

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF VERIZON AND VERIZON WIRELESS

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I. INTRODUCTION AND SUMMARY.

This proceeding presents a critical opportunity for the Commission to transform and modernize how the federal high cost fund distributes support. Under the current system, many providers receive support at levels far in excess of what is necessary to ensure affordable universal service to consumers. The current system also fails to recognize the competitive alternatives that are available to consumers everywhere and does not take into account the dramatic changes within the communications industry. Regardless of how well-intentioned, the current high cost fund actually undermines the effectiveness and intent of universal service by burdening consumers with large surcharges, inefficiently distributing support, and failing to create the proper incentives for companies to serve rural America.

Today's high cost fund is long overdue for a makeover. The Commission should act without delay to overhaul this vital program by adopting a more efficient, market-oriented approach that ensures high cost subsidies are limited to geographic areas where consumers would be denied service without support and that subsidies in areas that do need support are

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively "Verizon").

limited to no more than is required. The first step should be to adopt immediately an interim cap on high cost support to competitive ETCs, as the Federal-State Joint Board recommended almost a year ago.² This cap, while only temporary, is critical to the long-term stability of the fund. It will stem the explosive growth of the fund while the Commission moves toward comprehensive universal service reform. And it will benefit consumers by reducing pressures on the fund that have led to double-digit contribution factors. Such Commission action will protect consumers during the transition to a more efficient, market-oriented universal service system. An interim cap on competitive ETC support enjoys broad-based support across industry and government because it is an appropriate and reasonable response to a pressing problem.

Once the interim cap is in place, the Commission should focus on long-term reform of the high cost fund, including modernizing support mechanisms for incumbent local exchange carriers (“LECs”). A combination of proposals in the Joint Board’s *Recommended Decision*, the *Reverse Auctions NPRM*, and the *Identical Support Rule NPRM* provides the perfect opportunity to get the system right.³

First, the Commission should cap the overall high cost fund, as recommended by the Joint Board. Virtually all government programs operate on a budget, and so should the high cost

² *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, 22 FCC Rcd 8998 (2007) (“*Interim Cap Recommended Decision*”).

³ *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08-22, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Jan. 29, 2008); *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 07J-4, WC Docket No. 05-337, CC Docket No. 96-45 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (“*Recommended Decision*”); *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08-4, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Jan. 29, 2008) (“*Identical Support Rule NPRM*”); *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08-5, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Jan. 29, 2008) (“*Reverse Auctions NPRM*”).

fund. Indeed, other portions of the federal universal service fund (“USF”) are capped, including the schools and libraries program, the rural health care program, and certain high cost support to incumbent LECs. The Commission capped these programs for precisely the same reason it should cap the high cost fund – to ensure that support is specific and predictable and to avoid the excessive growth that harms consumers.

Second, the Commission should transition at least some wireless high cost support to one-time wireless construction grants intended to ensure the availability of wireless service in areas that have no wireless service today. These one-time construction grants should be awarded through competitive bidding and should be funded either by reducing ongoing ETC support in areas across the country that have not had a reverse auction for ongoing wireless support (consistent with the *Verizon Reform Plan*⁴) or from the savings realized from the ongoing support auctions. Under either scenario the total amount of support would not increase as a result of the program. Alternatively or in addition, funds from sources other than the federal USF program could be used to pay for wireless construction grants. While these grants would be one-time awards and should not necessarily fund the entire cost of deploying wireless network infrastructure, the grants could help defray the cost of constructing facilities in certain areas that may otherwise be cost prohibitive for a wireless carrier to reach.

At the same time, the Commission should adopt the *Verizon Reform Plan* that emphasizes use of reverse auctions for determining and distributing ongoing wireless and other competitive

⁴ See Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45 (filed May 31, 2007), Attachment - Modernizing Universal Service: Verizon’s Plan for Comprehensive Reform (“*Verizon Reform Plan*”); Letter from Kathleen Grillo, Vice President – Federal Regulatory, Verizon, to Commissioner Tate and Commissioner Baum, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45 (Feb. 9, 2007).

ETC support. Distributing ongoing high cost support to wireless ETCs through reverse auctions under the *Verizon Reform Plan* also would more accurately target support by allowing the market – rather than the government – to determine how much support is sufficient to provide universal service in a given area. The combined result of these two options – competitive bidding for one-time grants and reverse auctions for ongoing wireless support – is a win for consumers. It produces a more efficient high cost fund, and a more effective universal service program that requires only that amount of funding actually needed to meet the program’s goals.

Third, rather than creating a new Provider of Last Resort (“POLR”) fund, the Commission should cap high cost support to incumbent LECs at 2007 levels, as proposed by the Joint Board, as well as take concrete steps to reduce further existing subsidy levels. Specifically, the Commission should: (i) consolidate all study areas commonly owned within a state; (ii) require that all carriers serving rural areas with 100,000 lines or more within a state receive universal service support under the non-rural support mechanism; and (iii) freeze per-line support for all carriers at current levels. These steps will relieve financial burdens on the high cost fund while the Commission moves toward reverse auctions. Conversely, the Commission should not add mobility to the list of supported services, nor should the Commission use USF subsidies to support broadband services. These proposals would only further strain the fund.

Finally, the Commission should eliminate the identical support rule, but it is imperative that the Commission eliminate that rule as part of the transition to the reforms discussed above. Merely eliminating the identical support rule outright and replacing it with complex regulations designed to support competitive ETCs based on cost data – without other reforms – is a misguided “quick-fix” that ignores the underlying problems plaguing the program and adds a new layer of complexity to an already complicated system. Instead, the Commission should

promptly eliminate support to competitive ETCs from the funds that were intended to replace access charges. Wireless ETCs were never entitled to tariffed access charges, and competitive ETCs – both wireless and wireline – have not historically relied upon access charges as a source of universal service support. It makes perfect sense then, as the Commission tentatively concluded, to eliminate these subsidies immediately.

II. THE JOINT BOARD’S *RECOMMENDED DECISION* CONTAINS IMPORTANT PROPOSALS THAT WOULD MODERNIZE AND STABILIZE THE HIGH COST FUND.

The Joint Board’s *Recommended Decision* demonstrates leadership, and Verizon commends the Joint Board for its efforts to tackle the difficult problems confronting the high cost fund. Many of the Joint Board’s recommendations could modernize and stabilize the fund, and the *Recommended Decision* moves the debate in the right direction.

A. The Commission Should Adopt The Joint Board’s Recommendation To Cap The Overall High Cost Fund.

The Joint Board’s recommendation to cap the overall high cost fund is the right approach. *Recommended Decision* ¶ 26. As the Joint Board correctly notes, “unrestrained growth in the universal service fund, regardless of the source, could be, and would likely be catastrophic for universal service,” as it would threaten the affordability of telecommunications services and erode public support for the universal service program. *Id.* ¶¶ 24-25. An overall cap on the high cost fund is consistent with the notion that government programs should operate on a budget, and the high cost fund should be no different. *Id.* ¶ 26 (noting that “[m]any areas of government enterprise operate within a budget, and we think that high-cost funding can do likewise”).

There is nothing new or novel about capping universal service programs; government has long used caps as a means of controlling subsidy levels and exercising responsible governmental control over public programs. For example, funding for both the schools and libraries program

and the rural health care program was capped at the start of the programs.⁵ Similarly, the Commission capped high cost loop support to incumbent LECs and adopted a targeted cap on Interstate Access Support (“IAS”).⁶ Likewise, the amount of safety valve support available to an individual rural carrier is capped, as is the total amount of safety valve funding.⁷

These are important programs, but, recognizing that consumers ultimately pay for the USF, the Commission nonetheless adopted these caps for precisely the same reason that the Joint

⁵ 47 C.F.R. § 54.507(a); *see also Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, ¶ 529 (1997) (adopting an annual cap on universal service support for schools and libraries), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, D.A. No. 97-157 (June 4, 1997), *aff’d in part, rev’d in part, remanded in part sub nom Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (“*First Report and Order*”); 47 C.F.R. § 54.623; *First Report and Order*, ¶¶ 704-05 (adopting a funding cap on support distributed to recipients of rural health care program funds).

⁶ *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, ¶ 31-32 (2001) (“*MAG Report and Order*”). The Commission created the IAS in its 2001 *CALLS Order* as an explicit means to offset the loss of implicit support through interstate access charges. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000), *aff’d in part, rev’d in part, and remanded in part, Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001) (“*CALLS Order*”); *Access Charge Reform, Price Cap Performance Review for LECs, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Order on Remand, 18 FCC Rcd 14976, ¶ 14 (2003).

⁷ *See* 47 C.F.R. § 54.305(e); *see also Federal-State Joint Board on Universal Service, Valor Telecommunications of Texas, L.P. Request for Waiver of §54.305 of the Commission’s Rules*, 20 FCC Rcd 782, ¶ 4 (2005) (citing *MAG Report and Order* ¶ 99). Safety valve support is intended to encourage investment by rural carriers that acquire exchanges in high cost areas and subsequently “make post-transaction investments to enhance network infrastructure.” *Federal-State Joint Board on Universal Service, CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC, Petition for Waiver of Section 36.612(a)(3) of the Commission’s Rules*, Order, 21 FCC Rcd 14633, ¶ 3 (2006).

Board now recommends placing an overall cap on high cost support – to manage the program effectively by controlling the growth in the fund.⁸ As the Commission noted in capping incumbent LECs’ high cost loop support, a cap “balances the various goals enunciated in section 254 of the Act,” including “keeping the fund specific, predictable, and competitively neutral,” achieving “service and rate comparability,” “ensur[ing] that the fund is within the range of sufficiency,” and “minimiz[ing] burdens on carriers to contribute to the universal service mechanisms.” *MAG Report and Order* ¶ 37. The Commission’s IAS target “provides a specific and predictable amount of explicit support” consistent with the goals of section 254.⁹ Similarly, the cap on safety valve support is meant to “prevent uncontrollable growth” and to “help minimize the burden on contributors to the universal service support mechanisms.” *MAG Report and Order* ¶ 108.

In short, there are many caps that provide stability and predictability to the universal service program. The Joint Board’s recommendation to cap overall high cost funding is consistent with today’s current practice and would ensure that the high cost fund remains stable and predictable. Furthermore, under the Act, the Commission has authority to cap the fund. The Commission’s “broad discretion to provide sufficient universal service funding includes the

⁸ *MAG Report and Order* ¶ 32 (finding that “[p]rior to the adoption of the indexed cap, the high cost loop fund had grown by approximately 60 percent in eight years, with annual rates of growth ranging from one percent to more than 19 percent”). The Commission retained the cap on high cost loop support following the 1996 Act, reasoning “that the indexed cap would prevent excessive growth in the existing high-cost loop fund during the period preceding the implementation of a forward-looking support mechanism.” *Id.* ¶ 33.

⁹ *CALLS Order* ¶ 201; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4163-64 (2004) (“*MAG Further Notice*”).

decision to impose cost controls to avoid excessive expenditures that will detract from universal service.” *Alenco Commc’ns, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000).

B. The Commission Should Distribute Support Through One-Time Wireless Construction Grants To Fund Wireless Build-Out In Unserved Areas And Use Reverse Auctions For Ongoing Wireless Support.

The Joint Board correctly observed that it is not “in the public interest to use federal [high cost] support to subsidize competition and build duplicative networks.” *Recommended Decision* ¶ 35. As a recent study confirms, “a substantial proportion” of support for competitive ETCs subsidizes services to “customers who, by definition, would have received (and, indeed, already were receiving) the same services from the same carriers, even without the subsidy.”¹⁰

This problem is most acute with wireless ETCs. For example, according to one economic study, 98 percent of the customers who have wireless coverage available from a wireless ETC also have service available from one or more unsubsidized wireless carriers. This means that the one billion dollars a year that the Commission is spending on wireless subsidies results in very little additional wireless coverage for consumers in high cost areas.¹¹ For example, Alltel received more than \$98 million in high cost support in 2006 to serve 187 study areas that were also served by other wireless carriers that did not receive subsidies, and U.S. Cellular received nearly \$61 million to serve 234 study areas in 2006, 149 of which were served by other wireless carriers receiving little or no high cost support. Vantzelfde at 16-22. Another economic study confirms that subsidies provided to wireless ETCs “do not appear to result in significantly

¹⁰ Kevin W. Caves & Jeffrey A. Eisenach, *The Effects of Providing Universal Service Subsidies to Wireless Carriers*, Criterion Economics, LLC, 27-28 (June 13, 2007) (“Caves and Eisenach”).

¹¹ Nicholas Vantzelfde, *The Availability of Unsubscribed Wireless and Wireline Competition in Areas Receiving Universal Service Funds*, Criterion Economics, LLC, 15 (June 13, 2007) (“Vantzelfde”).

greater wireless coverage or choice.” Caves and Eisenach at 42. Further, in many of these areas, subsidies are being provided to more than one wireless ETC and “[o]f the 103.2 million people with coverage from wireless CETCs, over 52 percent have coverage from more than one subsidized CETC.” Vantzelfde at 14.

The Commission can solve these fundamental problems with a two-part approach. First, the Commission should transition wireless support to a new regime, as the Joint Board suggests. *Recommended Decision* ¶¶ 16-18. Consistent with the Joint Board’s general approach, the Commission should transition some high cost support to wireless ETCs to a targeted, project-based program awarding grants to extend wireless infrastructure into areas where wireless service is not available today. The Commission should use competitive bidding to award a single wireless construction grant in certain unserved areas. The second piece of the wireless solution, discussed in more detail below in the context of the *Reverse Auctions NPRM*, is to adopt the *Verizon Reform Plan* that includes reverse auctions for ongoing wireless and other competitive ETC support. Together these two reforms – competitive bidding for wireless construction grants and reverse auctions for ongoing wireless support – would result in a more efficient, market-oriented high cost fund in line with the Commission’s universal service objectives and consumers’ ability to pay for the fund.

1. The Commission should award wireless construction grants using competitive bidding.

The Joint Board’s proposal to award universal service subsidies “on a project-by-project basis” to a single wireless service provider “for construction of new facilities in unserved areas” is sound. *Recommended Decision* ¶¶ 16-18. As an initial matter, it is important to note that there are very few areas of the country that are truly “unserved.” According to Commission data, approximately 99.8 percent of the total U.S. population has one or more different wireless

operators offering mobile telephone service in the census blocks in which they live.¹² More than 95 percent of the U.S. population lives in areas with at least three wireless operators, and more than half of the population lives in areas with at least five competing wireless operators. *Twelfth Report* ¶ 2. Even in rural areas, approximately 99.3 percent of the U.S. population has one or more different operators offering mobile telephone service in the rural counties in which they live. *Id.*

Nevertheless, the fact remains that in certain limited areas the cost of providing wireless service is high and could be prohibitive. Providers should be encouraged to deploy mobile services in those areas, and the Commission can help achieve that goal by transitioning to wireless grants for the construction of new facilities in areas not served by wireless carriers today. With that goal in mind, the Commission should not seek to fully fund infrastructure build-out but should provide one-time grants that are sufficient to make building infrastructure in these unserved areas an attractive business proposition. Under this approach, unserved areas will receive wireless service without over-subsidizing wireless build-out, which will ensure that universal service funding is available for other important programs.

The Commission should begin this process by establishing each year a budget for project-specific wireless infrastructure grants. That budget would be the total amount the Commission would be willing to devote to supporting these one-time infrastructure projects that year.

¹² *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Twelfth Report, WT Docket No. 07-71, FCC 08-28, at 5 (rel. Feb. 4, 2008) (“*Twelfth Report*”). Prior to issuance of the *Twelfth Report*, the Commission analyzed wireless penetration at the county level. The *Twelfth Report*, by contrast, provides a “more granular and accurate analysis of mobile telephone service deployment and competition” by basing estimates on census blocks rather than counties. *Id.* ¶ 2. According to the Commission, “census blocks are much smaller than counties,” as “there are 8 million census blocks versus 3,200 counties.” *Id.*

The Commission and interested parties should then work to identify unserved areas that require these one-time grants. While there is no perfect way to identify unserved areas, the Commission can establish certain reasonable presumptions on the basis of available data. As described in the *Twelfth Report*, the Commission now has access to data from American Roamer that provides “detailed boundaries of the network coverage areas of every operational mobile telephone carrier in the United States.” *Id.* The Commission should define an “unserved area” as a contiguous group of census blocks that: (1) lies entirely within a state; (2) has no wireless voice service anywhere in the area;¹³ (3) has a population density above a threshold established by the Commission; and (4) includes a total population above a threshold level established by the Commission.

Using the American Roamer data, qualified bidders could identify and nominate areas for bidding. Each state commission would also have the opportunity to submit a limited number of nominations. The Commission could also *sua sponte* nominate areas that meet these criteria. The Commission could then provide an opportunity for public comment on these nominations. Based on this record, the Commission should issue a final decision as to which construction projects are eligible for bidding in that year’s process.

For each project, the Commission should establish a reserve amount which would serve as an upper limit for the construction grant that would be awarded in that area. Initially, the reserve could be established by an objective factor such as the cost per square mile to serve the area, based on the number of cellular towers required to fully serve the area. Once some expertise has been gained with the competitive bidding process, the Commission could use the winning bids in the initial auctions to establish the reserve amount.

¹³ This analysis should not take into account whether *wireline* voice service is available in the area.

If the sum of the project specific reserves established for the nominated unserved areas is less than the budget for the grants, the Commission would fund all of the projects. However, if the total amount of project-specific reserves *exceeds* the total reserve, the Commission would prioritize to decide which of the nominated areas to fund in that fiscal year. In order to determine priority, the Commission could rank those areas that have been nominated in a given year based on the reserve amount per population in the area, with those areas having the highest reserve amount per population ranked highest on the priority list. The Commission would then go down the priority list summing the reserve amounts until the sum of those reserves was equal to the budget. The projects within this subset would then be put out for competitive bidding.¹⁴ The Commission would solicit competitive bids for each nominated project from qualified bidders. Each bid would be the flat amount of subsidy that the bidder would require, and the Commission would select the lowest bid. The winning bidder would be required to build wireless infrastructure that covers all persons able to receive wireline service in an area today, but would not be required to provide blanket coverage in unpopulated or sparsely populated areas.

Funds to pay for the one-time construction grants necessary to bring wireless service to unserved areas could come from sources other than the federal USF program. In the event universal service funds are used to pay for wireless construction grants, the Commission should ensure that it does not exceed the overall cap on the high cost fund to pay for the wireless construction grants. To accomplish this, the Commission should fund the grants from two

¹⁴ In many of the project areas on the list, the winning bid will be less than the reserve. In other areas, no bid may meet the reserve. For both these reasons, some amount may remain in the budget once the Commission has completed auctions for all of the projects in the initial subset. In that case, the Commission could continue working its way down the list of prioritized projects until the sum of the grants awarded reaches the budgeted amount for the year.

sources – (1) from savings realized from the reverse auctions for ongoing support as discussed below; and (2) out of the existing ongoing support for wireless carriers in study areas across the country where there has not been a reverse auction for ongoing support. In either scenario, the one-time construction grants will be funded by reductions in ongoing support so that the total amount of support does not increase as a result of the program.¹⁵

With respect to the second source of one-time, construction grant funding, it is probable that as reverse auctions move forward, the high cost fund will realize significant savings because funding amounts will be lower and fewer carriers will receive funding. As these savings are achieved, the Commission may have sufficient funds to (1) set the total reserve amount for the wireless construction grants using a portion of the savings realized from the reverse auction process for ongoing wireless support; and (2) also use a portion of those savings to provide ongoing support in additional deserving areas as proposed in the *Verizon Reform Plan*.

However, if the savings realized from reverse auctions in a given year are less than the amount the Commission has budgeted for project-specific grants that year, then it will still be necessary to ensure that the total amount of support remains within the overall cap on the fund. To accomplish this, the Commission should reduce, on a permanent, pro-rata basis, the amount of ongoing wireless ETC support provided in areas where a reverse auction for ongoing support has not been held and should use the money freed by that reduction to fund the wireless construction grants. The permanent, pro-rata reduction in ongoing wireless support in areas where no auction has occurred will also provide incentives for the Commission and carriers to nominate study areas for reverse auction for ongoing wireless support. Because the subsidy

¹⁵ This is consistent with the *Recommended Decision*, which clearly contemplates that any new infrastructure grants would be funded by reductions in ongoing support for wireless carriers. *Recommended Decision* ¶ 28.

amount for auctioned areas will be equivalent to the winning bid in the reverse auction and will not be affected by the pro-rata reduction, carriers in these areas will be more likely to nominate the area for auction in order to lock in a more permanent ongoing support amount.

The introduction of project-based wireless support and the use of reverse auctions for ongoing wireless subsidies complement one another. The project-based grants will allow the Commission to award support that is directly targeted at extending wireless service into areas where it is not available today. However, without a new approach to awarding ongoing wireless subsidies, no further improvement will be made in the efficiency of those subsidies as this process unfolds. For example, in many areas the Commission would continue to fund multiple wireless ETCs. The reverse auctions for ongoing wireless support proposed by Verizon will allow the Commission to improve the efficiency of the existing wireless support. By conducting the auctions, the Commission could eliminate duplicative wireless support, choose the wireless ETC best suited to be the wireless provider of universal service in the area, and determine the amount of ongoing wireless subsidy that is just sufficient. The more the Commission can do with reverse auctions for ongoing wireless support to promote greater efficiency in the system, the more resources it will free up to fund other objectives, including the new project-specific wireless grants, and the less it will have to rely on simply squeezing existing support amounts on a pro-rata basis.

The Commission rather than the states should determine the unserved areas eligible for the wireless construction grants. Likewise, the Commission, not the states, should award the grants. *See Recommended Decision* ¶¶ 44-48. The Commission has available data to identify unserved areas and can ensure a consistent approach to determining which areas across the nation lack wireless coverage. In addition, the Commission does not have an incentive to

identify areas as “unserved” in order to direct additional funding to particular areas, as some states may. Furthermore, the Commission must oversee both the bidding for wireless construction grants and reverse auctions for ongoing wireless support at the federal level in order for both processes to function smoothly. State supervision would also force the Commission to make all of the difficult choices at the outset with respect to allocation of grant funding between the states, without the benefit of experience from managing the process over time. Having 50 different states oversee a competitive bidding or reverse auction process would undermine the benefits of these reforms and add unnecessary cost and expense to the system.

2. One-time wireless construction grants should be limited to “unserved areas,” not “underserved areas.”

The Commission should limit wireless construction grants to areas that are truly “unserved” and not, as the Joint Board suggests, extend this support to “underserved” areas. *Id.* ¶ 16. The term “underserved” is extremely hard to define and may mean many things to many different constituencies. Indeed, the Joint Board did not attempt to define an “underserved” area in the *Recommended Decision*, underscoring the futility of determining how much wireless coverage (or how many wireless carriers) is “enough” to qualify an area as “served” rather than “underserved.”

There is no clear test for what constitutes an “underserved” area. The one suggestion offered by the Joint Board – “the number of residents of each state who cannot receive a *strong and reliable wireless signal at their residence*” – illustrates the challenge. *Id.* ¶ 17 (emphasis added). What constitutes a “strong” wireless signal? How would the strength or “reliability” of a wireless signal be determined and by whom? Even assuming that strength and reliability of a wireless signal could be determined with precision (which is doubtful), signal strength and reliability may not correlate to the adequacy of wireless service in a particular market. For

example, a customer may experience a weak or unreliable signal because the customer elected to purchase a less robust mobile technology or a lower quality handheld device, even though better options were available. In some cases, the Commission would have to factor individual customer purchasing decisions into identifying so-called “underserved” areas, which would be difficult, if not impossible.

Furthermore, as the Joint Board acknowledges, “it should not be the goal of universal service funding to upgrade the multitude of existing wireless networks in rural areas throughout the country....” *Id.* ¶ 16. Funding duplicative networks through universal service support has strained the current system to the breaking point. Continuing to use universal service subsidies for this misguided purpose would exacerbate the problem.¹⁶ By definition, if an area is “underserved” (however that term is defined), some carrier already provides service in that area, and it is not necessary to use high cost support to ensure that consumers have universal service.

3. Wireless construction grants are consistent with the Act.

One-time wireless construction grants are fully consistent with the Act, which generally requires that (1) providers eligible for USF subsidies be designated as an ETC; (2) funded ETCs offer all supported services and advertise the availability of those services; and (3) state regulators play a role in defining USF service areas. 47 U.S.C. §§ 214(e), 254.

As with Verizon’s proposal for reverse auctions for ongoing support, ETC status should be a condition for receipt of a wireless construction grant. 47 U.S.C. §§ 214(e)(1), 254(e). ETC designation could be part of the qualification to bid for a construction grant or a condition to

¹⁶ Continuing to use universal service support to subsidize competition and construct duplicative networks also fails to accomplish the Joint Board’s goal of reducing high cost support over time, as competition and infrastructure deployments increase. *Recommended Decision* ¶¶ 3, 26. Consumers should have some reasonable expectation that the cost of supporting a universal service system will decrease over time, particularly as they take advantage of new communications technologies.

receipt of funds after winning the bid. The wireless provider that wins the bid for a build-out grant in an unserved area would also be required to make all supported services available to customers in the area and to advertise those services, as wireless ETCs do today under the current system. 47 U.S.C. § 214(e)(1). Moreover, there is no requirement in either section 214(e) or section 254 that the Commission award to ETCs ongoing high cost subsidies versus one-time grants. Section 254(e) requires only that support be used “for the provision, maintenance, and upgrading of facilities and services *for which the support is intended*” (emphasis added). In the case of a grant, the support will be “intended” to build communications infrastructure, which is a permissible universal service objective under both section 254(e) and the broader universal service policy principles established by Congress in section 254(b).

As for the definition of unserved areas eligible for a construction grant, section 214(e)(5) contemplates that state regulators will have a role in establishing USF “service areas.” For rural areas, these USF service areas are defined as the incumbent LEC study areas unless modified by the states and the Commission, 47 U.S.C. § 214(e)(5), which happens frequently under today’s system in order to tailor a USF service area that essentially matches the area that a new ETC desires to serve. State involvement with this process could and should be maintained with new wireless construction grants. After the Commission posts a list of nominated unserved areas and solicits comments, state regulators should certify that these areas truly are unserved such that federal high cost funding in the form of one-time grants should be released for build-out into these areas. In addition to satisfying section 214(e)(5) requirements, this state certification process will provide an additional level of oversight to be certain that an area truly is unserved.

III. REVERSE AUCTIONS ARE THE BEST WAY TO TARGET ONGOING HIGH COST FUNDING, AND VERIZON’S PROPOSAL IS THE BEST BLUEPRINT FOR CONDUCTING REVERSE AUCTIONS.

The Commission should adopt its tentative conclusion to “develop an auction mechanism to determine high-cost universal service support” because of the “potential advantages” that reverse auctions offer over the current high cost system. *Reverse Auctions NPRM* ¶ 11. As the Commission correctly notes, the benefits of a well-designed reverse auction for ongoing support include: (1) allowing “direct market signals” to determine support rather than “cost estimates made from either historical cost accounting data or forward-looking cost models ...”; (2) having the winning bid approximate “the minimum level of subsidy required to achieve the desired universal service goals”; (3) creating “incentives for ETCs to provide supported services at the minimum possible cost”; and (4) providing “a fair and efficient means of eliminating the subsidization of multiple ETCs in a given region.” *Id.* In addition, as discussed above, reverse auctions for ongoing wireless support under the *Verizon Reform Plan* could work in concert with the wireless construction grants recommended by the Joint Board.

To further these goals, attached as Appendix 1 to these comments is a comprehensive reverse auction proposal that builds on the original *Verizon Reform Plan* and provides specific answers to the operational questions the Commission raises in the *Reverse Auctions NPRM*.

A. Verizon’s Proposal Provides The Commission With A Detailed Roadmap For Phasing In Reverse Auctions

Under Verizon’s proposal, the Commission would gradually introduce reverse auctions in areas where auctions would provide the greatest benefit. Overall, the Commission should ensure that high cost subsidies are limited to geographic areas where consumers would be denied service without universal service support and also ensure that subsidies in areas that do need support are limited to no more than is required. In working toward this goal under Verizon’s

proposal the Commission would first introduce reverse auctions for ongoing wireless support in areas with multiple wireless ETCs. Approximately 481 of the country's 1,448 study areas have multiple wireless ETCs. See *Verizon Reform Plan* at 4. Employing the auction framework proposed by Verizon, the Commission could nominate for auction any or all of those study areas with at least two wireless ETCs, which ensures that there are at least two qualified bidders in each auctioned area. The auction process would select the most efficient wireless carrier and determine the amount that is sufficient for that carrier to provide universal service. *Id.* at 5. At the same time, the use of reverse auctions first for wireless support would: (1) provide invaluable experience upon which the Commission can rely in extending reverse auctions more broadly; and (2) obviate the need to determine universal service support based on "actual cost" as set forth in the *Identical Support NPRM*, which would be an overly regulatory and counterproductive approach, as discussed in greater detail below. The Commission noted that "[a]uctions have potential merit in that they allow direct market signals to be used as a supplement to, and possible replacement of, cost estimates made from either historical cost accounting data or forward-looking cost models, as is done under the current high-cost support programs." *Reverse Auctions NPRM* ¶ 11. Thus, the wireless auctions will inform the Commission's later auctions as well as universal service policy generally.

After the wireless ETC auctions, the Commission would then undertake auctions in areas with multiple wireline ETCs, using a similar process. *Verizon Reform Plan* at 5. Based on the results of the initial auctions, the Commission would have the flexibility to consider other methods for extending market-based efficiencies such as using a statistical analysis based on auction results to adjust the support for an incumbent LEC in areas that lack multiple wireless or wireline ETCs. Verizon's proposal would allow the Commission to ascertain where universal

services subsidies are actually required and to establish the minimum amount of subsidy that is “sufficient” “to preserve and advance universal service” consistent with section 254.

The Commission rather than the states should administer these auctions. Although states would play an important role in the auction process under Verizon’s proposal,¹⁷ it is essential for auctions to have uniform administration at the federal level in order to function effectively. For example, states in which multiple ETCs currently receive substantial ongoing subsidies may have little incentive to nominate study areas for auction, since it would mean the loss of universal service support.

Furthermore, one of the principal benefits of Verizon’s proposal is that reverse auctions would be phased in gradually so that the Commission can benefit from its experience with the initial universal service auctions. If the auction process were administrated at the state level, the Commission would be deprived of the first-hand auction experience necessary to make this assessment, because state-level agencies, not the Commission, would oversee and conduct the auctions. State administration of the reverse auction process would also be a costly and administratively burdensome exercise. There are simply no efficiencies to be gained from having 50 different states administer the auctions, whether in establishing the reserve prices or

¹⁷ See, e.g., *Verizon Reform Plan* at 9 (recommending that the Commission develop a standard request for quote “through collaboration with the state commissions”), at 16 (proposing that the Commission develop a model contract “in collaboration with the state commissions, which would detail the supported services and other requirements to which the winning bidder would be subject”), at 20 (suggesting that the Commission consult with state commissions at the time an auction mechanism is adopted to determine “whether it is appropriate to relieve some or all of incumbent LEC’s [carrier of last resort] obligations in the event it loses high cost support”).

monitoring the disbursement of support. Adding an additional layer of government oversight makes little fiscal or practical sense.¹⁸

Verizon’s proposal is the only proposal before the Commission that would stabilize the high cost fund permanently and rationalize universal service support. Under Verizon’s proposal, the needs of rural consumers for high-quality services – including wireline, wireless, and broadband – would be met. Most important, the *Verizon Reform Plan* would ensure that telecommunications services remain affordable and that consumers are treated fairly when they pick up the tab for universal service support.

B. The Commission Should Adopt Single Winner Auctions.

The Commission is right to tentatively conclude that reverse auctions “should award high-cost support to a single winner,” rather than to multiple winners as proposed by CTIA. *Reverse Auctions NPRM* ¶ 13. As the Commission correctly observes, a single winner approach would: (1) end “the uneconomic practice” of subsidizing multiple competitors; and (2) result in less overall universal service support, which would reduce demands on the high cost fund. *Id.* ¶ 14.

While Verizon and CTIA share many of the same goals and both recognize that reverse auctions are the best method to allocate high cost funding, CTIA’s proposal for a multiple winner or “winner-take-more” auction would not serve the broader goals of universal service reform.¹⁹ Specifically, as the Commission correctly notes, subsidies under a multiple winner approach –

¹⁸ Although the Joint Board asserts that “Congress and the courts have in several ways recognized the importance of states in maintaining universal service,” *Recommended Decision* ¶ 45, neither the Congress nor the courts have recognized any state role in disbursing federal subsidies. On the contrary, the authority to disburse federal universal service support is reserved to the Commission. *See* 47 U.S.C. § 254(c)(1).

¹⁹ Reply Comments of CTIA , WC Docket No. 05-337, at 10 (filed July 2, 2007).

whether calculated based on a fixed subsidy per geographic area or on the number of subscribers served – would result in more overall support than a single-winner auction and therefore “would violate the universal service principle of sufficiency and would be an unacceptable auction format.” *Reverse Auctions NPRM* ¶ 14. Verizon’s reverse auction proposal, on the other hand, will lower the overall demand on the high cost fund to more appropriate levels and further the Commission’s goals in this proceeding.

IV. OTHER PROPOSALS WOULD NOT RESULT IN MEANINGFUL REFORM AND ARE NOT WORKABLE.

A. The Commission Should Immediately Reform Existing High Cost Programs Rather Than Create A New “Provider Of Last Resort” Fund

The Joint Board recommends that the Commission maintain existing support mechanisms for rural LECs and create a Provider of Last Resort (“POLR”) fund that would consolidate and distribute support under these existing mechanisms. *Recommended Decision* ¶¶ 39-43. The Commission should decline to adopt this recommendation. Transitioning from the current system to a new, centralized POLR fund likely would require significant resources and involve substantial costs. The Commission would need to invest the time and effort to create new rules that would govern this new fund and determine how to monitor it. It is unclear from the Joint Board’s recommendation what such effort would produce and whether or how such a new fund would improve the current system, particularly when a new POLR fund would not ensure that subsidies are targeted to the right areas or that subsidy levels are appropriate.

Furthermore, the creation of a new POLR fund in addition to establishing a separate broadband fund, as discussed below, would only exacerbate the likelihood of duplicative support. While the Joint Board correctly recognized this potential problem, *Id.* ¶ 53, it is unrealistic to assume that there is any existing means to ensure that “inadvertent duplication of funding” could be avoided. For example, funding could be duplicated if an incumbent LEC

used current USF support to fund network upgrades necessary to offer broadband in a particular area and also sought a broadband construction grant, as discussed below.

In the near term, the Commission should cap the high cost fund at 2007 levels, as proposed by the Joint Board. *Id.* ¶ 32. Going forward, new technologies and more efficient practices should allow LECs to provide a consistent level of service at a lower cost, and a cap on the existing subsidies will ensure that all providers are focused on achieving that goal.

In addition, there are alternative steps the Commission has considered previously and should now take with respect to incumbent LEC subsidies to relieve financial burdens on the high cost fund before comprehensive reform is complete. First, the Commission should consolidate all study areas commonly owned within a state.²⁰ Under current rules for high cost loop support, a carrier often can receive more funding if it operates in multiple study areas in the state than it would if all of its lines were consolidated into one study area. Consolidating a carrier's study areas within each state would allow the funding formula to reflect the manner in which many rural carriers operate and would reduce inequitable results for similarly situated carriers.

Second, the Commission should require that all carriers serving rural areas with 100,000 lines or more within a state receive universal service support under the non-rural mechanism.²¹

This approach would reasonably recognize that carriers with 100,000 or more access lines do not belong in the rural support mechanism, since they more closely resemble larger non-rural carriers

²⁰ See Comments of Verizon, CC Docket No. 96-45, at 14-16 (filed Sept. 30, 2005) (“Verizon Sept. 2005 Comments”). The consolidation of study areas would be an interim measure until the Commission implements a reverse auction methodology, which, under Verizon’s proposal, would permit incumbent ETCs to retarget – but not increase – current support below the study area level. See *Verizon Reform Plan* at 23-25.

²¹ Verizon Sept. 2005 Comments at 16-18; see also Reply Comments of Verizon, CC Docket No. 96-45, at 8-13 (filed Dec. 14, 2004).

than small rural carriers. There is no statutory requirement that the Commission provide universal service subsidies based on a carrier's status as "rural" or "non-rural," and treating rural carriers with 100,000 or more lines in a manner similar to non-rural carriers is consistent with the Commission's view that "significant distinctions among rural carriers" should be taken into account for universal service purposes.²²

Last, the Commission should freeze per-line support for all carriers at current levels. Doing so will further encourage carriers to make prudent investment decisions and streamline their operations to decrease per-line costs while providing a sufficient level of funding for carriers in high cost areas. In addition, the freeze on per-line support will eliminate one source of rising universal service costs, namely the *increase* in an incumbent LEC's per-line subsidy amount as it loses lines. This also has the perverse effect under the current identical support rule of increasing per-line support to other ETCs operating in the incumbent LEC's territory, creating a cycle of spiraling subsidies. *See MAG Report and Order* ¶¶ 124-126.

B. The Commission Should Not Expand The Supported Services List To Include Mobile Services.

The Commission should not adopt the Joint Board's recommendation to add mobility to the list of services supported by the USF in 47 C.F.R. § 54.101. *Recommended Decision* ¶¶ 63-67. There is no need to alter the list of supported services in order to reform the system as described herein, particularly when wireless carriers receive USF support to provide service today.

²² *Federal-State Joint Board on Universal Service, Order*, 19 FCC Rcd 11538, ¶ 1 (2004); *see also Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High cost Universal Service Support*, Public Notice, 19 FCC Rcd 16083, ¶¶ 8-17 (2004) (requesting comment on whether the Commission should continue to use the definition of "rural telephone company" to determine whether carriers are rural carriers for USF purposes).

The Commission also would confront practical challenges in expanding the list of supported services to include mobility. For example, all ETCs must offer and advertise the services that are defined as supported services. 47 U.S.C. § 214(e)(1). Thus, if the Commission included mobility on the list of supported services, ETCs would be required to offer and advertise such services in order to be eligible for universal service support.²³ Many ETCs, particularly those in rural areas, do not offer mobility services; requiring that they do so in order to continue receiving subsidies could have draconian effects on universal service.

The Joint Board concludes that by “expanding the list of supported services, we do not intend that a carrier must offer all supported services (voice, mobility, and broadband) in order to receive any high-cost support.” *Recommended Decision* ¶ 68. This conclusion, however, cannot be reconciled with the language of 47 U.S.C. § 214(e)(1), which requires that an ETC “offer the services that are supported by Federal universal service support mechanism” “throughout the service area” for which it has been designated. Section 214(e)(1) does not appear to authorize an ETC to offer only some supported services but not others.²⁴

Moreover, there is no requirement to add mobility to the supported services list in order to award one-time wireless construction grants to bring wireless services to unserved areas. Wireless ETCs receive high cost funding today, ostensibly to support both the construction and

²³ *Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, 18 FCC Rcd 15090, ¶ 11 (2003) (noting that “[I]f advanced or high-speed services were added to the list of supported services, it could drastically increase the financial burden placed on carriers and, ultimately, consumers because all eligible telecommunications carriers would be required to offer such services in order to receive support”) (“*Reconsideration Order*”).

²⁴ *See, e.g., Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, Report and Order, 21 FCC Rcd 11506, n.10 (“[a]n eligible telecommunications carrier is a common carrier that offers all services that are supported by federal universal service support mechanisms under section 254(c) and that uses ‘media of general distribution’ to advertise the availability of those services and its charges for them. 47 USC §214(e)(1)”).

maintenance of wireless network infrastructure, even though mobility is not on the supported services list. In addition, wireless ETCs are already required to provide all of the services on the supported services list, including local usage, access to emergency services, access to interexchange service, and access to directory assistance. *See* 47 C.F.R. § 54.101. The Commission already has recognized that “the network is an integrated facility that may be used to provide both supported and non-supported services,” and the use of universal service subsidies to promote the deployment of such integrated networks is fully consistent with Congressional goals. *Reconsideration Order* ¶ 13. Consequently, the Commission can “maintain its commitment to ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure” by using USF subsidies for the construction of wireless networks without expanding the list of supported services.²⁵

In addition, the Joint Board’s proposal for wireless construction grants largely envisions only temporary support designed to encourage network expansion. *See, e.g., Recommended Decision* ¶ 26 (noting “that total funding can and should be decreased as broadband and wireless infrastructure deployment becomes widespread throughout the country”). One-time wireless construction grants will bring wireless services to areas that currently lack such service today, after which the Commission can eliminate the grant program.

C. The Commission Should Ensure Universal Broadband Availability By Encouraging Public-Private Partnerships, And Not By Creating New Government Broadband Subsidies

The Commission should also reject the Joint Board’s recommendation to create a new broadband fund to promote the deployment of broadband services in unserved areas. *Id.* ¶ 12.

²⁵ *Id.*; *see also* *MAG Report and Order* ¶¶ 199-201 (noting the importance of adopting policies that “do not impede the deployment of modern plant capable of providing access to advanced services” and encouraging carriers to deploy plant that can provide such access and “to replace plant that cannot provide such access”).

Instead, the Commission should encourage and promote the use of public-private partnerships as the best method to ensure increased broadband availability and subscribership. Increasing broadband availability and penetration is an important national priority, and Verizon as well as other broadband providers have invested billions of dollars toward achieving that goal. However, creating additional subscriber-funded subsidies to pay for broadband deployment is inconsistent with the goal of achieving a reasonable and sustainable USF and would not guarantee increased broadband availability or subscribership. By bringing together motivated broadband providers and interested state and local governments to map broadband need and demand, public-private partnerships present the best method for providing every American access to the benefits of broadband service.

Public-private partnerships work because they have the unique ability to examine all of the relevant factors that affect broadband demand and deployment at the local level. The best model for these public-private partnerships is Connected Nation's efforts in Kentucky and other states. Connected Nation developed a process that brings together the resources of state and local governments, broadband service providers, and other stakeholders to determine broadband need across the affected state. These partnerships undertake geographic mapping assessments of both wireline and fixed wireless services within the state with a special focus on areas with no broadband service. These maps synthesize a wealth of information from publicly available sources and directly from broadband service providers, including information about broadband facilities, population density, and existing and proposed infrastructure like roads, water and radio towers, and sewer lines. The result of this mapping exercise is a detailed picture of the current

state of broadband deployment in a state and a roadmap for further deployment to areas most in need.²⁶

Once this mapping is complete, the public-private partnerships gauge consumer demand for broadband services in unserved areas and determine which service providers are best positioned to provide service to a given area. They also analyze whether existing infrastructure could be useful in assisting deployment of service to those areas. In areas where the business case for broadband deployment might not yet be developed, the partnerships will consider how existing funding programs and solutions might fill in broadband gaps.²⁷ These state-level public-private partnerships are particularly effective in determining need and demand because they have an intimate understanding of what demographic and geographic factors affect broadband adoption, such as access to computers. Moreover, these public-private partnerships have the ability to adopt workable, particularized solutions given the facts in a certain area, rather than a cookie-cutter approach that may not be effective in certain locations.

These public private partnerships have proven highly effective in increasing broadband deployment and subscribership. The Connect Kentucky program that was the initial test case for Connected Nation's efforts was a huge success. Broadband availability in Kentucky grew from approximately 60 percent to more than 95 percent between 2004 and 2007.²⁸ Broadband

²⁶ See Connected Nation Response to FCC Notice of Inquiry, WC Dkt. No. 07-45, at 5-10 (filed May 16, 2007).

²⁷ See, e.g., Connect Kentucky, *Broadband Adoption and Barriers: Results and Analysis from the Connect Kentucky Technology Assessment Study* (2006), http://www.ConnectKentucky.org/_documents/2006CKdocSRSBBroadbandAdoptionBenchmarks.pdf.

²⁸ The Economic Impact of Stimulating Broadband Nationally, Connected Nation, 14 (Feb. 21, 2008), *available at* http://www.connectednation.com/documents/2008_02_21_TheEconomicImpactofStimulatingBroadbandNationally_AConnectedNationReport_005.pdf (“*Connected Nation Economic Impact Study*”).

subscribership grew as well, increasing from 24 percent to 44 percent between 2005 and 2007, a rate that far outpaced the national average increase over this period. *Connected Nation Economic Impact Study* at 16. Connect Kentucky achieved these goals through market-based solutions and by identifying existing sources of funding and other resources. For example, Connect Kentucky utilized loans with preferential terms for broadband construction. In addition, the state introduced a separate program that repurposes government computing equipment and distributes it to children without a home computer. *Id.* at 18-19. This program is especially effective because Connected Nation determined that “lack of a computer,” not broadband availability, is the “primary barrier associated with Internet adoption.” *Id.* at 18. Another survey conducted by Mid-Rivers Communications in its service area confirms that a major factor in broadband penetration is the level of computer ownership in a community.²⁹ Indeed, on a national level one study estimates that more than 80 percent of households with computers subscribe to a broadband service.³⁰

An informal survey of states reveals that about 25 states have public-private partnership programs that seek to replicate the successful techniques of Connect Kentucky.³¹ Many states

²⁹ See Letter from Gerry Anderson, General Manager, Mid-Rivers Communications to Meredith Atwell Baker, Acting Asst. Secretary for Communications and Information, NTIA, WC Dkt. No. 07-38 (filed Feb. 25, 2008).

³⁰ *Downgrading Telecom Services to Market Weight*, Credit Suisse, Feb. 19, 2008, at 3. Such studies indicate that the USF is an ill-suited mechanism to expanding the reach of broadband services.

³¹ Providers themselves are also expanding the reach of their broadband services. In West Virginia, Verizon recently announced a partnership with the state government and Connected Nation to map the state’s broadband availability, and Verizon plans to expand the number of sites that it will equip with high-speed services in West Virginia. See *Verizon Announces Plans to Expand High-Speed Internet Availability for Rural West Virginians* (Aug. 15, 2007), http://www.connectednation.com/documents/Article_VerizonAnnounces_WV_CN_81507.pdf. Verizon also recently announced that it would extend high-speed service to 23 communities in Massachusetts that are currently underserved as part of a \$200 million investment in that state. *Consumers, Businesses in Western Massachusetts to Benefit From Verizon Broadband*

have created a funding source for broadband to support public-private partnership initiatives, pay for broadband deployment, or to provide funding for some combination of the two activities. Others provide economic incentives for broadband deployment through the use of broadband tax credits or broadband equipment exemptions. For example, the California Public Utilities Commission dedicated approximately \$160 million to support enhanced broadband deployment in California.³² In Massachusetts, Governor Patrick announced a broadband initiative to be funded with \$25 million capitalized by general obligation bonds.³³ And in Ohio, Governor Strickland recently committed approximately \$7 million in state funds to launch the Connect Ohio program to map and expand broadband availability in that state.³⁴

Expansion Project, http://media-newswire.com/release_1061795.html (last visited Apr. 17, 2008).

³² See Cal. PUC, Interim Opinion Implementing California Advanced Services Fund, Rulemaking 06-06-028, Decision 07-12-054, (December 20, 2007), http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/76947.htm (establishing the California Advanced Services Fund and “providing \$100 million in funding over a two year period to qualifying projects”); Cal. PUC, “California Emerging Technology Fund,” <http://www.cpuc.ca.gov/PUC/Telco/emergingtech/> (last visited Apr. 17, 2008)(noting that “[a]s a condition of approving the mergers of SBC/AT&T and Verizon/MCI, the California Public Utilities Commission (PUC) ordered SBC/AT&T to commit \$45 million and Verizon/MCI to commit \$15 million (\$60 million total) over five years to the California Emerging Technology Fund (CETF)”).

³³ Press Release, Commonwealth of Mass., “Governor Patrick Files \$25 Million Broadband Bond Bill, *New Broadband Institute will connect unserved communities by 2010*,” (Oct. 18, 2007), http://www.mass.gov/?pageID=pressreleases&agId=Agov3&prModName=gov3pressrelease&prFile=071018_broadband_bond_bill.xml.

³⁴ William Hershey, *Strickland launches “Connect Ohio” program*, Dayton Daily News, Dec. 17, 2007, available at <http://www.daytondailynews.com/n/content/oh/story/news/local/2007/12/17/ddn121707broadbandweb.html>.

Public-private partnerships work to increase broadband availability and subscribership, and the Commission should encourage and promote their use rather than further strain the resources of the USF to subsidize broadband deployment.

1. The Commission lacks statutory authority to add broadband to the supported services list.

The Commission’s authority to use federal high cost subsidies to promote universal service is limited to “telecommunications services.”³⁵ As the Commission has found, and the courts affirmed, broadband Internet access service is an information service, not a telecommunications service.³⁶ Thus broadband does not qualify under section 254 as a supported service eligible for high cost subsidies. Section 254(c)(1)(C) limits supported services to those “deployed in public telecommunications networks by telecommunications carriers.” The fact that broadband services in some instances are provided by entities considered telecommunications carriers for other purposes does not authorize the Commission to add broadband to the supported services list because a company can be considered a telecommunications carrier for some purposes, but not others.³⁷

³⁵ See 47 U.S.C. § 254(c) (noting that “[u]niversal service is an evolving level of *telecommunications services* that the Commission shall establish ...” and establishing the factors the Commission must utilize in establishing the definition of “*telecommunications services*” “that are supported by Federal universal service support mechanisms ...”) (emphasis added).

³⁶ See, e.g., *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶17 (2005), *aff’d Time Warner Telecom v. FCC*, 507 F.3d 205 (3d Cir. 2007) (expressing agreement with the Commission’s “predictive judgment” concerning broadband competition) (“*Wireline Broadband Internet Access Order*”); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 2, n.3 (2007); see also *NCTA v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

³⁷ See *National Ass’n of Regulatory Utility Comm’rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir 1976) (noting that “[s]ince it is clearly possible for a given entity to carry on many types of activities, it is at least logical to conclude that one can be a common carrier with regard to some activities but not others”); *Southwestern Bell Telephone Co. v. FCC*, 19 F.3d 1475, 1480 (D.C.

Moreover, the Commission has recognized the limitation that “generic universal service definition in section 254(c)(1) ... [is] explicitly limited to telecommunications services.”³⁸

Indeed, in justifying its only offer to fund non-common carrier services under a different USF program, the schools and libraries program, the Commission relied on section 254(h), which is not applicable to the high cost program. The Joint Board also recognized this limitation and noted in 2002 that, should the Commission find that broadband Internet access service is an information service, “broadband Internet access services could not be included within the definition of supported services, because section 254(c) limits the definition of supported services to telecommunications services.”³⁹

To be sure, in section 254(b), Congress directed the Joint Board and the Commission to base policies for the preservation and advancement of universal service on several principles, one of which is that “[a]ccess to advanced telecommunications services should be provided in all regions of the Nation.” 47 U.S.C. § 254(b)(2). However, as the Fifth Circuit held, section 254(b) establishes “principles that the FCC should consider in developing its policies” rather than specific statutory commands.⁴⁰ In section 254(c), which is the specific statutory provision

Cir.1994) (noting that “whether an entity in a given case is to be considered a common carrier or a private carrier turns on the particular practice under surveillance”); *Wireline Broadband Internet Access Order* ¶ 73 (stating that “[m]erely because facilities-based wireline carriers offer some common carrier services does not mean that all their services must be similarly offered”).

³⁸ *First Report and Order* ¶¶ 436-440.

³⁹ *See Federal-State Joint Board on Universal Service*, Recommended Decision, 18 FCC Rcd 2943, ¶ 19 (2002). To the extent that carriers continue to provide broadband transmission service on a common carrier basis subject to the *Wireline Broadband Internet Access Order*, the underlying conclusion regarding eligibility as a supported service is not affected. The offering of that transmission service is a matter of carrier choice, not a Commission requirement, and is not equivalent to broadband Internet access under the *Wireline Broadband Internet Access*. *See Wireline Broadband Internet Access Order* ¶¶ 89-95.

⁴⁰ *Texas Office of Pub. Util. Counsel*, 183 F.3d at 421.

directing the Commission to establish the services to be supported by federal universal service, Congress used the term “telecommunications services” instead of “advanced telecommunications services.”⁴¹ As a matter of basic statutory construction, Congress’s use of two distinct terms in adjacent statutory provisions gives rise to the presumption that it intended to exclude broadband from the scope of “telecommunications services” supported by federal universal service.⁴²

2. Supporting broadband with USF subsidies is not the right policy.

Apart from the statutory challenges, the USF is not an efficient means by which to distribute broadband subsidies. According to the Congressional Budget Office, the universal service regime costs consumers and the economy an additional \$.67 to \$1.47 for every \$1 in universal service subsidies that go to service providers in high cost areas.⁴³ Creating a new USF program to subsidize broadband would only exacerbate these inefficiencies.

Moreover, adopting the *Verizon Reform Plan* would encourage broadband investment without creating long-term government entitlements. By providing a flat subsidy that is not tied to the deployment of any specific technology, Verizon’s proposal would create incentives for the winning bidder to deploy facilities that are capable of providing broadband and wireless services in addition to supported services as a way to increase revenue streams from their networks. Because the incremental cost of providing additional services over advanced networks is

⁴¹ See Telecomm. Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat 153; see 47 U.S.C. § 157 note (a) (defining “advanced telecommunications capability” as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology”).

⁴² See *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452-53 (2002) (“[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion”) (citation and internal quotation marks omitted).

⁴³ *Financing Universal Telephone Service*, Congressional Budget Office, at 20 (March 2005).

relatively low compared to providing these services individually over separate networks, providers and consumers will realize additional benefits from offerings of these services as well.

3. If the Commission does decide to support broadband with universal service funding, it should follow the Joint Board's guidance and limit support to one-time grants for facilities construction in unserved areas.

If the Commission does decide to fund broadband deployment with USF subsidies, it should do so on a basis that limits the scope of the subsidy and avoids expectations of permanent government funding. For example, a program could provide one-time grants to support the build-out of broadband infrastructure in unserved areas, as the Joint Board recommended, rather than provide ongoing support for maintenance and other service costs. *Recommended Decision* ¶ 12. In addition, the Commission should cap any broadband funding at \$300 million, consistent with the Joint Board's recommendation. *Id.* ¶ 29.

The Commission, not the states, also should decide which companies would receive these grants for the same reasons it should decide these issues with respect to wireless construction grants. *See* Section II.B.1, *supra*. While state and local authorities are well-suited to assist public-private partnerships with mapping broadband need in their states and demand, there are a host of other concerns involved in distributing federal universal service subsidies. Funds from a federal program such as the USF should be distributed directly by the Commission, which is accountable to all consumers who pay for the fund. In distributing these grants, the Commission would have the necessary national information to determine which areas are most in need. In addition, authorizing a state to use federal funds to subsidize local broadband projects may skew the decision-making process and produce few incentives to avoid duplicative support.

D. The Commission Should Not Return To Discredited Cost-Based Systems Or Regulation For Competitive ETC Subsidies.

Although support to incumbent LECs comprises the largest segment of disbursements from the high cost fund, the growth of the USF is driven by demands from competitive ETCs.⁴⁴ Thus, there is general agreement that eliminating duplicative support to numerous ETCs is an essential step toward a sustainable USF and that the Commission should abolish the identical support rule as part of its reform efforts. *Identical Support Rule NPRM* ¶ 11.

However, the identical support rule should be eliminated as part of comprehensive universal service reform; merely requiring competitive ETCs to “file cost data showing their own per-line costs of providing service in a supported area in order to receive high-cost universal service support” is the wrong approach. *Id.* ¶¶ 8-26.

Such a proposal would extend to competitive carriers the discredited cost-based system that currently applies to rural incumbent LECs. Adoption of this highly regulatory, cost-based approach would not solve the fund’s fundamental problems and would focus Commission resources on a complicated and uncertain interim solution instead of more meaningful long-term reform. First, the quantification of “costs” for regulatory purposes is not an exact science, particularly for a competitive ETC that has never been required to maintain its records in accordance with regulatory requirements. A competitive ETC that stands to receive subsidies based on its “costs” will have every incentive to maximize those costs in order to receive higher subsidy amounts and no incentive to become more efficient, which would only increase the

⁴⁴ See *Identical Support Rule NPRM* ¶ 4 (noting that between 2001 and 2006 competitive ETC support grew “from under \$17 million to \$980 million – an annual growth rate of over 100 percent” and that competitive ETC support was projected to be \$1.11 billion in 2007); see also Reply Comments of Verizon and Verizon Wireless, WC Docket. No. 05-337, CC Docket No. 96-45, at 3-10 (filed July 2, 2007).

financial strain on the high cost fund. The Commission should not adopt a mechanism that rewards wireless carriers for having high costs.

Second, using a competitive ETC's actual costs to establish subsidy levels would do nothing to ensure that universal service subsidies are more accurately targeted, either in terms of ensuring the proper amount of support or identifying areas where support should be provided. Replacing the identical support rule with an actual cost requirement would merely perpetuate the fundamental problems facing the high cost fund, as competitive ETCs would continue to receive subsidies on a "per-line" basis and would continue to receive support in areas with multiple ETCs. In addition, it would create unnecessary administrative burdens both for the Commission and ETCs, including the time and expense of conducting cost studies and taking part in cost proceedings and the protracted litigation that surely will follow.

Third, as Verizon has explained, examining a carrier's network costs does not answer the question of how much the Commission should pay to fund universal service. Many of these costs would have been incurred anyway, as the carrier pursued its business plan, regardless of subsidy. Since almost every area that receives wireless subsidies today is also served by one or more wireless carriers without subsidy, it would be nearly impossible to demonstrate what costs, if any, were uniquely attributable to a universal service obligation. Similarly, virtually all ETCs have revenues from services that are not supported with universal service subsidies, and for which some part of their network costs are incurred. But no cost allocation process could likely ever identify those revenues that were uniquely associated with supported services.

The sheer impracticality of attempting to allocate a wireless ETC's costs is apparent from considering only one possible cost element – radio spectrum. The *Identical Support Rule NPRM* tentatively concludes that "wireless spectrum costs should be included in high-cost support cost

submissions only to the extent that the competitive ETC actually paid for the spectrum.” *Id.* ¶ 17. But spectrum is purchased in large geographic areas that often cover multiple states. The recent 700 megahertz auction, for example, included one block of spectrum that included only seven licenses that covered the entire United States. How would the spectrum acquisition cost be allocated to the area to receive support? Pro-rata by geographic area? By population covered? Some other mechanism? In addition, spectrum is purchased before a wireless ETC can possibly deploy any service, let alone qualify for ETC support, so by definition, spectrum acquisition costs have nothing to do with providing universal service. It would be nonsensical to pay a carrier for costs that were incurred long before, and without regard to, the carrier's provision of supported services.

Further, the *Identical Support Rule NPRM* underscores the complexity of attempting to decide what spectrum costs would “count” by suggesting that spectrum bought at auction would be counted and spectrum obtained by lottery would not, but “obtaining spectrum by purchasing a company or the assets of a company does not in and of itself qualify the spectrum for inclusion in high-cost support costs.” *Identical Support Rule NPRM* at n. 47. In many if not most transactions involving wireless licenses, the value of the spectrum is paramount. Allowing spectrum acquisition costs when spectrum is bought from the Commission at auction, but not from another company, would be illogical. And how would the Commission calculate how much to allocate to spectrum costs out of a transaction that includes payment for other assets such as customers, towers, other equipment and goodwill? These problems, and others, highlight why the Commission should not take a step backwards and adopt cost-based subsidy systems for competitive ETCs.

In short, asking carriers to submit their network costs is asking the wrong question. It does not reveal the amount necessary for a carrier to be willing to take on the obligation to provide universal service. Only competitive bidding can do that.

Thus, instead of adopting a process for ETCs to submit their “costs,” the Commission should move as quickly as possible toward one-time construction grants for wireless build-out into unserved areas and reverse auctions for ongoing support. The Commission should further adopt its tentative conclusions that competitive ETCs should no longer receive Interstate Access Support or Interstate Common Line Support. *Id.* ¶¶ 23-24. As the Commission correctly notes, these support mechanisms were specifically designed for incumbent LECs to replace access charges that were eliminated by the Commission. *Id.* Because wireless ETCs have no right to tariff access charges,⁴⁵ and because competitive ETCs do not share incumbent LECs’ historical reliance on access charges as a primary means of supporting their networks, allowing competitive ETCs to receive universal service support designed to minimize the impact of the Commission’s efforts to reform the access charge system is an unjustified burden on the universal service system.

By eliminating these subsidies for ETCs, the Commission could ease unnecessary burdens on the USF while it works toward broader reform. Over the long term, Verizon’s reverse auction proposal would eliminate the need for any cost requirements or to inquire about what a provider’s actual costs may be. Instead, carriers seeking support in order to serve an area would participate in an auction to determine the subsidy they need to provide service. The Commission should proceed promptly with a comprehensive reverse auction process rather than

⁴⁵ See, e.g., *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd 13192, ¶¶ 1, 8-9 (2002).

subjecting regulators and the industry to endless debate and protracted litigation over competitive ETCs' costs.

V. CONCLUSION.

The Commission should promptly cap the fund and adopt the other reform proposals outlined above.

Respectfully submitted,

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