BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Docket Nos. 95-20, 98-10

REPLY COMMENTS OF MESCALERO APACHE TELECOM, INC.

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REPLY COMMENTS OF MESCALERO APACHE TELECOM, INC.

Mescalero Apache Telecom, Inc. ("MATI") respectfully submits its Reply Comments in the above-captioned Notice of Proposed Rulemaking ("NPRM").

SUMMARY OF POSITION

MATI strongly disagrees with the comments of the National Association of Regulatory Utility Commissioners ("NARUC") that the Federal Communications Commission ("Commission") must "immediately directly allocate to Part 64 all equipment used to offer any ILEC DSL 'information service'," [1] if the Commission adopts its proposed rule. MATI also strongly disagrees with NARUC's indirect suggestion that prior Commission precedent supports adoption of a 50 percent allocation

[1] NARUC Initial Comments, p. 13.

method to apportion joint and common costs resulting from the proposed reclassification or redefinition of information services to avoid subsidies. While MATI agrees in principle that subsidies of this nature should not occur, because of the circumstances under which tribal entities, such as MATI, and other high cost rural carriers operate, NARUC's proposal would have profoundly negative economic consequences on the carriers that have deployed broadband, as well as their customers, and would insure an end to broadband expansion into rural areas, both outcomes contrary to the intent and purpose of the *Communications Act of 1934* ("Act").[2] The NARUC *one size fits all* proposals ignore the unique and different characteristics of low density, high cost carriers.

MATI substantially agrees with the comments filed by the National Rural Telecom Association ("NRTA"), Beacon Telecommunications Advisors, LLC ("Beacon"), National Exchange Carrier Association, Inc. ("NECA"), Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), and the National Telecommunications Cooperative Association ("NTCA"). In particular, MATI agrees with and urges the Commission: (1) to allow the broadband Internet access service of low density, high cost carriers to remain a Title II telecommunications service, which, therefore, would not justify a change in current allocation factors or effect the levels of USF support provided to such carriers; (2) to exempt low density, high cost carriers from extension of the onerous requirements of the Computer III and related regulatory schemes to broadband Internet access service; and (3) to adopt measures, such as broadening the base of contributors, that will maintain the

[2] MATI's references to the Act herein include the Teleommunications Act of 1996.

stability and sufficiency of the universal service fund ("USF"). MATI agrees with the United States Telecom Association ("USTA") that rural carriers should be able to opt out of broadband deregulation and that the Commission should insure the availability and sustainability of the USF support program as it moves forward with deregulation.

DISCUSSION

In MATI's initial comments, MATI set forth its concerns regarding the NPRM. MATI's overriding concern is the severe financial impact upon MATI and other tribal telecommunications carriers if the Commission redefines or reclassifies wireline broadband Internet access services as "information services" subject to Title I regulation under the Act. The loss of USF support for that portion of a high cost carrier's telecommunications services reclassified as Title I "information services" would, at best, be a disincentive to broadband Internet access deployment and, at worst, would severely harm the economic circumstances of those high cost carriers that have already deployed broadband internet access service. MATI also urged the Commission to be guided by its obligations under the historic federal trust relationship between the federal government and federally recognized Indian tribes to encourage tribal sovereignty and self government, including through enhancement of tribal access to telecommunications and information services. MATI Comments at pp. 3-5.

Adoption of the NOPR as Written Would be a Disincentive to Broadband Deployment in Rural Areas and Would Financially Devastate Rural Carriers That Have Deployed Broadband

It is obvious from the initial comments of the industry's high cost rural carriers and those that work with them that they agree with MATI's conclusions as to the impact

of this NPRM on such carriers. *See,* Comments of NECA, OPASTCO, NRTA, Beacon and NTCA. The bottom line message that rural carriers are providing the Commission is that, as it affects rural carriers, the proposed NPRM's shift in regulatory regime would gravely harm their economic and financial conditions, would provide a disincentive to the deployment of broadband telecommunications services in rural areas and would negatively affect the level and quality of service to rural customers, customers who for a long time have been left behind from even basic telephone service and who will more than likely be left behind in broadband deployment unless the Commission provides regulatory incentives for rural carriers. As it is now written, the proposed rule does not provide the necessary regulatory incentives for rural carriers to deploy broadband Internet access services. MATI urges the Commission to consider the ramifications on small carriers before changing the rules on broadband services. As stated by USTA, a different approach to providing for the reasonable and timely deployment of broadband services is necessary for certain low density, high cost carriers. USTA Comments, p. 11.

Adoption of NARUC'S Allocation Proposals
Would Harm Rural Carriers and Customers

The severity of the harmful effect upon MATI, a state regulated telecommunications carrier, and other current and future tribal telecommunications carriers subject to direct or indirect state regulation is highlighted by NARUC's Comments. NARUC, the quasi-governmental non-profit organization representing the utility commissions of the fifty states, the District of Columbia, Puerto Rico and the Virgin Islands, has provided the Commission a clear and unambiguous response to the dramatic paradigm shift proposed in the NPRM. In addressing ¶83 of the NPRM,

NARUC has stated that, the Commission adopts its proposed reclassification scheme, the Commission must simultaneously directly allocate to Part 64 all equipment used to offer any ILEC DSL information service. NARUC Comments, p. 13. Relying on a proceeding on Video Dialtone, NARUC also seems to suggest that as for joint and common costs, the Commission should consider adopting a 50% allocation methodology as a starting point. *See*, NARUC Comments p.13.

NARUC's proposed manner and method of allocating costs would serve as a disincentive to rural carriers who have not deployed broadband Internet access services and would have profound negative economic consequences for those rural carriers that have deployed such services. NARUC's proposal would also have severe negative consequences on customers because rates would have to be substantially increased to make up the lost revenues from those facilities reclassified to Title I, and rural customers would be served by financially unstable carriers, outcomes NARUC certainly would want to avoid. Indeed, the financial impact upon high cost carriers because of the resulting reduced access to USF and other federal support would be catastrophic. Moreover, such allocation proposals would be economically unjustified. Rural carriers, such as MATI, who have already deployed state of the art facilities under the existing regulatory regime, would be subject to a severe financial penalty for providing the ubiquitous deployment of broadband Internet access service, the very goal of the proposed rule. In addition, as pointed out by OPASTCO, the provision of broadband Internet access service represents a minute incremental cost, if any, to a modern fiber line based telecommunications system. OPASTCO Comments, pp. 7-8. The provision of this additional service

capability has no impact on the cost of the customer loop.

Computer III Requirements Have No Place in Low Density, High Cost Areas

Several Commentors have addressed the appropriateness of extending the Computer III and related regulatory rules to broadband Internet access service. MATI agrees with NRTA that these substantial regulatory requirements were intended to protect against actions which could be taken by nationally dominant telecommunications carriers and should not be imposed on small carriers.[3] Clearly, low-density, high cost rural carriers do not have national dominance and they should not be burdened with the requirements of the regulatory schemes intended to address national dominance problems. Furthermore, imposition of these regulations on small carriers could impede the deployment and efficiency of broadband service.

The Commission Must Insure the Sustainability and Availability of the USF

Finally, the changes in the telecommunications industry are reducing the revenues available to support the USF program. MATI agrees with the other high cost carriers that the Commission must take action to insure that the changes it adopts for the industry in this NPRM provide for the present and future availability of USF support at least at current levels.

CONCLUSION

In conclusion, the comments provided by MATI and the other low density, high cost carriers demonstrate that adoption of a *one size fits all* rule is not possible without defeating the intent and purpose of Congress to provide for universal service and the

[3] NRTA Comments, p. 18.

intent and purpose of this NPRM to provide for the ubiquitous deployment of broadband Internet access service. MATI reiterates its position that the Commission should not reclassify broadband as solely "information services" subject only to Title I of the Act. The palpable harm to MATI and other tribal and rural carriers in the loss of universal service funds and the attendant inability to deploy advanced telecommunications services in high cost rural areas, which without doubt would result from adoption of the NPRM, is inconsistent with the Act. At the very least, MATI and other high cost carriers should be permitted to opt out of the deregulation of broadband service in the event the policy is adopted by the Commission, to have their broadband services classified a Title II service, and to keep their broadband services in the NECA pools and tariffs. The Commission also should exempt rural carriers from the requirements of Computer III and related regulatory requirements. Finally, the Commission must also insure that the universal service program is not diminished and is sustainable under whatever regulatory scheme the Commission finally adopts.

RESPECTFULLY SUBMITTED

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