
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
To: The Commission)

**REPLY COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION™**

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SUMMARY

The telecommunications industry is undergoing a sea change, with consumers in rural and urban areas increasingly gaining access to an array of wireless and wireline services offered over traditional and advanced network platforms. Wireless carriers have played a critical role in bringing the benefits of competition to both rural and urban areas. The Commission's policy of competitive neutrality in the availability of universal service support has facilitated, and continues to facilitate, the deployment and provision of wireless service in rural areas – some of which are unserved by the incumbent carrier – to the benefit of rural consumers.

In this environment, the Commission's high-cost universal service mechanisms are increasingly out of step with the changes in the marketplace. Despite industry-wide efficiency gains, advances in technology, increased competitive alternatives, and amortization of depreciated equipment, the high-cost mechanisms continue to increase rather than decrease in size over time. Moreover, instead of narrowly targeting appropriate amounts of high-cost support to areas where affordable services would otherwise be unavailable, the Commission's hopelessly complicated high-cost mechanisms provide too much support to some areas and not enough to others. In the end, the Commission's high-cost mechanisms disserve consumers, the intended beneficiaries of universal service.

Rather than compounding these problems, as some proposals in this proceeding urge, CTIA encourages the Commission to reform universal service by embracing policies that achieve the Act's twin goals of universal service and competition. The Commission should adopt non-discriminatory, competitively neutral changes to the existing high-cost universal service support mechanisms and should reject proposals that harm consumers by discriminating against competitive eligible telecommunications carriers ("ETCs") in the distribution of support.

The record in this proceeding demonstrates broad support for CTIA's positions. Many commenters urged the Commission not to adopt unnecessarily stringent and/or discriminatory ETC designation criteria. Specifically, the Commission should reject proposals to impose equal access or other dominant carrier regulations on wireless ETCs, limit the number of competitive ETCs in rural areas, refuse to designate competitive ETCs below the study area level, or apply any new guidelines retroactively to certified ETCs. Commenters also roundly criticized anticompetitive primary line proposals. These proposals are both unlawful and administratively infeasible.

Several commenters recognized that the correct way to ensure sufficient support for rural consumers without further inflating the size of the fund is to engage in more comprehensive reform of the underlying mechanisms, to make them consistent with today's world of intermodal competition. To that end, the Commission should transition all incumbent LECs – starting with larger incumbent LECs – to a single, unified forward-looking high-cost support mechanism that replaces the five existing high-cost mechanisms. Eventually, the Commission should consider developing a high-cost support mechanism that directs equal per line support to all eligible carriers – incumbents and competitors alike – based on the costs of the most efficient technology in a relatively small geographic area. Only by doing so can the Commission ensure, as the statute requires, that consumers in rural and high cost areas have access to affordable services that are “reasonably comparable” to those available to consumers in urban areas.

TABLE OF CONTENTS

SUMMARY i

I. THE COMMISSION SHOULD REJECT PROPOSALS TO ADOPT ETC DESIGNATION GUIDELINES THAT ARE MANDATORY OR DISCRIMINATE AGAINST WIRELESS CARRIERS 2

 A. The Communications Should Reject Proposals for ETC Guidelines that Are More Rigorous than the *Virginia Cellular* Criteria..... 2

 B. The Commission Should Reject Proposals for ETC Guidelines that Discriminate Against Wireless Carriers..... 5

 1. There is no basis for imposing equal access obligations on wireless ETCs 6

 2. Requiring Prospective ETCs to Demonstrate Financial Resources Is Not Competitively Neutral and Is Unnecessary..... 8

 3. There is No Basis for Limiting the Number of Competitive ETCs in Rural Areas 9

 4. There is no basis to refuse to designate competitive ETCs below the study area level..... 10

 C. The Act Prohibits Mandatory ETC Designation Guidelines 12

 D. Any New ETC Guidelines Should Not Be Retroactively Applied to Certified ETCs 12

II. MOST COMMENTERS AGREE THAT THE JOINT BOARD’S PRIMARY LINE PROPOSALS ARE UNLAWFUL AND UNWORKABLE 13

III. THE COMMISSION SHOULD REJECT PROPOSALS TO DISCRIMINATE AGAINST WIRELESS ETCS IN THE CALCULATION OF SUPPORT..... 14

IV. THE COMMENTS DEMONSTRATE THAT BETTER ALTERNATIVES EXIST TO CONTROL GROWTH OF THE HIGH-COST FUND 16

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CTIA – The Wireless Association™¹ (“CTIA”) submits these reply comments in response to the Commission’s *Notice of Proposed Rulemaking*² seeking comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (“Joint Board”).³ CTIA supports competitively neutral, voluntary eligible telecommunications carrier (“ETC”) designation guidelines. CTIA opposes proposals to discriminate against wireless ETCs in the receipt of high-cost support, but rather supports competitively neutral reforms to the underlying high-cost support mechanisms to better enable the Commission to fulfill the Telecommunications Act of 1996’s universal service goals.

¹ CTIA is the international organization of the wireless communications industry for wireless carriers, manufacturers, and applications providers. Membership in the association covers all Commercial Mobile Radio Service providers and manufacturers, including cellular, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, 19 FCC Rcd 10805 (2004) (“*NPRM*”).

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 19 FCC Rcd 4257 (2004) (“*Recommended Decision*”).

I. THE COMMISSION SHOULD REJECT PROPOSALS TO ADOPT ETC DESIGNATION GUIDELINES THAT ARE MANDATORY OR DISCRIMINATE AGAINST WIRELESS CARRIERS

A. The Communications Should Reject Proposals for ETC Guidelines that Are More Rigorous than the *Virginia Cellular* Criteria

The Joint Board recommended that the Commission establish permissive ETC guidelines to ensure that the ETC designation process is both “rigorous” and “predictable.”⁴ In the Joint Board’s view, a rigorous ETC designation process “should ensure that only fully qualified applicants” receive designations as ETCs and that ETC designees are “prepared to serve all customers within the designated service area.”⁵ In two orders released concurrent with the Joint Board’s Recommended Decision, the Commission announced rigorous procedures for reviewing petitions for ETC designation in the *Virginia Cellular* and *Highland Cellular* orders.⁶ In the *Virginia Cellular* order, the Commission held that:

in determining whether designation of a competitive ETC in a rural telephone company’s service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC’s ability to provide the supported services throughout the designated service area within a reasonable time frame.⁷

⁴ *Recommended Decision*, 19 FCC Rcd at 4261, ¶ 9.

⁵ *Id.*

⁶ *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) (“*Virginia Cellular*”); *Federal-State Joint Board on Universal Service; Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004) (“*Highland Cellular*”).

⁷ *Virginia Cellular*, 19 FCC Rcd at 1565, ¶ 4.

In addition, the Commission imposed ongoing conditions and reporting requirements designed to ensure that the ETC applicant “satisfies its obligations under Section 214 of the Act.”⁸

The Joint Board’s goals for the designation process will be met with guidelines that are no more stringent than the standards set forth in the *Virginia Cellular* and *Highland Cellular* decisions. Proposals to adopt additional ETC designation criteria and/or limitations are either already covered by requirements adopted in the *Virginia Cellular* and *Highland Cellular* orders (e.g., commitment and ability to provide supported services and consumer protection) or are simply unnecessary to preserve and advance universal service for consumers (e.g., local usage). In some cases, such requirements would not be competitively neutral.

For example, certain commenters urge the Commission to adopt an ETC guideline indicating that state commissions may impose consumer protection requirements as part of the ETC designation process.⁹ The Commission’s new ETC requirements already address this issue by requiring wireless ETCs to adopt the voluntary CTIA Consumer Code, which contains important customer protections, and mandating annual consumer complaint reporting.¹⁰ Similarly, the Joint Board and certain commenters also recommend that the Commission establish minimum standards relating to an ETC’s commitment and ability to provide supported

⁸ *Id.*

⁹ See, e.g., *Recommended Decision*, 19 FCC Rcd at 4270, ¶ 31; National Telecommunications Cooperative Association (“NTCA”) Comments at 20; Iowa Utilities Board (“Iowa”) Comments at 4; Independent Telephone & Telecommunications Alliance (“ITTA”) Comments at 25; National Association of State Utility Consumer Advocates (“NASUCA”) Comments at 39.

¹⁰ *Virginia Cellular*, 19 FCC Rcd at 1576, ¶ 30; *Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*; *Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee*; *Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Order, 2004 FCC LEXIS 4770, *12, ¶ 11 (rel. August 25, 2004) (“*Nextel Partners*”).

services throughout the designated service area.¹¹ This issue is already addressed by the specific commitments and reporting requirements established in *Virginia Cellular*, including: (1) annual reporting of progress towards build-out plans, unfulfilled service requests, and complaints; (2) specific commitments to provide service to requesting customers in the area for which the carrier is designated; and (3) specific commitments to construct new cell sites in areas outside existing network coverage.¹²

Likewise, a local usage requirement as recommended by some commenters is unnecessary and should not be included in any guidelines adopted by the Commission.¹³ As the Public Utility Commission of Oregon correctly concludes:

A commission cannot properly evaluate the public interest with regard to granting ETC status based on a single element of an applicant's rate structure, particularly an element that may be starting to disappear in the marketplace. Many wireless carriers, for example, offer a choice of plans that include varying amounts of business day minutes and unlimited evening and weekend minutes. These plans cannot be evaluated or compared to wireline

¹¹ See, e.g., *Recommended Decision*, 19 FCC Rcd at 4266, ¶ 23; People of the State of California and of the Public Utilities Commission of the State of California ("CPUC") Comments at 4 (supporting the "inclusion of such factors as financial viability and technical capability" to ensure "the ETC has the resources to serve all customers within its designated service area"); CenturyTel, Inc. ("CenturyTel") Comments at 8 ("[A]pplicants must prove they have the ability and the intention to provide service to all customers who make a reasonable request for service throughout the local service area"); National Telecommunications Cooperative Association ("NTCA") Comments at 17 (stating that ETC applicant "must demonstrate commitment and ability to provide the supported services throughout the ETC designation area to all customers who make a reasonable request for service.").

¹² *Virginia Cellular*, 19 FCC Rcd at 1570, ¶ 15; *Nextel Partners*, 2004 FCC LEXIS 4770 *12, ¶ 11.

¹³ In this regard, CTIA notes that while the Coalition of State Telecommunications Associations and Rural Telephone Companies ("Coalition"), CenturyTel, Iowa, the ITTA, the National Association of State Utility Consumer Advocates ("NASUCA") and TDS Telecommunications Corp. ("TDS") all support a requirement of local usage, not one of these commenters explain how such a requirement would benefit consumers in the wake of the disappearing distinction between local and long-distance service. See Coalition Comments at 8, 12; CenturyTel Comments at 8; Iowa Comments at 4; ITTA Comments at 25-26; NASUCA Comments at 39-40; TDS Comments at 8.

rate plans solely on the basis of the local usage included. If anything, this issue is more applicable in rural areas than in metropolitan areas because local calling areas may be quite limited.¹⁴

Further, there is strong record evidence that the distinction between local and long-distance is becoming obsolete, making a “local usage” requirement an anachronism. Both wireless and wireline carriers increasingly are offering rate plans that include a number of minutes at a single monthly rate, irrespective of whether the minutes are used for “local” or “long distance” calling.¹⁵ In sum, there is strong support in the record for the Commission to “stay the course” under its current ETC standards adopted in *Virginia Cellular* and *Highland Cellular*. Any guidelines adopted by the Commission should go no further than these decisions.

B. The Commission Should Reject Proposals for ETC Guidelines that Discriminate Against Wireless Carriers

A small subset of commenters urge the Commission to impose ETC designation criteria that would discriminate against wireless carriers. Such proposals include: (1) imposing equal access obligations on competitive ETCs;¹⁶ (2) requiring prospective ETCs to demonstrate sufficient financial resources to service the designated service area;¹⁷ (3) adopting limits on the

¹⁴ Public Utility Commission of Oregon (“Oregon”) Comments at 5. Indeed, because the local calling scope of wireline rural markets is often much smaller than the local calling scope enjoyed by consumers in urban markets, the Commission can fulfill its statutory duty to ensure that consumers in rural and high cost areas have access to affordable services that are “reasonably comparable” to those available to consumers in urban areas by permitting CMRS carriers to provide rural consumers with the benefits of the national one-rate calling plans. *See, e.g., infra* n.15.

¹⁵ Centennial Communications Corp. (“Centennial”) Comments at 7-8; Comments of Dobson Cellular Systems, Inc. (“Dobson”) Comments at 12-13; United States Cellular Corporation (“USCC”) Comments at 36-37.

¹⁶ *See, e.g.,* NASUCA Comments at 38; Nebraska Rural Independent Companies (“Nebraska Rural”) Comments at 7; TDS Comments at 8-9.

¹⁷ *See, e.g.,* Mid-Sized Carriers Coalition (“Mid-Sized Carriers”) Comments at 11; Nebraska Rural Comments at 8; United States Telecom Association (“USTA”) Comments at 9; CPUC Comments at 4; NASUCA Comments at 40.

(continued on next page)

number of competitive ETCs in areas receiving above a certain amount of per-line support;¹⁸ and (4) preventing competitive ETCs from being designated below the study area level.¹⁹ The Commission should reject these proposals. As CTIA pointed out in its initial comments, the Commission and states should only impose on ETCs those obligations that are necessary to further the goals of universal service.²⁰ As discussed below, guidelines that go beyond the *Virginia Cellular* criteria do not meet this standard. Moreover, the recommendations are not competitively or technologically neutral and unduly discriminate against wireless carriers in contravention of the statute. Such proposals also would harm consumers, the intended beneficiaries of universal service.

1. There is no basis for imposing equal access obligations on wireless ETCs

Nothing in the record demonstrates any sound legal basis for proposals to impose equal access obligations on wireless ETCs. Furthermore, the comments supporting such a requirement offer no explanation of how this requirement would benefit consumers in light of the way

(footnote continued)

¹⁸ See, e.g., AT&T Corp. Comments at 26 (stating that FCC should adopt a national benchmark of per-line support over which a state or the FCC would have the burden to demonstrate that an additional ETC is in the public interest); NTCA Comments at 22-23 (noting that where per-line support is high enough, limit ETCs because of strain on universal service fund).

¹⁹ See, e.g., Mid-Sized Carriers Comments at 12 (“Competitive ETC service areas should be identical to incumbent LEC service areas, and the presumption must remain that ‘a rural carrier’s study area should be the service area for a new ETC ... Under no circumstances should a competitive carrier’s service area be smaller than the portion of the incumbent LEC study area in which the potential ETC has the relevant federal and state licenses and certifications to serve.”); USTA Comments at 13-14 (opposing any redefinition of study area for purposes of limiting where an ETC applicant must serve and stating that just because support is disaggregated does not mean that the ETC can serve only part of the study area); TDS Comments at 11-12 (arguing for a presumption against redefinition); Rural Telecommunications Associations (“RTA”) Comments at 38-39 (stating that smaller service areas should only be permitted after careful analysis of the cream skimming potential).

²⁰ CTIA Comments at 12; see also *Recommended Decision*, 19 FCC Rcd at 4270-71, ¶¶ 31, 34.

telephone service is packaged and priced today.²¹ Moreover, many commenters strongly oppose imposing equal access obligations on wireless ETCs.²² The simple fact is that “[t]he competitive environment is rapidly making the concept of equal access an anachronism – for wireline as well as wireless carriers, ETCs or not.”²³ Both wireless and wireline carriers have begun offering bundled packages of “any-distance” minutes, which do not generally distinguish between local and long distance service and thus do not lend themselves to an equal access requirement.

In addition, as CTIA demonstrated in its comments, there is no legal justification for applying equal access or other dominant carrier requirements on non-dominant carriers in the context of ETC designations. Section 332(c)(8) of the Act states that CMRS carriers “*shall not* be required to provide equal access to common carriers for the provision of telephone toll service.”²⁴ The statute provides no exception from this bar for CMRS providers that have been designated as ETCs.²⁵ Given the availability of wireless rate plans that make no differentiation between local and “toll” charges, no CMRS consumer knowingly would select a separate long distance provider which assessed its own additional charge for service. The Commission has been considering whether to add equal access to the list of services supported by the

²¹ See NASUCA Comments at 38; Nebraska Rural Comments at 7; TDS Comments at 9.

²² See, e.g., Nextel Communications, Inc. (“Nextel Communications”) Comments at 24; Sprint Corporation (“Sprint”) Comments at 28-29; Western Wireless Corporation (“Western Wireless”) Comments at Exb. C, p. 3.

²³ Dobson Comments at 10. Indeed, “equal access” was intended to open the interexchange market to competition and “was designed with the specific purpose of preventing favoritism between AT&T and competing providers of long-distance and information services.” KELLOGG, THORNE, HUBER, TELECOMMUNICATIONS LAW 250 (1992); see also *United States v. AT&T*, 552 F. Supp. 131, 195 (D.D.C. 1982).

²⁴ CTIA Comments at 11-12 (quoting 47 U.S.C. § 332(c)(8)).

²⁵ *Id.* (citing *Recommended Decision*, 19 FCC Rcd at 4270-71, ¶¶ 31, 34).

Commission's universal service mechanisms for over two years.²⁶ The Commission should conclusively reject such proposals here.

2. Requiring Prospective ETCs to Demonstrate Financial Resources Is Not Competitively Neutral and Is Unnecessary

The Commission also should reject a requirement that ETC applicants demonstrate adequate financial resources to provide service throughout the designated area.²⁷ Such a requirement disregards the very reason for high-cost universal service support mechanisms – that without access to universal service support, many incumbent and competitive ETCs serving certain high-cost areas simply would be unable to provide supported services. Because many competitors do not currently have access to high-cost support, such a requirement could prohibit, or have the effect of prohibiting, the ability of competitive carriers to provide telecommunications in certain service areas. Such a requirement, therefore, would not be competitively neutral. Just as the Commission previously rejected a requirement that prospective ETCs provide all the supported services prior to obtaining ETC designations, the Commission should reject proposals to require prospective ETCs to show adequate financial resources prior to obtaining ETC designations.²⁸ We also note that a financial resources requirement is already indirectly addressed by the Commission's requirement that ETC applicants provide

²⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 14095 (2002); *see also Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090 (2003) (noting that the Joint Board could not decide whether to recommend that equal access be required and therefore Commission would consider issue in this proceeding).

²⁷ *See, e.g., Recommended Decision*, 19 FCC Rcd at 1576, ¶ 22; *see also supra* n.18.

²⁸ *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15172-73 (2000), *recon. pending* (“We find that requiring a new entrant to provide service throughout a service area prior to designation as an ETC has the effect of prohibiting the ability of the new entrant to provide intrastate or interstate telecommunications service, in violation of section 253(a).”).

commitments for service provisioning within designated areas, and a detailed methodology for serving customers requesting service that are within the designated areas but not within existing coverage at the time of the request.²⁹

3. There is No Basis for Limiting the Number of Competitive ETCs in Rural Areas

Similarly, the Commission should reject artificial limits on the number of competitive ETCs certified in rural areas, which fundamentally would be arbitrary and capricious.³⁰ Verizon, for instance, goes so far as to argue that it is presumptively not in the public interest to grant ETC status to more than one carrier in a rural study area, except in extraordinary circumstances.³¹ Verizon appears primarily to support this proposal as a way of limiting fund growth. While limiting fund growth is a worthwhile goal that CTIA supports, Verizon's position fails to acknowledge that it is incumbent LECs – not competitive ETCs – that have been responsible for the lion's share of growth in the high-cost fund.³² Rather than decreasing the cost of universal service, such a limitation would create powerful and perverse incentives for incumbent carriers to drive up the cost of universal service in order to avoid competitive entry.³³

²⁹ *Virginia Cellular*, 19 FCC Rcd at 1570, ¶ 15; *Nextel Partners*, 2004 FCC LEXIS 4770 *12, ¶ 11.

³⁰ *See, e.g.*, John Staurulakis, Inc. Comments at 4-5 (stating that there will be instances when a natural monopoly better serves the public interest); SBC Communications, Inc. ("SBC") Comments at 8-9 (noting that multiple ETCs could produce "undue strains on the fund"); South Dakota Telecommunications Association and Townes Telecommunications, Inc. ("SDTA") Comments at 9 (arguing that the FCC and states should examine whether an additional ETC would result in uneconomic competition); USTA Comments at 2 (stating that if no carrier can provide service to customers without USF support, there is no economic justification to support more than one carrier); Verizon Comments at 9 (stating that unless there are extraordinary circumstances, it is presumptively not in the public interest to grant ETC status to more than one carrier in a rural study area).

³¹ Verizon Comments at 9.

³² *See* CTIA Comments at 6-8, 22-23.

³³ *See id.* at 12-13.

Verizon also argues that, absent “exceptional circumstances,” the Commission and states should not designate more than one ETC in rural high-cost areas, because high cost support should not be used to “create” competition in rural areas.³⁴ Making equal per-line high-cost support available to ETCs in rural areas does not “create” competition as Verizon claims. Rather, equal per-line support provides an environment in which carriers can compete on an equal footing. On the other hand, proposals to deny competitors access to high-cost support would artificially suppress competitive entry in rural areas – ultimately denying consumers in rural areas the benefits of competitive choice. Providing high-cost support only to the incumbent wireline carrier also would reduce incentives for the incumbent to become more efficient, thereby increasing the size of the universal service fund over time.

4. There is no basis to refuse to designate competitive ETCs below the study area level

The Commission should reject arguments that competitive ETCs should not be designated for a geographic area smaller than the relevant incumbent LEC’s study area.³⁵ This proposal is not competitively neutral and would further deny consumers in rural areas access competitive alternatives. Indeed, there is strong support in the record for the Commission to facilitate the designation of competitive ETCs below the study area level.³⁶

³⁴ See Verizon Comments at 10.

³⁵ See *supra* n.20.

³⁶ See Western Wireless Comments at Exhibit C, pp. 4-5 (noting that wireless carriers who serve only partial ILEC service areas are not engaging in cream skimming because they are often impeded by licensing limitations and stating that RLECs have the opportunity to resolve cream skimming concerns by disaggregating support); General Communications, Inc. (“GCI”) Comments at 22-23 (arguing that the RLECs have “adequate means to ensure that high cost support is targeted to the higher costs portions of their study areas” by disaggregating support); Rural Cellular Association and Alliance of Rural CMRS Carriers (“RCA”) Comments at 21 (noting the effort of the Washington Utilities and Transportation Commission to facilitate competitive entry and advance universal service by mandating that all ILECs disaggregate support so that support is directed toward high-cost wire centers); United States Cellular

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Designating competitive ETCs below the study area level is appropriate due to the basic mismatch between wireless license areas and rural incumbent LEC service area boundaries. There are often areas within an incumbent LEC study area that are outside a wireless ETC's license area. To serve such areas, wireless ETCs would have to extend their service into geographic areas in which they are not licensed, either through resale or some other means. Compelling wireless ETCs to resell service in this context would ignore the primary benefits of competitive entry into rural areas – the “deployment of new facilities and technologies” and the fostering of “true, facilities-based competition,” as well as the creation of incentives “to the incumbent rural telephone companies to improve their existing network.”³⁷

Designating competitive ETCs below the study area level will only result in competitive ETCs receiving uneconomic levels of support if the incumbent LEC fails to adequately target support to high-cost areas.³⁸ As commenters observe, rural incumbent LECs are permitted to disaggregate support to ensure that support throughout their study area is closely aligned to cost.³⁹ Disaggregation allows the rural incumbent LECs “to direct universal service support to those zones within the study area where support is most needed.”⁴⁰ As a result, preventing

(footnote continued)

Corporation (“USCC”) Comments at 40-41 (noting also the efforts made by the Washington Utilities and Transportation Commission); *see also* Dobson Comments at 15-17.

³⁷ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48, 55 (CCB 2000).

³⁸ *See supra* note 37.

³⁹ *See, e.g.*, Dobson Comments at 15-17 (stating that disaggregation is a comprehensive solution to cream skimming and therefore allowing rural LECs who refrain from disaggregating and targeting support to raise cream skimming arguments erects a needless barrier to entry); RCA Comments at 21; USCC Comments at 40-41.

⁴⁰ *Recommended Decision*, 19 FCC Rcd at 4278, ¶ 54.

designations below the study area would serve no useful purpose, and would merely interpose a discriminatory barrier to wireless ETC designations.

C. The Act Prohibits Mandatory ETC Designation Guidelines

Assuming that the Commission does adopt new guidelines for the certification of ETCs, it should reject suggestions by some commenters that such guidelines should be mandatory.⁴¹ There is no basis in law to support mandatory federal guidelines. The United States Court of Appeals for the Fifth Circuit has already resolved this matter holding that nothing in Section 214(e) of the Act prohibits states from imposing their own public interest considerations, that may be less or more stringent than those adopted by the Commission.⁴² In the *Recommended Decision*, the Joint Board itself rejected calls for mandatory ETC designation criteria.⁴³

D. Any New ETC Guidelines Should Not Be Retroactively Applied to Certified ETCs

CTIA opposes applying any new ETC designation guidelines retroactively to previously-certified ETCs. Carriers designated as ETCs under the current scheme must, of course, remain in compliance with the requirements of Section 214(e) and any other conditions that were imposed upon them at certification, but they should not be subjected to new qualification requirements.⁴⁴

⁴¹ See, e.g., NASUCA Comments at 33, 36, 40; National Exchange Carrier Association Comments at 19; SBC Comments at 4-5; SDTA Comments at 1, 8; TDS Comments at 3, 6, 8-9.

⁴² *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (“*TOPUC*”).

⁴³ See *Recommended Decision*, 19 FCC Rcd at 4261, ¶¶ 9-10.

⁴⁴ ALLTEL Corporation Comments at 6. If the Commission nevertheless decides to impose new requirements on existing ETCs, such requirements should apply to both incumbent *and* competitive ETCs and should include a reasonable “grandfathering” period to allow carriers to come into compliance with any new obligations. Centennial Comments at 11.

II. MOST COMMENTERS AGREE THAT THE JOINT BOARD'S PRIMARY LINE PROPOSALS ARE UNLAWFUL AND UNWORKABLE

The record in this proceeding reveals that the Joint Board's primary connection proposals are inconsistent with the Act and are administratively infeasible.⁴⁵ Proponents of the Joint Board's primary line proposals gloss over the discriminatory nature of this proposal. The Joint Board itself admits that the primary line proposals are intended to shift support away from competitive ETCs in order to prevent or mitigate reductions in support available to rural carriers.⁴⁶ Such action on its face is not competitively neutral. The primary line proposals also disregard that the Act demands "sufficient funding for *customers*, not *providers*."⁴⁷ Moreover, maintaining current levels of high-cost support for incumbents at the expense of competitive ETCs would undermine rural consumers' access to reasonably comparable telecommunications service and would do nothing to promote spending on rural networks.⁴⁸ Indeed, the primary line proposals would send entirely the wrong signals for network investment in rural areas.⁴⁹

Limiting high-cost support to a single connection also faces high administrative hurdles that could make it infeasible.⁵⁰ In its comments, the Universal Service Administrative Company

⁴⁵ See, e.g., CenturyTel Comments at 18; Oregon Comments at 7; BellSouth Corporation ("BellSouth") Comments at 9; Mid-Sized Carriers Comments at 20-21; RTA Comments at 16-17, 20-22; Sprint Comments at 14-18; USTA Comments at 16-18; ITTA Comments at 6, 12-13; Iowa Comments at 7; Coalition Comments at 13-15; Western Wireless Comments at 5, Exb. B.

⁴⁶ *Recommended Decision*, 19 FCC Rcd 4289, ¶ 76; CTIA Comments at 15-16.

⁴⁷ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616, 622 (5th Cir. 2000) ("The FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other").

⁴⁸ See NTCA Comments at 6-9; see also Nebraska Rural Comments at 16-17; Nextel Communications Comments at 5-7; Mid-Sized Carriers Comments at 27; ITTA Comments at 6.

⁴⁹ See BellSouth Comments at 9; Dobson Comments at 20-22; Nextel Partners Inc. Comments at 26; RTA Comments at 16-22; Mid-Sized Carriers Comments at 30.

⁵⁰ See, e.g., CTIA Comments at 18-21; Centennial Comments at 13; Oregon Comments at 7; CPUC Comments at 5-6; ITTA Comments at 12-13; Missouri Public Service Commission Comments at 3-4; TDS Comments at 2, 21; Sprint Comments at 18-20.

(USAC) details some of the administrative problems with a primary line mechanism.⁵¹ To implement such a proposal, the Commission would first have to find a way to define what a “primary” line is. This becomes particularly difficult, however, when applied to a “household” comprised of separate individuals (*i.e.*, roommates), each of whom has an independent need for a telephone, or when applied to multi-line businesses.⁵² Similarly, to limit the discriminatory effects of the primary line proposals, the Commission would need to develop a process whereby an existing multi-line household could designate which line (wireline or wireless) would be primary.⁵³ In addition, the Commission would need to determine how frequently carriers would need to update their primary lines without imposing overly burdensome reporting obligations.⁵⁴ In sum, it is readily apparent that the discriminatory impact and administrative burdens associated with managing a primary line system would significantly outweigh its purported benefits. Finally, as discussed in section IV, below, there are better, competitively neutral ways to control the size of the universal service fund.⁵⁵

III. THE COMMISSION SHOULD REJECT PROPOSALS TO DISCRIMINATE AGAINST WIRELESS ETCS IN THE CALCULATION OF SUPPORT

The RTA and the Coalition, representatives of rural LECs, have put forth self-serving proposals that would reduce or eliminate high-cost support for wireless ETCS while providing the same or more support to incumbent carriers.⁵⁶ Specifically, RTA proposes a system under

⁵¹ USAC Comments at 5-19.

⁵² Centennial Comments at 13; CTIA Comments at 20; CPUC Comments at 5-6; .

⁵³ Centennial Comments at 13.

⁵⁴ CTIA Comments at 20.

⁵⁵ *Recommended Decision* at 4279-80, ¶ 56 (noting that the primary line proposal is consistent with Section 254 and is necessary to preserve the fund); *see also* AT&T Corp. Comments at 8-9; CPUC Comments at 5; NASUCA Comments at 3-4; Verizon Comments at 19.

⁵⁶ RTA Comments at 5-15; Coalition Comments at 17-20.

which competitive ETCs would be categorized into a four-tier system with each tier of carrier eligible to receive a progressively lower percentage of the study area average per-line support received by the incumbent LEC in that area.⁵⁷ The Coalition also proposes that wireless ETCs could draw support based upon their own costs, *but only to the extent that those costs are less than the incumbent carrier's costs*.⁵⁸

These proposals are, on their face, discriminatory against wireless ETCs. For example, although RTA admits that a wireless ETCs' costs could be greater than the incumbent LEC's, the tiered support for wireless ETCs would always be less than the incumbent receives.⁵⁹ In other words, these proposals require the Commission to abandon a bedrock principle of universal service portability – the “identical support rule,” 47 C.F.R. § 54.307 – which provides an equal amount of support to all ETCs serving an area. Abandoning this principle, however, is inconsistent with the express requirements of the Act. The federal courts have confirmed that the Commission's universal service program:

must treat all market participants equally – for example, subsidies must be portable – so that market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, this principle is made necessary not only by the economic realities of competitive markets, but also by statute.⁶⁰

The RTA and Coalition proposals to limit high-cost support to competitive ETCs have no policy or legal support and are designed solely to maintain the incumbent LECs' virtual monopoly on

⁵⁷ See RTA Comments, Attachment A at 1-4.

⁵⁸ Coalition Comments at 17-20.

⁵⁹ The top tier, Tier IV carriers, would only be eligible to receive 80 percent of the study area average per-line support received by the incumbent LEC. RTA Comments, Appendix A at 4. Further, while RTA does contemplate that competitive ETCs would be able to perform cost studies, it would cap support for a given competitive ETC to the per-line support eligibility of the incumbent LEC with which it competes, even if the competitive ETC has higher costs. RTA Comments at 14.

high-cost universal service support. It is a worthy goal to control the growth of the high cost fund, but to do so the Commission should focus on the underlying causes of the growth – the funding mechanism itself. Only by doing so can the Commission ensure, as the statute requires, that consumers in rural and high cost areas have access to affordable services that are “reasonably comparable” to those available to consumers in urban areas.

IV. THE COMMENTS DEMONSTRATE THAT BETTER ALTERNATIVES EXIST TO CONTROL GROWTH OF THE HIGH-COST FUND

Just as most commenters agree that the Joint Board’s primary line proposals are the wrong approach to control the size of the fund, there is broad support for taking other actions, as CTIA has recommended, to avoid excessive fund growth.⁶¹ CTIA supports nondiscriminatory efforts to curb growth of the high-cost fund while ensuring that all Americans have access to high-quality, affordable telecommunications and information services. Consistent with the principle of competitive neutrality and the pro-competition goals of the Act, under any new or modified mechanism, equal per-line support must be available both the incumbent and any eligible competitors. Meaningful reforms would mean less support for both incumbents and competitors, but CTIA believes such reductions are both appropriate and necessary for the long-term sustainability of universal service.

(footnote continued)

⁶⁰ *Alenco*, 201 F.3d at 616(citing 47 U.S.C. § 214(e)(1)).

⁶¹ *See, e.g.*, Nextel Communications Comments at 11-16, (suggesting that the Commission consider the following to control fund growth (a) freeze per-line high cost support in a study area upon competitive ETC entry, without the Joint Board options for ensuring continued support for rural LECs and without further adjustment based on the rural carrier’s embedded costs; (b) modify the rule that permits inclusion of corporate operations expenses in the calculation of rural LEC study area loop costs; (c) “immediately transition all ETCs with over 50,000 supported lines in a study area to a forward-looking cost methodology, while establishing a phased-in approach for those rural LECs with less than 50,000 supported lines”; and (d) “consolidate multiple study areas under common ownership within a state”); Oregon Comments at 8 (stating that FCC should cap the Universal Service Contribution Factor; once capped USF

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There are several problems with the current high-cost mechanisms. The Commission's high-cost universal service mechanisms are increasingly out of step with the changes in the marketplace. In fact, the Commission's universal service mechanisms are one of the few remaining remnants of a pre-divestiture regulatory structure designed to guarantee profits to inefficient monopolies insulated from competition. Despite industry-wide efficiency gains, advances in technology, increased competitive alternatives, and amortization of depreciated equipment, the high-cost mechanisms continue to increase rather than decrease in size over time.

Moreover, instead of narrowly targeting appropriate amounts of high-cost support to areas where affordable services would otherwise be unavailable, the Commission's hopelessly complicated high-cost mechanisms provide too much support to some areas and not enough to others. As Sprint notes in its comments, one symptom of these problems is that many incumbent LECs in rural areas actually charge significantly *lower* local calling rates than carriers in urban areas – even though costs may be significantly higher in rural areas.⁶² Illogical and incomprehensible allocation of support also retards the growth of competition in rural areas. In the end, the Commission's universal service policies disserve consumers, the intended beneficiaries of universal service, by making them pay too much into the fund and denying them high-cost support when they need it.

To address these problems, reform of the high-cost support mechanisms should target support better to high-cost areas and encourage carrier efficiency, consistent with an increasingly competitive marketplace. Reform also should result in less complexity, rather than more.

(footnote continued)

should grow only in proportion to the size of the interstate telecommunications market); *see also* Dobson Comments at 28-30.

⁶² *See* Sprint Comments at 11; *see also* Comments of SBC Communications, Inc., CC Docket No. 96-45, at 9 (filed May 5, 2003) (“To the extent that a carrier charges less than an

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Fundamental reforms to the Commission’s underlying universal service mechanisms are necessary to achieve these goals. The result of reform should be a single, simplified support mechanism that replaces the five existing high-cost support mechanisms and gives eligible carriers no more support than is necessary to achieve the goals of universal service. Although CTIA agrees with commenters that the high-cost reform proceeding currently before the Joint Board will provide the Commission with opportunities to consider fundamental reforms, the Commission can and should take steps in this proceeding to modify the existing high-cost mechanisms.

The Commission should, for example, adopt the Rural Task Force’s proposal to freeze per-line support available to all ETCs in a service area upon entry of a competitive ETC. This proposal received broad support,⁶³ and will immediately slow the growth of the fund.

Similar to NASUCA’s proposal before the Joint Board in this proceeding, the Commission also should move all incumbent LECs to the forward-looking support mechanism if they, along with their affiliates, have 50,000 or more access lines in a state or 2.5 million access lines nationally – whether or not they meet the Act’s definition of a rural telephone company or a rural carrier.⁶⁴ Although the Act codifies these definitions, the Commission is under no obligation to use different universal service mechanism cost proxies for “rural” and “non-rural” telephone companies or to use those definitions in the universal service context. As the Rural

(footnote continued)

“affordable” rate for service, there is no justification or basis in the Act for requiring other carriers and customers to subsidize that service.”).

⁶³ See AT&T Corp. Comments at 17-21; Nextel Comments at 11-16; AT&T Wireless Comments at 5; CTIA Comments at 21; GCI Comments at 28; Sprint Comments at 8-9; Western Wireless Comments at 18.

⁶⁴ Rural telephone companies in non-contiguous states and territories could remain on existing embedded cost-based support, consistent with Section 254’s particular concern with insular areas, but should be required to combine their study areas for purposes of calculating support.

Task Force observed almost four years ago, with modest changes to the forward-looking high-cost support mechanism, carriers with operations of this scope have no need to remain on an embedded-cost mechanism.⁶⁵ Responsible stewardship of the universal service fund requires the Commission to move them to the forward-looking mechanism. These changes are consistent with prior Commission and RTF findings that the forward-looking mechanism is a better predictor of costs for larger carriers than it is for smaller carriers serving rural and/or insular areas. CTIA concedes, however, that the forward-looking high-cost model may need to be updated prior to transitioning these carriers to it.⁶⁶

In the longer term, all incumbent LECs should eventually receive support based on a forward-looking cost mechanism. This will eliminate the incentives for inefficiency inherent in the existing embedded-cost mechanisms. A unified forward-looking high-cost mechanism also would better target support to high-cost areas (*e.g.*, wire centers), sending the appropriate signals for investment and competitive entry. In short, such a unified mechanism would better ensure that universal service is used for its intended purposes. Significant work will be necessary to prepare and modify the model to account for the unique characteristics of smaller carriers.⁶⁷

Eventually, the Commission should consider developing a unified high-cost support mechanism that directs support to all eligible carriers – incumbents and competitors alike – based

⁶⁵ Rural Task Force, White Paper 4, *Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies*, at 8 (rel. Sept. 2000), at <http://www.wutc.wa.gov/rtf>.

⁶⁶ For example, the Commission may need to update line counts, customer locations, and wire center locations. See *Federal-State Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 18 FCC Rcd 26639 (2003). The Commission also could consider whether to update other inputs in the model to reflect modern network infrastructure (*e.g.*, packet-switched networks).

⁶⁷ The Commission regularly updates line counts and other data used in the high cost model, but may need to engage in more thorough revisions to include smaller carriers (*e.g.*, modifying the benchmark and considering whether to eliminate statewide averaging).

on the most efficient technology in a given geographic area (such as a Census block group or rural county). This would truly make support no greater than necessary to ensure that universal service is available and would end debates about the appropriate levels of support for different types of eligible carrier technologies.

CONCLUSION

The Commission should reject the proposals to use the universal service designation and distribution mechanisms as a tool to discriminate against wireless ETCs. Rather than adopting “quick fix” proposals to reduce the growth of the high-cost fund by limiting wireless carriers’ eligibility to access support or reducing the support available to competitive ETCs, the Commission should fundamentally reexamine the underlying high-cost mechanisms. Any changes made to the underlying universal service funding mechanisms must ensure that support continues to be distributed in a competitively and technologically neutral manner consistent with the requirements of Sections 254 and 214(e) of the Act.

Respectfully submitted,

CTIA-THE WIRELESS ASSOCIATION™

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