

**TESTIMONY OF MICHAEL K. POWELL
PRESIDENT AND CEO
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

on

Universal Service Reform- Bringing Broadband to All Americans

before the

Committee on Commerce, Science, and Transportation

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Good morning, Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee. My name is Michael Powell and I am the President and Chief Executive Officer of the National Cable & Telecommunications Association. Thank you for inviting me today to testify on universal service and intercarrier compensation reform.

NCTA represents cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of residential high-speed Internet service, having invested more than \$173 billion since 1996 to build two-way, interactive networks with fiber optic technology.

Relying almost solely on private risk capital, the cable industry has made broadband available to more than 123 million American households. Using efficient, advanced IP technology, cable companies also provide state-of-the-art digital telephone service to more than 22 million American consumers in urban, suburban, and rural markets – almost wholly without any universal service support. Cable operators are committed to expanding access to quality voice and Internet services, and the dramatic growth in cable broadband subscribers is evidence of their success in doing so.

For at least a decade, policymakers have agreed that our system of subsidizing the operation and maintenance of rural communications networks is in critical need of reform. Our current support mechanisms – the high-cost support portion of the federal Universal Service Fund (“USF”) and intercarrier compensation (“ICC”) – were first established decades ago to ensure that every American had access to basic telephone service. That national priority has long

been met, but these programs are still propelled by past history rather than any vision for the future.

As Committee members are aware, earlier this year the Federal Communications Commission opened a rulemaking proceeding for the purpose of fundamentally reforming the existing USF and ICC programs. We share the goal of all of the Commissioners to put these programs on a “fiscally responsible path that provides incentives for efficient operations and accountability for every dollar spent.” It is important to remember that consumers, not companies, are the intended beneficiaries of universal service funding, and it is also consumers who ultimately pay for the USF program. If the Commission fails to meaningfully constrain the USF program, consumers will inevitably see their bills rise. In these depressed economic times, government should do everything it can to limit the economic burden of government programs on consumers, even programs like USF that serve worthy goals.

Cable companies strongly support and appreciate efforts to modernize the universal service program and to rationalize the intercarrier compensation regime. As competitors to the incumbent telephone companies, in both rural and non-rural areas, cable companies are directly and significantly affected by the FCC’s universal service and intercarrier compensation rules. While our cable companies operate in rural areas largely without subsidies, they compete directly with incumbent carriers that collectively receive billions of dollars annually in USF subsidies. Carriers have also refused to pay the appropriate intercarrier compensation on VoIP traffic we exchange with them. ICC reform must treat VoIP in a competitively neutral manner that encourages rather than penalizes investments in IP technology. The pending proceeding offers the opportunity to transform these programs into ones that can help accomplish our nation’s telecommunications goals of tomorrow while limiting further taxpayer exposure.

Principles to Guide Effective Universal Service and Intercarrier Compensation Reform

The goal of Universal Service Fund reform should be to provide support, on a fiscally responsible and competitively neutral basis, for broadband services in those areas of the country where there is no business case for providing broadband without government subsidy. The goal of reform of the intercarrier compensation regime should be regulatory certainty that ensures fair treatment of competitors and encourages the migration from circuit-switched to IP technology. These goals can be achieved within a framework that embodies the following principles.

Intercarrier Compensation Reform Must Ensure Competitive and Technological Neutrality. The intercarrier compensation system must be reformed so that it treats voice over Internet protocol (VoIP) calls the same as “circuit-switched” calls. The FCC must provide regulatory certainty by making sure that carriers are able to collect and pay for VoIP calls under the same rules that apply to traditional circuit-switched calls. Adopting different intercarrier compensation rules for circuit-switched and IP calls will continue the arbitrage inherent in the existing system today. In making reforms, the FCC must also maintain the interconnection and transport rules adopted in 1996 that ensure continued growth of competition in the voice market.

Target USF Broadband Support to Unserved Areas. The FCC should focus its reform efforts on bringing broadband to areas that do not have broadband today. Its policies should reward efficiency and make the best use of each taxpayer dollar of USF support. A common sense reform would be to prioritize support to providers that will bring broadband service to areas that lack such service today. We agree with members of Congress from both sides of the aisle that reform should end subsidies to providers that face competition from unsubsidized providers, whose presence in a market demonstrates that no subsidy is necessary.

Cap USF High-Cost Fund at \$4.5 Billion. High-cost support has more than doubled since 2000, and consumers currently contribute \$4.5 billion per year that is disbursed in high-cost program support. The Commission should cap high-cost support for broadband and voice services at this amount. Limiting the growth of USF is important for one reason above all; consumers ultimately pay for subsidizing this program. In these challenging economic conditions, policy-makers should do everything possible to limit the economic burden of government programs on consumers, even programs that serve worthy goals, as does USF.

Promote Competitive Neutrality and the Most Efficient Use of Subsidies. The FCC has acknowledged that it must modernize a 20th century program to serve 21st century needs. The USF high-cost support mechanisms that we have today were created in an era when wireline telephone service was provided on a monopoly basis, and are out of place in the modern, competitive communications marketplace. There is no justification for using subsidy funds simply to preserve incumbent phone companies' existing revenue streams. Real USF reform must be fiscally responsible and competitively- and technologically-neutral, and should recognize and encourage the continued growth of voice and broadband competition rather than serving as a mechanism to further entrench incumbent phone companies. The FCC should put in place support mechanisms that harness marketplace competition, like competitive bidding or reverse auctions, to award subsidies to the most efficient provider, regardless of what type of technology that provider uses. At that point, legacy high-cost support should end.

Improving Telephone Company Reform Proposals

Recently, much of the reform discussion at the FCC has centered on proposals made by two groups of incumbent telephone companies. One proposal, put forward by a group of larger incumbents, including Verizon, AT&T, and CenturyLink, has been labeled the ABC Plan. The

other, made by a group of smaller rural incumbents, has been dubbed the RLEC Plan. While these plans have been represented by their proponents as a consensus proposal put forward by all providers, that is not the case. The plans were created by, and are endorsed by, the incumbent phone companies and include many provisions designed to benefit those companies to the detriment of their competitors.

In spite of these flaws, there are some positive components of the ABC Plan that could serve as a basis for real reform that benefits consumers in all areas of the nation. Consequently, rather than encouraging the Commission to reject these plans entirely, the cable industry has encouraged the Commission to eliminate or fix those elements of that plan that run counter to the reform principles set out by the FCC earlier this year, particularly in terms of fiscal responsibility and competitive neutrality.

To assist the FCC in achieving reform that genuinely meets its goals of modernization, fiscal responsibility, accountability, and market-driven policies, NCTA has proposed an “Amended ABC Plan” that addresses weaknesses in the phone companies’ USF and ICC proposals and promises to yield a modern Universal Service Fund and intercarrier compensation regime that is more consistent with a competitive marketplace and the FCC’s reform principles.

USF Reform

Our Amended ABC Plan embodies several major improvements to the proposals put forward by the incumbent carriers. Our proposals are aimed at ensuring true fiscal responsibility for the USF program, taking full advantage of competition in the marketplace to eliminate the need for subsidies in areas where they are not necessary and to ensure the greatest possible efficiency in areas where they are.

Instituting Enforceable Fiscal Controls. NCTA's Amended ABC Plan proposal ensures that consumers will contribute no more than they do today for high-cost funding by establishing an enforceable cap on the size of the high-cost support program, with the possibility of limited waivers where the Commission determines that such exceptions are necessary. The phone companies' proposal professes to be tied to an estimated "budget," but it contains no meaningful mechanism for constraining – or reducing – the size of the fund.

In particular, the phone companies propose no meaningful constraints on rural phone companies' receipt of support. Instead, their suggested "limits" on fund size would be enacted by eliminating the very reforms that are the goal of this proceeding, *e.g.*, by delaying the availability of support in areas with significant unserved populations and deferring the reduction in excessive access charges that is an important aspect of intercarrier compensation reform. NCTA also has explained that caps or other mechanisms to limit the overall amount of support should not preclude the Commission from taking any necessary steps to ensure adequate support in areas that have been historically challenged, such as Alaska.

Targeting Government Subsidies to Areas Where Support is Necessary for Service. NCTA's Amended ABC Plan proposal would also target support only to those areas of the country where there is no business case for providing broadband without a subsidy. The presence of a cable operator offering broadband service in a given geographic area without subsidy shows that the area can be served without government support. While the ABC Plan put forward by the phone companies also targets support consistent with NCTA's proposal in areas served by the larger, price cap companies, it does not do the same for areas served by small and rural rate-of-return phone companies, allowing those companies to continue to receive subsidies even if the area is already served by cable companies or other broadband providers. This

approach unfairly advantages one provider over another and discourages the investment of private risk capital that could make subsidies unnecessary.

Promoting Savings through Technological Neutrality. NCTA's Amended ABC Plan proposal relies on marketplace approaches like competitive bidding to target the most efficient provider for support in an unserved area. By ensuring that subsidies go to the most efficient provider, these mechanisms would keep costs in check and possibly lead to overall reductions in the size of the fund. Consistent with this goal, USF should not be structured to favor incumbents by giving them a "right of first refusal" for USF support. By granting incumbents a preference over more efficient competitors, a right of first refusal would violate the principle of competitive neutrality and increase the size of the high cost program by denying support to a competing provider that could provide the same or better service at a lower cost.

Modernizing Outdated and Inefficient Regulatory Regimes NCTA's Amended ABC Plan proposal would establish a clear sunset date for outmoded and inefficient rate-of-return regulation applied to small and rural telephone companies and ask the Federal-State Joint Board on Universal Service to develop a transition plan to eliminate this out-of-date regulatory regime. In contrast, the phone companies' plans make only minimal changes to rate-of-return regulation.

ICC Reform

Of equal importance are our proposed changes to the ABC Plan's ICC proposal. Getting ICC reform right is essential to promoting full and fair competition and encouraging investment in IP networks. The goal of ICC reform must be a unified compensation system, not one in which a new disparity between traditional voice and IP technology is allowed to take root.

Reaffirming Reciprocal Obligations to Collect and Pay Access Charges. Through its reform efforts the FCC must provide regulatory certainty that carriers will be able to collect and

pay intercarrier compensation for VoIP traffic under the new rules. The FCC should affirmatively resolve issues surrounding compensation for carriers exchanging VoIP traffic that have been the source of many disputes and litigation, providing needed certainty and incentives for providers to transition from the legacy phone networks of the past to the forward-looking IP networks of the future.

Preserving Existing Regulatory Authority over Interconnection and Transport Charges.

The NCTA's Amended ABC Plan proposal preserves interconnection and transport policies enacted as part of the Telecommunications Act of 1996 that have been the foundation for competition to the voice market. The FCC should ensure that these critical services remain available and affordable to competitors, rather than allowing incumbent phone companies to hinder competition either by increasing the prices competitors must pay or by using strong-arm negotiating tactics to prevent competitors from using state commission-approved interconnection agreements as provided in the Telecommunications Act of 1996.

Restricting Access Charge Replacement Funding Based on Need. The phone companies' plans propose to create significant new transitional funding allowing telephone companies to obtain Universal Service Fund subsidies to replace access charge revenues lost through intercarrier compensation reform. Price cap carriers are generally large, financially-healthy companies that do not need "access replacement" funding to weather the transition to a new regime. The NCTA's Amended ABC Plan proposal demonstrates fiscal discipline by making clear that such funding should not be available to these incumbent phone companies, and should be provided to other carriers only upon a demonstrated showing of need.

Conclusion

These issues are not easy and many of them are not new. NCTA welcomes the Committee's continuing interest in USF and ICC reform. After a lengthy and considered review, the FCC appears poised to undertake major and welcome reform to universal service programs and the related intercarrier compensation regime. We remain committed to working cooperatively and constructively with Members of this Committee, the FCC, and with other stakeholders, including the incumbent telephone companies, to address remaining issues and achieve reforms that best meet the needs of the American public.

We appreciate the opportunity to share our views with you and thank you again for the opportunity to appear today.