

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

In the Matter of)	
)	
Petition for Rulemaking to Define)	RM No. 10522
“Captured” and “New” Subscriber Lines)	
for Purposes of Receiving Universal)	
Service Support Pursuant to)	
47 C.F.R. § 54.307 <i>et seq.</i>)	

**COMMENTS OF THE
COMPETITIVE UNIVERSAL SERVICE COALITION**

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COALITION**

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The Competitive Universal Service Coalition (“CUSC”), by counsel, hereby submits its comments in opposition to the above-captioned petition for rulemaking (“Petition”) filed by the National Telecommunications Cooperative Association (“NTCA”). 1/

INTRODUCTION AND SUMMARY

The Commission should reject NTCA’s blatant attempt to go back in time and reestablish the incumbent local exchange carriers’ (“ILECs”) monopoly in the local telephone service market. Although competitive carriers have made modest progress in serving rural and high-cost markets, competitive eligible telecommunications carriers (“CETCs”) remain at a very early stage of development,

1/ See Order, *Petition for Rulemaking To Define “Captured” and “New” Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to §54.307 et seq.*, RM No. 10522, DA 02-2214 (WCB, rel. Sept. 9, 2002) (adopting revised filing dates).

receiving only about 2% of federal high-cost funds. Indeed, CETCs still face extremely difficult and costly burdens in assessing availability of universal service support, obtaining ETC designation, and complying with additional ETC regulatory requirements. The NTCA petition presents a false and anti-competitive picture of the high-cost support system, inappropriately timed to cut off competition in high-cost areas – and the corresponding consumer benefits – before the CETCs have even achieved a toehold in these markets.

In particular, NTCA’s proposal to initiate a rulemaking to adopt anti-competitive rules defining “new” and “captured” lines and limiting so-called “duplicative support” is simply a ruse for the ILECs’ true attempt at securing their control in the local telephone market. NTCA’s proposals unlawfully would treat different classes of eligible telecommunications carriers (“ETCs”) dramatically differently even when they provide the same or comparable services. NTCA’s Petition would produce the following unreasonably discriminatory results:

- If a customer purchases primary data service from the ILEC and primary voice service from the CETC, only the ILEC would receive universal service support. By contrast, if the customer purchased both lines from the ILEC, the ILEC would receive support for both of them.
- If a customer purchases primary voice and data service from the CETC, and another line from the ILEC, only the ILEC receives universal service support. By contrast, if the customer purchased all three lines from the ILEC, the ILEC would receive support for all three.
- When a “new” customer requests service from an ILEC, the carrier can confidently expect to receive support regardless of any business relationships that customer has with other carriers. But if a “new” customer requests service from a CETC, the CETC would not receive support unless the customer is not purchasing service from any other carrier. Worse, if the customer subsequently purchases service from

the ILEC, the CETC would lose support even if it continues to provide service to the customer.

Such blatantly discriminatory treatment of carriers providing identical services violates the Communications Act of 1934, as amended (“Act”) and would run directly counter to the Commission’s established principle of competitive neutrality. NTCA’s plan would also effectively shut down competition for “additional lines” – an increasingly active and important competitive arena – to the detriment of consumers in rural and high-cost areas, as well as the public interest. Consumers today increasingly have more than one primary means of communications; sometimes this is two ILEC lines, or one ILEC line and one wireless.

NTCA’s proposals would amount to a virtual abandonment of funding portability – a point NTCA seems to relish, notwithstanding the Fifth Circuit’s holding that portability is not only permitted, but is mandated, by the Act. ^{2/} The Act similarly prohibits the Commission from limiting so-called “duplicative” support by giving ILECs built-in regulatory advantages, as NTCA proposes. Thus, the Commission has more than ample reason to reject NTCA’s petition for rulemaking.

I. THE COMMISSION SHOULD REJECT NTCA’S CALL FOR A RULEMAKING TO ESTABLISH ANTI-COMPETITIVE DEFINITIONS OF “NEW” AND “CAPTURED” LINES.

The Commission should refuse NTCA’s request to open a rulemaking on proposed rule changes aimed at preventing CETCs from providing universal

^{2/} *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000); *see also* Petition at 8 (arguing against portability).

service in competition with rural ILECs. The terms for which NTCA offers definitions have already been given clear meaning by the Commission, and NTCA's proposed definitions are plainly unreasonably discriminatory and violate the Commission's established principle of competitive neutrality. No changes to the existing rules are necessary or appropriate at this time, and particularly not rule changes that would severely undermine the twin goals set forth by the Act – both preserving universal service and advancing competition.

A. NTCA's Proposed Definitions of "Captured" and "New" Lines Are Anti-Competitive and Would Violate The Act

The Commission should reject NTCA's suggested new definitions for "new" and "captured" lines. As an initial matter, NTCA is wrong to suggest that these terms have never been defined or addressed by the Commission. To the contrary, NTCA in its anti-competitive zeal ignores the fact that the Commission already has established a clear interpretation of these terms for purposes of its high-cost universal service rules. In giving meaning to these terms, the Commission made it perfectly clear that all ETCs – including ILECs and CETCs alike – are entitled to equal support for each line they serve. Specifically, the Commission explained the current rule (§ 54.307) as follows:

Under the Commission's high-cost universal service mechanisms, a competitive eligible telecommunications carrier will receive the same per-line, high-cost support for lines that it captures from an incumbent carrier, as well as for any 'new' lines that the competitive eligible telecommunications carrier serves in high-cost areas. Thus, a competitive eligible telecommunications carrier receives support for ***each line it serves*** based on the

support the incumbent local exchange carrier would receive for serving that line. ^{3/}

Not only did this language effectively define the terms that NTCA claims are unclear and in need of new definitions, it was relied upon by the Rural Task Force, which included representatives of rural ILECs, competitive carriers, and other parties, in making recommendations to the Commission for universal service reform in rural ILEC study areas. ^{4/} There is no need for the rulemaking NTCA seeks.

Moreover, the Commission's existing interpretation of the portability rule (and the terms "new" and "captured" lines in § 54.307) – which in effect provide equal support both to CETCs and to ILECs for every line each carrier serves – are compelled by the statutory requirement that all support be explicit and portable, and those legal requirements preclude the rule changes NTCA seeks. ^{5/} Though rural ILECs have repeatedly challenged before both the FCC and the courts the established principle that all universal service support must be fully portable, their claims properly have been rejected on every occasion. Indeed, the courts have held that portability is not only permitted, but *compelled*, by provisions of the 1996 Act.

^{3/} *Federal-State Joint Board on Universal Service*, Order, FCC 00-125, 15 FCC Rcd 8746, 8786, ¶ 16 (2000) (emphasis added) (determining that information on the amounts of per-line and total support must be made publicly available in order to implement portability and ensure competitive neutrality).

^{4/} Rural Task Force, White Paper 5: "Competition and Universal Service," 16-17 (Sept. 2000) (available at <http://www.wutc.wa.gov/rtf/rtfpub.nsf/43e458610b70dda8882567d00074c6cd/6597dd7d0c39c96f88256977006190f7!OpenDocument>).

^{5/} See 47 U.S.C. § 254(e).

It is thus settled law that “portability is not only consistent with [the Act’s requirement of] predictability, but also is *dictated* by the principles of competitive neutrality and . . . 47 U.S.C. § 254(e).” 6/ Portability is also compelled by the Act’s mandate to open all markets to competitive entry and the FCC’s long-standing recognition that any regulatory system according ILECs more per-line support than CETCs would constitute an unlawful barrier to entry. 7/

Thus, the definitions of “captured” and “new” lines proposed by NTCA are anti-competitive and would violate the Act. NTCA’s definitions, in effect, would provide each ILEC with high-cost support for every line it serves, regardless of how many lines a customer purchases and how many other carriers besides the ILEC the customer does business with, but would provide support to a CETC only if it is the exclusive carrier the customer does business with. 8/

This would mean that, if a customer with one ILEC line decides to purchase one or more additional lines from the ILEC, the ILEC would receive

6/ *Alenco*, 201 F.3d at 622 (emphasis added); *see also id.* at 616 (“[T]he [universal service] program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, *this [portability] principle is made necessary not only by the economic realities of competitive markets but also by statute.*”) (emphasis added).

7/ *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd 16227 (2000) (“*Kansas USF Declaratory Ruling*”).

8/ *See* Petition at 4; *see also id.* at 3, 5-6.

support for every one of those added lines, but if the same customer decided to purchase the identical service from a CETC, the CETC would be denied any support. Moreover, under NTCA's proposed definitions, if an ILEC is contacted by a "new" customer with a request for service, the ILEC would be assured of receiving support when it provides service to that customer regardless of what else the customer is purchasing from whom, but if a CETC is contacted by a "new" customer, the CETC would not be assured of receiving support unless it could verify that the customer is not also taking service from someone else. This discriminatory approach violates Sections 253 and 254 of the Act and the established principle of competitive neutrality, which prohibit the Commission from adopting a system that provides funding to an ILEC but denies funding to a CETC that provides an identical service. ^{9/} Worse, it is intended to, and would, thwart competition in rural and high-cost areas to the detriment of consumers there.

^{9/} See, e.g., *Alenco*, 201 F.3d at 616 (“[T]he program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, this principle is made necessary not only by the economic realities of competitive markets *but also by statute.*”) (emphasis added); *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8701-02, ¶ 48 (1997) (subsequent history omitted) (“*Universal Service First Report and Order*”) (“We conclude that competitively neutral rules will ensure . . . that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.”); *Kansas USF Declaratory Ruling*, 15 FCC Rcd at 16231, ¶ 8 (“A mechanism that provides support to ILECs while denying funds to eligible prospective competitors . . . may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a).”)

The definitions proposed by NTCA would disserve the public interest for several reasons. First, when customers purchase service both from an ILEC and from a CETC, there is no reason to assume that ILEC service is “primary” while all other service constitutes some kind of unimportant add-on. Indeed, it has been reported that, while fewer than 2% of Americans use their wireless phones as their only phones, 18% report that they view their wireless phones as their “primary” voice service. ^{10/} Consumers may also use connectivity to the public switched network for several purposes, and any one of the mix of services any consumer purchases could be deemed “primary” by that customer, a designation that may change (and change back or back-and-forth) over time.

Second, local competition is not limited to “primary lines” in any event, nor is it a matter of consumers picking either the ILEC or the new entrant as their “primary” service provider. Rather, competition continues to develop for “second lines.” Such competition is in the public interest and should be encouraged by the FCC’s rules and policies. Just as opening markets for “primary” lines to competition conveys significant value to consumers, enabling competition with respect to all other lines also greatly advances the public interest. Moreover, the Act explicitly provides that “[c]onsumers . . . in rural, insular and high cost areas . . . should have access to telecommunications and information services . . . reasonably comparable to those services provided in urban areas and that are available at rates charged for

^{10/} Paul Kirby, *Analysts: Wireless Displacement of Wireline Services Will Rise*,
[footnote continues]

similar services in urban areas.” 11/ There is no limit to the number of lines consumers in urban areas can obtain at reasonable prices, in part due to the emergence of competition in those areas. To the extent universal service support and competition, together, ensure that consumers in rural areas have access to a range of choices at reasonable prices for their “primary” lines, the same combination of support funding and competitive forces should apply to give rural consumers the same opportunities as their urban counterparts with respect to “secondary” lines.

All told, NTCA’s proffered definitions of “new” and “captured” lines are unnecessary, discriminatory, and at odds with the Act’s mandates and objectives. The Commission should refuse to entertain NTCA’s call to modify the rules to the detriment of competitive entrants and consumers in rural areas.

B. Rejecting NTCA’s Definitions of “Captured” and “New” Service Makes the Proposed Definition of “Customer Billing Address” Unnecessary

The Commission should reject NTCA’s proposed definition of “customer billing address” 12/ for the same reasons as it should reject the “captured” and “new” service definitions. The “customer billing address” definition offered by NTCA is directed at enforcing NTCA’s misguided concept that whichever carrier served a consumer “first” should be the only ETC to receive support for serving that

TELECOMMUNICATIONS REPORTS, May 6, 2002.

11/ 47 U.S.C. § 254(b)(3).

12/ Petition at 4; *see also id.* at 6-7.

consumer. ^{13/} NTCA candidly characterizes its proposal as “inten[ding] that the [ETC] that first provides service to the customer should be the only carrier that receives the support for that customer.” ^{14/} But NTCA is wrong in suggesting that the Commission ever endorsed such an anti-competitive approach, when in fact it has consistently found that being “first” – *i.e.*, being the incumbent – should not provide a carrier with regulatorily-conferred advantages. ^{15/} Indeed, the rule NTCA cites to support its contention actually requires quite the opposite – it provides CETCs that do not rely on unbundled network elements or resale “the full amount of universal service support provided to the [ILEC] for the customer.” ^{16/} The rule, properly read, means that a CETC using its own facilities to provide a second line for which an ILEC would receive support would receive *the same* support for providing a comparable second line. Conversely, NTCA’s reading – and its proposed rule – would deny this support, based on its fundamentally mistaken belief that support is somehow intended to be limited to the “carrier that first provides service.”

^{13/} *Id.* at 6 (“The proposed definition . . . will assist USAC in ensuring that only the first carrier to provide service to the customer receives support when there is more than one eligible carrier providing service to the customer . . .”).

^{14/} *Id.* at 6-7 (citing 47 C.F.R. § 54.307(a)(4)).

^{15/} *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 8701-02, ¶ 48 (1997) (“We conclude that competitively neutral rules will ensure . . . that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.”).

Indeed, NTCA's proposed definition of "customer billing address" is quite absurd, given that the obvious meaning of customer billing address is a geographical location, and has nothing to do with when the customer was acquired. 17/ It is particularly objectionable, though, given that NTCA's proposal to include this clause in its definition is tied to its misguided attempt to restrict support for additional lines purchased by ILEC customers solely to the ILEC. Moreover, the Commission only recently, in the May 2001 *RTF Order*, 18/ adopted its current definition of "customer billing address" in the context of wireless ETCs. The Commission should keep that recently-adopted definition in place as part of the *RTF Order's* plan to establish "regulatory stability" over a five-year period. 19/

16/ 47 C.F.R. § 54.307(a)(4).

17/ See Petition at 4 (proposing definition of "customer billing address" that "includes . . . the date the customer began receiving service").

18/ *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, 16 FCC Rcd 11244, 11314-16, ¶¶ 180-84 (2001) ("*RTF Order*"), *recon.*, 17 FCC Rcd 11472 (2002).

19/ *Id.*, 16 FCC Rcd at 11309-10, ¶¶ 167-68. CUSC believes the Commission should not open a rulemaking to revisit provisions put in place as recently as last year's adoption of the *RTF Order*. If and when the rules are re-examined in the future, possibly after the expiration of the five-year period established by the *RTF Order*, the Commission should craft rules that treat all ETCs the same, rather than maintaining separate rules governing ILECs and CETCs. Thus, rather than maintaining the current definitions in § 54.307, which as NTCA's petition demonstrates are susceptible to misinterpretation, the Commission should make it clear that high-cost funding will be provided with respect to each line served by an ETC – whether a CETC or an ILEC.

II. THE COMMISSION SHOULD REJECT NTCA’S PROPOSED DISCRIMINATORY “DUPLICATIVE SUPPORT PREVENTION” RULE BECAUSE IT VIOLATES COMPETITIVE NEUTRALITY

The Commission must reject NTCA’s proposed “duplicative support prevention” rule, which would direct USAC to compare ILEC and CETC customer lists and disallow support for any CETC customers who are also taking service from the ILEC. Like the draft definitions discussed above, NTCA’s proposed “duplicative support prevention” rule is blatantly anti-competitive and violates the Act by discriminating against new entrants. First, the rule drafted by NTCA would allow an ILEC to continue to receive support not only for the first line it provides to a given household or business, but also for each and every additional line that it provides to the same customer. However, if the customer chooses to purchase additional lines from a CETC instead of from the ILEC, NTCA’s draft rule would foreclose the CETC from receiving support. This, in effect, would foreclose CETCs from competing for “second” lines. As discussed above, any rule that would provide funding to an ILEC but deny funding to a CETC that provides an identical service, violates Sections 253 and 254 of the Act, and the established principle of competitive neutrality. ^{20/}

Moreover, under NTCA’s proposed rule, whenever both an ILEC and a CETC provide service to the same customer, there would be an automatic and non-rebuttable presumption that the support to the CETC is “duplicative.” There is no

^{20/} See *supra* Section I.A and accompanying text.

basis for such a presumption. Arguably it would make more sense to automatically deny support to the ILEC in such a case, since the customer's more recent decision to purchase service from the new entrant could be presumed to be the more significant or determinative decision regarding the consumer's preferences. However, either a presumption automatically favoring ILECs or a presumption automatically favoring CETCs would be improper and would violate competitive neutrality.

Granting rural ILECs a first right to support, while relegating CETCs to the "back of the bus," is discriminatory and unlawful. The Act prohibits this kind of incumbent protection. Given the increasing and beneficial competition for both "primary" and "second" lines, rural ILECs should not be given an unfair advantage in competing to provide consumers with second lines, which would be the case if ILECs, but not CETCs, could receive support for providing additional lines to customers already served by an ILEC.

Finally, NTCA's proffered "duplicative support rule," like its suggested rules defining "new" and "captured" lines, stands as an effort to curtail or eliminate the portability of support. NTCA in essence admits as much, arguing that its proposals would combat what it characterizes as the problematic effects of the Commission's decision "that CETCs would receive the same per line support as ILECs, based on the ILEC's cost." 21/ As such, the FCC must reject NTCA's

21/ Petition at 8.

proposals, since “portability is not only consistent with . . . , but also is *dictated* by” the Act. ^{22/} Moreover, portability – as a necessary prerequisite to head-to-head competition in the provision of universal service in high-cost areas – is critical to facilitating competition and strongly serves the public interest, particularly the interests of consumers in rural and high-cost areas. ^{23/}

CUSC recognizes that Commission may wish to consider ways to limit the growth of the universal service fund, in order to protect consumers who ultimately pay for the fund and to ensure that the fund is sustainable in the long-term. However, any such limitations must be competitively neutral. There are a number of competitively neutral policy alternatives that the Commission could consider to prevent the total amount of the fund from unduly increasing. But there is no possible justification for the anti-competitive restrictions on so-called duplicative support that NTCA proposes.

III. NOW IS THE WORST POSSIBLE TIME FOR A RULEMAKING TO SMOTHER COMPETITION IN PROVIDING UNIVERSAL SERVICE TO RURAL AMERICANS.

A. Competitive Universal Service is at a Critical Formative Stage.

Consumers in rural areas are just now beginning to reap the benefits of the Commission’s pro-competitive universal service policies. These include improved

^{22/} *Alenco Communications, Inc. v. FCC*, 201 F.3d at 622; *see also supra* note 9 and accompanying text.

^{23/} *See* CUSC Reply Comments on ACS-Fairbanks Petition for Rulemaking, CC Docket No. 96-45 (filed Sept. 17, 2002), at 5-7.

telephone penetration in traditionally underserved areas, innovative pricing plans, and new service packages that reflect consumer needs (such as larger calling areas and service enhancements like free long distance, mobility, and vertical services). In addition to these consumer benefits brought by CETCs, increasing competition creates incentives for ILECs to improve their service offerings to meet the competitive challenge. However, while CETCs have made sufficient inroads to instigate the NTCA to file its current protectionist Petition, new entrants still face an uphill climb over unfamiliar terrain in seeking to provide competitive universal service to rural areas.

Though competitive carriers have made meaningful progress in striving to serve rural and high-cost markets, they remain at an early stage of development. Currently, CETCs receive only about 2% of federal high-cost funds. This reflects both the newness of the rules under which CETCs operate, as well the significant challenges they face when seeking to provide universal service in areas eligible for support. First, prospective entrants must determine the extent to which they might qualify for funding. This involves the extremely difficult and costly process of matching a competitive carrier's markets or serving areas with the complex web of boundaries of ILEC study areas, wire centers, UNE zones, and rural disaggregation areas. Competitive carriers must undertake a complex analysis needed to match

their existing or prospective customer base with the various ILEC service or study areas to determine whether and how much high-cost support may be available. ^{24/}

Second, obtaining designation as an ETC remains a time-consuming and often difficult process before some state commissions. ETC designation frequently takes nine months to a year or more – an eternity in the fast-moving telecom marketplace.

Third, becoming an ETC requires a carrier to make major investments in putting internal systems in place to comply not only with the basic federal ETC requirements but also, in some states, additional regulatory requirements imposed by state regulators. ^{25/} These requirements can significantly increase a CETC's

^{24/} For example, a wireless carrier may need to map its customer base into the ILEC wire centers, UNE zones, and study areas by matching the home address or home landline telephone numbers of its customers against the NPA/NXX to determine the ILEC wire center in which each customer is located. This process is even more complicated for newly established ILEC geographic units such as UNE zones, since no commercial software exists to conduct this mapping process, and it is not a straightforward task to identify which wire centers or other geographic areas are included in each zone. The UNE zone maps that ILECs file to be posted on USAC's website are not helpful because they contain no V/H coordinates for the boundaries that can be used to determine their precise locations or map them to CMRS service boundaries.

^{25/} See, e.g., *Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P-5695/M-98-1285, Order Granting Preliminary Approval and Requiring Further Filings, at 10, 21 (Minn. PUC Oct. 27, 1999) (affordability and unlimited local usage requirements); *Petition of WWC Holding Co., Inc., for Designation as an Eligible Telecommunications Carrier*, Docket No. 98-2216-01, Report and Order, at 6, 12, 14-15 (Utah PSC July 21, 2000) (unlimited local usage requirement); *Application of GCC License Corp. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 980000470, Final Order Approving GCC Corp. as an Eligible Telecommunications Carrier, at 17, (Okla.

[footnote continues]

entry costs, thereby delaying or even foreclosing the benefits of competition to rural customers.

As a result, only strongly committed carriers are willing to overcome the existing hurdles to competitive entry. Due to the complexity of the universal service rules and the ILEC-centric geographic and service definitions embedded in those rules, a major investment of time and resources are needed to enable a competitive carrier to begin receiving universal service support. These factors, together with the current challenging capital market environment, mean that a wireless carrier or CLEC must be very strongly committed in order to persist and overcome these costs and difficulties.

Therefore, it would be especially unfair and inopportune to pull the regulatory rug out from under these carriers, as would be the case if the Commission granted NTCA's Petition. The progress CETCs have made to date, and the hard work invested in achieving it, have all transpired under rules and policies that the Commission only recently adopted. To change those rules now would serve only to require competitive carriers to take several steps back, for no reason other than shielding rural ILECs from competition.

Corp. Comm'n 2001) (carrier of last resort requirement); *Application of Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R.26.418*, PUC Docket Nos. 22289 & 22295, SOAH Docket Nos. 473-00-1167 & 473-00-1168 (Tex. PUC Oct. 30, 2000) (affordability requirement).

Moreover, NTCA's concerns over allegedly swelling federal universal service funds are vastly overstated. As noted, only about 2% of federal high-cost funds now go to CETCs, and high-cost support is only one of several subsidy funds provided under the FCC's universal service rules. The only reason to adopt NTCA's proposals would be to inoculate the rural ILECs from the competition that they seem to dread. Opening a rulemaking now to consider those proposals would greatly disserve competitive carriers and the consumers in rural areas currently or potentially served by them.

B. NTCA's Proposals Would Nullify the Recently-Adopted RTF Compromise Plan, Which Was Intended to Establish Regulatory Stability for Five Years

In 1997, the FCC and the Federal-State Joint Board on Universal Service convened the Rural Task Force ("RTF"), which consisted of representatives of ILECs, prospective wireline and wireless competitive entrants, consumers, and state regulators. Through a multi-year process, the RTF forged a compromise that gave each industry faction some, but not all, of what they sought. The Commission adopted virtually all of the RTF's proposed rules in the *RTF Order*, which reflected concessions made by all parties – rural ILECs and new entrants alike – in hopes of crafting a fair 5-year transition for competitive universal service in rural areas. 26/

The plan included a number of features sought by rural ILECs, including the retention of rules basing support on their embedded costs, with a

26/ See *RTF Order*, 16 FCC Rcd at 11309-10, ¶¶ 167-68.

major one-time increase in the amount of support. The plan also included retaining *per-line funding portability* as a central component of the rules governing funding for carriers serving rural areas. ^{27/} Most critically, to ensure a stable regulatory environment, the RTF recommended, and the Commission agreed, that the rules would remain in effect for five years, from January 2002 until 2007. ^{28/}

The NTCA Petition attempts to rescind a critical part of the consensus that led to the *RTF Order*. The basic tenets of the RTF compromise must not be unraveled even before the first year is complete. NTCA's Petition, part of the rural ILECs' unrelenting effort to protect existing monopolies by restricting support to CETCs and precluding entry, would wholly undermine much of what the RTF and the Commission have accomplished. NTCA's proposal would fundamentally alter the competitive landscape and unfairly unravel the compromise that rural ILEC representatives on the RTF helped craft and agreed to support. Indeed, NTCA's facetious plea for certainty ^{29/} runs completely counter to its effort to destroy the RTF compromise, which was intended to provide regulatory stability for five years, before even one year has passed under that new, transitional regime.

^{27/} See *RTF NPRM*, Attachment A, 16 FCC Rcd at 6199 (“The Task Force has recommended that universal service support for [CETCs] continue to be based on the embedded costs of the incumbent carrier.”); see also *id.* at 6196-6201 (extensive discussion of means for achieving competitive neutrality); see also *RTF Order*, 16 FCC Rcd at 11290, 11298-99, 11307-08, 11324, ¶¶ 114, 134, 160-61, 203-05.

^{28/} *RTF Order*, 16 FCC Rcd at 11309-10, ¶¶ 167-68.

^{29/} Petition at 14.

C. The Justifications Offered by NTCA for its Proposals are Groundless

In support of its Petition, NTCA offers several reasons why it believes an expedited rulemaking is necessary, but none of these justifies the drastic rule changes NTCA seeks. For instance, NTCA contends that portable support violates competitive neutrality, 30/ but as discussed above, it is settled that portability is not only desirable but *required* by the Act. 31/

NTCA's suggestion that the divergent regulatory schemes under which different classes of carriers operate somehow provide some with "unfair competitive advantages" likewise does not withstand scrutiny, and is only tangentially relevant to the rule changes NTCA seeks in any event. 32/ NTCA complains that it is unfair that ILECs are subject to regulatory requirements that do not apply to competitive entrants. But the fact is that the historically monopolistic ILECs continue to possess and wield market power. Thus, asymmetric regulation at the very early stages of competitive development does not give new entrants an unfair competitive advantage. Rather, such different treatment of carriers with and without market power is necessary to ensure that the playing field is a level one. Such a regulatory

30/ Petition at 8.

31/ See *supra* n.9 (citing *Alenco*, 201 F.3d at 622; *Kansas USF Declaratory Ruling*, 15 FCC Rcd 16227) and accompanying text.

32/ Petition at 9-10.

approach is backed by 25 years of precedent in telecommunications regulation. ^{33/}
In any event, NTCA's Petition in actuality has little to do with the *different*
regulatory obligations imposed on its members and new entrants, but rather FCC
rules that ensure that ILECs and competitive carriers have the *same* opportunities
to provide supported universal service to customers. ^{34/}

Next, NTCA's familiar gripe that CETCs are somehow "gaming" the
FCC's universal service rules is totally unsupported. ^{35/} CETCs are operating
under the established rules, which correctly treat ILECs and CETCs equally. The

^{33/} See, e.g., *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1 (1980) (eliminating rate and entry regulation for new entrants and distinguishing them from incumbents on the basis of lack of market power) (subsequent history omitted); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd 20730 (1996) *aff'd sub nom. MCI WorldCom v. FCC*, 209 F.3d 760 (D.C. Cir. 2000) (eliminating tariff requirements for non-dominant interexchange carriers); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, 12 FCC Rcd 15756, 15858-59, ¶ 179 (1997) ("[S]eparation requirements should be imposed only on incumbent independent LECs that control local exchange and exchange access facilities. [T]his conclusion is consistent with the 1996 Act, which provides different regulatory treatment for incumbent and non-incumbent LECs. . . . By limiting application of the separation requirements to incumbent independent LECs that control local exchange and exchange access facilities, we avoid imposing unnecessary regulation on new entrants in the local exchange market . . .").

^{34/} It is ironic that NTCA decries the different regulatory regimes under which carriers with and without market power operate in a Petition where NTCA asks the FCC to deny CETCs support for which ILECs would remain eligible, even though both CETCs and ILECs provide the same service.

^{35/} Petition at 13-14.

only parties engaged in “gaming” are the ILECs that try to re-establish non-competitively neutral rules to forever wall off their customers from competition.

That the rural ILECs portray being exposed to such competition as a “disincentive to investment in rural areas” 36/ is at the same time unfortunate and irrelevant. NTCA’s argument that rural ILECs will invest in improving their networks and service offerings only if they are protected by barriers to entry such as exclusive access to universal service support is frankly appalling. To the contrary, the Commission has repeatedly recognized that the introduction of competition provides incentives for incumbent providers to invest in improving their networks and service offerings in order to serve customers more effectively in response to competitive forces. In any event, in adopting the 1996 Act generally and Sections 214(e), 253, and 254 specifically, Congress decided that such barriers to entry are no longer proper means of ensuring universal service. 37/ The FCC has properly followed Congress’ mandate that now competition – not lopsided USF rules – is the best way to give all carriers incentives to invest in rural areas.

36/ *Id.* at 14.

37/ *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 8703, ¶ 50 (“Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges.”).

Finally, the fact that CETCs are, at long last, beginning to make inroads is not harmful and does not demonstrate “changed circumstances,” as NTCA claims 38/. On the contrary, it demonstrates that the FCC’s pro-competition rules are finally beginning to work as intended. The emergence of CETCs is not a “changed circumstance,” but rather an intended consequence of the Commission’s efforts to reform universal service. Though support payments to CETCs are growing – something the Act and the FCC rules anticipated as new carriers enter the market and demonstrate their ability to provide the supported services – only about 2% of federal high-cost support is received by CETCs. Making the blatantly anti-competitive rule changes suggested by NTCA to impact this 2% of federal high-cost support would be an exercise in overkill aimed at suffocating competitive entry.

38/ Petition at 10-13.

CONCLUSION

For the foregoing reasons, the Commission should deny NTCA's
Petition for Expedited Rulemaking.

Respectfully submitted,

**COMPETITIVE UNIVERSAL
SERVICE COALITION**

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