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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

INITIAL COMMENTS

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TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 2

II. THE COMMISSION SHOULD INCLUDE BROADBAND IN THE FUTURE DEFINITION OF UNIVERSAL SERVICE. 8

III. THE COMMISSION MUST EXPAND THE BASE OF USF CONTRIBUTORS TO INCLUDE ALL BROADBAND PROVIDERS. 9

IV. THE COMMISSION MUST ADOPT AND IMPLEMENT A HIGH-COST USF REFORM TRANSITION PLAN THAT WILL FAIRLY AND EQUITABLY MOVE THE COMMUNICATIONS INDUSTRY FROM THE PUBLIC SWITCHED TELECOMMUNICATIONS NETWORK WORLD TO THE BROADBAND INTERNET PROTOCOL WORLD. 12

V. THE COMMISSION SHOULD REQUIRE ALL CARRIERS SEEKING ADDITIONAL OR NEW FEDERAL HIGH-COST BROADBAND UNIVERSAL SERVICE SUPPORT TO SUBMIT THEIR TITLE II REGULATED COSTS, REVENUES, AND EARNINGS WHEN DETERMINING THEIR FUTURE FEDERAL HIGH-COST USF SUPPORT DISBURSEMENTS. 18

VI. THE COMMISSION MUST ELIMINATE THE IDENTICAL SUPPORT RULE AND REQUIRE ALL CARRIERS TO BASE THE FUTURE HIGH-COST UNIVERSAL SERVICE SUPPORT ON EACH CARRIER'S OWN COSTS..... 19

VII. THE COMMISSION SHOULD BASE FUTURE CETC USF SUPPORT ON EACH CETC'S OWN COSTS. 22

VIII. IN THE LONG-TERM, THE FCC SHOULD DETERMINE THE FUTURE BASIS OF HIGH-COST USF SUPPORT FOR VARIOUS SIZED WIRELESS CETCs AND OPEN A PROCEEDING TO ESTABLISH THE REQUIREMENTS AND THE SPECIFIC METHODOLOGY FOR DETERMINING ACTUAL COST-BASED SUPPORT FOR CETCs. 24

IX. THE COMMISSION SHOULD SERIOUSLY CONSIDER THE PANHANDLE PROPOSAL AND THE ADVOCATES FOR REGULATORY ACTION PROPOSAL AS COST-BASED ALGORITHMS FOR DETERMINING FUTURE WIRELESS CETC HIGH-COST USF SUPPORT. 26

X. A MEANINGFUL "PUBLIC INTEREST" TEST MUST BE APPLIED IN FUTURE CETC DESIGNATIONS THAT AFFECT RURAL ILEC AREAS. 27

XI. THE APPLICATION OF REVERSE AUCTIONS AS A MECHANISM FOR DETERMINING FUTURE HIGH-COST USF SUPPORT WOULD BE A SERIOUS MISTAKE THAT WOULD HARM CONSUMERS SIGNIFICANTLY. 30

A. THE COMMISSION SHOULD DISMISS REVERSE AUCTIONS AS A MEANS OF DETERMINING HIGH-COST UNIVERSAL SERVICE SUPPORT. 31

B. THE DISAGREEMENT AMONG COMMENTERS SERVES TO ILLUSTRATE THE COMPLEXITY AND INHERENT DANGER OF USING REVERSE AUCTIONS FOR DETERMINING HIGH COST UNIVERSAL SERVICE SUPPORT DISBURSEMENT. 34

C. NO COMMENTER WAS ABLE TO PROVIDE A COMPARABLE REAL-WORLD EXAMPLE OF REVERSE AUCTIONS BEING SUCCESSFULLY UTILIZED. 35

D. GROUPS REPRESENTING THOSE AREAS IN NEED OF UNIVERSAL SERVICE SUPPORT ARE IN UNANIMOUS AGREEMENT—REVERSE AUCTIONS ARE UNWORKABLE. 37

E. THE EXPERIENCE OF SELECTING TRS PROVIDERS SERVES AS AN ILLUSTRATION OF THE DANGERS INHERENT TO REVERSE AUCTIONS. 37

F. THE CTIA, VERIZON, AND ALLTEL REVERSE AUCTION PROPOSALS CITED IN THE NOTICE ARE NOT VIABLE SOLUTIONS TO THE PROBLEM OF A BALLOONING HIGH COST UNIVERSAL SERVICE FUND. 40

G. NONE OF THE PROPOSALS DEALS SPECIFICALLY WITH THE ISSUE OF STRANDED INVESTMENT. 42

H. REVERSE AUCTIONS ARE AT ODDS WITH THE ACT WHICH REQUIRES "SPECIFIC, PREDICTABLE, AND SUFFICIENT" UNIVERSAL SERVICE SUPPORT MECHANISMS. 44

XI. CONGRESS NEVER INTENDED NOR GRANTED STATE COMMISSIONS WITH THE STATUTORY AUTHORITY TO DISTRIBUTE FEDERAL HIGH-COST USF SUPPORT. 46

XII. AS PART OF ITS REGULATORY FLEXIBILITY ANALYSIS, THE COMMISSION MUST ADDRESS TRANSPORT COSTS THAT ARE NOT COVERED IN THE CURRENT HIGH-COST MECHANISM WHICH CAN BE HARMFUL TO RURAL CARRIERS AND THEIR CUSTOMERS. 49

XIII. AS PART OF ITS REGULATORY FLEXIBILITY ANALYSIS, THE COMMISSION SHOULD PLACE REQUIREMENTS ON LARGE VERTICALLY INTEGRATED PROVIDERS OF SPECIAL ACCESS TRANSPORT TO THE INTERNET BACKBONE TO PREVENT ABUSE OF MARKET POWER AND AVOID UNDUE ECONOMIC BURDENS ON SMALL RURAL LECs. 51

XVI. CONCLUSION 52

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INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] hereby submits these initial comments in response to the three Notices of Proposed Rulemaking (NPRMs) released on January 29, 2008, by the Federal Communications Commission (Commission or FCC) in the above referenced dockets. In these NPRMs the Commission seeks comment on long-term comprehensive high-cost universal service fund (USF) reform.[2]

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 584 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (RLECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] *In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, Notices of Proposed Rulemakings (NPRMs), WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), FCC 08-5 (Reverse Auctions NPRM), and FCC 08-22 (Federal-State Joint Board NPRM)(rel. January 29, 2008).

I. INTRODUCTION AND SUMMARY

NTCA urges the Commission to adopt and implement a comprehensive high-cost universal service fund (USF) reform plan that will fairly and equitably transition the communications industry from the public switched telecommunications network (PSTN) world to the Internet protocol (IP) broadband world. The Joint Board realized the critical importance of supporting rural areas in its endorsement of the Provider of Last Resort Fund (POLR).[3] Unfortunately, the Joint Board failed to account for the additional funding required to supplant access charges. The Joint Board, instead, was focused on cost containment of universal service funding. While NTCA agrees that funding should be structured to prevent future fraud, waste, and abuse, NTCA believes that significant additional funding is required to provide specific, sustainable and sufficient future high-cost support for broadband deployment and investment. Without such additional funding, universal service in rural areas will be seriously jeopardized as access revenues continue to decline.[4] Considering both of these objectives, NTCA recommends that the Commission should include the following provisions in its high-cost universal service reform plan:

1. Include broadband in the future definition of universal service.

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[3] *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4, released November 20, 2007 ("Federal-State Joint Board Recommended Decision"), ¶ 39. NTCA opposes the creation of three separate funds (Provider of Last Resort Fund, Mobility Fund and Broadband Fund) at this time as there are more urgent requirements in order to bring broadband services to rural areas. The Commission certainly must address the explosive growth and inequity in wireless CETC USF support and should first fix the Identical Support Rule by requiring all CETCs to base their USF support on their own costs. The Commission would also need to ultimately determine whether the creation of three new funds as proposed would be in the public interest. To do otherwise will seriously jeopardize existing and future high-cost funding for all eligible carriers.

[4] For those regulatory structures that adjust rates to cost, as is the case in the interstate jurisdiction for rate-of-return rural incumbent local exchange carriers (ILECs), declining demand will cause rate increases. At some point in time, rural ILEC rates will not remain sustainable because interexchange carriers will withdraw service from rural ILEC service areas. In contrast, for those regulatory structures that have frozen rates, as is the case in many states, declining demand will result in access revenue reductions. Throughout these comments, NTCA will refer to access revenue decreases as being the result of demand decreases; however, unsustainable rates may also be an outcome.

2. Expand the USF contribution base to include all broadband service providers – landline, cable, wireless, electric, and satellite.

3. Leave the existing landline federal high-cost voice USF mechanisms unchanged during the transition to include broadband in the definition of universal service.

4. Manage the transition to IP, where access charges will no longer support the network, by distributing additional universal service money only to the extent necessary to recover expenses and earn an authorized rate of return on all broadband investment. Such additional monies would only be available to those companies who voluntarily agree to such regulatory scrutiny.

   i. Once broadband is included in the definition of universal service and is Title II regulated, a company that opts to receive broadband universal service funding will voluntarily agree to additional regulatory scrutiny over its Title II regulated revenues and expenses.[5] The company will include its Title II costs and revenues associated with broadband deployment in the computation of the company's future earnings levels.

   ii. For a company that chooses not to receive additional federal USF broadband support, there should be no additional regulatory scrutiny or oversight of voice USF support beyond the current FCC oversight concerning Title II rate-of-return regulated carriers which includes the review of pool earnings, federal tariff filings, certifications and audits.

5. Apply a meaningful public interest test for all future eligible telecommunications carrier designations.

6. Reject the application of reverse auctions to universal service distributions.

7. Dismiss the notion of state commissions distributing federal high-cost USF support, as Congress never intended nor granted state commissions this authority.

8. Dismiss consideration of establishing three separate funds (Provider of Last Resort Fund, Mobility Fund and Broadband Fund) until the Identical Support Rule is eliminated and all CETCs base their future federal USF support on their own costs.

9. Address rural transport costs that are not currently included in the high-cost USF mechanisms by: (a) providing additional future universal service funding to support these costs, or (b) requiring all wireless and interconnected VoIP providers to either establish a point of interconnection within a rural LEC local calling area or service area, or pay for the transport and termination of traffic outside of the small carrier's service area to avoid significant economic harm to small rural LECs and the consumers they serve.

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[5] NTCA recognizes that broadband access service is currently regulated under Title I of the Act. However, given that broadband should be included in the future definition of universal service and that all broadband service providers should be required to contribute to future broadband USF support, it is appropriate to reclassify and regulate broadband/high-speed Internet access service under Title II of the Act.

10. Eliminate the identical support rule and base future support on actual costs.

NTCA's recommendations allow for additional regulatory scrutiny concerning federal high-cost voice and broadband USF support, while creating a regulatory contract between broadband providers and the Commission. Regulators and Congress are asking carriers to build a National broadband network. Rural LECs are attempting to do their part in the rural high-cost areas they serve. Carriers operating in rural high-cost areas should neither be expected nor required to commit resources without a reasonable expectation of a return on their investment. Likewise, the Commission, Congress, and the American public are entitled to know that federal USF dollars are being used to support this National broadband network and that these USF dollars are being used prudently.

NTCA further recommends that the Commission's USF transition plan expand the USF contribution base to include all broadband service providers – landline, cable, wireless, electric, and satellite. The future IP-based public communications network will require universal service funding to provide affordable and comparable voice *and* broadband services to all Americans, urban and rural, high-cost and low-income. A fair and competitively neutral USF contribution methodology is required that will support the critical infrastructure necessary to meet the IP transmission demands of residential and business consumers.[6]

The Joint Board recognizes that the current high cost mechanisms have been effective in maintaining an essential network that serves rural local exchange carrier (RLEC) customers and that has allowed for the deployment of broadband-capable facilities.[7] In fact, the Joint Board's

[6] The Commission's most recent data on broadband subscribership demonstrates that high-speed connections continue to grow rapidly. During the first half of 2007, high-speed Internet access lines grew from 82.8 million to 100.9 million lines, an increase of 22 percent (or 18.1 million lines). *High-Speed Services for Internet Access: Status as of June 30, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 1 (March 2008). Requiring this evolving segment of the communications industry to contribute to the universal service fund will significantly lower the USF contribution assessment.

[7] Federal-State Joint Board Recommended Decision, ¶ ¶ 30 and 39.

Recommended Decision goes further to say that "RLECs have done a commendable job of providing voice and broadband services to their subscribers."[8] As a result, the Joint Board recommends the public interest will be served by maintaining the existing RLEC support mechanisms.[9] The Joint Board, however, does not go far enough. The current system that has so effectively addressed rural needs and allowed for the deployment of broadband has been supported not only by the current high cost mechanisms but also by access charge revenues. If universal service is to be sustained, the Commission must recognize and address the loss of this significant access revenue source that supports rural infrastructure and services.

Small rural LEC access revenues are declining rapidly because of the migration of traffic from those services that utilize access to those services that utilize non-access. Regardless, the same network is used for both. This rapid decline in access revenues is having an increasingly negative impact on investment certainty and the ability of rural LECs to continue to deploy and upgrade their broadband infrastructure. With the Commission's inaction on the Missoula Plan, or other proceedings, this regulated revenue stream is withering on the vine. The NPRMs recognize the value of universal service and what it has meant for rural consumers and for the deployment of broadband in rural areas.[10] If these benefits are to continue, the Commission cannot ignore this critical small rural broadband service provider issue in its comprehensive reform effort. The FCC must make this growing concern and its solution the centerpiece of the

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[8] *Ibid.*
[9] *Id.*, ¶ 39.
[10] Chairman Martin's Separate Statement in the three NPRMs states: "It is essential that we take actions that preserve and advance the benefits of the universal service program. The United States and the Commission have a long history and tradition of ensuring that rural areas of the country are connected and have similar opportunities for communications as other areas." Commissioner Adelstein's Separate Statement in the three NPRMs states: "Our choices in this proceeding will have a dramatic effect on the ability of communities and consumers in Rural America to thrive and grow with the rest of the country. History has shown that many rural consumers would be left behind if it weren't for the support made available through our universal service policies." Commissioner Tate's Separate Statement in the three NPRMs states: "[The high-cost universal service program] is an important program at the heart of rural America. Its purpose, to connect all Americans to telecommunications at affordable rates, has over the years permitted people to be connected even in rural and remote parts of our nation."

Commission's universal service reform, intercarrier compensation reform, and national broadband policy.

The Commission should further pre-condition future USF support by eliminating the Identical Support Rule and basing all carriers' USF support on their own costs. NTCA recommends that the FCC allow competitive eligible telecommunications carriers (CETCs) the option of submitting their cost data to the FCC for purposes of determining their future high-cost USF support. Those CETCs who do not submit cost support should cease to receive federal support. In addition, since wireless CETCs do not charge access, it is inappropriate for them to recover access-related support, Interstate Access Support (IAS), Interstate Common Line Support (ICLS) and Local Switching Support (LSS), even for an interim time period.

The Commission must reject the application of reverse auctions, both in areas with pre-existing landline and/or wireless infrastructure and in unserved areas. Dr. Dale Lehman[11] has written three papers[12] which provide material and substantial evidence as to why reverse auctions are not a viable option for the disbursement of high-cost universal service support in areas with preexisting infrastructure. The implementation of reverse auctions for determining the distribution of universal service in rural ILEC service areas with preexisting infrastructure and service would be a serious mistake and would be extremely harmful to communities already served by either landline and/or wireless service. Even in those areas without preexisting infrastructure, reverse auctions are simply too complex, too risky, and too costly to serve as a

[11] Director, Executive MBA in Information and Communication Technology, Director MBA program, and Professor of Economics, Alaska Pacific University.

[12] Dale Lehman, *The Use of Reverse Auctions for Provision of Universal Service*, filed on October 10, 2006 with NTCA's Initial Comments in the Universal Service Federal-State Joint Board's Reverse Auction Proceeding, WC Docket No. 05-337 and CC Docket No. 96-45 ("Lehman 10/10/06"); Dale Lehman, *Reply to Reverse Auction Comments*, filed on November 8, 2006, with NTCA's Reply Comments in the Universal Service Federal-State Joint Board's Reverse Auction proceeding in WC Docket No. 05-337 and CC Docket No. 96-45 ("Lehman 11/8/06"); and Dale Lehman, *Diversions and Essential Reforms*, filed on July 2, 2007, with NTCA's Reply Comments in the Universal Service Federal-State Joint Board's Reverse Auction proceeding in WC Docket No. 05-337 and CC Docket No. 96-45 ("Lehman 7/2/07").

legitimate means for determining the distribution of high-cost support and limiting the growth in the high-cost fund, when other, proven methods of achieving the same goals—which NTCA highlights in these comments—exist.

Furthermore, to achieve and maintain the goal of universal affordable broadband service for all Americans, the FCC should regulate the terms, conditions and prices of large providers of special access transport[13] needed to reach the Internet backbone. The Commission should also provide similar protections for the cost of the Internet backbone. These actions will ensure that large, vertically-integrated communications providers do not abuse their market power by imposing unfair and discriminatory pricing on small, rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States. To accomplish this goal, the Commission should adopt and implement the following:

1. Require large, vertically-integrated communications carriers to provide non-discriminatory access to special access transport needed to reach the Internet backbone.

2. Require large, vertically-integrated communications carriers to base the price charged for special access transport needed to reach the Internet backbone upon the cost of providing the service.

3. Require large, vertically-integrated communications carriers to provide non-affiliated companies with the same terms, conditions, and prices for special access transport needed to reach the Internet backbone as they do their affiliated companies.

4. Require large, vertically-integrated communications carriers to make publicly available all of the terms, conditions and prices for special access transport needed to reach the Internet backbone.

5. Require similar protections for the cost of the Internet backbone.

Finally, the Regulatory Flexibility Act (5 U.S.C. §601) requires the FCC to consider alternative rules that will reduce negative economic impacts on small entities. NTCA's proposed

[13] Special access transport includes, among other services, packet-switched broadband services, optical transmission services (e.g., frame relay, ATM, LAN, Ethernet, video-transmission, optical network, wave-based, etc.), TDM-based services (e.g., DS-1, DS-3, etc.), and other future transport services to reach the Internet backbone.

high-cost universal service reform recommendations would reduce the economic impact on rural consumers and small rural broadband providers. NTCA's proposals will also promote the public interest, convenience, and necessity by increasing competition and diversity in the broadband market and spur development of new advanced communications technologies and broadband deployment in America.

II. THE COMMISSION SHOULD INCLUDE BROADBAND IN THE FUTURE DEFINITION OF UNIVERSAL SERVICE.

The Commission should include broadband in the future definition of universal service by adding broadband service to the list of supported services. NTCA urges the FCC to establish a broadband universal service policy that will take into consideration the financial burdens placed on small rural LECs. The Commission needs to assist in the deployment of broadband through the use of USF support to make broadband affordable to consumers living in rural and high-cost areas. The FCC also needs to fully explore all the potential benefits, difficulties, risks and rewards associated with first defining "broadband" and then including the newly defined service into the definition of universal service. As with any technology that is changing, the definition of the broadband supported service necessarily will evolve over time.

The FCC must carefully consider the manner in which broadband is included in the universal service definition. The Commission must acknowledge the successful historical precedent rural LECs have established in fully executing the universal service public policy first introduced in 1934 for voice service. There is no basis whatsoever for believing the same level of success cannot be accomplished with regard to a future public policy that includes broadband service. Any attempt to introduce into the equation untried and unproven methods, such as reverse auctions, at best ignores this precedent. Reverse auctions fail to leverage the existing

investment in infrastructure wrought by years of successful policy implementation and would clearly result in a microeconomic inefficiency that would critically harm rural consumers.

III. THE COMMISSION MUST EXPAND THE BASE OF USF CONTRIBUTORS TO INCLUDE ALL BROADBAND PROVIDERS.

If broadband services are included in the definition of universal service, it is only logical that contributions would be based on information services as well as telecommunications services. NTCA urges the Commission to expand the pool of USF contributors to include all cable, wireline, wireless, electric, and satellite broadband Internet access providers and all voice substitute services, such as interconnected and non-interconnected VoIP services. Section 254(d) specifically provides the Commission with permissive authority to require any provider of interstate "telecommunications" to contribute to universal service. Requiring all broadband service providers and all voice substitute providers to contribute will provide sufficient universal service support and sustain long-term stability to the USF contribution methodology.

In *Brand X*, the Supreme Court stated, "the Commission reasonably concluded a consumer cannot purchase Internet service without also purchasing a connection to the Internet and the transmission always occurs in connection with information processing."[14] In the *Wireline Broadband Classification Order*, the Commission concluded that wireline broadband Internet access service provided over a provider's own facilities is an "information service."[15]

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[14] *NCTA v. Brand X*, slip op. at 20, (June 27, 2005). A copy of the *Brand X* Opinion can be found at http://www.fcc.gov/ogc/documents/opinions/2005/04-277-062705.pdf.

[15] *In the Matter of Appropriate Frameworks for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33, *Universal Service Obligations of Broadband Providers*, CC Docket No. 01-337, *Review of regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements;* CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under Section 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, Consumer Protection in the Broadband Era, WC Docket No. 05-271, FCC 05-150, ¶ 9 (rel. Sept. 23, 2005). (*Wireline Broadband Classification Order*).

The Commission also determined that "wireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service."[16] The Commission further held that "consistent with *Brand X*, such a transmission component is mere telecommunications."[17]

The regulatory classification of cable[18] and wireline broadband Internet access service as an information service does not preclude the Commission from requiring all providers of broadband Internet access service and all providers of voice substitute services to contribute to the USF mechanisms based on the revenues derived from these services. The underlying transmission component of all broadband Internet access services is "telecommunications" as defined by the Act.[19] Section 254(d) specifically provides the Commission with permissive authority to require any other provider of interstate "telecommunications to contribute to universal service."

On August 14, 2006, facilities-based wireline broadband Internet access service providers that chose to provide broadband transmission on a non-common carrier basis were no longer

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[16] *Id.*, ¶ 12. The Commission limited this order to wireline broadband Internet access service and its underlying broadband transmission component whether the component is provided over copper loops, hybrid copper-fiber loops, fiber to the curb or fiber to the premise (FTTP) network, or any other type of wireline facilities, and whether that component is provided using circuit switched, packet-based, or any other technology. ¶¶ 112-113. After a transition period established by the order, ILECs that choose to offer broadband Internet access on a common carrier basis will continue to be liable for USF contributions based on the revenues from those offerings. ILECs that choose to offer broadband Internet access on a private carriage basis after the transition, their revenues from the offering would not be subject to USF contribution assessments. ¶ 9, footnote 15.

[17] *Id.*, ¶104.

[18] *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling*, GN Docket No. 00-185; *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, FCC 02-77, ¶ 7 (rel. March 5, 2002). (cable-modem high-speed Internet access service, as it is currently offered, is classified as an interstate information service).

[19] Telecommunications is defined as the transmission, between or among points specified by the user, of information of the user's choosing, without change in form or content of the information as sent and received. 47 U.S.C. § 153(43). Information service is defined as the offering of a capability for generating acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications. 47 U.S.C. § 153(20).

required to contribute to the USF based on the revenues derived from that transmission service.[20] Apparently, the Commission believed that resulting reductions in USF contributions from these carriers will be offset by increased USF contributions from wireless carriers and interconnected voice over Internet protocol (VoIP) providers.[21] The Commission, however, provided no studies or data as part of its Interim USF Contribution Order to support such a result. If the additional contributions from wireless and VoIP providers do not offset the lost USF contributions from wireline broadband providers, then there will be a universal service support shortfall which will require an increase in the USF contribution factor. Without such a change, eventually contributions from circuit-switched services will diminish to the extent that the USF is unsustainable.

Moreover, the Missoula Plan for Intercarrier Compensation Reform, which is sponsored by a broad segment of the communications industry, supports expanding the base of universal service fund contributors to include all broadband Internet access providers.[22] The Missoula Plan states that it will be impossible to sustain a robust USF based on contributions from only a narrow class of carriers and services and that only a broad-based contribution methodology can achieve the Act's requirements that universal service support mechanisms be equitable and nondiscriminatory. The Missoula Plan further recommends that there should be a uniform contribution rule for all providers of facilities-based, broadband information services, regardless of the specific technology they use.

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[20] *Wireline Broadband Classification Order*, ¶113. See also, Universal Service Contribution Methodology Interim Order, WC Docket No. 06-122, fn. 206 (rel. June 27, 2006).
[21] Universal Service Contribution Methodology Interim Order, WC Docket No. 06-122, (rel. June 27, 2006). Commissioner Copps and Commissioner Adelstein, in their separate statements to the Contribution Order, expressed concern over the lack of certainty as to whether the new contributions from interconnected VoIP providers and wireless carriers will offset the funds lost by wireline broadband's non-participation.
[22] Missoula Plan, CC Docket No. 01-92, Appendix B, pp. 88-89 (filed July 24, 2006).

The future IP-based public communications network will require universal service funding in order to provide affordable and comparable voice and broadband services to all Americans, urban and rural, high-cost and low-income. A USF contribution methodology is required that will support the critical infrastructure necessary to meet the IP transmission demands of residential and business consumers.[23] If USF contributions are limited to traditional wireline and wireless voice services only, the inevitable migration away from these services will eliminate all future universal service funding. The Commission must keep pace with how communications providers use different IP facilities and technologies as substitutes for traditional circuit switched telecommunications services and require all cable, wireline, wireless, electric and satellite broadband providers and all providers of voice substitute services, such as interconnected and non-interconnected VoIP services, to contribute to the high-cost USF support mechanisms.

IV. THE COMMISSION MUST ADOPT AND IMPLEMENT A HIGH-COST USF REFORM TRANSITION PLAN THAT WILL FAIRLY AND EQUITABLY MOVE THE COMMUNICATIONS INDUSTRY FROM THE PUBLIC SWITCHED TELECOMMUNICATIONS NETWORK WORLD TO THE BROADBAND INTERNET PROTOCOL WORLD.

The ability of rural providers to obtain the financial resources necessary to be able to offer their customers broadband services comparable to those available to non-rural customers comes from several sources: (1) subscriber line charges, (2) access charges, (3) universal service funds, (4) cost or average schedule settlements and (5) charges to the end user customer. Should any of these funding sources shrink appreciably or be eliminated, the funding for the

[23] The Commission's most recent data on broadband subscribership demonstrates that high-speed connections continue to grow rapidly. During the first half of 2007, high-speed Internet access lines grew from 82.8 million to 100.9 million lines, an increase of 22 percent (or 18.1 million lines). *High-Speed Services for Internet Access: Status as of June 30, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 1 (March 2008). Requiring this evolving segment of the communications industry to contribute to the universal service fund will significantly lower the USF contribution assessment.

telecommunications network will be at risk, endangering those who have come to rely upon it—in this case rural consumers, and the providers who serve them. The Commission must act now in order to preserve universal service and provide the incentives for continued investment in broadband infrastructure. Failure to act will result in little or no additional investment in broadband infrastructure and may result in a painful, potentially devastating crisis for rural carriers and the customers they serve.

For several years now, access revenue has been shrinking. As we continue to move inexorably from the PSTN world to an IP-based world, both interstate and intrastate access revenues will continue to recede. At some point in time, the interstate pool and the settlements that are paid out of the pool will be in jeopardy. The problem will likely accelerate as customers adopt IP-based technologies. As access rates rise to fund the cost, access charge demand will be further depressed, thus exacerbating the downward spiral. Contrary to the rhetoric of some, however, the decrease in access minutes is not just the evolution away from an "obsolete legacy" network. Access charges are simply a means of collecting the costs associated with the use and provisioning of the network. If this revenue source disappears, as is happening at an alarming pace, new means for recovering costs must replace it in order to fund the costs of the underlying infrastructure. The PSTN infrastructure is a common infrastructure that is being used today for broadband and other services.

North Dakota offers a concrete example of the extent of the problem. Over a two-year period, from 2005 to 2007, North Dakota companies' interstate minutes of use fell by 17.5%.

Over the same period, total minutes of use fell by 11.5%.[24] It is anticipated that these declines will continue to grow in the coming years.[25]

Declines in access revenues, combined with unstable universal service funding, poses a very real threat to rural service providers. If the future loss of access revenues is not recognized and addressed, then many rural LECs will have neither the revenue streams nor the investment certainty needed to cover the costs of the network or to deploy and upgrade their broadband infrastructure. Eventually, ILECs will no longer be able to provide comparable broadband service in the rural areas they serve.

The Joint Board's Recommended Decision recognizes that the current high cost mechanisms have been effective in maintaining an essential network that serves rural customers and has also allowed for the deployment of broadband-capable facilities.[26] As a result, the Joint Board recommends that the public interest is served by maintaining the existing RLEC support mechanisms through the proposed POLR fund.[27] However, the current system that has so effectively addressed rural needs and allowed for the deployment of broadband is currently in crisis. If universal service is to be sustained, the Commission must recognize and address the loss of a significant revenue source that supports rural infrastructure and services. The Commission should transition the current funds to one that supports the construction, operation, and maintenance of a high-quality National broadband network without the assistance of access charges.

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[24] David Crothers, Executive Vice President, North Dakota Association of Telecommunications Cooperatives, April 4, 2008.
[25] *Ibid.*
[26] Federal-State Joint Board Recommended Decision, ¶¶ 30 and 39.
[27] *Id.*, ¶ 39. NTCA opposes the creation of three separate funds (Provider of Last Resort Fund, Mobility Fund and Broadband Fund) at this time. The Commission should not create three new funds until it addresses the explosive growth and inequity in wireless CETC USF support. The Commission should first fix the Identical Support Rule by requiring all CETCs to base their USF support on their own costs. The Commission should then determine whether the creation of three new funds would be in the public interest. To do otherwise will seriously jeopardize existing and future high-cost funding for all eligible carriers.

The Commission was presented with what NTCA considers a viable solution to a portion of the access charge problem in the Missoula Plan.[28] However, while the Commission has not yet taken any action on the plan, the problem continues to worsen daily. Absent certainty in future revenue streams, the ability of rural LECs to make critical investments in their network will be at risk, which is contrary to the Commission's goals.[29]

Risk—both real and perceived—is perhaps the single most important factor in determining both the availability and the cost of investment capital. Financing from Rural Utilities Service, CoBank, Rural Telephone Finance Cooperative and other sources will dry up for small rural broadband providers if the investments become too risky because of lost access revenues, lost USF support, and increased broadband-related costs. Absent Commission action, current loans could also be at risk since the broadband infrastructure that has been deployed has not been paid for. Consequently, it will become increasingly difficult, if not altogether impossible, for providers to continue to deploy, upgrade and maintain their broadband infrastructure.

While rural carriers are dealing with the problem of declining access revenues, those who serve as Internet service providers (ISPs) are also faced with increasing middle-mile broadband costs.[30] Many of these providers are located a significant distance from the Internet backbone, and consequently face higher costs to transport traffic to and from the backbone. At the same

[28] Missoula Plan, CC Docket No. 01-92, filed July 24, 2006.
[29] See Chairman Martin's statement attached to the three NPRMs: "Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to communications services that are comparable to those available in urban areas, as well as provide a platform for delivery of advanced services."
[30] "Middle-mile cost" is defined as the expense incurred to transport Internet traffic between an Internet service provider and the Internet backbone.

time, industry mergers have resulted in fewer choices for special access transport, removing the downward pressure on prices that typically exists in a more competitive marketplace.[31]

The National Exchange Carrier Association (NECA) performed an extensive analysis of middle-mile costs in a recent study.[32] NECA's findings were dire—concluding that high-speed Internet service is uneconomic in many rural areas. NECA further found that increased IP traffic will exacerbate, rather than ameliorate, the problem, as existing revenue shortfalls are multiplied as the scale of operations increases. For example, the study shows revenue shortfalls at $9.7 million per year at a 0.5% penetration rate, growing to $33.6 million per year at a 5% penetration rate, $49.8 million at a 10% penetration rate, and $63.8 million per year at a 15% penetration rate.[33] NECA's sobering conclusion: "high-speed Internet service may not be sustainable in many rural areas based on pure economics."[34]

NTCA members report similar realities. The cost of purchasing internet capacity on a per megabit basis has gone down in some instances over the last several years; however, in response to customer demand, small rural broadband providers are buying more and more capacity. Therefore, rural ILEC internet total capacity costs are increasing while the prices for broadband Internet access have remained at fairly constant levels. One NTCA member company, which provided NTCA with cost data under the proviso that its identity not be revealed, reported that total bandwidth costs for backhaul purposes increased by 105% between 2001 and 2008. Over the same period, Internet access capacity costs increased by more than 500%. While these cost increases were, in part, offset by increased broadband revenues, the average cost per customer is increasing because customers are consuming increasingly larger quantities of bandwidth.

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[31] The Joint Board recognized that overlooking transport costs can harm remote carriers. *See*, Federal-State Joint Board Recommended Decision, ¶ 21.
[32] National Exchange Carrier Association (NECA), *Middle Mile Broadband Cost Study*, October 2001.
[33] NECA, *Middle Mile Cost Study Executive Summary*, www.neca.org/source/NECA_Publications_1154.asp.
[34] *Ibid.*

Yet, despite this grim news, NTCA's annual Internet/Broadband Availability survey has consistently shown that small rural providers continue to offer state-of-the-art broadband services to their customers.[35] As community-based providers, these carriers feel a special obligation to offer their customers high quality services equal to those available to customers in non-rural areas. Oftentimes, this means providing service despite a questionable business case. These rural carriers truly operate according to the spirit of "universal service."

Despite the fact they obviously utilize the network, IP applications providers currently do not compensate network providers for the ever-increasing cost of building, operating and maintaining that network. This lack of compensation, coupled with the reduction in interstate and intrastate switched access revenues, is seriously threatening the availability of affordable and comparable broadband services for rural consumers compared to their urban counterparts—which should be true goal of universal service in a broadband world. To accomplish this goal, the Commission should investigate providing rural broadband service providers the ability to assess IP applications providers that ride and impose costs on rural broadband networks. This step must be taken quickly, before access revenues completely vanish and consumers—who may not have access to affordable, high-quality broadband service—and providers—who may be unable to offer affordable, high-quality broadband services—are significantly harmed. Ultimately, without adequate IP-based support, it is inevitable that many rural broadband providers would have no option but to declare bankruptcy.

[35] According to the most recent NTCA survey, 99% of survey respondents offer broadband service (defined as throughput of at least 200 kbps in one direction) to some portion of their customer base. *NTCA 2007 Broadband Internet Availability Survey Report*, September 2007, p. 6. Available online at http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2007ntcabroadbandsurveyreport.pdf.

With access revenues shrinking,[36] universal service funding sources uncertain, middle-mile costs increasing, and broadband infrastructure costs soaring, rural service providers are inevitably facing danger. In order to avert the impending catastrophe, the Commission should act expeditiously to stabilize the revenue streams supporting rural infrastructure.

V. THE COMMISSION SHOULD REQUIRE ALL CARRIERS SEEKING ADDITIONAL OR NEW FEDERAL HIGH-COST BROADBAND UNIVERSAL SERVICE SUPPORT TO SUBMIT THEIR TITLE II REGULATED COSTS, REVENUES, AND EARNINGS WHEN DETERMINING THEIR FUTURE FEDERAL HIGH-COST USF SUPPORT DISBURSEMENTS.

To efficiently manage a specific, sustainable and sufficient high-cost support mechanism that supports recovery of broadband costs yet assures accountability, NTCA recommends that the FCC's high-cost USF transition reform plan include a requirement that all carriers opting to receive future federal high-cost broadband USF support to voluntarily provide their regulated Title II costs, revenues, and earnings to be used when determining their future broadband high-cost USF support disbursements. Specifically, NTCA recommends the following:

1. Existing high-cost voice USF mechanisms supporting the PSTN will remain in place and FCC oversight regarding rate-of-return regulated carriers should remain unchanged. Such oversight would include the review of pool earnings, federal tariff filings, certifications and audits.

2. Realizing that rural LECs' settlements and access charge revenues are diminishing greatly as more consumers and businesses use wireless and IP technologies, and in order to ensure that traditional and advanced services continue to be available to all consumers at reasonable rates, there is a need for additional funding for rural broadband networks. NTCA therefore proposes that:

    a. Once a broadband service has been included in the definition of universal service and is Title II regulated, a company that opts to receive broadband universal service funding will voluntarily agree to additional regulatory scrutiny over its Title II regulated revenues and expenses, as well as commit to broadband infrastructure requirements. The company's costs and revenues associated with broadband deployment will be included in the computation of the company's future earnings levels. Specifically, ISP revenues related to dial-up and high-speed services, as well as middle mile costs, backbone costs and other ISP costs

[36] Eventually the interstate pool may also be in jeopardy.

would be included in a company's earnings calculations. Universal service funding would only be provided to the extent necessary to recover costs and to earn a return of 11.25% on investment.

b. For a company that chooses not to receive additional broadband USF support, there will be no additional FCC earnings or revenues oversight beyond that described in item #1 above.

This proposal allows for current regulatory scrutiny concerning federal high-cost voice USF support, while creating a regulatory contract between broadband providers and the Commission. Regulators and Congress are asking carriers to build a high-quality National broadband network. Rural LECs are attempting to do their part in the rural high-cost areas they serve. Carriers operating in rural high-cost areas should not be required to commit resources without a reasonable expectation of a return on their investment. Likewise, the Commission, Congress, and the American public are entitled to know that federal USF dollars are being used to support this National broadband network and that these USF dollars are being used prudently. NTCA urges the Commission to adopt this proposal because it provides the FCC with an effective means of assuring accountability from the broadband universal service mechanisms by limiting support for carriers who are consistently over-earning on their regulated services and by not permitting universal service over-dependency.

VI. THE COMMISSION MUST ELIMINATE THE IDENTICAL SUPPORT RULE AND REQUIRE ALL CARRIERS TO BASE THE FUTURE HIGH-COST UNIVERSAL SERVICE SUPPORT ON EACH CARRIER'S OWN COSTS.

Comprehensive USF reform is necessary, in large part, as a result of the recent explosive growth in the overall size of the high-cost fund. As has been well-documented in earlier proceedings, the majority of the blame for this growth can be placed at the feet of the identical support rule, which allows CETCs to receive support based on the incumbents' costs, regardless of the levels of their own cost. As FCC Chairman Kevin Martin correctly pointed out in his

statements at the Joint Board's February 2007 *en banc* hearing on reverse auctions, "almost all of the recent growth in high-cost universal service is largely as a result of CETC access to high cost support."[37] Any plan implemented to stop the runaway growth in the high-cost fund must somehow address this problem, and establish a real-world link between actual costs and universal service fund disbursements.

The Joint Board, the Commission, and members of Congress have called for the elimination of the identical support rule.[38] NTCA has consistently supported the elimination of the identical support rule as appropriate policy, as well as a method for reasonably controlling the growth of the fund. There is no reason why the FCC should not move forward and eliminate the rule. National and regional wireless carriers are not "rural telephone companies" as defined by the Telecommunications Act of 1996.[39] Because of the identical support rule, however, these large wireless providers are able to receive substantial amounts of high-cost support tied to "rural telephone company" costs that have no relationship to their wireless costs.[40] Indeed, CETC support has escalated from $106 million in 2003 to $1.2 billion in 2007,[41] a 1,032 percent change over this four-year period. During this same time, ILEC high-cost USF support has remained relatively unchanged at $3.1 billion.[42] The identical support rule is clearly the root of the escalating fund problem.

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[37] Kevin Martin, Federal-State Board on Universal Service *En Banc* Meeting, Opening Remarks, Washington, DC, February 20, 2007, at 4 ("Martin *En Banc* Remarks").
[38] 7 C.F.R. § 54.307. The identical support rule allows CETCs to receive the same per-line support as rural LECs based on the RLEC's costs.
[39] Based on a Joint Board recommendation, in 1997 the Commission adopted, for universal service purposes, a definition of rural carrier that mirrored the definition of "rural telephone company" found in section 153(37) of the Act. *See* 47 U.S.C. § 153(37); *Universal Service First Report and Order*, 12 FCC Rcd at 8943-44, ¶ 310.
[40] National and regional wireless carriers are currently receiving per-line support based on the costs of many small, landline, incumbent rural telephone companies serving less that 50,000 customers including such states as Alabama, Iowa, Michigan, Mississippi, North Dakota, South Dakota, Texas, Virginia, West Virginia, Washington, and Wisconsin.
[41] *See*, Universal Service Administrative Company (USAC) filing with the FCC: USAC 1Q2003 HC01and USAC 2007 Annual Report, p. 45.
[42] *Ibid.*

The identical support rule allows CETCs to receive the same per-line support as rural ILECs based on the ILECs' costs.[43] Currently it is entirely permissible for a large wireless CETC to receive rural support even if it can be extremely profitable in rural markets without support. Indeed, the District Court in Nemaha County, Kansas, overturned a decision by the Kansas Commission that would have made state universal service support received by rural LECs portable to CETCs on a per-line basis. The Court determined that providing support to a CETC based on the costs of an ILEC is not competitively neutral, finding that:

> The Order of the [Kansas Corporation] Commission violates the [state's] statutory requirement to make distributions in a "competitively neutral manner," because the Commission has failed to evaluate all the necessary cost/expense information from all providers. The LEC's [sic] are different in structure and treatment than the wireless providers. Attempting to establish competitive neutrality without evaluating all providers' costs and expenses means that the [Kansas Corporation] Commission has compared apples to oranges. In order that its orders are competitively neutral, the [Kansas Corporation] Commission must compare the same units of measure.[44]

This regulatory disparity has created a dangerous incentive for wireless carriers to seek CETC status in rural high-cost areas where they already provide ancillary wireless service to ILEC customers. Even if the management of a wireless carrier knows that its costs are low enough to compete effectively without the additional support, management is compelled by the identical support rule to seek CETC designation so as to maximize profits, remain competitively viable and avoid lost opportunities to obtain support. This situation has led to a dramatic increase in CETC rural high-cost universal service support over the years. The identical support rule creates an environment that permits wireless CETCs to receive a windfall through universal

[43] 47 C.F.R. § 54.307.
[44] *Bluestem Telephone Company, et al vs. Kansas Corporation Commission*, In the District Court of Nemaha County, Kansas, Case Nos. 01-C-39, 01-C-40, 03-C-20, and 2004-CV-19, Memorandum and Decision (rel. April 30, 2004).

service support.[45] Even AT&T, the largest wireless provider, is on record supporting elimination of the identical support rule.[46] The Commission should eliminate the identical support rule and send a clear message that the rule is not in the Nation's public interest.

VII. THE COMMISSION SHOULD BASE FUTURE CETC USF SUPPORT ON EACH CETC'S OWN COSTS.

NTCA recommends that the FCC allow carriers the option of submitting their cost data to the FCC for purposes of determining their future high-cost USF support. Once a CETC submits its cost data, the data should be applied to a cost algorithm to first determine whether the carrier is eligible for high-cost support based on its own costs, and second, how much support will be distributed to the CETC in the designated area(s).

If an existing wireless CETC chooses not to file its cost data, then the wireless CETC's transitional federal high-cost USF support for a given service area will be based on the wireless CETC's existing federal high-cost USF support minus access cost recovery support: Interstate Common Line Support (ICLS), Local Switching Support (LSS), and Interstate Access Support (IAS). Such support will be frozen and phased-out over a 5-year period, unless during this time the wireless carrier submits its costs and the FCC bases the CETC's future USF support on its costs. A wireless carrier seeking future CETC designations in service areas in which the requesting wireless carrier does not currently receive USF support will be required to submit its cost data in order to receive federal high-cost USF support, if its CETC designation in this area is granted.

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[45] Salomon Smith Barney, Wireless Services, USF Subsidies May Significantly Improve Subscriber Economics for Rural Carriers, Multi-Company Note, p. 1 (January 21, 2003)("USF is the single-most important opportunity for rural wireless carriers to improve their return on capital.") *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d at 412 (U.S.C.A. 5th Cir. July 30, 1999) ("The term 'sufficient' appears in § 254(e), and the plain language of § 254(e) makes sufficiency of universal service support a direct statutory command rather than a statement of one of the seven principles.").

[46] AT&T *Ex Parte* Letter, *In the Matter of the Federal-State Joint Board, High-Cost Universal Service, WC Docket 05-337, In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45,* (Filed on March 22, 2007).

The FCC has determined that wireless carriers do not have the right to impose access charges pursuant to tariff.[47] Thus, wireless carriers do not provide access services and do not rely on access charges as a means to support their networks. High-cost universal service funding designed to replace legitimate access cost recovery should not be available to wireless CETCs that do not impose access charges and have already benefited from access charge reductions under the Commission's CALLS and MAG intercarrier compensation reform orders. Complete removal of ICLS, LSS, and IAS support to wireless CETCs would result in an immediate reduction of nearly $520 million[48] in the size of the high-cost USF mechanisms.[49] Removing ICLS, LSS, and IAS USF support for wireless CETCs will stabilize the fund and is a reasonable interim step until wireless carriers' specific support can be determined for each wireless carrier based on detailed cost information for each area served.

In contrast, landline CETCs provide access, bear the costs of providing access, and have relied on access charges as a means of supporting their networks; therefore access replacement support should continue to be available for landline CETCs. The conditional removal of wireless CETCs' IAS, ICLS, LSS and 5-year phase-out of frozen federal high-cost USF support would not apply to landline CETCs because their support is based on similar cost elements as landline ILECs. A landline CLEC, however, must file its costs for determining its future level of high-

[47] *Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC Rcd 13192, 13196 ¶1, 8-9, (2002).

[48] AT&T Ex Parte Letter, *In the Matter of the Federal-State Joint Board, High-Cost Universal Service, WC Docket 05-337, In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45,* (Filed on March 22, 2007).

[49] Such a reduction in USF support is justified and will eliminate future confusion regarding access reform under the Missoula Plan's, or any other intercarrier compensation reform plan's access reductions, recognizing that the Restructure Mechanism (RM) is cost recovery under Section 201 available only to carriers that actually reduce their access charges in accordance with the Missoula Plan. An RM would compensate LECs for the costs imposed on their networks by other carriers and make up for the revenue lost through mandatory access charge reductions, not otherwise recovered through other sources of funding.

cost support within the first year of implementation of the FCC's new rules or its support existing support will be eliminated.

Based on these concepts, NTCA recommends the following steps for replacement of the Identical Support Rule:

1. If an existing wireless CETC chooses not to file its cost data, then the CETC's future federal high-cost USF support for a given service area should be reduced by removing IAS, ICLS, and LSS. The wireless CETC's federal high-cost USF support minus IAS, ICLS, and LSS will be frozen and phased-out over a 5-year period.

2. A wireless carrier seeking a future CETC designation in a service area in which the requesting wireless carrier does not currently receive USF support will be required to submit its cost data in order to receive federal high-cost USF support, if its CETC designation in this area is granted. If the wireless carrier does not submit its cost data, it will not receive high-cost USF support for the requested area.

3. The conditional removal of IAS, ICLS, LSS and 5-year phase-out of frozen federal high-cost USF support would not apply to landline CETCs because their support is based on similar cost elements as landline ILECs. A landline competitive local exchange carrier, however, must file its cost for determining its future level of high-cost support within the first year of implementation of the FCC's new rules or all of its existing high-cost federal USF support will be eliminated.

Once a wireless or landline CETC submits its cost data, the data should be applied to a cost algorithm to determine first whether the carrier is eligible for high-cost support based on its own costs, and second, how much support will be distributed to the CETC in the designated area(s).

VIII. IN THE LONG-TERM, THE FCC SHOULD DETERMINE THE FUTURE BASIS OF HIGH-COST USF SUPPORT FOR VARIOUS SIZED WIRELESS CETCs AND OPEN A PROCEEDING TO ESTABLISH THE REQUIREMENTS AND THE SPECIFIC METHODOLOGY FOR DETERMINING ACTUAL COST-BASED SUPPORT FOR CETCs.

To correct the problems associated with the identical support rule, the Joint Board and the Commission must take into account the fact that wireless carriers do not have the same costs or regulatory obligations as rural LECs. Wireless carriers do not provide the same quality of

local service, do not offer equal access to long distance carriers and do not have carrier of last resort obligations. Unlike rural LECs, wireless CETCs do not offer equal access to all long distance carriers and hence wireless CETCs' costs for providing access to a single long distance carrier are likely to be very different than the rural LEC's costs. In addition, wireless carriers can choose to serve only those customers within range of wireless towers.[50] Rural LECs do not have this luxury; rather they have made a commitment to provide local service throughout the service area. Finally, rural ILEC networks have been engineered to meet high standards for reliability and either have been or are in the process of being upgraded to provide broadband. Many wireless networks do not meet these strict engineering standards. These distinctions between wireless and wireline service offerings translate into different cost structures and cost levels. Thus, "non-rural" and "rural" wireless carriers designated as CETCs in a rural ILEC study area should not receive the identical per-line support as the ILEC, based on the ILEC's costs. NTCA therefore urges the FCC to open a proceeding to determine the future basis of high-cost USF support for various-sized wireless CETCs based on their actual costs.

As mentioned previously, the size and revenue base of wireless carriers are relevant in assisting the FCC to gauge the impact that a wireless CETC designation will have on the USF and the Commission's public interest determination. By eliminating the identical support rule and requiring each wireless CETC to base its universal service support on its own size and costs, the FCC will be better able to ensure that support to a wireless CETC is not excessive and is used for the purposes intended as required by Section 254(e) of the Act.[51] The Commission

[50] One of the most egregious aspects of the identical support rule is that it provides support as if the wireless carrier could serve its customers where they live, when in fact in sparsely populated rural areas this if often not the case. Rural customers frequently may not be able to receive wireless service at the location where they reside, but subscribe to wireless service for use when traveling.
[51] 47 U.S.C. § 254(e).

should recognize that a wireless carrier's size and costs do matter when it comes to determining whether a wireless CETC's designation is in the Nation's public interest.

IX. THE COMMISSION SHOULD SERIOUSLY CONSIDER THE PANHANDLE PROPOSAL AND THE ADVOCATES FOR REGULATORY ACTION PROPOSAL AS COST-BASED ALGORITHMS FOR DETERMINING FUTURE WIRELESS CETC HIGH-COST USF SUPPORT.

NTCA urges the Commission to seriously consider the Panhandle proposal and the Advocates for Regulatory Action proposal as cost-based algorithms for determining future CETC high-cost USF support. The Panhandle proposal requires wireless carriers to submit their actual costs to the FCC so that it may determine a national average cost per wireless minute.[52] A wireless CETC would determine its own cost per minute by dividing its cost by its minutes. A wireless CETC's high-cost support is determined by using a multiplier based on the CETC's size and its cost to provide service. The following multipliers would be applied to the national average wireless cost per minute to determine the wireless CETC's High-cost USF support amount:

A. 1.50 for Tier I Carriers (Large/Nationwide Carriers)
B. 1.35 for Tier II Carriers (Medium/Regional Carriers)
C. 1.15 for Tier III Carriers (Small Carriers)

These multipliers could also be used to control the size of the fund and reflect any unforeseen wireless cost trends. Any wireless carrier receiving high-cost USF support would also be required to provide a reduced wholesale roaming rate to any wireless carrier that roams on its network. Thus, the small wireless carrier roaming issue is solved by the proposal. The proposal also includes a high-cost company cap of ten times the national average cost per minute to help ensure that networks not supported by sound business plans are discouraged. The

[52] Panhandle Telecommunications, Inc., Written *Ex Parte* filed with the FCC on January 11, 2008 in CC Docket No. 96-45.

Panhandle proposal has already gained support from some small wireless CETCs, as well as RTG, the Tier III wireless association, and RICA, the small rural CLEC association.

The Advocates for Regulatory Action proposal determines a wireless carrier's actual cost, and then calculates high-cost USF support for wireless CETCs using a modified version of the high-cost algorithm used to determine rural ILEC loop support.[53] Wireless carriers would accumulate their costs in a limited number of Part 32 accounts: 12 investment and reserve accounts and 11 operating expense and tax accounts. The wireless CETC's cost information, wireless traffic ratios,[54] the CETC's total number of lines/phones and total number of voice lines/phones as of December 31st would be submitted to USAC. USAC would then determine the wireless CETC's high-cost USF support based on an algorithm similar to the high-cost loop algorithm.

Both the Panhandle proposal and the Advocates for Regulatory Action proposal provide the Commission with a solid foundation for determining future wireless support based on each wireless carrier's own cost. NTCA urges the Commission to adopt a cost-based algorithm for future wireless CETC high-cost USF support.

X. A MEANINGFUL "PUBLIC INTEREST" TEST MUST BE APPLIED IN FUTURE CETC DESIGNATIONS THAT AFFECT RURAL ILEC AREAS.

The Act guarantees that consumers in rural and high cost areas have services and rates comparable to urban areas.[55] The Act does not guarantee that rural and high cost areas have the same number of supported providers as urban areas. Therefore, rather than simply granting

[53] Advocates for Regulatory Action Written *Ex Parte* filed with the FCC on July 12, 2007 in WC Docket No. 05-337 and CC Docket No. 96-45.
[54] A wireless intra-MSA ratio is developed for the study area being served by the wireless CETC using the traffic minutes of use (MOUs) that is both originated and terminated within the MSA to the total traffic within the study area. For study areas outside an MSA, the factor will be developed and used in the algorithm by using intra-study area traffic compared to total traffic. If a wireless CETC does not have the capability of measuring the MOUs or chooses not to measure, a default ratio of 0.5 will be used in the algorithm.
[55] *See* 47 U.S.C. § 254(b)(3).

additional ETC designations, the Commission must look at whether support will in fact promote comparability between rural and urban areas. As Commission Adelstein recognized, "[those performing the public interest analysis] also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service."[56] Consumers in this nation are guaranteed that there are specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.[57] Therefore, it is incorrect for regulators to ignore the demand for and ultimate sustainability of the universal service mechanisms as they decide CETC designation requests.

In adopting the 1996 Act, Congress recognized that areas served by rural telephone companies are different than those served by larger carriers. Congress favored competition, but recognized that introducing competition into areas that cannot otherwise support competition would ultimately harm consumers. For this reason, Section 214(e)(6) specifically requires that there must be a finding of the "public interest" before an additional ETC is designated in an area served by a rural telephone company. Thus, while a state commission must designate other eligible carriers for non-rural areas, states and the Commission (when it acts instead of the state), may only designate additional eligible carriers for areas served by a rural telephone company upon a specific finding that such a designation is in the public interest.

Commissioner Adelstein has previously stated, "The public interest . . . demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn't be given as a matter of course just because it appears they meet other qualifications."[58] Commissioner Adelstein's remarks echo earlier

[56] Speech by Commissioner Jonathan Adelstein, "Rural America and the Promise of Tomorrow," NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003)("Adelstein NTCA Speech").
[57] 47 U.S.C. § 254(b)(5).
[58] Commission Jonathan Adelstein's Speech at NTCA's 2003 Annual Meeting, February 3, 2003.

statements of Chairman Martin. In a separate statement to the Order adopting the MAG plan, the Commissioner questioned "the Commission's policy . . . of using universal service support as a means of creating 'competition' in high cost areas."[59] Commissioner Martin recognized that subsidizing multiple competitors in an area that cannot support it "may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund."[60] This issue should be considered when determining whether an additional ETC is in the public interest.

The Commission must examine whether additional ETCs in an area will ultimately have an adverse effect on affordability contrary to universal service principles and quality service.[61] The Commission must also consider whether or not additional ETCs in rural areas will promote the deployment of advanced services, another universal service principle.[62] The public interest requires a balancing test that weighs the benefits and burdens of introducing multiple ETCs in rural, high-cost and sparsely populated areas. As the incumbent loses subscribers in these urban markets, those remaining on the network may have to pay more for the same service so that adequate service remains available.

Artificially induced competition in rural areas serves to undermine the already weak business case for the deployment of new, costly services by rural telephone companies. It threatens the revenue base for these carriers but does not reduce the investments required to

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[59] Separate Statement of Commissioner Kevin J. Martin in *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Federal-State Joint Board on Universal Service Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 16 FCC Rcd 19613 (2001).
[60] *Ibid.*
[61] *See* 47 U.S.C. § 254(b)(1).
[62] *See* 47 U.S.C. § 254(b)(2).

provide service. Furthermore, since rural LECs continue to have an obligation as the "carrier of last resort" they must continue to place and maintain the telephone plant necessary to meet this obligation. As a result, designation of CETCs in rural areas and deployment of advanced services may be in conflict.[63] Regulators must therefore fully consider the demand and ultimate sustainability of the universal service mechanisms in order to apply a meaningful public interest test when considering future CETC designation requests.

XI. THE APPLICATION OF REVERSE AUCTIONS AS A MECHANISM FOR DETERMINING FUTURE HIGH-COST USF SUPPORT WOULD BE A SERIOUS MISTAKE THAT WOULD HARM CONSUMERS SIGNIFICANTLY.

The Commission has, by now, assembled a considerable record on the potential use of reverse auctions as a means of disseminating universal service support. NTCA has contributed to that record, commenting in both the reverse auction[64] and comprehensive universal service reform proceedings.[65] Further, NTCA commissioned Dr. Dale Lehman,[66] professor at Alaska Pacific University, to perform several studies examining the economic implications of utilizing reverse auctions.[67] Dr. Lehman concluded that reverse auctions simply will not work in areas with existing infrastructure. Numerous other parties have weighed in, as well, and the vast

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[63] *See* Lehman, Dale, *The Cost of Competition*, The NTCA 21st Century White Paper Series. Paper 3 (December 2000).

[64] *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 06J-1, released August 11, 2006 ("Reverse Auction Proceeding.") NTCA Initial Comments filed October 10, 2006; Reply Comments filed November 8, 2006.

[65] *Ibid*.

[66] Director, Executive MBA in Information and Communication Technology, Director MBA program, and Professor of Economics, Alaska Pacific University.

[67] Dale Lehman, *The Use of Reverse Auctions for Provision of Universal Service*, filed on October 10, 2006 with NTCA's Initial Comments in the Universal Service Federal-State Joint Board's Reverse Auction Proceeding, WC Docket No. 05-337 and CC Docket No. 96-45; Dale Lehman, *Reply to Reverse Auction Comments*, filed on November 8, 2006, with NTCA's Reply Comments in the Universal Service Federal-State Joint Board's Reverse Auction proceeding in WC Docket No. 05-337 and CC Docket No. 96-45; and Dale Lehman, *Diversions and Essential Reforms*, filed on July 2, 2007, with NTCA's Reply Comments in the Universal Service Federal-State Joint Board's Reverse Auction proceeding in WC Docket No. 05-337 and CC Docket No. 96-45.

majority agreed that reverse auctions are simply too complex, too risky and too costly to serve as a legitimate means for determining the distribution of high cost support. Nothing in the intervening months has changed: though theoretically appealing, reverse auctions remain an unacceptable solution to the problem of how to most efficiently disburse universal service funds. More effective and less risky solutions exist; they should be fully investigated before something as radical as reverse auctions should even be considered.

A. THE COMMISSION SHOULD DISMISS REVERSE AUCTIONS AS A MEANS OF DETERMINING HIGH-COST UNIVERSAL SERVICE SUPPORT.

The Commission must reject the application of reverse auctions, both in areas with pre-existing landline and/or wireless infrastructure and in unserved areas. Dr. Dale Lehman has written three papers[68] which provide material and substantial evidence as to why reverse auctions are not a viable option for the disbursement of high-cost universal service support in areas with preexisting infrastructure. The implementation of reverse auctions for determining the distribution of universal service in rural ILEC service areas with preexisting infrastructure and service would be a serious mistake and extremely harmful to communities already served by either landline and/or wireless service.

While reverse auctions may be an appealing theoretical construct, in reality they are fraught with uncertainty and risk.[69] As demonstrated in other countries, there are insurmountable difficulties associated with defining the terms of the auction.[70] In addition, administration of a reverse auction is time and labor intensive, prohibitively expensive, and

[68] See, *supra* note 65.
[69] NTCA's Reverse Auction Proceeding Initial Comments, at 4.
[70] *Id*, at 5-6.

technically burdensome.[71] Finally, the critical issue of stranded investment could prove fatal to current providers as well as to future providers who fail to win in subsequent auctions.[72]

The wireline infrastructure in this country, which has been built with significant assistance from universal service support, is comprehensive and high-quality. The FCC's most recent telephone penetration report shows that 94.9% of all American households subscribe to telephone service;[73] rural service providers are working hard to increase that figure. Imposition of a reverse auction scheme for universal service distribution, however, will increase the overall level of risk inherent to serving high-cost customers, and increasing risk will only serve to threaten the viability of future investment and the goal of universal service throughout the United States.

While NTCA continues to support the Commission's overall goal of curtailing excessive growth and inefficiency in the high cost universal service fund, NTCA asserts that it is clear that the incumbent local exchange carriers are not responsible for the dramatic growth and inefficiencies in the high-cost fund. As FCC Chairman Kevin Martin correctly pointed out in his statements at the Joint Board's February 2007 *en banc* hearing on reverse auctions, "almost all of the recent growth in high-cost universal service is largely as a result of CETC access to high cost support."[74] CETC USF payments have grown by 101% annually since 2002.[75] CETCs received $1 million in USF support in 2000[76]; this ballooned to nearly $1.2 billion in 2007[77] and is estimated to reach $1.5 billion in 2008.[78] Imposing a "solution" which increases overall risk

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[71] *Id*, at 9-13.
[72] *Id*, at 13-15.
[73] FCC Report: *Telephone Subscribership in the United States, Data Through November 2007* (rel. March 2008), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280980A1.pdf, at 1.
[74] Martin *En Banc* Remarks at 4.
[75] *Ibid*.
[76] *Ibid*.
[77] Universal Service Administrative Company 2007 Annual Report, p. 45.
[78] *See*, USAC filing with the FCC, USAC 2Q2008 HC01.

imposed upon ILECs and threatens their ability to make future investments is clearly not the answer.

As NTCA pointed out in its earlier filings, reverse auctions are "fraught with uncertainty and risk."[79] As a case in point: in the Reverse Auctions NPRM, the Commission details no fewer than eight parameters of reverse auctions—eligibility requirements, single winner versus multiple winner, method of distributing the subsidy, geographic areas, universal service obligations, reserve prices, auction design, and frequency of auctions[80]—upon which it seeks comment. Getting just one of these parameters right poses a tremendous challenge. Getting all of them right is nearly impossible. Yet getting just one of them wrong could prove fatal to any reverse auction scheme, ultimately rendering the auction unworkable. Clearly, the myriad difficulties involved in correctly designing and implementing a reverse auction are simply too great to make auctions a viable solution to the problem of a ballooning universal service fund.

Supporters of reverse auctions tout the fact that these auctions serve as a means for allowing the competitive marketplace to determine the optimal amount of support needed. While this may be true, getting to that point would require considerable regulation, intervention and oversight. As Commissioner Copps correctly pointed out in his statement accompanying the Notice, "Ironically, this purportedly market-based approach strikes me as hyper-regulatory."[81]

[79] NTCA Reverse Auction Proceeding Initial Comments, p. 4.
[80] Reverse Auctions NPRM, pp. 6-18.
[81] Statement of Commissioner Michael J. Copps, Approving in FCC 08-22, Approving in FCC 08-4, Approving in Part, Dissenting in Part in FCC 08-5.

B. THE DISAGREEMENT AMONG COMMENTERS SERVES TO ILLUSTRATE THE COMPLEXITY AND INHERENT DANGER OF USING REVERSE AUCTIONS FOR DETERMINING HIGH COST UNIVERSAL SERVICE SUPPORT DISBURSEMENT.

There was relatively little support for reverse auctions among the commenters in the 2006 reverse auction proceeding.[82] Those opposed far outnumbered those who thought that reverse auctions could be a potentially viable solution to limiting the growth in the fund. Even among the minority who stood in favor of reverse auctions, there was a wide range of opinions about how successful the auctions could be, and how they should be run. If there was any mandate at all, it was that reverse auctions simply will not work.

A review of the initial comments filed in the 2006 reverse auctions proceeding shows a number of industry groups are unanimous in their opposition to reverse auctions: commenters representing small ILECs,[83] think tanks,[84] and financial groups.[85] Among each of the industry segments where there was some support for reverse auctions, there was also opposition. Of the big ILEC filers, AT&T and Qwest were in favor, CenturyTel, Inc. and Frontier Communications were opposed, and Alaska Communications System was neutral. Of the CLECs, General Communication, Inc. was in favor while RICA was opposed. Of the state commissions, the New Jersey Board of Public Utilities was in favor, while the Oklahoma Corporation Commission, Missouri Public Service Commission, and Iowa Utilities Board were opposed. Finally, among consumer advocates, the American Association of People with Disabilities and the Seniors

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[82] *See*, *supra* note 64.
[83] *See*, Reverse Auction Proceeding initial comments of FairPoint Communications, Western Telecommunications Alliance, Rural Iowa Independent Telephone Association, The South Dakota Telecommunications Association, Texas Statewide Telephone Cooperative, Inc., John Staurulakis, Inc., Montana Independent Telecommunications Systems, Oregon-Idaho Utilities Inc./Humboldt Telephone Company, NECA, Oklahoma Carriers, ICORE, OPASTCO, Louisiana Telecommunications Association, Alaska Telephone Association, and the Northwest Associations.
[84] *See*, Reverse Auction Proceeding initial comments of TCA, Inc., Alexicon Telecommunications Consulting, and GVNW Consulting.
[85] *See*, Reverse Auction Proceeding initial comments of Rural Telephone Finance Cooperative and CoBank.

Coalition were in favor, while the National Association of State Utility Consumer Advocates was opposed. If there exists this much dissent within the various industry groups, how can there possibly be agreement between them?

In the 2006 Reverse Auction proceeding, there was no consensus established on the very same issues upon which the Commission seeks comment in this proceeding. Professor Dale Lehman sums up the uncertainty quite nicely when he notes that in their initial comments, proponents of reverse auctions "do not converge on any significant dimension for such auctions—not the number of winners, the size of areas to be auctioned, the time periods for 'licenses' to be held, and not on the impacts on the overall size of the high cost fund."[86] Uncertainty is the enemy of universal service; reverse auctions would open the floodgates to uncertainty of all types.

C. NO COMMENTER WAS ABLE TO PROVIDE A COMPARABLE REAL-WORLD EXAMPLE OF REVERSE AUCTIONS BEING SUCCESSFULLY UTILIZED.

Several commenters noted that reverse auctions, *if properly implemented*, could help solve the problem of excessive growth of the high cost universal service fund.[87] Yet none was able to provide a comparable example of the successful real-world use of such a regime. Verizon offered examples of setting timber prices in British Columbia and establishing stranded electricity investment costs in Texas.[88] Yet these specific instances are very dissimilar to the matter at hand. As NTCA pointed out in its initial comments, "[a]uctions tend to work well in those cases where the bid being made is easily quantifiable, where the service put out for auction is easily defined, the parameters of the service are relatively static, and progress and ultimate

[86] Lehman 11/8/06, p. 7.
[87] *See*, for example, Reverse Auction Proceeding initial comments of PGCI, p. 2, NCTA, p. 4, AT&T, p. 2 and p. 4, Dobson Cellular Systems, p. 3. Virtually all pro-reverse auction commenters included this caveat.
[88] *See*, Verizon Reverse Auction Proceeding initial comments, pp. 15-16.

results can be easily measured."[89] While the British Columbia and Texas examples cited by Verizon may fit these criteria, the use of auctions for determining universal service support certainly does not, as it "will require that non-quantifiable factors be taken into account, as well."[90] Other proposed examples—the awarding of government and private business contracts,[91] or the provision of telecommunications services in unserved areas in developing countries,[92] are similarly flawed. As Lehman points out, "[these examples] work precisely because the circumstances under which they are utilized differ from the conditions under which universal service must be provided."[93]

Verizon, CTIA, Qwest and others cited the FCC's spectrum auctions as evidence that universal service auctions could be successful.[94] To the contrary, the spectrum auctions illustrate the dangers inherent to auctions. Despite the fact that the spectrum auctions are relatively straightforward, with a discreet and readily defined good being bid upon, the Commission still ran into serious problems, such as non-performing winning bidders. A more complex auction process, such as that proposed by the proponents of reverse auctions for universal service support, would pose even greater potential risks.

Further, as Lehman points out, spectrum auctions have not resulted in universal service, but in "deployment of services in urban and suburban markets with relatively less build-out in rural areas."[95] Bidders' freedom to deploy resources where the cost is low is what leads them to bid at auction in the first place. On the other hand, "[u]niversal service requires different considerations—ubiquity, quality, and comparability. There is no evidence that spectrum

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[89] NTCA Reverse Auction Proceeding initial comments, p. 6.
[90] *Ibid*.
[91] TracPhone Reverse Auction Proceeding initial comments, pp. 10-11.
[92] Satellite Industry Association Reverse Auction Proceeding initial comments, pp. 4-5. The examples cited refer to previously unserved areas or significant upgrades to the existing infrastructure within these areas.
[93] Lehman 11/8/06, p. 1.
[94] *See*, Reverse Auction Proceeding initial comments of Verizon, pp. 13-15, CTIA, p. 5, Qwest, p. 2.
[95] Lehman 11/8/06, p. 6.

auctions have been able to provide these features."[96] As with the other examples provided by commenters, the spectrum auction example cannot be directly applied to the matter at hand.

D. GROUPS REPRESENTING THOSE AREAS IN NEED OF UNIVERSAL SERVICE SUPPORT ARE IN UNANIMOUS AGREEMENT—REVERSE AUCTIONS ARE UNWORKABLE.

Commenting parties representing those providers serving the rural consumers who rely on universal service support for the receipt of telecommunications services were virtually unanimous in their opposition to reverse auctions. These groups are innately familiar with the challenges inherent to serving rural customers, and the risks posed by threats to continued sufficient, predictable and sustainable universal service support. The lack of a proven track record for reverse auctions, coupled with the other evidence presented in the round of initial comments, underscores NTCA's concerns about "[t]he difficulties and dangers inherent in applying reverse auctions in areas with existing communications infrastructure and service[.]"[97]

E. THE EXPERIENCE OF SELECTING TRS PROVIDERS SERVES AS AN ILLUSTRATION OF THE DANGERS INHERENT TO REVERSE AUCTIONS.

As the Commission considers reverse auctions, it may wish to consider the cautionary tale of telecommunication relay service (TRS) auctions. A number of states have implemented competitive bidding for the provision of TRS to their citizens. In several instances, the end results achieved were far from those desired.

California announced in 1995 that it would take bids for the provision of TRS. However, as no other provider was willing to match the $0.699 per conversation minute rate proposed by the incumbent, MCI, no other bids were offered. Two years later, believing that a choice of service providers would lead to improved quality of service, the California Public Utilities Commission authorized Sprint to operate as a secondary provider and to offer service at a rate of

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[96] *Ibid.*
[97] NTCA Reverse Auction Proceeding initial comments, p. 2.

$0.89 per conversation minute. Less than one year later, Sprint notified the Commission that unless its remuneration rate was increased to $1.09 per conversation minute, it would no longer be able to provide service. The Commission approved Sprint's request. Shortly thereafter, MCI requested a compensation rate equal to that of Sprint. The request was granted, resulting in a remuneration rate 56% above that originally bid.

There have been concerns about the overall quality of the service provided, as well. In 1998, the Communications Workers of America filed a protest against MCI, saying that the facility from which MCI provides relay service had a turnover rate of 80% to 90%. While noting that "the quality of relay service is adversely affected by high turnover rates among relay operators," the California Commission ultimately determined that MCI was adhering to all regulations to which it had committed.[98] Still, it is evident that the California commission's original goals of reasonably priced, high quality service have not been realized.

In the commonwealth of Massachusetts, the Department of Telecommunications and Energy in 1998 approved a settlement agreement between the Massachusetts Attorney General and MCI where monetary sanctions would be imposed against MCI should it fail to meet explicit relay service quality standards. Massachusetts' action was in response to a filing by 230 relay-using consumers and four disability rights groups. Under the terms of the settlement, an outside monitor tracks MCI's performance in order to ensure its compliance with the standards.[99] Again, in this instance, any cost savings that may have been realized are to some extent negated by unacceptably low service quality levels.

The New Hampshire Public Utilities Commission has decided that competitive bidding is entirely too risky for determining who should provide TRS in that state and at what price. When

[98] Public Utilities Commission of the State of California, Resolution T-16262, December 17, 1998.
[99] Ragged Edge Magazine Online, Disability Rights Nation, April 27-May 10, 1998, p. 2. (www.ragged-edge-mag.com/0598/a598drn.htm)

Sprint, the company that had been awarded the contract to provide TRS service statewide, filed a petition in 1998 to increase the price it received for providing TRS service by 15.2%, the Commission considered the question of whether "Sprint is providing the highest level TRS possible, or whether another provider could offer better service for the same price or the same service for a better price."[100] Ultimately, the Commissioned decided "we are not persuaded that a bid process will result in lower costs or better service. We see no need to risk this important means of communication for the mere possibility that costs may be lower or service better. In addition, transition from one service provider to another can result in significant disruptions to the community of TRS users who rely so heavily on this service."[101] In other words, the Commission determined that the mere potential for cost savings or service quality gains were not worth the very real risks involved.

These examples are relevant to the matter at hand because, by comparison, the provision of TRS is much better suited to the auction process than is the provision of universal telecommunications service. TRS is more fungible, the service quality expectations more explicit, and the service territories far more clearly defined. Further, the provision of TRS is far less dependent upon the deployment of new facilities, along with the resultant capital expenditures. Yet even at that, several states faced very real difficulties in implementing competitive bidding for TRS, as they saw potential cost savings evaporate and service quality deteriorate, to the detriment of their constituents. The implementation of reverse auctions for the determination of universal service support distribution will undoubtedly result in many of the

[100] New Hampshire Public Utilities Commission, Sprint Communications Company L.P. Petition to Increase Price for Telecommunications Relay Service, Order Approving Increase in Price for Telecommunications Relay Service, Order No. 23,178, March 30, 1999 ("Order"), at 2.
[101] *Id.*, at 5.

same problems experienced by those states highlighted here—only the overall stakes will be considerably higher.

F. THE CTIA, VERIZON, AND ALLTEL REVERSE AUCTION PROPOSALS CITED IN THE NOTICE ARE NOT VIABLE SOLUTIONS TO THE PROBLEM OF A BALLOONING HIGH COST UNIVERSAL SERVICE FUND.

In the Notice, the Joint Board seeks comment on reverse auction proposals submitted by CTIA, Verizon, and Alltel.[102] None of these proposals solves the myriad problems highlighted above and in NTCA's previous comments on reverse auctions. The CTIA reverse auction proposal is built upon the concept of "winner takes more," whereby the auction winner would be awarded support in the full amount of its bid while higher bids would be penalized with a lower percentage of the winning support payment. CTIA advocates relaxing coverage and/or quality of service obligations for wireless CETCs bidding to serve wire center geographies. In other words, CTIA's plan would impose an apples-to-oranges competition across technological platforms. The results would ultimately have a detrimental impact upon the quality of service provided to customers in rural areas.

The Verizon proposal consists of four steps. In step 1, a cap would be placed on high cost support at current levels. In step 2, the Commission would adopt an auction design and framework. In step 3, auctions would start in areas in which multiple wireless CETCs currently operate and receive support, followed by a parallel set of auctions for wireline CETCs. A single wireless and wireline winner would ultimately be selected. Finally, in step 4 the Commission and the Joint Board would review the auction experiences and decide next steps, which would include the possibility of conducting a single auction in which both wireline and wireless carriers would participate.

[102] Reverse Auction NPRM, pp. 4-6.

The wireline auction proposed in step 3 raises the significant issue of stranded investment, which NTCA addressed in detail in its previous comments in the reverse auction proceeding and later in this section of the comments.[103] Incumbent carriers, who have made significant investments in infrastructure according to existing regulatory compacts, are placed in dire jeopardy unless the issue of compensation for those investments is addressed.

Equally troubling is the intermodal auction proposed as part of step 4 of Verizon's plan. In reality, wireline and wireless service are complementary services rather than substitute services. Each does certain things well that the other does not. In addition, selecting a wireless carrier as the sole winner may ultimately result in it losing access to support services which were factored into its original bid—such as backhaul services from a wireline carrier.

Alltel proposes a pilot reverse auction system focused on broadband deployment. Universal service funds would be allocated to bidders that commit to deploy basic and advanced services, including broadband service of 400 kbps or faster, to selected unserved and underserved markets. Non-auction winning ETCs could receive comparable per-line support provided they are willing to make the same service commitment.

Chairman Martin, at the February 2007 Joint Board *en banc* hearing, said, "I do not agree with Alltel…that even those ETCs that do not win the reverse auction should get universal service support. Universal service is not about competition. It is about providing service to those in areas where competition and market forces alone will not result in the services available in more urban areas of the country."[104] The use of USF funding to create competition where it would not otherwise exist, illuminated by Chairman Martin, has played a significant role in allowing the high cost fund to balloon as it has. Universal service support is not intended to

[103] NTCA Reverse Auction Proceeding initial comments, at 13-15.
[104] Martin *En Banc* Remarks, at 6.

subsidize competition. Any plan which would result in carriers migrating to a particular service area as a result of the lure of universal service funding will ultimately result in an unnecessarily large fund.

G. NONE OF THE PROPOSALS DEALS SPECIFICALLY WITH THE ISSUE OF STRANDED INVESTMENT.

Rate-of-return rural LECs are making good on their promise to deliver broadband services to rural areas.[105] Rural LECs have made significant investments in the rural high-cost portions of America under an existing universal service support system that allows for recovery of a sufficient portion of a carrier's embedded costs of total regulated facilities. If these costs are no longer recovered through universal service, and an alternative recovery method is not available or is prohibited by regulators, then these costs will become stranded investment.[106] As Commissioner Copps stated:

> [i]t is essential, that any regime we adopt increase certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities.[107]

Commission Adelstein shares these concerns regarding stranded investment: "I am…concerned about the impact of reverse auctions and whether such mechanisms can provide adequate incentives for build out in Rural America."[108]

Given the Act's goal of preserving and advancing universal service to ultimately provide consumers with access to advanced telecommunications and information services, failure to

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[105] *NTCA 2007 Broadband/Internet Availability Survey Report*, September 2007, www.ntca.org.

[106] The term "stranded investment" typically means plant facilities that are no longer in use and have not fully recovered their costs. However, in the context of this proceeding, stranded investment can result in plant facilities that are not fully recovering their costs but are still in use.

[107] *In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77; *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers,*(2001)(MAG Order), *Dissenting Statement of Commissioner Michael J. Copps.*

[108] Statement of Commissioner Jonathan S. Adelstein, Approving in FCC 08-22, Approving in FCC 08-4, Concurring in Part, Dissenting in Part in FCC 08-5.

address stranded cost would be completely at odds with the intent of Sections 254 and 706 of the Act. If a rate-of-return ILEC loses a bid, the new provider will take over the service territory and some of the rural ILEC's network may be stranded or underused. Similarly, if a rate-of-return carrier wins the bid and its going forward support is frozen for a fixed number of years, its ability to recover its regulated cost will be at risk and stranded investment may result. Given that a portion of a rate-of-return ILEC's investments/costs are recovered through universal service support and were approved as reasonable by state and federal regulators, ILECs should receive cost recovery for these investments. In addition, regulators will need to decide in advance if the new provider will be allowed to use the portions of the rural ILEC's network, and at what level of compensation to the ILEC. Regulators will therefore need to adopt procedures and rules to compensate investors for the physical structures that may now go unused or be repurposed. Carriers deserve reasonable compensation for prudently-incurred investments made under the prevailing business and regulatory climate at the time. It will fall to the regulator to solve the difficult matter of determining the specifics of the compensation.[109] These administrative and legal concerns are significant and complex.

The Supreme Court recognized the important role states play to avoid issues of preemption and confiscation.[110] The Court stated that, "proper regulation of rates can be had only by maintaining the limits of state and federal jurisdiction." Congress obviously intended that state and federal representatives work together, make compromises and negotiate something that would work for both the federal government and the states. Given the complexities of the issues in this proceeding and the potential far-reaching ramifications, it is difficult to imagine

[109] It is interesting to note that the electric utility industry has been struggling with this stranded investment problem for many years without ultimate resolution. *See*, "Electric Utilities: Deregulation and Stranded Costs," Congressional Budget Office, October 1998.
[110] *Smith v. Illinois*, 282 U.S. 133, 51 S. Ct. 65 (1930).

that a reverse auction proposal can adequately address stranded investment issues associated with rate-of-return regulated rural LECs unless the recovery of past investments is provided for before the auction is put into place.

H. REVERSE AUCTIONS ARE AT ODDS WITH THE ACT WHICH REQUIRES "SPECIFIC, PREDICTABLE, AND SUFFICIENT" UNIVERSAL SERVICE SUPPORT MECHANISMS.

Reverse auctions assume that the public will benefit if support is limited to the least cost provider. The object of high-cost support is to ensure that consumers in rural areas receive comparable services to those received by urban consumers and that they are able to obtain those services at comparable rates. A system that limits support to the lowest bidder is highly unlikely to achieve this objective and cannot ensure that the goals of the Act will be consistently achieved throughout the United States. Support to the lowest bidder is inconsistent with the notions that companies must invest in networks to maintain service and that the evolution of the definition of universal service requires additional and timely investment in new technologies. The Commission's experience with competitive bidding for spectrum-based licenses (e.g., NextWave) shows that the speculative nature of auctions has the potential to create years of uncertainty for licensees and the public. Highly erratic, competitive bidding is at odds with an Act that requires "specific, predictable, and sufficient"[111] support mechanisms.

Additionally, the use of reverse auctions to decide which carriers obtain support and how much they obtain would deprive the states of regulatory oversight of the ETC designation process and impinge on the ability of federal and state regulators to assess whether support is "sufficient" to achieve the goals of universal service. Even if ETC designations were left to the states, the use of competitive bidding to award support would render a state's determination *pro forma*. Auctions would make state public interest findings irrelevant.

[111] 47 U.S.C. § 254(b)(5).

Furthermore, the Act does not give the Commission the authority to compel states to proceed by competitive bidding. States have the statutory option to choose one or multiple eligible telecommunications carriers in rural areas if it is in the public interest. States cannot be forced to conduct an auction themselves or submit to the results of a Commission auction.[112] Also, the circumstances that allowed a state to designate a carrier as an eligible telecommunications carrier might change after competitive bidding. A bid that is neither "sufficient" nor in the public interest, due to variable auction results, might not satisfy a state's original decision.

Even if the Commission had such authority or worked with the states to compel all state-designated eligible telecommunications carriers to bid, the bidding process would likely not satisfy the level of quality service contemplated by the Act, since the winning bidder could be the carrier which intends to commit the least amount of resources to the area. Competitive bidding is contrary to the Act's emphasis on "quality services."[113] More importantly, basing the study area support level on the lowest bid from all eligible carriers[114] would risk providing a support level that would not be "sufficient" as the Act requires. Under this scenario, a CLEC would be able to target the higher volume and lower cost customers in an ILEC's study area through selective marketing and preferential rates. As a result, the CLEC would be able to lower its universal service support bid, forcing the ILEC to make do with insufficient support for the remaining higher cost customers.

It has often been argued that the winners at auction are those who value the auctioned item the most. In reality, however, winning bidders are those for whom the opportunity cost of

[112] 47 U.S.C. § 214(e)(2).
[113] 47 C.F.R. § 254(b)(1).
[114] Recommended Decision, ¶ 343.

the funds bid is the lowest. An auction for USF funds, then, would tend to favor: (1) those with access to large amounts of capital; or (2) those who would prefer to have cash on hand rather than spending it to serve their customers. In short, a USF reverse auction would give an advantage to those parties who need USF funds the least.

Auctions are expensive to conduct, time consuming, administratively difficult, and require some degree of training for participants. The potential for fraud, whether on the part of an individual participant or through the collusion of several parties, is always present. Constant monitoring and vigilance would therefore be required to ensure the integrity of the auction results. The cost of administering the auctions, preventing fraud, and monitoring the results would ultimately increase the size of the universal service fund and could potentially outweigh any benefits gained from the process.

XI. CONGRESS NEVER INTENDED NOR GRANTED STATE COMMISSIONS WITH THE STATUTORY AUTHORITY TO DISTRIBUTE FEDERAL HIGH-COST USF SUPPORT.

The NPRM on the Joint Board's Recommendation Decision recommends that state commissions be granted the authority to award federal USF support to CETCs operating in their states.[115] Granting authority to state commissions to determine the amount of federal universal service support a carrier would receive would violate the Act and the Tenth Amendment. Indeed, the Joint Board has previously acknowledged the legal and administrative concerns associated with distributing federal USF support to the states through block grants.

> [W]e cannot recommend that the Commission adopt [a state block grant] mechanism, in light of the long-standing practice at the time that the 1996 Act became law of distributing federal universal service support to the carriers providing the supported services, and **the absence of any affirmative evidence in the statute or legislative history that Congress intended such a fundamental shift to a state block grant distribution mechanism.** In addition,

[115] Joint Board NPRM, pp. 20-21.

> distributing funding directly to state commissions is likely to create substantial administrative burdens for states…."[116]

Section 254 of the Act does **not** grant state commissions the authority to determine how much federal USF support an eligible carrier will receive. Nor did Congress explicitly direct the Commission to grant states this type of control over the federal universal service support dollars.

The Tenth Amendment provides that "the powers not delegated to the United States by the Constitution, nor prohibited by its States, are reserved to the States respectively, or to the people." Section 254(d) of the Act provides the Commission with the authority to decide how much and to whom federal USF support will be collected and distributed based on **interstate** telecommunications services. In comparison, Section 254(f) provides the states with the authority to adopt regulations not inconsistent with the FCC rules to preserve and advance universal service and allows the states to establish state universal service funding rules based on **intrastate** telecommunications services. Congress clearly envisioned that the Commission would decide federal USF collection and distribution issues and states would decide state USF collection and distribution issues. Delegating to state commissions the sole discretion over decisions concerning the distribution of federal USF support would therefore be contrary to intent of Congress, Section 254 and the Tenth Amendment.[117]

Distributing federal USF funding directly to state commissions may also create substantial administrative burdens for some state commissions that are understaffed and lack the resources necessary to adequately implement procedures and rules to properly manage and monitor a block grant distribution system. Many state commissions today are pushed to their

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[116] *In the Matter of Federal-State Joint Board on Universal Service,* Second Recommended Decision, CC Docket 96-45, ¶ 61 (rel. Nov. 25, 1998)(emphasis added).

[117] A challenge to a state commission's authority to decide how much federal USF support a carrier receives within a state could be challenged by an adversely affected party which would likely require the Commission to be a party to the litigation.

limit to meet their current mandates under state and federal law. Imposing the additional responsibilities could be asking far too much for some state commissions and could result in federal USF support being improperly determined and distributed. Having potentially many different state commissions determining federal USF support and subjectively distributing support to selected ETCs could make the Commission's efforts to improve its management, oversight and performance of the federal USF support mechanisms much more difficult.[118]

Contrary to the Commission's longstanding policy of distributing federal universal service support directly to rural LECs based on their specific costs to provide supported services to consumers living in high-cost areas, the proposed block grants could allow a state commission to divert federal cost-based USF support to carriers based on factors unrelated to costs.[119] This policy has enabled the Commission to reach and maintain a 95 percent universal service penetration rate in U.S. households. Adopting a block grant proposal could jeopardize this achievement by the United States and create significant disincentives for rural carriers to continue to invest and to provide high-quality affordable basic and advance services to their rural communities.[120]

If decisions concerning the distribution of support to carriers are not based on each rural carrier's actual costs to serve their study area, some rural LECs will not receive sufficient federal support necessary to maintain their facilities and provide affordable services in their service

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[118] *In the Matter of Comprehensive Review of Universal Fund Management, Administration, and Oversight,* WC Docket No. 05-195*; Federal-State Joint Board on Universal Service,* CC Docket No. 96-45*; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6*; Rural Healthcare Support Mechanism,* WC Docket No. 02-60; *Lifeline and Link-Up,* CC Docket No. 03-109*; Changes to the Board of Directors for the National Carrier Association,* CC Docket No. 97-21, FCC 05-124 (rel. June 14, 2005).

[119] The Holistic Integrated Package (HIP) Proposal, Submitted by Commissioner Robert Nelson of the Michigan Public Service Commission, Public Notice, Appendix C, p. 15, suggests, for example, State A could distribute federal USF support to ETCs, in accordance with FCC guidelines but may determine that more than one carrier could be funded in a given rural area, while State B could determine that only one carrier could be funded in a similar rural area. In addition, state commissions could consider Lifeline/Link-up participation when determining the amount of federal high-cost USF support each carrier receives.

[120] Section 254(b)(5) of the Act states that Federal and State mechanisms to preserve and advance universal service should be specific, predictable and sufficient.

areas. If rural carriers are under-funded based on a state commission's USF distribution decision, their ability to provide affordable service will be compromised and the consumers they serve will suffer through higher/unaffordable rates and/or diminished service quality. If rates are too high, the essential telecommunications services encompassed in universal service may indeed prove unavailable.[121] It is conceivable that some households in high-cost rural areas that do not qualify for Lifeline and Linkup support would no longer be able to purchase telecommunications and/or information services if rates increase significantly.

Increased rural consumer rates as a result of block grants and statewide averaging would also threaten the goal of making affordable high-speed Internet access available to all Americans and the Act's goal of encouraging the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis.[122] To avoid these potentially harmful effects on rural consumers, NTCA urges the Commission to exclude state block grants in its comprehensive reform of the high-cost universal service mechanisms.

XII. AS PART OF ITS REGULATORY FLEXIBILITY ANALYSIS, THE COMMISSION MUST ADDRESS TRANSPORT COSTS THAT ARE NOT COVERED IN THE CURRENT HIGH-COST MECHANISM WHICH CAN BE HARMFUL TO RURAL CARRIERS AND THEIR CUSTOMERS.

Transport cost associated with transporting a voice call outside a rural LEC's local calling area and/or service area can have a significant economic impact on small, rural wireline carriers. In the NPRM on the Joint Board's Recommendation, the Joint Board specifically recognizes the concern that the significant costs of transport are not covered in the current mechanism can be harmful to rural carriers and their customers.[123] The Joint Board recommends

[121] *Qwest v. FCC*, 398 F.3d 1222, 10th Cir., Feb. 23, 2005, at 29 (Qwest II). This case can also be found on the FCC's Webpage as *Qwest v. FCC*, 10 Circuit Case No. 03-9617.
[122] 47 U.S.C § 706.
[123] Joint Board Recommended Decision, ¶ 21 (The Joint Board states that this harm "worsens when those carriers must purchase special access facilities to connect their customers").

that the Commission consider this harm in its comprehensive reform of the high-cost USF mechanisms to help ensure that rural carriers and their customers are not harmed.[124] NTCA completely agrees.

The Commission is required under the Regulatory Flexibility Act (5 U.S.C. §601) to consider alternative rules that will reduce the economic harm on small entities. NTCA proposes that the Commission address rural LEC transport costs that are not currently included in the high-cost USF mechanisms by: (1) providing additional future universal service funding to support these costs, or (2) requiring all wireless and interconnected VoIP providers to either establish a point of interconnection ("POI") within a rural LEC local calling area or service area, or pay for the transport and termination of traffic outside of the small carrier's service area to avoid significant economic harm to small rural LECs and the consumers they serve.

The interconnection alternative proposed by NTCA is based on the established practice that governs wireline-to-wireline porting and it solves technical rating and routing issues. It addresses the crux of this economic burden imposed by the Commission's new local number portability rules, which do not address who will pay for the costs of delivering calls to locally-rated numbers ported to distant wireless and interconnected VoIP switches outside a rural LEC's local calling area and/or service area. This issue must be addressed and remedied as soon as possible. If the Commission chooses not to provide rural LECs with additional universal service funding to support transport costs, then it should adopt NTCA's proposed rural transport rule which will reduce the economic impact on rural consumers served by small rural LECs, require no additional high-cost USF support, and provide a fair and equitable compensation mechanism which is totally consistent with the Commission's long-established practice used for properly porting, rating, and routing calls between communications providers. In doing so, the

[124] *Id*, ¶ ¶ 21-23.

Commission will assist rural providers in their efforts to continue to provide affordable and comparable service to rural consumers.

XIII. AS PART OF ITS REGULATORY FLEXIBILITY ANALYSIS, THE COMMISSION SHOULD PLACE REQUIREMENTS ON LARGE VERTICALLY INTEGRATED PROVIDERS OF SPECIAL ACCESS TRANSPORT TO THE INTERNET BACKBONE TO PREVENT ABUSE OF MARKET POWER AND AVOID UNDUE ECONOMIC BURDENS ON SMALL RURAL LECs.

In the NPRM on the Joint Board's Recommendation, the Joint Board recognizes that "transport costs can harm rural carriers, and the problem worsens when those carriers must purchase special access facilities to connect their customers"[125] The Recommended Decision specifically recognizes the concern that the significant costs of transport are not covered in the current mechanism which can be harmful to rural carriers and their customers.[126] These costs as well as the IP costs associated with the middle mile and internet backbone are significant costs of providing broadband service in rural areas and as such must be addressed in any comprehensive reform. As part of the FCC's Regulatory Flexibility Analysis, the Commission should place the following requirements on large, vertically-integrated communications carriers that provide special access,[127] and access to the Internet backbone to prevent abuse of market power and avoid undue economic burdens on small rural LECs:

1. Require large, vertically-integrated communications carriers to provide non-discriminatory access to special access transport needed to reach the Internet backbone.

2. Require large vertically-integrated communications carriers to base the price charged for special access transport needed to reach the Internet backbone upon the cost of providing the service.

[125] Joint Board NPRM, p. 15.
[126] Recommended Decision, ¶ 21.
[127] Special access transport includes, among other services, packet-switched broadband services, optical transmission services (e.g., frame relay, ATM, LAN, Ethernet, video-transmission, optical network, wave-based, etc.), TDM-based services (e.g., DS-1, DS-3, etc.), and other future transport services to reach the Internet backbone.

3. Require large, vertically-integrated communications carriers to make available to non-affiliated companies the same terms, conditions, and prices charged to their affiliated companies for special access transport needed to reach the Internet backbone.

4. Require large, vertically-integrated communications carriers to make publicly available all of the terms, conditions and prices for special access transport needed to reach the Internet backbone.

5. Require similar protections for the cost of the Internet backbone.

To achieve and maintain the goal of universal affordable broadband service for all Americans, the Commission should regulate the terms, conditions and prices of Internet backbone services, including special access transport needed to reach the Internet backbone, to ensure that large, vertically-integrated Internet backbone providers do not abuse their market power by imposing unfair and discriminatory pricing on small, rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States. The FCC has already adopted some of these conditions as part of the FCC's recent approval of the AT&T/BellSouth merger.[128]

XVI. CONCLUSION

Based on the above stated reasons, NTCA urges the Commission to adopt and implement a high-cost universal service fund transition reform plan that will fairly and equitably move the communications industry from PSTN world to the IP broadband world. To accomplish this goal, the Commission should specifically adopt and implement the following measures:

1. Include broadband in the future definition of universal service.

2. Expand the USF contribution base to include all broadband service providers – landline, cable, wireless, electric, and satellite.

[128] *In the Matter of A&T and BellSouth Corporation Application for Transfer and Control,* Order on Reconsideration, Appendix, Page 5, WC Docket No. 06-74, (rel. March 26, 2007). http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-07-44A1.doc.

3. Leave the existing landline federal high-cost voice USF mechanisms unchanged during the transition to include broadband in the definition of universal service.

4. Manage the transition to IP, where access charges will no longer support the network, by distributing additional universal service money only to the extent necessary to recover expenses and earn an authorized rate of return on all broadband investment. Such additional monies would only be available to those companies who voluntarily agree to such regulatory scrutiny.

   i. Once broadband is included in the definition of universal service and is Title II regulated, a company that opts to receive broadband universal service funding will voluntarily agree to additional regulatory scrutiny over its Title II regulated revenues and expenses.[129] The company will include its Title II costs and revenues associated with broadband deployment in the computation of the company's future earnings levels.

   ii. For a company that chooses not to receive additional federal USF broadband support, there should be no additional regulatory scrutiny or oversight of voice USF support beyond the current FCC oversight concerning Title II rate-of-return regulated carriers which includes the review of pool earnings, federal tariff filings, certifications and audits.

5. Apply a meaningful public interest test for all future eligible telecommunications carrier designations.

6. Reject the application of reverse auctions to universal service distributions.

7. Dismiss the notion of state commissions distributing federal high-cost USF support, as Congress never intended nor granted state commissions this authority.

8. Dismiss consideration of establishing three separate funds (Provider of Last Resort Fund, Mobility Fund and Broadband Fund) until the Identical Support Rule is eliminated and all CETCs base their future federal USF support on their own costs.

9. Eliminate the identical support rule and base future support on actual costs.

10. Address rural transport costs that are not currently included in the high-cost USF mechanisms by: (a) providing additional future universal service funding to support these costs, or (b) requiring all wireless and interconnected VoIP providers to either establish a point of interconnection within a rural LEC local calling area or service area, or pay for the transport and termination of traffic outside of the small carrier's service area to avoid significant economic harm to small rural LECs and the consumers they serve.

[129] NTCA recognizes that broadband access service is currently regulated under Title I of the Act. However, given that broadband should be included in the future definition of universal service and that all broadband service providers should be required to contribute to future broadband USF support, it is appropriate to reclassify and regulate broadband/high-speed Internet access service under Title II of the Act.

11. Require large, vertically-integrated communications carriers to provide non-discriminatory access to special access transport needed to reach the Internet backbone.

12. Require large vertically-integrated communications carriers to base the price charged for special access transport needed to reach the Internet backbone upon the cost of providing the service.

13. Require large, vertically-integrated communications carriers to make available to non-affiliated companies the same terms, conditions, and prices charged to their affiliated companies for special access transport needed to reach the Internet backbone.

14. Require large, vertically-integrated communications carriers to make publicly available all of the terms, conditions and prices for special access transport needed to reach the Internet backbone.

15. Require similar protections for the cost of the Internet backbone.

Regulators and Congress are asking carriers to build a National broadband network. Rural LECs are attempting to do their part in the rural high-cost areas they serve. Carriers operating in rural high-cost areas should not be required to commit resources without a reasonable expectation of a return on their investment. NTCA's recommendations allow for current regulatory scrutiny concerning federal high-cost voice USF support, while creating a regulatory contract between broadband providers and the Commission concerning future broadband USF support.

NTCA's recommendations tie the receipt of support to costs, for both wireline and wireless providers, in both the circuit-switched and IP world. The recommendations regarding elimination of the identical support rule and cost-based support for CETCs will help stabilize the fund in the near term. The Commission, Congress, and the American public are entitled to know that federal USF dollars are being used to support the network and that USF dollars are being used efficiently and prudently.

To achieve and maintain the goal of universal affordable broadband service for all Americans, the FCC should also regulate the terms, conditions and prices of large

communications carriers providing special access transport needed to reach the Internet backbone. This action will ensure that large vertically integrated communications providers do not abuse their market power by imposing unfair and discriminatory pricing on small, rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States.

The Regulatory Flexibility Act (5 U.S.C. §601) requires the FCC to consider alternative rules that will reduce the economic impact on small entities. NTCA's proposed high-cost universal service reform recommendations would reduce the economic impact on small rural broadband providers. NTCA's proposals will promote the public interest, convenience, and necessity by increasing competition and diversity in the broadband market and spur development of new advanced communications technologies and broadband deployment. The Commission should therefore adopt NTCA's recommendations to ensure consumers living in rural high-cost areas are able to receive high-quality, affordable broadband services in the future.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the Initial Comments filed on behalf of the National Telecommunications Cooperative Association in WC Docket No. 05-337, and CC Docket No. 96-45, FCC 08-4, 08-5 and 08-22 was served on this 17th day of April 2008 via electronic mail to the following persons:

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