

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF THE MINNESOTA INDEPENDENT COALITION

The Minnesota Independent Coalition (“MIC”)¹ submits the following Reply Comments to support comments filed in opposition to the Petition for Rulemaking filed by the National Cable & Telecommunications Association (“NCTA”).²

SUMMARY OF OPPOSITION TO PETITION

The MIC agrees with the many comments which identify critical flaws in NCTA’s underlying premises and assumptions and in its proposed procedures, including:

1. The NCTA Petition and the study on which it relies overstate the extent of facilities-based cable voice competition in rural ILEC (“RLEC”) study areas and any potential savings from adopting NCTA’s proposed procedures;

¹ The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers (“ILECs”) providing local exchange service to primarily rural areas in Minnesota. MIC members are responsible for providing telecommunications service to customers throughout 50% of Minnesota’s land mass, including service to over 250 small communities and their surrounding rural areas. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per MIC member exchange is approximately 1,100 with half serving fewer than 600 access lines.

² *Petition of the National Cable and Telecommunications Association for Rulemaking Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition* (“NCTA Petition”), GN Docket No. 09-51, WC Docket No. 05-337, and RM-11584 (November 5, 2009).

2. Neither local rate deregulation nor an RLEC's ability to offer bundled services is a valid indicator of local service competition or any lack of an RLEC's need for universal service high-cost support.
3. NCTA's Petition may well increase pressure on universal service support, impose unequal burdens on RLECs, and conflict with RLEC network design and costs; and
4. NCTA's proposed procedures are administratively unworkable, disproportionately burden RLECs, fail to provide predictable support and may well disrupt further broadband deployment in rural areas.

The MIC agrees with comments filed by the National Exchange Carrier Association, Inc. ("NECA"), that if NCTA's proposal were followed:

Universal service support would become inherently unpredictable, in violation of section 254 of the Act, and prospects for further deployment of broadband networks and services in rural areas would likely vanish.³

The MIC agrees with the NECA Comments, the Association Comments filed by the a group of three trade associations representing the interests of rural ILECs in Washington, Oregon and Colorado,⁴ and comments filed by other parties, that the harms associated with NCTA's proposal far outweigh the potential benefits. The MIC joins with NECA in requesting that the Commission "decline to initiate the requested rulemaking proceeding and instead continue to focus its efforts on developing and implementing universal service reforms producing both sufficient and stable funding for the broadband age."⁵

DISCUSSION

- 1. The NCTA Petition and the study on which it relies overstate the extent of facilities-based cable voice competition in RLEC study areas and any potential savings from adopting NCTA's proposed procedures.**

Many of the comments convincingly discredit a fundamental premise of the NCTA Petition, that there is an "extensive availability of unsubsidized cable voice services in rural

³ Comments of the National Exchange Carrier Association, Inc., GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) ("NECA Comments"), p. 2.

⁴ Comments of the Washington Independent Telecommunications Association, the Oregon Telecommunications Association and the Colorado Telecommunications Association, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) ("Association Comments").

⁵ NECA Comments at 25-26.

America.”⁶ The MIC agrees with the comments demonstrating that the Eisenach Study⁷ (which provides the basis for NCTA Petition), highly overstates the actual extent of competition.

NECA’s comments and comments by the United States Telecom Association (“USTA”)⁸ examine the data in the Eisenach Study and expose the reality that: “[d]espite NCTA’s hyperbolic claims, what the Eisenach study really shows is in the vast majority of RLEC study areas where cable telephony competition ‘is available,’ that availability only extends to a portion of the area.”⁹ NECA also correctly points out that “[i]n most RLEC areas where unaffiliated cable companies provide telephony services at all, such service appears to be available only in portions of RLEC study areas, and (contrary to Dr. Eisenach’s claims) those portions are likely to be in low-cost areas.”¹⁰

These facts are further substantiated in comments of the Western Telecommunications Alliance,¹¹ that “in the substantial majority of WTA member study areas, there is no cable television service or voice service offered by unrelated CATV operators,”¹² and “[i]n those instances an unrelated cable television system is operating within a WTA member’s study area, the service area of such system is virtually always limited to population centers such as towns and planned residential communities. WTA is aware of no situations where an unrelated CATV operator is serving significant numbers of customers outside of a WTA member’s main towns or population centers.”¹³

⁶ NCTA Petition at 8.

⁷ Jeffrey A. Eisenach, Ph.D, *Universal Service Subsidies to Areas Served by Cable Telephony* (Nov. 2009) (“Eisenach Study”).

⁸ Comments of the United States Telecom Association, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) (“USTA Comments”), pp. 4-5.

⁹ NECA Comments at 4.

¹⁰ *Id.* at 13

¹¹ Opposition to Rulemaking, Western Telecommunications Alliance, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) (“WTA Comments”).

¹² *Id.* at 9.

¹³ *Id.* at 10.

In the demonstrated absence of “extensive availability of unsubsidized cable voice services in rural America,”¹⁴ the Commission should decline to pursue any further consideration of the NCTA Petition.

2. Neither local rate deregulation nor an RLEC’s ability to offer bundled services is a valid indicator of local service competition or of any lack of an RLEC’s need for universal service high-cost support.

The second premise of the NCTA Petition is that deregulation of local rates or authorization for an RLEC to provide local service in a bundle of services with an unregulated bundled rate serves to evidence the existence of local service competition and the absence of a need for high-cost universal services support. The MIC agrees with the comments which explain that these factors often have nothing to do with the presence or absence of facilities-based competition, or with the need for (and benefit to the public from) universal service support.

Comments filed by NECA,¹⁵ the WTA,¹⁶ and by the Association¹⁷ explain that some states have chosen not to regulate rates charged by telephone cooperatives, not because of the existence of competition, but because cooperative members own the carrier and determine through elected boards what rates the carrier should charge. The NECA Comments also explain that Iowa replaced municipal regulation of telephone utilities with a comprehensive plan of state-level regulation in 1963, and exempted most small LECs in Iowa from any rate regulation, years before local telephone service competition existed.¹⁸

As NECA further explained, deregulation in many states is motivated not by the existence of competition, but by a desire to reduce or eliminate the need for complex rate cases, which are traditionally a prerequisite to change local service prices. The MIC members’ own

¹⁴ NCTA Petition at 8.

¹⁵ NECA Comments at 13-14.

¹⁶ WTA Comments at 16.

¹⁷ Association Comments at 15.

¹⁸ NECA Comments at 14.

experiences are in line with NECA's observation that these proceedings are particularly burdensome for RLECs, which are unlikely to attempt to raise rates to unreasonable levels since they are often owned and managed by local residents, who are directly accountable to family, friends, and neighbors for their ratemaking decisions.¹⁹

The NECA, WTA and Association Comments, as well as additional filed comments²⁰ discredit NCTA's premise that deregulation of local service rates means competition exists. These comments further explain that even where "deregulation" is associated with some degree of competition, different levels of regulation may continue to apply, depending upon the regulatory status of the carrier, market demographics (urban vs. rural markets, population density), and type of service at issue. The NECA Comments show that in many states, retail pricing of larger price-cap regulated carriers is regulated differently than retail pricing of smaller rate of return ILECs, and a number of states, including Minnesota,²¹ allow rate of return ILECs to opt into a form of alternative regulation.²²

Comments filed by CenturyLink capture the reality of "deregulation" for ILECs:

[T]otal deregulation does not exist anywhere in the country. Even though direct regulation of local basic rates for some customers may have been eliminated, ILECs generally still are required to offer service at the same rates in low-cost and high-cost areas. In addition, rate regulation of other customers or carrier of last resort obligations, or both, often continue to exist in these same areas. Rate regulation, and other regulatory requirements imposed solely on ILECs, such as carrier of last resort, continue to prevent them from cutting their costs by targeting only profitable customers for the provision of service, a responsibility not shared by other market players, such as cable, wireless or satellite.²³

¹⁹ *Id.*

²⁰ USTA Comments at 7; Comments of Windstream Communications, Inc., GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) ("Windstream Comments"), p. 13; Comments of the National Telecommunications Cooperative Association, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) ("NTCA Comments"), pp. 19-20.

²¹ Minn. Stat. § 237.773.

²² NECA Comments at 14-15.

²³ Comments of CenturyLink on the National Cable Telecommunications Association's Petition for Rulemaking, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) ("CenturyLink Comments"), p. 21.

MIC also agrees with comments explaining why an authorization to offer bundled services does not mean competition exists. The Association Comments describe a motivation to offer bundled services which is shared by many members of the MIC, and is wholly unrelated to competition in an RLEC's rural exchanges. Bundles are simply a very popular means of pricing services, and an RLEC may bundle services to show its customers that it has packages of services available like those available in most urban areas.²⁴

The Association Comments expose another critical flaw in NCTA's proposal, relating to its stand-in proxy for competition where the state has "substantially deregulated the local exchange rates charged" by the IELC in a study area. Even if an RLEC's rates for basic service are not regulated by a state commission, or an RLEC has authority to offer bundled services where the price of the bundled service is not regulated, there may not actually be any competition in the RLEC's study area.²⁵ However, under NCTA's proposed Rule, an RLEC in those circumstances would be required to produce a costly and burdensome study to demonstrate its cost for its "non-competitive" area. Notwithstanding the absence of any actual competition but as a result of meeting the test for "substantial state deregulation," the RLEC would be required to demonstrate its costs for its entire study area. These would be circumstances faced by many RLECs, including those in Minnesota. The Association Comments explain the potential consequences:

Under the NCTA proposal the entire study area, by definition, would be required to be deemed "competitive," even if it is not in reality. This would then result in rates in areas where there may be no competition at all to increase dramatically. This result would be contrary to Section 254's requirements and goals.²⁶

²⁴ Association Comments at 10.

²⁵ *Id.* at 11.

²⁶ *Id.*

The MIC also agrees with NECA’s statement that “contrary to NCTA’s claims, a decision by state regulators to ‘deregulate’ retail rates does not ‘sever[] the connection between the receipt of universal service funding and the reasonableness of a provider’s rates.’”²⁷ As these comments amply demonstrate, states deregulate local service rates for many different reasons, including some completely unrelated to the presence of competition. There are also many different “flavors” of deregulation, including pricing flexibility, but this is not full deregulation. Consequently, state “deregulation” of local rates does not serve to evidence the existence of competition, nor support further consideration of the NCTA Petition to revise the amount of universal service funding for RLECs.

- 3. The NCTA Petition would increase pressure on universal service support, impose unequal burdens on RLECs and conflict with RLEC network design.**
 - a. Disaggregation of high-cost support between competitive and non-competitive areas within a study area may increase rather than reduce pressure on universal service support mechanisms.**

Many comments explain the issues associated with disaggregating support between competitive and non-competitive areas, below study area levels, as would occur under the NCTA proposal.²⁸ The MIC agrees that disaggregation of support below the study area level could cause increases in overall USF support levels, and that NCTA’s estimate of cost savings under its plan is likely to be grossly overstated because it failed to consider this effect.

The NECA Comments²⁹ and the Association Comments³⁰ cite an analysis of the former Northwestern Bell-North Dakota study area demonstrating that, while the study area as a whole does not qualify for support under the Commission’s hybrid cost proxy model, 21 of the 35 wire

²⁷ NECA Comments at 15.

²⁸ NECA Comments at 15,18-20; CenturyLink Comments at 10-16; Association Comments at 6-7; Comments of AT&T Inc., GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) (“AT&T Comments”), p. 5.

²⁹ NECA Comments at 18.

³⁰ Association Comments at 6.

centers in North Dakota would qualify under the model if they are treated separately. This analysis showed that disaggregation to the wire center level would substantially increase model-based support in that area.

The NECA Comments also describe its 1996 analysis, when cost proxy models were proposed for determining USF support, on the effects of disaggregating cost proxy model calculations to smaller service areas (study area, serving wire center, and census block group levels):

The most conspicuous observation was the support amounts rise significantly as the geographic region used to calculate the support becomes smaller. NECA concluded the reason for this is there is less averaging of high and low cost areas as disaggregation moves toward smaller service areas.³¹

These two analyses demonstrate that disaggregation of support below the study area level could cause increases in overall USF support levels, and contradict NCTA's claims that its proposal will reduce high cost support funding.

b. The NCTA Petition fails to consider the unequal regulatory obligations placed on RLECs as compared to facilities-based cable competitors.

As many comments point out, the NCTA proposal also fails to consider the inconsistency between and harm caused by reducing or ending support to RLECs in areas where competition exists, but continuing to impose carrier of last resort ("COLR") obligations on the RLEC for that same area.³² COLR obligations require RLECs to serve all customers in their service territory, regardless of line losses to competitors. While revenues therefore may decrease, the cost of maintaining the RLEC network does not. NECA accurately describes that, "there is little if any

³¹ NECA Comments at 18.

³² NECA Comments at 16; USTA Comments at 7; Association Comment at 5-6; NTCA Comments at 5; Comments of the Independent Telephone & Telecommunications Alliance, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) ("ITTA Comments"), p. 10; Comments and Opposition of the Rural ILEC Associations, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (January 7, 2010) ("Rural ILEC Comments"), p. 10.

cost reduction experienced by RLECs when customers choose to use an alternate provider's services."³³

In contrast, cable providers have the ability to choose the areas they serve, avoiding high-cost low density areas,³⁴ and COLR obligations can result in significant cost differences between RLECs and cable VoIP providers.³⁵ NCTA's proposal to reduce funding to RLECs where they experience losses to cable competitors ignores these competitive inequalities and cost differences, and is inconsistent with RLECs' continued COLR obligations to provide service throughout their service territories.

c. NCTA's Proposal is inconsistent with RLEC network design and costing principles.

The MIC agrees with the WTA Comments that the critical flaws in the logic of NCTA's "no support for lost lines" argument are that it ignores that: (1) RLECs and other carriers invest in, build and operate networks rather than individual customer lines, and (2) the cost of serving each customer is not the same.³⁶ As NECA also explains, the "fundamental flaw" in the NCTA proposal is that:

NCTA's costing approach ... incorrectly presumes a network's costs can be split into two parts: a core network, which recovers all switching, interoffice and administrative costs, and spokes or loops radiating from the core out to noncompetitive areas, which have separate costs. In reality, there is only one network and its design depends on the characteristics of the entire study area.³⁷

The MIC agrees with NECA and other parties³⁸ that NCTA's proposal identifying a "limited subset" of costs for continued USF funding in non-competitive areas is unreasonable and fails to reflect any realistic understanding of network design and costing principles. The

³³ NECA Comments at 17; *see also* WTA Comments at 14: "Moreover, the costs of individual RLEC customer lines do not decrease when a customer terminates service to move to a competitor."

³⁴ CenturyLink Comments at 11, 16-19.

³⁵ Rural ILEC Comments at 10.

³⁶ WTA Comments at 14.

³⁷ NECA Comments at 21; *see also* Rural ILEC Comments at 10.

³⁸ NECA Comments at 20; USTA Comments at 9; WTA Comments at 4; ITTA Comments at 3, 7.

MIC also agrees with the ITTA Comments that the “narrow parameters” set under the NCTA proposal for recovery “do not provide adequate recovery of rural network costs in a manner consistent with universal service principles mandating comparable rates and services.”³⁹

NCTA’s failure to acknowledge or understand RLEC network design and costing principles, and failure to acknowledge or understand how high-cost universal service operates, also appear to have caused NCTA to propose specific, unjustifiable, reductions or elimination of support in switching,⁴⁰ interoffice transport,⁴¹ overhead costs,⁴² and Interstate Access Support.⁴³ As is explained in the Comments cited above and in the USTA Comments,⁴⁴ NCTA’s attack on these specific categories of costs is misinformed and misguided and should not be pursued.

NCTA’s suggestion that support calculations should recognize the “ability of the carrier to recover network costs through the provision of both regulated and unregulated services provided over the carrier’s network in the non-competitive portion of the study area”⁴⁵ is equally invalid. NECA correctly notes that a support mechanism which considers revenues from non-regulated sources would also need to take into account the costs of providing such services.⁴⁶ In any event, several Comments also note that adopting such a proposal would be unlikely to produce cost savings, since many RLECs often find it unprofitable to offer long distance and other “add on” services, such as TV programming, in rural areas.⁴⁷ For example, some MIC Members which provide cable or IPTV to their customers are charged by programming content providers up to 20 times the rate paid by large cable providers, for identical content. This often

³⁹ ITTA Comments at 7.

⁴⁰ NCTA Petition at 18, n. 47.

⁴¹ *Id.* at 19.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ USTA Comments at 9-10.

⁴⁵ NCTA Petition, Attachment A, at 2.

⁴⁶ NECA Comments at 21.

⁴⁷ NECA Comments at 21; *see also* WTA Comments at 25; CenturyLink Comments at 15.

results in the provision of cable and IPTV service to rural customers at a net break-even or even a loss. To incorporate revenue from these unregulated business activities without consideration of costs (as impacted by unequal pricing standards) would be inequitable.

4. NCTA’s proposal is administratively unworkable, disproportionately burdens RLECs, does not meet the predictable support requirements of Section 254 of the Act, and would severely disrupt further broadband deployment in rural areas.

The MIC agrees with comments recognizing that the NCTA proposal would lead to “an administrative morass”⁴⁸ and is “administratively unworkable.”⁴⁹ As NECA describes:

[E]ach time a competitor⁵⁰ asserts one of the NCTA’s proposed trigger conditions has been met in a specific area, the Commission would need to conduct a complex, fact-intensive adjudicatory proceeding to determine whether those assertions are true, and if so, how much support should be considered “necessary” in that area.⁵¹

NECA further explains that since there are no existing standards for the determinations required to be made, and since responses will vary from region to region (if not in every single petition), “the Commission and interested parties might find themselves embroiled in complex ‘trial-type’ adjudicatory proceedings potentially involving cost studies, presentations by expert witnesses, cross-examinations, and other time-consuming (and expensive) processes.”⁵²

NECA’s observations predicting the difficulty of these proceedings should bear particular weight, due to its long successful history of dealing with regulatory costing and study area issues. However, NECA is hardly alone in envisioning the burdensome nature of petition brought under NCTA’s proposed Rule,⁵³ and the MIC shares the same concerns.

⁴⁸ ITTA Comments at 16;

⁴⁹ NECA Comments at 23.

⁵⁰ *But see* Association Comments at 4-5 (explaining that the ability to bring a petition to reduce support is not limited to “competitors”).

⁵¹ NECA Comments at 23.

⁵² *Id.* at 23-24.

⁵³ Association Comments at 12; NTCA Comments at 20-21; ITTA Comments at 16; WTA Comments at 23.

The MIC agrees with the NTCA Comments that the NCTA proposal would place an inappropriately heavy burden on RLECs and on the Commission.⁵⁴ Each RLEC, no matter how small or how limited its resources, would be required to substantiate its individual case, at the risk of losing high-cost support -- while still retaining COLR obligations within its entire study area.

The MIC agrees with the WTA Comments:

NCTA's proposed "minimum support" test goes so far beyond the scope of [state commission rate cases, NECA audits or USAC audits] that the only reasonable interpretation is that it is designed to ensure that the RLECs subjected to it will lose most or all of their high-cost support.⁵⁵

The MIC further agrees with comments assessing that the NCTA proposal will consume more resources than could possibly be saved.⁵⁶

Both the NECA Comments⁵⁷ and the Association Comments⁵⁸ noted that the inherent unpredictability of universal service funding that would result from adoption of the NCTA proposal would violate Section 254 of the Act. The MIC agrees with that position and joins with those parties cautioning that the NCTA proposal would create regulatory uncertainty for an extended period of time, destabilize RLEC access to the capital necessary to invest in broadband networks.⁵⁹

CONCLUSION

For all of the reasons noted above, it is evident that that NCTA's proposal fails to provide predictable, specific, and sufficient USF support as required by Section 254 of the Act. It would disrupt deployment of broadband facilities in many high-cost rural areas and harm the

⁵⁴ NTCA Comments at 20-21.

⁵⁵ WTA Comments at 23.

⁵⁶ NECA Comments at 24; NTCA Comments at 20-21; WTA Comments at 10.

⁵⁷ NECA Comments at 24.

⁵⁸ Association Comments at 12.

⁵⁹ NECA Comments at 24-25; WTA Comments at 21-22; ITTA Comments at 16-17.

affordability and comparability of broadband services to many consumers in these areas. This impact would be inconsistent with the National Broadband Goals set forth in the American Recovery and Reinvestment Act of 2009. The MIC, therefore, urges the Commission to deny NCTA's Petition for Rulemaking.

Date February 22, 2009

Respectfully submitted,

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and

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