Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Eliminating *Ex Ante* Pricing Regulation and	)	WC Docket No. 20-71
Tariffing of Telephone Access Charges	)	

REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these reply comments in response to filings addressing the Notice of Proposed Rulemaking ("*NPRM*")[2] adopted by the Federal Communications Commission ("Commission") in the above-captioned proceeding. The *NPRM* proposes eliminating *ex ante* pricing regulation and tariffing of telephone access charges, including subscriber line charges ("SLCs") and access recovery charges ("ARCs").

As NTCA noted in initial comments,[3] the rules that the *NPRM* proposes to eliminate serve a valuable purpose in promoting universal service, providing certainty to providers operating in difficult and high-cost-to-serve rural areas, and reducing burdens associated with the recovery of regulated costs. Even under normal circumstances, mandatory detariffing of the charges at issue would only promote confusion and disruption as consumers see charges disappear in one place only to reappear in another on invoices, a result that will prove to be

[1] NTCA represents approximately 850 rural local exchange carriers ("RLECs"). All of NTCA's members are voice and broadband providers, and many of its members provide wireless, cable, satellite, and other competitive services to their communities.

[2] *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, Notice of Proposed Rulemaking, FCC 20-40 (rel. Apr. 1, 2020) ("*NPRM*").

[3] Comments of NTCA–The Rural Broadband Association, WC Docket No. 20-71 (fil. Jul. 6, 2020) ("NTCA").

harmful to customer-carrier relationships as well as disruptive to carriers. But this disruption to consumers and carriers alike will only be exacerbated in the context of the current global health crisis, as consumers are struggling with bills of all kinds and providers are grappling with the challenges of sustaining services in a time of economic upheaval experienced by their subscribers.[4] Even worse, this disruption would take place based on a faulty assumption underlying the proposal: as the record in response to the *NPRM* shows, many RLECs do not enjoy significant "rate flexibility" at the state level such that they can merely shift these charges into local voice rates and avoid any shortfalls in revenues as a result. Many in fact face either rate cases or similarly burdensome proceedings (that may deny cost recovery entirely) or ratchets embedded in state codes or rules that will only allow persistent and annoying "death by a thousand cuts" rate increases for customers over months or years as part of any effort to increase local service rates to recover the costs that will be shifted from the interstate jurisdiction under this proposal. On top of that, the proposal violates relevant case law and is inconsistent with its forbearance authority.

With respect to the "rate flexibility" assumption that is foundational to the NPRM's proposal, like NTCA,[5] a diverse group of parties with direct experience in state-level

[4] As noted in initial comments, NTCA members and similarly situated operators are currently navigating unprecedented issues related to the COVID-19 pandemic and doing so at time when efforts to comply with buildout obligations under various universal service programs are ongoing and already quite challenging. With respect to the former, NTCA members – hundreds of whom were parties to the Chairman's pledge to Keep Americans Connected – recently reported, on average, approximately $80,000 in unpaid voice and broadband bills since the pandemic started. Even absent these pandemic-related challenges, the impact of the proposed changes is not insignificant – using projected data for the 2020-2021 tariff cycle, NTCA estimates that RLECs recover nearly $290 million annually from SLCs and ARCs. NTCA, p. 2.

[5] *Id*., pp. 4-8 (pointing to the states of Arizona, Georgia, California, and Kentucky as requiring rate cases to raise rates, as well as the complications involved in doing so in New York, Nevada, Kansas, Alabama,

proceedings, the manner in which local rates are set, and the overall process of RLEC cost recovery, point out that the process is much more complicated and much less de-regulatory than the Commission seems to believe. More specifically, the Multi-State RLEC Group,[6] the Concerned Rural LECs,[7] JSI,[8] the Small Company Coalition,[9] the state associations of Kansas,[10] Ohio,[11] and Alabama,[12] as well as USTelecom,[13] all point to the complicated and time-consuming (and certainly far from "deregulatory") processes at the state level that the *NPRM*

Idaho, Mississippi, Vermont, South Carolina, and Ohio). Several other parties referenced these and many other states, the common theme being that the "deregulatory trend" at the state level is overstated.

[6] Comments of the Multi-State RLEC Group, WC Docket No. 20-71 (fil. Jul. 6, 2020), pp. 4-6 (discussing the barriers to and implications of raising local rates in the states of New York and Nebraska).

[7] Comments of the Concerned Rural LECs, WC Docket No. 20-71 (fil. Jul. 6, 2020), pp. 3-5 (discussing the barriers to and implications of raising local rates in the states of Arkansas, California, Kansas, Kentucky, Missouri, Montana, Nevada, Oklahoma, and Texas).

[8] Comments of JS, LLC ("JSI") WC Docket No. 20-71 (fil. Jul. 6, 2020), pp. 2-4 (stating that "some carriers may not be able to recover these costs through state-governed rate mechanisms").

[9] Comments of the Small Company Coalition, WC Docket No. 20-71 (fil. Jul. 6, 2020), pp. 4-6 (discussing the barriers to and implications of raising local rates in the states of New Mexico and Kansas).

[10] Comments of the Kansas Rural Local Exchange Carriers, WC Docket No. 20-71 (fil. Jul. 6, 2020) (providing a detailed discussion of the complicated process of setting local service rates in Kansas and noting the devastating consequences a mandatory detariffing regime as proposed by the NPRM would have on Kansas RLECs).

[11] Comments of the Ohio Telecom Association, WC Docket No. 20-71 (fil. Jul. 6, 2020), pp. 3-5 (discussing the intricacies of Ohio law that will function as a substantial barrier for RLECs in that state seeking to shift the costs at issue to local service rates).

[12] Comments of the Alabama Rural Local Exchange Carriers, WC Docket No. 20-71 (fil. Jul. 6, 2020), p. 4 (discussing the many factors determining carriers' ability to raise local rates and stating that "the Alabama RLECs are thus without the ability to raise rates for basic local service to recover revenues lost through the mandatory detariffing of subscriber line charges and access recovery charges unless they waive the protections afforded rural telephone companies under 47 U.S.C. § 251(f)(1)(A)").

[13] Comments of US Telecom – The Broadband Association, WC Docket No. 20-71 (fil. Jul. 6, 2020), pp. 6-9 (pointing to several states that impose barriers to providers' shifting of the cost recovery at issue to local service rates).

overlooks. The states of California,[14] Nebraska,[15] and New York[16] also weigh in on the lack of flexibility for RLECs in those jurisdiction to raise local rates – and California and Nebraska each note as well the burdens that attempts to shift cost recovery to local rates will impose on RLECs.

In sum, many RLECs in fact face the prospect of rate cases or similarly burdensome proceedings as part of any effort to increase local service rates to recover the costs that will be shifted from the interstate jurisdiction under this proposal. In some other states, ratchets on rates are ensconced within state legislative codes and state commission rules, and thus rate increases can only come in a "phased-in" manner (which will lead to denied cost recovery for a period of years). RLECs in numerous states will therefore face shortfalls in revenues and cost recovery if rate increases are rejected by state commissions or if they are limited to a certain percentage over a period of years – *and, more importantly, consumers may experience constant changes to their end-user bills in states where RLECs are forced to shift costs to the local rates over time.* In

[14] Comments of the California Public Utilities Commission, WC Docket No. 20-71 (fil. Jul. 6, 2020), p. 2 ("For California, the proposal fails to account for rate-of-return carriers subject to CPUC regulation. There are 10 rate-of-return carriers in California that receive state high-cost support and serve households and businesses totaling approximately 52,000 access lines. Such carriers do not have the rate flexibility to combine the interstate access charges with local intrastate basic service rates without requesting such approval through a time-consuming formal proceeding. Such a proceeding would be in addition to and "out of cycle" with these carriers' general rate cases in which the CPUC reviews and approves intrastate basic rates, among other items, every five years. Hence, the detariffing proposal will cause considerable burden on the carriers and on the state to implement detariffing if forbearance is granted.").

[15] Comments of the Nebraska Public Service Commission, WC Docket No. 20-71 (fil. Jul. 6, 2020), p. 7 (stating that "rather than eliminating costs and regulatory burdens, the Commission's proposals to have the SLC and ARC absorbed into local rates on the consumer bill would actually impose significant costs on Nebraska providers").

[16] Comments of the New York State Public Service Commission, WC Docket No. 20-71 (fil. Jul. 6, 2020), p. 2 (discussing the process of developing intrastate rates in New York and stating that "[i]nsofar as interstate access charges are designed to recover jurisdictionally interstate costs, there is no legal mechanism in New York for the Incumbent LECs to recover their lost interstate revenues through increases to intrastate rates.").

short, the record in response to the NPRM shatters both the "rate flexibility" assumption that underlies this proposal as well as the notion that mandatory detariffing will somehow benefit smaller providers as a deregulatory measure. Indeed, based upon the initial comments, it is unclear what, if any, benefits will accrue from the proposal – and as noted in NTCA's initial comments,[17] a proper cost-benefit analysis is warranted here prior to any action being taken given that the "deregulatory costs" appear by all measures to far outweigh the purported "deregulatory benefits" of the proposed action.

The only parties endorsing the NPRM, even just in part, appear to focus merely on distinct parochial policy ends and fail to appreciate in any way the actual conditions "on the ground" or the complications and implications of pulling apart the strands of tariffing even as costs have been assigned to the interstate jurisdiction by regulatory mandate. Specifically, the Ad Hoc Telecom Users Committee overlooks the fact that the NPRM's proposal would not provide a reasonable opportunity for recovery of those costs elsewhere when it asserts that "SLC and ARC levels should have no impact on the overall price charged to the vast majority of end users who purchase services in states where retail prices have been deregulated."[18] (In other words, Ad Hoc's advocacy is premised upon the notion that prices would *not* be increased and revenues *would* be lost.) NCTA makes a similar mistake in representing the scope of state regulation.[19] Each of course ignores those states where rates have not been deregulated. Ad Hoc

[17] NTCA, pp. 15-16.

[18] Comments of the Ad Hoc Telecom Users Committee ("Ad Hoc"), WC Docket No. 20-71 (fil. Jul. 6, 2020), p. 6.

[19] Comments of NCTA — The Internet & Television Association, WC Docket No. 20-71 (fil. Jul. 6, 2020), p. 2. (stating that "the vast majority of states already allow pricing flexibility with respect to intrastate retail voice services").

also makes additional arguments – reiterating its support for phasing out ARCs and asserting that current rate levels for SLCs exceed costs – again without demonstrating any understanding of, or concern for, the process of unwinding and readjusting how consumers are billed and the follow-on impacts that will come from the adoption of the NPRM's proposals. While Ad Hoc may not grasp these implications for disruption to consumers and carriers alike, it is imperative that such issues be considered fully, the costs and benefits examined in a disciplined manner, and any concerns addressed thoughtfully as part of a meaningful rulemaking. Based on the evidence with respect to the lack of flexibility that RLECs have to increase local rates – and the consumer confusion as bills change for reasons they do not understand – a mandatory detariffing of the charges at issue here should be rejected.

It should also be noted that even as NTCA raised the legal and procedural infirmities of the proposal – pointing to its inconsistency with *Smith v. Illinois Bell Telephone Co*,[20] the fact that the proposal to shift costs to the intrastate jurisdiction raises separations issues,[21] and that the proposal does not meet the Commission's forbearance standard[22] – not one party supporting the proposal offers up any discussion of these critical issues. This demonstrates that, in addition to the numerous substantive policy reasons that mandatory detariffing should not be pursued, the proposed rule is also procedurally unsound and should therefore be abandoned.

[20] NTCA, pp. 11-12, citing *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133 (1930); *see also Direct Commc'ns Cedar Valley, Ltd. Liability Co. v. FCC*, 753 F.3d 1015, 1133 (10th Cir. 2014) (citing *Smith*, 282 U.S. at 148-149).

[21] NTCA, pp. 16-18.

[22] *Id*., pp. 18-22.

Ultimately, the record in this proceeding makes clear that a mandatory detariffing regime presents policy, practical, and legal challenges that justify rejection of such an approach; at most, the record supports nothing more than permissive detariffing of the end user charges at issue that would reflect local conditions and provider preferences consistent with the Commission's desire for deregulation.[23]

Respectfully submitted,

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[23] *Id.*, pp. 22-23. *See also*, Comments of Windstream, WC Docket No. 20-71 (fil. Jul. 6, 2020), p. 6; US Telecom, pp. 12-14; JSI, p. 9.