
McLean & Brown

ISSUE UPDATE

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FCC Releases National Broadband Plan

On March 16, 2010, the Federal Communications Commission (FCC) released the full text of its long-awaited National Broadband Plan (the Plan). Over a year in the making, the Plan represents the collaborative efforts of hundreds of FCC staff personnel and contains 360 pages and 1,544 footnotes. The Commission was directed by Congress to prepare the Plan as part of the American Recovery and Reinvestment Act of 2009, and was required to submit it within one year of the Act's passage (later extended by one month). The Plan provides policy recommendations on a variety of issues related to universal broadband deployment. Roughly half of these issues will be the subject of future FCC rulemaking proceedings, with the other half consisting of policy recommendations to Congress and other government entities.

In this initial summary we will focus primarily on the specific policy recommendations related to universal service and intercarrier compensation. This summary will also touch on several other regulatory and pricing issues raised in the Plan, and briefly summarize some of the major broadband goals and national purposes addressed in the Plan.

Universal Service Issues

National Broadband Availability Target

- Every household and business location in America should have access to affordable broadband service with:
 - Actual download speeds of at least 4 Mbps
 - Actual upload speeds of at least 1 Mbps
- The FCC should review and reset these targets every four years

National Broadband "Availability Gap"

- 14 million people living in 7 million housing units do not currently have access to broadband service at these minimum speeds
- There is a \$24B gap between costs to build and operate networks to deliver these services, and the revenue that would be generated from them

- Government support will be needed to supplement private investment to serve these currently unserved households
- Of the 7 million unserved households:
 - 46% could be served with one-time support
 - 54% could be served with one-time and ongoing operational support
 - The highest 250,000 would require \$14B of the \$24B

Guiding Principles for Comprehensive USF and ICC Reform

- Support broadband deployment directly, eliminating support for networks that only deliver POTS over time
- Maximize broadband availability, allocating resources so that the nation gets the "biggest bang for the buck"
- No flash cuts – new rules should be phased in over a reasonable time period
- Reform requires federal and state coordination, and the FCC should seek input from state commissions on how to harmonize federal and state efforts to promote broadband availability

Three Reform Stages to Close the Availability Gap Stage 1 (2010-2011)

- Improve current USF performance and accountability
- Create the new Connect America Fund (CAF) to bring broadband to currently unserved areas
- Create a new Mobility Fund (MF) to provide one-time support to bring all states to a minimum level of 3G availability
- Shift \$15.5B over ten years from current USF to targeted broadband support through common sense reforms
- Adopt a framework for long-term ICC reform, while implementing interim measures to curb arbitrage
- Examine middle-mile costs and pricing

Stage 2 (2012-2016)

- Begin implementation of the CAF
 - Examine potential costs and benefits of additional ways to shift funding from legacy USF to the CAF
 - Determine what ongoing support is necessary to sustain areas that currently have broadband, and how rights and responsibilities should be modified when the incumbent is not the funded Broadband Provider of Last Resort for a particular geographic area
 - Distribute CAF to extend broadband to unserved areas
- Broaden the universal service contribution base
- Begin staged reduction of per-minute ICC rates

Stage 3 (2017-2020)

- Manage total universal service funding to 2010 levels (approximately \$8.7B per/year)
- Eliminate legacy USF and move all funding to CAF
- Phase out per-minute ICC rates

Shift \$15.5B From Current USF to Broadband Over the Next Decade

Shift Funding From:

<u>Amount</u>	<u>Item</u>
\$3.9B	Implement Sprint/Verizon commitment to phase out USF support over 5 years (currently \$530M/year)
\$1.8B	Move RoR carriers to Incentive Regulation through freezing ICLS levels (limits growth in legacy fund while the FCC develops methods to provide appropriate amount of CAF to sustain areas that currently have broadband)
\$4.0B	Eliminate IAS for price cap carriers (currently \$457M/year)
<u>\$5.8B</u>	Phase out remaining CETC support in Stage 2
\$15.5B	

Shift Funding To:

<u>Amount</u>	<u>Item</u>
\$4.0B	Combination of activities including the new Mobility Fund, potential revenue replacement from ICC reform, expanding support for health care, and e-rate, and pilots for a broadband Lifeline program
<u>\$11.5B</u>	Connect America Fund to bring broadband to unserved areas
\$15.5B	

Roadmap for USF/ICC Reform

	Stage 1 (2010-2011)	Stage 2 (2012-2016)	Stage 3 (2017-2020)
Universal Service	Create CAF and MF Rules to eliminate IAS and retarget to broadband Rules to move RoR carriers to incentive regulation Implement Sprint/Verizon commitments to reduce CETC funding to zero over 5 years Rules to phase out remaining CETC support over 5 years Framework for ICC reform and measures to curb arbitrage	Begin disbursements from CAF and MF Implement reformed contribution methodology Phase out all remaining CETC support	Eliminate legacy High-Cost programs
Inter-carrier Compensation	Adopt framework for long-term ICC reform, while implementing interim measures to curb arbitrage	Begin reductions in ICC rates	Phase out per-minute ICC rates

Connect America Fund (CAF)

- CAF should only provide funding in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service
- The FCC should work to maximize the number of households that can be served quickly, focusing first on those areas that require lower amounts of subsidy to achieve that goal, and over time addressing those areas that are hardest to serve
- Support should equal forward-looking costs less revenues that will be generated (i.e., the *funding gap*)
 - Revenues should include voice, data, video, ICC, BIP/BTOP, state USF, etc.
- Neutral geographic units such as Census Blocks, Census Block Groups, etc.
- There should be at most one subsidized provider of broadband per geographic area.
 - Funding should be technology neutral
 - Any provider that can meet or exceed FCC standards qualifies
- Market-based selection criteria for funded carrier
 - Ensures that support goes to lowest-cost provider
- CAF recipients held accountable for funding use
 - Broadband Provider of Last Resort (BPOLR)
 - Timelines for serving unserved areas
 - Service quality and reporting obligations
 - Rates comparable to urban areas
- The FCC's ability to shift funds from existing programs to broadband assumes that this will not negatively impact company operations or future deployment strategies
- The Plan does not estimate the amount of support that may be necessary to sustain broadband service in those areas where it is already available
- To the extent an incumbent RoR carrier is not the designated BPOLR, the FCC would need to determine how changing support levels would impact service to consumers and how to address the costs of past network investments

Mobility Fund (MF)

- Provide one-time support for deployment of 3G networks to bring all states to a minimum level of 3G (or better) mobile service ability
- Use an efficient method, such as a market-based mechanism, for supporting mobility in targeted areas.

Tribal Broadband Fund (TBF)

- Congress should consider establishing a TBF to support sustainable broadband deployment and adoption on Tribal lands.
- The fund should be administered by NTIA in consultation with the FCC and the Bureau of Indian Affairs
- The FCC should solicit input from Tribal governments on USF matters that impact Tribal lands

Low-Income Fund

- Expand Lifeline Assistance and Link-Up to make broadband more affordable for low-income households
- The FCC and states should require ETCs to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service
- The FCC should integrate the expanded Lifeline and Link-up programs with other state and local e-government efforts
- Facilitate pilot programs that will produce actionable information to implement the most efficient and effective long-term broadband support mechanism

Broaden the Universal Service Contribution Base

- The Plan acknowledges several alternatives for contribution reform but does not recommend a specific reform proposal
- Whatever path the FCC takes, it should minimize the possibilities of arbitrage over time with changing markets and technologies

Recommendations to Congress

- Congress should consider providing optional public funding to the CAF, such as "a few billion dollars per year over a two to three year period"
- Additional funding would allow the country to achieve broadband targets earlier, and ease the glide path for other reforms by removing regulatory uncertainty over USF and ICC revenue streams
- Congress should consider expanding combination grant-loan programs
- Congress should consider expanding the Community Connect program

Tax-Efficient Funding

- The FCC should design new USF funds in a tax-efficient manner to minimize the size of the gap
- Treasury has recently issued a ruling that BTOP grants to corporations that are used to expand the business and that meet a five-part test would be excluded from income as a non-shareholder contribution to capital under section 118(a)

Intercarrier Compensation (ICC) Reform

- The FCC should adopt a framework for long-term ICC reform that creates a glide path to eliminate per-minute charges while providing carriers an opportunity for adequate cost recovery, and establish interim solutions to address arbitrage
- Given that there may be market power for terminating traffic, the FCC should carefully monitor compensation arrangements
- The first step should move intrastate terminating access rates to interstate levels in equal increments over two to four years
- Congress could make explicit the FCC's authority to reform intrastate ICC rates to reduce litigation and expedite reform
- To offset decreasing ICC revenue, the FCC should permit gradual increases in SLC charges

- The FCC should encourage states to complete rebalancing of local rates to offset the impact of lost access revenues
- When calculating support levels under the CAF, the FCC could impute residential local rates that meet an established benchmark to encourage rebalancing of low local rates
- The FCC should prohibit carriers from eliminating information necessary for a terminating carrier to bill an originating carrier for a call
- The FCC should adopt rules to reduce access stimulation and curtail business models that artificially stimulate terminating minutes
- The FCC should address the treatment of VoIP traffic for purposes of ICC
- The FCC should examine middle-mile costs and pricing

Other Regulatory Matters

Pole Attachments

- The FCC should establish rental rates for pole attachments that are as low and close to uniform as possible, consistent with Section 224 to promote broadband deployment
- The FCC should implement rules that will lower the cost of the pole attachment “make-ready” process
- The FCC should establish a comprehensive timeline for each step of the Section 224 access process and reform the process for resolving disputes regarding infrastructure access
- The FCC should improve the collection and availability of information regarding the location and availability of poles, ducts, conduits and rights-of-way
- Congress should consider amending Section 224 of the Act to establish a harmonized access policy for all poles, ducts, conduits and rights-of-way
- The FCC should establish a joint task force with state, Tribal and local policymakers to craft guidelines for rates, terms and conditions for access to public rights-of-way

Governmental Broadband Networks

- Congress should make clear that state, regional, local and Tribal governments can build broadband networks
- Eighteen states have passed laws to restrict or explicitly prohibit municipalities from offering broadband service
- Restricting these networks in some cases restricts the country’s ability to close the broadband availability gap, and should be revisited
- Federal and state policies should facilitate demand aggregation and use of state, regional and local networks when that is the most cost-efficient solution for anchor institutions to meet their connectivity needs

Overall Goals and Objectives

At the conclusion of the open meeting, the Commissioners did not vote directly on the Plan, but rather voted to approve a statement of six principles related to the development of broadband policy and services. The Plan itself contains numerous policy recommendations that the FCC or Congress will need to individually consider in further proceedings. In its “Joint Statement of Broadband,” the Commission stated “Although each of us may have differing opinions on some of the specific recommendations set forth in the Plan, we all share the following common beliefs:”

- Every American should have a meaningful opportunity to benefit from the broadband communications era—regardless of geography, race, economic status, disability, residence on tribal land, or degree of digital literacy
- Continuous private sector investment in wired and wireless networks and technologies, and competition among providers, are critical to ensure vitality and innovation in the broadband ecosystem and to encourage new products and services that benefit American consumers and businesses of every size.
- Strategic and prudent policies toward public resources like spectrum will benefit all Americans, by meeting current and future needs and by promoting continued innovation, investment, and competition.
- The nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.
- Our Nation should harness the tools of modern communications technology to protect all Americans, including by enabling the development of a nation-wide, wireless, interoperable broadband network for the Nation’s first responders.
- Ubiquitous and affordable broadband can unlock vast new opportunities for Americans, in communities large and small, with respect to consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

The Plan's call for action over the next decade includes the following goals and recommendations:

- Connect 100 million households to affordable 100-megabits-per-second service, building the world's largest market of high-speed broadband users and ensuring that new jobs and businesses are created in America.
- Affordable access in every American community to ultra-high-speed broadband of at least 1 gigabit per second at anchor institutions such as schools, hospitals, and military installations so that America is hosting the experiments that produce tomorrow's ideas and industries.
- Ensure that the United States is leading the world in mobile innovation by making 500 megahertz of spectrum newly available for licensed and unlicensed use.
- Move our adoption rates from roughly 65 percent to more than 90 percent and make sure that every child in America is digitally literate by the time he or she leaves high school.
- Bring affordable broadband to rural communities, schools, libraries, and vulnerable populations by transitioning existing Universal Service Fund support from yesterday's analog technologies to tomorrow's digital infrastructure.
- Promote competition across the broadband ecosystem by ensuring greater transparency, removing barriers to entry, and conducting market-based analysis with quality data on price, speed, and availability.
- Enhance the safety of the American people by providing every first responder with access to a nationwide, wireless, interoperable public safety network.

Much of the Plan focuses on a number of specific benefits that the nation will derive from the development of a robust broadband infrastructure and related services. The Plan includes specific recommendations designed to unleash increased use, private sector investment and innovation in the following areas:

1. Health Care

- Help ensure health care providers have access to affordable broadband by transforming the FCC's Rural Health Care Program.
- Create incentives for adoption by expanding reimbursement for e-care.
- Remove barriers to e-care by modernizing regulations like device approval, credentialing, privileging and licensing.
- Drive innovative applications and advanced analytics by ensuring patients have control over their health data and ensuring interoperability of data.

2. Education

- Improve the connectivity to schools and libraries by upgrading the FCC's E-Rate program to increase flexibility, improve program efficiency and foster innovation by promoting the most promising solutions and funding wireless connectivity to learning devices that go home with students.
- Accelerate online learning by enabling the creation of digital content and learning systems, removing regulatory barriers and promoting digital literacy.
- Personalize learning and improve decision-making by fostering adoption of electronic educational records and improving financial data transparency in education.

3. Energy and the Environment

- Modernize the electric grid with broadband, making it more reliable and efficient.
- Unleash energy innovation in homes and buildings by making energy data readily accessible to consumers.
- Improve the energy efficiency and environmental impact of the ICT sector.

4. Economic Opportunity

- Support broadband choice and small businesses' use of broadband services and applications to drive job creation, growth and productivity gains.
- Expand opportunities for job training and placement through an online platform.
- Integrate broadband assessment and planning into economic development efforts.

5. Government Performance - Civic Engagement

- Allow state and local governments to purchase broadband from federal contracts such as Networx.
- Improve government performance and operations through cloud computing, cybersecurity, secure authentication and online service delivery.
- Increase civic engagement by making government more open and transparent, creating a robust public media ecosystem and modernizing the democratic process.

6. Public Safety and Homeland Security

- Support deployment of a nationwide, interoperable public safety mobile broadband network, with funding of up to \$6.5 billion in capital expenditures over 10 years, which could be reduced through cost efficiency measures and other programs. Additional funding will be required for operating expenses.
- Promote innovation in the development and deployment of next-generation 911 and emergency alert systems.
- Promote cybersecurity and critical infrastructure survivability to increase user confidence, trust and adoption of broadband communications.

McLean & Brown is a telecommunications consulting company specializing in universal service, intercarrier compensation reform, and rural broadband issues. To learn more about our services and publications, please visit our web site at www.mcleanbrown.com.