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

October 8, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

***Ex Parte* Notice**

***A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Connect America Fund*, WC Docket No. 10-90; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing* a *Unified Intercarrier Compensation Regime*, CC Docket 01-92**

Dear Ms. Dortch:

On Thursday, October 7, 2010, Michael Romano, Senior Vice President of Policy at the National Telecommunications Cooperative Association ("NTCA"), and the undersigned met with the following representatives of the Wireline Competition Bureau, Telecommunications Access Policy Division: Vickie S. Robinson, Chin Yoo, Erica Myers and Nicholas Degani.

The meeting focused on NTCA's positions regarding contributions to the Federal Universal Service Fund ("USF"). NTCA advanced the position that contributions to USF should be assessed on revenues and the base of contributors should be expanded.

Revenues vs. Other USF Contribution Methodologies

NTCA has consistently argued that assessing revenues is the superior method for determining contributions to the USF. It is technologically neutral and captures the value that consumers place on competing services without regard to the technology used to deliver the service. It reflects the balance consumers strike between competitive offerings, new and old technologies and the evolution of consumer preference.

NTCA explained that a numbers based contribution methodology is backward-looking, placing a disproportionate responsibility for USF contribution on a small and shrinking group of telecommunications users. As the country transitions to IP-based communications, fewer telecommunications users would shoulder a disproportionate USF burden. A numbers based methodology saddles traditional wireline and wireless voice service with the entire USF contribution burden, effectively accelerating the migration away from these services to cheaper alternatives. The Commission should focus on the future, creating a nexus between telecommunications usage and USF payments.

Using a connections based USF contribution methodology is also riddled with problems. Speed determinations, shared capacity, and wholesale versus retail offerings would complicate the system. And it makes little sense. There is often no correlation between connection speeds and telecommunications usage. The connection speed merely identifies bandwidth that may be available. Customers often purchase excess bandwidth for future growth or backup, and the speed does not reflect actual usage. Interconnection arrangements – in which it is not clear who is providing a connection to whom – and the use of varying technologies only further complicate the "connections" landscape. There is also scant information on the record that explains how a connections methodology would operate.

Improving a Revenues-Based System

NTCA acknowledged that the current contribution system needs reform. The USF contribution factor is growing to a politically unsustainable level and loopholes exist. However, it is NTCA's position that appropriate reform, which includes expanding the base of assessable revenues within the confines of the existing revenues-based assessment system, will ameliorate those concerns. At a time when the Commission is considering massive reforms to the distribution mechanisms within the USF (*e.g.*, migration to a CAF), it should be seeking to place these funding programs on a more stable foundation. The Commission should seek to use and improve a revenues-based system that is known and understood to a significant degree, rather than create from whole cloth a new system and thereby run the risk of creating new and unforeseen pressures and loopholes that undermine the Commission's larger reform objectives.

NTCA recommended that the Commission should assess revenues associated with both retail broadband Internet access and non-interconnected VoIP services, in addition to the traditional telecommunications and interconnected VoIP revenues that form the contribution base today. Doing so would provide substantial new funding for the new funding objectives of broadband deployment and adoption, while still permitting the Commission to reduce the overall contribution factor considerably.

Such reforms would provide precisely the funding foundation needed to achieve the laudable, but ambitious, objectives spelled out in the National Broadband Plan to: (1) ensure that high-quality, high-capacity affordable service will remain available in high-cost areas; and (2) address the need to support the deployment of broadband networks in areas where service is not available today. Short of such reform and attention to the funding needs that arise from these objectives, however, the Commission faces severe risk of being unable to succeed fully in either objective.

The Commission Has Ample Authority and Good Policy Reasons to Undertake such Contribution Reforms

The Commission has ample authority to expand the list of assessable services to include services delivered by providers of "telecommunications," including Internet access providers. "Broadband Internet access providers" include any provider that offers for sale to an end user, any broadband Internet access service. As a threshold, if the Commission determines that it will distribute funds to support broadband Internet access services under Section 254 of the Communications Act, as amended, then it clearly has the authority to require contribution derived from revenues associated with such services under the same section.

The Commission has other grounds as well upon which it could assess revenues received from retail broadband Internet access services. As NTCA explained, Section 254(d) confers permissive authority to require any provider of interstate "telecommunications" to contribute. A telecommunications transmission component is an element of any integrated broadband Internet access service offering. As the Commission found with Interconnected VoIP providers in 2006,[1] broadband providers "provide" telecommunications by including such inputs as a component of the larger, integrated product. In that order, the Commission determined that interconnected VoIP service was telecommunications, but did not resolve whether the service was information service or telecommunications service, effectively concluding that it did not matter.[2] Using the same rationale, even if Internet access service is an information service, it may be subject to universal service contributions.[3]

The Commission also has ancillary authority to assess contributions on revenues associated with broadband Internet access services. The preservation and advancement of USF is clearly laid out as a statutory mandate. Prior to Section 254 becoming law, *Rural Telephone Coalition* in 1988 established that the Commission could use Title I and Section 1 in the first place to create a universal service program. [4] The Court, borrowing the language of Section 1 of the Communications Act, held that "[a]s the Universal Service Fund was proposed in order to further the objective of making communication service available to all Americans at reasonable charges, the proposal was within the Commission's statutory authority."[5]

NTCA also supports assessing revenues derived from non-interconnected VoIP services. The question with respect to assessment of such services is really just a definitional one, rather than a jurisdictional one. The current rule defining interconnected VoIP results in only providers of two-way services being assessed.[6] This definition makes little sense, however, in the context of a

1 *Second Contribution Methodology Order,* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 21 FCC Rcd 7518 (2006).
2 *Id.* at 7537.
3 The Commission's construction of section 254(d) was upheld in *Vonage Holdings Corporation v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).
4*Rural Telephone Coalition v. FCC,* 838 F.2d 1307 (D.C. Cir 1988).
5 *Id.* at 1315.
6 47 C.F.R. § 9.3

USF program that seeks to support the networks upon which traffic rides. On a "per session" basis, the fact that data may be flowing in one direction or two (or the fact that a session could only be initiated from or received by a given station) is irrelevant to the burden placed on the network by the session as it occurs.

Finally, NTCA suggested that the Commission study further how to address business models that rely heavily upon driving traffic from others to specific websites or web-based enterprises. Expanding the base to include broadband Internet access revenues within the contribution base could conceivably capture many of the network costs arising out of such business models, to the extent that these enterprises buy broadband Internet access services to receive traffic.[7] To the extent that some of these enterprises instead "peer" for the exchange of their traffic, however, there could be little or no revenues to assess in connection with the delivery of traffic. NTCA therefore believes the Commission should investigate further how enterprises that rely heavily upon driving Internet traffic – but do not pay for either telecommunications or broadband Internet access services in doing so – can be made to pay a fair share to support the networks that in turn support their business models.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2020 or jcanfield@ntca.org.

Sincerely,

/s/ Jill Canfield
Jill Canfield
Senior Regulatory Counsel

cc: Vickie S. Robinson
Chin Yoo
Erica Myers
Nicholas Degani

7 Presumably, providers already contribute today to the extent they sell telecommunications services to such enterprises based upon the revenues received from such sales. But under today's system, a provider of broadband Internet access service to such firms would not be required to contribute based upon those sales.