

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In re)
)
The Contribution of Federal, State) GN Docket Nos. 09-47, 09-51, 09-137
and Tribal and Local Government)
to Broadband)

COMMENTS OF NTCH, INC.

NTCH, Inc. (“NTCH”) hereby offers this brief response to the Commission's request for input on how government actions have advanced – or hindered – the deployment of broadband in this country. NTCH here will address three very clear policies by which the Commission *itself* has hindered the deployment of broadband. The Commission is in a position to correct or ameliorate its own actions and policies relatively quickly, and therefore these succinct comments may be especially useful.

I. First, the Commission established a licensing scheme for the PCS C block band that contemplated a system of ubiquitous nationwide roaming similar to what had worked very successfully for cellular carriers. The cellular licensing system had, of course, been characterized by hundreds of individual independent service providers around the country who needed to roam with each other in order to provide ubiquitous nationwide service. In the intervening two decades, mobile service has become extraordinarily consolidated. The "Big Four" (and especially the Biggest Two) now have sufficient bandwidth over the United States that they do not need to roam in most major places since they have their own licenses there. Without the incentive to enter into fair roaming agreements, the majors now routinely impose such stringent roaming conditions on independent carriers that roaming becomes practically, if

not legally, infeasible. While independents do have the theoretical recourse to file a complaint with the Commission charging the carriers with discrimination under Title II, that cumbersome process would take years to complete. The practical difficulty is heightened by the fact that most roaming agreements are kept secret so there is no public basis on which independents can reliably assert that the rates they are being offered are discriminatory. The Title II complaint process is therefore an illusory remedy for carriers who face roaming barriers.

Of course, in the case of broadband, the Commission has yet to impose any roaming requirement at all. If the Commission continues to delay action on broadband roaming, it will effectively keep independent broadband providers from being able to provide service. Since most customers will expect ubiquitous roaming capability similar to what they are familiar with in the cellular realm, independents who cannot offer such service through roaming arrangements will be crippled, if not fatally impaired. The Commission will have strangled broadband competition in its cradle.

II. Second, the Commission has established and maintains a bloated and grossly inefficient system of subsidies for rural LECs that discourages innovation and competition and drives up costs for rural service. The FCC has been struggling to reform the Universal Service Fund for more than five years. Although everyone seems to agree that the system as currently configured makes no logical sense, the entrenched beneficiaries of the current subsidy system so vigorously and tenaciously fight to preserve their subsidies that the Commission seems powerless to take even small steps toward reform, much less the radical overhaul of the system that is desperately needed. Rural LECs have successfully cloaked themselves with the mantle of Mom and apple pie, despite the fact that many of them are owned by New York investment companies who have recognized – and reap the benefits of – very generous subsidies.

Because rural LECs receive uncapped high cost support based on their "costs" of providing service, they have no incentive whatsoever to operate efficiently. To the contrary, their economic incentive is to generate as high costs as possible since this increases the amount of funding they can qualify for – and perversely maintains their position as "high cost" carriers, who use those high costs to demand the continuation of subsidies. NTCH has seen instances of what can only be called "goldplating" where rural LECs have as many as five or ten employees doing a job that could easily be done by a single person in an environment where competition works to drive down costs. In an environment where the carrier is effectively rewarded for inefficiency by increased subsidies, nothing other than inefficiency and goldplating should be expected.

Under the Martin chairmanship, the Commission floated the concept of some kind of reverse auction to allocate USF funding in an attempt to impose a regime that would reward and incent the provision of basic phone services at the lowest prices. In the face of ferocious opposition from LECs, that idea went nowhere. To make matters worse, the Commission imposed a cap on the USF funds receivable by the CLECs, the only market force that could conceivably provide the competitive alternative necessary to drive down LEC costs and rates. The Commission thus handicapped the competition between LECs and CLECs (especially wireless carriers) by denying the latter the subsidy needed to provide service to rural areas while continuing to provide full, uncapped support to the providers who suck down by far the largest portion of USF funds. The situation would be utterly unbelievable if it were not true.

But it gets worse. Many LECs have used the USF subsidies they receive to upgrade their facilities to permit wired broadband distribution. This has been done despite the fact that USF funds are not denominated for broadband use and should not have been used for

this purpose. Again, the Commission has unwittingly taken an increasingly obsolete service provider and kept it afloat by the indirect provision of huge subsidies for services that should be competitive and that could be provided better and more cheaply by competing carriers.

However, the competing carriers do not enjoy the benefit of a hidden subsidy. Many of the same LECs who receive USF funds also receive RUS loans to further subsidize their broadband efforts. At no point in the process does anyone consider whether broadband might be provided more efficiently, more widely, at greater speeds, and with less government funding by another provider. The legacy system just chugs along year after year at an annual cost of billions of dollars to the consumers who indirectly contribute to the USF by their monthly payments and to the taxpayers who subsidize low cost loans.

Adding insult to injury, the LECs who benefit by this glut of support frequently charge interconnection rates that are exorbitant. (NTCH knows of at least one instance where the interconnection rate is *100* times greater than the rate for similar services in urban areas.) While one would expect the rates to be somewhat higher given the lower volume of calls and the higher costs involved, the subsidies received by the LECs should at least buy interconnection at reasonable rates. The purpose of high cost support is to make available to rural subscribers rates for phone service equivalent to those enjoyed by urban subscribers. Unfortunately, by charging wireless carriers confiscatory interconnection rates on a monopoly basis, the LECs can effectively preclude wireless competition from entering their markets. The very people whom high cost support is intended to benefit thus lose out because they are denied access to competing wireless carriers who might be able to offer services that the public desires rather than what the LEC ordains.

If the Commission would simply rationalize the USF system so that carriers are not rewarded for inefficiency, do not receive dual subsidies, and must pass on subsidies in the form of urban-equivalent interconnection rates to competing carriers, broadband could be rapidly deployed in rural markets by competing carriers – carriers who would be delighted to do so if they could be relieved of the crippling handicaps which the Commission has imposed.

III. Finally, the Commission continues to permit the hoarding of spectrum by large carriers. The Commission has repeatedly made the mistake of auctioning off spectrum in huge swathes such as REAGs that cover vast areas of the United States. These areas have proven to be too vast for any one carrier to build out on a timely basis. The natural economic imperative is to build out those areas which are most remunerative and where service can be provided at the lowest cost per subscriber. This always turns out to be the denser markets, as any first year economic student would predict. Service to the remoter parts of these huge license areas trickles out only toward the end of the license term – or not at all. Even megacorporations have limits on access to capital and of course they put their money where it will get the highest and quickest return. This is entirely predictable. Yet the Commission persists in auctioning off nationwide, REAG and even MEA sized licenses which necessarily result in large areas remaining unserved for the better part of a decade, if not longer. The "secondary market" in spectrum has never really operated to break up these megalicenses since the licensees prefer to hoard their spectrum rather than sell or lease a portion of it to someone who may be a competitor some day.

The way to speed broadband deployment is to authorize licensees on a local or regional basis such as BTAs or CMAs. In some cases even BTAs and CMAs (such as the Los Angeles BTA) are so huge as to prevent multiple independent licensees. By licensing on a smaller scale, urban-centered basis, greater diversity of licenseeship and more competition in the

marketplace would be possible. Each of these smaller, local licensee entities will have strong incentives to build out their local facilities because that is all they have and all they are concerned about. They will also have their own independent sources of financing and will not be dependent on huge financings from international banking consortia. A community-oriented licensing approach would thus discourage hoarding and get broadband spectrum into use in all parts of the country at the earliest possible time.

IV. If the Commission is looking for government-based impediments to broadband deployment, it need look no further than its own hallways. Its own policies have retarded broadband. By making the changes highlighted here, the Commission could take a large stride toward hastening deployment with greater diversity and at lower cost to the American people.

Respectfully submitted,

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