ATTACHMENT B

to

Reply Comments of Western Wireless

in

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

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Primary Line Restrictions Would Be Anti-Competitive, Impossible to Implement, and Contrary to the Public Interest

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A "primary line" restriction would disserve the public interest, would detract from the intended goals of Section 254 of the Act, and would harm the rural consumers that universal service policy is intended to serve. By contrast, providing support for all ETCs' customer connections promotes rural consumers' access to the same range of affordable telecommunications services that are available to consumers in urban areas.

This Attachment supplements the Reply Comments of Western Wireless with additional, specific responses to the arguments of the parties that support primary line restrictions. Specifically, we show here:

- A primary line restriction would detract from universal service and would harm consumers Consumers demand connectivity anywhere and at any time, and not just at fixed locations, and receive benefits from mobile wireless services that compete with ILEC offerings even when they do not altogether replace such offerings.

- A primary line restriction would preclude funding to wireless ETCs in most circumstances. Such an anti-competitive policy would contravene the principle of competitive neutrality and would blatantly violate the Act.

- Primary line restrictions would be impossible to implement in a competitively neutral manner, since there is no principled way to distinguish which connection is "primary" and which is not in cases where a consumer purchases service from two different ETCs.

- Primary line restrictions are not likely to be a particularly effective means to achieve the main policy goal that appears to motivate the proponents of such restrictions – to slow the growth of the high-cost fund – since support to rural ILECs is a much more significant factor in the growth of the fund than CETC entry.

A. A Primary Line Restriction Would Harm Universal Service and Disserve the Public Interest

Imposing a restriction that permits funding only for "primary lines" would harm consumers in rural areas and would contravene both of the Act's twin goals of universal service and competition. Primary line restrictions would preclude wireless ETCs from receiving funding, in most cases, and therefore would eliminate most of the competition in the marketplace for supported universal service. Not only would such an anti-competitive policy change violate the Act and consistent precedents from the Commission and reviewing courts (as discussed below in Section B), it would also restrict the availability of universal service alternatives to consumers in rural areas, and thus would impede universal service

Primary line restrictions would contravene the goals of the universal service program. The proponents of a primary line restriction argue that there is no universal service rationale for supporting "multiple" connections to a single household or business location. 1/ Western Wireless submits that these parties are stuck in a universal service paradigm of the past, and have failed to take account of the fundamental paradigm shift that has already transformed the telecommunications marketplace:

> Consumers around the world have expanded their demand for connectivity to the [public switched telecommunications network] across time and space. That is, the concept of universal service as a measure of service to physical locations is giving way to concepts of connecting individuals at all times and across geography. 2/

Consistent with this new paradigm, the Joint Board and the Commission must reject the narrow formulation of the objectives of the universal service policy offered by parties supporting primary line restrictions. 3/ Instead, regulators should endorse a more appropriate formulation of the fundamental purposes of the universal service program, recognizing the paradigm shift in consumer demand for connectivity. As the WUTC states, "we do not believe we should constrain rural citizens to supported communication only from their homes." 4/ Consistently, Dr. William Gillis, former chair of the RTF, ably articulated the objectives of the

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1/ *See, e.g.,* AT&T Comments at 9; Verizon Comments at 7; GCI Comments at 67; NASUCA Comments at 6.

2/ Steve G. Parsons, "A Paradigm Shift in Concepts of Universal Service," Attachment B to Western Wireless Comments, at 2. Dr. Parsons supports this concept with empirical data regarding shifting consumer demands and perceptions. *Id.* at 3-7.

3/ *See, e.g.,* AT&T Comments at 9 ("the objective of Section 254 was to support one connection per household or business").

4/ WUTC Comments at 16, citing *Petition of RCC Minnesota for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-023033, Order Granting Designation as an Eligible Telecommunications Carrier, ¶¶ 48-50 (WUTC, Aug. 14, 2002).

universal service program during the recent Senate Commerce Committee hearing on universal service:

> What is required to fulfill the principles outlined by Section 254(b) of the Federal Telecommunications Act is that all regions of the nation have access to a bundle of modern telecommunications services and options "reasonably comparable" to what is available in much of urban America and a growing number of rural locations, including where feasible, a choice of alternative service providers. 5/

There is no merit to AT&T's and SBC's arguments that multiple connections to a home or business do not deserve to be supported by universal service funds because they are not "essential to education, health, or public safety." 6/ First, in the real world, there is no such thing as a service called "non-primary lines" – the concept of a separate market for connections other than the first connection is alien to the telecommunications marketplace. Moreover, this abstract argument ignores the fact that mobile wireless service plays an invaluable and essential role in protecting health and public safety, particularly in providing ubiquitous access to E-911 emergency service – regardless whether a caller also has a wireline phone at home. 7/

5/ Testimony of Dr. William R. Gillis, Director, Center to Bridge the Digital Divide, Washington State University, before the Senate Commerce Committee, Hearing, "Universal Service, April 2, 2003 (available at http://commerce.senate.gov/hearings/testimony.cfm?id=687&wit_id=1847). Western Wireless does not necessarily endorse all of the policy recommendations that Dr. Gillis presented in his testimony.

6/ *See, e.g.,* AT&T Comments at 9; SBC Comments at 14 (both quoting 47 U.S.C. § 254(c)(1)(A)).

7/ For example, consumers place 156,000 calls per day to 911 emergency services using wireless phones, and it is anticipated that by 2005, the majority of 911 calls will be from wireless callers. "Wireless Service: An Essential Service for Rural Consumers," Attachment C to Western Wireless Comments, at 8; *see* http://www.wow-com.com/news/press/body.cfm?record_id=1103 (CTIA data on wireless 911); http://www.nena.org/Wireless911/Overview.htm (National Emergency Number Association fact sheet on wireless 911). Both Congress and the FCC have recognized the absolutely critical contributions to health and public safety made by the availability of E-911 calling from mobile wireless phones. *See, e.g., Implementation of 911 Act*, CC Docket No. 92-105, Fourth Report and Order and Third Notice of Proposed Rulemaking, 15 FCC Rcd 17079, 17082, ¶ 5 (2000) ("In our increasingly mobile society, Congress noted the increased reliance on wireless phones in emergency situations . . . ."); *Revision Of The Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388, 17389-90, ¶ 3 (1999) ("The growing use of wireless phones to make 911 calls clearly represents an important advance in public safety."); Joint Written Statement of Commissioners Kathleen Abernathy and Jonathan Adelstein, Hearing on Wireless 911, Senate Committee on Commerce, Science, and Transportation, Subcommittee on Communications (Mar. 5, 2003), at 16 ("Wireless communications have become increasingly important to our national communications infrastructure and our everyday lives. That significance is further validated by the fact that the United States is the only nation in the world that has required that wireless telephones are E911 capable to assist the public safety community in performing their vital work.").

Thus, a modern concept of universal service cannot limit itself to a single, fixed "primary line" connection to a home or business location. The Joint Board and the Commission should be careful to avoid falling into the trap of thinking that wireless service is a valid alternative to wireline ILEC service only when it completely displaces wireline service. A large number of consumers use both wireline and wireless, but are relying more and more heavily on wireless. 8/ Indeed, the record shows that an increasing number of consumers place more minutes of use over their wireless phones than over their wireline phones. 9/ The primary line concept is thus inconsistent with the way 21st century consumers actually use their phones, since it assumes that the "first line" a customer purchased is the most important to him or her, when in fact the record is full of evidence to the contrary.

Finally, consumers in rural areas need and want so-called "second lines" as much as consumers elsewhere, if not more so. 10/ As OPASTCO points out, "a policy of limiting support to primary lines and/or primary residences is contrary to the Act's principles of affordable and reasonably comparable rates "11/ The WUTC observes that "a decision to limit support to one connection would adversely affect businesses in rural, insular, and high-cost locations" and could have significant negative effects on economic development in rural areas. 12/

8/ *Seventh CMRS Competition Report* at 20-21; 32-33. *See generally* Steve G. Parsons, "A Paradigm Shift in Concepts of Universal Service," Attachment B to Western Wireless Comments; "Wireless Service: An Essential Service for Rural Customers," Attachment C to Western Wireless Comments.

9/ Steve G. Parsons, "A Paradigm Shift in Concepts of Universal Service," Attachment B to Western Wireless Comments, at 5-6; "Wireless Service: An Essential Service for Rural Customers," Attachment C to Western Wireless Comments, at 4-5.

10/ Indeed, earlier this week, NTCA publicized a new study that it conducted jointly with the Foundation for Rural Studies, which demonstrated that "[r]ural youth is ahead of the wireless curve with 78% of rural teenagers already owning a cellphone — far above the national average estimated at 30%-40%"; that "64% of rural teens said they spent $26-$50 a month on cellphone services"; that "more than 60% of rural teens were primary users of landline phone service for local calls" (implying that almost 40% of them primarily rely on their wireless phones for local calls); "and 7% said they had completely abandoned their landline phones." *Communications Daily*, June 3, 2003, at 10-11.

11/ OPASTCO Comments at 37-38; *see also* USTA Comments at 5-6.

12/ WUTC Comments at 15.

Nothing in the Act indicates that universal service support is intended only to support connectivity via a single "primary" line. 13/ To the contrary, the Act explicitly provides that "consumers" – not "households" or "business locations" – "in rural, insular and high cost areas . . . should have access to telecommunications and information services . . . reasonably comparable to those services provided in urban areas and that are available at rates charged for similar services in urban areas." 14/ There is no limit to the number of connections consumers in urban areas can obtain at reasonable prices. Rural consumers are entitled to the same opportunities as their urban counterparts, including comparable access to a range of choices at reasonable prices for so-called "additional" connections, just as for "primary" connections.

The vigorous competition that is continuing to develop for both "first" and "additional" connections is in the public interest. The Joint Board and the Commission should refrain from enacting artificially regulatory barriers to such competition by limiting or eliminating support for "additional" connections. A primary line restriction is an anti-competitive short cut that, if implemented, would be devastating to CETCs' ability to serve rural consumers.

B. A Primary Line Restriction Designed to Preclude Funding to Competitive ETCs Would Violate the Act

Reducing competition from wireless carriers is not just a collateral effect of primary line restrictions, but the principal rationale driving those who advocate such a policy, and the parties supporting primary line restrictions make no bones about their reasons for

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13/ *Accord, Harrisonville Tel. Co. v. Illinois Commerce Commission*, Case Nos. 00-0233 & 00-0335 (Consolidated), Decision No. 5-02-0199 (Ill. Ct. App., 5th Dist., May 23, 2003), slip op. at 14-15, available at http://www.state.il.us/court/Opinions/AppellateCourt/2003/5thDistrict/May/Wp/5020199.doc (reversing state decision to include only residential primary telephone lines in counting the number of access lines eligible for support, based on the following rationale: "Simply stated, universal support means universal support. * * * To the extent that the Commission was concerned that urban residents should not be required to pay for 'discretionary services' enjoyed by their rural counterparts, we ask, Why should access to phone lines – even 'discretionary' phone lines – cost much more in a rural setting than in an urban setting? Furthermore, the assumption that all 'secondary' lines are 'discretionary' lines dismisses entities like schools and public libraries, which require affordable access on all of their lines. The point of providing universal fund support service is to level the playing field. Theoretically, lower prices, competitive with what is offered in urban settings, will allow greater access to telephonic services. Our state and federal governments have established this greater access as a worthy goal. These extra access lines, whether or not they can all be labeled 'discretionary,' should not be inordinately more expensive than identical services in an urban setting. We find no legal justification for limiting the number of access lines eligible for this support.").

14/ 47 U.S.C. § 254(b)(3).

supporting this approach. For example, Verizon supports a primary line restriction as a means to prevent the flow of support to "multiple competitors," while making it clear that it has no objection to providing support for multiple lines to a single household "when all such lines are being provided by the rural ILEC." 15/ A policy that is specifically designed for the purpose of wiping out competitive alternatives to rural ILECs in the marketplace for supported universal service can hardly be said to benefit consumers. Moreover, Western Wireless submits that proposals designed with the express purpose of excluding prospective competitors that use a particular technology (wireless) blatantly violate the Act and the principle of competitive neutrality. 16/ As WUTC points out, such a restriction could well "reduce or eliminate competition" by imposing a "disincentive [to entry] that no carrier would attempt to overcome." 17/

Certain parties recommend implementing a primary line restriction using the presumptions advocated in NTCA's 2002 petition for rulemaking, under which the ILEC always would be presumed to be the "primary" line provider and CETCs would receive support "only if the competitive ETC's customer does not have a connection to the network provided by the ILEC." 18/ But such a blatantly anti-competitive presumption clearly would violate the Act. AT&T, in its reply comments in the NTCA petition proceeding, correctly criticized this approach:

> [T]hese new "definitions" would severely curtail portability of federal high-cost support. For example, a CETC that captures one of two lines to a single customer would not be eligible to receive federal high-cost universal service support if the

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15/ Verizon Comments at 5, 7. Similarly, AT&T admits that its proposal is designed not to have any impact on rural ILECs providing multiple lines to a single household prior to CETC entry, AT&T Comments at 13, and and states that the objective of its proposals is to impose limits on fund growth "as more wireless carriers are certified as CETCs." *Id.* at 15. *Accord*, NASUCA Comments at 5-6; SBC Comments at 14.

16/ *Alenco Communications v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) ("[T]he [universal service] program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, *this principle is made necessary not only by the economic realities of competitive markets but also by statute*.") (emphasis added).

17/ WUTC Comments at 19-20.

18/ *See, e.g.,* Verizon Comments at 6, *citing* NTCA Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines for Purposes of Receiving Universal Service Support, RM No. 10522 (filed July 26, 2002) ("NTCA Petition").

> ILEC continues to serve the other line (but if the ILEC served both lines [it] would be eligible for support for both lines). Similarly, a wireless carrier that provides a new line to a customer would not be eligible for support if that customer continues to purchase wireline service from the ILEC (but if the ILEC served both the wireline and the new wireless line, the ILEC would be eligible for support for both lines). The comments provide numerous additional examples of situations where the NTCA's proposed rules would cut CETCs off from receiving federal high-cost universal service support. On this record, there is no question that a grant of NTCA's Petition would substantially reduce portability of high-cost support to CETCs and, therefore, as the Fifth Circuit has confirmed would violate section 254(e) of the Act and the principle of competitive neutrality. 19/

Yet, in a stunningly unprincipled departure from its earlier position, AT&T now proposes a primary line restriction that would have virtually identical impacts as the pernicious NTCA proposals that AT&T correctly criticized in its earlier comments. AT&T's half-hearted attempt to distinguish its current proposal as "competitively neutral" in contrast to the NTCA approach, is unconvincing. 20/ AT&T's proposal – like NTCA's – would allow a CETC to receive support only if its service "replaced the ILEC as the provider of a customer's first line." 21/ An ILEC, by definition, would not need to make any such showing. The Joint Board should heed the 2002 comments of AT&T, and should reject the directly contradictory proposals in the 2003 AT&T comments.

There is no principled and competitively neutral way to determine whether a wireless ETC connection or an ILEC line is "primary" in cases where a consumer has decided to buy service from both. 22/ And if the distinction is based on which connection is the "first line," as AT&T proposes, 23/ it is essentially identical to the anti-competitive NTCA proposal that whichever carrier served a consumer "first" should be the only ETC to receive support for serving that consumer. 24/ The Commission has consistently found that being "first" – i.e.,

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19/ AT&T Reply Comments in Opposition to the Petition of NTCA, RM No. 10522, at 5 (filed Oct. 7, 2002), citing *Alenco*, 201 F.3d at 622.

20/ AT&T Comments at 15-16.

21/ *Id.* at 16.

22/ *See infra* section C.

23/ AT&T Comments at 16.

24/ NTCA Petition at 6.

being the incumbent – should not provide a carrier with regulatorily-conferred advantages. 25/ An equivalent restriction would hold that the "primary" connection is always the one that the consumer most recently purchased, since consumers typically value most highly the object or service that they most recently acquired. 26/ Another approach would be to deem as "primary" the connection that the consumer uses for the preponderance of minutes. Although such rules could well tend to favor wireless CETCs, they would also be non-competitively neutral.

In sum, primary line restrictions in the form advocated by certain parties in this proceeding would clearly operate to benefit ILECs and to exclude wireless ETCs from receiving high-cost support for serving their customers. It therefore would violate the competitive neutrality principle, which requires that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." 27/

C. A Primary Line Restriction Would Be Administratively Infeasible to Implement in a Competitively Neutral Manner

While it may be theoretically possible to design a form of primary line restriction that would purport to be competitively neutral, such an approach would be impossible to implement as a practical matter. To its credit, in seeking comment on primary line restrictions, the *Joint Board Public Notice* asks a number of questions apparently directed toward solving the competitive neutrality problems with primary line restrictions, such as the following: "If support were limited to a single connection, how would it be determined which line receives support?" 28/ The record here demonstrates that there is no principled and competitively neutral answer to this question. Indeed, WUTC correctly points out that "[t]he difficulty inherent in

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25/ *See, e.g., Western Wireless Corporation for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, 15176-77, ¶¶ 21-22 (2000) (finding that a requirement that a carrier must already be providing service throughout an area to receive ETC designation for that area would not be competitively neutral, even though it applied equally to all carriers, because it would have the effect of favoring incumbent carriers whose service predated that of competitive entrants).

26/ For example and by way of analogy, most people are coming to view their DVD players as more valuable than their older VCRs.

27/ *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8801, ¶ 47 (1997), *subsequent history omitted*.

28/ *Joint Board Public Notice*, 18 FCC Rcd at 1953-54, ¶ 29.

making that determination has been one reason for not choosing a program of universal service support for just one connection per consumer or business." 29/

The *Public Notice* further asks, "Is it administratively feasible to distinguish primary from second lines?" 30/ The answer is clearly "no:" "[t]here is no practical, non-arbitrary way to determine which of multiple subscriber services are 'first' or 'primary.'" 31/ Western Wireless concurs with the many rural ILEC commenters who oppose primary line restrictions on the grounds that they would be administratively infeasible to implement in a competitively neutral manner. For example, OPASTCO's reasoning on this point is persuasive:

> All of the same administrative and enforcement difficulties that arose under the primary/non-primary line distinction for price cap carrier residential SLCs would also arise in the context of a primary line or primary residence high-cost support policy. For instance, the Joint Board asks how primary lines should be defined. If it is a household, how would residences with unrelated individuals be treated (for example, college roommates or families who take in boarders)? If it is an individual, what would stop a family from placing each of the lines it subscribes to under a different family member's name, so that they are all classified as "primary"? If only primary residences are supported, there is the administrative complexity of carriers having to share information given the likelihood that a subscriber's primary and second residences are in different service areas. * * * [I]t is not the role of carriers to pry into the private living arrangements of their customers. * * *
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> Moreover, the Joint Board is correct in suggesting that the problems of limiting support to primary lines may be magnified in a multi-carrier environment. * * * Clearly, the exceedingly complex mechanisms that would be needed to implement and enforce a rule that limited support to primary lines would fail any reasonable cost/benefit analysis. The Joint Board should not recommend a policy which has already been experimented with and ultimately abandoned for its administrative complexity and costliness. 32/

29/ WUTC Comments at 17.

30/ *Joint Board Public Notice*, 18 FCC Rcd at 1953-54, ¶ 29.

31/ *See* RICA Comments at 25.

32/ OPASTCO Comments at 35-37; *accord*, WUTC Comments at 16 ("In circumstances where there is support for only one connection, it might be necessary to examine a consumer's daily use of two or more connections in an effort to determine which qualifies for support. That would be an impossible task if it had to be accomplished by a monthly comparison of each consumer's telecommunications habits."); WorldCom Comments at 6-7 ("[W]here two housemates each have a different line and only primary lines are supported, how is it determined which line receives support?"). The *Joint Board Public Notice* itself notes that "[t]he Commission previously acknowledged the

Some parties suggest that, in cases where consumers purchase service from both an ILEC and a CETC, the consumers themselves could choose which of these carriers' connections to designate as "primary." But such a choice would amount to little more than a popularity contest, and would be meaningless to consumers, unless the selection made some economic difference to them. But as a number of parties have pointed out, having the selection make an economic difference would require that a consumer pays more to purchase an unsupported "additional" line, whether from an ILEC or from a CETC, than he or she pays to purchase a supported "first" line. In the case of rate-regulated ILECs, extensive and complicated coordination between the FCC and state commissions would be needed to implement such a policy. 33/ The need for this coordination would make this option quite difficult, if not impossible, to implement as a practical matter.

Some of the parties who support primary line restrictions acknowledge the likely "administrative difficulties in designating the single residential connection eligible for high cost support," but with no analysis, and no proposed solutions, blithely assume that these difficulties "should not present an obstacle" and that solutions to them can be "identified through industry collaboration." 34/ Other proponents of supposedly competitively neutral primary line restrictions do not even acknowledge the administrative difficulties, ignoring the Joint Board's request for comment on how to solve these difficulties. 35/ The fact that the proponents of primary line restrictions do not bother to address the mechanics of such a system – despite the specific questions on that issue posed in the *Joint Board Public Notice* – provides strong support for the position of Western Wireless that such restrictions would be virtually impossible to manage.

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difficulties with applying different primary and non-primary residential SLC rates." *Joint Board Public Notice*, 18 FCC Rcd at 1953-54, ¶ 29 & n. 64.

33/ *See, e.g.,* OPASTCO Comments at 38. *See also* "Policy Analysis of Changes to the Universal Service Support System in a Competitive Environment," Attachment J to Western Wireless Comments, at 6 & n.15. A system of "phone stamps" would another way to implement a consumer choice process, although such a system would be extraordinary difficult and complicated to implement and administer. *Id.* at 6-7.

34/ GCI Comments at 69; *see also* NASUCA Comments at 6.

35/ *E.g.*, AT&T Comments at 4-16, SBC Comments at 12-17.

D. A Primary Line Restriction Is Not An Effective Means to Advance The Policy Goals Sought By Its Proponents

The main rationale motivating proponents of a primary line restriction appears to be to address the perceived problem of excessive growth of the high-cost fund due to CETC entry. Most of the parties supporting this proposal are net contributors into the funds; they unanimously cite the risk that, unless restrictions are imposed on funding disbursements to wireless CETCs, the size of the high-cost fund is liable to grow at an unacceptably high rate. 36/ But a primary line restriction would not be a particularly effective policy tool to address this perceived problem, since primary line restrictions would restrict funds to CETCs, but an overwhelming majority of the fund growth is due to increasing disbursements to ILECs. Moreover, effective alternative policy options are available to curb fund growth, and – unlike the primary line restriction proposal – these alternative options are competitively neutral. If several policy options would work equally well to achieve the objective relating to fund size, it is incumbent on the Joint Board and the Commission to select the option that has the least negative impact on competition. 37/

First, it is beyond question that support to ILECs – mostly rural, rate-of-return regulated carriers – is by far the largest factor that has driven the growth of the high-cost fund over the past few years. Western Wireless submitted analyses based on second quarter 2003 USAC projections that showed that only 4.5% of total high-cost dollars, and 9.2% of the high-cost fund growth over the past 4 years, has been due to CETCs, with the remaining 95.5% of the second quarter 2003 dollars and 90.8% of the growth benefitting ILECs. 38/ Moreover, in light

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36/ AT&T Comments at 5-8; SBC Comments at 13-14.

37/ *Cf.* 47 U.S.C. § 604 (requiring agencies to include in final rulemakings "a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected"; *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)*, CC Docket No. 81-893, Sixth Report and Order, 99 FCC 2d 1066, ¶ 28 (1985) (considering several proposed options and choosing "the one which will have the least long-time negative impact on competition in the communications industry and . . . the alternative that, as conditioned, will best promote competitive goals").

38/ "The Legal and Historical Background of the Federal Universal Service System," Attachment A to Western Wireless Comments, at 6; "The Myths and Realities of the Impact of CETCs on the High Cost Federal Universal Service Fund," Attachment D to Western Wireless Comments, at 1-6.

of USAC's recent release of third quarter 2003 data, this analysis now appears to overstate the impact of CETC entry, since USAC apparently included in the second quarter 2003 figures projected funding to CETC study areas that at the time were "ineligible" to receive support, such as areas for which a CETC had applied for ETC designation but not yet received it. The third quarter 2003 figures released by USAC now include an indication of which CETC study areas are "ineligible" to receive support. An analysis that properly excludes those "ineligible" areas shows that projected support to CETCs has declined by over 12 percent, from $36.9 million in second quarter 2003 to $32 million in third quarter 2003. This means that the impact of CETCs on high cost fund growth is probably even less than Western Wireless and other parties estimated in initial comments. 39/

If you start by identifying the wrong problem, you will certainly fall upon the wrong solution. CETCs are not causing the fund-growth problem; excessive funding to ILECs, primarily the rural, rate-of-return carriers, is the problem. In Section II of these Reply Comments, we discuss possible long-term solutions to this real problem, including replacing the antiquated, discredited, and inefficient rate-of-return system with a system based on forward-looking costs. By contrast, "solutions" geared to reducing funding to CETCs, such as primary line restrictions, will do very little to address the real problem.

In sum, primary line restrictions would harm universal service, would be profoundly anti-competitive, would be difficult or impossible to implement, and would not effectively advance the objective of limiting the growth of the high-cost funds.

39/ It is notable that AT&T "fudges" its numbers to make it appear as though funding to wireless carriers will grow by a greater extent in the future. AT&T claims that there are approximately 1.4 wireless connections per household, but that claim is misleadingly based on a false assumption that wireless connections provided to businesses should be treated as if they were residential. *See* AT&T at 7 & n.19. In any event, there is no basis for assuming, as AT&T, OPASTCO, and other parties apparently do, that every wireless carrier in every high-cost area will seek (or qualify for) ETC status, given the costs and difficulties imposed by the ETC process and the statutory requirements and obligations entailed in serving as an ETC.