
McLean & Brown

ISSUE UPDATE

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FCC Releases NOI and NPRM to Begin Implementation of the National Broadband Plan

On April 21, 2010, the FCC released a Notice of Inquiry (NOI) and Notice of Proposed Rulemaking (NPRM) initiating the first of many proceedings that will be necessary to implement the National Broadband Plan. The FCC stated that these proceedings “will develop the detailed analytic foundation for the Commission to distribute funds in an efficient and targeted manner that avoids waste and minimizes burdens on American consumers.” The NOI seeks comment on the use of a proxy model to determine funding levels under the Connect America Fund (CAF), and to create an accelerated process to target funding to new deployment of funding in unserved areas. The NPRM seeks comment on specific “common-sense” reforms to cap growth and cut “inefficient funding” in the current high-cost programs, and to shift savings to the new CAF. Comments are due 60 days from publication in the Federal Register (which could take up to several weeks), and reply comments will be due 30 days later.

Following is a summary of some of the key questions raised in the NOI and NPRM on which the FCC seeks comment:

I. Notice of Inquiry on Models

The FCC seeks comment in three general areas: (¶13)

1. Use of a model as a competitively neutral and efficient tool to quantify the minimum amount of universal service funding necessary to support broadband networks;
2. Potential approaches to provide targeted funding on an accelerated basis in order to extend broadband networks into unserved areas, such as a competitive procurement auction;
3. In the accompanying NPRM, the FCC seeks comment on specific proposals to cap and cut the legacy high-cost programs and realize savings that can be shifted to targeted investment in broadband infrastructure.

The NOI raises the following specific questions:

A. Model (¶ 14-16)

1. Should the Commission use the National Broadband Plan Model (NBPM, as discussed in

the OBI Technology Paper No. 1 “The Broadband Availability Gap”) as the starting point for developing a cost model?

- a. Does the NBPM provide a useful foundation for calculating support levels for the CAF that minimize waste, fraud and abuse?
- b. What modifications to the NBPM would be required if the CAF is eventually used to replace all of the legacy high-cost programs?

B. Use of a Model (¶ 17-22)

1. Should the FCC develop a nationwide broadband cost model to estimate support levels for broadband in areas that are currently served with support from USF, as well as areas that are unserved?
 - a. Would this provide a more uniform and equitable procedure than individual carrier cost studies?
2. Would a model be an important tool, even if the FCC uses a market-based mechanism to select supported entities and support levels under the CAF?
 - a. Should a model be used to set the “reserve price” for a reverse auction (i.e., the maximum amount of support that a bidder could request)?
 - b. Could it be an important tool for determining support amounts in areas where a competitive bidding mechanism is not possible?

C. Cost Basis for Support: (¶ 23-30)

1. Should the FCC base any new CAF support on the forward-looking economic costs of an efficient provider, rather than on historic, embedded costs?
2. What technology platforms should be included in the forward-looking cost model if the FCC decides to base costs on the most “efficient provider?”
 - a. Should support be equal for all technologies and carrier classifications (i.e., rural or non-rural) to ensure competitive neutrality?
 - b. Should the model estimate costs for all technologies currently deployed or soon to be deployed?

- c. How should the most-efficient, least-cost technology be identified for determining the level of CAF support?
 - d. Is it reasonable to exclude satellite technology due to insufficient capacity to serve all unserved households?
3. To what degree should the forward-looking economic cost model consider existing infrastructure?
 - a. The FCC's prior HCPM adopted a "scorched node" approach that assumed the ILEC's existing central office locations as a given.
 - b. What existing infrastructure should the new model assume?
 - c. Which "nodes" of alternative technologies are most analogous to the LEC central office?
 4. The user experience on wireless networks is influenced by several "layers of complexity" not found in wireline networks that influence build-out costs, such as distance from the cell site, the number of users sharing spectrum, terrain, and the capability of end-user devices.
 - a. What modifications to the NBPM would be appropriate to estimate wireless costs for purposes of universal service support?
 - b. Determining the actual cost of a wireless deployment requires a finely calibrated and costly propagation model.
 - i. Would a propagation model be required to accurately model wireless costs for determination of universal service support?
 - ii. Would the development of a national propagation model be feasible?
 - iii. The NBPM uses a "combination of approaches" to estimate wireless costs
 - Are the assumptions used in the NBPM appropriate?
 - Is the NBPM an appropriate way to model wireless deployment costs for purposes of determining CAF support?
- D. Types of Models (¶ 31-42)**
1. HCPM vs. NBPM
 - a. The NBPM uses factors not included in the HCPM such as road and other right-of-way data, multiple broadband technologies, and middle-mile facilities.
 - i. Is the NBPM a better starting point than the HCPM?
 - ii. What other models should the FCC consider if it determines it should develop a new model?
- E. Total Costs vs. Incremental Costs (¶33-34)**
1. The NBPM determines funding needs through estimates the incremental costs and revenues of extending existing networks into unserved areas without regard to the forward-looking cost of existing networks, or current universal service funding.
 2. If the FCC replaces its current high-cost funding mechanism with a new CAF, should the model adopt a total cost rather than an incremental cost approach?
- F. Cost vs. Cost and Revenue (¶35-40)**
1. Should the model consider revenues, as well as costs, in determining CAF support?
 - a. Should the model take into account revenues from all services, including broadband and video?
 - b. Should the model consider programming costs of video services?
 - c. How should factors such as area of the nation and demographic factors be considered in determining revenues and costs?
 2. Are the methodology and assumptions that the NBPM uses to estimate incremental revenues appropriate if the FCC decides to include revenues in a model to determine CAF support?
 - a. Are the Average Revenue per User and Take Rate assumptions used in the NBPM appropriate?
 - b. How often should a revenue model be updated to reflect changes in prices and market trends?
 - c. Are the NBPM assumptions of an 11.25% discount factor and a 20 year project life appropriate?
- G. Geographic Areas (¶ 41-42)**
1. While the NBPM estimates the incremental cost of deploying broadband to unserved areas at the Census Block level, it makes the determination of the lowest-cost technology at the County level, since network deployment decisions are not made for small areas such as Census Blocks.
 - a. What are the advantages and disadvantages of using a particular geographic area to determine either the costs or the gap between costs and revenues?
 - b. Is the use of Counties a workable approach for future universal service funding decisions?
- H. Expedited Process for Providing Funding to Extend Networks to Unserved Areas (¶ 43-48)**
1. Would some form of competitive procurement auction be an efficient mechanism to determine subsidies for the extension of new broadband-capable infrastructure in unserved areas?
 2. Could such a process be used to target one-time subsidies to areas that would not require ongoing (i.e., opex) universal service support?
 3. What scoring criteria should be used to evaluate competing proposals?
 4. Should proposals providing broadband speeds in excess of 4/1 Mbps receive higher weighting?
 5. What time frame and performance measures should be used to verify that conditions have been satisfactorily been met?
- II. Notice of Proposed Rulemaking on Reforms to Current High-Cost Programs**
- A. Controlling the Size of the High Cost Program (¶ 51-52)**
1. How should the FCC implement a cap on the legacy high-cost mechanisms to ensure that total size remains close to its 2010 levels?
 - a. Cap each high-cost mechanism at 2010 levels?

- b. Freeze per-line support for each carrier at 2010 levels?
 - c. Freeze total amount of support a carrier received in a particular study area in 2010?
 - d. Are there other ways to implement such a cap?
2. What rule changes would be required to implement this proposal?

B. Specific Steps to Cut Legacy High-Cost Support (¶¶ 53-62)

- a. To the extent that any commenter believes that these proposals would negatively affect affordable voice service for customers, such commenter must identify all assumptions and provide data, including information on network investment plans over the next five years, and free cash flows, to support that position.
- b. When should each rule be implemented, and how should reforms be sequenced to provide regulatory clarity for ongoing private sector investment?
- c. What is the relationship between each universal service reform and carriers' rates, including intercarrier compensation rates, under the FCC's current pricing rules?
- d. What rate impacts under existing pricing rules would arise from universal service reforms?
- e. For RoR carriers that participate in the NECA pooling process:
 - i. If legacy high-cost USF programs are frozen, would the NECA pooling process unfairly advantage or disadvantage certain carriers?
 - ii. Would concerns the FCC has previously expressed regarding carriers who voluntarily converted to incentive regulation continuing to participate in the pooling process be eliminated if all carriers converted to incentive regulation?
 - iii. Would the pool be able to continue to operate pursuant to other than RoR regulation?

1. Shifting Rate-of-Return (RoR) Regulation to Incentive Regulation

- a. Should the FCC require current RoR carriers to convert to some form of incentive regulation?
- b. Should RoR regulation be replaced with the price cap framework recently adopted for voluntary conversions, an alternative price-cap framework, or some other form of incentive regulation?
- c. What costs and benefits would be realized by converting all RoR carriers to price cap or some other incentive regulation?

- d. In an increasingly competitive market, and with carrier' service offerings expanding beyond regulated services, is RoR regulation still appropriate?
- e. Should ICLS be frozen on a per-line basis?
- f. Should the ICLS freeze be implemented concurrent with the implementation of CAF funding for the deployment of broadband infrastructure to currently unserved areas?

2. Elimination of IAS Support

- a. Should the FCC eliminate IAS support and transfer these funds to the CAF?
- b. Commenters are invited to propose an appropriate timeline for IAS elimination, and any glide-path to ensure that carriers can continue to provide voice services.

3. Sprint and Verizon Wireless Voluntary Commitments

- a. The FCC will consider an Order clarifying how to implement the commitment to reduce CETC support to zero over five years.

4. Elimination of CETC High-Cost Support

- a. Should the Commission phase out remaining CETC funding over a five-year period with the savings going to the CAF?
- b. How and when should this phase-out be implemented?

5. General Proposals

- a. Commenters are invited to submit other proposals to eliminate or reduce funding levels in legacy high-cost support programs and transition savings to the CAF.
- b. For any such proposals, what would be the necessary rule changes, and what would be the dollar impact of such changes?

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.