

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

In the Matter of	)	<b>GN Docket Nos. 09-47, 09-51, 09-137</b>
	)	<b>NBP Public Notice #25</b>
Transition from Circuit-Switched Network	)	
to All-IP Network	)	<b>DA 09-2517</b>



**COMMENTS – NBP PUBLIC NOTICE #25**

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**COMMENTS – NBP PUBLIC NOTICE #25**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> responds to the Federal Communications Commission (Commission or FCC) December 1, 2009 NBP Public Notice #25 calling for input on the impacts created by a transition from a circuit-switched Public Switched Telephone Network (PSTN) to an all-Internet Protocol (IP) network.<sup>2</sup> Specifically, the Commission seeks comment on whether to issue a Notice of Inquiry (NOI) regarding the

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<sup>1</sup> NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 585 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *Pleading Cycle Established for Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Notice #25, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2517, Public Notice (rel. Dec. 1, 2009) (NBP Public Notice #25).

appropriate regulatory framework to facilitate and respond to this transition.<sup>3</sup> The Commission notes in its Public Notice #25 several policy objectives that the Commission pursued in previous technological and philosophical transitions: ensuring consumers are protected from loss of essential services during the transition; informing consumers of the choices presented by the transition; and providing a glide path for all industry players.<sup>4</sup> The Commission seeks reflections through this Public Notice on the proper policy areas, issues and regulatory structures (citing disability protections and carrier of last resort obligations as examples) to guide the PSTN-IP transition that can be explored through an NOI.<sup>5</sup>

## **I. SUMMARY.**

NTCA has presented the Commission with a national broadband plan that addresses the Commission's concerns about the transition from the PSTN to an all-IP network, and this plan was filed as part of NTCA's June 8, 2009 comments.<sup>6</sup> Contained in NTCA's plan and critical to creating a path for rural consumers and small rural ILECs undergoing the IP transition are eight elements:

1. Transition high-cost universal service fund (USF) voice support to high-cost USF broadband support over a reasonable period of time;
2. Maintain rate-of-return (RoR) regulation and study area average costs for rural ILECs throughout the transition period;
3. Allow RoR carriers to receive high-cost USF support for stand-alone DSL during and after the transition period;
4. Require interconnected voice over Internet protocol (VoIP) traffic to pay access charges throughout the transition period;

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<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> Public Notice #25, p. 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> NTCA Initial Comments, GN Docket Nos. 09-47, 09-51, 09-137 (filed June 8, 2009).

5. Allow state commissions to reduce intrastate tariffed access rates to interstate tariffed access rate levels within five years, while at the same time freezing interstate access rates.
6. Create an access rate cost recovery restructure mechanism (RM) for lost access revenues;
7. Retain carrier of last resort (COLR) obligations for USF recipients during transition to protect rural consumers; and
8. Apply the Regulatory Flexibility Act, 5 U.S.C. § 610 *et seq.*, when crafting the IP transition rules for small business entities, which include small rural ILECs.

## **II. THE PSTN IS ALREADY EVOLVING TOWARDS AN ALL-IP BASED SYSTEM.**

The Commission characterizes communications services from the PSTN to an IP-based broadband system as an “evolution” which is driven by market forces and technology.<sup>7</sup> To this description the Commission should add enlightened regulatory oversight and an engaged rural and urban telecommunications industry. This evolution began with the PSTN, which one noted author described the PSTN in 1998 as a highway:

“The [PSTN] is analogous to a network of major highways originally built by a single organization but added to and expanded by multiple organizations. Traffic enters and exits these highways (long distance lines) from multiple “ramps” built by still more organizations, e.g., the local telephone companies and competitive access providers. ... As a result of these [AT&T] standards, everyone with a telephone can talk to everyone else. Dialing, ringing, routing and telephone numbering are uniform.”<sup>8</sup>

These principles of connectivity, affordability and accessibility are just as relevant in an IP-based world as they are in a circuit-switched PSTN world, and the evolution from one stage to the next must reflect those principles.

Another recognized chronicler of the telecommunications industry describes the PSTN as usually referring to: “the worldwide voice telephone network accessible to all those with telephones and access privileges (i.e., in the U.S., it was formerly called the Bell System network

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<sup>7</sup> Public Notice #25, p. 1.

<sup>8</sup> *The Essential Guide to Telecommunications*, Annabel Z. Dodd, Prentice Hall PTR (1998), p. 109.

or the AT&T long distance network).”<sup>9</sup> The PSTN referenced in the Public Notice focuses just on the United States component, though the evolution will undoubtedly affect communications beyond the U.S. borders. According to one new media definition, this evolution or transition is near completion:

The public switched telephone network (PSTN) is the network of the world’s public circuit-switched telephone networks, in much the same way that the Internet is the network of the world’s public IP-based packet switched networks. Originally a network of fixed-line analog telephone systems, the PSTN is now almost entirely digital and includes mobile as well as fixed (POTS) [plain old telephone service] telephones.<sup>10</sup>

Transitioning to an IP-world for telecommunications in rural areas will require the Commission’s assistance and guidance. NTCA’s national broadband plan offers guidance in these areas.

### **III. TRANSITIONING TO AN ALL-IP WORLD WILL REQUIRE ADDITIONAL STEPS.**

Rural consumers and their small rural ILEC service providers will need the Commission’s assistance to retain essential services, offer transparent choices, and maintain financial incentives for continually improving services. Should the Commission elect to open an NOI on the transition, the Commission should consider as part of this transition USF support, intercarrier compensation, rate-of-return (ROR) regulation, stand-alone DSL provisions, and interconnected VoIP provider compensation. Other necessary components are permitting states to gradually move intrastate rates to interstate rates, creating a restructure mechanism (RM) for lost access revenues, continuing carrier of last resort (COLR) obligations, and applying the federal Regulatory Flexibility Act (RFA) mandates for small business entities.

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<sup>9</sup> *Newton’s Telecom Dictionary* (22<sup>nd</sup> Ed.), Harry Newton, CMP Books, definition of “public switched telephone network,” p. 738.

<sup>10</sup> Wikipedia.org, “Public Switched Telephone Network” definition accessed Dec. 17, 2009.

**A. All High-Cost Voice USF Support Should Be Transitioned to High-Cost Broadband USF Support Over a Reasonable Time.**

The transition from circuit-based USF to an IP-broadband world should be managed carefully and gradually. A transition period will avoid rate shock, prevent service disruptions, and provide stability and certainty during the transition. It is critical that the progress gained under existing high-cost USF (particularly in areas served by rural ILECs) not be inadvertently disrupted with a premature, unwarranted discontinuation of existing High-Cost programs.

Without careful thought to this IP transition, the Commission could not only thwart additional investment but could also jeopardize the service that has been successfully deployed today. The Federal-State Joint Board's 2008 proposal similarly recommended a transition of an unspecified period of time from existing high-cost voice USF to a high-cost broadband fund.<sup>11</sup> A reasonable period of time is necessary for the transition of high-cost USF funds.

**B. Rate-of-Return Regulation and Study Area Average Costs Should Be Maintained For Rural ILECs Throughout the Transition Period.**

The Commission must maintain existing rate-of-return (RoR) regulation for rural ILECs throughout the period of transforming the voice high-cost USF support mechanisms to broadband high USF support mechanisms. Any disruptions to the current rural high-cost USF mechanisms, RoR regulation, intercarrier compensation, and NECA pooling mechanisms will likely leave many rural consumers without service, substandard service, or result in price increases that will prevent consumers living in these areas from purchasing broadband Internet access service. This scenario would violate the Commission's universal service affordability and comparability requirements.

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<sup>11</sup> Recommended Decision of the Federal-State Joint Board on Universal Service (rel. Jan. 29, 2008), ¶ 31.

The transition to a broadband universal service mechanism must be done carefully, prudently and within a reasonable time period so that all rural, high-cost consumers are unharmed in the process. Rural ILECs should also be allowed to continue basing their high-cost USF support on each carrier's study area average costs during the IP transition. This will ensure affordable and uninterrupted broadband Internet access service to rural, high-cost consumers.

**C. Provide Stand-Alone Broadband Service With the Same Level of USF Funding as Allocated to Their Bundled Voice and Broadband Service During and After the Transition Period.**

NTCA's National Broadband Plan includes a component for stand-alone, or "naked," digital subscriber line (DSL) during and after the IP transition period.<sup>12</sup> Under the current rules, many rural ILECs provide consumers living in their high-cost service areas with a bundled voice and DSL broadband service offering under a NECA tariff. This bundled service provides high-cost rural consumers with both affordable voice and broadband services. The NECA tariff rate for bundled voice and DSL service is also significantly cheaper than the NECA tariff rate for stand-alone DSL broadband service. The voice component of the bundled service offering is supported by high-cost USF support, whereas the stand-alone broadband DSL service is not supported by USF.

Rural consumers receiving broadband service in rural ILEC service areas know they are receiving the highest quality broadband service, and in some cases, the only broadband service available in these areas. Like urban consumers, rural consumers are seeking cheaper voice services via wireless and VoIP, but still want to keep their high-quality rural ILEC broadband service. The current high-cost USF rules, however, make it very difficult for consumers to

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<sup>12</sup> NTCA Initial Comments, filed June 8, 2009, pp. 22-24.

purchase only rural ILEC broadband service. NTCA therefore recommends that during the development, implementation and completion of the IP transition that the FCC allow rural ILECs to offer stand-alone/naked DSL broadband service with the same levels of high-cost USF support that would be allowed in their bundled voice/broadband service offering.

**D. Interconnected VoIP Traffic Should Pay Access Rates and Reciprocal Compensation rates Throughout the IP Transition Period.**

The Commission should require interconnected VoIP services to pay intercarrier compensation during the PSTN-IP transition period. If the Commission does not soon issue a specific rule that requires interconnected VoIP to pay applicable access charges, the intercarrier compensation (IC) reform will be thrown into a state of chaos. AT&T, Verizon, Qwest and other IXC's and wireless carriers will eventually take advantage of this loophole in the rules in the near future 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. Rural consumers will be left with either substandard broadband service or no broadband service at all. 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.

The policy implication of classifying VoIP as an information service is both dire and immediate. If an information service classification for traffic exchanged between IP and PSTN networks were 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 annual originating access savings, coupled with \$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 interconnected VoIP, as information services also has substantial implications for the process of obtaining interconnection agreements. As Free Press suggests, “[t]his change in policy has substantial implications for the ability of VoIP providers to obtain reasonable interconnection arrangements with other carriers. This move would likely increase the level of uncertainty in the access charge regime precisely at a time when the Commission is seeking to provide certainty. By declaring interconnected 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.”<sup>13</sup>

Exemption or forbearance of interconnected VoIP service from access charges would significantly increase the size of the Restructure Mechanism (RM) or force rural LECs to unjustly raise their customer rates to recover costs imposed on their networks by VoIP providers or incur substantial revenue losses. Rural LEC consumers would be faced with higher end-user rates, degradation in the quality of their underlying LEC’s network, or the possible loss of their

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<sup>13</sup> Free Press Ex Parte, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 05-337, WC Docket No. 06-122 (filed Oct. 24, 2008), p. 3.

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.

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

Rather than innovation being stymied by making VoIP providers subject to access charges, such a decision would go a long way toward establishing certainty in funding and enabling competitive carriers to have equal access to network resources. The robust interconnected network has stimulated innovation and has enabled many of the services now available. VoIP providers only exist because there is a network in place. By putting the network’s future funding in jeopardy, everyone loses. The Commission should, as part of the PSTN/IP transition, classify interconnected VoIP service as a “telecommunications service” and

require interconnected VoIP providers to pay access charges so that telecommunications consumers may continue to enjoy the benefits the interconnected network has provided.

**E. Allow State Commissions to Reduce Intrastate Tariffed Access Rates to Interstate Tariffed Access Rate Levels Within Five Years, While Freezing Interstate Access Rates.**

As part of the PSTN/IP transition, the Commission should encourage and allow state commissions to reduce intrastate “originating and terminating access” rates and change the access structure to the interstate rates and structure on a voluntary basis. The Commission would provide supplemental federal USF support and/or increase subscriber line charges to offset intrastate lost access revenues. The Commission does not have the statutory authority to require states to reduce their intrastate toll access charges under Section 152(b) of the Act. The Commission should, therefore, 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 ICC rates.

These changes will benefit not only interexchange carriers (IXCs) but also customers. IXCs will benefit by paying lower access rates than they otherwise would if interstate rates were not capped and if intrastate rates were not reduced to interstate levels. Since IXCs pass on access costs in their retail long-distance rates, customers will also benefit by paying lower retail long-

distance rates. Moreover, rural customers will also continue to receive the high-quality service and will benefit by rural carriers' continued investment in broadband infrastructure.

Consequently, NTCA supports a proposal that allows state commissions to voluntarily move intrastate originating and terminating toll access rates and structures to interstate access rate levels and structures over a reasonable time period. NTCA further recommends freezing interstate originating and terminating access rates in order to keep interstate access rates from increasing in the future.

**F. Establish a Restructure Mechanism (RM) as Part of the IP Transition to Allow Rate-of-Return (RoR) Carriers to Recover Lost Access Revenues.**

NTCA urges the Commission to adopt a Restructure Mechanism (RM) during the IP transition period. This will allow rate-of-return carriers to recover lost access revenues through increases in the interstate common line support (ICLS) mechanism and will provide the needed cost recovery for rural carriers investing in broadband infrastructure. The RM should be in place prior to states requiring access reductions.

The Commission has consistently recognized its legal responsibility to provide reasonable cost recovery and has regulated in a manner that allows RoR carriers to recover their costs along with a reasonable return on investment. The Commission has also recognized the unique characteristics of rural RoR carriers and the challenges faced in providing quality service to their customers. 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.”<sup>14</sup> The *MAG Order* also terminated the Commission’s 1998 prescription proceeding of the authorized rate-of-return, which was set at 11.25% in 1990.<sup>15</sup>

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. NTCA believes that the Commission should establish a Federal Benchmark (FB) rate during the IP transition to ensure equity between states and to limit the size of the RM. For those states opting into the receipt of federal supplemental ICLS money for access replacement, the states would agree to decrease access rates to the levels to interstate levels, mirror the interstate access structure and allow companies to increase local rates such that the company could reach the FB rate level. The FB rate should include the local residential rate, 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 substantially within their states. A FB rate is designed to provide equity for customers and companies across the nation. Finally, inclusion of a FB rate minimizes the replacement revenues necessary for IC reform because companies would

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<sup>14</sup> *In the Matter of 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*, CC Docket No. 98-166; Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (rel. Nov. 8, 2001) (*MAG Order*), ¶ 131.

<sup>15</sup> *MAG Order*, ¶¶ 12, 206, 209, 282.

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

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

NTCA also recommends that all carriers opting to receive additional supplemental universal service through ICLS or Interstate Access Support (IAS) during the IP transition period 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. This, too, is a critical component of the PSTN/IP

transition to make broadband available and affordable in high-cost rural areas throughout the United States.

**G. Carrier of Last Resort Obligations Should Extend During the IP Transition.**

The Commission refers to carrier of last resort (COLR) obligation as an example of an issue that could be discussed in the context of an IP transition.<sup>16</sup> The Commission should retain the current federal requirements that all carriers who receive high-cost USF support must comply with COLR obligations throughout the IP transition. Rural consumers would especially be vulnerable to service quality loss if the few service providers in their areas do not retain their COLR obligations during transition.

**H. Follow the Regulatory Flexibility Act to Reduce the Economic Burden Which Transitional Rules May Impose on Small Rural ILECS.**

The Regulatory Flexibility Act, 5 U.S.C. § 604, (RFA) requires the Commission to consider less economically burdensome alternatives as part of any rulemaking proceeding. The United States Court of Appeals for the District of Columbia has held:

The Regulatory Flexibility Act requires that agencies issuing rules under the Administrative Procedure Act publish a final regulatory flexibility analysis. *See* 5 U.S.C. § 604. Such an analysis must meet certain statutory requirements. It must state the purpose of the relevant rule and the estimated number of small businesses that the rule will affect, if such an estimate is available. In addition, each analysis must summarize comments filed in response to the agency's initial regulatory flexibility analysis, along with the agency's assessment of those comments. Finally, each analysis must include "a description of the steps the agency has taken to minimize the significant economic impact" that its rule will have on small businesses, "including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected." § 604(a)(5).

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<sup>16</sup> Public Notice #25, p. 2.

*National Telephone Cooperative Association v. FCC*, 563 F.3d 536 (D.C. Cir. 2009) (No. 08-1071, decided April 28, 2009).<sup>17</sup> Any IP transitional rules ultimately adopted should reflect RFA consideration and should minimize the economic impact on small rural communications providers.

#### IV. CONCLUSION

For the reasons stated above, NTCA urges the Commission to:

1. Transition high-cost USF voice support to high-cost USF broadband support over a reasonable period of time;
2. Maintain RoR regulation and study area average costs for rural ILECs throughout the transition period;
3. Allow RoR carriers to receive high-cost USF support for stand-alone DSL during and after the transition period;
4. Require interconnected VoIP traffic to pay access charges throughout the transition period;
5. Allow state commissions to reduce intrastate tariffed access rates to interstate tariffed access rate levels within five years, while at the same time freezing interstate access rates.
6. Create an access rate cost recovery restructure mechanism for lost access revenues;
7. Retain COLR obligations for USF recipients during transition to protect rural consumers; and
8. Apply the Regulatory Flexibility Act, 5 U.S.C. § 610 *et seq.*, when crafting the IP transition rules for small business entities, which include small rural ILECs.

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<sup>17</sup> This court opinion by the D. C. Circuit Court of Appeals is publicly available at: <http://pacer.cadc.uscourts.gov/docs/common/opinions/200904/08-1071-1177914.pdf>, accessed Oct. 28, 2009.

These steps will assist rural consumers and rural ILECs to transition to an all-IP broadband world.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in GN Docket No. 09-47, 09-51, 09-137, NBP Public Notice #25, DA 09-2517, was served on this 21<sup>st</sup> day of December 2009 via electronic mail to the following persons:

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