NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
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October 24, 2007

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

Ex Parte Notice

Re: In the Matter of the Federal-State Joint Board on Universal Service Proceeding on Long-Term Comprehensive High-cost Universal Service Reform, WC Docket 05-337, and CC Docket 96-45.

In the Matter of Telephone Number Portability Initial Regulatory Flexibility Analysis, CC Docket No. 95-116.

Dear Ms. Dortch:

On Tuesday, October 23, 2007, Scott Bergmann, Commissioner Adelstein's Legal Advisor for Wireline Issues met with Lennis Kelly with Danville Telecom in Danville, Iowa, Heath Mallory with the Western Iowa Telephone Association in Lawton, Iowa, Don Jennings with Partner Communications Cooperative in Gilman, Iowa, Sheila Navis with the Rural Iowa Independent Telephone Association (RIITA), and Daniel Mitchell with the National Telecommunications Cooperative Association.

During the meeting the Iowa representatives presented the Iowa Utilities Board's 2006 broadband survey results which showed that 92.9 percent (1,144 out of 1,231) of Iowa communities currently have access to one or more types of high-speed Internet technology. In the 962 rural communities throughout Iowa, 95.3 percent (918 rural communities) currently have access to high-speed Internet access. These results clearly demonstrate that the existing model for determining rural ILEC high-cost universal service support is making broadband available to consumers living in rural, high-cost areas throughout Iowa and the United States. NTCA and the Iowa companies urge the Commission and the Federal-State Joint Board on Universal Service (Joint Board) to continue to use the current model for determining rural ILEC high-cost universal service support. In addition, we recommended that the FCC and Joint Board adopt NTCA's Universal Service Fund (USF) Long-Term Reform Plan filed with the Joint Board in the above-referenced dockets on Monday, October 1, 2007, to address the problems associated with the explosive growth of competitive eligible telecommunications carrier (CETC) USF support, the inefficiencies of Identical Support Rule, and the lack of broadband deployment in unserved areas throughout the United States. NTCA's presentation was consistent with its comments made in its October 1, 2007 filing.

NTCA's Five-Point Long-Term USF Reform Plan specifically calls for:

- Eliminating the identical support rule.
- Prohibiting the portability of access cost recovery support (interstate common line support (ICLS), local switching support (LSS), and interstate access support (IAS)) to wireless competitive eligible telecommunications carriers (CETCs).

- Opening a proceeding to determine the future basis of support to CETCs.
- Opening a redefinition proceeding to consider whether to include broadband in the definition of universal service and if so, how to include broadband in that definition.
- Considering a broadband pilot USF grant program for non-rate-of-return carriers in unserved areas. Enclosed please find a copy of NTCA's Long-Term USF Reform Plan.

In addition, NTCA presented its recommendations as to how the Commission should rule on the March 11, 2005, United States Court of Appeals for the District of Columbia Circuit remand finding that the FCC failed to follow the Regulatory Flexibility Act when it chose not to prepare a regulatory flexibility analysis as part of its Intermodal Local Number portability (LNP) order in CC Docket No. 95-116.[1]

NTCA demonstrated in its initial and reply comments in this proceeding (see enclosed comments) that it is technically infeasible for rural ILECs to comply with the rating and routing requirements of the Intermodal LNP Order in the absence of established points of interconnection (POI) with wireless carriers. In addition, the high per-subscriber costs of deploying intermodal LNP, coupled with low demand for wireline-to-wireless porting, imposes significant economic burdens on rural ILECs that the Commission must address under its regulatory flexibility analysis and establish separate rules for rural ILECs to address these substantial economic burdens. As part of its regulatory flexibility analysis, NTCA urges the Commission to extend the stay of the Intermodal LNP Order[2] for rural incumbent local exchange carriers (ILECs) until the issues related to the rating and routing of calls to ported numbers and rural ILEC transport responsibilities are resolved. NTCA recommends that when the Commission does address the rating, routing and transport responsibilities associated with intermodal LNP it should require all wireless carriers requesting intermodal LNP to be responsible for incurring the cost to distant a POI located outside a rural ILEC's service area or to a distant POI located within a rural ILEC's network but beyond the ILEC's local calling area.[3]

Specifically, the Communications Act of 1934, as amended (Act), only requires ILECs to provide interconnection services and arrangements "at least equal in quality to those provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."[4] Rural ILECs are not required to pay for the cost of transporting a competitors traffic to a distant POI outside their service area or to a distant POI located within it local network but beyond the rural ILEC's local calling area. Rural ILECs are also not required by the Act to provide interconnection arrangements or interconnection services to competitive local exchange carriers (CLECs), Commercial Mobile Radio Service (CMRS) providers, and Regional Bell Holding Companies (RBOCs) that are greater than the quality of those services the rural ILEC provisions for itself.

Requiring rural ILECs to provide extraordinary and costly transport to distant locations for calls would represent an enhanced interconnection arrangement for competitors at the expense of rural ILECs. Such superior interconnection arrangements have been found by the U.S. Court of Appeals for the 8th Circuit as not required by ILECs under the Act.[5] The Act does not require ILECs to offer a new form of superior exchange service to competing carriers simply because a competitor has unilaterally chosen to interconnect with another carrier at a distant location and has decided not to interconnect directly within a two percent carrier's local calling area where the competitor's calls are completed. The Act also does

[1] *U.S. Telecom Assn. v. FCC*, 400 F.3rd 29 (D.C. Cir. 2005).
[2] *U.S. Telecom Assn, v. FCC*, 400 F.3d 29, 43 (D.C. Cir. 2005).
[3] See NTCA's Reply Comments filed In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92, pp. 9-14 (July 20, 2005).
[4] § 251(c)(2)(C) of the Act.
[5] *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744 (8th Cir. 2000). The U.S. Court of Appeals for the 8th Circuit found referring to 47 U.S.C. § 251(c)(2)(C),("Nothing in the statute requires the ILECs to provide superior quality of interconnection to its competitors.").

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4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
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not require a rural ILEC to be forced to incur costs to transport traffic to distant locations based on the sole desire of a competitor. An ILEC's obligation to direct CMRS traffic to distant POIs and to include this traffic in the rural ILEC's local calling service offering should depend on whether the requesting CMRS carrier or other competing carrier is willing to pay for the additional cost of such transport.

The Commission should therefore require that all wireless carriers requesting intermodal LNP are responsible for incurring the cost to distant a POI located outside a rural ILEC's service area or to a distant POI located within a rural ILEC's network but beyond the ILEC's local calling area.[6] Until wireless carrier rating, routing and transport requirements are adopted and implemented, the Commission should extend the stay of the Intermodal LNP Order for rural ILECs.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter and enclosure is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact the undersigned at (703) 351-2016.

Sincerely,

/s/ Daniel Mitchell
Daniel Mitchell
Vice President, Legal and Industry

cc: Scott Bergmann, Commissioner Adelstein's Legal Advisor for Wireline Issues

[6] See NTCA's Reply Comments filed In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92, pp. 9-14 (July 20, 2005).

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