Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
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. 09-137

COMMENTS OF THE ASIAN AMERICAN JUSTICE CENTER, NATIONAL COUNCIL OF LA RAZA AND RAINBOW PUSH COALITION IN RESPONSE TO NBP PUBLIC NOTICE #19

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The Asian American Justice Center, National Council of La Raza and Rainbow PUSH Coalition ("Civil Rights Organizations") respectfully submit the following comments in response to the Commission's Public Notice Seeking Comments on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, Public Notice # 19 ("Notice").[1]

The Federal Communications Commission is charged with many important functions; however, one of the Commission's most critical duties is illustrated in the parallel goals of the universal service fund ("USF") and advanced services, Section 706.[2]

Under Section 706, the Commission is charged with encouraging "the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[3] As the Commission's Advisory Committee on Diversity has noted, the definition of advanced telecommunications capability specifically encompasses broadband capabilities,[4] meaning that,

[1] Comment Sought 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 (rel. Nov. 13, 2009) ("Notice").

[2] See 47 U.S.C. § 254; Section 706 of the Telecommunications Act of 1996 (codified at § 47 U.S.C. § 1302). See also Lynne Holt and Mary Galligan, State and Federal Policies to Accelerate Broadband Deployment: A Policy Checklist, 17 CommLaw Conspectus 141, 144 (2008).

[3] See Recommendation of the Constitutional Issues Subcommittee of the FCC's Advisory Committee on Diversity For Communications in the Digital Age, The FCC's Obligation to Close the Digital Divide, at 2-3 (Dec. 3, 2009) (citing 47 U.S.C. §1302(a)).

[4] See id. at 3 (citing 47 U.S.C. §1302(d)(1)).

under the rule, the Commission must actively ensure broadband deployment "to all Americans in a reasonable and timely fashion."[5]

The goal of the universal service programs is to ensure that all Americans are provided high-quality and affordable advanced telecommunications and information services.[6] Section 254 recognizes that the definition of universal service is "an evolving level of telecommunications service that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services…"[7]

The Civil Rights Organizations commend the Commission's current actions of exploring a more expansive definition of universal service.[8] As the Commission creates a national broadband plan, now is the time to expand the definition of universal service to include broadband capabilities and increase the resources of each support mechanism to carry out the national broadband plan and USF program objectives.

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[5] See id. at note 7 (citing §1302(b). "The legislative history underlying Section 706 confirms Congress's intent regarding the Commission's obligation to promote the ubiquitous availability of broadband. The Joint Conference Report provides that the Commission – as part of its obligation to monitor whether advanced broadband offerings are being deployed to all Americans – "shall include an assessment…of the availability, at reasonable cost, of equipment needed to deliver advanced broadband capability. If the Commission makes a negative determination, it is required to take immediate action to accelerate deployment." H.R. CONF. REP. NO. 104-458, at 210 (1996), reprinted in 1996 U.S.C.C.A.N. 10).

[6] See 47 U.S.C. § 254(b). See also Kathleen Q. Abernathy, FCC Commissioner, Speeches Before the Silicon Flatirons Telecommunications Program: Preserving Universal Service in the Age of IP, 3 J. on Telecomm. & High Tech. L. 409, 410 (2005).

[7] 47 U.S.C. § 254(c)(1) (in recommending the appropriate level and definition of Universal Service the Joint Board will take into account several specific policy considerations.).

[8] See Notice.

I. UNIVERSAL SERVICE SUPPORT SHOULD BE INCREASED

The Commission should increase universal service funding for each of its support mechanisms to ensure that the opportunities presented by broadband are available to all Americans[9] and allow these programs to encompass broadband related objectives including service, equipment, digital literacy training, and growing bandwidth needs.[10]

While identifying the critical gaps in the path to universal broadband, the Commission recognized that in order to reach its goals, there must be an environment where a myriad of issues, including digital literacy and computer access, are addressed.[11] In an article on creating a national broadband policy, Dr. Robert Atkinson noted that the existence of adoption issues extending beyond broadband deployment "…suggests that a universal service policy focusing solely on subsidizing costs will not be the most successful method of maximizing broadband adoption. Any policy to expand broadband use must begin with efforts to make non-users comfortable with, and interested in, computers and broadband."[12]

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[9] See Robert D. Atkinson, Framing a National Broadband Plan, 16 CommLaw Conspectus 145, 163 (2007) ("Framing a National Broadband Plan") (explaining that "[w]hile broadband cannot create competitive advantages for a region, a lack of broadband can retard it. For example, between 1998 and 2002, employment in communities with broadband grew one percentage point faster annually than communities without.")

[10] See Initial Comments of the Broadband Diversity Supporters, A National Broadband Plan for Our Future, GN Docket No. 09-51, 15-17 (June 8, 2009) ("National Broadband Plan Comments").

[11] See News Release, Federal Communications Commission, FCC Identifies Critical Gaps In Path To Future Universal Broadband, at 2 (Nov. 18, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294706A1.pdf (last visited Dec. 4, 2009).

[12] See Framing a National Broadband Plan, 16 CommLaw Conspectus at 171.

USF funding should be increased to ensure that low-income consumers have the access, the ability, and the knowledge to use broadband to enhance the quality of their lives. Programs such as Lifeline/Linkup have provided a critical connection for low-income consumers in emergencies and everyday lives; helping to reduce isolation, and expand access to employment opportunities.[13] Now, as the overwhelming majority of Fortune 500 companies are requiring online responses to jobs posted on the companies' websites,[14] it is time to update Lifeline/Linkup to keep pace with current technology.[15] Initially, to determine the necessary increase in support for low-income consumers, the Commission could examine state-by-state data on Lifeline support,[16] comparing telephone adoption among the states to estimate the cost per new subscriber, and the economic benefits derived from Lifeline's ability to enable the nation to

[13] See National Broadband Plan Comments at 16.

[14] See Taleo Research, Talent Management Process, available at http://www.taleo.com/research/articles/talent/don-miss-the-next-strategic-turn-115.html (last visited Dec. 2, 2009) ("In 2005, 77 percent of the Fortune 500 do not give jobseekers the option of responding offline to job positions posted to the corporate Careers website.").

[15] See, e.g., Deborah Taylor Tate, FCC Must Make Broadband Access Universal, Baltimore Sun (Aug. 9, 2009) ("The Lifeline/Linkup programs, which have been somewhat underutilized, could be expanded to provide discounts for installation and monthly charges for today's broadband services, just as they have for old-fashioned telephone service."), available at http://articles.baltimoresun.com/2009-08-09/news/0908080032_1_broadband-deployment-and-adoption-linkup (last visited Dec. 2, 2009).

[16] See, e.g., Trends in Telephone Service, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, at 19-14 (Aug. 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf (last visited Dec. 4, 2009) (Table 19-7 sets forth data on lifeline monthly support by State or Jurisdiction).

approach universal telephony.[17] The Commission should then undertake to extrapolate this calculation to broadband.

Universal service funding also should be increased for the rural health care program. The rural health care program has great potential to continue increasing the quality of health care, while reducing its cost by providing a connection between physicians and members of remote, rural communities.[18] While immediate benefits of this program are clearly available, the limited funding that it has received has resulted in the omission of nearly two-dozen rural states.[19] Insufficient funding combined with a primary focus on rural areas may have detrimental implications for innovation, adoption, and use of telemedicine applications in non-rural areas.[20] Finally, as the Commission continues to calculate the allocations for USF programs, it should remain cognizant of the growing bandwidth requirements for telemedicine applications and react accordingly.[21]

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[17] See, e.g., Map of 2008 Lifeline Participation Rates By State (June 10, 2009), available at http://www.usac.org/_res/documents/li/pdf/li-participation-rate-map-2008.pdf (last visited Dec. 4, 2009) (only Alaska, California, Montana, Colorado, and Oklahoma have participation rates above 50%).

[18] See National Broadband Plan Comments at 16.

[19] See id. (citing MMTC, Road Map for Telecommunications Policy, at 13 (July 21, 2008), available at http://mmtconline.org/lp-pdf/MMTC-Road-Map-for-TCM-Policy.pdf (last visited Dec. 4, 2009).

[20] See Charles M. Davidson and Michael J. Santorelli, Barriers to Broadband Adoption: A Report to the Federal Communications Commission, The Advanced Communications Law & Policy Institute, New York Law School (2009) at 47 ("ACLP Comments").

[21] See U.S. Broadband Coalition, Expanding and Accelerating the Adoption & Use of Broadband Throughout the Economy, at 29 (Nov. 13, 2009) ("U.S. Broadband Coalition Report"), available at http://www.jointcenter.org/publications_recent_publications/media_and_technology/expanding_and_accelerating_the_adoption_use_of_broadband_throughout_the_economy (last visited Nov.

Universal service funding should be increased for the e-rate program. The e-rate program has been instrumental in providing affordable broadband access to nearly all of the nation's public schools.[22] However, e-rate funds should be increased, and funds should be allocated to providing teacher training on how to effectively use the technology in the classroom.[23] E-rate funding, in conjunction with other federal funding, should be allocated to providing laptop computers and home broadband for students in low-income communities.[24] The Commission should also endeavor to simplify the e-rate application process and allow schools to leverage broadband networks to bring broadband into the homes of their neighborhoods.[25] As the Commission re-evaluates USF programs, e-rate provides another example of a program that should consider the growing bandwidth needs necessary to effectively use valuable education applications.[26]

25, 2009) ("As these services become available to them, broadband speeds of 10's of megabits and 1 gigabit per second will become common practice.").

[22] See National Broadband Plan Comments at 16 (citing Universal Service Administrative Company Annual Report 2007, at 2, available at http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2007.pdf (last visited Dec. 1, 2009).

[23] See National Broadband Plan Comments at 17 (citing National Education Association, Access, Adequacy, and Equity in Education Technology (2008), available at http://sc08.sc-education.org/conference/k12/sat/stem/08gainsandgapsedtech.pdf (last visited Dec. 4, 2009). See also ACLP Comments at 78. See also U.S. Broadband Coalition Report at 34.

[24] See National Broadband Plan Comments at 24. See also ACLP Comments at 74-75 (discussing computer access and the impact of laptop programs).

[25] See U.S. Broadband Coalition Report at 36. See also ACLP Comments at 76.

[26] See ACLP Comments at 82. See also U.S. Broadband Coalition Report at 34-36.

II. THE COMMISSION SHOULD CONSIDER A BROADBAND VOUCHER SYSTEM

The Commission should consider, among other approaches, restructuring universal service programs with voucher programs similar to those proposed and developed during the DTV conversion process.[27] Consumers should be able to use the vouchers to subsidize the cost of any broadband service or equipment they choose.[28] In that way, consumers will be able to decide which products and services best meet their needs, therefore encouraging competition and increasing consumer independence, self-respect, and dignity while directly advancing the goals of USF and Section 706.[29] A complementary approach might be to enable children eligible for free school lunches to receive reduced connect rates.

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[27] See Comments of the Civil Rights Organizations, Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, MB Docket No. 03-15, RM-9832 et al. at 17-26 (April 21, 2003). See also Comments of the Minority Media and Telecommunications Council, Over-The-Air Broadcast Television Viewers, MB Docket No. 04-210, 2-5 (Aug. 11, 2004) ("MMTC Broadcast Television Viewers Comments").

[28] See MMTC Broadcast Television Viewers Comments at 5 (recommending that "vouchers be available not only for converter boxes, but also to partly subsidize the cost of DTV sets and multi-channel video. In this way, the voucher program would not intentionally contribute to a two-tier system of television signal deliver, in which multi-channel video is for the wealthy and middle class, and minimal service is for the poor.").

[29] See id. at 4 ("When consumers are empowered to render purchasing decisions, they base their choices on attributes the government cannot easily offer: competitive prices; convenience of retailers' locations; brand awareness and credibility; retailers' reputations for fair service and for assistance with instillation and repair; retailers' and manufacturers' domestic and international labor practices and community involvement.").

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