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

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

REPLY COMMENTS OF AT&T CORP.

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SUMMARY

The Commission now finds itself in essentially the same position that faced the Joint Board last year. Practically every commenter agrees that the Commission must address the rapid growth in the Universal Service Fund ("USF") sooner rather than later. And a wide range of commenters agree that what AT&T has described as a USF "death spiral" is caused by increasing support for multiple lines (especially wireless lines).

Thus the Commission, like the Joint Board before it, is faced with a choice. Is this growth truly necessary to support universal service, or does it represent excessive support that must be reined in to stabilize the fund and focus on its most critical objectives? The Joint Board concluded that the latter is the case, and it was right in doing so.

The record in this proceeding demonstrates quite clearly that the Commission should, as the Joint Board recommended, take two principal actions to prevent runaway USF growth. *First*, it should establish mandatory guidelines that strictly limit additional rural Eligible Telecommunications Carrier ("ETC") designations. The threshold question of whether there should be multiple ETCs in rural study areas needs to be addressed via a rigorous public interest cost-benefit analysis, which weighs the potential benefits of multiple ETCs against the incremental cost to the USF.[i] Such quantification is the only way for regulators to demonstrate the public interest of multiple ETCs in rural study areas

[i] For purposes of this discussion, AT&T refers to a cost-benefit analysis for purposes of determining whether designating multiple ETCs for high-cost support is in the public interest. AT&T asks the Commission to provide separate ETC certification procedures for carriers wishing to receive only Low-Income support. *See* AT&T Comments at 29; *see also* Public Notice, *The Wireline Competition Bureau Seeks Comments on Petitions Concerning Eligible Telecommunications Designation and the Lifeline and Link-Up Universal Service Support Mechanism*, CC Docket No. 96-45, WC Docket No. 03-109, DA 04-2750, (rel. August 30, 2004).

and overcome the logic that, absent substantial countervailing reasons, competition should lower the cost of providing universal service, not increase it. As part of such a test, to avoid spiraling growth of the USF, the Commission should set a benchmark of High Cost Support per line, above which there would be a rebuttable presumption that a study area served by a rate-of-return regulated incumbent LEC will be limited to one ETC. That benchmark should be set sufficiently low so that all rural, rate-of-return regulated study areas would fall above the benchmark. Wireless carriers' opposition to this approach is understandable, as they are the carriers most aggressively targeting entry in high cost areas. However, as the Joint Board recognized, mobility is not and should not be treated as a supported service. To the extent that the Commission wants to provide further inducements for wireless entry in rural areas, its should set up a new funding mechanism that would operate entirely independently of the existing High Cost Support mechanisms, or pursue such incentives through other means.

Second, the Commission should limit High Cost Support to a single connection to each home or business in rural study areas where multiple ETCs have been determined to be in the public interest. As the Joint Board concluded, this is "more consistent with the goals of section 254 [of the Act] than the present system, and is necessary to preserve the sustainability of the universal service fund."[ii] It would also "send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral."[iii]

Certainly, none of the arguments against such "primary line redistribution" disturb the Joint Board's conclusions.

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ii *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 04J-1, CC Docket No. 96-45, at ¶ 56 (2004).

iii *Id*.

- Wireless carriers' assertions that primary line redistribution undervalues mobility or the benefits of "everyone, everywhere" connectivity simply restates their preference that universal service be extended to all connections to every man, woman and child, rather than being limited to a basic network connectivity. The Joint Board got this right: the Commission has never made mobility a supported service. Moreover, the Act commands that support be sufficient – which, *inter alia*, means not excessive.

- Some incorrectly assume that primary line distribution would apply to all study areas everywhere. In reality, such distribution would be much more limited. There is no need for it in study areas without competitive ETCs, or in non-rural study areas.

- Other commenters raise questions about the administrability of primary line distribution. Some of these questions are legitimate, but one need only look at California's universal service and the federal Lifeline program (both with single line restrictions) to realize that primary line distribution will not be the administrative nightmare some commenters describe. Moreover, when it is recognized that primary line distribution is only necessary in a small subset of study areas, the administrability issues become much more manageable.

- A number of commenters argue that primary line distribution will devastate rural communities by raising prices for second and multiple lines. At least under the Joint Board's restatement proposal, this is simply not the case. While *new* non-primary lines would not be supported, the cost of installing such lines is much lower that the cost of installing primary lines, so there need not be price increases for such lines.

- A handful of parties suggest other proposals for addressing USF issues. Some of these are plausible, and AT&T has long fought for at least one of them. But not all of them are relevant to *this* proceeding, and none of them should serve as a substitute for primary line distribution.

In this regard, the Rural Telecommunications Associations ("RTA") has submitted a more comprehensive alternative plan, which perhaps deserves additional discussion. RTA would provide High Cost support to wireless ETCs based on a series of "safe harbors," under which smaller wireless carriers would receive more per-line support, and the largest carriers would receive none at all. This plan *disserves* the public interest for at least two reasons. It cements the idea that High Cost support should flow to as many lines as a individual might desire – which, in a world of ever increasing lines, means ever increasing USF growth. In other words, while it may slow the ills of the existing system, it will not cure them. Moreover, the safe harbors themselves – the product of negotiations among a variety of smaller carriers – quite blatantly favor such carriers. This, among other problems, practically invites large and small wireless carriers to game the system through complicated financial transactions.

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GLOSSARY

High Cost Loop Support ("HCLS")	Assists rural local telephone companies with high local loop costs. Support offsets loop costs that would otherwise be recovered through intrastate rates. *See* 47 C.F.R. § 36.601 *et seq*. Total HCLS nationwide is subject to an indexed cap.
High Cost Model Support ("HCMS")	Assists non-rural local telephone companies with High Costs, based on FCC's Hybrid Cost Proxy model of forward-looking costs. Support offsets loop costs that would otherwise be recovered through intrastate rates. *See* 47 C.F.R. § 54.309.
Interstate Access Support ("IAS") – also known as "CALLS Support"	Provides per line support for all ETC loops in High Cost zones of study areas served by ILECs regulated under price cap regulation. *See* 47 C.F.R. § 54.800. Total nationwide IAS is capped at $650 million per year. IAS is included in the calculation of a carrier's interstate rate of return.
Interstate Common Line Support ("ICLS") – also known as "MAG Support"	Provides support to offset a portion of the interstate common line revenue requirement of rate-of-return ILECs, with CETCs receiving per line support equivalent to the ILEC's support per ILEC working loop. *See* 47 C.F.R. § 54.901. ICLS is included in the calculation of a carrier's interstate rate of return.
Local Switching Support ("LSS")	Assists local telephone companies serving study areas of 50,000 or fewer access lines. Support is provided to offset a portion of the local switching costs that would otherwise be recovered through intrastate rates. *See* 47 C.F.R. § 54.301. LSS is included in the calculation of a carrier's interstate rate of return.

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REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby replies to comments submitted in response to the Commission's June 8, 2004 *Notice* and the *Recommended Decision* issued by the Federal-State Joint Board on Universal Service (the "Joint Board") concerning the High Cost Support mechanism and the designation of Eligible Telecommunications Carriers ("ETCs").[1]

I. COMMENTERS BROADLY ACKNOWLEDGE THE NEED TO CONTROL USF GROWTH.

AT&T is by no means alone in arguing that USF growth is contributing to a "death spiral" for universal service funding. To the contrary, as was the case last year, virtually every commenter in this proceeding agrees with AT&T and the Joint Board that, if universal service is to be preserved,[2] the Commission must act to control runaway USF

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[1] *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1 (2004) ("*Recommended Decision*"); *see also Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) ("*Notice*").

[2] *See* 47 U.S.C. § 254(b)(5) (directing the Commission to create "mechanisms to preserve and advance universal service"). As NASUCA observes, "[i]n order to advance universal service, however, the Commission must first take measures to preserve it." NASUCA Comments at 6. All comments cited in this reply were filed in response to the *Notice*, unless otherwise noted.

growth.[3] And many commenters identify the same area of growth – increasing support for multiple lines (especially wireless lines) – identified by the Joint Board.[4] As was the case before the Joint Board,[5] the real dispute in this proceeding concerns whether these sources of growth are truly necessary to support universal service, or whether they represent excessive support that must be reined in order to stabilize the fund and focus on its most critical objectives.[6] AT&T continues to believe, and the record reflects, that the latter is the case. If only one thing is clear from the initial comments, it is that the *status quo* is no longer a viable option. The Commission must act now.

II. THE COMMISSION SHOULD PROVIDE CLEARER GUIDANCE TO STATE COMMISSIONS EVALUATING WHEN ADDITIONAL ETC DESIGNATIONS ARE IN THE PUBLIC INTEREST.

The Joint Board recommended that the Commission adopt *permissive* federal guidelines for states to use when determining whether applicants are qualified to be

[3] *See*, *e.g*., Verizon Comments at 3 ("More than a year ago, when the Joint Board was accepting comments on this proceeding, commenters were nearly unanimous in urging that something be done to control growth of the high cost fund. The size of the universal service fund is growing to levels that threaten two of the primary goals of the universal service program – sustainability of the fund, and affordability of telecommunications services for all Americans."); Sprint Comments at 2 ("Sprint believes that it is imperative for the Commission to impose limits on the growth of the universal service fund. Growing contribution burdens pose a drag on the telecommunications sector of the economy, limit economic growth, and harm telecom consumers."); CTIA Comments at ii ("Despite industry-wide efficiency gains, advances in technology, and amortization of depreciated equipment, the high-cost mechanisms continue to increase rather than decrease in size over time."); NTCA Comments at iv ("[T]he danger of excessive fund growth is not clear and present."); MSCC Comments at 4 ("[Current policies have] placed unreasonable pressure on the federal universal service fund and [have] threatened the statutory mission . . . [a]s a direct result, the Commission, as well as Congress, has expressed the need to limit addition unreasonable growth of the universal service fund.")

[4] *See*, *e.g*., NASUCA Comments at 11 ("The Commission's fears of an 'overly expansive' support mechanism have now been realized as a result of the current mechanism that supports multiple lines from multiple carriers for a single household or an individual consumer."); CPUC Comments at 8 ("We believe the change in the current system of providing High Cost support is timely considering the growth in the high cost fund"); Verizon Comments at 2 (discussing growth in the fund due to the entry of competitive ETCs).

[5] *See generally* Reply Comments of AT&T Corp., CC Docket No. 96-45 (filed June 3, 2003).

[6] As the Fifth Circuit recognized, "excessive funding itself may violate the sufficiency requirements of the Act." *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

designated as ETCs under section 214.[7] Ostensibly, the recommended guidelines would assist states in determining whether or not the public interest would be served by a carrier's designation as an ETC. Permissive guidelines of this sort, however, are insufficient to constrain exponential USF growth.

A number of commenters agree with AT&T that the *threshold* question of whether there should be multiple ETCs in rural study areas needs to be answered via a rigorous public interest analysis.[8] According to TDS, "[t]he Commission should require state regulators to conduct a fact-specific public interest analysis . . . weighing the costs and benefits of designating the particular Petitioner as a competitive ETC in the designated service area."[9] Both SBC and Verizon concur in this assessment. SBC maintains that the "Commission should require the states to consider, among other things, whether granting ETC status to additional carriers would place undue strains on the fund and is necessary to achieve the goals of section 254 as part of the public interest analysis."[10] As Verizon states, "Petitioners seeking ETC status should have a heavy burden to overcome the presumption of one ETC per rural study area."[11]

Such a public interest analysis can best be implemented by a mandatory cost-benefit analysis, in which the potential benefits (such as consumer choice and affordability) of multiple ETCs can be measured against the incremental cost to the USF.[12] The quantification inherent in a cost-benefit analysis is the only way for

7 *Recommended Decision* at ¶ 5.

8 AT&T Comments at 26.

9 TDS Telecom Comments at 9.

10 SBC Comments at 8.

11 Verizon Comments at 9.

12 AT&T Comments at 26; GVNW Comments at 12; MITS Comments at 7.

regulators to clearly demonstrate the public interest of multiple ETCs in rural study areas and overcome the common sense, inescapable logic that, absent substantial countervailing reasons, *competition should lower the cost of providing universal service, not increase it*.[13]

There is no dispute that the incremental cost to the USF when designating multiple ETCs can be significant, especially if the incumbent LEC is rate-of-return regulated. As many incumbents have pointed out in their opposition to the primary line proposal, support from the high-cost programs that are specific to rural carriers (HCLS, LSS and ICLS) is part of the compensation for their network costs, which are predominantly fixed costs.[14] When a competitive ETC ("CETC") wins a customer from a rate-of-return incumbent, the incumbent loses much of the revenue associated with that customer, but loses little or none of its network costs. The per-line HCLS support available to the new entrant CETC under section 54.307 of the Commission's rules will continue to *increase* as the incumbent loses lines to the new entrant to ensure the recovery of the incumbent's network costs under rate-of-return regulation.[15] This is the so-called "spiral effect" on USF, as documented by the Rural Task Force ("RTF").[16]

There are other perverse effects. For example, given how the indexed capping mechanism of HCLS operates, more HCLS support is siphoned to those study areas that

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13 AT&T Comments at 26.

14 Century Comments at 20; MITS Comments at 9; NTCA Comments at 4; Rural Telecommunications Associations Comments at 18; TDS Comments at 24.

15 *See* 47 C.F.R. § 54.307. Under Section 54.901 of the Commission's rules, the per-line ICLS support available to the new entrant *increases* as the incumbent's Common Line Revenue Requirement is offset by lower incumbent end-user common line revenues. *See* 47 C.F.R. § 54.901.

16 *See* RTF Work Paper 3, dated August 3, 2000, and AT&T Comments at 15.

have multiple ETCs at the expense of study areas that do not.[17] Moreover, if the CETC does not win a customer from the incumbent LEC, but instead serves supplemental lines – as is the case with many of the wireless CETCs – the total amount of USF support to the rural study area increases. Capping per-line support to *both* the incumbent and the new entrant upon competitive entry only partly mitigates the "spiral effect," but does *not* prevent the total USF support for that study area from increasing.[18]

In lieu of the primary line proposal, for example, TDS and NTCA propose that CETC support should be based on the CETC's costs, instead of the incumbent's costs.[19] Although this may lower the amount of USF support provided to the new entrant CETC, it nonetheless means that, instead of one network supported by USF, there would be two or more networks supported by the fund. This approach begs the question raised by SBC as to the public interest of designating multiple ETCs, when the costs of serving a particular area are so high that the existing ETC already requires significant High Cost Support.[20]

The fact is that under any of the mechanisms suggested by the Joint Board (restatement, hold harmless and lump sum), the rate-of-return incumbent's network costs must be recovered. If they are not recovered from the local ratepayer in the form of higher local rates, then they must be recovered from ratepayers nationwide through higher USF payments. This is precisely the concern over escalation of High Cost support

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[17] *See* Comments of AT&T Corp., CC Docket No. 96-45 at 3 (filed Feb. 26, 2001).

[18] AT&T continues to support capping per-line support upon competitive entry, *see* AT&T Comments at 22, but such capping is only relevant in study areas where multiple ETCs have been determined to be in the public interest.

[19] TDS Comments at 3; NTCA Comments at 13.

[20] SBC Comments at 9; *see also* NASUCA Comments at n.102.

raised by members of the Joint Board in their Separate Statements.[21] Moreover, the burden of higher USF support for these rural areas increases the USF payment burden for those relatively low-cost states that are already *net payers* into the USF. These states are held virtually captive to high-cost states making ETC determinations. Absent a rigorous cost-benefit analysis, high-cost states will be able to export inordinate costs created by multiple CETC without constraints, effectively creating a telecommunications version of taxation without representation for consumers in low-cost states.[22]

The Joint Board declined to recommend the rigorous cost-benefit analysis proposed by AT&T, MITS and GVNW.[23] In lieu of such a test, the Joint Board proposes that states consider the level of the High Cost, per-line support to be received by ETCs as a factor in determining whether it is in the public interest to have additional ETCs designated in a study area.

The comments, however, overwhelmingly support the concept of such a benchmark.[24] Indeed, the benchmark should be set at a sufficiently low level such that all study areas served by a rate-of-return regulated incumbent will be presumed to be limited to one ETC, thereby addressing the policy issues identified above. A low benchmark puts the burden of proof on the state commissions under section 214(e)(2) and the FCC under section 214(e)(6) to demonstrate why increasing High Cost Support in these study areas by allowing multiple ETCs is in the public interest.

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21 *See* Verizon Comments at n.25 (summarizing Joint Board statements).

22 *See* AT&T Comments at 26.

23 *See* AT&T Comments at 26; MITS Comments at 7; GVNW Comments at 12.

24 *See* Rural Telecommunications Associations Comments at 37; AT&T Comments at 26; SBC Comments at 9; Verizon Comments at 13; NTCA Comments at 22; NASUCA Comments at 43; Century Tel Comments at 12.

Not surprisingly, most of the opposition to a per-line benchmark comes from the wireless industry.[25] Because wireless carriers are the ones most aggressively targeting entry in high-cost areas, they are most likely to be negatively affected by a benchmark set at a low level. As USAC has shown, 96 percent of all CETC lines belong to wireless carriers.[26] The arguments advanced by Western Wireless typify those of all wireless carriers. Western Wireless continues to insist that Section 254's goal of reasonable comparability requires support for multiple ETCs in order to foster the development of rural wireless service.[27] It further contends that the Joint Board's decision to the contrary – *e.g.* that "[m]obility is not a supported service"[28] – was incorrect, because the Joint Board failed to consider the benefits of wireless service.[29] Thus, Western Wireless argues vociferously that wireless service can promote safety, emergency access, mobility, high-speed access, economic development, competitive pricing, and good customer service in rural areas.[30]

All of this may be true, but it does *not* make mobility a supported service. In the first instance, "mobility" appears nowhere in the Commission's rules setting forth the services to be supported by federal universal service mechanisms.[31] Nor should mobility

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25 *See* Rural Cellular Association and Alliance of Rural CMRS Carriers Comments at 18; Western Wireless Comments at 20; AT&T Wireless Comments at 5.

26 *See* "Information is Now Available on Specific CETC High Cost Support," *available* at www.universalservice.org/default.asp.

27 *See*, *e.g.*, Western Wireless Comments at 11 (arguing that "there can be no 'reasonably comparable' services for rural consumers without wireless service that is both ubiquitous and of high quality"); *id.* at 12-14 (discussing the benefits of rural wireless service).

28 *Recommended Decision* at ¶ 63 (noting that while "deployment of rural wireless infrastructure is an important policy goal, . . . the reasonable comparability principle does not justify supporting multiple connections to achieve it").

29 Western Wireless Comments at 3.

30 *Id.* at 12-14 (discussing all these benefits).

31 *See* 47 C.F.R. § 54.101 (listing supported services).

be added as a supported service. Universal service support for mobility is unnecessary to ensure "comparability" between urban and rural areas,[32] because most areas already have wireless service.[33] According to CTIA, "98% of consumers have access to at least 3 wireless providers and 83% have a choice of five or more providers . . . [and] [e]xcept for a single isolated borough (county) in Alaska, there is mobile wireless service in every county in America."[34] Indeed, many wireless carriers are seeking ETC status in areas where they already provide service even without universal service support.[35] Even if mobility were to be included as a supported service under 254(c)(2), it would warrant a completely *new* funding mechanism. Otherwise, as the Joint Board recognized, support for mobility would decertify all of the existing wireline ETCs who do not provide mobility.[36] Such a new funding mechanism should operate independently of the current mechanism, and thus be independent of a threshold per-line benchmark for determining multiple CETCs for the current mechanism. Western Wireless' claim that Section 254 *requires* support for mobility is simply not plausible.

Perhaps what Western Wireless really means is that mobility *should be* a supported service, because rural wireless service is something the government ought to encourage (and because the Commission has already taken certain actions to encourage

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[32] 47 U.S.C. § 254(b)(3) (providing that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas").

[33] *See*, AT&T Comments at 8; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 02-379, FCC 03-150, at Appendix F, Maps 1-3 ("*Eighth Annual CMRS Report*").

[34] CTIA Comments at 2.

[35] *See* Verizon Comments at 12.

[36] *Recommended Decision* at ¶ 63 n.243; *see also* AT&T Comments at 8.

it).[37] But the Joint Board correctly found that a mere desire to support rural wireless deployment is no reason to continue the *status quo* with respect to High Cost Support for multiple connections.[38] Of course, the Commission has supported rural wireless development in a number of ways. But this does not mean that it must do so in every conceivable way, or at all costs. Declaring mobility a supported service in the name of rural wireless deployment would be particularly unfortunate – both because it would harm the USF, and because High Cost Support is an especially inappropriate mechanism for supporting rural wireless deployment.[39]

Finally, Western Wireless's answer to the Rural Task Force's concern over the "spiraling" growth to USF support is to eliminate rate-of-return regulation of ILECs.[40] Even if replacing rate-of-return regulation in rural study areas holds merit, that is not an issue to be decided in this proceeding, but rather in the MAG proceeding in which the Commission is considering incentive regulation for rate-of-return LECs.[41] Moreover, as demonstrated above, even if the incumbent does not lose lines to wireless CETCs, the total support for these rural study areas would increase significantly because most wireless lines are supplemental to, not replacements for, the incumbents' lines.

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[37] *See* Western Wireless Comments at 6. Sprint is more straightforward about this distinction, arguing that the High Cost fund ought to support mobility not because mobility is a supported service, but because "there are significant positive *externalities* enjoyed by rural customers when the supported services are provided by wireless competitive ETCs." Sprint Comments at 7 (emphasis in original).

[38] *See Recommended Decision* at ¶ 63 (finding that "[d]eployment of rural wireless infrastructure is an important policy goal, but the reasonable comparability principle does not justify supporting multiple connections to achieve it").

[39] *See* AT&T Comments at 9 (noting that continued support for multiple connections would put an unbearable strain on the USF, and could also distort the rural wireless market by putting wireless ETCs and wireless non-ETCs on a different competitive footing).

[40] *See* Western Wireless Comments at 17.

[41] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd. 4122 (2004).

The PUC of Oregon opposes the per-line support benchmark for an entirely different reason. It views high per-line support as an indication that technologies different than those employed by the incumbent are more suitable for providing universal service.[42] However, the PUC fails to explain how per-line support of the rural High Cost programs (*i.e.*, HCLS, LSS, and ICLS), which are based on the *wireline* carrier's embedded costs, is appropriate for determining support of an alternative technology, such as wireless.

In short, the Commission should reject opponents' arguments and establish a mandatory cost-benefit test, including a low value for a national benchmark of per-line support, above which the presumption would be that multiple ETCs are not in the public interest. This would put the burden of proof on the state commissions under section 214(e)(2) and the FCC under section 214(e)(6) to demonstrate why increasing High Cost Support in rural study areas by granting multiple ETCs is in the public interest. Indeed, as discussed below in Section III, such a determination should be a prelude to consideration of restricting support to the primary line.

III. LIMITING SUPPORT TO A SINGLE CONNECTION IS NECESSARY TO SAFEGUARD THE HIGH COST FUND IN RURAL AREAS IF IT IS DETERMINED THAT MULTIPLE ETCs ARE IN THE PUBLIC INTEREST.

In its initial comments, AT&T supported the Joint Board's recommendation to limit the definition of services to be supported by federal universal service support – *i.e.*, the universal services – to voice grade access to the public switched telephone network for a single connection to a home or business.[43] As clarified above in Section II, this

[42] PUC of Oregon Comments at 5.

[43] AT&T Comments at 1-17.

limitation should be conditional upon a public interest finding that multiple ETCs in rural study areas are in the public interest. For if a rural study area is limited to a single ETC, the impact of the primary line proposal is rendered moot. Some recipients of High Cost Support, however, neglect this important distinction, and argue that all carriers should continue to receive such support for as many connections as a customer may desire, both because the law (allegedly) requires it, and because sound public policy (purportedly) recommends it.[44] Neither is the case.

A. Primary Line Distribution Need Not Apply Everywhere.

Perhaps some of the anxieties expressed concerning primary line distribution stem from a misapprehension that such distribution would apply everywhere. This need not – and should not – be the case. *First*, primary line support need not be implemented in the vast majority of rural LEC study areas without a competing CETC. If the Commission adopts more stringent ETC certification requirements, such as those discussed above, this will be the case in a larger number of study areas. Where there is only a single ETC, it makes no difference to overall fund size whether High Cost Support is calculated on the basis of lines or primary lines – all of the money for that study area goes to the single ETC and the network costs for which support is provided will be largely the same, regardless of whether one views support as for the primary line or for all lines.[45] Only when a study area contains *multiple* ETCs – and particularly when the additional ETC is a CMRS provider – is there the possibility that support for connections to complement

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44 *See generally*, *e.g*., Western Wireless Comments; Sprint Comments.

45 As AT&T previously pointed out, the costs of the poles, conduit, and trenching are all incurred to provide service to the customer, irrespective of the number of lines purchased. *See* AT&T Comments at 14.

the primary connection will significantly increase the amount of overall High Cost Support.

Second, primary line distribution need only apply in rural study areas because, as Verizon observes, there is far greater potential for USF growth in those areas.[46] AT&T has proposed a primary line distribution with respect to HCLS, LSS, and ICLS – the High Cost Support mechanisms that are the most susceptible to runaway growth. While a portion of the Interstate Access Support mechanism applies to rural areas, IAS is subject to a hard cap, and thus cannot be the source of uncontrolled High Cost Support growth.[47]

When primary line distribution is limited to rural ILEC study areas with multiple ETCs, the number of lines affected drops dramatically. Indeed, AT&T estimates that at most 15.5 million ILEC lines – or approximately 13 million households – would be affected by the primary line proposal.[48] This substantially reduces the administrative burdens and costs associated with implementation of primary line distribution.

B. Administrative Difficulties Do Not Justify Providing Universal Service to Unlimited Connections.

A number of commenters raised objections or questions about how primary line distribution might be administered.[49] While many of these issues are real, none demonstrate that such distribution is unworkable, or not worth the effort. Such a system

[46] *See* Verizon Comments at 19 (noting that "[t]he primary line proposal and freeze on per-line support are not necessary for non-rural and insular areas, as there does not exist the same potential for growth in high-cost funding").

[47] *See Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-202 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 99-249, 15 FCC Rcd. 12,962, 13,406 (2000), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

[48] This would be the case if multiple ETCs were determined to be in the public interest in *every* rural study area. As shown in Section II, this should *not* be the case.

[49] *E.g.*, USAC Comments at 6-12; BellSouth Comments at 10.

is clearly workable: the largest state high cost support mechanism is restricted to a primary line.[50] And, as NASUCA observes, the federal Lifeline program is also restricted to a single telephone line.[51] To AT&T's knowledge, neither of these programs has caused insurmountable administrative difficulties. Moreover, these administrative difficulties can be further substantially reduced if primary line distribution is limited to the rural high cost programs, ICLS, LSS and HCLS – the funds most susceptible to growth – in study areas in which multiple ETCs have been designated. As noted above, AT&T estimates that this would limit primary line distribution to approximately 13 million households[52] – far fewer than the 106 million households with telephones.[53] Even more to the point: as NASUCA observes, whatever administrative difficulties (and costs) may arise are far outweighed by the costs of continuing to support second or additional lines.[54]

Several commenters ask in particular about the definition of "primary line."[55] The Joint Board recommends, and AT&T agrees, that *consumers*, not carriers, should determine which lines are primary.[56] This being the case, USAC (and others) point out that "it [will be] critical to clearly define who constitutes the 'consumer' to enable

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50 *See* California PUC Comments at 7-8, 9-10; Cox Comments at 3, 9-11.

51 *See* NASUCA Comments at 27.

52 The application of primary line distribution will be significantly less than 13 million households if many of these rural study areas are limited to a single ETC under the public interest determination. *See* Section II, above.

53 Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *Telephone Subscribership in the United States (Data through March 2004)*, Table 1 (rel. Aug. 13, 2004).

54 *See* NASUCA Comments at 23 (arguing that "no one seriously contends" the costs of administering primary line distribution outweigh the costs of continuing the *status quo*).

55 *See*, *e.g.*, USAC Comments at 6; SBC Comments at 9.

56 *Recommended Decision* at ¶ 71.

effective administration."[57] AT&T agrees with USAC's instinct – bright line rules are required here.

Fortunately, as experience in California suggests, bright line rules are readily achievable.[58] One possibility, derived in part from the comments of Verizon and others is the following:[59]

- The Commission should limit High Cost support to one primary line per residential or business address in rural study areas with more than one ETC.

- In areas where there is more than one ETC, each ETC should initially submit the addresses of its customers.

- If two ETCs submit the same address, the customer should determine the carrier to be designated as primary. Only in the rare event that two ETCs were to submit two separate customers at the same address would USAC need to step in to resolve the issue. The FCC should create a bright line rule to address situations such as two families in one residential unit, either permitting or barring eligibility in that situation. After that initial determination, customer changes in designation should be honored.

- Subject to audit, each ETC would be responsible to designate a single customer per location (even if there are two customers at such location). That customer would have the ability to choose designate a primary line for that location.

Certainly, other bright line rules are plausible.[60] AT&T is not wedded to any particular set of rules. The point, though, is that defining a "primary" connection is not the

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[57] USAC Comments at 6.

[58] *See* CPUC Comments at 7; Cox Comments at 9-12 (discussing experience in California).

[59] *See, e.g.*, Verizon Comments at 17.

[60] California, for example, provides for the designation of a primary line per "household" which is defined as "that portion of an individual house or building or one flat or apartment occupied entirely by a single family or individual functioning as one domestic establishment." CPUC Comments at 7. NASUCA proposes that carriers submit uniform ballots to all consumers, with the "primary line for customers submitting multiple ballots" being the first one postmarked. NASUCA Comments at 25. NASUCA also proposes a default rule by which the ILEC's line remains the primary line for consumers who fail to designate such a line themselves. *Id.* at 26. Qwest would forego balloting altogether, and simply decree that a customer's first (ILEC) line "is deemed the primary connection"

"administratively unworkable" proposition that some commenters would have the Commission believe.[61]

Other commenters object more specifically to allowing consumers to choose their primary lines – one even arguing that "[e]nforcing the Commission's anti-slamming rules will seem a stroll in the park compared to the activities necessary to uncover and deter the fraudulent identification of 'primary connection' carriers."[62] Fears of "primary line slamming," while legitimate, should not preclude consumer choice. Just as the Commission would not eliminate long distance choice and competition simply to eliminate the possibility of "slamming," the Commission should not decline to safeguard the High Cost Fund through primary line support distribution. When customers select or change primary line designation, the last-in-time choice should be presumed correct if accompanied by proper documentation, and fraud and other abuses in procuring documentation should be punished.

None of this is to say that primary line distribution of High Cost Support would be without administrative complications – such complications would clearly occur. But each of these complications can be addressed, and they are far outweighed by the benefits to the USF that primary line distribution would bring.

C. The Restatement Proposal Addresses Rural ILECs' Concerns In Study Areas With Multiple ETCs.

Rural ILECs uniformly argue that a primary line distribution would harm rural consumers. One commenter argues that, "[a]ny reduction in high-cost support due to

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until the customer disconnects service from the ILEC. Qwest Comments at 3. AT&T sees no reason why the designation of primary lines need be administered in such an obviously pro-ILEC manner.

61 Qwest Comments at 2.

62 NECA Comments at 12; *see also*, *e.g.*, MSCC Comments at 21.

limiting support to primary lines would adversely affect the ability of rural carriers to deliver all but a basic connection to consumers living in rural, high-cost, and insular areas" and that "[a] primary line limitation will necessarily result in significant cost increases for secondary lines and unsupported business lines."[63] Another offers this forecast with respect to rural small businesses:

> Few businesses can operate with only one phone line and the loss of support [from primary line distribution] could place these companies at a competitive disadvantage with their urban counterparts, forcing some to relocate where rates are reasonable. . . . In most rural areas, where small businesses make up the lion's share of the opportunities for employment and economic development, a primary line limitation would wreak havoc on these communities.[64]

While this may be an argument for limiting support to a single ETC, it is irrelevant once the PUC has determined that multiple ETCs are in the public interest. Primary line distribution – at least under the Joint Board's "restatement proposal" – would avoid rate increases for rural ILEC second lines. As the name indicates, the restatement proposal would merely *restate* ILEC study-area support in terms of first lines.[65] This would initially not reduce rural ILEC aggregate support at all.[66] There would thus be neither a reduction in ILECs' ability to deliver service to their customers nor a "rate shock" for second, third, or fourth lines.[67]

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63 NTCA Comments at 7.

64 RTA Comments at 26.

65 *See* AT&T Comments at 12. If, for example, an ILEC receives $40,000 under existing areas for a study area in which it has 9,000 "first lines" and 1,000 "additional lines," the Joint Board's proposal would simply restate that $40,000 over the ILECs 9,000 first lines, rather than over its 10,000 total lines. Total ILEC support for that study area would not change. *See id*.

66 *See* NASUCA Comments at 17.

67 When combined with a freeze on per-line support upon CETC entry, ILECs would only lose support when they lose first line subscribers.

It is true that, under the restatement proposal, rural ILECs would not receive additional support associated with the installation of *future* multiple lines. But, as NASUCA points out, "[g]iven the architecture of both wireline and wireless facilities, it is very likely that the cost of subsequent non-primary connections by either type of provider is much lower than the initial connection."[68] NASUCA is correct, and rural carriers should not be receiving High Cost Support for the low-cost, high-margin business of providing multiple lines, especially where a state commission has made the determination that multiple ETCs are in the public interest.

In any event, state regulatory processes can mitigate the potential for rate changes that adversely affect universal service. States could, for example, provide state universal service support. The potential for some rate changes should not, in and of itself, preclude fiscally responsible reforms.

D. The Potential For Other Reforms Does Not Eliminate The Need To Implement Primary Line Distribution.

Finally, some commenters argue that there are other, better ways to address the ills facing the USF.[69] Some of these proposals bear further consideration, and AT&T has been at the forefront in supporting others.[70] But none of them are substitutes for, or should delay implementation of, primary-line distribution.

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[68] NASUCA Comments at 17; *see also* Montana Telecommunications Association Comments, CC Docket No. 96-45 at 8-9 (filed May 5, 2003) (noting that "[r]eaching the same customer with a 'secondary' line requires only marginal additional investment after the 'primary' line is deployed").

[69] *See*, *e.g.*, Dobson Comments at 28-30 (setting forth a host of proposals); Nextel Communications Comments at 10-15 (proposing to cap study area funding upon competitive entry, limit recovery of corporate operations expenses, transition larger carriers to forward looking cost methodology, and create statewide study areas).

[70] *See* SBC Comments at 1 (urging the Commission to "finally tackl[e] the intractable problem of widespread reliance on implicit subsidies in intrastate rates to support universal service").

As AT&T has observed before,[71] when the Commission deferred implementation of the Joint Board's 1996 recommendation to limit High Cost Support to a single connection to a home or business, it perhaps could not have anticipated the extent to which wireless service would proliferate, the number of wireless carriers that would obtain ETC status in order to receive High Cost Support for services they were already offering even without High Cost Support, and the potential for skyrocketing USF support that would result.[72] There can no longer be any doubt about these issues. Regardless of the merit of any other potential universal service reform (and AT&T believes there may be merit in some of the proposals), these problems must be solved, and a primary line distribution on study areas where multiple ETCs is determined to be in the public interest is an important component of that solution.

IV. THE RURAL TELECOMMUNICATIONS ASSOCIATIONS' PLAN IS NOT IN THE PUBLIC INTEREST.

The Rural Telecommunications Associations propose an alternative to primary line restrictions described as "movement toward a cost-based system for determining support for wireless CETCs . . . ."[73] RTA proposes a "tiered series of safe harbor ratios for determining . . . per-line support" with larger wireless carriers receiving proportionately less per-line High Cost support than smaller wireless carriers.[74] The idea, according to RTA, is that large wireless carriers do not really need High Cost Support, because they "are able to internally support their 'rural' operations," while "small, rural . . . carriers that are actually focused on the communications needs of rural

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71 *See* Reply Comments of AT&T Corp., CC Docket No. 96-45 at i (filed June 3, 2003).

72 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 8829 (1997).

73 RTA Comments at iv.

74 *Id.*

communities" *do* need High Cost support.[75] RTA's proposal would turn usual marketplace principles on their head by rewarding *inefficiency* rather than efficiency. In any event, RTA's proposal is nothing more than a blatantly self-serving way for rural LECs to maximize the amount of High Cost support drawn by their ILEC, CLEC and CMRS operations, at the expense of other telecommunications carriers and the public interest.

First, the RTA plan concedes the very question at issue in this proceeding – it would provide support for as many connections and networks as met ETC designations, so long as these networks were not provided by "national" CMRS operators. RTA rejects the Joint Board's conclusion that universal service should support a basic level of connectivity, and instead embraces an infinite number of lines, so long as the providers of the connections are sufficiently small players. RTA argues that, "unlike head-to-head competition between ILECs and CLECs, wireless service is used by rural consumers for mobility and security and serves as a complement to their fixed wireline service."[76] As discussed above in Section II, mobility and security (and for that matter, complementary service) may well be good things, but High Cost support is the wrong way to promote them.

More to the point, RTA's plan – even with its safe harbors – would ensure a continued upward spiral in USF growth. As is the case today, every time an ETC adds a wireless line, the burden on the fund would increase. RTA's plan would not, for example, prevent support for family plans, or for multiple phones per household. All the

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75 *Id.* at 3-4.

76 *Id.* at 3.

safe harbors would do is slow this growth somewhat by excluding some carriers. And, for that matter, it would not slow growth at all for existing ETCs for at least two years.[77]

Second, the ratios themselves are at best arbitrary. It is perhaps no surprise that a "consensus of small, rural . . . carriers that are actually focused on the communications needs of rural communities"[78] – or more aptly, the needs of the small carriers in those communities – would come up with ratios that are biased toward smaller carriers (who would receive 80 percent of the study area average per-line support, as opposed to national carriers, who would receive *no* support). It is not obvious that back office operations, and other expenses that could be subject to variation based on the scale of the operation, account for RTA's proposed ratios. To the contrary, it seems far more likely that the RTA is relying on implicit averaging between higher and lower cost areas – a universal service support mechanism inconsistent with the Communications Act.[79]

Third, such a scheme presents gaming opportunities. Larger carriers will have obvious incentives to sell off licenses to smaller carriers in order to maximize the amount of High Cost support. Rather than structure deals as acquisitions, deals will be structured to use creative financing mechanisms to avoid attribution solely to increase universal service support. Such a result would have no public interest benefit – and the FCC should not create such a cottage industry.

The obvious intent of the RTA proposal is to provide maximum High Cost support for complementary – rather than competing – rural ILEC operations. But funding

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77 *Id.* at 14 n.20.

78 *Id.* at 4.

79 *See COMSAT v. FCC*, 250 F.3d 931 (5th Cir. 2001) (holding that "the plain language of § 254(e) does not permit the FCC to maintain any implicit subsidies").

complements does not serve the public interest. Complements do not compete. They will not stimulate the "invisible hand" of the marketplace to improve communications products, lower prices, or improve service. The FCC should reject the RTA Plan.

CONCLUSION

For the reasons set forth herein and in AT&T's Comments, and in AT&T's initial comments, the Commission should: (1) establish a cost-benefit test or, alternatively, set a national benchmark of per-line support, above which the presumption should be that multiple ETCs are not in the public interest; (2) implement the Joint Board's recommendation to limit High Cost Support to a single line to a home or business; (3) implement the Joint Board's recommendation for a cap on per-line support upon entry of a competitive ETC, as the Rural Task Force previously recommended with respect to HCLS; and (4) make separate ETC designations for High Cost and Low Income Support.

Respectfully submitted,

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September 21, 2004

CERTIFICATE OF SERVICE

I, Judy Sello, hereby certify that, on this day of September 21, 2004, I have caused true and correct copies of this document to be served by hand delivery, unless otherwise noted, on the following:

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