

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

In the Matter of )  
)  
Inquiry Concerning the Deployment of ) WT Docket No. 10-159  
Advanced Telecommunications Capability to )  
All Americans in a Reasonable and Timely )  
Fashion, and Possible Steps to Accelerate )  
Such Deployment Pursuant to Section 706 of )  
the Telecommunications Act of 1996, as )  
Amended by the Broadband Data )  
Improvement Act )

**COMMENTS OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

Jill Canfield  
Senior Regulatory Counsel

Richard Schadelbauer  
Economist

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

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**COMMENTS OF THE  
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**I. INTRODUCTION & SUMMARY & STATEMENT OF INTEREST**

The National Telecommunications Cooperative Association (NTCA) hereby submits these comments in the above captioned proceeding.<sup>1</sup> All of the Association’s members are rural telephone companies as that term is defined in the Communications Act of 1934, as amended.<sup>2</sup> The members are full service telecommunications companies, most providing broadband Internet access, video, local, long distance and/or wireless service to their rural communities.

In its *Inquiry*, the Commission seeks data and information to complete its annual task of determining whether broadband is being deployed to all Americans in a reasonable and timely

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<sup>1</sup> Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, *Seventh Broadband Deployment Notice of Inquiry*, GN Docket No. 10-159, FCC 10-148 (rel. Aug 6, 2010) (“*Inquiry*”).

<sup>2</sup> 47 U.S.C. §153(37).

fashion.<sup>3</sup> NTCA asserts that the Commission should define “broadband” consistently for all regulatory purposes, and that the definition should reflect consumer expectations. While NTCA recognizes the need for determining where broadband is not available to consumers, NTCA vigorously opposes the use of models. They have been consistently shown to fail to capture the vagaries of providing telecommunications and advanced services in rural areas.

Rural carriers have done a commendable job of deploying broadband to rural communities largely due to predictable and stable funding mechanisms and rate of return regulation. However, there are specific actions the Commission should take to accelerate deployment in rural areas. It should immediately expand the base of contributors to the universal service fund, expand the call signaling rules to mitigate phantom traffic, and clarify that all IP to PSTN and PSTN to IP traffic is subject to intercarrier compensation. Finally, recognizing that access to video spurs deployment, the Commission should act to ensure that rural carriers have nondiscriminatory access to video content.

## **II. THE DEFINITION OF “BROADBAND” SHOULD BE CONSISTENT FOR ALL REGULATORY PURPOSES AND SHOULD EVOLVE OVER TIME.**

The Commission seeks comment on how to define “broadband” for purposes of its *Seventh Broadband Deployment Report*.<sup>4</sup> NTCA believes that “broadband” should refer to the same speeds whenever or however the term is used by the Commission.<sup>5</sup> To do otherwise would mean that an area could be deemed served by broadband for one regulatory purpose, but be declared unserved or underserved for another – leaving providers and consumers unsure about what services and applications are available in any given location and leading to a whole host of other

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<sup>3</sup> *Inquiry*, ¶ 1.

<sup>4</sup> *Id.*, ¶ 5.

<sup>5</sup> NTCA agrees with the Commission that the terms “broadband” and “advanced telecommunications capability” should be used synonymously. *Inquiry*, n.2.

potentially inconsistent regulatory consequences. A consistent broadband definition across all reports, analysis, and proceedings affords all parties stability and predictability and avoids confusion.

NTCA supports ensuring that services meeting the broadband threshold are capable of supporting advanced video services, such as two-way video conferencing and streaming high-definition video.<sup>6</sup> The *National Broadband Plan* notes that typical advertised speeds that consumers purchase have grown approximately 20 percent each year and that it is likely that 90 percent of the country will have access to advertised peak download speeds of more than 50 Mbps by 2013.<sup>7</sup> The *National Broadband Plan* also points out that actual download speeds are approximately 40 to 50 percent of the advertised “up to” speeds.<sup>8</sup> This means that 90 percent of the country will likely have access to actual download speeds of at least 20 Mbps (50 times 40 percent) within three years time.<sup>9</sup> “Broadband” as defined by the Commission should therefore be forward looking and evolve to reflect this exponential growth availability and demand.

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<sup>6</sup> *Inquiry*, ¶ 5.

<sup>7</sup> Omnibus Broadband Initiative, FCC, Connecting America: The National Broadband Plan, , GN Docket No. 09-51, at XIV(2010), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296935A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf) . (“National Broadband Plan”)

<sup>8</sup> *Id.* at 21.

<sup>9</sup> *See*, 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, Joint Comments of the National Exchange Carrier Association, Inc, *et.al*, at 17 (filed July 12, 2010) (“Joint Association Comments”).

### **III. THE USE OF MODELS TO MEASURE BROADBAND AVAILABILITY AND DEPLOYMENT COST WILL NOT WORK FOR RURAL AREAS.**

NTCA has explained repeatedly in prior filings why models fail to capture the vagaries of providing telecommunications and advanced services in rural areas. The same holds true in the context of assessing availability.

In its *Inquiry*, the Commission seeks comment on “how to better assess broadband availability using data the Commission collected and relied upon in the most recent broadband deployment report.”<sup>10</sup> The Commission references the Broadband Assessment Model created as part of the National Broadband Plan to estimate broadband performance data for telecommunications providers, cable operators, and mobile wireless providers.<sup>11</sup> While not asking whether a Model is an appropriate mechanism for assessing broadband availability, the Commission seeks comment on the methodologies used in the Model.<sup>12</sup> NTCA, together with NECA, OPASTCO, WTA, the Rural Alliance, and more than three dozen other associations, addressed this issue extensively in their comments on the National Broadband Plan and Connect America Fund.<sup>13</sup> The Associations noted that the proposed model is “too coarse-grained to measure support needs for Rural Incumbent Local Exchange Carriers (“RLEC”) service territories.”<sup>14</sup> Specifically, that analysis identified the following flaws in the proposed model:

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<sup>10</sup> *Inquiry*, p. 5.

<sup>11</sup> FCC Broadband Assessment Model at 17-26 (2010) (“Model”), available at [http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-\(obi\)-working-reports-series-technical-paper-broadband-assessment-model.pdf](http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-(obi)-working-reports-series-technical-paper-broadband-assessment-model.pdf).

<sup>12</sup> *Inquiry*, ¶ 13.

<sup>13</sup> Joint Association Comments, Appendix A.

<sup>14</sup> Joint Association Comments, p. 53.

The Broadband Assessment Model incorporates a number of faulty assumptions regarding the extent to which particular areas are “unserved.”<sup>15</sup> By using commercially-available coverage databases and maps that impute where carriers are licensed to provide service, rather than taking account of the actual locations in which services are provided, the model substantially overestimates coverage.<sup>16</sup> Additionally, as Appendix A to the Joint Association Comments on the Connect America Fund explains in significant detail, the model relies on demand, speed, and middle mile capacity assumptions that are inconsistent with actual consumer demand, thereby further promoting inaccurate conclusions

The model utilizes flawed processes to determine the cost of extending existing facilities.<sup>17</sup> For example, the model uses a table of vendor equipment costs from a mid-sized carrier as the single source of DSL equipment costs, even though such costs may be significantly higher for smaller carriers.<sup>18</sup> Elsewhere, the model’s reliance on a single “rural classification” for operating expenses fails to account for the varying costs incurred by smaller carriers in serving areas with different characteristics. Finally, while the model purports to account for cost variations by dividing companies into three size groups, the classifications in the model yield little, if any, useful analysis when one considers the actual size of the companies that would be affected by the model. Specifically, the smallest classification in the model is for companies under one million lines, notwithstanding that 99.5% of all rate of return telephone companies have fewer than 50,000 lines.<sup>19</sup>

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<sup>15</sup> See Joint Association Comments, Appendix A, Section I.

<sup>16</sup> *Id.* pp. 3-4.

<sup>17</sup> Joint Association Comments, Appendix A, pp. 10-13.

<sup>18</sup> Joint Association Comments, p. 56.

<sup>19</sup> *Joint Association Comments*, pp. 56-57.

The model has not been statistically validated.<sup>20</sup> Rather than comparing model results to a battery of actual data, the model was compared to previous proxy models. This is not true statistical validation, as it compares the achieved model results to other estimations of reality, rather than with reality itself. The end result casts a shadow of doubt over any claims of model accuracy.

Middle-mile capacity was not an included variable in the model.<sup>21</sup> High middle mile and backbone costs are significant factors that can prevent rural LECs from offering broadband service at target speeds. These costs and associated capacity constraints can lead to consumers experiencing slower speeds even when the last mile infrastructure serving them is state-of-the-art. The model, however, seems to assume that inadequate *last mile* infrastructure issues are responsible for target speeds not being met.

The model's net present value (NPV) approach to estimating costs of providing broadband service ignores several critical real-world parameters.<sup>22</sup> The model generally treats existing investment as needing no ongoing cost recovery, and thus fails to recognize that cost recovery is in fact spread over the in-service life of equipment. Second, networks constructed on a 4/1 Mbps availability target (the target assumed by the model) will be quickly outmoded for the reasons discussed in the introduction to these comments. Using NPV as a planning tool thus leads to a short-sighted assessment of technologies.

The combined magnitude of these problems can perhaps best be seen in the divergent subscribership findings between the model and Form 477 data. While the model estimates 14

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<sup>20</sup> *Id.*, Appendix A, pp. 14-20.

<sup>21</sup> *Id.*, pp. 10-13.

<sup>22</sup> *See, Id.* Sections II, III.

million Americans are currently unserved, Form 477 data indicate that number is 24 million. While the NOI states that “it is not unusual for different methodologies to yield different estimates,”<sup>23</sup> the sheer magnitude of the difference—the 477 estimate is more than 170% that of the model—indicates that it would not be prudent to place faith in the model results, particularly given the critical importance that these estimates will ultimately hold for rural communities, consumers, and providers. As the Joint Associations correctly assert, “a model based on flawed statistical techniques, unreliable and unrepresentative data, and unsound engineering assumptions cannot reasonably be used as a tool to estimate support needs for small rural service areas.”<sup>24</sup>

The extreme fluctuations in the myriad variables that RLEC service providers face in deploying broadband within their service areas cannot be accurately captured in a single model. Compounding the problem is that fact that while the errors inherent to the modeling process may be insignificant and eventually “even themselves out” for larger providers, they can have devastating consequences for a RLEC with a much smaller scale of operations.

In the *Inquiry*, the Commission seems to view the use of a model as a given, asking only for comment on model inputs or how the model results should be treated. This conclusory approach is concerning as both a substantive and procedural matter, given that the Commission is simultaneously seeking comment on the same model in another proceeding. As explained in those prior comments and further above, NTCA continues to assert that models are an inappropriate tool for analyzing the operations of rural service providers. The stakes for these providers and the communities they serve are enormously high—these carriers are often the only providers of broadband and other advanced services to wide swaths of their study areas. The

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<sup>23</sup> *Inquiry*, p. 7.

<sup>24</sup> Joint Association Comments, p. 59.

Commission should not balance the future viability of broadband availability on something as tenuous as an economic model.

#### **IV. SUFFICIENT AND STABLE REGULATORY MECHANISMS HAVE ENABLED RURAL CARRIERS TO DEPLOY BROADBAND IN A TIMELY MANNER**

The Commission seeks comment on its analysis of rural areas in the *2010 Sixth Broadband Deployment Report*. In its report, the Commission found that unserved areas appeared to be more rural than areas where broadband is available. While it may be true rural areas are more unserved than urban areas at a very high level, the facts tell a different story when one takes a more granular look at areas served by Rural Telephone Companies. Largely due to stable and predictable regulatory and support mechanisms, such as the federal universal service fund (“USF”) and Rate of Return regulation (“RoR”), rural telcos have done a commendable job of deploying broadband to their subscribers.<sup>25</sup>

Section 254 of the Communications Act of 1934, as amended (the “Act”), has promoted more widespread access to modern telecommunications. It calls for specific, predictable, and sufficient support mechanisms that are capable of not only preserving universal service, but simultaneously advancing it as well. Section 254 also envisions comparable and affordable services to all Americans. RLECs depend significantly on high-cost USF cost recovery

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<sup>25</sup> For the last eleven years, NTCA has conducted its annual Broadband/Internet Availability Survey to gauge the deployment rates of advanced services by its member companies. In the late spring and early summer of 2009, NTCA sent an electronic survey form to each of the companies in NTCA’s email database; 156 members (31%) responded. Ninety-eight percent of the 2009 survey respondents offered broadband, as “broadband” was then defined by the FCC, to some part of their customer base. NTCA 2009 Broadband/Internet Availability Survey Report (released November 2009), available at <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2009ntcabroadbandsurveyreport.pdf>

mechanisms under Section 254 to provide service in high cost rural areas, relying on these revenues to maintain networks and services in rural communities across the country. If these funding sources are abandoned without sufficient replacement mechanisms, evolution of existing networks will halt, and the considerable progress and success of RLECs in deploying broadband services more deeply into rural areas over the past decade could come to a screeching halt. Without support, carriers may also face the unfortunate need to cut back on plant maintenance or other aspects of operations that have helped to deliver high-quality broadband networks to rural America. Broadband adoption rates in RLEC service territories might also plummet, as cuts in high-cost support could force broadband end-user rates to rise to unaffordable levels.

Similarly, RoR regulation has provided a stable and predictable environment in which RLECs have been able to meet their consumers' needs. It promotes highly desired investment in America's rural communications networks by providing revenue stability to the carriers that serve these areas, while also keeping consumer rates fair by providing carriers limited returns at levels set by this Commission and State regulatory bodies. While not guaranteeing any minimum level of investment return, RoR regulation provides an opportunity for rural carriers to recover specified expenses and earn an authorized return on capital investments, therefore supporting investment in high-cost areas where typical business case incentives might be limited or not otherwise exist. RoR carriers are subject to extensive state and federal oversight, as well as oversight by other parties, holding waste, fraud, and abuse in check.. Interstate RoR regulation has a proven track record of success in enabling deployment and provision of broadband services to rural areas.<sup>26</sup> The *National Broadband Plan* correctly recognized that much of the rural

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<sup>26</sup> In developing the *National Broadband Plan*, the OBI Broadband Task Force was provided with overwhelming evidence that stable and sufficient USF mechanisms and rate-of-return regulation enabled RLECs to achieve high levels of broadband deployment in their serving areas.

portions of territories served by companies operating under price caps do not have access to broadband services. Incentive regulation has proven to be substantially less successful than RoR regulation in encouraging deployment of broadband to rural areas.<sup>27</sup>

This combined regulatory framework – sufficient, predictable USF support together with stable RoR regulation – has enabled carriers operating in hard-to-serve high-cost areas to install, provide, and maintain critical high-speed connections between rural communities and the world. The economic and civic livelihood of rural communities depends on affordable access to and the continued deployment and operation of such advanced networks. The Commission should take a more granular look at the successful efforts at broadband deployment to date in rural markets and look to replicate further this broadband deployment success story.

## **V. THE COMMISSION SHOULD TAKE IMMEDIATE ACTION TO ACCELERATE DEPLOYMENT**

Section 706 requires the Commission to take actions to accelerate broadband deployment if it finds that broadband is not available is not available to all Americans in a reasonable and timely manner.<sup>28</sup> There are three actions the Commission can and should take immediately to serve this mandate; these specific steps would stabilize the industry, provide certainty, and promote investment during the transition to comprehensive reform of the high-cost program and intercarrier compensation (“ICC”): (1) reform the USF contribution methodology to include, at a minimum, all broadband providers and services in the contribution base; (2) strengthen the call signaling rules in order to mitigate the problem of phantom traffic, and confirm that all IP-to-

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*See, e.g.,* Comments filed by NECA, NTCA, OPASTCO and WTA, GN Docket No. 09-51. *See also,* NTCA 2009 Broadband/Internet Availability Survey Report, November 2009, available at: <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2009ntcabroadbandsurveyreport.pdf>.

<sup>27</sup> *National Broadband Plan* at 141.

<sup>28</sup> 47 U.S.C. § 1302(b).

PSTN and PSTN-to-IP traffic is subject to applicable ICC payments when a provider uses the PSTN to originate and/or terminate such traffic; and (3) promote broadband adoption by ensuring that providers have access to video content on reasonable and non-discriminatory terms and conditions. As explained further below, the longer the Commission takes to address these issues, the more challenging it will be for RLECs to meet the broadband demands of their customers, as well as the goals of Congress and the Commission. Fortunately, there is no need for any additional procedural delay. There have been open proceedings on all three of these issues for many years, and the record on each is more than sufficient to proceed expeditiously to resolve each matter without the need for further public comment.

#### **A. Universal Service Contribution Reform.**

The Commission has had an open proceeding on USF contribution methodology since 2001, and has sought comment on fundamental contribution reform several times.<sup>29</sup> In light of

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<sup>29</sup> See, e.g., *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008) at 6536-6564, 6669-6695, 6735-6762, App. A, ¶¶ 92-156, App. B, ¶¶ 39-104, App. C, ¶¶ 88-151 (*Comprehensive Inter-carrier Compensation and Universal Service Fund Reform FNPRM*); *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Public Notice, 18 FCC Rcd 3006 (2003); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration of the North American Numbering Plan and North American Numbering Plan Cost*

the voluminous record that already exists, the Commission would be well-justified in acting now to reform the contribution methodology. Through appropriate reform, which must necessarily include expansion of the contribution base to include at a minimum all broadband Internet access providers, the Commission can ensure that the USF is sustainable for the long term. Just as important, requiring equitable contributions from all broadband providers will also make more feasible the USF expansion that is necessary to enable the provision of affordable access to truly robust broadband services to all Americans, including but not limited to those living in RLEC service territories.

**B. Strengthen the Call Signaling Rules to Mitigate Phantom Traffic and Clarify that IP-to-PSTN and PSTN-to-IP Traffic is Subject to Intercarrier Compensation.**

Extensive records also exist on enhanced call signaling rules to address phantom traffic as well as the ICC obligations that should apply as VoIP traffic accesses and/or traverses the PSTN. For example, as recently as November 2008, the FCC sought comment on proposed rules that would facilitate the transfer of necessary call identification information to terminating service providers, improving their ability to bill providers from whom they receive traffic.<sup>30</sup> In

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*Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72, *Number Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002); *Federal-State Joint Board on Universal Service, et. al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002); *Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, NSD File No. L-00-72, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001).

<sup>30</sup> *Comprehensive Intercarrier Compensation and Universal Service Fund Reform FNPRM*, 24 FCC Rcd 6641–6649, 6841-6848, App. A, ¶¶ 326-342, App. C, ¶¶ 322-338. Under the proposal in the FNPRM, in the event that network traffic did not contain the information required by the Commission’s rules, the terminating service provider would

addition, since 2006, numerous parties have made filings proposing rules to mitigate phantom traffic,<sup>31</sup> and when the Commission sought comment on the Missoula Plan, it issued a separate public notice seeking comment on the Missoula Plan's phantom traffic proposal.<sup>32</sup>

In addition, the Commission has sought comment on many petitions that have been filed by parties requesting a ruling confirming that those seeking to originate and/or terminate IP-to-PSTN or PSTN-to-IP traffic are required to pay ICC for their use of carriers' networks. Thus, it would be entirely reasonable for the Commission to address these discrete ICC issues prior to issuing an Order on more comprehensive reform. Doing so would assure equitable treatment of all providers, give the Commission a more stable and solid foundation upon which to achieve broader USF and ICC reform, and ultimately promote investment in broadband-capable networks based upon this steadier foundation.

### **C. The Commission Can Help Spur Broadband Adoption In Rural Areas By Ensuring RLECs Have Nondiscriminatory Access To Video Content.**

The Commission has correctly recognized that there is a direct connection between a provider's ability to offer video service and to deploy broadband networks.<sup>33</sup> These findings are consistent with the experiences of RLECs who serve as both broadband service providers and

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be permitted to charge its highest terminating rate to the service provider delivering the traffic.

<sup>31</sup> See, e.g., NECA, Petition for Interim Order, CC Docket No. 01-92 (filed Jan. 22, 2008); Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Mar. 17, 2006); Letter from Karen Brinkmann, Latham & Watkins, on behalf of the Midsize Carriers, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 21, 2006); Letter from Glenn Reynolds, USTelecom, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Apr. 4, 2008); Letter from Jeffrey S Lanning, USTelecom, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 10, 2006).

<sup>32</sup> *Comment Sought On Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, CC Docket No. 01-92, Public Notice, 21 FCC Rcd 13179 (2006).

<sup>33</sup> *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2007) at ¶ 62.

multichannel video programming distributors (MVPDs). In fact, NECA has found that pool members offering DSL with a video component or option have a DSL adoption rate nearly 24 percent higher than companies offering DSL without access to any video services.<sup>34</sup> This not only increases the number of rural consumers taking advantage of the numerous benefits that broadband Internet access offers, it also results in increased revenues for RLECs. This increased revenue, in turn, provides RLECs with the incentive and additional resources to invest in the deployment of broadband services to additional rural consumers and to improve the quality (including speeds) of service where it is already offered. In short, the ability of RLECs to provide multichannel video services is a vital rural broadband issue.

However, RLECs face significant obstacles to obtaining nondiscriminatory access to the consumer demanded video content that is necessary for offering a viable multichannel video subscription service. These obstacles include:<sup>35</sup>

- Outdated retransmission consent rules, which prevent RLECs from providing programming to consumers at market-based rates;
- Forced tying, also known as forced carriage, where RLECs are required to purchase unwanted programming in order to offer “must have” content and is often imposed under the burdensome retransmission consent process;
- Broadband tying, where RLECs are required to pay an additional fee for access to online content based on its number of broadband subscribers, regardless of whether or not these customers subscribe to multichannel video services;
- Video programmers that cite the use of shared head-ends as an excuse to deny access to content or impose unwarranted and burdensome financial or technological obligations; and
- Abusive and predatory pricing practices.

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<sup>34</sup> NECA Comments, on NBP Public Notice #19, GN Docket No. 09-51 (filed Dec. 7, 2009) at 6.

<sup>35</sup> See, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No 07-269, NTCA Initial Comments, (filed May 19, 2009).

As with the issues discussed *supra* (USF contributions, phantom traffic, and the applicability of ICC to IP traffic as it makes use of the PSTN), the Commission should take immediate action to reform the program access rules, without seeking additional public comment, as there is a more than ample record upon which to act. Proper reform would help to drive rural broadband adoption and usage, as well as provide RLECs with the additional revenues necessary to improve the reach and quality of their broadband networks.

## **CONCLUSION**

It is imperative that the Commission accurately assess broadband deployment, correctly identifying areas that are served and distinguishing them from areas that remain unserved. The determinations in the on-going Section 706 analysis will drive the Commission's policy and regulatory broadband decisions. NTCA asserts that the Commission should define "broadband" consistently for all regulatory purposes, and that the definition should reflect consumer expectations. While NTCA recognizes the need to determine where broadband is not available to consumers, models fail to provide a complete or accurate picture with respect to broadband deployment. The Commission should recognize that rural carriers have successfully deployed broadband to many of their subscribers due to predictable and stable funding mechanisms and rate of return regulation. Finally, immediate action expanding the base of contributors to the

USF fund, declaring that phantom traffic and IP traffic as it accesses or traverses the PSTN are both subject to intercarrier compensation, and ensuring that rural carriers have nondiscriminatory access to video content will hasten rural broadband deployment.

Respectfully submitted,



By: /s/ Jill Canfield  
Jill Canfield  
Senior Regulatory Counsel

Richard Schadelbauer  
Economist

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

## CERTIFICATE OF SERVICE

I, Rita H. Bolden certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in via electronic mail to the following persons:

Julius Genachowski, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B201  
Washington, D.C. 20554  
[Julius.Genachowski@fcc.gov](mailto:Julius.Genachowski@fcc.gov)

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B115  
Washington, D.C. 20554  
[Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov)

Commissioner Robert M. McDowell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-C302  
Washington, D.C. 20554  
[Robert.McDowell@fcc.gov](mailto:Robert.McDowell@fcc.gov)

Commissioner Mignon Clyburn  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A302  
Washington, D.C. 20554  
[Mignon.Clyburn@fcc.gov](mailto:Mignon.Clyburn@fcc.gov)

Commissioner Meredith Attwell Baker  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A204  
Washington, D.C. 20554  
[Meredith.Baker@fcc.gov](mailto:Meredith.Baker@fcc.gov)

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445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, D.C. 20554  
[fcc@bcpiweb.com](mailto:fcc@bcpiweb.com)

Chelsea Fallon  
Federal Communications Commission  
Spectrum and Competition Policy Division,  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 8-B201  
Washington, D.C. 20554  
[chelsea.fallon@fcc.gov](mailto:chelsea.fallon@fcc.gov)

Eliot Maenner  
Spectrum and Competition Policy Division  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 8-B201  
Washington, D.C. 20554  
[eliot.maenner@fcc.gov](mailto:eliot.maenner@fcc.gov)

/s/ Rita H. Bolden  
Rita H. Bolden