

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

In the Matter of)
Update to the Rural Broadband Report) GN Docket No. 11-16
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)

**COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;**
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
**ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES;**
WESTERN TELECOMMUNICATIONS ALLIANCE; and
EASTERN RURAL TELECOM ASSOCIATION

March 2, 2011

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. THE COMMISSION SHOULD USE THE *2009 RURAL BROADBAND REPORT* AS A BUILDING BLOCK FOR THE REFORM OF ITS HIGH-COST USF PROGRAM AND ICC RULES 3

A. Reform Of The High-Cost USF Program Should Promote The Deployment Of Scalable Broadband Networks In Rural Areas That Can Keep Pace With Evolving Bandwidth Demands..... 6

B. The Commission Should Secure The Long-Term Sustainability Of The USF By Expediently Requiring All Broadband Providers To Contribute To The Fund. 8

C. The Commission Should Ensure That Any Reforms To Its Intercarrier Compensation Rules Promote The Deployment And Upgrade Of Broadband Networks In RLEC Service Areas. 9

D. To Better Ensure That Robust Broadband Services Can Be Provided In All Rural Areas, The Commission Should Provide Support For Middle-Mile Transport Costs. 10

E. The Commission Can Increase Broadband Adoption By Ensuring That Rural Carriers Have Access To Video Content At Reasonable Rates And Under Reasonable Terms And Conditions. 11

F. The Commission Can Help Ensure That Wireless Broadband Reaches Rural Areas By Creating And Enforcing Policies That Foster 4G Wireless Deployment By Rural Wireless Providers. 13

III. CONCLUSION..... 14

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I. INTRODUCTION AND SUMMARY

The Commission's *Public Notice*¹ in the above-captioned proceeding requests comment on how to update and evaluate the *2009 Rural Broadband Report*² in light of the many broadband-related developments since its release. Specifically, the Commission seeks comment on how its actions since the *Report's* release have impacted or enhanced broadband deployment or adoption in rural areas, asks what additional measures would improve access to rural broadband deployment and adoption, and encourages the submission of relevant data and analyses regarding broadband deployment and adoption in rural areas.³

¹ *Comments Requested in Preparation for Update to the Rural Broadband Report*, GN Docket No. 11-16, Public Notice, DA 11-183 (rel. Jan. 31, 2011) (*Public Notice*).

² *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, Acting Chairman Michael J. Copps, FCC, GN Docket No. 09-29, 24 FCC Rcd 12791 (2009) (*2009 Rural Broadband Report*).

³ *Public Notice* at 2.

In these comments, NECA, NTCA, OPASTCO, WTA and ERTA (the Associations)⁴ urge the Commission to consider carefully several of the *Report's* key findings as it moves forward with implementing specific reforms to existing Universal Service Fund (USF) and intercarrier compensation (ICC) mechanisms.⁵ The *Report* demonstrated keen understanding of the importance of broadband for rural America,⁶ and identified a number of critical issues that must be addressed if rural consumers and businesses are to have access at reasonably comparable rates to modern broadband services that are reasonably comparable to those available in urban areas. The *Report* also correctly recognized wireless services will play a critical complementary role in ensuring broadband reaches rural areas and that it is appropriate to ensure rural telephone

⁴ The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, collection of certain high-cost loop data, and administering the interstate Telecommunications Relay Services (TRS) fund. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River.

⁵ 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 an 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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (*February 2011 ICC/USF NPRM*).

⁶ *2009 Rural Broadband Report* at ¶ 82.

companies (RLECs) and small businesses that have an interest in serving rural areas have access to spectrum.⁷

As discussed below, subsequent developments, including the USF reform proposals contemplated in the National Broadband Plan (NBP), have, in part, strayed from the common-sense recommendations contained in the *2009 Rural Broadband Report*. The recently released *February 2011 ICC/USF NPRM* takes some welcome steps beyond the NBP, however, and the Associations nevertheless remain optimistic that the Commission will consider reasonable short and long-term alternatives for USF and ICC reform, consistent with the core principles described in the *2009 Rural Broadband Report*.

II. THE COMMISSION SHOULD USE THE *2009 RURAL BROADBAND REPORT* AS A BUILDING BLOCK FOR THE REFORM OF ITS HIGH-COST USF PROGRAM AND ICC RULES

On May 22, 2009, Acting Chairman Michael Copps released the *2009 Rural Broadband Report*. The report stated “all rural Americans, like their counterparts in more densely populated areas of the country, [should] have the opportunity to reap the full benefits of broadband services.”⁸ Among other things, the *Report*: recommended that networks deployed in rural areas be scalable to meet future bandwidth demands; stated that broadband providers should be required to contribute to the USF; noted that any ICC reforms must account for the impact they will have on rural broadband deployment; recognized that middle-mile transport costs are often prohibitively expensive for rural broadband providers; recognized the link between RLECs’ access to video content and rural broadband adoption; and acknowledged the critical role of wireless services in rural areas.

⁷ *Id.* at ¶ 142.

⁸ *Id.* at ¶ 9.

Approximately 10 months following release of the *Report*, the Commission published the NBP,⁹ which strayed in many respects from the *Report's* recommendations. Whereas the *Report* called for the deployment of scalable networks capable of meeting tomorrow's bandwidth demands,¹⁰ the NBP established a 4/1 Mbps national broadband availability target despite evidence this standard will soon be obsolete. In addition, the NBP failed to make a clear recommendation regarding the inclusion of broadband services in the USF contribution base, did not recognize the critical role that ICC revenues play in RLECs' ability to deploy and upgrade broadband services, and left unaddressed the issue of access to video content. Most significantly, the NBP's various proposals for USF and ICC reform created substantial uncertainty over the ability of RLECs to recover existing and future broadband investments, which in turn has had an adverse impact on broadband deployment and upgrades in hard-to-serve, high-cost areas.¹¹

Despite the clear disconnects between the *2009 Rural Broadband Report* and the NBP, the Associations are encouraged by the general approach to reform and some of the questions and statements in the *February 2011 ICC/USF NPRM*. For example, rather than proceed directly to a long-term vision of a broadband "ecosystem," the NPRM tees up short-term and longer-term approaches that attempt to define better and set a proper pace for the transition path to an environment where broadband is the primary, if not exclusive, communications infrastructure.

⁹ Connecting America: The National Broadband Plan (rel. Mar. 16, 2010) (*NBP*).

¹⁰ *2009 Rural Broadband Report* at ¶ 82.

¹¹ *See, e.g.*, Joint Reply of NECA, NTCA, OPASTCO, WTA, and the Rural Alliance, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 4-5 (filed Aug. 11, 2010); Comments filed by Blooston Rural Carriers at 19, North Dakota Rural Telephone Group (ND Telcos) at 8, Farmers Telecommunications Cooperative at 7, JSI at 12, Fiber-To-The-Home Council at 2, Home Telephone at 7, Border Companies at 12, Pioneer Communications at 6 (all filed on July 12, 2010, in WC Docket No. 10-90); Letter from Sarah Tyree, CoBank, to Marlene H. Dortch, FCC, GN Docket No. 09-51 (filed Dec. 16, 2009).

The NPRM also solicits comment on: whether the 4/1 Mbps broadband availability target is too low;¹² specific considerations for rate of return (RoR) carriers in the development of an ICC recovery mechanism;¹³ how to address near term ICC issues such as phantom traffic and the ICC obligations of VoIP traffic,¹⁴ and whether universal service support should be provided to address high middle-mile transport costs.¹⁵ Perhaps most important, the NPRM recognizes the value of “measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruptions,”¹⁶ and sensibly does not propose any “flash cuts” to new broadband-support mechanisms.¹⁷

Thus, even if much debate remains on the specific ways in which reforms can be achieved, the Associations are pleased to see the Commission’s more specific focus on significant threshold questions, as well as the appropriate transition from today’s mechanisms to tomorrow’s framework. As the Commission moves forward with its broadband policy agenda, it should take heed of the common-sense recommendations in the *2009 Rural Broadband Report*, which provide an excellent guide for achieving the goal of ubiquitous access to affordable, robust broadband services throughout rural America.

¹² *February 2011 ICC/USF NPRM* at ¶ 111.

¹³ *Id.* at ¶¶ 595-599. The *February 2011 ICC/USF NPRM* also considers maintaining some form of RoR regulation for certain areas as a long term vision for the Connect America Fund (CAF).

¹⁴ *Id.* at ¶¶ 603-634.

¹⁵ *Id.* at ¶ 395.

¹⁶ *Id.* at ¶ 12. *See also*, separate statements of Chairman Genachowski and Commissioner Baker.

¹⁷ Further, the Associations are encouraged by the reportedly imminent release of a notice of a NPRM on possible reforms to the Commission’s retransmission consent rules, thus potentially addressing the various “access to content” issues identified by the Associations in prior comments on broadband deployment issues. *See infra* p. 11; *see also FCC to Hold Open Commission Meeting, Thursday, March 3, 2011*, Agenda (rel. Feb. 24, 2011).

A. Reform Of The High-Cost USF Program Should Promote The Deployment Of Scalable Broadband Networks In Rural Areas That Can Keep Pace With Evolving Bandwidth Demands.

The *2009 Rural Broadband Report* advised that rural networks “should be designed on principles of durability, reliability, openness, *scalability*, and interoperability so that they can *evolve over time to keep pace with the growing array of transformational applications and services that are increasingly available to consumers and businesses in other parts of the country.*”¹⁸ Unfortunately, the NBP’s national broadband availability target of 4 Mbps download and 1 Mbps upload will not ensure that rural consumers have access to broadband connections that can keep pace with increasingly bandwidth-intensive applications and services available elsewhere. As pointed out by numerous industry stakeholders, a 4/1 definition “would create a permanent rural/urban digital divide, would be obsolete by the time funding is disbursed, and would halt the deployment of fiber optic facilities and other long-term broadband solutions.”¹⁹ The Commission should therefore focus on ensuring that RLECs have sufficient and stable high-cost USF support to provide robust broadband services throughout their territories that can evolve over time as demand for bandwidth-intensive services increases and that – consistent with applicable law - are reasonably comparable to those available in urban areas, whatever those speeds and functions may be.

As both the *2009 Rural Broadband Report*²⁰ and the NBP recognized,²¹ access to robust broadband connections can have a profound effect on rural Americans. The presence of a high-speed broadband network can entice businesses to relocate to a rural area as well as help to retain

¹⁸ *2009 Rural Broadband Report* at ¶ 11 (emphasis added).

¹⁹ *February 2011 ICC/USF NPRM* at ¶ 111; *see also* n. 187.

²⁰ *See, 2009 Rural Broadband Report* at ¶¶ 14-25.

²¹ *See, NBP*, Part III (“National Purposes”).

existing businesses, which can bring jobs to areas with high unemployment. In addition, high-speed residential broadband connections can make available health care, education, employment, and home security services, among others, that would not otherwise be available to rural consumers. Typically, speeds of at least 10 Mbps download are required to accommodate these and other applications and services. Many RLECs report that their customers are already seeking access to broadband speeds faster than 4/1 Mbps and such services are already available in many urban areas. Moreover, rural consumers' bandwidth needs will only continue to grow, and the demand for speeds of 100 Mbps download or more will soon become commonplace.²² As the *2009 Rural Broadband Report* states, "technologies that cannot be upgraded easily could make Internet applications less than five years from now look like the dial-up downloads of today."²³

While RLECs have done a commendable job of deploying basic levels of broadband to the majority of consumers in their service areas, the task is far from complete. Significant network upgrades are necessary to satisfy consumer and business demand and to accommodate the ever growing number of transformational bandwidth-intensive applications and services. These wireline network upgrades include those necessary to support and transport wireless broadband services.²⁴

²² *2009 Rural Broadband Report* at ¶ 82.

²³ *Id.* As the Commission is well aware, one does not engineer and invest in a network just for the speeds that may be in demand today, but rather, a prudent firm will design and invest in network technologies that are capable of meeting the demands that can be reasonably anticipated over the life of the investment.

²⁴ Wireline networks provide services for wireless networks particularly backhaul services and last-mile wireline broadband infrastructure that serves as the basis for wireless femtocells, which takes the burden off scarce spectrum. Joint Comments of NECA, NTCA, OPASTCO, WTA and the Rural Alliance, WC Docket No. 10-90, at 28, n. 70 (filed July 12, 2010) (*citing* ACE Report Appendix B at 9).

The *2009 Rural Broadband Report* implicitly recognized that over the long term, universal service policies that promote the build-out of scalable networks are a more efficient use of public resources than encouraging the deployment of “least-cost” non-scalable technologies.

As the *Report* stated:

Given the high fixed costs of constructing broadband networks, once built, they are not likely to be replaced, especially in rural areas that are unserved today. As a consequence, we believe that networks deployed in rural areas should not merely be adequate for current bandwidth demands. Instead, they also should be readily upgradeable to meet bandwidth demands of the future.²⁵

Therefore, going forward, the FCC should follow the path identified by the *2009 Rural Broadband Report* and adopt policies, definitions, and targets that support the deployment and predictable cost recovery of scalable broadband networks in rural areas.

B. The Commission Should Secure The Long-Term Sustainability Of The USF By Expeditiously Requiring All Broadband Providers To Contribute To The Fund.

A sustainable USF contribution mechanism is a key component in the effort to provide ongoing, ubiquitous access to affordable, robust broadband services to all Americans. To that end, the most important step to reforming the contribution mechanism is expanding the base of contributors to include, at a minimum, all broadband Internet access providers over all technological platforms. As the *2009 Rural Broadband Report* stated, “adding broadband to both the contribution and distribution sides of the ledger...would accomplish a great deal in addressing the sustainability and integrity of the fund for the long term and promote broadband in the areas served by the fund.”²⁶ By expanding the contribution base to include an industry segment that continues to grow, it will sustain the USF for the foreseeable future and avoid the imposition of unreasonable universal service fees on consumers’ communications services.

²⁵ *2009 Rural Broadband Report* at ¶ 82.

²⁶ *Id.* at ¶ 138.

Additionally, requiring broadband providers, who depend on broadband networks, to contribute to the USF is consistent with a program that is being reformed to explicitly support broadband.

There is a voluminous record on USF contribution reform upon which the Commission could immediately act. However, by delaying action, the Commission risks undermining the goodwill that policymakers have regarding the USF and it also risks being unable to adopt some of the other recommendations in the *2009 Rural Broadband Report*. The Commission should therefore immediately act to secure the sustainability of the USF for the long term by reforming the contribution methodology and specifically requiring all broadband providers to contribute.

C. The Commission Should Ensure That Any Reforms To Its Intercarrier Compensation Rules Promote The Deployment And Upgrade Of Broadband Networks In RLEC Service Areas.

For RLECs, the revenues earned through ICC are essential to their ability to operate networks that provide high-quality broadband services at affordable rates to their customers. Likewise, the calculation of interstate access rates based on an authorized rate of return provides the opportunity for predictable cost recovery that helps RLECs secure loans to finance broadband network deployment and upgrades. Therefore, as the *2009 Rural Broadband Report* recommended, “a critical factor in evaluating any specific set of proposed [ICC] reforms should be the effect they will have on the deployment of broadband services in rural areas.”²⁷

The Associations are encouraged that the *February 2011 USF/ICC NPRM* seeks comment on a number of short term ICC issues that, if resolved properly, would improve RLECs’ ability to make network investments. For example, the NPRM includes proposals to strengthen the Commission’s call signaling rules²⁸ and seeks input on VoIP providers’ obligation

²⁷ *Id.* at ¶ 155.

²⁸ *February 2011 ICC/USF NPRM* at ¶¶ 620-634.

to pay ICC rates,²⁹ actions that would inject some much needed stability into RLECs' ICC revenue streams. The Associations are also encouraged that the NPRM seeks comment on an ICC reform recovery mechanism exclusive to RoR carriers.³⁰

It is critical that any recovery mechanism accounts for the significant revenue stream that ICC represents for RLECs as well as the unique challenges that these carriers face in improving the quality and reach of their broadband networks. By establishing a sufficient ICC recovery mechanism that is appropriate for RLECs, the Commission would improve the likelihood that robust, affordable broadband services will be available to rural consumers throughout their serving territories. These issues will be addressed further in comments filed by the Associations in response to the *February 2011 ICC/USF NPRM*.

D. To Better Ensure That Robust Broadband Services Can Be Provided In All Rural Areas, The Commission Should Provide Support For Middle-Mile Transport Costs.

Access to affordable, high capacity middle-mile facilities is an important component of RLECs' ability to offer high-speed broadband services. As demand for bandwidth grows in rural areas, RLECs' middle-mile connections to the Internet backbone will need to be upgraded – even the most forward-looking and efficient investment in last-mile broadband technology could be rendered moot if there is insufficient capacity in the middle. However, as the *Report* acknowledges, “even when the last-mile provider acquires access to adequate middle-mile facilities, that access may be prohibitively expensive.”³¹ This is due to the fact that RLECs' networks are sometimes long distances from the closest Internet backbone peering point, and

²⁹ *Id.* at ¶ 618.

³⁰ *Id.* at ¶¶ 595-599.

³¹ *2009 Rural Broadband Report* at ¶ 114.

because there may often be only one provider of transport on all or parts of the routes needed to reach those peering points.

The Associations were pleased that the *2009 Rural Broadband Report* acknowledged this challenge,³² and they were also encouraged that the NBP recommended the Commission consider the costs of middle-mile facilities in any discussion of support to high-cost areas.³³ Most recently, the *February 2011 ICC/USF NPRM* sought comment on whether the Commission should modify its universal service support rules to provide additional support for middle-mile costs.³⁴ The Associations support this proposal, as doing so would improve the likelihood that businesses and consumers in RLEC service areas will be able to enjoy the full benefit of high-speed last-mile broadband facilities, at affordable rates.

E. The Commission Can Increase Broadband Adoption By Ensuring That Rural Carriers Have Access To Video Content At Reasonable Rates And Under Reasonable Terms And Conditions.

The Commission should strongly consider the important role that affordable access to video content plays in improving broadband adoption rates. As the *2009 Rural Broadband Report* correctly stated, “[a]ccess to video programming is often an important element in a customer’s decision to purchase broadband service.”³⁵ The experience of the Associations’ members confirms that when video is offered jointly with broadband Internet access services, adoption rates increase.³⁶

³² *Id.* at ¶ 154.

³³ *NBP* at 140.

³⁴ *February 2011 ICC/USF NPRM* at ¶ 395.

³⁵ *2009 Rural Broadband Report* at ¶ 159.

³⁶ A survey conducted by the National Exchange Carrier Association (NECA) found that when rural carriers were able to offer video along with broadband services, broadband adoption rates

This, of course, is predicated on the ability of rural carriers to obtain video content at fair and reasonable prices, and on reasonable terms and conditions.³⁷ A fundamentally flawed retransmission consent process,³⁸ the use of “tying” provisions where carriers are forced to purchase programming they do not want in order to obtain “must have” content,³⁹ and other onerous terms and conditions imposed by video programmers inhibit rural carriers’ ability to offer their subscribers the video services they demand, let alone at affordable rates. The forthcoming proceeding on the retransmission consent regime provides an opportunity to begin the long-awaited reform of the Commission’s video access rules. Reform in this area will be a vital component to enhancing broadband adoption in the areas served by RLECs.

increase by 24 percent. National Exchange Carrier Association Comments, GN Docket Nos. 09-47, 09-51, 09-137, at 6 (filed Dec. 7, 2009).

³⁷ See also, *Resolution on Fair and Non-Discriminatory Access to Content*, adopted by the NARUC Board of Directors on Feb. 16, 2011 (urging Commission to refer issue of content availability and discriminatory pricing that disadvantages small and mid-size LECs to Section 706 Joint Conference for examination and recommendations.), available at <http://www.naruc.org/Resolutions/Resolution%20on%20Fair%20and%20Non%20Discriminator%20Access%20to%20Content.pdf>.

³⁸ See, OPASTCO, NTCA, ITTA, WTA, and Rural Independent Competitive Alliance (RICA) Comments, MB Docket No. 10-71 (filed May 18, 2010).

³⁹ See, Letter from Stephen Pastorkovich, OPASTCO, *et al.*, to FCC Chairman Kevin J. Martin, MB Docket No. 07-198 (filed Aug. 15, 2008). See also, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, MB Docket No. 07-29, *Review of the Commission’s Program Access Rules and Examination of Program Tying Arrangements*, MB Docket No. 07-198, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791 (2007) at ¶120; OPASTCO Comments, MB Docket No. 07-269, at 13-16 (filed July 29, 2009); NTCA Comments, MB Docket No. 07-269, at 4-6 (filed May 19, 2009); American Cable Association (ACA) Reply Comments, MB Docket No. 07-269, at 9-11 (filed Aug. 28, 2009).

F. The Commission Can Help Ensure That Wireless Broadband Reaches Rural Areas By Creating And Enforcing Policies That Foster 4G Wireless Deployment By Rural Wireless Providers.

To date, Commission efforts have not been consistently successful in promoting rural wireless broadband deployments. Much unused spectrum in rural territory remains under the control of large carriers that concentrate their build-out and upgrade efforts in the more profitable densely populated areas along the highways, even as rural deployment requires spectrum be held by parties with an interest in serving rural communities – namely, RLECs and small businesses. The Commission must review its spectrum policies to determine how it can encourage large entities to part with unused spectrum, or at a minimum, apply stricter build-out requirements and incentives for partitioning spectrum.

The Commission should also consider changes to its auction structure.⁴⁰ Small business bidding credits and small geographic license territories are helpful for small businesses, but offer little to a small business that is bidding against a nationwide provider with nearly unlimited resources. Furthermore, a nationwide provider may be motivated to obtain spectrum in a rural area even if its immediate plans do not include providing ubiquitous service in that area. The Commission should again consider setting aside spectrum for licensees with the will and ability to serve rural communities.

The Commission should also consider the ways in which data roaming requirements, existing handset exclusivity deals, and the adoption of technical standards that prevent interoperability between spectrum bands harm rural consumers, as these factors often prevent rural providers from offering services comparable to those available in urban areas.

⁴⁰ 2009 Rural Broadband Report at ¶ 147.

III. CONCLUSION

The Commission should be guided by the valuable recommendations presented in the *2009 Rural Broadband Report* as it proceeds with ICC and USF reform. Proposed approaches to reform described in the NBP and subsequent notices have not fully reflected the *Report's* findings, and have created significant regulatory uncertainty for RLECs. Specifically, the Commission's reform efforts should seek to promote scalable broadband networks in rural areas, implement ICC reform in ways that promote financial stability, support RLEC's middle mile costs, ensures RLEC's access to video content at reasonable rates, terms and conditions, and require all broadband providers to contribute to the USF. The Commission must also re-work its spectrum policies with stricter build-out requirements and incentives for spectrum partitions to encourage large carriers to relinquish their rights to unused spectrum thus allowing RLECs and rural businesses to utilize spectrum more efficiently. The Commission should further set aside spectrum for licensees with the desire and capability to serve rural communities.

In going forward, the Commission should implement a rural broadband strategy consistent with the findings in the *2009 Rural Broadband Report*, enabling rural customers to

enjoy access to broadband services that are reasonably comparable in price and functionality to those enjoyed by consumers living in urban and suburban America.

March 2, 2011

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.



By:
Richard A. Askoff
Linda A. Rushnak
Its Attorneys
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ Jill Canfield
Jill Canfield
Senior Regulatory Counsel
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS
COMPANIES

By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy and
Business Development
2020 K Street, NW, 7th Floor
Washington, DC 20006
(202) 659-5990

WESTERN TELECOMMUNICATIONS
ALLIANCE

By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202

EASTERN RURAL TELECOM
ASSOCIATION

By: /s/ Jerry Weikle
Jerry Weikle
Regulatory Consultant
5910 Clyde Rhyne Drive
Sanford, NC 27330
(919) 708-7404

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 2nd day of March, 2011 by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com