

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

In the Matter of)
)
Report on Rural Broadband Strategy) GN Docket No. 09-29
) DA 09-561
)



**NTCA COMPREHENSIVE RURAL BROADBAND STRATEGY
COMMENTS**

Respectfully submitted,

**Daniel Mitchell
Vice President, Legal & Industry**

**Karlen Reed
Regulatory Counsel, Legal & Industry**

Its Attorneys

**4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000**

March 25, 2009

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY.....	2
II. INCLUDE BROADBAND IN THE DEFINITION OF UNIVERSAL SERVICE.	8
A. Broadband As A Supported Service.	8
B. Defining Broadband, Unserved Areas and Underserved Areas.	10
C. Expand The USF Contribution Base And Continue To Collect USF Contributions Based On Revenues.....	11
D. Avoid Caps And/Or Freezes On High-Cost USF Support.	13
III. ALLOW STATE COMMISSIONS TO VOLUNTARILY MOVE INTRASTATE ORIGINATING AND TERMINATING ACCESS RATES AND RATE STRUCTURES TO CAPPED INTERSTATE ACCESS RATE LEVELS AND STRUCTURES OVER A REASONABLE TIME PERIOD.....	14
IV. ADOPT AN ALTERNATIVE HIGH-COST USF COST RECOVERY MECHANISM (RM) PRIOR TO REQUIRING ACCESS REDUCTIONS.....	15
V. REQUIRE PROVIDERS OF INTERCONNECTED VOIP SERVICE TO PAY THE APPROPRIATE INTERCARRIER COMPENSATION RATES.	19
VI. ELIMINATE THE IDENTICAL SUPPORT RULE AND BASE SUPPORT ON A CETC’S ACTUAL COSTS OVER A REASONABLE PERIOD OF TIME.	24
VII. REJECT REVERSE AUCTIONS BECAUSE THEY WILL NOT FACILITATE BROADBAND IN HIGH COST RURAL AREAS AND WILL PUT RURAL CONSUMERS AT SIGNIFICANT RISK.....	25
VIII. REQUIRE TANDEM SWITCHING RATES BE COST-BASED AND NON- DISCRIMINATORY.....	26
IX. REQUIRE THAT SPECIAL ACCESS (MIDDLE-MILE) TRANSPORT SERVICE TO THE IP-BACKBONE BE COST-BASED AND NON- DISCRIMINATORY.....	26

X. WHOLESALE LONG DISTANCE SERVICES SHOULD BE COST-BASED TO REDUCE CONSUMER RETAIL LONG-DISTANCE RATES.	28
XI. NONE OF THE CURRENT \$7 BILLION NTIA AND RUS STIMULUS MONEY AVAILABLE FOR BROADBAND SHOULD BE GIVEN TO AT&T.....	28
XII. ANY STIMULUS MONEY DISTRIBUTED TO LARGE CARRIERS THAT PROVIDE SPECIAL ACCESS TRANSPORT (MIDDLE-MILE) SERVICE TO THE INTERNET BACKBONE, SUCH AS VERIZON, QWEST, AND COMCAST, SHOULD BE CONDITIONED ON THESE LARGE PROVIDERS BEING REQUIRED TO BASE THESE SERVICES ON COST AND OFFER THEM TO UNAFFILIATED BROADBAND PROVIDERS AT THE SAME PRICE, TERMS AND CONDITIONS AS OFFERED TO THEIR AFFILIATES.....	29
XIII. 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 COMPENSATION RATES.....	29
XIV. REFRAIN FROM ADOPTING 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.	34
XV. REFRAIN FROM ADOPTING THE AT&T/VERIZON EDGE PROPOSAL BECAUSE IT WILL ELIMINATE THE CURRENT ACCESS REGIME, CAUSE CHAOS, AND UNNECESSARILY INCREASE THE SIZE OF THE USF RESTRUCTURE MECHANISM.....	37
XVI. ENHANCING RURAL HEALTHCARE SHOULD BE PART OF THE NATION’S RURAL BROADBAND STRATEGY.....	39
XVII. THE BROADBAND LIFELINE PILOT PROGRAM HAS MERIT IN GENERAL AND CAN BE IMPROVED WITH A FEW MODIFICATIONS.....	40
A. Background.	41
B. The Proposed Low-Income Subsidies Are Substantial But May Miss Rural Consumers Unless the Pilot Includes a Rural Set-Aside and Excludes a Requirement to Provide Devices.....	42

C. Amid The ETC Requirements, The Commission Should Require ETC Participants To Disclose Advertised Broadband Speeds And Not Require Provisioning The Entire Service Territory..... 45

D. Increasing The Size Of The Low-Income Portion Of The USF Through The Pilot Program May Strain Existing Auditing And Enforcement Actions. 48

XVIII. APPLY REGULATORY FLEXIBILITY ACT (RFA) ALTERNATIVE RULES TO REDUCE THE ECONOMIC IMPACT ON SMALL RURAL ILECS..... 49

XIX. CONCLUSION 49

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Report on Rural Broadband Strategy) GN Docket No. 09-29
) DA 09-561
)



**NTCA COMPREHENSIVE RURAL BROADBAND STRATEGY
COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ files these comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) March 10, 2009 Public Notice² seeking comment on Congress’s directive to develop a comprehensive rural broadband strategy by May 22, 2009.³ The Commission, consulting with the U.S. Department of Agriculture, seeks comment on how the Commission and the Department of Agriculture should implement section 6112 of the 2008 Farm Bill, including substantive recommendations, proposed goals and timeframes to achieve the purposes of the report.⁴

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 580 rural rate-of-return regulated telecommunications providers. All NTCA members are full service rural local exchange carriers (RLECs), and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Public Notice of Comment Date for Report on Rural Broadband Strategy*, GN Docket No. 09-29, DA 09-561 (rel. Mar. 10, 2009) (Notice).

³ Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, 122 Stat. 1651 (June 18, 2008) (2008 Farm Bill); Notice, p. 2

⁴ Notice, p. 2.

I. INTRODUCTION AND SUMMARY.

NTIA and RUS have conducted several public hearings on broadband funding issues concerning the potential use of funds provided under the 2009 American Recovery and Reinvestment Act (ARRA).⁵ These hearings have included private sector eligibility, innovative programs to encourage sustainable broadband adoption, and the definitions of “broadband,” “underserved areas,” and “unserved areas.” NTCA participated and/or attended several of the public hearings in an effort to explain the small rural broadband provider view and provide recommendations for the most efficient and effective manner to distribute the \$7 billion in National Telecommunication and Information Administration (NTIA) and Rural Utility Service (RUS) broadband stimulus money.

For the last ten years, NTCA has conducted its annual Broadband/Internet Availability Survey to gauge the broadband deployment rates of advance services by its member companies. All NTCA members are small carriers that are “rural telephone companies” as defined in the Communications Act of 1934, as amended. While some offer local exchange service to as few as 44 lines and a small handful to 50,000 or more, nearly 50% of NTCA members serve between 1,000 and 5,000 lines. Population density in most member service areas is in the range of 1 to 5 customers per square mile.

The 2008 Broadband/Internet Survey provides valuable aggregated insight into the broadband speeds offered by small independent rural communications providers, the customer take rates, the technologies small rural providers use to deliver broadband, distance from primary Internet connection, levels of competition, rural carriers’ marketing efforts, their future

⁵ See www.ntia.doc.gov/broadbandgrants, and <http://www.rurdev.usda.gov/index.html>. The public hearings were held March 16, 17, 18, 19, 23, and 24, 2009. NTIA Docket No. 090309298-9299-01.

deployment plans and deployment barriers that rural providers face in providing broadband to their members. Key results of this 2008 Survey are as follows:

- 91% of respondents' customers can receive 200 – 768 kbps service, 83% can receive 768 kbps – 1.5 Mbps, 58% can receive 1.5 – 3 Mbps, 46% can receive 3 – 6 Mbps, and 25% can receive greater than 6 Mbps.
- Regarding take rates, 11% of respondents' customers subscribe to up to 56 kbps service, 19% to 200 – 768 kbps, 36% to 768 kbps – 1.5 Mbps, 10% to 1.5 – 3 Mbps, 11% to 3-6 Mbps, and 5% to greater than 6 Mbps.
- Of the technologies used to bring broadband to their customers, 99% of the respondents use DSL, 44% use fiber to the home or fiber to the curb, 33% use some form of wireless, 14% use satellite and 10% use cable modem (some respondents use more than one technology).
- The typical respondent is located 98 miles from their primary Internet connection, reflecting the distance issues that hinder broadband deployment.
- Ninety-three percent of the survey respondents said they already face competition in the provision of advanced services from at least one other service provider. These competitors include national Internet service providers (ISPs), satellite broadband providers, cable companies, and wireless ISPs. Over half of the respondents found it difficult to compete with competitors' price promotions. Deployment costs remain the most significant barriers to wide deployment of fiber.⁶

NTCA also conducts a Wireless Survey of its members in the same manner as the Broadband Survey. Highlights from the 2008 Wireless Survey reveal:

- Fifty-six percent of survey respondents who are providing wireless service are also offering broadband data.
- Thirty-five percent of respondents characterized the process of obtaining financing for wireless projects as “very difficult” or “virtually impossible.”⁷

These survey results draw a clear picture of the difficulties small rural carriers face in providing broadband to rural customers. While on average 91% of NTCA members' customers have broadband available, the last nine percent has been largely too costly to receive previous

⁶ See NTCA 2008 Broadband/Internet Survey Report (rel. Oct. 2008), available at: <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2008ntcabroadbandsurveyreport.pdf>.

⁷ See NTCA 2008 Wireless Survey Report (rel. Jan. 2009), available at: <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2008ntcawirelessurveyreport.pdf>.

public or private financing. Given that stimulus money is intended to be used for broadband projects that otherwise could not be financed, a significant portion of the \$7 billion NTIA and RUS stimulus money should therefore be targeted to small rural incumbent carriers, who have provided high-quality, dependable, enduring service for decades, to complete the broadband build-out in their rural communities.

NTCA specifically urges the Commission propose in its May 22, 2009 Comprehensive Rural Broadband Strategy Report to Congress that the following prudent, reasonable and lawful actions take place in order to properly and effectively transition the high-cost universal service fund (USF) mechanisms, intercarrier compensation (IC) mechanisms, and NTIA and RUS financing programs from supporting the public switched telecommunications network (PSTN) to supporting the new Internet protocol (IP) broadband network of the future:

1. Include broadband in the definition of universal service, expand the USF contribution base to include all broadband service providers, and retain revenues as the basis for assessing the USF contributions.
2. Define “broadband” based on high-speed Internet access capabilities that are generally available in a significant sample of service offerings in urban areas to establish a standard of comparability and affordability in urban and rural areas. As the capability of broadband technology and IP applications develop, the definition must evolve to meet consumer, education, business, and public health/safety demands. By linking the definition to generally available services, affordability, and comparability, the definition is enduring, technology neutral, and in the public interest.
3. Define “unserved areas” as populated areas that have no service or have dial-up only service (excluding satellite broadband service).
4. Define “underserved areas” as populated areas that have access to broadband service at speeds greater than 56 kbps dial-up Internet access service but less than 768 kbps broadband service taking into consideration average customer usage during peak-hour or busy-hour load as established by the FCC.
5. 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.

6. 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.
7. 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.
8. 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.
9. Require IP/PSTN traffic, specifically interconnected VoIP traffic, 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.
10. 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.
11. 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.
12. Require special access (middle-mile) transport rates to be cost-based and non-discriminatory.
13. Require tandem switching rates to be cost-based and non-discriminatory.

14. Require wholesale long distance rates to be cost-based and non-discriminatory.
15. None of the current \$7 billion NTIA and RUS stimulus money available for broadband should be distributed to AT&T, which was required to buildout 100% of its service area in 2007 as part of the FCC's AT&T/Bell South merger conditions and has invested billions overseas. Stimulus money used to serve any existing unserved AT&T households should be given to other providers applying for funding.
16. Any of the current \$7 billion NTIA and RUS stimulus money distributed to large carriers that provide special access transport (middle-mile) service to the Internet backbone, such as Verizon, Qwest, and Comcast, should be conditioned on the requirement that these carriers base middle-mile services on cost and offer them to unaffiliated broadband providers at the same price, terms and conditions as offered to their affiliates. Keeping large carriers middle-mile transport cost-based will accelerate broadband deployment and subscription, result in more affordable broadband services to consumers, and drive economic development throughout the United States.
17. Refrain from adopting access rate reform beyond that described in Item 6 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.
18. Refrain from adopting 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.
19. Maintain the current interconnection environment, dismiss the AT&T Edge proposal, and consider any future changes to the existing interconnection rules in a FNPRM.
20. Expand and make permanent the Universal Service Fund's Rural Health Care Pilot Program. Telemedicine networks made possible by broadband services save lives and will improve the standard of healthcare and life in sparsely populated, rural areas. Telehealth and telemedicine must be a critical component to the rural broadband strategy.
21. Improve the proposed broadband pilot program for low-income customers by setting aside half of the pilot program funds for rural low-income consumers and by clarifying the speed and device availability requirements. By permitting eligible telecommunications carriers (ETCs) to use the low-income broadband pilot program to offer broadband internet access to part of their service territories, rather than the entire territory, will enhance participation in the pilot program and, consequently, give more rural consumers affordable broadband internet access.
22. Use the Regulatory Flexibility Act (RFA) (5 U.S.C. Section 601) effectively. The RFA 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 meet 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 believes firmly that investing in additional universal service support dollars to build and maintain our broadband networks will stimulate the United States economy and establish this Nation as a global leader in broadband. 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, learning institutions, healthcare facilities and businesses.

During the last 20 years, rural carriers have continued to invest in rural, high-cost and insular areas in the United States based on a system of rate-of-return regulation, National Exchange Carrier Association (NECA) pooling, and high-cost USF support. This existing regulatory structure has allowed the Commission to meet its Congressional mandate to ensure rural consumers access to telecommunications services at prices that are comparable to services and prices received by urban consumers. Rural consumers, meanwhile, continue to demand the high quality of service that they are accustomed to receiving from the carriers that have served them for decades.

This goal is now threatened by some intercarrier compensation (IC) and USF reform proposals, which create uncertainty about the stability of future access cost recovery and the mechanisms used to fund universal service. Rural carriers, therefore, have a strong interest in ensuring that reforms to the IC and USF rules provide cost recovery consistent with their past decisions to invest in networks and incur costs under lawful regulatory rules. Reforming this

“regulatory compact” incorrectly poses grave dangers for communications services provided to consumers in high cost areas. Financial markets are closely monitoring how Congress and regulators deal with this regulatory compact. The wrong decisions could curtail future broadband investment in rural communities, as well as put rural carriers’ ability to repay debt in jeopardy.

Regulators and Congress want carriers to build a national broadband network. Rural carriers are doing their part to deliver high-speed broadband using cost-effective technologies, but there is much left to do. Carriers operating in rural, high-cost areas need to know that if they commit resources they have a reasonable expectation to recovery their costs and earn a reasonable return on their investment. Likewise, the FCC, 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 FCC to adopt NTCA’s Comprehensive Rural Broadband Strategy contained herein, which will ensure that all consumers living in rural, high-cost areas are able to receive high-quality, affordable voice and broadband services.

II. INCLUDE BROADBAND IN THE DEFINITION OF UNIVERSAL SERVICE.
A. Broadband As A Supported Service.

NTCA agrees with many 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 2001.⁸ 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.⁹ 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.

⁸ http://www.usda.gov/rus/telecom/broadband/pdf/BIBA_asof_5-9-08.pdf

⁹ 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.

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 include broadband in the definition of universal service and urge the FCC to adopt NTCA's proposed broadband definition below.

B. Defining Broadband, Unserved Areas and Underserved Areas.

The Commission should define broadband based on high-speed Internet access capabilities that are generally available in a significant sample of service offerings in urban areas to establish a standard of comparability and affordability in urban and rural areas. As the capability of broadband technology and IP applications develop, the definition must evolve to meet consumer, education, business, and public health/safety demands. By linking the definition to generally available services, affordability, and comparability, the definition is enduring, technology neutral, and in the public interest.

The Commission should also define unserved areas as populated areas that have no service or have dial-up only service (excluding satellite broadband service). Further, the Commission should define underserved areas as populated areas that have access to broadband service at speeds greater than 56 kbps dial-up Internet access service but less than 768 kbps broadband service taking into consideration average customer usage during peak-hour or busy-hour load as established by the FCC.

The intent of the American Recovery & Reinvestment Act (ARRA) is to achieve 100% broadband availability and subscription in every U.S. Household before using stimulus money to over-build any existing broadband networks. The current \$7 billion available in NTIA and RUS

broadband grants, loans, and loan guarantees will not meet the needs of the estimated 10 million U.S. households currently without available broadband service. This money therefore should be used exclusively for unserved areas (populated areas with only dial-up service) first before considering underserved areas. The letters attached from Senators sent to NTIA, RUS and FCC define "unserved areas" as "dial-up only areas" and urge NTIA, RUS, and the FCC to use the broadband stimulus money in unserved (dial-up only) areas first and foremost. NTCA's proposed definitions are consistent with the congressional intent of the ARRA, prevent the gaming of NTIA/RUS broadband stimulus program, and protect and promote the public interest.

C. Expand The USF Contribution Base And Continue To Collect USF 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 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 cable¹⁰ 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

¹⁰ *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).

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.¹¹ 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 contribution 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 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.

A revenues-based assessment methodology is technologically neutral, and will not be overly influenced by the ongoing migration to IP technologies. NTCA strongly urges the

¹¹ 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).

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. 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.

D. Avoid 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.¹² 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 regional Bell operating companies (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.

¹² 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.

III. ALLOW STATE COMMISSIONS TO VOLUNTARILY MOVE INTRASTATE ORIGINATING AND TERMINATING ACCESS RATES AND RATE STRUCTURES TO CAPPED INTERSTATE ACCESS RATE LEVELS AND STRUCTURES 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.¹³ NTCA further recommends freezing interstate originating and terminating access rates in order to keep interstate access rates from increasing in the future.¹⁴ The Commission should allow state 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 interexchange carriers (IXCs), but also consumers. 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.

IV. ADOPT AN ALTERNATIVE HIGH-COST USE COST RECOVERY MECHANISM (RM) 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

¹³ 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.

¹⁴ 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.

costs along with a reasonable return on investment.¹⁵ The Commission has also recognized the unique characteristics of rural RoR carriers and the challenges faced in providing quality service to their customers.¹⁶ 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.”¹⁷ The Commission has also recognized that RoR regulation operating in tandem with the USF has worked well, not only for providing quality service at reasonable rates but also for incenting the deployment of broadband in rural areas.¹⁸ 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

¹⁵ See *In the Matter of Federal State Joint Board on Universal Service, CC Docket No. 96-45, FCC 01-157, Fourteenth Report & Order*, ¶¶ 24 and 25 (May 23, 2001) (“*RTF Order*”) and *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) ¶¶ 3, 12, 131, 132, and 134 (“*MAG Order*”).

¹⁶ *RTF Order*, ¶¶ 24, 25, and 79 and *MAG Order*, ¶¶ 3, 12, 131, 132, and 134

¹⁷ *MAG Order*, ¶ 131.

¹⁸ *MAG Order*, ¶ 224 and *Joint Board Recommended Decision*, ¶¶ 30 and 39.

allow companies to increase local rates such that the company could reach the FB rate level.¹⁹ The FB rate should include the local residential rate,²⁰ 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 within their states. A FB rate is designed to provide equity for customers and companies across the nation.²¹ Finally, inclusion of a FB rate minimizes the replacement revenues necessary for IC reform because companies 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.

¹⁹ 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.

²⁰ Benchmarks would not apply to business lines.

²¹ 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 penalized²¹ and the federally funded replacement dollars would be excessive.

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 also 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.

V. REQUIRE PROVIDERS OF INTERCONNECTED VOIP SERVICE TO PAY THE APPROPRIATE INTERCARRIER COMPENSATION RATES.

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.²²

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 available, affordable, and comparable in rural LEC service areas will no longer exist.²³ 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

²² 47 U.S.C. § 153(47).

²³As fewer revenues must support a high fixed cost network, the remaining services have to be priced higher to recover the investment.

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 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 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.²⁴ 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.²⁵ 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."²⁶ The Commission further maintained "that the cost

²⁴ FNPRM, Appendix A, ¶¶ 211-229, specifically footnote 564, Appendix C, ¶¶ 206-224, specifically footnote 555.

²⁵ 47 USC 153 (51)

²⁶ *IP-Enabled Services*, Notice of Proposed Rulemaking, ¶ 33, WC Docket No. 04-36 (rel. March 11, 2004).

of the PSTN should be borne equitably among those that use it in similar ways.”²⁷ 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 voice communications market in direct conflict with its own principle of competitive neutrality.²⁸

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

²⁷ *Id.*

²⁸ 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.

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. 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.²⁹ Rural LEC consumers would be faced with higher end-user rates, degradation in the quality of their underlying local exchange carrier (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.³⁰

²⁹ 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).

³⁰ 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.

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 regime.³¹ 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).³²

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

³¹ 47 U.S.C. §153(47).

³² 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

available. VoIP providers only exist because there is a network in place. By putting the 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.

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

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.³³ 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.³⁴

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 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

³³ 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 rural LEC's costs.

³⁴ 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).

its cost data in order to receive federal high-cost USF support, if its CETC designation in this area is granted.

VII. 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 FCC must recognize 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 auction³⁵ 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.³⁶

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

³⁵ *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 06J-1, released August 11, 2006 (“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.

³⁶ NTCA’s Reverse Auction Proceeding Initial Comments, at 4.

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.³⁷

VIII. REQUIRE TANDEM SWITCHING RATES BE COST-BASED AND NON-DISCRIMINATORY.

Any comprehensive rural broadband strategy must address tandem-switching rates. 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 5.³⁸ 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.

IX. REQUIRE THAT SPECIAL ACCESS (MIDDLE-MILE) TRANSPORT SERVICE TO THE IP-BACKBONE BE COST-BASED AND NON-DISCRIMINATORY.

A comprehensive rural broadband strategy must reform special access (middle-mile) transport service to the IP-backbone.³⁹ NTCA recommends that in this proceeding the

³⁷ *Id.*, at 13-15.

³⁸ See the July 18, 2006, Executive Summary of The Missoula Plan, pages 11 and 12, filed in CC Docket 01-92.

³⁹ Special access (middle-mile) transport service includes, among other services, packet-switched broadband services, optical transmission services (e.g., frame relay, ATM, LAN, Ethernet, video-transmission, optical network,

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.⁴⁰ These costs, as well as the middle mile transport⁴¹ and the Internet backbone itself are significant cost factors in providing rural broadband service and must be addressed in any comprehensive reform.⁴²

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 (middle mile) 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.⁴³ NTCA urges

wave-based, etc.), TDM-based services (e.g., DS-1, DS-3, etc.), and other future transport services to reach the Internet backbone.

⁴⁰ Federal-State Joint Board Recommended Decision, p. 15.

⁴¹ 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.

⁴² 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.

⁴³ *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).

the Commission to broaden these conditions as part of the FCC's comprehensive rural broadband strategy.

X. WHOLESALE LONG DISTANCE SERVICES SHOULD BE COST-BASED TO REDUCE CONSUMER RETAIL LONG-DISTANCE RATES.

Rural LECs throughout the United States have been notified by both ANPI and TDN that the underlying long distance carriers are dramatically increasing our wholesale rates. These rates are going up over 40% making it extremely difficult for rural LECs to offer all-you-can-eat bundles. Specifically, ANPI included the following in its notifications: *In closing, as noted over the past several months, it is clear that IXCs are working in unison to raise rates, and introduce monitoring mechanisms and administrative best practices to limit the prospect for conditions in which access exceeds toll costs. All carriers are absolutely committed to addressing this issue, and re-indexed toll rates simply represent our rapidly unfolding reality.* With access cost reductions to IXCs, the cost of wholesale long distance service should also decrease and be cost-based and non-discriminatory.

XI. NONE OF THE CURRENT \$7 BILLION NTIA AND RUS STIMULUS MONEY AVAILABLE FOR BROADBAND SHOULD BE GIVEN TO AT&T.

None of the current \$7 billion NTIA and RUS stimulus money available for broadband should be distributed to AT&T who was required to buildout 100% of its service area in 2007 as part of the FCC's AT&T/Bell South merger conditions and has invested billions overseas. Stimulus money used to serve any existing unserved AT&T households should be given only to other providers applying for funding.

XII. ANY STIMULUS MONEY DISTRIBUTED TO LARGE CARRIERS THAT PROVIDE SPECIAL ACCESS TRANSPORT (MIDDLE-MILE) SERVICE TO THE INTERNET BACKBONE, SUCH AS VERIZON, QWEST, AND COMCAST, SHOULD BE CONDITIONED ON THESE LARGE PROVIDERS BEING REQUIRED TO BASE THESE SERVICES ON COST AND OFFER THEM TO UNAFFILIATED BROADBAND PROVIDERS AT THE SAME PRICE, TERMS AND CONDITIONS AS OFFERED TO THEIR AFFILIATES.

The Commission should require that any of the stimulus money distributed to large carriers that provide special access transport (middle-mile) service to the Internet backbone, such as Verizon, Qwest, and Comcast, be conditioned on these large providers being required to base these services on cost and offer them to unaffiliated broadband providers at the same price, terms and conditions as offer to their affiliates. Keeping large carriers middle-mile transport cost-based will accelerate broadband deployment and subscription, result in more affordable broadband services to consumers, and drive economic development throughout the United States.

XIII. 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 COMPENSATION RATES.

The Commission does not have statutory authority to set intrastate access rates and reciprocal compensation rates for voice traffic that touches the PSTN. The Supreme Court found in *Iowa Utilities Board* 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.⁴⁴ Supreme Court precedent dictates that the role of the state commission is to establish rates; therefore, the Commission does not have legal authority to establish a single default rate for all traffic routed over the PSTN.⁴⁵

⁴⁴ *Id.*, 525 U.S. at 385.

⁴⁵ Verizon *Ex Parte*, September 19, 2008, at 5.

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).”⁴⁶

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.⁴⁷ 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”⁴⁸ 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 of the provision declaring the purpose of the Act and the role of the FCC.⁴⁹

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

⁴⁶ 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.

⁴⁷ *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*).

⁴⁸ *Id.*, 476 U.S. at 373.

⁴⁹ *Id.*, 476 U.S. at 370.

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.⁵⁰ 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)."⁵¹

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.⁵² 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,⁵³ Section 152(b) prevented the Commission from taking intrastate action solely because it furthered an interstate goal.⁵⁴ 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 claimed authority to issue rules governing depreciation methods applied by local telephone companies.⁵⁵ -

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

⁵⁰ *Id.*, 476 U.S. at 376-7.

⁵¹ *Id.*, 476 U.S. at 377.

⁵² *Id.*, 476 U.S. at 369.

⁵³ *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).

⁵⁴ *Louisiana*, 476 U.S. at 374.

⁵⁵ *Iowa Utilities Board*.

“express a clear attempt to preempt state law.”⁵⁶ 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.⁵⁷ Thus, Congress has expressly directed that the state commissions, and 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.⁵⁸ The Proposed Orders in the FNPRM attempt to gut Sections 152(b),

⁵⁶ *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S.Ct. 1305, 51 L.Ed. 604 (1977).

⁵⁷ 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 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.

⁵⁸ 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

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.⁵⁹ 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.⁶⁰

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) access rates⁶¹ nor has Congress legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law.⁶² 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.

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.

⁵⁹ *Free v. Bland*, 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed. 180 (1962).

⁶⁰ *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 312, 83 S.Ct. 1210, 10 L.Ed. 284 (1963).

⁶¹ *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed. 4909 (1983).

⁶² *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947).

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 increases⁶³ 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.

XIV. REFRAIN FROM ADOPTING 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 intrastate access rates in this proceeding without further study of the implications of adopting a different rate methodology. Specifically, the Commission should seek further comment on whether the additional cost standard under Section 252(d)(2) of the Act should 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.⁶⁴ Even though states have been setting rates under the TELRIC standard for

⁶³ NTCA only supports SLC increases up to a federal benchmark level.

⁶⁴ 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

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 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

Comment filed on October 14, 2004, pp. 2-3; *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, NTCA Initial Comments filed May 23, 2005, pp. 32-34.

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.⁶⁵ 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.

The Commission should determine that the terminating rate for Section 251(b)(5) traffic be set on company-by-company basis,⁶⁶ 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.

⁶⁵ 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 (Core Remand Order), and Further Notice of Proposed Rulemaking (FNPRM), p. 19 (rel. November 5, 2008). (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.)

⁶⁶ Core Remand Order, p. 19. (Nov. 5, 2008).

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

XV. REFRAIN FROM ADOPTING THE AT&T/VERIZON EDGE PROPOSAL BECAUSE IT WILL ELIMINATE THE CURRENT ACCESS REGIME, CAUSE CHAOS, AND UNNECESSARILY INCREASE THE SIZE OF THE USF RESTRUCTURE MECHANISM.

AT&T and Verizon propose an interconnection plan also known as the “Edge Plan.”⁶⁷

The Commission must refrain from adopting the Edge Plan. Beyond the inadequacy and lack of specificity in the proposed Edge Plan, the framework fails to identify the originating carrier with

⁶⁷ 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). FNPRM, Appendix A, ¶¶ 274-281, Appendix C, ¶¶ 270-276.

financial responsibility. The current access regime provides structural and architecture obligations, not just financial ones. 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.⁶⁸ IXCs do not have local subscribers because they have not constructed their own exchange facilities. The proposals do not answer how the reciprocal compensation framework of Section 251(b)(5), which includes only transport

⁶⁸ First Report and Order, ¶ 13.

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.

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.

XVI. ENHANCING RURAL HEALTHCARE SHOULD BE PART OF THE NATION'S RURAL BROADBAND STRATEGY.

One aspect of the Notice concerns integration of broadband efforts with existing rural broadband initiatives.⁶⁹ One such initiative is the Rural Health Care Pilot Program, a part of the Universal Service Fund Rural Health Care mechanism. NTCA agrees with the Commission's view in the Notice that "telemedicine networks made possible by broadband services save lives

⁶⁹ Notice, p. 1.

and improve the standard of healthcare in sparsely populated, rural areas.”⁷⁰ To further that end, the Commission should expand and make permanent the Universal Service Fund’s Rural Health Care Pilot Program. The timeframe for completion (i.e., review of RHCPP quarterly reports and consideration of permanence) should commence immediately since the funding for the RHCPP expires June 30, 2010.⁷¹ This is an existing federal rural broadband initiative that involves the FCC and the National Institute of Health, a federal agency whose services are targeted for inclusion in the broadband infrastructure development in rural America. NTCA members anticipate seeing ARRA stimulus funds being used by local and state entities and rural health care providers to meet the 15% “buy-in” requirement of the RHCPP. Telehealth and telemedicine should be a critical component to the United States rural broadband strategy.

XVII. THE BROADBAND LIFELINE PILOT PROGRAM HAS MERIT IN GENERAL AND CAN BE IMPROVED WITH A FEW MODIFICATIONS.

The Commission has proposed to establish a \$300 million per year, three-year pilot program designed to improve broadband Internet access services to low-income Americans by using USF funds through the Lifeline and Link-up programs.⁷² In general, NTCA supports the creation of a broadband pilot program for low-income customers and offers suggestions to improve the proposed program. The Commission suggests increasing the USF to accommodate this pilot program and then evaluating the program’s effectiveness for permanent acceptance.⁷³

⁷⁰ Ibid.

⁷¹ NTCA Ex Parte Filing, WC Docket No. 02-60 (filed Mar. 16, 2009).

⁷² FNPRM, Appendix A, ¶¶ 64-91, and Appendix C, ¶¶ 60-87. The broadband pilot program provisions are identical in both appendices and, for simplicity, citations in this section will refer just to the Appendix A provisions.

⁷³ FNPRM Appendix A, ¶ 76.

A. Background.

For purposes of the Broadband Lifeline Pilot Program only, the Commission has included broadband as a supported service for universal service funding.⁷⁴ The Commission relies on Section 254(b)(2) and 254(b)(3) of the Act to support the creation of this pilot program, but does not guarantee that all Lifeline and Link Up customers will be able to participate in the pilot program.⁷⁵ Participation will be permitted on a “first-come, first-served” basis designed to prioritize distribution of the limited funds.⁷⁶ This means that ETCs who sign up new Lifeline or Link Up low-income customers first for the pilot program will have priority over those ETCs who sign up their customers later.

In 2007, about \$823 million of the USF went to serve low-income consumers.⁷⁷ The Commission asserts that a \$300 million per year 3-year pilot program will not overly increase the amount of low-income support disbursed from the USF.⁷⁸ The broadband pilot program is exempt from fees and taxes just as under the existing Lifeline USF program.⁷⁹ The broadband Internet access services and device subsidies are to be paid by the Universal Service Administrative Company (USAC) to the ETC per USAC’s usual USF procedures.⁸⁰

NTCA is among a large group of participants in the current discussions to overhaul the USF who encourages the Commission to include broadband as a supported service for low-income consumers.⁸¹ NTCA approves the FCC’s inclusion of broadband as a supported service

⁷⁴ *Id.* ¶ 71, fn. 174.

⁷⁵ *Id.* ¶ 72. Indeed, the Commission estimates that the pilot program “should increase the broadband subscribership for low-income customers to over fifty percent.” *Id.* ¶¶ 75, 79.

⁷⁶ *Id.* ¶ 85.

⁷⁷ *Id.* ¶ 78.

⁷⁸ *Id.* ¶ 79.

⁷⁹ *Id.* ¶ 80.

⁸⁰ *Id.* ¶ 81.

⁸¹ TracFone recommended the Commission start a trial program to support broadband services and devices for low-income consumers in Florida, Virginia, Tennessee, and the District of Columbia. *TracFone Petition to Establish a Trial Broadband Lifeline/Link Up Program*, WC Docket No. 03-109, CC Docket No. 96-45 (filed Oct. 9, 2008). A

for low-income consumers for a pilot program. NTCA also encourages the Commission to apply this same definition to all consumers and to require all broadband providers to contribute to the broadband pilot program.⁸²

AT&T urges the Commission to create under Title I a special “Lifeline Service Provider” (LSP) designation, separate from ETC designation, which could be used by interconnected VoIP providers to participate in the pilot program.⁸³ The Commission should reject this suggestion because the Commission has not yet classified interconnected VoIP providers as telecommunications carriers or as subject to Title II regulation and thus they are not eligible to be ETCs. Consequently, interconnected VoIP providers should not be allowed to participate in the pilot program and the Commission need not create a new category of broadband service providers just for low-income consumers.

B. The Proposed Low-Income Subsidies Are Substantial But May Miss Rural Consumers Unless the Pilot Includes a Rural Set-Aside and Excludes a Requirement to Provide Devices.

The Commission estimates there are 6.9 million consumers participating in the Lifeline universal service program, and consumer eligibility depends on meeting the qualifications of 47 C.F.R. § 54.409.⁸⁴ Lifeline support provides low-income consumers with discounts up to \$10 monthly for telephone service, while Link-up provides low-income consumers with a discount up to \$30 for installing telephone services.⁸⁵ The Pilot Program provides that if an ETC provides

second petition, filed by the Computer and Communications Industry Association (CCIA), asked the Commission to include broadband internet access services for low-income consumers in the list of supported services for universal service. *CCIA Petition for Rulemaking to Enable Low-Income Consumers to Access Broadband through the Universal Service Lifeline and Link Up Programs*, WC Docket No. 03-109 (filed Oct. 7, 2008). The Washington Independent Telecommunications Association (WITA) and the Oregon Telecommunications Association (OTA) also support the pilot program for low-income consumers. WITA and OTA Comments, p. ii.

⁸² The California Public Utilities Commission (CPUC) also urges the Commission to require all broadband providers to contribute to the broadband pilot program for Lifeline and Link Up participants. CPUC Comments, p. 12.

⁸³ AT&T Comments, p. 53.

⁸⁴ FNPRM Appendix A, ¶ 75.

⁸⁵ *Id.* ¶ 65, fn. 158.

Lifeline service to an eligible customer, 50% of that customer's installation costs and internet access device expenses, up to \$100, will be paid through the pilot program.⁸⁶ Also, the pilot program will double, up to \$10, a Lifeline household's monthly subsidy to offset the cost of broadband internet services.⁸⁷ This subsidy is limited to one subsidy per household (one adult plus dependents living together).⁸⁸

The Link Up portion of the pilot program will subsidize up to \$100 of the installation and the purchase of broadband internet access devices, *e.g.*, desktop computers, laptop computers, and handheld devices, so long as the devices can access the Internet at FCC-defined broadband speeds (at least 768 kbps download and greater than 200 kbps upload) and has a warranty.⁸⁹ The Commission implies that the \$100 subsidy is appropriate because desktop computers can be purchased from Wal-Mart for \$200.⁹⁰ The device support is limited to one device and new installation per household. Lifeline customers who already have a broadband connection and device are not eligible for this pilot program.⁹¹ Consumers must return the broadband internet access devices to the ETC if the devices are not used in compliance with the pilot program or other applicable laws.⁹²

High demand for the FCC's \$300 million per year for three year program is expected, so the Commission should modify its "first-come, first-served" approach by setting aside half of the funds for low-income consumers in rural areas. As Windstream correctly asserts, this set-aside will target support more efficiently to rural consumers who may not be sought as quickly and

⁸⁶ *Id.* ¶ 64.

⁸⁷ *Ibid.*

⁸⁸ *Id.* ¶ 80.

⁸⁹ *Id.* ¶¶ 81, 84.

⁹⁰ *Id.* ¶ 75, fn. 187.

⁹¹ *Id.* ¶ 86.

⁹² *Id.* ¶ 90.

efficiently as their urban counterparts.⁹³ Windstream asserts that the first-come, first-served approach will not result in a proportionate distribution to rural consumers due to marketing difficulties, and requiring ETCs to offer a wide assortment of devices will impair ETCs' ability to keep costs low.⁹⁴ NTCA agrees.

The Proposed Order requires all participating ETCs to “make available a wide array of cost efficient broadband Internet access devices” for the program.⁹⁵ This requirement may be difficult for small rural ETCs to satisfy, which will minimize their ability to participate in the pilot program and unfairly favor large carriers who maintain product line relationships with computers and hand-held devices. AT&T suggests that the pilot program should not be used to subsidize devices like cell phones because many ETCs are not in the business of bringing devices to, or repossessing them from, their customers.⁹⁶ Most small rural ETCs have no such connection and, consequently, cannot make devices available as the Commission wants. The Commission should clarify and, if necessary, remove any requirement from the pilot program that ETCs provide devices to low-income consumers. Windstream also supports this approach.⁹⁷

Some commenters have opposed using pilot program subsidies for devices, contending that it makes no sense to require low-income consumers who pay part of the device expense to return said devices if they are not being used in accordance with the pilot program. AT&T and NASUCA, for example, questioned the reasonability of a requirement that low-income consumers return the devices to the ETC if the consumers paid part of the cost of the devices and the ETC already is compensated for the device expense.⁹⁸ The Commission, in the Proposed

⁹³ Windstream Comments, p. 59.

⁹⁴ *Id.* at 57.

⁹⁵ FNPRM Appendix A, ¶ 90.

⁹⁶ AT&T Comments, pp. 51-52.

⁹⁷ Windstream Comments, p. 60.

⁹⁸ AT&T Comments, p. 52; NASUCA Comments, p. 36.

Order, delegates to USAC the responsibility of deciding how much of the pilot funds should be allocated to the Lifeline services portion and the Link Up devices portion, “relying instead on the certification and reporting requirements herein to enable USAC to properly administer the Pilot Program.”⁹⁹ These arguments have some merit such that the Commission and USAC should seriously reflect on whether and how much of the pilot program funds should be used to reimburse devices, instead of just for broadband Internet access services. If the Commission chooses to proceed with the device subsidy, NTCA agrees with GoAmerica that video relay service (VRS) devices should be specifically included in the list of approved device categories for the pilot program.¹⁰⁰ The Commission should not, however, create a more detailed list of devices eligible for reimbursement because rural low-income consumers should not be locked into a small subset of devices used to access the Internet over their broadband connection.

C. Amid The ETC Requirements, The Commission Should Require ETC Participants To Disclose Advertised Broadband Speeds And Not Require Provisioning The Entire Service Territory.

As proposed, all ETCs in the existing low-income programs can participate in the broadband pilot program.¹⁰¹ ETCs are required to certify their customers’ eligibility under the current Lifeline income-based or program-based criteria.¹⁰² ETCs must notify USAC and the FCC of their election to participate in the pilot program by a date to be set by the Commission.¹⁰³ The ETCs must also certify their compliance with the programs (identify the service area, costs of service and devices, and costs to customers).¹⁰⁴ Support will be given to ETCs on a first-come, first-served basis, which means ETCs who submit their requests to USAC first for

⁹⁹ FNPRM Appendix A, ¶ 88.

¹⁰⁰ GoAmerica Comments, p. 3.

¹⁰¹ FNPRM Appendix A, ¶ 83.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

reimbursement will receive payment over subsequent submitters. ETCs must also comply with 47 C.F.R. §54.405 regarding carrier obligations and submit a request for reimbursement to USAC within 30 days after a customer subscribes to broadband service or purchases a device.¹⁰⁵ ETCs must maintain self-certification procedures specified in 47 C.F.R. §§ 54.410 and 54.416.¹⁰⁶

The Commission should review the ETCs' monthly reporting requirements to minimize the regulatory burden imposed on ETCs and to comply with the Regulatory Flexibility Act.¹⁰⁷ The ETCs' monthly reporting requirements include: 1) number of pilot program participants; 2) types and prices of devices offered; 3) type of technology used; 4) speeds at which it is providing service to each consumer; 5) number of subscribers served for the past month; and 6) projections of subscribers for next 2 months.¹⁰⁸ ETCs must keep records for three preceding calendar years and for three years after participating consumers stop receiving broadband Lifeline service under this pilot program.¹⁰⁹

The Commission should clarify and affirm that the reported broadband speed is the advertised speed offered to the low-income customer, not the actual speed delivered.¹¹⁰ NTCA's rural ETC members have encountered difficulties in reporting actual delivered speeds due to fluctuations in usage and other issues. AT&T acknowledges that actual delivered speeds are problematic to report.¹¹¹ NTCA concurs in this analysis and notes that the question of how and whether to report actual delivered speed is the subject of a pending Further Notice of Proposed

¹⁰⁵ *Id.* ¶ 88.

¹⁰⁶ *Id.* ¶ 90.

¹⁰⁷ The Regulatory Flexibility Act of 1980 is codified at 5 U.S.C. § 603.

¹⁰⁸ FNPRM Appendix A, ¶ 88.

¹⁰⁹ *Id.* ¶ 89.

¹¹⁰ *Id.* ¶ 84.

¹¹¹ AT&T Comments, p. 54.

Rulemaking.¹¹² Consequently, for comparison purposes the Commission should require ETCs to report the advertised speed, not the actual delivered speed, offered in the serviced area.

The pilot program currently requires an ETC to offer the supported services throughout the service area.¹¹³ This requirement poses difficulties to rural ETCs due to the expense involved in providing broadband throughout large rural service territories. Rural ETCs who must provision their entire service territories as a condition of participating in the pilot program may be forced to reject pilot program funding as a consequence. As AT&T and Windstream accurately contend, the participating ETCs should be allowed to apply the pilot program to part, not necessarily all, of their service territories.¹¹⁴ This will encourage more rural ETCs to participate in the pilot program and to use program funds most effectively to bring broadband access to their low-income consumers.

The Commission should consider the effect on the pilot program of resolution of AT&T's pending USAC audit petition.¹¹⁵ AT&T filed a petition on August 18, 2008, requesting review of a USAC audit review of AT&T's Lifeline Program. This appeal challenges USAC's interpretation of AT&T's certification documentation retention procedures for pro-rated Lifeline reimbursements, Lifeline reseller compliance certification, and toll blocking as reported on FCC Form 497.¹¹⁶ The FCC sought comments on AT&T's petition, and this petition remains pending with the Commission. Resolution of AT&T's petition may affect ETC compliance requirements under this pilot program.

¹¹² *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking (rel. June 12, 2008), ¶ 36.

¹¹³ FNPRM Appendix A, ¶¶ 83, 87.

¹¹⁴ AT&T Comments, p. 56; Windstream Comments, pp. 55, 57.

¹¹⁵ *In the Matter Of Request for Review by AT&T Inc. of Decisions of Universal Service Administrator*, WC 03-109, filed Aug. 18, 2008.

¹¹⁶ *Id.* at 2.

D. Increasing The Size Of The Low-Income Portion Of The USF Through The Pilot Program May Strain Existing Auditing And Enforcement Actions.

Under the pilot program, the FCC's Wireline Competition Bureau has delegated authority to disqualify an ETC or consumer from the pilot program and to seek support recovery if appropriate.¹¹⁷ The FCC's Office of Inspector General (OIG) may audit every pilot program participant, including ETCs and vendors, and USAC is authorized to adjust support of other USF payments for improper use of pilot program funds.¹¹⁸ The FCC can also impose fines and forfeitures, and can seek criminal sanctions, for waste, fraud and abuse of the pilot program funds.¹¹⁹

Recently the OIG released its Semiannual Report to Congress on the status of the existing Low-Income program of the USF.¹²⁰ In this Low-Income statistical analysis, the OIG concluded that the entire Low-Income program for 2006-08, approximately \$1.606 billion, must be considered an erroneous payment because USAC does not have proper source documents that permit verification of disbursements and because USAC disburses Low-Income funds based on an ETC's estimate of foregone revenues, not actual expenses.¹²¹ The OIG classifies the Low-Income program as "at-risk" under the Improper Payments Information Act of 2002 (IPIA) and recommends USAC revise its document retention practices.¹²²

Given the new auditing and enforcement demands that will be placed on USAC and the OIG to audit the pilot program participants, the Commission should ensure that adequate resources and funding are in place. Other USF program participants, such as the High Cost fund

¹¹⁷ FNPRM Appendix A, ¶ 90.

¹¹⁸ *Id.* ¶ 91.

¹¹⁹ *Ibid.*

¹²⁰ FCC Office of the Inspector General, Assessment of Payments Made Under the Universal Service Fund's Low Income Program, (OIG Low-Income Statistical Analysis) (rel. Dec. 12, 2008).

¹²¹ OIG Low-Income Statistical Analysis, pp. 3, 7; FCC News Release (rel. Dec. 12, 2008), p. 1.

¹²² *Id.* at 7.

participants, do not bear the brunt of underfunded USAC and OIG auditing and enforcement activities.

XVIII. APPLY REGULATORY FLEXIBILITY ACT (RFA) 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.¹²³ 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.

XIX. CONCLUSION

Rate-of-return, rural LECs are making good on their promise to deliver broadband services to rural areas.¹²⁴ 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.¹²⁵ As Acting FCC Chairman Michael J. Copps stated:

[i]t is essential, that any regime we adopt increase certainty so that rural

¹²³ NTCA's Interim Universal Service & Intercarrier Compensation Reform Proposal, filed on July 11, 2008, CC Docket No. 01-92 (NTCA Proposal).

¹²⁴ *NTCA 2007 Broadband/Internet Availability Survey Report*, September 2007, www.ntca.org.

¹²⁵ 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.

carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in its communities.¹²⁶

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 specifically urges the Commission to propose in its May 22, 2009 Report to Congress on a comprehensive rural broadband strategy that the following prudent, reasonable and lawful actions take place in order to effectively transition the high-cost USF mechanisms, IC cost-recovery mechanisms, and NTIA and RUS financing programs from supporting the PSTN to supporting the new IP-broadband network of the future:

1. Include broadband in the definition of universal service, expand the USF contribution base to include all broadband service providers, and retain revenues as the basis for assessing the USF contributions.
2. Define broadband based on high-speed Internet access capabilities that are generally available in a significant sample of service offerings in urban areas to establish a standard of comparability and affordability in urban and rural areas. As the capability of broadband technology and IP applications develop, the definition must evolve to meet consumer, education, business, and public health/safety demands. By linking the definition to generally available services, affordability, and comparability, the definition is enduring, technology neutral, and in the public interest.
3. Define unserved areas as populated areas that have no service or have dial-up only service (excluding satellite broadband service).
4. Define a underserved areas as populated areas that have access to broadband service at speeds greater than 56 kbps dial-up Internet access service but less than 768 kbps broadband service taking into consideration average customer usage during peak-hour or busy-hour load as established by the FCC.

¹²⁶ *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*.

5. 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.
6. 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.
7. 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.
8. 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.
9. Require IP/PSTN traffic, specifically interconnected VoIP traffic, 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.
10. 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.

11. 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.
12. Require special access (middle-mile) transport rates to be cost-based and non-discriminatory.
13. Require tandem switching rates to be cost-based and non-discriminatory.
14. Require wholesale long distance rates to be cost-based and non-discriminatory.
15. None of the current \$7 billion NTIA and RUS stimulus money available for broadband should be distributed to AT&T, which was required to buildout 100% of its service area in 2007 as part of the FCC's AT&T/Bell South merger conditions and has invested billions overseas. Stimulus money used to serve any existing unserved AT&T households should be given to other providers applying for funding.
16. Any of the current \$7 billion NTIA and RUS stimulus money distributed to large carriers that provide special access transport (middle-mile) service to the Internet backbone, such as Verizon, Qwest, and Comcast, should be conditioned on the requirement that these carriers base middle-mile services on cost and offer them to unaffiliated broadband providers at the same price, terms and conditions as offered to their affiliates. Keeping large carriers middle-mile transport cost-based will accelerate broadband deployment and subscription, result in more affordable broadband services to consumers, and drive economic development throughout the United States.
17. 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.
18. Refrain from adopting 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.
19. Maintain the current interconnection environment, dismiss the AT&T Edge proposal, and consider any future changes to the existing interconnection rules in a FNPRM.
20. Expand and make permanent the Universal Service Fund's Rural Health Care Pilot Program. Telemedicine networks made possible by broadband services save lives and will improve the standard of healthcare and life in sparsely populated, rural areas. Telehealth and telemedicine must be a critical component to the rural broadband strategy.
21. Improve the proposed broadband pilot program for low-income customers by setting aside half of the pilot program funds for rural low-income consumers and by clarifying

the speed and device availability requirements. By permitting ETCs to use the low-income broadband pilot program to offer broadband internet access to part of their service territories, rather than the entire territory, will enhance participation in the pilot program and, consequently, give more rural consumers affordable broadband internet access.

22. Use the Regulatory Flexibility Act (5 U.S.C. Section 601) effectively. The RFA 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 meet 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 proposed comprehensive rural broadband strategy recommendations allow for additional regulatory scrutiny concerning additional federal high-cost voice and broadband USF support and NTIA and RUS broadband funding, while creating a regulatory contract between broadband providers and the Commission, NTIA, and RUS. 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 broadband, 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,



By: /s/ Daniel Mitchell
Daniel Mitchell

By: /s/ Karlen Reed
Karlen Reed

Its Attorneys
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

March 25, 2009

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in GN Docket No. 09-29, DA 09-561, was served on this 25th day of March 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Acting Chairman Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Spectrum & Competition Policy Div.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Portals 1,
Washington, D.C. 20554
RuralBB@fcc.gov

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Jonathan.Adelstein@fcc.gov

/s/ Adrienne L. Rolls
Adrienne L. Rolls

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Best Copy and Printing, Inc.
Federal Communications Commission
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
CPDcopies@fcc.gov

United States Senate

WASHINGTON, DC 20510

March 9, 2009

The Honorable Otto J. Wolf
Acting Secretary of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Acting Secretary Wolf:

As you begin the process of implementing the broadband initiatives provided in the American Recovery and Reinvestment Act of 2009 (ARRA), we urge you to prioritize deploying basic broadband to currently unserved areas through the National Telecommunications and Information Administration (NTIA). The legislation provided \$4.7 billion for NTIA broadband deployment programs, but it also contained a number of priorities for you to consider in allocating those funds. Bringing broadband to unserved rural areas, however, must be our first priority because economic recovery will be difficult to achieve in rural communities without broadband access.

It is widely understood that high-speed broadband is a crucial driver of economic recovery, creating jobs and enhancing our global competitiveness. Currently, many areas are served only by dial-up, which can be very slow in rural areas. By providing access to high-speed broadband to places that only have access to dial-up connections, many rural communities will experience the development that broadband allows. Broadband access will spur job creation in rural areas hardest hit by the recession. Broadband will also be central to improving educational opportunities and delivering health care more efficiently, important benefits that also contribute to economic growth.

As you know, lowering health care costs is essential to economic recovery. Broadband networks enable innovative use of telemedicine services and applications, allowing more cost-effective and quality care, greater access to specialists, and remote monitoring of patient vital signs and diagnostic information by doctors. Perhaps most importantly, telemedicine gives rural and low-income communities access to medical experts even at great distance.

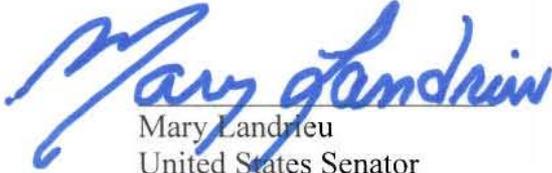
In addition, broadband networks are an essential part of improving educational opportunities for students. Access to broadband has transformed education by improving learning outcomes, serving multiple learning styles, and expanding access to high quality curriculum. It also allows for instant feedback between teachers and students and individual tailoring of instruction.

Without access to broadband, many rural communities will be unable to realize the benefits of economic recovery as intended in the ARRA. We urge you to make deploying broadband to unserved areas your first priority in dispensing the considerable resources accorded to broadband by Congress in the ARRA.

Sincerely,



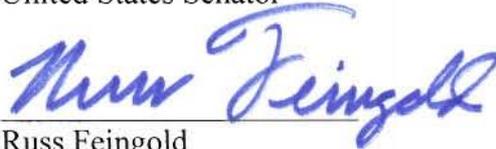
Jeanne Shaheen
United States Senator



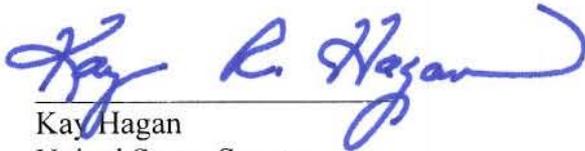
Mary Landrieu
United States Senator



Debbie Stabenow
United States Senator



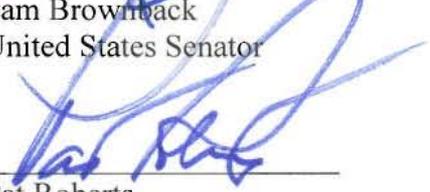
Russ Feingold
United States Senator



Kay Hagan
United States Senator



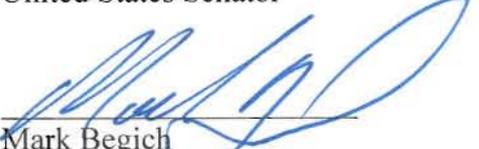
Sam Brownback
United States Senator



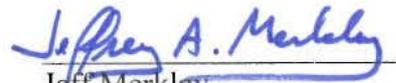
Pat Roberts
United States Senator



Ron Wyden
United States Senator



Mark Begich
United States Senator



Jeff Merkley
United States Senator

CC: Commissioner Jonathan S. Adelstein

Commissioner Robert McDowell

United States Senate

WASHINGTON, DC 20510

March 9, 2009

Acting Chairman Michael J. Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Acting Chairman Copps:

As you begin the process of coordinating the broadband initiatives provided in the American Recovery and Reinvestment Act of 2009 (ARRA), we urge you to prioritize deploying basic broadband to currently unserved areas. The legislation provided federal agencies with \$7 billion for broadband deployment programs, but it also contained a number of priorities for agencies to consider in allocating those funds. Bringing broadband to unserved rural areas, however, must be our first priority because economic recovery will be difficult to achieve in rural communities without broadband access.

It is widely understood that high-speed broadband is a crucial driver of economic recovery, creating jobs and enhancing our global competitiveness. Currently, many areas are served only by dial-up, which can be very slow in rural areas. By providing access to high-speed broadband to places that only have access to dial-up connections, many rural communities will experience the development that broadband allows. Broadband access will spur job creation in rural areas hardest hit by the recession. Broadband will also be central to improving educational opportunities and delivering health care more efficiently, important benefits that also contribute to economic growth.

As you know, lowering health care costs is essential to economic recovery. Broadband networks enable innovative use of telemedicine services and applications, allowing more cost-effective and quality care, greater access to specialists, and remote monitoring of patient vital signs and diagnostic information by doctors. Perhaps most important, telemedicine gives rural and low-income communities access to medical experts even at great distance.

In addition, broadband networks are an essential part of improving educational opportunities for students. Access to broadband has transformed education by improving learning outcomes, serving multiple learning styles, and expanding access to high quality courses. It also allows for instant feedback between teachers and students and individual tailoring of instruction.

Without access to broadband, many rural communities will be unable to realize the benefits of economic recovery as intended in the ARRA. We urge you to make deploying broadband to unserved areas your first priority in dispensing the considerable resources accorded to broadband by Congress in the ARRA.

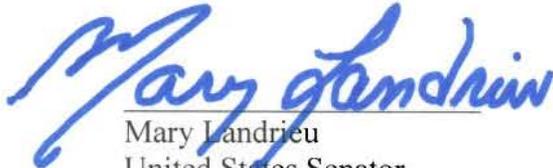
Thank you for considering these views.

Thank you for considering these views.

Sincerely,



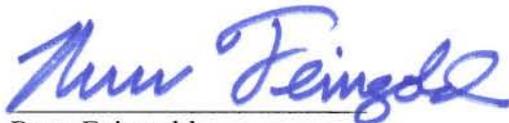
Jeanne Shaheen
United States Senator



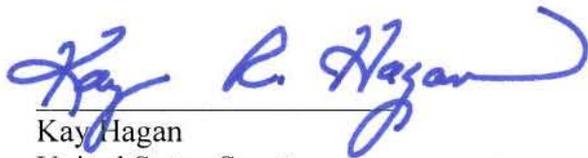
Mary Landrieu
United States Senator



Debbie Stabenow
United States Senator



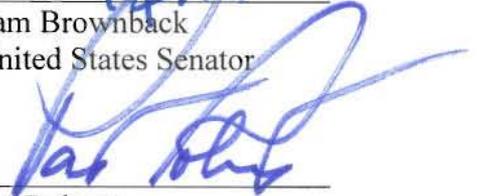
Russ Feingold
United States Senator



Kay Hagan
United States Senator



Sam Brownback
United States Senator



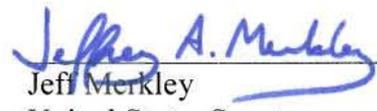
Pat Roberts
United States Senator



Ron Wyden
United States Senator



Mark Begich
United States Senator



Jeff Merkley
United States Senator

CC: Anna Gomez
Deputy Assistant Secretary for Communications and Information and Acting
Administrator, National Telecommunications and Information Administration

United States Senate

WASHINGTON, DC 20510

March 9, 2009

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Vilsack:

As you begin the process of implementing the broadband initiatives provided to the Department of Agriculture (USDA) in the American Recovery and Reinvestment Act of 2009 (ARRA), we urge you to prioritize deploying basic broadband to currently unserved areas through the Rural Utilities Service (RUS). The legislation provided \$2.5 billion for RUS/USDA broadband deployment programs, but it also contained a number of priorities for you to consider in allocating those funds. Bringing broadband to unserved rural areas, however, must be our first priority because economic recovery will be difficult to achieve in rural communities without broadband access.

It is widely understood that high-speed broadband is a crucial driver of economic recovery, creating jobs and enhancing our global competitiveness. Currently, many areas are served only by dial-up, which can be very slow in rural areas. By providing access to high-speed broadband to places that only have access to dial-up connections, many rural communities will experience the development that broadband allows. Broadband access will spur job creation in rural areas hardest hit by the recession. Broadband will also be central to improving educational opportunities and delivering health care more efficiently, important benefits that also contribute to economic growth.

As you know, lowering health care costs is essential to economic recovery. Broadband networks enable innovative use of telemedicine services and applications, allowing more cost-effective and quality care, greater access to specialists, and remote monitoring of patient vital signs and diagnostic information by doctors. Perhaps most importantly, telemedicine gives rural and low-income communities access to medical experts even at great distance.

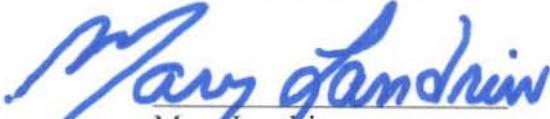
In addition, broadband networks are an essential part of improving educational opportunities for students. Access to broadband has transformed education by improving learning outcomes, serving multiple learning styles, and expanding access to high quality curriculum. It also allows for instant feedback between teachers and students and individual tailoring of instruction.

Without access to broadband, many rural communities will be unable to realize the benefits of economic recovery as intended in the ARRA. We urge you to make deploying broadband to unserved areas your first priority in dispensing the considerable resources accorded to broadband by Congress in the ARRA.

Thank you for considering these views.

Sincerely,


Jeanne Shaheen
United States Senator

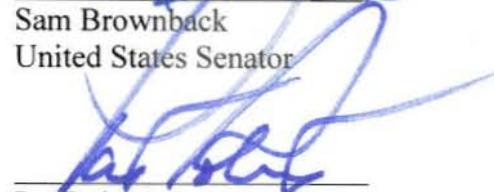

Mary Landrieu
United States Senator


Debbie Stabenow
United States Senator

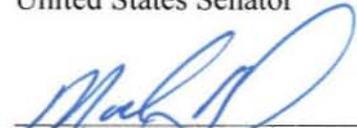

Russ Feingold
United States Senator

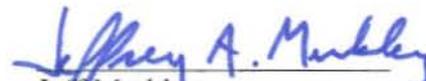

Kay Hagan
United States Senator


Sam Brownback
United States Senator


Pat Roberts
United States Senator


Ron Wyden
United States Senator


Mark Begich
United States Senator


Jeff Merkley
United States Senator

CC: James R. Newby
Acting Administrator, Rural Utilities Service