

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”) hereby submits its comments in response to the Commission’s related Notices of Proposed Rulemaking in the above-mentioned dockets.¹ TIA is a leading trade association for the information and communications technology industry, with 600 member companies that manufacture or supply the products and services used in the provision of broadband and broadband-enabled applications. The pending proposals to create a fund aimed at subsidizing the build-out of high-capacity broadband networks (the “Broadband Fund”)² are of great importance to the organization’s member companies, as they impact investment in and deployment of next-generation networks, applications, and devices across the United States. TIA supports comprehensive reform of the universal service system. Of utmost importance, the Commission should create a Broadband Fund, as the current

¹ See Notice of Proposed Rulemaking, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No, 05-337, CC Docket No. 96-45, FCC 08-5 (rel. Jan. 29, 2008) (“Auctions NPRM”); Notice of Proposed Rulemaking, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No, 05-337, CC Docket No. 96-45, FCC 08-22 (rel. Jan. 29, 2008) (“RD NPRM”); Notice of Proposed Rulemaking, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No, 05-337, CC Docket No. 96-45, FCC 08-4 (rel. Jan. 29, 2008) (“Identical Support NPRM”) (collectively, the “Notices”).

² See Recommended Decision, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No, 05-337, CC Docket No. 96-45, FCC 07J-4 (rel. Nov. 20, 2007) (“Joint Board RD”).

narrowband-focused system has not succeeded in making high-quality, affordable, broadband service universally available.

As with any support mechanism, care should be taken to ensure that the Broadband Fund meets its stated objectives. Ideally, the FCC would immediately and comprehensively reform the support mechanism to be technology- and competitively-neutral between all technologies based on market forces. However, if that is not immediately possible, the Broadband Fund should be designed to be fully technology and competitively neutral in as little as five years, such that existing support for narrowband service does not decrease providers' incentives to deploy next-generation broadband offerings. Therefore, the Broadband Fund should be grown over time, targeting support to providers seeking to deploy and operate high-speed broadband networks in otherwise unserved or underserved areas. Funds should be transitioned away from support for narrowband services to the Broadband Fund in a deliberate but expeditious fashion, consistent with a national goal of creating universal broadband availability. The transition schedule should be subject to a hard completion date. In TIA's view, narrowband support should be phased out in as little as five years in favor of support mechanisms that promote broadband connectivity and market-based competition. These features will supplement the Commission's other pro-deployment policies and help to ensure that Americans enjoy truly universal broadband service in a timely and efficient manner. Reliance on market forces and technology- and competitive-neutrality will be the most efficient means of achieving universal broadband service.³

³ In TIA's view, because the majority of CETCs are wireless carriers, the proposed cap on CETC funding would unfairly discriminate against wireless – and thus is not technology- or competitively- neutral.

I. THE COMMISSION SHOULD CREATE A TECHNOLOGY AND COMPETITIVELY NEUTRAL BROADBAND FUND.

TIA vigorously agrees that deployment of high-speed services to unserved and underserved areas should be supported. As TIA has emphasized, the growth in broadband Internet access subscription figures in recent years has been stunning, but many high-cost areas are not being served or are underserved. According to the Commission's newest data, there were more than 100 million high-speed "lines" in service as of June 30, 2007 (including wireline, cable, wireless, fiber, satellite, powerline, and other platforms) – about 25 percent more lines than just six months earlier.⁴ TIA's own data shows that high-speed subscribership grew by more than 50 percent between 2005 and 2007,⁵ and that annual infrastructure investment will grow from \$16 billion in 2007 to \$25.2 billion in 2011.⁶

However, TIA recognizes that many rural or otherwise hard-to-serve areas remain unserved or underserved. As illustrated by the Wireline Competition Bureau's presentation at the Commission's March 19, 2008 open meeting, many of these areas are served by just a handful of providers or enjoy no broadband Internet access at all.⁷ The reason is clear: In sparsely populated areas, current costs per potential subscriber are often too high to support a business case.

⁴ See Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of June 30, 2007* at Table 1 (March 2008) ("March 2008 High-Speed Report"), available at <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280906A1.pdf>.

⁵ 2008 TIA Market Review & Forecast, Table II-2.36 "High Speed Subscribers by Access Technology in the United States," ("2008 TIA Market Review & Forecast") available at <<http://www.tiaonline.org/business/research/mrf/>>.

⁶ See 2008 TIA Market Review & Forecast.

⁷ See Wireline Competition Bureau Presentation of the Section 706 Report and Broadband Data Gathering Order, March 19, 2008 Open Meeting, available at <http://www.fcc.gov/WCB_031908_open_meeting_slides.pdf> ("WCB Presentation").

The infeasibility of broadband deployment in some geographies demands a deliberate and sustained response, especially in today's economy. As numerous observers have recognized, broadband deployment confers far-reaching societal benefits that are too important to forego. In Chairman Martin's words:

Broadband technology is a key driver of economic growth. The ability to share increasing amounts of information at greater and greater speeds[] increases productivity, facilitates interstate commerce, and helps drive innovation. But perhaps most important, broadband has the potential to affect almost every aspect of our lives – from where we work, to how we educate our children and increasingly to the way healthcare is delivered.⁸

Every sitting Commissioner, moreover, has affirmed the centrality of broadband to contemporary American life. For example, Commissioner Copps has stated that “[h]igh-capacity networks are to the Twenty-first century what roads, canals and railroads were to the Nineteenth and highways and basic telecommunications were to the Twentieth.”⁹ Commissioner Tate has noted that “[b]roadband is revolutionizing how we communicate, how, where and when we work, how we educate our children, the delivery of healthcare and public safety as well as how we entertain ourselves.”¹⁰ As Commissioner Tate emphasizes, “[b]roadband is particularly critical in rural and tribal areas, where advanced communications can shrink the distances that isolate remote

⁸ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, et al., WC Docket No. 07-38, GN Docket No. 07-45, Statement of Chairman Kevin J. Martin.

⁹ *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*, GN Docket No. 07-45 (“*Fifth Section 706 Report*”), Statement of Commissioner Michael J. Copps, Dissenting, quoting *Availability of Advanced Telecommunications Capability in the United States*, 19 FCC Rcd 20540, Statement of Commissioner Michael J. Copps, Dissenting (2004).

¹⁰ *Fifth Section 706 Report*, Statement of Commissioner Deborah Taylor Tate.

communities.”¹¹ Broadband facilitates innovation and makes American businesses more competitive. It also enables e-health, e-learning, and e-government. In short, broadband deployment expands opportunity for all Americans in innumerable respects. Under these circumstances, there is a public interest in furthering broadband deployment even where the current market will not, on its own, produce such deployment.

II. BROADBAND FUNDING SHOULD SUPPORT NEW BUILDOUT AND OPERATIONS IN UNSERVED AND UNDERSERVED AREAS.

Broadband support should extend beyond initial deployment in unserved areas, covering deployment in areas with little or no broadband service and the continued operation of existing broadband service. As the Commission has recognized in its recent Order revising the Form 477, the range of speeds referred to as “broadband” is very wide, from the 200 Kbps speeds referred to in that Order as “First Generation Data,” to the more aspirational “greater than 100 Mbps” speeds now classified as “Broadband Tier 7.”¹² A regime that withdrew support as soon as an area was served at 200 Kbps – or at *any* pre-determined static level – would deprive rural consumers of the “evolving level of telecommunications service” that Congress viewed as the very definition of “universal service”¹³ and deny them the numerous benefits discussed above. Congress declared in section 254 of the Act that consumers in high-cost locales should receive service “reasonably comparable to those services provided in urban areas,” at rates “that are

¹¹ *Id.* See also *id.*, Statement of Commissioner Jonathan S. Adelstein, Dissenting (citing “the ever-increasing importance of broadband to our country’s economy, public safety, education, and health care”); Commissioner Robert M. McDowell, Luncheon Address, Broadband Policy Summit III (June 7, 2007) (calling broadband “the most dynamic, positive, constructive and disruptive force to rock the world economy since electricity”).

¹² See WCB Presentation at 6.

¹³ 47 U.S.C. § 254(c)(1) (“Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”).

reasonably comparable to rates charged for similar services in urban areas.”¹⁴ If the Commission is to fulfill this goal, it should permit support for the deployment and operation of new broadband networks, as well as the upgrade of broadband service in areas where it is not reasonably comparable to urban areas.

III. IF A TECHNOLOGY AND COMPETITIVELY NEUTRAL APPROACH IS NOT IMMEDIATELY POSSIBLE, SUPPORT SHOULD TRANSITION FROM NARROWBAND SERVICE TO BROADBAND SERVICE OVER TIME, WITH ALL TECHNOLOGIES COMPETING FOR BROADBAND FUNDS.

Today, narrowband service still plays an important role in providing service to millions of American families. Ideally, the FCC would immediately restructure the entire universal service support mechanism to be technology- and competitively-neutral. However, if full technology- and competitive- neutrality is not possible, the Commission must ensure that support for existing service does not inhibit deployment of next-generation offerings. To ensure timely migration to next-generation networks and services, the Commission should gradually transition support away from the existing “narrowband” funds (which under the pending proposals would still account for all but \$300 million of a \$4.3 billion high-cost fund¹⁵) toward a technology and competitively neutral Broadband Fund. By migrating support to broadband service over a pre-established time frame, the Commission would create strong incentives for providers eligible to receive the subsidy to invest in next-generation facilities to the extent they have not done so. Moreover, by shifting monies to the technology and competitively neutral Broadband Fund, the Commission could eliminate existing disparities between providers that are now able to use narrowband support to support broadband-capable facilities and those that are not. If the FCC establishes separate funds, then only through application of such a “phase-over” over a set period

¹⁴ *Id.* § 254(b)(3).

¹⁵ *See* Universal Service Monitoring Report, CC Docket No. 98-202 (Dec. 2007) at Table 3.2.

of time with a hard date for completion can the Commission ensure that the Broadband Fund “ha[s] a meaningful chance to address the public’s desire for more ubiquitous broadband availability.”¹⁶ The “phase-over” will ensure that, in the end, all technologies are competing for broadband support in a technology- and competitively-neutral manner and Americans enjoy truly universal broadband service in a timely and efficient manner.

IV. BROADBAND SUPPORT SHOULD BE TECHNOLOGY AND COMPETITIVELY NEUTRAL.

Finally, broadband support must be structured so as to distribute funds in a technology and competitively neutral manner. As Chairman Martin and every sitting Commissioner has emphasized, government regulation must not favor or disfavor one particular broadband Internet access platform over others and government mandates must not be used to skew a competitive outcome.¹⁷

Providers using a wide range of platforms and technologies are now competing to supply broadband connectivity across the United States. Some use fiber-optic cables; others use coaxial or hybrid coaxial/fiber networks, others use copper plant; others use (or soon will use) spectrum

¹⁶ *Joint Board RD ¶ 29.*

¹⁷ *See* Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV; Delivered via Satellite from Washington, DC, 2005 FCC LEXIS 5797 (October 26, 2005) (“Regulation must not have the effect, unintended or otherwise, of favoring the adoption of certain technologies over others.”); Remarks of Commissioner Michael J. Copps, OECD Conference on the Future Digital Economy, Rome, Italy, 2006 FCC LEXIS 576 (January 30, 2006) (noting that government must “not ... pick winners and losers,” because “[g]overnment is poorly equipped for that job”); *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, 21 FCC Rcd 13281, 13296, Concurring Statement of Commissioner Jonathan S. Adelstein (2006) (noting importance of “adopt[ing] a consistent approach” for providers of broadband Internet access services); “A Rewrite for the 21st Century,” Tennessee Telecommunications Association; Commissioner Deborah Taylor Tate, 2006 FCC LEXIS 2156 (May 2, 2006) (citing need to “create and maintain a regulatory landscape that is fair and technology neutral”); *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*, 22 FCC Rcd 19633, 19649, Statement of Commissioner Robert M. McDowell (2007) (noting the importance of “ensur[ing] that no governmental entities, including those of us at the FCC, have any thumb on the scale to give a regulatory advantage to any competitor”).

in the 2.5 GHz, AWS-I, 800 MHz, 1900 MHz, and recently auctioned 700 MHz bands; others use satellite platforms; and yet others use powerline networks. Moreover, these assets are distributed among companies large and small, public and private, in rural areas, urban areas, and everywhere in between.¹⁸ Given the wide distribution of broadband-capable spectrum and facilities among diverse providers, funds should be awarded to those high-speed broadband network providers that can provide the supported service in the most efficient manner – regardless of the technology used to provide that service – so that we can reach our universal broadband goal cost-effectively. A framework that relies on reverse auctions or similar market-based mechanisms will ensure that funds are distributed in a technology- and competitively-neutral manner. In keeping with this principle, a fund designed to promote broadband as such must not be premised on specific additional capabilities that are only available via one platform or another.¹⁹ Similarly, the Commission should to the maximum extent possible eschew reliance on geographical units that inherently favor one platform or another.²⁰ These steps will help ensure that the broadband market is driven, in rural and urban areas alike, by consumer preference and not by regulatory scale-tipping.

¹⁸ For example, upon the completion of Auction 66, Chairman Martin noted that “more than half of the winning bidders were small businesses.” Statement of Chairman Kevin J. Martin on the Conclusion of Advanced Wireless Services Auction (Sept. 18, 2006), *available at* <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267473A1.pdf>. Similarly, at the close of the more recent 700 MHz auction, Chairman Martin observed that bidders other than the national incumbent providers won about 69 percent of the 1090 licenses sold, and that at least one non-incumbent provider won a license in every market. Among these were 75 “new players” that “won licenses to serve 305 rural areas of the country.” More than half of winning bidders, moreover, were small businesses. *See* Statement by FCC Chairman Kevin J. Martin (Mar. 20, 2008), *available at* <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280968A1.pdf>.

¹⁹ For example, a requirement that limited support to platforms that provided their own power source would improperly favor traditional wireline networks, and would not be technology neutral.

²⁰ For example, support based on incumbent LEC central office service areas, or on cable service areas, would advantage these providers over others seeking support. *See, e.g.*, Auctions NPRM at ¶¶ 19-22.

CONCLUSION

For the foregoing reasons, the Commission should create a market-based, technology- and competitively-neutral Broadband Fund, which should grow over time using funds that are migrated away from phased-out support for narrowband services.

Respectfully submitted,

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