

**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
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

COMMENTS OF NTCH, INC.

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NTCH, Inc. ("NTCH"), by its attorneys, submits these comments on the Commission's proposal to reform its USF/ICC regime. NTCH has long advocated fundamental reform of the Commission's USF and ICC policies in numerous comments filed over the last decade. Though everyone, including the Commission, seems to recognize the need for radical reform, the problem has come to seem intractable, like the federal deficit: everyone wants the deficit to go down substantially, but no one wants to either pay more taxes or see their own entitlements drop. This is how policy paralysis occurs both on Capitol Hill and at the Commission. NTCH is therefore pleased that the Commission has chosen to address this matter head on, understanding that everyone must lose something in this process if everyone is ultimately to gain.

NTCH's perspective is that of an independent Tier III mobile services provider in mostly rural or smaller communities around the United States. It serves a niche market of pre-paid, usually lower-income, customers who were largely ignored by the major carriers when NTCH got into the business. NTCH's formula is the simple one of building and operating its facilities at costs much lower than the majors and then offering service to the public at commensurately lower prices than the majors. As will be set forth below, there are several concrete ways in which the Commission can reform the current system so as to 1) reduce the overall costs of USF to the public significantly, 2) stimulate the provision of voice and broadband service to underserved areas, 3) increase competition, which should reduce prices to the public while improving service offerings, and 4) eliminate gold-plating. This will require confronting – and perhaps even slaughtering – some sacred cows, but it's a confrontation that is long overdue and necessary if the public interest is to be served.

A. Reform of the USF Must Be Structural and Universal

Over the years, the Commission has put in place various caps or other tweaks to the USF that fail to address the biggest problem: over \$4 billion dollars a year is going in high cost support to LECs in circumstances where the services they provide could actually be provided by another carrier either with *no subsidy at all* or a significantly reduced one. Because the current "high cost" system effectively rewards LECs for inefficiency and bloating, no one should be surprised that inefficiency and bloating have resulted. That's what the very structure of the system economically demands. The example that comes most readily to mind here is the rural LEC that provides service to an area also served by NTCH. The RLEC has a modern six-story glass and steel building and an army of 20 (!) accountants to serve a customer base of 3000 people. NTCH by contrast serves more than 40,000 people with an accounting staff of 3 and 500 sq. ft. of rented space. The American people are picking up the tab for this kind of gold-plating masquerading as "high costs" and it must stop. The inefficiency is then multiplied by having the accountants work on the paperwork necessary to justify high cost support and then having USAC personnel review the paperwork. High costs thus generate even higher costs.

We must stop and remind ourselves from time to time that the point of the USF system is not to sustain RLECs, no matter how quaint and time-honored a part of the telecom landscape they are, but rather to ensure that the public in high cost areas have access to basic telecommunications at prices comparable to the prices charged in urban areas. To that end, the Commission should:

- a. *Eliminate support entirely* in areas where any carrier is willing to provide unsupported service. There is absolutely no reason to provide subsidies for service in areas where the market is handling or willing to handle the public need. Not only are subsidies

unnecessary, but the current system of dual or treble subsidies to multiple carriers in the same areas borders on the irrational. NTCH's experience is that the USF subsidy actually serves to deter market-based unsubsidized carriers from entering particular markets because they cannot compete fairly head to head with a subsidized carrier.

b. *Where subsidies are needed, use reverse auctions to get the needed service at the lowest cost to the public.* The Commission has toyed with the reverse auction concept for years, but it should embrace it wholeheartedly. By using this mechanism to decide which single carrier should be subsidized for providing carrier of last resort service in areas that would not otherwise receive service, the Commission will reduce substantially the amounts that are now paid because cost cutting and efficiency would now be rewarded. Whichever technology – wireless, wireline or even satellite – that can provide the needed services most cost effectively will be employed as correctly driven by economics. In some cases this will mean that wireless carriers will assume the mantle of receiving the sole subsidy in an area and take on COLR obligations, but if that is the cheapest way to accomplish the job, that's what should happen. In other cases, we anticipate that the incumbent LECs who currently receive subsidies will continue to receive them, but at a significantly reduced rate and stripped of the gold-plating that will now be a burden rather than an advantage. Again, by providing a single subsidy to a single low cost provider in each area, the overall size of the fund will be reduced dramatically. This reform will also at one stroke eliminate the current bias in the system in favor of wireline technology (often a dated technology at that) and eliminate the need for complicated subsidy paperwork and USAC oversight (since the low bid process ensures that the recipient carrier will not pad).

c. *Minimize "glide paths" and "transition periods".* The Commission's NPRM seems to envision a lengthy process of weaning incumbent high cost recipients away

from the USF trough. The idea is that such carriers have based their business plans on the expectation of support for years to come and these expectations should not be disappointed. This is bad reasoning. First, the Commission effectively slashed support for CETCs in 2009 by imposing a cap on CETC high cost support while at the same time adding new CETCs to the recipient pool. Some carriers suffered cuts of as much as 58% in the funding they received. Yet somehow most CETCs have managed to continue providing service as they did before. Given the huge benefits that ILECs have already enjoyed over the years in public contributions to their infrastructure, there is no reason to think that they will suddenly vanish or go broke if the subsidy is eliminated quickly as happened with CETCs. They can make do by cutting costs or perhaps even reducing profits. Second, once we conclude, as we must, that the current subsidies are too high, unnecessary and even counterproductive, the imperative should be to eliminate them as quickly as possible – not to continue them out of some beneficence to the recipients. Prolonging a bad policy just prolongs the evil. To be sure, the incumbents will implore the Commission to effectively continue their current bonanza for as long as possible, but the Commission should resist those pleas. You don't deal with morbid obesity by gradually reducing the number of potato chips consumed over a period of years – you go on a crash diet. And that's what the current system badly needs.

d. *Require recipients of USF funding to provide reasonable access.* One serious problem which NTCH has experienced is that the RLECs who are typically recipients of USF funding do not return this favor in the form of reasonable interconnection charges to competing carriers. NTCH recently dealt with a LEC who charges *35 times more* to interconnect in its serving area than is charged in more urban areas. The anomaly here is that the USF subsidy system is intended to permit ETCs (who are often LECs) to offer reduced rates to

customers comparable to rates in urban areas, yet the LECs are not applying this same principle to the rates which they charge other carriers for interconnection. Instead, they are using their monopoly position to charge prospective competitors rates so high that competition is not possible. There is no reason why the Commission should not tie the carrot of USF funding to fairer treatment of competitors in several respects.

The Commission should:

1. Require USF high cost recipients to charge interconnection rates that are reasonably comparable to the rates charged in urban areas. This would be fully consistent with the overall objectives of the USF concept. It would also assist immeasurably in opening closed monopoly markets to fair competition because right now the exorbitant rates of interconnection in some markets literally makes competitive entry impossible.
2. Require USF recipients to make available to competitors at discounted rates space on towers, poles, structures, rights of way and other facilities which have been subsidized by USF funds. Having contributed toward these assets, the public should get the full benefit of them through increased competition using those facilities.
3. Require recipients of USF funds to adhere to Commission-established intrastate access charge guidelines. Because applying interstate access charge limits to its intrastate operations would be a voluntary act of the ETC carrier, the Commission would avoid jurisdictional issues over its right to regulate intrastate access.

B. ETC Designation Must Be Simplified

The current ETC designation process is unduly and needlessly cumbersome and time-consuming. To be sure, in some states the process is relatively swift, but in others the process involves a lengthy hearing and the embedded carriers do their best to impede or obstruct entry by

new ETCs into "their" market. They have every incentive to do so and unfortunately the system permits such obstructionist tactics. Indeed, this is the very reason that Section 332(c)(3) of the Act expressly pre-empts state regulation of competitive entry into the CMRS market. But now, in a backdoor but equally effective way, competitive entry is being retarded by the erection of procedural barriers to receiving ETC designation. Without ETC status, a new entrant cannot hope to compete effectively with carriers who *are* receiving subsidies. The process can take as much as three years, involve thousands of pages of documents, and be prohibitively expensive – and even if the applicant is ultimately successful, its designated area may be highly circumscribed. This Commission itself is not without blame since often even unopposed or relatively routine ETC designation requests can take more than a year or two to be processed. While that delay is occurring, the public and the carrier are being denied the benefits that Congress intended to flow from the ETCs.

In addition to delay, the process often involves study area re-definitions to comport the wireless carriers' designated ETC areas with newly created study areas. The Commission should therefore take the following steps:

1. For federal ETC designations, the ETC process should be virtually automatic as long as the ETC applicant certifies that it will meet all obligations of an ETC. A reverse auction applicant would be required to agree to meet the obligations of an ETC in any area it "wins," and would then be automatically designated an ETC if and when it wins.

2. The Commission should declare that the adoption by a state of laws, rules or regulations for designating ETCs that are more onerous than those imposed by the

Commission are a barrier to entry in violation of Section 253(a) of the Act.¹ States would continue to administer ETC designations as contemplated by the Act, but they could not interpose procedures which serve to delay or block the entry of competing carriers by delaying approval of their ETC status.

3. Study areas that define ETC service areas are now based on antiquated LEC service areas which of course bear no relationship either to political boundaries or wireless service areas. The current system is needlessly tied to these obsolete study areas. Within the purview of the current statutory scheme, the Commission, in conjunction with a Joint Board, should adopt a generic rule that study areas proposed by wireless carriers may conform to either their actual service areas or their licensed service areas as defined by the Commission. This would eliminate the time-consuming need for constant re-definition of study areas in order to deviate from LEC-based study areas.

4. The process of ETC designation for Lifeline/Linkup-only ETCs should be expedited. These providers offer direct and immediate benefits to the most disadvantaged and needy persons in the communications marketplace. It is especially essential that they not be delayed in their ability to have access to funds which are then effectively passed on to eligible consumers. The Commission should therefore adopt simplified and expedited rules for such carriers where designation is virtually automatic as long as they certify to be compliant with all pertinent FCC rules, including post-designation monitoring rules.

¹" No state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. " 47 U.S.C. 253(a).

C. Traffic Pumping and Stimulation Should be Banned

The Commission's NPRM clearly understood the seriousness of the traffic pumping problem and the need for rectification. Here NTCH can add an instance from its own experience. It offers customers flat rate unlimited calling for \$29 per month in one market. However, a company associated with a nearby LEC had set up a gay chat line for which the call termination charge was 2.5 cents per minute. One chatter ran up 14,000 minutes of use to that chat room, resulting in a charge to NTCH of over \$350. A loss of \$321 per month per subscriber cannot be made up in volume. These chat rooms, meeting places, conference calling features, and other artificial devices are simply subterfuges that permit so-called CLECs to impose unrestrained termination charges on the carriers (who cannot control the calls) instead of on the customers who should rightly pay, based on full disclosure, the costs of such services. The measures proposed by the Commission to stop these practices are long overdue and should be implemented as quickly as possible.

D. Broadband Should be Covered by USF

While the Commission is committed to expanding the coverage of the universal program to broadband, it devoted only a single paragraph in its 239-page NPRM to the jurisdictional basis for this step. The question necessarily arises because Section 214(e) of the Act limits ETC eligibility to "common carriers." A common carrier is defined as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy..." 47 USC Section 153(10). While the definition of common carrier does not track precisely the definition of "telecommunications service" provider, it is clear that to be a common carrier, one must provide telecommunications services. One who provides "information services" would not qualify as a common carrier, nor has the Commission

ever treated an information service provider as a common carrier. Moreover, the Act describes "universal service" as "an evolving level of *telecommunications services*." 47 U.S.C. Section 254. (Emph. added). No matter how far or wide the definition of universal service evolves, the supported services will always be limited to telecommunications services -- not information services. Yet at the same time the Act establishes as an objective the provision to consumers of "access to telecommunications and information services, including interexchange services and advanced telecommunications and information services." (Section 245(b)(3))

How can the Commission accommodate these differing vectors of the statute? It could require recipients of USF funds to also provide broadband information service as a condition of funding. While broadband service would not itself be supported with USF funds, the carrot of support would incent carriers to provide broadband and the availability of USF support for regular telecommunications services would indirectly aid the ability of the company to deliver broadband.

Or -- and this is a step which NTCH has urged the Commission to take for years -- the Commission could revisit its definition of "telecommunications service" to include broadband internet access. The Commission has increasingly treated broadband providers as if they were common carriers, imposing quasi-common carrier regulation on them under its ancillary jurisdiction or other available hooks in the Act. The Commission has grasped that broadband service effectively and in a practical sense does indeed involve "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." Yet because of the implications for regulation of the internet, the Commission has long avoided taking the obvious

step of calling a spade a spade. If the Commission is to adopt a judicially sustainable way of supporting broadband through universal service, however, it must bite that bullet.

To be sure, the Commission could and should at the same time forebear from applying the full panoply of common regulation to pure broadband providers -- something that would clearly be justified by the competitive nature of broadband service today. The Commission could apply just the very lightest touch of regulation -- only that needed to treat broadband providers on a competitively equal basis with other telecommunications service providers who offer comparable service to the public. This would ensure that broadband providers 1) are eligible for USF support and 2) receive all the other privileges and bear all the responsibilities (such as paying access charges and contributing to the USF) that other functionally equivalent providers bear.

Respectfully submitted,

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