

NBP/USF Panel – NARUC (As Delivered)
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What follows may be construed as five minutes of criticism of the National Broadband Plan. For the most part, it is. But lest my remarks be misconstrued, there is much in the National Broadband Plan which is not only commendable but reflective of considerable courage on the part of its authors. Reforms are addressed which should have been addressed years ago. Many of what the National Broadband Plan calls common-sense reforms are in fact just that, unless your business plan happens to be exploitation of the gaps and loopholes in the program. The question is the highest and best use of the next four and a half minutes.

Perception is reality. What is taken from the Plan may not be what was intended, and parts of the plan may have been intended to provoke discussion, but to a great extent the Plan has created perceptions which need to be addressed.

So, let's get down to cases with regard to the problems in the plan.

First, anecdotal but very real evidence is beginning to surface that rather than stimulating investment in rural areas, the perceived uncertainty over future funding for RLECs in particular is causing some rural providers to cancel projects which were in various stages of planning, even buildout.

Second, in the past the FCC has taken steps to facilitate entry of technologies into the market place and to assure a level playing field. Facilitating entry, facilitating buildout, facilitating certainty. Now, however, some are strongly suggesting that the Plan has many of the hallmarks of segment-preferential industrial policy.

Third, the differential between the admittedly aspirational 100 Mb/s down, 50 Mb/s up and the 4 Mb/s down/1 Mb/s up which is being interpreted as the standard for rural America may well, under that scenario, violate the spirit if not also the letter of Congressional intent in 254(b)(3) which could not be more clear: "Consumers in all regions of the Nation, including...those in rural, insular, and high cost areas, should have access to telecommunications and information services... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

Fourth, in at least one prior attempt at intercarrier compensation and Universal Service reform, the focus primarily was on regulatory artifices rather than basic business truisms. If a proposal creates an unsustainable situation for the entire business enterprise, revenues from regulated or unregulated segments, or from this or that jurisdiction, are irrelevant.

Fifth, rhetorically appearing to marginalize existing networks through use of such terms as "legacy" ignores the fact that in many cases, those so-called "legacy" networks are fully

capable right now of delivering the network of the future, if that future is 4Mb/s down, delivered by the technology of what is characterized as a “legacy” technology. Language matters and so do perceptions.

Sixth, A keystone of the plan, which gets its own chapter in the Plan, is what is euphemistically called the “repurposing” of 500 Mhz of spectrum, including reclamation of spectrum from broadcasters, purportedly only in urban areas and only on a voluntary basis. The plan needs an honest, transparent look at true spectrum needs. In fact, as I mentioned yesterday, a 52-page international study conducted by Merrill Lynch and issued in February, and as supported by others including the Chairman and CEO of the largest wireless provider in the nation, suggests that there is no overwhelming and demonstrated need. Merrill Lynch is a more credible observer than CTIA. Sorry, Dane. Sorry, Jackie. Now, I haven’t always agreed with Ivan Seidenberg. I’m sure he doesn’t lose any sleep over that revelation. “Who?” Back in April, in response to a question specifically about the repurposing proposal, he had this to say:

“...If I took the self-serving approach, it would be ‘OK, screw the broadcasters. Let’s get their spectrum and we can put it to use in our wireless and cellular business or broadband business.’ ” Continuing on and speaking of the broadcasters, he noted that there are inter-industry issues. “But basically confiscating the spectrum and repurposing [it] for other things, I’m not sure I buy the idea that that’s a good thing to do.”

Seventh, as the Indiana Commission argued in its comments, it is essential to sound policy decisions that we not do exactly what this process appears to do: divide the evaluation process into over 40 bite-size components. It is impossible to render intelligent decisions on High Cost support without also taking into account other factors which are equally critical to the economics of rural service, such as intercarrier compensation. As we said, “while implementing the Plan in smaller parts may make the work effort more manageable and efficient, it has also created the fiction that the implementation is likely to be small. That is unlikely to be the case.”

Eighth, these proposals could have a major and largely unexamined impact on states and state commissions. Foremost among them is the likelihood of imposing an unfunded liability by proxy on the state Universal Service funds.