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
	}	

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SourthernLINC Wireless") hereby replies to the initial comments filed in response to the Notice of Proposed Rulemaking in the above-captioned docket.[1] The record in this proceeding demonstrates that the Federal Communications Commission ("FCC" or "Commission") should focus on fundamental reform of the universal service system rather than attempting to impose a cap that violates the requirements of the Act and the Commission's own rules and policies.

States with many consumers in rural, insular and high-cost areas[2] and competitive eligible telecommunications carriers ("ETCs"), as well as carriers with ETC applications pending, oppose the cap because it would not be competitively neutral or ensure that statutory universal service goals could be met while the cap is in place.[3] Predictably, the incumbent local

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1 *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 07-88 (rel. May 14, 2007) ("*USF Cap NPRM*").

2 *See, e.g.*, Comments of the Corporation Commission of the State of Kansas at 1-5 (explaining that proposed cap is discriminatory); Comments of the Idaho Public Utilities Commission ("IPUC") at 1-2; Comments of the Maine Public Utilities Commission at 1-3; Comments of the Montana Public Service Commission ("MTPSC") at 3-8; Comments of the South Carolina Office of Regulatory Staff at 2-3.

3 *See, e.g.*, Comments of Chinook Wireless at 2-3; Comments of CompTel at 1-4; Comments of Corr Wireless Communications at 1-8 (expressing disappointment with cap and proposing modifications to the cap); Comments of CTIA at 1-30; Comments of Dobson Cellular Systems, Inc. at 1-16; Comments of ETS Telephone Company at 1-5; Comments of General Communication, Inc. at 1-22; Comments of the Rural Cellular Association ("RCA") and the Alliance of Rural CMRS Carriers ("ARC") at 1-38; Comments of the Rural Independent Competitive Alliance ("RICA") at 1-6 (recommending modifications to the proposed cap); Comments of Sprint Nextel Corporation at 1-16; Comments of Surewest Communications at 1-8; Comments of

exchange carriers ("ILECs") support the cap so long as they do not lose any of their current funding and new ETCs receive no additional funding.[4] Their support is not surprising as ILECs would gain an unfair competitive advantage under the proposed cap.

United States Cellular Corporation ("U.S. Cellular") and Rural Cellular Corporation ("RCC") at 1-39. *See also, e.g.,* Comments of Bob Andrews, Director E911 Communications Center, Jonesboro Police and Fire Dispatch at 1-2; Wes Ashley, Director, Martinsville-Henry County 911 Center at 1-2; Representative Harold J. Brubaker, 78th District, North Carolina General Assembly at 1-2; Michael E. Cox, Meade County Kansas Sheriff, Meade County Sheriff's Department at 1-2; Terri Ebert, Dispatch Supervisor, Rock County Sheriff's Office at 1-2; John W. Gibson, County Administrator, Washington County, Arkansas County Courthouse at 1-2; Comments of Allen C. Holder, Director, Lincoln County 911 Communications at 1-2; Kris Marple, Wilson County Coordinator, Office of Wilson County Coordinator at 1-2; Julie Murie, 9-1-1 Manager, Cottonwood Police Department at 1-2; Comments of Melissa Turner, Supervisor, Grants County 911 at 1-2; Tim Wallace, Director, Washburn County Office of Emergency Management at 1-2; Katie Zeringue, ENP, 911 Administrator, Lafourche Parish at 1-2.

4 *See, e.g.,* Comments of the Alaska Telephone Association at 1-6 (association of ILECs); Comments of Alexicon Telecommunications Consulting at 1-5 (ILEC consultant); Comments of AT&T Inc. at 1-10 (ILEC); Comments of the Blackfoot Telecommunications Group at 1-6 (ILEC); Comments of CenturyTel at 2-6 (ILEC);Comments of Embarq at 1-9 (ILEC); Comments of Fred Williamson and Associates at 1-7 (ILEC consultant); Comments of Frontier Communications at 1-4 (ILEC); Comments of the Independent Telephone and Telecommunications Alliance ("ITTA") at 1-9 (association of ILECs); Comments of the Iowa Telecommunications Association at 1-4 (association of ILECs); Comments of Mid-Rivers at 1-9 (ILEC with rural wireless services that supports cap with respect to wireless non-rural ETCs); Comments of the Minnesota Independent Coalition at 1-4 (coalition of ILECs); Comments of the Nebraska Rural Independent Companies and the South Dakota Telecommunications Association at 1-10 (association of ILECs); Comments of NECA at 1-5 (ILECs); Comments of NTCA at 1-15 (association of rural ILECs); Comments of OPASTCO at 1-8 (association of ILECs); Comments of the Rural Iowa Independent Telephone Association at 1-4 (association of ILECs); Comments of the State Independent Telephone Association of Kansas and the Independent Telecommunications Group at 1-5 (association of ILECs); Comments of TCA at 1-3 (ILEC consultants); Comments of TDS at 1-6; Comments of the Telecommunications Association of Michigan at 1 (association of ILECs); Comments of the Telephone Association of Maine at 1-2 (association of ILECs); Comments of the Texas Statewide Telephone Cooperative, Inc. at 1-3 (ILECs); Comments of USTelecom at 1-7 (association of ILECs); Comments of Valley Telephone Cooperative, Inc. at 1-5 (ILEC); Comments of Verizon and Verizon Wireless at 1-11 (ILEC and wireless affiliate); Comments of the Western Telecommunications Alliance at 1-7 (association of ILECs); Comments of Windstream Communications, Inc. at 1-5 (ILEC); Comments of the Wisconsin State Telecommunications Association at 1-5 (association of ILECs). *See also, e.g.,* Comments of NASUCA at 1-11(association of state utility consumer advocates); Comments of the Iowa Utilities Board at 1 (receiving $42.2 million of competitive ETC funding in 2006); Comments of the New Jersey Board of Public Utilities at 3-5 (receiving no competitive ETC funding in 2006); Comments of the New York State Department of Public Service ("NYDPS") at 1-3 (receiving $3.3

Importantly, nothing in the record of this or any other proceeding demonstrates a crisis of the magnitude that could justify the imposition of a cap, let alone a cap that is fundamentally inconsistent with the Act and the Commission's own rules and policies. Accordingly, SouthernLINC Wireless joins the parties urging the Commission to focus upon fundamental reform rather than implementing temporary measures that will harm consumers in rural, insular and high cost areas and skew the marketplace. To the extent the Commission nonetheless decides to impose an "interim, emergency cap," the agency must ensure that (1) the cap applies equally to all recipients of high-cost support; (2) funding is capped at the state level; (3) funding is distributed on a pro-rata basis according to line counts and/or actual service costs; (4) the cap is based upon the most recent full quarter funding before the cap's effective date; (5) the cap expires automatically no later than one year after it becomes effective; (6) high-cost support is fully portable; and (7) ETCs are permitted to file revised service improvement plans. Finally, SouthernLINC Wireless agrees that all pending ETC applications should be processed promptly.[5]

I. THE FUND IS NOT FACING AN EMERGENCY

SouthernLINC Wireless agrees with those commenting parties who correctly noted that the universal service fund is not facing an urgent or emergency situation which requires the Commission to impose a cap that would violate the Act and the Commission's rules and policies.[6] SouthernLINC Wireless agrees with CTIA that universal service support for

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million of competitive ETC funding in 2006); Comments of the Public Utilities Commission of Ohio at 1-6 (receiving no competitive ETC funding in 2006).

5 *See, e.g.,* Comments of Dobson Cellular Systems, Inc. at 14-15.

6 *See, e.g.,* Comments of Chinook Wireless at 4; Comments of Centennial Communications Corp. at 1-2; Comments of the RCA and the ARC at 5-12; Comments of U.S. Cellular and RCC at 5-12.

wireless carriers has been "explosive and dramatic" only to the extent that growing consumer demand for mobile wireless services has been "explosive and dramatic,"[7] which has also resulted in greater universal service contributions from wireless consumers.[8] SouthernLINC Wireless also agrees that there is no evidence on the record to demonstrate that fund growth will become "unsustainable" over the next 18 months without a cap.[9] At worst, the universal service fund assessment percentage next year may be a few tenths of a percentage point higher than it is this year. Moreover, as other commenting parties observed, any increase would be negligible and offset by the direct benefits that universal service investments deliver to consumers.[10] In any event, if the Commission focuses on fundamental universal service reform rather than temporary caps, the agency could implement reform before the contribution rate faces any material increases.

II. THE PROPOSED CAP WOULD NOT BE CONSISTENT WITH THE ACT OR THE COMMISSION'S CURRENT RULES AND POLICIES

SouthernLINC Wireless agrees that the proposed cap would be fundamentally inconsistent with the universal service provisions of the 1996 Act and the Commission's current rules and policies.[11] As the Rural Cellular Association ("RCA") and the Alliance of Rural

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7 *See* Comments of CTIA at 1-5. *See also* Comments of the RCA and the ARC at 8-12 (explaining that fund growth was anticipated and that the growth is likely due to the fact that competitive ETCs are new entrants who started with a baseline of zero); Comments of Sprint Nextel at 5 (noting that the increase in competitive ETC receipts is anticipated and expected); Comments of U.S. Cellular and RCC at 5-12.

8 *See, e.g.,* Comments of Chinook Wireless at 2-3.

9 Comments of the RCA and the ARC at 5-8; *see also* Comments of U.S. Cellular and RCC at 5-12 (same).

10 Comments of the RCA and the ARC at 13-16; *see also* Comments of U.S. Cellular and RCC at 15-16 (same).

11 *See, e.g.,* Comments of Chinook Wireless at 4; Comments of ComspanUSA at 1-11; Comments of Dobson Cellular Systems, Inc. at 2-10; Comments of ETS Telephone

CMRS Carriers ("ARC") explain, the "Joint Board's recommendations could scarcely be more at odds with the 1996 Act, which promised to preserve ***and advance*** universal service, consistent with the goal of bringing competition to all Americans, not just those in urban areas."[12] The proposed cap would not only interfere with efforts to preserve and advance universal service, but it would also make it less likely that fundamental reform will be implemented promptly because it would eliminate the incentive for ILECs and other parties who would not be harmed by the cap to pursue further reform efforts.[13]

A. The Proposed Cap Would Not Be Competitively Neutral

SouthernLINC Wireless joins other commenting parties in urging the Commission to reject the Joint Board's proposal because it unfairly limits available funding only for wireless ETCs, despite the fact that wireless services are essential to consumers in rural, insular and high-cost areas.[14] As the United States Court of Appeals for the Fifth Circuit has

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Company at 1-5; Comments of the RCA and the ARC at 12-38; Comments of Sprint Nextel at 6-11; Comments of U.S. Cellular and RCC at 16-38.

12 Comments of the RCA and the ARC at 2 (footnote omitted); *see also* Comments of U.S. Cellular and RCC at 2 (same); Comments of Sprint Nextel at 6-11 (same).

13 *See, e.g.,* Comments of Dobson Cellular Systems, Inc. at 7-8; Comments of Surewest Communications at 6-8.

14 *See, e.g.,* Comments of Centennial Communications Corp. at 5-9; Comments of Chinook Wireless at 8; Comments of CompTel at 1-4; Comments of the Corporation Commission of the State of Kansas at 1-5 (explaining that proposed cap is discriminatory); Comments of Corr Wireless Communications at 3-4; Comments of ComspanUSA at 7-9; Comments of Dobson Cellular Systems, Inc. at 2-10; Comments of the Montana Public Service Commission ("MTPSC") at 3-8; Comments of the RCA and the ARC at 26-38; Comments of the South Carolina Office of Regulatory Staff at 2-3; Comments of Sprint Nextel at 6-11; Comments of Surewest Communications at 2-6; Comments of U.S. Cellular and RCC at 24-38; Comments of Bob Andrews, Director E911 Communications Center, Jonesboro Police and Fire Dispatch at 1-2; Wes Ashley, Director, Martinsville-Henry County 911 Center at 1-2; Representative Harold J. Brubaker, 78th District, North Carolina General Assembly at 1-2; Michael E. Cox, Meade County Kansas Sheriff, Meade County Sheriff's Department at 1-2; Terri Ebert, Dispatch Supervisor, Rock County Sheriff's Office at 1-2; John W. Gibson, County Administrator, Washington County, Arkansas County Courthouse at 1-2; Comments of Allen C. Holder, Director,

explained, under a competitively neutral regime, "[regulatory] disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers."[15] The Court's explanation of competitive neutrality and its importance match the Commission's own rules and policies. Indeed, the Commission has explained that "competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[16]

Unfortunately, the proposed cap would create a disparity which provides ILECs with an unfair competitive advantage that skews the marketplace and inhibits competition. Among other things, the proposed cap would create the following unfair disparities:

- ILECs would have incentive to increase their USF support levels, knowing they would enhance their existing competitive position vis-à-vis competitive ETCs.[17]
- ILECs would know the amount of support they are eligible to receive, while competitive ETCs would have no idea how much support they could receive until a later date.[18]
- ILECs would receive cost-based support while the support available to competitive ETCs would reflect only an arbitrary pro-rata portion of available support, which may or may not cover their costs.[19]

Lincoln County 911 Communications at 1-2; Kris Marple, Wilson County Coordinator, Office of Wilson County Coordinator at 1-2; Julie Murie, 9-1-1 Manager, Cottonwood Police Department at 1-2; Comments of Melissa Turner, Supervisor, Grants County 911 at 1-2; Tim Wallace, Director, Washburn County Office of Emergency Management at 1-2; Katie Zeringue, ENP, 911 Administrator, Lafourche Parish at 1-2.

15 *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 614 (5th Cir. 2000) (emphasis added).

16 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801, ¶¶ 47 (1997) ("*First Universal Service Report and Order*").

17 *See* Comments of CTIA at 6.

18 *See, e.g.,* Comments of SouthernLINC Wireless at 14-15.

SouthernLINC Wireless also agrees that neither the Joint Board nor the Commission has identified any justification for violating the competitive neutrality principle in this manner.[20] Specifically, the regulatory distinctions cited by the Joint Board could never justify the abandonment of the competitive neutrality principle, as CTIA and other commenting parties explained.[21]

B. The Proposed Cap Would Not Promote Universal Service

SouthernLINC Wireless agrees with CTIA and other commenting parties that the proposed cap would preserve inefficiencies in the current funding mechanism rather than address the root causes of fund growth.[22] As Embarq explained in its comments, "under the current system there are certain geographic areas that receive too much support, and . . . there are other geographic areas that receive insufficient support."[23] However, imposition of the proposed cap would lock these flaws into place indefinitely, which would be fundamentally inconsistent with the 1996 Act's mandate of a "specific, predictable and sufficient"[24] universal service fund.

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19 *See, e.g.,* Comments of the RCA and the ARC at 36-38; Comments of U.S. Cellular and RCC at 28-31.

20 *See* Comments of Corr Wireless Communications at 4; Comments of CTIA at 12-18.

21 *See* Comments of CTIA at 12-18; Comments of Dobson Cellular Systems, Inc. at 1-16; Comments of the RCA and the ARC at 26 (noting that the Joint Board's recommendation ignores the Commission's own ruling that the "***statute itself, however, imposes obligations on ILECs that are greater than those imposed on other carriers, yet section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs***" citing *First Universal Service Report and Order*, 12 FCC Rcd at 8857-58, ¶144 (emphasis added)); *Id.* at 33-35; Comments of Sprint Nextel at 6-11; Comments of Surewest Communications at 4-6; Comments of U.S. Cellular and RCC at 25-28.

22 *See* Comments of CTIA at 5-7; Comments of ComspanUSA at 9-11; Comments of Dobson Cellular Systems, Inc. at 5-7; Comments of General Communication, Inc. at 3-13; Comments of the Montana Public Service Commission ("MTPSC") at 3-8; Comments of Sprint Nextel at 6-11.

23 Comments of Embarq at 2.

24 47 U.S.C. § 254(b)(5).

The cap would ensure that funds are not sufficient because some areas would, by definition, not be eligible to receive funding no matter how great the need.[25] SouthernLINC Wireless also agrees that rural consumers will be harmed if the proposed cap is imposed, because denying wireless carriers the ability to receive funding would interfere with public safety in rural areas, and the benefits of competition would be unavailable to some of the least served rural, insular and high-cost areas in America unless universal service support is also available to competitive ETCs.[26] Moreover, the cap would make funding unpredictable since competitive ETCs would not know how much funding would be available to them.

III. IF THE COMMISSION NONETHELESS IMPOSES A CAP, THE CAP MUST MINIMIZE COMPETITIVE DISPARITIES AND ENSURE THAT THE GOALS OF THE ACT CAN BE MET

SouthernLINC Wireless agrees with CTIA and other commenting parties that, if the Commission adopts a cap despite the legal and policy problems that imposition of a cap would create, then the agency would have to take specific steps to minimize competitive disparities and ensure that the goals of the act can be met.[27] Specifically, the Commission would have to ensure that:

- the cap applies equally to all recipients of high-cost support;[28]

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25 *See, e.g.,* Comments of the Maine Public Utilities Commission at 1-3; Comments of the Montana Public Service Commission ("MTPSC") at 3-8; Comments of the South Carolina Office of Regulatory Staff at 2-3; Comments of the RCA and the ARC at 36-38; Comments of Sprint Nextel at 6-15; Comments of U.S. Cellular and RCC at 35-38.

26 *See* Comments of the RCA and the ARC at 16-24; *see also* Comments of U.S. Cellular and RCC at 16-23 (same).

27 *See, e.g.,* Comments of CTIA at 26-30.

28 *See, e.g.,* Comments of Chinook Wireless at 6-7; Comments of Corr Wireless Communications at 2-3; Comments of CTIA at 27-28; Comments of Dobson Cellular Systems, Inc. at 12-13; Comments of the New Jersey Board of Public Utilities at 3-5; Comments of the New York State Department of Public Service ("NYDPS") at 1-3; Comments of TracFone Wireless, Inc. at 1-5. *See also* Comments of NASUCA at 11-12 (supporting cap applied to entire high-cost fund as an alternative to only applying to competitive ETCs).

- funding is capped at the state level;[29]
- funding is distributed on a pro-rata basis according to line counts and/or actual service costs;[30]
- the cap is based on the most recent full quarter funding before the cap's effective date;[31]
- the cap expires automatically no later than one year after it becomes effective;[32]
- high-cost support is fully portable;[33]
- competitive ETCs are permitted to file revised service improvement plans.[34]

Although SouthernLINC Wireless believes that no cap is necessary, the modifications outlined above are the minimum necessary to reduce the harm that would result from the imposition of any cap.

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29 *See, e.g.,* Comments of Corr Wireless Communications at 7; Comments of CTIA at 27-28; Comments of Dobson Cellular Systems, Inc. at 10-12.

30 *See, e.g.,* Comments of CTIA at 27-28); Comments of Dobson Cellular Systems, Inc. at 10-12. *See also* Comments of the Rural Independent Competitive Alliance ("RICA") at 3-5 (recommending that competitive ETCs that demonstrate their costs should not be limited by the cap); Comments of Unicom, Inc. at 1-3 (recommending that competitive ETCs that demonstrate their costs should not be limited by the cap.

31 *See, e.g.,* Comments of Corr Wireless Communications at 6-7; Comments of CTIA at 28-29. *See also* Comments of the Nebraska Public Service Commission ("NPSC") at 1-7 (urging use of 2007 annualized data to calculate the capped support); Comments of the Rural Independent Competitive Alliance ("RICA") at 3 (same); Comments of Chinook Wireless at 9 (same); Comments of Dobson Cellular Systems, Inc. at 14-15 (urging use of four full quarters prior to effective date of any order adopting a cap).

32 *See, e.g.,* Comments of Chinook Wireless at 8; Comments of the Idaho Public Utilities Commission ("IPUC") at 1-2; Comments of the Maine Public Utilities Commission at 1-3. *See also* Comments of the Rural Independent Competitive Alliance ("RICA") at 2-3 (recommending 18 month sunset).

33 *See, e.g.,* Comments of the RCA and the ARC at 32-33 (also noting that a number of ILECs are significantly over earning – some with rates of return approaching 30%); Comments of U.S. Cellular and RCC at 32-33 (same).

34 *See, e.g.,* Comments of CTIA at 29-30.

IV. CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to focus on permanent universal service reform rather than unreasonably discriminatory interim measures designed to cap growth of the fund until permanent reform can be completed at some unspecified future date. To the extent the Commission nonetheless decides to impose an "interim, emergency cap," the agency would have to ensure that (1) the cap applies equally to all recipients of high-cost support; (2) funding is capped at the state level; (3) funding is distributed on a pro-rata basis according to line counts and/or actual service costs; (4) the cap is based upon the most recent full quarter funding before the cap's effective date; (5) the cap expires automatically no later than one year after it becomes effective; (6) high-cost support is fully portable; and (7) ETCs are permitted to file revised service improvement plans. Finally, SouthernLINC Wireless urges the FCC promptly to process all pending ETC applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, J. Isaac Himowitz, hereby certify that on this 21st day of June, 2007, a copy of the foregoing Reply Comments has been served via electronic mail to the following:

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