanism that imposes a likely 14.1% assessment on interstate revenues (which includes the subscriber line charge).⁷ The contribution mechanism will be discussed below, but it should be clear that an assessment of this magnitude imposes a substantial burden on consumers. This burden should not be increased in order to universalize broadband; thus it is

⁶ DA 09-2419 at 1.

⁷ See <http://www.universalservice.org/about/governance/fcc-filings/2010/Q1/1Q2010%20Quarterly%20Demand%20Filing.pdf> and <http://www.universalservice.org/about/governance/fcc-filings/2010/Q1/1Q2010%20Contribution%20Base%20Filing.pdf>.

important to squeeze as much unnecessary funding out of the current fund as possible if broadband is to be supported.

With regard to the high-cost mechanism, on many occasions NASUCA has proposed measures to ensure that the mechanism meets its statutory purpose: that telecommunications services in rural areas – and especially the rates for those services – are reasonably comparable to those in urban areas.⁸ NASUCA believes that, in many respects, the current high-cost mechanism is unnecessarily large, and can be substantially reduced even while the statutory goal is met.⁹ The recent petition filed by the National Cable and Telecommunications Association (“NCTA”) – which would eliminate support where there is facilities-based unsupported competition, and where local carriers’ retail rates have been deregulated – provides an interesting approach to this issue.¹⁰ Elimination of support where it is not necessary would free up high-cost funds for other purposes, like broadband deployment.

NASUCA has also pointed out that, both because broadband has not yet been determined to be a supported service under § 254 and because the Commission has (inappropriately) determined that broadband is not a telecommunications service, broadband cannot now be supported by the high-cost fund.¹¹ Nonetheless, given that in

⁸ See, e.g., CC Docket No. 96-45, WC Docket No. 05-337, NASUCA Reply Comments on Notice of Inquiry (June 8, 2009).

⁹ Where there is a real need for additional support, such as that demonstrated by the longstanding request from Wyoming, additional support should be provided.

¹⁰ See <http://www.ncta.com/DocumentBinary.aspx?id=858>.

¹¹ WC Docket No. 05-337, et al., Comments of the National Association of State Utility Consumer Advocates, Maine Office of Public Advocate, Maryland Office of Peoples’ Counsel, The Utility Reform Network, and The Utility Consumer Action Network on Further Notice of Proposed Rulemaking (Nov. 26, 2009) (“NASUCA Nov. 26, 2007 Comments”) at 39; GN Docket No. 09-51, NASUCA Comments on Notice of Inquiry (June 8, 2008) at 49.

most areas the network that provides telecommunications services is the same network that provides broadband, rural carriers in particular have used their high-cost funding to advance broadband deployment.

Obviously, the schools and libraries program is part and parcel of national broadband deployment.¹² Noting however, the recent growth of 35% in this fund, surely there are efficiencies to be gained in these expenditures.

The low-income program is vital for universal service, and provides benefits directly to consumers. The recent 74% growth in this portion of the USF appears to be caused almost entirely by funding of prepaid wireless low-income ETCs, especially TracFone/SafeLink. These services clearly provide benefits to consumers otherwise unserved or ill-served by wireline carriers. But it is still open to question whether the value provided to those consumers is commensurate with the benefit the carriers receive from the universal service fund.¹³

The rural health care program has grown by almost 3½ times. But this is an artifact of the previous low usage of the program, and still leaves it at less than 3% of the entire fund. The rural health care program is also an inherently broadband-based program.

2. **Contribution Methodology.**

Numerous commenters have urged the Commission to modify the current methodology for assessing contributions to the universal service fund. For example, commenters have recommended a

¹² See http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A1.pdf.

¹³ Indeed, while we are on the subject, in an era when many retail telephone rates have been deregulated, although Lifeline customers should still receive a discount off the retail rate, it no longer makes sense to base Lifeline payments to carriers on the full amount of the retail discount.

numbers or connections-based methodology, an expanded revenue-based methodology, or some combination of the two.

- a. **Commenters should explain how their preferred solution would impact end users, who ultimately bear the cost of universal service through carrier pass-through charges. Commenters should identify with specificity all assumptions.**
- b. **Commenters should specify how any proposed modifications would alter the relative share of contributions borne by residential consumers as opposed to business consumers.**
- c. **Commenters should address the anticipated impact of universal service pass-through charges under different contribution methodologies on residential households with different consumption characteristics, such as (i) a household with landline voice service, low interstate usage, and no broadband connection, (ii) a household with landline voice service, moderate interstate usage, an average wireless plan, and a broadband connection; and (iii) a household with landline voice service, a wireless family plan with five lines, and a broadband connection. Commenters should specify all assumptions.**¹⁴

NASUCA has for years opposed proposals to change from the current interstate-revenue-based mechanism to a numbers- or connections-based mechanism.¹⁵ The opposition was based on three fundamental principles: 1) no need had been shown for such a change, because the assertions that the interstate revenue base was declining or more difficult to reach were unfounded; 2) the understanding that a numbers-based mechanism was no more robust than a revenue-based mechanism under conditions of

¹⁴ DA 09-2419 at 1-2.

¹⁵ See, e.g., WC Docket No. 06-122, WC Docket No. 05-337, CC Docket No. 96-45, NASUCA ex parte letter (July 29, 2009); id., NASUCA ex parte letter (August 5, 2008). In the AT&T NBP NOI Comments cited in the Public Notice, AT&T referred to the “revenues-based contribution methodology, which the Commission itself declared unsustainable back in 2001.” AT&T NBP NOI Comments at 87, citing *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 16 FCC Rcd 9892, 9899-9900 ¶¶ 12-13 (2001). Not only did the cited paragraphs **not** represent a declaration of unsustainability, but the mechanism has clearly been sustained in the more than eight and a half years since the Commission raised issues about the revenue-based mechanism in the Notice of Proposed Rulemaking.

extreme fund growth¹⁶; and 3) the fact that a numbers- or connections-based mechanism taxed consumers based on access to the network, rather than usage of the network.

As noted above, the revenue-based contribution factor for the first quarter of 2010 is projected to reach 14.1%, a new record. This appears driven by the combination of a recession-caused decline in revenues (very different from the supposed structural declines and difficulties discussed by the supporters of numbers-based mechanisms) and increases in fund needs. The latter are within Commission control, as discussed above. The former are not within Commission control, but still do not appear to be sufficient basis for a massive shift in the contribution mechanism, with its attendant costs, disruptions, and, as previously discussed, numerous requests for exemption or special treatment.

Based on this view that the mechanism should not change, NASUCA has not done (nor does it have the resources to do at this point) the detailed analyses referred to in the Public Notice regarding the impact of changes in the contribution mechanism. We will view with interest (and concern?) other commenters' such analyses, as we have in the past. Again, despite the lack of a formal reply opportunity on these issues, NASUCA expects to be able to make its views known to the Commission if there are particularly egregious errors or misstatements in the analyses.

One crucial point, however, is relevant whether or not the Commission changes the structure of the contribution mechanism. As previously stated by NASUCA, to the extent that the USF supports broadband, whether through the high-cost or some other fund, then it is absolutely necessary for broadband services to contribute to the fund.¹⁷ It

¹⁶ Based in part on the results of an FCC Staff study published in 2003, and never effectively challenged by the supporters of a numbers-based mechanism.

¹⁷ NASUCA Nov. 26, 2008 Comments at 46.

would be exceedingly unfair to assess only consumers of traditional telecommunications services to pay for broadband deployment, rather than requiring broadband to share (or even bear most of) the burden for its support.

3. **Transitioning the Current Universal Service High-Cost Support Mechanism to Support Advanced Broadband Deployment.**

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

- a. **One option would be to maintain the existing universal service programs on a transitional basis to support operating expenses of legacy voice-only networks, but that all new investment would be supported from a new broadband fund.**
 - i. **What would be an appropriate transition plan and path to the new broadband fund?**
 - ii. **What percentage of overall universal service high-cost support already is being used to upgrade infrastructure that can provide broadband service? For instance, what percentage of funding is being used to extend fiber deeper into networks, condition loops, install soft-switches, deploy advanced wireless technology, and perform other network upgrades to support broadband under the Commission’s “no barriers to advanced services” policy? Conversely, what percentage of existing support is being used to support voice service over networks that are not broadband-capable?**
 - iii. **Of the carriers that already are using high-cost support to upgrade their networks to be broadband-capable, what percentage of that support is being dedicated to such upgrades? How much funding is used for capital expenditures versus operating expenses? For example, what percentage of high-cost support currently is used for return on investment, depreciation and**

- amortization, operating expenses (not including depreciation), taxes, and other operating expenses (and specify what “other” includes) to equal 100 percent of a carrier’s USF support?
- iv. **What is the total dollar amount of high-cost funding, either by individual carrier or by industry segment such as incumbent local exchange companies (incumbent LECs) or rate of return incumbent LECs, currently supporting the maintenance of legacy networks that are not yet broadband-capable? Identify assumptions and calculations used in estimating the size of this support.**
 - b. **If the high-cost support mechanism is reformed to support deployment of broadband, how should the new mechanism be structured, e.g., a single fund or multiple funds (mobility and/or fixed, middle mile, last mile)? Through what mechanism or by what criteria should funding be awarded? What would be the impact of designing a broadband support mechanism so that a provider’s competitive loss of a subscriber results in the loss of associated funding?**
 - c. **Would the size of any broadband funding mechanism be appreciably different if support were calculated based on a forward-looking cost model designed to calculate the lowest total cost of ownership on a technology-neutral basis, as opposed to individual provider submission of actual costs? Response should identify all assumptions.**
 - d. **The current high-cost support mechanism provides a return on net investment (currently 11.25 percent) for rate-of-return carriers, but does not provide direct reimbursement for capital expenditures (capex). Should high-cost broadband funding be limited to supporting a direct one-time reimbursement for new capital expenditures, or should it support both capital and operational expenses? If a new broadband fund did not support broadband operational expenses, how would carriers distinguish between legacy expenses and broadband expenses? If commenters believe support for ongoing operational expenses is necessary, explain why. Responses should also:**
 - i. **Identify the technology and cost assumptions (and how “cost” is defined, i.e., embedded versus forward-looking) used to develop this answer.**
 - ii. **Identify the specific infrastructure and facilities that should be supported, such as loops, electronics, backhaul, wireless towers, etc., and why.**
 - iii. **Indicate whether the answer to this question depends on the technology (i.e., fiber, hybrid-fiber coaxial cable, wireless, satellite). If so, how and why?**

- iv. **Indicate the types of operational expenses that should or should not be eligible for support from a high-cost broadband mechanism, and why.**
- e. **If a new high-cost broadband mechanism were to consider all revenues derived from the upgraded plant, what would be the impact and how should those revenues be used in the calculation of support?**
- f. **In disbursing support under a high-cost broadband mechanism, should the Commission take into account broadband grants issued by NTIA or RUS, and, if so, how?**
- g. **One option for a broadband mechanism would be to more narrowly target universal service high-cost support to smaller geographic areas and to areas in which broadband service is not available today from any provider. If the Commission were to develop a new broadband support mechanism that is targeted at such areas, what would be the appropriate geographic area for determining the appropriate amount of support? What would be the impact of basing support on the cost of providing broadband in a wire center, a Census Block, a Census Tract, or an area defined by the proposed broadband provider? Explain why the proposed geographic area is preferable to alternatives, and how that would impact the overall size of the high-cost fund. Should the presence of one broadband service provider using any technology preclude support to any provider, or might support still be targeted to a provider offering features that are not available from the existing service, e.g., a mobile broadband service provider where only fixed broadband service is available?**
- h. **What would be the impact of capping the funding available under such mechanisms? How should any such cap be calculated, and should it apply on a per-carrier basis, or to a geographic area, and why?**
- i. **Certain ETC requirements today are premised on the provision of voice service. If the Commission were to create a new high-cost support mechanism for broadband, should current ETC requirements be revised, and if so, how?¹⁸**

The sheer numerosity of these questions prevents a complete response. NASUCA and its members are neither the “existing eligible telecommunications carriers (ETCs) (both wireline and wireless companies)” nor the “other broadband providers” referred to

¹⁸ DA 09-2419 at 2-4.

by the Commission in this item. But we do represent the consumers who are both the intended beneficiaries of the programs under discussion here and those who pay for the programs. As such, NASUCA brings a vital interest to this debate. In the following comments, the individual discussion items are identified.

Item 3., 3.a., and 3.a.i. As discussed previously, NASUCA’s preference is “to gradually reduce funding under the existing high-cost programs over a period of years” though better targeting of the high-cost fund,¹⁹ and then to use those savings “to supplement the existing high-cost programs with one or more additional programs that would target funding for broadband deployment in unserved areas.” The transition, then, would be to limit the broadband fund to the amount of such savings plus any additional funds that are available from assessing broadband services, as discussed above, in order not to increase the burden on the customers and their services that currently pay into the fund.

This does not mean, however that support for “legacy voice-only networks” should be abandoned, as is implied under the option of “maintain[ing] the existing universal service programs on a transitional basis to support operating expenses of legacy voice-only networks” but supporting “all new investment” from a new broadband fund” as suggested in Item 3.a. The networks involved are the same networks, and to incent creation of broadband service by withdrawing support for traditional voice service would do a disservice to the millions of consumers who still depend on traditional service.

Item 3.a.ii.-iv. NASUCA does not have information on “[w]hat percentage of

¹⁹ This “better targeting” does not entail abandoning the statewide cost-averaging that currently applies to non-rural carriers in favor of a wire-center (or partial wire center) mechanism. It does mean, for example, eliminating the identical support rule and establishing a separate mobility fund to bring wireless service to unserved and underserved areas.

overall universal service high-cost support already is being used to upgrade infrastructure that can provide broadband service....” This is information the industry will have to provide. We would expect that the bulk of such support is granted to rural companies, and also would expect that the majority of the support currently received by those rural carriers is used for such upgrades.

NASUCA must also point out, however, that if the Commission had maintained and upgraded its universal service support cost model, the model may well have been useful in helping address this question.²⁰ Further, the paucity of data on this subject points to the need not only to reinstate Automated Reporting Management Information System (“ARMIS”) reporting, but to improve it so that the FCC, Congress and other interested parties have the ability to better analyze the issue.

*Item 3.b. and 3.g. The Federal-State Joint Board on Universal Service (“Joint Board”), in its Recommended Decision, proposed that there be three funds: A carrier-of-last-resort (“COLR”) fund, a mobility fund, and a broadband fund. NASUCA supported that concept, and continues to do so. The mobility fund could (and, at this point, should) contain a broadband component, but the principal broadband fund should focus on wireline.²¹ The broadband fund could appropriately contain separate middle mile and last mile components, but, as previously discussed, must focus on unserved areas.

Given the necessary focus on unserved areas for the broadband fund, an auction mechanism could be used.²² But there would have to be a recognition that in many such

²⁰ CC Docket No. 96-45, et al, NASUCA Reply Comments (June 8, 2009) at 19.

²¹ NASUCA recognizes the significant recent advances in wireless broadband technology. Nonetheless, the preference for wireline should be maintained.

²² NASUCA Nov. 26, 2008 Comments at 48.

areas, there may be only one entity (the incumbent carrier) interested in providing broadband service, even with support. This would require a separate calculation of the appropriate level of support.²³

As suggested by the NCTA Petition cited above, for broadband service as for traditional telephone service, if there is a competitive alternative available that is not supported, then the need for support may no longer exist.²⁴ This means that if a supported carrier loses a customer, the impact of also losing the support merely replicates what happens in a competitive environment.

Item 3.c. NASUCA has generally supported the use of forward-looking costs as the basis for providing support, for reasons long ago identified by the Commission.²⁵ The same principle should apply for broadband service.²⁶

Item 3.d. Consistent with the view that broadband support should focus on unserved areas, the preference for support should be for capital expenditures. Any support for operational expenses should be limited, and should only be provided if, without the support, and considering all available revenues, the recurring price for the broadband service would not be reasonably comparable to that available in urban areas.

Item 3.e. Support should be provided only if the cost of installing plant exceeds

²³ The issue of areas where no entity is interested in providing support would have to be addressed as well.

²⁴ This assumes that the prices and capabilities of the two services are reasonably comparable, which seems a relatively safe assumption for wireline broadband service.

²⁵ CC Docket No. 96-45, et al, NASUCA Comments on Recommended Decision (April 17, 2008) at 55. The one traditional exception has been for the smallest rural telephone companies, where the FCC's cost model may not accurately reflect the costs of providing traditional telephone service. This concern should not apply to new services like broadband.

²⁶ The reference to "technology-neutral basis" should be seen to be limited to variants of wireline broadband service. "Technology-neutral" cost comparisons between wireline and wireless broadband services would be problematic.

all of the revenues that would be derived from that plant when upgraded to provide broadband service. It is safe to assume that in currently-unserved areas, it is difficult to make the economic case (even considering all revenues) for the upgrade.

Item 3.f. Broadband providers should not be allowed to “double-dip,” i.e., collect from two different sources for the same project. Any grants issued by NTIA or RUS – indeed, the proceeds of any loans from those sources – should be set off against the costs that an FCC program would otherwise support.

Item 3.g. Again, given that broadband support should focus on unserved areas, “the appropriate geographic area for determining the appropriate amount of support” should be contiguous unserved areas. The preference should be for service to the entire area, but if a provider sought support for a discrete portion of that area, the provider’s request should be considered. This approach will focus on the needs of the area in question, rather than being constrained by artificial demarcations such as wire centers or Census Blocks.

Further, given the proposed division between wireline and wireless broadband support, the presence of a wireless broadband provider should not preclude support to a wireline provider under the broadband fund. Similarly, the presence of a wireline broadband provider should not preclude support to a wireless carrier under the mobility fund, if there is no other wireless carrier providing service in the area.

Item 3.h. It is not clear what the Commission means by “capping the funding available under such mechanisms.” If the reference is to a specific area, there would perforce be a cap because only one provider would be supported. It may be that the support to that carrier for that particular area would also need to be capped because of the

overall need not to increase the size of the current USF.

Item 3.i. Under the three-fund structure proposed by the Joint Board and supported by NASUCA, the ETC requirements for the three funds would be different. For example, a COLR ETC would not be required to provide broadband or wireless, and a wireless carrier receiving support under the mobility fund would not be required to provide broadband. (Efficiencies would likely be gained, however, if the COLR ETC were also the broadband ETC, and the mobility provider also provided broadband.)

That said, it is not clear specifically which ETC requirements the Commission is referring to in this paragraph. If they are the requirements of 47 U.S.C. § 214, then they would have to apply under the broadband fund, as a matter of law. If the requirements referred to are those under 47 C.F.R. §§ 54.201-.209, it does not appear that any of those requirements in the FCC rules would be inappropriate or unneeded for a broadband fund.

4. **Impact of Changes in Current Revenue Flows.**

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

- a. **What factual analyses should the Commission undertake to test the validity of such arguments?**
- b. **What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already is at least one competitor offering broadband (using any technology) today that does not receive any high-cost support?**
- c. **What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there**

- already are multiple competitors offering broadband (using any technology), with more than one of those providers receiving high-cost service support.
- d. **To what extent are existing ICC revenues and high-cost support being used to pay debt obligations? To what extent do carriers securitize high-cost support and/or ICC cash flows and, if this is occurring, how often and why? Identify lenders who are willing to securitize ICC and high-cost support cash flows.**
 - e. **For individual carriers or groups of carriers, please provide revenue, Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) and capex for study areas that receive high-cost funding.**
 - f. **For individual carriers or groups of carriers, what percentage of free cash flow (defined as EBITDA minus capex) do high-cost support and/or ICC represent?**
 - g. **Please discuss your capital structure, in particular the amount of debt, weighted average interest rate on debt obligations, length of debt obligations, Net Debt/EBITDA and percentage of revenues devoted to paying interest and principal.**
 - h. **The Commission seeks to understand how intercarrier compensation payment flows may impact broadband deployment incentives and how any intercarrier compensation reform may alter or change such incentives. We are particularly interested in factual information or data that addresses the question of how the current intercarrier compensation system either supports or inhibits broadband deployment, rather than conclusory assertions that intercarrier compensation should be reformed. Accordingly, the following information is requested:**
 - i. **Entities that pay or receive intercarrier compensation should submit data on their total intercarrier compensation minutes of use, payments and revenues for the last 3-5 years in the aggregate as well as separating terminating traffic into three categories: intrastate access, interstate access and reciprocal compensation. Responses should separate originating access revenues and payments from terminating access revenues and payments, and identify net payments.**
 - ii. **Identify total intercarrier compensation revenues as a percentage of total revenues (total regulated revenues and as a percentage of overall revenues). Identify total intercarrier compensation expenses as a percentage of total expenses (total regulated expenses and as a percentage of overall expenses). Responses should**

- explain any assumptions and any response should include both revenues and expenses.**
- iii. **Identify the portion of total intercarrier compensation terminating intrastate, interstate and reciprocal compensation traffic that is subject to dispute due to issues or concerns over the proper classification or jurisdiction of the traffic and billing and record issues. Responses should quantify the amount of disputed traffic as a dollar amount or percentage of the total intercarrier compensation traffic either by entity, groups of entities or for the entire industry.**
 - iv. **Interested parties should identify the total costs that could be avoided if intercarrier compensation reform eliminated or reduced such disputes. In particular, what are the costs associated with the current system of compensation, such as costs associated with billing, traffic monitoring, and dispute resolution, which might be avoided or minimized through unification of compensation rates? Would these costs be avoided if there were some unitary positive rate? Responses should quantify the savings and identify any assumptions and explain how such cost savings were calculated.**
 - v. **What is the total minutes of use (MOU) of transit traffic for entities that provide or utilize transit services for the past five years? What are the transit traffic revenues and expenses per provider and how has this changed over the last five years?**
 - vi. **What would be the impact, if any, of comprehensive ICC reform on transit voice or data rates? If any concerns are identified, identify why ICC reform is the basis for the concern, and how, if at all, this is relevant to the deployment or adoption of broadband.²⁷**

This is a crucial area for comment in the Public Notice. As the Commission notes, many carriers (the recipients of huge amounts of USF largesse and substantial intercarrier compensation revenue) assert that every dollar of those amounts is absolutely necessary for the provision of adequate telephone service at reasonable rates and the provision of broadband for the future. These carriers have never been required to provide

²⁷ DA 09-2419 at 4-5.

proof on the first point and have submitted nothing but rhetoric on the second. NASUCA submits that it is time for these carriers to bear the burden of justifying their receipt of these dollars that come from the customers of other carriers.

As to the first point, NASUCA has submitted extensive data to the Commission to show that under the current high-cost fund, the rural rates for non-rural carriers are reasonably comparable to their urban rates.²⁸ NASUCA has also suggested that the Commission perform a similar survey of rural carriers' rates, and suspects that the results will be the same as the NASUCA survey of non-rural carriers. Under these circumstances, and under those outlined in the NCTA Petition discussed above,²⁹ it seems unlikely that removal of substantial amounts of USF would jeopardize carriers' ability to provide service.

With regard to intercarrier compensation ("ICC"), the Commission has already taken major steps on many the rates that are within its jurisdiction, in the CALLS order and the MAG order.³⁰ As NASUCA has pointed out, what the Commission should not do in this area is adopt a plan like the Missoula Plan, which **more than** replaced every dollar of lost revenue from reduced access charges through a combination of end-user

²⁸ CC Docket No. 96-45, et al NASUCA Reply Comments (June 8, 2008) at 8-15.

²⁹ This also responds to the questions in Items 4.b. and 4.c.

³⁰ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, FCC 00-193 (rel. May 2000) ("CALLS Order"); *In the Matter of 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, *Second Report and Order*, FCC 01-304 (rel. November 2001) ("MAG Order").

charges and USF.³¹ And the Commission should also not do what it discussed in the order of November 2008, when it asserted jurisdiction over all intercarrier compensation, including intrastate access charges, and set a rate for that compensation – both on the access charge side and the reciprocal compensation side – that was unquestionably confiscatory, particularly for smaller carriers.³²

That said, the data that the Commission asked for in items 4.d. through 4.h., particularly the first five subparts of 4.h., are crucial for the “factual analyses” that the Commission referred to in item 4.a. Yet NASUCA should be forgiven for assuming that the carriers who assert most loudly that the current levels of USF and ICC are absolutely necessary will be the least likely to produce this data.

5. **Competitive Landscape.**

In 1997, the Commission adopted a principle of competitive neutrality to guide its future policymaking, concluding that universal service rules should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly advantage nor disadvantage one technology over another. Today, the high-cost fund provides support to some facilities-based broadband providers, but not others. Moreover, virtually all incumbent local exchange companies operating in rural high-cost areas have carrier of last resort (COLR) obligations for voice service, while other providers that are offering voice, video and/or broadband in such areas do not.

- a. How does this disparity in regulatory obligation impact the economics of deploying broadband in rural areas? Should the national broadband plan evaluate whether COLR obligations should be revisited in light of the changing competitive landscape? If so, how and why?**

³¹ In AT&T’s NBP NOI comments cited in the Public Notice, AT&T looked to “a more efficient regime in which carriers do not shift costs to one another but instead compete more directly based on the costs they recover from their end users.” AT&T NBP Comments at 84-85. AT&T’s view overlooks the fundamental principle that when carriers use the networks of other carriers to complete calls for the initiating carriers’ end users, the originating carriers should pay the terminating carriers for that usage. The terminating carriers’ end users should not have to pay for that termination.

³² If states reduce their intrastate access charges, the response if any is an intrastate response.

- b. Should the broadband plan recommend that COLR obligations be removed or modified if any entity no longer is receiving universal service support?**
- c. What would be the impact of requiring all entities that accept universal service support for broadband to assume some form of COLR obligation for broadband?**
- d. What would be the impact of requiring entities that accept universal service support for broadband to offer the underlying transmission on a common carrier basis?**
- e. How do the COLR obligations vary by state? Do any states have “best practices” that promote deployment and use of alternative technologies?**
- f. Do states permit carriers to satisfy their COLR obligation using wireless or other technologies? If so, which states and should other states be encouraged to do so?**
- g. Do states permit carriers to satisfy their COLR obligations using VoIP? If not, should states be encouraged do so?**
- h. Quantify cost savings, both in capital expenditures and operating expenses, that could be achieved if we permitted carriers of last resort to meet this COLR obligation through wireless and/or interconnected VoIP service. Responses should explain any assumptions and how the estimated savings was calculated.³³**

There are, of course, a number of different facets to this issue. First, as noted above, the current USF provides support to rural carriers that use their support to build networks that can provide broadband service... despite the fact that broadband is not explicitly eligible for such support. The non-rural carriers also receive support, but do not use it for broadband. It is not clear that this “unfairly” disadvantages the non-rural carriers compared to the rural carriers, especially because the two do not compete. But this would be fixed by adopting an explicit broadband support mechanism available to rural and non-rural carriers alike.

Then there are the carriers receiving support who provide broadband when

³³ DA 09-2419 at 5-6.

another carrier operates in the area without support, as discussed in the NCTA Petition. That does unfairly disadvantage the carrier not receiving support, but the solution is not to make the support more broadly available; instead the solution, as proposed by NCTA, is to eliminate the (unnecessary) support currently being provided.

The COLR responsibility imposed by tradition and sometimes by state law, typically on incumbent carriers, is the one key justification for continuing universal service support.³⁴ But that COLR responsibility is, perhaps without exception, focused on traditional voice service. Thus the interface of the National Broadband Plan with COLR responsibilities should be minimal; the fact that a carrier can offer Internet access over the same facilities that it provides traditional voice service should not supplant the COLR responsibility.³⁵

COLR obligations do vary by state; as noted above, in some states the obligation is found in statute, in others it is found in rules or state commission orders. Certainly there is nothing in the Commission's power that allows it to supersede such state requirements, especially as they focus on *local* service. And it is not clear how the Commission has the authority to "permit[] carriers of last resort to meet this [state] COLR obligation through wireless and/or interconnected VoIP service."³⁶ This is

³⁴ Although there are legitimate questions about the extent to which COLR actually imposes costs on the incumbents. Peter Bluhm and Phyllis Bernt, "Carriers of Last Resort: Updating a Traditional Doctrine" (NRRI July 2009), available at http://www.nrri.org/pubs/telecommunications/COLR_july09-10.pdf.

³⁵ The suggestion in Item 5.b. that the Plan could recommend that COLR obligations be removed or modified if an entity is no longer receiving universal service support ignores the fact that the obligations preceded such support and currently apply even to carriers that receive neither federal nor state universal service support.

³⁶ Public Notice at 6. Thus the question of cost savings from such a requirement would be mere speculation.

especially true given many states' lack of authority over wireless service,³⁷ and the current uncertainty over state authority over VoIP. In any event, NASUCA is not aware of any state that explicitly allows carriers to satisfy their COLR obligations using VoIP, wireless or other technologies.³⁸

But the Commission also asks whether the Plan should include a COLR responsibility for broadband if an entity accepts broadband funding. In the context of NASUCA's proposal that the broadband fund be available only for currently unserved areas, it would be appropriate to condition the receipt of such federal funding on the acceptance of a broadband COLR obligation for the area for which the funding is accepted.³⁹

6. **High-Cost Funding Oversight.**

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

- a. **Should the states and/or the federal government adopt new mechanisms to oversee the distribution of any new high-cost funding to support broadband and why?**
- b. **How should the Commission track a recipient's progress in deploying broadband-capable infrastructure in whatever geographic area is targeted for support? In particular, should the Commission mandate annual submission of financial documentation, certifications, audits, or other forms of verification such as field inspections?**

³⁷ Would also there be a conflict with the prohibition of state authority over wireless entry in 47 U.S.C. §332?

³⁸ There is a question whether a state requirement on the wireless side would conflict with §332's prohibition of state authority over wireless entry.

³⁹ On the other hand, the suggestion in Item 5.d. that the support be conditioned on the carrier offering the underlying transmission on a common carrier basis would create a situation where some broadband carriers were common carriers while most are not. As proposed by NASUCA in our initial comments on the National Broadband Plan, all broadband providers should have a common carriage obligation.

- c. **Identify current “best practices” for state oversight over eligible telecommunications carriers and their use of USF. Explain the benefits of any identified state’s procedures and identify any modifications that would serve our goal of ensuring that funds are used efficiently and effectively to make broadband available to consumers in the relevant geographic area.**⁴⁰

Regardless of what the fund is designated, as a broadband part of the high-cost fund, a separate fund, or something else, there must be appropriate oversight. There should be no less oversight for this compared to the other piece parts of the USF; indeed, under the current statute it could be argued that a broadband fund is less connected to the core universal service principles, so there should be more oversight.

Especially if the broadband fund is limited as ASCA proposed to a focus on unserved areas, this limitation should make evaluation of results easier. In any event, “a recipient’s progress in deploying broadband-capable infrastructure in whatever geographic area is targeted for support” must be tracked. This should include (at least) “annual submission of financial documentation, certifications, audits, or other forms of verification such as field inspections.”

That said, NASUCA is aware of the recent controversies over the audits of the current USF. It does appear that there are reasonable grounds for complaint about the burden these audits place on the recipients of universal service funds, with little apparent benefit to the fund to show for it. We hope that these problems can be fixed for the current fund and not repeated in audits of broadband programs.

⁴⁰ DA 09-2419 at 6.

7. **Lifeline/Link Up.**

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

- a. **How should any devices necessary for a low-income broadband program be supported?**
 - i. **Who would own such devices, and what would become of these devices should a consumer exit the program or seek to upgrade his/her device?**
 - ii. **How would consumers purchase such devices – through vouchers, reimbursement, and/or some other means?**
 - iii. **Should the Commission limit the types of devices available to consumers participating in the program? Commenters should identify with specificity any implementation issues.**
 - iv. **Should the Commission determine some sort of minimum specifications for supported devices? If so, how should these specifications be set initially and how should they change over time as technology evolves? Commenters should identify with specificity any implementation issues.**
- b. **Commenters should provide estimates of the anticipated demand for a low-income broadband program.**
 - i. **How should the Commission determine the appropriate support amounts for devices and for service? Please provide data supporting the proposed support levels and identify all assumptions.**
 - ii. **Should funding be initially capped for a trial period, and if so, at what level?**
 - iii. **How much low-income support would be necessary in the aggregate to enable all eligible consumers to participate in a low-income broadband program? Commenters should identify all assumptions.**
- c. **What eligibility requirements should apply to consumers participating in a low-income broadband program?**
 - i. **Should these eligibility requirements be the same as or different from the eligibility criteria in the existing low-income program?**
 - ii. **If the consumer eligibility requirements should be the same, then should current subscribers in the existing low-income program be automatically enrolled in the low-income broadband program?**

- iii. **If the consumer eligibility requirements should be different from those applied in the existing program, what should these different eligibility requirements be?**
- iv. **How should the Commission define “household” and “head of household” for purposes of determining eligibility for any low-income broadband program that the Commission might establish?**
- d. **How can the Commission provide flexibility to consumers to select the service offerings that meet their needs under a broadband Lifeline/Link Up program?**
- e. **One option would be to permit carriers who are not eligible telecommunications carriers (ETCs) to be eligible to participate in a low-income broadband program.**
 - i. **What would be the impact of allowing non-ETCs to be eligible to participate?**
 - ii. **Should ETCs currently participating in the existing low-income program automatically be eligible to participate in a low-income broadband program? Why or why not?**
 - iii. **What would be the impact of having requirements for carriers participating in a low-income broadband program that differ from the requirements imposed on existing ETCs? If commenters believe there should be different requirements, what should these different requirements be?**
 - iv. **What would be the impact of requiring providers participating in a low-income broadband program to conduct outreach to inform potential eligible consumers about the program? Quantify the impact on carriers and identify any operational issues. If such outreach is required, should the outreach be the same as or different from the outreach requirements in the existing low-income program? Why or why not?**
- f. **How could a newly-established federal low-income broadband program work in concert with existing and/or future state low-income broadband programs? Could the cooperation between the states and the Commission regarding the existing state and federal low-income programs serve as a model for federal-state cooperation in the context of a federal low-income broadband program?**
- g. **If the Commission establishes a low-income broadband program, what implications would such a program have for existing Lifeline and Link Up programs? For instance, would creation of a new low-income broadband program have any impact on current enrollment levels in the existing Lifeline and Link Up programs?**

- h. **If commenters believe that corresponding changes should be made to the existing Lifeline and Link Up programs, what would be an appropriate transition timeline and what implementation issues would need to be addressed and why?**
- i. **How can the Commission protect against waste, fraud, and abuse in any low-income broadband program it establishes?**
 - i. **Particularly, how can the Commission protect against waste, fraud, and abuse related to any hardware or devices used in the program?**
 - ii. **How can the Commission ensure that consumers cannot obtain the same supported service from two different providers?**⁴¹

NASUCA has long supported development of an effective and fair Lifeline and Link-Up universal service program to assist low income consumers in obtaining telephone service at affordable rates. Broadband services today provide ways for consumers to communicate and obtain and exchange information. Broadband service can be a platform for voice service, for social networking, for e-government, online education, and commerce. NASUCA agrees that universal service support should be made available so low income consumers and their household can obtain broadband service on more affordable terms. NASUCA described some of the legal challenges and program concerns related to implementation of a Lifeline for Broadband pilot in Comments filed with the FCC on November 26, 2008 and December 22, 2008 Reply Comment.⁴² Many of NASUCA's concerns articulated in those comments would apply to development of any alternative Lifeline program as part of a National Broadband Plan.

⁴¹ DA 09-2419 at 6-8.

⁴² WC Docket No. 05-337, et al., Comments of the National Association of State Utility Consumer Advocates, Maine Office of Public Advocate, Maryland Office of Peoples' Counsel, The Utility Reform Network, and The Utility Consumer Action Network on Further Notice of Proposed Rulemaking (Nov. 26, 2009) at 32-37 ("NASUCA Nov. 26, 2007 Comments"); WC Docket No. 05-337, et al., Reply Comments of the National Association of State Utility Consumer Advocates on Further Notice of Proposed Rulemaking (Dec. 22, 2009) at 24-28.

The National Broadband Plan under development by the FCC should include plans for a Lifeline for Broadband program. However, similar to the goal of universal service for plain old telephone service (“POTS”), the goal of universal service for broadband must necessarily be a long term goal which will take years to accomplish. At present, applications for American Recovery and Reinvestment Act (“ARRA”) funding to deploy broadband to unserved and underserved areas, for public computing centers, and other projects are pending review and approval. Mapping information and data regarding where broadband service is available, by what technology, and at what speeds is not yet uniformly available. Just as the FCC can track the availability of voice services in the consumer’s home or available close by, broadband penetration must be capable of being measured and tracked. A Lifeline for Broadband program will assist not only the low income consumers but aid broadband providers by increasing the take rate and return on investments. A baseline understanding of broadband penetration rates and targets for improvement are a necessary part of any regulatory effort that will flow federal USF dollars to broadband service providers. The Commission should recognize this fact and move with deliberation toward development of the baseline information needed to shape an effective and efficient program to promote universal broadband service among low income consumers. The FCC’s current request for comments is a step in the right direction. NASUCA offers the following replies to the FCC’s queries.

Item 7.a. The FCC poses a series of questions directed at the development of a program to provide universal service support for devices that would connect low income consumers to broadband services. NASUCA notes that Lifeline and Link-Up for voice service do not provide support for telephone handsets. The FCC long ago deregulated

inside wiring and allowed consumers to purchase their choice of telephone handsets from competing suppliers. The market for broadband connecting devices today is highly competitive and covers a wide spectrum of devices from personal computers, to gaming devices, to wireless handsets. Because the market for broadband connecting devices is fully competitive and unregulated, the FCC should approach the question of whether to provide a subsidy for end-user broadband equipment with extreme caution, with such support being provided only where absolutely necessary.

Indeed, NASUCA questions whether the FCC has the authority to impose universal service fees to be used to purchase or subsidize broadband connecting devices which would become the private property of individuals. As a matter of policy, NASUCA cannot, at this time, support a proposal that would require all consumers who pay to support the USF to contribute to expense of broadband connecting devices.⁴³

Additionally, there may be other ways to address the individual and varying needs of low-income consumers for broadband connecting devices. States, community groups, or industry members may develop programs to provide new or refurbished personal computers, smart phone handsets, or other devices to consumers.⁴⁴ What type of device would meet the low income household's needs may vary depending whether there are

⁴³ In response to the Lifeline Broadband Pilot proposed by Chairman Kevin Martin in late 2008, NASUCA identified flaws in the proposed Pilot but NASUCA did not oppose outright the possibility of support for hardware. The Pilot would have provided support for up to 50% of the cost of broadband Internet access service installation, including a broadband Internet access device, up to a total amount of \$100. However, the household could be required to return the Internet access device to the ETC under some conditions. NASUCA opposed depriving consumers of their property interest in the device and expressed concern that the consumer's privacy would be comprised. Further, the Pilot had not determined what Internet access devices would or would not be supported. NASUCA Nov. 26, 2008 Comments at 32-37. As set forth in these Comments, NASUCA asserts that the better approach for a national Lifeline for Broadband program is to allow consumers to choose the device which best meets their needs.

⁴⁴ See e.g., FCC News Release, "Chairman Genachowski Commends NCTA's Adoption Plus (A+) Program," (Dec. 1, 2009).

children in the household, or a need for features to accommodate disabilities, or a preference for mobility. Libraries that have benefited from School & Libraries USF support and public computing centers eligible for ARRA grants or loans might provide alternatives for all consumers to obtain broadband connectivity, if ownership of a device is otherwise a barrier.

Item 7.b. The starting point for universal service for broadband is significantly different than voice telecommunications. With the exception of some Tribal areas, voice service has been pretty much universally available throughout the United States for many years. In order to comply with the mandate of the 1996 Telecom Act, the FCC quantified the low income gap in universal service through the Commission's telephone penetration and telephone subscribership surveys. Thus, Lifeline subsidies were approved to promote the goal of making telephone service affordable for low-income consumers, in order to increase and maintain penetration rates. If the Commission determines that Lifeline support is needed to achieve the goal of universal broadband service, the anticipated demand may approximate the demand for Lifeline for telephone.

It is difficult to project the level of aggregate demand for Lifeline for Broadband support that an effective program might require. Adoption of the federal default eligibility criteria for Lifeline and Link-Up for telephone service, as discussed below, might result in a slightly smaller pool of Lifeline for Broadband eligible households, where some states that mandate state universal service support have adopted broader eligibility criteria. Yet economic hardship has led to an increase in the number of households that qualify for food stamps and so would qualify for Lifeline. Federal health care reform might alter the number of consumers eligible for Medicaid, and so in turn

change the number who would qualify for Lifeline.

Even if the pool of consumers eligible for Lifeline for Broadband support can be estimated, it is difficult to predict how many would request Lifeline for Broadband support. Historically, few states have succeeded in enrolling more than 50% of the Lifeline eligible consumers.⁴⁵ Little data is available to determine the cost of Lifeline support if all eligible customers enrolled. In 2003, FCC staff forecast that if all states added income at or below 135% of federal poverty guidelines as a Lifeline eligibility criterion, federal expenditures for Lifeline support in 2005 would be in the \$833 to \$846 million dollar range, providing support for over 8 million Lifeline subscribers.⁴⁶

Although the FCC and states that mandate state universal service support have adopted broader Lifeline eligibility criteria since the FCC Staff study, the advent of TracFone and other carriers offering prepaid wireless service with Lifeline support has arguably had a more significant impact, increasing the number of Lifeline subscribers and demand for Lifeline USF reimbursement dramatically. Thus, for 2010, the Universal Service Administration Company forecasts \$1.165 billion in Lifeline support will be distributed.⁴⁷

Any sound estimate of the demand for Lifeline for Broadband support must

⁴⁵ USAC staff prepares annually a study of the Lifeline participation rates in each state, based on United States Census Bureau data. The 2008 Lifeline Participation Rates by State map compiled by USAC shows just 5 states, Alaska, California, Colorado, Montana and Oklahoma, as having estimated Lifeline participation rates in excess of 50%. A description of the USAC study method and links to maps for 2008 and earlier years is available at <http://www.usac.org/li/about/participation-rate-information.aspx>.

⁴⁶ WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, (rel. Apr. 29, 2004), App. K-12.

⁴⁷ Universal Service Administration Company, "Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2010" (Nov. 2, 2009) at 16, available at <http://www.usac.org/about/governance/fcc-filings/2010/Q1/1Q2010%20Quarterly%20Demand%20Filing.pdf>

consider not only the size of the pool of eligible households, but also how eligible households perceive the value of such Lifeline for Broadband support. NASUCA supports development of a Lifeline for Broadband program as a worthy goal but cautions that consideration must be given to the cost relative to the value and effectiveness in achieving universal broadband service.

Adoption of the current Lifeline eligibility criteria (as discussed below) to determine which households may qualify for Lifeline for Broadband support would assist in measuring the likely demand for Lifeline for Broadband. Since many states do not regulate broadband services or offer state universal service support for broadband service, the Commission should consider adopting the federal default Lifeline eligibility standards to determine Lifeline for Broadband eligibility.

Item 7.b.i. As to the appropriate level of support for the monthly cost of maintaining broadband connectivity, NASUCA notes that in the past the Commission started with a moderate level of Lifeline support for telephone service. The Commission later increased the amount of support, particularly for Tribal areas, based on telephone penetration data and recognition of the increasing costs of telephone service for all consumers. NASUCA recommends that the Commission take a similarly measured approach, as tracking procedures to monitor the success or failure of a Lifeline for Broadband subsidy still need to be developed.

As discussed above, NASUCA recommends that universal service support for broadband service must be collected from broadband service providers. The size of funding available for Lifeline for Broadband would depend on the size of the broadband universal service fund. Alternatively or in addition, current federal high cost support that

would no longer be distributed after implementation of the reforms recommended by NASUCA might provide funding for Lifeline for Broadband.

Item 7.c. The FCC has also requested comment on eligibility requirements and whether households which receive Lifeline telephone support should automatically be enrolled to receive Lifeline for Broadband support. NASUCA supports application of the federal default Lifeline eligibility criteria to determine eligibility for Lifeline for Broadband support.⁴⁸ A Lifeline subsidy should be provided one-per household, either for voice telephone service or broadband, but not both. Since broadband service offers the capability for voice service, the Lifeline subsidy should be restricted to one or the other per household.

In the past, automatic enrollment has been considered as a mechanism to automatically enroll consumers who meet Lifeline eligibility criteria to receive the Lifeline discount. NASUCA supports automatic enrollment as an efficient mechanism to increase Lifeline participation. However, since under NASUCA's proposal consumers may receive Lifeline telephone service for wireline or wireless telephone service or for broadband, the consumer's preference should be considered. It is premature to determine which Lifeline subsidy should be the default, if a consumer receives both telephone and broadband service and could be automatically enrolled for one form of Lifeline support or the other.

The FCC has also asked for comments on how to define "household" and "head of household." NASUCA does not have a recommendation at this time. NASUCA notes that the FCC has measured Lifeline penetration rates for voice service based on the

⁴⁸ 47 C.F.R. § 54.409(b).

United States Census Bureau’s concept of “household.” However, the appropriate definition of “household” and “head of household” should not result in the exclusion of low income consumers and their families from receipt of Lifeline for Broadband support due to reliance on temporary or congregate housing, or even a lack of housing. However, NASUCA has filed and is following the comments filed in response to TracFone’s request for clarification and modification of the “one-per-household” rule in WC Docket 03-109.

Item 7.d. In order to maximize the use of available low income funding, the Commission should consider a basic subsidy for basic broadband with minimal capabilities and allow customers the freedom to choose additional, more costly options as needed. (Providers should not be allowed to limit Lifeline customers’ access to only selected broadband programs.) This is no different than offering Lifeline support for basic voice service and allowing low income customers to select additional capabilities and options as needed. Basic broadband should be the goal of universal service while the market should be allowed to determine the success or failure of the individual providers in meeting the total needs of their customers. The Commission should also consider vouchers, which would provide the consumer with more power to shop, rather than reimbursement to the provider.

Item 7.e. As discussed above, if Lifeline broadband is provided under § 254, the Commission must require the provider to be an ETC. Yet as the Commission and states have seen with other low-income providers, a “low-income ETC” need not also be a “high-cost” ETC. Thus the question asked in this item is a bit misleading: The Commission could establish a separate category of ETC for the Lifeline program. Of

course, a provider would not be precluded from being both a Lifeline ETC and a high-cost – or COLR – ETC. Indeed, any current ETC should be eligible to participate in the Lifeline broadband program.

There is no reason why providers benefiting from the broadband Lifeline program should not be subject to the same conditions that apply to other Lifeline ETCs, including contributing (at least to the broadband USF), protection of customer privacy and records retention for possible audits. If the Commission does allow non-ETCs to participate, they must meet those conditions. The conditions must include the requirement to perform outreach to inform customers of the program's availability. We will be interested in reviewing the proposals of any non-ETC providers to participate in this program.

Item 7.f. There is a decided need for information on whether states have Lifeline for Broadband type programs. In any event, a single nationwide set of eligibility standards that could be modified in a few years, after experience is gained, would be helpful. There is no reason that the states could not coordinate state broadband programs with the federal program, but the burden would have to be upon the state to develop a compatible plan. Since most states presently use the federal Lifeline standards, this should not really be a problem for the Commission or the states.

Item 7.g. NASUCA Comments filed last year emphasized that loss of broadband should not jeopardize loss of Lifeline voice service.⁴⁹ The network is in the process of evolving from narrow-band voice to broadband. As broadband expands, then Broadband Lifeline should also expand, while voice Lifeline may decline.

⁴⁹ NASUCA Nov. 26, 2008 Comments at 32-37.

Item 7.h. NASUCA does not believe that any changes are needed for the existing Lifeline and Link Up programs to accommodate a Lifeline program, other than the safeguards discussed in the next paragraph.

Item 7.i. The Commission asks how it can protect against waste, fraud, and abuse related to any hardware or devices used in the program. As discussed above, NASUCA does not believe that hardware should be supported by the program.

The Commission also asks how it can ensure that consumers do not obtain the same supported service from two different providers. This is a difficult, but not impossible task. As with the current prepaid wireless Lifeline programs, each customer should be asked to sign a statement that they are receiving Lifeline support from only a single provider. Then, if there is evidence of fraud, a universal database could be created to trap “double-dippers,” who would be excluded from future participation in any Lifeline program.

CONCLUSION

NASUCA appreciates the opportunity to bring these views to the Commission’s attention.

Respectfully submitted,

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