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
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REPLY COMMENTS OF THE MID-SIZED CARRIER COALITION

September 21, 2004

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Innovative Telephone ("Vitelco"), Iowa Telecommunications Services, Inc. ("Iowa Telecom"), and Valor Telecommunications of Texas, L.P. ("Valor") (collectively the "Mid-Sized Carrier Coalition")[1] file the following Reply Comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* in the above-referenced proceeding ("*Notice*") responding to specific arguments and proposals presented in the initial set of comments filed on August 6, 2004.[2]

I. INTRODUCTION AND SUMMARY

The Commission has an opportunity in this proceeding to revisit and alter its universal service policies for competitive carriers to ensure that the promise of Section 254 of the Communications Act of 1934, as amended ("Act"), to preserve and enhance universal service to all Americans is fulfilled. Building on the Federal-State Joint Board on Universal Service's ("Joint Board") recommendation, commenters properly recognized the compelling need for

[1] Vitelco, Iowa Telecom, and Valor are each independent incumbent local exchange carriers ("LECs") providing service primarily in rural areas.

[2] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004); *Federal-State Joint Board On Universal Service*, Recommended Decision, FCC 04J-1 (rel. Feb. 27, 2004).

significant reforms to the process by which competitive carriers are designated eligible telecommunications carriers ("ETCs"). A number of parties highlighted the inconsistent standards used to evaluate ETC applications at the FCC and at state commissions, which highlights the pressing need for rigorous and mandatory minimum federal competitive ETC application criteria. The Joint Board's proposed guidelines provide a set of common sense requirements that all carriers professing to provide universal service should be able to easily satisfy; the guidelines also interject a much-needed heightened level of scrutiny for all competitive ETC applicants. The Joint Board's guidelines, coupled with a requirement of all ETCs to meet basic carrier-of-last-resort obligations, just as rural incumbent LECs do, should be adopted by the FCC and applied to all current and prospective competitive ETCs. The accompanying need for vigilant oversight and auditing of competitive ETCs must be fully addressed as well.

The FCC should, however, reject a primary-line methodology for high-cost funding, because the record in this proceeding strongly cautions against such an approach. Beyond the substantial and insurmountable administrative concerns raised by the program administrator and a host of other carriers and industry participants, commenters established that such a methodology runs counter to statutory directives, historic Commission policy, and incumbent carrier network design and architecture. In lieu of a primary-line methodology, or similarly problematic caps on funding levels, the FCC should eliminate the "identical support" rule in this proceeding. Squarely addressing the manner in which competitive carriers receive universal service support offers an alternative to the economically unsound primary-line proposals, which could threaten the sufficiency and predictability of universal service support to all ETCs. Targeted action to tighten the ETC designation process and to eliminate the identical support rule

would remedy the particular funding issues identified by the Joint Board, in a manner that does not jeopardize the sufficiency or predictability of funding to carriers serving rural America. At base, the primary-line methodology fundamentally fails to achieve the Section 254 mandate that the FCC ensure that universal service be sufficient and predictable in rural, high-cost, and insular areas.

II. UNIVERSAL SERVICE SHOULD EXPAND SERVICE TO UNSERVED COMMUNITIES, NOT INDUCE ARTIFICAL COMPETITION

There is a clear disconnect among commenters as to the purpose of universal service, and the role competition and competitive neutrality should play within universal service policies. CTIA seemingly suggests that competitive ETCs need funding because rural customers are "deprive[d]" of any choice of service providers.[3] Universal service has never been, nor should it be, a means to foster the development of duplicative networks that serve the same communities with additional choices, particularly in rural America.[4] USTA correctly notes that Section 254 at base "simply provide[s all Americans] with access to such services," and is not intended to "provide consumers … with a competitive choice."[5]

As a practical matter, the lack of universal service funding has not affected the ability of wireless carriers to provide competitive options to all Americans. It is important to highlight that

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[3] CTIA at 8.

[4] Moreover, the position of some wireless providers that "Congress expressed an unequivocal intent to drive competition throughout every corner of this nation, without exception" is directly counter to the clear division in Section 214 between non-rural and rural communities, and the clear intent of Congress to create a different standard in rural communities. U.S. Cellular at 38. Similarly, Western Wireless brazenly claims that "the benefits of greater access to telecommunications services in rural areas far outweigh the nominal additional cost of supporting CETCs." Western Wireless at 2.

[5] USTA at 3.

while the number of wireless providers with ETC status continues to grow, the vast majority of wireless carriers operate without ETC status today. CTIA provides the clearest evidence that wireless competition in rural communities does not require universal service funding, as it readily admits that there is active wireless competition in every county in America except one.[6] Even more telling is that there are at least *three* wireless providers serving 98 percent of American consumers.[7] It is apparent that in the same areas in which targeted universal service funding is necessary to provide a single wireline link, wireless carriers – without any federal support – are able to economically operate multiple networks without universal service support.

The suggestion that limited universal service funds should be expended on carriers that compete effectively without funding today – without any explicit promise to expand operations to unserved areas – is bad public policy. The Missouri Public Service Commission correctly notes that there is no basis to grant ETC status to wireless providers that have demonstrated the ability to serve an area without high-cost support.[8] If universal service policies do not affect the ability of competitors to enter and succeed in markets, there is no basis to create explicit universal service funding to further support or induce additional artificial competition.[9]

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[6] CTIA at 2.

[7] *Id.*

[8] CenturyTel at 11 (citing *Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*, Report and Order, Case No. TO-2003-0531, at 30 (Mo. Pub. Serv. Comm'n Aug. 5, 2004)); *see also* NASUCA at 33 ("If an applicant for ETC status cannot demonstrate the required improvements would not occur *but for* the support, ETC status should not be granted.").

[9] Western Wireless suggests that the Recommended Decision was "written in a policy vacuum." Western Wireless at 3. Far from it, the Joint Board recognized that wireless deployment and development are not the goals of the universal service program. The FCC and state commissions are acting in other dockets and proceedings to address the need to further

Accordingly, in an effort to return universal service policies to core principles, a number of parties suggest means to limit the funding of competitive carriers. Verizon states that there is no basis, absent extraordinary circumstances, to permit competitive ETCs in rural areas; USTA likewise finds that there is "no public interest in providing federal funds to designate multiple ETCs in high-cost areas."[10] Similarly AT&T and CenturyTel contend that no competitive ETC designations should be permitted in areas with costs over a set benchmark.[11]

Short of a clear refusal to grant any competitive ETCs in rural and insular areas or very high-cost areas, the FCC and state commissions should require carriers to demonstrate that unserved communities – by either wireless or wireline providers – will be served as a result of the competitive ETC designation. For instance, there are some current competitive ETCs that provide true universal service to previously unreached communities: CTIA highlights a number of these carriers, including Centennial in Shaw and Blackhawk, Louisiana; Smith Bagley in Native American communities in New Mexico and Arizona; and Saipancell in the Northern Marianas Islands.[12] However, the FCC must prevent attempts by wireless providers to hijack the ETC designation process, and strip out the universal service principles underlying ETC status and funding.

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deploy wireless technologies. As a factual matter, Western Wireless has failed to demonstrate that universal service policies are inhibiting wireless competition in any manner.

[10] Verizon at 9-10; USTA at 3.

[11] AT&T at 26; CenturyTel at 18.

[12] CTIA at 4.

III. FEDERAL ETC GUIDELINES SHOULD BE MANDATORY

The majority of commenters noted that the uncertainty and unpredictability of state commission proceedings warrant federal guidelines. To that end, the need for action – and the incorrect decisions of some states – requires mandatory, not permissive federal guidelines.[13] One state organization freely admitted that there is a great deal of inconsistency among states in designating competitive ETCs.[14] Further, the national consequences of ETC designations, and the fact that states may believe it is beneficial to maximize federal funding through the designation of additional ETCs caution against an open-ended approach.[15] At a minimum, state commissions should be required to justify any departure from the federal guidelines.[16]

A number of state commissions suggest that any guidelines should be non-binding.[17] The Mid-Sized Carrier Coalition recognizes that state commissions are the most aware of competitive conditions and rural and insular consumers in their states, and should have some limited latitude to determine if additional eligibility requirements are warranted. However, given that these state commission decisions have a direct impact on funding levels of a federal program, state commissions should not be permitted to ignore federal guidelines that do not impinge upon state

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[13] USTA at 5; TDS at 5; NECA at 18; NASUCA at 41.

[14] NASUCA at 34 (noting a "fair degree of inconsistency").

[15] SBC at 5.

[16] *See* BellSouth at 5.

[17] California PUC at 5; New York Department of Public Service at 2; Iowa Utilities Board at 2.

jurisdiction, but only provide straightforward federal eligibility requirements in order to receive federal funds.[18]

Some wireless providers seek permissive guidelines as a means to shift this debate to potentially more receptive venues in the state commissions, seeking only "less exacting standards."[19] Similarly, other wireless carriers suggest that the current process is sufficiently rigorous,[20] or that additional time is necessary until the effect of the *Virginia Cellular* and *Highland Cellular* orders can be evaluated.[21]

Regardless of the particular approach advocated, wireless providers are overly protective of the current permissive process that often rubber stamps ETC applications, and are highly resistant to any efforts to place substantive requirements and obligations on the ETC designation process. Wireless providers have failed, however, to provide documented evidence that the proposed guidelines are overly restrictive, or how permissive guidelines could achieve the objective sought in this proceeding: tightening the designation procedures and creating a more rigorous review process.

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[18] Concerns are not limited to state commission designation decisions; the Wireline Competition Bureau's recent grant of ETC status to Nextel, has raised similar concerns as to the appropriate level of scrutiny for ETC applications. *See Federal-State Joint Board on Universal Service NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the state of Alabama Petition, et al*, Order, DA 04-2667 (Aug. 25, 2004).

[19] Alltel at 6.

[20] Western Wireless at 20; Sprint at 21.

[21] AT&T Wireless at 4; CTIA at 9; Nextel at 16. U.S. Cellular takes the most aggressive posture suggesting that any eligibility requirements would be in violation of Section 214, which is directly contrary to the clear finding of Fifth Circuit. *Compare* U.S. Cellular at 10 *to Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (addressing the question of whether states may subject carriers to eligibility requirements beyond those included in section 214(e)(1) of the Act).

IV. THE PROPOSED GUIDELINES ARE DIRECTLY RELATED TO THE GOALS OF UNIVERSAL SERVICE

Each of the proposed Joint Board guidelines should be adopted, as well as a basic requirement that carriers satisfy state carrier-of-last-resort obligations.[22] A number of wireless providers, however, seek to eliminate individual guidelines because they are overly restrictive or wireline-focused. To the contrary, the proposed guidelines are common sense requirements that should be imposed on any provider of true universal service. Encouragingly, a number of competitive ETCs support the requirements to file build-out plans, additional reporting requirements, a demonstration of adequate financial resources, and appropriate consumer protection standards.[23] At least one state organization highlighted a number of concerns with wireless provider compliance with basic service principles: "Wireless carriers are generally unregulated entities that provide highly variable service quality, varying levels of customer service, unilaterally determined billing and collection policies, unilaterally-determined rates and have no requirement to provide facilities in specific areas."[24]

Sprint suggests that "ETC criteria must be rationally related to advancing the universal service orientated goals of the Act," and undoubtedly, service quality, network integrity and reliability go directly to whether a service satisfies the goals of universal service.[25] Far from an attempt "to disqualify competitive carriers" as AT&T Wireless insinuates,[26] ensuring that a

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22 USTA at 5; TDS at 8-9.

23 Centennial at 4-5.

24 NASUCA at 35.

25 Sprint at 31.

26 AT&T Wireless at 4.

service is always on and of sufficient quality to allow effective and efficient communications is not "wireline-orientated or monopoly-focused consumer protection rules," it is a necessary building block of any universal service.[27]

The fact that incumbent LECs are required to satisfy these types of obligations for multiple purposes – both as incumbent carrier in many states *and* as an ETC – is no answer to the argument that wireless providers should satisfy these same requirements.[28] It is reasonable that regulators demand a minimum level of service in exchange for federal funding.

Wireless carriers also contest the need to serve the entire service area of rural carriers. U.S. Cellular proposes that rural LECs be forced to disaggregate their service territories to wire centers immediately, and Centennial suggests that disaggregation should be automatic if a competitive ETC seeks to serve some, but not all, of a rural LEC's study area.[29] USTA correctly notes that disaggregation should play no role in the ETC designation process; it is only a means to target universal service support, and it is not, nor should it be, a means to redefine study areas.[30]

Wireless carriers seek to serve the smallest service area possible in order to maximize their ability to "cream skim" the most attractive set of consumers, while minimizing the related requirements to serve extremely rural, insular, or less dense areas. If wireless providers were able to limit their service area by fiat, consumers in the nation's most rural and insular areas

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[27] Sprint at ii.

[28] SBC at 7 (highlighting that "CETCs must be able to meet the same network security, reliability, and integrity standards as the incumbent."). In contrast, there are any number of monopoly-related requirements that should not apply to competitive ETCs, *e.g.*, tariffing requirements, retail rate regulation.

[29] Centennial at 16; U.S. Cellular at 42-43.

[30] USTA at 13.

would be further insolated from competition and new services, and wireless carriers would be able to avoid the true costs of ETC designation. The FCC properly held in the *Virginia Cellular* order that any wireless ETC application in which the carrier seeks to serve only a portion of a rural LEC study area, excluding the highest-cost areas, must be rejected as contrary to the public interest.[31] The wireless community has offered no basis – other than their own financial self-interest – to revisit this conclusion.

V. GUIDELINES MUST APPLY TO ALL CURRENT AND PROSPECTIVE COMPETITIVE ETCS

All guidelines and requirements adopted by the Commission must apply to current and prospective competitive ETCs. Each current competitive ETC should be reevaluated upon the adoption of rules in this proceeding under the more rigorous standards set out above. The additional regulatory tools provided by the guidelines allow for improved oversight by state commissions and the FCC, and facilitates the ability of those agencies to ensure that federal funds are directed only to deserving carriers. NASUCA properly noted that "[e]arly appliers for ETC status should not be able to evade these requirements."[32]

The requirements are not onerous, and if service quality or reach of service is so deficient as to require a three to five year transition as Centennial contends, it begs the question what current competitive ETC are using funding towards.[33] Those carriers unable to satisfy the requirements should be quickly transitioned off federal funding with their ETC status rescinded,

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[31] *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, ¶ 35 (2004).

[32] NASUCA at 45.

[33] Centennial at 2.

despite CTIA's unsupported claim that revoking ETC status would be "extremely disruptive."[34] There is no evidence in this record that those wireless providers would cease operating in rural or insular areas, or on what basis carriers failing to meet minimal requirements should continue to receive federal funds. Again, U.S. Cellular adopts the most aggressive view asserting that the FCC lacks the power to revoke ETC status once granted, underscoring the view of many wireless providers that ETC designations are a blank check that cannot be limited, conditioned, or enforced. Any competitive ETC expanding the reach of their service with federal funds and providing true universal service to unserved areas should be largely unaffected by these requirements.

Despite demands regarding wireless carriers' perception of fair treatment, there is no basis to apply these same requirements to incumbent LECs that are already required to satisfy far more exacting service standards and suffer more intrusive examinations of their operations and compliance due to their carrier-of-last resort obligations and other federal and state reporting requirements.[35] The need to avoid duplicative auditing and oversight of rural incumbent LECs is important for both carriers and state commissions, especially in light of the strained auditing resources at the state level.[36]

VI. A PRIMARY-LINE METHODOLOGY IS CONTRARY TO THE STATUTE AND UNIVERSAL SERVICE FUNDING POLICIES

The Mid-Sized Carrier Coalition was encouraged by the sheer volume of commenters addressing the central failing of a primary-line methodology, specifically that high-cost support

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34 CTIA at 10.

35 Centennial at 12; Western Wireless Exh. C at 2; Sprint at 26.

36 Iowa Utilities Board at 5.

funds rural and insular networks, not lines. A sample of comments from a wide range of industry participants underscores the importance of this factual predicate:

- ”Restricting support to primary-lines ignores the realities of constructing and maintaining a network.”[37]
- “Neither incumbents nor competitors receive support for individual connections – they receive support for constructing networks.”[38]
- A “[r]ational scheme [must] recognize[] that service is provided via networks, not lines.”[39]
- Universal service “depends on the availability of ubiquitous telephone networks, operated by [carriers-of-last-resort], not on individually-supported lines.”[40]

No proponent of a primary-line methodology has provided any credible statutory or policy basis to replace the FCC’s long-standing high-cost support program, which funds rural and insular networks, with a support mechanism based on per-line support.[41] Despite ample evidence to the contrary, commenters in favor of the methodology mistakenly suggest that a primary-line methodology would be consistent with Section 254 of the Act, judicial precedent, and LEC operational realities. Equally uncompelling are claims that a primary-line methodology will curb fund growth, or that rural carriers have more substantial challenges ahead. The current funding system should be maintained with far less draconian modifications, because each of the primary-line proponents’ arguments does not withstand scrutiny.[42]

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[37] BellSouth at 9.

[38] U.S. Cellular at 43.

[39] NTCA at 3, 8.

[40] NECA at 6.

[41] *See* Mid-Sized Carrier Coalition at 27-30.

[42] Even among those that support the methodology, such support is often qualified in such a manner that is tantamount to opposition. For instance, SBC supports the methodology only to the extent that it is imposed in concert with other reforms that “ensure that all carriers serving

First, the contention that a primary-line methodology would conform "with the original intent of universal service" or return universal service policies "to its core objectives" is without statutory support.[43] In fact, a large contingent of Senators and Members of Congress explained at length in separate letters to the Commission that the proposed methodology runs directly counter to the purposes of Section 254 of Act, concluding that the primary-line proposal could "wholly vitiate the purpose of universal service."[44] No party has provided legislative history – let alone explicit statutory language – to suggest that universal service funding could be detached from LEC network costs in a manner consistent with the Act.

Second, the U.S. Court of Appeals for the Fifth Circuit's statement in *Alenco* that universal service funding requires "sufficient funding for customers, not providers" has no bearing on the legality of a primary-line methodology.[45] As a threshold matter, that specific phrase is irrelevant in this instance because both rural consumers and carriers would be severely harmed by a primary-line methodology. Rural customers would bear the risk of rate increases, limited deployment of advanced service, and the long-term potential that carriers-of-last-resort would be unable to meet their obligations to provide affordable and high-quality service. NECA

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high cost areas have flexibility to reform their rate structures to fully recover the costs of providing non-essential, non-primary connections and services." SBC at 9. Any such effort would need to be coordinated with states, and the Commission has given no indication that a holistic multi-jurisdictional reform of how rural carriers receive revenues would be (or could be) included within this proceeding, or how the FCC could require states to permit increases in rural LECs' retail rate structures. *See also* Verizon at 15 (suggesting that "rural carriers would be able to recover from customers any loss in universal service support").

[43] Qwest at 2; California Public Utilities Commission at 5.

[44] Letter from the Honorable Sam Graves, *et al*, to the Honorable Michael K. Powell. (May 7, 2004) (available at http://www.ntca.org/content_documents/PrimeLineHseToFcc050704.pdf).

[45] CTIA at 15 (Aug. 6, 2004); U.S. Cellular at 45 ("The Commission must only be concerned as to whether support is sufficient for consumers."); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (2000) ("*Alenco*").

correctly notes, "the *Alenco* decision never adequately addresses the 'chicken and egg' question of whether a NECA customer can benefit from universal service when, as a result of faulty universal service rules, there is no longer a network on which access is available."[46]

Moreover, the *Alenco* decision addressed only minor modifications made to the rural high-cost support mechanism,[47] as the court only concluded that those specific restrictions did not compromise the sufficiency of support provided to rural carriers.[48] Nowhere did the court, or any participant in the case, suggest that universal service support should no longer be based on network costs. Nor can the court's reasoning be expanded to sanction such a fundamental change because its conclusion explicitly relied on the fact that "there [wa]s sufficient and competitively-neutral funding to enable all customers to receive basis telecommunications services."[49] That baseline level of funding would not exist over the long-term under a primary-line methodology.

Third, a primary-line methodology is not rationally related to incumbent LECs' network costs or operations. In particular, AT&T contends that a primary-line methodology is warranted because LECs "open a single trench or put up a single set of poles, then lay multiple loops to each home or business in that facility."[50] Similarly, NASUCA contends that "second line service has minimal incremental cost."[51] Yet the Rural Telecommunications Association rebuts that

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46 NECA at 6, 19.

47 *Alenco*, 201 F.3d at 618.

48 *Id.*, 201 F.3d at 619-22.

49 *Id.*, 201 F.3d at 620.

50 AT&T at 14.

51 NASUCA at 13.

simplistic view because "building a network … involves a relatively long planning horizon and the creation of extra capacity to accommodate future growth in demand."[52] Such capacity cannot be captured under a primary-line analysis, nor are the costs of adhering to carrier-of-last-resort obligations, including the ability to serve potential and former customers.

Further, AT&T's view ignores that the majority of LEC network costs are fixed costs, and that the incremental costs of adding or losing a single line do not correlate to the artificial per-line support levels used under a primary-line methodology. As a result, the loss of a single line to a competitor under a primary-line methodology – and the corresponding per-line support – results in insufficient funding to the incumbent LEC; a deficiency that is magnified with each additional line lost.

More fundamentally, the primary-line proposal does not guarantee any level of high-cost support to LECs for either initial or secondary lines. Despite AT&T and others' attempt to characterize the Joint Board's recommendation as eliminating only support to second lines, the primary-line methodology operates in a multi-carrier environment in which either the wireless provider or the wireline provider will receive funding as the primary-line provider. By creating this strawman, AT&T and NASUCA attempt to avoid one of the key failings of a primary-line methodology, that a LEC and a wireless provider may receive inadequate funding to support digging a single trench or constructing a single tower to provide any service to rural consumers. Moreover, a rural LEC would not receive funding even if it provides a second line pursuant to its carrier-of-last-resort obligation. By focusing on eliminating support for second lines rather than a primary-line methodology as proposed, AT&T and NASUCA inaccurately minimize the significant concerns both rural LECs and wireless provides have raised.

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[52] Rural Telecommunications Association at 20.

Fourth, a number of commenters attempted to transform the issue of controlling or decreasing the size of the universal service fund into the paramount goal of the Commission's universal service policy, advocating a primary-line methodology because of its fund-constraining potential.[53] While the size of the fund has grown considerably since the passage of the Telecommunications Act of 1996 ("1996 Act"),[54] the Mid-Sized Carrier Coalition submits that such growth was explicitly required by the legislation, which requires universal service support to be explicit, predictable, and sufficient.[55] As a result, the transition of funding from implicit sources to explicit support places greater pressure on expanded explicit universal service programs to provide necessary funding to rural carriers.[56] Opponents cannot claim that the newly created explicit support is somehow excessive because it was clearly contemplated by the Act.[57] Sufficiency in universal service funding is a core component of the universal service

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[53] *See* New York Department of Public Service at 2 (asserting that a primary-line methodology would "help minimize federal high cost support"); U.S. Cellular at 31 (advocating that the if the universal service fund "is broken, [it is] because ILECs draw significantly more than they did just a few years ago without any oversight").

[54] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq.

[55] *Id.* at § 101(a), codified at 47 U.S.C. § 254.

[56] *Federal-State Joint Board*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, ¶ 15 (2003) (explaining that "Congress adopted section 254 to help ensure that, as competition develops, explicit support mechanisms would replace, as far as possible, implicit support mechanisms in order to preserve the fundamental communications policy goal of providing universal telephone service in all regions of the nation at reasonably comparable rates").

[57] The ability of the Commission and state commissions to continue the process of transitioning implicit support to explicit mechanisms could be in jeopardy if any increase in explicit funding were met with immediate and unwarranted scrutiny. Unlike the E-Rate program under which costs are being examined due to concerns of waste, fraud, and abuse, the high-cost program is under attack simply because of its relative size.

program and cannot be ignored simply because opponents of the universal service program want to reduce costs.

One thing is certain, however, competitive carriers' receipt of funds will be directly responsible for the lion's share of growth in the fund going forward. CTIA attempts to distract attention away from the skyrocketing growth of competitive ETC support by relying on stale statistics.[58] More recently available statistics indicate the clear trends in funding levels are mainly due to competitive ETC support. The Rural Telecommunications Association's statistical analysis reveals that competitive ETC support ballooned 114 percent since the 3rd Quarter of 2003, while incumbent LEC support grew only 3 percent during that same time period.[59] Importantly, the funding of wireless ETC results in the immediate – and potentially significant – growth in the size of the total fund as federal monies are directed at the construction and upkeep of overlapping competitive networks, while funds continue to support the legacy incumbent networks. Thus, the proper FCC focus should be competitive ETC funding levels and related designation procedures.

Fifth, NASUCA dismisses rural carriers' concerns over the potential for a dramatic decrease in universal service funding because "[i]n the longer term, there are many other technological and regulatory trends – such as the move of more and more telecommunications traffic to voice over Internet protocol ("VoIP") – that could threaten the current revenue stream for rural ILECs."[60] Yet these trends provide key evidence that the FCC should make every effort

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58 CTIA at 7 (citing 2000-2002 statistics).

59 Rural Telecommunications Association at 37. The actual millions in additional funding added by competitors in this time frame ($285 million) far exceeds the growth in incumbent funding ($85 million).

60 NASUCA at 19. Similarly, a number of carriers, particularly wireless providers, attempt to interject into this docket an unsubstantiated attack on the appropriateness of rate-of-return

to ensure that its universal service policies provide a level of predictability for rural carriers, not further undermine rural and insular carrier networks. The FCC should reject all proposals to limit universal service support to primary-lines, or eliminate the historic link between high-cost support and network costs as contrary to Section 254 and the public interest.

VII. A PRIMARY-LINE METHODOLOGY WOULD BE ADMINISTRATIVELY AND OPERATIONALLY UNWORKABLE

The majority of commenters raised significant issues with the administrative complexity facing the Commission if it were to adopt a primary-line methodology.[61] An equal number of commenters – even including those that generally support such a methodology – openly question if the costs of such a methodology exceed the benefit.[62] Overall, the reach and breadth of concerns from all sides of the industry underscore the Mid-Sized Carrier Coalition's initial concerns with respect to the workability of a primary-line methodology.[63] Rather than providing

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regulation and the use of actual costs to determine universal service support levels. Centennial at 9; Western Wireless at 17. As the Joint Board begins its review of rural high-cost support methodology, there is no evidence that the current high-cost support methodology based on actual costs is somehow infirm or requiring an overhaul. To the contrary, the current rural support mechanism provides sufficient support to rural carriers; if anything due to the limits and caps within that mechanism, support may be insufficient. With that perspective, the suggestion that all carriers with over 50,000 access lines in a single state should have a forced transition to forward-looking cost-based support is contrary to decades of practice, and presupposes the resolution of the Joint Board's ongoing proceeding. CTIA at 26; Nextel at 14. Rural and insular carriers should have the ability to opt into support based on forward-looking costs if such a methodology accurately reflects the carrier's costs, but there is no basis to require such a transition.

[61] BellSouth at 10; Centennial at 2; AT&T Wireless at 2; Rural Telecommunications Associations at 26.

[62] SBC at 9.

[63] *See generally* USAC at 23-27.

an exhaustive list of the problems identified with a primary-line methodology, the Coalition only focuses on a handful of the most fundamental problems with this approach.

Of particular significance, USAC, the universal service program administrator, highlighted an alarming number of areas in which gaping questions remain, and also provided considerable insight as to the true costs of such a methodology, including the "need to significantly increase [USAC's] staff."[64] USAC further recognized the need to collect "substantially more data than it collects today," and conceded that such a methodology would "significantly" change its role in administering the fund, in part, by requiring it to resolve disputes between carriers and to develop direct relationships with consumers for the first time.[65] From an operational standpoint, USAC also questions its own ability to generate monthly disbursements and quarterly reports under the new regime, in light of the "add[ed] layer of complexity to the high-cost support calculations."[66]

Other commenters echo USAC's concerns, noting that a primary-line methodology could have the unintended consequence of transferring resources from rural and insular network investment to administrative and marketing costs required by the primary-line methodology.[67] USAC agrees with a number of commenters that such a methodology also "has the potential to raise serious issues of waste, fraud, and abuse."[68] Likewise, the daunting task of educating

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64 *Id.* at 12.

65 *Id.* at 7, 11, 12.

66 *Id.* at 14, 18.

67 U.S. Cellular at 44.

68 USAC at 7; Qwest at 3 (describing the creation of "special [carrier] discounts for primary-line designations").

customers, especially in light of the considerable confusion remaining as to the current industry conditions, is a substantial roadblock to any reforms.[69]

Unfortunately, even the few commenters that try to provide any specifics or a basic framework as to how a primary-line methodology could work raise more questions than answers.[70] For instance, a definition of primary-line based on that used to determine primary subscriber line charges ("SLCs") discounts the substantial implementation problems faced by the FCC in the SLC context and also avoids multiple questions about how to identify a primary line in multi-family residences, how to resolve those issues when bills are delivered to different addresses, and the uncertainties associated with expansion of the SLC definition to multi-carrier environments and rate-of-return carriers.[71] Such a definition also does not avoid forcing "carriers to pry into the private living arrangements of their customers."[72] Other carriers provide

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[69] AT&T Wireless at 3. Moreover, the FCC will need to adopt a default rule for those end-user customers that neglect to designate a primary-line. Qwest's proposal of the "first connection provided to the customer" is sensible, and technologically neutral. Qwest at 3; NASCUA at 28 (advocating a presumption that the incumbent LEC line is primary). There is, however, no basis to determine a consumer's "primary line" based on actual usage as Alltel suggests, nor a clear manner in which actual usage could be defined. Alltel at 7-8. By way of example, a household of two may use their individual wireless line more often than a wireline connection, but the collective household still could use the wireline connection more than the either individual wireless connection. Similarly, the actual usage of an always-on data connection compared to the "primary" voice connection further complicates this approach. Alltel fails to justify how usage necessarily correlates to a consumer's primary line.

[70] *See generally* Verizon*;* NASUCA.

[71] Verizon at 17. Nor does the Lifeline program's use of primary lines provide a helpful corollary. NASUCA at 27. Lifeline is a far smaller program affecting far fewer customers, with far more limited wireless ETC involvement. Further, because such support goes directly to the consumer, competitive carriers have no incentive to maximize the number of primary-line Lifeline connections.

[72] NTCA at 10.

sample consumer primary-line ballots, but avoid altogether more inherent and difficult issues facing the FCC and USAC.[73]

Directly contrary to this laundry list of concerns, NASUCA asserts that the primary-line procedures "would become routine," and that any "pessimism about the feasibility of new administrative tasks is premature before anyone has designed and implemented systems."[74] The sheer lack of any detailed description in the Joint Board recommendation or related FCC Notice is precisely the source of these legitimate concerns from the program administrator and others. It would be reckless to blindly implement a program without fully addressing these problems first. And, even if NASUCA's assertions were true its claim completely bypasses the larger question, which is whether such procedures and related costs are cost-effective, warranted, or appropriate.

In addition, NASUCA's contention that "no one seriously contends that the cost of identifying primary-lines outweighs the cost of continuing to support second or additional lines" misses the mark.[75] NASUCA inaccurately implies that the FCC is faced with two choices:

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[73] NASUCA at 48.

[74] *Id.* at 25. For instance, NASUCA dismisses "slamming" concerns because the FCC and state commissions have "tools to deter" slamming or other misconduct, but NASUCA ignores the substantial costs associated with maintaining slamming regimes, and that the primary check against long distance slamming would be lost in the primary-line context. Specifically, consumers have a financial incentive to report slamming and are able to easily determine if a slam occurred on their monthly bill. NECA at 12-13. Both the consumer's incentive as well as their access to relevant information would be unavailable in a primary-line context. It would fall upon USAC to audit, monitor, and verify primary-line connections. NASUCA also grossly underestimates the substantial financial incentives created for foulplay in a primary-line methodology, not necessarily present in a long-distance context. NASUCA at 24; *see also* NECA at 12-13 (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 … investigating and resolving primary connection slamming complaints will be far more time-consuming and difficult than resolving instances of long distance carrier slamming.").

[75] *Id.*

spiraling increases in universal service funding or the adoption of a primary-line methodology. Yet a middle ground is available, because there are more discrete and less administratively burdensome means to ensure that all carriers receive sufficient, but not excessive, funding, *e.g.*, eliminate the identical support rule, tighten the ETC designation process.

The record in this proceeding does not support moving forward with a primary-line methodology given the substantial implementation and operational concerns that remain unanswered. If the FCC were to proceed, a further notice of proposed rulemaking would be necessary outlining the operation and administration of a primary-line methodology,[76] as well as developing rules implementing a hold harmless mechanism for rural and insular incumbent LECs.[77]

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[76] In fact, a number of commenters correctly note that a further notice is required to satisfy procedural obligations due to the lack of specificity with which the Commission describes the administration of a potential primary-line methodology. *See* NTCA at 4 ("not possible to gauge the extent of adverse economic impact under … the Regulatory Flexibility Act."). In addition, given the likely significant departure from current rules, affected parties should be given the option to provide input and insight into the operation of a primary-line methodology. *See* SBC at 10 (arguing that "[u]ntil the Commission offers a detailed proposal, parties cannot comment meaningfully on the potential costs and implications of limiting support to primary-lines.).

[77] A necessary component of any major modifications in this proceeding needs to be the adoption of a rural LEC hold harmless mitigation mechanism that ensures that rural LECs can recover the costs of new investment under the universal service program. The Regulatory Commission of Alaska correctly notes that the Joint Board's mitigation plans as proposed "may be inadequate," and may fail to fully account for rural LEC universal service needs. Regulatory Commission of Alaska at 5. Suggestions that the "mitigation proposals are not warranted" ignore the significant network costs not captured under a primary-line mechanism. New York Department of Public Service at 3. Similarly, complaints from some wireless providers that there are competitive neutrality concerns with the mitigation proposals distort the basic premise of these proposals: to maintain the current level of rural LEC funding, not provide additional funding. NASUCA 31; Sprint at ii.

VIII. CAPPING PER-LINE SUPPORT ADDRESSES THE SYMPTOM, NOT THE PROBLEM: THE FCC SHOULD ELIMINATE THE IDENTICAL SUPPORT RULE

The funding "upward spiral" issue recognized by the Joint Board is a genuine problem under the current system, in which competitive ETCs' per-line funding can increase with each line captured from incumbent LECs.[78] Rather than address the true origin of the problem – the identical support rule – a number of parties suggest freezing per-line support for *all* carriers upon competitive ETC entry.[79] However, such a cap is not needed to resolve the identified problem, which can be resolved in a more targeted manner without adversely affecting incumbent LEC investment levels.[80]

Specifically, the intimation that incumbent LEC support increases when lines are lost to competitors is a misnomer and a blatant distortion of the actual basis of incumbent LEC support. Incumbent LECs' support is linked to underlying network costs, not per-line amounts. When a line is lost to a competitor, incumbent LECs receive no additional funding, but in the short-term the incumbent's per-line support would increase as the same level of network support is spread across fewer lines.[81] However, competitive carriers ignore the next logical step in that if enough incumbent LEC lines are lost to competition, the carrier's network costs will decrease along with the associated per-line support levels.

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[78] Western Wireless at 18.

[79] CTIA at 22; Western Wireless at 18.

[80] *See* USTA at 21.

[81] AT&T's claim that "neither the ILEC nor the CETC can expect that per-line High Cost Support will increase in response to competitive entry" is patently false. AT&T at 22-24. AT&T seeks only to encourage efforts to eviscerate rural LECs funding and reduce its own universal service obligations.

In fact, the origin of the upward spiral issue is the identical support rule in which competitive ETCs receive the same level of per-line funding as incumbent LECs. As a result, the most direct means by which the upward spiral issue can be eliminated is to abolish the identical support rule and provide competitive ETCs funding based on their own costs. Because the upward spiral issue does not affect incumbent LEC funding, there is no basis to include incumbent lines in any remedy.[82]

Competitive ETCs' continued intransigence against the development and consideration of funding based on their own costs should not excuse Commission action to address this problem, yet the few proponents of the identical support rule offer little more than rhetoric in support.[83] A number of other commenters highlighted the need for immediate action on the identical support

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[82] Similarly, a temporary cap on funding levels is also unnecessary because it is based on the false premise that current funding is excessive and a predetermination that future proceedings will curb or limit incumbent LEC funding. Regulatory Commission of Alaska at 9. Likewise, Verizon's proposal to freeze per-line support for all rural study areas regardless of competitive entry is without support as a policy matter and beyond the scope of this proceeding. Verizon at 18. There is no evidence that an indexed growth factor can properly compensate rural LECs, or that it will provide appropriate incentive for rural LEC network development and expansion. There is also no principled rationale to support a cap limited to rural carrier funding. *Id.* at 19-20. Western Wireless' market share distribution proposal is equally flawed. Under this plan an area's support levels would be capped upon the entry of a competitive ETC, and support would be allocated based upon market share to the incumbent and competitors. AT&T Wireless at 5; Western Wireless Exh. B. at 2; Sprint at 9. This proposal suffers the same significant problems as a primary-line methodology, because it too is based on line counts and per-line funding that ignore the realities of network costs. Further, such an approach – unlike the primary-line proposal – would guarantee an immediate reduction in funding to incumbent LECs, and ensure wireless carriers a sizable portion of the funds, irregardless of carrier's cost structures. The continued upward trend in the number of lines served by wireless carriers, in particular in light of the reductions in access lines served by incumbent LECs, reveals the self-interested foundation of such a proposal.

[83] Centennial at 10 ("Simple fairness (as well as competitive neutrality) requires that ETCs serving the same area receive the same amount of funding.").

rule.[84] The Rural Telecommunications Association noted that competitive ETCs "avoid the substantial costs associated with cost studies, rate cases, accounting obligations, separations requirements, and audit reviews."[85] They also provided statistical proof that investment levels of LECs and wireless providers diverge significantly: for every $100 spent by incumbent LECs, wireless providers invest only $40.[86] Western Wireless even admits that "wired service typically requires substantially more investment per line than wireless service in rural areas."[87] The difference in investment patterns raise additional questions as to the validity of supporting competitive ETCs based on the investment costs and patterns of a more investment-reliant technology. While the Commission's implementation of the Act requires that competitive ETCs receive universal service funding, competitive neutrality does not require that carriers using different technologies receive the same level support based on incumbent LEC's cost structure.

A number of parties raise short-term solutions to competitive ETC funding issues that warrant further review. For instance, the Rural Telecommunications Associations' safe harbor proposal could serve as a framework for action.[88] The creation of a safe harbor funding level for

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[84] SBC at 3 ("Consequently, the Commission is obliged to modify its method of calculating support for CETC's notwithstanding the Joint Board's decision to punt on the issue."); Fred Williamson and Associates at 11 ("Wireless and wireline technologies are fundamentally different technologies with differing cost structures. It is wrong to believe that competitive neutrality requires exactly the same amount of support to be provided to these differing technologies.").

[85] Rural Telecommunications Associations at 8.

[86] *Id.* at 9.

[87] Western Wireless at 16.

[88] Rural Telecommunications Associations at 8. It is unclear if a tiered structure of support as proposed, however, is necessary, and it may be simpler to have a single wireless safe harbor figure based on the average investment cost differential between wireless and wireline carriers. The Rural Telecommunications Associations' concerns regarding small rural providers are valid,

wireless ETCs would ensure that wireless providers have predictable and sufficient levels of funding, and an opportunity to demonstrate higher costs with cost studies if desired. The use of a safe harbor for wireless carriers is not unprecedented, and has been successful in the context of wireless universal service contributions.[89] Similarly, Commnet's proposal to direct wireless universal service funding at cell sites in low-density counties also warrants further study as a complete replacement to per-line funding for wireless ETCs.[90] At a bare minimum, until competitive ETCs participate in the process and develop a funding mechanism based on their own costs, and in order to address squarely the upward spiral issue, a funding cap for competitive ETCs – and only competitive ETCs – should be adopted based on the incumbent's per-line support at the time of competitive entry.

While the Mid-Sized Carrier Coalition is pleased that the Joint Board has sought comment on the continued appropriateness of the identical support rule in its review of the rural high-cost support mechanism,[91] the Commission should not divorce consideration of the identical support rule from the concrete reforms proposed in this proceeding specifically directed at other competitive ETC funding issues, *e.g.*, establishing mandatory and stringent federal ETC guidelines. Nonetheless, to the extent that the Commission wishes to continue to preserve the

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but those carriers familiarity with cost studies could alleviate those concerns since they would be well prepared to justify higher support levels, if warranted.

[89] *Federal State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002).

[90] Commnet at 3-4. Commnet suggests that the cell-site support should be in addition to per-line support, which would result in unnecessary duplicative support. This proposal does, however, have some merit as a replacement for per-line support, which may not be logically tied to wireless network costs.

[91] Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support, FCC 04J-2, ¶¶ 35-37 (rel. Aug. 16, 2004).

identical support rule in the short-term, at a bare minimum, the Commission must tighten competitive ETC eligibility requirements as described in detail above in order to ensure that only those competitive carriers offering true universal service receive funding based upon incumbent LECs' support levels.

IX. CONCLUSION

Based upon the voluminous record in this proceeding, the Commission has a clear course of action available to it to remedy the current inadequacies in its procedures under which competitive carriers receive federal universal service funds. Specifically, the FCC should (1) adopt mandatory federal ETC guidelines to ensure that the FCC and state commissions only designate carriers offering true universal service to unserved communities; (2) refrain from further consideration of a primary-line methodology due to the extensive policy and administrative concerns raised by commenters; and (3) eliminate the identical support rule to ensure that competitive carriers receive funding based upon their own cost structure. As such, the Commission can ensure that its universal service policies for competitive carriers adhere to the explicit promises of the Act, by guaranteeing the continued stability of the universal service fund, while adequately protecting the interests of rural consumers and carriers.

Respectfully submitted,

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