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

In the Matter of	)	
	)	
Federal-State	)	
Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

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AirTouch Communications, Inc. ("AirTouch") hereby submits its comments in response to the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (FNPRM)* in the proceeding referenced above.[1] AirTouch is a Commercial Mobile Radio Services (CMRS) provider with interests in cellular, paging, PCS and mobile satellite services, both domestic and international.

I. INTRODUCTION AND SUMMARY

AirTouch supports the Commission's effort to re-address the methodology CMRS carriers may employ to allocate their end-user revenue between intrastate and interstate jurisdictions, for purposes of reporting their universal service support contributions For some carriers, the Commission's proposal to adopt a "safe harbor" percentage of reported interstate revenues represents a workable proxy for more accurate data which is either unattainable or only available at significant costs to the carrier, and thus inefficient. However, the Commission should not mandate the use of a proxy where carriers possess an efficient means of determining their own reasonable estimate of interstate traffic. In these cases, the use of a second-best "one size fits all" proxy, especially the particular proxy adopted by the Commission as an interim solution in the *FNRPM*, is likely to be less accurate, more distortive of consumption, and result in greater competitive

[1] *In the Matter of Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* CC Docket No. 96-45, FCC 98-278 (rel. Oct. 26, 1998).

inequities. Accordingly, wireless carriers should be given the *option* to use openly documented methods, such as studies or sampling, to derive an internal calculation of their own percentage of interstate revenues as an alternative to any safe harbor percentage set by the Commission.

Additionally, AirTouch generally supports the adoption of "simplifying assumptions" that wireless carriers may use to derive and report their own percentages where these assumptions serve to facilitate the calculation of a percentage based on interstate traffic. On the other hand, assumptions that merely simplify, but are not reasonably or demonstrably linked to determining interstate traffic should be rejected. Such assumptions do not really simplify at all, but merely add another layer of complexity, uncertainty and inequity to an already complicated process.

Finally, AirTouch commends the Commission for attempting to deliver on the promise of "competitive neutrality" by re-examining the criteria required to qualify as an Eligible Telecommunications Carrier (ETC). In order to realize that promise, however, the Commission must recognize that competition means choice. Without choice, the market cannot grow, and the consumer cannot reap, the full harvest of competitive benefits. The Commission's concern that absent a local usage requirement, consumers will not benefit from the universal service subsidies ignores the effect of choice in a competitive market. If consumers perceive comparatively less benefit from a certain mix of telecommunications services, that mix will not be chosen. In other words, given competitive choices, consumers themselves will ensure that the goals of universal service are achieved.

II. CARRIERS SHOULD RETAIN THE *OPTION* OF DETERMINING THEIR OWN PERCENTAGES OF INTERSTATE REVENUE BASED ON METHODS, SUCH AS STUDIES OR SAMPLING, THAT ARE OPENLY DOCUMENTED AND SUBJECT TO AUDIT

AirTouch appreciates the need for clarification, and in some cases, simplification of the "methods by which wireless telecommunications providers might allocate between the intrastate and interstate jurisdictions their end-user telecommunications revenues for purposes of the universal service reporting requirements."[2] Indeed, as the Commission notes, simple "good faith estimates"

[2] *FNRPM* at ¶ 16.

have the "potential for systematic underreporting or underestimating of revenues, or, in some cases, overestimation of revenues."[3]

However, in crafting a solution to this problem, the Commission must not be tempted to favor predictability over precision. Instead, the Commission must keep in mind that the goal of this endeavor should be, foremost, to improve the accuracy of the reporting, *on a carrier by carrier basis*. Competitive inequities that result from over- or underreporting in a model that relies on "good faith estimates" are no more damaging than competitive inequities that result from over- or underreporting in a system characterized by a predetermined "fixed percentage."[4] Accordingly, it is critical that the Commission not be seduced into believing that a model that, *in the aggregate*, balances out over- or underreporting across all carriers, will be more "competitively neutral" or contain fewer "competitive inequities" than the current system.

For example, the Commission notes that, under the system in place prior to release of the *FNPRM*, broadband CMRS carriers reported a widely divergent percentage of interstate traffic, ranging from seven percent to 28 percent.[5] The Commission apparently interprets this divergence as the result of over- or underreporting. However, it is certainly possible that at least a portion of the divergence is due to actual differences in carriers' percentages of interstate traffic. Indeed, later in the *FNRPM*, the Commission notes several factors that could result in carriers experiencing different percentages of interstate traffic, such as rate plans that encourage interstate calling[6] or licenses that cross state lines.[7] Any model that *requires* all wireless carriers to report a uniform fixed percentage of interstate end-user revenue will necessarily fail to account for these actual differences and result in just the sort of cross-carrier subsidies and anti-competitive effects the Commission is seeking to address in this *FNRPM*.[8] Furthermore, to the extent the differences are the result of a carrier's competitive pricing and marketing decisions, such a model would create inefficient market distortions affecting service offerings and consumption decisions.

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[3] *Id*. at ¶ 17 (quoting Comcast Report to Congress comments at 12).
[4] Indeed, a system relying exclusively on fixed percentages may be much more inequitable assuming that the worst inequities of the "good faith estimate" system could be controlled by Commission audits.
[5] *FNRPM* at ¶ 10.
[6] *Id.* at n. 26.
[7] *See Id.* at ¶ 17.
[8] *Id.* at ¶ 11, n. 21.

The most important means to avoid creating a system that simply aggregates inaccuracies across carriers, is to allow carriers the *option* to determine their own percentages of interstate revenue based on methods, such as studies or sampling, that are openly documented and subject to audit by the Commission. Such methods allow for greater accuracy in determining interstate allocations and thus reduces the competitive inequities associated with over- or underreporting.

AirTouch has described, and the Commission has accurately summarized, the jurisdictional tracking procedure AirTouch uses to calculate and report its percentage of interstate end-user telecommunications revenues.[9] Such a methodology offers several virtues over the proposed safe harbor for those carriers that elect to employ it.

First, the resulting interstate percentage is based on the actual usage patterns of the reporting carrier's customers. This differs significantly from the Commission's proposal to use a fixed percentage based on *wireline* traffic reported for the DEM weighting program.[10] There can be no doubt that, regardless of how similar wireline and wireless calling patterns are, *actual wireless* customer usage is more accurate than a proxy based on *averaged wireline* customer usage. Furthermore, because the carrier determines and reports its own percentage, it is not forced to subsidize a rival's competitive pricing and marketing decisions.

Second, while the Commission is correct in noting that AirTouch's method is not perfect (it is unable to distinguish when, due to crossing a state boundary, an interstate call becomes an intrastate call or *vice-versa*) these inaccuracies are likely to balance out on a carrier by carrier basis. This contrasts with a mandated uniform fixed percentage which attempts to balance over-and underreporting inaccuracies through aggregation across all carriers. A model that balances inaccuracies on a carrier by carrier basis is clearly preferable as it eliminates the need for some carriers to subsidize their competitors, thus minimizing competitive inequities.

For individual carriers, or classes of carriers, that do not have either the technical or financial means to perform such studies, uniform "safe harbor" percentages are warranted. For these carriers, "good faith estimates" are more likely to result in inaccuracies and, as a result, competitive inequities. Accordingly, because the rationale for establishing safe harbor percentages

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[9] *Id.* at ¶¶ 38-39.
[10] *Id.* at ¶ 20.

is to reduce reporting inaccuracies and inequities, the Commission should maintain its focus on improvements that increase the accuracy of reported interstate allocations when crafting such safe harbor percentages.

III. SIMPLIFYING ASSUMPTIONS ARE WARRANTED ONLY WHERE THEY ASSIST IN DETERMINING INTERSTATE TRAFFIC

AirTouch generally supports the Commission's proposal to adopt "simplifying assumptions" that "either the Commission or wireless telecommunications providers could use to determine the appropriate percentage of interstate wireless telecommunications revenues that should be reported."[11] However, assumptions that merely simplify, but are not reasonably or demonstrably linked to determining the proportion of interstate traffic, should be rejected. Such assumptions do not really simplify at all, but merely add another layer of complexity, uncertainty and inequity to an already complicated process.

Furthermore, any simplifying assumption should be, like the proposed fixed interstate percentage, considered an *optional* safe harbor, use of which confers immunity from penalty, but non-use of which does not imply nefarious motives or deceptive practices. Carriers should remain free to use other openly documented means for calculating their interstate revenues, subject to Commission audit. Such a system ensures that no carrier is placed at a competitive disadvantage because of its choice of particular network or billing systems.

A. Originating Point of a Call (Broadband CMRS)

AirTouch supports the Commission's proposal to use a fixed reference point to determine the originating point of a broadband wireless call.[12] While the Commission suggests the location of the first receiving antenna be used as this reference point, AirTouch recommends that broadband wireless carriers be alternatively permitted to use the location of the switch that first receives the call.

Use of the switch as originating point is an equitable and logical option for wireless carriers as switch location is likely more readily determinable than original antenna site. Accordingly,

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[11] *Id.* at ¶ 27.
[12] *Id.* at ¶ 29.

permitting use of the switch would allow more carriers to perform their own studies or samples, increasing accuracy. Furthermore, because there is no obvious reason why either the antenna or the switch is more accurate, or less prone to over- or underreporting, allowing carriers to select either of the two conventions better respects the diversity of carriers' network and billing systems, and thus avoids artificial competitive advantages or disadvantages.

B. Terminating Point of a Call (Broadband CMRS)

AirTouch supports the Commission's proposal to identify the terminating jurisdiction of an outgoing wireless call by reference to the area code to which the call is placed.[13] Such a convention is reasonable to implement and unlikely to pose competitively significant over- or underreporting of interstate revenues.

AirTouch notes that this assumption and the above assumption regarding originating point of a call are not as easily applied to calls originating on the wireline network. However, a further simplifying assumption could be adopted to allow carriers to apply the percentage of interstate calls derived by examining wireless-to-wireline traffic to wireline-to-wireless traffic. This additional assumption would, likewise, be easy to implement and unlikely to pose competitively significant over- or underreporting of interstate revenues.

C. Calls Originating and Terminating in a Major Trading Area (Broadband CMRS)

The proposal to substitute MTA boundaries for state lines in determining interstate wireless traffic is precisely the type of simplifying assumption that sacrifices the important goal of accuracy for the veneer of simplicity.[14] Indeed, this proposal is *designed* to promote inaccurate reporting, yet provides little in the way of simplicity. Accordingly, AirTouch opposes the proposal on several grounds.

First, there is no connection between MTA boundaries and state lines. Indeed, this fact, ironically, is offered as the justification for the proposal, as CMRS carriers, it is often correctly pointed out, "operate without regard to state boundaries."[15] Presumably, though, the Commission's

[13] *Id.* at ¶ 31.
[14] *Id.* at ¶ 32.
[15] *See, e.g., Id.* at ¶ 6.

decision to require carriers to apportion revenue by interstate and intrastate jurisdiction was made in deference to principles, such as federalism or "comity between the federal and state governments" that operate without regard to CMRS coverage maps.[16] Indeed, it is only because the Commission has declared these principles to be important that CMRS carriers attempt the costly and burdensome exercise of apportionment in the first place. If, however, the rationale behind interstate/intrastate apportionment is so weak that it may be discarded for a proxy that consciously bears no relation to state boundaries, than the more efficient proposal is to abandon artificial apportionment entirely, for all telecommunications carriers. Apportionment for apportionment sake is nonsensical and wasteful.

Second, the proposal to substitute MTA boundaries for state lines would produce significant underreporting by carriers that operate licenses that cross state lines and are thus likely to have the highest actual percentage of interstate revenues. Similarly, the simplifying proposal would produce corresponding overreporting by carriers that operate licenses in areas within the jurisdiction of a single state and are thus likely to have the lowest actual percentage of interstate revenues. The result is that the federal universal service mechanism is converted from a program supported by interstate revenues to one funded by a much greater percentage of intrastate revenues, defeating the presumably important goals of federalism and comity.

Third, those carriers that have highest percentages of intrastate inter-MTA revenues are not only more likely to overreport their *federal* contributions, these carriers are most likely to be saddled with the greatest share of *state* universal service contribution requirements as well, as states that asses a universal service charge on carriers' intrastate revenue are unlikely to adopt such a tortured proxy for state jurisdiction.

Finally, in addition to being unfair, the proposal does not even deliver on its advertised virtue of simplicity. This is because, as the Commission recognizes, many CMRS licensees operate without regard to MTA boundaries as well.[17] Indeed, for such carriers, MTA boundaries are more difficult to determine than state lines, where at least area codes provide some assistance. As a result, the assumption adds significant complexity, not simplicity, for it either has to account for

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[16] Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 9200, ¶ 831 (rel. May 8, 1997) (*Universal Service Order*)
[17] *FNPRM* at ¶ 32.

additional arbitrary boundaries, such as MSAs and RSAs (which because of differences in size, result in direct competitive inequities) or force all carriers to observe MTAs, which is as impractical as it is foolish.

Accordingly, for all these reasons, the Commission should reject MTA boundaries as a proxy for state lines for the purpose of determining the jurisdiction of wireless calls.

D. Roaming Revenues (Broadband CMRS)

As the Commission accurately notes, AirTouch suggests, as a simplifying assumption, that CMRS carriers be permitted to report the same interstate percentage it applies to non-roaming revenue as the percentage applied to roaming traffic.[18] Such a proposal has several advantages.

First, as described in the *NPRM*, this option eliminates the need for extensive information exchanges between the customer's principal provider and the "serving provider."[19] Second, this approach would reflect the fact that in a competitive market, CMRS carries price air-time usage differently. Third, as there is no reason to believe that roaming customers engage in significantly different usage patterns than non-roaming customers, the assumption does not result in any obvious over- or underreporting. Finally, it offers true simplicity by allowing carriers to report a single percentage for roaming and non-roaming revenue.

E. Paging Providers

The Commission accurately notes that the technical design and operation of a paging system makes it impossible for paging carriers to determine the jurisdictional nature of a paging call.[20] Accordingly, AirTouch supports adoption of a Commission established fixed percentage for paging carriers to apply to their total revenues, for purposes of reporting interstate revenues.

In setting such a percentage, the goals of accuracy and competitive neutrality are best accomplished by recognizing the likely difference in interstate percentages generated by different service options.[21] These service options are typified by coverage area options and service type

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[18] *Id.* at ¶ 33.
[19] *Id.*
[20] *Id.* at ¶ 35 (citing AirTouch Feb. 11, 1998 ex parte at 2).
[21] *See Id.*

options. Both classes of options affect the percentage of interstate traffic carried over the paging network and can readily be distinguished by paging carriers.

Paging service is generally offered in three coverage options: local, regional and nationwide. These coverage options correspond to increasing percentages of interstate traffic. AirTouch supports disaggregating reporting percentages by each type of option. Such a solution ensures that small carriers that offer primarily local service are not forced to subsidize large paging companies that offer a higher percentage of nationwide coverage.

Such a subsidy could be quite significant. For example, though the Commission proposes a single uniform percentage of 12% for all paging carriers, it is not obvious why local paging service differs materially from analog SMR service in terms of percentage of interstate traffic. However, the Commission proposes to establish a percentage of only one percent for analog SMR carriers. Accordingly, failing to provide different percentages for different service options would lead both to cross-carrier subsidization within the paging industry and significant competitive inequities and consumption distortions between potentially competing carriers in different CMRS classes.

In addition to coverage options, paging service is typically offered in either numeric or alphanumeric service. Alphanumeric service is, in general, more likely to be local, intrastate services. Accordingly, the accuracy of reporting percentages could be easily improved by discounting the established interstate percentages for each coverage option based on the percentage of alphanumeric subscribers. Such a discount would improve the accuracy, and thus the competitive neutrality, of any fixed percentage.

IV. A LOCAL USAGE ELIGIBILITY REQUIREMENT IS UNNECESSARY AND ANTICOMPETITIVE

AirTouch commends the Commission for its apparent willingness to reexamine its decision to require ETCs to offer some amount of flat-rated local usage as part of the "basic service" package of supported services.[22] Reconsideration is indeed warranted as this requirement is both unnecessary and anticompetitive.

[22] *Id.* at ¶¶ 46, 50. *See Universal Service Order*, 12 FCC Rcd at 8813, ¶ 67.

Though the Commission expresses concern that, absent a local usage eligibility requirement, consumers might not receive the benefits of universal service because carriers receiving support might charge high per-minute rates and thus prevent service from being "affordable,"[23] and that the requirement is necessary to avoid giving a "competitive advantage to mobile wireless carriers,"[24] these concerns are, in fact, unwarranted in a competitive marketplace.

AirTouch agrees that, where incumbent LECs receive subsidies, but face no competition, there will continue to be a public interest in defining a baseline level of usage to ensure affordable prices for households and single-line businesses. But in areas where eligible carriers compete, the Commission's concerns are founded on two inconsistent scenarios occurring simultaneously.

A wireless new entrant cannot compete with an ILEC for customers and yet price its service in a manner which is "unaffordable." Where a wireless carrier provides service as a new entrant eligible carrier, there will be sufficient incentives to make services affordable, not the least of which will be competition from the incumbent LEC. "Competitive neutrality" does not require government to dictate pricing structures, or to ensure that carriers recover their costs of service costs in identical ways. Just the opposite, regulation of price structures will restrict consumer options and violate competitive neutrality.

A. A Local Usage Eligibility Requirement Is Not Necessary To Ensure Affordable Prices for Consumers

It is highly unlikely that customers in the same geographic area will simultaneously suffer from both excessive prices and excessive competition. Where there is competition, particularly from an incumbent LEC -- who will have numerous advantages including overwhelming market share – new wireless carriers will not be able to attract subscribers while charging unaffordable rates. If a wireless ETC offers rate levels and structures that are less desirable than those of the ILEC, then consumers will choose to remain as subscribers to the ILEC's services. Thus, there is no danger that a wireless ETC will collect subsidy revenues for the provision of unaffordable services.

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[23] *FNPRM* at ¶ 50.
[24] *Id.* at ¶ 49.

Accordingly, there is no public interest in blocking a wireless provider from being an eligible provider of a service that has a lower access price and higher usage-based charge than the schedule offered by the ILEC or other competing carriers. If the wireless carrier offers services that consumers find less desirable, they will not switch to that carrier. On the other hand, the fact that some customers do switch to the wireless carrier's service demonstrates that they *prefer* the wireless carrier's rate plan and that it *better* meets their communications needs.

B. A Local Usage Eligibility Requirement Will Inefficiently Limit Consumer Choice

The fundamental logic of competition discussed above demonstrates that there is no need for government regulation of the price structures of new entrants. Regulation is in fact unlikely to ensure just and reasonable price structures as effectively as competition. Regulation could instead inefficiently reduce consumer choices and distort market outcomes. Customers should be free to decide what price structures meet their needs. Competing eligible carriers should be free to offer price plans that are similar or different to those offered by the ILEC, developed by business judgment in response to household and business users demands. Competition is, as the Commission has generally recognized, superior to regulation in identifying and responding to customer needs.

The situation of a competitive market is, of course, very different from that of a market controlled solely by an entrenched ILEC with significant market power. The Commission should adopt measures to address the local usage issue for an incumbent LEC that is the sole provider of universal service in a given area. However, where an ILEC retains its original service offerings, this regulation need not apply to an ILEC's new service options for the same reasons that regulation need not apply to the offerings of a new entrant. Customers who find the new service option less attractive than that of the original ILEC price structure will simply retain their existing arrangements.

The problem of ILEC market power is exacerbated by the Commission's decision to continue to subsidize all existing ILEC lines that currently receive support.[25] Given the decision to

[25]AirTouch urges the Commission to move quickly to end these subsidies, or at least minimize the problem by subsidizing second lines by a significantly smaller amount. AirTouch notes that the Commission has already received comment on the question of defining a primary line for purposes of differing access charge payments;

subsidize second lines, ILECs have incentives to offer customers a "bare minimum" service at reduced rates simply to qualify for additional subsidies. Where an ILEC can receive a subsidy payment based on the cost of full universal service, for offering something which in fact costs much less, subsidy payments will be excessive. This is made more likely by the fact that subscribers can retain their existing primary service at subsidized rates. As long as the cost of a service is lower than the subsidy payment received, ILECs could offer inferior second line services practically for free, and profit from receiving subsidies based on the costs of a more robust service. This result would clearly inflate subsidy levels and not serve the public interest.

C. Local Usage as an Eligibility Requirement Will Violate Competitive Neutrality

AirTouch agrees that eligibility requirements should be competitively neutral as between carriers with higher and lower traffic-sensitive costs. But there is no basis for the Commission's concern that a local usage eligibility requirement is necessary to avoid an unfair competitive advantage for wireless carriers or others who have lower basic access costs and higher usage-based costs.[26] The discussion of this issue in the *Universal Service Order*, to which the *FNPRM* refers, appears to confuse the two roles of a local usage measurement. As AirTouch has previously commented, universal service cost models appropriately include a local usage measurement so as to model costs neutrally between "access" and "usage" costs, thereby not favoring a particular technology.[27] But this is an entirely different issue than whether all carriers must offer some amount of local usage on a flat-rated basis in order to be eligible for subsidies.

Where the Commission designs technology-neutral cost models to determine the level of subsidy, how competing carriers choose to recover their costs is not something that must be regulated in order to ensure competitive neutrality. It is difficult to see how differences in price structures translate into an unfair advantage in a competitive market. Competitors whose pricing structures are more attractive to consumers may have an advantage, but it is not an *unfair* advantage that should be addressed by regulation. As discussed above, in order to promote efficiency,

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the record in that proceeding should also inform the question of defining a primary line for purposes of differing explicit subsidy payments. *See Notice of Proposed Rulemaking*, CC Docket No. 97-181, FCC 97-316 (September 5, 1997).

[26] *FNPRM* at ¶¶ 47-49.

encourage new entry, and allow markets to work, regulation should not attempt to dictate prices or price structures. Even where some eligible carriers, such as incumbent LECs, remain subject to state regulation of local service prices or price structures, universal service mechanisms should not have the effect of subjecting other competitive carriers to the same regulations.[28] True competitive neutrality does not mean simply imposing the same requirements on all carriers.

Fortunately, the Commission has recognized in the past that the universal service provisions of the 1996 Act were intended to ensure affordable local service, not to insulate ILECs from competition from competing carriers.[29] AirTouch urges the Commission to follow that principle here. If the Commission yields to political pressures to preserve existing pricing structures through regulatory fiat, universal service mechanisms will reduce the likelihood of local competition and deny consumers the benefits of service and pricing options.

Finally, an unlimited local usage requirement would be inefficient because of the presence of traffic-sensitive costs. In a circuit-switched world with limited capacity, even wireline local calling can impose traffic-sensitive costs. Efficient prices should reflect these costs to ensure that consumers do not make calls that they value by less than the cost of those calls. Even if all carriers had the same charges and/or costs, it still would be efficient to limit the amount of subsidized calling to ensure that people do not wastefully use the network.

V. CONCLUSION

For the reasons herein discussed, the Commission should a) allow wireless carriers to retain the option of determining their own percentages of interstate revenue based on methods, such as studies or sampling, that are openly documented and subject to audit, b) adopt only those simplifying assumptions are likely to increase the accuracy of reporting interstate traffic and c)

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[27] *See* Comments of AirTouch Communications, Inc. on Section IV, *In the matters of Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Doc. Nos. 96-45, 97-160 (Oct. 17, 1997).

[28] *See also Universal Service Order*, ¶ 147 (noting that carriers not subject to state rate regulation are eligible for designation as an eligible carrier).

[29] *See, e.g., Universal Service Order*, ¶ 51 (promoting competition is an underlying goal of the 1996 Act, and adopting a principle of "competitive neutrality" to govern universal service mechanisms); *Universal Service Order*, ¶¶ 364-365. The Commission notes that this competitive neutrality criteria is related to the obligations of CMRS providers to contribute to these support mechanisms. *Id.*

refrain from imposing an unnecessary and anticompetitive local usage eligibility requirement on carriers seeking to provide services eligible for universal service support.

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Respectfully submitted,
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