Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
High-cost Universal Service Support	)	WC Docket No. 05-337

To: The Commission

COMMENTS OF NTCH, INC.

It is with a profound sense of déjà vu that NTCH, Inc. ("NTCH") offers these comments regarding the Commission's proposals to re-structure the focus and operation of the Universal Service Fund. The Commission has recognized for at least six or seven years that the Universal Service program as currently applied is seriously flawed. It distributes billions of dollars to rural LECs to support their "high cost" operations. While this is well-intentioned, the subsidy has the effect of embedding and, perhaps even increasing, the high costs of those operations because there is no incentive to reduce costs or achieve economies. At the same time, other FCC policies (such as the cap on CETC funding) have the effect of deterring wireless competitors from entering rural markets where a wireless operator could not only present a service alternative to the local LEC but spur the LEC to reduce its charges (and costs) to meet the competitive threat. The whole program serves to prop up outdated technologies at enormous cost to the public when it is not at all clear either that a subsidy is even necessary, or, if it is necessary, that it's going to the right entity for the right services.

The Commission knows all this, which is why it has been proposing relatively radical fixes to the USF program for years. But nothing ever happens. Instead of reforming USF, the Commission consistently takes steps to make it even worse, presumably bowing to pressure from rural LECs who seem to have convinced the Commission that civilization as we know it will come to an end if somebody other than them provides phone service to rural customers. No reputable economist or policy-maker believes the system that is in place makes economic or policy sense, yet it continues to chug along to the tune of $4 billion a year. None of the millions of words that have been filed in FCC proceedings since 2004 have made any difference in bringing about a modicum of reform. So with that background, NTCH returns to its keyboard here somewhat jadedly. The Commission has simply not been able to muster the political will to make drastic and urgently needed changes in the program which will be unpopular with RLECs, despite saving the public money and rationalizing a broken system. Perhaps the adoption of the National Broadband Plan at last gives the Commission a broader context in which to discharge its public interest obligations, a blueprint of principles to follow, and a sense of urgency about effectuating real reform.

The five principles espoused by the Commission regarding the Connect America program are so fundamentally sound as to require little discussion. There is no reason why these principles should not be applied as quickly as possible to the existing voice-based USF program as we transition to a broadband and IP-based communications infrastructure. NTCH supports these principles fully, offering the following thoughts as to how implementation of those principles can be best achieved. Implementation of the NBP will effectively address the issues posed in the current NOI and NPRM.

Principle 1: **The CAF should only provide funding in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service.**

Implementation of this proposal will yield immediate cost savings to the CAF since in many marginal rural areas there are CETCs who would be willing to provide service if they could compete realistically with the subsidized provider in the market. Therefore, in connection with Principle 2, below, the Commission should be able to significantly reduce the subsidies in many markets -- in some cases to zero -- by making the subsidy available on a lowest bid basis. A reverse auction or similar subsidy award methodology would properly incent providers to seek only the bare minimum subsidy that they really need to sustain profitable service. NTCH anticipates that such a methodology would not only draw interested competing carriers to regions which now have only a single provider but would also cause rural LECs who now receive very substantial subsidies to accept considerably lower ones in order to ensure that they retain any subsidy at all.

We emphasize that this approach should only apply to the high cost subsidy program. The Life Line and Link Up programs, which are effectively and efficiently delivering subsidies to the neediest individuals, should continue in much their current form, though with eligibility for receipt of these funds streamlined from the current procedures so that as many carriers as possible can qualify to serve these customers.

Principle 2: **There should be at most one subsidized provider of broadband per geographic area**

The Commission seems to have recognized that there is no public interest benefit in subsidizing more than one carrier to provide service in high cost areas. The operative principle is that the American people need to provide a subsidy to reduce the cost of telephone service to people in high cost areas so that their costs will be in line with the national average. While there are valid reasons to question the very premise of subsidizing high cost areas, we will not address those here. (*E.g.*, Why should we subsidize phone service but not other goods or services that cost more in rural areas (such as gas, appliances, and food)? And if we are trying to put rural folks on a par with the national average, don't we need to also factor in the much higher cost of housing that people in urban areas must pay?) For present purposes, we assume that the national policy – for better or worse – is that high cost areas should get a telecom subsidy. But as a matter of policy, all we are trying to accomplish is to ensure that residents of high cost areas pay no more than the national average. There obviously needs to be only one subsidized carrier to achieve that end, and the carrier that receives that subsidy should be the one who can deliver low cost service to the public at the lowest cost to the USF.

By offering the USF subsidy to the carrier who is willing to provide the service at the lowest cost, the Commission can obviate entirely the need to examine the cost models discussed in Section II(B) of the NOI. Bidding carriers would themselves determine what level of support they need to provide the service at a designated cost level to the public. Competition would drive them to ask for only the amount of support that they actually need. The USF should provide the lowest level of support specified by any carrier willing and able to provide the supported services. A reverse auction would be an easily administrable way of determining who the low cost carrier is. It would also ensure that bidding carriers would not gold-plate and pad their cost structures in order to qualify for higher subsidies; on the contrary, they would have to actually cut costs in order to be competitive. From an economic policy perspective, this approach seems so evidently superior to the present wasteful system that it is difficult to understand why the present system persists. The reason, of course, is that the present system of entitlements has become so ingrained and made RLECs so profitable that it has proven politically impossible to wean them away from those subsidies. Everyone should recognize that fact and stop pretending otherwise.

One major flaw in the present system which the Commission could easily correct is to require that any carrier receiving a high cost subsidy permit other carriers to interconnect at a cost that is commensurate with the national average. As it stands, RLECs frequently receive USF funds to subsidize lower cost service to their customers. However, they do not pass this subsidy along to other carriers in the form of lower interconnection rates. Often these rates are many multiples of the rates charged in urban areas and are so prohibitively high that potential new entry into the rural market by competing carriers is not economically feasible. These interconnection rates have become a serious choke point on competition by a monopoly service provider. While the situation merits anti-trust attention in any event, certainly if a carrier is receiving a USF subsidy it can and should be required to extend interconnection at reduced rates. That would make it feasible for wireless competition to enter the market and offer not only lower cost service to the public but perhaps a better quality and variety of services than the old-fashioned monopoly provider has been supplying.

Principle 3: **The eligibility criteria for obtaining broadband support from CAF should be company- and technology-agnostic so long as the service provided meets the specifications set by the FCC**

This principle, which seems so obvious, cannot be emphasized enough. The current system favors, either implicitly or explicitly, the local wireline carriers at the expense of wireless ones. This is evident, for example, in the Commission's decision to cap USF funding for wireless carriers (leaving them, by definition, underfunded in the provision of basic services) while leaving wireline carriers (who are by the far the largest consumers of high cost USF support) to continue sucking down support dollars without limit.

The Commission's proposal to now cap high cost support for LECs as well as wireless carriers is a step in the direction of technological agnosticism,[1] but even here we can see the unconscious bias operating. For wireless carriers, the cap was set at 2007 levels, a situation that was worsened by the ever-expanding number of ETC's who were sharing in the capped wireless USF pie. For wireline carriers, however, the Commission is proposing to cap support at 2010 levels (which we assume are higher than 2007 levels). Wireline carriers also do not have to contend with new entrants who carve the pie up into smaller pieces. So that cap not only starts out higher but remains constant rather than being constantly decreased, as is the case for wireless ETCs. Again, let's call a spade a spade: this is not technological agnosticism – it is a demonstrable favoring of wireline technology over wireless.

The truly tech-agnostic approach would be to simply apply an across-the-board cap at 2010 levels to *all* ETC recipients.[2] This would limit the overall amount of USF funding which must be generated from customer user fees while ensuring that the resulting fixed fund is distributed neutrally across the entire spectrum of ETCs. The Commission offered no reason whatsoever why wireline ETCs should be preferred in this regard, and such a preference is

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[1] For the record, NTCH wishes to lodge an objection to the Commission's regular misuse of the term "agnosticism" in this context as a synonym for neutrality. In philosophy, agnosticism holds that man is incapable of knowing any fundamental truths about God or metaphysics. Here the Commission is not saying that it is, or should be, incapable of knowing the technologies involved; it is saying that it should be neutral toward them. See, e.g., "*Why I am Not a Christian*" by Bertrand Russell, a noted agnostic.

[2] We should stress that NTCH does not favor caps at all. Indeed, NTCH believes that caps of any kind in the absence of fundamental USF reform have the effect of unlawfully cutting subsidies below levels which theoretically are necessary to sustain the supported services. However, if a cap is to be imposed – and we recognize, of course, that the DC Circuit has approved caps as a way of achieving sustainability of the Fund – then it should be applied neutrally to <u>all</u> ETCs.

directly antithetical to the "technology-agnostic" Principle espoused by the National Broadband Plan.

Principle 4: **The FCC should identify ways to drive funding to efficient levels, including market-based mechanisms where appropriate, to determine the firms that will receive CAF support and the amount of support they will receive**

NTCH has discussed this point above. A reverse auction seems like the most objective and open way of awarding USF support at the lowest cost necessary to get the job done.

Principle 5: **Recipients of CAF support must be accountable for its use and subject to enforceable timelines for achieving universal access**

This principle is perhaps the hardest one to implement. Accountability can be enforced by periodic audits, but such threats have not kept LECs from using USF funds for broadband facilities, which are not as yet a supported universal service. So clearly the auditing system leaves something to be desired. Given the amounts of money being distributed, the Commission must step up its auditing efforts in this regard. The imposition of time lines is also a tricky matter. If the reverse auction process is to provide a meaningful comparison among bidders, there must be a target date by which any USF recipient would have to achieve the provision of broadband service. But that date would not necessarily be the same in all markets, and it would be impossible for the Commission to determine pre-auction what the correct date for any market might be. There would also be a natural reluctance to pull the plug on a provider who had substantially met the established benchmark but had nevertheless fallen short.

NTCH's suggestion is to let the market handle the problem rather than regulation. High cost providers would receive the full amount of their funding if they accomplish universal broadband within their service areas within three years. They would lose 25% of their support for each year thereafter that it takes them to provide full service. If full service was not provided within six years, they would lose support altogether and a new provider would be selected.

Conclusion

Implementation of the National Broadband Plan gives the Commission the opportunity to finally clean up the Augean stable of USF by rationalizing it, making it more fair, and reducing the cost to the American public. The Commission should seize the opportunity to effectuate this long-needed reform.

Respectfully submitted,
NTCH, Inc.

By________/s/_______________
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