

State of California

Public Utilities Commission
San Francisco

M E M O R A N D U M

Date : **November 30, 2009**

To : **The Commission**
(Meeting of December 3, 2009)

From : **Gretchen Dumas**
Public Utilities Counsel IV

Subject : **Filing of Comments in Response to FCC's Request for Comment on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, NBP Notice #19; GN Docket Nos. 09-47, 09-51, 09-137**

RECOMMENDATION: The CPUC should file comments, as recommended below, in response to the Public Notice, released November 13, 2009, by the Federal Communications Commission ("FCC"), in which the FCC seeks more focused comment on the role of Universal Service and Intercarrier Compensation ("ICC") reform in the National Broadband Plan ("NBP"). Comments are due December 7, 2010.

BACKGROUND: Congress has directed the FCC to develop the NBP by February 17, 2010.¹ In the FCC's initial request for comments to inform the development of a NBP,² several entities, including AT&T, encouraged the FCC to recommend reform of the federal universal service scheme and ICC as part of the NBP. In response, in this Notice, the FCC seeks more focused comment on its universal service and ICC policies and on various policy options that would further the goal of making broadband universally available as required by the Recovery Act.

The Federal Telecommunications Act of 1996 ("Act") added Section 254 establishing federal universal service policies. Section 254(b) of the Act states that "...access to advanced telecommunications and information services should

¹ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.115 (2009) (Recovery Act) § 600(k).

² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.115 (2009) (Recovery Act) § 600(k).

be provided in all regions of the nation.”³ Currently, the federal Universal Service Lifeline/Link-up program for low-income individuals and the federal High-Cost Support program for carriers operating in high cost areas only provide support for telecommunications services. On November 20, 2007, the Federal-State Joint Board on Universal Service (“Joint Board”) issued its recommendations for reform of the federal high-cost universal service support program which included proposals to establish limited high cost funds to support wireline and wireless broadband deployment.⁴ On November 5, 2008, the FCC released comprehensive proposals for reform of the Universal Service Fund and the ICC scheme.⁵

The CPUC filed comments on both the Joint Board’s Recommended Decision and the FCC’s proposals. Furthermore, the CPUC filed comments earlier this year in response to the FCC’s request for information to inform its development of the National Broadband Plan, which included comments on universal service support for broadband. Staff’s recommendations in this Memorandum on universal service reform are consistent with the Commission’s (CPUC) filings in these previous federal proceedings.

Also, to promote universal service, regulators have long relied on a complex array of ICC mechanisms, which generally have included implicit subsidies. Through the years, the introduction of competition -- first into long-distance and then into local markets, as well as the development and deployment of new technologies -- have eroded the fundamental economic underpinnings of the current ICC regimes. For several years, the FCC has been taking comments on the how to reform ICC in order to unify and simplify the myriad ICC systems in existence today.

Following passage of the 1996 Telecommunications Act, the FCC began reforming both interstate access charges and federal universal service support mechanisms by moving the implicit subsidies contained in interstate access charges into explicit universal service support, consistent with the 1996 Act’s directives. The FCC most recently made changes to the ICC scheme in 2000 and 2001.⁶ Since that time the FCC has sought comment on further access charge reform. In 2006, the FCC sought comment on an industry task force proposal for ICC reform, dubbed “the Missoula Plan,” and this Commission filed extensive comments on that proposal. Also, as noted above, the CPUC filed comments on the ICC reform proposals in the FCC’s FNPRM released last fall. Proposals in the FCC’s Further Notice of Proposed Rulemaking (FNPRM) were designed to unify

³ 47 U.S.C. § 254(b)(1), (2), (5).

⁴ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (JB 2007) (*Comprehensive Reform Recommended Decision*).

⁵ *Further Notice of Proposed Rulemaking*, FCC 08-262, rel. November 5, 2008.

⁶ See *CALLS Order*, 15 FCC Rcd 12962 (2000) and *MAG Order*, 16 FCC Rcd 19613 (2001).

and simplify the ICC scheme so as to encourage the efficient use of, and investment in, advanced telecommunications and broadband networks, spur intermodal competition throughout the United States, and minimize the need for future regulatory intervention.

DISCUSSION OF RECOMMENDATIONS:

Universal Service Reform

Regarding federal universal service reform, Staff recommends that the Commission urge the FCC to take the following actions:

1) Lifeline/Link-up Support for Broadband Internet Access Service

Encouraging adoption of broadband services is a necessary and worthy goal of the National Broadband Plan. Lack of economic resources is one reason that broadband Internet access has not been embraced by all U.S. residents who wish to have such access. Some parties have urged the FCC to add broadband service to the services supported by the federal Lifeline/Link-up program that provides discounted telecommunications services to low-income customers. However, it is unknown what the cost to the Universal Service Fund would be if such a proposal were adopted.

Therefore, staff recommends that the CPUC urge the FCC, as part of the National Broadband Plan, to establish a pilot project or projects, with funding caps, that would provide a limited number of low-income subscribers with Lifeline/Link-up broadband support for equipment and monthly Internet access service. Pilot programs would permit the FCC to gauge the cost of such a program and to determine the best way, if at all, to provide low-income consumers with equipment (smart phones, wireless laptops etc.) necessary for broadband Internet access. The CPUC has supported such pilot proposals in past filings.

2) High-Cost Support for Broadband Deployment

In past filings the CPUC has supported the establishment of a separate limited fund to support broadband deployment in un-served and under-served areas as recommended by the Joint Board in 2007. Staff recommends that the CPUC again express its support for such a deployment program (which would only include operation and maintenance support in extreme circumstances) as it has in past filings.

However, staff also recommends that the CPUC urge the FCC not to implement such a fund until the results of the economic stimulus broadband deployment projects are known and until accurate mapping of unserved and underserved areas is available. Ensuring that monies are targeted to areas where there is still a need

will both improve the efficacy of the program and control its costs. Alternately, if the FCC decides to establish a high-cost broadband fund as part of its National Broadband Plan to be issued in February, staff recommends that the CPUC urge the FCC to only provide funding under the new fund to areas of the country where states have thoroughly mapped the availability of broadband services. Funding beyond those states should be postponed until the national map of broadband availability required by the Recovery Act by February 17, 2011 is released.

3) Carrier of Last Resort Obligations

Staff also recommends that in its filing, the CPUC include specific information regarding California's carrier-of-last-resort obligations the FCC requests in this Notice, and emphasize that such obligations should continue to be determined by the states.

The particulars of the CPUC's comments on the three matters discussed above should reflect our past filings.

ICC Reform

Staff recommends that the CPUC advocate that the FCC not address ICC reform as part of the National Broadband Plan. The issues associated with ICC are too complex to be addressed in the NBP due in February. Rather, the FCC should address this subject in the current open rulemakings on ICC reform in which it has received hundreds of comments over the past decade. However, in recognition of the importance of ICC reform and its impact on the provision of universal deployment of advanced services, the CPUC should urge the FCC to include in the National Broadband Plan a statement of its overarching goals for ICC reform and to set a definite timetable for resolution of this matter, which should no more than 6 months after issuance of the NBP.

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