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September 25, 2009

Darlene Stanley
Chief – Utilities Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

In Re: Docket to Study the Merits of Rural Affordability Fund
Docket No. 09-00096
Comments of Comcast Phone of Tennessee, LLC

Dear Ms. Stanley:

Comcast Phone of Tennessee, LLC ("Comcast") values the opportunity to comment on the proposed legislation seeking to establish a Tennessee Rural Affordability Fund ("TRAF"). Consistent with your letter dated September 4, 2009, below you will find Comcast's analysis and response to the questions propounded by the Authority. As a preliminary matter, Comcast's submits the discussion initiated by the Authority's questions is necessarily frustrated without first identifying the cost of the fund. In other states considering reduction of intrastate access charges and the creation of a support mechanism, the estimated funding requirements proved to be astronomical; Georgia, sixty (60) million dollars and Missouri, two hundred (200) million dollars.

In summary, Comcast opposes the proposed legislation or the creation of a TRAF. Furthermore, Comcast contends that the proposed legislation is inconsistent with and undermines the spirit and intent of the Market Regulation Act of 2009.

<u>Questions and Responses</u>

1. Please discuss in detail the financial impact of reducing your company's access rates to the interstate level as proposed in the legislation.

Since the proposed legislation appears to require access rate reductions for rural telephone companies with less than one (1) million access lines, Comcast assumes it would not be required to reduce it rates, and therefore, there would be no financial impact on Comcast. If the application of required reductions becomes more broadly applied, Comcast submits that consideration of the issue should be included in a broader discussion concerning the entire scheme of intercarrier compensation and subsidy funding.

2. Please discuss the merits of the TRAF as proposed and any changes/modifications that you believe would be necessary in establishing this fund.

Comcast can identify no merit associated with the TRAF as proposed. Consistent with NCTA's federal comments filed in USF reform, Comcast cannot support *any* legislative or regulatory proposal that seeks piecemeal solutions to complex, interrelated compensation and subsidy funding issues. Those federal comments speak to, among other things, supporting lowering intrastate access rates to parity with interstate rates, opposing inadequate cost controls imposed on funding recipients and opposing any fund (in the federal case a proposed POLR fund but in Tennessee the 'TRAF' as proposed in HB2117/SB2147) that perpetuates the discredited linkage between the public interest of consumers with the private financial interest of the incumbent carrier.

The current proposals' offer to reduce intrastate access charges cannot be squared with a result that insulates rural LECs from legitimate competitive pressures by guaranteeing 100% recovery of lost revenues from a subsidy source funded in vast part by competitors, current and potential. Comcast will not support this proposal unless and until all affected parties choose to undertake a serious and comprehensive reform discussion that incorporates, among other things, (1) benchmarking end user rates to a rational level, (2) a transition plan for all fund recipients to that benchmark and (3) the imputation of revenues realized from other, non-regulated services that ride 'supported' facilities."

3. What should be the determining factors and criteria in determining whether to establish a TRAF?

Any funding mechanism needs to determine which areas, if any, need support, for which defined set of supported service(s), and how much support to provide. Under no circumstances can this need be established, as is contemplated by the TRAF proposal, based solely upon past revenues. In addition, the defined set of supported services should not be expanded.

With regard to telephone services the approach commonly used in the past, looking solely at the incumbent's cost of providing service, is no longer a rational trigger for determining whether funding support is needed. The traditional cost-based approach is inadequate for a number of reasons. First, regulators often lack meaningful, verifiable information regarding ILECs' embedded cost of providing telecommunications services. The vast majority of service providers in Tennessee are no longer subject to cost-based rate regulation and their costs are not reviewed by state or federal regulators. Tennessee has adopted significant deregulation of local rates legislation and those rates still subject to regulation generally are governed by price caps, not cost-based regulation.

Compounding the problem, the FCC has eliminated key accounting rules that would enable it to determine the costs attributable to telecommunications services. In particular, the FCC granted forbearance with respect to rules that controlled the allocation of costs among different services.

In conjunction with the ongoing freeze of jurisdictional separations factors, any ILEC statement regarding the actual cost of providing supported services is pure speculation that is essentially impossible for regulators to verify.

Even if regulators had better information on carriers' costs, using a cost-based approach would still be problematic because there may be no clear relationship between those costs and a carrier's rates for supported telecommunications services. Certainly there is no basis for continuing the current practice of assuming that all network costs are attributable to supported telecommunications services. Even in rural areas, most ILECs now provide multiple services, including long distance, broadband and multichannel video service, over the facilities used for subsidized telecommunications services. Because those new services generally are not subject to rate regulation, there is no reason why an ILEC should not be required to recover a larger portion of its total network costs from these new services and less from subsidized regulated services.

Given these developments, the process for deciding how much support, if any, to provide an ILEC for a particular geographic area must be much more nuanced than it has been in the past. The burden should be on the carrier seeking support to demonstrate that, absent such support, it would be unable to charge rates for supported telecommunications services that are affordable and reasonably comparable to urban areas.

When the carrier seeking support offers multiple services over the network used to provide supported telecommunications services, the TRA's determination should include an assessment of all the revenue opportunities available to the carrier, as the Federal-State Joint Board recommended in 2007. Section 254(k) of the Telecommunications Act of 1996 makes clear that supported services should "bear no more than a reasonable share of the joint and common costs of the facilities used to provide those services" and section 254(e) requires that support be used only for supported services. Because there is no objective way to allocate joint and common costs among services provided over the same network, regulators must look at the total cost of providing all services over the network and compare this to the total revenues available from these services. And as NCTA has opined previously, the provision of multichannel video service by an ILEC should be considered evidence that existing levels of support are excessive.

Regulators also should consider the extent to which customers in the study area can take service from alternative providers, particularly competitors that are not receiving subsidies. The availability of competitive services from an unsubsidized provider is strong evidence that subsidies are not needed to ensure that rates are affordable in the relevant area. Even where a competitor does not serve the entire area, the important point is that the amount of support should be no more than is needed to bring service to consumers that otherwise would not have the ability to purchase service at rates that are affordable and reasonably comparable to urban rates.

4. Please discuss whether prices and service offering should be comparable between all rural and urban areas, and how this determination should be made?

Among the goals established by Congress in Section 254 is ensuring that rates for telecommunications services in rural areas are reasonably comparable to the rates available in urban areas. In the past, the FCC has attempted to achieve this goal by considering the incumbent's costs of providing service in rural areas, rather than the rates available to consumers, and directing support to non-rural carriers with costs that are much higher than average. Whatever the merits of the FCC's prior approach might have been, it no longer represents a rational approach to considering the comparability of rural and urban rates. In particular, regulators should focus an analysis on rates, not costs, in determining whether urban and rural rates are comparable. As explained in more detail below, in today's marketplace, where competitive options are numerous and LECs provide multiple unregulated services over the same facilities used for supported services, regulators no longer can assume that the cost of constructing and operating an ILEC's telecommunications network can serve as a proxy for the rates of supported services.

If regulators focus on rates offered to consumers, not costs incurred by the incumbent, they will find that rates generally are comparable in rural and urban areas. In most areas of the country, including most rural areas, consumers have multiple options for all-distance voice services from a variety of companies, including LECs, wireless carriers, and cable operators. For example, large cable operators such as Comcast, Time Warner Cable and Cox typically charge the same rates for voice service without regard to whether they are operating in rural or urban areas. In areas served by these companies, there can be no doubt that rural rates and urban rates are comparable.

Cable operators are not the only providers that have moved to national or regional pricing. Major wireless providers generally offer the same pricing plans in rural areas that they offer in urban areas. Similarly, over-the-top VoIP providers, such as Vonage, offer voice service at the same rate to any customer with a broadband connection. In any rural area where these service options are available, rates should be considered comparable to urban areas. To be sure, there may still be pockets of the country where these options are not available and rural rates are higher than urban rates, although evidence suggests that incumbent LECs often receive support in areas where their end user rates are well below rates charged in urban areas. To the extent that carriers believe continued funding is necessary in particular areas, regulators need to develop a fresh approach to considering requests for support in these areas.

Benchmarking represents a legitimate tool for achieving comparability in rates. End user rates that are exceedingly low generally reflect an historic inflow of subsidy payments and therefore bear little resemblance to market-based rates. They have been insulated from any inflationary factors and display no linkage over time to the consumer price index (CPI) or other economic metric(s). Because they have been and still are held artificially low they serve as an effective barrier to entry for any potential competitor. Rather than being 'guaranteed for life' these economically distorted rates must be re-examined and made comparable to rates exposed to market disciplines.

5. Should the earnings of incumbent local exchange companies ("LECs") operating under rate-of-return regulation be examined prior to receiving TRAF funds?

Yes. Excessive earnings not only serve as proof that competitive markets are not in evidence, they also demonstrate that subsidy levels are inappropriately generous. Also, an examination of earnings would necessarily – and appropriately – also include an examination of many of the other critical financial components already discussed.

6. Should the TRAF target funds for expanding a recipient company's broadband deployment?

In July the NTIA and the USDA's Rural Utilities Service (RUS) jointly issued a Notice of Funds Availability (NOFA) and solicitation of applications on July 1, 2009, describing the availability of funds and application requirements for the broadband initiatives contained in the American Recovery and Reinvestment Act of 2009—NTIA's Broadband Technology Opportunities Program (BTOP), and the RUS Broadband Initiatives Program (BIP). Funded at $4.7 billion, BTOP alone provides grants to support the deployment of broadband infrastructure in unserved and underserved areas, to enhance broadband capacity at public computer centers, and to encourage sustainable adoption of broadband service. Through this support, BTOP will also advance the Recovery Act's objectives to spur job creation and stimulate long-term economic growth and opportunity.

It would be premature to even contemplate state-based subsidy funding for broadband deployment until these programs have run their course.

7. Should the TRAF be expanded to replace other sources of implicit funding used to support universal service?

No. The question names no "other sources of implicit funding" but Comcast's fundamental opposition remains.

8. Should TRAF disbursements be portable to Eligible Telecommunications Carriers ("ETCs") for customers they serve in these rural areas?

There should be no TRAF. Should a TRAF be adopted it should be created consistent with the requirements outlined in #2 above. If that can be accomplished then competitive neutrality requires that support funding be made available to all ETCs *and any other carrier* that seeks to replace revenues it would otherwise lose by virtue of a reduction in its intrastate access rates.

9. Should the TRA establish a state-wide local residential benchmark rate for universal service and determine necessary universal funding based upon the benchmark, i.e., a company could draw money out of a universal fund if its rates are below the benchmark?

A benchmark should be established that reflects the minimum retail rate wherein recovery of demonstrated costs in excess of the rate can be offset using subsidy funding.

10. Please provide your thoughts/suggestions on whether there should be a phase out or reduction in the amount of TRAF funding once carriers elect Market Regulation.

The TRAF should not be available to carriers electing Market Regulation. Subsidies are antithetical to competitive markets and Market Regulation was enacted to reflect a level of regulation appropriate for competitive markets only.

11. What factors and procedures should be considered in determining the per line support amount for rural carriers?

See #3 above. Per line support can only be reasonably established via a rate case-like process wherein all relevant costs and revenues are evaluated.

12. Which companies should contribute to the TRAF, and state why or why not?

There should be no TRAF. Should a TRAF be adopted it should be created consistent with the requirements outlined in #2 above.

13. What method should be used to determine the TRAF contribution per company?

There should be no TRAF. Should a TRAF be adopted it should be created consistent with the requirements outlined in #2 above.

14. If intrastate access rates are reduced in Tennessee, should language be incorporated into the proposed legislation to ensure that companies subscribing to intrastate access do not receive windfall profits, but rather return the access savings to their customers?

Comcast takes no position on this question but would observe that reducing intrastate access rates to parity with interstate rates would reflect an economic fact, that being any costs associated with 'access' simply do not, and cannot, vary based solely on the jurisdiction of a call.

Respectfully submitted,

FARRIS MATHEWS BOBANGO PLC

Charles B Welch Jr

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