

**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 et seq.	)	

**REPLY COMMENTS OF THE ALLIANCE OF RURAL CMRS CARRIERS**

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## Summary

Not surprisingly, NTCA's Petition for Expedited Rulemaking, with its proposal to severely restrict the ability of competitive eligible telecommunications carriers ("CETCs") to receive high-cost support in rural areas, has elicited a wide array of responses from various quarters. Indeed, a proposal that would effectively destroy competition in rural areas can be expected to garner support among incumbent local exchange carriers ("ILECs") and to face opposition by competitive LECs and wireless carriers.

Tellingly, however, a united ILEC front behind NTCA's Petition was sorely lacking. Even among ILECs and their representative associations there was fundamental disagreement on the wisdom of NTCA's proposal. Some ILEC commenters urged the Commission to refrain from taking the piecemeal approach requested by NTCA, and instead address the underlying concerns as part of a more comprehensive review of the high-cost rules. Others soundly rejected any proposal that would prevent any ETC from receiving high-cost support for each line it serves.

The reason for this cacophony of voices on the ILEC side is that NTCA's proposal is a profoundly flawed plan that is being proposed at precisely the wrong time. In its request to change the definitions of "captured" and "new" subscriber lines and adopt rules to eliminate "duplicative" support, NTCA seeks to take a wrecking ball to the carefully crafted plan for rural high-cost support that came out of the Rural Task Force process. As commenters on both sides of the fence agree, NTCA's concerns and related issues are best addressed in a comprehensive review of the rural high-cost rules.

In addition, NTCA's proposal is blatantly anticompetitive and violates the Act and Commission precedent. By restricting the types of lines on which CETCs can receive high-cost support while leaving the ILECs' access to high-cost support untouched, the proposal violates the Congressional mandate that support be portable. The proposal also is tailored to benefit ILECs by effectively erasing CETCs from the scene. As such, it seeks to obliterate the notion of a competitively neutral support mechanism as envisioned by Congress and the Commission. Finally, NTCA's proposed enforcement mechanisms would create an unworkable and administratively burdensome regime that would far offset any savings achieved by destroying portability.

Because NTCA's proposal is baseless, anticompetitive, contrary to the Act, and would create enormous administrative burdens, the Commission should deny the Petition.

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**REPLY COMMENTS OF THE ALLIANCE OF RURAL CMRS CARRIERS**

The Alliance of Rural CMRS Carriers ("ARC") by its counsel and pursuant to the Commission's *Public Notice and Order*, is pleased to submit its reply comments in the above-captioned proceeding.<sup>1</sup>

I. Introduction.

The comments filed by regulators, associations, and carriers from across the competitive spectrum in this proceeding reflect profound doubts and broad-ranging disagreement as to the wisdom of NTCA's proposal. Such is the controversial nature of the Petition that even some of the NTCA's perennial allies found parts of it distasteful and were careful to distance themselves accordingly. For example, rather than follow NTCA's lead, the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") and the Minnesota Independent Coalition ("MIC") suggest that the best way to deal with concerns raised in NTCA's

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<sup>1</sup> National Telecommunications Cooperative Association Petition for Expedited Rulemaking (filed July 26, 2002); *see* Public Notice, Report No. 2567 (Cons. & Govt. Aff's Bur. rel. Aug. 8, 2002). The deadline for filing reply comments was extended by *Order*, DA 02-2214 (WCB rel. Sept. 9, 2002).

petition is in the course of a comprehensive rulemaking.<sup>2</sup> CenturyTel, for its part, points out that the FCC has already rejected NTCA's proposal to deny support for second lines and has no reason to change settled policy.<sup>3</sup> Even among those who lined up dutifully behind NTCA's Petition, there was significant disagreement on what exactly is wrong with the rules as currently applied, and there was altogether no consensus on what should be done to right those perceived wrongs.<sup>4</sup> For example, it is interesting to note that none of the commenters mentioned the supposed "erosion" of support that NTCA discussed in its Petition,<sup>5</sup> instead focusing on the very different issue of excessive fund growth. While NTCA's Petition complained of "disincentives to investment in rural areas" under the current rules,<sup>6</sup> one ILEC commenter insists that the current rules contain "artificial incentives to investment" leading to disproportionately high growth in rural working loops.<sup>7</sup> In other words, the ILEC commenters are all over the map.

The reasons for the disunity among the ILECs is that the Petition advocates exactly the wrong plan at exactly the wrong time. It is, in essence, a purported solution — without basis in law or in any "changed circumstances" — to a problem that is simply not there. The FCC's rules

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<sup>2</sup> See OPASTCO Comments at p.2 (filed Sept. 9, 2002); MIC Comments at p. 1 (filed Sept. 9, 2002).

<sup>3</sup> See CenturyTel Comments at p. 5 (filed Sept. 23, 2002).

<sup>4</sup> See, e.g., Verizon Comments at p. 5 (filed Sept. 23, 2002) (flexibility granted to rural LECs to opt out of disaggregation results in potential for cream-skimming by competitors); CenturyTel Comments at p. 6 (rules should be changed to ensure that an ILEC continues to receive support for a line *after* it is "captured" by a competitive ETC).

<sup>5</sup> Petition at p. 3.

<sup>6</sup> *Id.* at p. 14.

<sup>7</sup> See Verizon Comments at pp. 6-7.

prescribing support to competitive eligible telecommunications carriers (“CETCs”) for “captured” and “new” subscriber lines are unambiguous and simple in their application. Most importantly, they are essential to the introduction of competition in rural areas, so that consumers in those areas may have choices among services at prices comparable to those available in urban areas. As several commenters opposing the Petition have pointed out, the rules NTCA seeks to sabotage are part of a deliberate process, proposed by the Rural Task Force (“RTF”) and adopted in the *Fourteenth Report and Order*,<sup>8</sup> which envisions the introduction of competition in rural areas. This process must be given a chance to work. Eighteen months into the plan, competitive entry is barely underway and should not be waylaid by ILEC-induced regulatory fiat before it is even out of the starting gate.

The crisis situation described by NTCA and its supporters simply does not exist.<sup>9</sup> There is no “loophole” allowing competitive ETCs to have access to a greater share of high-cost support than they need or deserve. To the extent growth in the Universal Service Fund is a problem, the minuscule percentage of high-cost support received by CETCs is not a significant factor. NTCA’s urgent call for action is thus misplaced. Moreover, its proposed solution would

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<sup>8</sup> See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11294 (2001) (“*Fourteenth Report and Order*”).

<sup>9</sup> See NTCA Petition at p. iii (complaining of “loophole. . .that, unless closed, will jeopardize the preservation and advancement of universal service in high-cost areas in America”); Verizon Comments at p. 7 (filed Sept. 23, 2002) (cautioning that current rules governing high-cost support to competitive ETCs, “[i]f allowed to go unchecked. . .will only exacerbate the strain on the high cost program and lead to ‘inefficient and/or stranded investment and a ballooning universal service fund.’”)

produce absurdly anticompetitive results and foreclose the possibility of true competitive choice for rural consumers. Accordingly, the Commission should reject NTCA's Petition and decline to alter the high-cost rules as it suggests. Should the Commission determine it is necessary to revisit the issue of portability of support in rural areas, it should heed OPASTCO's advice and do so only as part of its broader effort to refine its rules once the RTF plan has been given a chance to demonstrate its benefits.

## **II. Rural Universal Service Issues Should Be Addressed Comprehensively**

ARC generally agrees with OPASTCO that a special rulemaking to change one or two rules that rankle NTCA is not appropriate.<sup>10</sup> ARC believes the better course is to not begin a new rulemaking proceeding, but instead to follow the Commission's directive in the *Fourteenth Report and Order* that the Joint Board be reconvened to continue working on the many unresolved issues surrounding universal service reform for rural carriers.<sup>11</sup> To date, that has not happened. As pointed out by the RTF, there are a number of issues yet to be resolved in order to ensure the sustainability of the universal service fund and to carry out Congress' mandate of providing customers in rural areas with a choice of services that are similar to those available in urban areas.<sup>12</sup>

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<sup>10</sup> See OPASTCO Comments at p. 2.

<sup>11</sup> See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11310.

<sup>12</sup> See *Federal-State Joint Board on Universal Service, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 at pp. 38-39 (rel. Sept. 29, 2000).

### **III. NTCA’s Proposed Rule Changes Are Blatantly Anticompetitive and Contrary to the Act**

The effect of NTCA’s proposal would be to eliminate almost all support to which competitive ETCs in rural areas are entitled under the Act and the Commission’s rules. At the same time, NTCA seeks to preserve the ILECs’ ability to receive support for multiple voice and/or data lines, as well as leaving untouched the “safety valve,” “safety net,” and other provisions protecting the ILECs’ bottom line. Apart from disserving the principle that universal service support mechanisms be competitively neutral, NTCA’s proposal violates the provisions in the Act requiring that support be explicit and sufficient.<sup>13</sup> For this reason alone, NTCA’s Petition should be rejected.

#### **A. NTCA’s Proposal to Eliminate “Duplicative Support” to CETCs Would Produce Absurdly Anticompetitive Results**

NTCA argues that a rural ILEC should be the only carrier to receive support for a customer, even when a CETC provides a second line to the same customer. Indeed, according to NTCA, only the support to the CETC is “duplicative.” Of course, if an ILEC sells the customer a second, third or fourth line, each would receive the same duplicative support. The initial comments submitted by the Competitive Universal Service Coalition (“CUSC”) aptly demonstrate the irrational and anticompetitive nature of NTCA’s proposal by identifying a number of counterintuitive and illogical outcomes the rule changes would produce — always to

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<sup>13</sup> See 47 U.S.C. § 254(e).

the detriment of the CETC and the rural customers who might otherwise benefit from a choice among service providers.<sup>14</sup>

Changing the rule to now limit the term “new” to mean a subscriber who has never had telephone service before, and only then if added after a CETC’s designation, would not be competitively neutral. It would mean that all ILEC lines and only some CETC lines are supported. It would mean that multiple lines installed by an ILEC, some of which are unused, or used only for data are all supported, while a CETC who has added a line before designation is not supported, notwithstanding that the line is in a high-cost area.

Consistent with NTCA’s apparent conviction that nobody should be allowed to have it as good as the ILECs, the “clarity” that NTCA seeks from the Commission will ensure that no other carrier will ever offer facilities-based competition in rural areas on a level playing field. Such a proposal does not merit serious consideration.

**B. NTCA’s Proposal Would Violate the Act and Reverse Established Commission Policy**

Several commenters concur that NTCA’s Petition seeks to alter settled Commission policy in a manner that is inconsistent with the Act. As ARC stated in its initial comments, and as many commenters agree, the well-considered provisions ensuring portability and support for all lines were deliberately achieved through the RTF process, and there is no need or justification to reverse this consensus or revisit it prematurely.<sup>15</sup> Even CenturyTel, a consistently vociferous

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<sup>14</sup> See CUSC Comments at pp. 2-3 (filed Sept. 23, 2002).

<sup>15</sup> See Cellular Telecommunications and Internet Association (“CTIA”) Comments at p. 2; CUSC Comments at p. 18; Sprint Comments at p. 2; WUTC Comments at p. 4.

opponent of wireless CETC entry into rural areas, categorically opposes NTCA's efforts to limit support to "primary" lines, cautioning that "the NTCA Petition may lead to unintended consequences."<sup>16</sup> CenturyTel goes on to underscore its point:

The Commission determined in 1997 that multiple residential and business lines shall be supported by the universal service fund. There is no reason to alter the Commission's policy of supporting multiple residential and business lines now.<sup>17</sup>

The Commission's current rules on portability of high-cost support correctly interpret the Congressional mandate that all support be explicit and portable. In the *Alenco* case, the Fifth Circuit made it clear 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)."<sup>18</sup> Indeed, the Court emphasized that: "this [portability] principle is made necessary not only by the economic realities of competitive markets but also by statute."<sup>19</sup>

NTCA's proposal to limit high-cost support to CETCs to lines that were either relinquished by an ILEC or never before served by anyone would eviscerate the concept of portability which is central to Section 254(e). ILECs would be guaranteed support for all lines, regardless of how many per household, regardless of whether the customer was previously served by another carrier. What NTCA seeks is to impose a discriminatory, unilateral limitation on CETCs that would all but choke off competition in rural ILEC service areas. Such an outcome is directly contrary to the Congressional goal of establishing a "pro-competitive, de-regulatory

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<sup>16</sup> See CenturyTel Comments at pp. 4-5.

<sup>17</sup> *Id.* at p. 5 (internal citation omitted).

<sup>18</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000).

<sup>19</sup> *Id.* at 616.

national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans *by opening up all telecommunications markets to competition.*”<sup>20</sup>

**C. NTCA’s Proposed Rule Changes Would Be Administratively Burdensome**

The Joint Board has emphasized that the principle set forth in Section 254(b)(5) “that support mechanisms should be specific and *predictable* . . . encompasses administrative simplicity.”<sup>21</sup> Contrary to this principle, NTCA’s proposal to eliminate “duplicative” support would create a cumbersome process which would invite a deluge of requests to the Commission by ILECs seeking support determinations on individual subscribers.<sup>22</sup> ARC agrees with CTIA that “it is highly likely that almost all incumbent LECs would challenge CETCs because they have absolutely nothing to lose under NTCA’s proposed ‘enforcement’ rule.”<sup>23</sup> In addition to encouraging costly regulatory challenges, NTCA’s proposal would require rules of a much greater complexity than even NTCA envisions. As the WUTC notes, a system of rules would be needed to determine whether one person per family may order a line, to prevent business customers from creating affiliates for the sole purpose of ordering supported lines, and to

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<sup>20</sup> *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8781 (1997) (*quoting* Joint Explanatory Statement at 1) (emphasis added).

<sup>21</sup> *See Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 103 (Jt. Bd. 1996) (internal brackets and quotation marks omitted) (emphasis in original).

<sup>22</sup> *See* ARC Comments at pp. 6-7 (filed Sept. 23, 2002).

<sup>23</sup> CTIA Comments at p. 7.

determine whether a residential customer who orders a business line is actually in business or simply seeking a cheaper second line, to name a few examples.<sup>24</sup>

In light of the massive administrative burden and expense likely to result from NTCA's proposal to eliminate "duplicative" support, NTCA's professed desire to "minimize, if not eliminate, the impending public waste that would otherwise, in the interim, occur while the Commission plans its broader rulemaking" must be taken with a grain of salt. In proposing to cut off nearly all high-cost support to CETCs, NTCA lays at the Commission's feet the most wasteful and burdensome solution that can be imagined.

#### **IV. NTCA and Its Supporters Fail to Demonstrate a Need For the Proposed Changes**

##### **A. The Existing Rules Are Abundantly Clear and Contain No "Loophole"**

Attempts by some ILEC commenters to parse the rules border on absurd. For example, the MIC cites, with italics, part of Section 54.307(a),<sup>25</sup> leaving out the critical final sentence, which could not be more clear:

A competitive eligible telecommunications carrier serving loops in the service area of a rural incumbent local exchange carrier, as that term is defined in §54.5 of this chapter, shall receive support *for each line it serves* in a particular service area based on the support the incumbent LEC would receive for each such line.<sup>26</sup>

The MIC interprets the term "new" lines to mean only those lines added after a carrier is designated as an ETC. The Commission never intended such a limitation. Whenever a CETC gains a subscriber in a high-cost area, it is entitled to support. The fact that a line is added before

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<sup>24</sup> See WUTC Comments at pp. 4-5.

<sup>25</sup> See MIC Comments at p. 2.

<sup>26</sup> 47 C.F.R. § 54.307(a)(1) (emphasis added).

the competitor is designated as an ETC does not change the fact that it is a “line it serves” in a high-cost area. As CTIA correctly notes, the existing definitions of “captured” and “new” lines ensure that ILECs will not lose support when a customer signs up with a CETC and the ILEC does not lose a line as a result.<sup>27</sup> Moreover, as several commenters point out, provision of support to all lines is essential to the goal of providing rural consumers with pricing and service options comparable to those in urban areas, regardless of the technology used.<sup>28</sup> Clearly, there is no “loophole” to be fixed.

**B. The Commission Should Reject Unsupported Allegations of a “Windfall” to Wireless Carriers**

Several ILEC commenters, and one commenter representing wireline CLECs, argue that wireless CETCs face substantially lower costs than ILECs and wireline CLECs and, therefore, receive a “windfall” of high-cost support because of portability.<sup>29</sup> It has also been argued that a line added in a high-cost area before designation should not be supported because that line was added under a business plan that did not contemplate support.<sup>30</sup> These simplistic arguments reflect a fundamental misunderstanding of the Commission’s well-reasoned and appropriate “per-line” support methodology for supporting CETCs.

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<sup>27</sup> See CTIA Comments at p. 3 (filed Sept. 23, 2002).

<sup>28</sup> See, e.g., CUSC Comments at pp. 8-9; RTG Comments at pp. 3-4 (filed Sept. 23, 2002); Sprint Comments at p. 4 (filed Sept. 23, 2002); Washington Utilities and Transportation Commission (“WUTC”) Comments at p. 5 (filed Sept. 23, 2002).

<sup>29</sup> See, e.g., CenturyTel Comments at p. 9; Rural Independent Competitive Alliance (“RICA”) Comments at p. 2 (filed Sept. 23, 2002); Texas Statewide Telephone Cooperative, Inc. (“TSTCI”) Comments at pp. 2-3 (filed Sept. 23, 2002).

<sup>30</sup> See TSTCI Comments at pp. 2-3.

Under the current system, CETCs cannot submit costs for reimbursement. If they did, the levels of support they would receive in early years would be much greater than the levels paid out to date. The Commission understood that the only way to properly support a competitor, even if it has a lower cost structure, is to support all of its lines. The reason is that most CETCs have far fewer lines than an ILEC, and that a CETC cannot receive support unless it has a customer. When a CETC customer drops off, support for that line ceases and there is no way to reaverage those costs into a CETC's rate base to make up for it.

If CETCs are paid as NTCA suggests, the level of support would be so small as to prevent CETCs from meeting their commitment to serve an entire service area. In short, there would be little or no new infrastructure development in rural America, and no competitive entry by CETCs.

**C. “Regulatory Disparity” Should Be Rejected as a Justification**

CenturyTel claims that a wireless CETC may serve only a portion of an entire study area and may not be required to invest in and serve the entire study area, thereby reducing its costs.<sup>31</sup> CenturyTel's comments ignore the fact that ILECs were given the ability to greatly reduce and in many cases eliminate the possibility of a competitor cream skimming an ILEC's study area. The *Fourteenth Report and Order* set forth paths of disaggregation which would more accurately target support, yet only 10% of rural ILECs took the opportunity to protect their low-cost areas from competitive entry.

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<sup>31</sup> See CenturyTel Comments at p. 11.

Wireless carriers are not licensed along ILEC boundaries, and it would be anticompetitive to deny them eligibility for high-cost support based on this mismatch of boundaries, which is a result of the technology they use.<sup>32</sup> Moreover, if support is properly disaggregated, the fact that a wireless carrier does not serve all of an incumbent's study area is not a concern. If a wireless carrier is only licensed to serve low-cost areas, it should receive little or no support. If a wireless carrier is only licensed to serve high-cost areas, it should receive high-cost support. In either event, it is up to the ILEC to target support to high-cost areas so as to conserve the universal service funds and ensure that they are not spent in low-cost areas.

Cream skimming arguments should be limited to a CETC applicant that actually attempt to engage in such conduct. If a wireless carrier proposes to serve its entire licensed service area in high-cost regions, then surely there can be no argument that it is attempting to cream skim. Indeed there is no rule which requires the service area of an ILEC to match that of a CETC. CenturyTel's attempt to put the responsibility for cream skimming on CETCs is completely misplaced. A CETC cannot control how an ILEC's support is disaggregated — it can only protest when it is done in an anticompetitive fashion.<sup>33</sup>

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<sup>32</sup> See Petition by Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at pp. 4, 12 (filed Aug. 1, 2002).

<sup>33</sup> See, e.g., *In the Matter of the Application of Wiggins Telephone Association for Approval of its Disaggregation Plan*, Docket No. 02A-276T, N.E. Colorado Cellular's Petition to Intervene and Service Designation, filed with the Colorado Public Utilities Commission on June 6, 2002.

CenturyTel erroneously suggests that a CETC's universal service support amounts may increase when it does not invest in a rural community.<sup>34</sup> Even if true, that possibility represents pennies compared to the huge amount of support potentially wasted by ILECs who chose Path 1 disaggregation, leaving potentially millions of support in low-cost areas available to CETCs. Far from there being uncertainty, as Verizon suggests,<sup>35</sup> ILECs intentionally avoided disaggregation, which fosters competitive entry. In so doing, they have been able to force CETCs to engage in separate and often lengthy proceedings on disaggregation, forestalling competition even further.

CenturyTel has been a leader in this area. In New Mexico, without ever officially opposing the application of Smith Bagley, Inc. ("SBI") to provide service on Native American lands, it engineered lengthy delays through the New Mexico Exchange Carriers Group to forestall competitive entry. Claiming that service area redefinitions were not appropriate and that SBI failed to serve a fractional area within a remote desert, CenturyTel effectively blocked Native Americans from obtaining basic telephone service. In an area where less than half of the houses have a telephone, and where CenturyTel has completely failed to reach out and improve telephone services, such conduct is lamentable.

They have acted similarly in Colorado. CenturyTel has tried to block the service area redefinition that the Colorado PUC has proposed to the FCC. Again, the losers are rural customers who are waiting for infrastructure investment that will not happen in the absence of high-cost support.

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<sup>34</sup> See CenturyTel Comments at p. 8.

<sup>35</sup> See Verizon Comments at p. 5.

CenturyTel wrongly claims that CETCs are not required to certify how they used the support. Many states, such as Mississippi, require detailed plans to be submitted demonstrating how support will be used, and in fact the Mississippi commission recently re-certified Cellular South License, Inc. for 2003 based upon plans they submitted this summer. Other states require a certification along the lines of the FCC's requirement that funds will only be spent in accordance with the law. These requirements are generally competitively neutral and appropriate.

**D. NTCA's "Disincentive to Invest" Theory Finds No Adherents**

NTCA's suggestion that rural ILECs will withhold investment in the absence of "certainty" must be soundly rejected.<sup>36</sup> These threats are code words for, "if you ensure our monopoly, we promise to invest in our communities," and they contain echoes of AT&T's brazen attempt to lobby its competition out of existence in the mid-1970's.<sup>37</sup> Like AT&T's ill-fated legislative gambit, NTCA's attempt to trick regulators into making a "deal with the Devil" must fail. Other ILEC-oriented commenters, evidently recognizing that NTCA has gone too far with this argument, correctly declined to lend their support to the theory.

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<sup>36</sup> See Petition at p. 14.

<sup>37</sup> In 1976, AT&T engaged in an all-consuming lobbying campaign to pass a bill called the Consumer Communications Reform Act (CCRA), commonly known as the "Bell Bill." Had it passed, the Bell Bill would have authorized AT&T to provide long-distance service as "utility" functions in a single, integrated system, and it would have immunized AT&T against all antitrust suits and authorized it to buy out all of its competitors. Much like NTCA in its Petition, AT&T attempted to justify the legislative eradication of its competitors by pointing to the allegedly harmful effects of competition on AT&T's ability to invest in and operate its network. See Steve Coll, *THE DEAL OF THE CENTURY: THE BREAKUP OF AT&T* at 92-95 (1986).

If rural ILECs are *not* spending high-cost funds to invest in the communities for which the funds are intended, then some of their support dollars should be returned.<sup>38</sup> It is one thing to withhold investment because of uncertain government policies — it is quite another to withhold it when a company is receiving support which is required to be invested.

At last week's Goldman Sachs conference in New York, Chairman Powell extolled the virtues of facilities-based competition.<sup>39</sup> Notwithstanding the finger-pointing by NTCA, facilities-based competition in rural areas is the only way to reduce the high-cost fund. The course the FCC has chosen — to make support explicit, portable, competitively and technologically neutral, and to encourage competitive entry — is the right one.

The telecommunications network in this country has advanced by leaps and bounds since the 1984 break up of the Bell System. It is no accident that most of the advances that have improved services and prices for consumers have been in the unregulated or less-regulated areas such as long distance, customer premises equipment, and wireless telephony. Monopoly control of the local exchange bottleneck has resulted in Americans being stuck with, among other things, dial-up Internet connections, high-priced and low-value DSL, and high local exchange and intra-LATA toll rates.

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<sup>38</sup> See 47 U.S.C. § 254(e); *Fourteenth Report and Order, supra*, 16 FCC Rcd at 11317-19.

<sup>39</sup> See Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Goldman Sachs Communicopia XI Conference, New York, NY (Oct. 2, 2002) (“Only through facilities-based competition can an entity bypass the incumbent completely and force the incumbent to innovate to offset lost wholesale revenues.”)

As multiple commenters emphasized, facilities-based competitive entry will force ILECs to invest in new subscriber plant, improve operating efficiencies, and better serve their customers.<sup>40</sup> The Commission's current pro-competitive ETC rules are helping to drive such competition. Rather than step back, as NTCA has requested, the Commission should charge forward and require the Joint Board to bring the universal service system for rural carriers to the next level so that when the current transitional period concludes there will be a stable fund with competition flourishing in rural areas across the country.

**E. High-Cost Support to Competitive ETCs Is Not Responsible for the “Ballooning” Universal Service Fund**

Apparently disagreeing with NTCA's assertion that CETCs are somehow “eroding” ILECs' high-cost support,<sup>41</sup> several commenters representing ILECs expressed the opinion that, far from eroding support to ILECs, CETCs are contributing to the “ballooning” of the Universal Service Fund.<sup>42</sup>

In emphasizing the growth of the Fund and placing the blame squarely on “duplicative support” to CETCs, the ILECs completely miss the mark. As of the date of this filing, CETCs receive only a tiny portion of the total support;<sup>43</sup> CUSC points out that CETCs currently receive only about 2% of federal high-cost funds.<sup>44</sup> Thus, it is clear the primary beneficiaries of the

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<sup>40</sup> See CUSC Comments at p. 22; WUTC Comments at p. 7.

<sup>41</sup> See Petition at p. 14.

<sup>42</sup> See, e.g., CenturyTel Comments at p. 8; MIC Comments at p. 1; TSTCI Comments at p. 1; Verizon Comments at p. 1.

<sup>43</sup> See WUTC Comments at p. 2.

<sup>44</sup> See CUSC Comments at p. 15.

swelling Fund have been the ILECs themselves. As CTIA correctly observes, “additional lines provided by an ILEC also increase universal service funding requirements.”<sup>45</sup> ARC also agrees with CTIA that, had they truly been concerned about fund growth, NTCA and its supporters might have proposed that only one line per address or one line per carrier receive high-cost support.<sup>46</sup> Not surprisingly, NTCA tailored its proposal to limit Fund growth except where it might affect the level of support to ILECs and all of the lines they serve.

In addition to “duplicative” support to multiple ILEC lines, the ILECs’ continued receipt of high-cost funds based on embedded costs is similarly blameworthy. ARC is puzzled by Verizon’s claim that funding requirements for Interstate Common Line Support (“ICLS”) and Interstate Access Support (“IAS”) are contributing to excessive growth of the Fund. The Commission has done exactly what Congress has asked it to do — remove implicit support from carriers’ rates and make them explicit.<sup>47</sup> The American public is not paying any more for telecommunications services as a result of ICLS and IAS being removed from carriers’ rate bases. By making ICLS and IAS explicit, the Commission’s rules ensure that customers will pay for them through the universal service charge on their bills, rather than in their rates, as access charges and other implicit subsidies are correspondingly reduced.

The not-so-artful misdirection engaged in by NTCA and Verizon should be ignored. It is not competitive ETCs who are substantially increasing the size of the fund, it is rural ILECs, who continue to be paid on the modified embedded cost mechanism, the entire premise of which has

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<sup>45</sup> CTIA Comments at p. 7 n.20.

<sup>46</sup> *See id.*

<sup>47</sup> *See* 47 U.S.C. § 254(e).

been called into question by the Supreme Court.<sup>48</sup> The “progress” that NTCA seeks to make by cutting out the roughly \$50 million in high cost support being collectively received this year by its competition is dwarfed by the savings which could be made if the government supported rural carriers based on economic costs.

If the modified embedded cost system is to remain, then the only way to control the size of the fund is to introduce competition, which will force ILECs to improve operational efficiencies and streamline operations, thus reducing the level of support required to provide service in rural areas. Any reduction in support to ILECs will likewise reduce support to CETCs. By contrast, NTCA’s proposal would ensure that ILECs will retain not only a monopoly, but a support level that will leave them without an incentive to become more efficient. NTCA’s members do not desire efficiency, only a guarantee that competition will not darken their doorstep. Indeed, the changes proposed in the Petition would give them a lucrative window of opportunity to deliver high-speed access to their subscribers without competition.

## **V. Conclusion**

Universal service reform cannot be undertaken piecemeal. And it cannot be solved by swinging a hatchet in an area where the appropriate tools are a needle and thread. Congress has given the Commission direction on the big picture — make universal service subsidies explicit and improve the lives of people in rural areas by making choices in telecommunications available to them. As many of the commenters properly note, NTCA’s piecemeal and obviously anticompetitive proposal will lead to unintended and uncertain consequences. Moreover, the

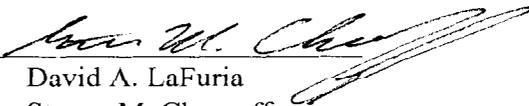
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<sup>48</sup> See *Verizon Communications v. FCC*, 122 S.Ct. 1646, 1661-62 (2002).

initial comments reflect a wide range of concerns with respect to the high-cost rules — concerns that are best addressed as part of the comprehensive process established by the *Fourteenth Report and Order*, not by a selectively targeted petition for rulemaking. Accordingly, NTCA's Petition should be denied.

Respectfully submitted,

Alliance of Rural CMRS Carriers

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October 7, 2002

CERTIFICATE OF SERVICE

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 7<sup>th</sup> day of October, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Reply Comments of the Alliance of Rural CMRS Carriers* filed today to the following:

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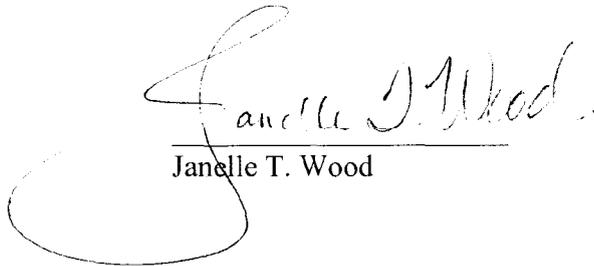
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