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

In the Matter of	)	
	)	
The National Cable & Telecommunications	)	GN Docket No. 09-51
Association Petition for Rulemaking to	)	WC Docket No. 05-337
Reduce Universal Service High-Cost	)	
Support Provided to Carriers in Areas	)	RM-11584
Where There is Extensive Unsubsidized	)	DA 09-2558
Facilities-Based Voice Competition	)	

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

INITIAL COMMENTS

Daniel Mitchell
Vice President
Legal and Industry

Karlen Reed
Regulatory Counsel

Its Attorneys

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

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INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] files these comments in response to the Federal Communications Commission (Commission or FCC) December 8, 2009, National Broadband Plan (NBP) Public Notice requesting input on the National Cable & Telecommunications Association ("Cable Association" or "Cable") petition for rulemaking seeking to reduce high-cost universal service fund (USF) support provided to carriers in areas where there is proven extensive unsubsidized facilities-based ***voice*** competition.[2] NTCA urges the Commission to deny the petition.

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

[2] *Pleading Cycle Established for Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There is Extensive Unsubsidized Facilities-Based Voice Competition*, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584, DA 09-2225, Public Notice (rel. Dec. 8, 2009) (Public Notice).

The petition, if adopted, would halt deployment of broadband facilities in many high-cost rural areas, increase retail broadband prices in these areas significantly, and harm the affordability and comparability of broadband services to many consumers living in these areas indefinitely. The petition fails to provide any proposals to transition existing high-cost voice USF support to future high-cost broadband USF support over the next five to ten years, which is a primary focus of the NBP proceeding. The petition provides nothing to assist the Commission in its efforts to provide affordable and comparable ***broadband*** public Internet access services to consumers living in high-cost rural areas throughout the United States.

I. THE CABLE PETITION WOULD HALT RURAL BROADBAND DEPLOYMENT, INCREASE RURAL CONSUMER BROADBAND PRICES, AND INDEFINITELY HARM THE AFFORDABILITY AND COMPARABILITY OF BROADBAND SERVICES TO MANY CONSUMERS LIVING IN HIGH-COST RURAL AREAS.

The Cable Association rulemaking petition seeks to establish procedures and rules to remove high-cost voice support from those areas with extensive facilities-based competition.[3] The petition proposes that the Commission use a two-step analysis for any party that asks the Commission to reassess voice USF support to a specific ILEC service territory/study area. In the first step, the burden would be on the petitioner to demonstrate that an ILEC study area meets one of two competition-based triggers. Specifically, the petitioner would be required to demonstrate either: (1) that unsubsidized wireline competitors offer voice service to more than 75 percent of the customers within the ILEC's study area;[4] or (2) that the state has found

[3] Public Notice, p. 1.

[4] This step can also be triggered by the competitor demonstrating that at least 50 percent of the households have such an option an that the cost characteristics (e.g., population density) of the portion of the study area not served by such competitors are similar to those in the competitive portion of the study area. Attachment A, Proposed Rule 47 C.F.R. 54.317(a)(2)(A).

sufficient voice competition in the ILEC study area to substantially deregulate the retail basic local exchange service rate charged by an ILEC.[5]

If one or both of those triggers is satisfied, the Commission would initiate the second step of the proceeding. In the second step, the burden would be on a USF recipient to demonstrate the minimum amount of high-cost voice USF support necessary to ensure that the non-competitive portions of the ILEC's study area will continue to be served. In this stage of the process, the Commission would identify any ILEC costs, including costs attributable to any provider of last resort obligations imposed under state law that cannot be recovered through the services provided over the network in the portion of the study area without competition.

If the Commission were to remove high-cost voice USF support in rural ILEC study areas where there is unsubsidized voice competition, but insufficient broadband competition, the FCC would halt rural ILEC broadband deployment, increase retail rural broadband prices, and indefinitely harm the affordability and comparability of broadband services to consumers living in high-cost rural areas. Under the Commission's current high-cost universal service rules, many rural ILECs provide consumers living in their high-cost service areas with a bundled voice and digital subscriber line (DSL) broadband service offering under a National Exchange Carrier Association (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 because the voice component of the bundled service offering is supported by high-cost

[5] The Cable Association characterizes its petition as "a modest first step" that relies on a fact-based approach that shifts the burden of proof from a petition to a USF recipient, who would have to "demonstrate any continued need for high-cost support." This Petition covers both incumbent local exchange carriers (ILECs) and competitive exchange telecommunications carriers (CETCs) and is intended to reduce the USF contribution factor and the size of the USF by reducing USF high-cost funding. Petition, p. i-ii.

USF support, whereas the stand-alone broadband DSL service does not receive high-cost USF support.[6]

Rural consumers receiving broadband service in rural ILEC service areas know they are receiving high 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 voice over Internet protocol (VoIP) services, but still want to keep their high-quality rural ILEC broadband service because either there is no broadband competition or the quality of the competitor's broadband service is substandard.

The current high-cost USF rules allow rate-of return rural ILECs to use their high-cost voice support to provide affordable broadband service to their high-cost rural communities. But for the rural ILEC's ability to use their high-cost voice USF to help recover the high cost of providing bundled voice and broadband service in these high-cost areas, many rural consumers would either not have broadband service, would not be able to afford the broadband service, or would have only substandard broadband service available in their communities. NTCA therefore recommends that Commission deny the Cable Association Petition and during the development, implementation and completion of the Commission's National Broadband Plan that the FCC stay the current rural ILEC voice/broadband bundling rules and allow rural ILECs to offer stand-alone/naked DSL broadband service with same levels of high-cost USF support that would be allowed in their bundled voice/broadband service offering.

Given that the Commission and Congress seek to move all voice USF support into future

[6] From a cost allocation perspective, NECA has two tariff rate structures for broadband service offered over DSL. One service offering is when broadband is delivered in addition to voice service, and another offering is when broadband is delivered as a stand-alone service. In the first case the broadband tariff is based on the incremental cost to add broadband service to the voice service. In the second offering the broadband service has all of the costs of the subscriber's local loop in addition to the incremental cost of the broadband service.

broadband USF support and seek to accelerate affordable broadband deployment and penetration throughout the United States, it is good public policy for the Commission to immediately stay any USF support rules that will hinder making broadband services affordable to consumers. NTCA's proposed stay of the current rural ILEC voice and broadband bundling rules, pending the Commission implementation and completion of the FCC's National Broadband Plan, will allow rural ILECs to continue to provide affordable broadband services and accelerate new broadband deployment in currently unserved and underserved areas.[7] Conversely, the Cable petition will only undermine this ambitious broadband goal set forth by Congress.

II. PROVIDER OF LAST RESORT (POLR) REQUIREMENTS AND SUFFICIENT COST RECOVERY ARE ESSENTIAL FOR MEETING THE BROADBAND NEEDS OF CONSUMERS IN HIGH-COST RURAL AREAS.

In deciding the necessary level of ILEC voice USF support in a particular study area, the Cable petition proposes that the FCC would consider the ability of the carrier to recover network costs through services provided over the carrier network in the non-competitive portion of the study area.[8] The Commission would also consider whether a carrier incurs costs in the relevant area that would not be incurred but for the existence of an obligation to operate as a provider of last resort (POLR).[9] The Cable petition further asserts that the Commission should distinguish between the cost attributable to ILEC POLR requirements and the cost of operating in a competitive marketplace.[10] The petition then argues in areas where a cable provider or other unsubsidized wireline competitor has built facilities and offers voice services, each provider's

[7] NTCA's proposed stay is consistent with the FCC's mission of providing affordable broadband services to all consumers and is consistent with the broadband stimulus goals in the American Recovery and Reinvestment Act (ARRA).
[8] Attachment A, Proposed Rule 47 C.F.R. 54.317(b)(2).
[9] *Id.*
[10] Petition, p. 19.

cost of operating and maintaining facilities is a cost attributable to competition and not a cost attributable to POLR obligations. This is not true.

For profit carriers will not commit to meeting POLR obligations if the support is not "sufficient" to allow for sustained operations and a sustained provisioning of the broadband services over the long term. Any new rules that change the methods of determining USF distribution amounts should recognize the true costs of meeting POLR obligations while also giving meaningful consideration to the different characteristics of large vs. small, and rural vs. non-rural carriers. The Cable petition does not take any of these factors into consideration.

In the NBP proceeding the Commission refers to the POLR obligations in the context of transitioning the public switched telecommunications network (PSTN) to an all Internet protocol (IP) network.[11] NTCA agrees. Rural consumers would especially be vulnerable to service quality loss if the few service providers in their areas do not retain their POLR obligations during and after the PSTN-IP transition. During and after the IP transition the Commission will have to identify which carriers/providers should receive broadband USF support and to more specifically determine those areas that are in most need of high-cost broadband support and then determine what levels of broadband USF support will needed to sustain POLR obligations. The Commission should therefore retain the current federal requirements that all carriers who receive high-cost USF support must comply with POLR obligations during and after the IP transition.

More importantly, the longstanding public policy of the United States is that all rural citizens have access to affordable communications services at rates, terms and conditions comparable to those in urban areas. The historical record of the nation's independent rural

[11] NBP Public Notice #25, p. 2.

telecommunications providers in executing this policy is undisputed. The success of United States Department of Agriculture (USDA) Rural Utilities Service (RUS) loan programs in providing capital for the execution of this policy is also undisputed. Central to this undisputed success is a common, but often overlooked, attribute that was historically required for high-cost USF support (even when USF support was not explicit but rather imbedded in toll access cost separations) and for receipt of USDA/RUS financing. That component was the acceptance by the rural ILEC of a core responsibility to serve every citizen that met the basic requirement for service (e.g. credit worthiness, technical feasibility, etc.). This came to be known in a competitive environment as the carrier/provider of last resort responsibility. The necessity of this social compact is essential to effective public policy in achieving the goals contained in the Communications Act of 1934, as amended, and the goals in the American Recovery and Reinvestment Act (ARRA).

Since the inception of the Rural Electrification Act (REA) modifications in 1949 that led to the emergence of rural independent telephony, rural ILEC business models and plans have been based principally upon the continuation of this compact and, as a general rule, there has never been a model of cost study that was ultimately deemed more appropriate in determining the fair and reasonable cost of providing service than that of the rural ILEC study area which is generally the entire service area of the rural ILEC. The investment of billions of dollars in rural ILEC facilities was made and is currently maintained in view of over 76 years of relative stable public policy supporting such investment principally in return for the acceptance of universal service responsibility and include POLR obligations. Furthermore, no facilities in rural America are more ready to provide the foundation for future broadband service than the facilities of rural ILECs.

Rural ILEC business models continue to rely upon the economic efficiencies of averaging common costs across their entire service areas in support of their overall objectives which include universal affordable voice and broadband services to all consumers living in these areas and POLR responsibilities. The Commission, however, must understand that rural ILECs have historically averaged their embedded costs over their entire service areas to achieve this goal established by Congress. If rural ILECs lose high-cost USF support in competitive areas then those costs will need to be recovered over the remaining non-competitive areas to provide affordable future broadband services to consumers living in these areas. If not, Congress's goal of universal affordable broadband services to all Americans will not be achieved. Rural ILECs, the sole providers of services in these remote high-cost areas will experience greater difficulty in feasibly serving the remainder of the high-cost non-competitive portions of their study areas as required by the universal service requirements and POLR obligations. These are the most remote and high-cost areas throughout the United States where cable providers, wireless providers and other providers avoid and refuse to serve.

The Cable petition fails to acknowledge or address this critical issue, which is at the heart of the National Broadband Plan - providing affordable and comparable universal broadband service to all Americans. The Commission must address this critical issue responsibly and equitably in order to achieve the goals of set out by Congress. The National Telecommunications Cooperative Association's National Broadband Plan filed with the FCC on June 6, 2008, provides the Commission with a roadmap to achieve this goal.

III. THE CABLE PETITION WOULD PUT MANY HIGH-COST RURAL CONSUMERS AT RISK BY UNDERMINING THE STABLE TRANSITION OF CONVERTING EXISTING VOICE USF SUPPORT TO FUTURE BROADBAND USF SUPPORT.

Making broadband access to the Internet part of the universal service definition will unquestionably help spur on deployment in rural areas. In doing so it is essential that the transition from a circuit-based USF mechanism to a broadband-based mechanism is carefully managed and gradual. It is critical that the progress gained under existing high-cost USF (particularly in areas served by rate-of-return rural ILECs) not be inadvertently disrupted with a premature, unwarranted discontinuation of existing high-cost programs. The Cable petition would prematurely disrupt the existing high-cost programs and leave many rural consumers with unaffordable broadband services.[12] Without careful thought to this transition, the Commission could not only thwart additional investment but could also jeopardize the service that has been successfully deployed today.

During the last 20 years, rural carriers have invested in rural, high-cost and insular areas in the United States based on a system of rate-of-return (RoR) regulation, NECA pooling, intercarrier compensation (IC), rural embedded high-cost USF support, and POLR responsibilities. 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 affordable and comparable to services and prices received by urban consumers. Universal service will play an integral role in helping rural providers meet current and future broadband challenges.

[12] The Cable Association petition seeks to reform only the high-cost USF voice support distributions to reduce allegedly unnecessary voice USF support in competitive areas throughout the United States.

The high-cost USF mechanisms will be vital in establishing the necessary cost recovery that must flow to those providers committed to providing broadband in the Nation's most economically challenging areas. The highest priority in the Commission's National Broadband Plan must center on strengthening and preserving our universal service policies in a manner that restates the underlying program's value in an IP world. The current $7.2 billion contained in the ARRA broadband stimulus package coupled with merely existing levels of high-cost USF support will not to meet the Nation's growing broadband needs.

The Commission must maintain existing RoR regulation and the study area average embedded costs methodology for determining high-cost USF support for each rural ILEC throughout the period of transitioning and 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, NECA pooling mechanisms and POLR obligations during the development and implementation of a future broadband high-cost USF support mechanism will likely leave many rural consumers without 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 contained in Sections 151 and 254 of the Act. The transition to an all-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. To ensure this, the FCC must allow rural ILECs during this transition to base their high-cost USF support on each carrier's study area average embedded costs to ensure quality broadband Internet access service is uninterrupted and remains affordable to the consumers living in their high-cost service areas.

IV. THE COMMISSION SHOULD DENY THE CABLE PETITION AND INSTEAD, AS PART OF THE NATIONAL BROADBAND PLAN, OPEN A PROCEEDING TO DEFINE AND IDENTIFY "MARKET FAILURE AREAS" THROUGHOUT THE UNITED STATES AND TARGET FUTURE HIGH-COST BROADBAND USF SUPPORT TO CARRIERS SERVING THESE AREAS IN ORDER TO PROVIDE CONSUMERS LIVING IN THESE AREAS WITH AFFORDABLE AND COMPARABLE BROADBAND SERVICE.

In the NBP proceeding the Commission should focus on providing future broadband USF support to carriers serving market failure areas rather than focusing on areas with competitive voice service as proposed in the Cable petition. NTCA recommends that as part of the NBP the FCC undertake the daunting but essential task of identifying market failure areas where the market alone cannot support even one broadband carrier without high-cost USF supplemental support. NTCA introduced in its initial comments filed in this proceeding on June 8, 2009, a new term be adopted for identifying these locations, "market failure areas" or "MFAs"[13] This term accurately depicts and should be defined based on the fact that many areas of the nation simply do not have the population base or economic foundation for any provider to justify broadband facilities build-out and ongoing maintenance without high-cost broadband USF support.

NTCA proposes that market failure areas or MFAs be determined at a sufficient level of granularity so that: (1) future broadband USF support is more closely targeted to carriers serving those specific areas where retail revenues available to carriers are insufficient to recover the costs of broadband facilities deployment and to sustain long-term provisioning of broadband services, and (2) enable the FCC to most efficiently manage and distribute the limited high-cost broadband USF support that is available for spurring broadband deployment and adoption. NTCA

[13] NTCA Initial Comments, *In the Matter of a National Broadband Plan, GN Docket No. 09-51,* filed on June 8, 2009.

recommends that the Commission open a proceeding to define and identify MFAs throughout the United States, and then determine the most efficient method for determining and distributing future high-cost broadband USF support to carriers serving these MFAs in a manner that will in fact bring affordable broadband services to consumers living in these areas.[14]

The goal of the Commission and Congress in the NBP is to ensure that consumers in rural high-cost areas have access to affordable and comparable ***broadband*** service as compared to urban consumers. The future high-cost broadband USF distribution mechanism will therefore require some USF support in high-cost rural areas where cable, wireless, electric, and satellite broadband service is either non-existent or substandard, as well as in urban, metropolitan, suburban, and rural areas where middle mile, second mile or other costs will need cost recovery in the form of USF support in order to maintain affordable and comparable retail broadband services throughout the United States. The Cable petition offers no proposals for distributing future high-cost broadband USF support to broadband providers serving MFAs in order to provide affordable and comparable broadband service to consumers living in these areas.

The Cable petition fails to address the most important goal set out by Congress in the ARRA – providing affordable broadband services to all Americans, particularly those in market failure areas.[15] Focusing on costs of providing broadband services in all MFAs should be beneficial in making these areas more desirable for economic development investment and jobs creation. NTCA believes that ultimately targeting broadband support to providers serving

[14] As a first step in the process, NTCA recommends that market failure areas should be established by dividing the nation geographically into support areas that are small enough to reasonably demonstrate the costs of broadband facilities and operating expenses in each area. These areas will need to be developed to accurately confirm that support is required in order to ensure broadband deployment to all households and businesses in that support area.

[15] *See*, for example, Comments of National Association of State Utility Consumer Advocates, FCC Docket No. 08-262, at p. 26, fn 108, which state that "it is widely known that rural carriers have done a better job of bringing broadband to their customers than have non-rural carriers (at least in the rural portions of the non-rural carriers' territories)."

market failure areas is sound public policy that is absolutely necessary if citizens residing in the most high-cost, rural areas, especially very sparsely populated unincorporated areas, are ever to receive affordable and comparable broadband service during the 21st century.[16]

V. AS PART OF THE NATIONAL BROADBAND PLAN THE FCC SHOULD ESTABLISH COST DATA TO IDENTIFY "MARKET FAILURE AREAS" AND TARGET FUTURE BROADBAND USF SUPPORT TO PROVIDERS SERVING SUCH AREAS.

The Cable Association petition recommends removing high-cost voice support in a rural ILEC study area when there is at least 75 percent unsubsidized competition and allowing continued voice support in the locations in that study area that are without unsubsidized voice competition.[17] According to the Cable petition the remaining USF support in the study areas would be based on the current methodologies for determining high-cost voice USF support, not high-cost broadband USF support.[18] The Cable Association petition thus becomes obsolete once the Commission includes broadband in the definition of universal service.

Once broadband is included in the definition of universal service, the Commission will then have to focus on the challenges of determining what areas of the country require high-cost broadband USF support and how to calculate high-cost broadband USF support in these areas. The Cable petition also fails to determine what costs should be considered for reimbursement through future broadband USF support. Because of this failure the Cable petition is not consistent with meeting the long-term future universal service broadband goals set out by Congress it should be dismissed.

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[16] The Commission should gather input from all interested and affected parties on how to establish exactly which providers serving areas that are too costly and thus would qualify as broadband "market failure areas," as opposed to markets that do not require future high-cost broadband USF support. The process needs to be transparent and focused on areas – not providers -- so that it is not dominated by corporations with the largest reservoir of financial, technical and political resources.

[17] Petition, pp. 5-8, 12-14, 16, Attachment A, and Attachment B.

[18] *Id.*

Accurately determining costs in rural areas presents significant challenges since the costs per customer are so much higher and the variables (such as customer density and terrain) differ so drastically across locations. The Commission will have to determine whether cost models are viable in estimating broadband costs, and if so whether they can be verified in an objective, dependable manner.[19] Such concerns are as valid today as they were almost a decade ago when the Commission adopted the Rural Task Force recommendation to not utilize the non-rural LEC proxy model in determining rate-of-return LEC costs for universal service funding.[20] Nevertheless, it is critical that once a definition of broadband Internet access service is settled upon, the Commission must seek a realistic, credible and transparent process to determine deployment and operating costs for broadband networks serving the above-mentioned "market failure areas" and to distinguish those cost characteristics from urban areas. The Cable petition does nothing to help the Commission in this endevour.

Furthermore, the Cable petition recommends elimination of ILEC high-cost USF support for voice facilities in competitive (high density) areas with high-cost USF support being limited to a portion of the ILEC's voice loop costs associated with customers in non-competitive (low density) areas of the ILEC study area. This portion of the Cable petition ignores the fact that the essential facilities to serve the low density areas may be located in the high density area of the ILEC's study area/service territory where there may be facilities-based voice competition. In many rural exchanges a town is surrounded by high cost rural areas and a carrier serving both establishes a wire center design which locates not only its switch in the town, but also essential portions of its outside plant facilities needed to serve the rural low density portions of the

[19] *Id*.
[20] *See* Rural Task Force Recommended Decision to Federal-State Universal Service Joint Board (rel. Sept. 29, 2000), CC Docket 96-45.

exchange.

If the Commission adopts rules to reduce or eliminate high-cost USF support in a town (high density area) where competivie service is also available, it must allow the rural carrier serving both the high and low density areas to make a fair and equitable allocation of the costs associated with its switching, routing and outside plant facilities and operating overhead in determining its cost basis for future high-cost broadband USF support. It is preferable to remain with the current methodology utilizing study area average costs throughout the entire study area to accomplish the Commission's goals of ubiquitous, affordable and comparable universal broadband service throughout America. If, however, the Commission determines otherwise, there must be a fair and equitable allocation of the switching, routing, and outside plant facility costs along with the appropriate operating overhead needed to serve to determine sufficient high-cot broadband USF support needed to provide affordable broadband services to the rural low density areas within a rural ILEC's study.

VI. EFFORTS TO APPLY UNIVERSAL SERVICE SUPPORT TO BROADBAND NETWORKS SHOULD BE PRECEDED BY ACTIONS TO REFORM AND MODERNIZE THE EXISTING USF MECHANISMS AND TO TARGET FUTURE BRODBAND USF SUPPORT TO PROVIDERS SERVING HIGH-COST MARKETS FAILURE AREAS.

NTCA believes that efforts to apply universal service support to broadband networks should be preceded by actions to reform and modernize the existing USF mechanisms and to more carefully target future USF broadband support to providers serving MFAs.[21] If broadband access to the Internet becomes USF eligible, the Commission must require USF contributions from broadband providers. Expanding the contributions base to all broadband providers is especially appropriate given Congress' mandate for-the Commission to develop a national plan

[21] Petition, p. 4.

to bring broadband to all consumers. Furthermore, broadening the base of contributions will minimize funding requirements, while also paving the way for fairer and quicker deployment of broadband in hardest-to-reach areas.

NTCA therefore 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. The underlying transmission component of all broadband Internet access services is "telecommunications" as defined by the Act.[22] 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.

NTCA also urges the Commission to continue to assess USF contributions based on revenues as part of the FCC's National Broadband Plan. Revenues-based assessment methodology is technologically neutral, and will not be overly influenced by the ongoing migration to Internet protocol technologies. If the Commission assesses a broad base of services, the contribution factor will stabilize or decrease, which will limit the migration away from currently assessed services. NTCA strongly urges the Commission to retain the current revenues-based contribution methodology for USF assessments, which has proven to be the most equitable, non-discriminatory, and administratively feasible mechanism for providing specific

[22] 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).

and predictable universal service support in accordance with the Act.

When adequate funding is available, rural ILECs respond by investing to bring high-quality broadband to their customers.[23] 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 the imposition of additional, uncompensated broadband build-out requirements. The Commission should therefore 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.

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. 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. While great strides in rural broadband deployment are being made, there is undeniably much more progress necessary before broadband is available to all. 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

[23] **See NTCA 2009 Broadband/Internet Availability Survey Report, December 2009, http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2009ntcabroadbandsurveyreport.pdf.**

financial commitment to reach the remaining customer locations with broadband facilities.

VII. THE CABLE PETITION FAILS TO CONSIDER ESCALATING MIDDLE MILE AND SECOND MILE BROADBAND TRANSPORT COSTS TO MEET INCREASING CONSUMER DEMANDS AND ITS IMPACT ON AFFORDABILITY AND COMPARABILITY OF BROADBAND SERVICES.

On November 19, 2009, NTCA filed its middlle mile and second mile comments in this proceeding with the FCC.[24] In these comments NTCA compared its cost data to the data NECA filed in this proceeding on November 4, 2009. As a check against NECA's data, NTCA collected similar data for Ethernet connections for each band on the table below under 10 Mbps, 10 to 50 Mbps, 50 to 100 Mbps, 100 to 1000 Mbps and over 1000 Mbps. Based on this comparison, NTCA found the following.

Size of Middle Mile Connection Mbps	Cost per Mbps	Total Middle Mile Cost
1	$1,050.00	$1,050.00
10	$227.46	$2,274.60
100	$49.27	$4,927.43
1,000	$10.67	$10,674.21
10,000	$2.31	$23,123.38
100,000	$0.50	$50,091.82

As Internet speeds increase, middle mile costs will become an increasing proportion of the cost of providing Internet Access service. In addition, rural broadband providers experience costs that are much higher than the large providers. In other words, the economies of scale realized by the largest providers are real and permit large carriers to have middle mile costs that

[24] NTCA Comments, *In the Matter of Comment Sought on Impact of Middle and Second Mile Access on Broadband Availability and Deployment,* GN Docket Nos. 09-47, 09-51, 09-137, NPB Public Notice #11, filed on November 19, 2009.

are probably 2 or more orders of magnitude below rural those of providers.[25]

The results of analysis make it readily apparent that small carriers will require some form of high cost USF broadband support for middle mile and second mile costs in response to increased consumer demand. Absent such USF support, it will be virtually impossible for small carriers to provide broadband at rates comparable to those offered by the large providers in non-rural areas. In determining future broadband USF requirements, it will be critical that the Commission take rural carriers' growing middle mile and second mile access costs into consideration and allow these providers a means of recovering their costs. The Cable petition fails to consider the escalating middle mile and second mile costs to meet the increasing consumer demands and its impact on affordability and comparability of broadband services as required by the Communications Act of 1934, as amended.

VIII. DEGULATION DOES NOT AUTOMATICALLY MEAN VOICE OR BROADBAND COMPETITION IS PRESENT

The Cable Association's reliance on non-regulated or deregulation status as an indicator of competition is misplaced, and the Commission should reject the cable association's reliance. The Cable petition and its attached report fallaciously assume that a few isolated, overstated examples can be used to extrapolate a general explanation and that a lack of rate regulation automatically denotes competitive markets in all circumstances. The petition's November 2009 report asserts that there is extensive cable voice coverage in rural ILEC territories, contends that cable voice is often available in high-cost areas, and contends that high-cost subsidies appear unjustified.[26] This report does not reflect, however, differences in how non- or deregulation status was conferred.

[25] It is interesting to note that this is not inconsistent with the Intercarrier Compensation proceeding with NECA access rates of approximately $0.02 versus unified access rates of $0.0007.

[26] Petition, Attachment B, "Report of Dr. Jeffrey A. Eisenach," rel. Nov. 2009, pp. 14, 20, 24.

The decision whether to permit deregulation, or to not rate regulate, lies with the state public service commissions, and each state uses different rules, procedures and standards to determine whether the market is sufficiently competitive to award deregulation status. Each state uses a different set of parameters to determine an appropriate "market" and uses different thresholds for "market power" measurements. Some states do not rate regulate rural ILEC customer-owned cooperative telecommunications providers because the customers control their own rate increases – not because competition exists. State deregulation proceedings also may not have considered the impact that deregulation status may have on receiving federal USF funding, so state commission may find themselves faced with reconsidering their deregulatory designations. The Commission should not, therefore, rely on a state designation of deregulation as an accurate, consistent measure of competitive market forces for USF funding purposes. Each designated geographic area would have to be examined using a standardized measurement schematic.

IX. THE ADMINISTRATIVE BURDEN CREATED BY THE CABLE ASSOCIATION PROPOSAL IS TOO GREAT.

The Cable petition would place an inappropriately heavy regulatory burden on rural ILECs and the Commission. The Cable Association's proposed two-step analysis for removing rural ILEC high-cost voice USF support would require the Commission and rural ILECs to spend an inordinate amount of time and resources reviewing each geographic area to determine whether facilities-based competition exists. This is not a cost-effective strategy because it will generate continual litigation and administrative proceedings as the Commission examines whether competitive triggers have been met and whether USF support is needed in the questioned geographic areas. These examinations would, by their nature, equate to a rate case

and would impose serious, additional financial and regulatory burdens on small rural ILECs and their customers.

Another regulatory burden that would fall squarely on rural LECs under the cable association's proposal is the burden of maintaining POLR obligations while reducing the rural ILECs' USF funding. The POLR obligations cannot be jeopardized during and after and examination of the rural ILEC's USF support level. POLR duties are held by rural ILECs, most of which are small business entities. Large cable petitioners such as Comcast, Time Warner and Cox Communications will seek to divest USF funding from these small ILECs and the large cable companies have a huge advantage over small rural ILECs through economies of scale and commercial financial backing. The Commission should recognize this regulatory burden as persuasive reasoning not to adopt the cable association's Petition.

X. THE CABLE PETITION FAILS TO TAKE INTO CONSIDERATION THE REGULATORY FLEXIBILITY ACT.

The Regulatory Flexibility Act, 5 U.S.C. § 604, (RFA) requires the Commission to consider less economically burdensome alternatives for small entities, such as rural ILECs, 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. 5 U.S.C. §604(a)(5).

National Telephone Cooperative Association v. FCC, 563 F.3d 536 (D.C. Cir. 2009) (No. 08-1071, decided April 28, 2009).[1]

Any Internet protocol (IP) transitional rules ultimately adopted should reflect RFA considerations and should minimize the economic impact on small rural communications providers. In addition, any reforms must recognize rural versus non-rural carrier differences such as economies of scope and scale. The reforms adopted should not operate to unfairly penalize rural carriers based purely on their status as smaller carriers focused on less attractive markets. Rural carriers have for many years been regulated as rate-of-return carriers based on an appropriate recognition by regulators of the more difficult circumstances faced by carriers in providing telecommunications services within the most rural parts of this country. These different circumstances and different form of regulation have been recognized and adopted in the Commission's previous comprehensive IC and USF reform orders know as the Multi-Association Group (MAG) Plan and the Rural Task Force (RTF) Plan, respectively.[27] The Communications Act of 1934, as amended, also contains various provisions recognizing the special circumstances of rural telephone companies.[28]

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[27] *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), [27] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001) (Rural Task Force Order). Also see, *In the Matter of Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, 16 FCC Rcd 6162, 6182, (2000)(RTF Joint Board Recommendation).

[28] 47 U.S.C. §§ 153(47), 251(f)(1) and 251(f)(2), and 5 U.S.C. § 601, *et seq*.

Any reforms that fail to recognize the different characteristics of the areas served by rural ILECs will jeopardize the quality of service and service choices that are available to all customers residing within rural telephone company service areas. Whatever reforms are adopted as part of the NBP for the purpose of more efficiently targeting USF support, or for eliminating existing inefficiencies in the USF mechanisms, the total USF support provided still needs to be "sufficient" from an operating provider perspective. The USF mechanisms must therefore provide a level of funding that provides sufficient support based on investments already made and which will allow for a long term provisioning of affordable broadband services to all customers within existing service areas. The Cable petition completely ignores this important and critical fact.

XI. CONCLUSION

Based on the above reasons the Commission should deny the Cable Association Petition for Rulemaking. To ensure the goal of a viable and open public Internet with high-quality, affordable and comparable high-speed broadband service to all consumers, the Commission must focus on providing sufficient, sustainable, and predictable USF support for broadband services throughout the "highest-cost areas" in United States. To this end, NTCA recommends that the Commission adopt the following reasonable, timely, and prudent measures as the main components, which are contained and discussed in more detail in NTCA's June 8, 2009 comments filed in this proceeding:

1. Define "broadband" based on high-speed Internet access capabilities during peak-hour or busy-hour load 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.

2. Include “broadband Internet access service” in the definition of “universal service.”

3. Open a proceeding to define and identify “Market Failure Areas” throughout the United States and target these areas for future high-cost broadband USF support in order to ensure consumers living in these areas have access to affordable and comparable broadband service.

4. Define a “Market Failure Area” as an area that does not have the population base or economic foundation for any provider to justify broadband facilities build-out and ongoing maintenance without external monetary support.

5. Reclassify wireline and cable “broadband Internet access service,” as “telecommunications service.”

6. Regulate broadband Internet access service providers under Title II common carrier regulation.

7. Apply a Title II earnings review to all broadband providers who voluntarily receive federal high-cost broadband USF support.

8. Allow rate-of-return (RoR) carriers to receive future federal high-cost broadband USF support through the Interstate Common Line Support (ICLS) mechanism, and price-cap carriers seeking to receive future broadband USF support through the Interstate Access Support (IAS) mechanism, when they 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.

9. Include ongoing operations and maintenance expenses, in addition to construction cost, in the calculation of the future high-cost broadband USF support.

10. Transition all high-cost voice USF support to high-cost broadband USF support over a reasonable time period to avoid rate shock, prevent service disruptions, and provide stability and certainty during the transition.

11. Maintain RoR regulation for rural ILECs throughout the transition period and allow rural ILECs to base their high-cost USF support on each carrier’s study area average costs to ensure affordable and uninterrupted broadband Internet access service to rural, high-cost consumers.

12. Allow RoR rural carriers to provide stand-alone/naked broadband service with the same level of universal service funding as allocated to their bundled voice and broadband service during and after the transition period.

13. Expand the base of USF contributors to include all retail broadband Internet access service providers.

14. Open a proceeding to determine whether other companies that impose significant costs on the public Internet, such as Google, should be required to contribute to the new high-cost broadband USF mechanism.

15. Assess USF contributions based on telecommunications and broadband revenues.

16. Include Internet backbone and special access (middle-mile) transport service costs in the calculation for determining future high-cost USF broadband support.

17. Eliminate the identical support rule and base high-cost USF support on each company's own costs within 5 years.

18. Refrain from capping and/or freezing rural carrier high-cost USF support because this will halt broadband deployment in high-cost areas and leave many rural consumers with substandard broadband service or without any broadband service whatsoever.

19. Require IP/PSTN traffic, specifically interconnected VoIP traffic, to pay applicable tariffed originating and terminating interstate access rates, intrastate access rates, and reciprocal compensation rates, throughout the transitional period and/or until such time as there is no longer a PSTN.

20. Implement intercarrier compensation (IC) reform as part of the National Broadband Plan by allowing state commissions to reduce voluntarily, on a company-by-company basis, intrastate originating and terminating tariffed access rates to interstate tariffed access rate levels within 5 years, and at the same time freeze interstate originating and terminating access rates in order to keep interstate access rates from increasing.

21. Establish a Restructure Mechanism (RM) as part of IC reform that allows RoR carriers to recover lost access revenues not recovered in end-user rates through supplemental ICLS and price-cap carriers to recover lost access revenues not recovered in end-user rates through supplemental IAS.

22. Establish Title II interconnection and network management rules pursuant to Sections 251 and 256 of the Act to allow for the seamless transmission of communications between public broadband Internet access networks.

23. Require vertically-integrated Internet backbone and special access (middle-mile) transport provider rates to be cost-based and non-discriminatory.

24. 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 National Broadband Plan.

25. 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. Permitting eligible carriers 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.

26. Use the Regulatory Flexibility Act (RFA) (5 U.S.C. Section 601, *et seq*) effectively and adopt alternative rules to reduce the economic burden on small providers of broadband Internet access service, such as RoR rural carriers.

Respectfully submitted,

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

By: /s/ Daniel Mitchell
Daniel Mitchell
Vice President
Legal and Industry

By: /s/ Karlen Reed
Karlen Reed
Regulatory Counsel

Its Attorneys

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

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CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in GN Docket No. 09-51, WC 05-337, and RM-11584, DA 09-2558, was served on this 7th day of January 2010 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Julius.Genachowski@fcc.gov

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

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

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

Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554
Meredith.Baker@fcc.gov

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

Gary Seigel
Federal Communications Commission
Telecommunications Access Policy Division,
Wireline Competition Bureau
445 12th Street, SW, Room 5-C408
Washington, D.C. 20554
Gary.Seigel@fcc.gov

Katie King
Federal Communications Commission
Telecommunications Access Policy Division,
Wireline Competition Bureau
445 12th Street, SW, Room 5-B544
Washington, D.C. 20554
Katie.King@fcc.gov

Theodore Burmeister
Federal Communications Commission
Telecommunications Access Policy Division,
Wireline Competition Bureau
445 12th Street, S.W., Room 5-B438,
Washington, D.C. 20554; e-mail:
Theodore.Burmeister@fcc.gov

Neal M. Goldberg
Steven F. Morris
NCTA
25 Massachusetts Ave., NW, Suite 100
Washington, D.C. 20001

/s/ Adrienne L. Rolls
Adrienne L. Rolls