

**Before the
Federal Communications Commission
Washington, DC 20554**

Petition of)	
)	
NTCA–The Rural Broadband Association)	WC Docket No. _____
and the United States Telecom Association)	
for Targeted, Temporary Forbearance)	WC Docket No. 06-122
Pursuant to 47 U.S.C. § 160(c) from)	
Application of Contributions Obligations on)	
Broadband Internet Access Transmission)	
Services Pending Universal Service Fund)	
Comprehensive Contributions Reform)	

**PETITION FOR FORBEARANCE OF
NTCA–THE RURAL BROADBAND ASSOCIATION AND
THE UNITED STATES TELCOM ASSOCIATION**

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**PETITION FOR FORBEARANCE OF
NTCA–THE RURAL BROADBAND ASSOCIATION AND
THE UNITED STATES TELECOM ASSOCIATION**

Pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),¹ and Sections 1.53 and 1.54 of the rules of the Federal Communications Commission (the “Commission”),² NTCA–The Rural Broadband Association (“NTCA”)³ and the United States Telecom Association (“USTelecom”)⁴ (jointly “Petitioners”) hereby petition the Commission for targeted, temporary forbearance from the application of universal service fund (“USF”)

¹ 47 U.S.C. § 160.

² 47 C.F.R. §§ 1.53 and 1.54.

³ NTCA is an industry association composed of nearly 900 rural local exchange carriers (“RLECs”) that provide advanced telecommunications and broadband services to millions of consumers and businesses in the most rural reaches of the United States.

⁴ USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

contribution requirements pursuant to Section 254(d) of the Act⁵ and Section 54.706 of the Commission's rules⁶ with respect to broadband Internet access transmission services provided by RLECs pending the completion of comprehensive USF contributions reform.⁷

I. SUMMARY OF PETITION AND RELIEF SOUGHT

Petitioners request targeted, temporary forbearance from USF contribution requirements applied pursuant to Section 254(d) of the Act and Section 54.706 of the Commission's rules for RLEC-provided broadband Internet access transmission services, whether tariffed or offered on a de-tariffed basis, until such time as the Commission reaches a decision on whether *any and all* broadband services (and not just RLEC-provided broadband Internet access transmission services) should be required to contribute to support of federal USF programs or completes some other form of contributions reform.⁸ The relief requested herein is consistent with the standards of Section

⁵ 47 U.S.C. § 254(d)

⁶ 47 C.F.R. § 54.706.

⁷ *Federal State Joint Board on Universal Service; Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket Nos. 96-45, 06-122, GN Docket No. 09-51, Order, 29 FCC Rcd 9784 (2014).

⁸ Independent of the narrow, limited subject matter of this Petition, NTCA has repeatedly called for comprehensive reform to broaden and stabilize the “contributions base.” *See, e.g., Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, GN Docket No. 14-28, WC Docket No. 06-122, CC Docket No. 96-45 (filed Feb. 19, 2015); *Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 06-122 (filed Jan. 10, 2012). In other words, NTCA hopes that the forbearance granted pursuant to this Petition is truly short-term and temporary in nature. As NTCA has previously explained, the contributions reform debate does not need to be, nor should it be, a question of seeking to achieve substantial increases in the overall size of the USF. Rather, the fundamental issue is that comprehensive reform must occur just to ensure fundamental fairness in terms of having all of those that benefit from broadband-capable networks contribute to the health and well-being of the federal USF programs that are now primarily focused upon promoting national broadband objectives. Moreover, in the absence of comprehensive contributions reform, the viability and sustainability of the Commission's essential USF programs *at even just their current levels of funding* are in peril. For

10(a) of the Act, in that it: (1) will eliminate the current disparate and discriminatory treatment of one discrete class of broadband as compared to all other similarly situated services; (2) will avoid the anti-competitive implications of a regime that picks “winners and losers” in the broadband marketplace by treating one type of offering differently from all others based merely upon regulation which uniquely handicaps rural providers; (3) it would serve the public interest by mitigating to some degree the already high cost of broadband for rural consumers; and (4) is fully consistent with courses of action and clarification with respect to contribution assessments applicable to similar broadband Internet access services as articulated and adopted by the Commission in both its Title II proceeding and more recent USF reform efforts, as well as prior orders in 2002 involving cable modem service and in 2005 involving wireline broadband Internet access service.⁹ Finally, the requested relief will have a *de minimis* effect on USF contribution levels.

purposes of clarification, this Petition is being filed for docketing in a new proceeding because it seeks *only* temporary, targeted forbearance separate and distinct from comprehensive contributions reform; nonetheless, pursuant to Section 1.54(c) of the Commission’s rules, 47 C.F.R § 1.54(c), NTCA submits this Petition in the contributions reform docket as well in an abundance of caution and because the limited forbearance requested herein would presumably ultimately be tied to resolution of matters in that broader contributions proceeding.

⁹ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory. Ruling, and Order, 30 FCC Rcd 5601, 5836-37 (2015) (“*Title II Order*”), at ¶ 489; *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking 31 FCC Rcd 3087, 3160 (2016) (“*Rate-of-Return Reform Order*”), at n. 428; *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-785, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (“*Cable Modem Order*”), *aff’d*, *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (“*WBIAS Order*”).

Further information as required by Section 1.54 of the Commission's rules is provided in the Appendices hereto, and Sections II and III herein provide a full statement of the *prima facie* case for the forbearance relief requested by NTCA and USTelecom in this Petition.

II. THE COMMISSION SHOULD ADDRESS THE DISCRIMINATORY AND ANTI-COMPETITIVE TREATMENT OF RLEC-PROVIDED BROADBAND INTERNET ACCESS TRANSMISSION SERVICES AS COMPARED TO OTHER BROADBAND INTERNET ACCESS SERVICES IN ADVANCE OF COMPREHENSIVE CONTRIBUTIONS REFORM.

A. The Treatment of *Most* Broadband Internet Access Services Today

In 2002, the Commission declared that cable modem broadband service was an “information service” as defined in the Act.¹⁰ As such, cable modem broadband was not required to contribute in support of federal USF programs, because mandatory contributions are required only from the sale of interstate telecommunications services, and the Commission did not otherwise exercise its permissive authority to compel contributions based upon the provision of interstate telecommunications.¹¹

In 2005, the Commission issued an order finding that, like cable modem broadband, all facilities-based wireline broadband Internet access services were “information services.”¹² Recognizing, however, that some wireline broadband Internet access providers were already contributing to USF based upon the prior treatment of their broadband Internet access transmission services as “telecommunications services,” the Commission directed that “facilities-based providers of wireline broadband Internet access services must continue to contribute to existing

¹⁰ *Cable Modem Order*, 17 FCC Rcd at 4823, ¶¶ 38-39.

¹¹ 47 U.S.C. § 254(d).

¹² *WBIAS Order*, 20 FCC Rcd at 14863-64, ¶¶ 14-17.

universal service support mechanisms based on their current level of reported revenue for the transmission component of their wireline broadband Internet access services for a 270-day period after the effective date of this Order or until we adopt new contribution rules . . . , whichever occurs earlier.”¹³

In the 2015 *Title II Order*, the Commission reconsidered these prior decisions and classified retail broadband Internet access services as telecommunications services.¹⁴ As the Commission observed in that order, its revised treatment of such services “would immediately require new universal service contributions associated with broadband Internet access service.”¹⁵ Nonetheless, because the question of contributions from broadband Internet access services was the subject of an open inquiry about broader comprehensive reform, the Commission found in the *Title II Order* – echoing its decision a decade earlier in the *WBIAS Order* – that “limited forbearance is warranted at the present time in order to allow the Commission to consider the issues presented based on a full record in that docket.”¹⁶

¹³ *Id.* at 14916, ¶¶ 112-113.

¹⁴ *Title II Order*, 30 FCC Rcd at 5758-59, ¶¶ 355-356.

¹⁵ *Id.* at 5836, ¶ 488.

¹⁶ *Id.* at 5836-37, ¶ 489 (citing *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012) and *Federal-State Joint Board on Universal Service; Universal Service Contributions Methodology; A National Broadband Plan for Our Future*, WC Docket Nos. 96-45 and 06-122, GN Docket No. 09-51, Order, 29 FCC Rcd 9784 (2014)). Of course “that docket” has been pending for eleven years now, the record in that docket has been complete for almost five years now (other than a Joint Board referral that has been pending for three years), and the fundamental question presented – whether broadband services should continue to be exempt from contributing to the viability and sustainability of USF programs that are increasingly oriented to promote broadband services – is essentially the same question that the Commission noted as being important in its 2005 *WBIAS Order*.

B. The Disparate, Discriminatory, and Anti-Competitive Treatment of RLEC-Provided Broadband Internet Access Transmission Services Today

While *most* broadband Internet access services have thus either never contributed to the viability and sustainability of the USF programs (or at least have not done so over the past decade-plus years), a singular category of such services *has* been required to continue to contribute throughout this period. Specifically, as part of the *WBIAS Order* in 2005, the Commission permitted providers to continue to offer their broadband Internet access transmission services on a common carrier basis if they wished to do so – but it noted that to the extent they made such a choice, they would remain subject to the mandatory USF contribution requirement of section 254(d).¹⁷ Thus, if carriers wished to provide broadband Internet access transmission services as telecommunications services as a matter of their own choosing (in order to obtain cost recovery for such services via access rates and USF), then they were required to effectively elect such disparate treatment.¹⁸

Even as the Commission decided in the *Title II Order* that retail broadband Internet access services would be considered telecommunications services and then granted temporary forbearance from contributions requirements for such services, it expressly excluded RLEC-provided broadband Internet access transmission services from that forbearance. At the time, the

¹⁷ *WBIAS Order*, 20 FCC Rcd at 14917, n. 357.

¹⁸ For those stakeholders unfamiliar with *why* a provider might voluntarily offer broadband Internet access transmission service as a telecommunications service, as the *WBIAS Order* explains and as explained further in Section II.C, *infra*, without such treatment and the corresponding ability to recover those regulated costs via tariffed rates, pool settlements, and/or USF distributions for actual costs through High-Cost Loop Support (“HCLS”), Interstate Common Line Support (“ICLS”), or even the new Connect America Fund-Broadband Loop Support (“CAF-BLS”) (formerly Interstate Common Line Support or “ICLS”), RLECs “would be unable to afford the investment necessary to deploy facilities necessary to provide broadband Internet access services.” *See id.* at 14902, n. 269.

Commission explained that its rationale was not “to disturb the status quo with respect to current contributions obligations,” and that with respect specifically to the disparate treatment of RLEC-provided broadband Internet access services as compared to all other broadband Internet access services, “there will be a future opportunity to consider these issues in the contributions docket.”¹⁹ Although NTCA was disappointed with that outcome, neither it nor any stakeholder sought reconsideration of or appealed that determination, recognizing that this appeared to be a temporary concern and looking forward instead to the aforementioned “future opportunity” for near-term discussion of how the “limited forbearance” granted and the lack of relief with respect to RLEC-provided broadband Internet access transmission services would be addressed as part of the more comprehensive contributions debate.

It has now been more than two years since this “future opportunity” for discussion was mentioned, and unfortunately no visible progress has been made toward either correcting this disparate treatment - which puts rural providers on an uneven playing field - or completing a process for comprehensive contributions reform. This observation is by no means intended to question the good faith efforts of the Joint Board or others working hard on these issues, as the questions presented are clearly ones that require responsible, careful consideration. But the fact remains that actual resolution instead seems to keep becoming ever more distant, even as the discriminatory treatment of RLEC-provided broadband Internet access transmission services persists.²⁰

¹⁹ *Title II Order*, at 30 FCC Rcd at 5837, n. 1472.

²⁰ This disparate and discriminatory treatment has been further exacerbated during the intervening period in that RLECs that were able to elect model-based USF support now have the alternative of providing the broadband transmission services on a private carriage basis without risk of losing High-Cost USF support, while those RLECs continuing to rely upon non-model support (including the “Alaska Plan”) remain subject to the obligation to contribute to USF on

This persistent mismatch in treatment is also anti-competitive, in that it imposes upon a subset of RLECs and their customers a unique and discriminatory obligation to contribute to USF on broadband Internet access services. To be clear, Petitioners support comprehensive contributions reform that ensures the sustainability and viability of the federal USF programs that now enable greater access to and use of broadband-capable networks. But pending such reform, there is no good public policy rationale to subject only a single class of providers and their consumers alone to such an obligation. Indeed, the requirement that certain RLECs contribute while all other providers are “given a pass” is anti-competitive on its face, imposing pricing pressures on RLECs that are materially higher than those faced by any other operator. This in turn makes it more difficult, if not impossible, for RLECs to provide services at rates that are “reasonably comparable” to those in urban areas where providers do not contribute to the viability and sustainability of USF programs. Thus, in the absence of and until comprehensive contributions reform is achieved, RLECs should not be the sole class of provider subject to a disparate contribution duty.

Petitioners’ request is simple and straightforward – treat these specific broadband services the same as all other broadband services are treated pending further final determinations with respect to these issues. For these reasons and for the additional reasons described herein, RLEC-provided broadband Internet access transmission services should be placed on the same regulatory footing as all other broadband Internet access services – that is, “limited forbearance is warranted at the present time” in the form of targeted, temporary relief for these specific services pending consideration “of the issues presented based on a full record” in the contributions docket, in lieu

their broadband transmission service revenues at the risk of forfeiting their High-Cost USF support.

of leaving this specific broadband Internet access service as the *only* one subject to disparate, discriminatory, and anti-competitive treatment while awaiting the “future opportunity” afforded by a comprehensive contributions reform debate.

C. The Effects – or Lack Thereof – of Recent Changes and Clarifications on USF Contributions Obligations for RLECs

The need to address this discriminatory and anti-competitive treatment is even more pressing and appropriate in the wake of recent USF distribution reforms undertaken by the Commission. The forbearance requested herein provides the optimal vehicle to resolve this issue on a targeted, temporary (or “limited”) basis pending comprehensive contributions reform consistent with recently expressed desires of the Commission itself. Specifically, in the recent *Rate-of-Return Reform Order*, the Commission indicated that if an RLEC “chooses to detariff its wholesale consumer broadband-only loop offering,” it would no longer be subject to USF contributions obligations for that service, “similar to other carriers that previously chose not to offer a separate tariffed broadband transmission service.”²¹ Thus, the Commission clearly intended to provide RLECs with an opportunity to achieve “equal footing” from a USF contributions perspective.

Unfortunately, this opportunity is difficult, if not impossible, for most RLECs to pursue due as a practical matter to the mechanical operation of the Commission’s current rules. While

²¹ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3160, n. 428. The Wireline Competition Bureau further explained that “carriers that choose to change their offering of transmission service as a telecommunications service” and instead treat it as a “private carriage” service would not be “subject to a mandatory contributions obligation.” *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order (rel. June 15, 2016), at ¶ 25. Although non-model RLECs are also permitted to impute their broadband-only transmission rates to mitigate contributions obligations to some degree, this is a “patch” that does not overcome the fact that RLECs remain the only subset of broadband providers currently subject to a contributions duty.

this option is viable for those RLECs that elected model-based USF support (where support flows without reference to the actual incurrence of underlying regulated costs), the rules governing cost recovery via USF distributions pursuant to HCLS and CAF-BLS (as well as the “Alaska Plan”) provide for recovery only of *regulated* costs by non-model RLECs. To be even more clear, these support mechanisms and rates operate by reference to regulated costs that arise out of the provision of *telecommunications services* as recognized and allocated pursuant to Parts 64 and 65; the Commission’s own rules in these parts expressly dictate that any costs associated with non-common carrier services – such as any costs associated with services offered on a non-regulated “private carriage” basis – must be *excluded* from RLEC costs for purposes of interstate ratemaking and high-cost support purposes.²² Put another way, given that price cap carriers and CAF Phase II recipients will not face such concerns, in the absence of comprehensive reform, RLECs are the only broadband providers required to recover the costs of USF contributions from consumers in order to receive USF support and/or charge regulated rates for special access transmission.

Thus, the contributions “relief” clearly intended by the *Rate-of-Return Reform Order* provides little aid in practice. In ceasing to offer broadband Internet access transmission service on a common carrier basis pursuant to Title II and by electing to offer such service on a “private carriage” basis, a RLEC would be electing not only to cease contributing on the associated revenues – the rules indicate that it would *also* be electing in effect to cease recovering those costs through regulated rates or pool settlements or to receive HCLS, ICLS, or CAF-BLS for the

²² See, e.g., 47 C.F.R. § 65.800 (“The rate base shall consist of the interstate portion of the accounts listed in § 65.820 that has been invested in plant used and useful in the efficient provision of interstate *telecommunications services regulated by this Commission . . .*”) (emphasis added).

underlying costs of that transmission.²³ Clearly, this was not the intended or desired result of the Commission’s discussion with respect to contributions in the *Rate-of-Return Reform Order*, but as a practical, technical, and mechanical matter, this is precisely the result under current rules. For the reasons explained below, the Commission can and should address these concerns and ensure *all* broadband Internet access services, whether tariffed or detariffed, are subject to similar treatment through a grant of targeted, temporary forbearance.

D. The Benefits of Addressing – and the Need to Address – these Concerns Via Targeted, Temporary Forbearance

There are two possible ways in which the Commission can address the discriminatory and anti-competitive treatment noted above. One by rulemaking and the other by forbearance as described below.

In the first instance, to fulfill the intent of what it attempted to do in the *Rate-of-Return Reform Order*, the Commission could initiate a new rulemaking to modify its current rules to allow the recovery via USF and interstate rates and settlements of non-regulated costs associated with broadband Internet access transmission services that are offered on a “private carriage” basis. This option, however, would require substantial and time-consuming administrative procedural steps, including a careful, detailed analysis in the first instance of each and every section of Parts 64 and 65 and other potentially-affected cost recovery rules in Parts 32, 36, 54, and 69 to ensure that the right rules are considered for possible amendment or elimination. Such an effort would take not only the time necessary for proper notice-and-comment rulemaking pursuant to the Administrative

²³ As noted in footnote 20, *supra*, this concern persists specifically for those RLECs that did not elect model-based support, and thus rely upon the aforementioned mechanisms to recover regulated costs; the offering of such broadband transmission on a private carriage basis does not appear to affect the ability to receive model-based USF support since that has been decoupled from any tether to regulated cost recovery.

Procedure Act, but also substantial time *even prior to the release* of a Notice of Proposed Rulemaking to ascertain and confirm the scope of the proposed rule changes needed to effectuate the intended result. Moreover, even if such work were undertaken in a prompt manner, such an effort would be incomplete and inefficient to the extent it addressed only the treatment of detariffed services provided by RLECs on a private carriage basis and left broadband Internet access transmission services offered by RLECs pursuant to tariff still subject to the persistent discriminatory and anti-competitive treatment discussed above.

The other option to address the concerns noted above is via a simple targeted, temporary grant of forbearance as requested by this Petition. There are multiple benefits to this approach. First, it does not require the burdensome diagnostics and surgery and substantial additional process that would be needed to assess and “clean up” rules that may be scattered across Parts 32, 36, 54, 64, 65, and 69. Instead, just like the “limited forbearance” granted in the *Title II Order*, the Commission could simply forbear from application of Section 254(d) of the Act (and Section 54.706 of its rules) as applied to RLEC-provided broadband Internet access transmission services. As a result, these services would be exempt from contributing to USF – just like *all other* broadband Internet access services – until the Commission has had the “future opportunity to consider these issues in the contributions docket.”²⁴

Forbearance also offers the promise of a prompt means of addressing the persistent discriminatory and anti-competitive treatment that applies to RLEC-provided broadband Internet access transmission services. For the last two years all other retail broadband Internet access services have been exempt from any USF contributions obligation while RLEC-provided

²⁴ *Title II Order*, at 30 FCC Rcd at 5837-38, ¶ 490 and n. 1472.

broadband Internet access transmission services have remained subject to an increasing contribution factor while awaiting the future opportunity of a comprehensive contributions reform debate. Instead of delaying the process any longer, now is the time for a fresh look at the question of why a subset of RLECs and their consumers should uniquely bear this obligation.

Additionally, a grant of forbearance in this instance would help with significant lingering concerns about the affordability and adoption of broadband Internet access services by RLEC consumers. With a contribution factor of 17.1% (and likely rising over time despite periodic fluctuations), this translates to at least \$7.18 per month of contribution obligations based just upon the Commission’s own \$42 “broadband-only” loop transmission benchmark, and several times more than that per month for those RLECs for whom the “budget control” compels even higher transmission charges. Thus, forbearance offers a chance to help mitigate this cost as borne uniquely by RLEC consumers and thus help stimulate adoption of and migration to broadband services by rural consumers.

Finally, a grant of targeted, temporary forbearance with respect to USF contributions from RLEC-provided broadband Internet access transmission services would not have a material impact on the universal service contribution factor overall pending further action on comprehensive contributions reform. Petitioners estimate that removing the revenues associated specifically with RLEC-provided broadband Internet access transmission services from the USF “contributions base” (for those RLECs that have not elected model support) could have the effect of increasing the contribution factor by only 0.2% (rounded up),²⁵ which represents roughly \$0.10 per month – *a single dime per month, or the grand total of \$1.20 per consumer per year* – on the bill of a

²⁵ The sources used to derive this estimate are identified and explained in Appendix B hereto.

consumer purchasing \$50 per month in telecommunications services. This incremental amount is certainly far less than the potential impact on consumers of recent reforms that increased the USF distribution budgets for certain programs, and to the extent that the Commission undertakes and completes comprehensive contributions reform in the near future, the impact of this targeted, temporary forbearance is likely to be *de minimis* in the broader scope of the USF programs.

Moreover, and significantly, the outcome of the relief requested herein in the form of a resulting minor decrease in the contributions base is something that *the Commission already contemplated and adopted*. In the *Rate-of-Return Order*, the Commission specifically and intentionally adopted a path for such relief and intended to make it available to all RLECs that wished to avail themselves of it without limitation. Only a technical glitch in that path, which had the effect of precluding all non-model RLECs from taking it and the grant of this Petition to correct it, stands in the way of fulfilling this measure. Thus, the Commission has already in effect approved the path that permits and enables the minor decrease in the contributions base contemplated by this Petition.

III. THIS PETITION SATISFIES THE STANDARDS FOR FORBEARANCE.

Section 10(a) of the Act states that forbearance from a regulation or any provision of the Act shall be granted if the Commission determines that: (1) “enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with [a] telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;” (2) “enforcement of such regulation or provision is not necessary for the protection of consumers;” and (3) “forbearance

from applying such provision or regulation is in the public interest.”²⁶ Each of the standards is satisfied by the request for forbearance articulated in this Petition.

Taking the standards in reverse order, the Commission has already previously found “limited forbearance” from USF contributions obligations for broadband Internet access services pending comprehensive reform to be in the public interest.²⁷ The only additional step the Commission did *not* take – the simple step that is now requested by this Petition – is to include RLEC-provided broadband Internet access transmission services within the scope of that prior grant of forbearance for *all other* broadband Internet access services. Indeed, the Commission made that choice to exclude this discrete subset of services not because such a grant was deemed contrary to the public interest, but rather because the Commission’s primary focus at the time in 2015 was to maintain “the status quo” at the time with respect to contributions obligations pending “a future opportunity to consider [treatment of RLEC-provided broadband Internet access transmission services] in the contributions docket.”²⁸ Unfortunately, more than two years have passed and that opportunity has not come to pass even as the disparate treatment of RLEC-provided broadband Internet access transmission services persists.

Although the Commission attempted in the interim to provide some relief from for a subset of RLEC-provided broadband Internet access transmission services in the *Rate-of-Return Reform Order*,²⁹ as discussed in Section II.C, *supra*, the mechanical operation of the Commission’s current rules governing USF cost recovery and interstate ratemaking unfortunately prevented this relief

²⁶ 47 U.S.C. § 10(a).

²⁷ *Title II Order*, 30 FCC Rcd at 5836-37, ¶ 489.

²⁸ *Id.* at 5837, n. 1472.

²⁹ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3160, n. 428.

from being effective for the majority of RLECs and their consumers. Thus, a grant of temporary, targeted forbearance with respect to USF contributions from RLEC-provided broadband Internet access transmission services, whether offered on a tariffed or detariffed basis, pending comprehensive contributions reform is wholly consistent with prior Commission action and clearly in the public interest.

Furthermore, a grant of limited forbearance is warranted and in the public interest because the additional USF assessment is a charge that gets passed through to the consumer and the effect of removing this regulatory obligation would be a cost savings to certain rural consumers who are bearing a disproportionate burden today as compared to other consumers because of the uneven playing field upon which RLECs sit. The original intent in the *Title II Order* was for this to be only a short-term disparate treatment of RLEC-provided broadband Internet access transmission services pending comprehensive reform, but it has turned into lengthening the time these specific consumers in rural America have had to bear a unique burden. As discussed in Section II, *supra*, RLECs and their consumers are suffering a disproportionate burden as the sole contributors to USF on broadband while no other provider or consumers bears the same duty. This burden ultimately undermines rural providers in their efforts to serve their customers with rates comparable to the rates offered in urban areas. As described above, many RLEC consumers could see an immediate reduction of \$7.18 – or much greater – on their monthly bills to the extent RLEC-provided broadband Internet access transmission services are no longer uniquely subject to a USF contributions obligation. One of the biggest hurdles facing adoption in rural communities is price, and this is only exacerbated by budget controls that make it difficult, if not impossible, for many RLECs to offer services (and especially standalone broadband) at reasonably comparable rates. A

decrease of \$7.18 or greater could offer some help in making the cost of broadband somewhat more affordable for rural consumers.

The continued imposition of contribution obligations singularly upon RLEC-provided broadband Internet access transmission services is unnecessary to ensure just and reasonable charges or practices by RLECs or to avoid unjust or unreasonable discrimination. The Commission has already found that for every kind of provider, *other* than RLECs, there is no need for the time being to collect USF contributions on broadband Internet access services pending further consideration of comprehensive reform. And, for RLECs, a temporary reprieve from such contributions pending comprehensive reform would not render their rates or terms of service to consumers unjust or unreasonable or unjustly or unreasonably discriminatory; to the contrary, forbearance would ensure that their offering of broadband Internet access services is on more equal footing with all other providers of such services and more affordable for consumers than is currently the case where RLEC consumers bear a unique burden in their broadband purchases. In this regard, as noted earlier in this Petition, a grant of targeted, temporary forbearance is *necessary* to avoid unjust and unreasonable discrimination among broadband consumers.

IV. CONCLUSION

For the foregoing reasons, NTCA and USTelecom respectfully request that the Commission grant forbearance from USF contribution obligations pursuant to Section 254(d) of the Act and Section 54.706 of its rules pending comprehensive contributions reform for all RLEC-provided broadband Internet access transmission services, whether offered on tariffed or detariffed basis.

Respectfully submitted,



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Appendix A:
Summary Statement of Scope of Relief Requested and Other Information
Required Pursuant to 47 C.F.R. §§ 1.54(a) and (e)

Consistent with the current treatment of contributions to USF for all other broadband Internet access services, NTCA respectfully requests that the Commission grant targeted, temporary forbearance for all RLEC-provided broadband Internet access transmission services, whether offered on tariffed or detariffed basis, from USF contribution obligations pursuant to Section 254(d) of the Act and Section 54.706 of its rules pending comprehensive contributions reform. For purposes of further clarification:

- 47.C.F.R. § 1.54(a)(1) – Forbearance is sought with respect to 47 U.S.C. § 254(d) and 47 C.F.R. § 54.706.
- 47.C.F.R. § 1.54(a)(2) – Forbearance is sought for all rate-of-return-regulated incumbent local exchange carriers.
- 47.C.F.R. § 1.54(a)(3) – Forbearance is sought with respect to all broadband Internet access transmission services, whether offered on a tariffed or detariffed basis, provided by any given RLEC.
- 47.C.F.R. § 1.54(a)(4) – Forbearance is sought within all regions across the United States and all territories.
- 47.C.F.R. § 1.54(a)(5) – Consistent with the current treatment of *all other* broadband Internet access services, forbearance is sought only until such time as the Commission reaches a final decision with respect to common and consistent treatment of *all* broadband Internet access services for USF contributions purposes as offered by any and all providers of such services.

Appendix B: All Supporting Data Upon Which the Petition Intends to Rely

In addition to those Commission rules, prior orders, and stakeholder filings specifically cited in the Petition, this Petition relies upon the following supporting data:

- Universal Service Administrative Company (“USAC”) Quarterly Filings, available at: <http://www.universalservice.org/about/tools/fcc/filings/> (providing information on USF contributions by quarter)
- NECA 2016 Annual Tariff Filing, Transmittal No. 1489, Vol. 5, Exhibit 8, Workpaper 5 (“NECA Annual Tariff Filing”) (providing projected broadband transmission revenues for NECA tariff participants)
- Universal Service Fund Data: NECA Study Results (“USF Data Study Results”), available at: <https://www.fcc.gov/general/universal-service-fund-data-neca-study-results> (providing information on the total number of loops for all RLECs, including but not limited to NECA tariff participants)

For purposes of the estimate provided in Section II.D of the Petition with respect to the impact of forbearance relief on the USF contribution factor and other contributors – the 0.2% increase in the contribution factor – NTCA performed the following multi-step calculation to derive estimated quarterly broadband transmission revenues for all RLECs.

To NTCA’s knowledge, no public data are available with respect to the broadband transmission revenues for all RLECs that do not participate in the NECA broadband transmission tariff, nor is NTCA aware of any specific publicly available count of broadband transmission connections (standalone or voice/data combined) for those companies that do not participate in the tariff. NTCA therefore used the following steps to derive a quarterly revenue estimate for non-model RLEC broadband transmission services based upon publicly reported tariff broadband transmission revenues and thereby estimate the effect on the contribution factor of removing all such revenues from the “USF contribution (or revenue) base”:

1. The projected amount in the NECA Annual Tariff Filing of annual broadband transmission revenue for RLEC NECA broadband transmission tariff participants is stated as \$263,106,917.
2. Per the USF Data Study Results, the total number of voice and voice/data lines:
 - a. provided in the 585 RLEC study areas participating in the NECA broadband transmission tariff during that period is 1,606,609; and
 - b. provided in the 1095 RLEC study areas, whether or not participating in the NECA broadband transmission tariff during that period, is 3,697,337.
3. Step 2 indicates that 43.45% of RLEC voice and voice/data lines are associated with NECA broadband transmission tariff participants.
4. “Grossing up” the NECA annual broadband transmission tariff revenue projection in Step 1 to reflect the complete universe of RLEC study areas (*i.e.*, using the percentage identified in Step 3) yields an estimated \$605,495,761 in annual broadband transmission revenue for all RLECs.
5. The estimated annual broadband transmission revenue for “non-model” RLECs that would receive relief pursuant to this Petition is \$395,206,942.
6. Dividing this estimated annual broadband transmission revenue of \$395,206,942 for non-model RLECs by four yields a quarterly broadband transmission revenue estimate of \$98,801,736.
7. The “USF revenue base” for the third quarter of 2017 is \$13.110461 billion.
8. Subtracting the quarterly broadband transmission revenue estimate of \$98,801,736 as noted in Step 6 from the revenue base identified in Step 7 would yield a revised third quarter 2017 base of \$13.011659 billion.
9. If a revised third quarter 2017 revenue base of \$13.011659 billion (see Step 8) were substituted for the original figure of \$13.110461 billion (see Step 7), this would yield a contribution factor of 17.3% rather than the current 17.1% factor – an estimated increase of 0.2% (rounded upward) in the factor.

Although this is only an estimate using available public data and a proxy of voice and voice/data lines for relative numbers of broadband transmission connections, the estimate derived in terms of contribution factor impact is conservative because total RLEC annual broadband transmission revenues estimated here would actually need to be hundreds of millions of dollars larger to cause the third quarter contribution factor to increase by more than 0.2%.

Appendix C: Any Supporting Statements or Affidavits

NOT APPLICABLE GIVEN LIMITED SCOPE OF FORBEARANCE REQUESTED