

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

In the Matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> submits its reply comments in response the Federal Communications Commission’s (Commission’s or FCC’s) Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.<sup>2</sup>

**I. THE SIZE OF THE UNIVERSAL SERVICE FUND IS NOT AT ISSUE**

The U.S. Appeals Court neither required nor suggested that the Commission concern itself with the size of the universal service fund (USF) or the amount carriers contribute to the fund in this proceeding. AT&T’s suggestion that the Commission should formally recognize that reducing carrier contributions and the size of the fund as a new principle under Section 254(d) is inappropriate.<sup>3</sup> This proceeding seeks to determine whether the non-rural universal service support mechanisms satisfy the requirements of section 254 of the Act. Redefining the terms “sufficient” and “reasonably comparable” are independent of the size of the universal service fund.

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<sup>1</sup> NTCA is a non-profit corporation established in 1954 and represents 545 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Communications Act of 1934, as amended (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-41, Notice of Propose Rulemaking and Order, (rel. Feb. 15, 2001).

<sup>3</sup> AT&T’s Initial Comments, p. 8.

In establishing the requirements of section 254, Congress never imposed a requirement that the Commission must or should limit the size of the universal service fund or the amount of a carrier's USF contribution. Section 254 mandates that universal service support be sufficient and that rates in urban and rural areas be reasonably comparable regardless of how much support is needed to accomplish these goals. The high-cost USF mechanism therefore should be free of all caps and constraints.

It is patently unlawful for the Commission to treat preventing significant growth of the federal fund over its current level as an independent test of a suitable federal mechanism. NTCA objects to any cap on the fund and urges the Commission to recognize that continuation of the support caps will force relitigation of that issue as change progresses and will force individual carriers to seek costly administrative waivers to meet customer needs.<sup>4</sup> The high-cost USF cap truly "prevents rural carriers from obtaining all the support for which they qualify, contrary to the Act's mandate that support be sufficient."<sup>5</sup>

Furthermore, CUSC's suggestion that the Commission eliminate the modified embedded cost model for determining rural carrier USF support is equally inappropriate.<sup>6</sup> This proceeding deals exclusively with the forward-looking economic cost (FLEC) model for determining high-cost support for non-rural carriers. The suggestion raised by CUSC is beyond the scope of this proceeding and should be summarily dismissed.

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<sup>4</sup> NTCA Comments in CC Docket No. 96-45, November 3, 2000, at 7-8. *See also*, NTCA Comments in CC Docket no. 96-45, February 26, 2001, at 3, n.8, and 14 n.32.

<sup>5</sup>Comments of NRTA and OPASTCO, February 26, 2001, at 6. *See also* Comments of John Staurulakis, Inc., February 26, 2001, at 6: "The existing caps and proposed RTF modifications to caps and limitations on High Cost Loop ("HCL") support impede sufficient support and should be eliminated." NTCA and others parties objecting to the universal service support caps also questioned the recommended safety net and safety valve, arguing that they should go further to provide predictable and sufficient support. *See*, for example, NTCA comments in CC Docket No. 96-45, November 3, 2000, at 8.

The Rural Task Force has convincingly shown that the public will not benefit from the use of a FLEC model to determine support for 1300 rural carriers. A rural carrier support model based upon FLEC output costs fails to account for much of the cost already incurred in the build-out of a network in rural areas.<sup>7</sup> The Rural Task Force found in its study of the FLEC model that:

[t]he aggregate results of this study suggest that, when viewed on an individual Rural Carrier basis, the costs generated by the [FLEC model] are likely to vary widely from reasonable estimates of forward-looking costs. As a result, it is the opinion of the Task Force that the current model is not an appropriate tool for determining the forward-looking cost of rural carriers.<sup>8</sup>

The Rural Task Force further stated that:

applying the [FLEC model] directly to the task of sizing the national Rural Carrier high cost fund and using the same policy mandates adopted for non-Rural Carriers would reduce available support to Rural Carriers from the current \$1.553 billion to \$451 million, a reduction of over one billion dollars...[W]e conclude that the non-rural method and [FLEC model] developed for the non-Rural Carriers are not the appropriate tools and application for Rural Carriers and will not produce a sufficient universal service mechanism for Rural Carriers that is in the public interest and consistent with the principles of the 1996 Act.<sup>9</sup>

The Commission agreed with these findings and adopted a modified version of the Rural Task Force's recommended embedded cost model for determining high-cost support for rural carriers on May 10, 2001. Nothing has changed since then to warrant the elimination of the embedded cost model.

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<sup>6</sup> Competitive Universal Service Coalition (CUSC) Initial Comments, pp. 22-29.

<sup>7</sup> See Comments of the Rural Telephone Coalition, CC Docket Nos. 96-45 and 97-160, DA 98-715, May 15, 1998 at 12.

<sup>8</sup> Recommendation at 19.

<sup>9</sup> Recommendation at 20-21.

## **II. THE COMMISSION SHOULD EXPAND THE LIST OF USF CONTRIBUTORS TO INCLUDE CABLE, WIRELESS AND SATELLITE BROADBAND INTERNET ACCESS PROVIDERS**

NTCA agrees with SBC Communications' recommendation that the Commission should expand the contribution base to include all interstate telecommunications providers, such as IP telephony, cable operators, and other providers of broadband Internet access services.<sup>10</sup> Cable, wireless and satellite communications companies are currently using their platforms to provide broadband Internet access service in direct competition with incumbent local exchange carrier (ILEC) broadband access service. None of these non-LEC broadband access providers, however, have the same universal service obligations as their ILEC competitors. Contribution policies and rules therefore should change in order to eliminate the distinct competitive advantage these companies have over contributing ILECs, as well as the drain they impose on the interstate revenue assessment base.<sup>11</sup>

Under the Commission's existing contribution rules, wireline telecommunications carriers providing "telecommunications services," including broadband transmission services, are required to make USF contributions to the extent they provide broadband transmission services or other telecommunications services on a stand alone basis to affiliated or non-affiliated Internet service providers (ISPs) or end-users.<sup>12</sup> These rules, however, do not apply to cable, wireless, and satellite providers of broadband

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<sup>10</sup> SBC's Initial Comments, p. 20.

<sup>11</sup> *First Report and Order*, CC Docket 96-45, 12 FCC Rcd 9183-9184, ¶795.

<sup>12</sup> *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, *Universal Service Obligations of Broadband Providers*, and *Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services: 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Dockets Nos. 95-20, 98-10, FCC 02-42, Notice of Proposed Rulemaking (NPRM) ¶¶ 71 and 72 (rel. Feb. 15, 2002).

transmission services or broadband Internet access.<sup>13</sup> The Commission is tentatively proposing to redefine certain ILEC propounded broadband services as “telecommunications” and place these on a regulatory parity basis with “cable modem” services. It should also treat all providers alike for USF assessment purposes.<sup>14</sup>

To the extent that the Commission is concerned about competitive neutrality and the sustainability of an adequate revenue base for its interstate USF mechanisms, it should require all providers of broadband transmission or other telecommunications services on a stand alone basis to affiliated or non-affiliated ISPs or end-users to contribute on an equitable and non-discriminatory basis.<sup>15</sup> The Commission’s rules should keep pace with competition as competitors use different facilities and technologies as substitutes for traditional circuit switched telecommunications services and broadband Internet access services. The Commission should therefore require that cable, satellite, and wireless broadband Internet access providers contribute to the federal universal service fund. Failing to position these carriers on equal footing with existing contributors will continue to place existing contributors at a distinct competitive disadvantage and further drain revenues from the existing contribution revenue assessment base.

### **III. CONCLUSION**

When addressing the issues raised by the Court concerning the redefinition and application of the key statutory terms of reasonably comparable, rural and sufficient, and deciding on proper inducements for states to establish universal service mechanisms, the Commission should consider NTCA’s recommendations in this proceeding to ensure that

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<sup>13</sup> *Id.* ¶ 79.

<sup>14</sup> *Id.*

<sup>15</sup> 47 U.S.C. §254(d).

its decisions do not adversely affect the calculation of universal service support for rural incumbent local exchange carriers or their right to recover costs properly allocated to the interstate jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, FCC 02-41 was served on this 25th of April 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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