Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF COMPTEL

COMPTEL respectfully submits these comments, pursuant to the Notice of Proposed Rulemaking ("*NPRM*") released on May 14, 2007 (FCC 07-88) in the above-referenced dockets. In its *NPRM* the Commission seeks comment on the recommendation of the Federal-State Joint Board on Universal Service ("Joint Board") that the Commission impose an interim, emergency cap on the amount of high-cost universal service support that competitive eligible telecommunications carriers (ETCs) receive. COMPTEL urges the Commission to reject the recommendation of the Joint Board and, instead, adhere to its precedent and maintain per-line portable universal support for competitive ETCs identical to that which the incumbent would receive.

In the *First Report and Order*, the Commission adopted the principle that federal support mechanisms should be competitively neutral, "neither unfairly advantaging nor disadvantaging particular service providers or technologies."[1] As such, the Commission determined that federal universal service support should be made available, or "portable," to all ETCs that provide supported services, regardless of the technology used,[2] and that a competitive ETC receives the same per-line amount of high-cost universal service support that the incumbent LEC would receive for serving the same customer (the "identical support rule").[3] The Commission must adhere to its own precedent or explain its reasons for reversing its course.[4] As the Court said in Columbia Broad Sys., Inc. v. FCC, 454 F.2d at 1026:

> [W]hen an agency decides to reverse its course, it must provide an opinion or analysis indicating that the standard is being changed and not ignored, and assuring that it is faithful and not indifferent to the rule of law."

The principle of competitive neutrality, and the Commission's application of this principle to distribution of funds, is as critical today as when adopted. As the Commission has found, promoting competition is an underlying goal of the Telecommunications Act of 1996 and the principle of competitive neutrality is consistent with that goal.[5] In particular, the Commission recognized that competitive neu-

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642, ¶ 2 (2002). *See also, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶¶ 46-48 (1997) ("First Report and Order").

[2] *Id.*

[3] *See id* at ¶ 3; 47 C.F.R. § 54.307(a).

[4] *Greyhound Corp. v. ICC*, 551 F.2d 414, 416 (D.C. Cir. 1977). *See also, Columbia Broad. Sys., Inc. v. FCC*, 454 F.2d 1018, 1026 (D.C. Cir. 1971).

[5] *First Report and Order* at ¶ 51.

trality in the distribution of funds "is consistent with congressional intent and necessary to promote 'a pro-competitive, de-regulatory national policy framework.'"[6]

The identical support rule is a necessary aspect of a competitively neutral distribution of funds. Whereas, the arbitrary and anti-competitive policy proposed by the Joint-Board – with its obvious favoritism toward incumbency – blatantly violates this principle. The Joint-Board did not even ascertain whether a lower support would be sufficient to cover the costs of competitive ETCs in providing the competitive services, even though the Act requires support to be sufficient. Neglecting to ensure sufficient support for competitive ETCs clearly puts these competitors at a disadvantage to incumbents whose embedded costs are guaranteed. Nevertheless, even if competitors are more efficient in their provision of service, and therefore experience lower costs, while the Commission may consider this factor in reevaluating the support all carriers receive, it should not provide the more efficient provider less support. Lowering or increasing support based on the costs of an individual carrier not only rewards inefficiency, it decreases incentives for carriers to act in a cost effective manner and, therefore, constitutes bad public policy.

The Joint Board rationalized the cap as a means to stem the dramatic growth in high-cost support. While this is a legitimate interest in itself, it does not justify singling out competitive ETCs for a reduction in support. As the Commission has concluded, the principle of competitive neutrality is not secondary to the advance-

[6] *First Report and Order* at ¶ 48.

ment of universal service.[7] A principle goal of universal service is to provide consumers in high cost areas the same access to the same choices and quality of service that other consumers receive. Therefore, the Commission must retain a policy that encourages – not discourages – competitive entry into these high cost markets, even though it may add additional burdens on the fund. Moreover, the true source of excessive growth is not the identical support rule. It is the duplication and amount of support that puts the fund at risk. In order to reverse the excessive growth in the fund, and position it at a sustainable level, the Commission should move quickly toward comprehensive, competitively neutral high-cost universal support reform, such as reevaluating the cost methodology used to calculate support to be applied uniformly to all ETCs in a market or reconsidering the number of connections supported for each household.

Respectfully submitted,

/s/ Karen Reidy________
Karen Reidy
Vice President, Regulatory Affairs
COMPTEL
900 17th Street, NW, Suite 400
Washington, DC 20006
(202) 296-6650

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[7] *First Report and Order* at ¶50.