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

In the Matter of	)	
	)	
Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption"	)))	WC Docket No. 08-152

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

INITIAL COMMENTS

Respectfully submitted,

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INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] hereby submits these initial comments in response to the Federal Communications Commission (Commission or FCC) Public Notice[2] seeking comment the petition filed by AT&T Inc., (AT&T) specifically requesting:

1. A Declaratory Ruling that access charges apply when traffic that originates in Internet Protocol (IP) is terminated by a party served by the public switched telephone network (PSTN) and conversely, when PSTN-originated traffic is terminated to a party served by an IP-based network;

2. In the alternative, if the FCC determines that the Enhanced Service Provider (ESP) Exemption applies to IP-PSTN and PSTN-IP traffic (collectively referred to as IP/PSTN traffic), that the Commission waive the application of the ESP Exemption and apply applicable access charges to this traffic; and

[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] Public Notice on the AT&T Petition for Interim Declaratory Ruling and Limited Waivers, WC Docket No. 08-152, DA 09-1725 (rel. July, 24, 2008) (Public Notice).

3. Willing carriers would voluntarily reduce their **<u>intrastate</u>** access charges to their **<u>interstate</u>** access charge rate levels and recover the ***lost intrastate revenues*** in their ***subscriber line charges (SLCs)*** and in their ***originating interstate access charges*** up to $0.0095 per minute.

I. INTRODUCTION AND SUMMARY

AT&T proposes to move what is now considered intrastate costs to interstate cost recovery rates (SLCs or originating interstate access charges). This appears to be in recognition of previous FCC decisions to categorize more and more services as interstate in nature. NTCA agrees that this is a move in the right direction and further believes more costs should be considered interstate because of previous FCC decisions on services and their revenues. Over time as more traffic moves to VoIP and other IP-based applications, more costs should be assigned to the interstate jurisdiction and recovered through federal USF mechanism, specifically the Interstate Common Line Support (ICLS) mechanism for Rate of Return (RoR) carriers.

NTCA further agrees that the ESP Exemption should not apply to IP-PSTN and PSTN-IP traffic and urges the Commission to issue a ruling declaring that IP/PSTN traffic, and specifically Voice over Internet Protocol (VoIP) traffic, is required to pay applicable tariffed intrastate access rates, intrastate access rates, and reciprocal compensation rates.

The AT&T voluntary interim intercarrier compensation proposal concerning lowering intrastate terminating access rates to interstate terminating access rate levels, however, is deficient, specifically tailored for price-cap carriers, and provides no relief to rural consumers served by RoR carriers. The Commission should not adopt the AT&T interim proposal without concurrently adopting NTCA's interim universal service fund (USF) and intercarrier compensation (IC) reform plan (NTCA Interim USF & IC Reform Plan) filed on July 11, 2008, which is specifically tailored to address the interstate USF and IC needs of rural consumers served by RoR regulated rural LECs.[3] (See Attachment A).

The NTCA Interim USF & IC Reform Plan proposes the following interim measures for interstate access rate design and residual USF access revenue cost recovery:

1. RoR carriers' federal interstate switched access rates, for NECA pool companies as well as non-NECA RoR companies, should be capped at existing rate levels, until permanent access replacement funding is established for the transition to broadband funding.[4]

2. Access costs that are unrecovered from those capped rates should be recovered from interim USF funding as another component of ICLS, consistent with the existing reliance on ICLS as a residual recovery mechanism for RoR carriers' access-related costs. Even with this additional ICLS support, the overall universal service fund size will likely not increase because of the Commission's recent establishment of a cap on support for competitive eligible telecommunications carriers ("CETCs")[5] and by the future elimination of the identical support rule for CETCs, which will free hundreds of millions of dollars in CETC USF support to be used for this and other purposes.[6] Existing federal high-cost USF mechanisms and the criteria for existing ICLS support should remain intact through the duration of the interim plan.

3. A proceeding with a specific timeline should be opened to develop a transition from the PSTN universal service system to an IP/broadband universal service system. NTCA recommends that the ultimate IP/broadband USF mechanism for RoR companies should include the characteristics contained in its comments filed earlier this year in the Commission's three universal service Notice of Proposed Rulemakings (NPRMs).[7]

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[3] *See, NTCA Interim USF & IC Reform Plan,* filed on July, 11, 2008, in CC Docket No. 96-45, CC Docket No. 01-92, and WC Docket No. 05-337. The NTCA Interim USF & IC Reform Plan does not address intrastate access because of the jurisdictional issues that would be presented. While intrastate access demand is decreasing, and in several states more significantly than interstate demand, intrastate cost recovery is not addressed in the NTCA plan.

[4] For the National Exchange Carrier Association (NECA) pool, the cap would reflect the composite pool average switched access rate level. NECA would continue to have the ability to assign pool study areas at rate bands as it does currently.

[5] *See, In the Matter of High-Cost Universal Service Support* (WC Docket No. 05-337) and *In the Matter of Federal-State Joint Board on Universal Service* (CC Docket No. 96-45), (rel. May 1, 2008) ("*CETC Cap Order*").

[6] *See, In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking,* FCC 08-4, (rel. January 29, 2008) ("Identical Support NPRM")

[7] *See, In the Matter of High-Cost Universal Support, Federal-State Joint Board on Universal Service,* WC Docket No. 05-337, CC Docket No. 96-45, Comments filed April 17, 2008, by the National Telecommunications Cooperative Association ("NTCA Comments"). Specifically, the NTCA Comments recommend that the Commission: (1) include broadband in the future definition of universal service; (2) expand the base of USF contributors to include all broadband providers; (3) require all carriers seeking additional or new federal high-cost broadband USF support to submit their Title II regulated costs, revenues and earnings when determining future USF

For several years now, access usage and revenues have been declining. 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. Soon, the National Exchange Carrier Association (NECA) interstate pool and the NECA settlements that are paid out of the pool will no longer be sustainable. As access usage drops, access rates rise to cover the costs of carriers in the pool. As access rates rise, demand will be further depressed, thus exacerbating the downward spiral in access usage and revenues. The problem will accelerate as consumers adopt IP-based technologies.

The Regulatory Flexibility Act (5 U.S.C. §601) further requires the FCC to consider alternative rules that will reduce the economic impact on small entities. NTCA's Interim USF & IC Reform Proposal filed on July 11, 2008, and NTCA's proposed long-term high-cost universal service reform recommendations filed on April 17, 2008, will reduce the economic impact on small rural providers during the transition to comprehensive IP-based telecommunications. NTCA's proposals will further allow the Commission to begin to meet its regulatory responsibility, will promote the public interest, convenience, and necessity, will spur development of new advanced communications technologies and broadband deployment, and most importantly will ensure that consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services.[8] NTCA therefore urges the Commission to adopt NTCA's interim and long-term recommendations concurrently with its determination in this proceeding to ensure consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services.

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disbursements; and (4) adopt and implement a transition plan to fairly and equitably move the communications industry from the PSTN world to the IP world.

[8] As access demand continues to decrease, further and more comprehensive reform by the Commission will be necessary.

II. THE COMMISSION SHOULD ADOPT THE AT&T INTERIM PROPOSAL AND THE NTCA INTERIM USF & IC REFORM PLAN SIMULTANEOUSLY.

The AT&T Petition allows willing price-cap carriers to voluntarily reduce their intrastate access charges to their interstate access charge rate levels and recover the lost revenues in their SLCs and their originating access charges up to $0.0095. Because most RoR rural LECs have no "head room" in their SLCs and their originating interstate access rates already exceed $0.0095, the AT&T Petition provides no relief for rural consumers served by ROR rural ILECs. Further, price cap carriers' interstate originating interstate access rates are not cost-based and therefore the Commission can potentially move intrastate costs over to price-cap carrier interstate originating access rates.[9] The Commission, however, cannot move ROR carrier costs over the interstate originating rate because RoR carrier interstate originating access rates are cost-based. ROR LECs, therefore, need alternative cost recovery from sources other than prohibited increases in SLCs and originating access charges. Specifically, RoR carriers need to recover costs lost to declining access revenues through increases in RoR rural ILEC Interstate Common Line Support (ICLS) as proposed in NTCA's Interim USF & IC Reform Plan.

Furthermore, the AT&T Petition does not address continued decreases in access minutes as outlined in the NTCA Interim USF & IC Reform Plan and hence would require RoR LECs to increase interstate access rates, unless alternative reform is adopted by the Commission. Rural RoR carriers face a crisis today precipitated by declining demand for switched access services on the PSTN. Ironically, this reduction in minutes of use on the PSTN has the effect of not only

[9] However, because RoR carriers cannot recover lost intrastate terminating access revenues through SLCs and interstate originating rate increase, the FCC should explicitly confirm that smaller carriers may continue to access intrastate access charges on interstate interexchange IP/PSTN traffic at filed rate levels. Alternatively, as AT&T suggests, the FCC should enable higher-cost RoR carriers to achieve access parity by permitting them to recover shortfalls intrastate access revenues via increases in interstate access USF support mechanisms.

reducing revenues, but also increasing switched access rates for RoR carriers.[10] At some point in near future, the NECA interstate pool and the NECA settlements that are paid out of the pool will no longer be sustainable. As access usage drops, access rates will continue to rise to cover the costs of carriers in the pool. As access rates rise, access demand will be further depressed, thus exacerbating the downward spiral in access usage and revenues. The problem will accelerate as consumers adopt IP-based technologies. More importantly, the reduction in access revenues will directly affect the ability of rural carriers to continue to fulfill current universal service obligations and to invest in broadband infrastructure in rural and high-cost areas of the nation.

The NTCA Interim USF & IC Reform Plan directly addresses this immediate problem by capping ***interstate access rates*** for RoR carriers at current levels.[11] The proposal recommends that residual access costs be recovered from ICLS because the Commission initially established the ICLS mechanism to recover residual access costs previously contained in interstate access elements. Allocating additional residual interstate access elements is consistent with the *MAG Order* and, as previously noted, also with the approach the Commission adopted in the *CALLS Order* in establishing IAS. In addition, allowing recovery of both traffic-sensitive and non-traffic-sensitive costs from ICLS is also consistent with the *MAG Order*.[12] Recently, the

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[10] NECA pool rates are designed to recover the total revenue requirements of RoR carriers. As minutes of use decline more rapidly than the revenue requirement associated with the RoR carriers' networks, the access rates necessary to recover the revenue requirement must increase.

[11] The NTCA plan is interim and does not resolve the overall problem of a continuing decline in access revenues and the negative impact that has on RoR companies. It is an interim proposal to stop the problem from getting worse while the Commission addresses overall comprehensive universal service and intercarrier compensation reform.

[12] *See*, *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers, Second Order and Further Notice of Proposed Rulemaking,* FCC Docket No. 01-304, (rel. October 11, 2001) ("*MAG Order*"), ¶¶ 100 & 136, n. 375.

Commission allowed certain carriers who converted from RoR to Price Cap regulation to retain their ICLS.[13]

To effectuate this proposal, each RoR carrier, filing independently or through NECA, will be required to file its prospective traffic-sensitive revenue requirements[14] and prospective interstate switched access demand for the test year with the Commission. Based upon these filings, the Universal Service Administrative Corporation (USAC) would then make the appropriate adjustment to the company's ICLS distribution based on the difference between the estimated revenue from switched access rates in the test period and the total estimated (unadjusted) switched access revenue requirement. To maintain the alignment between cost and rates, all NECA and independent tariff RoR carriers will develop an adjustment factor for each test year which, when applied to the traffic sensitive (TS) revenue requirement, will determine which costs are subject to interstate access ratemaking and which costs will be attributable to ICLS recovery. This supplemental ICLS recovery would be subject to subsequent true-up, just as ICLS is today.[15]

This important change in the ratemaking process for interstate switched access is consistent with the policy that the Commission first applied in its last significant reform of intercarrier compensation for RoR carriers in 2001 when ICLS was established.[16] In the *MAG Order*, the Commission shifted RoR carriers' costs from various interstate access elements to be

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[13] The Commission has also found that it is appropriate for carriers that were rate-of-return and convert to price cap regulation to continue to receive high-cost universal service support to explicitly recover their common line costs by allowing such carriers to continue to receive ICLS. *See Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order (rel. Mar. 18, 2008), ¶¶ 19-22.

[14] For those companies electing average schedule treatment, estimated average schedule settlements would be a proxy for those companies' costs, as is done today within the pool.

[15] See 47 C.F.R. §54.903(a)(4).

[16] See *MAG Order*, ¶¶ 100 & 136, n. 375.

recovered from a new, explicit USF support mechanism, ICLS. In its deliberation in the *MAG Order*, the Commission changed the cost recovery for line ports and the transport interconnection charge (TIC) from switched access rates to ICLS.

The Commission adopted a proxy of 30 percent as the portion of overall local switching costs associated with line ports, and thus allocated that amount to the common line category.[17] In the *MAG Order,* the Commission recognized that RoR carriers' line port costs may vary widely, and also indicated an awareness that some carriers' line port costs were significantly more than 30 percent of total local switching costs.

In similar fashion, the Commission concluded that TIC costs were related to different access categories and represented both traffic-sensitive costs and non-traffic-sensitive costs. Thus, it ordered that the TIC costs were to be spread <u>proportionately</u> to all other rate elements.[18] While it stated that equally valid alternative methods for assigning TIC costs could have been adopted, the Commission admitted that it could not determine from the record in the proceeding the exact portion of the costs recovered from TIC that were transport related.[19]

For both local switching costs and TIC-related transport costs, it would be entirely consistent with the Commission's action in the *MAG Order* to assign a different proportion of local switching and transport cost between the common line, switching and transport categories and to recover these common line costs with a supplemental distribution from ICLS as proposed in this plan. The ICLS mechanism developed by the Commission can accommodate additional costs that may be re-categorized as common line costs upon further reconsideration. In initially establishing the ICLS without a cap, the Commission recognized that allowing recovery of

[17] See *MAG Order*, ¶94.

[18] See *MAG Order*, ¶100.

[19] See *MAG Order*, ¶101.

interstate access costs is essential for RoR carriers because those companies are "particularly sensitive to disruptions in their interstate revenue streams."[20]

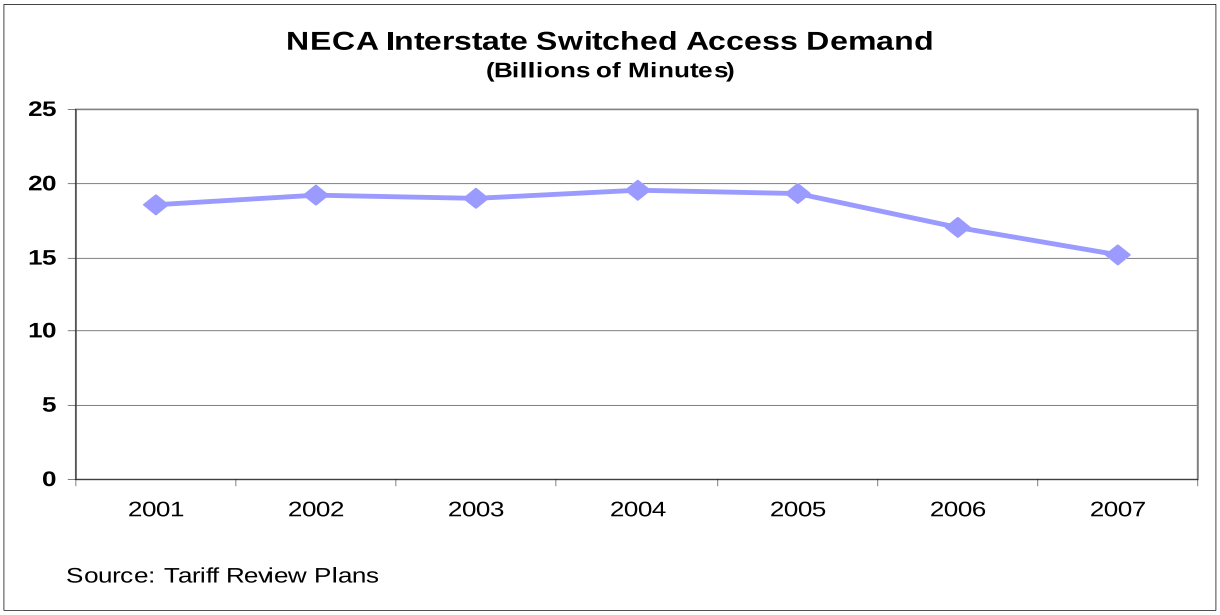
The capping of interstate access rates and reassigning of access-related costs to ICLS is necessary to remedy the looming disruption of RoR carriers' operations and universal service obligations to their customers. The precipitous decline in switched access traffic constitutes a serious, ultimately debilitating effect on RoR carriers' ability to serve their customers, thus requiring immediate action. In its 2008 interstate access tariff filing, NECA forecasted local switching minutes to decline by almost 12 percent.[21] This forecasted decrease was on top of an 11.4 percent reduction from 2006 to 2007 that NECA had previously reported.[22] Given the shift away from long-distance service to other services that do not utilize switched access, it is obvious that RoR carriers' switched access demand will continue to decline. This reduction in interstate access demand will result in ever escalating access rates for RoR carriers unless this Commission takes immediate interim action. The current and forecasted decline in switched access demand and the resulting and forecasted increase in switched access rates are clearly

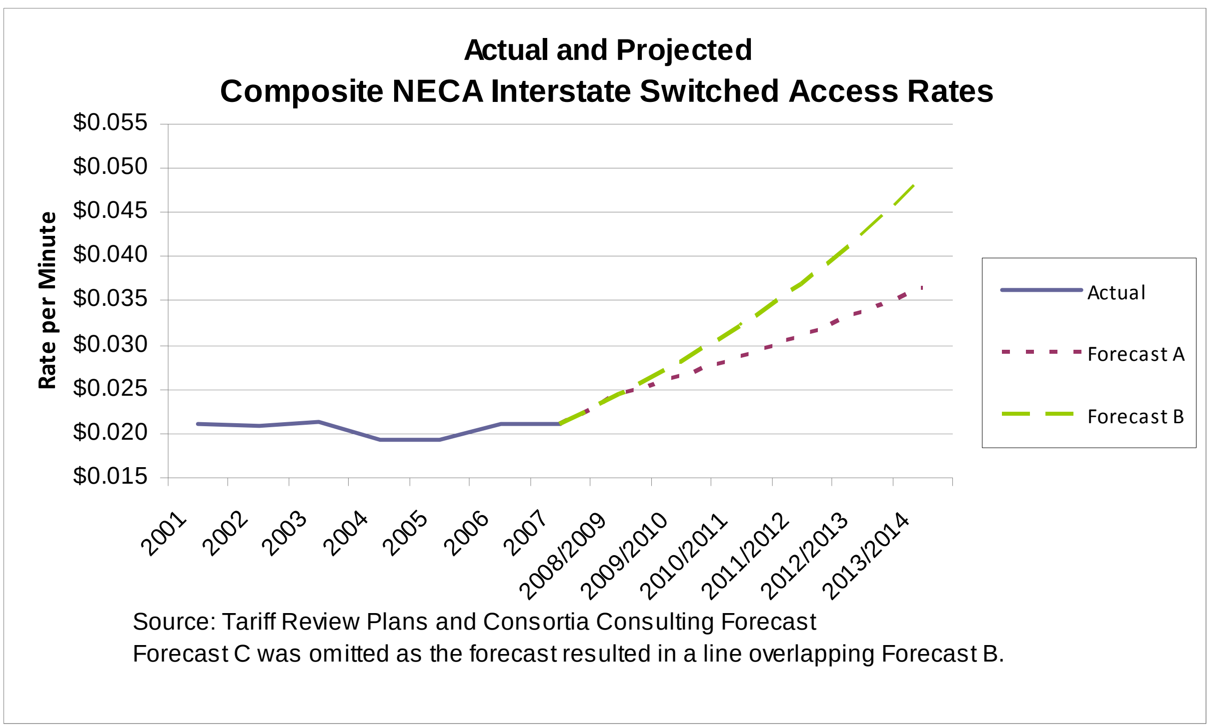
[20] See *MAG Order*, ¶ 134.

[21] See NECA Access Service Tariff F.C.C. No. 5, Transmittal No. 1214, June 16, 2008, Volume 3 at p. 4. This decline is measured by comparing the forecast for the 2008/2009 tariff period against the actual minutes of use for the 2007 calendar year.

[22] See NECA TRP filing Excel File; sheet 'DMD-1 Page 3'. Percent decline represents the change from actual 2006 minutes of use to actual 2007 minutes of use.

shown in the graphs below.[23]





23 The forecast of switched access rates assumes that pool composition remains constant, i.e., no pool members enter or exit the pool, and that revenue requirements do not shift between switched and special access.

Implementing a cap on interstate rates will ensure that RoR carriers' access rates do not continue to increase, which will benefit multiple parties. Interexchange carriers will benefit by paying lower access rates than they otherwise would if rates were not capped. Since interexchange carriers pass on access costs in their retail long-distance rates, customers will also benefit by paying lower retail long-distance rates. Moreover, rural customers will also continue to receive the high-quality service and will benefit by rural carriers' continued investment in broadband infrastructure.

In addition, implementing the recovery of residual common line revenue requirements from ICLS for RoR is also sound public policy, building on the record in the *MAG Order*. Since supplemental support it is limited solely to RoR carriers, which represent a small portion of the nation's access lines relative to price cap carriers, such a change will not result in large increases in the USF.[24] Indeed, recently in its *CETC Cap Order*, the Commission observed that both Local Switching Support and ICLS for RoR carriers have been stable in recent years.[25] Thus, the stability in the size of ICLS for incumbent RoR LECs that the Commission anticipated seven years ago in the *MAG Order* has occurred. This stability should continue under the NTCA Interim USF & IC Reform Proposal.

III. CONCLUSION

The Commission should issue a ruling declaring that IP/PSTN traffic, and specifically VoIP traffic, is required to pay applicable tariffed intrastate access rates, intrastate access rates, and reciprocal compensation, and adopt the AT&T interim access proposal for price-cap carriers and the NTCA Interim USF & IC Reform Plan for RoR carriers simultaneously.

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[24] In the *MAG Order*, the Commission also observed that ICLS will be constrained by carriers' embedded costs and recalculated annually to recoup any unrecovered costs. See *MAG Order*, ¶¶ 133-134.

[25] See *CETC Cap Order*, ¶ 10.

The current access charge system can no longer provide a reasonable opportunity to recover costs and therefore the Commission must take immediate action if it is to fulfill its legal responsibilities. Failure to act will result in little or no additional investment in broadband infrastructure and will result in a painful, potentially devastating crisis for rural telecommunications customers and the carriers that serve them. If such a scenario were allowed to transpire, rural customers served by RoR carriers would likely have few, if any, others means for receiving communications services because the rural RoR carriers provide the underlying networks necessary for other technologies, such as wireless, to operate. In a very real sense, these rural customers will be disconnected from the emerging IP-based economy. Failure to act will also mean that the Commission has failed to fulfill its statutory obligations. NTCA urges the Commission to implement NTCA's Interim USF & IC Reform Proposal now in order to provide a reasonable cost recovery mechanism, to preserve and advance universal service in high-cost and rural areas, and to provide a specific and predictable universal service mechanism for the foreseeable 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. 08-152, DA 08-1725, was served on this 12th day of August 2008 via electronic mail to the following persons:

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