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

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

T-MOBILE REPLY COMMENTS

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SUMMARY OF REPLY COMMENTS

T-Mobile addresses four subjects in its reply comments.

1. T-Mobile agrees with the unanimous recommendation of the Joint Board that the Commission should not at this time expand the list of universal services. As the Joint Board correctly concludes, "no new service satisfies the statutory criteria." In addition, American consumers cannot afford to pay the added costs that would be needed to expand the program. Consumers already pay a 9.1 percent USF rate, and this rate is projected to increase to 11 percent in the next few years – even if the program is not expanded. Given that consumers also pay other fees and taxes on their telecommunications services (over 18 percent in some states), American consumers simply cannot afford to pay even higher amounts to fund an expansion to the USF program .

2. There is no basis in law or policy to expand covered services to include an equal access capability. The Commission has already determined that including equal access would be incompatible with Section 332(c). In addition, equal access does not satisfy the statutory criteria set forth in Section 254(c). Specifically, T-Mobile demonstrates that equal access is not "essential" and that the proposal does not meet the "substantial majority of residential customers" criterion. Equal access would also constitute bad policy because such a requirement would force wireless carriers to spend money for a capability that no customer would use: the opportunity to pay two charges (airtime plus IXC toll) for the same calls that they today pay with only one charge (airtime).

3. There is also no basis in law or policy to require unlimited flat-rated local service. The two parties challenging the unanimous Joint Board decision do not question the Joint Board's determination that a particular rate structure is not "essential to education, public health, or public safety," one of the statutory criteria. This proposal also does not satisfy the "substantial majority" test.

4. The rural ILEC "regulatory parity" argument is misguided. Congress has explicitly determined that regulatory parity is not appropriate so long as incumbent carriers maintain market power and regulatory parity has no relevance to the equal access debate. Equal access was not imposed to support universal service, but was an antitrust remedy designed to develop a competitive interexchange industry. In any event, the solution to any regulatory parity concerns is not to apply rules designed for a monopoly environment to competitive carriers wielding no market power. Rather, as the principal ILEC trade association recognizes, the solution for incumbent carriers believing they are at a competitive disadvantage is to petition the Commission for relief from monopoly regulations.

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T-Mobile USA, Inc. ("T-Mobile") below replies to the comments submitted in response to the Commission's inquiry whether the existing list of services supported by universal service should be expanded.[1] T-Mobile supports the overwhelming number of commenters, representing all industry segments including state regulators, who support the Joint Board's recommendation that the Commission not expand at this time the list of supported services.

I. AMERICAN CONSUMERS CANNOT AT THIS TIME AFFORD ANY EXPANSION IN THE LIST OF SUPPORTED SERVICES

The Joint Board considered numerous proposals to expand the list of supported services. It concluded following a thorough analysis that "no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended ("Act"), and that the public interest would not be served by expanding the scope of universal service at this time."[2] Notwithstanding this unanimous recommendation, a handful of commenters urge the Commis-

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[1] *See Federal-State Board on Universal Service,* CC Docket No. 96-45, *Notice of Proposed Rulemaking,* FCC 03-13 (Feb. 25, 2003), 68 Fed. Reg. 12020 (March 13, 2003). *See also Federal-State Board on Universal Service,* CC Docket No. 96-45, *Recommended Decision,* FCC 02J-1, 17 FCC Rcd 14095 (July 10, 2002)("*Recommended Decision*").

[2] *Recommended Decision,* 17 FCC Rcd at 13095 ¶ 1.

sion to expand the list of supported services to include such capabilities as advanced services,[3] prepaid services,[4] and soft dial tone.[5]

T-Mobile agrees with the Joint Board's observation that such capabilities might be "extremely beneficial to *some* consumers."[6] But as the Joint Board has correctly recognized, "the issue for universal service is whether such access is 'essential' to consumers generally and residential consumers particularly."[7] Congress was very specific in identifying the factors the Joint Board and Commission are to utilize in considering whether to expand the list of covered services,[8] and the commenters confirm the conclusion unanimously reached by the Joint Board: "no new service satisfies the statutory criteria contained in Section 254(c)."[9] Even the proponents of certain additional capabilities acknowledge that their proposal does not meet the statutory "substantial majority" criterion.[10]

There is, however, a second reason the Commission should reject proposals to expand the list of covered services and accept the Joint Board's recommendation: American consumers simply cannot afford any expansion in the list of covered services. This is because the universal ser-

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[3] *See, e.g.,* Valor Telecommunications Enterprises Comments at 3-7; National Telecommunications Cooperative Association Comments at 7.

[4] *See, e.g.,* Comments of United States Conference of Catholic Bishops, Alliance for Community Media, Appalachian People's Action Coalition, Center for Digital Democracy, the Community Technology Institute, Consumer Action, Consumer Federation of America, Consumers Union, Edgemont Neighborhood Coalition, the Migrant Legal Action Program, the National Coalition for the Homeless, and the National Community Voice Mail Federation at 13-20 ("USCCB *et al.*").

[5] *See, e.g., id.* at 4-12.

[6] *Recommended Decision,* 17 FCC Rcd at 13099 ¶ 12 (emphasis added).

[7] *Ibid.*

[8] *See* 47 U.S.C. § 254(c)(1).

[9] *Recommended Decision,* 17 FCC Rcd at 13095 ¶ 1. *See also* Comments of Florida Public Service Commission ("FPSC"); New York State Department of Public Service ("NYDPS"); MCI; SBC Communications; United States Telecom Association ("USTA").

[10] *See, e.g.,* USCCB *et al.* Comments at 18 (recognizing that only "8 to 10 percent of U.S. wireless phone users" subscribe to prepaid service); Valor Comments at 4 (proposing USF subsidies for high-speed lines in areas where it cannot convince 75 customers to subscribe to the service).

vice contribution rate is already high, and will almost certainly rise even higher – even without expanding the list of covered services.

American consumers currently are assessed 9.1 percent of their interstate revenues as against the federal universal service fund ("USF").[11] Customers also pay several carrier surcharges caused by regulatory mandates, including E911, TRS, and number pooling. In addition, customers pay a wide variety of federal, state and local fees and taxes for their telecommunications services. In some states, such fees and taxes comprise 18 percent – or more – of a customer's telecommunications expenses.[12]

The burden that customers face will soon worsen. Commission staff estimates that, absent changes in the USF program, the total size of the USF will grow by nearly *$1 billion annually* ($974 million) in the next four years.[13] The Office of Management and Budget ("OMB") has projected similar increases.[14] Unless interstate revenues increase in proportion to the increase in disbursements, an increase in USF support necessarily will require an increase in the USF contribution rate. In this regard, some have projected that, absent reform, the USF rate will exceed 11 percent within the next three years.[15] Obviously, customers would pay even higher USF fees if the Commission were to expand the list of covered services.[16]

Federal courts have held that "excessive [USF] funding may itself violate . . . the Act":

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[11] *See Public Notice,* Proposed Second Quarter 2003 Universal Service Contribution Factors, DA 03-689 (March 7, 2003).

[12] *See* CTIA Press Release, *Wireless Taxes Increase as Tax Day Looms* (April 11, 2003).

[13] *See* Wireless Competition Bureau Staff Study of Alternative Contribution Methodologies, CC Docket No. 96-45, FCC 03-31 (Feb. 26, 2003)("Staff Study").

[14] *See* Budget of the U.S. Government, Analytical Perspectives, Fiscal Year 2004, Table 15-11, at 339.

[15] *See* National Exchange Carrier Association, *Trends in Telecommunications Cost Recovery: The Impact on Rural America*, at 37-46 (Oct. 2002), *cited in* AT&T Comments, CC Docket No. 96-45, at 15 (Feb. 28, 2003).

[16] According to Qwest, it alone would have to expend "billions of dollars" to deploy DSL throughout its service area. Qwest Comments at 2.

> Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.[17]

T-Mobile agrees with those commenters who suggest that the Commission should be focusing on controlling the size of the current fund rather than considering proposals to increase the size of the fund.[18] In the current economic climate in particular, the American consumer simply cannot afford to pay more in USF fees. T-Mobile encourages the Commission to consider the interests of American consumers in evaluating the proposals of a handful of parties to expand the list of covered services, action that would invariably increase the USF rate to unprecedented levels to fund the additional costs required to include additional services.

II. THERE IS NO BASIS IN LAW OR POLICY TO EXPAND COVERED SERVICES TO INCLUDE AN EQUAL ACCESS CAPABILITY

There is widespread agreement within the industry – including state regulators,[19] interexchange carriers ("IXCs"),[20] incumbent local exchange carriers ("LECs"),[21] and wireless providers[22] – that it would be inappropriate to require "equal access" as a condition to receive universal service support. As the largest ILEC trade association states:

> USTA opposes the addition of equal access to the list of supported services. . . . [T]he absence of an equal access requirement for eligible telecommunications carriers (ETCs) does not impair universal service.[23]

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17 *Alenco Communications* v. *FCC,* 201 F.3d 608, 620 (5th Cir. 2000).

18 *See, e.g.,* AT&T Comments at 3-6; USTA Comments at 4;

19 *See* FPSC Comments at 6-7; NYDPS Comments at 6-7.

20 *See, e.g.,* AT&T Comments at 6; Sprint Corporation Comments at 4-11.

21 *See, e.g.,* USTA Comments at 5-6.

22 *See, e.g.,* Comments of Cellular Telecommunications & Internet Association ("CTIA"); Rural Cellular Association and Alliance of Rural CMRS Carriers ("Rural CMRS Carriers"); United States Cellular Corporation ("USCC"); Verizon Wireless.

23 USTA Comments at 5.

Rural ILECs nonetheless continue to assert that equal access is important because, they say, the capability would increase customer choice.[24] But the "choice" rural ILECs advocate is absurd. Mobile customers already have the choice of subscribing to "one rate" plans where any call in the country is rated as a local call, for which they pay only one exchange charge. According to rural ILECs, wireless carriers (after designing service plans to meet customer needs) should now be required to spend money so they can offer their customers the option of paying two charges – airtime *plus* IXC toll charges – to make the same type of calls that they today pay with only one charge (airtime).

Wireless equal access is not "good for the American consumer" as the rural ILECs assert.[25] Including equal access as a universal service will have one of two effects: wireless carriers will either (1) not enter rural markets to avoid the costs associated with new government mandates (thereby depriving rural residents of the benefits of increased competition), or (2) enter rural markets but increase their prices to recover the added costs (depriving rural customers of rates that are comparable to those available to urban mobile customers). Ultimately, wireless equal access is good only for rural ILECs, which obviously hope that a new regulatory mandate may help insulate them from meaningful competition.[26]

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[24] *See, e.g.,* NTCA Comments at 3 ("A carrier that does not offer equal access deprives its customers of choice."). T-Mobile has difficulty understanding NTCA's position. On the one hand, NTCA urges inclusion of equal access as a covered service to promote competition. *Id.* at 1 and 3. On the other hand, NTCA asserts that Congress "never intended universal service support to be used as the basis for stimulating competition in rural and high-cost areas." *Id.* at 5.

[25] NTCA Comments at 1.

[26] *See also* Western Wireless Corporation Comments at Attachment 1.

A. THE COMMISSION MAY NOT LAWFULLY IMPOSE AN EQUAL ACCESS REQUIREMENT AS A CONDITION TO RECEIVING USF SUPPORT

Numerous commenters point out that Section 332(c)(8) of the Communications Act prohibits the Commission from requiring wireless carriers to provide equal access as a condition to becoming eligible to receive USF support.[27] T-Mobile agrees with this position, and it will not repeat this demonstration here. Indeed, the Commission has already determined that a requirement that wireless carriers provide equal access in order to receive universal service support "would be contrary to the mandate of Section 332(c)(8)."[28]

Equal access is not only incompatible with Section 332(c), but also does not meet the statutory conditions that Congress imposed in Section 254(c) for expanding the list of covered services. Section 254(c) specifies that a service proposed for inclusion must be "essential to education, public health, or public services."[29] Interexchange service is not necessarily "essential" to education or public services. Whether access to such public agencies requires long distance service depends entirely on the size of local carrier's local calling area and the location of educational, public health and public service agencies. If a local carrier draws a small local calling area, many of its customers as a result will likely have to originate a fair number of toll calls (*albeit* not necessarily to schools, doctors or local government offices). If, however, a local carrier establishes a large local calling area, its customers may need to make few (or no) toll calls.

For mobile customers subscribing to a "one rate" plan, calls to public agencies are *always* rated local *regardless* of their location, because customers do not pay a separate toll charge. If access to public agencies does not even require access to interexchange services, it necessarily

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[27] *See, e.g.,* Comments of FPSC at 6; CTIA at 3-5; Dobson at 15-16; Rural CMRS Carriers at 2-3; Sprint at 4-5; Verizon Wireless at 2.

[28] *First Universal Service Order,* 12 FCC Rcd 8776. 8819 ¶ 78 (1997).

[29] 47 U.S.C. § 254(c)(1)(A).

follows that access to multiple interexchange carriers is not "essential" to access such agencies. That equal access is not "essential" to universal service is further confirmed by the fact that some incumbent ETCs still do not provide equal access – nearly 20 years after the Commission imposed this mandate.[30]

Section 254(c) also specifies that a service proposed for inclusion must be "subscribed to by a substantial majority of residential customers."[31] Equal access does not meet this statutory condition, even if the Commission assumed that end user customers "subscribe" to equal access. According to the Commission's most recent data, LECs, both incumbent and competitive, served a total of 142 million residential and small business customers in June 2002.[32] At this same time, there were also 129 million mobile wireless customers,[33] although CTIA estimates that this figure today exceeds 144 million customers.[34] Assuming *arguendo* that 10 percent of LEC customers are small business customers and that 20 percent of mobile customers are business customers, then LECs were serving in June 2002 approximately 128 million residential customers while wireless carriers were serving approximately 103 million residential customers.

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[30] *See Recommended Decision,* 17 FCC Rcd at 14125 n.169. OPASTCO simply rewrites history when it states that "Congress . . . required all LECs to provide equal access." OPASTCO Comments at 11 (emphasis in original). The Bell Companies provided equal access pursuant to an antitrust settlement decree they negotiated with the Department of Justice. The FCC required other incumbent LECs to provide equal access *after they agreed to the proposal*. *See MTS/WATS Market Structure – Phase III Order,* 100 F.C.C.2d 860, 866 ¶ 16 (1985)("The ITCs generally support the proposal that they be required to implement equal access.").

[31] 47 U.S.C. § 254(c)(1)(B).

[32] *See* Industry Analysis and Technology Division, *Local Telephone Competition Status as of June 30, 2002*, at Table 2 (Dec. 2002).

[33] *See id.* at Table 11.

[34] *See* www.wow-com.com

TOTAL NUMBER OF RESIDENTIAL CUSTOMERS IN JUNE 2002 WITH EQUAL ACCESS CAPABILITY

Industry Segment	Equal Access Available	Number of Residential Customers	Percent of Total
LECs (90% of 142,131,854)	Yes	127,917,900	55%
CMRS (80% of 128,845,821)	No	103,076,800	45%
Total		230,994,700	100%

Given this data, the Commission cannot possibly conclude that equal access is subscribed to by "a substantial majority of residential customers."

In fact, the Commission should not even consider LEC residential customers in considering the "substantial majority" condition. Section 254(c) specifies not simply that a service be "subscribed to by a substantial majority of residential customers," but also that this subscription occur "through the operation of market choices by customers."[35] Given that LEC provision of equal access is required by rule, the Commission cannot conclude that equal access "subscription" by LEC customers occurs through "the operation of market choices by customers."

In summary, equal access does not satisfy the conditions Congress has established in Section 254(c) for adding the capability to the universal service program, in addition to being incompatible with Section 332(c) of the Act.

B. THERE WOULD BE NO PUBLIC BENEFIT BY REQUIRING WIRELESS CARRIERS TO OFFER EQUAL ACCESS AS A CONDITION TO RECEIVING USF SUPPORT

Equal access proponents, principally rural ILECs, claim that an equal access requirement would be "good for the American consumer":

[35] 47 U.S.C. § 254(c)(1)(B).

> [C]onsumers will benefit greatly through lower prices, new service packages, and enhanced intermodal competition between landline and wireless providers.[36]

It is understandable why these equal access proponents provide no facts to support their claims, because an equal access requirement would provide *no* public benefit. As explained below, such a requirement would increase the costs of wireless service for a capability that *no mobile customer would use*. Thus, the only beneficiary of an equal access requirement would be incumbent ETCs, because their competitive position would improve to the extent they can increase their competitors' costs (or deter wireless carriers from even entering rural markets altogether).

The Commission has already determined that imposing an equal access condition "would undercut local competition and reduce consumer choice and, thus, would undermine one of Congress's overriding goals in adopting the 1996 Act."[37] Specifically, an equal access requirement would increase a wireless carrier's cost of service. Such a requirement could thus deter wireless carriers from entering rural markets. Residents of rural areas would not benefit from having fewer choices in service providers, thereby depriving them from enjoying access to telecommunications services that are "reasonably comparable to those services provided in urban areas."[38] If the wireless carrier does decide to enter rural markets, it would face higher costs than it otherwise would, costs that necessarily will be reflected in service pricing. Again, it is not apparent how residents of rural areas benefit from higher wireless prices, and requiring residents of rural areas to pay higher rates because of a new regulatory mandate would deprive them from enjoying "rates that are reasonably comparable to rates charged for similar services in urban areas."[39]

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36 National Telecommunications Cooperative Association ("NTCA") Comments at 1.

37 *First Universal Service Order,* 12 FCC Rcd 8776, 8819 ¶ 79 (1997).

38 47 U.S.C. § 254(b)(3). *See also* FPSC Comments at 6; NYDPS Comments at 7.

39 47 U.S.C. § 254(b)(3).

Moreover, as a practical matter, no wireless customer would use an equal access capability if it were deployed. With today's "one rate" plans, mobile customers pay the same rate – an airtime charge – for a call across the street or across the country. With equal access, mobile customers would now incur two charges – airtime *plus* IXC toll charges – to make the same set of calls.[40] And, according to OPASTCO, the IXC toll charges could be hefty: "between $0.185 and $0.35."[41] No rational consumer will choose to pay an additional 18 to 35 cents per minute simply to make the same calls the customer makes today.

Thus, when rural ILECs contend that equal access will provide consumers increased choices, what they are really saying is wireless carriers should spend money so their mobile consumers have the opportunity to pay more – actually, substantially more – than they would otherwise pay. As CTIA correctly observes, "It is no wonder than interexchange carriers have expressed no interest in extending the equal access requirement to CMRS carriers!"[42] And, it is no wonder why rural ILECs never explain the purported benefits of equal access. The rural ILEC equal access process is simply an attempt to insulate their monopolies from competition.

NTCA thus is wrong when it asserts that an equal access requirement would be good for the consumer. In fact, an equal access requirement would inhibit, not enhance, intermodal competition which, in turn, would harm consumers in rural areas.

C. AN EQUAL ACCESS REQUIREMENT WOULD OPEN A PANDORA'S BOX OF NEW REGULATORY PROBLEMS

An equal access requirement assumes that there is an interexchange service that a customer must purchase in order to make calls outside the local calling area. The Act defines toll

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40 *See, e.g.,* Sprint Comments at 9-10.

41 Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") Comments at 12.

42 Cellular Telecommunications & Internet Association ("CTIA") Comments at 9.

service as service "between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[43] However, there is no long distance toll service with mobile "one rate" plans. With such plans, there is only one exchange (or outbound local calling area), and that exchange is coextensive with the boundary of the United States.[44] How can one provide equal access to multiple interexchange carriers when there is no interexchange service?

The equal access proponents have never discussed how they think wireless carriers are to implement equal access. Wireless carriers would necessarily be compelled to dismantle their nationwide local calling area into several smaller exchange areas so as to introduce an interexchange component into wireless service.[45] But what would be the boundary of these new, small wireless exchanges? LATAs would not work because wireless networks, unlike LEC networks, are not built around LATAs. Exchanges based on state boundaries (a separate wireless exchange for each state) are not workable because wireless networks are not built along state boundaries and because a call between Washington, D.C. and Arlington, Virginia, or between Kansas City, Missouri and Kansas City, Kansas, would become a toll call. Nor are MTAs workable, because consumers have no understanding of MTA boundaries. A mobile customer in Denver will not reasonably know that a call to Rapids City, South Dakota is an intraMTA call (with no IXC, so only airtime charges) while a call to the state capitol, Pierre, South Dakota, is an interMTA call where an IXC would be used (because Pierre is located in the Minneapolis-St. Paul MTA), and as a result, the customer would pay two charges for the call (airtime and IXC toll charges). The

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[43] 47 U.S.C. § 153(48).

[44] *See* 47 U.S.C. § 153(47)(Exchange service defined as "service within a telephone exchange, or within a connected system of telephone exchanges . . . which is covered by the exchange service charge.").

[45] *See, e.g.,* Sprint Comments at 10; USCC Comments at 6.

Commission cannot impose an equal access requirement on wireless carriers without first understanding how the requirement might possibly be implemented.

CTIA has observed that adding equal access to the list of supported services will only open "a Pandora's Box of new regulatory problems."[46] Identifying the boundary of new, smaller wireless exchange areas is only one of many difficult implementation issues that would arise by conditioning USF support on the acquisition and deployment of an equal access capability.

D. THE RURAL ILEC "WINDFALL" ARGUMENT IS UNSUPPORTED AND BASELESS IN ANY EVENT

Some rural ILECs contend that wireless carriers would receive a financial "windfall" if they do not provide equal access.[47] This rural ILEC argument goes as follows: rural ILECs receive universal support based on their embedded costs, which include equal access costs; competitive ETCs receive "portable" support based on the per-line amount received by the ILEC; and if wireless carriers do not provide equal access, they are receiving USF support as if they were providing equal access – ergo, the "windfall." Rural ILECs then baldly assert:

> Wireless carriers can then use these windfalls to compete unfairly against rural ILECs.[48]

There are numerous defects to this rural ILEC argument. First of all, the "windfall" argument is not properly made in this proceeding, since the argument questions the manner in which competitive ETC support is calculated. As Verizon Wireless observes,[49] this issue should

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46 CTIA Comments at 13.

47 *See, e.g.,* NTCA Comments at 6-7.

48 *Id.* at 6-7.

49 Verizon Wireless Comments at 6.

rather be raised in the pending Joint Board proceeding examining whether the methodology for USF support provided to competitive ETCs should be changed.[50]

Second and more fundamentally, the rural ILEC argument is entirely unsupported by any facts – and the argument is not credible on its face. Fifteen years ago, the rural ILECs secured a waiver so they could expense their equal access conversion costs in the year the costs were incurred.[51] Thus, rural ILECs already recovered years ago the largest equal access cost – the cost to implement the capability. Rural ILECs may incur ongoing presubscription costs, but one would think these costs are recovered through presubscription fees that rural ILECs impose either on their own customers or on IXCs.

One rural ILEC consultant asserts that presubscription costs are allocated to certain interstate accounts under the Part 36 separations rules.[52] Even assuming presubscription revenues are properly assigned to interstate accounts for purposes of Part 36, it is not apparent how these costs are relevant to Part 54 universal service support. As but one example, the High-Cost Loop Support fund is designed to subsidize an ILEC's loop costs. Yet, loop costs have nothing to do with the costs of providing equal access to IXCs (which requires modification to switch software).

An equal access requirement would be discriminatory, but it would discriminate *against* wireless carriers. The most costly component of equal access is the cost to develop, purchase,

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[50] *See Public Notice,* Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process, CC Docket No. 96-45, FCC 03J-1 (Feb. 7, 2003), 68 Fed. Reg. 10429 (March 5, 2003).

[51] *See NECA Waiver Order,* 3 FCC Rcd 6042 (1988). In contrast, the Bell Operating Companies were required to recover their conversion costs over an eight-year period ending in 1993.

[52] *See* GVNW Consulting Comments, Exhibit A.

test and install the capability.[53] As noted, rural ILECs recovered their conversion costs years ago. As one incumbent LEC recognizes:

> [M]ost ILECs recovered almost all (if not all) of their equal access deployment costs a decade ago. Thus, adding equal access to the list of required USF services would, for all intents and purposes, impose a burden exclusively on wireless service providers.[54]

In other words, with an equal access requirement, wireless carriers would use any USF support to fund their equal access conversion costs (to make available a feature that no customer would use), rather than use this support to compete directly with the incumbent LECs.

The rural ILEC "windfall" argument, in addition to being entirely unsupported, is not credible. If rural ILECs are interested in continuing the advocate this position, the Commission should require rural ILECs to identify that portion of the USF subsidies they receive that are attributable to equal access costs. T-Mobile is confident that even assuming rural ILECs are capable of identifying this sum, the amounts involved would be well less than one percent of USF subsidies received. In short, once the rural ILECs disclose the facts, even the rural ILECs would be compelled to concede that there is no basis to the assertion that wireless carrier receipt of "portable" support enables wireless carriers to "compete unfairly" against rural ILECs.

III. THERE IS NO BASIS IN LAW OR POLICY TO REQUIRE UNLIMITED FLAT-RATED LOCAL SERVICE

Rural LECs typically provide unlimited, flat-rated local service, while wireless carriers often do not. Rural ILECs argued to the Joint Board that such a rate structure should be required for all ETCs, obviously hoping to disable wireless carriers from receiving the same support that they receive and thereby inhibiting the ability of wireless carriers to compete with incumbent

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[53] The NTCA proposal that the FCC adopt a "reasonable" transition period of December 31, 2003, *see* NTCA comments at 8, borders on the absurd. It generally takes switch vendors two years to develop a new capability. Carriers then need additional time to acquire and test the new feature.

carriers. The Joint Board unanimously decided that flat-rated unlimited local service should not be a supported service for several reasons, including that the rate structure of local service is not "essential to education, public health, or public safety."[55]

Two parties urge the Commission to reject the unanimous decision of the Joint Board and to require all ETCs to provide flat-rated unlimited service as a condition to receiving USF support.[56] But in taking this position, these two parties make no attempt to challenge the Joint Board's analysis – namely, rate structure (flat-rated vs. metered use) has no relevance to access and thus cannot possibly be "essential to education, public health, or public safety."[57]

These parties assert that flat-rated unlimited local service meets another Section 254(c) criterion: the service has been subscribed to by "a substantial majority of residential customers."[58] But the statutory "substantial majority" condition is not limited to landline residential customers, but to "residential customers," which necessary includes residential customers of wireless services. As noted above, when wireless residential customers are included in the base of all residential customers, the Commission cannot conclude that flat-rated unlimited local service is "subscribed to by a substantial majority of residential customers."[59]

It is also important to observe that the "flat-rated unlimited local service" debate has largely become moot. Wireless carriers have continued to refine their service plans as competition within the industry has intensified and as they strive to develop plans that better meet the

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[54] Sprint Comments at 5.

[55] *See Recommended Decision*, 17 FCC Rcd at 14112-14 ¶¶ 41-45.

[56] *See* Montana Universal Service Task Force ("MUST") Comments at 7-8; National Association of State Utility Consumer Advocates ("NASUCA") Comments at 4-5.

[57] 47 U.S.C. § 254(c)(1)(A).

[58] *Id.* at § 254(c)(1)(B). *See* MUST Comments at 8 ("[M]ost subscribers [have] expectations with respect to local usage."); NASUCA Comments at 4 ("[C]ustomers have overwhelmingly subscribed to the service that allows unlimited local usage.").

[59] 47 U.S.C. § 254(c)(1)(B).

changing needs of customers. For example, T-Mobile's current regional plan for the D.C./Baltimore metropolitan area includes 3,000 minutes – a level of usage that is far greater than what most customers require in a given month. With T-Mobile's national "one rate" plans, customers can purchase up to 1,000 "anytime" minutes with unlimited calling during the week-ends.

There is no basis in law or policy for the Commission to require competitive ETCs to adopt the identical rate structure used by incumbent ETCs. Such an approach would be antithetical to competition and consumer choice. If, however, the Commission is seriously considering requiring all ETCs to provide a flat-rated unlimited local service option, then the competitive parity principle would require that it also require all ETCs to offer customers a "one rate" plan. Adoption of the predominant landline rate structure but not the predominant wireless rate structure would not be competitively neutral.

IV. THE RURAL ILEC "REGULATORY PARITY" ARGUMENT IS MISGUIDED

Rural ILECs supported the proposal that they be required to offer equal access. As the Commission stated at the time it imposed the mandate:

> The ITCs [Independent Telephone Companies] generally support the proposal that they be required to implement equal access.[60]

Having voluntarily agreed to provide equal access, rural ILECs now contend that wireless carriers should be forced to provide equal access in the name of "regulatory parity."[61]

The rural ILEC view of "regulatory parity" argument is grossly misplaced. As Chairman Powell has stated:

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[60] *MTS/WATS Market Structure – Phase III Order,* 100 F.C.C.2d 860, 866 ¶ 16 (1985).

[61] *See, e.g.,* NTCA Comments at 6 ("Regulatory parity between landline and wireless carriers further justifies adding equal access to the definition of universal service."); OPASTCO Comments at 14-16.

> If the [1996] Act means anything, it means that we should not impose regulations just for the sake of uniformity or to enact some grand regulatory plan.[62]

And as the full Commission stated in an analogous situation, "Because of the disparity in market power between DBS providers and cable operators, we find unpersuasive the cable industry's call for 'regulatory parity' for entities that are not similarly situated."[63]

Congress made very clear that "regulatory parity" had no place so long as incumbent carriers maintain market power. The very structure of the Telecommunications Act of 1996 – all telecommunications are subject to minimal requirements (Section 251(a)); local exchange carriers, but not CMRS providers, are subject to additional requirements (Section 252(b)); and incumbent LECs are subject to more onerous requirements (Section 251(c)) – demonstrates clearly that Congress expected disparate regulations depending upon the extent of the entity's market power. Wireless carriers possess no market power; in contrast, rural ILECs, and incumbent LECs in particular, continue to yield extensive market power. It cannot be reasonably said that wireless carriers and incumbent LECs are similarly situated as far as market power.

As the New York Department of Public Service recognizes, equal access was not imposed for universal service purposes (*i.e.,* advance availability of local telephone service), but to address "wholly unrelated" issues involving "competitive concerns in the interexchange market."[64] Verizon Wireless further notes

> Regulatory parity is not a legitimate justification for imposing equal access as a supported service in order to qualify for universal service. Equal access was designed to address the specific problem of eliminating anti-competitive activities in the long distance market resulting from the LEC control of bottleneck facilities.[65]

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62 Separate Statement of Commissioner Powell, *Truth-in-Billing,* 14 FCC Rcd 7562, 7567 (1999).

63 *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act,* 13 FCC Rcd 23254, 23278 ¶ 60 (1998).

64 NYDPS Comments at 6-7.

65 Verizon Wireless Comments at 5.

Any rural ILEC truly believing it has lost market power due to the forces of competition has a remedy available to it: submit a Section 10 forbearance petition asking to be relieved of the equal access mandate.[66] As the principal ILEC association states in opposing any new equal access requirement:

> The solution, though, is not to include equal access as a supported universal service – and therefore an obligation of all ETCs – rather, it is to relieve all LECs of the obligation to provide equal access.[67]

There is no basis in law or policy to impose on competitive carriers rules adopted in a monopoly environment.

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[66] *See* 47 U.S.C. § 160.

[67] United States Telcom Association ("USTA") Comments at 6. USTA asks the FCC to commence a rulemaking and determine that "all LECs" be relieved of their equal access obligation. *See ibid.* However, given that there are over 1,000 incumbent ILECs, T-Mobile doubts that the FCC could conclusively determine in a rulemaking that all 1,000+ ILECs posses no market power. It would therefore appear that the appropriate remedy is for ILECs to submit forbearance petitions under Section 10 of the Act.

V. CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Commission adopt positions consistent with the positions set forth above.

Respectfully submitted,

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