

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| Petition For Waiver, <i>Nunc Pro Tunc</i> , Of |) | |
| North Central Telephone Cooperative, Inc. |) | |
| Of The Revision To Section 36.605 Of The |) | |
| Commission’s Rules That Eliminated |) | |
| Eligibility Of Local Exchange Carriers |) | |
| To Receive Safety Net Additive Support |) | |

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”)¹ hereby files comments in the above-captioned proceedings to support the Petition submitted by North Central Telephone Cooperative (“NTC”) for reinstatement, *nunc pro tunc*, of Safety Net Additive (“SNA”) support. Specifically, NCTC requests waiver of the revision of Section 36.605² that eliminated eligibility of local exchange carriers to receive SNA support with respect to qualifying investments made during 2010³ (the “Petition”). NCTC would have begun receiving SNA support in February 2012 but for changes in rules made by the Federal Communications Commission (“Commission”) that, as described below and further in prior filings,⁴ should be reconsidered in full. In any event, if the Commission will not reconsider and reverse a punitive

¹ NTCA represents more than 570 rural telecommunications providers. . All of NTCA’s members are rate-of-return-regulated local exchange carriers, and many of its members provide wireless, video, broadband Internet, satellite, and/or long distance services to their communities; each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended

² 47 U.S.C. Sec 36.605

³ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“Order”)

⁴ *See*, National Exchange Carrier Association, Organization for the Promotion and Advancement of Small Telecommunications Companies and Western Telecommunications Alliance, Petition for Reconsideration and Clarification of the Order (filed Dec. 29, 2011).

policy that reflects the very kind of “flash-cut” that the Commission professed a desire to avoid in its *Order*,⁵ the Commission should at a minimum grant the waiver sought here by NCTC. Indeed, NCTC has demonstrated that good cause exists for the requested waiver and that strict compliance with the Commission’s rules would be inconsistent with the public interest.

By way of background, NCTC organized in 1951 as a 1,600 member cooperative and today its 100 employees serve 10 exchanges with 18,000 access lines. The cooperative provides its rural subscribers with voice, internet and IPTV services. It also provides wireless backhaul. NCTC has been proactive in enhancing its service offerings and lowering its cost structure.⁶ NCTC has provided state of the art, modern services to its rural consumers despite its unique challenges including low customer density, difficult terrain and a socioeconomically disadvantaged customer base.⁷

In 2010, NCTC made extensive capital investments to upgrade its facilities in rural areas that qualified it for SNA support without regard to line loss. These investments were part of a multiyear development plan that began in 2008. Prior to that, most of the subscriber base had access to only dial up internet. After analysis and several studies, on January 25, 2010, NCTC was awarded a loan and grant combination to accelerate construction of its broadband network in underserved areas under the Broadband Initiatives Program. In other words, NCTC invested specifically at the call of President Obama for “shovel-ready” projects and prudent investment in infrastructure that can deliver a payback both in the near- and longer-term. Under the Program, NCTC will be reimbursed for eligible costs associated with the construction of the broadband

⁵ “By adopting a multi-year transition, we seek to avoid a flash cut that would dramatically affect either carriers or the consumers they serve” *Order*, ¶ 242

⁶ Petition pp 2-3.

⁷ Petition pp 4-5.

facilities over a five year period. In addition to the RUS Loans and the BIP award, NCTC has invested substantial funds from operational cash flow and obtained commercial bank loans to contribute to the network modernization the CLEC build out.

NCTC invested to modernize its network and intended to continue its efforts to push the fiber into the network, shorten all loops, add cloud business servers and continue business modernization. However, the feasibility analysis of NCTC's plan relied upon the \$3M SNA payment which was designated to enable the cooperative to accelerate the new services and expense reductions. The NCTC application for government funding, and the federal agency approval of it, was reasonably based on the conclusions that the loans could be repaid from revenue streams that existed under the Commission's rules in effect at that time. Unfortunately, even as the administration was calling upon companies to deploy broadband and invest in infrastructure projects that would create jobs, the Commission just a few years later adopted a "flash-cut" change to SNA that pulled the rug out from many such projects – thereby contradicting the very policy the administration and Congress sought to promote and undermining the viability of those same projects.

The SNA rule was adopted in 2001 to address the concern that the cap imposed on total high cost support would deter investment. The Commission stated, “. . . . providing this additional support will provide rural carriers with appropriate incentives to invest in the network infrastructure serving their communities.”⁸ In February 2011, the Commission changed course, explaining that the rule does not ensure that investment is reasonable or cost efficient, concerned

⁸ *Federal- State Joint Board on Universal Servicer, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, 16 FCC Rcd 11244, ¶ 79 (2011).

that the support would accelerate construction of fiber-to-the home in an area served by a cable operator.⁹ However as NCTC points out, no actual examples of such problems were identified in the NPRM or the Order.¹⁰ Instead, the NPRM and the Order both cited concerns about SNA qualifications based only upon *line loss* – that is, carriers “backing into” qualification for SNA by virtue of line loss making their investments per line look larger.¹¹ There was thus little, if any, indication that carriers qualified to receive SNA support based upon investments made would lose access to such support. Although the Commission seemed to recognize this distinction in deciding to wind down SNA support over a multi-year period for those who qualified based upon line loss while allowing those that qualified for SNA based upon 2009 and earlier investments to continue to receive it, the Commission unfortunately adopted an incongruous “flash-cut” of support for those carriers who would have qualified based upon 2010 and 2011 investments. Although NTCA disagrees generally with the elimination of investment-based SNA support, such elimination is particularly inequitable and improper as to companies that lose access to USF support associated with investment in broadband-capable networks during the two years leading up to the release of the Order simply because of a regulatory procedural lag. NTCA also noted that such support should certainly be maintained in the face of this procedural lag given that similar – or even more generous – transitions are being provided to other carriers.¹²

⁹ Order at ¶ 251. The Order does not provide the basis for beliefs or explain why its earlier justifications for SNA are no longer valid.

¹⁰ Petition, p. 31.

¹¹ *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 184

¹² See, e.g., *Ex Parte* Letter from John Nakahata, Counsel to General Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No 10-90, *et al.* (filed April 16, 2012).

Harkening back to the case of NCTC, this flash-cut loss of SNA support based upon real investments made in broadband-capable networks threatens to have a substantial adverse effect upon consumers and a carrier like NCTC that took up the challenge to build for them. NCTC notes that its expectations for SNA support were reasonable and prudent given the information available when the loan applications were filed.¹³ SNA has historically provided small rural telecommunications carriers with USF support over a five-year period starting two years after qualifying investments are made. NCTC only accelerated its multi-year build-out plan once stimulus funds became available to provide the capital needed to do so. NCTC incurred costs in deploying network infrastructure in 2010 and under the rules in place at the time and absent a rule change it would have received SNA support to help recoup some of those costs starting in 2012 and continuing through 2016. As noted above, under the Commission’s rule change, carriers who built networks in 2009 or earlier are “grandfathered” and can continue to receive SNA support for the remainder of their five-year period, but carriers such as NCTC, who incurred costs to hire staff and build networks in 2010 or 2011 (before the Order was released and at the time the Administration was calling for companies to take on such efforts) had the “rug pulled out from under them” in terms of SNA support. In other words, had NCTC accelerated its build-out *even more* and not taken faster steps to deploy its network only as part of the larger national stimulus policy, it likely would not have suffered the penalty of a flash-cut loss of SNA support.

NCTC’s petition demonstrates more than good cause for the grant of a waiver. Absent grant of NCTC’s waiver request, the elimination of SNA support to NCTC will defer substantial revenues and undermine cost reduction opportunities that constituted an essential and material

¹³ Petition, p. 37.

portion of the revenue and cash flow necessary to support financial feasibility of NCTC's loans. Without the waiver, NCTC will continue to take actions to ensure business viability but cuts and reductions in its programs would impact longer term revenue generation and expense reductions which will threaten the viability of the company and the rural communities it serves. The loss of SNA support will leave rural subscribers without access to broadband services for several years, delay the retirement of plant and modems with a high maintenance cost, defer the development and implementation of a number of systems and business process improvements which would improve efficiencies and result lower longer term costs and the resultant reliance on high cost recoveries.¹⁴ The public interest demands that NCTC and similarly situated carriers receive the SNA support upon which they reasonably and prudently relied in developing their broadband deployment plans. If the Commission will not yet reconsider the draconian flash-cut adopted in the *Order* as a matter of comprehensive policy, it should at the least take the step to grant the waiver of NCTC and those companies that may be similarly situated with respect to the sudden and unforeseeable loss of access to SNA support based upon qualifying investments in broadband-capable networks for the benefit of consumers.

Respectfully submitted,

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¹⁴ Petition