Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
A National Broadband Plan for Our Future	) GN Docket No. 09-51
	)
High-Cost Universal Service Support	) WC Docket No. 05-337
	)
National Cable and Telecommunications Association, Reducing Universal Service Support in Geographic Areas that are Experiencing Unsupported Facilities-Based Competition	) RM-11584)))

TO: The Commission

OPPOSITION TO PETITION FOR RULEMAKING

WESTERN TELECOMMUNICATIONS ALLIANCE

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Summary

The Western Telecommunications Alliance ("WTA") opposes the petition for rulemaking of the National Cable and Telecommunications Association ("NCTA") to reduce the high-cost support of the small rural local exchange carriers ("RLECs") who have been using such support most efficiently and effectively to upgrade their multiple-use networks to bring emerging broadband services to their rural customers. The NCTA petition should be denied for any one or more of the following reasons: (1) its focus upon CATV voice competition is an inappropriate and irrelevant rationale for setting future Universal Service policies in a world where traditional voice and cable television services are rapidly converging into a data-rich broadband network; (2) its core factual premise of extensive CATV voice competition in RLEC study areas is wholly inaccurate; (3) its "minimum support" test is designed transparently to be impossible to pass and to strip RLECs and their rural customers of virtually all high-cost support; (4) its Trigger #1 ("75 percent" and additional "50 percent" criteria) disregards the nature of RLEC networks and the service relied upon by rural customers in outlying areas, and places future RLEC high-cost support in jeopardy when a CATV offers voice service in certain population centers within an RLEC study area; and (5) its Trigger #2 threatens future RLEC high-cost support when a state has deregulated certain rates, even if RLEC costs remain high and there are no competitive alternatives for the affected rural customers.

The asserted rationale for NCTA's proposed "two-step" procedure to terminate or reduce high-cost support for RLECs is that such support is no longer needed in areas where unsupported CATV voice competition is "flourishing." Even if this were true, it is not an appropriate or relevant basis for setting future public policy at a time when traditional voice and cable television services are converging into the national broadband network that the Commission is busy planning.

Moreover, the key "fact" upon which NCTA relies to support its petition – that CATV operators are presently providing "robust" or "flourishing" or "extensive" voice service competition in RLEC study areas – is simply not true. The predominant providers of cable television services in the rural Western study areas of WTA members are: (1) the RLECs themselves or their video affiliates; and (2) satellite video providers. Where unrelated CATV operators are present in the study areas of WTA members, they have confined their operations virtually entirely to towns and similar population centers.

A second key NCTA "factual" premise – that RLEC high-cost support is associated with the recent rapid escalation in the size of USF contribution factor – is also demonstrably false. Rather, recent increases in the USF contribution factor have been due primarily to: (a) increases in the size of the Low Income mechanism during an economic downturn; and (b) decreases in the end-user telecommunications revenue base.

Likewise, NCTA erroneously assumes that RLECs construct and operate individual lines rather than networks, and that state deregulation or non-regulation of the retail rates of small RLECs means that high cost support is no longer necessary and that other entities can readily provide quality facilities and services at affordable rates in the affected rural areas.

NCTA's proposed "two-step" process is designed transparently to slash the high-cost support of many small RLECs, whether or not there is any other entity available to provide quality telecommunications and broadband services to their rural customers at affordable rates.

NCTA's Trigger #1 employs "75 percent" and "50 percent" tests that clearly recognize that non-RLEC CATV operators predominately serve towns and similar population centers, and attempts to eliminate RLEC high-cost support when such population centers constitute a significant portion of the population of an RLEC study area. NCTA intends to leave residents of the outlying rural areas to their own devices, even though the very high costs of serving these sparsely-populated and often rugged areas have heretofore deterred CATV operators from serving them. In attempting to defend its Trigger #1, NCTA undercuts its prior assertions of extensive CATV voice competition in RLEC study areas when it concedes that the majority of such RLEC study areas would not currently "qualify" with respect to either its "75 percent test" or its additional "50 percent test."

NCTA's Trigger #2 threatens the high-cost support of a significant number of RLECs whose local service rates have been deregulated by state legislators or regulators for a variety of reasons unrelated to the presence or absence of market forces, the availability or lack of competitive alternatives to RLEC services, or the existence or non-existence of high rural construction and operating costs. It imperils the service quality and rates of customers in a significant number of RLEC study areas without any indication or assurance that another voice or broadband service provider is available or will step forward to serve them within the foreseeable future.

Finally, if a CATV operator can satisfy one of the two triggers, the unfortunate RLEC will have the impossible burden of satisfying NCTA's proposed "minimum support" test. Such test has been transparently designed to ensure that the RLECs subjected to it will lose most or all of their high-cost support by requiring them to prepare and submit extensive data regarding a range of factors and situations that cannot be substantiated by RLECs, larger ILECS or CATV operators (such as impact of loss of support upon "other providers" and upon customers; identification and calculation of costs that would not be incurred "but for" the provision of service to "customers lacking a competitive option"; and calculation of "potential" revenues from services sold to customers in areas where the test subject is the "sole provider).

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TO: The Commission

OPPOSITION TO PETITION FOR RULEMAKING

The Western Telecommunications Alliance ("WTA") hereby opposes the petition for rulemaking of the National Cable and Telecommunications Association ("NCTA") referenced in the Commission's Public Notice (*Comment Sought on the National Cable and Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There Is Extensive Unsubsidized Facilities-Based Voice Competition*), GN Docket No. 09-51, WC Docket No. 05-337 and RM-11584, DA 09-2558, released December 8, 2009 ("*Public Notice*"). The Commission should reject NCTA's unwarranted and unsupported attempt to reduce the high-cost support of the small rural local exchange carriers ("RLECs") who have been using it most efficiently and effectively to bring emerging broadband services to their rural customers.

From its inception in mid-1980s[1] to the present, the great success story of the federal Universal Service Fund ("USF") program has been the progress of the smallest local exchange

[1] Contrary to NCTA, Congress did not direct the FCC "to create the USF program in 1996" (NCTA petition, p. 2). Rather, a Universal Service Fund substantially similar to the current High Cost Loop mechanism had been established by the FCC more than ten years earlier at the time of

carriers -- those with the least financial resources, the fewest economies of scale and the most limited access to capital markets -- in deploying first voice services and now broadband services in many of the nation's most sparsely populated, expensive and difficult-to-serve rural areas. During recent years, WTA members and other RLECs have been leaders in the prudent upgrade of their multiple-use networks to provide access to the current version of "broadband" services[2] to approximately 90 percent of the households in their rural service areas.

Unfortunately, with this success has come attempts by a variety of interests to take away or seize for themselves all or substantial parts of the approximately $2.4 billion of annual federal high-cost support that has enabled RLECs to make such substantial progress in the deployment of broadband-capable facilities since 2005. The current National Broadband Plan proceedings have been particularly rife with proposals to reallocate essential high-cost support away from RLECs and to use such funds instead for other purposes.

However, while RLECs have made substantial progress in the upgrade of their voice networks to broadband networks, their task is far from finished and their ultimate success in keeping pace with increasing broadband demands is far from assured. The crucial facts are that "broadband" services are continuing to evolve rapidly and that required "broadband" capacities will require the extension of fiber optic loops closer and closer to the home as "broadband" speeds move through the tens of Mbps and hundreds of Mbps ranges to Gigabit per second ("Gbps") levels during the next decade or so. RLECs will need to make major additional infrastructure investments and to incur above-average operating expenditures if they are to continue providing their rural customers with access to broadband services reasonably

the break-up of the Bell System, while other universal service support mechanisms such as Local Switching Support (formerly, DEM weighting) had long been incorporated into interstate access charge settlements. The 1996 Act provided legislative recognition and validation of long-established federal Universal Service policies and programs, plus express principles and instructions for the future operation of existing and additional federal universal service programs and mechanisms.

[2] WTA recognizes that broadband services and capacity needs are rapidly changing. At the beginning of 2010, it believes that a reasonable current definition of "broadband" would encompass a range of speeds from 516 kilobits per second ("kbps") to 3 megabits per second ("Mbps").

comparable in quality and price to the rapidly evolving and expanding broadband services available in urban areas. Given that many WTA members and other RLECs rely upon federal high-cost support for approximately 30-to-40 percent of their regulated revenue streams, decreases in such support not only will preclude future infrastructure upgrades but also will threaten the quality and affordability of existing rural services.

NCTA is the latest entity seeking to take away the federal high-cost support received by rural telephone companies. Whereas its motives are unclear, NCTA's underlying assumptions and factual allegations are grossly inaccurate, while its proposed "solution" would discourage and decrease continued broadband investment in RLEC study areas without producing any significant public interest benefits. For example, even if NCTA's claim that there is currently "extensive" CATV-based voice competition in RLEC study areas were true, such claim would not be a relevant or appropriate basis for reducing high-cost support because the traditional voice competition and tiered cable television business models relied upon by NCTA are being supplanted rapidly by the rich data services and new consumer service options of the broadband world. NCTA's factual underpinnings are equally weak and suspect – for example, NCTA's claims regarding "the extensive scope of cable voice services in areas served by rural ILECs" (NCTA petition, p. 6) are a surprise to most WTA members and their rural Western customers who have yet to see much of a non-RLEC cable presence outside of an occasional town. Finally, and most important, NCTA's proposed triggers and "minimum support" test are designed transparently to take large amounts of high-cost support away from RLECs, whether or not there are other wireline voice and broadband services available to serve the affected rural areas. The primary effect of the NCTA proposal will be to discourage and impair broadband deployment in many of the rural areas where high-cost support has been most successful as well as most needed by the affected rural consumers, without serving any significant public interest goal.

I
The Western Telecommunications Alliance

The Western Telecommunications Alliance is a trade association that represents more than 250 rural telephone companies that operate as Carriers of Last Resort ("COLRs") within the twenty-four states located west of the Mississippi River, including Alaska and Hawaii.

Most WTA members are small companies and cooperatives that were developed at separate times and under a variety of circumstances to serve differing remote and sparsely populated rural areas that neither larger telecommunications carriers nor multiple cable system operators wanted to serve. The per-customer costs of constructing, operating and maintaining facilities in these rural areas were then (and remain today) much higher than those in urban and suburban America.

The service areas of WTA members range from sparsely populated farming and ranching regions from the Canadian border to the Mexican border; to rugged and isolated mountain, desert, forest and mining areas; and to Native American reservations, Arctic villages and the Hawaiian Home Lands. Most WTA members serve fewer than 3,000 access lines in the aggregate and fewer than 500 access lines per exchange.

WTA members have made considerable efforts to invest in and upgrade their "last mile" facilities (in the Rural West, these are more accurately characterized as "last 20-to-50 mile" facilities) to give their rural customers access to advanced services as well as traditional voice services over their multiple-use networks. The typical WTA member presently offers broadband service to more than 90 percent of its customers. The speeds of these predominately digital subscriber line ("DSL") and hybrid fiber-DSL services generally range from 516 kbps to 3 or more Mbps. Many WTA members have been deploying fiber optic facilities further and further out into their distribution networks in order to extend the range of their DSL services, and some are beginning to offer fiber-to-the-home ("FTTH") service as they construct "green field" facilities to serve new developments and as they replace degrading copper loops in existing service areas.

The typical WTA member relies upon high-cost support from the federal USF program for approximately 30-to-40 percent of its regulated revenue stream. This is not an ideal business model, but rather has evolved: (a) as WTA members and other RLECs were required by COLR obligations to extend their networks to areas and customers that could not be served profitably at affordable rates; (b) as portions of their access revenue streams were transferred to USF mechanisms by Commission orders, and as the remaining portions thereof were further reduced by changing toll market conditions; and (c) as needs for substantial investments to deploy broadband-capable infrastructure have increased. Continued predictable and sufficient high-cost support is essential for WTA members if they are to obtain the loans necessary to make future investments in broadband-capable infrastructure, to repay their outstanding infrastructure loans, and to operate and maintain their existing and future networks and services.

II
<u>NCTA's Underlying Rationale Is Backward-Looking And Irrelevant</u>

The asserted basis for NCTA's proposed procedure to reduce high-cost support for RLECs is that such support is no longer needed in areas where "unsupported facilities-based [*i.e.*, CATV] voice competition is flourishing" (NCTA petition, pp. 1, 4). Assuming, *arguendo*, that cable companies were in fact providing "robust" or "flourishing" or "extensive" voice competition in RLEC study areas (as discussed below, a "fact" that has not heretofore been observed by most residents of the portions of the Rural West served by WTA members), NCTA's "voice competition" rationale is not an appropriate or relevant basis for setting future public policy in a world where traditional voice and cable television services are rapidly converging into a data-rich broadband network.

WTA believes that the public switched telecommunications network has already made a significant start down the path toward a national broadband network. Soft switches have been replacing circuit switches, while the fiber optic portions of hybrid fiber-DSL and fiber-coax lines have been moving closer and closer to the home. As facilities upgrades and new broadband services interact to increase consumer expectations and demand, WTA expects "broadband" capacity requirements to continue accelerating through the one-digit, two-digit and three-digit Mbps ranges to Gbps levels as a plethora of high-bandwidth broadband services emerge. These services are likely to include cloud computing, ultra high definition video (which, by itself, requires approximately 120 Mbps of capacity per channel), advanced videoconferencing, telepresence, real-time collaboration, smart appliances, home security, virtual sports, online gaming, virtual laboratories, telesurgery, remote diagnosis and medical imaging, as well as a host of future data-rich services that have not yet even been envisioned.

In this emerging and evolving broadband world, voice and video services are likely to continue to exist but to have a much different look and significance than the traditional services with which we are familiar today. Already, both rural and urban customers are using email to replace local and long distance voice calls, and are viewing increasing amounts of "television" programs on websites rather than paying for unwanted programming on multiple-channel cable television tiers. WTA expects these trends to continue and accelerate as broadband networks offer consumers more and more digital content and communication options.

In determining how rural consumers will continue to have access in the future to broadband networks and services reasonably comparable in quality and price to those available in urban areas, it makes no sense for the Commission to develop universal service policies based upon voice services or voice competition or CATV services or CATV competition that are likely to change substantially in nature and significance in the relevant emerging broadband world. For this reason alone, the backward-looking NCTA petition should be rejected.

III
NCTA's Factual Allegations Are Erroneous

Moreover, the key "fact" upon which NCTA relies to support its petition – that CATV operators are presently providing substantial voice service competition in RLEC study areas – is simply not true. The predominant providers of cable television services in the rural Western study areas of WTA members are the RLECs themselves, their affiliates and satellite video providers. Where unrelated CATV operators are present, they have confined their operations to towns and similar population centers.

A second key NCTA "factual" premise – that RLEC high-cost support is associated with the recent rapid escalation in the size of USF contribution factor – is also demonstrably false.

Likewise, NCTA erroneously assumes that RLECs construct and operate individual lines rather than networks, and that state deregulation or non-regulation of the retail rates of small RLECs means that high cost support is no longer necessary and that other entities can readily provide quality facilities and services at affordable rates in the affected rural areas.

A.

There Is No "Robust" Or "Flourishing" Or Extensive" CATV Voice Competition in the Study Areas of WTA Members

NCTA's proposed two-step process for reducing the high-cost support of RLECs is founded virtually entirely upon the false factual premise that there is "robust" or "flourishing" or "extensive" wireline voice competition in RLEC study areas from cable television operators that do not receive high-cost support (NCTA petition, pp. 1, 2, 4 and 5). NCTA alleges that CATV operators provide competitive voice services in "hundreds of rural areas across the country" (NCTA petition, p. 6), and that over 6.6 million households, or 43 percent, in RLEC study areas have access to cable voice services (NCTA petition, p. 7). It attempts to deny preemptively charges that CATV operators serve only the low-cost customers in the rural areas they serve, claiming both: (a) that "in many areas" cable operators offer service to more than 75 percent of households (and "in some cases" offer service to 90-100 percent of households) in ILEC study areas (NCTA petition, p. 7); and (b) that "in many cases" the portion of a study area not served by a cable operator has the same density and topography as the area that is served (NCTA petition, p. 8).

In subsequent portions of its petition, NCTA contradicts its own earlier claims of "robust" or "flourishing" or "extensive" CATV voice competition in RLEC study areas. For example, when trying to convince the Commission that its Trigger #1 (*i.e.*, that competitive CATV voice service is available to at least 75 percent of the households in an RLEC study area, or to at least 50 percent of the households in such study area under ambiguous "similar" terrain and population density conditions) is an "extremely conservative" test, NCTA admits that "at present the **majority of rural LEC study areas** would **not qualify** under this trigger [emphasis added]" (NCTA petition, p. 13). In fact, the only incumbent local exchange carriers ("ILECs") expressly mentioned by NCTA as being subject to voice service competition from CATV operators in rural areas are three mid-sized price cap carriers: Embarq, CenturyTel and Windstream (NCTA petition, p. 7, n. 19 and n. 20).

WTA members have not yet seen any indication in their Rural Western service areas of the "robust" or "flourishing" or "extensive" wireline voice competition that the first part of the NCTA petition claims CATV operators are providing in RLEC study areas. Rather, in the substantial majority of WTA member study areas, there is no cable television service or voice service offered by unrelated CATV operators.

Since the elimination of the telephone-cable cross-ownership restrictions in the 1996 Act, increasing numbers of RLECs have been responding to the requests of their customers and offering multi-channel video distribution services in their rural service areas.[3] In some instances, they have purchased and upgraded small analog cable television systems that were serving towns within their study areas; in other instances, they have built and upgraded their own analog or digital cable television systems. Recently, more and more WTA members have been providing Very High Bit Rate DSL ("VDSL") and Symmetric DSL ("SDSL") video services to more and more of their rural customers over their hybrid fiber-DSL facilities.

In fact, the number of WTA members alone that are offering multi-channel video service in their rural service areas appears to exceed significantly the 56 study areas that NCTA's "Eisenach Study" identified as receiving cable telephony provided by an RLEC or RLEC holding company (Eisenach Study, p. 16, n. 38). Put simply, if more than 56 of WTA's 250 RLEC members are providing CATV services in their study areas, it can be reasonably concluded that far more than 56 of the more than 1,000 total RLECs nationwide are doing so. This would indicate either: (a) that the data relied upon by NCTA and the Eisenach Study is

[3] Prior to 1996, it was relatively common for RLECs to obtain waivers of the telephone-cable cross-ownership restrictions on the ground that no unrelated CATV provider had indicated interest in serving their rural service areas.

erroneous or misinterpreted; or (b) that the Eisenach Study failed to identify a substantial number of RLEC-affiliated entities (for example, those using a different trade name than the RLEC) such that a substantial portion of the alleged "robust" cable "competition" in RLEC study areas is actually being provided by RLEC video affiliates.

The other substantial providers of multi-channel video services in the service areas of WTA members are direct broadcast satellite ("DBS") services.

In those instances an unrelated cable television system is operating within a WTA member's study area, the service area of such system is virtually always limited to population centers such as towns and planned residential communities. WTA is aware of no situations where an unrelated CATV operator is serving significant numbers of customers outside of a WTA member's main towns or population centers. The Eisenach Study's claim that, "in many cases" cable companies serve the "high-cost" portions of RLEC study areas (Eisenach Study, p. 21) is not borne out by its own "evidence" which fails to identify the study areas, to disclose the specific criteria employed, or to demonstrate the calculations used to reach the alleged population density, topography or distance conclusions summarized in its Table 3 (Eisenach Study, p. 23). The WTA members that have unrelated cable television systems within their study areas will be happy to take Commission representatives on a tour of their study areas at any time, and show them that the unrelated CATV facilities and services virtually always stop at town boundaries and do not extend significantly into the outlying farming, ranching, forest, mining and other outlying areas that constitute the major portion of the physical territory of their study areas.

Also, in many instances where an unrelated cable television system is operating within a WTA member's study area, such cable system is a small, locally-owned system that has limited channel capacity and that is not presently offering voice or broadband services.

Finally, WTA notes that NCTA's claim that cable operators "generally have entered into these [RLEC study] areas without any federal high cost support" (NCTA petition, p. 8) is disingenuous and misleading. With respect to those relatively few towns in the Rural West where non-RLEC cable operators are present, most constructed or purchased their CATV system to provide CATV service many years ago (often, while the pre-1996 telephone-cable cross-ownership restrictions were in effect). With respect to the even smaller number of CATV operators that have begun offering competitive voice services during recent years, many have hid behind the so-called "Sprint Business Model" wherein a Sprint competitive local exchange carrier ("CLEC") affiliate fronts for the CATV operator and allows the CATV operator to obtain the benefit of favorable CLEC interconnection arrangements and pricing without the CATV operator itself having to become a telecommunications carrier or to subject itself to federal or state common carrier regulation. In other words, the reason why a few cable operators have begun providing voice service in portions of RLEC study areas without any federal high cost support is that they have elected to game the system to avoid becoming subject to federal or state common carrier regulation, and consequently have not been able to be designated as eligible telecommunications carriers.

In sum, there is no substantial presence of unrelated CATV operators in the rural Western study areas of most WTA members, much less the "robust" or "flourishing" or "extensive" wireline voice competition asserted by NCTA as the primary basis for its proposal. For this reason alone, the NCTA petition should be rejected.

B.
RLEC Support Is Not Responsible for Recent Increases in the USF Contribution Factor

NCTA also attempts to justify its proposed reduction of RLEC high-cost support on the ground that the USF contribution factor is continuing to "escalate" at a "rapid pace" or a "staggering rate" (NCTA petition, pp. 1, 3).

This justification is irrelevant and misleading because the high-cost support distributed to RLECs has been very stable at approximately $2.4 billion per year during recent years and has not been responsible for the recent increases in the USF contribution factor. Specifically, aggregate HCL, LSS and ICLS support for RLECs was $2.395 billion in 2005, $2.382 billion in 2006, $2.411 billion in 2007 and $2.406 billion in 2008.[4] It is expected to be $2.412 billion in 2009 and $2.353 billion in 2010.[5]

During the past year, the changes in the USF contribution factor from 11.3 percent (Second Quarter 2009) to 12.9 percent (Third Quarter 2009) to 12.3 percent (Fourth Quarter 2009) to 14.1 percent (First Quarter 2010) have been due primarily to increases in the size of the Low Income mechanism during an economic downturn, as well as to decreases in the end user telecommunications revenue base.[6] During the period, the adjusted total revenue requirement for the Low Income mechanism has increased steadily and substantially from $200.93 million (Second Quarter 2009) to $237.73 million (Third Quarter 2009) to $287.67 million (Fourth Quarter 2009) to $356.25 million (First Quarter 2010). At the same time, Total Projected Collected Interstate and International End-User Telecommunications Revenues have decreased from $18.714716 billion (Second Quarter 2009) to $18.032832 billion (Third Quarter 2009) to

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[4] Source: USAC Quarterly Federal Universal Service Support Mechanism Fund Size Projections, Appendix HC01.
[5] Id.
[6] All data relating to recent USF contribution factors come from Public Notice (*Proposed Second Quarter 2009 Universal Service Contribution Factor*), CC Docket No. 96-45, DA 09-584, released March 13, 2009; Public Notice (*Proposed Third Quarter 2009 Universal Service Contribution Factor*), CC Docket No. 96-45, DA 09-1322, released June 12, 2009; Public Notice (*Proposed Fourth Quarter 2009 Universal Service Contribution Factor*), CC Docket No. 96-45, DA 09-2042, released September 14, 2009; and Public Notice (*Proposed First Quarter 2010 Universal Service Contribution Factor*), CC Docket No. 96-45, DA 09-2588, released December 11, 2009.

$17.164439 billion (Fourth Quarter 2009) before increasing to $17.254235 billion (First Quarter 2010). In comparison, the adjusted total revenue requirement for all High-Cost mechanisms [including non-rural carriers and competitive eligible telecommunications carriers ("CETCs") as well as RLECs] fluctuated from $1.077.45 million (Second Quarter 2009) to $1,175.11 million (Third Quarter 2009) to $970.70 million (Fourth Quarter 2009) to $1,098.11 million (First Quarter 2010).

Hence, during the past year, the increase in the USF contribution factor from 11.3 percent (Second Quarter 2009) to 14.1 percent (First Quarter 2010) has been caused predominately by the $155.32 million increase in the Low Income mechanisms and the $1.460481 billion decrease in the end-user telecommunications revenue base, and not by the net $20.66 million increase in the High-Cost mechanisms for RLECs, non-rural carriers and CETCs.

WTA notes that it has supported modification of the USF contribution mechanism to reduce the burden it imposes upon traditional long-distance toll services and to require all services using the public network (including the rapidly emerging public broadband network) to contribute equitably. In contrast, WTA has not proposed or supported reforms of, or reductions in, the Low Income mechanisms, and presumes that the recent rapid growth of these mechanisms will be reversed as the overall economy improves.

In sum, WTA has clarified the actual reasons for the recent growth of the USF contribution factor, and demonstrated that there is no significant connection between stable RLEC high-cost support and NCTA's asserted "rapid/staggering escalation" of such contribution factor.

C.
NCTA Does Not Understand That RLECs Build Networks, Not Lines

In those limited instances where CATV operators are competing with RLECs in one or more of the population centers in their study areas, WTA opposes the design of high cost support mechanisms to include features that take away the "per-line" support associated with a customer upon the customer's shift to a competitor. The critical flaws in the logic of NCTA's "no support for lost lines" argument is that it ignores the facts that: (1) RLECs and other carriers invest in, build and operate networks rather than individual customer lines; and (2) the cost of serving each customer is not the same.

The major portion of the construction and operating costs of an RLEC broadband "last mile" network are comprised of the soft switch and/or routers, the other central office electronics and the trunks that carry traffic most of the way between the central office and the customer to the nodes from which individual customer lines emanate. Such common network facilities will be even more significant in the emerging broadband world than in the traditional circuit switched world, for packet technologies are designed and intended to take advantage of the economies of using common network pipes rather than individual customer circuits. The costs of common network facilities are allocated on a per-line basis for high-cost support reporting purposes, but such common network facilities remain in place and their costs do not decrease or disappear when individual customers initiate service or terminate service to move to the networks of competitors.[7]

Moreover, the costs of individual RLEC customer lines do not decrease when a customer terminates service to move to a competitor. Most state COLR requirements mandate that RLECs

[7] The situation is very similar for wireless carriers which must build and maintain networks comprised of switches, towers, antennas, transmitters and backhaul facilities. The addition or loss of individual customers generally does not significantly affect the cost of these common network facilities.

and other COLRs maintain individual customer lines in place even after the customer terminates his or her service. For example, California requires COLRs to retain and maintain "warm lines" in premises where service is terminated, so that anyone can connect a telephone within the house (even if no one is paying for service) and make an E911 call.

Finally, as the Commission is well aware, it costs an RLEC significantly more to serve a customer whose residence is located 30 miles outside of town (and even more if the intervening terrain is rugged) than to serve a customer whose residence is in town three blocks from the RLEC's central office.

"Per line" support reduction rules can have several substantial adverse consequences. First, they preclude the affected high-cost support recipient from recovering its appropriate network costs, thereby affecting its ability to repay the loans it used to construct and deploy its network facilities, and its ability to continue to operate, maintain and upgrade its broadband network. Second, they discourage high-cost support recipients from marketing their services to marginal customers, for such customers pose the threat of reducing the carrier's allocated "per-line" costs and support when they initiate service and then leaving such support at this reduced "per-line" level if they terminate service after a relatively short period. Third, uncertainty regarding the receipt of sufficient and predictable high-cost support for common network costs and the repayment of associated infrastructure loans will make it more difficult and expensive for RLECs and others to obtain financing for future broadband deployment and upgrade projects.

D.
State Deregulation of RLEC Retail Rates Does Not Mean That Competition Exists or That High-Cost Support Is Not Needed

Finally, state deregulation or non-regulation of RLEC retail rates does not mean that competition or market forces will be sufficient to ensure that quality facilities and services will be available at affordable rates, or that high-cost support is no longer necessary.

Unlike some CATV operators,[8] RLECs do not have a history of poor customer service or excessive customer rates. In fact, the vast majority of the more than 1,000 existing RLECs have excellent records and reputations with their federal and state regulators for high quality services, affordable rates and minimal customer complaints.

Some state legislatures or public service commissions have elected not to regulate telecommunications cooperatives on the wholly reasonable rationale that the member-owners and Boards of Directors of such cooperatives can regulate their services, practices and rates much more efficiently and effectively. Such non-regulation does not mean: (a) that the costs of constructing and maintaining facilities and providing service in cooperative areas are not high; (b) that cooperatives can continue to obtain loans for infrastructure upgrades or to provide service at affordable rates if their high-cost support is eliminated or significantly reduced; or (c) that CATV operators or other entities will step in to serve a rural area if a cooperative can no longer do so.

Some state legislators or regulators also have eliminated or reduced the regulation of small RLECs that are not cooperatives in order to conserve regulatory resources, particularly where small RLECs have had a long record of quality service, affordable rates, and minimal consumer complaints. For example, the State of Oregon has employed expedited rate making

[8] Customer complaints regarding CATV rate increases and service quality problems were a substantial reason for passage of the Cable Television Consumer Protection and Competition Act of 1992.

proceedings since the 1980s for small telephone companies whose proposed local service rate increases did not attract significant customer opposition, and has twice noted the high quality of service furnished by such small companies as part of the rationale for increasing its size criteria for "small" companies. Even where RLECs are not cooperatives, they are generally owned, managed and/or operated by local residents who frequently interact with their neighbor-customers and who are well acquainted with and sensitive to the service needs and demands of such customers. Again, a state decision to reduce its regulation of small RLECs is likely to be a resource allocation decision based upon excellent service records and high customer satisfaction, and does not mean: (a) that the costs of constructing and maintaining facilities and providing service in the study areas of the affected small RLECs are not high; (b) that the small RLECs can continue to obtain loans for infrastructure upgrades or to provide service at affordable rates if their high cost support is eliminated or significantly reduced; or (c) that CATV operators or other entities will step in to serve a rural area if a small RLEC can no longer do so.

Finally, some states have permitted ILECs to include voice and other services in packages of bundled services. This has largely been due to the fact that wireless carriers, CLECs and CATV operators in urban areas have been able to place urban ILECs at a substantial competitive disadvantage by offering service packages and bundles. Where state legislatures or commissions have included RLECs in rules and orders permitting the bundling of services, it has generally been part of an effort to treat all large and small ILECs in the state uniformly for bundling purposes, rather than a conclusion that the RLECs are subject to substantial competition.

IV
NCTA's Proposed Mechanism Would Impair Broadband Service In RLEC Study Areas Without Any Public Interest Benefits

NCTA's proposed "two-step process" is designed transparently to slash the high-cost support of many small RLECs, whether or not there is any other entity available to provide quality telecommunications and broadband services to their rural customers at affordable rates.

A
NCTA's Trigger #1 Does Not Ensure The Presence of Significant Alternative Services

NCTA's Trigger #1 purports to be based upon the premise that there is there is "robust" or "flourishing" or "extensive" wireline voice competition in RLEC study areas. It requires that an RLEC's high-cost support be reviewed and reduced if competitive wireline voice service is "available"[9] from a cable operator to at least 75 percent of the households in the RLEC's study area (NCTA petition, p. 12).

As indicated above, there is no such "robust" or "flourishing" or "extensive" cable video or voice competition in the study areas of most WTA's members. In the minority of Rural Western study areas where unrelated CATV "competitors" are present, such CATV companies have limited their plant and operations virtually entirely to towns and similar population centers. NCTA appears to recognize this, and focuses its "75 percent test" on households rather than service areas. Hence, in the limited number of RLEC study areas where the "population center" includes 75 percent of the households (whether or not the CATV voice "competitor" is actually providing voice service to a significant portion of such "population center" households), the RLEC's high-cost support will be reduced or eliminated entirely (see discussion below of NCTA's proposed "minimum support" test). Rural customers in the more sparsely populated

[9] NCTA does not propose that CATV operators actually have to serve or offer service to 75 percent of the households in a study area. Rather, the cable voice service only has to be "available" at some vague location in the area.

outlying areas of such study areas (which outlying areas may encompass 75 percent or more of the land area thereof) will be left to their own devices if the RLEC no longer can generate or obtain the resources to maintain or upgrade their voice or broadband facilities. These customers in outlying areas are the very ones that are most expensive for RLEC COLRs to serve, and who have heretofore been too expensive for most CATV operators to serve.

WTA notes that, in these few "75 percent test" situations, the cable operators do not have any of the regulatory responsibilities or costs of the RLEC. Cable operators generally provide voice and other telecommunications services without subjecting themselves to common carrier regulation, much less to COLR obligations. Whereas their video operations can be regulated by local franchising authorities, Section 621(b)(3) of the Communications Act prohibits local franchising authorities from regulating the telecommunications operations of CATV operators. Even in those relatively few instances where CATV telecommunication providers have not hidden behind Sprint or operated as largely unregulated cable modem services, they have sought to operate as CLECs without significant rate regulation or customer service responsibilities.

However, the main point is that there are very few RLEC study areas that are subject to the "75 percent" standard. NCTA appears to recognize this, and responds by trying to slip in an additional "50 percent test" whereby an RLEC's high-cost support would also be reviewed and reduced if competitive wireline voice service is "available" from a cable operator to at least 50 percent of the households in the RLEC's study area and the portion of the study area with no cable wireline voice competition has cost characteristics that are "comparable" to the covered portion (NCTA petition, p. 13).

WTA knows of no rural Western study area of a member where an unrelated CATV "competitor" has extended its plant outside the boundaries of a town or population center into the more rugged and more sparsely populated outlying farming, ranching, mountain, forest and/or desert areas. Nonetheless, it is worried about how NCTA's members will try to claim various terrain or population density characteristics are "comparable." For example, Table 3 of the Eisenach Study makes conclusory assertions about the relative population densities, topographies and distances of cable service areas and RLEC study areas without explaining the bases for its conclusions or demonstrating any examples of unrelated cable operators serving the outlying portions of RLEC study areas.

Again, there are still very few of even these "50 percent" situations in the Rural West. Notwithstanding its claims of "robust" or "flourishing" or "extensive" wireline voice competition in RLEC study areas, NCTA concedes that the majority of RLEC study areas would not currently "qualify" with respect to either its "75 percent test" or its additional "50 percent test" (NCTA petition, p. 13). Because the "trigger" based upon NCTA's asserted basic premise of "extensive" CATV voice competition in RLEC study areas is not generally applicable by its own admission, its petition should be denied.

B
NCTA's Trigger #2 Is a Blatant Attempt to Reduce the High Cost Support Of Numerous RLECs That Are Not Subject to CATV Voice Competition

Recognizing that its Trigger #1 tests will not reduce the high-cost support of many RLECs, NCTA proceeds to deviate even further from its "CATV voice competition" theory to add a separate Trigger #2 that would require the review and reduction of the high-cost support of all RLECs whose rates (including bundled service rates) are not regulated or have been deregulated by their state public service commissions. NCTA's proffered rationale for this new line of attack is the unsupported assumption that such non-regulation or deregulation constitutes proof "that market forces should be sufficient to ensure that service in the deregulated area will be provided at reasonable rates" (NCTA petition, p. 14).

As indicated above, state commissions have exempted from regulation or deregulated the local service rates of RLECs for a variety of reasons that have nothing to do with the presence or absence of market forces, the availability or lack of competitive alternatives to RLEC services, or the existence or non-existence of high rural construction and operating costs. Among other things, some state commissions have elected not to regulate or to more flexibly regulate the rates of various groups of RLECs due to: (a) the existence of cooperative governance mechanisms; (b) the small size and limited scopes of operation of certain RLECs; (c) the long and established records of many RLECs for providing high quality service at reasonable rates with minimal complaints from their rural customers; (d) the need to conserve regulatory resources; and (e) in the case of bundled rates, decisions not to impose upon small RLECs restrictions that had been relaxed for larger urban ILECs.

Those like WTA with knowledge of rural conditions are well aware that state rate deregulation does not mean that most or all RLEC infrastructure and operating costs can be recovered from local service rates, or that high-cost support is no longer needed by RLECs to keep their rates at affordable levels. In fact, high-cost support has generally been a critical factor enabling RLECs to maintain their local service rates at stable and affordable levels so that state commission deregulatory initiatives were not opposed by rural customers.

In the end, the gaping flaw in NCTA's proposed Trigger #2 is that it calls into question and threatens the high-cost support of a significant number of RLEC study areas without any indication or assurance that another voice or broadband service provider is available or will step forward to serve the area within the foreseeable future. In large expanses of the Rural West, the existing RLEC is the only entity with a demonstrated interest during the past 30-to-50 years of providing voice and cable television services, and is the only entity that can be relied upon during the foreseeable future to make the infrastructure upgrades necessary to provide broadband services. Placing the continuing high cost support of many of these RLECS in jeopardy will stop abruptly their current efforts to obtain loans and other financing and to upgrade their infrastructure to meet broadband capacity demands. This will injure not only the RLECs themselves, but also the economic, social, educational and medical opportunities of their rural customers and the overall economic development of their rural service areas.

C
NCTA's "Minimum Support" Test Is Designed to Be Impossible to Pass

WTA is concerned about Trigger #1 and particularly Trigger #2 because any RLEC running afoul of one of these triggers will have the burden of proving that it has satisfied NCTA's impossible "minimum support" test if it wants to retain its high-cost support. NCTA would have RLECs demonstrate: (1) the "relevant facts" as to how competition has developed in their study areas; (2) the prices that their "competitors" are charging for regulated and unregulated services; (3) the effect on "all providers" and on "consumers" if high-cost support were reduced or eliminated;[10] (4) the "subset" of their costs that would "not be incurred but for" the provision of services to customers that do not have a "competitive option"; and (5) the "subset" of their costs that "cannot be recovered through rates for the services (regulated and unregulated)" provided over the network in the "portion of the study area with no competition" (NCTA petition, p. 17). Verizon and AT&T would have an extremely difficult or impossible

[10] WTA asks the Commission to imagine the reaction of NCTA member Comcast if the Commission were to impose a similar provision requiring Comcast to demonstrate the impact of its proposed acquisition of NBC upon "all video and content providers" and "consumers" before the transaction could be approved.

time providing the requested information and meeting the burden of proof. As NCTA is well aware, the test is designed to be impossible for the much smaller RLECs.

Many WTA members have successfully participated in state commission rate cases, National Exchange Carrier Association ("NECA") audits and Universal Service Administrative Company ("USAC") audits, and have been able to demonstrate to the appropriate regulatory authorities and their agents that they reasonably and prudently incurred the costs and expenditures for which they sought recovery in their local service rates, intrastate and interstate access rates, and high-cost support.

However, NCTA's proposed "minimum support" test goes so far beyond the scope of these established RLEC proceedings that the only reasonable interpretation is that it is designed to ensure that the RLECs subjected to it will lose most or all of their high-cost support. Why should RLECs have the burden of demonstrating the "relevant facts" (and who decides what is "relevant") regarding how "competition" developed in a study area, or the prices that "competitors" may be charging for their regulated and unregulated services (assuming that such prices are stable and readily available)? How would any RLEC or ILEC or CETC demonstrate the effect on "all providers" (presumably, all competing providers) and "consumers" of the reduction (by how much) or elimination of its high-cost support? How would any RLEC or ILEC or CETC or CATV operator identify and calculate the portion of its costs that "would not be incurred but for" the provision of service to "customers that do not have a competitive option" (and what does it mean to "have" what kind of "competitive option")? How would any RLEC or ILEC or CETC or CATV operator identify and calculate the portion of its costs that cannot be recovered through "rates for the services (regulated and unregulated) provided over the network" (at what rates and to how many customers) in the "portion of the service/study area with no competition"? How would any RLEC or ILEC or CETC or CATV operator meet a burden to demonstrate that the "total cost" of serving areas where it is a sole provider is greater than the "total revenues it potentially can generate" from "services" (how might one estimate the potential revenues from an unlimited variety of services) sold to customers in that area? WTA agrees with NCTA that the latter's proposed "minimum support" test constitutes "a very different inquiry than takes place under the current system" (NCTA petition, p. 17), but only because the current system contemplates the distribution of sufficient and predictable high-cost support to RLECs (rather than the elimination of such support) and gives them a fair opportunity to demonstrate their compliance with reasonable criteria for its calculation, distribution and use.

The "minimum support" test is equally flawed with respect to most of its details. For example, NCTA's proposal that support for plant costs be limited to the portion of loop costs associated with customers in the non-competitive portion of the affected RLEC study area (NCTA petition, p. 18) betrays a lack of knowledge of networks. The facilities delivering services to customers in the outlying portions of RLEC study areas do not just materialize from thin air at population center boundaries. Rather, they are part and parcel of integrated networks that are constructed throughout the RLEC study area. As noted above, the costs of network facilities are allocated on a per-line basis for high-cost support reporting purposes, but such network facilities primarily function as part of a unitary whole. Most remain in place and their costs do not decrease or disappear when individual customers initiate service or terminate service to move to the networks of competitors.

Likewise, it is NCTA (rather than WTA and other ILEC entities) that has a warped view of how COLR obligations and competitive markets work. COLR obligations require ILECs to serve unprofitable customers whether such customers are located in competitive or non-competitive markets or areas. In addition, they require ILECs to retain and maintain indefinitely facilities that are no longer producing any revenues because they formerly connected customers who have been lost to competitors or who have otherwise discontinued service. The legacy of COLR obligations is that ILECs (unlike CATV providers and CLECs) have been required to serve many areas and customers that a rational economic decision-maker would have declined to serve, and that they are currently forced to bear the substantial costs of unprofitable customers and non-revenue-producing facilities. At the present time, the costs of these COLR obligations are recovered through high-cost support and other mechanisms. However, if a proposal like that of NCTA renders high-cost support uncertain or insufficient, the COLR system will no longer be sustainable.

Contrary to NCTA's assumptions, revenues from other regulated and unregulated services will not significantly reduce the high-cost support needs of most RLECs within the foreseeable future. Like WTA members who generally serve fewer than 3,000 access lines in the aggregate, most RLECs are small companies serving small markets. They lack the economies of scale needed to generate significant profits or positive cash flows from video, Internet access and toll resale services. Rather, WTA members generally have broken even or lost money on such ventures, and do not see the situation changing significantly for the better during the foreseeable future.

Finally, NCTA's suggestion that the Commission study the use of some sort of "proxies" to "streamline" the "minimum support" test (NCTA petition, p. 20) directly conflicts with NCTA's assertions at the beginning of its petition that competitive conditions vary from area to area so that a one-size-fits-all approach may not be feasible (NCTA petition, p. 11).

V
<u>Conclusion</u>

Like other RLECs, WTA members have effectively and efficiently utilized the federal high-cost support that constitutes 30-to-40 percent of their revenue streams to deploy broadband-capable facilities to approximately 90 percent of the households in their Rural Western study areas. In so doing, they have rarely encountered CATV operators offering competitive voice, video or broadband services; and have virtually never done so outside certain towns and similar population centers.

NCTA's proposal would put an end to the great USF success story of the RLECs. Its impossible "minimum support" test would eliminate the high-cost support for RLECs whose rates are not regulated by their state commissions, as well as for RLECs with CATV "competitors" in towns large enough to meet NCTA's "75 percent" or back-up "50 percent" tests. Unfortunately, given the fact that few entities can sustain or survive the loss of 30-to-40 percent of their revenue streams, the result will be an immediate end to broadband-capable infrastructure upgrades by the affected RLECs, as well as the eventual roll-back of most or all of their progress to date. And unless NCTA's member CATV companies make a 180-degree change in their historical policy not to serve high-cost rural areas, the end result for the affected RLEC study areas will be an increasing inability to keep up with the infrastructure investments and upgrades (particularly in outlying areas) necessary to retain access to telecommunications and information services reasonably comparable in quality and price to those available in urban areas.

Therefore, the subject NCTA petition should be denied for any one or more of the following critical defects: (1) its CATV voice competition rationale is an inappropriate and irrelevant basis for setting future Universal Service policies in a world where traditional voice and cable television services are rapidly converging into a data-rich broadband network; (2) its basic factual premise of extensive CATV voice competition in RLEC study areas is wholly inaccurate; (3) its "minimum support" test is designed transparently to be impossible to pass and to strip RLECs and their rural customers of virtually all high-cost support; (4) its Trigger #1 ("75 percent" and additional "50 percent" criteria) disregards the nature of RLEC networks and the service relied upon by rural customers in outlying areas, and threatens future RLEC high-cost support when a CATV offers voice service in certain population centers within an RLEC study area; and (5) its Trigger #2 threatens future RLEC high-cost support when a state has deregulated certain rates, even if RLEC costs remain high and there are no competitive alternatives for the affected rural customers.

Respectfully submitted,
WESTERN TELECOMMUNICATIONS ALLIANCE

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