



January 27, 2003

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., TW-A325  
Washington, D.C. 20554

Re: *ExParte* Notice

Access Charge Reform, CC Docket No. 96-262  
Universal Service, CC Docket No. 96-45, RM-10522  
Number Portability, CC Docket 95-116  
Attribution of Cooperative Director Income In Spectrum Auctions, WT Docket No. 97-82  
Wireline High-Speed Internet Access, CC Docket No. 02-33, CC Docket No. 01-337  
Voice Over Internet Protocol Telephony, WC Docket No. 02-361  
Spectrum Policy for Rural Areas, WT Docket No. 02-381, RM # 02-135, ET Docket No. 02-135

Dear Ms. Salas:

On Friday, January 24, 2003, Commissioner Jonathan Adelstein and Lisa Zaina, Senior Legal Advisor for Commissioner Adelstein met with L. Marie Guillory and Daniel Mitchell of the National Telecommunications Cooperative Association. Issues in the above-referenced proceedings were discussed at the meeting. A summary of NTCA's positions on the issues was provided and used to facilitate the discussion. Enclosed please find a copy of the summary.

In accordance with the FCC's rules, an original and two copies of this letter are being filed with the Secretary's office. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Daniel Mitchell  
Daniel Mitchell

Enclosure

cc: Commissioner Jonathan Adelstein  
Senior Legal Advisor, Lisa Zaina



**Ex Parte Meeting**  
**Commissioner Jonathan Adelstein**  
**January 24, 2003**

- 1 Universal Service Contribution Methodology:** In the Matter of USF Contribution Methodology System (R&O & 2<sup>nd</sup> FNPRM 12/13/02, FCC 02-329) CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, & 98-170

The Commission should gain experience with the interim measures it adopted recently before it changes the contribution methodology permanently. Experience with the interim measure may prove that raising the wireless safe harbor to 28.5% will stabilize the fund. It is necessary to expand the pool of contributors to include others who provide services that compete with those provided by telecommunications providers or that benefit from interconnecting with the public switched network. These include cable, satellite and broadband Internet access providers. The Commission should exercise its permissive authority to continue to assess the revenues associated with the “telecommunications component” of reclassified services if it reclassifies wireline high-speed Internet access services as “information services.” Section 254(d) of the Act gives the Commission permissive authority to assess these “other providers of interstate telecommunications.”

- 2 Universal Service Portability Rules:** NTCA’s Petition for Reconsideration regarding the portability of Interstate Common Line Support (ICLS) in 14<sup>th</sup> R&O, (CC Dockets 00-256, 96-45, 98-77 and 98-166 ) filed May 23, 2002; NTCA’s Petition for Interim Rules to Define "Captured" and "New" Subscriber Lines For Purposes of Receiving Universal Service Support, Pursuant to 47 C.F.R. § 54.307 et seq, RM-10522, filed July 26, 2002

In the 7-year course of designing support mechanisms and implementing access reform, the Commission has adopted rules which skew the goals of the Act by making universal service the handmaid of competition. As a result, multiple carriers are eligible to receive support regardless of their obligation to provide carrier of last resort services. The long-term sustainability of the fund is threatened by the existing duplication of support which in the case of wireless carriers is based on customer billing addresses that may or may not have a relationship to where the service is provided. The Commission should take affirmative steps to maintain universal service by modifying rules which distort the intent of the Act. The 1996 Act makes universal service a discrete goal intended to achieve reasonably comparable services and rates between rural and urban areas. Support should not be used to create artificial competition in areas that cannot otherwise support multiple carriers.

NTCA’s Petition for Reconsideration in CC Docket 00-256 shows that the Commission cannot at the same time comply with the requirements of Section 254(e) and make ICLS available to carriers that have no loops and incur no costs associated with the provision of loop facilities.

NTCA's Petition for Interim Portability Rules, RM-10522, is referenced in the November 7, 2002 Order in CC Docket No. 96-45 referring a wide range of "portability" issues to the Joint Board on Universal Service. NTCA welcomes a review of the high cost support rules.

- 3 FCC Designation of Eligible Telecommunications Carriers:** In the Matter of Federal-State Joint Board on Universal Service, RCC Holdings, Inc, Petition for Designation As an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, CC Docket No. 96-45, DA 02-746; In the Matter of Federal-State Joint Board on Universal Service Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama, CC Docket No. 96-45, DA 02-1465; In the Matter of Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR § 54.207(c), For Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., A Rural Telephone Company, CC Docket No. 96-45, DA 02-2382

Application of the existing rules on the designation of eligible telecommunications carriers (ETCs) ignores the "public interest" finding that the Act requires prior to the designation of additional ETCs in rural telephone company service areas. Beginning with the Wyoming ETC Order, DA 00-2896 (rel. Dec. 26, 2000), the Commission has rubber stamped requests for ETC designation in rural telephone company service areas. Each time it has routinely concluded that the public interest is synonymous with the introduction of competition in these areas. The Commission should review the ETC policy.

- 4 Intercarrier Compensation:** In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; In the Matter of Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic, CC Docket No. 01-92, DA 02-2436

The nearly 2-year old record in this proceeding should be refreshed before the Commission proceeds further. Access reform for rate of return carriers was implemented after this proceeding began. Any additional change in the existing access structure will have a significant impact on the customers of rate of return companies. Access reform involved increases in end user rates and cost shifts to universal service. Additional cost shifts to the end user are likely to have a severe impact on rates in very high cost areas where calling scopes are limited in comparison to urban areas. Also, shifting yet more revenue recovery to universal service increases the uncertainties associated with reliance on support.

- 5 Number Portability:** In the Matter of Numbering Resource Optimization, CC Docket No. 99-200; In the Matter of Telephone Numbering Portability, CC Docket No. 95-116

On May 6, 2002, NTCA filed comments urging the FCC to exempt all ILECs with switches inside the largest 100 MSAs from local number portability (LNP) and thousand-block number pooling (TBNP) requirements, until a rural ILEC has received a request for LNP from a competing carrier and is LNP capable. NTCA also urged the FCC clarify its rules so that rural ILECs with switches located outside the largest 100 MSAs that have lines inside the MSAs, are exempt from LNP and TBNP requirements, absent a specific request for LNP.

- 6 Attribution of Cooperative Director Income In FCC auctions:** In the Matter of Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures, WT Docket No. 97-82; In the Matter of Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, DA 02-2152

In a Fifth Report and Order released on August 14, 2000 the Commission implied that onerous attribution rules apply to officers and directors of rural telephone companies organized as cooperatives. The rules attribute the gross revenues of the outside business activities of cooperative directors to the cooperative for the purpose of determining whether a cooperative is eligible for bidding credits in spectrum auctions.

Cooperative directors have no greater financial interests in the coop than any other member that takes service from the coop. The outside income of directors is not available to the coop. Moreover, board members economic interests in the coop are the same as that of any other member. Every cooperative member has one vote regardless of the business it does with the cooperative and all members participate in margins on the basis of their patronage.

NTCA supports a pending petition for reconsideration of the rule. The attribution rule does not benefit the public. It is punitive because board members are forced to disclose private information about their income before the cooperative can avail itself of bidding credits.

- 7 FCC Spectrum Policy for Rural Areas:** In the Matter of Facilitating the Delivery of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (NOI 12/20/02, FCC 02-325); Spectrum Policy Task Force Report (DA 02-3400)

Section 309(j) of the Act gives the Commission the ability to refine and modify its rules to facilitate the delivery of spectrum-based services in rural areas. The rules for auctioning the C-block in the lower 700 MHz auction were an example of successful policy. In that auction, the Commission licensed the C-block over 734 MSAs and RSAs.

The smaller license sizes enabled rural telephone companies to participate in the auctions and gain licenses. The Commission should set aside a similar block based on MSAs and

RSAs in all auctions. In addition, it should consider a range of options that promote deployment in rural areas. These include partitioning and disaggregation and “use it or lose it” options that minimize the delay in rural deployment.

- 8 Redefinition of Wireline High-Speed Internet Access:** In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities -Universal Service Obligations of Broadband Providers (CC Docket No. 02-33, FCC 02-42); In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337, FCC 01-360

Rate of return companies are very different from companies regulated under price caps. These differences need to be considered before the Commission redefines broadband Internet access services provided by ILECs as “information services.” The Commission should not “redefine” these services before it can determine how it will impact network, rural telephone companies and the delivery of services to rural America. The redefinition implicates universal service and the ability of ROR carriers to continue to deploy broadband in rural areas. Universal service in rural areas should not be sacrificed for the sake of achieving regulatory parity.

- 9 Voice Over IP Telephony:** In the Matter of AT&T Petition for Declaratory Ruling Requesting Phone-to-Phone IP Telephony, WC Docket No. 02-361, DA 02-3334

AT&T’s petition seeks to have the Commission declare phone-to-phone Internet protocol (IP) service exempt from paying access charges. This is a preemptive attempt to evade paying legitimate access charges and avoid making lawful universal service fund (USF) contributions. AT&T couched its petition as a request for access charge exemption, but if adopted, it would have an increasingly severe effect on universal service and separations. The petition should be dismissed and the USF and separations issues masked in the petition should be referred to the Federal-State Joint Boards on Universal Service and Separations. The comments filed in the proceeding should also be made part of the record in the unified intercarrier compensation docket. Various types of voice-over Internet protocol (VOIP) services are emerging and the future application of access charges to these types of services should be thoroughly considered in the NPRM. Phone-to-phone IP telephony service should be classified as “telecommunications service” and the Commission should require all providers of such service to pay access charges and make contributions to the universal service funding mechanisms.