

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

Reducing Universal Service Support)	RM-11584
in Geographic Areas that are)	
Experiencing Unsupported)	
Facilities-Based Competition)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
In the Matter of High-Cost Universal)	WC Docket No. 05-337
Service Support)	

**COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.**

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January 7, 2010

I. INTRODUCTION

Texas Statewide Telephone Cooperative, Inc. (TSTCI) files these comments in response to the National Cable and Telecommunications Association's (NCTA's) Petition for Rulemaking (Petition)¹ which proposes a process to reduce or eliminate federal universal service high-cost support received by incumbent local exchange carriers (ILECs) in study areas where there is extensive, unsubsidized facilities-based voice competition. The NCTA Petition proposes these rules under the guise of controlling the size of the current universal service high-cost program which supports voice services so that the Commission can establish targeted programs for broadband deployment. As an association representing 38 small, rural incumbent telephone companies and cooperatives in Texas who are committed to providing quality voice and advanced services to all consumers throughout their service territories, TSTCI urges the Commission to deny NCTA's petition.² TSTCI believes the Petition is a self-serving attempt to merely strengthen the cable industry's competitive footing, particularly in the densely populated areas in which they mainly provide service, and will harm rural areas rather than carry out the universal service principle of providing access to telecommunications and information services in rural high-cost areas comparable to the services and rates charged in urban areas.³

¹ National Cable & Telecommunications Association, Reducing Universal Service Support in Geographic Areas that are Experiencing Unsupported Facilities-Based Competition, Petition for Rulemaking, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584, (filed November 5, 2009) (Petition).

² See Attachment 1 for list of TSTCI member companies and cooperatives.

³ Communication Act of 1934, as Amended, Section 254(b)(3) (the Act).

II. NCTA's Proposal Targets Rural ILECs to Contain USF Growth Even Though Rural ILECs Are Not the Source of the Growth.

Under the NCTA proposal, any petitioner can request that the Commission reduce the high-cost support amount in the ILEC's study area by demonstrating at least one of the following conditions: 1) at least 75% of the households in the study area can purchase voice services from a competitive facilities-based wireline provider; 2) at least 50% of the households have such an option and the cost characteristics (e.g., similar terrain and population density) of the part of the study area without competition are comparable to the competitive portion of the study area; or 3) the ILEC's local exchange service retail rates have been deregulated throughout the study area.

The NCTA proposal presupposes that reducing the amount of universal service high-cost support the ILECs receive will reduce the growth in the universal service fund (USF), even though the Federal-State Joint Board on Universal Service (Joint Board) found that it was USF support to competitive eligible telecommunications carriers (CETCs) that caused the exploding growth rate in the USF. The Joint Board found that ILEC support was flat or declined since 2003, while universal service high-cost support to CETCs (primarily wireless CETCs) grew substantially from \$15 million to almost \$1 billion in only six years (from 2001 through 2006).⁴ The NCTA proposal uses a "back door" approach to curbing growth in the USF. Instead of advocating reform such as elimination of the identical support rule (proposed by the Joint Board),⁵ NCTA supports reducing or eliminating support to the rural ILEC. While this would reduce or eliminate excess identical support to the CETC, whose costs may bear no relationship to the

⁴ In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, (Rel. May 1, 2007) par.4.

⁵ The identical support rule allows a CETC to receive USF support identical to the ILEC's support based upon the ILEC's costs.

ILEC's costs, it substantially harms the ILECs for whom the support is critical. The unintended consequence (or perhaps the consequence is intended) is that the ILEC will find it increasingly difficult to serve its entire study area, meet its obligation as a carrier of last resort (COLR) and an eligible telecommunications carrier as universal service support is diminished.⁶

III. NCTA's Proposal Does Not Uphold Universal Service Principles

A major universal service principle mandated by statute is that consumers in all regions of the Nation including rural and high cost areas "...have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."⁷ The Act further maintains that there should be specific, predictable and sufficient support mechanisms to preserve and advance universal service.

As mentioned previously, NCTA's Petition requests that the Commission adopt a rule that would reduce or eliminate the amount of high-cost support in any study area where there is **unsupported** facilities-based voice competition available (such as the voice service offered by some cable companies) to at least 75% of the households in the ILEC's study area⁸, or where the state has deregulated the ILEC's local exchange retail rates. While this may sound good at face value, the NCTA proposal presupposes that cable voice service is a competitive substitute for the ILECs' telecommunications service

⁶ Also referred to as a provider of last resort (POLR).

⁷ *Ibid.*

⁸ High-cost support could also be reduced if unsubsidized wireline voice competition was available to at least 50% of the households when the portion of the study area without competition has the same cost characteristics (e.g., similar terrain and population density) as the competitive part of the study area

and the availability of such a service deems universal service support to the ILEC unnecessary. However, there is nothing in the NCTA proposal by which a determination is made to ensure that the “competitive service” meets the principle of comparable telecommunications service and price, as mandated by the Act.

Universal service support is determined by the eligible telecommunications carrier’s (ETC’s) ability to provide the supported telecommunications services as outlined in Commission rules.⁹ These services must be offered throughout the ILEC’s whole service area. NCTA posits that the presence of **unsupported** wireline competitors in an ILEC’s study area indicates that universal service support should be reduced or eliminated. They state that the presence of such a competitor is sufficient to ensure that customers have access to reasonably priced services even if universal service support is reduced or eliminated.¹⁰ TSTCI contends this is not the case. This premise first begs the question of why the service is not supported if it is provided in rural, high-cost areas.

The Rural Cellular Association (RCA) states “...most carriers can provide service to 75% of the customers in an area without support. In RCA members’ experience, it is the high cost of providing service to the last 25% of the population that generates the need for support. Accordingly, RCA believes NCTA’s proposal would eliminate support just as an NCTA member company succeeds in cream skimming the highest-density and easiest to service portions of a particular service area. NCTA’s petition would be more credible if support reductions occurred when a competitor’s facilities pass 100% of a service area.”¹¹ TSTCI believes there is merit in what the RCA says.

⁹ See 47 C.F.R. Sec. 54.101.

¹⁰ See Petition at i.

¹¹ Comments of Rural Cellular Association, NBP Notice # 19, GN Docket No. 09-47, GN Docket No. 09-51, and GN Docket No. 09-137, filed December 7, 2009 at p. 21.

It is highly unlikely that the unsupported service meets the same rigorous standards required by the Commission for supported services in a rural, high-cost area or that the service is comparable to the telecommunications service available in urban areas. These competitors do not seek support in these areas because the services they provide do not meet the standards required for universal service support, and/or they don't offer the service throughout the ILEC's study area. NCTA contends that a cable operator may serve only a portion of the ILEC's study area because its franchise boundaries don't match the ILEC's study area boundaries.¹² (That may be the case; however, judging by the many sparsely populated areas without even basic cable service, there are certainly economic factors that guide cable providers' decisions to not request extensions of their franchises to many rural areas.)

Because the ILEC has obligations to offer service to all consumers in its study area, NCTA concedes that the ILEC may still need some universal service support to provide service in areas without competition. However, NCTA proposes that the ILEC must demonstrate the amount of support necessary to continue providing service in those parts of the study area without competition.

Such a proceeding alone will be extremely costly for the small rural ILECs, and the approach proposed by NCTA to determine costs will be extremely harmful if not disastrous to the ILEC's ability to provide service in the high-cost areas. The majority of TSTCI members, and many more rural ILECs throughout the nation (companies and cooperatives), are considered small entities under the Regulatory Flexibility Act , 5 U.S.C. § 604, (RFA) and it is incumbent upon the Commission to consider less

¹² See Petition, p. 13.

economically burdensome alternatives for these rural carriers than those proposed by NCTA as part of any rulemaking proceeding.

NCTA proposes that high-cost support be determined on the basis of a limited subset of ILEC costs that (1) would not be incurred but for the provision of service to customers that do not have a competitive option and (2) cannot be recovered through rates for the services (regulated and unregulated) provided over the network in the portion of the study area with no competition. Support “should be limited to those additional costs that are **solely** attributable to bringing service to the non-competitive portion of the study area and that cannot be recovered through these services.”¹³

(Emphasis added.) While NCTA’s proposal may sound simple, this is not the case.

NCTA “encourages the Commission to seek comment on whether there are proxies that could be used to streamline the process.”¹⁴ Due to the vast differences in terrain, geographic make-up, and population density in rural areas (among other things) an appropriate method of determining costs through a cost model has plagued the Commission and industry for many years. Averaging costs throughout a rural ILEC’s study area has been an accepted methodology by the Commission. A sudden mandate that these small rural carriers establish costs for a limited portion of their study area, while partially or entirely eliminating other categories of costs will be a monumental, burdensome, and costly task.

¹³ Petition at 17-18.

¹⁴ Petition at 20.

IV. Conclusion

As stated in previous filings with the Commission, TSTCI supports modifications to the Universal Service Fund that will stop explosive growth in the fund, but ensure that the principles of universal service are preserved. This includes such modifications as the elimination of the identical support rule and expansion of the contributor base, especially if the definition of supported services is expanded to include access to broadband Internet service. Moreover, universal service reform must be done in conjunction with intercarrier compensation reform.

The proposal made by NCTA appears to be self-serving by eliminating universal service support for rural carriers in the select rural areas where the cable companies have chosen to provide service. While NCTA boasts that cable service is being provided without support from the universal service fund, they dismiss the obligations imposed on the rural carriers to offer service to all in their study area – even those in the most remote, high-cost areas. TSTCI questions how under NCTA’s plan, the small, rural ILEC is supposed to fulfill the universal service principle that rural consumers “should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and . . . at rates that are reasonably comparable to the rates charged for similar services in urban areas”¹⁵ if USF support is provided to only a portion of their service area. The density and geography of the rural high-cost areas prohibit the cost effective delivery of service, but it is necessary to serve these areas to fulfill the National goal of affordable telecommunications services at affordable prices. Let’s remember that most if not all small rural providers operate in

¹⁵ FTA Sec. 254 (b) (3)

areas where the large providers made deliberate decisions in decades past to not provide service exactly because of the costs.

To add insult to injury, NCTA proposes that to maintain support in those high-cost areas, even the smallest rural carriers undertake a burdensome, expensive process to determine the amount of support that will be needed to sustain only those areas with unsupported competition, like the competition provided by some of the cable companies. TSTCI urges the Commission to deny NCTA's Petition and not implement any reform that will degrade telecommunications service to rural consumers.

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazos Telecommunications, Inc.
Brazos Telephone Cooperative, Inc.
Cameron Telephone Company
Cap Rock Telephone Cooperative, Inc.
Central Texas Telephone Cooperative, Inc.
Coleman County Telephone Cooperative, Inc.
Colorado Valley Telephone Cooperative, Inc.
Community Telephone Company, Inc.
Cumby Telephone Cooperative, Inc.
Dell Telephone Cooperative, Inc.
E.N.M.R. Telephone Cooperative, Inc.
Eastex Telephone Cooperative, Inc.
Electra Telephone Company
Etex Telephone Cooperative, Inc.
Five Area Telephone Cooperative, Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company, Inc.
Livingston Telephone Company
Mid-Plains Rural Telephone Cooperative, Inc.
Nortex Communications, Inc.
Panhandle Telephone Cooperative, Inc.
Peoples Telephone Cooperative, Inc.
Poka Lambro Telephone Cooperative, Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Cooperative, Inc.
South Plains Telephone Cooperative, Inc.
Tatum Telephone Company
Taylor Telephone Cooperative, Inc.
Wes-Tex Telephone Cooperative, Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Cooperative, Inc.
XIT Rural Telephone Cooperative, Inc.