

**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  
Proposals to Modify the Commission's Rules )  
Relating to High-Cost Universal Service Support )  
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**REPLY COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC.  
D/B/A SOUTHERNLINCWIRELESS**

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October 31, 2005

## **SUMMARY**

SouthernLINCWireless commends the efforts the Federal-State Joint Board on Universal Service on the proposals for the high-cost universal service support mechanism. Each proposal recognizes the need for specific, predictable, and sufficient funding for high-cost programs. Unfortunately, as noted in several of the initial comments, each proposal falls short of delivering a high-cost universal service support mechanism that furthers all of the goals of universal service. SouthernLINCWireless urges the Commission to reject any plan that requires separate and unequal funding levels for wireless eligible telecommunications carriers (“ETCs”), including the Universal Service Endpoint Reform Plan (“USERP”). There can be no justification under the Communications Act of 1934, as amended, (the “Act”) for discriminating against wireless ETCs by creating a separate wireless ETC fund or providing wireless ETCs with lower funding levels than wireline ETCs. SouthernLINCWireless endorses the reforms to the high-cost universal service support mechanism that CTIA has proposed.

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Southern Communications Services, Inc. d/b/a SouthernLINCWireless respectfully submits these reply comments to the Federal Communications Commission (“Commission”) on the comments filed in response to the four high-cost universal service support mechanisms proposed by members and staff of the Federal-State Joint Board on Universal Service (“Joint Board”).<sup>1</sup> As explained below, SouthernLINCWireless agrees with the numerous parties who recommend that the Commission not adopt any of the four proposals in their current form, because each contains serious flaws that are fundamentally inconsistent with the principles of competitive and technological neutrality.

SouthernLINCWireless is a commercial mobile radio service (“CMRS”) carrier, licensed by the Commission to provide cellular communication services throughout Alabama, Florida, Georgia, and Mississippi. As a FCC-licensed CMRS carrier, SouthernLINCWireless

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<sup>1</sup> See *Federal-State Joint Board on Universal Service seeks Comment on Proposals to Modify the commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No., 96-45, FCC 05J-1 (rel. Aug. 17, 2005) (“*High-Cost Notice*”). On September 13, 2005, in response to a Motion for Extension of Time filed by Verizon, the Commission extended the comment cycle on these proposals. See *Federal-State Board on Universal Service Extends Deadlines for Filing Comments and Replay Comments*, CC Docket No. 96-45, FCC 05J-2 (rel. Sept. 13, 2005).

provides service in accordance with the terms of its FCC licenses. SouthernLINCWireless has provided service since December 1995, and last year it sought designation from the Commission as an eligible telecommunications carrier (“ETC”) in both rural and non-rural portions of its service areas in Alabama, Georgia, and Florida.<sup>2</sup> These designation petitions are pending before the Commission.

SouthernLINCWireless supports the efforts of the Commission and the Joint Board to develop a competitively and technologically neutral high-cost methodology that will promote the goals of sustainable universal service.<sup>3</sup> Nonetheless, since all of the current proposals are flawed by treating wireless ETCs as an afterthought, SouthernLINCWireless urges the formulation of new plans that are competitively and technologically neutral.

**I. THE HIGH-COST METHODOLOGY MUST BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL**

Competitive and technological neutrality in both the collection and distribution of universal service funds is consistent with congressional intent and necessary to promote “a pro-competitive, de-regulatory national policy framework.”<sup>4</sup> The Commission has defined

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<sup>2</sup> *Parties Invited to Comment on Southern LINC Petitions for Designation as an Eligible Telecommunications Carrier in the states of Alabama and Georgia*, CC Docket No. 96-45, DA 05-269 (rel. Feb. 1, 2005). In addition, the Commission placed SouthernLINCWireless’s Petitions for Designation as an Eligible Telecommunications Carrier in its non-rural service areas in Alabama and Georgia and rural and non-rural service areas in Florida on a separate Public Notice. *See Parties Invited to Comment on Southern LINC Petitions for Designation as an Eligible Telecommunications Carrier in the states of Alabama, Florida, and Georgia*, CC Docket No. 96-45, DA 05-143 (rel. Jan. 21, 2005).

<sup>3</sup> *See* Section 254 of the Communications Act of 1934, as amended (the “Act”), codified at 47 U.S.C. § 254.

<sup>4</sup> *See, e.g., Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 at ¶ 23 (1996) (“Joint Explanatory Statement”) (cited in *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 48 (1997)) (“*First Report and Order*”).

“competitive neutrality” as “universal service support mechanisms and rules [that] neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another.”<sup>5</sup> Moreover, as the United States Court of Appeals for the Fifth Circuit has ruled, competitive neutrality is an integral component of portability.<sup>6</sup> Where the states or the Commission have found that multiple ETCs are appropriate in a particular study area, then the support rules should apply equally to all of those ETCs, regardless of the technology they use or whether they are an incumbent or a new entrant. Otherwise, the support would not be portable and thus would be inconsistent with the requirements of the Act.

Any proposal that would segregate support funds based on technology or competitive status would violate the principles of competitive and technological neutrality. Separate has never been equal. Worse yet, in their current form, the distinctions in the plans fail to subject wireline and wireless ETCs to the same rules or provide them with the same level of funding, and thus they are facially infirm. As the Commission has recognized, departures from competitive neutrality, no matter how insignificant they may first appear, must be minimized in order “facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.”<sup>7</sup> Accordingly, the Commission has ruled that all such disparities must be minimized “so that no entity receives an unfair competitive advantage that

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<sup>5</sup> *First Report and Order*, ¶47.

<sup>6</sup> *See Alenco Communications, Inc. v. Federal Communications Comm’n*, 201 F.3d 608, 622 (5<sup>th</sup> Cir. 2000)(ruling that “portability is . . . dictated by principles of competitive neutrality and the statutory command that universal service support be spent ‘only for the provisions, maintenance, and upgrading of facilities and services for which the [universal service] support is intended.’”).

<sup>7</sup> *First Report and Order*, ¶48.

may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.”<sup>8</sup>

**II. NONE OF THE FOUR PROPOSALS IN THEIR CURRENT FORM IS CONSISTENT WITH THE ACT OR THE GOALS OF UNIVERSAL SERVICE**

SouthernLINCWireless agrees with CTIA and other commenters that, although the proposals superficially appear to encourage and reward efficiency, they actually create unnecessary and improper distinctions between service providers based on technology or competitive status, and they arbitrarily discriminate against certain categories of carriers, including wireless carriers, while maintaining “all you can eat” embedded cost support for certain categories of wireline carriers.<sup>9</sup> Limiting the funding support levels specifically for wireless ETCs hinders the ability of wireless ETC to further the goals of universal service under Section 254 of the Act in their designated areas.

The State Allocation Method (“SAM”) proposes a program of universal service support block grants or “allocations” to the states rather than resolving the issues included in the *Referral Order*. SouthernLINCWireless agrees with commenting parties that it is therefore difficult to determine whether the SAM approach would be consistent with the Act, particularly since it is silent on the issue of support to wireless ETCs.<sup>10</sup> SouthernLINCWireless also agrees that the SAM proposal’s clear preference for the embedded cost methodology is not the best and

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<sup>8</sup> *First Report and Order*, ¶48.

<sup>9</sup> *See, e.g., In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of CTIA – the Wireless Association<sup>TM</sup> at ii (filed Sept. 30, 2005) (“CTIA Comments”).

<sup>10</sup> *See, e.g., In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Nextel Partners, Inc. 8 (filed Sept. 30, 2005) (“Nextel Partners Comments”).

most efficient means for controlling the universal service fund size.<sup>11</sup> Finally, SouthernLINCWireless agrees with CTIA and others that the Commission must maintain authority over the allocation of Federal universal service support, and that the administrative complexities weigh against recommending a state block granting approach.<sup>12</sup>

SouthernLINCWireless fully supports the articulated end result of the Three Stage Package but agrees with other commenters that extensive work is needed to develop appropriate Stage Three methodologies.<sup>13</sup> Moreover, there are several significant problems with Stage One of the proposal including, for example, the proposal to pay competitive ETCs a different amount based on their own embedded costs, which is not competitively neutral.

The Holistically Integrated Package ("HIP"), like the SAM and Three Stage Package, leave most of the hard work of developing a methodology to the future. However, the Holistically Integrated Package would grant even greater discretion to the states than the SAM block grant approach. As such, the Holistically Integrated Package is flawed to an even greater extent than the SAM proposal.

SouthernLINCWireless particularly opposes the Universal Service Endpoint Reform Plan ("USERP") plan and urges the Commission not to adopt any plan that limits the level of support available to wireless ETCs or makes funding determinations based on type of ETC providing the service in the same geographic territories. Among the many flaws of the USERP plan, high-cost funding would no longer be a "portable" universal service support mechanism that encourages competition and efficiency. Instead, the new support mechanism, the "Portability Fund," would be accessible only by wireless ETCs, and the wireline carriers

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<sup>11</sup> See, e.g., Nextel Partners Comments at 9.

<sup>12</sup> See, e.g., CTIA Comments at 13-17.

would continue to receive funding based on embedded costs from a separate fund. Moreover, unlike traditional high-cost support mechanisms, the USERP plan would cap the Portability Fund at \$1 billion per year, substantially less than the \$1.8 billion contributed by wireless carrier to the universal service fund in 2005.

Although the USERP Plan recognizes the need for wireless ETC inclusion in any high-cost universal service support mechanism, the creation of two separate and unequal funds directly contravenes the Act and the Commission's policies by limiting the amount of funding available based solely upon technology and competitive position of the ETC. The Commission cannot implement a high-cost universal support mechanism like the USERP plan that is neither competitively nor technologically neutral. As explained below, the USERP plan is neither competitively nor technologically neutral, and thus undermines the goals of universal service.

**A. The High-Cost Universal Service Support Mechanism Must Be Fully Portable and Accessible by all ETCs, including Wireless ETCs**

SouthernLINCWireless agrees with CTIA and others that the USERP plan unfairly discriminates against wireless ETCs and that support under the USERP plan would not be portable as required by the Act. The USERP plan would not only cap the Portability Fund but also restrict wireless ETC funding use exclusively to the construction of new facilities. As correctly noted by Dobson Cellular,<sup>14</sup> this restriction is "in clear contravention of Section 254(b) of the Act" and fails to allow wireless ETCs to use funds for "the provision, maintenance, and upgrading of facilities and services."<sup>15</sup>

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<sup>13</sup> See, e.g., Nextel Partners Comments at 10-11.

<sup>14</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Dobson Cellular Systems, Inc. at 21 (filed Sept. 30, 2005) ("Dobson Cellular Comments").

<sup>15</sup> 47 U.S.C. § 254(e).

The USERP plan also contemplates restricting the use of high-cost funds by wireless ETCs to “unserved areas with major roads”<sup>16</sup> based on flawed assumptions regarding the characteristics of wireless networks. In addition to ignoring the requirement that universal service support be fully portable, this requirement “ignores the fact that wireless services have proven extremely popular with people living in rural areas due to the unique characteristics (such as mobility) of wireless service.”<sup>17</sup> Wireless ETCs have used high-cost funds to help deploy new and innovative services to high-cost rural areas, and the funds should continue to remain available for this purpose.<sup>18</sup> Restricting the use of the Portability Fund to those areas abutting major highways would harm residents living in high-cost areas that do not abut major highways by denying them the benefits of competition and efficiency that Congress intended the universal service funding mechanism to foster.

Moreover, equal funding levels for wireless ETCs and wireline ETCs will not result in the creation of an unnecessary government-funded parallel network as argued by some commenters.<sup>19</sup> Rather, ensuring that universal service funding is fully portable, as required by the Act, fosters the goals of universal service by helping competitive ETCs, including wireless ETCs, to expand their service offerings and increase the availability of alternative service providers in high-cost areas. The importance of alternative and redundant service providers was highlighted recently by the aftermaths of Hurricanes Katrina and Rita, when wireless networks,

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<sup>16</sup> *High-Cost Notice* at 27.

<sup>17</sup> *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Sprint Nextel Corporation at 6 (filed Sept. 30, 2005) (“Sprint Nextel Comments”).

<sup>18</sup> *See, e.g.*, Nextel Partners Comments at 6-7.

<sup>19</sup> *See, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of New Jersey Division of the Ratepayer Advocate at 22 (filed Sept. 30, 2005) (“NJ Ratepayer Advocate”).

including the network of SouthernLINCWireless, remained largely functional while much of the wireline network was inoperable due to damaged wireline infrastructure. Specifically, by September 1, 2005, 98% of the sites of SouthernLINCWireless in the affected areas were operable, and 100% were operable by September 8, 2005. As this example illustrates, ensuring that support is fully portable is critical to meeting the universal service goals, and governmental efforts to “manage” technology and competition will only create problems for the future.

The creation of a separate fund would also likely reduce the overall amount of support available for high-cost areas rather than increase support. Like wireline ETCs, wireless ETCs provide essential telecommunications services to subscribers in high-cost areas. As USTelecom noted, the creation of the separate Portability Fund would “unnecessarily divide the total amount of support ... limiting the ability of carriers to obtain sufficient support to build, maintain, upgrade and expand networks as necessary for their customer demand.”<sup>20</sup> Unnecessary limitations do nothing to further the goals of universal service, and they merely interfere with the efforts of competitive ETCs, including wireless ETCs, to deploy new network facilities and maintain quality, reliable service to its subscribers in high-cost areas.

Providing all ETCs, including wireless ETCs, with access to exactly the same level of funding is an essential component of any high-cost support mechanism that encourages the development and deployment of advanced services to high-cost areas.<sup>21</sup> The creation of a separate and unequal high-cost universal service support funding mechanism would not

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<sup>20</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the United States Telecom Association at 9 (filed Sept. 30, 2005) (“USTelecom Comments”).

<sup>21</sup> See Nextel Partners Comments at 2-5.

encourage the improvement of existing services<sup>22</sup> or the deployment of additional facilities in high-cost areas.<sup>23</sup> Residents living in rural, high-cost areas deserve a choice in service providers and alternatives in emergencies. SouthernLINCWireless agrees with CTIA and others that restricting the funding levels for wireless ETCs would illegally limit the ability of wireless ETCs to expand and improve their networks and make wireless ETCs second-class citizens under the policies of the Commission.<sup>24</sup>

Contrary to the suggestion by the Oregon PUC,<sup>25</sup> substitutability of wireless services for wireline services is not an appropriate factor for consideration as part of any high-cost universal service support methodology. The Act requires that universal service support be fully portable, and only competitively and technologically neutral support methodologies permit the support to be fully portable.<sup>26</sup> Accordingly, wireless ETCs are entitled to the same level of support for high-cost areas as any other type of ETC, and any plan that requires unequal funding for wireline and wireless ETCs would be fundamentally inconsistent with the requirements of the Act and the goals of universal service.

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<sup>22</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of General Communications, Inc. at 16 (filed Sept. 30, 2005) (“General Communications Comments”).

<sup>23</sup> See CTIA Comments at 12.

<sup>24</sup> CTIA Comments at 10.

<sup>25</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Oregon Public Utility Commission at 15 (filed Sept. 30, 2005) (“Oregon PUC Comments”).

<sup>26</sup> *Alenco Communications v. FCC* 201 F.3d at 621-622 (noting that “portability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the statutory command”).

**B. Cost Distinctions between Wireless and Wireline Networks Do Not Justify Distinguishing Between the Two for Purposes of Universal Service Support**

As drafted, the USERP plan calls for the creation of separate funding for wireline and wireless ETCs and the imposition of a cap on the fund for wireless ETCs. The rationale for creating a separate and capped funding mechanism for wireless ETCs is based on the assumption that wireless ETCs incur costs that are substantially less than the costs that wireline ETCs incur, and thus the discrimination is necessary in order to avoid creating financial windfalls for wireless ETCs. Regardless of whether certain technologies are less costly than other technologies, the Act and the Commission's policies prohibit the Commission from implementing a high-cost universal service support mechanism that creates separate and unequal funding mechanisms based solely on technology. As CTIA correctly noted in its comments, funding structures discriminate based upon technology or competitive position cannot be squared with Section 254 of the Act, which requires that, once a carrier is designated as an ETC, it be eligible for the same universal service support as every other ETC.<sup>27</sup> Without such parity, the creation of two separate and unequal funds "puts the government's thumb on the competitive scales, openly and blatantly, in favor of [wireline ETCs] getting more money."<sup>28</sup>

Critically, some commenters mistakenly believe providing wireless ETCs with the same level of support available to wireline ETCs does in fact create a "windfall", allowing wireless ETCs to "subsidize the provision of service to existing customers that were already able

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<sup>27</sup> CTIA Comments at 9-10.

<sup>28</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Centennial Communications Corp. at 5 (filed Sept. 30, 2005) ("Centennial Comments").

to service successfully without any high-cost funding.”<sup>29</sup> These claims fail to acknowledge any costs associated with wireless networks such as the costs of installing, maintaining, and upgrading wireless networks. Although these costs are different from the costs associated with a traditional wireline network, they are just as substantial.

Furthermore, SouthernLINCWireless agrees with commenting parties who correctly observe that some incumbent wireline networks are replete with inefficiencies, both in design and in operating practices.<sup>30</sup> Any high-cost universal service support methodology that rewards the retention of flawed network design and inefficiency with increased levels of support does not further the goals of universal service.<sup>31</sup> Rather, the Commission must implement a high-cost universal service support mechanism that fosters competition and rewards efficiency in both network design and the provisioning of services to those who need it most. Wireless networks can be an extremely efficient, and the entry of wireless carriers into high-cost areas can foster the type of competition Congress sought to encourage, and thus the high-cost universal service support mechanism should not discriminate against wireless ETCs. There simply is no valid reason for discriminating against any type of technology in the distribution of universal service support for high-cost areas.

**C. Capping the Portability Fund and Implementing a 5-Year Sunset is Detrimental to the Goals of Universal Service**

SouthernLINCWireless agrees with CTIA and others that capping the Portability Fund at levels unequal to wireline ETCs and establishing a 5-year sunset undermines the goals of

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<sup>29</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at 18 (filed Sept 30, 2005) (“OPASTC Comments”).

<sup>30</sup> Sprint Nextel Comments at 7-8.

<sup>31</sup> Centennial Comments at 5-6.

universal service and is fundamentally inconsistent with the Act and the Commission's policies. Considering that wireless carriers contribute substantially to the universal service fund, nearly \$1.8 billion in 2005, there is no justification to limit the amount accessible to wireless ETCs, particularly when wireless ETCs are net payors of universal service support. As Sprint Nextel correctly observes, the USERP plan locks wireless carriers in as "net payors" while prohibiting wireless ETCs from accessing an equivalent portion of high-cost universal service support as is available to "net payees" like many wireline ETCs.<sup>32</sup> The Commission simply cannot implement a high-cost universal service support mechanism that purposely limits the amount of funds available to wireless ETCs or any other type of technology.

Furthermore, implementing a sunset to the Portability Fund is harmful to the universal service goals<sup>33</sup> and fundamentally inconsistent with the requirement of Section 254 of the Act that universal service be "specific, predictable and sufficient."<sup>34</sup> As Dobson Cellular correctly noted, the Portability Fund also fails to satisfy the requirements of the Act and the Commission's policies that universal service support mechanisms preserve and advance universal service, and ensure reasonably comparable rates.<sup>35</sup> Since the statute mandates a specific, predictable, and sufficient fund, the Commission cannot adopt any plan like the USERP plan that is fundamentally inconsistent with these requirements.

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<sup>32</sup> Sprint Nextel Comments at 6.

<sup>33</sup> Nextel Comments at 12-13; *see also* Sprint Nextel Comments at 4-6.

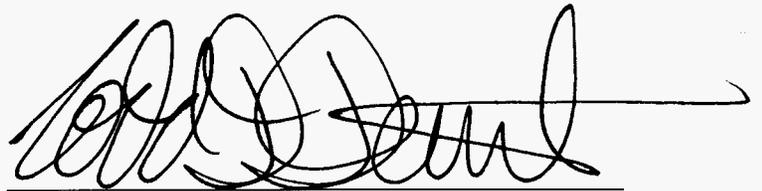
<sup>34</sup> 47 U.S.C. § 254(b)(5). *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of AT&T Corp. at 8 (filed Sept 30, 2005) ("AT&T Comments").

<sup>35</sup> Dobson Cellular Comments at 21.

**III. CONCLUSION**

The Act and the Commissions policies require high-cost support methodologies to be competitively and technologically neutral. Accordingly, any methodology that distinguishes between types of ETCs for funding purposes and that unfairly discriminates against wireless ETCs is fundamentally inconsistent with the Act. As the comments filed in this proceeding demonstrate, new high-cost support methodologies must be developed, because none of the current proposals are competitively and technologically neutral.

Respectfully submitted,



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