Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications ("Midcontinent"), by its attorneys, and pursuant to Section 1.415(b) of the Commission's rules, hereby provides these comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] As a competitive provider of cable telephony in rural areas, Midcontinent has a strong interest in helping the Commission ensure that rural customers gain the full benefits of competition among multiple voice service providers. Competitive entry in high-cost areas already is a very difficult undertaking, and whatever solution the Commission adopts to combat increasing high-cost fund disbursements, the Commission must maintain a level playing field that will spur investment and stimulate competition in these areas. For that reason, the Commission should adjust the proposal contained in the *Recommended Decision* to make clear that where incumbents LECs and new entrants are competing directly, each competitor receives the same per-customer universal service disbursement as the incumbent.[2]

[1] *See* 47 C.F.R. § 1.1415(b); High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07-88, 72 Fed. Reg. 28936 (released May 14, 2007).

[2] *See* High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, *Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45; FCC07J-1 (released May 1, 2007) ("*Recommended Decision*").

I. Introduction

Midcontinent is the Upper Midwest's leading provider of bundled, local and long distance telephone service, high-speed Internet access and cable television services. Midcontinent uses its cable platform to provide both circuit-switched and voice over IP local and long distance telephone service as a certificated competitive LEC in North Dakota, South Dakota and Minnesota. Midcontinent currently provides competitive telephone service to more than 70,000 residential and business customers in 85 communities.[3]

Unlike most broadband providers of bundled voice, video and data services, much of Midcontinent's service territory consists of thinly populated rural communities. Midcontinent is not, therefore, rolling out advanced services only in the most densely populated or affluent locales, but is extending these services into communities that historically have been last in line for new services and the benefits of competition. Due to the difficulties of introducing telephone services in these areas, Midcontinent often qualifies for universal service subsidies under the Commission's high-cost funding rules.

Midcontinent serves customers in sparsely populated rural states in small towns, and competes against rural incumbent LECs that enjoy considerable freedom from the local telephone market-opening provisions of the Communications Act and the Commission's rules. Midcontinent offers potential customers a true substitute for incumbent telephone service. Moreover, new Midcontinent telephone customers typically switch all of their telephone service from the incumbent to Midcontinent and do not purchase Midcontinent service as an addition to existing incumbent LEC services. Many of the rural incumbents against which Midcontinent competes

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[3] Midcontinent provides cable service in over 200 communities and serves nearly 250,000 customers in North and South Dakota, Northern Nebraska, and Western Minnesota.

already are offering customers bundled voice, video and data offerings. In many cases, the introduction of Midcontinent telephone service gives customers their first opportunity to obtain competitive telephone service and choose between competing triple-play bundles. In this way, Midcontinent both introduces new advanced services and allows customers in rural areas to experience the quality of service and rate control benefits of full competition.

II. Maintaining Equal Access to High-cost Funds for Incumbents and Competitors Like Midcontinent Is Essential to Ensuring a Level Competitive Playing Field.

Under the current universal service rules, incumbent LECs are eligible for high-cost fund support based on their costs of providing service, and competitive LECs are eligible for funding based on the per-line support provided to the incumbent.[4] This regime ensures that incumbent LECs serving rural high-cost areas are eligible for the full high-cost fund subsidy regardless of whether they face competition. Rural incumbent LECs also often are eligible for additional support funding and loan assistance from other sources such as the Department of Agriculture's Rural Development Telecommunications Program. These funding sources, coupled with guaranteed high-cost subsidies, give incumbent LECs a significant advantage over competitive providers like Midcontinent, which must rely more heavily on private funding sources.

The current high-cost funding mechanism helps establish a baseline of competitive neutrality by guaranteeing that competitors will receive the same level of funding for each former incumbent LEC customer that the incumbent would receive.[5] This competitive balance would be destroyed by the approach advocated in the *Recommended Decision*, which would maintain

[4] 47 C.F.R. § 54.301-.307.

[5] *See* 47 C.F.R. § 51.307(a). The level of funding also depends in part on whether the competitor utilizes resale, unbundled loops, or unbundled switching.

incumbent LEC funding levels while capping the amount of funds available to competitors like Midcontinent, regardless of how many lines or customers they capture from incumbents.[6]

The *Recommended Decision* relies heavily on the observation that the growth in high-cost fund disbursements has been almost entirely due to increased payments to competitive providers.[7] That result is to be expected, however, because the incumbent LEC receives high-cost subsidies at the same level regardless of the number of lines it serves,[8] while competitors receive the funding for lines they actually serve.[9] As competitors multiply and gain more lines, the disbursements to competitors must rise, while the disbursements to incumbents will fall only to reflect diminished current and future investment in service expansion. The demands on the high-cost fund also have multiplied due to the substantial increase in the number of ETCs, which is in turn attributable to the growth in providers of non-substitute services like wireless.

Responding to this increase in fund payments by capping the amounts available to all competitive providers may solve the immediate problem of growth in demands on the high-cost fund, but it will do so only by creating a substantial competitive disadvantage to providers like Midcontinent that directly compete with incumbents. The effect will be to artificially subsidize incumbent LECs that are losing customers, essentially placing the FCC's thumb on the incumbent's side of the competitive scale, while withdrawing legitimate subsidies from facilities-based and other providers that have relied on those payments to introduce competition into high-cost areas.

This problem will be most acute for competitors like Midcontinent that seek to offer a facilities-based, full substitute for incumbent LEC service. The inevitable effect of capping high-

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6 *See Recommended Decision* at ¶¶ 9-12.

7 *See id.* at ¶¶ 4-7.

8 *See* 47 C.F.R. § 51.301.

cost funds will be to slow the spread of facilities-based competitive services while enabling incumbent LECs to realize artificial revenue and market share gains. The problem goes deeper still. By delaying competitive entry by providers like Midcontinent, which would provide competitive video, voice, and data services to rural communities, the Commission will be permitting incumbent LECs that also are beginning to offer these bundled services a first-mover advantage in rural markets that will make competitive entry for all services even more difficult in the future.[10] For this reason, a blanket cap on high-cost funds available to all competitors is a blunt instrument that may temporarily stabilize fund disbursements, but ultimately will harm competitive entry and consumers in rural markets. That result would undermine the public interest.

III. The Commission Should Not Cap High-Cost Fund Disbursements to Competitors Offering Substitute Wireline Telephone Services.

While the proposed cap could have a significant impact on rural competition, there is a way to avoid this harm to consumers. Simply put, if the Commission elects to adopt a cap or some alternative limitation on high-cost funding to competitive LECs, that limitation should not apply in situations where the competitor offers a substitute service.

The Commission has recognized that some alternative telephone services, such as wireless and "over-the-top" voice over IP, are not substitutes, but rather are complementary to traditional wireline telephone service.[11] Given the goal of the high-cost fund to spread the availability of

[9] *See id.* at § 51.307(a).

[10] In Midcontinent's experience, rural incumbents often seek to exploit this sort of first-mover advantage by attempting to conceal their construction of video facilities and delaying interconnection negotiations so that they can maintain the longest possible period of being the only provider offering voice, video and high speed Internet service.

[11] *See, e.g.*, Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area, *Memorandum Opinion and Order*, WC Docket No. 05-281, FCC 06-188 ¶ 29 (released January 30, 2007); Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in

traditional telephone service to all communities, it would be unreasonable for the Commission to treat substitute services that would fully accomplish this goal the same as complementary services that only partially do so.[12]

Instead, the Commission should reject the *Recommended Decision* to the extent that it would impair high-cost disbursements to competitors providing substitute services. Where a competitor like Midcontinent offers a substitute service, the high-cost rules should continue to ensure that it receives the same per-customer subsidy that the incumbent receives for each customer that the competitor captures from the incumbent.[13] This limited exception to the proposed funding cap should allow the Commission to achieve the purposes of curtailing growth in demands on the high-cost fund without compromising burgeoning competition in high-cost areas.

The Commission's rules already have mechanisms to ensure that competitive LECs are receiving funding only for customers and lines that they actually serve in high-cost areas.[14] This should alleviate any concerns that competitors providing substitute services are receiving anything more than the minimum amount necessary to maintain a level competitive playing field. Nonetheless, if the Commission wishes to more closely police disbursements to competitors like Midcontinent, it could institute additional reporting or eligibility requirements. For example, the Commission could require competing carriers to certify that each customer for which it claims a universal service subsidy previously was served by an incumbent LEC. Alternatively, the

the Omaha Metropolitan Statistical Area, *Memorandum Opinion and Order*, 20 FCC Rcd 19415, 19452 (2005)

[12] 47 U.S.C. § 254(b).

[13] 47 C.F.R. § 54.307(a)(3).

[14] *See id.* at § 54.307(b).

Commission could require that in areas where portability has been implemented, the subsidy would be available only if the customer's number has been ported from an incumbent.

These types of controls could permit greater oversight for high-cost fund disbursements to competitive providers without unduly compromising competitive neutrality or further advantaging incumbent LECs. The Commission must not, however, sacrifice *bona fide* direct competition to ameliorate a funding problem that cannot be attributed to the pro-universal service, pro-competitive activities of providers like Midcontinent.

Conclusion

For the foregoing reasons, the Commission should adopt an order that ensures equal access to high-cost universal service funds for both incumbents and competitors providing direct competition by offering substitute services.

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

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June 6, 2007