

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

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

COMMENTS OF CELLULAR SOUTH, INC.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE COMMISSION’S NOTICES OF PROPOSED RULEMAKING DO NOT OFFER WORKABLE SOLUTIONS.....	3
A.	Reverse Auctions Are Not A Workable Method for Allocating Support.....	3
1.	Reverse Auctions Cannot Be Competitively Neutral.....	4
2.	It is not the Government’s Job to Pick Winners in a Market.....	5
3.	Limiting Support to a Single Provider Will Not Necessarily Lower Costs.....	5
B.	The Commission Should Retain the Identical Support Rule.....	7
1.	Identical Support is a Competitively Neutral Method of Allocating Support.....	7
2.	There is No Viable Proposal to Provide Support to Competitive ETCs Based on Their Own Costs.....	8
C.	The Joint Board’s Recommended Decision Contains Unworkable Proposals that Are Not Competitively Neutral.....	9
1.	Broadband Should be a Supported Service, but the Proposed Broadband Fund is the Wrong Approach.....	10
2.	Mobility Has a Place in the Universal Service System, but the Proposed Mobility Fund Is Not the Solution.....	11
3.	The Provider of Last Resort Fund Offers No Reform and Unjustifiably Protects Legacy Services from Competition.....	12
4.	The Joint Board’s Opposition to Funding Multiple Providers is Flawed in its Reasoning.....	13
III.	A REASONABLE TRANSITION PERIOD IS ABSOLUTELY NECESSARY.....	14
IV.	CONCLUSION.....	14

SUMMARY

The Telecommunications Act of 1996 was founded on the concept of competition. By opening markets to competition, consumers have benefitted through lower prices and access to advanced services. Though the size of the Universal Service Fund has grown over time, many rural consumers today have access to services that are comparable to those offered in urban areas.

Despite what USF opponents claim, the Fund is not exploding and there is no emergency. Accordingly, there is no reason to rush in to policy decisions without thoroughly exploring all options. The worst thing the Commission could do for rural Americans would be to adopt dramatic and unproven reform proposals that would rob consumers of competition and result in a pre-1996 environment of subsidized monopolies in rural areas.

Before adopting any unproven reform proposal, the Commission should first make USF support portable for incumbent LECs. There is no justification for shielding these providers from competition any longer. Additionally, the Commission should retain the identical support rule, but should reject the idea of reverse auctions because it cannot be implemented in a competitively neutral manner.

The Joint Board's Recommended Decision is correct in recognizing that Universal Service should support broadband and mobility, but the Joint Board's proposals for supporting these services are not the proper approach.

Ultimately, the Commission should allow a transition period of at least five years if it undertakes comprehensive USF reform.

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Cellular South, Inc. (“Cellular South”)¹ hereby submits its Comments to the Federal Communication Commission’s three Notices of Proposed Rulemaking² in the above-captioned proceeding.

I. INTRODUCTION

The Telecommunications Act of 1996 (“1996 Act” or “Act”)³ brought the benefits of competition to rural consumers. Today, non-incumbent carriers have the opportunity to compete in markets that were previously the exclusive domain of a single incumbent carrier. The 1996 Act fostered competition in “high-cost” areas that would otherwise be uneconomic to serve by allowing competitive carriers to receive Universal Service Fund support. Because of the 1996 Act, consumers in these high-cost areas have choices in their telecommunications services. These consumers have

¹ Cellular South, Inc. is one of the nation’s largest privately-held wireless carriers based on number of subscribers and serves all of Mississippi as well as portions of Florida, Alabama, Tennessee and Arkansas.

² *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (rel. Jan. 29, 2008) (“*Recommended Decision NPRM*”); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (rel. Jan. 29, 2008) (“*Identical Support Rule NPRM*”); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (rel. Jan. 29, 2008) (“*Reverse Auctions NPRM*”)(collectively “*USF NPRMs*”).

³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

benefitted from competition between carriers and have received access to advanced services that would not have been available without USF support.

As competitors have entered new markets and have begun to build out their networks, Universal Service Fund support has grown. The growth in the size of the Universal Service Fund over the years has invited criticism from those who oppose competitive entry into these markets.

Support from USF is often discussed in terms of providing support to rural consumers (when discussing per-line amounts) or to carriers (when considering total USF dollars received by carriers). However, it is more accurate to discuss USF as a means of promoting competitive markets. Put another way, USF support goes to high-cost areas that would otherwise be uneconomic to serve. The support from the Fund makes it possible to have a functioning market for telecommunications services. When multiple carriers exist in a high-cost area, it is evidence that the USF system has succeeded in creating a viable market. It is not evidence that the market could exist on its own and that USF support is unnecessary.

Most current USF reform proposals are designed to eliminate competition and designate a single USF recipient in a high-cost area. It is claimed that this would reduce the overall size of the Universal Service Fund. Despite the claims that the Fund has seen “explosive growth” or that there is a “crisis” facing the Fund, the evidence shows that the quarterly contribution factor for the Universal Service Fund was near its 3-year low as recently as the first quarter of 2008.⁴ This hardly shows “explosive growth” or a “crisis” in the Fund.

In addition to the lack of evidence that the Fund is in dire straits due to its size, there is also a lack of any evidence that the size of the Fund could be reduced by limiting support to a single carrier. Even if this were true, such a scheme would require the Commission to abandon the

⁴ See FCC Public Notice, “Proposed First Quarter 2008 Universal Service Contribution Factor,” CC Docket No. 96-45, DA 07-5007 (rel. Dec. 14, 2007).

workings of the market and select one carrier in an area to receive a franchise to be the lone service provider in that area.

Of course, there would be no legal barrier to competitors who wished to enter a high-cost area without USF support, but high-cost areas require support because it is uneconomic to serve those areas without it. Since carriers can only offer service in those areas with USF support, there is no basis for expecting that an unsupported competitor would enter a high-cost area to compete against a supported carrier. Any discussion of long-term USF reform must begin with the recognition that the Fund promotes viable markets, and that consumers must continue to benefit from the competition that exists through USF support.

II. THE COMMISSION’S NOTICES OF PROPOSED RULEMAKING DO NOT OFFER WORKABLE SOLUTIONS

The Commission seeks comment on a number of options that would change the Universal Service Fund system.⁵ While there certainly are areas of the Universal Service Fund that could use reform, competitive carriers are hardly the appropriate starting point for effectively overhauling the system. Unfortunately, the USF NPRMs do not offer solutions that would protect consumers and promote advanced services in high-cost areas. Accordingly, they do not present a workable approach for long-term USF reform.

A. Reverse Auctions Are Not A Workable Method for Allocating Support

In the Reverse Auction NPRM, the Commission reaches a tentative conclusion that it “should develop an auction mechanism to determine high-cost universal service support.”⁶ According to the Commission, “reverse auctions offer several *potential* advantages over current high-cost support distribution mechanisms”⁷ When weighed against the likelihood of harm to the program,

⁵ See generally *USF NPRMs*.

⁶ *Reverse Auction NPRM* at para. 11.

⁷ *Id.* (emphasis added).

dramatic changes such as those proposed in the Reverse Auction NPRM must offer more than mere potential to be worth the associated cost. There is a far greater likelihood of harm to rural consumers than there is benefit under a reverse auction mechanism.

1. Reverse Auctions Cannot Be Competitively Neutral

The first problem with reverse auctions is that they cannot be conducted in a competitively neutral manner. If a reverse auction is open to all ETCs in an area and has a single winner, then the advantage goes to the incumbent LEC that presumably has a mature network. In addition to considering the cost of providing service in an area, the incumbent LEC – acting rationally – would also consider the value of eliminating competition in the area by winning the auction. This could lead the incumbent to submit an artificially low bid – possibly zero – in order to foreclose support to competitors and drive them out of the market. The possibility of “gaming the system” is not limited to incumbents with mature networks, however. Competitive ETCs might also submit artificially low bids if they are willing to use profits in low-cost areas to offset their losses in high-cost areas. Instead of submitting bids based on the cost of providing service, rational bidders would also include the value of effectively eliminating competition in a given area and the bids would not be a true indicator of the cost of providing service to an area. A single-winner reverse auction cannot be competitively neutral if it allows for this type of “gaming” by entrenched bidders.

The situation is not solved by a reverse auction system that allows multiple winners. This is true whether each winner receives support according to a percentage of the lowest bid or a percentage of its own bid. If an ETC knows that it will receive a percentage of the winning bid even if it does not submit the lowest bid, and that ETC submits a true bid and loses, then the rational bidder will not enter the market because it is being offered a lesser amount of support than what is actually required to provide service. This yields the same result as a single-winner reverse auction.

This result also holds true if a losing ETC is offered support that is a lesser percentage of its own submitted bid. If the losing ETC submitted a true bid, then receiving a percentage of that bid should not be sufficient to allow entry into the market. This provides an incentive to submit a bid that is higher than actually necessary to provide service so that the bidder after having lost the auction still receives an amount that is sufficient to facilitate entry in the market. Clearly, then, this design would also invite incumbents and competitive ETCs to “game” the system to eliminate competition in the first case, or to submit an artificially high bid in the second case.

2. It is not the Government’s Job to Pick Winners in a Market

Another problem with a reverse auction mechanism is that it puts the government in the position of establishing a monopoly provider in an area. When regulators pick the “winner” in an area, the government chooses the winning provider and technology instead of leaving that choice to consumers in the market. This is a model that our society abandons at virtually every opportunity, but is a model that was embraced in the old Soviet Union. There is a reason that this model fails. Consumers are better situated than the government to pick market winners. The same is true here. Any changes to the Universal Service Fund system must ensure that the market is allowed to operate and that the Fund continues simply to assist the market in its operation and not supplant the market through decision-making.

3. Limiting Support to a Single Provider Will Not Necessarily Lower Costs

One of the most frequent reasons given for proposing reverse auctions is that this will result in a savings to the Fund because support will only go to a single competitive ETC in a given area rather than “funding multiple networks.” This argument fails to grasp a basic premise of competitive ETC support. Under the Universal Service Fund, competitive ETCs receive support based on the number of customers that they serve, not the extent to which they deploy a network. Therefore, the

maximum amount of USF support available in an area is a function of the number of consumers in an area and not on the number of competitive ETCs or separate networks in an area.

Universal Service support does not fully fund multiple networks in an area. Opponents of Universal Service imply that this is the case when arguing against funding multiple networks. In actuality, competitive ETCs must first make sizeable capital investments in a high-cost area before the first dollar of USF support is received by that ETC. Carriers enter high-cost areas at their own risk, and no competitive ETC is guaranteed customers or success under the current system. This is exactly the way that the system should work – Universal Service Fund dollars should assist in making a market viable, but should not be a means of guaranteeing that a carrier will operate as a profitable business.

The fact that multiple competitive ETCs exist in high-cost areas does not cause the Fund to grow or shrink. Because of the way that the competitive ETC formula works, competitive ETCs must compete for customers and they only receive support when they attract customers. Even more, competitive ETCs lose support when they lose customers. Because competitive ETCs receive support based on line counts and not based on their costs, there is a *de facto* ceiling on the amount of support that can go to competitive ETCs in an area – the number of customers in that area. It makes no difference whether there are two or 200 competitive ETCs in a high-cost area because the available support will always depend on each competitive ETC's line counts and those line counts will always be capped according to the number of customers in the area.

Additionally, supporting a single provider would be contrary to one of the core principles of the 1996 Act. The 1996 Act allowed competition in areas that were formerly served only by monopolies. In so doing, consumers were able to benefit from lower prices, new technologies and

improved service. Proposals that eliminate competition in high-cost areas violate the principles of the 1996 Act and would strip consumers of the benefits of competition.

The Universal Service Fund works as a method of assisting markets becoming economic for carriers to serve. Because of Universal Service, economic markets exist in areas that would otherwise be unserved, and rural Americans in these areas enjoy the benefits of competition

B. The Commission Should Retain the Identical Support Rule

Under the identical support rule, competitive ETCs receive the same level of per-line support in a high-cost area as the incumbent LEC in that area. Because competitive ETC support is calculated based on the ILECs' costs, opponents criticize the identical support rule as not being an accurate means of distributing the level of support necessary for a competitive ETC to serve an area. The Commission is wrong to tentatively conclude that it should eliminate the identical support rule.⁸

1. Identical Support is a Competitively Neutral Method of Allocating Support

One clear advantage to the identical support rule is that it is a competitively neutral way to allocate support to both ILECs and competitive ETCs. The identical support rule treats all ETCs equally in a given high-cost area because all receive the same per-line support. This ensures that no provider or technology is favored over another.

Rather than eliminating identical support, the better solution is to set a per-line amount in high-cost areas and make support portable when customers add or drop service. That is, when a customer leaves a carrier, the support for that customer should also leave. This is the system that is currently in place for competitive ETCs and should be in place for incumbent LECs. The problem is not that all ETCs in a high-cost area receive the same amount of per-line support, it is that incumbents continue to receive the same levels of total USF support even though they are

⁸ *Identical Support NPRM* at para. 5.

hemorrhaging customers. Rather than attack competitive ETCs for receiving support under a competitively neutral rule, the Commission should make USF support portable for ILECs just as it is for competitive ETCs.

2. There is No Viable Proposal to Provide Support to Competitive ETCs Based on Their Own Costs

A popular refrain in the current USF discussion is that competitive ETCs should be “paid on their own costs” rather than using ILECs’ costs as the basis for calculating support. Two immediate problems with this position are that it this would favor higher-cost carriers over lower-cost carriers, and that there is no proposal that adequately addresses questions of calculation and comparison.

First, putting carriers on a system that provides support based on reported costs – such as the current ILEC model – would reward carrier inefficiencies and unfairly benefit those carriers with the greatest costs. This is exactly what has allowed the support going to incumbent LECs to continually grow over the years despite their operating inefficiencies and loss of customers. If competitive ETCs received support based on their own costs, inefficient carriers would be rewarded and there would be no incentive to operate efficiently. Under the current system, competitive ETCs have an incentive to be efficient in order to make USF support stretch farther in high-cost areas.

Furthermore, proposals to fund competitive ETCs based on their own costs are inevitably tied to the incumbents’ benchmark for determining whether costs are sufficiently high to qualify as a high-cost area. The Commission even proposes that support be determined by comparing a competitive ETC’s cost per loop to a national average cost per loop for incumbent LECs.⁹ This asks competitive ETCs to be as inefficient as incumbent LECs or risk losing USF support. For this idea to be viable, wireless CETCs must have a separate, standard method of calculating costs and those costs must be compared against a benchmark that is relevant to wireless carriers.

⁹ *Id.* at para. 20.

Rather than put competitive ETCs on their own costs, the better solution is to specify a per-line amount for all ETCs in a high-cost area and make incumbent LECs' support portable. This would preserve competitive neutrality, slow the growth in the Fund, and promote efficiency among all ETCs.

C. The Joint Board's Recommended Decision Contains Unworkable Proposals that Are Not Competitively Neutral

The Joint Board's Recommended Decision¹⁰ contains many proposals, but virtually none that affect incumbent LECs and competitive ETCs equally. Instead of promoting the expansion of 21st century technologies, the proposals in the Recommended Decision simply ensure that USF support will flow unabated to carriers operating legacy networks employing 19th century technologies. The Joint Board's Recommended Decision is neither competitively nor technologically neutral, and the proposals contained within it would adversely affect competitive ETCs while continuing to reward inefficiencies among the incumbent LECs. Further, the Joint Board's proposals would work to eliminate competition in high-cost areas, thus abandoning one of the core principles of the 1996 Act.

The details of the three new funds proposed in the Recommended Decision seem to vary in severity according to the type of ETC that is eligible to participate in the particular fund. Of the Joint Board's three proposed funds, Broadband, Mobility, and Provider of Last Resort, the primary purpose of both the Broadband Fund and Mobility Fund – two funds that could include competitive ETCs – is for new infrastructure in unserved areas, with a secondary purpose of operation and maintenance. These funds do not provide for eventual network upgrades. By contrast, the Provider of Last Resort Fund – essentially an incumbent LEC fund – would continue to support voice service provided by the same incumbents that have been receiving funds for this purpose for decades. It seems backwards to allow legacy carriers with mature networks an open-ended source of funding

¹⁰ *Recommended Decision NPRM.*

while dramatically curtailing funding that would support advanced networks in high-cost areas. This plan would return high-cost areas to the pre-1996 world that provided monopoly protection for incumbent LECs at the expense of the consumer.

1. Broadband Should be a Supported Service, but the Proposed Broadband Fund is the Wrong Approach

Cellular South welcomes the Joint Board's recognition that broadband should be a supported service within the Universal Service Fund. This designation is long overdue and the Commission can speed broadband deployment to rural areas by declaring that broadband is a supported service. However, creating a Broadband Fund like that proposed by the Joint Board is not the best way to accomplish deployment in high-cost areas.

The Broadband Fund in the Recommended Decision is designed primarily to provide funding for new broadband facilities in the form of grants for constructing facilities in unserved areas.¹¹ The secondary purposes of the fund would be for operating these facilities and for improving facilities in underserved areas.¹² Certainly there are many rural areas today that lack access to broadband and deploying facilities in these areas should be a priority. However, the Joint Board's focus on broadband deployment in new areas should not be at the expense of operational support and additional facilities in underserved areas.

What this structure misses is the current need to improve broadband in underserved areas and the future requirements for technology upgrades. Despite what various broadband mapping research projects show, an area is not truly served by broadband when only a portion of a county or ZIP Code has access to broadband.

Another problem with the Broadband Fund is that the Joint Board proposes that states distribute these infrastructure grants to a single provider in an area. As discussed above, this is

¹¹ *Recommended Decision NPRM* at para. 12.

¹² *Recommended Decision NPRM* at para. 12.

contrary to the principles of competition set forth in the 1996 Act. This proposal would ensure that that only one provider offers broadband service in a high-cost area. This “solution” fails to recognize that the only thing worse than subsidized competition is a subsidized monopoly.

2. Mobility Has a Place in the Universal Service System, but the Proposed Mobility Fund Is Not the Solution

Like the Broadband fund, the Mobility Fund is primarily targeted at promoting new wireless facilities in unserved areas. Support for this fund would be in the form of grants for constructing new network infrastructure. The fund would have the secondary purpose of supporting the costs of operations and maintenance.

The first fault with the Mobility Fund is that it does not adequately address the need for network investment in underserved areas and it does not fund upgrades to existing networks. From the Mobility Fund’s perspective, once an area receives service, it is “covered” from that point forward. Under this philosophy, rural areas could have been served with analog service years ago, and would not justify new investment for digital technology. Of course, this is not what the Telecom Act envisioned because it mandates that rural consumers have access to services that are comparable to those received by consumers in urban areas.¹³

Another problem with the Mobility Fund as proposed is that it would award grants to states which would then choose a single mobility provider for an area. This solution is based on the faulty premise that the way to cut costs is to reduce the number of competitors in an area. As discussed above, this simply is not true. The amount of universal service support in an area is a function of the consumers adopting service in that area and not the number of competitors. This proposal would ensure that that only one mobility provider serves a given high-cost area. Again, the only thing worse that subsidized competition is a subsidized monopoly.

¹³ 47 U.S.C. § 254(b)(3).

3. The Provider of Last Resort Fund Offers No Reform and Unjustifiably Protects Legacy Services from Competition

The Joint Board proposes that there be a Provider of Last Resort (“POLR”) Fund to support incumbent LECs. This fund would “be comprised of the sum of all existing Incumbent LEC support mechanisms.”¹⁴ With minor possible exceptions, “these programs would be left intact for the present.”¹⁵ Keeping the incumbent LECs on the same funding mechanisms that they currently enjoy is a guaranteed way to ensure that the companies continue their operating inefficiencies. By continuing to support these carriers on a cost-plus system, the Commission offers no incentive for those carriers to streamline their operations or improve efficiency.

In fact, it is not clear what legitimate policy goal the POLR Fund serves. Incumbent LECs should be able to access support from the proposed Broadband Fund and use that support to provide voice services as an ancillary component of providing the required broadband service. For example, an incumbent providing DSL service over copper wire would naturally have voice service available over those facilities. The Broadband Fund’s support would exist to deliver the broadband service, but the copper facilities would have the lesser included benefit of delivering voice. In this way, the Commission could get more value out of USF dollars because it would promote broadband deployment while still ensuring that legacy voice service is available to consumers.

While “the Joint Board anticipates that Mobility and Broadband support for operation and maintenance will only be available for a limited period of time” and it envisions “wean[ing]” providers from these two funds once geographic coverage is met, there is no similar plan for the POLR Fund.¹⁶ Instead, the Joint Board’s recommendation is that the POLR Fund should include the

¹⁴ *Recommended Decision NPRM* at para. 19.

¹⁵ *Recommended Decision NPRM* at para. 19.

¹⁶ *Recommended Decision NPRM* at para. 38.

current incumbent LEC funding mechanisms,¹⁷ and that it should, in time, “provide support for only one carrier in any geographic area.”¹⁸ This robs rural consumers of the benefits of competition and re-establishes the pre-1996 environment consisting of a single subsidized monopoly provider of legacy voice service in a high-cost area.

4. The Joint Board’s Opposition to Funding Multiple Providers is Flawed in its Reasoning

As discussed above, the rationale of not funding multiple networks is flawed when used to justify funding only one competitive ETC in a given area. Competitive ETCs do not receive support simply for entering an area. Rather, competitive ETCs receive support only when the competitive ETC serves a customer and a competitive ETC that serves no customers receives no support. In other words, the maximum amount of USF support available in an area is a function of the number of consumers in an area and not on the number of competitive ETCs or separate networks in an area. Therefore, it makes no sense to eliminate competition by having government select a single competitive ETC for a high-cost area.¹⁹

The clearest policy principle in the 1996 Act is that consumers deserve to benefit from competition in telecom markets. The Act does not limit this to consumers in urban areas or in areas where carriers can clearly make a profit. In fact, the statute says quite the opposite. The Act makes it clear that consumers in rural areas deserve access to services that are comparable to those offered in urban areas at reasonably comparable prices.²⁰ Competition gives consumers choices in providers and requires service providers to improve in service, quality, price, etc. in order to attract and retain customers. Unfortunately, the Joint Board’s Recommended Decision would eliminate this competition through untested and unproven proposals.

¹⁷ *Recommended Decision NPRM* at para. 19.

¹⁸ *Recommended Decision NPRM* at para. 43.

¹⁹ See p. 11, *supra*.

²⁰ 47 U.S.C. § 254(b)(3).

III. A REASONABLE TRANSITION PERIOD IS ABSOLUTELY NECESSARY

Finally, Cellular South asks the Commission to consider the needs of the industry when finally adopting a new mechanism for USF support and to establish an adequate transition period. Carriers establish business plans years in advance and are held accountable for those forecasts by investors, state regulators and, most importantly, our customers.

In its Recommended Decision, the Joint Board supports the idea of a transition period and references a previous Joint Board member's suggestion that the transition period last five years.²¹ A five-year transition period should be the minimum considered when making wholesale changes to the Universal Service Fund system.

IV. CONCLUSION

The 1996 Act had competition as its cornerstone. In opening markets to competition, it allowed consumers to reap the rewards of lower prices and advanced services. Though the size of the Universal Service Fund has grown over time, many rural consumers today have access to services that are comparable to those offered in urban areas. There is still much to do in rural America and competitive ETCs are striving to deliver services to these areas. The worst thing the Commission could do for rural Americans would be to adopt dramatic and unproven reform proposals that would rob consumers of competition and result in a pre-1996 environment of subsidized monopolies in rural areas.

Before adopting an untested reform proposal, the Commission should make USF support portable for incumbent LECs. There is no justification for shielding these service providers from competition any longer. Additionally, the Commission should retain the identical support rule, but reject the idea of reverse auctions.

²¹ *Recommended Decision NPRM* at para. 27.

The Joint Board's Recommended Decision is correct in recognizing that Universal Service should support broadband and mobility, but the methods by which the Joint Board suggests action are not the best means of balancing the goals of delivering service and controlling the size of the Fund.

Finally, if the Commission chooses to move forward with one or more of the proposed items, it is absolutely necessary that service providers be allowed a transition period to adjust their practices to new mechanisms and to modify customers' expectations accordingly.

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