

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

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

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF
RURAL CMRS CARRIERS**

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SUMMARY

The Commission's proposed revisions to the Universal Service Fund's high-cost support mechanisms would do more harm than good. The Commission has failed to seize the moment by pursuing long-promised comprehensive reforms that would adapt high-cost support to marketplace and technological realities and would provide for sufficient and stable funding mechanisms capable of ensuring efficient carrier operations in a competitive environment.

Instead, the Commission's proposals display an obeisance to an existing system that is seriously flawed, that continues to reward inefficient investments and operations by entrenched incumbent carriers, and that fails to ensure that consumers in rural and other high-cost areas have an opportunity to share the advances in telecommunications technologies that have benefited consumers in urban and suburban communities across the Nation.

The Identical Support Rule

The Commission's proposal to repeal the identical support rule is ill-considered and should not be adopted. Elimination of the rule would not be consistent with the pro-competitive mandate enacted by Congress in the Telecommunications Act of 1996. As the Commission has often explained, the identical support rule is designed to ensure that high-cost support is disbursed in a competitively neutral manner, which in turn encourages competitive entry in rural and other high-cost markets. Market entry and the delivery of services by competitive providers ensure that consumers in rural and other high-cost markets have access to telecommunications services that are comparable (in quality, features, and price) to services available in urban areas.

Repeal of the identical support rule would turn the Commission's core principle of competitive neutrality into a hollow promise by further entrenching incumbent LECs in rural and other high-cost markets and would hinder the delivery of competitive services in these markets.

The Commission has sought to justify termination of the identical support rule in part by claiming that the growth of the high-cost fund (which the agency blames on wireless carriers) is threatening the viability of the fund, and that this threat will only get worse unless the rule is eliminated. But the Commission presents virtually no evidence or documentation supporting its assumptions about the growth of the high-cost fund, the causes of this growth, the likelihood that the rate of growth will continue, or the actions necessary to stem the purported growth trends. The agency's failure to demonstrate that a problem exists makes the Commission's proposed solution (*i.e.*, termination of the identical support rule) all the more capricious.

The Commission implicitly acknowledges that elimination of the identical support rule would constitute a departure from the agency's competitive neutrality principle. But the agency seeks to justify this departure by contending in effect that the competitive neutrality principle actually does not apply because wireless services are not complete substitutes for wireline services and, therefore, wireless carriers really are not competing with rural incumbent LECs in providing services to consumers. Apart from the significant legal and policy issues raised by the Commission's suggested analysis, the agency fails to justify or explain its proposed use of a very narrow formulation of substitutability between wireless and wireline services, and also fails to account sufficiently for recent data and statistics showing that consumers are increasingly inclined to treat wireless service as a complete replacement for wireline service.

Finally, elimination of the identical support rule would bring with it the need to construct a completely new regulatory regime to identify wireless competitive ETCs' costs that are eligible for high-cost fund reimbursement, and to monitor the incurrence of these costs. The Commission attempts to come to grips with this problem by sketching out some accounting and reporting requirements, but the agency's proposals only serve to highlight the difficulties associated with

attempting to invent an accounting regime that accurately and fairly addresses wireless carriers' costs and also operates in a competitively neutral manner.

Reverse Auctions

The reverse auctions scheme proposed by the Commission would not be consistent with the universal service policies and goals embodied in the Telecommunications Act of 1996, and therefore should be rejected on that basis.

A further problem with the Commission's proposal is that, as the Commission previously has recognized, competitive bidding mechanisms are likely to be effective only in areas where significant competition already is present. This situation does not yet exist in many rural and other high-cost areas, because incumbent LECs have fully deployed their telecommunications plant in these areas, but competing carriers have not yet established fully mature wireless networks. This mismatch of deployed facilities would place wireless carriers at a significant disadvantage in bidding for high-cost support in reverse auctions.

If, however, the Commission persists in its effort to design and implement a reverse auctions mechanism for disbursing high-cost fund support, such a mechanism should be structured in a way that adheres to certain core principles and policies. Most importantly, reverse auctions must not unfairly advantage or disadvantage competing service providers or different telecommunications technologies.

In keeping with this objective, the Commission should not adopt any reverse auctions mechanism that would insulate incumbent carriers from competition. Further, the mechanism must ensure that all carriers — both incumbents and competitive entrants — are able to bid for the right to provide service in identical territories. One way to accomplish this would be to designate relatively small service areas (perhaps using county boundaries), so that carriers using

different technologies would be on a relatively equal footing regarding their ability to provide service throughout the auctioned service areas.

Finally, RCA-ARC disagree with the Commission's tentative view that use of a multiple-winner reverse auctions mechanism would proportionately increase the amount of support needed in a given service area. The problem of proportionate increases in funding can be solved if the rules governing multiple winner reverse auctions were to make a set per-line amount of support available in the service areas covered by the auctions. Under this approach, any carrier interested in entering the market would be eligible to receive the per-line support, but the support would be portable, *i.e.*, it would be capped by the number of customers in the service area.

The Rural Incumbent LEC Embedded Cost Mechanism

An additional problem with the Commission's proposed approach to universal service reform in this rulemaking is that there is an elephant absent from the room. The Commission has failed to put on the table any proposal to reform the embedded cost mechanism that continues to be the basis for disbursement of high-cost funds to rural incumbent local exchange carriers. The agency has long recognized that the embedded cost model is replete with problems and must be replaced in order to ensure better utilization of high-cost funds. Yet the Commission inexplicably has avoided this issue while deciding to forge ahead in this proceeding with sweeping proposals that would change the competitive dynamic in rural and other high-cost areas in ways that would undercut pro-competitive Congressional policies and imperil the interests of consumers.

RCA-ARC believes that, given the concerns the Commission has voiced about the sufficiency and stability of the high-cost fund, the Commission cannot credibly insist upon a one-sided package of "reforms" that ignores a central cause of the problems that the agency is purporting to solve.

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The Rural Cellular Association (“RCA”) and the Alliance of Rural CMRS Carriers (“ARC”) (collectively, “RCA-ARC”), by counsel, hereby provide consolidated comments on the following Notices of Proposed Rulemaking adopted by the Commission regarding the high-cost universal service support program: (1) *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 08-4 (rel. Jan. 29, 2008) (“*Identical Support Rule NPRM*”); and (2) *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 08-5 (rel. Jan. 29, 2008) (“*Reverse Auctions NPRM*”).¹

¹ See *Comment Cycle Established for Commission’s Notices of Proposed Rulemaking Regarding the Identical Support Rule, the Use of Reverse Auctions to Set High-Cost Universal Service Support, and the Federal-State Joint Board on Universal Service’s Recommendations for Comprehensive Reform of High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, FCC Public Notice, DA 08-499 (rel. Mar. 4, 2008) (providing that comments are due April 3, 2008, and reply comments are due May 5, 2008, and indicating that “parties may file consolidated comments . . . in response to the three Notices”); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Order*, DA 08-674 (Wireline Comp. Bur., rel. Mar. 24, 2008) (revising the pleading cycle to provide that comments are due April 17, 2008, and reply comments are due May 19, 2008).

I. INTRODUCTION.

RCA-ARC welcome the opportunity to provide its comments in this proceeding, in which the Commission has advanced numerous proposals that have far-reaching implications for the provision of telecommunications services in rural and other high-cost areas throughout the Nation. Since the passage of the Telecommunications Act of 1996 (“1996 Act”)² wireless carriers have sought to compete with incumbent local exchange carriers (“LECs”) in these areas by deploying wireless infrastructure and serving the telecommunications needs of consumers. RCA-ARC urge the Commission to develop policies and prescribe rules in this proceeding that continue to promote competition and to ensure that high-cost fund disbursements are used efficiently for the benefit of consumers.

RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA’s wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but two of RCA’s members serve fewer than 500,000 customers.

ARC is a group of Commercial Mobile Radio Service (“CMRS”) carriers who are licensed to serve rural areas in Alabama, Colorado, Illinois, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Oregon, South Dakota, Vermont, Washington, Wisconsin, Wyoming, Guam, and Saipan. ARC’s membership is comprised of the following carriers (or their subsidiaries): Rural Cellular Corporation, Guam Cellular and Paging, Inc., Illinois Valley Cellular, Leaco Rural

² Pub. L. No. 104-104, 110 Stat. 56 (1996).

Telephone Cooperative, N.E. Colorado Cellular, Inc., Airadigm PCS, MTPCS, LLC, the Cellcom Companies, and Bluegrass Cellular, Inc.

II. THE COMMISSION SHOULD RETAIN THE IDENTICAL SUPPORT RULE.

The Commission has tentatively concluded to eliminate its “identical support” rule, which it adopted to ensure competitive neutrality in the disbursement of universal service high-cost fund support by providing competitive ETCs with the same per-line high-cost support amounts that are given to incumbent LECs.³

The Commission should abandon its proposal to repeal the identical support rule. The underpinnings of the proposal are flawed and cannot support or justify the Commission’s proposed action, for the following reasons:

First, the proposal is inconsistent with the framework established by Congress in the Communications Act of 1934, as amended (“Act”) that is intended to preserve and advance universal service, while at the same time promoting competition. The identical support rule is grounded in the core principle of competitive neutrality, a principle that has been articulated and repeatedly embraced by the Commission for more than a decade as the agency has sought to ensure that consumers in rural and other high-cost areas share with urban consumers the benefits manifested by competitive marketplace forces.

Identical support is implemented through portability, that is, support is provided to the carrier that serves the customer, and moves with consumer choices. Abandoning the requirement that high-cost support must be portable, and basing support for competitive ETCs on their embedded costs, would not only stand the Commission’s own precedent on its head, but would

³ *Identical Support Rule NPRM* at para. 1.

also place the agency's policies completely at odds with policies and requirements codified in the Act.

Second, the Commission apparently has been tentatively persuaded by arguments that its hand has been forced by the imminent collapse of the high-cost fund, and that elimination of the identical support rule is the only defense that the agency can deploy to save the fund from impending peril.⁴ Yet, neither the Commission nor the proponents of the claim that the high-cost fund is under "extraordinary pressure" provide any convincing evidence that the high-cost fund is in danger of becoming destabilized. The Commission simply has not provided any data or constructed any analysis in the *Identical Support Rule NPRM* to explain or support its view that the high-cost fund is in grave jeopardy. The evidence, in fact, demonstrates otherwise.

Moreover, the Commission offers no evidence that the identical support rule is the root cause of the purported risks faced by the high-cost fund, or that continuation of the identical support rule would fuel substantial funding increases that would in turn expose the fund to heightened danger. Nor does the agency undertake any analysis of whether it could pursue other steps that would ease the perceived pressures on the fund while at the same time saving the Commission from nullifying its principle of competitive neutrality.

And, *third*, the *Identical Support Rule NPRM* demonstrates, in paragraph after paragraph, the tortuous journey the Commission must take if it abandons the identical support rule, namely, the mapping out of the embedded costs of competitive ETCs using several different technologies. It is remarkable that the Commission, generally a steadfast and forceful advocate of competition, the benefits of the marketplace, and light-handed regulation as a means of spurring technological innovation, consumer choice, and low prices for telecommunications services, now apparently

⁴ *Id.* at para. 4 (the rapid growth of high-cost support to competitive ETCs has placed "extraordinary pressure on the federal universal service fund").

stands poised to cobble together a hidebound regulatory regime to micromanage the flow of high-cost funds to competitive ETCs. The Commission's proposed cost accounting and reporting requirements, which raise more questions than they answer, would have one clear result: competitive ETCs would be unfairly disadvantaged by unrealistic and unwarranted obligations and would be unnecessarily burdened by a complicated and unwieldy cost accounting and reporting structure.

A further and more fundamental problem with the Commission's proposal to terminate the identical support rule is that the agency's time would be better spent developing and implementing more comprehensive and even-handed measures to safeguard the viability and durability of the high-cost fund. A more comprehensive effort — that includes reforming the Commission's policies and rules for providing high-cost fund support to incumbent LECs — is a fairer and more reliable way to ensure the ongoing sufficiency of funding mechanisms.

These issues are discussed in greater detail in the following sections, together with RCA-ARC's concerns regarding several other aspects of the Commission's proposed plan.

A. Eliminating the Identical Support Rule Would Violate the Communications Act, and Would Also Be Bad Public Policy.

The Act poses a major roadblock to the Commission's proposal to repeal the identical support rule, because the Act requires that competitive neutrality must play an important role in advancing Congress's pro-competitive policies, which in turn must work in tandem with the statutory objectives of preserving and advancing universal service. Moreover, the Commission has a statutory obligation to ensure that consumers in rural and other high-cost areas have affordable access to wireless services, and elimination of the identical support rule would have the effect of reducing the likelihood that this obligation could be met. And, not least, abandoning the identical support rule would seriously undermine the public policy objective of capitalizing

on the engine of competition to achieve a wider deployment of services in rural and other high-cost areas.

Equally problematic is the Commission's proposal to cap high-cost funding to competitive ETCs at the level of support available to incumbent LECs. The one-two punch of a funding cap and elimination of the identical support rule would result in a misguided public policy that would risk the inadvertent consequence of constraining wireless investment in rural areas or, worse, driving wireless carriers out of rural and other high-cost markets altogether. Finally, various arguments advanced in support of eliminating the rule fall far short of providing any reasonable basis for such an action by the Commission.

1. Imposing an Embedded Cost Requirement on Competitive ETCs Would Violate the Requirement That Disbursement of High-Cost Funds Must Be Competitively Neutral.

Congress has forged twin objectives in the Act: Sufficient support mechanisms must be maintained to preserve and advance universal service. And competition must be promoted in the telecommunications marketplace. "Section[s] 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service."⁵ The Commission has acknowledged these twin goals, and has long embraced the principle that "universal service mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another."⁶

The Commission in the *USF First Report and Order* established the *core principle* of competitive neutrality as a means of pursuing the twin *goals* established in the Act. This core

⁵ Rural Task Force, *White Paper 5: Competition and Universal Service* (2000) at 8 (accessed at <http://www.wutc.wa.gov/rtf>), cited in CTIA Comments, Joint Board USF Reform Proceeding, WC Docket No. 05-337, May 31, 2007 ("CTIA Reform Proceeding Comments"), at 5.

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8801 (para. 47) (1997) ("*USF First Report and Order*") (subsequent history omitted)

principle — which is the only core principle the Commission has adopted pursuant to its authority under Section 254(b)(7) of the Act⁷ — rests on the same footing as those principles enacted by Congress in Section 254(b) and applies with the same force as the statutory principles.

In the *Identical Support Rule NPRM*, the Commission correctly describes competitive neutrality as a *principle* when discussing its origins,⁸ but then, when contemplating a “minimal departure” from competitive neutrality by eliminating the identical support rule, recasts the principle as a “goal.”⁹ RCA-ARC disagrees with this semantic downgrading of the core principle of competitive neutrality, especially if the Commission intends to discount the status of the principle in order to clear the path for a “minimal departure” from it. Competitive neutrality is not merely a goal. Rather, it is a core principle that the Commission adopted eleven years ago and that the Commission must enforce, just as it must enforce the other six core principles set forth by Congress.

The twin statutory goals have been given a practical and forceful judicial interpretation: Universal Service Fund (“USF”) funding mechanisms, *in order to comply with the Act*, must not only be sufficient to maintain and advance universal service, but also must be competitively neutral.¹⁰ The *Alenco* court stressed that:

the [USF funding] program must treat all market participants equally — for example, *subsidies must be portable* — so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.¹¹

⁷ 47 U.S.C. § 254(b)(7).

⁸ *Identical Support Rule NPRM* at para. 2.

⁹ *Id.* at para. 12.

¹⁰ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) (“*Alenco*”).

¹¹ *Id.* (emphasis added).

The court further underscored the importance of competitive neutrality by concluding that “[s]o long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act”¹²

The problem with the Commission’s proposal to abandon the identical support rule, and instead to base high-cost support on competitive ETCs’ own embedded costs, is that this “unequal federal funding” would *not* be competitively neutral. We know this because the Commission has made the point plainly, repeatedly, and emphatically. The Commission has explained that “universal service [should] be sustainable in a competitive environment; this means both that the system of support must be competitively neutral and permanent and that all support must be targeted as well as portable among eligible telecommunications carriers[.]”¹³ and has concluded that, 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.”¹⁴

And the Commission has further explained how this principle of competitive neutrality is intended to work, holding that:

[t]o ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the *same amount of support* that the incumbent would have received for the line *Unequal federal funding* could discourage competitive entry in high-cost areas and stifle a

¹² *Id.* at 620. The Commission also has concluded that the principle of competitive neutrality is embodied in the Act. *USF First Report and Order*, 12 FCC Rcd at 8801 (para. 48) (finding that competitive neutrality is consistent with Section 254(d), is required by Section 254(h)(2), and is embodied in the requirements of Sections 214(e) and 254(f))

¹³ *USF First Report and Order*, 12 FCC Rcd at 8788 (para. 19)

¹⁴ *Id.* at 8802 (para. 48).

competitor's ability to provide service at rates competitive to those of the incumbent.”¹⁵

The Commission — in keeping with the imperatives of the Act, as affirmed by *Alenco* — has stated categorically that the portability of high-cost funding is necessary to ensure competitive neutrality,¹⁶ and has explained that portability is necessary because unequal federal funding (*i.e.*, funding that is not the same between the incumbent LEC and the competitive ETC), combined with implicit support unilaterally enjoyed by incumbent LECs, would threaten competition.¹⁷

In addition to the fact that unequal federal funding, in the form of imposing an embedded cost requirement on competitive ETCs, would violate the principle of competitive neutrality, removing the identical support rule and shifting to an embedded cost mechanism would further violate the principle because such a step would have the effect of imposing regulatory burdens on wireless carriers that are not faced by many incumbent LECs that receive high-cost support.

¹⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20480 (para. 90) (1999) (“*USF Ninth Report and Order*”) (emphasis added); see *USF First Report and Order*, 12 FCC Rcd at 8944 (para. 311) (“paying the [portable] support to a competitive eligible telecommunications carrier that wins the customer or adds a new subscriber would aid the entry of competition in rural study areas”); *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, *Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 8078, 8113 (para. 73) (1999) (“*USF Seventh Report and Order*”) (“competitive neutrality is a fundamental principle of universal service reform, and . . . portability of support is necessary to ensure that universal service support is distributed in a competitively neutral manner”).

¹⁶ The Commission has determined that “it is difficult to see how . . . a program [offering non-portable support] could be considered competitively neutral” because “a mechanism that offers nonportable support may give ILECs a substantial unfair price advantage in competing for customers.” *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, *Memorandum Opinion and Order*, 15 FCC Rcd 16227, 16232 (para. 10) (2000) (“*Kansas Preemption Order*”), cited in Alltel Wireless (“Alltel”) Letter to Commissioner Deborah Taylor Tate and Commissioner Ray Baum, Feb. 16, 2007 (“Alltel Letter”), Attachment (“Alltel Universal Service Reform Proposals”) at 10, n. 26.

¹⁷ *USF Seventh Report and Order*, 14 FCC Rcd at 8082 (para. 9):

Under the current system of federal support, potential new entrants to the local market in high-cost areas are at a competitive disadvantage relative to incumbents, which have access to much greater implicit support than new entrants. Converting such implicit support to explicit support that is portable among all eligible telecommunications carriers will significantly lessen this competitive advantage. Consequently, explicit mechanisms may encourage competitors to expand service beyond urban areas and business centers into all areas of the country and to all Americans, as envisioned by the 1996 Act.

CTIA – The Wireless Association[®] (“CTIA”) has estimated that approximately 40 percent of annual incumbent LEC high-cost support (or about \$1.3 billion) is *not* based on the incumbent LECs’ actual or embedded costs.¹⁸ Those who advocate imposing an embedded cost regime on competitive ETCs receiving high-cost support must defend the legality and public policy foundations of a mechanism that imposes embedded costs on wireless carriers while at the same time awarding billions of dollars in high-cost support to incumbents that are not held to an embedded cost standard.

The Commission’s current analysis of the identical support rule overlooks the fact that the key to the rule is *not* that high-cost support for both incumbent LECs and competitive ETCs must be based on incumbent LECs’ embedded costs. The key to the rule — and the reason that the rule ensures competitive neutrality — is that wireless carriers must be entitled to the *same level* of support as incumbent LECs *on a portable basis*. As RCA-ARC has observed, both the Commission and the *Alenco* court have endorsed the full portability of high-cost support.¹⁹ Their reason for doing so is that identical per line support ensures that all competitors are treated the

¹⁸ CTIA Reform Proceeding Comments at 10. The CTIA estimate includes interstate access support, model-based support, local switching support, high-cost loop support for average schedule incumbent LECs, and support that is transferred pursuant to Section 54.305 of the Commission’s Rules, 47 C.F.R. § 54.305. *Id.*

¹⁹ *See* U.S. Cellular & Rural Cellular Corporation Comments, Joint Board USF Reform Proceeding, WC Docket No. 05-337, May 31, 2007 (“U.S. Cellular & RCC Joint Board Comments”), at 16-17. U.S. Cellular also has explained that contrasting the provision of services in urban and rural areas further illustrates the need to disburse high-cost funds in a neutral manner:

In urban areas, no universal service support is provided. Market participants compete for customers on a playing field not skewed by universal service support. In rural areas, wireline carriers constructed their networks first, with the help of implicit and explicit support, and as a result they became monopoly carriers, having all the customers and all the support. In order to provide the appropriate incentive to bring newcomers into the market, an identical amount of support must be provided to level the playing field.

Id. at 19. In addition to the need for this incentive, U.S. Cellular agrees with CTIA’s observation that competitive neutrality, as achieved by identical support and full portability, “mandates equal treatment, [and does so] because only equal treatment will guarantee that consumer and provider choices are governed by cost and value considerations rather than regulatory arbitrage.” CTIA Comments, Joint Board Interim Cap Proceeding, WC Docket No. 05-337, CC Docket No. 96-45, June 6, 2007 (“CTIA Interim Cap Comments”), at 15.

same and that high-cost fund disbursements do not serve as a vehicle by which any competitor can gain an advantage over other competitors.²⁰

In sum, retaining the identical support rule based on incumbent LECs' embedded costs — or fashioning a new identical support rule that is based on different criteria for calculating support — is the only means to ensure competitive neutrality. Moreover, this approach would not lead to increased pressure on the level of high-cost funding, *so long as the Commission mandates that per line funding is fully portable*. In contrast, doing away with the rule not only would violate the mandate of the Act but would also amount to the Commission's turning its back on competition, notwithstanding the agency's longstanding acknowledgment that a public policy promoting competition is the best means to achieve universal service objectives.

2. Eliminating the Identical Support Rule Would Undercut the Commission's Obligation To Ensure That Rural Consumers Have Affordable Access to Both Wireline and Wireless Services.

In the *Reverse Auctions NPRM*, the Commission has asked whether the Act requires that rural consumers have affordable access to *both* wireline and wireless services.²¹ The answer is that the Act does in fact impose such a requirement. Specifically, Section 254(b) of the Act²² requires the Commission to base its policies for the preservation and advancement of universal service on several stated principles, including the principle contained in paragraph (3) of Section 254(b), namely, that consumers in rural and other high-cost areas should have access to telecommunications services that are reasonably comparable to those services provided in urban

²⁰ To provide a very simple context, each carrier in an urban market receives \$0.00 of support. That is identical support, and consumers choose the carrier that best suits their needs. The object of universal service support in rural areas is to provide the correct amount of support (whether it be per line, per minute, or otherwise) so that consumers receive the same benefits. Regulators must avoid conferring unequal benefits to market participants.

²¹ *Reverse Auctions NPRM* at para. 16.

²² 47 U.S.C. § 254(b).

areas, and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Since consumers in urban areas have virtually ubiquitous access to wireless telecommunications services, the statutory principle codified in Section 254(b)(3) of the Act requires that the Commission's universal service policies must ensure that reasonably comparable wireless services are available in rural and other high-cost areas.

Elimination of the identical support rule — especially in the absence of any parallel action by the Commission to curb high-cost fund disbursements to incumbent LECs — would impair the ability of wireless competitive ETCs to compete against incumbent LECs and would also hinder the efforts of wireless carriers to continue their installation and expansion of wireless infrastructure in rural and other high-cost areas.

The FCC adopted the competitively neutral identical support rule in order to guard against a high-cost funding mechanism that would enable incumbent LECs to maintain their entrenched position in rural and other high-cost markets, and to accelerate investment by wireless carriers in keeping with the statutory mandate to provide reasonably comparable services in rural and other high-cost areas.

3. Capping HCMS and HCLS Support for Competitive ETCs, If Combined with Elimination of the Identical Support Rule, Would Compound the Commission's Dismantling of the Competitive Neutrality Principle.

The Commission seeks comment on whether high-cost model support (“HCMS”) and high-cost loop support (“HCLS”) available to wireless competitive ETCs should be capped at the level of HCMS and HCLS available to incumbent LECs. The Commission reasons that “[a]dopting a ceiling for competitive ETCs at the level of incumbent LEC support could avoid

rewarding competitive ETCs for being inefficient and reduce incentives for competitive ETCs to inflate their costs.”²³

RCA-ARC strongly endorse any effort by the Commission to stamp out incentives for cost inflation wherever it finds them. In fact, we suggest that an examination of the Commission’s high-cost funding mechanisms for incumbent LECs would be fertile ground for such a search for cost inflation incentives. In this regard, it was dismaying to learn from the Federal-State Joint Board that it had “not reached agreement on specific changes to the legacy support mechanisms that today provide support for incumbent local exchange carriers”²⁴ What many consider to be the keystone of universal service reform has been left on the shelf by the Joint Board and the Commission.

RCA-ARC respectfully suggest, however, that capping high-cost fund disbursements to competitive ETCs while also abandoning the identical support rule would not be the most efficacious way to promote the proper cost incentives, and would also result in unintended consequences that would undermine the Commission’s stated policies for promoting competition in rural and other high-cost areas as a means of achieving statutory goals for universal service.

The Commission appears to be proposing a funding mechanism whereby competitive ETCs would be capped at the per line level of funding for the incumbent LECs, while funding available to incumbent LECs would continue to be based on their embedded costs and would not be capped. This “heads I win tails you lose” proposal would, as Alltel has observed, “by design,

²³ *Identical Support Rule NPRM* at para. 25.

²⁴ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Rcd 20477, 20482 (para. 19) (Fed.-State Jt. Bd., 2007) (“*Comprehensive Reform Recommended Decision*”) at para. 19.

inevitably . . . disburse more support to ILECs than to competitors using alternative technologies”²⁵

In light of the unfairness inherent in this Commission proposal to impose a competitive ETC cap and eliminate the identical support rule at the same time, there is no credible argument that such a prescription could be reconciled with the statutory mandate of competitive neutrality. The proposal would transparently give incumbent LECs “protection from competition, the very antithesis of the Act.”²⁶

4. Arguments Suggested in Support of Repealing the Identical Support Rule Are Not Persuasive.

The Commission has tentatively concluded that the identical support rule should be abandoned because a number of serious problems threaten the fate of the high-cost fund and the only cure for these problems is repealing the rule.²⁷ The soundness of this tentative conclusion is examined in the following section of these Comments.

Before turning to that discussion, however, we first examine two policy arguments that have been advanced for replacing the identical support rule with an embedded cost model for competitive ETCs. Neither argument is persuasive.

The first argument is that basing competitive ETCs’ high-cost fund support on their embedded costs would be competitively neutral because the same method of disbursement is used for incumbent LECs. This argument fails, however, because the Commission has repeatedly ruled that portability provided by the identical support rule is a key ingredient of competitive neutrality. The use of embedded costs as the basis for high-cost fund disbursement cannot be

²⁵ Alltel Letter, Attachment at 11. We are constrained to note that there are today ample rewards for rural ILEC inefficiencies and no incentives for rural ILECs to reduce their costs.

²⁶ *Alenco*, 201 F.3d at 622, cited in Alltel Letter, Attachment at 10, n. 25.

²⁷ *Identical Support Rule NPRM* at para. 10.

competitively neutral because the resulting differences in funding levels would inherently give one competitor an advantage over the other.

This conclusion is buttressed by observations made by a proponent of repeal of the identical support rule. In a recent *ex parte* filing, the Advocates of Regulatory Action (“ARA”) pointed out that:

[t]he basic argument for the WiCAC [wireless carrier actual cost] mechanism [proposed by ARA] is more closely associated with the Universal Service Funds being a limited resource which must be distributed prudently. Competitive neutrality is an issue and the WiCAC does move in that direction, but the more important issue is that the Commission and Joint Board determine which carriers should receive High Cost Funds and have a method of assuring that it is only the “High Cost” that is being supported.²⁸

ARA’s explanation amounts to an admission that an embedded cost methodology such as its WiCAC proposal would tilt the balance toward a purported effort to preserve and advance universal service and away from any promotion of competition.²⁹ This admission is tantamount to conceding that abandoning the identical support rule in favor of an embedded cost funding requirement cannot be competitively neutral, and thus would violate the pro-competitive mandate of the Act.

The second argument is that the identical support rule should be terminated because it has enabled the funding of multiple networks in areas that would not otherwise support any competition. Thus, the Commission’s Chairman, Kevin J. Martin, argues, in support of eliminating the identical support rule, that:

[a] large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple competitors to serve areas in which costs are

²⁸ ARA, Ex Parte Filing in WC Docket No. 05-337 and CC Docket No. 96-45, Oct. 9, 2007, at 4. ARA claimed that “Wireless Carrier Actual Cost (WiCAC) is a cost-based system to calculate the equivalent of wireline carrier high-cost loop support for wireless ETCs.” *Id.* at 2. *See also* ARA, Ex Parte Filing in WC Docket No. 05-337 and CC Docket No. 96-45, Sept. 18, 2007 (“WiCAC Proposal”).

²⁹ ARA’s assertion that WiCAC “move[s] in [the] direction” of competitive neutrality is unexplained and unsupported.

prohibitively expensive for even one carrier. These additional networks don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower.³⁰

This concern seems to presume that, because of the identical support rule, the fund is artificially supporting entry in areas that otherwise could not sustain it, and that this phenomenon results in unwarranted disbursements from the fund. These presumptions are not correct. To the extent that high-cost support is fully portable, the identical support rule cannot result in the complete funding of multiple carrier networks in a given service area because the amount of support in the area is limited by the number of customers.

Moreover, the concern about multiple wireless competitive ETCs being funded in a service area is misplaced because, as a result of the identical support rule, a competitive ETC only receives support when it wins a customer, and competitive ETCs lose high-cost support when they lose customers. Thus, high-cost funding is *fully portable* among competitive ETCs. The funding portability provided by the identical support rule avoids any "overfunding" as a result of multiple competitive ETCs receiving support in the same service area.³¹ The Commission's real concern about overall fund size can be easily resolved by carrying out the agency's intent to fully implement its statutory mandate to make all support *fully portable among all carriers, not just competitive ETCs*.

B. The Identical Support Rule Does Not Threaten the Sufficiency of Universal Service Support Mechanisms.

Apart from the issue of whether the Commission could overcome the statutory and public policy requirements and considerations that militate against abandonment of the identical support

³⁰ *Identical Support Rule NPRM*, Statement of Chairman Kevin J. Martin.

³¹ See RCA-ARC Joint Board Comments at 16-19.

rule, another central issue is whether the agency can meet its task of demonstrating a sufficient factual basis in support of its tentative conclusion that the rule should be repealed.³²

The Commission, in defending its tentative conclusion to eliminate the identical support rule, has subscribed to the claim that the level of high-cost support disbursed to competitive ETCs has placed “extraordinary pressure on the federal universal service fund.”³³ In order for the agency to rely upon this and related claims as the factual underpinnings of any decision to abandon the identical support rule, the Commission must present sufficient facts about the present and anticipated future status of the high-cost fund to demonstrate that termination of the identical support rule is a reasonable and necessary step to avoid the purported problems faced by the fund.³⁴

The Commission must be able to demonstrate that the problem it is setting out to solve actually exists. As the District of Columbia Circuit has explained, “we must consider whether the Commission has made out a case for undertaking rulemaking at all since a ‘regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.’”³⁵ In this case, the Commission’s solution is in search of a problem.

To sustain the reasonableness of its proposal, the Commission first must support its assumption that near-term growth in the high-cost fund is likely to occur at such a rate that the fund will become unsustainable. Next, the agency must demonstrate that funding to competitive

³² See *Telocator Network of America v. FCC*, 691 F.2d 525, 537 (D.C. Cir. 1982) (finding that the agency must explain the facts upon which it relies and that “those facts [must] have some basis in the record”).

³³ *Identical Support Rule NPRM* at para. 4 (footnote omitted).

³⁴ In fact, the Commission was required to present sufficient facts in the *Identical Support Rule NPRM* to demonstrate the reasonableness of its proposals and provide interested parties with an opportunity to review and comment on the facts on which the agency relied in formulating its proposals. See *HBO v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) (emphasis added) (finding that an agency rulemaking notice, “or information subsequently supplied to the public, must disclose in detail the thinking that has animated the form of the proposed rule and the data upon which that rule is based”). The Commission has not met this burden.

³⁵ *Id.* at 36 (quoting *City of Chicago v. FPC*, 458 F.2d 731, 742 (D.C. Cir. 1971), *cert denied*, 405 U.S. 1074 (1972)).

ETCs based on identical support will be the preponderant cause of sharp high-cost fund growth in the future. And, finally, the Commission must make its case that eliminating the identical support rule is the agency's only option, because there are no other steps that could effectively contain high-cost fund growth.

In the absence of these showings, the Commission will not be able to demonstrate a reasonable basis for its proposed action to terminate the identical support rule, especially in light of the serious statutory and public policy issues associated with the proposal. The sufficiency of the agency's showings in the *Identical Support Rule NPRM* is examined in the following sections.

1. Near-Term Growth in the Size of the High-Cost Fund Will Not Threaten the Viability of the Fund.

Although concerns about the threatened status of the high-cost fund have been expressed in virtually apocalyptic terms,³⁶ neither the Joint Board nor the Commission has provided an explanation of the exact nature of this threat³⁷ or described with any precision the confluence of events that would serve as the tipping point at which the threat would become a reality.³⁸ In other words, the Joint Board and the Commission have been vocal in airing their alarms about the state of the fund, but they have not provided any details or analysis that gives a reasonable basis for these alarms. In order for interested parties to evaluate and comment upon the reasonableness of

³⁶ See, e.g., *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Rcd 8998, 9000 (para. 4) (Fed.-State Jt. Bd., 2007) ("*Interim Cap Recommended Decision*") (claiming that "the federal universal service fund is in dire jeopardy of becoming unsustainable").

³⁷ In its proposal to terminate the identical support rule, the Commission has limited its assessment of the current and future state of the high-cost fund to one paragraph. See *Identical Support Rule NPRM* at para. 4.

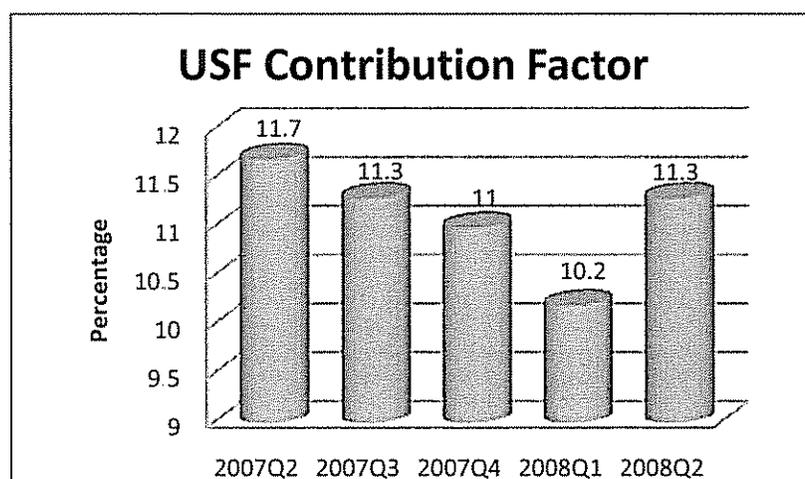
³⁸ For example, the Commission seeks comment on whether a "minimal departure" from the "goal" of competitive neutrality is "compensated by the *potential* stabilization of the high-cost fund[.]" *id.* at para. 12 (emphasis added), but the agency does not explain the nature or extent of the fund's current presumed de-stabilization. Even more telling is the agency's necessary concession that eliminating the identical support rule will only potentially fix the fund's purported problems.

the Commission’s proposal to eliminate the identical support rule, such details and analysis should have been presented in the *Identical Support Rule NPRM*.

In assessing the overall growth of the high-cost fund, the Commission limits itself to the observation that the size of the fund has increased between 2001 and 2006.³⁹ The agency’s examination of predicted near-term growth in the fund consists only of its projection of the annualized amount of support that competitive ETCs would receive in 2007.⁴⁰

The Commission’s assumption that the high-cost fund currently is de-stabilized is suspect for two reasons. First, the agency fails to present its criteria for determining the presence and extent of this “de-stabilization” and also fails to present any data that supports its claims about the dangers the fund currently faces and will continue to face.

And, second, the Commission ignores relevant data and factors that should be taken into account in evaluating the stability of the high-cost fund. For example, the agency does not consider the recent quarterly levels of the Universal Service Fund (“USF”) contribution factor, which is a direct determinant of the size of the fund. The following chart shows these percentage levels in recent quarters:



³⁹ *Id.* at para. 4.

⁴⁰ *Id.*

The fact that the contribution factor has decreased from 11.7 percent to 10.2 percent between the second quarter of 2007 and the first quarter of 2008 contradicts the Commission's assumptions about the stability of the high-cost fund and the threat that continued growth in the size of the fund poses to its ongoing viability.⁴¹

Moreover, although the Commission has not explained its criteria for measuring the future viability of the high-cost fund, one reasonable evaluation would be the impact that fund size may have on general consumer welfare. This in turn can be assessed by observing changes in the level of monthly subscriber contributions to USF, depending on the size of the fund.⁴²

The growing size of the high-cost fund that has given rise to the Commission's concerns does not have any appreciable negative impact on general consumer welfare. For example, applying the latest contribution factor of 11.3 percent and the wireless safe harbor percentage of 37.1 percent, a wireless consumer with a \$50 monthly bill contributes \$2.10 to the USF. If all competitive ETC petitions currently pending before the Commission were granted today, the contribution factor would rise from 10.2 percent to 11.5 percent.⁴³ The impact on a wireless consumer's monthly bill would be roughly 3 cents.

⁴¹ U.S. Cellular notes that the contribution factor for the second quarter of 2008 has increased to 11.3 percent. See FCC Public Notice, "Proposed Second Quarter 2008 Universal Service Contribution Factor," CC Docket No. 96-45, DA 08-576 (rel. Mar. 14, 2008). This increase, however, does not appear to be attributable (to any appreciable extent) to projected high-cost program support. For the first quarter of 2008, the Universal Service Administrative Company ("USAC") projected high-cost program support (before adjustments, *i.e.*, administrative costs, interest, and periodic true-ups) to be \$1.141 billion. FCC Public Notice, "Proposed First Quarter 2008 Universal Service Contribution Factor," CC Docket No. 96-45, DA 07-5007 (rel. Dec. 14, 2007), at 2. For the second quarter, USAC projects unadjusted high-cost program support to be \$1.148 billion, an increase of only 0.6 percent. See USAC, "Federal Universal Support Mechanisms Fund Size Projections for the Second Quarter 2008" (filed Feb. 1, 2008) at 10-11.

⁴² Evaluating monthly subscriber contributions is reasonable because there likely is a nexus between the sustainability of the high-cost fund and the burden that the fund places on telecommunications service consumers. The greater the upward trend in monthly contributions, the greater the pressure to modify the operation of the fund to relieve the upward trend and preserve the viability of the fund.

⁴³ This calculation uses a quarterly support projection of approximately \$31 million per quarter for the 28 ETC applications that seek support from the high-cost portion of the USF. Support estimates for ETC applicants are based on information from ETC applications and on quarterly projections in USAC High Cost Appendix HC01 for Second Quarter 2008. With respect to the handful of applicants for which support projections are not available, projected

At the same time, wireless prices (reflected by average revenues per minute) have dropped by as much as 20 to 30 percent each year between 1998 and 2005. The overall decline in revenues per minute for wireless services from 1998 through 2007 was 82.9 percent.⁴⁴ The same trend is true for wireline customers, whose USF contributions account for a small portion of their monthly bills and whose average local and long distance bills have fallen between 1995 and 2005.⁴⁵

Another measure of the positive impact that wireless service has had on consumer welfare is the sharp decline in interstate revenues received by toll service providers in recent years. The drop in toll revenues — from \$109.6 billion in 2000 to \$61.9 billion in 2006,⁴⁶ a decrease of 43.5 percent — reflects a substantial savings for consumers. This is because many consumers have moved away from wireline long distance service in order to take advantage of long distance savings incorporated into wireless calling plans that bundle services, including nationwide calling, in flat-rated monthly packages.⁴⁷ One of the reasons that the Commission's retention of a fair, competitively neutral high-cost funding mechanism is important is that consumers in rural and other high-cost areas can reap the advantages of these wireless calling

support was assumed to be the per-applicant average of those for which projections are available. The calculation of the impact on the contribution factor also assumed that all variables other than high-cost support — including support from other USF programs, USAC administrative expenses, true-ups from prior support periods, and the telecommunications industry revenues used in determining the adjusted contribution base — will remain constant.

⁴⁴ CTIA, Ex Parte Filing in WC Docket No. 05-337 and CC Docket No. 96-45, Jan. 23, 2008 (“CTIA January 2008 Ex Parte Filing”), at 6 (Chart: “ARPU Has Remained Relatively Stable, While Usage Has Soared”). See also Exhibit 1, attached.

⁴⁵ Average monthly wireline bills (local and long distance) for all households have dropped 13.7 percent from 1995 to 2005. Industry Analysis and Technology Div., Wireline Comp. Bur., FCC, *Trends in Telephone Service*, Feb. 2007 (“2007 Trends Report”), at 3-4 (Table 3.2). See also Exhibit 2, attached.

⁴⁶ Industry Analysis and Technology Div., Wireline Comp. Bur., FCC, *Telecommunications Industry Revenues 2005*, June 2007, at 12 (Table 1). The revenue for 2006 is a preliminary estimate.

⁴⁷ See *The Current State of Competition in the Communications Marketplace*, Hearing Before the Subcomm. on Telecommunications and the Internet, of the H. Comm. on Energy & Commerce, 108th Cong (Feb. 4, 2004) (statement of Frank Louthan, Vice President, Equity Research, Raymond James Financial, Inc.) (testifying that “[a] large portion of incumbent service providers’ revenue comes from long distance and network access revenue, which is being eroded by wireless and other forms of technological substitution. We believe consumers now view wireless long distance as free and are therefore more likely to use their wireless phone to make long distance calls.”).

plans (and reduce their long distance bills) only to the extent that wireless carriers are able to fully deploy their networks in these areas.

Consumer welfare also should be considered from an additional perspective. Consumers benefit from competition. This incontrovertible fact has long been the basis for Commission policies with regard to the role that regulation should play in telecommunications markets. “Carriers in competitive markets can price their services no higher than the market will allow, and must offer more service, lower prices, and better service in order to stay in business.”⁴⁸ Competitive markets drive out inefficiency.

RCA-ARC urge the Commission to take account of the fact that, viewed from the perspective of consumers, the size of the high-cost fund is not jeopardizing its stability, and also to recognize that, in fact, incumbent LEC inefficiency is a significant source of upward pressure on the high-cost fund, that elimination of the identical support rule will exacerbate this problem (by undermining competition), and that consumers will pay the price.

2. Continued Funding to Competitive ETCs Based on the Identical Support Rule Will Not Be a Preponderant Cause of Any Significant Increases in High-Cost Fund Growth.

The Commission points to an annual growth rate in competitive ETC support of more than 100 percent between 2001 and 2006.⁴⁹ This growth rate is relied upon implicitly to support the Commission’s tentative conclusion that it “must fundamentally reform how we distribute support under the existing high-cost mechanism.”⁵⁰

There are several significant problems with the Commission’s reliance on annual growth rates for competitive ETC high-cost funding. First, the Commission’s assumptions ignore the

⁴⁸ RCA-ARC Joint Board Comments at 8; *see also id.* at 10 (citing comments by Chairman Martin regarding the benefits of competition in the video services market).

⁴⁹ *Identical Support Rule NPRM* at para. 4.

⁵⁰ *Id.* at para. 5.

fact that such growth rates are to be expected in the early years of competitive ETC market entry because they are a product of the agency's own decision to promote this entry to extend and enhance services available in rural and other high-cost areas. During the transition from no competitive ETC participation in rural and other high-cost markets to an increasing competitive ETC presence in these markets, there will inevitably be an initial climb in competitive ETC funding levels.⁵¹

Further, CTIA has convincingly demonstrated that high-cost fund support to wireless competitive ETCs has grown at an unremarkable rate that has simply mirrored the growth in demand for wireless services. RCA-ARC agree with CTIA's observation that high-cost support for wireless carriers is a function of subscribership.⁵² Therefore, CTIA points out, consumers control whether and how much support a wireless competitive ETC receives. More subscribers mean more support and less subscribers translate to less support.⁵³ This contrasts with high-cost funding for rural incumbent LECs, who can (and often do) retain funding even as they lose customers.

CTIA indicates that, between 2001 and 2006, annual high-cost universal service support for wireless competitive ETCs increased to about \$1 billion.⁵⁴ But the number of wireless

⁵¹ Sprint Nextel Corporation ("Sprint") has provided an explanation of this phenomenon:

This result is entirely anticipated and expected: Congress' decision to promote competition in all areas of the nation and to require explicit high cost subsidies has naturally led to increased universal service support to CETCs. However, it is a tortured and invalid leap of logic to then conclude that the federal high-cost USF is imperiled entirely due to the fact that CETCs are receiving more USF funds than they did a year, or two years, or five years ago. There is nothing improper about CETC participation in the USF program, and to lay the blame for all of the high-cost fund's problems at the collective CETC doorstep is totally unwarranted.

Sprint Comments, *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Red 8999 (Fed.-State Jt. Bd., 2007), June 6, 2007 ("Sprint Comments") at 5.

⁵² CTIA Reform Proceeding Comments at 3.

⁵³ *Id.*

⁵⁴ *Id.*

subscribers increased from 118.4 million in June 2001⁵⁵ to more than 238.2 million in June 2007.⁵⁶ Between June 2001 and June 2007, the average number of minutes that subscribers use their mobile devices each month rose from 320 to 746 minutes, or more than 12 hours per month.⁵⁷ In the first six months of 2007, there were approximately 1.012 trillion minutes of use on wireless networks (up from 857 billion minutes in the first six months of 2006).⁵⁸

CTIA also observes that wireless service providers are investing more than \$27 billion annually to increase the capacity of their networks so they can respond to consumer demand and deliver next generation services to consumers,⁵⁹ and indicates that, in many respects, growth of wireless carriers' high-cost support has not kept pace with other more recent measures of the wireless industry's success, such as wireless broadband subscribership. From December 2005 to June 2006, almost 60 percent of all new high-speed lines reported were wireless broadband lines. Over that six-month period, wireless broadband subscription grew by almost 8 million subscribers, a rate of 250 percent. Wireless companies are providing wireless broadband coverage to more than 200 million customers. Public safety users also are increasingly using wireless broadband networks.⁶⁰

A second problem with the Commission's assumptions is that there is no basis for concluding that the initial historical growth in competitive ETC support will continue indefinitely at the same rate in future years. Without such a showing, the Commission cannot

⁵⁵ CTIA January 2008 Ex Parte Filing at 3 (Table: "Subscribership Growth Reflects Wireless' Value").

⁵⁶ FCC, *Local Telephone Competition: Status as of June 30, 2007* (rel. Mar. 2008) at Table 14 ("Mobile Wireless Telephone Subscribers").

⁵⁷ CTIA January 2008 Ex Parte Filing at 6 (Chart: "ARPU Has Remained Relatively Stable, While Usage Has Soared").

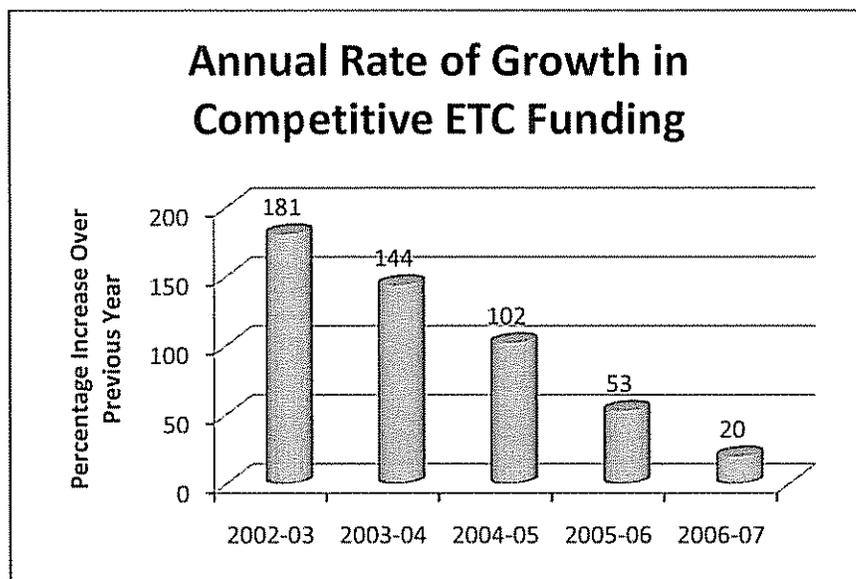
⁵⁸ *Id.* at 2.

⁵⁹ CTIA Reform Proceeding Comments at 4.

⁶⁰ *Id.*

reasonably conclude that elimination of the identical support rule is necessary to “save” the high-cost fund.

The Joint Board, for example, has asserted that high-cost support to competitive ETCs “is estimated to grow to almost \$2 billion in 2008 and \$2.5 billion in 2009 even without additional [competitive ETC] designations in 2008 and 2009.”⁶¹ But the evidence is that the rate of growth in competitive ETC high-cost support is declining. Even as wireless lines steadily increase nationwide, the level of competitive ETC high-cost support is proving to be self-regulating. The following chart illustrates the dramatic decrease in the annual growth rate of competitive ETC disbursements from the high-cost fund:⁶²



The predictions made by the Joint Board appear doubtful in light of the recent downward trend in the growth of competitive ETC funding. Moreover, even assuming that the rate of growth in competitive ETC support will not continue to decline but will instead remain level in 2008 and

⁶¹ *Interim Cap Recommended Decision*, 22 FCC Rcd at 9000 (para. 4).

⁶² High-cost support for competitive ETCs totaled \$46.1 million in 2002, \$129.6 million in 2003, \$315.8 million in 2004, \$627.7 million in 2005, \$979.9 million in 2006, and \$1.18 billion in 2007. Fed.-State Jt. Bd, *Universal Service Monitoring Report*, CC Docket No. 98-202, (rel. 2007) (“2007 Monitoring Report”) at 3-15 (Table 3.2: “High-Cost Support Fund Payment History – ILECs and CETCs”); USAC, *2007 Annual Report* at 45 (Table: “High Cost Program, Disbursements by Incumbent v. Competitive ETC”).

2009, the Joint Board's predictions for the period from 2007 through 2009 overstate competitive ETC support by approximately \$1.479 billion.⁶³

And, finally, there is a related problem with the Commission's assumption that switching to an embedded cost methodology will relieve purported pressures on the high-cost fund. Specifically, the agency seems to assume that competitive ETC costs to provide service in rural and other high-cost areas are lower than incumbent LEC costs, so that basing competitive ETC support on incumbent LEC costs (pursuant to the identical support rule), in the Commission's view, results in an unwarranted subsidy to wireless competitive ETCs, and switching to an embedded base model for wireless competitive ETCs would result in a reduction of high-cost fund disbursements.

Although it would be prudent to test the assumptions before undertaking such a major revision of the high-cost mechanism, the Commission has not done so. It may turn out that, "[i]n fact, providing support on a newcomer's costs would, in the short term, likely yield much higher support levels as new networks are being constructed."⁶⁴

On the other hand, if a competitive ETC's costs in fact are lower than an incumbent LEC's costs, then entry should be encouraged by the Commission, and the identical support rule is an effective means of encouraging this entry. The competitive ETC's lower costs "can result in lower prices to consumers and a smaller fund over the long run."⁶⁵ Thus, the Commission's

⁶³ In the *Interim Cap Recommended Decision*, the Joint Board stated that "competitive ETC support in 2007 will reach at least \$1.28 billion if the Commission takes no action to curtail this growth. . . . High-cost support to competitive ETCs is estimated to grow to almost \$2 billion in 2008 and \$2.5 billion in 2009 even without additional ETC designations in 2008 and 2009." *Interim Cap Recommended Decision*, 22 FCC Rcd at 9000 (para. 4) (footnote omitted). In calculating the amount by which the Joint Board has overstated the growth in competitive ETC support, the rate of growth in competitive ETC support was assumed to be 20.27 percent, which was the rate of growth in competitive ETC support from 2006 to 2007 according to USAC's annual reports for those years. Using this percentage, competitive ETC support was calculated at \$1.42 billion for 2008 and \$1.70 billion for 2009.

⁶⁴ RCA-ARC Joint Board Comments at 15-16.

⁶⁵ Don J. Wood, *Effective Long Run Management of the High-Cost Universal Service Support Mechanism* (2003) at 12

proposal to repeal the identical support rule, which may not in fact reduce fund disbursements in the near-term, would likely place greater pressures on the fund in the longer term because imposing an embedded cost model on wireless competitive ETCs would have a chilling effect on their market entry and would lead to the unintended consequence of consolidating the dominance of incumbent LECs in rural and other high-cost markets. The absence of competition, together with the disbursement of high-cost support to incumbent LECs based on their embedded costs, would likely result in upward pressure on the size of the fund.

This clearly would be an anomalous result, especially in light of the fact that incumbent LECs — and not wireless competitive ETCs — pose the greater threat to the ongoing sustainability of the high-cost fund. An example of this threat is that incumbent LEC access lines decreased by 26.3 percent from 2000 to 2006⁶⁶ while high-cost support given to incumbent LECs increased by 39.5 percent over the same period.⁶⁷ The significance of high-cost fund disbursements to incumbent LECs, in the context of high-cost fund reform, is examined in more detail in the following section.

3. Elimination of the Identical Support Rule Is Not the Only Option for Solving the Purported High-Cost Fund Crisis.

The Commission's proposal to switch from identical support to embedded costs for competitive ETC high-cost fund support represents a significant departure from a funding methodology that has been in place for more than a decade. Moreover, the proposal cannot be reconciled with the statutory requirement — and the agency's own policy — that high-cost funding must be disbursed on a competitively neutral basis. In these circumstances, sound policymaking would dictate that, in addition to providing convincing documentation of the

⁶⁶ See *2007 Monitoring Report* at 10-5 (Table 10.1: "Switching Data").

⁶⁷ See *id.* at 3-15 (Table 3.2: "High-Cost Support Fund Payment History – ILECs and CETCs").

current and projected instability of the high-cost fund (which the Commission has not done) as a basis for justifying a change in the disbursement methodology, alternative measures of reducing this purported funding instability should be considered and proposed.

The Commission's choice not to explore any of these alternatives is jarringly displayed in the first two sentences of its discussion in the *Identical Support Rule NPRM*: "To ensure the sufficiency of the universal service mechanism, we believe that the Commission must fundamentally reform how we distribute support under the existing high-cost mechanism. We therefore tentatively conclude that we should eliminate the Commission's current identical support rule for competitive ETCs"⁶⁸ There is no credible argument that the Commission can proclaim "mission accomplished" regarding high-cost reform merely by singling out competitive ETC funding mechanisms for revision.⁶⁹

Consumers in rural and other high-cost areas quite literally would pay a high price if the Commission adopts its proposal to repeal the identical support rule while at the same time ignoring other policy options that would better preserve and advance high-cost funding, to the benefit of these consumers. The harm to consumers that is risked by the approach taken by the Commission in the *Identical Support Rule NPRM* is a product of two related problems with the agency's proposal.

First, the Commission's decision to rush toward a narrowly focused "reform" of the high-cost fund mechanism, while continuing to put aside more comprehensive reform efforts, heightens the burden on the Commission to demonstrate that the current and projected state of

⁶⁸ *Identical Support Rule NPRM* at para. 5 (footnote omitted)

⁶⁹ The Joint Board, of course, has already conceded that it has not been able to make any recommendations regarding changes to incumbent LEC support mechanisms. *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20482 (para. 19). And the Commission has also reminded parties that it and the Joint Board are "currently considering" reforming high-cost support for rural carriers. *Identical Support Rule NPRM* at para. 24, n. 58. Efforts to pursue these reforms apparently have been delayed as the Commission has sought to pursue its proposal to eliminate the identical support rule.

the high-cost fund warrants such precipitous action. Yet, the Commission has barely addressed the nature and extent of the presumed current and projected instability of the fund, and the scant documentation the agency does provide in the *Identical Support Rule NPRM* falls far short of making a credible case that the Commission's only option is to eliminate the identical support rule. The Commission's failure to consider other options thus exposes consumers in rural and other high-cost areas to harm if elimination of the identical support leads to the consequences that RCA-ARC has described in these Comments.

And, second, a reasonable process for reforming the high-cost fund program would begin by focusing on where the bulk of the funding is disbursed. Given the fact that incumbent LECs receive the lion's share of disbursements from the high-cost fund,⁷⁰ if the Commission is correct that immediate steps must be taken to stabilize the fund and protect its future viability, then it is puzzling that the agency has ruled out any effort to "go where the money is" by focusing on reforming the funding methodologies and disbursement practices applicable to incumbent LECs. As Sprint has argued, "[t]o focus only on the CETC segment — in effect, to place the entire responsibility for jeopardizing the high-cost fund on a group of carriers that accounts for less than a quarter of 2006 disbursements — makes no economic or policy sense."⁷¹

⁷⁰ Sprint has pointed out that, in 2006, incumbent LECs received \$3.1 billion in high-cost support, while competitive ETCs received \$980 million. Sprint Comments at 3. *See also* Exhibit 3, attached. In addition, RCA-ARC has indicated that the Commission's failure to adopt long-term, comprehensive reform has directly contributed to fund growth:

[T]he FCC adopted a five-year transition period during which rural ILECs would not lose support when CETCs entered. The FCC extended the transition period indefinitely in 2006 without any reform having been enacted. With rural ILECs having lost over 10% of their access lines since 2003, that represents roughly \$300,000,000 per year in increased fund support which has not been addressed by the proposed cap [on competitive ETC high-cost funding] or any other comprehensive reform proposal.

RCA-ARC Joint Board Comments at 4 (footnote omitted).

⁷¹ Sprint Comments at 3.

The agency's reluctance to make incumbent LEC high-cost funding reform the centerpiece of its efforts to relieve perceived pressures on the fund is even more perplexing in light of the fact that the Commission has before it an ample record that provides a roadmap for this reform. To take a few examples, the Commission could:

- Implement full portability of high-cost funds disbursed to incumbent LECs.⁷²
- Fix the “interim” embedded cost methodology used for incumbent LEC funding disbursements. There is widespread agreement that this interim measure, adopted in 2001, promotes inefficiency.⁷³
- Wean incumbent LECs away from high-cost support once the objective of geographic coverage has been accomplished.
- Prescribe more effective measures to prevent fraud, waste, and abuse associated with the use of high-cost funds disbursed to incumbent LECs, and to remedy any instances of such fraud, waste, or abuse if they occur.⁷⁴
- Provide high-cost fund support to incumbent LECs on a geographically disaggregated basis upon competitive entry.
- Change the rule that bases rural incumbent LEC support on a comparison of a rural incumbent LEC's per line revenue requirement with a national benchmark. “This adjustment would reduce the artificial incentive [rural LECs] have to increase their

⁷² We note that *full portability* is a cap on overall funding that would be consistent with the core principle of competitive neutrality.

⁷³ *Id.* at 8.

⁷⁴ To take one example, auditing criteria currently used by USAC for reviewing wireline company submissions are not sufficient “to determine whether support is being used efficiently, or whether related-party transactions are contributing to over-subsidization and structural inefficiencies within individual [incumbent LEC] companies” *Id.* at 9.

support by allowing (even actively encouraging) their cost per line to grow faster than the national average.”⁷⁵

- Require that incumbent LECs charge a certain minimum prescribed rate for basic local exchange service, as a prerequisite for their receipt of high-cost funding.⁷⁶
- Reduce high-cost support to incumbent LECs that earn supra-competitive rates of return, generated, for example, by “inflated access rates . . . or unlawful traffic pumping schemes”⁷⁷

The reform proposal to phase out incumbent LECs’ high-cost support warrants discussion here because of a related Joint Board recommendation. The Joint Board has indicated that it “anticipates” that Mobility Fund support⁷⁸ relating to the operation and maintenance of wireless networks “will only be available for a limited period of time[,]” and that the Commission should seek comment on “the appropriate transition plan to wean a provider from Mobility . . . support once the objectives of geographic coverage in an area have been met.”⁷⁹ At the same time, the Joint Board, after effusively praising rural incumbent LECs for doing “a commendable job of providing voice and broadband services to their subscribers[,]”⁸⁰ expresses its belief that, because of these good works, “it is in the public interest to maintain, for the present, the existing

⁷⁵ Sprint Comments at 4.

⁷⁶ *Id.*

⁷⁷ *Id.*; see also Oregon Public Utility Commission, *2006 Annual Statistics of ILECs* (accessed at <http://www.puc.state.or.us/PUC/telecom/stats06.pdf>) at 3-13 (showing many rural incumbent LECs earning rates of return significantly above the prescribed rate of 11.2 percent)

⁷⁸ See *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20482 (para. 16) (recommending a Mobility Fund to be “tasked primarily with disseminating wireless voice services to unserved areas”). The Commission has sought comment on recommendations made by the Joint Board in the *Comprehensive Reform Recommended Decision*. See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 08-22 (rel. Jan. 29, 2008) at para. 8.

⁷⁹ *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20486 (para. 38).

⁸⁰ *Id.* at 20487 (para. 39).

RLEC support mechanisms, distributed through the proposed POLR [Provider of Last Resort] Fund.”⁸¹

RCA-ARC believe that the Commission should reject the “commendable job” test apparently recommended by the Joint Board, and instead renew its commitment to pursue the critical task of replacing the embedded cost methodology with funding mechanisms that provide incumbent LECs with incentives to operate efficiently in a competitive environment. In addition, the Commission must reject the proposal that funding support for wireless carriers should be phased out while embedded cost funding for incumbent LECs remains in place. A funding mechanism that gives support to one provider while cutting off support to another would be the antithesis of competitive neutrality.⁸²

In sum, RCA-ARC believe that, even if the Commission could overcome the statutory impediments and public policy arguments against its proposed elimination of the identical support rule, which we have described in Section II.A., *supra*, the Commission’s proposal is still deficient unless the agency can demonstrate that the high-cost fund faces a substantial and ongoing peril and that repeal of the rule is the only option to salvage the fund.

The Commission has not presented any credible evidence that the high-cost fund is unstable or that its viability is hanging in the balance, nor has the agency supported its claim that the fund’s purported problems can be laid at the doorstep of competitive ETCs. Finally, the Commission has given no explanation for its plan to address the perceived high-cost fund crisis by focusing on disbursements to competitive ETCs while failing to address the much larger disbursements made to incumbent LECs. For all these reasons, the Commission should not adopt its proposal to eliminate the identical support rule.

⁸¹ *Id.*

⁸² *See Alenco*, 201 F.3d at 622.

C. The Identical Support Rule Does Not Fail To Provide Efficient Investment Incentives for Competitive ETCs.

The Commission seeks to justify its proposal to eliminate the identical support rule by claiming that the rule “fails to create efficient investment incentives for competitive ETCs.”⁸³ This claim is wrong, for several reasons.

First, the purpose of the identical support rule is to ensure the competitive provision of service in rural and other high-cost areas. Competition in turn promotes efficient investment. By promoting competitive entry, the rule ensures that competitive ETCs are building wireless infrastructure that can be used to provide valuable services in rural and other high-cost areas. The rule also ensures that this investment in rural and other high-cost areas will be efficient, because wireless competitive ETCs will not enter a market unless they conclude that they can provide service more efficiently than the incumbent LEC. If a competitive ETC cannot provide service at a level of investment below that of the incumbent LEC, and still make a profit, the competitive ETC will not enter the market.⁸⁴ Thus, the identical support rule forces efficient investment by wireless competitive ETCs, because only efficient investment will enable them to provide service at a level of investment lower than that of the incumbent LEC.

Second, competitive ETCs receive high-cost fund support *only* to the extent that they are successful in winning customers in rural and other high-cost areas. Attracting and retaining customers requires that wireless competitive ETCs invest risk capital in facilities sufficient to provide services for which there is consumer demand. The identical support rule, by linking support to the acquisition of customers, plays a central role in the promotion of efficient investment by wireless competitive ETCs in rural and other high-cost markets.

⁸³ *Identical Support Rule NPRM* at para. 10 (footnote omitted).

⁸⁴ This is likely why the vast majority of competitive ETCs are wireless carriers, not wireline.

Third, the Commission’s tentative conclusion that the identical support rule has failed “to reward investment in communications infrastructure in rural and other high-cost service areas” is misplaced.⁸⁵ This tentative conclusion appears to be based on findings in the Criterion Report that there is “no evidence of a positive relationship” between “USF subsidies and wireless availability and choice” in rural and other high-cost areas.⁸⁶ The Verizon-sponsored Criterion Report⁸⁷ is a slender reed upon which to reach conclusions about the effectiveness of the identical support rule in promoting investment by wireless competitive ETCs. The Commission should not accept the Criterion Report without considering significant evidence in the record of this proceeding that undermines its core findings.

The fact of the matter is that wireless competitive ETCs are *required* to use the *entirety* of their high-cost support to build and maintain the infrastructure and facilities needed to support, maintain, and improve supported services for consumers in rural and other high-cost areas.⁸⁸ RCA-ARC members, for example, have provided detailed evidence in many of the states in which it operates showing the manner in which high-cost funds are being used to develop networks in rural and other high-cost areas for the delivery of their services.⁸⁹

And, fourth, the Commission is incorrect in its contention that competitive ETCs have little incentive to make facility investments in areas with low population densities.⁹⁰ This claim is not consistent with the evidence in the record of this proceeding, and it is not consistent with

⁸⁵ *Identical Support Rule NPRM* at para. 12 (citing Letter from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337, Attachment, *The Effects of Providing Universal Service Subsidies to Wireless Carriers* at 42 (filed June 13, 2007) (“Criterion Report”))

⁸⁶ Criterion Report at 42.

⁸⁷ The report was produced with financial support provided by Verizon Communications. *Id.* at 1, n. *.

⁸⁸ See 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.202(a)(1)(ii), 54.209(a)(1).

⁸⁹ For example, RCC submits detailed information to the Oregon Public Utility Commission and the Vermont Public Service Board. N.E. Colorado Cellular submits detailed information to the Colorado and Nebraska commissions. And many other carriers have submitted similar data to the FCC.

⁹⁰ *Identical Support Rule NPRM* at para. 10.

the experience of RCA-ARC members who are filing annual ETC recertification reports with state public utility commissions. Nor does it square with the *USF First Report and Order*, in which the Commission concluded that:

because a competing eligible telecommunications carrier must provide service and advertise its service throughout the entire service area, consistent with section 254(e), the CLEC cannot profit by limiting service to low cost areas. If the CLEC can serve the customer's line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC.⁹¹

Moreover, to the extent the Commission believes there is a need to provide wireless competitive ETCs with greater incentives to invest in areas with low population densities, there are options for achieving such a result that are less draconian than removing the identical support rule. For example, if the Commission made it mandatory for rural incumbent LECs to disaggregate their service areas upon competitive entry, this would enable the agency to target high-cost fund support to remote areas, thus promoting investment in those areas.⁹²

Thus, there is a direct-line relationship between high-cost support received by wireless competitive ETCs pursuant to the identical support rule and investments made by these recipients in rural and other high-cost areas. There is a wealth of evidence to this effect readily available to the Commission simply by requesting information from any of the many states that have designated competitive ETCs and are requiring such information to be submitted each year. It is difficult to understand, therefore, how the Commission could conclude that the identical support rule is not "rewarding" investment in wireless infrastructure.

⁹¹ *USF First Report and Order*, 12 FCC Rcd at 8933 (para. 289).

⁹² 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*, CC Docket No. 96-45, CC Docket No. 00-256, *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, 11302 (para. 145) (2001) ("*RTF Order*") (concluding that "as a general matter, support should be disaggregated and targeted below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service" and that creates economic incentives for competitive entry and investment in highest-cost areas).

D. The Commission Should Not Eliminate the Identical Support Rule Based Upon the Argument that Competitive ETCs Do Not Provide Services That Are Substitutes for Wireline Services.

The Commission tentatively concludes in the *Identical Support Rule NPRM* that wireless competitive ETCs are not providing a “complete substitute for traditional wireline service” in rural and other high-cost areas,⁹³ and that this has created “serious problems” for the high-cost fund.⁹⁴ The theme of the agency’s proposal is that the level of support to competitive ETCs must be reduced to save the high-cost fund, and that such a reduction is justified because wireless competitive ETCs are merely providing additional service to consumers in rural and other high-cost areas.

There are several problems with the Commission’s formulation. First, the question of whether wireless service is a “complete substitute” for wireline services in rural and other high-cost areas is not the correct question to ask. Instead, the Commission should focus on the question of whether the identical support rule, operating as the vehicle for ensuring competitive neutrality, has been effective in bringing the benefits of competition to consumers in rural and other high-cost areas.

The Commission would slice the competitive neutrality principle too finely if it were to conclude that the agency’s repeal of the identical support rule is competitively neutral (or that such repeal does not have to take account of the competitive neutrality principle) because “the majority of competitive ETCs generally do not sell services that consumers view as direct substitutes for wireline services.”⁹⁵

⁹³ *Identical Support Rule NPRM* at para. 9.

⁹⁴ *Id.* at para. 10. RCA-ARC have demonstrated in Section II.B., *supra*, that the Commission has not documented or provided any credible support for its assertion that the high-cost fund is unstable and will likely remain so unless the identical support rule is repealed.

⁹⁵ *Identical Support Rule NPRM* at para. 12.

Such an outcome would significantly alter the broad design the Commission articulated for the competitive neutrality principle when it promulgated the principle eleven years ago. Rather than making application of the principle turn on whether “the majority” of competitive entrants “generally” sell services that “consumers view” as “direct” substitutes for wireline service, the agency committed to the task of ensuring “that universal support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another[.]”⁹⁶ recognizing that its approach is necessary to promote the pro-competitive, deregulatory national policy framework mandated by the Act.⁹⁷

The Commission has already determined that a support mechanism that would disburse high-cost funds to competitive ETCs based on their embedded costs would unfairly disadvantage one provider over another and would unfairly disfavor one technology over another.⁹⁸ If, as the Commission has found, the identical support rule is necessary to ensure that the high-cost mechanism is competitively neutral, then the Commission has already answered its own question regarding “whether this proposal [to terminate the identical support rule] is consistent with the goal of competitive neutrality”⁹⁹

Second, the Commission’s broad design for competitive neutrality has been vindicated by the fact that, as a result of applying this principle, no provider is unfairly disadvantaged and competition is not inhibited “by limiting the available quantity of services or restricting the entry of potential service providers.”¹⁰⁰ The Commission has consistently acknowledged that wireless service mobility is vital in rural areas, especially the provision of access to emergency services

⁹⁶ *USF First Report and Order*, 12 FCC Rcd at 8801 (para. 47).

⁹⁷ *Id.* at 8801-02 (para. 48).

⁹⁸ See *USF Ninth Report and Order*, 14 FCC Rcd at 20480 (para. 90); *USF Seventh Report and Order*, 14 FCC Rcd at 8113 (para. 73).

⁹⁹ *Identical Support Rule NPRM* at para. 12.

¹⁰⁰ *USF First Report and Order*, 12 FCC Rcd at 8802 (para. 48).

that can reduce the unique risks of geographic isolation faced by residents of rural communities.¹⁰¹ Requiring mobile wireless services to be a “direct substitute” ignores competitive neutrality, unfairly disadvantaging wireless competitive ETCs, and places at risk the availability of these valuable services.

Such a result would lead to a third problem. Abandoning competitive neutrality based upon the Commission’s belief that wireless services are not “direct substitutes” for wireline services would be inconsistent with the comparability principle codified in the Act.¹⁰² The purpose of the comparability principle is to ensure that consumers in rural and other high-cost areas are not consigned to second class status, and will instead have the opportunity to benefit from their access to wireless and other telecommunications technologies that are comparable to technologies available in urban areas.

The effectiveness of the comparability principle depends in part upon its being applied dynamically by the Commission. For example, a recent survey conducted by the Pew Internet and American Life Project, which examined the extent to which “Americans are part of a wireless, mobile population that participates in digital activities away from home or work,” found that 43 percent of respondents living in urban areas, and 45 percent of respondents living in suburban areas, engage in at least one of ten activities using a mobile device with handheld access on a typical day.¹⁰³

¹⁰¹ See, e.g., *Federal-State Board on Universal Service, Smith Bagley, Inc., Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah*, CC Docket No. 96-45, *Order*, 22 FCC Rcd 2479, 2487 (para. 25) (Wireline Comp. Bur. 2007).

¹⁰² 47 U.S.C. § 254(b)(3).

¹⁰³ Pew Internet and American Life Project Survey, *Mobile Access to Data and Information*, rel. Dec. 2007 (“Pew Survey”), at 8. (The ten activities are: send or receive text messages; take a picture; play a game; send or receive e-mail; access the Internet for news, weather, sports, or other information; record a video; play music; send or receive instant messages; get a map or directions to another location; watch video. *Id.* at 2.)

The survey found, however, that only 12 percent of respondents in rural areas engage in at least one of the ten activities on a typical day. As carriers attempting to serve rural Americans, RCA-ARC member companies fully understand the reason for this rural/urban dichotomy. Rural Americans do not have sufficient service availability throughout the areas where they live, work, and play compared to their urban counterparts. RCA-ARC urge the Commission to focus its policy toward ensuring that consumers in rural areas have the opportunity to access wireless services in a manner that keeps pace with access to such features and enhancements in urban areas.

The competitive neutrality principle was intended to work in tandem with the comparability principle to enable the suppliers of wireless and other telecommunications technologies to compete in rural and other high-cost areas free from any unfair competitive disadvantages. The “substitutability” proposal, by vitiating the effectiveness of the competitive neutrality principle, would have the effect of denying consumers in rural and other high-cost areas access to comparable services and technologies.

Finally, even assuming *arguendo* that the above-described infirmities of the proposed substitutability analysis could be cured, the Commission’s proposed approach is problematic for two additional reasons. First, the “complete” substitution test proposed by the Commission is the wrong test for determining whether wireless services compete with wireline services and therefore should be protected by the competitive neutrality principle and the identical support rule.

The Commission appears to reason that its proposal to eliminate the identical support rule may be found “consistent” with the “goal” of competitive neutrality because consumers do not

view wireless services as “direct substitutes” for wireline services.¹⁰⁴ In fact, however, it is not a question of whether the proposal is “consistent” with the competitive neutrality principle, but whether the “minimum” departure (in the Commission’s view) from the principle that would be effected by repealing the identical support rule is justifiable on the grounds that wireless and wireline services do not compete (*i.e.*, one does not “completely” substitute for the other).

The purpose of the Commission’s competitive neutrality principle is to make sure that support mechanisms do not unfairly advantage or disadvantage one provider over another, or one technology over another. *All* providers of the supported services must be treated equally. The Commission in the *Identical Support Rule NPRM* in effect seeks comment on whether the competitive neutrality principle can be set aside because wireless services actually do not compete with wireline services. This necessarily leads one to conclude that the principle would clearly be violated by removal of the identical support rule, but the violation would be irrelevant (in the Commission’s estimation) because there are no competitors for the principle to protect.

The problem with this line of argument, however, is that there is no basis for concluding that wireless services are not entitled to competitive protections — protections that are mandated by the statutory goal of promoting competition as a means of serving the interests of consumers in rural and other high-cost areas — because they do not completely substitute for wireline services.¹⁰⁵ As Stephen Pociask has demonstrated (in commentary that pre-dates the 2005 data the Commission relied upon to conclude that the services are not substitutes), the concept of “completeness” has no place in the classical test for determining substitutability:

Two goods are considered to be *substitutes* when consuming one good leads to less consumption of the other good. Substitute goods can have different prices and

¹⁰⁴ *Identical Support Rule NPRM* at paras. 9, 12.

¹⁰⁵ By “complete” substitution, the Commission refers to households cutting the cord and relying exclusively on wireless phones. *Id.* at para 9 & n. 27.

levels of quality, differences that consumer preferences can sort out. While substitutes need not be identical products, they do need to serve overlapping markets, provide similar consumer benefits, and sometimes be sold in a similar unit of measure. . . . If wireless services substitute for wireline services, they are competing services, similarly addressing overlapping markets and providing similar benefits.¹⁰⁶

Pociask rejects any narrower formulation of the definition of substitutability. While noting that “[s]ome people claim that wireless services are not substitutes for wireline services because very few consumers have ‘cut the cord’ and become solely wireless users[,]” Pociask concludes that statistics about exclusive wireless use say “very little about the substitutability of the two goods, since consumption between wireless and wireline services need not be mutually exclusive.” Thus, “wireline subscribers could still substitute their calling by using wireless services without actually cutting the cord; they might eliminate second telephone lines or simply reduce wireline usage.”¹⁰⁷

Relying upon this conventional definition of substitutability, Pociask concludes that “overwhelming evidence shows that wireless services are replacing wireline services. While wireless service demand is on the rise, wireline service demand — measured in terms of primary telephone lines, additional telephone lines and telephone usage — is declining.”¹⁰⁸ Pociask observes that “wireless users are beginning to disconnect the wireline services into their homes[,]” that “numerous reports suggest that many consumers consider their wireless telephone as their primary telephone[,]” and that “three wireless subscribers are added for every telephone line lost.”¹⁰⁹ He then concludes that, based on econometric models employed in his study, there

¹⁰⁶ Stephen B. Pociask, *Wireless Substitution and Competition*, Competitive Enterprise Institute, Dec. 15, 2004 (“Pociask Paper”) (accessed at <http://cei.org/gencon/025%2C04329.cfm>) at 3 (emphasis in original).

¹⁰⁷ *Id.* at 4.

¹⁰⁸ *Id.* at 1. See also Exhibit 4, attached

¹⁰⁹ Pociask Paper at 1. See Harris Poll #36, “Cell Phone Usage Continues To Increase,” Apr. 4, 2008 (“Harris Poll #36”) (accessed at http://www.harrisinteractive.com/harris_poll/index.asp?PID=890) (finding that 89 percent of

is “conclusive evidence that wireless and wireline services are substitutes. This model finds that a one percent increase in wireline prices will result in a two percent increase in wireless demand. In other words, there appears to be statistically significant evidence that wireless competition prevents wireline prices from rising excessively.”¹¹⁰

Recent observations by Chairman Martin about consumer demand for wireless services are in keeping with Pociask’s conclusion that wireless services are replacing wireline services. Speaking at “CTIA Wireless 2008” earlier this month, Chairman Martin noted that “wireless is no longer seen as a luxury, but as a vital means of everyday communication [and] the public has growing expectations of how they will be able to use wireless to meet their everyday needs.”¹¹¹ The Chairman then concluded that “[w]e all know that people are relying on cell phones for more and more of their calls”¹¹²

Incumbent LECs and their representatives also acknowledge that wireless service is a substitute for wireline service. For example, in a proceeding currently pending before the Public Service Commission of Wisconsin,¹¹³ CenturyTel, Inc. (“CenturyTel”), concluded that “wireless telephony is no longer a nascent complementary service, but is becoming well-established as a highly competitive replacement service for many customers.”¹¹⁴ CenturyTel also observed that “today’s data show clearly that wireless quickly is becoming the primary mode of voice

adults have a wireless phone, an increase from 77 percent in October-December 2006, while the percentage of adults with wireline phones has decreased from 81 percent in 2006 to 79 percent in the Harris Poll’s most recent survey).

¹¹⁰ Pociask Paper at 2.

¹¹¹ Kevin J. Martin, Chairman, FCC, Remarks at CTIA Wireless 2008 (Apr. 1, 2008) (accessed at <http://www.fcc.gov/>) at 4.

¹¹² *Id.*

¹¹³ Wis. Pub. Serv. Comm’n, *Investigation into the Level of Regulation for Telecommunications Providers*, Docket No. 5-II-1777 (“*Wisconsin PSC Proceeding*”).

¹¹⁴ CenturyTel Comments, *Wisconsin PSC Proceeding*, Mar. 25, 2008, at 13.

communications for a growing portion of the national population[.]”¹¹⁵ and “that wireless customers increasingly are cutting the wired cord.”¹¹⁶ The Wisconsin State Telecommunications Association (“WSTA”)¹¹⁷ echoed CenturyTel’s position, stating that “[t]oday, wireless phones are the standard, if not the preferred method of communication. The statistics show that wireless services are quickly becoming as or more prevalent than wireline service, in both urban and rural markets.”¹¹⁸ Other trade associations representing rural incumbent LECs also argued that “statistics show that wireless service is a substitute for wireline service in both urban and rural markets.”¹¹⁹

Finally, the Commission appears to have embraced the formulation of wireless substitutability discussed by Pociask, finding that “the growth of Commercial Mobile Radio Service . . . appears to be causing significant migration of interstate telecommunications revenues from wireline to mobile wireless providers” and that “mobile service is becoming a substitute for traditional wireline services such as . . . second lines to the home, and there is a small but growing number of customers who have substituted mobile wireless for their primary residential lines.”¹²⁰

In addition, the Commission recognized at the inception of the new universal service support system more than ten years ago that making wireless carriers eligible for full participation in the program “may promote more direct competition of wireless as a substitute for

¹¹⁵ *Id.* at 10.

¹¹⁶ *Id.* at 12.

¹¹⁷ WSTA is a non-profit trade association representing the majority of incumbent LECs serving customers in Wisconsin, including all small telecommunications utilities. WSTA Comments, *Wisconsin PSC Proceeding*, Mar. 25, 2008, at 6.

¹¹⁸ *Id.* at 17.

¹¹⁹ Wisconsin Locally Owned Telephone Association and Wisconsin Statewide Telephone Cooperative Association Comments, *Wisconsin PSC Proceeding*, Mar. 25, 2008, at 5.

¹²⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking and Report and Order*, 17 FCC Rcd 3752, 3757-58 (para. 11) (2002).

wireline service.”¹²¹ The Commission understood that the pro-competitive policies of the 1996 Act intended that universal service mechanisms would provide consumers in rural and other high-cost areas with the choice of using wireless services as substitutes for wireline services, and the Commission prescribed the competitive neutrality principle as a means of fostering and protecting this choice.

For the Commission now to say that the competitive neutrality principle does not prevent the agency from repealing the identical support rule, because wireless service is not a complete substitute for wireline service and therefore the two services do not compete against each other, would flatly contradict the Commission’s initial and correct conception that the statute’s and its own pro-competitive policies should promote the opportunity for substitution.

RCA-ARC recognize that the Commission has determined that, for antitrust purposes, wireless services should be treated as part of the local services product market only when they are used as a complete substitute for wireline service for consumers’ voice communications.¹²² Even in this context, however, the Commission acknowledged that increasing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service instead of wireline service,¹²³ and concluded that “intermodal competition between mobile wireless and wireline services will likely increase in the near term.”¹²⁴

¹²¹ *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*, FCC 98-91, *Third Report*, 13 FCC Rcd 19746, 19757 (1998).

¹²² *See, e.g., AT&T Inc and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5714-15 (paras. 95-96) (2007) (“*AT&T-BellSouth Merger Decision*”).

¹²³ *Id.* at 5714 (para. 96).

¹²⁴ *Id.* at 5715 (para. 96). The Commission also found in the *AT&T-BellSouth Merger Decision* that there was sufficient substitution between wireless and wireline long distance service (although the precise extent was unclear) to include wireless long distance services in the relevant long distance service markets. *Id.* at 5716 (para. 98).

More significantly, in the face of criticism that its narrow definition of wireless substitutability in its merger decisions was undermining its own intermodal competition policies,¹²⁵ the Commission proclaimed that it would be concerned about:

any future transactions that would diminish significantly the ability of independent wireless carriers to offer intermodal alternatives to wireline service. At this time, *we recognize that there are benefits to consumers from both wireline replacement offerings and complement offerings*. We intend to monitor carefully further developments in this marketplace that may affect intermodal competition, and to consider carefully future transactions that may impede our efforts in that regard. The Commission has worked hard to create the regulatory conditions for robust intermodal competition, and it remains strongly committed to achieving that important policy goal.¹²⁶

This rulemaking proceeding, which is ostensibly focused on ensuring that rural consumers have similar opportunities to enjoy intermodal competition, is a case in which such monitoring by the Commission should be undertaken. The identical support rule is a necessary tool for ensuring that high-cost funding mechanisms operate in a competitively neutral manner. If the Commission repeals the identical support rule based on a finding that the competitive neutrality principle does not apply because wireless service is not a complete substitute for wireline service, then intermodal competition will be adversely affected and consumers in rural and other high-cost areas will be denied the benefits of wireline replacement offerings and complementary offerings.

RCA-ARC urge the Commission instead to apply the conventional and accepted test for substitutability, rather than its proposed formulation that wireless is not a substitute for wireline unless consumers use wireless service exclusively. Doing so will lead to the inescapable conclusion that wireless service competes against wireline service. Because the competitive neutrality principle is intended to foster and protect this competition, for the benefit of

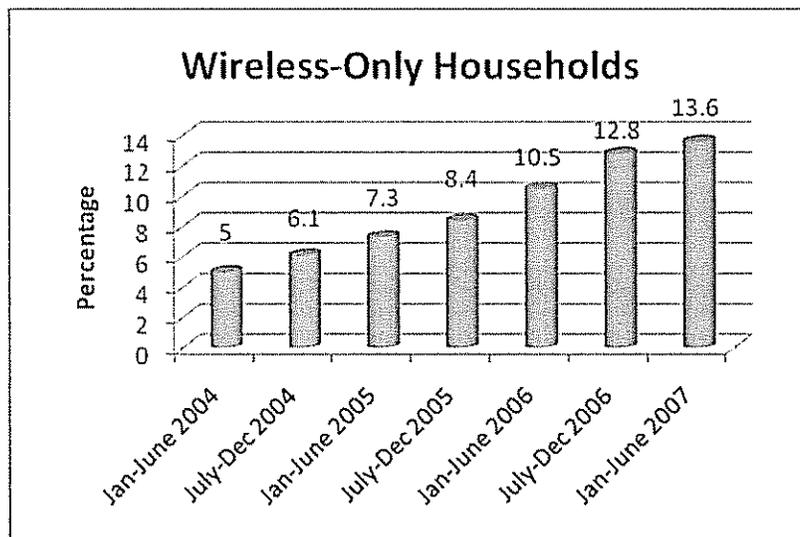
¹²⁵ See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21658-59 (2004) (Statement of FCC Commissioner Michael J. Copps).

¹²⁶ *Id.* at 21619 (para. 250) (emphasis added).

consumers in rural and other high-cost areas, the Commission cannot turn its back on the principle by pretending that competition between wireless and wireline services does not exist.

The second problem with the Commission’s flawed “complete substitution” approach is that the agency has presented almost no empirical data to support a conclusion that wireless services in fact are not “complete” substitutes for wireline services in rural and other high-cost areas. To the contrary, there is significant evidence suggesting that consumers are increasingly opting to use wireless exclusively for voice service at an accelerating pace. As the Commission has recently noted, “wireless substitution has grown significantly in recent years.”¹²⁷

For example, according to a survey conducted by the National Center for Health Statistics (“NCHS”), the number of wireless-only households in the Nation nearly tripled from mid-2004 to mid-2007, increasing from 5.0 percent to 13.6 percent:¹²⁸



¹²⁷ *Twelfth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 08-28 (rel. Feb. 4, 2008) (“*Twelfth Competition Report*”), at para. 246.

¹²⁸ The chart is drawn from information contained in U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, January-June 2007* (rel. Dec. 10, 2007) at Table 1 (“Percentage of Households, Adults, and Children with Different Types of Household Telephone Service, by Date of Interview: United States, January 2004 – June 2007”). Harris Poll #36 reached a similar result, finding that 14 percent of adults use only a wireless phone, an increase from 11 percent in 2006.

The Commission's tentative conclusion that wireless is a complete substitute for wireline in only 8 percent of households is based on three-year-old data.¹²⁹ Since the release of the *Identical Support Rule NPRM*, the Commission, citing an earlier survey conducted by NCHS, acknowledged that "[i]n the last half of 2006, . . . 12.8 percent of households (as opposed to adults) were wireless-only, up from 8.4 percent at the end of 2005, and 4.2 percent at the end of 2003."¹³⁰ The Commission also noted that "wireless-only households are more prevalent among younger adults,"¹³¹ which supports a conclusion that the rate of wireless substitution will continue to accelerate in the future.¹³²

In addition, a recent Morgan Stanley Report projects that 21 million households will go wireless-only in the next four years, with complete wireless substitution reaching 32 percent of all households in the Nation by 2012.¹³³ Morgan Stanley notes that this trend "is prevalent and accelerating across most demographic profiles," especially among the young and lower income groups.¹³⁴ The Report also indicates that the phenomenon of wireless substitution "is driven by

¹²⁹ See *Identical Support Rule NPRM* at para. 9, n. 27. It is worth noting that the Commission has indicated its appreciation of the importance of ensuring that agency conclusions and actions are not based on out-of-date information. See Letter from Kris Anne Monteith, Chief, Enforcement Bur., FCC, to Mark Goldstein, Director, Physical Infrastructure, U.S. Gov't Accountability Office ("GAO"), undated, at 2-3 (indicating that a GAO report concerning enforcement processes at the FCC "relied on information that is significantly out-of-date in making its conclusions and recommendations" thus "detract[ing] from [the] utility" of the report). The letter was reported by the FCC on March 13, 2008. See Berry Best's Annotated Daily Digest, Mar. 13, 2008.

¹³⁰ *Twelfth Competition Report* at para. 247 (footnote omitted).

¹³¹ *Id.* at para. 246.

¹³² Cf. Pociask Paper at 8 ("As . . . young consumers become accustomed to wireless phones, text messaging, and instant messaging, they learn to be less dependent on wireline services."). But see Harris Poll #36 (finding that, although 49 percent of adults using only wireless phones are between the ages of 18 and 29, this percentage has decreased from 55 percent in 2006 because cellphone-only usage has also increased among adults 30 years of age or older during the same period).

¹³³ Morgan Stanley, *Telecom Services, Cutting the Cord: Wireless Substitution Is Accelerating*, Sept. 27, 2007 ("Morgan Stanley Report"), at 1.

¹³⁴ *Id.*

improved wireless coverage and better pricing and will be supported by new handsets and new wireless technologies”¹³⁵

While the Morgan Stanley Report notes that wireline cord-cutting has not been proceeding as rapidly in rural areas,¹³⁶ the Report cites dead spots in rural areas as a reason for this.¹³⁷ Commission policies — such as retention of the identical support rule — that continue to support investment in wireless infrastructure in rural areas would help to cure this problem and ensure that consumers in rural areas have an opportunity to mirror the march toward wireless-only usage that currently is taking place in urban markets.¹³⁸

¹³⁵ *Id.*

¹³⁶ *Id.* at 9 (Ex. 16).

¹³⁷ *Id.* at 4 (Ex. 5).

¹³⁸ This important role played by the identical support rule in fostering the competitive delivery of advanced technologies points to another problem with the Commission’s current fund disbursement policies, which would be exacerbated by elimination of the rule. This problem is illustrated by the construction plans of the Wiggins Telephone Association (“WTA”), a high-cost funding recipient operating in northern Colorado. WTA recently announced plans to spend \$29.5 million to replace its copper infrastructure with fiber optic cable. “Funding from the USF will pay for most of the change.” Dan Barker, *WTA Plan To Cost \$29.5M, USF To Pay Most*, Fort Morgan Times, Mar. 17, 2008, at 1. Although WTA has been losing lines “because of people switching to wireless service[,]” the company “‘should be making a lot of money’” after the conversion to fiber optic cables. *Id.* at 3 (quoting WTA Board President Tom Mertens). This is because “[e]verything we do will be based on cost recovery.” *Id.* at 1 (quoting WTA Chief Executive Officer and General Manager Terry Hendrickson). The stability and sufficiency of the high-cost fund are not well served by Commission policies that enable rural carriers like WTA to fend off competition from wireless carriers by using high-cost funds to install broadband infrastructure. These policies are especially detrimental because they fund rear-guard actions by incumbent LECs even though — as the WTA case illustrates — rural consumers are increasingly cutting the cord and moving to wireless services. Instead of repealing the identical support rule and capping high-cost fund disbursements to wireless carriers, the Commission should focus on replacing its embedded cost methodology, which only serves to drain the high-cost fund by underwriting projects such as the WTA infrastructure conversion.

We also note that, notwithstanding the fact that companies such as WTA are utilizing high-cost support to upgrade their networks to accommodate the provision of broadband services, consumers in rural areas generally have few options for obtaining high-speed broadband services from incumbent carriers at reasonable prices. Exhibit 5, attached, presents a sampling of information about the provision of DSL services by incumbents in rural areas. The continuing lack of consumer choice regarding broadband services in rural and other high-cost areas further supports RCA-ARC’s position that the Commission should not eliminate the identical support rule. The rule, by helping to ensure that high-cost funds are disbursed in a competitively neutral manner, facilitates the deployment of wireless broadband services in competition with DSL and other broadband services provided by incumbent carriers. CTIA has reported that, in the past several years, wireless carriers “have deployed high-speed networks to reach more than 210 million people. These broadband technologies . . . offer average download speeds between 400-600 kbps (or more), and bursting speeds up to 1.6 Mbps.” CTIA January 2008 Ex Parte Filing at 9.

Additional evidence supports both the conclusion that wireless services compete with wireline services based upon the conventional substitutability test described by Pociask, and the conclusion that the trend of complete wireless substitution will continue. For example, according to CTIA, “[a] majority of consumers currently using wireline service consider their wireless phone their ‘primary’ connection; if forced to choose one or the other, they say they would keep their wireless phone and give up their wireline connection.”¹³⁹ The Pew Survey produced similar results, finding that only 40 percent of landline telephone users surveyed in December 2007 said it would be difficult to do without their wireline phones (compared to 63 percent in 2002), while 51 percent of cellphone users indicated it would be difficult to give up their cellphones (compared to 38 percent in 2002).¹⁴⁰

An additional “indication of wireless substitution in usage is the growth in wireless calling.”¹⁴¹ The Commission has reported substantial growth in wireless calling. Although the rate of growth slowed somewhat between 2005 and 2006 (the most recent periods for which the agency reported data), the average minutes-of-use per wireless subscriber per month has grown from 427 minutes in 2002 to 714 minutes in 2006,¹⁴² an increase of 67.2 percent.

Meanwhile, “[s]ince 2001, interstate switched access minutes have declined, due to a number of reasons including substitution of other services.”¹⁴³ Interstate switched access minutes for incumbent LECs decreased from 539.8 billion in 2001 to 400.9 billion in 2005 (a drop of

¹³⁹ CTIA Interim Cap Comments at 10 (footnote omitted). CTIA explained that, on March 6-8, 2007, MyWireless.org[®] commissioned a national survey of 1,000 adult wireless phone users who also have wireline phones and who are likely voters. The question asked was: “If you could keep one service, would you keep your cell phone service or your home landline phone service?” *Id.* at 10, n. 20.

¹⁴⁰ Pew Survey at 1.

¹⁴¹ Alltel Reply Comments, High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, filed July 2, 2007, Ex. 3, Steve. G. Parsons, *The New Communications Paradigm: Implications for Universal Service* at 17.

¹⁴² *Twelfth Competition Report* at para. 2.

¹⁴³ *2007 Trends Report* at 10-1

25.7 percent). The number of minutes through the first three quarters of 2006 (the most recent periods reported by the Commission) was 287.4 billion (producing an annualized amount for 2006 of 383.2 billion).¹⁴⁴ Morgan Stanley indicates that its “base case forecast implies that access lines in service will fall by an average of 3.5 million lines per year over the next five years as a result of wireless substitution alone.”¹⁴⁵

The Commission’s casual conclusion also ignores the rapidly developing tools that consumers are using to avoid the need for a wireline voice subscription. Wireless carriers are introducing services that permit wireless phones to operate on home wi-fi networks, and companies such as Airvana are introducing femtocells,¹⁴⁶ which amplify cellular and PCS signals indoors to improve service quality. These tools, and others, are going to accelerate substitution, rapidly outstripping the Commission’s tentative conclusions, perhaps before they are even implemented.¹⁴⁷

¹⁴⁴ *Id.* at 10-3 (Table 10.1).

¹⁴⁵ Morgan Stanley Report at 1.

¹⁴⁶ Femtocell access points are a class of small personal base stations that provide in-home wireless coverage and connect to operator networks via a broadband cable or DSL Internet connection. *See* Airvana Website (accessed at http://www.airvananet.com/products/products_personal_base_stations.htm).

¹⁴⁷ One femtocell proponent, for example, indicates that:

Today, some 40 percent of home calls are made using a cellular phone within the residence. With the addition of a femtocell, operators can increase this number dramatically. Converting home phone usage from fixed line to cellular usage maximizes Minutes of Use and improves customer satisfaction levels. Once subscribers have established a premium cellular service within their home, the traditional fixed line becomes . . . redundant in the home and more residences will transition to a complete cellular system.

. . .

The growth expectations for femtocells are highly encouraging. According to ABI Research, the femtocell market is estimated to grow to 150 million users worldwide by 2012; this number reflects 36 million units shipped per annum by 2012. Likewise, In-Stat expects worldwide femtocell subscriptions (installed devices) to grow to 40.6 million by 2011, with femtocell end users reaching 101.5 million in that time span.

As femtocells become part of everyday life they will evolve technically to incorporate new wireless standards and become part of the home environment.

Mae Kowalke, “Femtocells: The Next Big Thing for Wireless Carriers and Customers,” TMCNET, Mar. 5, 2008 (accessed at <http://mobile-voip.tmcnet.com/topics/mobile-communications/articles/22240-femtocells-next-big-thing-wireless-carriers-customers.htm>) (quoting Serge Pequeux, President and Chief Executive Officer, AirWalk

In sum, the Commission's conclusion that wireless services are not a substitute for wireline services, based largely on three-year-old data, would fundamentally conflict with the statutory principle that rural consumers are entitled to services that are comparable to those available in urban markets. And, more recent evidence than that cited by the Commission in the *Identical Support Rule NPRM* illustrates that consumers are increasingly cutting the cord by using wireless as a complete substitute for wireline service. Finally, the Commission itself seems to endorse the view that the trend of wireless substitution will continue.¹⁴⁸

E. By Eliminating the Identical Support Rule, the Commission Would Face the Virtually Impossible Task of Devising Reasonable and Equitable Wireless Competitive ETC Embedded Cost Studies for Purposes of Allocating High-Cost Support.

The Commission has consistently recognized that using embedded costs to allocate support is a profoundly flawed approach because, as the agency recently noted in the *Reverse Auctions NPRM*, "a support mechanism based on . . . a carrier's embedded costs . . . provides no incentives for ETCs to provide supported services at the minimum possible costs."¹⁴⁹ The

Communications). Global femtocell equipment revenues are expected to more than double each year, reaching \$5 billion in 2012. Scott Woolley, "Hi-Def Cellular," *FORBES*, Apr. 7, 2008, at 48 (citing a study by Forward Concepts). The miniaturization of cellular base stations that is being driven by femtocell chip technology is expected to have a profound impact on wireless service, including the capability "to offer sound quality that has never before been experienced in a telephone." *Id.* at 50. Femtocells also received press attention at the recent CTIA Wireless 2008 convention, where it was reported that femtocell routers cost approximately \$50, and that many consumers "might consider it the best money they ever spent" because of the technology's ability to improve wireless phone coverage and reception indoors. Suzanne Choney, *CTIA: From "Can You Hear Me Now?" to "See Me Now"*, *MSNBC.COM*, Apr. 3, 2008 (accessed at <http://www.msnbc.msn.com/id/23926921/from/ET/>).

¹⁴⁸ *Twelfth Competition Report* at para. 249 (footnotes omitted) (quoting John C. Hodulik, *et al.*, *Wireless 411*, UBS Warburg, Equity Research, Mar. 19, 2007, at 47):

These trends [in wireless substitution] appear to be due to the relatively low cost, widespread availability, and increased use of wireless service. . . . [A] number of analysts have argued that wireless service is competitive or cheaper than wireline, particularly if one is making a long-distance call or when traveling. As one analyst wrote, "At currently effective yields, we continue to believe wireless pricing is competitive with traditional wireline pricing. Lower yields, combined with the convenience of mobility, should continue to drive wireline displacement."

¹⁴⁹ *Reverse Auctions NPRM* at para. 11. More generally, carriers' incentives to increase their costs in order to garner higher profits led the Commission to abandon its rate-of-return regulatory regime almost two decades ago. See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, *Report and Order and Second Further Notice of Proposed Rulemaking*, 4 FCC Rcd 2873, 2908 (para. 77) (1989) (footnote omitted):

Commission, placing aside its own concerns, has nonetheless proposed to repeal the identical support rule, and to attempt the manufacture of a cost accounting and reporting regime to be imposed on wireless competitive ETCs.

RCA-ARC believe that this attempt would be ill-considered, would lead to burdensome and unwarranted requirements, and would not advance either the universal service goals or pro-competitive goals of the Act.

1. A Cost Reporting Regime Imposed on Wireless Competitive ETCs Would Be Burdensome and Would Cause Further Erosion of the Competitive Neutrality Principle.

The Commission has consistently avoided the imposition of cost accounting requirements on non-dominant, competitive telecommunications carriers, recognizing that marketplace incentives obviate the need for burdensome and restrictive cost reporting obligations.¹⁵⁰ Imposing cost accounting and reporting requirements on wireless competitive ETCs would be a staggering backward step that could not be reconciled with the deregulatory and pro-competitive framework of the 1996 Act. RCA-ARC agree with AT&T's assessment that "[t]he time and expense of imposing a uniform accounting system on the wireless industry that has no history of regulatory accounting uniformity would be exponential."¹⁵¹

By expanding its rate base in the course of making investment decisions regarding its regulated activities, a rate of return regulated firm can increase its profits without any change in the allowed rate of return. This phenomenon . . . encourages carriers to make inefficient investment decisions. Furthermore, rate of return does nothing to encourage carriers to limit expenses, since carrier expenses are flowed directly through to revenue requirements

The same analysis applies to a high-cost mechanism that links the level of support to a carrier's embedded costs.

¹⁵⁰ The Commission "has imposed no accounting requirements on non-dominant wireline carriers" and also has chosen not to exercise its authority to impose accounting requirements on CMRS providers. *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, 1483-84 (paras. 192-193) (1994). The Commission in this order decided it was not necessary to relinquish its powers under Sections 219 and 220 of the Act with respect to CMRS carriers, but that it would "not exercise our authority to require annual reports or to prescribe forms of accounts . . ." *Id.* at 1484 (para. 193).

¹⁵¹ AT&T, Ex Parte Filing in WC Docket No. 05-337, Oct. 4, 2007 ("AT&T Letter"), at 4. AT&T noted that, when the Commission required regulated carriers to transition to the new Uniform System of Accounts in 1986, the

In addition to the financial cost and other burdens that would be inherent in any regulatory cost accounting regime imposed on wireless competitive ETCs, the Commission recognized in the *Identical Support Rule NPRM* that its design for the examination of wireless competitive ETC costs could raise issues regarding competitive neutrality. Specifically, the Commission asks whether it “should examine wireless competitive ETC costs independently from wireline LEC costs for purposes of determining high-cost support[.]” and “whether adopting . . . a separate wireless high-cost support mechanism comports with the goal of competitive neutrality.”¹⁵²

Any independent examination of wireless competitive ETC costs, for purposes of allocating high-cost support, would violate the competitive neutrality principle. The Commission has held that regulatory disparities must be minimized in awarding high-cost support, in order to ensure that no class of carriers receives an unfair competitive advantage.¹⁵³ If rural incumbent LEC embedded costs and wireless competitive ETC embedded costs were examined on an independent basis, this approach almost by definition would result in regulatory disparities. If the costs of the two classes of carriers were examined on the basis of differing criteria, it is difficult to conceive of a system for doing so that could be equally fair to both classes of carriers.¹⁵⁴

The problem for the Commission, however, is that if it moved toward some type of unified system for examining both incumbent LEC and wireless competitive ETC costs, this

estimated cost of doing so was between \$600 million and \$1.1 billion (in 1986 dollars), even though carriers were switching from one uniform system to another. *Id.* at 3-4. The exercise for wireless competitive ETCs would be more burdensome because it would involve more than the transition from one regulatory accounting system to another.

¹⁵² *Identical Support Rule NPRM* at para. 22.

¹⁵³ *USF First Report and Order*, 12 FCC Rcd at 8802 (para. 48).

¹⁵⁴ Alltel has observed that, “in order for any proposal to use embedded costs for wireless carriers to be equitable and competitively neutral, USF payments based on a wireless carrier’s embedded cost study would need to be determined in a manner that parallels the approaches used by the rural ILECs as closely as possible.” Alltel Letter, Attachment at 22.

might help mitigate inconsistencies with the competitive neutrality principle but would inevitably lead to other significant problems. As AT&T has noted, “[s]imply inputting wireless costs into wireline [mechanisms] generates anomalous results that do not meet policy goals.”¹⁵⁵ AT&T explains that a principal reason for these anomalous results is that many factors relevant to wireline carrier cost data (*e.g.*, per-line and per-customer sensitive costs; study area specific cost data; the maintenance of accounts on a functional basis) do not have comparable analogs in the case of wireless carrier cost data.¹⁵⁶ The simplest (and most equitable) solution to this dilemma is to avoid it altogether by retaining the identical support rule.

2. Numerous and Substantial Problems Would Plague Any Effort by the Commission To Devise Cost Accounting and Reporting Requirements for Wireless Competitive ETCs.

In addition to the threshold problems with cost accounting and reporting requirements that RCA-ARC have discussed in the previous section, specific components of the Commission’s proposal generate a host of additional problems. These are addressed in the following sections.

a. System of Accounts.

The Commission seeks comment on whether it “should develop a system of accounts for competitive ETCs, including wireless carriers, that mirror the Part 32 rules applicable to incumbent LECs.”¹⁵⁷

The fact that wireless competitive ETCs currently are not subject to Part 32 presents significant difficulties with the Commission’s proposal. There would be a mismatch between the structure and requirements of Part 32 and the accounting practices and classifications used by most wireless competitive ETCs. Either the Commission would need to adapt Part 32 to

¹⁵⁵ AT&T Letter at 2.

¹⁵⁶ *Id.* at 2-3.

¹⁵⁷ *Identical Support Rule NPRM* at para. 15.

accommodate the financial accounting environment of the wireless competitive ETCs (which would be tantamount to not using Part 32 at all), or the wireless competitive ETCs would be forced to adapt their accounting methods and practices to fit within the Part 32 regime. This task might include the need for wireless competitive ETCs to restate their books.¹⁵⁸ Such an exercise is an example of the nature and extent of burdens that wireless competitive ETCs would face if the Commission were to impose a cost accounting and reporting regime.

The Commission's proposal regarding the adoption of Part 32 accounting for competitive ETCs also warrants the further comment that such a step would bring with it the prospect of the Commission's imposing an antediluvian rate-of-return regulatory system on competitive ETCs. Traveling down such a regulatory path would not be consistent with the pro-competitive mandate of the Act or with Commission policies designed to promote market entry by non-dominant, competitive wireless carriers.

b. Projecting Wireless Competitive ETC Subscribership.

One aspect of the Commission's cost accounting and reporting proposal is particularly emblematic of the difficulties that would be engendered if the agency were to eliminate the identical support rule. Specifically, the Commission explains in the *Identical Support Rule NPRM* that, "[b]ecause a competitive ETC may have few or no lines when it first receives its ETC designation, performing a calculation of per-line support at the initial time of market entry likely would result in a considerable upward bias in the resulting support amount."¹⁵⁹ The Commission's possible solutions only tend to illustrate the enormity of the problem:

We . . . seek comment on whether a competitive ETC should be required to project its subscribership for some future point in time when performing its cost submissions. To the extent that we require such subscribership projections, we

¹⁵⁸ See Alltel Letter, Attachment at 20-21.

¹⁵⁹ *Identical Support Rule NPRM* at para. 21.

seek comment on how far into the future a competitive ETC should be required to project (e.g., 3 years, 5 years). We also seek comment on whether, and when, it would be appropriate to switch from projected future subscribership to actual subscribership.¹⁶⁰

Does the Commission intend to prescribe rules that would govern the way in which wireless competitive ETCs must project their future subscribership? How would the Commission identify and select the criteria necessary to ensure the accuracy of the projections? Would the carriers' projections be subject to regulatory review and approval? Would the carriers bear the burden of establishing the reasonableness of their projections? Would the carriers be subject to reimbursement requirements and penalties if the Commission later determined that their line projections were understated?

In addition to these specific issues that the Commission would need to resolve, the agency's acknowledgment of this quirk in its proposal to impose an embedded cost regime on wireless competitive ETCs provides another illustration of how far the repeal of the identical support rule would lead the Commission away from the principle of competitive neutrality. Basing incumbent LEC support on actual line counts, while basing "start up" wireless competitive ETC support on projected line counts, would not be competitively neutral. That is, an under-projection of lines could inflate cost recovery (to the competitive disadvantage of the incumbent LEC) while over-projection could depress cost recovery. The Commission would be faced with the administrative burden of overseeing wireless competitive ETC line projections in an effort to minimize competitive disadvantages that would almost inevitably result from the need to use projected line counts.

¹⁶⁰ *Id.*

c. **Benchmarks for Competitive ETC Support.**

The Commission proposes that, for competitive ETCs providing service in rural study areas, a cost per loop would be developed for each competitive ETC for each incumbent LEC study area that it serves, and then support would be determined by comparing a competitive ETC's cost per loop to the national average cost per loop for incumbent LECs developed by the National Exchange Carrier Association pursuant to Section 36.613 of the Commission's Rules.¹⁶¹

The problem with this approach is that it bases wireless support on *wireline* costs, a problem the Commission identifies as the reason for eliminating the identical support rule. Determining of the level of a wireless competitive ETC's cost support based upon a comparison with a nationwide benchmark of average costs per loop that is developed *without any inclusion of wireless costs* would not be competitively neutral.¹⁶² To the extent there are differences in average costs between wireless carriers and wireline carriers, basing wireless competitive ETCs' high-cost support exclusively on a national benchmark derived from wireline carrier costs (and then capping wireless support when it exceeds the wireline carrier) virtually *could not* be competitively neutral.¹⁶³ To cure this problem, any benchmark system established by the Commission must, at a minimum, ensure that *wireless costs* in rural areas are compared to *wireless costs* in urban areas.

The problem with the Commission's proposed approach would be exacerbated by a feature contained in the WiCAC Proposal relating to what ARA calls the "wireless IntraMSA

¹⁶¹ *Id.* at para. 20.

¹⁶² See Alltel Letter, Attachment at 23.

¹⁶³ Alltel points out that the way to solve this problem would be to reinitialize the nationwide benchmark, but this would require all wireless carriers (not just wireless competitive ETCs) to carry out embedded cost studies. "The absurdity of this nevertheless logical outcome further demonstrates the problems with any attempt to apply ILEC based USF standards to wireless carriers." *Id.*

Ratio.”¹⁶⁴ The ratio would be used in connection with comparing wireless competitive ETCs’ surrogate loop costs to the national average cost per loop. The ratio measures traffic (based on minutes of use) within an MSA compared to total traffic in the study area involved.

The problem arises if a wireless competitive ETC does not have the capability to measure its traffic on an MSA or study area basis. If this is the case, then the WiCAC Proposal would simply apply a “default ratio” that would have the effect of cutting the competitive ETC’s loop costs in half. RCA-ARC agree with AT&T’s conclusion that the effect of the ratio proposal would be “to artificially reduce wireless carriers’ costs, but not rural LECs’ costs, in a manner more likely to exclude wireless ETCs from receiving support.”¹⁶⁵ Such a result would not be competitively neutral.

d. Ceiling on Competitive ETC Per-Line Support.

The Commission asks for comment regarding whether it should impose a cap on the amount of per-line high-cost support that may be received by competitive ETCs, voicing the view that “[a]dopting a ceiling for competitive ETCs at the level of incumbent LEC support could avoid rewarding competitive ETCs for being inefficient and reduce incentives for competitive ETCs to inflate their costs.”¹⁶⁶

Although there may be a certain logic to the Commission’s proposal, the difficulty is that this logic exists only within the confines of the Commission’s ill-conceived proposals to repeal the identical support rule, to shift competitive ETCs to a support mechanism based on their embedded costs, and to impose cost accounting and reporting requirements on competitive ETCs. Even more problematic is the fact that these same issues (*i.e.*, inefficient operations, cost

¹⁶⁴ WiCAC Proposal at 16 (proposed Part 54, Section 54.1200, of the Commission’s Rules).

¹⁶⁵ AT&T Letter at 4.

¹⁶⁶ *Identical Support Rule NPRM* at para. 25.

inflation incentives) exist in far more imposing form (because a larger amount of high-cost funds is at stake) in the embedded-cost support mechanism for incumbent LECs. But, rather than moving forward with an effort to address these issues by reforming the support mechanisms that have provided \$25 billion in support to incumbent LECs since 1999, the Commission is proposing to create the same problems all over again by imposing an embedded-cost mechanism on competitive ETCs.

A better approach would be to retain the identical support rule as the mechanism for disbursing high-cost funds to competitive ETCs and make all support fully portable. The identical support rule removes any incentive for competitive ETCs to inflate their costs, because inflated costs do not “reward” competitive ETCs with high-cost disbursements, but rather make it more difficult for them to compete in offering services in rural and other high-cost areas. The identical support rule — unlike the Commission’s proposal to impose an embedded-cost regime on competitive ETCs — drives competitive ETCs toward more efficient operations. Full portability caps fund growth and begins to redistribute support away from fixed voice services that consumers are abandoning — toward mobile wireless services that they are adopting.

e. Geographic Disaggregation.

The Commission seeks comment on whether “it will be necessary to disaggregate each competitive ETC’s cost by relevant competitive ETC service area, and by the relevant incumbent LEC study area, wire center, or disaggregation zone.”¹⁶⁷ This issue of geographically disaggregating wireless competitive ETCs’ costs reveals another glaring problem with the Commission’s proposed effort to impose a cost accounting and reporting regime on wireless carriers.

¹⁶⁷ *Identical Support Rule NPRM* at para. 16.

There would be two ways to approach the problem. A solution suggested by the Commission — dividing wireless carriers' costs into the incumbent LECs' study areas, wire centers, or disaggregation zones — would be an extremely difficult undertaking for the wireless carriers to accomplish. Given the fact that “[m]any, if not most[,] wireless carriers do not maintain their financial records on a state-by-state basis much less by study area,”¹⁶⁸ major changes would need to be made by the wireless carriers in order to comply with the Commission's proposed disaggregation requirement. On the other hand, if wireless serving areas were used as the basis for computing wireless competitive ETCs' costs and disbursing high-cost support, the Commission would be confronted with the problem of how to do this in a competitively neutral manner, given the mismatch between the wireless carriers' serving areas and incumbent LECs' study areas.¹⁶⁹

As part of its discussion of geographic disaggregation, the Commission also seeks comment on “how to best ensure that a competitive ETC does not inflate the costs being allocated to high-cost areas as compared to lower cost areas for which the competitive ETC may not be seeking support.”¹⁷⁰ The need for the Commission to ask this question merely serves to underscore further the shortcomings of the agency's proposal to repeal the identical support rule and replace it with the burdensome and inefficient edifice of cost-based regulation. Introducing a support mechanism for competitive ETCs based on their embedded costs could bring with it these concerns about the inflation of costs. These concerns would be avoided if the Commission retains the identical support rule, ensures full portability, and weans incumbent LECs away from the embedded-cost support mechanism they currently use.

¹⁶⁸ AT&T Letter at 2-3.

¹⁶⁹ Alltel Letter, Attachment at 22.

¹⁷⁰ *Identical Support Rule NPRM* at para. 16.

f. Local Switching Support

The Commission proposes to eliminate local switching support (“LSS”) for wireless competitive ETCs, because “LSS . . . includes a number of assumptions regarding switching costs, such as the economies of scope and scale, that are not likely to be accurate for competitive ETCs.”¹⁷¹ The Commission proposes instead that “competitive ETCs would be permitted to receive high-cost support *only* for their local loop-equivalent costs, to the extent such costs can be shown to be high-cost.”¹⁷²

A threshold problem with the Commission’s proposal is that it has no basis in Commission precedent and is not consistent with statutory requirements or the agency’s own policies that all support should be sufficient, explicit, and portable. The Commission made LSS fully portable in the *USF First Report and Order*, finding that doing so “would aid the entry of competition in rural study areas.”¹⁷³ There is no record evidence that the stated goal has not been furthered by making support explicit and portable.

In addition to these fundamental problems with the Commission’s proposal, it also raises the question of what happens to costs associated with Mobile Telephone Switching Offices (“MTSOs”). Although it would seem unlikely that the Commission would intend to exclude MTSO-related costs in connection with the calculation of high-cost support, the agency does not explain whether these costs would be treated as local loop-equivalent costs (the only type of

¹⁷¹ *Id.* at para. 24.

¹⁷² *Id.* (emphasis added).

¹⁷³ *USF First Report and Order*, 12 FCC Rcd at 8944 (para. 311). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 18 FCC Rcd 22559, 22617 (para. 99, n. 357) (2003) (noting that the Commission has made “federal high-cost support available or ‘portable’ to all ETCs on a competitively- and technologically-neutral basis”).

costs for which wireless competitive ETCs would be permitted recovery under the Commission's proposal).¹⁷⁴

g. Interstate Access Support; Interstate Common Line Support.

Reversing decisions only recently established, the Commission tentatively concludes that competitive ETCs should no longer receive Interstate Access Support ("IAS") or Interstate Common Line Support ("ICLS"), reasoning that, since competitive ETCs "are able to recover their revenues from end users and have no need to recover additional interstate revenues from access charges or from universal service,"¹⁷⁵ allowing competitive ETCs to receive IAS or ICLS "is inconsistent with how competitive ETCs recover their costs or set rates."¹⁷⁶

The Commission's rationale for proposing to cut off IAS and ICLS funding for wireless competitive ETCs conflicts with the statutory requirements that explicit universal service support¹⁷⁷ must be fully portable, so that line-based "support flows to the . . . carrier [that] is incurring the economic costs of serving that line . . ." ¹⁷⁸ and that no carriers are competitively disadvantaged by the mechanisms disbursing support.¹⁷⁹ A central objective of the 1996 Act's universal service provisions is to identify and move implicit support from carrier rates into explicit support mechanisms that are available to any eligible carrier that serves the customer. Thus, the treatment of IAS and ICLS funding should be clear-cut:

If the [IAS and ICLS] revenue represents universal service support and is funded by universal service contributions, it must be portable. Conversely, if it is not universal service, then there is no justification for providing the guaranteed

¹⁷⁴ See Alltel Letter, Attachment at 21.

¹⁷⁵ *Identical Support Rule NPRM* at para. 23.

¹⁷⁶ *Id.*

¹⁷⁷ The Act states that universal service support "should be explicit and sufficient to achieve the purposes of this section [Section 254]." 47 U.S.C. § 254(e).

¹⁷⁸ *USF First Report and Order*, 12 FCC Rcd at 8932 (para. 287).

¹⁷⁹ *Id.* at 8801 (para. 47).

revenue stream to the ILECs (or any other class of carrier), and these funds should be eliminated altogether.¹⁸⁰

For these reasons, the Commission should reject its proposal to cut off IAS and ICLS funds.

Some commenters have stated that IAS and ICLS are merely “access charge replacement” and that wireless carriers should not receive funding from such mechanisms because they were not receiving access charge payments before the establishment of these funds.¹⁸¹ Again, this view fundamentally ignores the fact that IAS and ICLS funds represent explicit high-cost support that was removed from access so that two critical goals could be accomplished: First, wireline carriers would be better able to compete against unsubsidized carriers who could undercut them. And, second, support would be made explicit and portable to competing carriers so that the playing field in rural areas would be leveled.¹⁸²

Instead of adopting facially defective proposals, the Commission should continue to adhere to the policy rationale it articulated when it decided that support converted from implicit to explicit mechanisms must be portable to competitive ETCs, namely, that “[a]ccording to the principle of competitive neutrality adopted by the Commission[,] universal service support

¹⁸⁰ Alliance of Rural CMRS Carriers, Alltel, Centennial Communications Corp., CTIA, Dobson Cellular Systems, Inc., Ex Parte Filing in CC Docket Nos. 96-45 and 01-92, Oct. 9, 2006, at 2.

¹⁸¹ See CenturyTel, Inc., Ex Parte Filing in CC Docket Nos. 96-45 and 01-92, Sept. 13, 2006, at 1.

¹⁸² See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, CC Docket No. 00-256, CC Docket No. 96-45, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613, 19617 (para. 3) (2001):

By simultaneously removing implicit support from the rate structure and replacing it with explicit, portable support, this Order will provide a more equal footing for competitors in the local and long distance markets, while ensuring that consumers in all areas of the country, especially those living in high-cost, rural areas, have access to telecommunications services at affordable and reasonably comparable rates. This Order also is tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas, and will help provide certainty and stability for rate-of-return carriers, encourage investment in rural America, and provide important consumer benefits.

mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another.”¹⁸³

h. Filing Cost Data with State Regulatory Commissions.

The Commission proposes that, if a competitive ETC’s designation petition was approved by a state regulatory commission, then the competitive ETC should file cost data with that commission on an annual basis and should file line-count data on a quarterly basis. The competitive ETC would not be permitted to submit its cost data to USAC until the data is approved by the state commission.¹⁸⁴

If the Commission decides to impose cost accounting and reporting requirements on wireless competitive ETCs, then the Commission itself should take full responsibility for reviewing and approving the cost data for high-cost funding purposes. Given the fact that the high-cost fund is a federal program that disburses federal dollars, it would be inappropriate for the Commission to delegate cost data review functions to the state regulatory commissions. In addition, such a step would place substantial burdens on state commissions as well as wireless competitive ETCs, and would inevitably lead to conflicting precedents and decisions regarding the treatment of cost data that would impose further burdens on wireless competitive ETCs and

¹⁸³ *Id.* at 19678 (para. 151). Moreover, when the Commission adopted an explicit interstate access universal support mechanism to replace implicit universal service support, it required that the new support mechanism would:

provide support that is portable among competing carriers — if a competitor serves a supported customer, the competitor will receive the interstate access support for that customer. . . . Thus, . . . we are able to serve the 1996 Act’s dual goals of promoting competition in the telecommunications marketplace and simultaneously preserving and advancing universal service.

Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249, CC Docket No. 96-45, *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, 13039 (para. 186) (2000).

¹⁸⁴ *Identical Support Rule NPRM* at para. 13.

hamper the efficient operation of the fund disbursement process. This burden would be extraordinary for carriers providing services in multiple states.

3. There Is a Better Way To Disburse High-Cost Support.

The discussion in the previous sections of the general and specific problems with the Commission's proposal for cost accounting and reporting requirements highlights the fact that any attempt by the Commission to measure wireless competitive ETCs' embedded costs would likely be an ill-fated undertaking. The differences between wireless carriers and wireline carriers' costing methodologies — differences that in many cases are the product of the different underlying technologies used by the carriers — are so substantial that it would be difficult for the Commission to be successful in melding together cost accounting and reporting requirements that bring wireless carriers into the existing framework used for tracking wireline carriers' costs.

On the other hand, if the Commission were to acknowledge this problem and attempt to work around it by devising an independent costing methodology for wireless carriers, it would be difficult for the agency to demonstrate that the outcomes generated by the differing methodologies used by incumbent LECs and wireless competitive ETCs produce competitively neutral calculations of high-cost support.

Rather than going down this path, the Commission should seek "simpler solutions to cutting fund growth without creating a new cost model for each technology that may one day be used in provisioning universal service."¹⁸⁵ The most obvious solution is to retain the identical support rule and ensure full portability of high-cost support.

Another promising solution would be for the Commission to adopt a universal service system that caps support at the level of the most efficient provider's costs in serving a particular

¹⁸⁵ RCA-ARC Joint Board Comments at 19.

area, regardless of the technology used by that provider.¹⁸⁶ This approach would force incumbents as well as potential market entrants to make economic decisions about whether to compete in particular rural and other high-cost markets, and would force all participants in such markets to operate on an efficient basis. These incentives would reduce the growth of the high-cost fund while at the same time ensuring that consumers in rural and other high-cost areas have access to telecommunications services in a manner that comports with the universal service goals and pro-competitive goals of the Act. Finally, states could be properly tasked with developing universal service mechanisms (that would be funded by contributions based on revenues from intrastate telecommunications) to ensure that consumers have access to essential services in those situations where no carrier is able to provide service under the federal mechanism.

III. A REVERSE AUCTION METHODOLOGY IS INCONSISTENT WITH THE TELECOMMUNICATIONS ACT OF 1996 AND SHOULD THEREFORE BE REJECTED.

In 2001, the Commission stated, “[i]n the 1996 Act, Congress established principles for the preservation and advancement of universal service in a competitive telecommunications environment.”¹⁸⁷ Despite its clear policy direction to develop universal service mechanisms that work in a competitive environment, the Commission has now tentatively concluded, without providing a single citation, that the federal universal service mechanism should not be supporting multiple competitors in areas that would be prohibitively expensive for one carrier to serve without a subsidy.¹⁸⁸ This unsupported conclusion flies directly in the face of Section 214 of the Act, which states that the FCC *shall* designate multiple carriers in areas served by non-rural

¹⁸⁶ *Id.*

¹⁸⁷ *RTF Order*, 16 FCC Rcd at 11252 (para. 14).

¹⁸⁸ *Reverse Auctions NPRM* at para. 10.

carriers and *may* designate multiple carriers in areas served by rural carriers.¹⁸⁹ Moreover, it contradicts without explanation or factual underpinning, the FCC's prior decision that competition and universal service are dual goals that must be served equally.¹⁹⁰

The Commission also stated, again without providing a single citation, that "a support mechanism based on . . . a carrier's . . . forward-looking cost model provides no incentives for ETCs to provide supported services at the minimum possible cost."¹⁹¹ That statement contradicts significant prior Commission pronouncements regarding the best way to provide support. For example:

Support based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.¹⁹²

And,

The Commission explained that support based on forward-looking economic costs provides sufficient support without giving carriers an incentive to inflate their costs or to refrain from efficient cost cutting.¹⁹³

A reader is left wondering what has changed that would cause the Commission to abandon substantial precedent, supported by tens of thousands of pages of research, white papers, recommendations, and orders. Without a word of explanation as to why established support mechanisms based on forward-looking costs are not working, or cannot be improved, the Commission proposes to implement single-winner reverse auctions in a manner that would

¹⁸⁹ 47 U.S.C. § 214(e)(2); *see also* 47 U.S.C. §§ 254(b)(3), 254(b)(5).

¹⁹⁰ *USF First Report and Order*, 12 FCC Rcd at 8787-88 (para. 19), 8791-92 (para. 25); *see Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, *Tenth Report and Order*, 14 FCC Rcd 20156, 20160 (para. 3) (1999); *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, *Fifth Report and Order*, 13 FCC Rcd 21323, 21326 (para. 6) (1998).

¹⁹¹ *Reverse Auctions NPRM* at para. 11.

¹⁹² *USF Seventh Report and Order*, 14 FCC Rcd at 8103 (para. 50) (footnote omitted).

¹⁹³ *RTF Order*, 16 FCC Rcd at 11252 (para. 15).

abandon Congressional mandates that all markets are to be opened to competition and consumers in rural areas deserve comparable services at comparable prices as those available in urban areas.

Accordingly, RCA-ARC oppose the Commission's proposal to use a single-winner auction as a means of providing universal service in rural areas. It fails to uphold the Commission's own goal of advancing the dual goals of universal service and competition and denies Americans the very benefits that universal service was intended to deliver.

We provide below some more granular commentary on specific aspects of auctions generally and single-winner auctions specifically.

A. Auctions Cannot Yield Competitively Neutral Results Until Competitive Networks Exist.

We agree with the FCC's previous assessment that "it is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future. Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future."¹⁹⁴ Use of auctions for USF support would not yield the right result if one carrier (*e.g.*, the incumbent LEC) is fully built out in the area, and the other(s) (*e.g.*, the competitive ETCs such as wireless carriers) have immature networks. Until there are mature wireless networks and regulators can determine that an area is competitive, the use of auctions will not be competitively or technologically neutral. A carrier with an immature network, that needs substantial capital to construct network facilities throughout an area, cannot reasonably be expected to bid competitively against a carrier that has already completed a network build-out and does not require such capital.

¹⁹⁴ *USF First Report and Order*, 12 FCC Rcd at 8950 (para. 324) (footnote omitted).

This is true even if the newcomer is substantially more efficient, because it is impossible to know what to bid until a network has been fully constructed. Once a competitive network has been constructed, a competitor will have sufficient information regarding construction and operating costs to bid on a level playing field with an incumbent.

The *Reverse Auctions NPRM* does not even mention this problem (which RCA-ARC discussed in comments before the Joint Board¹⁹⁵) much less address it in some meaningful way. As noted elsewhere in our Comments, the first task should be to map the country to determine where competitive networks exist.

In its *South Dakota Preemption Order*, the Commission made clear that a carrier cannot be required to construct facilities in an area before it has been designated as an ETC, otherwise no carrier would invest.¹⁹⁶ The entire purpose of the “per-line” support mechanism is to provide funds to a competitive ETC only when it gets a customer. This allows a carrier to invest knowing that it has been designated, however it must invest risk capital in order to capture customers.

Under the FCC’s *Reverse Auctions NPRM*, a newcomer, who has no idea how much it will cost to construct and operate a network in a particular area, would be required to bid at an auction against an incumbent or other carrier with a mature network. A key element of a successful auction is that all bidders must have equal knowledge about the item up for bid. The disparity in knowledge between a carrier that is trying to enter and one that has operated for many years (or many decades) is so substantial as to preclude a fair process.

For all of these reasons, any auction that goes forward with networks of varying maturity will fail the test of competitive neutrality.

¹⁹⁵ See RCA-ARC Joint Board Comments at 22-23.

¹⁹⁶ *Federal-State Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, *Declaratory Ruling*, 15 FCC Rcd 15168, 15173 (paras. 12-13) (2000) (“*South Dakota Preemption Order*”).

B. Auction Rules Must Incorporate Principles of Competitive and Technological Neutrality.

Competitive neutrality is a core universal service principle.¹⁹⁷ As discussed above, the Commission has consistently ruled that competitive neutrality requires all ETCs to receive the same amount of per-line support. The 1996 Act put to rest federal universal service policies that favor one carrier or technology over another.

Whatever the Commission does, it must follow its own core principle of competitive neutrality and promote the twin goals of advancing universal service and promoting competition throughout America. Critical to this mission is establishing a “per-line” amount, targeting support to the highest-cost wire centers, and inviting all technologies to compete for the support and the customer. If the FCC can accomplish this through an auction methodology, then such a universal service distribution scheme could be competitively neutral. As proposed, however, it appears that the same old wireline set-asides will remain intact, in clear violation of federal mandates and the FCC’s own rules mandating competitive neutrality.

C. Any Mechanism That Insulates Incumbents from Competition Must Be Rejected.

Any proposal pursuant to which competitive carriers would bid, and a “winner” would receive support to undertake universal service obligations in a rural area, to the exclusion of other competitors, is a non-starter under the 1996 Act. Any auction scheme which insulates one class of carrier from competition violates the Act and may run afoul of the U.S. Constitution.

As a practical matter, the Commission has already given rural incumbent LECs twelve years of protection from competition, culminating in the *RTF Order* of 2001. There, the FCC

¹⁹⁷ *USF First Report and Order*, 12 FCC Rcd at 8801 (para. 47) (“Universal service support mechanisms and rules should be competitively neutral. In this context, 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.”).

increased the fund for rural carriers by \$1.26 billion and decided not to freeze support in rural incumbent LEC study areas upon competitive entry. To now require competitors to bid against each other for the right to build a network, while rural incumbent LECs are insulated (even though their access line counts generally have been falling at an accelerating rate),¹⁹⁸ will doom rural areas to second-class status well into the latter part of the next decade. Moreover, such a system would impede competition in rural areas by artificially picking market winners. As such, it is inconsistent with the FCC's mandate "to transform universal service mechanisms so that they are both sustainable as competition in local markets develops, and explicit in a manner that promotes the development of efficient competition across the nation."¹⁹⁹

A single winner reverse auction may not provide sufficient support to provide access, without heavy regulatory intervention and a significant skewing of otherwise competitive markets that deliver significant and sustainable benefits to consumers and society. An obvious and certain result of a single-winner auction methodology will be the re-monopolization of rural America. Any single-winner auction is going to require the Commission to regulate rates, service quality, interconnection, and other terms in order to effectively create an "artificial marketplace" that will be destroyed by the selection of a single winner.

All of this will come at a time when wireless competitors are attempting to aggressively build new networks to compete for consumers. A single winner auction will choke off investment by all but the winner and effectively deny rural consumers the benefits of many new technologies and solutions. There is plenty of evidence concerning how wireless carriers have

¹⁹⁸ See FCC, *Local Telephone Competition: Status as of June 30, 2007* (rel. Mar. 2008) at Table 1 ("End-User Switched Access Lines Reported").

¹⁹⁹ *USF Seventh Report and Order*, 14 FCC Rcd at 8086 (para. 20).

been using universal service support to expand networks in rural areas and the Commission has developed no evidence to support a different conclusion.²⁰⁰

A single-winner auction reduces competition, a result that should only ensue in the most remote areas of the Nation, not the vast majority of rural areas that could support competition if a subsidy program were tailored to provide support only to the carrier that gets the customer. Ironically, that is precisely the system the Commission has put in place for competitors, whose support is fully portable. The proper answer is to extend full portability to *all* market participants so that competitors make market-based decisions to enter, construct, and serve, and rural consumers have *choices* in services that are reasonably comparable to those in urban areas.

Limiting universal service support to only one competitive provider, and presumably compensating that provider for the cost of constructing an entire network, would not result in less support being paid out than a system of providing per-line support based on the costs of constructing an efficient network, to any number of carriers, using any technology that can deliver the supported services and is willing to compete.

As discussed above, one of the most serious misconceptions in today's universal service debate is by those who argue that "multiple networks" should not be subsidized.²⁰¹ Today, it is impossible to subsidize the cost of constructing multiple networks in their entirety because the amount of support in any given area is effectively capped by the number of customers within that area. An auction system is demonstrably inferior to the current "per-line" support mechanism because it would chill competition, would not reduce fund outlays significantly, if at all, and would provide rural consumers with only one choice of service provider.

²⁰⁰ The only evidence cited is the Verizon-sponsored Criterion Report which reaches conclusions that, as discussed above, appear to be wrong.

²⁰¹ See Sections II.A.4., III, *supra*.

If the Commission wants to accomplish increased competition in rural areas, provide appropriate incentives for modern carriers to invest, and control growth of the fund, it has all the necessary tools at its disposal within the current support mechanism. Put simply, auctions among competitors, to determine a single winner, while incumbent LECs continue to draw \$3 billion per year for antiquated networks that consumers are abandoning, is a short-sighted and bankrupt industrial policy better suited for the defunct Soviet Union or Communist China.

D. Single Winner Auctions Would Not Fit Within the Statutory Scheme for Universal Service.

Below, we examine single winner auctions in the context of the universal service principles set forth in Section 254 of the Act.²⁰²

Section 254(b)(5) states that universal service mechanisms should be specific, predictable, and sufficient to preserve *and advance* universal service. Using single-winner auctions might result in support being specific and predictable; however, it would not be sufficient to advance universal service in many rural areas.

Using a single-winner auction would only provide the supported services at affordable rates if the Commission or the states actively regulated rates — since competition would be stifled. Regulating the rates of any wireless carrier, or worse *only a wireless carrier that is an ETC*, is simply not an option and is contrary to the deregulatory statutory scheme for CMRS providers. Nor is it a policy direction the FCC should be embracing at the very time that it is systematically deregulating rates for wireline carriers.

A single-winner auction would perpetuate a monopoly (or, a duopoly environment if a separate auction is conducted for wireline and wireless technologies). It would forestall all of the innovation currently seen in urban areas — such as flat-rated nationwide local service offerings

²⁰² 47 U.S.C. § 254.

from large incumbent LECs. This is inferior to encouraging competitive entry and the natural price competition that comes with it. Locking rural America into a single network would not *advance* universal service — it would do precisely the opposite — much to the advantage of entrenched carriers who can forestall competition or develop business plans to provide such services themselves free of competition and with the implicit support contained in current universal service mechanisms. This is precisely the *opposite* of productive, forward-looking universal service reform.

In addition to rate regulation, presumably the Commission would have to impose on ETCs obligations similar to those contained in Section 251 of the Act²⁰³ in order to open up these monopoly networks to other carriers who wish to enter without support through resale or Unbundled Network Element (“UNE”) platforms — as this would be the only viable way to provide some minimal level of competition. That is assuming, of course, that the FCC effectively set UNE rates at a level needed to provide an incentive for competitors to enter. A single-winner auction would likely frustrate the FCC’s policy move away from UNE platforms. Again, these additional layers of regulation are the *opposite* of what the 1996 Act demands — that universal service mechanisms help to deregulate the marketplace and promote competition for all Americans, not just those living in urban areas.

Nor is there any indication that auctions would provide support that is sufficient to both preserve and advance universal service. It is critical to America’s place in the world that modern networks be constructed in rural areas. The entire focus of the fund should shift toward extending fiber builds for wireline broadband and mobile wireless networks so that rural consumers have the same opportunities as those in urban and suburban areas to attract new businesses.

²⁰³ 47 U.S.C. § 251.

Auctions that result in a single winner would not promote the availability of reasonably comparable services at reasonably comparable rates in rural areas. This is the most critical of universal service goals. Auctions would limit the ability of carriers to compete in many areas and the benefits of innovation, service choices, and new technologies will be delayed or denied to consumers in many rural areas. The much better course is to reaffirm the existing principle of competitive neutrality by providing fully portable per-line support to all carriers willing to offer the supported services throughout a designated service area and by capping such support at a level needed to provide consumers with similar choices in telecommunications services as are available in urban areas.

In sum, single-winner auctions would not advance the universal service principles embodied in Section 254 of the Act as well as the current system, which provides equal per-line support to all competitive carriers in a competitively neutral fashion.

E. Auctions Cannot Be Conducted Unless All Carriers Bid on Identical Territories.

The Commission has previously found that irregular and oftentimes non-contiguous incumbent LEC boundaries present a significant barrier to entry for competitive carriers, none of which are licensed along incumbent LEC boundaries.²⁰⁴ In order for any auction scheme to be competitively neutral, service areas must be defined for all carriers. An auction is not even feasible if competitors are not operating on the same plane — that is — bidding for the same thing. Twelve years after the 1996 Act, it is difficult to articulate a defensible rationale for insulating rural incumbent LECs from competitive entry any longer. Service areas would need to

²⁰⁴ See *USF First Report and Order*, 12 FCC Rcd at 8879-80 (para. 185) (finding that service areas “simply structured to fit the contours of an incumbent’s facilities” would give incumbents an advantage over wireless carrier entrants).

be small, defined for example along county boundaries, so that all carriers bid on identical territory.

F. A Ten-Year Term for an Auction Winner Would Exacerbate the Problem of Stranded Plant.

Any proposal to provide an auction winner with an exclusive term is problematic because installed telephone plant is comprised of long-term assets that are generally fixed into the ground (concrete, tower, T-1, microwave), and that have lengthy depreciation schedules. Dismantling a network at the end of a term is not practicable. This “stranded investment” issue would be far worse than the existing wireline problem, as much wireline plant in service today is decades old and fully depreciated.²⁰⁵

G. Any Proposal That Continues to “Set Aside” Benefits for Rural Incumbent LECs Potentially Violates the Due Process Clause of the Fifth Amendment.

Auctions raise equal protection concerns in that setting aside such an extraordinary benefit for one class of carriers bears no relationship to the purpose or objectives of Section 254 of the Act. Universal service funds are for *consumers*. Setting aside universal service benefits for wireline carriers while wireless carriers must compete at an auction does nothing to preserve or advance universal service for the citizens who cannot receive the benefits promised by Congress. The Commission’s denial of equal protection in such a way would appear to violate the Due Process Clause of the Fifth Amendment.

²⁰⁵ In addition, it is intuitively unwise to anoint one entity the winner and sole recipient of support for a 10-year period, essentially placing all of the USF’s eggs in one basket and giving the winner little or no incentive to perform well to earn its exclusive status.

H. A Multiple-Winner Auction Would Not Necessarily Result in Proportionately Greater Support.

The Commission tentatively concludes that a multiple-winner auction mechanism would increase the amount of support needed proportionately.²⁰⁶ Yet the FCC's own orders make clear that this need not be the case. In its very first post-1996 Act order, the FCC stated:

Federal universal service support will be distributed based on the interstate portion of the difference between the forward-looking economic cost of providing service and a nationwide revenue benchmark. The amount of support will be explicitly calculable and identifiable by competing carriers, *and will be portable among competing carriers, i.e., distributed to the eligible telecommunications carrier chosen by the customer.*²⁰⁷

A critical component of making universal service mechanisms work with competitive markets is *portability*, that is, providing support only to the carrier that a consumer chooses. The Commission has always embraced portability, even though it has not been fully implemented,²⁰⁸ and the courts have ruled that the statute requires portability.²⁰⁹

If a multiple winner reverse auction resulted in a set per-line amount of support being made available for a particular area, then *any* carrier willing to invest risk capital in that area and take on universal service obligations would be eligible to receive that support. It would matter not whether one carrier entered or ten carriers entered. The amount of support in an area would be capped by the number of customers in that area.

As demonstrated in Section II of these Comments, if the current per-line support mechanism were properly implemented, incumbent carriers would lose support when they lose

²⁰⁶ *Reverse Auctions NPRM* at paras. 15-16.

²⁰⁷ *USF First Report and Order*, 12 FCC Rcd at 8786 (para. 15) (emphasis added).

²⁰⁸ *See, e.g., id.* at 8788 (para. 19), 8944 (para. 311); *USF Seventh Report and Order*, 14 FCC Rcd at 8113 (para. 73); *Kansas Preemption Order*, 15 FCC Rcd at 16232 (para. 10).

²⁰⁹ *Alenco*, 201 F.3d at 616.

customers, *just as wireless carriers do today.*²¹⁰ Once the Commission determines that an amount of support within a targeted area is sufficient to meet the Act's goals, overall support need not increase as new competitors enter. Accordingly, the FCC's tentative conclusion that support would increase through multiple-winner auctions need not come to pass.

I. Carrier of Last Resort Obligations Must Be Defined.

It is time for the Commission to define carrier of last resort ("COLR") obligations, for all carriers. Today, almost every state requires a COLR to extend service to consumers upon reasonable request, if such request can be accommodated at a reasonable cost. When it cannot be done at a reasonable cost, a COLR is permitted to levy a "line extension charge" or to refuse service and record a "held order." In most states where it serves as an ETC, RCA-ARC have the same COLR obligations as incumbent LECs.

If universal service support is used to build new infrastructure in rural areas, bringing in much needed competitive choices, the need for COLR obligations is greatly reduced. That should be an explicit goal of federal universal service reform — to reduce or eliminate the need for COLR obligations by providing consumers with choices in telecommunications services.

IV. CONCLUSION.

The Commission should retain the identical support rule because the rule plays a critical role in promoting competition in rural and other high-cost areas, and elimination of the rule would give an unfair advantage to incumbent LECs, thus contradicting the pro-competitive policies reflected in the Act and in the Commission's principle of competitive neutrality.

A single winner reverse auctions mechanism should be rejected by the Commission because such a mechanism would not be consistent with the Congressional mandate that all telecommunications markets must be open to competition, nor would single winner auctions

²¹⁰ See Section II.A.1., *supra* (citing the *USF Ninth Report and Order*).

produce better results for consumers than funding mechanisms that disburse high-cost support based upon forward-looking costs.

Finally, the Commission should expand its high-cost reform efforts so that its adoption of comprehensive reform includes replacing the current modified embedded cost mechanism for the disbursement of high-cost funds to rural incumbent LECs with a funding model that better ensures prudent investments and efficient operations. This reform must be a critical component of any Commission strategy to safeguard the sufficiency and stability of the high-cost fund and to preserve and advance universal service.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION
ALLIANCE OF RURAL CMRS CARRIERS

[Filed Electronically]

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April 17, 2008

EXHIBIT 1

Cost of Wireless Service

**Per-Minute Cost of Wireless Service
(Including USF Contributions)**

(1995-2007)

Sources: FCC, *Trends in Telephone Service*, Table 19.17 (Feb. 2007); *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*, WT Docket No. 06-17, *Twelfth Report*, FCC 08-28 (rel. Feb. 4, 2008), at para. 201 (Table 14)

YEAR	(A) AVERAGE REVENUE PER VOICE MINUTE (\$) ^{1/}	(B) CONTRIBUTION FACTOR (%) ^{2/}	(C) PER MINUTE COST OF CONTRIBUTION FACTOR (\$) ^{3/}	TOTAL COST PER MINUTE (\$) (A) + (C)
1995	0.4300			
1996	0.3800			
1997	0.3700			
1998	0.2900	3.1625	0.0092	0.2992
1999	0.2200	3.0143	0.0066	0.2266
2000	0.1800	5.6980	0.0103	0.1903
2001	0.1200	6.8445	0.0082	0.1282
2002	0.1100	7.1625	0.0079	0.1179
2003	0.1000	8.7701	0.0088	0.1088
2004	0.0800	8.8000	0.0079	0.0879
2005	0.0600	10.5500	0.0074	0.0674
2006	0.0600	10.1750	0.0071	0.0671
2007	NA	10.9250		

^{1/} Data covers the last six months of each year.

^{2/} The listed number for years 1998-2007 is an average of the four quarterly contribution factors.

^{3/} Calculated by multiplying the average revenue per minute (A) by the contribution factor (B)

EXHIBIT 2

Average Wireline Local and Long Distance Bills

Average Wireline Residential Local and Long Distance Telephone Bills Plus USF Contribution Surcharge

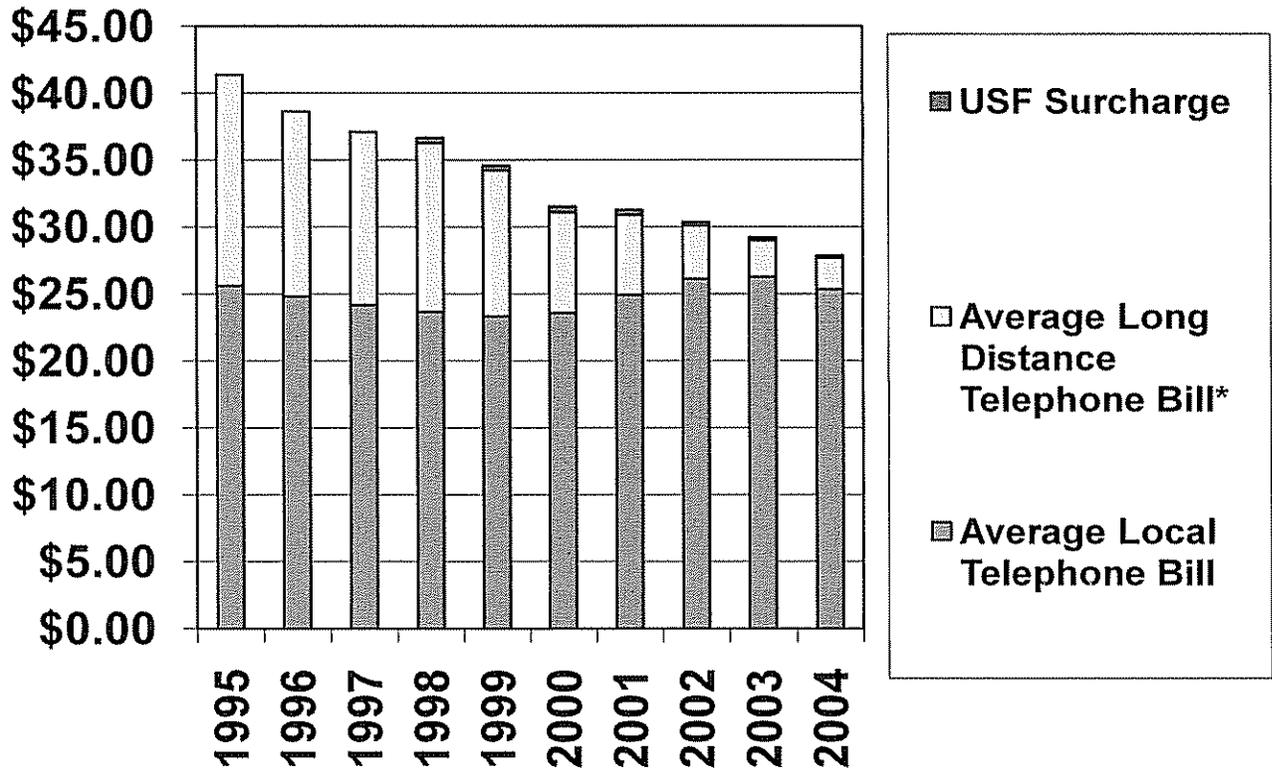


EXHIBIT 3

Incumbent LEC High-Cost Fund Support

Payment History

ILEC HIGH-COST SUPPORT FUND PAYMENT HISTORY

Source: Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 3.2 (2007)

YEAR	TOTAL HIGH-COST SUPPORT	PCT CHANGE
2002	2,888,900,000	--
2003	3,135,600,000	8.54%
2004	3,152,600,000	0.54%
2005	3,168,600,000	0.51%
2006	3,116,400,000	-1.65%
2007 ^{1/}	3,153,600,000	1.19%

^{1/} Estimate based on USAC projections.

ILEC HIGH-COST SUPPORT FUND PAYMENT HISTORY

Source: Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 3.2 (2007)
(In Millions of Dollars)

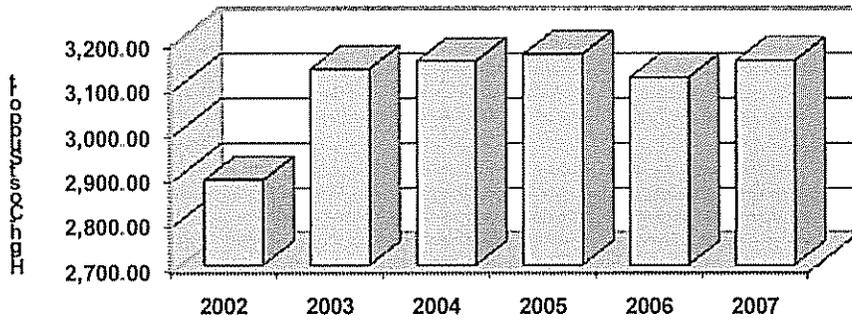
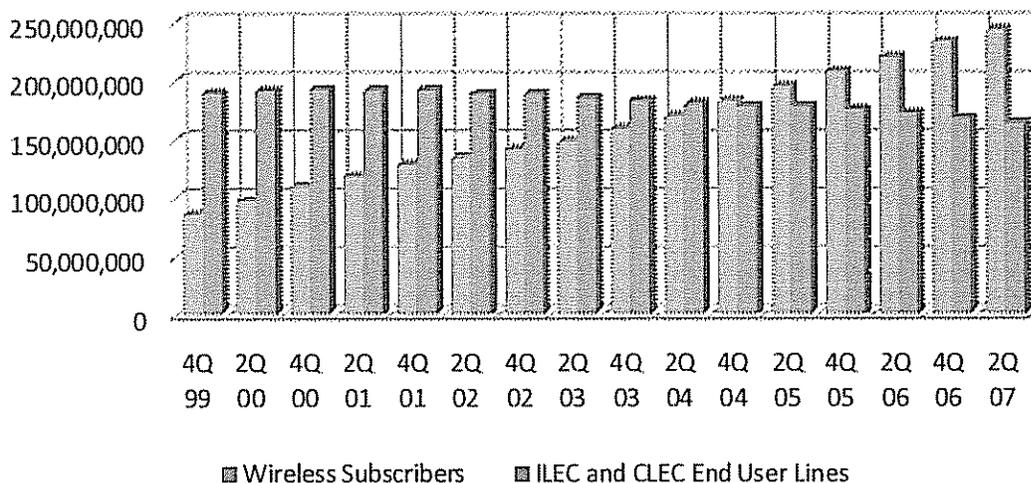


EXHIBIT 4

Wireless Subscribership and Wireline Access Lines

**Total ILEC and CLEC End-User Lines vs. Wireless
Subscribership: 1999-2006**



**Total ILEC and CLEC End-User Lines vs.
Wireless Subscribership: 1999-2006**

PERIOD	WIRELESS SUBSCRIBERS	TOTAL ILEC AND CLEC END USER LINES
4Q 1999	86,047,003	189,397,096
2Q 2000	97,035,925	191,206,106
4Q 2000	109,478,031	192,432,431
2Q 2001	118,397,734	192,027,002
4Q 2001	128,374,512	191,570,800
2Q 2002	134,561,370	188,974,934
4Q 2002	140,766,842	189,250,143
2Q 2003	148,065,824	185,259,883
4Q 2003	158,721,981	182,933,281
2Q 2004	169,467,393	180,027,133
4Q 2004	182,140,362	177,690,711
2Q 2005	194,479,364	177,733,044
4Q 2005	207,896,198	175,160,940
2Q 2006	219,652,457	172,086,792
4Q 2006	233,040,781	167,504,016
2Q 2007	243,428,202	163,170,381

Sources: CTIA, Semi-Annual Wireless Industry Survey Results, January 1985 – June 2007
FCC, Local Telephone Competition: Status as of June 30, 2007 (rel. Mar. 2008), Table 1

EXHIBIT 5

DSL Offerings by Selected Rural Telecommunications Provider

Exhibit 5-A

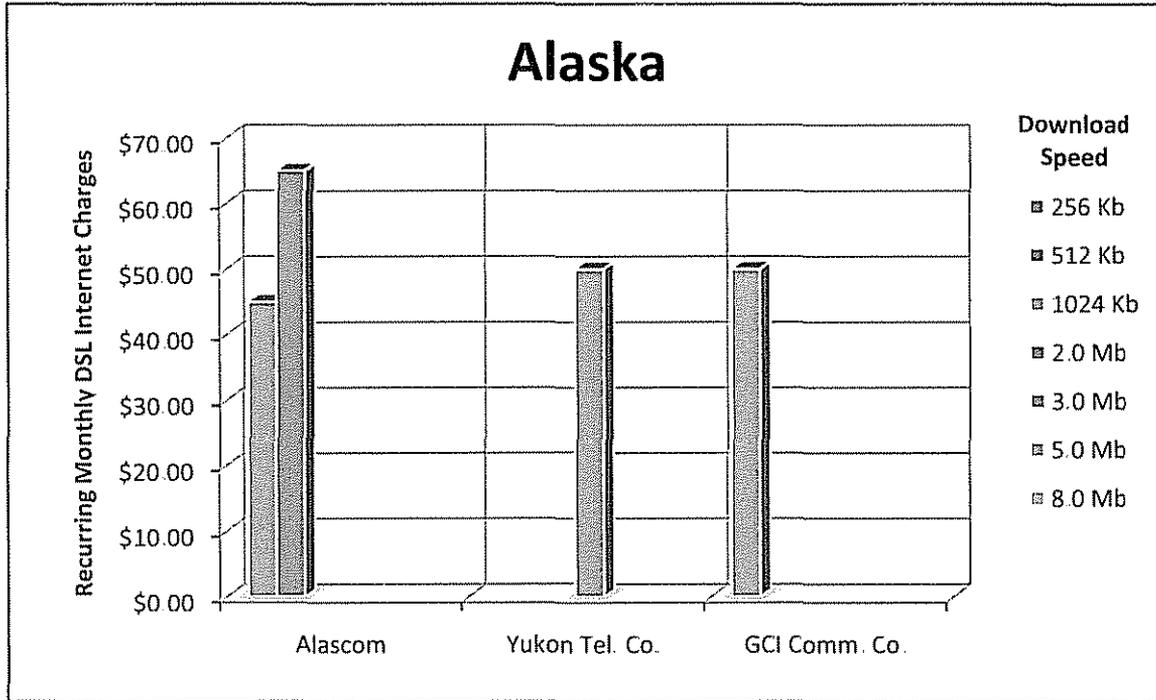


Exhibit 5-B

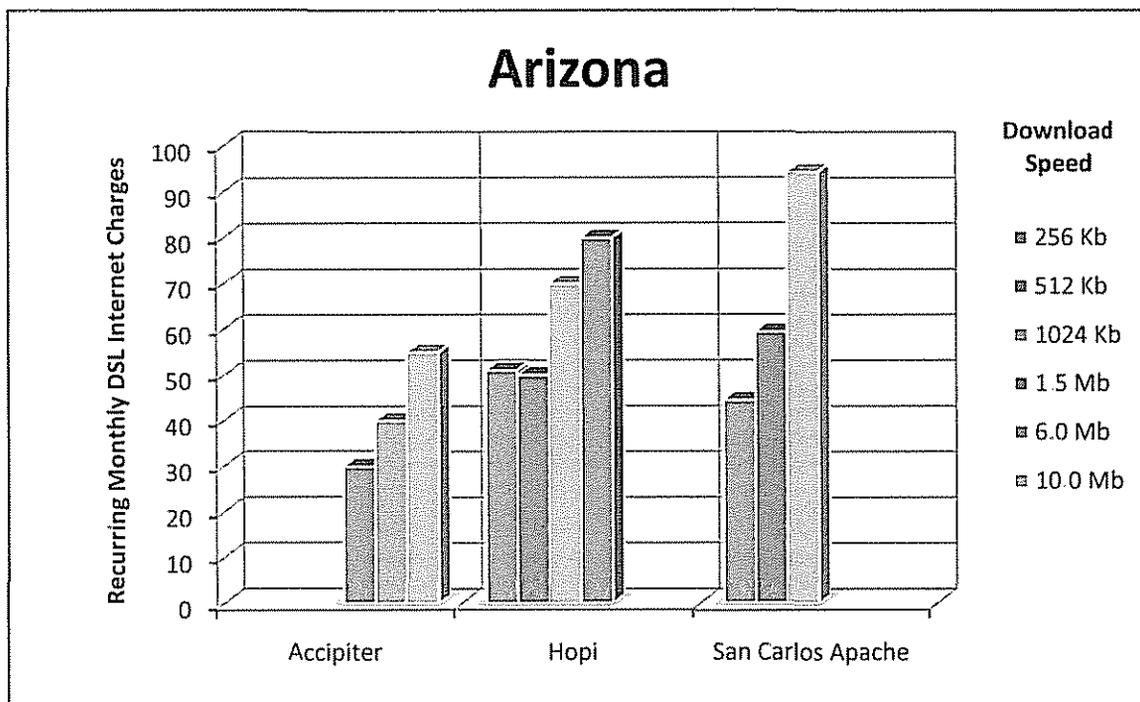


Exhibit 5-C

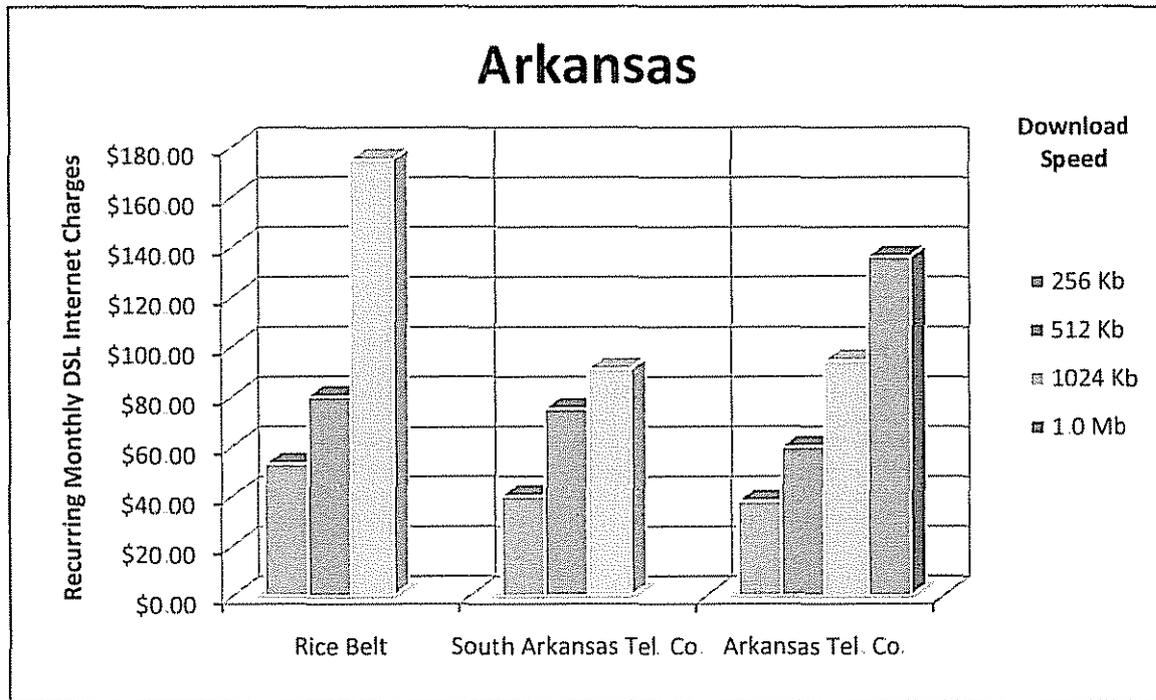


Exhibit 5-D

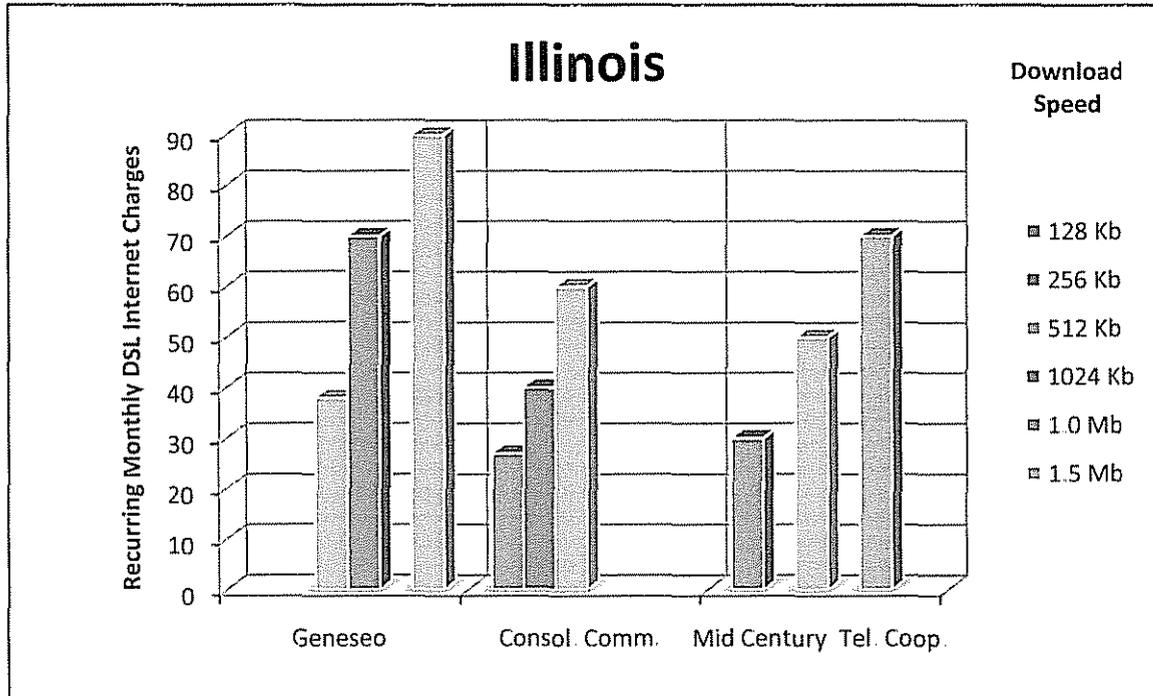


Exhibit 5-E

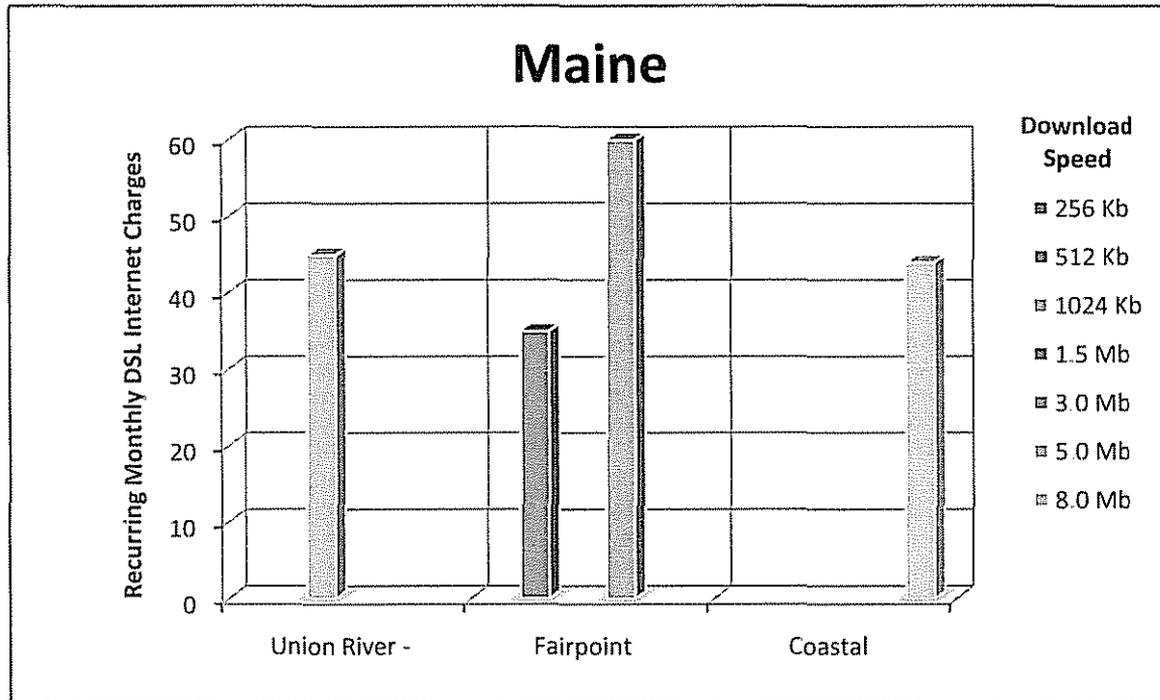


Exhibit 5-F

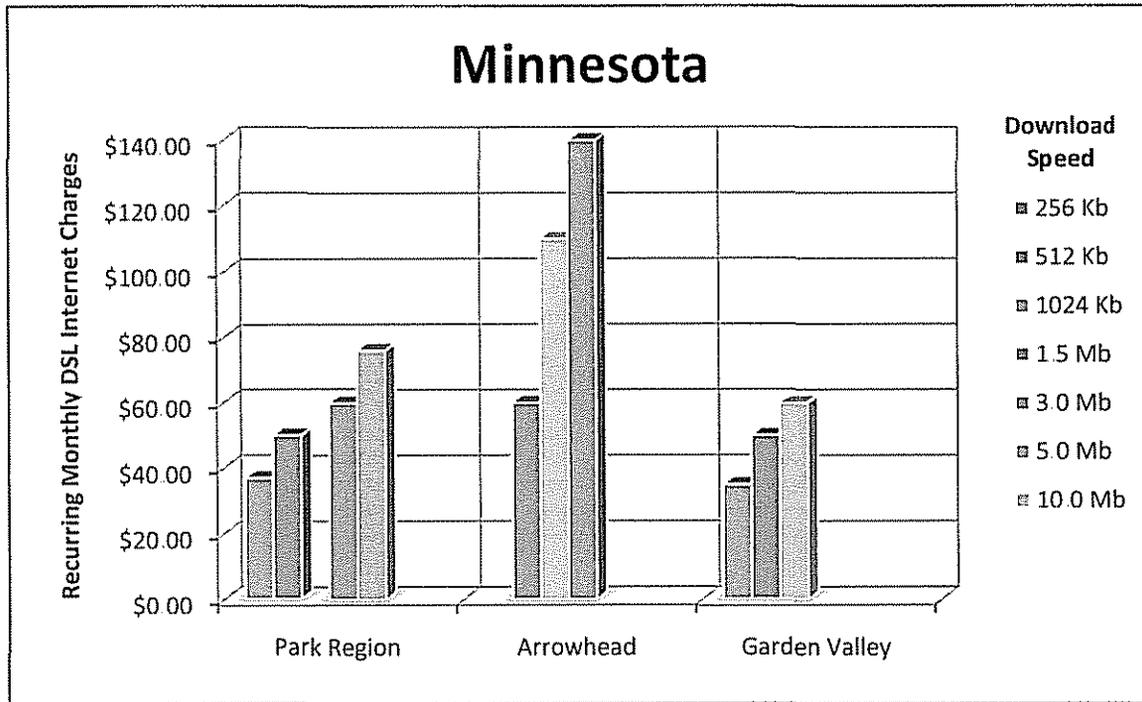


Exhibit 5-G

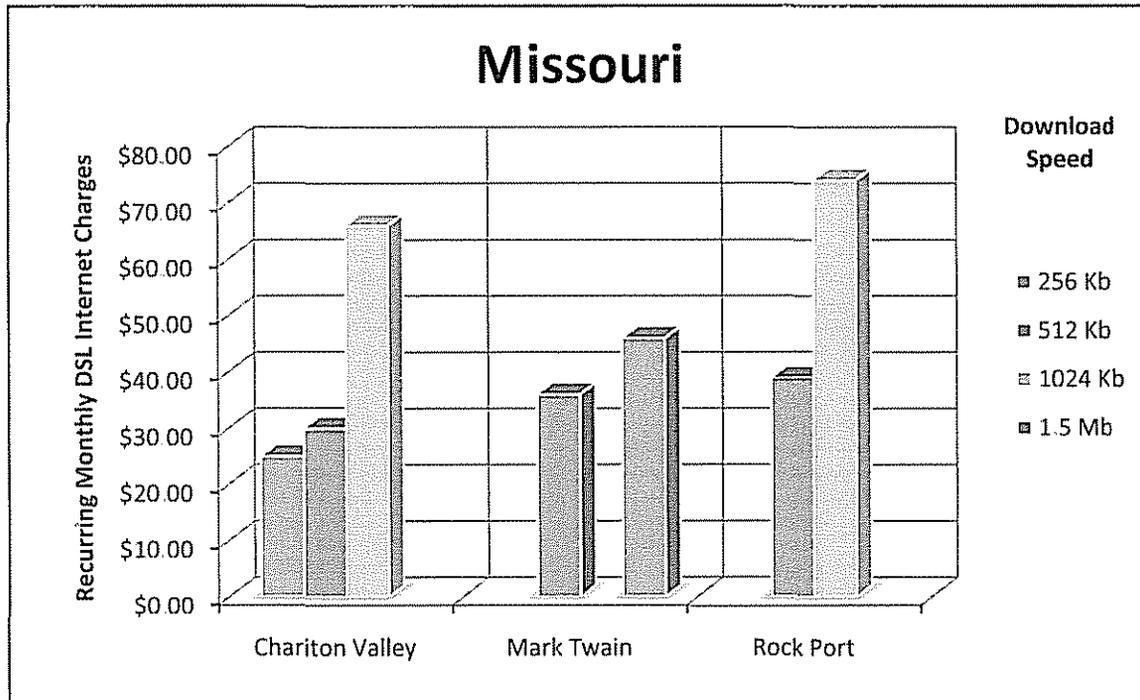


Exhibit 5-H

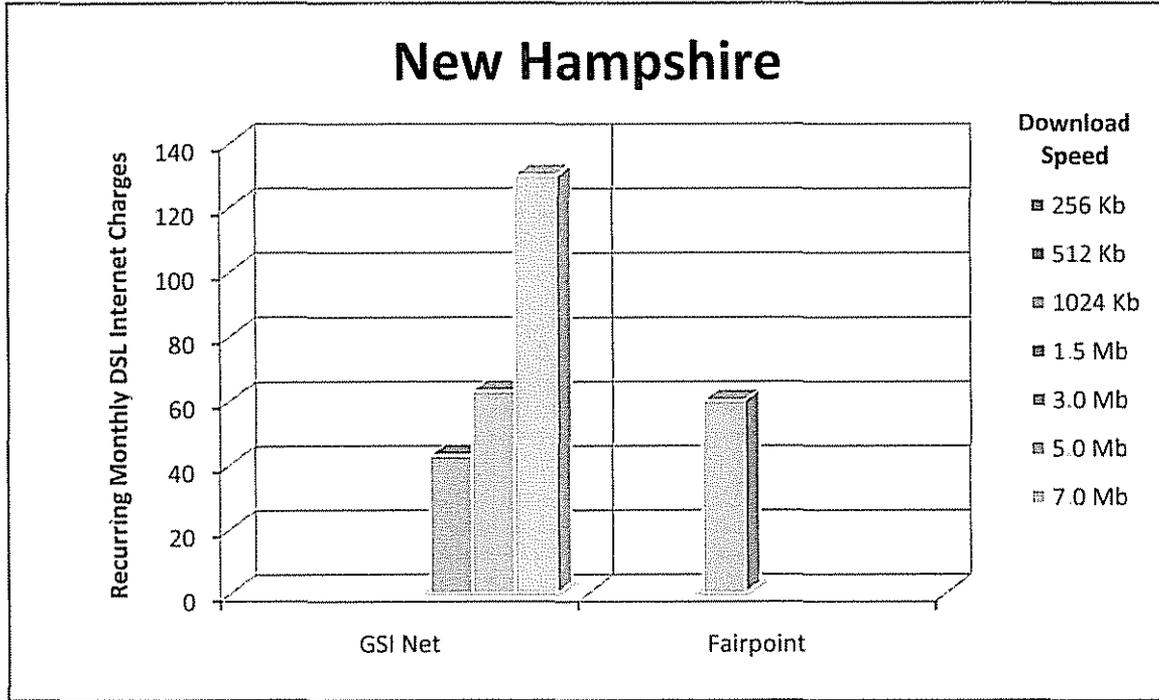


Exhibit 5-I

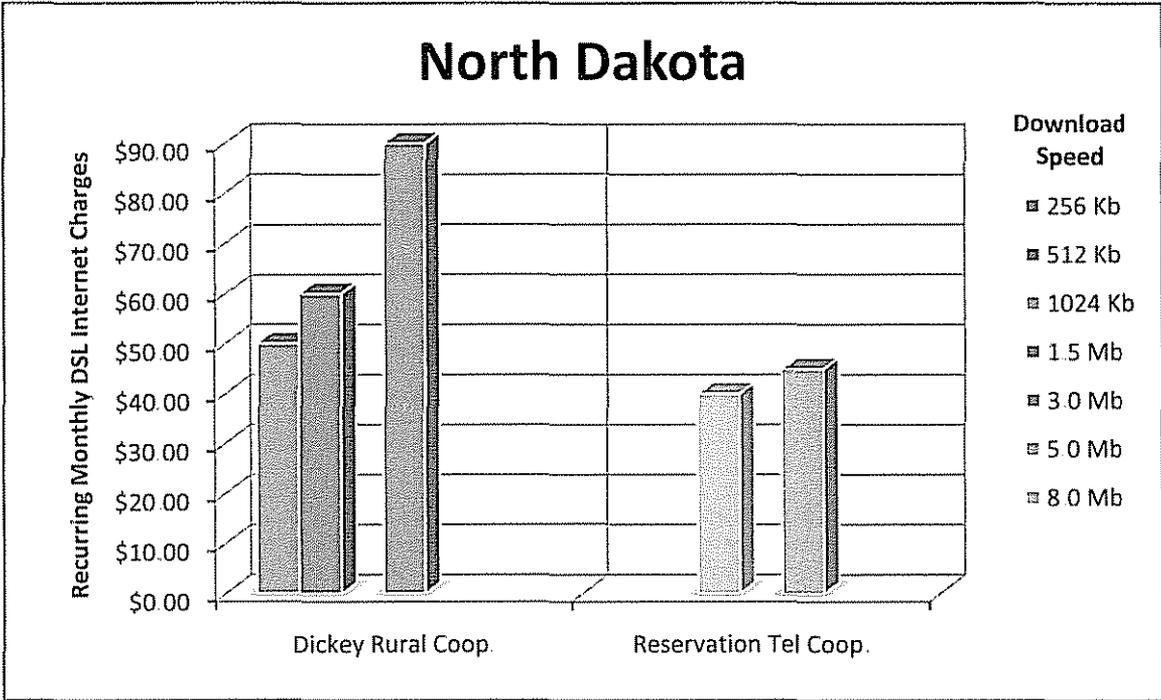


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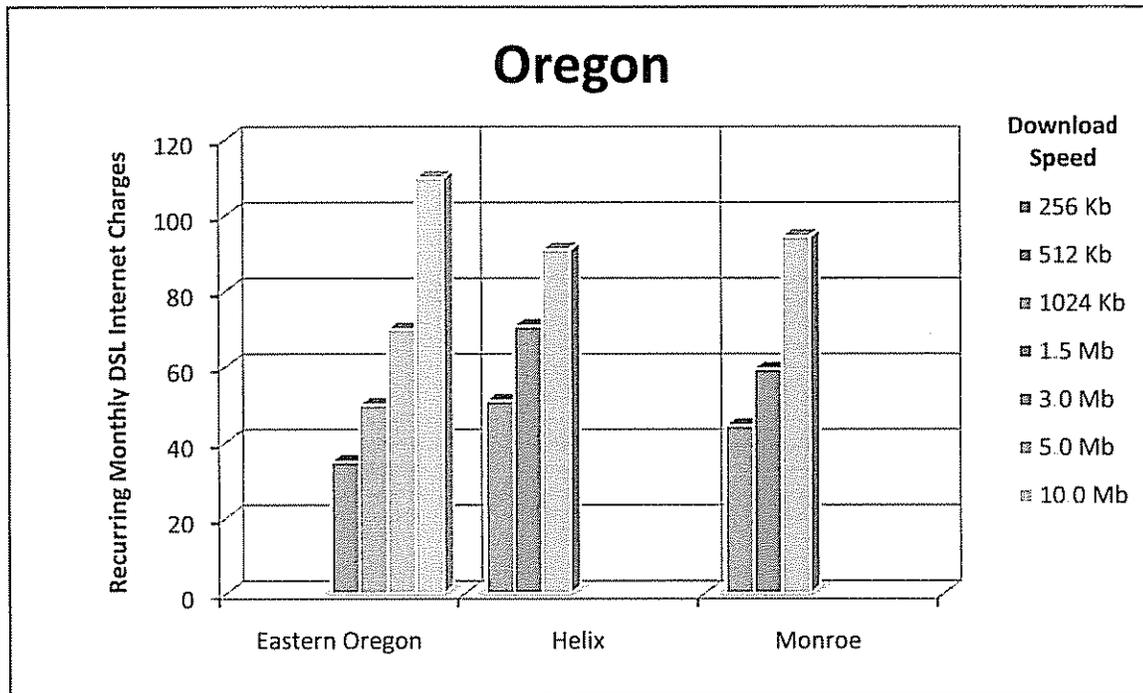


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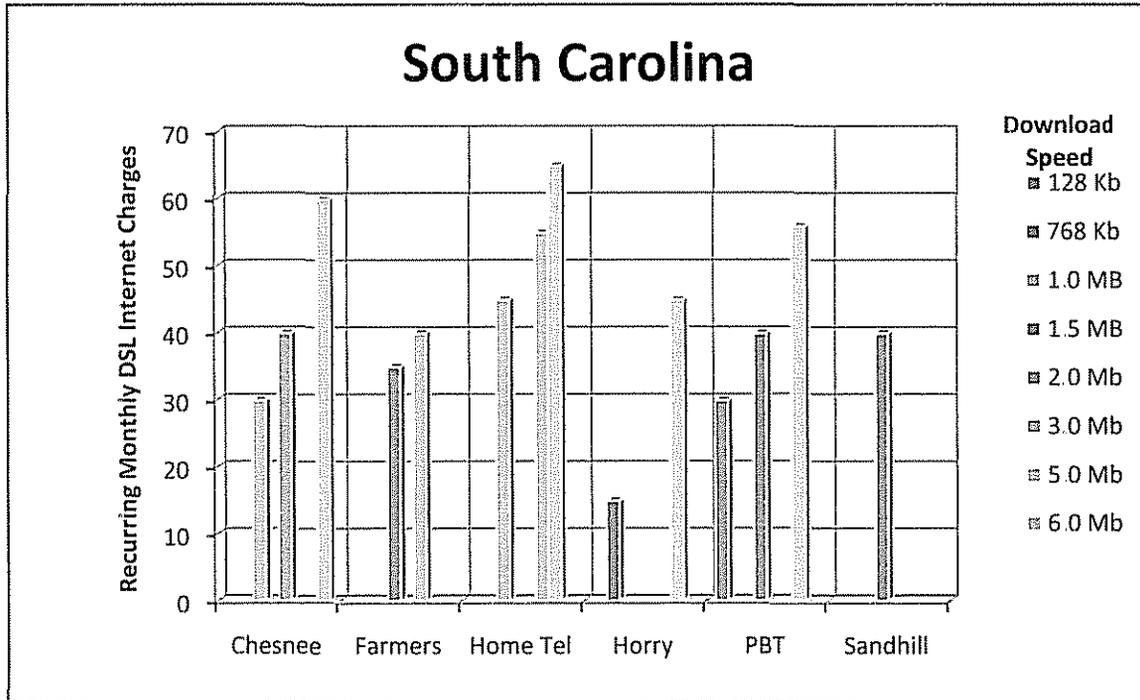


Exhibit 5-L

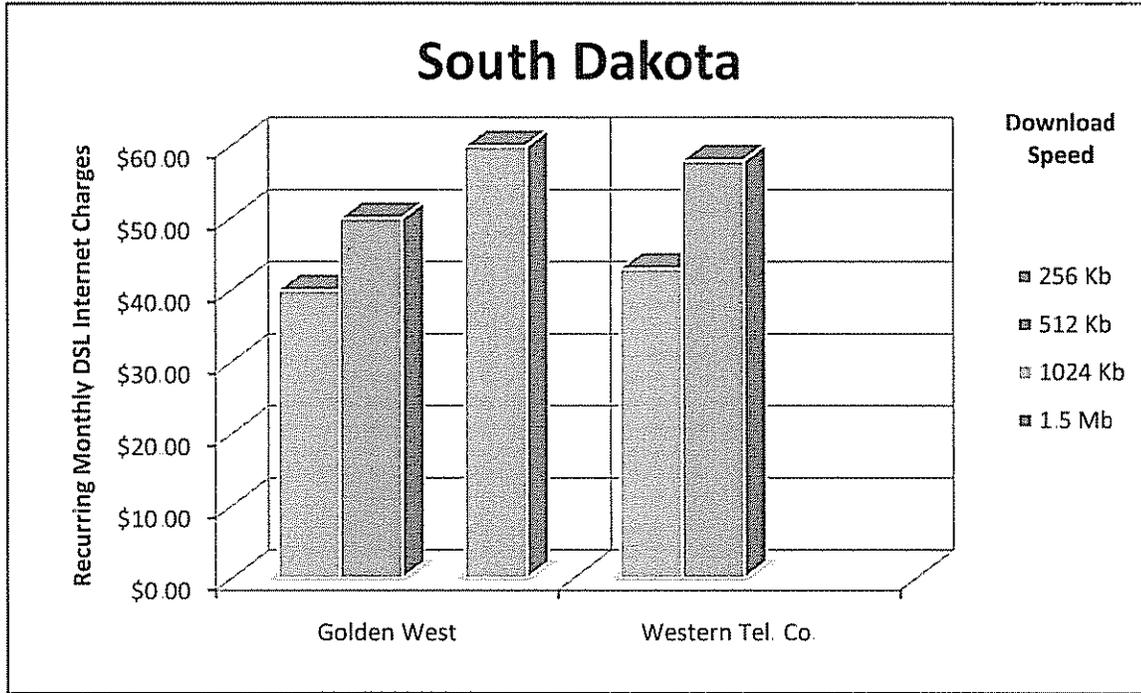


Exhibit 5-M

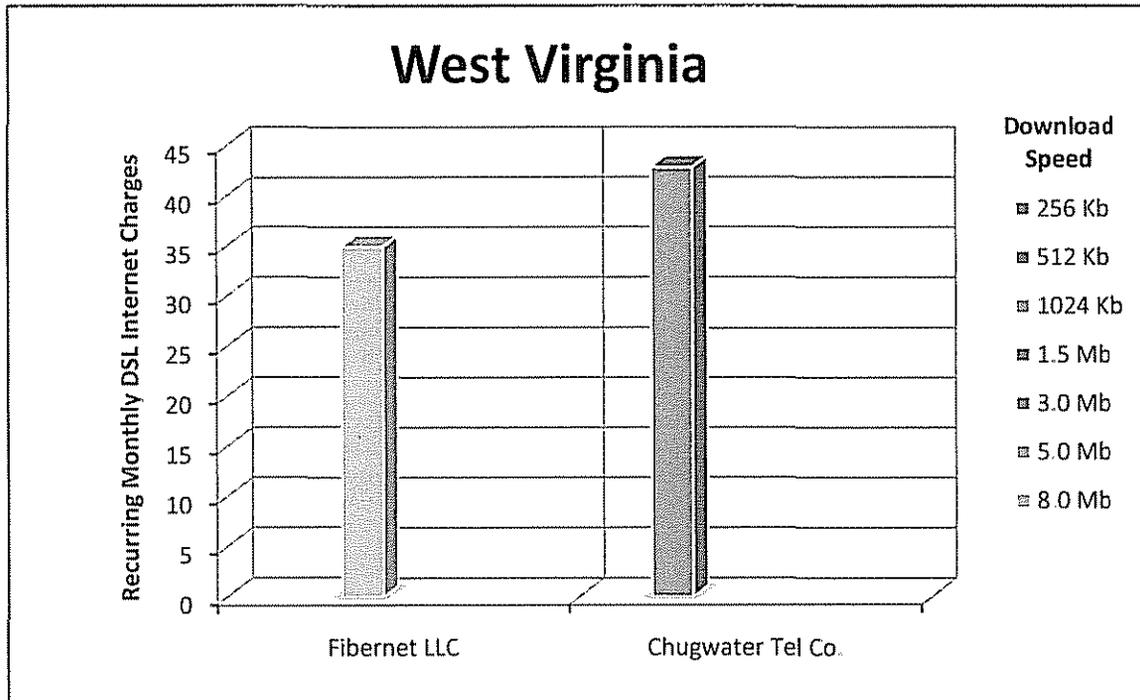


Exhibit 5-N

DSL Offerings by Large Wireline Providers

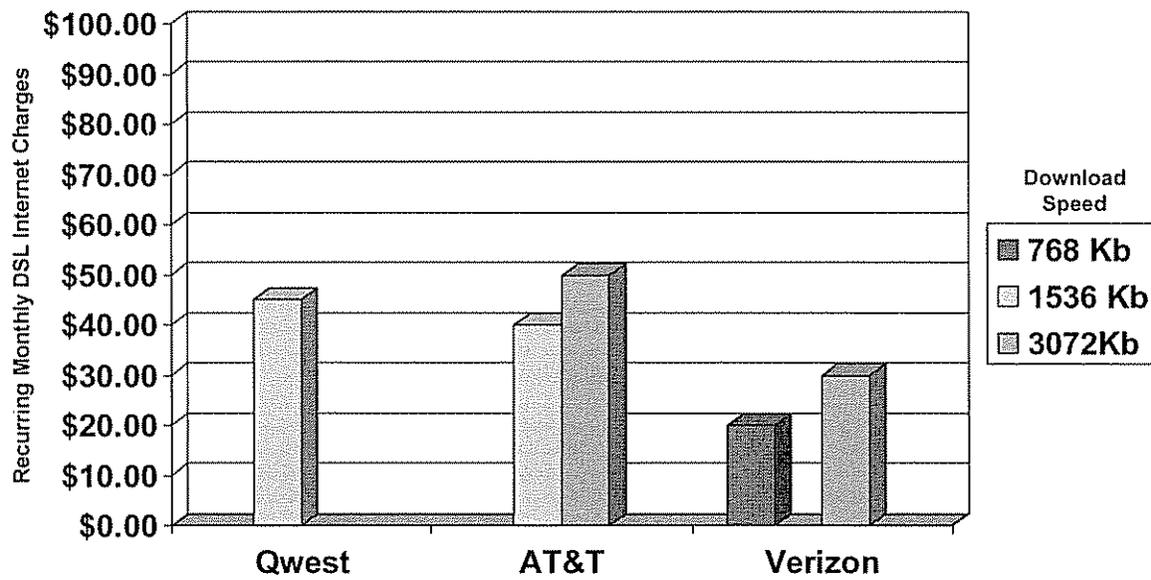
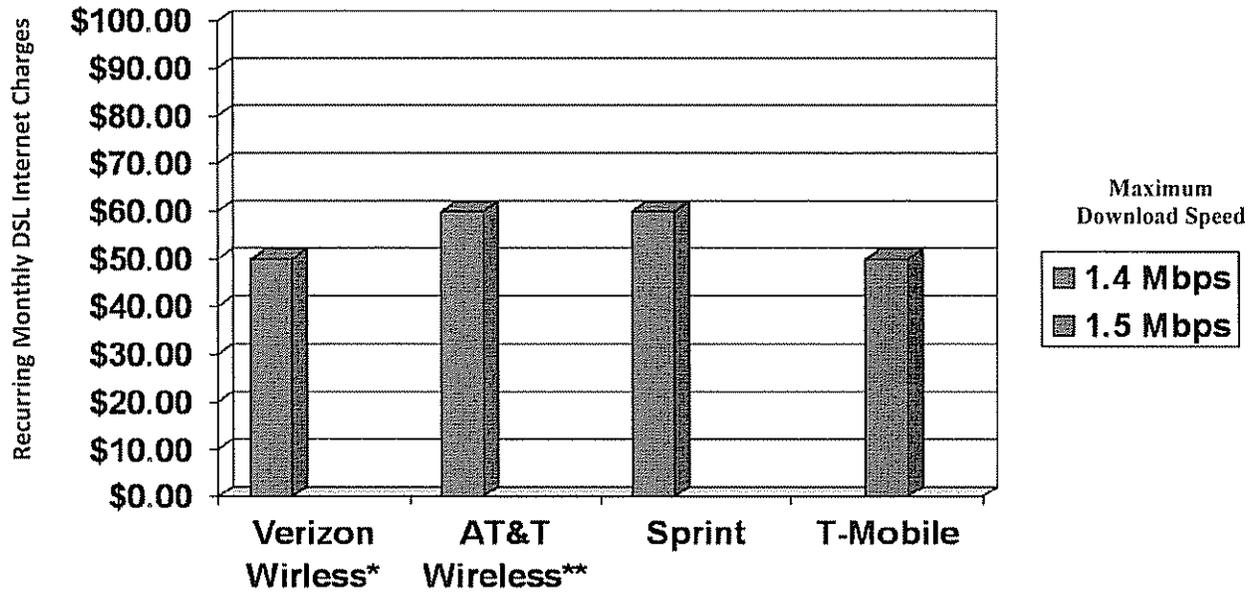


Exhibit 5-O

Mobile Wireless Broadband Access



*Monthly data usage limit of 5 GB; \$0.49 per minute beyond limit.

**Monthly data usage limit of 5 GB.