

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

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

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Richard Cordray
Ohio Attorney General

Duane W. Luckey
Section Chief

John H. Jones
Stephen Reilly
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
614.466.4393 (telephone)
614.644.8794 (fax)
john.jones@puc.state.oh.us
stephen.reilly@puc.state.oh.us

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INTRODUCTION AND SUMMARY

Pursuant to a Congressional mandate to develop a national broadband plan, the Federal Communications Commission (“FCC”) released its plan “to ensure that every American has access to broadband capability” entitled *Connecting America: The National Broadband Plan* (“NBP”) on March 16, 2010.¹ A little over a month later, on April 21st, the FCC released its first in an anticipated series of Notices of Inquiry (“NOI”) and/or Notices of Proposed Rulemaking (“NPRM”) related to the National Broadband Plan (“NBP”). The combined NOI/NPRM seeks comment on a proposed cost model for broadband deployment and maintenance support as well as issues surrounding the transition of present legacy high-cost support to a new Connect America Fund (“CAF”) that is intended to support ubiquitous national broadband deployment.

¹ *Connecting America: The National Broadband Plan*, Executive Summary (rel. March 15, 2010) at xi.

At its outset, the NBP sets very high expectations for broadband service stating that it is “a foundation for economic growth, job creation, global competitiveness and a better way of life.”² To achieve this vision, the transition from traditional telephony service to broadband service represents nothing short of a paradigm shift in the field of communications. The Ohio Commission recognizes this and commends Congress and the FCC on its vision and the laudable goal of universal broadband service. Nevertheless, with such an ambitious and, in many instances aggressive, plan as the NBP, the devil truly will be in the details. Accordingly, the Public Utilities Commission of Ohio (“Ohio Commission”) is pleased to submit its comments to the FCC.

DISCUSSION

I. General Comments

The National Broadband Plan proposes an aggressive goal of at least 100 million U.S. homes with affordable access to actual download speeds of at least 100 Mbps and actual upload speeds of at least 50 Mbps by the year 2020.³ Initially, however, the NBP proposes a more modest, yet nonetheless ambitious, universalization target of 4 Mbps of actual download speed and 1 Mbps of actual upload speed, with an acceptable quality of service for interactive applications.⁴ In setting universalization target download and upload speeds, the NBP has essentially redefined what is, and what is not, broadband service. As a consequence of the

² *Id.*

³ *Id.* at 9.

⁴ *Id.* at 135.

NBP's recasting broadband in absolute terms of minimally acceptable download and upload speed, it has also potentially recast those areas that are and are not served with broadband.

According to the NBP, approximately 95% (roughly 290 million Americans) of the U.S. population live in housing units with access to terrestrial, fixed broadband infrastructure capable of meeting the NBP's target universalization download speed of at least 4 Mbps actual download speed.⁵ Approximately 98% of all Ohioans presently have access to terrestrial fixed broadband service.⁶ The adoption rate in Ohio is 66%.⁷ For many Ohioans, this broadband is only available through DSL service, which is likely to provide slower download and upload speeds than cable or fiber. Consequently, for the 38% of Ohio broadband subscribers who know their broadband download speed, over one-half of this group reports speeds that are *less* than the universalization target speed.⁸ If this distribution is representative of Ohio as a whole, then the download speeds for over one-half of the remaining 62% of Ohio Broadband subscribers are less than 4Mbps. Under the NBP, then, many Ohio broadband subscribers would not be included among the national 95% of Americans with access to broadband that meets the Plan's universalization target. This causes the Ohio Commission to question whether the Broadband Availability Gap described in the NBP has been understated.

Subscribers of DSL broadband service generally receive their service from their local telephone service provider. In Ohio, this includes small, rural independent carriers that are often

⁵ *Id.* at 20.

⁶ Connect Ohio Residential Technology Assessment Results (2010) at 7 available at http://www.connectohio.org/_documents/Binder1.pdf.

⁷ *Id.* at 5.

⁸ *Id.* at 10.

the only service option for their subscribers. While it would certainly be possible for these carriers to achieve a broadband infrastructure capable of delivering the download and upload speeds set forth in the NBP, doing so would likely require an upgrade to the carriers' existing networks, which, of course, would be at a cost to the carriers. In many cases, the cost of an upgrade to increase download and upload speeds would be linear, meaning that a carrier's cost would increase proportionally to its increase in broadband speeds. In other words, if a carrier doubles its broadband speeds, its cost for providing broadband service would double as well.

Currently, legacy high-cost support is available to carriers certified by their state commissions as Eligible Telecommunications Carriers ("ETCs") to provide voice service in high cost areas. While the high-cost fund has historically been intended as support for providing voice service, many ETCs have used it to indirectly subsidize, and, consequently be able to offer, broadband service to their customers. In Ohio, these ETCs are generally the small, rural independent carriers. These carriers have used legacy high-cost support to build their existing networks and would likely require at least some level of capital expenditure ("capex") and maintenance support to upgrade these networks to achieve the higher download and upload speeds suggested by the NBP.

Under the NBP, legacy high-cost support for incumbent ETCs will be phased out over a ten-year period.⁹ During this time, funding will be shifted to the CAF, which will support broadband service in unserved areas as well as those areas not meeting the universalization target.¹⁰ All of Ohio's small, rural ETCs have deployed some form of broadband, but do not

⁹ *Connecting America: The National Broadband Plan* at 147-148.

¹⁰ *Id.*

necessarily meet the NBP's universalization target speeds.¹¹ While the CAF would assist those small Ohio carriers needing to upgrade their networks to meet the universalization target, many already meet it.¹² In essence, these carriers have used *existing* legacy high-cost support to accomplish the NBP's objective, i.e., 100% voice and broadband availability within their service territories. The NBP recognizes the need for a transition mechanism to allow these carriers to continue to receive network support under the CAF, and alludes to ongoing support for existing broadband services but makes no provision for such a mechanism.¹³ Furthermore, the NBP does not account for this required, ongoing support in its calculation of the broadband availability gap nor does it take into account the impact on those carriers that presently have a carrier of last resort ("COLR") obligation.¹⁴ In other words, the carriers that are already compliant with the NBP's universalization target with the aid of legacy high-cost support are, at best, unaccounted for by the NBP and, at worst, penalized by it.

Ohio is presently a net-payer into the high-cost fund, meaning that, as a whole, more money is paid into the fund by Ohio subscribers than is paid out to Ohio carriers providing service in high-cost areas. With the transition to the CAF, Ohio will potentially become an even larger net-payer as ETCs meeting the universalization target possibly lose their legacy high-cost support. As a result of Ohio carriers being ahead of the broadband curve, high-cost support that has previously been provided to these Ohio ETCs and helped them meet or exceed the universalization targets may be redirected out of Ohio through the CAF to other states and

¹¹ Ohio staff survey of small LECs through websites and/or telephone calls.

¹² *Id.*

¹³ *Connecting America: The National Broadband Plan* at 147-148.

¹⁴ *Id.* at 137.

regions of the country that are behind the curve. As a result, Ohio subscribers may be left with a proportionally larger tab for high-cost support as well as the additional burden of making up for the lost high cost support in those areas that have been ahead of the broadband curve and may fall behind without that support.

To avoid such an outcome, the Ohio Commission respectfully suggests that the FCC take steps to ensure that all carriers presently offering broadband service that meets the universalization targets retain their current levels of high-cost support both during and following the NBP's ten-year transition period to the CAF. According to the NBP, the projected high-cost support disbursement for fiscal year 2010 is \$4.6 billion.¹⁵ If the high-cost fund is capped as the NBP recommends, this figure can be extrapolated over the ten-year phase-out period to \$46 billion in high-cost disbursements. The NBP recommends shifting up to \$15.5 billion from the current high-cost program to broadband (presumably the CAF) over this ten-year period.¹⁶ This leaves \$30.5 billion available for disbursement under the current high-cost program to support carriers meeting the universalization targets during the transition period. The Ohio Commission realizes that the amounts available for disbursement may fluctuate from year-to-year during this time; nonetheless, legacy high-cost support should still be available to those carriers that have relied upon it to build and maintain their current voice and broadband networks and such carriers should receive priority in legacy high-cost fund disbursements during the transition. What is not clear in the NBP, however, is what happens at the end of the transition period. The NBP is clear that legacy high-cost support will be eliminated during phase three of this reform and alludes to

¹⁵ *Connecting America: The National Broadband Plan* at 140, Exhibit 8-E.

¹⁶ *Id.* at 147.

ongoing support for these carriers.¹⁷ However, since support for these carriers is not included in the NBP's calculation for ongoing costs, it is unclear from where this support will come.

The NBP is also unclear as to what happens to the contribution levels at the end of the ten-year period. The current levels presently support \$4.6 billion in high cost disbursements. If, as the NBP recommends, the universal service base is broadened,¹⁸ the level of support should increase if all other factors remain constant. Consequently, if at the end of the ten-year transition period all universal service funding that had been previously directed toward the legacy high-cost support program is fully directed toward the CAF, there should be adequate funding available to support those carriers who had relied on legacy high-cost support to maintain their voice and broadband networks during the transition. The Ohio Commission suggests that those carriers meeting the universalization targets be identified and adequate funding earmarked for their ongoing support. This could be accomplished through the CAF, or by simply grandfathering the existing high-cost support received by these carriers. To control the size of the fund, the support levels should be capped or frozen at 2010 levels, with the realization that they may need to be adjusted from time-to-time. The Ohio Commission believes that such an approach insures that those carriers that have taken the initiative to build a broadband network are protected without compromising the goals and objectives of the NBP.

The Ohio Commission realizes that the question of the FCC's authority to fund the CAF as anticipated by the NBP is beyond the scope of this NOI/NPRM and is addressed by the FCC's June 17, 2010, NOI issued in GN Docket No. 10-127. Nonetheless, the Ohio Commission

¹⁷ *Id.* at 137 – 144.

¹⁸ *Id.* at 149.

wishes to briefly point out that it believes that a reclassification of broadband from a Title I information service to a telecommunications service whether under Title II without forbearance, under the FCC's proposed "Third-Way" approach or under some other approach, including an amendment to the Telecommunications Act itself, would provide the FCC with the clearest, cleanest and best authority to reform the Universal Service Fund and provide funding for the CAF to achieve the NBP's objectives. While it is certainly debatable whether Section 254 of the Telecommunications Act would authorize the FCC to fund the CAF in the absence of a reclassification, it is clear that the FCC would have this authority if there is such a reclassification. Without a reclassification, the FCC's authority to carry out Congress' mandate and implement the NBP will be in constant doubt.

II. Cost Model

A. Cost/Cost v. Cost/Revenue Model

Using the NBP model, both the incremental costs and expected incremental revenue from the new broadband customers and services resulting from the broadband build-out would be considered in determining support levels.¹⁹ As noted in the NOI, this is in contrast to the FCC's current approach of using a "cost only" model for determining legacy high-cost support levels for non-rural carrier.²⁰ As a result of these differing approaches, the FCC has asked for comment on which approach should be used in determining CAF support levels under the NBP. For

¹⁹ *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry/Notice of Proposed Rulemaking, FCC 10-58 (rel. April 21, 2010) at 15, ¶ 35.

²⁰ *Id.*

several reasons, the Ohio Commission recommends that broadband support levels be determined using a “cost/cost” model rather than a cost/revenue model.

A cost/revenue model presents several problems because it must capture all of the costs and revenue associated with the broadband network. Such revenues must include not only revenue for voice service, but for other services such as internet access and cable TV, including programming revenue. In other words, much of the revenue would not be directly attributable to broadband service itself, but would be a by-product of other services which rely on the underlying broadband availability. Of course, there would be varying levels of demand for these applications driven in large part, one may presume, by promotional offerings. Using a cost/revenue model, it would be difficult to account for price fluctuations that result from these promotional offerings. Estimating the demand for each application further adds an additional level of complexity. For instance, several factors will affect the calculation of costs and revenues for video service such as the minimum number of channels that must be purchased. As one might expect, then, revenue would fluctuate over time as services, service offerings and technologies change causing difficulty and unreliability in its estimation using a cost/revenue model.

In addition to the difficulties estimating the amount of revenue to input into a cost revenue model, using this model would likely lead to an increase in a carrier’s dependence on intercarrier compensation (ICC) revenues. As per-minute ICC revenues are eliminated, as is contemplated by the NBP,²¹ the required CAF support will increase, again creating inefficiency in the use and allocation of support. Finally, and perhaps most importantly, the cost/revenue

²¹ *Connecting America: The National Broadband Plan* at 148

model provides little or no incentive for a carrier to maximize revenue. Since support would only be provided in those areas where no business case can be made for offering broadband service, it is a reasonable assumption that a carrier's revenue for that area will not, in the long term, exceed its costs, otherwise support would not be necessary. Since increased revenue would actually reduce the amount of support a carrier receives, there may be an incentive to actually keep revenue down so as not to jeopardize the carrier's support level. This result runs counter to the NBP's goal of keeping high-cost support in check.

Alternatively, the approach favored by the Ohio Commission is a forward-looking economic cost model that compares the nationwide average forward-looking incremental costs of providers with the support recipient's forward-looking incremental costs. The level of support would be the difference between the two. Unlike the cost/revenue model, the cost/cost model promotes efficiency by allowing a carrier to pursue revenues without having to factor the revenues into the support calculation. Insuring that a provider's costs are supported without an offset for revenue acts to incent the provider to maximize its revenue, which would have the effect of spurring broadband deployment through the most efficient means. As such, using the cost/cost approach for calculating CAF support will likely decrease a carrier's dependence on ICC revenues. Since the carrier's costs are covered by CAF support, any change in ICC revenue should not be a factor in the equation. Instead, carriers will become less dependent on ICC revenues and should focus on how to maximize their revenues through creative offerings to end users. This approach should apply to both the calculation of the CAF support needed for the build-out of the broadband network in the gap, i.e., unserved, areas, as well as the CAF support needed for the ongoing operation of the broadband network. Finally, should the FCC elect to use a market-based mechanism, such as a reverse auction to determine support levels, carriers

and providers will have a greater incentive to submit the lowest support bid to win such an auction since their potential revenue will not be affected by their costs. For this reason, the cost/cost model would provide a mechanism to help insure that the most efficient provider at the lowest required level of support is selected for each unserved and underserved area.

B. Technology & Competitive Neutrality

The Ohio Commission agrees with the NBP's principal that eligibility for obtaining support under the CAF should be technology-neutral.²² Consequently, regardless of the cost model that the FCC ultimately selects, it should be able to determine the support requirements of different types of networks. In each geographic area, the cost model must determine the lowest support requirement among competing network platforms with support being provided to the most efficient, lowest cost broadband provider regardless of technology or platform, including satellite service. While there may be capacity issues with satellite service today,²³ it seems short-sighted to assume that this will always be the case. The NBP takes a long-view over a ten-year transition period. Today's cutting-edge technology will likely seem antiquated at the end of this period as advancements are made in the deployment and delivery of broadband service. Such advances will most certainly include satellite service. Consequently, categorically excluding *any* type of technology from the model raises questions about whether the most efficient provider has been selected to provide broadband service at the lowest cost and contradicts the NBP's stated principle of technology neutrality.

²² *Id.* at 145.

²³ FCC 10-58 Combined NOI/NPRM at 137, ¶ 26.

Closely related to the principal of technology neutrality is the NBP's proposal of competitive neutrality. The NBP recommends that support be available to incumbent as well as competitive telephone companies, who are rural as well as non-rural.²⁴ The Ohio Commission generally supports this idea, but would qualify it so as not to place small, rural telephone companies at an inherent disadvantage when competing against large ILECs and intermodal competitors such as cable TV providers. Many of Ohio's small rural telephone companies are bordered or surrounded by one or more large ILECs and/or intermodal broadband service providers and are the sole provider of service within their respective territories. In these instances, the large ILECs and intermodal competitors have advantages of scale and scope that their much smaller neighbors do not have. In a competitively neutral environment, such as with a reverse auction, it would be very difficult for the small, rural carrier with a COLR obligation to compete against a large ILEC or intermodal competitor that does not have a COLR obligation, even within the small carrier's own service territory. In essence, these territories will be anything but competitively neutral as the small carriers will simply be forced to abdicate their territories for the large ILECs and/or intermodal competitors. Therefore, the Ohio Commission suggests that the principal of competitive neutrality only be applied in areas served by carriers that have a minimum number of subscribers, for instance 10,000 or less subscribers, or in areas that have already been opened to competition such as where a small, rural carrier is presently competing with an ILEC, a CLEC, or an intermodal service provider. In those territories that do not meet any of the minimum thresholds, the level of broadband support that the small, rural carrier receives would be determined by the model.

²⁴ *Connecting America: The National Broadband Plan* at 145.

C. Use of Market-Based Mechanisms

The NOI seeks comment on the use of a model if the FCC decides to also use a market-based mechanism to identify supported entities and support levels.²⁵ In prior comments filed with the FCC, the Ohio Commission has supported the use of reverse auctions²⁶ and believes that, in appropriate geographic areas,²⁷ the use of such a market mechanism could be beneficial in determining supported entities and support levels. Nonetheless, the Ohio Commission believes that the FCC should take the cost of conducting any given reverse auction into its decision to hold such an auction. In those areas where one carrier or provider is undoubtedly dominant possessing significant advantages of scale and scope, the FCC should takes steps to ensure that the costs of conducting a reverse auction do not outweigh its benefits since the outcome of the auction would not likely be in doubt. However, in those areas where a reverse

²⁵ FCC 10-58 Combined NOI/NPRM at 10 – 11, ¶¶ 20 – 22.

²⁶ See, e.g., *High Cost Universal Support, Federal-State Joint Board on Universal Support*, Comments of the Public Utilities Commission of Ohio Regarding Reverse Auctions, WC Docket No. 05-337, CC Docket No. 96-45, filed April 18, 2008 (Ohio 2008 Reverse Auction Comments). *High Cost Universal Support, Federal-State Joint Board on Universal Support*, Reply Comments of the Public Utilities Commission of Ohio Regarding High-Cost Universal Service Reform, Identical Support and reverse Auctions, WC Docket No. 05-337, CC Docket No. 96-45, filed May 27, 2008 (Ohio 2008 Reverse Auction reply Comments).

²⁷ The Ohio Commission is of the opinion that an appropriate geographic area is an area that is unserved rather than underserved. In an unserved area, no broadband service is available because no business case can be made for offering the service. By contrast, in an underserved area, broadband service is available, but not at speeds meeting the NBP's universalization target. While these areas are defined as "unserved" by the NBP, the Ohio Commission believes that use of a model rather than a reverse auction or reverse auction/model combination is most appropriate in the territories of small, rural telephone companies that would be placed at an inherent disadvantage if forced to bid against a neighboring large ILEC or intermodal competitor. Small carriers that have built out their networks to include broadband, but who do not meet the universalization target and lack the scale and scope to compete with their neighboring competitor(s), should not be forced to bid in their own service territories, but instead, receive support at a level determined by the model to upgrade their networks to meet the universalization target.

auction is clearly appropriate, the Ohio Commission agrees that a model could be helpful in setting a “reserve price” for such an auction, as is suggested by the NOI.²⁸

The NOI alludes to potential problems that could arise using a model to set a reserve price.²⁹ The Ohio Commission agrees that there are risks associated with the use of a model; however, the alternative of using a carrier’s current level of high-cost support to set reserve prices also has risks. As stated in the NOI, high-cost support currently is based upon the state-wide or average area costs to provide voice service. This cost, though, may not necessarily be the same as the costs of an efficient provider of both broadband and voice service.³⁰ If the model is based upon a forward-looking incremental cost of providing both broadband and voice services, as a consequence, it has a better likelihood of projecting the cost of an efficient provider of both services.

At the outset, it must be decided whether the reserve price will be revealed to the bidders. If the reserve price is revealed, the Ohio Commission concurs with the NOI that bidding may either be discouraged or too much support may be allocated to a particular area.³¹ For this reason, the Ohio Commission suggests that the reserve price not be revealed prior to bidding, if it is revealed at all. If the model is accurate, one may presume that the bids will be at or below the reserve price. If they are not, questions would be raised as to a business case being made for providing service at the model’s support level and the model should be reevaluated accordingly.

²⁸ FCC 10-58 Combined NOI/NPRM at 10, ¶ 20.

²⁹ *Id.*

³⁰ *Id.* at ¶ 21.

³¹ *Id.*

On the other hand, if the reserve price is disclosed with the effect of discouraging bidding such that there are no bidders or if there are no acceptable bids, support should be provided to the ILEC with the COLR obligation for the geographic area in question. Imposing a broadband provider of last resort (“POLR”) obligation³² on the ILEC as a default should result in the lowest incremental cost and be the most efficient means for deploying broadband and allocating support where there may be no other bidders since the ILEC has, among other advantages, an existing network upon which to build and access to rights-of-way.

D. Cost-Basis of Model

In terms of a cost basis for the model, it is the Ohio Commission’s opinion that any new CAF support should be based upon the forward-looking economic costs of an efficient provider rather than on historic, embedded costs. This approach is consistent with the Long-Run Service Incremental Cost (“LRSIC”)³³ and the Total Element Long-Run Incremental Cost (“TELRIC”) approaches that have been used for several years with traditional voice service. If the FCC decides to adopt this approach for determining broadband support, the forward-looking cost model should include all technology platforms, including satellite. The inclusion of all technology platforms is consistent with the recommendation that eligibility for receiving broadband support be company and technology neutral.³⁴ Additionally, the Ohio Commission agrees with the plan’s recommendation that support be available on a competitively neutral basis

³² The notion of imposing a “broadband POLR obligation” is consistent with the NBP which states that “recipients of funding should be subject to a broadband provider-of-last-resort obligation.” *Connecting America: The National Broadband Plan* at 145.

³³ The LRSIC approach is also known as the Total Service Long-Run Incremental Cost or TSLRIC approach.

³⁴ See *Connecting America: The National Broadband Plan* at 145.

to only one provider per geographic area so as to be available to incumbent and competitive telephone companies, rural and non-rural carriers, fixed and mobile wireless providers, and satellite and other providers of broadband service. Accordingly, the model that is developed should estimate the support requirements of all technologies being deployed, or, as noted in the NOI, soon to be deployed,³⁵ that are capable of providing both broadband at the universalization target and voice service.

In defining forward-looking economic cost, the Ohio Commission believes that the FCC should consider and include the existing infrastructure and plant as assumed by the NBP.³⁶ The “scorched node” approach is a model that has been used previously and is consistent with the NBP’s approach of using incremental costs in the cost model. With regard to the deployment of broadband service, the “scorched node”³⁷ approach is appropriate since most areas in which such deployment will occur presently have some existing infrastructure. Consequently, the forward-looking cost model should assume that a node is already in place when calculating support levels. Additionally, and in line with the NBP’s objective of efficiency, the model should also assume that the provider receiving support will make the best use of the existing facilities. Hence, if existing infrastructure and plant are available and capable of supporting the technology needed to meet the NBP’s universalization target, then its inclusion in identifying the most efficient, i.e., least cost, provider is necessary. Accordingly, the ongoing maintenance support

³⁵ FCC 10-58 Combined NOI/NPRM at 12, ¶ 25.

³⁶ *Id.* at ¶ 27.

³⁷ According to the NOI and Universal Service First Report and Order, Appendix J, 12 FCC rcd at 9435, n. 628, “[a] ‘scorched node’ model is one that models the network using existing wire centers” and in contrasted with a “greenfield” model, which “does not use the existing wire centers, but models a completely new network, including new wire centers.” FCC 10-58 Combined NOI/NPRM at 12, n. 67.

should be calculated as the difference between the model cost and the average cost of providing broadband and voice service.

E. Changes for Wireless Service

The NOI inquires as to what changes should be made to the model to estimate wireless costs for purposes of universal service support.³⁸ At first glance, the forward-looking economic model using the scorched node concept appears to be inapplicable to wireless support due to the differences between wireline and wireless network architecture and existing infrastructure and plant. Further analysis, however, reveals that this model is, in fact, appropriate for wireless service. While the networks are certainly different, wireline and wireless service are affected in much the same way. For instance, both are affected by the number of subscribers using a circuit (wireline) and tower (cellular) at the same time as well as the distance the subscribers of each are from the central office and, accordingly, incur similar costs, which should be included in the cost model.

F. Incremental v. Total Cost

The FCC seeks comment as to whether it should use a forward-looking economic cost model that estimates the total cost of broadband capable networks as opposed to the incremental costs of upgrading or extending existing networks when determining support levels for unserved areas.³⁹ An “either-or” proposition such as this ignores the fact that both models may be appropriate in the proper context. Accordingly, the Ohio Commission suggests the possibility of

³⁸ FCC 10-58 Combined NOI/NPRM at 13, ¶ 28.

³⁹ *Id.* at 14, ¶ 33.

using two models: one for the initial broadband build-out and implementation and the other for the ongoing maintenance of the network.

As the NOI suggests, estimating the forward-looking incremental costs of additional network resources needed for upgrading or extending existing networks would be appropriate because these costs represent the one-time investment necessary to bring existing networks up to the NBP universalization target. Many costs previously incurred to achieve the present networks are embedded and would have no bearing on the cost required to upgrade these networks. In other words, the build-out is incremental/additional in nature, so the costs associated with it should also be only for the additional network resources needed. As such, estimating total costs rather than incremental/additional costs only for the build-out would result in inflated capex requirements.

On the other hand, estimating total forward-looking incremental cost for the maintenance of the broadband networks would be entirely appropriate as these costs are recurring costs necessary for the continued operation of the networks. Unlike the build-out, there are no embedded costs as the broadband provider must maintain the whole network, not just an incremental portion of it. A model that only estimates additional costs would only account for costs associated with filling the gap. If such support is not included in the model's cost estimate for the ongoing maintenance of the broadband network, new gaps will undoubtedly result.

As the NOI points out, the NBP plan does not take into account any high-cost support that carriers in high-cost areas presently receive.⁴⁰ Offsetting support as part of the NBP will be

⁴⁰ *Id.*

necessary to provide continuing support for the networks of these carriers. Additionally, the NBP does not explain how it takes into account ongoing support for carriers whose networks presently meet the universalization target nor does it account for normal growth into presently undeveloped areas. Carriers presently meeting the universalization targets have used legacy high-cost support to build and maintain their networks. With the elimination of legacy high-cost support, any cost model adopted by the FCC must account for the support of these networks. While one may presume that the CAF will replace the legacy high-cost support following the ten-year transition period, this is not clear in the NBP. Without sufficient maintenance support for these existing networks, new gaps will be created, undermining the purpose of the NBP.

G. Geographic Areas

The FCC seeks comment on what geographic area should be used in calculating the cost of deploying a broadband network and providing ongoing broadband service as well as whether it should use neutral geographic units as recommended in the NBP.⁴¹ Specifically, the NBP proposes estimating support levels at the county level rather than the census blocks level. The Ohio commission agrees with this proposal.

The Ohio Commission favors counties over census blocks for two significant reasons. First, the forward-looking economic cost model that the Ohio Commission has supported in these comments compares the actual cost to the average nationwide cost in determining support levels. The use of census blocks rather than counties would lead to more high cost areas when these areas are compared to the average cost since there are potentially fewer cost-diverse subscribers

⁴¹ *Id.* at 17, ¶ 42.

within a census block area. In other words, a geographic area with a higher population will likely have a more diverse mix of long, mid and short loops, creating a greater cross-section of high, mid and low-cost customers. As a result, the cost for the geographic area as a whole is more likely to be near the average nationwide cost. Using the census block level would skew the cost calculation to the high side in many sparsely populated areas since these areas are likely to be further from the central office and are more likely to be comprised on long loops. The result would be an artificially greater number of high-cost areas and/or an inflated level of high cost support for a given high-cost area.

Second, and as pointed out in the NOI,⁴² greater economies of scale and scope are achieved at the county level than would be achieved at the census block level. The greater the population – which, of course, means a greater number of subscribers – the greater the efficiencies that can be realized by the broadband service provider. As the number of subscribers goes up, the cost per subscriber to provide broadband service to an area should go down. The cost savings that are realized by providers capitalizing on the efficiencies of a larger population would, in turn, be factored into the support calculation for their respective geographic areas, resulting in lower support requirements.

H. Expedited Broadband Deployment Process

Comment is sought on the best way to create an expedited process for the distribution of CAF build-out support that does not require the use of a model.⁴³ In particular, the Commission

⁴² *Id.* at 18, ¶ 42.

⁴³ *Id.* at 18, ¶ 43.

is interested in receiving comment on the NBP's proposal to use a competitive process such as a competitive procurement auction to determine the recipients of expedited build-out funds.⁴⁴

As noted above, the Ohio Commission has previously supported the use of competitive procurement auctions, i.e., reverse auctions for purposes of determining support levels.⁴⁵ The Ohio Commission agrees with the NBP that such a mechanism could be useful in expediting the deployment of broadband in unserved areas during the period that the FCC considers final rule to implement the new CAF funding mechanism. As previously discussed, a cost model, in this case for the build-out, would be an effective means of setting a "reserve price" for the auction and is supported by the Ohio Commission.

In seeking comment on the appropriateness of using a competitive procurement auction, the NBP and the NOI assume that an expedited distribution of CAF support funds for broadband deployment will occur.⁴⁶ Curiously, the FCC does not seek comment on this. Nonetheless, the Ohio Commission wishes to raise a few observations pertinent to such an accelerated distribution of CAF support.

According to the NBP, the cost of the initial capex is \$15.2 billion.⁴⁷ Presumably, since this is the *initial* capex, it would include the funding necessary for any expedited broadband deployment. This expedited capex build-out in unserved areas is to be funded with savings from

⁴⁴ *Id.* at 18 – 20, ¶¶ 43 – 47.

⁴⁵ See Ohio 2008 Reverse Auction Comments, Ohio 2008 Reverse Auction Reply Comments.

⁴⁶ See FCC 10-58 Combined NOI/NPRM at 18, ¶ 43.

⁴⁷ *Connecting America: The National Broadband Plan* at 137, Ex. 8-B.

the phased-out elimination of existing legacy high-cost support.⁴⁸ As such, the NBP recommends that the FCC shift *up to* \$15.5 billion from legacy high-cost support to broadband support over the next decade.⁴⁹ While \$15.5 billion is sufficient to cover the initial capex expenditure, this amount will not be available for the initial capex since it is to be shifted over the ten-year transition period. Further, while the Ohio Commission believes that ultimately \$15.5 billion will be shifted from the legacy high-cost support, the NBP, by stating *up to* \$15.5 billion, leaves open the possibility that the amount actually shifted may not be this great. This does not even take into consideration where the additional \$9.1 billion (assuming that the revenue projection of \$9.1 billion after deployment is accurate) necessary to maintain the newly minted broadband networks will be obtained.

Congressional intervention in the form of “additional public funding” seems to be crucial to the success of the NBP.⁵⁰ But what if this “additional public funding” is not forthcoming from Congress? Or, perhaps, “additional public funding” will be provided by Congress, but not at a level sufficient to achieve the objectives of the NBP. The NBP fails to adequately address these possibilities and provide any contingencies. If such “additional public funding” is not available to finance the capex funding necessary for broadband deployment and ongoing maintenance the FCC will likely be faced with tough decisions to fill this funding gap such as further depleting the existing legacy high-cost support fund or passing the cost through to end users through additional regulatory fees and charges. As such, the Ohio Commission encourages the FCC to

⁴⁸ *Id.* at 145 – 148.

⁴⁹ *Id.* at 147.

⁵⁰ *Id.* at 151.

develop a contingency plan should the anticipated “additional public funding” from Congress not come to fruition. Additionally, the Ohio Commission recommends that the FCC solicit comment from interested stakeholders before finalizing any such contingency plan.

It seems that perhaps the “cart has been put ahead of the horse” so to speak, in that the FCC is seeking comment on how to implement an expedited broadband deployment when the NBP does not make clear from where the necessary funding for such a deployment will be received. The Ohio Commission respectfully suggests that the FCC address this apparent gap in funding prior to addressing the gap in broadband.

III. NPRM

A. High-Cost Cap

The Universal Service Fund’s high cost program is an important source of revenue and support for small and rural telephone carriers and has been such for many years. There are presently 35 such carriers⁵¹ in Ohio that are classified as small and/or rural who receive support from the USF’s high-cost program. Over the years, the Ohio Commission has had particular interest in issues or proposals affecting the high-cost program and has previously provided

⁵¹ Arcadia Telephone Company, Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone Company, The Benton Ridge Telephone Company, Buckland Telephone Company, The Champaign Telephone Company, Chillicothe Telephone, Columbus Grove Telephone Company, The Conneaut Telephone Company, Continental Telephone Company, Doylestown Telephone Company, Farmers mutual Telephone Company, Fort Jennings Telephone Company, Frontier Communications of Michigan, Inc., The Germantown Independent telephone Company, Glandorf Telephone Company, Inc., Kalida Telephone Company, Inc., Little Miami Communications Corp., McClure Telephone Company, Middle Point Home Telephone Company, Minford Telephone Company, The New Knoxville Telephone Company, The Nova Telephone Company, Oakwood Telephone Company, Orwell Telephone Company, The Ottoville Mutual Telephone Company, Pattersonville Telephone Company, The Ridgeville Telephone Company, Sherwood Mutual Telephone Company, Sycamore Telephone Company, Telephone Service Company, Vanlue Telephone Company, Vaughnsville Telephone Company, and Wabash Mutual Telephone Company.

comments to the FCC in this regard.⁵² As noted in the FCC's NPRM, the National Broadband Plan recommends significant changes to the current high-cost program for which the FCC seeks comment.⁵³

The FCC seeks comment on whether the legacy high-cost support provided to incumbent telephone companies should be capped at 2010 levels.⁵⁴ According to the NPRM, if such a cap is implemented, it will stay in place while the FCC determines how to distribute funds in "a more efficient, targeted manner to those areas of the country where no firm can operate profitably without government support."⁵⁵ Furthermore, such a cap would minimize the burden placed on American consumers who ultimately pay for high cost support.⁵⁶ The Ohio Commission agrees and has supported a similar cap in past comments.⁵⁷ In 2008, the Ohio Commission agreed with

⁵² See, e.g., *Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers*, Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No. 96-45, filed June 6, 2007; *Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers*, Reply Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No. 96-45, filed July 2, 2007.

⁵³ FCC 10-58 Combined NOI/NPRM at 20, ¶ 49.

⁵⁴ *Id.* at 21, ¶ 51.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See, e.g., *In the Matter of High-Cost Universal Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Reply Comments of the Public Utilities Commission of Ohio Regarding High-Cost Universal Service Reform, Identical Support and reverse Auctions at 13 - 15, filed May 27, 2008 ; *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and link-Up; Universal Service Contribution Methodology; Numbering Resource Optimization, implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 96-122, CC Docket No. 99-200, CC Docket No. 96-98, , CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36, Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 26, filed November 26, 2008.

a Joint Board recommendation that the high-cost fund be capped at \$4.5 billion, which was the approximate level of the 2007 high-cost support.⁵⁸

The Ohio Commission continues to support controlling the size of the high-cost support fund to ensure that it remains at a reasonable level. Rather than advocate for a cap of the high-cost fund, however, the Ohio Commission believes that a per line freeze may be a more appropriate course of action within the context of the NBP and agrees with the NBP's recommendation to freeze Interstate Common Line Support (ICLS). Unlike a per line freeze, a cap would allow for fluctuations among the various high-cost support mechanisms at or below the cap limit. This, in turn, would create uncertainty among high-cost recipient carriers in the amount of high-cost support the carriers will receive during the transition to the CAF. For carriers like Ohio's small, rural telephone carriers who rely on high-cost support as a significant revenue source, such uncertainty will likely make business planning difficult, especially when coupled with access reform as is proposed in the NBP.⁵⁹ A per-line freeze⁶⁰ would set support at a designated level for the transition period, which would provide a certain degree of revenue certainty for carriers that rely on the high-cost fund.

B. Transition to Incentive Regulation

As part of the NBP, traditional rate-of-return carriers will be shifted to incentive regulation. This provision is consistent with recent revisions to Ohio's telecommunications

⁵⁸ *Id.* at 12.

⁵⁹ *Connecting America: The National Broadband Plan* at 148.

⁶⁰ In enacting a per-line freeze, consideration should be given to the support of the total network so that it is maintained even if the number of customers on the network decreases.

law⁶¹ on the state side and is supported by the Ohio Commission. The Ohio Commission believes that a shift to incentive regulation will provide traditional rate-of-return carriers with the flexibility required to foster innovation. As these carriers must come to rely less and less on their traditional pillars of support, i.e., legacy high-cost support and ICC revenue, a shift to incentive regulation and the opportunity it provides will be a central key to their long-term survival.

C. Elimination of High-Cost Support for ETCs

The NOI seeks comment on how to eliminate high-cost support for competitive eligible telecommunications carriers (“CETC”) and proposes reductions over a five-year period using a pro-rata basis (e.g., 20% per year), an accelerated rate of decline or a proportional basis.⁶² There are presently no (nor have there been) any CETCs in Ohio that receive high-cost support as the Ohio Commission has shared former FCC Chairman Martin’s belief that it is inefficient and unsustainable to provide support to multiple providers to serve an area that cannot be served by one provider without a subsidy.⁶³ Accordingly, the Ohio Commission has no preference as to the structure, but supports the NBP’s proposal to phase out CETC high-cost support over a five-year period with the savings targeted toward broadband. While the phase-out of CETC high-cost support would eliminate duplicate subsidies in a given geographic area and is necessary to achieve the NBP’s objective of one supported broadband provider per geographic area, it would not preclude a CETC from bidding in a reverse auction to become that one supporter broadband provider for a particular geographic area. Should a provider that is currently a CETC win a

⁶¹ See Am. S.B. 162.

⁶² FCC 10-58 Combined NOI/NPRM at 25, ¶ 61.

⁶³ *Telecom Regulatory Note*, Regulatory Source Associates, LLC, January 11, 2008, citing comments made by former Chairman Martin at the Consumer Electronics Show and a Citigroup investor conference.

reverse auction, the Ohio Commission strongly believes that the CETC should be required to assume the POLR obligation for the geographic area as a condition of receiving CAF support.

CONCLUSION

Broadband truly is this generation's link to the world and the Ohio Commission commends the FCC on its vision for bringing broadband service to all Americans. The NBP represents a revolution in communications policy in the United States. In any revolution, there are winners and there are losers. The NBP is no different. As such, the Ohio Commission urges the FCC to be vigilant and judicious in its approach to pursuing universal broadband service so as to ensure that all stakeholders' interests are adequately and fairly considered. This NOI/NPRM represents a good first step in that direction and the Ohio Commission appreciates the opportunity to share its comments with the FCC.

Respectfully submitted,

Richard Cordray
Ohio Attorney General

Duane W. Luckey
Section Chief

/s/John H. Jones

John H. Jones
Stephen Reilly
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
614.466.4393 (telephone)
614.644.8794 (fax)
john.jones@puc.state.oh.us
stephen.reilly@puc.state.oh.us

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