



December 11, 2009

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street  
SW Portals II, Room TW-A325  
Washington, DC 20554

**Re: Nex-Tech, Inc.  
Submission of Cost Study  
WC Docket No. 05-337; CC Docket No. 96-45**

Dear Ms. Dortch:

The Rural Independent Competitive Alliance (“RICA”) respectfully submits this letter-comment in the above-referenced proceeding to support the expedient grant of the request by Nex-Tech to receive Universal Service Fund distributions based on its own costs. Although Nex-Tech submitted its cost study to USAC on July 29, 2009, in a manner consistent with established USF procedures, USAC has not acted to distribute USF support to Nex-Tech on the basis of its actual costs.

RICA respectfully urges the Commission to direct USAC to distribute to Nex-Tech USF support based on Nex-Tech's actual costs pursuant to the FCC's *Interim Cap Order*<sup>1</sup> and the Commission’s established rules and procedures. RICA further urges the Commission

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<sup>1</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Alltel Communications, Inc, et al Petitions for Designation as Eligible Telecommunications Carriers RCC Minnesota Inc. , RCC Atlantic, 8834 (2008) ("Interim Cap Order")*.

to provide USAC with specific guidance and direction with respect to the processing of USF payments to all competitive eligible telecommunications carriers (“ETCs”) that submit company-specific cost studies as a basis for the determination of their appropriate USF distributions.

RICA is a national association of competitive local exchange carriers (“CLECs”) that are affiliated with rural incumbent local exchange carriers (“ILECs”). RICA members, including Nex-Tech, provide facilities-based service in rural areas. Following the 1996 Act, Nex-Tech and other RICA member companies responded to the pleas of their neighbors residing in nearby rural areas where the incumbent carrier provides basic service utilizing older obsolete networks. The customers in these rural areas, in contrast to the rural areas served by rural ILECs, are served by much larger incumbent carriers whose business plans focus on more lucrative densely populated service areas.

Nex-Tech and other RICA members brought state-of-the-art service over modern facilities to residential and business subscribers in these severely underserved areas and quickly achieved significant market share. As a result, many rural communities in remote, low density areas, including those served by Nex-Tech, have modern reliable communications services for which they would still be waiting if their only choice was the large incumbent LEC. Nex-Tech and other RICA members stand ready, willing and operationally able to expand their commitment to the provision of state of the art services in rural under-served area, including the deployment of networks that will support the provision of high speed broadband services. The financial ability of these carriers to achieve this national goal, however, is largely dependent upon the Commission’s USF high cost support system.

As providers of service in high cost to serve rural areas, the service areas in which RICA members focus are not generally market driven. These areas lack the economic and demographic characteristics of competitive market driven areas. The willingness of RICA members to make the financial commitment to bring advanced network services to these formerly under served rural areas is, therefore, largely based on the correct implementation of the Commission's universal service policies which recognize that a rationale portion of the costs of provision of services at reasonable rates to the rural consumers must be recovered through mechanisms other than the rates charged to rural end users.

In fact, all carriers serving high cost to serve rural areas face a similar dilemma. In order to provide advanced services at reasonable rates to rural customers, carriers serving high cost to serve rural areas require the continuity of Commission policies that enable them to recover a rational portion of their costs from mechanisms other than rural end user customer charges.

RICA has, in this regard, fully supported the Commission's efforts to control and reform the USF by ensuring that the funding requirements of the high cost support program are directly tied to the actual costs of providing service. Accordingly, RICA has long advocated that rural CLECS that are designated as ETCs should recover a reasonable portion of their costs from the USF based on the submission of their costs in a manner consistent with the rules applied to rate of return regulated carriers.

RICA has consistently noted that the flawed "identical support" rule utilized to determine the distribution of USF to competitive ETCs does not achieve the Commission's underlying universal service objectives. In some instances, the "identical support" rule has

resulted in excessive funding that has no relation either to the actual costs of the service provided by the recipient. In other instances, including that experienced by Nex-Tech, the “identical support” rule results in insufficient funding.

This inequitable result occurs when a rural competitive ETC, such as Nex-Tech, attempts to bring state of the art universal service to a high cost to serve area that is underserved by the large incumbent carriers. These areas, often relatively neglected by the larger incumbent LECs, are not subject to the receipt of USF based on actual costs. Instead, these areas are subject to the USF formulas applied to non-rural LECs that are associated with models related to the large carrier’s statewide costs which include the costs of serving the more densely populated and lower cost to serve areas of the state.<sup>2</sup>

The Commission took a most welcomed first step in addressing this problem when it adopted the *Interim Cap Order* in which it both established a cap on the “identical support” based USF available to competitive ETCs, and, at the same time, adopted a limited exception to the interim cap when a competitive ETC submits its own costs as the basis for determining its USF distribution (the “Cost Study Exception”). While RICA heartily applauded the Commission’s action that explicitly fosters the nation’s universal service policies by rationally enabling a competitive carrier to obtain USF distributions based on the actual cost of providing universal service, RICA and its members are disheartened by the apparent stall that has taken place in implementing the policy adopted last year.

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<sup>2</sup> Moreover, the manner in which USF high cost support distributions to non-rural carriers is determined has been the subject of a long pending Appellate Court remand to the Commission. The issues raised by the remand could easily be resolved if the Commission applied the same cost based USF distribution rules to all ETCs as it applies to rural incumbent carriers.

RICA understands that the delay by USAC in moving forward arises because of concern with regard to its understanding of the Commission's expectation of how a competitive ETC will demonstrate its own costs. In the case of Nex-Tech and any other wireline facilities-based ETC, however, there is no question about how the cost demonstration is made. The FCC stated that, pursuant to the Cost Study Exception, "a competitive ETC will not be subject to the interim cap to the extent that it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC."<sup>3</sup> The plain and clear words of the Commission provided equal treatment and equal protection to Nex-Tech and all similarly situated competitive ETCs. Nex-Tech is required to do exactly as it has done: prepare a demonstration of its costs in exactly the same manner as a wireline incumbent LEC demonstrates its costs. Nex-Tech has prepared and submitted its demonstration of its actual costs pursuant to Parts 32, 36 and 69 of the Commission's Rules, consistent with the precise manner in which an incumbent LEC files its costs.

Nex-Tech's cost submission to USAC raises no new or novel process or issue. Nonetheless, the Nex-Tech cost submission lingers at USAC more than a year after the adoption of the *Interim Cap Order*. The failure to distribute USF high cost support to Nex-Tech on the basis of its own costs – and consistent with the Commission's straight-forward and rational universal service policy – is inequitable to Nex-Tech, its customers and its potential customers residing in under-served rural areas. Moreover, the unnecessary delay in processing Nex-Tech's company-specific cost demonstration raises an alarm for all RICA members and all potential carriers that stand ready, willing and operationally ready to bring

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<sup>3</sup> *Interim Cap Order*, ¶ 31

advanced services to rural areas by imposing the question of whether they can rely on the universal service policy and rules that the Commission adopted.

RICA and its members fully understand that the Commission is challenged with a barrage of significant policy and operational issues, and regrets that it is necessary to bring this matter to the Commission's attention. RICA notes, however, that this matter does not involve an unsettled matter of law or unresolved issue of fact; nor does it require the dedication of any new staff resources. By directing USAC to process the company-specific cost demonstrations filed by Nex-Tech and any other wireline competitive ETC that "files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC,"<sup>4</sup> the Commission can easily resolve this matter and remove the concern that has been raised with respect to the Commission's intent to implement the Cost Study Exception policy adopted last year.

Sincerely,

**s/Stephen G. Kraskin**

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<sup>4</sup> *Interim Cap Order*, ¶ 31