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

November 21, 2008

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

***Ex Parte* Notice: *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92; *Universal Service Contribution Methodology,* CC Docket 96-45, and *IP-Enabled Services,* WC Docket 04-36.**

Dear Ms. Dortch:

On Friday, November 21, 2008, Daniel Mitchell with the National Telecommunications Cooperative Association (NTCA)[1] met with Commissioner Copps' Senior Legal Advisor, Scott Deutchman, to discuss issues raised in the above referenced dockets. NTCA's comments and positions during the meeting were consistent with NTCA's previous pleadings in these dockets.

NTCA would like to thank and applaud the Commissioners for recognizing the importance of due process, transparency and providing all interested parties the opportunity to fully review and comment on the critical and monumental intercarrier compensation (IC) and universal service fund (USF) proposals contained in the Further Notice of Proposed Rulemaking (FNPRM).[2] As

[1] NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 585 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (LECs) 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] NTCA submits these ex parte comments in response to the Federal Communications Commission (Commission or FCC) November 5, 2008, request for comment on the following three proposals: (1) Chairman Martin's Original Draft Comprehensive Intercarrier Compensation (IC) and Universal Service Fund (USF) Reform Proposal circulated to the Commission on October 15, 2008, which includes an access charge exemption for interconnected voice over Internet protocol (VoIP) service; (2) A Modified Version of Chairman Martin's Original Draft Comprehensive IC and USF Reform Proposal circulated to the Commission on the evening of November 5, 2008, which also includes an access charge exemption for interconnected VoIP service; and (3) A Narrow Universal Service Draft Alternative Proposal circulated to the Commission on October 31, 2008. *See, 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, *Lifeline and Link Up,* WC Docket No. 03-109, *Universal Service Contribution Methodology,* WC Docket No. 06-122, *Numbering Resource Optimization,* CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92; Intercarrier Compensation for ISP-Bound traffic, CC Docket No. 99-68, and *IP-*

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703-351-2000 • Fax/703-351-2001 • www.ntca.org

the Commission undertakes comprehensive intercarrier compensation and universal service reform, NTCA urges the Commission to focus on providing sufficient, sustainable, and predictable USF support for broadband services throughout the high-cost, rural areas of United States. NTCA believes that the single most influential factor in stimulating the United States economy and establishing this Nation as a global leader in broadband is to invest in additional USF support to build and maintain the Nation's broadband networks. The one place the United States should be willing to invest its resources is in the building, maintaining, and operating in America's broadband infrastructure, particularly in rural areas, so that broadband is affordable to all consumers and businesses.

In the Joint Statement of Commissioners Copps, Adelstein, Tate, and McDowell released with this FNPRM, the Commissioners indicate that there: (1) appears to be a growing consensus to move intrastate access rates to interstate levels over a reasonable period of time, (2) a need to avoid unduly burdening consumers with rate increases untethered to reductions in access rates, (3) establish an alternative cost recovery mechanisms in certain circumstances to offset lost access revenues as a result of intercarrier compensation reform, (4) eliminate the identical support rule, and (5) emphasize the importance of broadband to the future of universal service. NTCA agrees with all of these goals. In order to achieve these objectives the FCC must reject the Chairman's proposals contained in Appendices A and C of the FNPRM, and adopt a set of completely new comprehensive IC and USF reform measures such as contained below and will be filed in more detail on December 18, 2008.

NTCA believes the intercarrier compensation and universal service reform should be structured to prevent future fraud, waste, and abuse. NTCA also 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 at risk.[3] Considering both of these objectives, NTCA recommends that the Commission should include the following provisions in its intercarrier compensation and high-cost universal service reform plan:

1. Implement a rule that IP/PSTN traffic, specifically interconnected VoIP traffic, is required to pay applicable tariffed interstate access rates, intrastate access rates, and reciprocal

*Enabled Services*, WC Docket No. 04-36; Order on Remand and Report and Order, and Further Notice of Proposed Rulemaking (FNPRM), p. 19 (rel. November 5, 2008).

[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.

compensation rates, until such time as there is no longer a public switched telecommunications network (PSTN).

2. Allow the state commission to voluntarily reduce, on a company-by-company basis, intrastate originating and terminating access rates to interstate access rate levels over a reasonable period of time.

3. Establish and implement a Restructure Mechanism (RM), before access rate reductions take place, to allow rate-of-return (RoR) carriers to recover lost access revenues, not recovered in end-user rates, through increases in the Interstate Common Line Support (ICLS) mechanism.

4. 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 local calling area and service area as contained in the Missoula Plan to avoid significant economic harm to small rural LECs and the consumers they serve.

5. Continue the use of the embedded cost methodology for setting small rate-of-return rural ILEC access rates because this methodology is best suited to the unique economic, geographic, topographic needs of these carriers and for the sustainability of the NECA pools.

6. Include broadband in the future definition of universal service and regulate broadband under Title II of the Act.

7. Expand the USF contribution base to include all broadband service providers and special access service providers.

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

9. Manage the transition from the PSTN to IP by distributing additional universal service money to the extent necessary to recover expenses and earn an authorized rate of return on all broadband investment.

10. Refrain from imposing any caps and/or freezes on high-cost USF support for rural carriers.

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

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

13. Adopt rules to address phantom traffic.

14. Adopt rules to address traffic stimulation.

15. Require tandem switching rates to be cost-based.

16. Require special access transport services to be cost-based.

17. Require wholesale long distance services to be cost-based.

18. Seek further comment on any new proposed access pricing methodologies.

19. Seek further comment on the FCC's legal authority to regulate all voice traffic under Section 251(b)(5) of the Act.

20. Use the Regulatory Flexibility Act (5 U.S.C. §601) to reduce the economic impact on small entities, such as RoR rural carriers and adopt a separate set of rules to reduce the economic impact on small rate-of-return rural broadband providers, rural consumers and the communities they serve.

The Chairman's comprehensive IC and USF proposals contained in Appendices A and C will not make broadband available, affordable or comparable to all Americans throughout the United States, particularly in high-cost rural areas. Instead of taking the steps necessary to put in place a forward looking proposal, the Chairman's proposal draws upon an ancient bureaucratic warhorse called "regulatory fiat." The FCC cannot make broadband universally available solely by regulatory command. The consequences of the Chairman's proposals will be a smothering blanket on efforts to extend and maintain broadband to the most rural, high-cost parts of the United States.

It is unrealistic for the Chairman to believe that broadband infrastructure can be built and maintained in high cost rural areas without additional support. Absent continuous high-cost USF support, there is no business case to be made for the provision of communications and broadband in these areas. Now, in the current financial turmoil facing the world, no one is going to provide the capital funding necessary to build and maintain new broadband infrastructure unless there is a reasonable prospect of repayment and reasonable return on investment.

Limiting universal service support to the amount received now or two years from now and conditioning that limited support to a commitment to furnish broadband to everyone in a rural

LECs service area in five years is unrealistic. Engineering estimates can exceed $100,000 per residential location to provide universal broadband service to the last 10% of the population in very rural high-cost areas. Rural LECs cannot and will not be able to bear this burden. In all likelihood it means that some rural Americans are not going to have broadband. Adoption of the Chairman's proposal in Appendix A or Appendix C of the FNPRM with its cap and freeze on high-cost USF support will be counter productive and devastating to rural consumers served by rural carriers.

After reviewing the previously undisclosed Comprehensive IC and USF orders contained in the FNPRM, it is perfectly clear that the Chairman's proposals are unbelievably generous to AT&T, Verizon and Qwest, and truly devastating to small rate-of-return rural ILECs serving consumers in high-cost rural communities throughout America. The draft orders wrongly classify interconnected voice over Internet protocol (VoIP) service as an "information service," exempt interconnected VoIP service from paying access charges in rules buried in footnotes 564 and 555 in Appendices A and C in the FNPRM, respectively, and provide AT&T, Verizon and Qwest and other IXCs and wireless carriers with a resulting annual multi-billion dollar access savings windfall with no strings attached.

The Commissioners should not adopt a proposal that will cap and freeze USF support, exempt interconnected VoIP from paying access charges, eliminate of rate-of-return regulation, eradicate the NECA pools, and create a fire sale of rural telephone plant through the use of reverse auctions. NTCA therefore urges the Commission to specifically rule in this proceeding that interconnected VoIP providers are required to pay access charges when interconnected VoIP calls terminate on the PSTN.

In the IP-Enabled services NPRM, the Commission stated that, as a policy matter, the FCC believes that "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network."[4] The Commission further maintained "that the cost of the PSTN should be borne equitably among those that use it in similar ways."[5] If interconnected VoIP providers were allowed a free ride from paying access charges, the Commission would be handing VoIP providers an unfair advantage in the highly competitive voice communications market in direct conflict with its own principle of competitive neutrality.[6]

Exemption or forbearance of interconnected VoIP service from access charges would force rural LECs to unjustly raise their customer rates to recover costs imposed on their networks by VoIP

[4] *IP-Enabled Services,* Notice of Proposed Rulemaking, ¶ 33, WC Docket No. 04-36 (rel. March 11, 2004).
[5] *Id.*
[6] The FCC's principle of competitive neutrality requires that rules neither unfairly advantage or disadvantage one provider over another and neither unfairly favor or disfavor one technology over another.

providers or incur substantial revenue losses.[7] Rural LEC consumers would have no protection from either higher end-user rates, degradation in the quality of their underlying LEC network, or the possible loss of their carrier of last resort. Rate shock and potential loss of subscribers to the PSTN and IP networks would be a very real possibility, particularly for lower income consumers who do not qualify for LifeLine or Linkup support and who cannot afford a high-speed Internet access connection: specifically, working families who currently can afford LEC telephone service and/or dial-up Internet service but cannot afford the high-speed Internet access connection that VoIP providers must have in order to offer voice service.[8]

The Commission should classify interconnected VoIP service as a "telecommunications service" subject to access charges.[9] The Act defines "telecommunications services" as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of facilities used. Customers of Interconnected VoIP service pay a fee for sending and receiving voice telephone calls. Interconnected VoIP service uses North American Numbering Plan (NANP) telephone numbers to facilitate voice calls throughout the PSTN. Interconnected VoIP uses the PSTN in the same way as other carriers who pay access and contribute to universal service in recognition of the fact that their use imposes costs on the underlying ILEC network. From the customer's perspective, interconnected VoIP service is identical to traditional telephone voice service. The fact that interconnected VoIP uses the PSTN, NANP telephone numbers, and charges customers for its voice service, clearly demonstrates that interconnected VoIP is voice service, should be classified as a "telecommunications service" and should be required to pay access charges.

NTCA therefore urges the Commission to require IP-PSTN and PSTN-IP traffic, and specifically interconnected VoIP traffic, to pay applicable tariffed interstate access rates, intrastate access rates, and reciprocal compensation rates, until such time as there is no longer a PSTN.

[7] The Commission may forbear from the regulation of telecommunications carriers or telecommunications services only if it determines the regulation of the carrier or service is: (1) not necessary to achieve just and reasonable rates, (2) not necessary for the protection of consumers, and (3) forbearance is consistent with the public interest. 47 U.S.C. § 159(10)(a)(3).

[8] Forbearance from assessing access charges on VoIP traffic is not in the public interest. Access charges and universal service obligations fall principally and mandatorily on telecommunications service providers, such as Inflexion, in recognition of the fact that they benefit from the nationwide public telecommunications system which is supported by access charges and USF contributions. Inflexion and other providers should not be excused from these obligations under the guise that they will be shackled by regulation. The imposition of access and universal service obligations on these providers is not pervasive regulation of entry or rates. Applying access charges to VoIP providers will eliminate the potential for regulatory arbitrage, ensure competitive neutrality, and provide all providers of voice services with certainty pending the outcome of the major proceedings on universal service support, inter-carrier compensation and IP-Enabled services.

[9] 47 U.S.C. § 153(47).

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.

In response to questions concerning other rural association modifications included in Appendix C of the FNPRM, NTCA has the following comments concerning the proposed modifications and the provisions contained in Appendix C.

When taken as a whole, the Appendix C alternative proposal in the FNPRM would freeze and cap high-cost USF support, exempt interconnected VoIP from paying access charges, gut the current access charge system, eliminate rate-of-return regulation, eradicate the NECA pools, and create a fire sale of rural ILEC telephone plant through the use of reverse auctions. In sum, if the Chairman's alternative proposal contained in Appendix C were ever adopted, many rural ILECs would very likely be out of business and rural consumers without service within ten years.

The following is a list of modifications made to the Chairman's draft comprehensive intercarrier compensation IC and USF reform order and an explanation of why NTCA cannot support the modifications.

**MODIFICATION #1:** Supplemental Interstate Common Line Support (ICLS) is automatically available for carriers currently under rate-of-return (RoR) regulation in the interstate jurisdiction, without any other conditions applying, particularly those related to the way a carrier is regulated in the state jurisdiction.

**ORIGINAL RULE IN THE CHAIRMAN'S PROPOSAL:** *Rate-of-Return Incumbent LECs*. For incumbent LECs subject to rate-of-return regulation, a carrier may qualify for universal service funding (ICLS) if it can demonstrate that, it will not have a reasonable opportunity to earn its authorized rate of return as a result of its net loss of revenues caused by the changes in intercarrier compensation rates resulting from this order, even after having increased its interstate subscriber line charge (SLC), state SLC (if any), and state retail local rates to the maximum permitted by applicable law.

**WHY NTCA CANNOT SUPPORT MODIFICATION #1:**

The original rule would have only provide RoR carriers with supplemental ICLS if the carrier was not earning its interstate FCC approved 11.25% rate of return after SLC and end-user rate increases.[10] This approach allows the FCC to be fiscally responsible by not unnecessarily increasing the size of the high-cost USF funding mechanisms, while at the same time allowing the RoR carriers to earn their 11.25% authorized rate of return.

The modification allows RoR carriers to "automatically" receive supplemental ICLS without any conditions, even when earning more than 11.25% on their rate base. Simply put, the modification automatically provides ICLS to RoR companies that over-earn. This modification allows over-earnings, abuses USF support by unnecessarily increasing the size of the high-cost USF mechanisms, and raises the USF contribution burden on all consumers.

NTCA cannot support this modification because it is inconsistent with NTCA's efforts to maintain its goodwill, integrity, and standing with the FCC, Congress and the American Public. NTCA continues to assert that over-earning companies should not be allowed additional high-cost USF support. Specifically, NTCA proposed earlier this year:

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 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 include the review of pool earnings, federal tariff filings, certifications and audits.

NTCA's 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.

[10] Incumbent LECs operating in states where retail rates are deregulated are not entitled to the new universal service funding. FNPRM, p. A-143,144.

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. The NTCA proposal 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.

**MODIFICATION #2:** In Appendix C it states that supplemental ICLS consist of two components. The first component compensates rural rate-of-return ILECs for all of the revenues lost as a result of the mandated reductions in intercarrier compensation rates that are not otherwise recoverable through increases in SLCs. The second component is available only to those rural rate-of-return ILECs that have committed to the five-year broadband build-out requirement. This component is intended to ensure that those rural rate-of-return ILECs continue to have an opportunity to earn their authorized interstate rate of return, subject to a cap. This component will provide compensation for unrecoverable revenue losses attributable to losses in access lines and interstate and intrastate minutes of use, using 2008 as a base year. The second component remains in effect for the first five years of the transition and is capped at $100 million in year one, $200 million in year two, $300 million in year three, $400 million in year four, and $500 million in year five. Prior to year five, the Commission shall conduct a proceeding to determine if modifications are required.

**WHY NTCA CANNOT SUPPORT MODIFICATION #2:**

Supplemental ICLS will be made available for both rate and demand decreases. The supplemental ICLS related to rate decreases will be available to all rate-of-return carriers, no matter their intrastate earnings or local rate levels. The earnings issue was addressed in Modification #1. Since the proposal does not have a federal benchmark mechanism, SLC increases are not conditioned on a company's existing local rates, intrastate SLC charges or intrastate universal service contributions.

The Federal Benchmark Mechanism in the Missoula Plan was designed to provide equity for customers and companies across the nation. Various states have already undertaken access charge reform.[11] Coincident with the lowering of access rates, states have increased local rates, implemented state Subscriber Line Charges, enacted state universal service funds, limited state earnings, or a combination of the foregoing. If the FCC simply provides revenue replacement

[11] Such states are commonly called "Early Adopter" states.

for all carriers' intrastate access rate reductions without consideration of the previous actions of state commissions, customers and companies in "Early Adopter" states would be unfairly penalized[12] and the federally funded replacement dollars would be excessive. Through the establishment of a federal benchmark, companies would be required to recover a specified benchmark level of revenues from their customers before asking the federal government to provide additional funding. Moreover, customers with already high local rates would be protected from further rate increases because once the benchmark level was reached, additional replacement dollars would be provided through universal service funding. Finally, inclusion of a federal benchmark mechanism minimizes the replacement revenues necessary for intercarrier compensation reform.

The second component of supplemental ICLS support for demand decreases is only available if a company commits upfront to provide broadband at a rate of 768kps down/200kps to 100% of their customers. Such demand-related support is capped at various levels for five years, starting at $100 million and increasing by $100 million annually to a total of $500 million at the end of five years. Thereafter, supplemental ICLS support for demand decreases is zero. Because of the demand-related support caps, there is no guarantee of that RoR companies will be able to earn their authorized rate of return. Since the same Proposal exempts interconnected VoIP service from paying access, the demand for terminating access minutes will very likely drop down to zero within the next five years. The VoIP exemption will cause all interexchange carriers to immediately change their business plans to take advantage of free termination. As a result, rural ILECs will see drastic decreases in demand, which will cause a "run on the bank" such that RoR rural ILECs will not be able to earn their authorized rate of return. Furthermore, after five years the supplemental ICLS support for demand decreases is eliminated. Even if the VoIP exemption provision were not included in the final Order, the lack of supplemental ICLS for demand decreases certainly would eventually cause companies to fall short of their authorized rate of return.

The modification does not describe what happens if a company does not commit to providing broadband. Under the original Chairman's proposal, if a company did not provide broadband to 100% of its customers, the company's universal service funding would be put up for auction. If no other entity bids to become the Carrier of Last Resort at the existing funding level, the company could receive additional funds. Under the new negotiated deal, there is no guarantee

[12] Customers in "Early Adopter" states would be penalized because they have to pay higher local rates, intrastate SLC charges or state universal service contributions after companies were required to lower intrastate access rates. Without a federal benchmark provision, customers in "Early Adopter" states would also have to pay for the access reductions of other states, while still funding their own state's access reductions. In contrast, customers in states that have not implemented access charge reform would receive federal replacement mechanism funds without having to pay for higher local rates, intrastate SLCs or intrastate universal service contributions.

that companies would even have any USF after a 10-year period. All of these uncertainties make this modification unacceptable to NTCA.

NTCA has long opposed USF caps, reverse auctions and recommended that the High Cost Loop (HCL) cap be removed or rebased. This modification would leave the HCL cap in place, while imposing a new cap and freeze on all other high-cost USF support. In addition, Appendix C includes a reverse auction provision for rural ILECs. This modification coupled with reverse auctions and other provisions in Appendix C would dismantle decades of rate-of-return regulation, which has successfully brought voice and broadband service to the most rural areas of the United States.

**MODIFICATION #3:** Notwithstanding the forgoing, for local and extended area service (EAS) calls made by a rural rate-of-return incumbent LEC's customer to a non-rural carrier's customer, the rural rate-of-return ILEC will be responsible for transport to a non-rural terminating carrier's point of presence (POP) when it is located within the rural rate-of-return incumbent LEC's service area. When the non-rural terminating carrier's POP is located outside the rural rate-of-return ILEC's service area, the rural rate-of-return incumbent LEC's transport and provisioning obligation stops at its meet point and the non-rural terminating carrier is responsible for the remaining transport to its POP.

**WHY NTCA CANNOT NOT SUPPORT MODIFICATION #3:**

This modification has been added to the AT&T Edge Proposal contained in the Chairman's original proposal. The AT&T Edge Proposal requires each carrier to declare one network edge in each LATA and each carrier has to bring its originating traffic to that edge. (Rural interests were successful in defeating adoption of the AT&T Edge scenario in the Missoula Plan negotiations.) The AT&T Edge proposal would be overlaid with a new modified "Rural Transport Rule" whereby rural ILECs would not be required to transport local traffic beyond their exchange boundaries. What a rural ILEC's transport obligation is for non-local or access traffic remains unclear.

Furthermore, the modified order eliminates access traffic under section 251(g) of the Act beginning in the third year of the transition. The interconnection requirements will be for either local or access (non-local) traffic during years 3 to 10 are unknown. At a minimum, the interconnection requirements do not contain many of the negotiated arrangements and protections included in the Missoula Plan. NTCA is concerned about the interconnection uncertainties that this modification would create. Consequently, NTCA will not support this modification. NTCA will instead continue to support the Missoula Plan interconnection rules, including the Missoula Plan's Rural Transport Rule, negotiated and developed by NTCA members over a two-year period leading up the filing of the Missoula Plan in 2006.

**MODIFICATION #4:** All-high-cost USF mechanisms utilized by RoR ILECs would continue to operate as they do through December 31, 2010, and then frozen thereafter. The Chairman's draft proposal would freeze high-cost USF mechanisms as of December 31, 2008. Because rural ILEC high-cost USF calculations and distributions on December 31, 2008, would only include rural ILEC investments made by year end 2006, all rural ILEC investments in 2007 and 2008 would have not be included in future rural ILEC the high-cost USF calculations and distributions. Adjusting for the 2-year lag in investments and resulting high-cost USF disbursements by increasing the cut-off date to December 31, 2010, all rural ILEC investments in 2007 and 2008 would be included in the rural ILEC high-cost USF calculations and distributions, and then frozen thereafter. The modification would have gained rural ILECs two additional years of investments included in rural ILEC high-cost universal service calculations and disbursements before the study area USF support freeze at 2010 levels kicks in (which are actually year-end 2008 amounts based on the 2-year lag).

**WHY NTCA CANNOT SUPPORT MODIFICATION #4:**

NTCA cannot support this modification as it causes all rural ILEC investments made during 2009-2014 to be excluded from a RoR rural ILEC's USF payments and because it caps and freezes rural LEC high-cost USF support, which is inconsistent with NTCA's longstanding opposition to such measures. This action will have a chilling effect on future broadband investment in high-cost areas and will make it more difficult to pay back loans to the Rural Utility Service (RUS), CoBank and Rural Telephone Finance Cooperative (RTFC), which are the traditional lenders to RoR rural LECs. NTCA will not support freezing rural ILEC support at all, particularly when the FCC and Congress are asking rural ILECs to build broadband facilities to all of their customers, which likely include the most high-cost, difficult to serve regions within their study areas.[13] This modification would prohibit many high-cost rural ILECs from recovering any of these future investments in high-cost USF. Without additional USF funding, these unserved areas will not have broadband.

In addition, this Modification only applies if the rural ILEC commits to meet its broadband build-out requirements. If not, the rural ILEC's universal service support is auctioned, and if a new entrant wins the auction, the new entrant becomes the carrier of last resort (COLR) for the entire study area. Without universal service funding and nearly no intercarrier compensation revenue, the rural ILEC is eventually put out of business.

[13] To put this in perspective, one NTCA member is currently capable of serving 96% of its customers with broadband. To serve the remaining 4%, this member expects to spend another $8 - $10 million. This member's current net plant is $12 million.

**MODIFICATION #5:** Requires a broadband build-out requirement with a limited automatic exception for very high-cost loops and that allows those RoR rural ILECs to serve those customers by satellite without filing a waiver request as proposed in the original Martin draft order. A very high-cost loop is defined as a loop in which the additional cost to provide broadband in excess of 150 percent of the carrier's study average loop cost. The automatic exception cannot apply to more than two (2) percent of a carrier's total loops within a study area.

**WHY NTCA CANNOT SUPPORT MODIFICATION #5:**

The original waiver proposal did not limit broadband provisioned through satellite to only two percent of a rural ILEC's total loops within a study area. When some rural ILECs in the most sparsely populated areas of the United States may need satellite-based broadband for more than two percent of their customer base,[14] NTCA cannot support a two percent cap on satellite service.

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

Sincerely,

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

DM:rhb

cc: Scott Deutchman
Nick Alexander
Scott Bergmann
Greg Orlando
Dana Shaffer
Marcus Maher
Al Lewis
Randy Clarke

[14] As demonstrated in modification #4 above.