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
Lifeline and Link-Up	**)**	WC Docket 03-109
Universal Service Contribution Methodology	**)**	WC Docket No. 06-122
Implementation of the Local Competition Provisions in the	**)**	
Telecommunications Act of 1996	**)**	CC Docket 96-98
Developing a Unified Intercarrier Compensation Regime	**)**	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	**)**	CC Docket No. 99-68
In the Matter of IP-Enabled Services	**)**	WC Docket No. 04-36
Numbering Resource Optimization	**)**	CC Docket No. 99-200

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

INITIAL COMMENTS

Respectfully submitted,

National Telecommunications
Cooperative Association

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INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] 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 high-cost Universal Service Fund ("USF") support proposals contained in the Order on Remand and Report and Order and Further Notice of Proposed Rulemaking (herein after referred to as "FNPRM" or "Proposed

[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.

Orders in the FNPRM") issued on November 5, 2008.[2] As the Federal Communications Commission ("Commission" or "FCC") undertakes comprehensive IC 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 our broadband networks. The United States should invest its resources in the construction, maintenance, and operation of this nation's broadband infrastructure, particularly in rural areas, so that broadband is available and affordable to all consumers and businesses.

I. INTRODUCTION AND SUMMARY OF NTCA'S PROPOSALS

In the Joint Statement of Commissioners Copps, Adelstein, Tate, and McDowell released on November 5, 2008 with this FNPRM, the Commissioners indicate that there appears to be a growing consensus for the following objectives: moving intrastate access rates to interstate levels over a reasonable period of time; avoiding unduly burdening consumers with rate increases untethered to reductions in access rates; addressing phantom traffic and traffic stimulation;

[2] NTCA submits these initial 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 and 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-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).

implementing alternative cost recovery mechanisms in certain circumstances to offset lost access revenues as a result of IC reform; eliminating the identical support rule and move over time towards USF support based on each company's own cost; and emphasizing the importance of broadband to the future of universal service. NTCA agrees with all of these objectives.

In order to achieve these objectives, the Commission must not adopt the Proposed Orders in the FNPRM and adopt a new comprehensive IC and USF reform proposal such as the measures contained herein. Knowing that the Commission seeks to take some action at its Open Meeting on December 18, 2008, NTCA recommends that the FCC take the following prudent, reasonable and lawful actions on December 18, 2008:

1. Allow state commissions to reduce voluntarily, on a company-by-company basis, intrastate originating and terminating tariffed access rates to interstate tariffed access rate levels over a reasonable period of time (5 years) and at the same time freeze interstate originating and terminating access rates in order to keep interstate access rates from increasing.

2. Establish and implement a Restructure Mechanism (RM) to allow rate-of-return (RoR) carriers to recover lost access revenues not recovered in end-user rates through supplemental Interstate Common Line Support (ICLS) and price-cap carriers to recover lost access revenues not recovered in end-user rates through supplemental Interstate Access Support (IAS). Consistent with the RoR regulation, the RM calculation must produce ICLS support levels that ensure a RoR carrier can earn its authorized rate-of-return of 11.25% on total regulated operations, notwithstanding reductions in access rates, losses in access lines, and decreases in demand minutes. Supplemental ICLS and IAS should be offset by any increases in the Federal Subscriber Line Charge (SLC) up to $1.50 and any increases in local end-user rates up to a Federal Benchmark (FB) rate of $20. The FB rate should include local residential rates, state and federal SLCs and SLC-like charges, mandatory Enhanced Area Service (EAS) charges and per line state universal service fund collections. SLC increases, if any, should be limited to what is required for the company to reach the Federal Benchmark Rate and the overall SLC cap.

3. RoR carriers seeking to receive additional supplemental universal service support through the ICLS mechanism, and price-cap carriers seeking to receive additional supplemental universal service support through the IAS mechanism, would voluntarily choose to have their broadband services regulated under Title II and voluntarily provide their total company regulated Title II costs, revenues, and earnings to be used when determining their future broadband high-cost USF support disbursements. Supplemental ICLS or IAS would only be

provided to those carriers that voluntarily agree to have their broadband services regulated under Title II and receive supplemental ICLS or IAS to the extent necessary to recover all reasonable regulated costs. RoR carriers' earnings would be adjusted to 11.25% and price cap carriers' earnings would be adjusted in accordance with price cap rules.[3]

4. Implement a rule that IP/PSTN traffic, specifically interconnected VoIP traffic, is required to pay applicable tariffed terminating interstate access rates, terminating intrastate access rates, and reciprocal compensation rates, until such time as there is no longer a PSTN.

5. Maintain the current interconnection environment, dismiss the AT&T Edge proposal, and consider any future changes to the existing interconnection rules in a FNPRM.

6. Eliminate the identical support rule and move over a reasonable period of time (5 years) towards USF support based on each company's own cost.

7. Include broadband in the definition of universal service and expand the USF contribution base to include all broadband service providers and retain revenues as the basis for assessing the USF contributions.

8. Reject reverse auctions for rate of return RoR carriers and maintain the current universal service mechanisms for rural carriers. The existing mechanisms have been successful in facilitating the deployment of broadband to rural customers.

9. Refrain from capping and/or freeze high-cost USF support to RoR carriers. Capping or freezing USF will halt broadband deployment in high cost areas served by rural companies and leave many rural consumers with substandard broadband service or without broadband service.

10. Require tandem switching rates and special access transport rates to be cost-based.

11. Refrain from adopting access rate reform beyond that described in Item 1 above without a further notice and comment to study the implications of adopting a different rate methodology, such as the TELRIC standard or the Faulhaber additional cost standard.

12. Refrain from ruling and seek further comment on whether the Commission has legal authority to include all voice traffic under Section 251(b)(5) of the Act, particularly when Section 152(b) grants state commissions with exclusive authority to regulate and set

[3] NTCA's recommendations allow for additional regulatory scrutiny concerning additional 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.

intrastate access rates, as well as the authority to set reciprocal compensation rates. The Proposed Orders in the FNPRM would unlawfully preempt state commission jurisdiction.

The Proposed Orders in the FNPRM 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 Proposed Orders in the FNPRM draw upon an ancient bureaucratic warhorse called "regulatory fiat." The Commission cannot make broadband universally available solely by regulatory command. The consequences of the Proposed Orders in the FNPRM will be to stifle efforts to extend and maintain broadband to the most rural, high-cost parts of the United States, while providing windfall cost savings to the nation's large interexchange and wireless carriers.

It is unrealistic to believe that broadband infrastructure can be built and maintained in high-cost, rural areas by limiting universal service support to the amount received now or two years from now. Absent continuous high-cost USF support, there is no business case to be made for the provision of communications and broadband in these areas.[4] In the current financial turmoil facing the global markets, no one is going to provide the capital funding necessary to build and maintain new broadband infrastructure unless there is a reasonable prospect for repayment and a reasonable return on investment. Engineering estimates can exceed $100,000 per residential location to provide universal broadband service to the last 10% of the population in extremely rural study areas. Rural ILECs cannot and will not be able to bear this burden. In all likelihood, it means that some rural Americans will not have access to broadband service. Adoption of the Proposed Orders in the FNPRM proposal to cap and freeze high-cost USF support will be counterproductive and devastating to rural consumers served by rural carriers.

[4] However, additional universal service support should only be provided to the extent necessary to recover costs and a reasonable return as discussed in more detail later in these comments.

The Proposed Orders in the FNPRM 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,[5] and gut any rational transition of today's IC regime. Exempting interconnected VoIP from paying access charges will quickly eliminate terminating access charges and the NECA pools, without providing a sound universal service backstop to fund rural networks. NTCA, therefore, urges the Commission to rule in this proceeding that interconnected VoIP providers are required to pay access charges when interconnected VoIP calls terminate on the public switched telecommunications network (PSTN).

The Proposed Orders in the FNPRM wrongly propose to adopt significant changes to the interconnection responsibilities of carriers without fully exploring the implications or ramifications of those significant changes. The Proposed Orders in the FNPRM propose that the default rules regarding the network "edge" become effective when carriers implement the final uniform reciprocal compensation rate. Such significant changes to the fundamental way in which carriers interconnect with each other are outlined in seven scant bullet points, which cover less than one page.[6] Due to the industry's complexity, the current interconnection rules are necessarily complicated and any changes should be carefully evaluated and considered. These or any other interconnection modifications should not be adopted without fully exploring the ramifications on customers, competition and universal service.

The Proposed Orders in the FNPRM also wrongly eliminate the access regime prior to the access market going away. Eliminating access charges prematurely increases the amount of

[5] See footnote 564 in Appendix A and footnote 555 in Appendix C.
[6] Appendix A paragraph 275, and Appendix C paragraph 270.

needed RM, provides a free ride for these services on the backs of rural networks, and ignores the interconnection obligation and structural differences between access and reciprocal compensation. Last, but not least, the Proposed Orders in the FNPRM provide AT&T, Verizon, and other interexchange carriers (IXCs) and wireless carriers with an annual multi-billion dollar access savings windfall with no strings attached.

NTCA supports Commission action to reform intercarrier compensation and high-cost universal service support in a reasonable, rational manner. NTCA urges the Commission to not adopt the Proposed Orders in the FNPRM, which gut the current intercarrier carrier compensation system, leave RoR rural ILECs without adequate cost recovery mechanisms to provide rural consumers with affordable and competitive broadband service, and hand AT&T, Verizon, and other IXCs an annual multi-billion dollar gift. Instead, NTCA urges the Commission to adopt the comprehensive reform proposal included in these comments.

II. STATE COMMISSIONS SHOULD BE ALLOWED TO VOLUNTARILY MOVE INTRASTATE ORIGINATING AND TERMINATING ACCESS RATES AND RATE STRUCTURES TO CAPPED INTERSTATE ACCESS RATE LEVELS AND STUCTURES OVER A REASONABLE TIME PERIOD.

NTCA proposes that state commissions be allowed to reduce intrastate “originating and terminating access” rates and change the access structure to the interstate rates and structure on a voluntary basis.[7] As an incentive for taking these actions, the Commission would provide supplemental federal USF support and/or increase subscriber line charges to offset intrastate lost access revenues as discussed in Section III below. The Commission should allow state

[7] The current interstate access rates are based on the embedded cost pricing methodology and the Commission has determined that this methodology is best suited to the unique economic, geographic, topographic needs of ROR carriers, and for the sustainability of the NECA pools. Tariffed rate setting for intercarrier compensation rates in lieu of negotiated commercial agreements between small, rural ROR carriers and large, vertically integrated interexchange and wireless carriers is a reasonable approach, given the disparity in size between the negotiating parties and the efficiencies created through pooled rate setting.

commissions to determine the length of the transition period based on the magnitude of the difference between intrastate and interstate tariffed access rates, but in no case should the transition period exceed five years. This approach appropriately recognizes the states' responsibility for setting intrastate access rates, while providing an incentive for states to collaborate with the Commission to achieve the goal of reforming IC. Freezing interstate tariffed access rates is also necessary in order to keep cost-based rates from increasing as a result of demand decreases. This reasonable interim step will address the largest disparity between current IC rates.

These changes will benefit not only IXCs but also customers. IXCs will benefit by paying lower access rates than they otherwise would if interstate rates were not capped and if intrastate rates were not reduced to interstate levels. Since IXCs 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.

NTCA opposes the mandatory requirement in the Proposed Orders in the FNPRM that state commissions reduce intrastate access charges based on the rate set by the Commission.[8] The Commission does not have the statutory authority to require states to reduce their intrastate toll access charges under Section 152(b) of the Act. The Commission should seek comment in a further notice on whether further rate unification is appropriate or necessary, what methodology and legal basis should be used for unifying IC rates further, and the success of this voluntary approach to intercarrier compensation reform.

[8] FNPRM, Appendix A, ¶ 194, Appendix C, ¶ 189.

NTCA, therefore, supports only those clearly legal proposals as discussed above. Accordingly, NTCA supports a proposal that allows state commissions to voluntarily move intrastate originating and terminating toll access rates and structures to interstate access rate levels and structures over a reasonable time period. NTCA further recommends freezing interstate originating and terminating access rates in order to keep interstate access rates from increasing in the future.[9]

III. THE COMMISSION SHOULD ADOPT AN ALTERNATIVE HIGH-COST USF COST RECOVERY MECHANISM PRIOR TO REQUIRING ACCESS REDUCTIONS.

The Commission has consistently recognized its legal responsibility to provide reasonable cost recovery and has regulated in a manner that allows RoR carriers to recover their costs along with a reasonable return on investment.[10] The Commission has also recognized the unique characteristics of rural RoR carriers and the challenges faced in providing quality service to their customers.[11] In the *MAG Order* the Commission stated that "Our examination of the record reveals that rate-of-return carriers generally are more dependent on their interstate access charge revenue streams and universal service support than price cap carriers and, therefore, more sensitive to disruption of those streams. . . . . The approach that we adopt will provide these carriers with certainty and stability by ensuring that the access charge reforms we adopt do not affect this important revenue stream."[12] The Commission has also recognized that RoR regulation operating in tandem with the USF has worked well, not only for providing quality

[9] 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 to rate bands as it does currently.
[10] RTF Order, ¶ ¶ 24 and 25 and MAG Order, ¶¶ 3, 12, 131, 132, and 134.
[11] RTF Order, ¶¶ 24, 25, and 79 and MAG Order, ¶¶ 3, 12, 131, 132, and 134
[12] MAG Order, ¶ 131.

service at reasonable rates but also for incenting the deployment of broadband in rural areas.[13] NTCA urges the Commission to adopt a RM to allow RoR carriers to recover lost access revenues through increases in the ICLS mechanism and to provide the needed cost recovery for rural carriers investing in broadband infrastructure. The RM should be in place prior to states requiring access reductions.

NTCA believes that the Commission should establish a Federal Benchmark (FB) rate to ensure equity between states and to limit the size of the RM. For those states opting into the receipt of federal supplemental ICLS money for access replacement, the states would agree to decrease access rates to the levels to interstate levels, mirror the interstate access structure and allow companies to increase local rates such that the company could reach the FB rate level.[14] The FB rate should include the local residential rate,[15] state and federal Subscriber Line Charges (SLC) and SLC-like charges, e.g., interconnection charges or network access fees, mandatory EAS charges, and per line state universal service fund end user collections.

State commissions and legislatures have used a variety of regulatory mechanisms to substantially reduce intrastate access charges substaintially within their states. A FB rate is designed to provide equity for customers and companies across the nation.[16] Finally, inclusion of a FB rate minimizes the replacement revenues necessary for IC reform because companies

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[13] MAG Order , ¶ 224 and Joint Board Recommended Decision, ¶¶ 30 and 39.

[14] If a company chose not to raise its local rate, the revenue equivalent to that received at the benchmark level would be imputed before calculating any supplemental universal service funding.

[15] Benchmarks would not apply to business lines.

[16] Those states that have already taken action to reduce intrastate access charges substantially are termed "early adopter" states. 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 Commission simply provided revenue replacement 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[16] and the federally funded replacement dollars would be excessive.

would be required to recover a specified benchmark level of revenues from their customers before asking the federal government to provide additional funding.

SLC increases, if any, should be limited to what is required for the company to reach the rate benchmark and the overall SLC cap. Such a limitation would protect those customers with already high rates. These customers would be protected from further rate increases because once the benchmark level was reached, additional replacement dollars would be provided through universal service funding. While FB rate and SLC increases minimize the size of the RM, the record is devoid of evidence that would support a conclusion that increasing customer charges provide a RoR carrier with a reasonable opportunity to recover costs and therefore RM funding is unnecessary.

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

NTCA recommends that all carriers opting to receive additional supplemental universal service through Interstate Common Line Support (ICLS) or Interstate Access Support (IAS) voluntarily agree that total company regulated Title II costs, revenues, and earnings will be used when determining their future broadband high-cost USF support disbursements as a condition of receiving such support. Supplemental ICLS or IAS would only be provided to those carriers that voluntarily agree to have their broadband services regulated under Title II and receive supplemental ICLS or IAS to the extent necessary to recover all reasonable regulated costs. RoR carriers' earnings would be adjusted to 11.25% and price cap carriers' earnings would be adjusted in accordance with price cap rules. Consistent with the RoR regulation, the RM calculation must produce ICLS support levels that ensure a RoR carrier can earn its authorized rate-of-return on total regulated operations, notwithstanding reductions in access rates, losses in access lines, and decreases in demand minutes.

IV. THE COMMISSION MUST IMPLEMENT A RULE THAT REQUIRES PROVIDERS OF INTERCONNECTED VOIP SERVICE TO PAY THE APPROPRIATE INTERCARRIER COMPENSATION RATE.

Interconnected VoIP is a direct substitute for traditional voice telephone service. To the extent interconnected VoIP calls utilize the PSTN these calls should be treated like any other telephone call. The Commission should therefore classify interconnected VoIP service as a "telecommunications service" and require that interconnected VoIP providers pay applicable access charges when using the public switched telecommunications network.[17]

If the Commission does not issue a specific rule that requires interconnected VoIP to pay applicable access charges, IC reform will be thrown into a state of immediate chaos. AT&T, Verizon, Qwest and other IXCs and wireless carriers will immediately take advantage of this loophole in the rules to classify all of their voice traffic as interconnected VoIP and refuse to pay access charges. Super-arbitrage will occur and the access revenues needed to make broadband

[17] 47 U.S.C. § 153(47).

available, affordable, and comparable in rural LEC service areas will no longer exist.[18] Rural consumers will be left with either substandard broadband service or no broadband service at all.

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." The following attributes of interconnected VoIP service clearly demonstrate that interconnected VoIP service is voice service, should be classified as a "telecommunications service," and should be required to pay access charges. First, customers of interconnected VoIP service pay a fee for sending and receiving voice telephone calls. Second, interconnected VoIP service uses North American Numbering Plan (NANP) telephone numbers to facilitate voice calls throughout the PSTN. Third, interconnected VoIP uses the PSTN and imposes costs on the underlying ILEC network in the same way as other telecommunications providers who pay access and contribute to the universal service fund. In fact, from the customer's perspective, interconnected VoIP service is identical to traditional telephone voice service. Undoubtedly, interconnected VoIP is voice service, should be classified as a "telecommunications service" and should be required to pay access charges.

The Proposed Orders in the FNPRM classify those services that originate calls on IP networks and terminate them on circuit-switched networks or, conversely, those that originate calls on circuit-switched networks and terminate them on IP networks (collectively IP/PSTN services) as information services.[19] The particular nature of the definition of IP/PSTN services appears to include both ISP-Bound Traffic and all forms of VoIP traffic that touches the PSTN, including interconnected VoIP. The Proposed Orders in the FNPRM go on to utilize this service

[18] As fewer revenues must support a high fixed cost network, the remaining services have to be priced higher to recover the investment.
[19] FNPRM, Appendix A, ¶¶ 209-210

classification to preempt state authority over these services and to draw conclusions about the compensation regime associated with the exchange of traffic between IP and PSTN networks.[20] The proposal's drafters discarded the fact that the traffic exchanged at the exchange point between the PSTN and the IP networks is always circuit switched. Because the traffic is both circuit-switched and is provided for a fee, it unequivocally falls under the category of telecommunications services.[21] Any protocol conversion that takes place on the IP side of the traffic exchange point is irrelevant to IC, irrespective of whether that traffic necessarily falls under the Section 251(b)(5) or Section 251(g) compensation regime.

In the IP-Enabled services NPRM, the Commission stated, as a policy matter, that the Commission 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."[22] The Commission further maintained "that the cost of the PSTN should be borne equitably among those that use it in similar ways."[23] The Proposed Orders in the FNPRM would reverse previous Commission policy requiring equitable compensation for the PSTN in favor of a policy whereby VoIP calls are originated or terminated free of charge. If interconnected VoIP providers were exempted from paying access charges, the Commission would be handing VoIP providers an unfair advantage in the highly competitive

[20] FNPRM, Appendix A, ¶¶ 211-229, specifically footnote 564, Appendix C, ¶¶ 206-224, specifically footnote 555.
[21] 47 USC 153 (51)
[22] *IP-Enabled Services,* Notice of Proposed Rulemaking, ¶ 33, WC Docket No. 04-36 (rel. March 11, 2004).
[23] *Id.*

voice communications market in direct conflict with its own principle of competitive neutrality.[24]

The policy implication of classifying VoIP as an information service is both dire and immediate. After an information service classification for traffic exchanged between IP and PSTN networks is approved, all interconnected carriers that would serve to gain from unclear compensation obligations associated with "information services" would be motivated to claim that all traffic exchanged is from IP networks. Determining that IP/PSTN traffic exchange is not required to pay access charges is tantamount to creating a super-arbitrage incentive to gut any rational transition plan. Telecommunications voice service providers, such as AT&T, Verizon and others, will no doubt reclassify, retariff, or reconfigure all their current PSTN Voice Service to Interconnected VoIP Service simply to avoid paying legitimate access charges and universal service contributions. The $4 billion in potential terminating access savings is a windfall for AT&T, Verizon, and Qwest, and conversely will be a death knell for many RoR rural LECs.

Declaring all IP/PSTN services, including VoIP, as information services also has substantial implications for the process of obtaining interconnection agreements. As Free Press suggests, "[t]his change in policy has substantial implications for the ability of VoIP providers to obtain reasonable interconnection arrangements with other carriers. This move would likely increase the level of uncertainty in the access charge regime precisely at a time when the Commission is seeking to provide certainty. By declaring VoIP an information service, the structure of Section 251 and the entire industry's interconnection regime is called into question.

[24] The Commission'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.

This is a very dangerous move, as there is no parallel regime under Title I to ensure competitive access." NTCA agrees.

Exemption or forbearance of interconnected VoIP service from access charges would significantly increase the size of the RM and, if not funded through the RM, force rural LECs to unjustly raise their customer rates to recover costs imposed on their networks by VoIP providers or incur substantial revenue losses.[25] Rural LEC consumers would be faced with higher end-user rates, degradation in the quality of their underlying LEC's 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 low-income consumers who do not qualify for LifeLine or Linkup support and who could not afford a high-speed Internet access connection. Specifically, working families who currently can afford LEC telephone service and/or dial-up Internet service would not be able to afford the high-speed Internet access connection that VoIP providers must have in order to offer voice service.[26]

In conclusion, the Commission should classify the traffic exchanges between IP and PSTN network service providers as a "telecommunications service" subject to the appropriate IC

[25] 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).

[26] 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.

regime.[27] 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. Interconnected VoIP service meets all of these conditions. The Commission should also determine that the Enhanced Service Provider (ESP) exemption was never intended to cover IP-to-PSTN voice calls and require all VoIP providers to pay the appropriate compensation depending on the end point of the call under either Section 251(g) or Section 251(b)(5).[28]

The new features and cost savings associated with VoIP service have only been possible by exploiting the extensive network put in place by telecommunication service providers. Most customers assume VoIP can offer "unlimited long distance" because of advances in technology. This notion is far from the truth. Rather, VoIP providers offer lower cost services by avoiding access charges through a variety of methods, including claiming ESP exemptions, the masking of traffic (phantom traffic), and "local" termination (sending the call to a point that is EAS to the called party and terminating it as a local call). Much of the "enhanced functionality" provided by VoIP services can also be accomplished through Class-5 and circuit-switched technologies.

Rather than innovation being stymied by making VoIP providers subject to access charges, such a decision would go a long way toward establishing certainty in funding and enabling competitive carriers to have equal access to network resources. The robust interconnected network has stimulated innovation and has enabled many of the services now available. VoIP providers only exist because there is a network in place. By putting the

[27] 47 U.S.C. §153(47).

[28] See NECA Comments In the Matter of Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 USC section 160(c) from Enforcement of Rule 69.4(a), 47 USC section 251(b), and Commission Orders on the ESP Exemption, WC Docket NO. 08-08, Filed February 19, 2008

network's future funding in jeopardy, everyone loses. The Commission should not adopt the proposal to classify VoIP as an information service and or to exempt it from access charges so that telecommunications consumers may continue to enjoy the benefits the interconnected network has provided.

V. THE COMMISSION MUST REFRAIN FROM ADOPTING THE AT&T EDGE PROPOSAL BECAUSE IT WILL ELIMINATE THE CURRENT ACCESS REGIME, CAUSE CHAOS, AND UNNECESSARILY INCREASE THE SIZE OF THE RESTRUCTURE MECHANISM.

The "interconnection framework" contained in the Proposed Orders in the FNPRM first transitions the existing interstate and intrastate access structure to a regime where interstate rates are assessed on all access traffic regardless of the jurisdictional nature of the call.[29] This transition is proposed to occur during the first two years following adoption of the Proposed Orders in the FNPRM. After year two, terminating interstate access rates will begin to transition to a uniform state-wide reciprocal compensation rate, followed by a transition through the end of year ten to the uniform reciprocal compensation rate included in the proposal. At the conclusion of the ten-year transition period, an interconnection architecture and IC regime as recommended by AT&T and Verizon, also known as the "Edge Plan,"[30] would go into effect.[31]

Beyond the inadequacy and lack of specificity in the proposed "Edge" structure to be put in place after year ten, the Proposed Orders in the FNPRM create many short-term and long-term uncertainties in years three through ten ("Interim Period"). For instance, the proposed interconnection framework fails to define who is the originating carrier with the financial responsibility during this Interim Period. The current access regime provides structural and architecture obligations, not just financial ones. If the access charge regime is eliminated, can LECs stop providing originating interconnection facilities and, if so, how are customer calls to be completed? Furthermore, given that originating LECs receive no compensation for "800" toll-

[29] FNPRM, Appendix A, ¶¶ 192-206, Appendix C, ¶¶ 188-201.
[30] FNPRM, Appendix A, ¶¶ 274-281, Appendix C, ¶¶ 270-276.
[31] Two of NTCA's member companies have filed an *ex parte* letter expressing their concerns about the lack of specificity and extraordinary transport burden placed on rural carriers that is associated with the recent AT&T/Verizon "Edge Proposal" filed on October 14, 2008. See Great Plains/Consolidated *ex parte* letter filed on October 21, 2008.

free traffic other than originating access, how will these LECs be compensated under a termination-only compensation structure?

The current reciprocal compensation structure for transport and termination of calls is premised on two carriers collaborating to complete a **local** call. Both carriers have customers participating in the call. The local caller pays the originating carrier, and the originating carrier compensates the terminating carrier for completing the call. This structure was not established to accommodate the interconnection of long-distance carriers in either the originating or terminating portion of a call.

In order to provision long-distance service, the IXC must access customers to which the IXC has no physical network connection. The IXC accesses multiple LEC networks through various points of interconnection and specific meet point billing arrangements. The caller pays the IXC for long-distance service, which compensates the IXC for the use of its network, but absent access charges, as in the Edge Plan, the IXC is allowed to use the LECs' networks free of charge. Thus, the IXC must pay access to compensate the network providers for the use of their networks.

The Commission recognized, in its First Report and Order, that Section 251(b)(5) together with Section 251(c)(2) provide new entrants that have constructed their own local exchange facilities with the right to enter into agreements with the incumbent LECs to transport and terminate traffic originating on the other local carrier's network under a reciprocal compensation arrangement, thereby enabling the entrant's subscribers to place and receive calls from the incumbent LEC's subscribers and vice versa.[32] IXCs do not have local subscribers because they have not constructed their own exchange facilities. The proposals do not answer

[32] First Report and Order, ¶ 13.

how the reciprocal compensation framework of Section 251(b)(5), which includes only transport and termination compensation for termination traffic originating in the same local calling area, can possibly accommodate the IXC/LEC interconnection relationships in the access regime. Should the IXC be required to construct its own facilities to reach the customer or can the IXC continue to purchase access from the incumbent for this service? If the Commission is contemplating making such a significant change to physical and financial interconnection responsibilities it must first examine the ramifications as well as the legal justification for making such changes.

According to the Proposed Orders in the FNPRM, three years from the effective date, the Commission would require that all LECs reduce their terminating rates by 50 percent of the difference between their current terminating rate and the interim, uniform reciprocal compensation rate established by the state. Noticeably absent from the discussion is a description of which carrier should pay the terminating reciprocal compensation. If the Proposed Orders in the FNPRM were adopted as currently written, the Commission will establish the precedence of “plausible deniability” among the carriers as traffic is transitioned from access into reciprocal compensation. In the case of long-distance traffic, the IXC will receive the compensation from the customer making the call, so the originating LEC will expect the IXC to pay the terminating LEC reciprocal compensation, but the IXC will likely expect the originating carrier to pay the reciprocal compensation instead. In the case of traffic traversing several LECs, the originating carrier will want the transiting LEC to pay the terminating LEC, but the transiting LEC will expect the originating carrier to pay. In order to prevent this outcome, the Commission must specify which carrier in the call stream is responsible for the payment of terminating compensation. In addition, given that reciprocal compensation rules were implemented for local calling, not interexchange calling, any transition must include traffic exchange rules that define where on the ILEC network the terminating carrier can exchange traffic.

In the Proposed Orders in the FNPRM, the Commission seeks comment on whether the originating access regime should remain. The Proposed Orders in the FNPRM conclude that originating charges for all telecommunications traffic subject to the comprehensive IC framework must be eliminated after transition to the new regime. Without offering any rationale, the Proposed Orders in the FNPRM conclude that originating access would be inconsistent with a new regulatory approach to IC. Such an assertion ignores the fact that traditional long-distance carriers continue to utilize LECs' networks to originate traffic from a customer physically connected to the LEC's network. Under the dialing parity requirement established pursuant to Section 251(b)(3), there needs to be a framework whereby an IXC can purchase wholesale access from LECs. Wholesale long distance simply cannot be defined as the transport and termination of traffic. Therefore, as long as IXCs require the use of LEC's networks for the origination of their traffic, a separate access regime must be maintained. Moreover, given that originating LECs receive no compensation for "800" toll-free traffic other than originating access under a termination-only compensation structure, these LECs will not be compensated. The Commission should either determine a means of compensation or eliminate "800" toll-free traffic.

The proposed "interconnection framework" and transition plan lack specificity and create a multitude of critical unanswered questions. It would be dangerous for the welfare of the nation's telecommunications network and national security and an irresponsible disregard of the public interest if the interconnection framework proposed in the Orders were adopted at this time. In addition, the elimination of originating access that would result from eliminating the access charge regime would double the size of the RM. The complexity of the telecommunications industry necessitates that interconnection rules be complicated to address the widely varying circumstances. Any changes in these rules should be carefully evaluated and considered. In order to avoid complete chaos in the marketplace, the Commission must fully explore the ramifications on customers, competition and universal service before eliminating the access regime or fundamentally modifying interconnection rules.

VI. THE COMISSION SHOULD ELIMINATE THE IDENTICAL SUPPORT RULE AND BASE SUPPORT ON A CETC'S ACTUAL COSTS OVER A REASONABLE PERIOD OF TIME.

The FNPRM proposes to eliminate the identical support rule and require all CETCs to base their support on their own costs.[33] The Joint Board, the Commission, and members of Congress have called for the elimination of the identical support rule as a method for reasonably controlling the growth of the fund.[34] NTCA has consistently supported the elimination of the identical support rule as appropriate policy. Even AT&T, the largest wireless provider, is on record supporting elimination of the identical support rule.[35]

NTCA recommends that the Commission allow carriers the option of submitting their cost data to the Commission for purposes of determining their future high-cost USF support. If an existing wireless CETC chooses not to file its cost data, then the wireless CETC's transitional, federal high-cost USF support for a given service area should be based on the wireless CETC's

[33] FNPRM, Appendix A, pp. A-26, 27, and Appendix C, pp. C-26, 27.
[34] 7 C.F.R. § 54.307. The identical support rule allows CETCs to receive the same per-line support as rural LECs based on the RLEC's costs.
[35] AT&T *Ex Parte* Letter, *In the Matter of the Federal-State Joint Board, High-Cost Universal Service, WC Docket 05-337, In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45,* (Filed on March 22, 2007).

existing, federal high-cost USF support minus access cost recovery support: Interstate Common Line Support (ICLS), Local Switching Support (LSS), and Interstate Access Support (IAS). Such support should be frozen and phased-out over a 5-year period, unless during this time, the wireless carrier submits its costs and the Commission bases the CETC's future USF support on its costs. A wireless carrier seeking future CETC designations in service areas in which the requesting wireless carrier does not currently receive USF support should 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.

VII. THE COMMISSION SHOULD TAKE STEPS TO INCORPORATE BROADBAND INTO UNIVERSAL SERVICE POLICY.

A. Include Broadband In The Definition Of Universal Service.

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

According to the Rural Development Telecommunications Program's May 2008 investment report, through its loan programs, over $6.3 billion has been invested in expanding broadband capabilities since 2001.[36] While this is a staggering number, it does not include financing received from other sources, including CoBank, RTFC and local banks, among others. This is a good story. Broadband is being deployed in rural networks and the Commission should not take actions that would be contrary to the further deployment of broadband in rural areas.

The models for exchange of Internet traffic are drastically different from models for exchange of PSTN traffic.[37] The financial responsibility for the exchange of PSTN traffic is borne by the retail service provider. For the exchange of Internet traffic, the entity with the lesser comparable value in the traffic exchange must pay the entity with the greater comparable value. Thus, as applications converge to IP network platforms, IC dollars flow from the smaller providers to the larger providers. This compensation scenario presents a major problem for small network service providers, such as the RoR carriers serving the most rural areas of the country. Instead of being recipients of IC revenue (through access charges and reciprocal compensation), the IP revenue flows are reversed, and small, rural RoR carriers become payers. Without traditional IC revenue, rural RoR carriers cannot fund advanced network investment. In other words, the shift of traffic to IP threatens the ability of small carriers to continue providing broadband service.

The Commission must recognize that this fundamental shift in compensation threatens the ability of rural carriers to build the necessary infrastructure to provide quality advanced and information services at just, reasonable and affordable rates. This fundamental shift in compensation is the reason that NTCA proposes that the Commission initiate a proceeding to

[36] http://www.usda.gov/rus/telecom/broadband/pdf/BIBA_asof_5-9-08.pdf
[37] Although, as has been observed, there is widespread existence of IP-enabled traffic that utilizes the PSTN, and in such instances it is becoming increasingly apparent that sound policy calls for payment by IP providers to pay when they utilize PSTN resources.

investigate the implications of the IP paradigm shift on universal service and ability of rural carriers to deploy broadband.

In its recent filing with the Commission on the three USF NPRMs, NTCA made several recommendations related to long-term high cost universal service reform.[38] NTCA proposed that, as an initial action, broadband service should be included in the definition of universal service.[39] The Commission should include, in a new proceeding, an investigation into the specific nature of the broadband service that would be included in the definition of universal service. The Commission should also investigate the legal foundation for including generally available broadband services. Finally, as proposed by NTCA, the Commission should investigate the costs associated with middle-mile and Internet backbone services for small ISPs providing service in rural areas and consider implications for access to advanced information services.

B. Expand The Contribution Base And Continue To Collect Contributions Based On Revenues.

If broadband services are included in the definition of universal service, it is only logical that contributions be based on information services as well as telecommunications services. NTCA urges the Commission to expand the pool of USF contributors to include all cable, wireline, wireless, electric, and satellite broadband Internet access providers, all voice substitute services and all special access service providers. 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

[38] See NTCA Comments filed on April 17, 2008 in WC Docket No. 05-337 and CC Docket No. 96-45.

[39] *Id.*, p. 8.

providers and all voice substitute providers to contribute will provide sufficient universal service collections and create long-term stability in the USF contribution methodology.

The regulatory classification of cable[40] and wireline broadband Internet access service as an information service does not preclude the Commission from requiring all providers of broadband Internet access service and all providers of voice substitute services to contribute to the USF based on the revenues derived from these services. The underlying transmission component of all broadband Internet access services is "telecommunications" as defined by the Act.[41] Section 254(d) specifically provides the Commission with permissive authority to require any provider of interstate "telecommunications to contribute to universal service."

Sustaining a robust USF based on contributions from only a narrow class of carriers and services is impossible. If USF contributions are limited to a subset of services, the pricing differential between services that support the network and those that receive a "free ride" will cause services to migrate away from the services that support the network. Eventually, the network cannot be sustained in high-cost, rural areas because the funding source will have disappeared. Regulations must also keep pace with how communications providers substitute traditional circuit-switched telecommunications services with IP facilities and technologies. The base should be uniform across all providers of facilities-based, broadband information services, regardless of the technology used. Only a contribution methodology that is inclusive of all

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

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

technologies can achieve the Act's requirements that universal service support mechanisms be equitable and nondiscriminatory. A broad-based contribution methodology must assess all cable, wireline, wireless, electric and satellite broadband providers and all special access service providers. Saddling traditional wireline and wireless voice service with the entire USF contribution burden will accelerate the migration away from these services to cheaper alternatives and put the nation's infrastructure at risk.

All three Proposed Orders in the FNPRM employ a numbers-based contribution methodology for residential customers.[42] The proposal is backward looking, and by basing USF contributions on legacy telephone numbers while exempting broadband, future USF contributions will be limited.[43] On the other hand a revenues-based assessment methodology is technologically neutral, and will not be overly influenced by the ongoing migration to IP technologies. In the Notice, the Commission cites a decline in the assessable revenue base as a reason to move to number-based contributions.. Using the data provided in the Notice, assessable industry revenues fell 5.7% between 2000 and 2006, however, the revenue base has stabilized in the last couple of years. If the Commission assesses a broad base of services, the contribution factor will stabilize or decrease, which will limit the migration away from currently assessed services. NTCA strongly urges the Commission to retain the current revenues-based contribution methodology for USF assessments, which has proven to be the most equitable, non-discriminatory, and administratively feasible mechanism for providing specific and predictable universal service support in accordance with the Act.

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[42] Notice, pp. A-47, B- 21, and C-45.

[43] *"[M]ost experts believe that IP technologies will be used to deliver the predominant share of voice and data traffic within a few years."* Notice, p. A-117.

In summary, NTCA sees no compelling reason to abandon the current revenues-based USF contribution system. Indeed, the Commission should expand the revenues-based system to include all broadband service providers. Given all the turmoil and upheaval within the industry today, it makes little sense to make changes where the potential benefits are not clear-cut. Moving from a revenues-based to a numbers-based contribution methodology would be just such a move.

C. The Commission Should Avoid Additional Caps And/Or Freezes On High-Cost USF Support.

The Commission should not impose additional USF caps (and/or support freezes) that unlawfully foreclose all opportunities for rate-of-return carriers to earn the authorized rate of return, or shift excessive costs to rural consumers in violation of the comparable rate requirement of Section 254 of the Act. When adequate funding is available, rural ILECs respond by investing to bring high-quality broadband to their customers.[44] These companies provide vital communications services to rural communities. These services are often vastly superior to services offered to similarly situated consumers in areas served by RBOCs. Rural ILECs should be rewarded and encouraged for investing, not penalized by imposing additional, uncompensated broadband build-out requirements.

If there were an economically feasible way that the most remote customers could be provided broadband through any method other than satellite, rural carriers would undoubtedly be doing so. Rural carriers currently use a variety of technologies to reach customers: DSL, fiber to the home/fiber to the curb, wireless (both licensed and unlicensed), satellite and cable modem.

[44] See NTCA 2008 Broadband/Internet Availability Survey Report, October 2008, http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2008ntcabroadbandsurveyreport.pdf

These carriers are intimately familiar with rural issues and challenges, and understand the best way to serve their customers - who are, in large part, friends and neighbors in their community. Mandating the service that must be provided, limiting technological options, and establishing an arbitrary timetable for providing service is not only inefficient, but will ultimately have exactly the opposite effect as intended—poorer quality service, or, in the extreme, no service whatsoever. While great strides in rural broadband deployment are being made, there is undeniably much more progress necessary before broadband is available to all. Rural ILECs have done an admirable job deploying broadband thus far. Imposing arbitrary deadlines on broadband deployment will jeopardize all of the rural ILECs' previous hard work.

Caps and/or freezes on high-cost USF support are fundamentally inconsistent with the Commission's broadband build-out goals. Most rural companies have deployed broadband throughout most of their serving areas. Without the assurance that necessary funding will be available, companies cannot make the significant financial commitment to reach the remaining customer locations with broadband facilities. In no event should the Commission establish retroactive dates for changes in existing IC and USF mechanisms. In addition, carriers cannot be expected to implement intrastate rate reductions until a reasonable time after specific rules governing alternative cost recovery to recover residual access losses are in place and final.

VIII. THE COMMISSION SHOULD REJECT REVERSE AUCTIONS BECAUSE THEY WILL NOT FACILITATE BROADBAND IN HIGH COST RURAL AREAS AND WILL PUT RURAL CONSUMERS AT SIGNIFICANT RISK.

NTCA urges the Commission to reject the application of reverse auctions. The Proposed Orders in the FNPRM ignore the considerable record in this proceeding on the potential use of reverse auctions as a means of disseminating universal service support. NTCA has contributed to that record, commenting in both the reverse auction[45] and comprehensive universal service reform proceedings and will not repeat those arguments here, except to say that numerous other parties have weighed in, as well, and the vast majority agree that reverse auctions are simply too complex, too risky and too costly to serve as a legitimate means for determining the distribution of high cost support. In short, reverse auctions are an unacceptable solution to the problem of how to most efficiently disburse high-cost USF support dollars.[46]

The specific reverse auction implementation proposal takes away support from incumbent providers who are unable to provide ubiquitous broadband service within five years, thus jeopardizing the ongoing operations of networks that have been carefully constructed over many years. Reducing or eliminating the support these carriers currently receive will have a significant and detrimental impact on their daily operations, and may result in many of these carriers being forced out of business altogether prior to the conclusion of the transition period. The infrastructure would thus become stranded, and the network investments will go unrecovered. The critical issue of stranded investment could prove fatal to other telecommunications providers, as well as those consumers that rely on the underlying infrastructure of the rural carrier.[47]

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[45] *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 06J-1, released August 11, 2006 ("Reverse Auction Proceeding.") NTCA Initial Comments filed October 10, 2006; Reply Comments filed November 8, 2006. Dale Lehman, *The Use of Reverse Auctions for Provision of Universal Service,* filed on October 10, 2006 with NTCA's Initial Comments in the Universal Service Federal-State Joint Board's Reverse Auction Proceeding, WC Docket No. 05-337 and CC Docket No. 96-45; Dale Lehman, *Reply to Reverse Auction Comments,* filed on November 8, 2006, with NTCA's Reply Comments in the Universal Service Federal-State Joint Board's Reverse Auction proceeding in WC Docket No. 05-337 and CC Docket No. 96-45; and Dale Lehman, *Diversions and Essential Reforms*, filed on July 2, 2007, with NTCA's Reply Comments in the Universal Service Federal-State Joint Board's Reverse Auction proceeding in WC Docket No. 05-337 and CC Docket No. 96-45.

[46] NTCA's Reverse Auction Proceeding Initial Comments, at 4.

[47] *Id*, at 13-15.

IX. THE COMMISSION SHOULD REFRAIN FROM RULING AND SEEK FURTHER COMMENT ON THE COMMISSION'S ABILITY TO PLACE ALL VOICE TRAFFIC UNDER SECTION 251(B)(5) OF THE ACT BECAUSE STATE COMMISSIONS HAVE THE EXCLUSIVE LEGAL AUTHORITY TO SET INTRASTATE ACCESS AND RECIPROCAL COPMENSATION RATES.

The Proposed Orders in the FNPRM state that the Commission has authority to establish pricing rules for interstate traffic, including ISP-bound traffic, under Section 201(b), and that authority was preserved by Section 251(i).[48] The Proposed Orders in the FNPRM also find that Section 251(b)(5) and the grandfather clause in Section 251(g), supports the view that the transport and termination of all telecommunications exchanged with LECs is subject to the reciprocal compensation regime in Sections 251(b)(5) and 252(d)(2).[49] The Proposed Orders in the FNPRM further state that the Commission has the authority to cap both interstate and intrastate originating switched access rates at current levels until further action by the Commission addressing the appropriate transition for this traffic.[50] NTCA disagrees with this view. The Commission does not have statutory authority to set intrastate access rates and reciprocal compensation rates for voice traffic that touches the PSTN.

The Proposed Orders in the FNPRM fail to address the unambiguous distinction made by the Supreme Court in *Iowa Utilities Board.* In its finding, the Supreme Court concluded that while the Commission has authority to design and implement pricing standards and methodologies, states have the authority to apply the pricing standards and implement the methodologies to determine and set the actual rates.[51] Supreme Court precedent dictates that the role of the state commission is to establish rates; therefore, the Commission does <u>not</u> have legal

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[48] Appendix C, p. 105, ¶ 230.
[49] Appendix C, p. 100, ¶ 222.
[50] Appendix C, p. 102, ¶ 224.
[51] *Id*., 525 U.S. at 385.

authority to establish a single default rate for all traffic routed over the PSTN.[52] In fact, Verizon and Verizon Wireless in their most recent legal filing on October 2, 2008, concerning ISP-Bound traffic and the *WorldCom/Core Remand* correctly stated "Congress tasked the "state commission[s] - not this Commission - with the duty to establish any rates for reciprocal compensation. 47 U.S.C. §252(c)(2)."[53]

Further, Section 152(b) of the Act provides the state commissions with exclusive jurisdiction over intrastate rates and services. In *Louisiana Public Service Commission v. FCC*, the United States Supreme Court examined this statute and the Supremacy Clause in reviewing the Commission's authority to preempt state control over depreciation for intrastate rates. [54] The Court, however, said: "In our view, the jurisdictional limitations placed on the FCC by 152(b), coupled with the fact that the Act provides for a "separations" proceeding to determine the portions of a single asset that are used for interstate and intrastate service, 47 U.S.C. 410(c), answer both pre-emption theories." The Court specifically found that Section 152(b) "denies the FCC the power to preempt state regulation of depreciation for intrastate ratemaking purposes"[55] and held:

> [Section 152(b)] asserts that "nothing in this chapter shall be construed to apply or give the Commission jurisdiction with respect to (1) charges, classifications, practices, facilities, or regulations for or in connection with intrastate communications service…." **By its terms this section fences off from the FCC reach or regulation intrastate matters-indeed, including matters "in connection with" intrastate service.** Moreover, the language with which it does so is certainly as sweeping as the wording

[52] Verizon *Ex Parte*, September 19, 2008, at 5.
[53] Supplemental Comments of Verizon and Verizon Wireless, *Intercarrier Payments for ISP-bound Traffic and The WorldCom Remand*, CC Docket Nos. 01-92, 96-98, and 99-68, page 3, filed October 2, 2008.
[54] *Louisiana Public Service Commission v. FCC*, 106 S.Ct. 1890, 476 U.S. 355, 90 L.Ed.2d 369, 54 USWL 4505, p. 12, (May 27, 1986) (*Louisiana*).
[55] *Id*., 476 U.S. at 373.

of the provision declaring the purpose of the Act and the role of the FCC.[56] [Emphasis Added]

In *Louisiana,* the Commission attempted to support its claim of preemption of depreciation methods with two arguments. First, the Commission argued that it could regulate intrastate because Congress had intended the depreciation provisions of the Communications Act to bind state commissions, *i.e.*, that the depreciation provisions "applied" to intrastate ratemaking.[57] The Supreme Court observed that "[w]hile it is, no doubt, possible to find some support in the broad language of the section for respondents' position, we do not find the meaning of the section so unambiguous or straightforward as to override the command of § 152(b)."[58]

The Commission also argued that, even if the statute's depreciation provisions did not apply to intrastate commerce, regulation of state depreciation methods would enable it to effectuate the federal policy of encouraging competition in interstate telecommunications.[59] The Supreme Court also rejected that argument because, even though the Commission's broad regulatory authority normally would have been enough to justify its regulation of intrastate depreciation methods that affected interstate commerce,[60] Section 152(b) prevented the Commission from taking intrastate action solely because it furthered an interstate goal.[61] The Supreme Court further affirmed this finding in the *Iowa Utilities Board* case and stated the need for both limitations [federal and state] is exemplified by *Louisiana* where the Commission

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[56] *Id*., 476 U.S. at 370.
[57] *Id.*, 476 U.S. at 376-7.
[58] *Id.*, 476 U.S. at 377.
[59] *Id.*, 476 U.S. at 369.
[60] *Id.*, 476 U.S. at 370; cf. *Houston & Shreveport R. Co. v. United States,* 234 U.S. 342, 358, 34 S.Ct. 833, 58 L.Ed. 1341 (1914).
[61] *Louisiana*, 476 U.S. at 374.

claimed authority to issue rules governing depreciation methods applied by local telephone companies.[62]-

As demonstrated, analysis of the precedent established in both the *Louisiana* and *Iowa Utilities Board* cases clearly rejects the preemption argument presented in the Proposed Orders in the FNPRM. Congress, in enacting the Communications Act of 1934, as amended, did not "express a clear attempt to preempt state law."[63] To the contrary, Congress expressly preserved state commission jurisdiction over charges, classifications, practices, facilities, or regulations for or in connection with intrastate communications services pursuant to Section 152(b). Indeed, Congress enhanced state commission jurisdiction in 1996, when it amended the Communications Act of 1934 with Section 251(d)(3) entitled in capital letters by Congress the "PRESERVATION OF STATE ACCESS REGULATIONS." Section 251(d)(3) states that in "prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State Commission that -

> (A) Establishes access and interconnection obligations of local exchange carriers;
> (B) Is consistent with the requirements of this section; and
> (C) Does not substantially prevent the implementation of the requirements of this section and the purposes of this part.

Furthermore, Section 251(b)(5) explicitly provides the state commissions with the legal "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications" for voice calls that originate and terminate in a local calling area shared by two competing carriers.[64] Thus, Congress has expressly directed that the state commissions, and

[62] *Iowa Utilities Board*.
[63] *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S.Ct. 1305, 51 L.Ed. 604 (1977).
[64] Section 252(d)(2)(B) states that this paragraph shall not be construed - to precluded under Section 252(d)(2)(B)(i) arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including

not the Commission, shall exercise jurisdiction over charges, classifications, practices, facilities, or regulations for or in connection with intrastate communications services, including local reciprocal compensation.[65] The Proposed Orders in the FNPRM attempt to gut Sections 152(b), 251(b)(5), 252(d)(2)(A)(ii), and 252(d)(2)(B)(ii) of the Act and the entire federal/state access regime should be completely rejected.

In addition, there is no outright or actual conflict between federal and state law.[66] Congress has clearly established that the Commission has jurisdiction over interstate (Federal) communications pursuant to Section 151, and state commissions have jurisdiction over intrastate (State) and reciprocal compensation (local) communications pursuant to Sections 152, 251, and 252 of the Act. These jurisdictional and authoritative boundaries have worked together since 1934 and have flourished throughout the 1990s and 2000s in establishing vibrant competitive communications markets that have led to new and innovative services, new jobs, and opportunities for new entrants and consumers. Indeed, compliance with both federal and state IC laws and regulations has never been nor is it now physically impossible to implement and enforce.[67]

Moreover, there is nothing in federal law, implicit or explicit, which provides a barrier to state commissions to set intrastate (state) toll access rates or reciprocal compensation (local)

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arrangements that waive mutual recovery (such as bill-and-keep arrangements); or to authorize under 252(d)(2)(B)(ii) the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to additional costs of such calls.

[65] Section 252(b)(2)(A) states for the purpose of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable – (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of another carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the traditional costs of terminating such calls.

[66] *Free v. Bland*, 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed. 180 (1962).

[67] *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 312, 83 S.Ct. 1210, 10 L.Ed. 284 (1963).

access rates[68] nor has Congress legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law.[69] Indeed, as demonstrated, the Act, itself, pursuant to Sections 152(b), 251(b)(5), 251(d)(3), 252(c)(2), 252(d)(2)(A)(ii), and 252(d)(2)(B)(ii) explicitly provides multiple barriers which prevent the FCC, not state commissions, from setting intrastate (state) toll access rates and reciprocal compensation (local) access rates.

NTCA supports allowing the state commissions to voluntarily move intrastate originating and terminating access rates to interstate access levels and structures over a reasonable time period with an incentive of receiving supplemental federal USF support and/or subscriber line increases[70] to offset intrastate lost access revenues. In addition, NTCA urges the Commission to adopt NTCA's proposed rules for an RM to allow RoR carriers to recover lost access revenues through increases in ICLS, which would be implemented before access rate reductions take place. In this way the Commission will avoid unlawful preemption of state commission jurisdiction and authority while providing needed cost recovery for rural carriers investing in broadband infrastructure.

X. THE COMMISSION SHOULD REQUIRE TANDEM SWITCHING RATES SHOULD BE COST-BASED.

The FNPRM does not reform tandem-switching rates. Instead, the Proposed Orders puts these bottleneck rates out for future comment.[71] The Commission should not allow this to happen. Instead, the Commission should rule in this proceeding that these rates be cost-based.

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[68] *Shaw v. Delta Airlines, Inc.,* 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed. 4909 (1983).
[69] *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947).
[70] NTCA only supports SLC increases up to a federal benchmark level.
[71] FNPRM, Appendix A, pp. A-154, ¶ 347, Appendix C, C-153, ¶ 344.

Any comprehensive IC reform should address tandem-switching rates up front. The tandem-transiting rate proposed in Step 2 of the Missoula Plan capped the tandem transit service rate for price cap carriers at $0.0025 per minute, and allowed this rate to increase annually by inflation at Step 5.[72] The Commission should establish cost-based rates for these services. The volume of minutes traversing a tandem switch is much higher than that of a local central office switch, therefore it would be reasonable to expect that the cost for providing these services would be lower than the cost of local switching. Reducing price cap carrier tandem transiting rates to cost based rates would provide further savings for IXCs, VoIP providers, and consumers. NTCA urges the Commission to adopt cost-based tandem-switching rates for AT&T, Verizon, and Qwest to assure reasonable access to these bottleneck facilities of the nation's largest carriers.

XI. TO HELP CONSUMERS AFFORD BROADBAND, THE COMMISSION SHOULD REQUIRE THAT SPECIAL ACCESS TRANSPORT TO THE IP-BACKBONE SHOULD BE COST-BASED.

The FNPRM does not reform special access transport to the IP-backbone at all. NTCA recommends that in this proceeding the Commission require all large, vertically-integrated communications carriers, such as AT&T, Verizon, and Qwest to provide non-discriminatory, cost-based special access transport services needed to reach the Internet backbone. Increasing broadband demand means that carriers must increase their transport capacity to the Internet backbone. When these carriers must purchase special access services at above cost rates, customers eventually will see these higher costs included in their broadband rates.[73] These costs,

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[72] See the July 18, 2006, Executive Summary of The Missoula Plan, pages 11 and 12, filed in CC Docket 01-92.

[73] Federal-State Joint Board Recommended Decision, p. 15.

as well as the middle mile transport[74] and the Internet backbone itself are significant cost factors in providing rural broadband service and must be addressed in any comprehensive reform.[75]

To achieve and maintain the goal of universal affordable broadband service for all Americans, the Commission should regulate the terms, conditions and pricing of Internet backbone services, including special access transport needed to reach the Internet backbone, to ensure that large, vertically-integrated Internet backbone providers do not abuse their market power by imposing unfair and discriminatory pricing on small, rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States. The Commission has already adopted some of these conditions as part of the Commission's approval of the AT&T/BellSouth merger.[76] NTCA urges the Commission to broaden these conditions in the future.

XII. THE COMMISSION SHOULD NOT ADOPT ACCESS RATE REFORM BEYOND VOLUNTARY STATE COMMISSION ACTIONS TO REDUCE INTRASTATE ORIGINATING AND TERMINATING TARIFFED ACCESS RATES TO INTERSTATE TARIFFED ACCESS RATE LEVELS, WITHOUT A FURTHER NOTICE TO STUDY THE IMPLICATIONS OF ADOPTING A DIFFERENT RATE METHODOLOGY.

The Commission should not adopt a further reduction from intrastste access rates in this proceeding without further study of the implications of adopting a different rate methodology.

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[74] National Exchange Carrier Association (NECA), *Middle Mile Broadband Cost Study*, October 2001. NECA's findings were dire—concluding that high-speed Internet service is uneconomic in many rural areas. NECA further found that increased IP traffic will exacerbate, rather than ameliorate, the problem, as existing revenue shortfalls are multiplied as the scale of operations increases. For example, the study shows revenue shortfalls at $9.7 million per year at a 0.5% penetration rate, growing to $33.6 million per year at a 5% penetration rate, $49.8 million at a 10% penetration rate, and $63.8 million per year at a 15% penetration rate. NECA's sobering conclusion: "high-speed Internet service may not be sustainable in many rural areas based on pure economics. *See NECA Middle Mile Cost Study Executive Summary*, www.neca.org/source/NECA_Publications_1154.asp.

[75] 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.

[76] *In the Matter of A&T and BellSouth Corporation Application for Transfer and Control*, Order on Reconsideration, Appendix, Page 5, WC Docket No. 06-74, (rel. March 26, 2007).

Specifically, the Commission should seek further comment on whether the additional cost standard under Section 252(d)(2) of the Act be: (1) the TELRIC standard; or (ii) the Faulhaber incremental cost standard in the Proposed Orders in the FNPRM. In addition, the Commission does not have to eliminate access charges in order to bring IC rates closer together. A number of options should be considered before taking the next reform step.

NTCA has expressed concerns with using a TELRIC or similar forward looking standard for RoR carriers.[77] Even though states have been setting rates under the TELRIC standard for over ten years and many cases have been arbitrated or litigated, similarly situated companies can end up with significantly different rates under this pricing standard. Another concern is that if rates were set based on the "additional costs standard," the switched access NECA pool would no longer function as it does today. For example, if TELRIC rates were applied to access, the pool would not receive billed access revenues equal to the settlement revenues to be paid out of the pool. There would be a net inflow or outflow depending on whether the average TELRIC rate was above or below the average cost per minute.

The proposed Faulhaber additional cost standard would be potentially even more harmful for RoR carriers and would not address any of TELRIC's fatal flaws. Rates set at near-zero levels do not reflect RoR rural carriers' cost and demand characteristics, and therefore, represent bad economic policy. There are likely unintended market implications of driving rates for exchange of traffic to near zero. Rural LECs may choose not to sufficiently maintain or invest in their rural networks, reducing the quality of all industry outputs. To the extent that new

[77] *See*, for example, *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, NTCA Initial Comment filed on October 14, 2004, pp. 2-3; *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Dockert No. 01-92, NTCA Initial Comments filed May 23, 2005, pp. 32-34.

investment is sufficient, the other outputs of rural LECs will bear the full fixed costs, given that intercarrier prices do not reflect rural costs. Other market distortions also are probable any time that such an anti-competitive regulation is adopted.

The recent turmoil in the financial markets provides an excellent example of the potential consequences of the speedy adoption of untested changes to regulation. The Commission must consider not only the cost of termination but also the cost of transport, which for rural carriers can be significant. The pooling implications as well as the ability to recover costs of origination, termination and transport must be considered fully before the Commission selects TELRIC or any other rate methodology for pricing IC. If the Commission reduces intrastate tariffed access rates to interstate levels, it will be addressing the most significant rate disparities, which will give the Commission time to fully evaluate the next IC reform steps. There is no need to immediately force carriers to replace existing intrastate and interstate access charges with below-cost reciprocal compensation rates under Section 251(b)(5), using TELRIC or another undefined methodology -- such as Faulhaber -- and the record does not support doing so.[78] Once interstate and intrastate access charges are unified, further rate changes can be addressed in a further notice. Before adopting a new pricing standard, the Commission should conduct a comprehensive cost-benefit analysis that would take into account the full economic costs and benefits of such a plan.

[78] The record is not sufficient to warrant additional changes. In particular, the methodology for computing incremental cost for a multi-product as proposed in paragraph 248 of Appendix A only differs from the current TELRIC Plus standard in that the output in question is redefined and there is no provision for the allocation of common costs. In addition there is no reason to make this decision at this point.

The Commission should determine that the terminating rate for Section 251(b)(5) traffic be set on company-by-company basis,[79] rather than on a statewide basis. The statutory framework in the Act does not provide for a statewide rate. Since costs and network configurations vary significantly by carrier, company-specific rates continue to be appropriate. NTCA submits that neither Section 252 nor economic theory support a pricing regime that establishes a single statewide termination rate for all Section 251(b)(5) traffic. The current system of non-uniform rates from carrier to carrier for IC is an efficient way to address cost disparities. Differentiated rates from carrier to carrier for IC are efficient because they allocate resources according to the cost associated with conducting business in different geographies. While referring to how market forces should come up with the economically efficient price for access, the Proposed Orders in the FNPRM propose a uniform price for the entire market. Setting prices is not a characteristic of a market economy. The laws of supply and demand for the entire market should be used to determine the equilibrium price of any service. When determined by the rules of the market, the prices of many goods and services - for example, food, energy, housing, wages, and many others – vary regionally to reflect variations in cost. The price of interconnection (access and reciprocal compensation) should not be any different.

The Commission also does not need to adopt these proposed pricing approaches to deal with traffic stimulation. NTCA recommends that the Commission address access stimulation directly through tariff restrictions, enforcement and investigation above certain level, and other actions such as limiting an ILEC's ability to enter and exit the NECA pool. NTCA proposes that CLEC traffic stimulation could be addressed by a modification to CLEC ratemaking. Namely, a

[79] Core Remand Order, p. 19. (Nov. 5, 2008).

CLEC's interconnection rates could be tariffed using the ILEC's cost in the numerator and the CLEC's actual demand in the denominator.

XIII. THECOMMISSION SHOULD CONSIDER ALTERNATIVE RULES TO REDUCE THE ECONOMIC IMPACT ON SMALL RURAL ILECS.

The Regulatory Flexibility Act (5 U.S.C. Section 601) requires the Commission to consider alternative rules that will reduce the economic impact on small entities. The Commission should adopt NTCA's universal service and IC reform proposals, which will reduce the economic burden on small, rural LECs and the consumers they serve.[80] NTCA's proposals will also 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.

XIV. CONCLUSION

Rate-of-return, rural LECs are making good on their promise to deliver broadband services to rural areas.[81] Rural LECs have made significant investments in the rural, high-cost portions of America under an existing universal service support system that allows for recovery of a sufficient portion of a carrier's embedded costs of total regulated facilities. If these costs are no longer recovered through access charges and/or universal service and an alternative recovery method is not available or is prohibited by regulators, then these costs will become stranded investment.[82] As Commissioner Copps stated:

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[80] NTCA's Interim Universal Service & Intercarrier Compensation Reform Proposal, filed on July 11, 2008, CC Docket No. 01-92 (NTCA Proposal).

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

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

> [i]t is essential, that any regime we adopt increase certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in its communities.[83]

Given the Act's goal of preserving and advancing universal service to provide consumers with access to advanced telecommunications and information services, failure to address stranded cost would be completely at odds with the intent of Sections 254 and 706 of the Communications Act of 1934, as amended.

NTCA urges the Commission to not adopt the Proposed Orders in the FNPRM because they significantly harm rural consumers, unlawfully preempt the states, and result in an unlawful taking of RoR carrier property. The proposed unification of all terminating interstate, intrastate, and local/reciprocal compensation access rates to a ***non-cost-based per minute rate*** for RoR carriers would violate federal and state approved cost-based rate-of-return ratemaking and separations requirements under Section 410, would violate the States authority to set intrastate rates under Section 2 of the Act, and violate the takings clause in the 5th Amendment of the United States Constitution. The Commission should instead adopt the following prudent, reasonable and equitable measures on December 18, 2008.

1. Allow state commissions to reduce voluntarily, on a company-by-company basis, intrastate originating and terminating tariffed access rates to interstate tariffed access rate levels over a reasonable period of time (5 years) and at the same time freeze interstate originating and terminating access rates in order to keep interstate access rates from increasing.

2. Establish and implement a Restructure Mechanism (RM) to allow rate-of-return (RoR) carriers to recover lost access revenues not recovered in end-user rates through supplemental Interstate Common Line Support (ICLS) and price-cap carriers to recover lost access revenues not recovered in end-user rates through supplemental Interstate Access Support

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

(IAS). Consistent with the RoR regulation, the RM calculation must produce ICLS support levels that ensure a RoR carrier can earn its authorized rate-of-return of 11.25% on total regulated operations, notwithstanding reductions in access rates, losses in access lines, and decreases in demand minutes. Supplemental ICLS and IAS should be offset by any increases in the Federal Subscriber Line Charge (SLC) up to $1.50 and any increases in local end-user rates up to a Federal Benchmark (FB) rate of $20. The FB rate should include local residential rates, state and federal SLCs and SLC-like charges, mandatory Enhanced Area Service (EAS) charges and per line state universal service fund collections. SLC increases, if any, should be limited to what is required for the company to reach the Federal Benchmark Rate and the overall SLC cap.

3. RoR carriers seeking to receive additional supplemental universal service support through the ICLS mechanism, and price-cap carriers seeking to receive additional supplemental universal service support through the IAS mechanism, would voluntarily choose to have their broadband services regulated under Title II and voluntarily provide their total company regulated Title II costs, revenues, and earnings to be used when determining their future broadband high-cost USF support disbursements. Supplemental ICLS or IAS would only be provided to those carriers that voluntarily agree to have their broadband services regulated under Title II and receive supplemental ICLS or IAS to the extent necessary to recover all reasonable regulated costs. RoR carriers' earnings would be adjusted to 11.25% and price cap carriers' earnings would be adjusted in accordance with price cap rules.

4. Implement a rule that IP/PSTN traffic, specifically interconnected VoIP traffic, is required to pay applicable tariffed terminating interstate access rates, terminating intrastate access rates, and reciprocal compensation rates, until such time as there is no longer a PSTN.

5. Maintain the current interconnection environment, dismiss the AT&T Edge proposal, and consider any future changes to the existing interconnection rules in a FNPRM.

6. Eliminate the identical support rule and move over a reasonable period of time (5 years) towards USF support based on each company's own cost.

7. Include broadband in the definition of universal service and expand the USF contribution base to include all broadband service providers and retain revenues as the basis for assessing the USF contributions.

8. Reject reverse auctions for rate of return RoR carriers and maintain the current universal service mechanisms for rural carriers. The existing mechanisms have been successful in facilitating the deployment of broadband to rural customers.

9. Refrain from capping and/or freeze high-cost USF support to RoR carriers. Capping or freezing USF will halt broadband deployment in high cost areas served by rural companies and leave many rural consumers with substandard broadband service or without broadband service.

10. Require tandem switching rates and special access transport rates to be cost-based.

11. Refrain from adopting access rate reform beyond that described in Item 1 above without a further notice and comment to study the implications of adopting a different rate methodology, such as the TELRIC standard or the Faulhaber additional cost standard.

12. Refrain from ruling and seek further comment on whether the Commission has legal authority to include all voice traffic under Section 251(b)(5) of the Act, particularly when Section 152(b) grants state commissions with exclusive authority to regulate and set intrastate access rates, as well as the authority to set reciprocal compensation rates. The Proposed Orders in the FNPRM would unlawfully preempt state commission jurisdiction.

Lastly, the Regulatory Flexibility Act (5 U.S.C. Section 601) requires the Commission to consider alternative rules that reduce the economic impact on small entities, such as RoR rural carriers. NTCA's USF and IC reform recommendations reduce the economic impact on small, RoR broadband providers and rural consumers. NTCA's proposals also allow the Commission to meets its regulatory responsibility, promote the public interest, convenience, and necessity, spur development of new advanced communications technologies and broadband deployment, and most importantly ensure that consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services.

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

Respectfully submitted,

NTCA

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

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November 26, 2008

CERTIFICATE OF SERVICE

I, Rita H. Bolden certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36, and CC Docket No. 99-200, FCC 08-262, was served on this 26th day of November 2008 via electronic mail to the following persons:

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