

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Appropriate Framework for Broadband ) CC Docket No. 02-33  
Access to the Internet over Wireline )  
Facilities )  
)  
Universal Service Obligations of Broadband )  
Providers )  
)  
Computer III Further Remand Proceedings: ) CC Dockets Nos. 95-20, 98-10  
Bell Operating Company Provision of )  
Enhanced Services; 1998 Biennial )  
Regulatory Review – Review of Computer )  
III and ONA Safeguards and Requirements )

**REPLY COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

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

**I. INTRODUCTION**

The Commission’s decisions in this proceeding and its companion rulemaking proceedings will determine the future of broadband deployment in this country. Although numerous parties commented on the Commission’s tentative conclusions on the appropriate

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<sup>1</sup> NTCA is a not for profit corporation established in 1954. It represents more than 500 small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996 (Act). NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. NTCA members are rate-of-return regulated carriers.

<sup>2</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*, *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 Dockets Nos. 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42 (rel. February 15, 2002). (NPRM).

statutory classifications to wireline broadband Internet access services, only a few specifically addressed how this classification will affect rural carriers and rural broadband deployment.

Congress expressed its intention in 1996 for consumers in rural, insular, and high-cost areas to have access to advanced telecommunications and information services that are reasonably comparable to those available in urban areas, and at reasonably comparable rates.<sup>3</sup> It is therefore imperative that the Commission review and consider the comments filed by the rural interests and not make any sweeping policy decisions that will harm rural consumers or the rural telephone companies that serve them.

The rural interests were in agreement with NTCA's salient points in its initial comments. Specifically, other parties agree with NTCA's assertion that the Commission should adopt a regulatory approach that preserves NECA pooling and tariffing for rural incumbent local exchange carriers' (ILECs') DSL-based service. Many parties further agree with NTCA that all facilities-based broadband Internet access providers must contribute to the universal service fund in order to ensure the continued stability and sufficiency of support.

Many commenters argue that if the Commission decides to regulate broadband under Title I, it should continue to require unbundling and resale obligations. As discussed more fully below, NTCA cautions the Commission against accepting this argument without acknowledging and adopting the rural protections currently built into the law.

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<sup>3</sup> 47 U.S.C. §254(b)(2), (3).

## **II. THE COMMISSION MUST PRESERVE NECA POOLING, TARIFFING OF BROADBAND INTERNET ACCESS SERVICES, AND COST ALLOCATION RULES THAT ENCOURAGE BROADBAND DEPLOYMENT**

### **A. Pooling is Needed to Ensure Continued Provision of Broadband Services in Rural Areas**

In its initial comments NTCA states, “The Commission should adopt a flexible approach that permits tariffing for those carriers who choose to remain under rate of return regulation.”<sup>4</sup> Common carrier regulation under Title II has provided the cornerstone for rural broadband deployment. The NECA pooling structure works as a stabilizing factor for small carriers by reducing administrative costs, creating incentives and spreading the substantial risks of investing in rural areas among its participants.

The National Rural Telecom Association (NRTA) points out that if the Commission classifies wireline broadband Internet access as an information service with no telecommunications service component, the costs of the telecommunications component will no longer be subject to Title II common carrier regulation.<sup>5</sup> Since only regulated service costs may be included in tariffs filed pursuant to Part 69 of the Commission’s rules, DSL-based service and other broadband transmission services would be eliminated from the NECA pools and relieved of tariffing obligations. Carriers in rural and high-cost areas would lose the benefits of pooling and the stability of that environment.

The Western Alliance demonstrates that in high cost areas the cost per broadband customer for loop upgrades and DSL equipment alone could be thousands of dollars and without pooling and preservation of existing cost allocation rules, a per month charge could

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<sup>4</sup> NTCA comments, p. 6.

<sup>5</sup> NRTA comments, pp. 16-17.

be as much as \$300 per customer.<sup>6</sup> Given the fact that DSL take rates are low at the NECA tariffed rate of \$35.95, a cost of hundreds of dollars per month is unsustainable.

The National Exchange Carrier Association (NECA) argues that the Commission must preserve a pooling option for rural ILECs' DSL-based service even if wireline broadband Internet access service is reclassified. It cautions the Commission against adopting a "one-size-fits-all" policy.<sup>7</sup> NECA argues that while some ILECs might benefit from reduced regulation, a number of rate-of-return ILECs would not be able to offer broadband without the "regulatory and economic assurances provided by the tariff and pooling process."<sup>8</sup>

NTCA believes that the stand-alone DSL services offered by NECA pool members is a "telecommunications service."<sup>9</sup> However, if the Commission decides that either stand alone services or self-provisioned broadband Internet access services are "information services" or some other hybrid not subject to Title II regulation, it should at least recognize that carriers regulated under rate of return should be able to continue to tariff those services and allocate costs as they do today.

The only way we will realize Congress's goal of comparable services at comparable rates in all areas of this Nation and the Commission's stated goal of encouraging the availability of advanced services to all Americans is if the Commission preserves the option of NECA pooling and tariffing for rural ILECs serving rural and high cost areas. As the rural parties agree, rural carriers should be permitted to continue to offer their DSL-based services and other broadband services according to Title II regulation.

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<sup>6</sup> Western Alliance comments, pp. 5-7.

<sup>7</sup> NECA comments, p. 3. See also OPASTCO comments, p. 5.

<sup>8</sup> *Id.*, p. 4. See also USTA comments, p. 11.

<sup>9</sup> NTCA comments, pp. 2-5.

**B. Broadband Access Services Provided on a Stand-Alone Basis are Properly Allocated as Regulated Costs**

Stand alone broadband services constitute transmission and are offered “for a fee directly to the public.” The cost allocation rules in Part 64.901 spell out the appropriate allocation of Title II regulated costs to ensure recovery on the regulated side and in the appropriate jurisdiction.<sup>10</sup> There is no need to change the allocation rules for ROR carriers who continue to provide stand alone broadband access services as they do today. However, should the Commission reclassify these services or self-provisioned broadband access services, any cost allocation issues should be referred to a federal-state Joint Board on Separations. The Commission may not indirectly decide separations treatment and cause previously interstate costs to shift to the intrastate jurisdiction without referring the matter to a Joint Board, but it should weigh the consumer impact of any potential shift of costs to the intrastate jurisdiction.

**III. MANY PARTIES AGREE THAT ALL FACILITIES-BASED BROADBAND INTERNET ACCESS PROVIDERS SHOULD BE REQUIRED TO CONTRIBUTE TO THE UNIVERSAL SERVICE FUND TO ENSURE ITS CONTINUED STABILITY AND SUFFICIENCY**

In its comments NTCA stated, “all facilities based broadband providers should be treated alike and contribute to the universal service fund.”<sup>11</sup> Other parties agree.<sup>12</sup>

Cable, wireless and satellite communications companies are currently using their platforms to provide broadband Internet access service in direct competition with wireline broadband access service. These carriers benefit from the nationwide public switched

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<sup>10</sup> The rules also contain the mandate of Section 254(k), which provides that services supported by universal service bear no more than a reasonable share of joint and common costs of the facilities used to provide these services. The continued application of Title II to the stand-alone broadband services of ROR carriers removes the concern that Part 64 rules may need to be modified to comply with Section 254(k).

<sup>11</sup> NTCA comments, p. 8.

<sup>12</sup> See, e.g. comments of NRTA, OPASTCO, and USTA.

network because they originate and/or terminate broadband traffic over that infrastructure. None of these non-ILEC broadband access providers, however, have the same universal service obligations as their wireline ILEC competitors. Contribution policies and rules therefore must change in order to eliminate the distinct competitive advantage these companies have over contributing wireline ILECs, as well as the drain they impose on the interstate revenue Universal Service Fund (USF) assessment base.<sup>13</sup>

To achieve regulatory parity, all facilities-based broadband providers should be treated alike. Requiring only wireline ILECs to contribute to the universal service fund places these carriers at a distinct competitive disadvantage. To the extent that the Commission is concerned about regulatory parity 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>14</sup>

Further, if the Commission reclassifies wireline broadband access services, the public interest demands that the Commission require other providers of “interstate telecommunications” to contribute to universal service.<sup>15</sup> Reclassification would remove a large group of services from the assessment base. A modification of the rules to require other providers to contribute would be necessary to avoid harm to universal service.

The technology that consumers want and expect to have access to is changing. As Congress anticipated, the current definition of universal service must evolve to keep pace with the consumer need. Universal service support ensures comparable and affordable services throughout the nation. Cable, wireless and satellite providers of broadband Internet

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<sup>13</sup> *First Repost and Order*, CC Docket 96-45, 12 FCC Rcd 9183-9184, ¶795.

<sup>14</sup> 47 U.S.C. §254(d).

access will benefit from the nationwide network made possible by universal service. They should therefore be required to contribute to the USF mechanism. Expanding the list of contributors to the universal service fund is critical to the continued success of universal service and to ensure regulatory parity among all providers of high-speed access to the Internet.

#### **IV. THE COMMISSION SHOULD ENSURE THAT RURAL PROTECTIONS REMAIN INTACT**

Congress adopted the Telecommunications Act of 1996 in part, to spur competition. However, Congress recognized that introducing competition into areas that cannot otherwise support competition would ultimately harm consumers. Artificially induced competition decreases the financial viability of the rural telephone companies<sup>16</sup> and adversely affects the business case for broadband deployment.<sup>17</sup> The relatively small number of people living in rural areas limits the revenues available for recovery of the significant financial investment needed for deployment. Thus, the introduction of competition in rural areas that cannot support it will actually slow, if not altogether stop, the deployment of broadband and other services. For these reasons, rural telephone companies are initially exempt from the interconnection, unbundling and resale requirements of 47 U.S.C. §251(c).

Several parties in this proceeding argue that if the Commission reclassifies wireline standalone broadband as an “information service,” it should exercise its authority to require wireline carriers to unbundle and/or resell that service.<sup>18</sup> None of these parties discusses how

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<sup>15</sup> *Id.*

<sup>16</sup> Dale Lehman, *The Cost of Competition*, the NTCA 21<sup>st</sup> Century White Paper Series (Dec. 2000), p. 6.

<sup>17</sup> *Id.*, at 14.

<sup>18</sup> See comments of United States Internet Industry Association, p. 15; AT&T Corp. pp. 29-37; Florida Public Service Commission, p. 11; and The Public Utilities Commission of Ohio, pp. 29-31.

such requirements would apply to rural companies currently exempt from the unbundling and reselling obligations.

If the Commission does, in fact, reclassify wireline standalone broadband, but then adopts any combination of unbundling, interconnection or resale obligations, it is imperative that the Commission also adopts the current rural protections built into the law.<sup>19</sup> The law balances competition and universal service by exempting rural telephone companies from certain obligations imposed on carriers serving urban areas. The Commission must preserve that balance.

Congress recognized that rural telephone companies are dedicated to the communities they serve. They deploy services when the community need is great, but the business case is weak. They have carrier of last resort obligations and serve areas that competitors have historically ignored. The continued success of rural telephone companies is necessary to ensure the continued success of rural communities.

Congress understood that “rural is different.” The Commission should have a similar understanding and be cautious in this proceeding to not undermine Congress’s intent to protect rural communities from unsustainable competition.

## **V. CONCLUSION**

The Commission received many comments in this proceeding, but few addressed the need to preserve quality, affordable service in rural America. The parties that did address rural concerns agree with NTCA that: 1) the Commission should adopt a regulatory approach that preserves NECA pooling and tariffing for rural incumbent local exchange carriers’

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<sup>19</sup> It is appropriate for the Commission to consider individual markets, rather than create a national rule. The D. C. Circuit recently instructed the Commission to consider the state of competitive impairment in particular markets as part of the “necessary and impair” standards of its unbundling rules. *USTA v. FCC*, 290 F. 3d 415 (D.C. Cir. 2002).

(ILECs') DSL-based service; and 2) that all facilities-based broadband Internet access providers must contribute to the universal service fund in order to ensure the continued stability and sufficiency of support.

If the Commission does decide to regulate broadband under Title I, it must be careful to protect rural interests and protect the balance between competition and universal service. The Commission must fully acknowledge and adopt rural protections currently built into the law.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

By: /s/ L. Marie Guillory  
L. Marie Guillory  
(703) 351-2021

By: /s/ Jill Canfield  
Jill Canfield  
(703) 351-2020

Its Attorneys

4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203  
703 351-2000

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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. 02-33, CC Docket No. 95-20, CC Docket No. 98-10, FCC 02-42 was served on this 1<sup>st</sup> day of July 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail C. Malloy

Gail C. Malloy

Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8B201  
Washington, D.C. 20554

David P. McClure, President & CEO  
US Internet Industry Association  
5810 Kingstown Center Drive  
Suite 120, PMB 212  
Alexandria, VA 22315

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A204  
Washington D.C. 20554

Roger B. Borgelt, Assistant Attorney  
General  
Consumer Protection Division  
Public Agency Representation Section  
P.O. Box 12548  
Austin, Texas 78711-2548

Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-C302  
Washington, D.C. 20554

Daniel L. Brenner, Esq.  
Neal M. Goldberg, Esq.  
David L. Nicoll, Esq.  
National Cable & Telecommunications  
Association  
1724 Massachusetts Avenue, N.W.  
Washington, D.C. 20036

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A302  
Washington, D.C. 20554

Michael B. Fingerhut, Esq  
John E. Benedick, Esq.  
Richard Juhnke, Esq.  
Jay C. Keithley, Esq.  
Sprint Corporation  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004

Qualex International Portals II  
445 12th Street, S.W.  
Room CY-B402  
Washington, D.C. 20554

David Gabel, PhD  
Mark Kosmo, PhD  
Eric Kodjo Ralph, PhD  
Gabel Communications  
31 Stearns Street  
Newton, Massachusetts 02159

Stephen Ward, Public Advocate  
State of Maine  
112 State House Station  
Augusta, Maine 04333

Robert S. Tongren, Consumer Counsel  
David C. Bergmann, Assistant  
Consumer Counsel  
Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215

Phillip f. McClelland  
Senior Assistant Consumer Advocate  
Joel H. Cheskis,  
Shaun A. Sparks  
Assistant Consumer Advocates  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923

Michael J. Travieso, People's Counsel  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202

Regina Costa, Telecommunications  
Research Director  
The Utility Reform Network  
711 Van Ness Avenue, Suite 360  
San Francisco, CA 94102

Margot Smiley Humphrey  
Holland & Knight LLP  
2099 Pennsylvania Avenue, Suite 100  
Washington, D.C. 20006

Stephen L. Earnest, Esq.  
Richard M. Sbaratta, Esq.  
Bellsouth Corporation  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

Bruce Kushnick, Chairman  
TeleTruth Executive Director  
New Networks Institute  
826 Broadway, Suite 900  
New York, NY 10003

James Baller, Esq.  
Sean A. Stokes, Esq.  
The Baller Herbst Law Group, P.C.  
2014 P Street, N.W.  
Washington, D.C. 20036

Richard Geltman, General Counsel  
American Public Power Association  
2300 M Street, N.W.  
Washington, D.C. 20037

Paul M. Schudel, Esq.  
Woods & Aitken, LLP  
301 South 13<sup>th</sup> Street, Suite 500  
Lincoln, Nebraska 68508

Gerald J. Duffy, Esq.  
Blooston, Mordkofsky, Jackson, Duffy  
& Prendergast  
2120 L Street, N.W.  
Washington, D.C. 20554

Stephen Pastorkovich, Business  
Development Director/ Senior Policy  
Analyst  
Stuart Polikoff, Director of Government  
Relations  
OPASTCO  
21 Dupont Circle, N.W.  
Suite 700  
Washington, D.C. 20036

Richard Askoff, Esq.  
Martha West, Senior Regulatory  
Manager  
National Exchange Carrier Association,  
Inc.  
80 South Jefferson Road  
Whippany, NJ 07981

Steven T. Nourse, Assistant Attorney  
General  
Public Utilities Section  
Public Utilities Commission of Ohio  
180 E. Broad Street, 7<sup>th</sup> Floor  
Columbus, OH 43215

Lawrence E. Sarjeant, Esq.  
United States Telecommunications  
Association  
1401 H Street, N.W., Suite 600  
Washington, DC 20005 -2162

Cynthia B. Miller, Esq.  
Office of Federal & Legislative Liaison  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mark C. Rosenblum  
Lawrence J. Lafaro  
Stephen C. Garavito  
Diane Mack  
Richard H. Rubin  
AT&T Corp.  
295 North Maple Avenue, Room 113L2  
Basking Ridge, NJ 07920

David W. Carpenter, Esq.  
Sidley Austin Brown & Wood  
One Bank One Plaza  
Chicago, Illinois 60602

David L. Lawson, Esq.  
Peter D. Keisler, Esq.  
Daniel Meron, Esq.  
James P. Young, Esq.  
C. Frederick Beckner III, Esq.  
Stephen B. Kinnaird, Esq.  
Jennifer M. Rubin, Esq.  
Sidley Austin Brown & Wood L.L.P.  
1501 K Street, N.W.  
Washington, D.C. 20005

