

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

In the Matter of)	
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Inquiry Concerning the Deployment of)	GN Docket No. 10-159
Advanced Telecommunications Capability to)	
All Americans in a Reasonable and Timely)	FCC 10-148
Fashion, and Possible Steps to Accelerate)	
Such Deployment Pursuant to Section 706 of)	
the Telecommunications Act of 1996, as)	
Amended by the Broadband Data)	
Improvement Act)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

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SUMMARY

The Commission should abandon the high-cost USF reform recommendations for RLEC service areas contained in the National Broadband Plan and accompanying rulemaking proceedings. These proposals will prevent the deployment of broadband to many rural consumers in a reasonable and timely fashion, as called for in section 706 of the 1996 Act.

The NBP recommends maintaining the size of the USF at roughly its existing level. This constraint forced the NBP to also recommend a national broadband availability target of 4 Mbps download and 1 Mbps upload. These speeds will not provide consumers in RLEC service areas with access to broadband services that are “reasonably comparable” to those offered in urban areas. Indeed, based on data provided in the NBP, 90 percent of the nation will likely have access to actual download speeds of at least 20 Mbps by 2013. This is five times faster than the proposed download target speed. If rural consumers do not have access to “reasonably comparable” advanced services, it follows that broadband is not being deployed “in a *reasonable* and timely fashion.”

Significant network upgrades are necessary in RLEC service areas to provide consumers with access to robust, affordable broadband connections that can accommodate an ever-growing number of bandwidth-intensive applications and services. This will not occur, however, with a USF that is capped at its current size and 4/1 Mbps speeds. The FCC should therefore reexamine the NBP’s recommendations regarding the size of the USF and the initial broadband availability target.

The Commission should abandon its proposals to impose additional caps and/or freezes on RLECs' existing high-cost USF support during the transition to the Connect America Fund. If adopted, these proposed caps and/or freezes would cause a large majority of RLECs to experience negative free cash flow from regulated services. Revenue shortfalls of this magnitude would make it impossible for RLECs to raise new capital for investments to deploy broadband to those customers that remain without access, as well as to improve the quality of service (*i.e.* speeds) that they make available. Revenue shortfalls may also necessitate end-user rate increases that are harmful to broadband adoption. To deploy broadband in a reasonable and timely fashion, comparable with their urban counterparts, RLECs need stable and sufficient sources of revenue.

The Commission should also jettison its proposal to eliminate rate-of-return regulation, as it too will likely prevent broadband from being deployed in a reasonable and timely fashion in RLEC service areas. RoR regulation has been highly successful in enabling RLECs to make high-quality broadband available to a large portion of their service areas. Given this success, and the fact that the majority of homes that remain without access to broadband are located in the areas served by price cap carriers, a "data driven" plan would presumably retain regulatory regimes that have worked and replace those that have failed.

The Commission should immediately expand the base of USF contributors to include, at a minimum, all broadband Internet access providers. This will allow for prudent growth in the size of the USF, which is necessary to achieve and maintain

“reasonably comparable” broadband services and rates in RLEC service areas and hence, the deployment of broadband to all Americans in a reasonable and timely fashion.

In addition to high-cost USF support, intercarrier compensation has been essential to enabling RLECs to provide broadband at affordable rates. Comprehensive ICC reform must therefore provide RLECs with sufficient replacement of the revenues lost due to the lowering and/or capping of ICC rates. In the short term, the FCC should strengthen its call signaling rules to mitigate phantom traffic and clarify that interconnected VoIP providers are subject to the appropriate ICC. By taking action on these two issues now, it will help to sustain the existing ICC regime while the Commission pursues more comprehensive USF and ICC reform.

The availability of broadband connections to “community anchor institutions” in rural areas, while important, should not be considered a reasonable substitute for robust connections to all rural residences and businesses. This would fail to maximize the advancement of various “national purposes” in RLEC service areas and would not achieve the goals contained in sections 706 and 254.

The Commission should also take immediate action to reform its program access rules so that RLECs can gain access to video content at affordable rates and on reasonable terms and conditions. The bundling of video services with broadband helps to spur broadband adoption. This, in turn, will provide RLECs with additional revenues and incentive to expand broadband availability and increase available speeds.

Finally, the Broadband Assessment Model has been shown to produce inaccurate cost estimates. Thus, it should not be used to determine if broadband is being deployed in a reasonable and timely fashion or to determine RLECs’ high-cost USF support levels.

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**COMMENTS
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ORGANIZATION FOR THE PROMOTION AND
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I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Notice of Inquiry (NOI) in the above-captioned proceeding.¹ OPASTCO is a national trade association representing approximately 470 small rural rate of return (RoR)-regulated incumbent local exchange carriers (RLECs). Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers.

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Deployment Notice of Inquiry, FCC 10-148 (rel. Aug. 6, 2010) (NOI).

Many of the high-cost Universal Service Fund (USF) reform recommendations contained in the National Broadband Plan (NBP) and accompanying proceedings will prevent the Commission from fulfilling its duty to ensure that broadband is being deployed in a reasonable and timely fashion in RLEC service areas.² These proposals include maintaining the size of the USF at roughly its existing level, a 4 Mbps download/1 Mbps upload broadband availability target, additional caps and/or freezes on RLECs' high-cost support, and the elimination of RoR regulation. Implementation of any of these recommendations will likely prevent the achievement of "reasonably comparable" broadband services in RLEC service areas, as sought by Congress in section 254 of the Telecommunications Act of 1996 (1996 Act).

To make possible the growth in the USF that is necessary for achievement of the section 706 and 254 goals, the Commission should immediately expand the base of USF contributors to include, at a minimum, all broadband Internet access providers. In addition, comprehensive intercarrier compensation (ICC) reform must provide RLECs with sufficient replacement of the revenues lost due to the lowering and/or capping of ICC rates. In the short term, the FCC should immediately strengthen its call signaling rules to mitigate phantom traffic and clarify that interconnected voice over Internet protocol (VoIP) providers are subject to the appropriate ICC.

In addition, the availability of broadband connections to "community anchor institutions" should not be considered a reasonable substitute for robust connections to all rural residences and businesses. This would fail to maximize the advancement of various

² *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, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) (High Cost Reform NOI and NPRM).

“national purposes” in RLEC service areas and would not achieve the goals contained in sections 706 and 254.

The Commission can accelerate broadband deployment and upgrades in RLEC service areas by removing barriers to RLECs’ access to video content at affordable rates and on reasonable terms and conditions. Finally, the FCC should not use the Broadband Assessment Model (BAM) to determine if broadband is being deployed in a reasonable and timely fashion or to determine RLECs’ high-cost USF support levels, as it has been shown to have significant flaws.

II. MANY OF THE NATIONAL BROADBAND PLAN’S HIGH-COST USF REFORM PROPOSALS WILL PREVENT THE COMMISSION FROM FULFILLING ITS DUTY TO ENSURE THAT BROADBAND IS BEING DEPLOYED IN A REASONABLE AND TIMELY FASHION IN RLEC SERVICE AREAS

A. The Commission should abandon the National Broadband Plan’s approach to high-cost USF reform for RLEC service areas

The NOI seeks comment on actions that the Commission should or should not take to accelerate the availability of broadband to all Americans in a reasonable and timely fashion.³ Pointing to the NBP and the individual initiatives listed in the *Broadband Action Agenda*, the NOI also asks whether there are any steps the Commission should take in those proceedings to further its responsibilities under section 706 of the 1996 Act.⁴

In April 2010, the FCC released a NOI and NPRM that began the process of reforming the High Cost USF program, as recommended by the NBP.⁵ Unfortunately, many of the proposals for reform of the High Cost program for RLEC service areas

³ NOI, ¶42.

⁴ *Id.*, ¶43.

⁵ Connecting America: The National Broadband Plan (rel. Mar. 16, 2010) (NBP).

contained in the NBP and the High Cost Reform NOI and NPRM are highly flawed and will fail to achieve the Congressional objectives contained in sections 706 and 254 of the 1996 Act. This is due primarily to the fact that the proposals are constrained by the NBP's recommendation to maintain the size of the USF at roughly its current size in 2010 dollars.⁶ The Commission should therefore abandon its USF reform proposals for RLEC service areas along with its objective of maintaining the existing Fund size. Instead, it should focus on ensuring that RLECs have sufficient and stable USF support to provide robust broadband services throughout their territories that are reasonably comparable in quality and price to those offered in urban areas.⁷ Only by ensuring that broadband services in rural areas are "reasonably comparable" will the Commission also be able to find that broadband is being deployed to rural consumers in a *reasonable* and timely fashion.

1. The High Cost USF program must be sized to provide consumers in RLEC service areas with access to "reasonably comparable" broadband services

As a result of the NBP's recommendation to maintain the USF at roughly its current size, a wholly inadequate national broadband availability target of 4 Mbps download and 1 Mbps upload has been proposed, which will be used to guide funding from the Connect America Fund (CAF). A 4/1 Mbps broadband availability target will not produce broadband services in RLEC service areas that are reasonably comparable to those offered in urban areas. Thus, the High Cost program needs to be sufficiently sized

⁶ *Id.*, pp. 149-150.

⁷ 47 U.S.C §254(b)(3).

to enable RLECs to provide their customers with access to a robust broadband network keeps pace with the speeds available to urban consumers.

The NBP notes that by 2013, it is likely that 90 percent of the country will have access to advertised peak download speeds of more than 50 Mbps.⁸ The NBP also points out that actual download speeds are approximately 40 – 50 percent of the advertised “up to” speeds.⁹ This means that 90 percent of the country will likely have access to actual download speeds of at least 20 Mbps (50 Mbps x 40 percent) within three years time. This is *five times faster* than the proposed 4 Mbps download target speed to be initially supported by the CAF under the NBP. Even worse, this differential will exist only one year following the implementation of the CAF in 2012, and will become far greater prior to the first review and resetting of the broadband availability target.

While RLECs have done a commendable job of deploying broadband at today’s speeds to the majority of customers in their service areas, the task at hand is far from complete. Significant network upgrades are necessary to accommodate the ever growing number of bandwidth-intensive Internet-based applications and services. Speeds of at least 10 Mbps download are already required to accommodate a whole host of broadband-enabled health, education, public safety, and workforce related applications. In fact, many OPASTCO members report that their customers are already seeking access to broadband speeds faster than 4/1 Mbps, which are available in many urban areas. Moreover, bandwidth needs will only continue to grow, and speeds of 100 Mbps download or more will soon become commonplace. The NBP recognizes this by

⁸ NBP, pp. 20-21.

⁹ *Id.*, p. 21.

establishing as a goal the availability of 100 Mbps download and 50 Mbps upload to 100 million U.S. homes by 2020.¹⁰ Thus, RLECs need to invest in high-speed, scalable broadband infrastructure so that their customers have access to the full array of transformational Internet-based applications and services, both now and in the future. This will not occur with a USF that is capped at its current Fund size and a 4/1 Mbps availability target.

The NBP's proposed broadband availability target seemingly endorses the notion that it is acceptable for the broadband service available to consumers living in areas reliant on high-cost support to be substandard relative to the service available to the majority of Americans. As such, it is clearly at odds with the "reasonable comparably" objective in section 254 of the 1996 Act. In addition, if rural consumers do not have access to "reasonably comparable" advanced services as Congress sought to achieve, it follows that broadband is not being deployed "in a *reasonable* and timely fashion," as called for in section 706.¹¹

OPASTCO recognizes that refocusing the High Cost program to explicitly support broadband must not overly burden consumers. At the same time, however, the FCC's broadband "deployment" policies cannot focus exclusively on extending basic broadband to those consumers that do not yet have access to this service. There needs to be equal focus on upgrading and maintaining broadband networks in rural areas that can keep pace with consumers' ever-increasing bandwidth needs and the level of service offered in urban areas. Yet, the NBP's recommendation to cap the Fund at its current

¹⁰ *Id.*, p. XIV.

¹¹ 47 U.S.C. § 1302(b) (emphasis added).

size will make impossible the necessary network investment. The FCC should therefore reexamine the NBP's recommendations regarding the size of the USF and the initial broadband availability target, and develop a support program for RLEC service areas that addresses rural consumers' ongoing bandwidth needs and fulfills Congress's "reasonable comparability" objective.

2. The proposal to impose additional caps on RLECs' existing high-cost USF support will halt the progress being made to deploy and upgrade broadband in rural service areas

Another consequence of the NBP's recommendation to disallow growth in the USF is the proposals to impose additional caps and/or freezes on RLECs' existing high-cost support as part of the transition to the CAF.¹² These proposals, if implemented, would have a devastating effect on broadband availability, quality, and end-user rates in RLEC service areas.

Based on a survey conducted by the National Exchange Carrier Association (NECA) of its member companies, 50 percent of the respondent RLEC study areas would experience negative free cash flow from regulated services by 2015 if the Commission were to just freeze RLECs' interstate common line support (ICLS) on a per-line basis.¹³ This percentage increases to 86 percent by 2020. Predictably, the proposal to freeze carriers' total high-cost support on a per-line basis would be even more devastating.

Revenue shortfalls of this magnitude would make it impossible for RLECs to raise new capital for investments to deploy broadband to those customers that remain

¹² High Cost Reform NOI and NPRM, ¶¶51-52, 55-56.

¹³ Joint Comments of OPASTCO, NECA, the National Telecommunications Cooperative Association (NTCA), the Western Telecommunications Alliance (WTA), the Rural Alliance, and 38 concurring state associations, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (fil. Jul. 12, 2010) (Associations' Joint Comments), pp. 36-44.

without access as well as to improve the quality of service (*i.e.* speeds) that they make available. In fact, it may even force a number of RLECs to default on their existing debt and lead some to file for bankruptcy. Moreover, significant revenue shortfalls will likely necessitate end-user rate increases which would be harmful to broadband adoption rates. In order to deploy broadband in a reasonable and timely fashion, comparable with their urban counterparts, rural carriers need stable and sufficient sources of revenue. This will not occur if additional caps and/or freezes of any kind are placed on existing RLEC high-cost support.

Finally, the Commission should consider that its USF reform proposals are already disincenting broadband investment in RLEC service areas. The uncertainty caused by the NBP has caused RLECs to reconsider or even abandon previously planned network investments,¹⁴ for fear that their costs may not be recovered and their loans may not be able to be repaid.¹⁵ Therefore, to avoid further damage, the Commission should immediately make clear that additional caps and/or freezes on existing RLEC high-cost support mechanisms will not be implemented. Instead, the Commission should direct its full attention to developing a comprehensive plan that includes broadband support mechanisms that fully incorporate the service and funding objectives of the 1996 Act as well as a smooth transition path that will ensure affordable, high-quality service continues to be provided to rural consumers without disruption.

¹⁴ For example, Home Telephone Company, Inc., comments, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (fil. Jul. 12, 2010) (Home Telephone), p. 7.

¹⁵ For example, Smithville Telephone Company in Ellettsville, Indiana, which was awarded a \$38 million loan under the Rural Utilities Service (RUS) Broadband Initiatives Program (BIP), has decided to decline this opportunity due to concerns about the effect NBP proposals will have on its ability to repay. *See*, Letter from Darby A. McCarty, President/CEO Smithville Telephone Company to Kenneth Kuchno, Director Broadband Division Telecommunications Program, Rural Utilities Service (June 28, 2010).

3. The proposal to eliminate rate-of-return regulation should be abandoned

The NBP and the High Cost Reform NOI and NPRM propose that RoR-regulated carriers be required to shift to some form of incentive regulation.¹⁶ This recommendation should be rejected because it would likely prevent broadband from being deployed in a reasonable and timely fashion in hard-to-serve RLEC territories.

RoR regulation has been highly successful in enabling RLECs to make high-quality broadband services available to a large portion of their territories. This is due to the fact that RoR regulation incents carriers to invest in high-cost areas by providing them with the assurance that they will have the opportunity to recover their regulated interstate costs and earn a reasonable return on their investments. Likewise, RoR regulation increases the confidence level of lenders that RLECs will have the stable and sufficient revenue streams necessary to repay their loans.

On the other hand, the NBP points out that the majority of housing units that remain without access to broadband at the proposed 4/1 Mbps target are located in the territories of carriers operating under price cap regulation.¹⁷ Given this finding, a rational “data driven” plan would presumably propose making improvements to existing regulatory regimes, and to change or abandon those that have failed.

¹⁶ NBP, p. 147; High Cost Reform NOI and NPRM, ¶55. The Commission sought comment on the proposal to eliminate RoR regulation in the High Cost Reform NOI and NPRM. While a few commenters contended that RoR regulation leads to “inefficient” behavior, the record is devoid of any actual evidence to support these claims. Nor does the record support the assertion that RoR regulation impedes competition in rural service areas. *See*, Joint Reply Comments of OPASTCO, NECA, NTCA, WTA, the Rural Alliance, and 41 concurring state associations, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (fil. Aug. 11, 2010) (Associations’ Joint Reply Comments), pp. 14-17.

¹⁷ NBP, p. 141.

Forcing RLECs to shift to incentive regulation will eliminate the stability that has driven their success in upgrading their networks to provide broadband and will ultimately inhibit the Commission's efforts to meet the goals contained in sections 254 and 706 of the 1996 Act. Therefore, the Commission should permit RLECs to remain RoR-regulated, which has been integral to promoting prudent, incremental broadband investment in rural service areas.

III. TO MAKE POSSIBLE THE GROWTH IN THE USF THAT IS NECESSARY TO PROVIDE BROADBAND TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHION, THE COMMISSION SHOULD IMMEDIATELY EXPAND THE BASE OF USF CONTRIBUTORS TO INCLUDE ALL BROADBAND INTERNET ACCESS PROVIDERS

The Commission should immediately expand the base of USF contributors to include, at a minimum, all broadband Internet access providers over all technological platforms. This will allow for prudent growth in the size of the USF, which is necessary to achieve and maintain "reasonably comparable" advanced services and rates in rural areas and hence, the deployment of broadband to all Americans in a reasonable and timely fashion.

Broadband Internet access providers collectively represent a large and growing source of connections and revenues. By requiring contributions from all of these providers, growth in the Fund can occur without imposing an unreasonable universal service fee on each communications service that is assessable for contributions. Also, the total cost of the USF would be distributed much more fairly among consumers than it is today.

Furthermore, it is logical that the contributions to the USF should be aligned with the purpose of distributions from the Fund. Requiring all broadband Internet access

providers to contribute equitably to the USF is harmonious with a High Cost program that explicitly supports broadband, as these providers and their customers will all benefit from a ubiquitous broadband network.

IV. THE COMMISSION SHOULD ENSURE THAT ICC REFORM PROVIDES RLECS WITH A SUFFICIENT REVENUE REPLACEMENT MECHANISM; THE COMMISSION SHOULD TAKE IMMEDIATE ACTION TO ADDRESS PHANTOM TRAFFIC AND CLARIFY THAT INTERCONNECTED VOIP PROVIDERS ARE SUBJECT TO THE APPROPRIATE ICC

ICC represents a significant portion of RLECs' revenues from regulated services and, together with universal service support, has been essential to enabling them to provide broadband at affordable rates. Unfortunately, in recent years, ICC has become increasingly unreliable as a stable source of revenue for RLECs. The *Broadband Action Agenda* indicates that the Commission plans to release a NPRM on ICC reform in the fourth quarter of 2010. While many complex and longstanding issues need to be addressed, the most critical piece of ICC reform for RLECs is a sufficient replacement mechanism for the revenues lost due to the lowering and/or capping of ICC rates. Without sufficient revenues and the ability to recover their costs, RLECs will have neither the ability nor incentive to continue investing in their networks, which could prevent broadband from being deployed in a reasonable and timely fashion in rural service areas. In addition, absent a sufficient replacement mechanism, the loss of ICC revenue may necessitate end-user rate increases which would jeopardize broadband take rates.

While comprehensive ICC reform understandably may take some time to adopt and implement, in the short term the Commission should take quick action to mitigate

“phantom traffic” through the strengthening of its call signaling rules. It should also make a definitive determination that interconnected VoIP providers are required to pay the appropriate ICC for traffic that terminates on the public switched telephone network (PSTN). Phantom traffic and VoIP providers’ refusal to pay access charges has been unjustly depriving RLECs of revenues that could otherwise be used for broadband investment for the benefit of rural consumers. The Commission has more than an adequate record upon which to address these two issues, without resorting to further rulemaking proceedings. By taking action on these issues now, it will help to sustain the existing ICC regime while the Commission pursues more comprehensive USF and ICC reform.

V. THE AVAILABILITY OF HIGH-SPEED BROADBAND TO ANCHOR INSTITUTIONS IS NOT SUFFICIENT, BY ITSELF, TO FIND THAT BROADBAND IS BEING DEPLOYED TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHION

The NOI seeks comment on whether its assessment of the availability of broadband to all Americans should include its availability at “community anchor institutions” and other publicly available access points.¹⁸ OPASTCO agrees that it is critical for community anchor institutions in rural service areas to have access to a high-quality broadband network. However, the availability of high-speed broadband to community anchor institutions should in no way be considered a reasonable substitute for the availability of high-speed broadband connections to every rural residence and business.

¹⁸ NOI, ¶33.

To appreciate the value of a robust broadband connection to each residence and business in a rural service area, the Commission need only consider the various “national purposes” listed in the American Recovery and Reinvestment Act of 2009 (ARRA),¹⁹ to which seven chapters are devoted in the NBP. For example, the widespread availability of high-speed connections throughout a rural area creates economic opportunity by attracting new businesses to the area, retaining existing ones, allowing residents to “telework,” and enabling interactive job training from home. In addition, robust residential broadband connections are necessary for health care applications such as remote patient monitoring. They are also necessary to advance the nation’s educational goals by allowing students of all ages to engage in online learning from the convenience of their home.

Thus, the availability of high-speed broadband connections only to rural community anchor institutions and coffee shops would not maximize the advancement of the “national purposes” enumerated in the ARRA and would fail to make “reasonably comparable” broadband services available in rural areas. As a result, it would not achieve broadband availability in a reasonable and timely fashion to all Americans. To achieve all of these Congressional objectives, robust, affordable broadband connections must be available to all rural residences and businesses, and RLECs will require ongoing sufficient and predictable universal service support to make that a reality.

¹⁹ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), §6001(k)(1) (Recovery Act).

VI. THE COMMISSION CAN ACCELERATE BROADBAND DEPLOYMENT AND UPGRADES IN RLEC SERVICE AREAS BY REMOVING BARRIERS TO RLECS' ACCESS TO VIDEO CONTENT

The NOI asks if there are recommendations and proceedings that the Commission can act on to accelerate broadband deployment but that are not covered in the *Broadband Action Agenda*.²⁰ As OPASTCO has repeatedly noted and the Commission has recognized,²¹ there is a direct link between the ability of RLECs to access video content at affordable rates and on reasonable terms and conditions and their ability to deploy and upgrade broadband services. This is because when video and broadband services are offered concurrently at a discount, more consumers subscribe to both. This, in turn, provides the carrier with additional revenue and incentive to expand broadband availability and increase the data speeds available in their high-cost areas, which makes broadband even more attractive to consumers.²²

However, efforts by RLECs to provide video services are hindered by a daunting business model that is partly the result of discriminatory prices and onerous terms and conditions demanded by producers and/or owners of video content. The Commission should therefore immediately take the following actions to accelerate investment in broadband capability.²³

²⁰ NOI, ¶43.

²¹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5132-33, ¶62 (2007).

²² A 2009 NECA study found that pool members offering digital subscriber line (DSL) with a video component or option have a DSL adoption rate nearly 24 percent higher than companies offering DSL without access to any video services. NECA comments, GN Docket Nos. 09-47, 09-51, 09-137 (Dec. 7, 2009), p. 6.

²³ 47 U.S.C. §1302(b). The Commission's authority to take immediate action in these cases is buttressed by its recent determination that broadband is not being deployed to all Americans in a reasonably and timely fashion. In this situation, the Commission is required by section 706 to take actions, such as those suggested above, to remove barriers to investment in broadband infrastructure. *Inquiry Concerning the*

- Reform the retransmission consent rules,²⁴ which insulate broadcasters from market forces, resulting in unwarranted costs for small multichannel video programming distributors (MVPDs) that impede their ability to provide and extend video and broadband services;
- prohibit the practice of forced tying, also known as forced carriage, where RLECs are required to purchase unwanted programming in order to offer “must have” content, often imposed during the retransmission consent process;²⁵
- prohibit the practice of broadband tying, where RLECs are required to pay an additional fee for access to online content based on its number of broadband subscribers, regardless of whether or not these customers subscribe to multichannel video services;²⁶ and
- prohibit video programmers from denying access to content or imposing unwarranted and burdensome financial or technological obligations based upon RLECs’ use of shared head-ends.²⁷

On each of these issues, the Commission has collected a voluminous record demonstrating that RLECs face substantial barriers to obtaining video content at reasonable rates and under nondiscriminatory terms and conditions.

Affordable access to “must have” content is critical to rural carriers’ ability to win new video and broadband subscribers which, in turn, provides essential revenues

Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 09-137, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Sixth Broadband Deployment Report, FCC 10-129 (rel. Jul. 20, 2010), ¶2.

²⁴ See, OPASTCO, NTCA, ITTA, WTA, and Rural Independent Competitive Alliance (RICA) comments, MB Docket No. 10-71 (May 18, 2010) (RLEC video comments).

²⁵ See, OPASTCO, NTCA, RICA, and WTA *ex parte* letter, MB Docket No. 07-198 (fil. Aug. 15, 2008). See also, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, MB Docket No. 07-29, *Review of the Commission’s Program Access Rules and Examination of Program Tying Arrangements*, MB Docket No. 07-198, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, 17862-17863, ¶120 (2007).

²⁶ See, OPASTCO comments, MB Docket No. 07-269 (Jul. 29, 2009), pp. 13-16. See also, NTCA comments, MB Docket No. 07-269 (May 19, 2009), pp. 5-6; American Cable Association (ACA) reply comments, MB Docket No. 07-269 (Aug. 28, 2009), pp. 9-11. See, OPASTCO comments, MB Docket No. 07-269 (Jul. 29, 2009), pp. 5-10.

²⁷ See, OPASTCO reply comments, MB Docket No. 06-189 (Dec. 29, 2006), pp. 12-13.

for extending and upgrading broadband services. The Commission should therefore act on these issues without further delay.

VII. THE BROADBAND ASSESSMENT MODEL DEVELOPED AS PART OF THE NBP SHOULD NOT BE USED TO DETERMINE IF BROADBAND IS BEING DEPLOYED IN A REASONABLE AND TIMELY FASHION OR TO DETERMINE RLECS' HIGH-COST USF SUPPORT LEVELS

The NOI seeks comment on the Broadband Assessment Model (BAM), which was created to estimate broadband availability, and its relationship to the Commission's responsibilities under section 706.²⁸ The NOI also seeks comment on maps based upon the BAM that purport to show the percentage of housing units with access to broadband, and the "broadband investment gap" intended to show which technology would be cheaper to close the availability gap.²⁹ Significant flaws in the BAM should deter the Commission from utilizing the maps to make any determinations related to this NOI or to use the model to determine RLECs' high-cost USF support levels.

The record developed in response to the High Cost Reform NOI and NPRM demonstrates that the cost estimates produced by the BAM are inaccurate. To begin with, the BAM underestimates the costs of deploying, maintaining, and upgrading broadband facilities in RLEC service areas.³⁰ In particular, it gives no consideration to the costs of maintaining existing wireline facilities, which are essential to both wired and wireless networks. As a result, the BAM's "investment gap" estimate is unreliable.

²⁸ NOI, ¶¶11-12.

²⁹ *Id.*, ¶¶21-22.

³⁰ Associations' Joint Comments, pp. 55-59, Appendix A, pp. 1-25; Associations' Joint Reply Comments, pp. 22-25.

In addition, the BAM underestimates the costs of providing wireless broadband services at the proposed 4/1 Mbps availability target.³¹ It also overestimates the capacity of wireless networks and fails to consider that they do not provide the scalability that wireline networks offer. This makes wireless networks a far less efficient investment than wireline technologies over the long term as consumers' bandwidth needs continue to grow. Likewise, a recent Broadband Properties magazine blog utilizes actual data to show that the BAM seriously overestimates the cost of deploying fiber.³² It is also important to note that the BAM was not properly statistically validated. And, the lack of transparency in the model's development has undermined confidence in its efficacy from the outset.³³

Given the breadth and seriousness of the BAM's shortcomings, the broadband availability maps that are derived from it should not be used to determine whether broadband is being deployed in a reasonable and timely fashion. Moreover, due to its inability to accurately estimate the costs of deploying broadband for both wireline and wireless technologies, the BAM cannot accurately determine the investment necessary to provide "reasonably comparable" broadband services throughout RLEC service areas. Thus, the BAM should also not be used to determine broadband funding requirements in RLEC service areas.

³¹ Associations' Joint Reply Comments, pp. 23-24.

³² Steven S. Ross, *Modeling Absurdity: The National Broadband Plan Poisons the Well*, Broadband Properties Online (Aug. 8, 2010), <http://bbpmag.com/wordpress3/2010/08/modeling-absurdity-the-national-broadband-plan-poisons-the-well/>.

³³ See, Associations' Joint Reply Comments, p. 21, citing comments of CenturyLink, n. 138, NASUCA, p. ii, AT&T, p. 14-15, Qwest, p. 12-13, ITTA, pp. 9-10, Comcast, pp. 11-13, WGA, pp. 14-15, USTelecom, pp. 20-21, PA PUC, p. 18, CTIA, p. 21, T-Mobile, pp. 11-20, Home Telephone, pp. 3-5, Nebraska Telecom Assn, pp. 37, RICA, pp. 17-19, NASUCA, *et al.*, p. 17.

VIII. CONCLUSION

To achieve the Congressional objectives contained in sections 706 and 254 of the 1996 Act the Commission should:

- reconsider the NBP's proposal to cap the USF at its current size;
- reconsider the NBP's proposal for a 4/1 Mbps broadband availability target that will not provide for broadband services in RLEC service areas that are "reasonably comparable" to those offered in urban areas;
- reject additional caps and/or freezes on RLECs' high-cost support, which will prevent them from making the necessary investments to achieve and maintain the "reasonable comparability" of broadband services and rates in RLEC service areas;
- permit RLECs to remain RoR-regulated, which has been integral to promoting prudent, incremental broadband investment in rural service areas;
- immediately expand the base of USF contributors to include, at a minimum, all broadband Internet access providers, which will allow for prudent growth in the size of the USF necessary to achieve and maintain "reasonably comparable" broadband in RLEC service areas;
- ensure that comprehensive ICC reform provides RLECs with a sufficient replacement mechanism for ICC revenues lost due to the lowering and/or capping of ICC rates;
- immediately strengthen the call signaling rules in order to mitigate phantom traffic and clarify that interconnected VoIP providers are subject to the appropriate ICC for traffic that terminates on the PSTN;
- remove barriers to RLECs' access to video content, which incents consumers to subscribe to broadband while providing RLECs with the revenues to accelerate broadband deployment and upgrades in rural service areas and;
- decline to use the unreliable BAM to determine if broadband is being deployed in a reasonable and timely fashion or to determine RLECs' high-cost USF support levels.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
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September 7, 2010

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent via electronic mail, on this, the 7th day of September 2010, to those listed on the attached sheet.

By: /s/ Brian Ford
Brian Ford

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