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

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

REPLY COMMENTS

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The National Telecommunications Cooperative Association (NTCA)[1] hereby submits these reply 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, which seek comment on long-term comprehensive high-cost universal service fund (USF) reform.[2] Silence on any positions raised by parties in this proceeding connotes neither agreement nor disagreement with their positions or proposals. Unless specifically stated below, NTCA

[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).

reasserts its positions described in its April 17, 2008, initial comments filed in these dockets.

I. INTRODUCTION

NTCA urges the Commission to adopt and implement a comprehensive high-cost universal service fund (USF) reform plan that would 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 was primarily focused on cost containment of universal service funding—undeniably an important objective. But NTCA further believes that long-term, stable funding is required to provide specific, sustainable and sufficient future high-cost support for broadband deployment and investment. Without stable USF funding, which in highest-cost areas will need to be at levels higher than current USF, availability of broadband in rural areas will be seriously jeopardized as switched access revenues decline.[3]

II. A SIGNIFICANT AND DIVERSE MAJORITY AGREE THE FCC SHOULD INCLUDE BROADBAND IN THE DEFINTION OF UNIVERSAL SERVICE.

AT&T, AARP, Cellular South, Centennial Communications, Consumers Union, Information Technology Industry Council, Montana Independent Telecommunications Systems, NASUCA, New Jersey Division of Rate Council, North Dakota Public Service Commission, NTCA, Oklahoma Corporation Commission, OPASTCO, Public Utility

[3] 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.

Commission of Oregon, Qwest, TCA, TIA, Texas Statewide Telephone Corporation, United States Cellular Corporation, Utah Rural Telecom Association, and Western Telecommunications Alliance all agree that the definition of universal service should expand to include broadband.[4] Broadband is no longer a luxury item—it is a necessity if the United States is to remain competitive in the global economy. Including broadband in the definition of universal service would be a tremendous step in the direction of ubiquitous deployment, a goal espoused by the FCC, the Joint Board, Congress, and the President of the United States.

The Commission must carefully consider the manner in which broadband is included in the universal service definition. The FCC 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 universal broadband service.

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

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[4] *See*, Initial Comments of AT&T at 9-12, AARP at 21-23, Cellular South at 10-11, Centennial Communications at 4-5, Consumers Union at 5, Information Technology Industry Council at 5, Montana Independent Telecommunications Systems at 16-18, NASUCA (Joint Board Recommended Decision) at 16-17, New Jersey Division of Rate Council at 18-20, North Dakota Public Service Commission at 5, NTCA at 8-9, Oklahoma Corporation Commission at 17, OPASTCO at 21-22, Public Utility Commission of Oregon at 3, Qwest at 3, TCA at 11, TIA at 3-5, Texas Statewide Telephone Corp. at 11, United States Cellular Corp. at 60-62, Utah Rural Telecom Association at 3, and Western Telecommunications Alliance at 5-9.

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 should evolve over time.

When broadband is included in the definition of universal service, it is only logical that contributions would be assessed 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.

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.[5] If USF contributions are limited to traditional wireline and wireless voice services only, the inevitable

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[5] 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.

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.

III. THE RURAL AND NON-RURAL DISTINCTION MUST BE MAINTAINED.

Differential treatment is justified by the significant differences between rural and non-rural carriers. NASUCA correctly points out[6] there are major differences between rural ILECs and non-rural ILECs as explained in detail in *The Rural Difference*.[7] Non-rural carriers are the largest ILECs in the nation and most of these ILECs provide healthy earnings to their investors. Conversely, rural companies have less ability to spread their costs across a smaller customer base without increasing their rates to unaffordable levels or rate levels that are not reasonably comparable with urban rates. NTCA agrees with NASUCA that the rural and non-rural distinction must be maintained as the Commission transitions broadband into the future definition of universal service.

The Joint Board recognizes that the current high-cost mechanisms have been effective in maintaining an essential network that serves rural local exchange carrier

[6] NASUCA Initial Comments, Appendix 4.
[7] *The Rural Difference,* Rural Task Force White Paper 2 (January 2000)(available at http://www.wutc.wa.goc/rtf).

(RLEC) customers and that has allowed for the deployment of broadband-capable facilities.[8] In fact, the Joint Board's Recommended Decision states that "RLECs have done a commendable job of providing voice and broadband services to their subscribers."[9] As a result, the Joint Board recommends the public interest will be served by maintaining the existing RLEC support mechanisms.[10] NTCA concurs urges the FCC to adopt the Joint Board's recommendation.

NTCA, however, cautions the Commission that if universal service is to be sustained, the FCC must recognize and address the loss of switched access--a significant 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 all of these services. 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 ILEC areas.[11] If these

[8] Federal-State Joint Board Recommended Decision, ¶ ¶ 30 and 39.
[9] *Ibid.*
[10] *Id.*, ¶ 39.
[11] 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.

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

IV. THE MAJORITY AGREES THAT THE IDENTICAL SUPPORT RULE IS THE SOURCE OF MANY OF THE CURRENT PROBLEMS WITH THE HIGH COST FUND, AND MUST BE ELIMINATED.

The Identical Support Rule NPRM asks whether the identical support rule—whereby the competing carrier receives support based on the incumbent's costs, regardless of their own—should be eliminated. The vast majority of commenting parties agreed that the identical support rule must be eliminated.

The main proponents of the identical support rule were those representing cable and wireless interests. Some wireless carriers argued that the identical support rule was necessary to ensure and maintain "competitive neutrality."[12] This argument is specious and self-serving, at best. A rule which allows one carrier to enter another carrier's service territory and collect universal service support for a functionally different service which is, in many instances, well beyond their legitimately incurred costs is anything but "neutral"—more correctly, it should be deemed a "windfall."

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."

[12] *See*, Initial Comments of Alltel Communications at 5, Cellular South at 7-8, Sprint Nextel Corporation at 7, and United States Cellular Corporation at 5-9.

The Commission agrees that competitive neutrality is no longer a valid premise for the identical support rule. In the recently released CETC USF Cap Order,[13] the Commission writes that in initially determining that the identical support rule was consistent with the principle of competitive neutrality, both the Joint Board and the Commission "did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service."[14] Most recipients of CETC support are wireless carriers, and "rather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service."[15] The end result, the Commission concludes, is that

> [i]nstead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines, the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines. Because the majority of households do not view wireline and wireless services to be direct substitutes, many households subscribe to both services and receive support for multiple lines, which has led to a rapid increase in the size of the fund.[16]

Moreover, the Commission found that the identical support rule incents providers to expand their number of subscribers rather than the geographic scope of their network.[17]

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[13] *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122, rel. May 1 2008 ("CETC USF Cap Order").
[14] *Id*, ¶ 20.
[15] *Ibid.*
[16] *Id*, ¶ 21.
[17] *Ibid.*

NTCA believes that the concept of competitive neutrality is better served by ensuring that sufficient support is provided to all eligible carriers at levels sufficient to cover their costs of providing service, no more and no less. Providing one sector of the industry with excessively high levels of support not only will not make customers better off as their overall quality of service will not be appreciably improved, but will actually cause them harm as they pay higher USF assessments. Ensuring that competitive carriers only receive support based on their actual, demonstrable costs will go a long way toward curing some of the inefficiencies currently inherent to the universal service program. Elimination of the identical support rule will be a major step toward accomplishing that goal.

Not all wireless carriers are united in their support of the identical support rule. AT&T, the nation's largest wireless carrier,[18] recognizes that "[w]hile the Commission's goals in establishing [the identical support] rule may have been laudable, the rule is largely responsible for the explosive growth in the Commission's high cost fund."[19] AT&T goes on, however, to recommend that all wireless CETC funding be phased out within five years, to be "redeployed to the Advanced Mobility Fund."[20] NTCA maintains, as stated in its initial comments, that the creation of separate funds should not be undertaken until and unless the numerous factors contributing to the explosive growth in the high cost fund are remedied.[21]

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[18] http://www.wireless.att.com/about/.
[19] AT&T Initial Comments at 36-37.
[20] *Id* at 37.
[21] NTCA Initial Comments at 3.

Verizon and Verizon Wireless also recommend elimination of the identical support rule, and agree with NTCA that wireless CETCs should no longer receive support based on access replacement:

> "[T]he Commission should promptly eliminate support to competitive CETCs from the funds that were intended to replace access charges. Wireless ETCs were never entitled to tariffed access charges, and competitive ETCs—both wireless and wireline—have not historically relied upon access charges as a source of universal service support.[22]

However, Verizon and Verizon Wireless tie the elimination of the identical support rule to the granting of one-time wireless construction grants in areas currently without wireless service. The companies propose that these grants would be awarded through competitive bidding.[23] While NTCA has previously noted that reverse auctions could potentially work in greenfield areas, Verizon and Verizon Wireless further urge the Commission to make "use of reverse auctions for determining and distributing ongoing wireless and other competitive ETC support."[24] NTCA strongly disagrees, for all the reasons noted in a subsequent section of these reply comments.

In the event of the elimination of the identical support rule, CTIA proposes "a five-year period during which carriers are transitioned off of the existing support mechanisms and onto any successor mechanisms."[25] Doing so would be patently unwise. Competing carriers should be entitled to support at a sufficient level to cover their costs, as the incumbents currently are. The problem, however, is caused by those competing carriers who are receiving support in excess of their own legitimately incurred costs for

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[22] Verizon and Verizon Wireless Initial Comments at 4-5.
[23] *Id* at 3.
[24] *Id* at 3-4.
[25] CTIA Initial Comments at 20.

providing a service that is functionally different. Recognizing the problem, identifying steps to correct it, but then waiting five years to implement corrective steps would be illogical. Corrective action needs to be decided upon now and implemented as soon as possible. The Commission should reject any proposed delays to urgently needed reform.

V. THE COMMISSION SHOULD IMMEDIATELY ELIMINATE ACCESS REPLACEMENT SUPPORT TO WIRELESS CETCs.

AT&T, Verizon, Qwest, and NTCA all agree that wireless CETCs should not receive ILEC access replacement USF support (Interstate Common Line Support (ICLS), Local Switching Support (LSS), and Interstate Access Support (IAS)). AT&T recommends that access replacement USF support currently distributed to CETCs support be phased-out over a period of years.[26] Qwest states that CETCs should stop receiving IAS, ICLS, and LSS because the purposes underlying ILEC receipt of this support are not served by providing this support to CETCs.[27] Verizon and Verizon Wireless further state that wireless CETCs were never entitled to tariffed access charges and have not historically relied on access charges as a source of universal service support and therefore it makes perfect sense to eliminate these subsidies to CETCs immediately.[28] NTCA agrees and recommends that the Commission eliminate access replacement support to wireless CETCs immediately.

The FCC has determined that wireless carriers do not have the right to impose access charges pursuant to tariff.[29] Thus, wireless carriers do not provide access services

[26] AT&T Initial Comments at 40.
[27] Qwest Initial Comments at 7.
[28] Verizon and Verizon Wireless Initial Comments at 5 and 38.
[29] *Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges,* 17 FCC Rcd 13192, 13196 ¶1, 8-9, (2002).

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.

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. Since wireless CETCs do not offer equal access to all long distance carriers, a wireless CETCs' costs for delivering long-distance traffic are likely to be very different than a rural LEC's costs. In addition, wireless carriers can choose to serve only those customers within range of wireless towers.[30] Rural LECs do not have this luxury; rather they have made a commitment to provide local service throughout the service area.

NTCA therefore recommends the following steps for replacement of the Identical Support Rule, which includes IAS, ICLS, and LSS:

1. If an existing wireless CETC chooses not to file its cost data as allowed in the FCC's CETC USF Cap Order,[31] 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

[30] 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.
[31] CETC USF Cap Order, ¶ 31.

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 Commission-approved 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). This process will ensure that federal high-cost USF support is determined and distributed to companies in a competitively neutral manner which will in turn allow the FCC to maintain sufficient, sustainable, and predictable federal high-cost support mechanisms during the communications industry's transition from the PSTN world to the IP broadband world.

VI. REVERSE AUCTIONS REMAIN AN IMPERFECT AND UNWORKABLE SOLUTION TO THE PROBLEM OF EFFICIENTLY DISTRIBUTING UNIVERSAL SERVICE PAYMENTS, AND SHOULD BE REJECTED.

Like much in the economics profession, the concept of reverse auctions can seem appealing from a theoretical standpoint. However, the devil lies in the details. And the number of critical details is daunting: 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[32] are all non-trivial matters that must be determined—and determined correctly—before a reverse auction scheme has the slightest chance to be even moderately successful. In this proceeding, the Commission asked for comment on each of these reverse auction parameters and received precious little substantive feedback in return.

[32] Reverse Auctions NPRM at 6-18.

Three parties have provided details: explicit reverse auction proposals have been submitted by CTIA, Verizon, and AllTel. As NTCA has noted previously, none of these are workable. Under CTIA's "winner takes more" plan, losing bidders—who, according to reverse auction proponents, would have already bid the lowest amount of support necessary for them to serve the area at auction—would be "awarded" a lower amount of support than their minimum-level bid. Either these bidders will decline the support, which would require them to operate at a deficit, or—should they actually be able to provide a viable level of service for the lower amount of support—accept the support and provide service, thus proving that reverse auctions are not nearly as efficient at minimizing support levels as their supporters would claim. NTCA detailed its reservations about the Verizon plan (which "raises the significant issue of stranded investment"[33]) and the Alltel proposal (which "us[es] USF funding to create competition where it would not otherwise exist"[34]) in its initial comments in this proceeding.

Again, as in the Joint Board's 2006 Reverse Auction proceeding,[35] the vast majority of commenters correctly recognize that reverse auctions are not a viable method for determining how universal service fund payments should be distributed. Virtually all of the industry associations, ILECs and consultants stand in opposition to reverse auctions.

It is extremely telling that two agencies which provide funding for rural providers, CoBank and the Rural Telephone Finance Cooperative (RTFC), both strongly oppose the

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[33] NTCA Initial Comments at 41.
[34] *Ibid.*
[35] *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.

use of reverse auctions.[36] As NTCA pointed out in its initial comments, "[i]mposition of a reverse auction scheme for universal service distribution…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."[37] CoBank concurs:

> Rural ILECs rely heavily on debt capital to maintain and improve [the] rural infrastructure. The repayment of these loans depends on access to universal service support and existing cost recovery mechanisms. Access to debt capital could be significantly reduced under a reverse auction system. Lenders require a high degree of certainty regarding a borrower's capacity to repay debt. There is a direct correlation between the ability of a borrower to repay debt capital and the amount of capital a lender is willing to make available to a borrower. The greater the level of uncertainty about future cash flow, the lower the amount of debt capital available to a borrower. If a telecommunications provider is faced with the possibility of losing access to universal service support funding through a reverse auction system, lenders will restrict the amount of debt made available. This lack of access to capital could impair the ability of service providers of all types to meet the growing telecommunications needs of rural Americans.[38]

Similarly, RTFC expresses concerns about the overall degree of uncertainty that reverse auctions would inject into the ongoing operations of rural telecommunications providers:

> [I]n order to make a loan, even a member-owned cooperative such as RTFC must use all possible due diligence in ascertaining that a prospective borrower's revenue streams are adequate for the life of the projected loan. The possibility of relatively sudden and possibly total loss of high-cost universal service support at some point in the life of the loan creates an insurmountable level of uncertainty that the borrower will be able to service its debt. This consequence of reverse auctions would not seem to meet the Telecom Act's requirement that universal service support be "specific, predictable and sufficient."[39]

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[36] CoBank Intial Comments at 3-4, RTFC Initial Comments at 2-7.
[37] NTCA Initial Comments at 32.
[38] CoBank Initial Comments at 4.
[39] RTFC Initial Comments at 4-5.

The ability to obtain financing for rural projects at reasonable terms is critical to the overall viability of the project. As illustrated by the comments filed by CoBank and RTFC, imposition of reverse auctions will increase the overall level of uncertainty surrounding rural projects, and will make lenders less likely to provide critical funding for these projects. The ultimate losers will be high-cost rural customers, the very ones whom the universal service program is intended to benefit.

As was the case in the Joint Board's 2006 reverse auctions proceeding, while the majority of respondents are opposed to the imposition of reverse auctions, there was significant disagreement within the some of the industry groups where there was some support of reverse auctions. Most notably, parties representing wireless interests were split down the middle: AllTel, CTIA, NTCH, SouthernLinc Wireless, T-Mobile, Windstream Communications and Verizon and Verizon Wireless were in favor, while CellularSouth, Sprint Nextel and US Cellular stood opposed.[40] Similarly, the state commissions were split: the California, Connecticut, New Jersey, New York and Ohio commissions favor reverse auctions, while the North Dakota, Oklahoma and Oregon commissions oppose.[41] As NTCA asked in its initial comments, "[i]f there exists this much dissent within the various industry groups, how can there possibly be agreement between them?"[42]

[40] *See*, Initial Comments of AllTel at 40-41, CTIA at 23, NTCH at 2, SouthernLinc Wireless at 17-30, T-Mobile at 11-12, Windstream Communications at 24-25, Verizon and Verizon Wireless at 18-22, CellularSouth at 3-7, Sprint Nextel at 12-13, and US Cellular at 55-60.

[41] *See*, Initial Comments of California Public Utilities Commission (Reverse Auctions) at 3-6, Connecticut Department of Public Utility Control at 6-7, New Jersey Board of Public Utilities at 5, New York State Public Service Commission at 2-3, The Public Utilities Commission of Ohio (Regarding Reverse Auctions) at 3-10, North Dakota Public Service Commission at 4-5, Oklahoma Corporation Commission at 13-17, and Public Utility Commission of Oregon at 2.

[42] NTCA Initial Comments at 35.

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. The recently-imposed CETC cap is a good first step toward ensuring the continuing viability of the universal service program. The Commission should continue to explore other, less potentially harmful methods of reform than reverse auctions.

VII. CONCLUSION

During the last two decades, rural ILECs have invested in rural, high-cost and insular areas in the United States based on a system of rate-of-return regulation, NECA[43] pooling, and universal service support. This existing regulatory structure has allowed the Commission to meet its Congressional mandate to ensure rural consumers access to communications services at prices that are comparable to similar services and prices received by urban consumers. Applying the current embedded-cost methodology to determine rural ILEC high-cost universal service support has enabled the FCC and Congress to achieve its voice universal service goals and can do the same to achieve its broadband universal service goals.

NTCA therefore urges the Commission to adopt NTCA's USF reform recommendations and concurrently implement modifications to the universal service contribution methodology to further preserve and ensure the future sustainability of the universal service mechanisms in the United States. Specifically, NTCA recommends that

[43] National Exchange Carrier Association (NECA).

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.** Broadband is no longer a luxury item—it is a necessity of the U.S. is to remain competitive in the global economy. Including broadband in the definition of universal service would be a tremendous step in the direction of ubiquitous deployment, a goal espoused by President Bush.

2. **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.[44]

3. **Leave the existing rural landline federal high-cost voice USF mechanisms unchanged during the transition to include broadband in the definition of universal service.** The Joint Board, in their recommended decision, noted that rural carriers have done a "commendable" job of providing voice services and that "it is in the public interest to maintain, for the present, the existing RLEC support mechanisms[.]"[45] NTCA concurs.

4. **Manage the transition to IP 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

[44] 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.

[45] *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.

regulated revenues and expenses.[46] 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.** Much of the dramatic growth in the high cost fund is a direct result of multiple ETCs designated in areas that could not otherwise support any direct competition. Implementation of a meaningful public interest test would help insure that USF dollars are being used in an efficient manner.

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

7. **Dismiss the notion of state commissions distributing federal high-cost USF support, as Congress never intended nor granted state commissions this authority**. Granting such authority to state Commissions would violate both the Act and the Tenth Amendment.[47]

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.** The Commission can then determine whether the creation of three new funds is in the public interest. To do otherwise will seriously jeopardize existing and future high-cost funding for all eligible carriers.

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[46] 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.
[47] *See*, NTCA Initial Comments at 46-49.

9. **Address rural transport costs that are not currently included in the high-cost USF mechanisms.** This can be best accomplished 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.

10. **Eliminate the identical support rule and base future support on actual 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—namely, Interstate Access Support (IAS), Interstate Common Line Support (ICLS) and Local Switching Support (LSS) —even for an interim time period.

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[48] 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.

[48] 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.

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.

Lastly, 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 will 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.

Taken *in toto*, NTCA's recommendations would 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; provide carriers operating in rural high-cost areas reasonable expectation of a return on their investment; and ensure the Commission, Congress, and the American public that federal USF dollars are being prudently used to support the National broadband network.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments 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 2nd day of June 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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