

**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 ALLTEL COMMUNICATIONS, LLC

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EXECUTIVE SUMMARY

- The Commission must transform the high-cost support program to more effectively promote the true goals of universal service in the 21st century: access to mobile wireless and broadband networks and increased provision of services in high-cost, rural, and insular areas.
- Alltel sets forth a concrete plan to establish two new high-cost mechanisms – a Mobility Fund and a Broadband Fund – consistent with the Joint Board’s September 2007 statement of principles. These new funds ultimately will supersede the existing support system, including the current version of the “identical support rule.”
 - Under this plan, more than one Mobility ETC and Broadband ETC may qualify for designation in each geographic area, as long as each carrier satisfies rigorous service quality and accountability standards.
 - Funds within each category will be portable and competitively neutral, but different amounts of support will be disbursed to Mobility ETCs than to Broadband ETCs, depending on the respective costs of each service.
 - The Mobility Fund and the Broadband Fund will support the ongoing costs of operations and maintenance in high-cost areas, as well as initial capital expenditures.
 - Funding will be targeted to narrowly disaggregated geographic areas, in order to prioritize the highest cost areas for support and control the overall size of the fund.
- The legacy support mechanisms tailored to support voice-grade services should be eliminated over a transition period of no longer than 4-5 years, by transferring dollars from those accounts into the new Mobility and Broadband Funds.
 - Voice-grade services will continue to be supported in high-cost areas because both mobile and broadband facilities can be used for voice telephony as well. However, the new funds will be structured to promote the deployment and operation of mobile and broadband facilities rather than to prop up legacy voice-grade networks.
 - Until the voice-grade oriented support mechanisms are phased out, all ETCs must continue to receive the same amount of funding per line under these legacy mechanisms. Extensive evidence demonstrates that consumers view wireless and wireline as competitive substitutes in the market for voice-grade services.
- The so-called *Identical Support NPRM* is a non-starter. The pervasive problems with the current system cannot be solved just by deleting one rule in isolation without responsibly determining what system will replace it.
 - The proposals in the *Identical Support NPRM* are systematically jerry-rigged to reduce or eliminate support for wireless carriers, while retaining the funds for ILECs without change, in clear violation of competitive neutrality and the 1996 Act.

- The *Identical Support NPRM* proposals are internally inconsistent and irrational. If the purported objective is to set wireless CETCs’ support based on their own “actual costs,” then it makes no sense either to cap CETC support at ILEC levels or to use inapposite ILEC cost accounting categories and geographic units that bear no relationship to the way wireless carriers incur costs.
- The Commission should reject proposals that would deny CETCs access to the IAS, ICLS, and LSS mechanisms and thereby convert these funds back into ILEC-only monopoly preservation subsidies. These funds either should be preserved for both CETCs and ILECs, or preferably should be eliminated for both as part of a comprehensive reform plan.
- Properly structured reverse auction systems such as Alltel’s pilot plan proposed in February 2007 could help to determine the appropriate levels of support, but must not be used to select a single ETC or to restrict consumers’ choices among services and service providers.

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
INTRODUCTION AND OVERVIEW	1
I. COMPREHENSIVE REFORM OF HIGH-COST UNIVERSAL SERVICE IS NEEDED TO SUPPORT ADVANCED MOBILITY AND BROADBAND NETWORKS IN RURAL AMERICA	7
A. Applying The Competitive Neutrality Principle to Voice-grade, Mobility, and Broadband Services	8
1. Competitive Neutrality Requires Equal Treatment of ETCs Providing Substitute Services Competing in the Same Product Market, Such as Voice-grade Wireless and Wireline	9
2. The Current Form of the Identical Support Rule Will Not Be Necessary For the New Mobility and Broadband Support Programs	11
B. The Commission Should Implement Alltel’s Principled, Pro-Competitive, and Comprehensive Plan for Universal Service Reform	12
1. The Commission Should Adopt Challenging But Achievable Definitions of the Supported Mobility and Broadband Services	13
2. Rigorous Mobility and Broadband ETC Designation Procedures and Service Obligations Will Ensure Accountability and the Benefits of Competition	14
3. Mobility and Broadband Support Should Be Based on the Cost of Deploying and Operating Service in High-cost Areas	17
4. Over a Transition Period, the New Mobility and Broadband Support Funds Should Replace the Legacy Voice Mechanisms and Supersede the Current Version of the Identical Support Rule	21
II. THE COMMISSION MUST REJECT THE ANTI-COMPETITIVE AND ANTI-CONSUMER PROPOSALS IN THE IDENTICAL SUPPORT NPRM	22

A.	The <i>Identical Support NPRM</i> is Premised Upon A Competition Analysis That Is Fundamentally Erroneous And Turns The Facts On Their Head.	22
1.	Contrary to the <i>NPRM</i> 's Analysis, Wireless and Wireline Are Substitutes for Voice Service.....	23
2.	Contrary to the <i>NPRM</i> 's Analysis, Universal Service Need Not Be a Zero Sum Game.....	24
3.	Contrary to the <i>NPRM</i> 's Analysis, Neither ILEC Nor CETC Support Is Based on Actual Costs or Provides Effective Investment Incentives.	24
B.	The Proposals in the <i>Identical Support NPRM</i> Are Distorted So As to Reduce Support for CETCs, Rather Than to Support CETCs Based On Their Own “Actual Costs.”	28
1.	The Commission Should Reject the Proposal to Place a Ceiling on CETC Per-Line Support Based on ILEC Funding Levels.....	29
2.	The Commission Should Reject Proposals That Diminish and Distort Wireless Carriers’ Costs By Applying Wireline Cost Structures	30
a.	ILEC Separations and Cost Accounting Categories Should Not Be Imposed on CETCs	30
b.	Geographic Units From ILEC Networks Cannot Be Used to Assess Wireless CETCs’ Costs	31
c.	ILEC Cost Benchmarks Cannot Be Used to Derive “Cost-Based” Support Amounts for Wireless Carriers.....	32
d.	Wireless Specific Costs, Including Spectrum Costs, Must Be Properly Taken Into Account	33
e.	It Would Be Unfair To Require Advance Review of CETCs’ Costs When ILECs’ Costs Are Not Subject to Similar Advance Review	34
f.	Requiring CETCs to Use Projected Line Counts While ILECs Use Historic Line Counts Would Be Patently Discriminatory	35
3.	The Commission Should Reject Unlawful and Anticompetitive Proposals to Eliminate CETC Eligibility for IAS, ICLS, and LSS Funds.....	35
III.	PROPERLY STRUCTURED REVERSE AUCTIONS COULD HELP DETERMINE THE PROPER LEVELS OF SUPPORT	40
CONCLUSION	42

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Alltel Communications, LLC (“Alltel”) respectfully submits these comments in response to the three Notices of Proposed Rulemaking in these proceedings released on January 29, 2008.¹

INTRODUCTION AND OVERVIEW

The time has come to begin building the future of universal service, rather than preserving the antiquated funding mechanisms of the past. America needs to create a new framework to promote and sustain the new universal services of the 21st century that are required by consumers across our nation. A comprehensive and thorough reform of the high-cost support program is within reach and should be implemented in a thoughtful and deliberate manner.

The Commission must not waste this opportunity by limiting its efforts to tinkering around the margins of the existing outdated program, which was created on the basis of the last century’s voice-grade services and monopoly market structure. It is too late for half-measures,

¹ *High-Cost Universal Service Support*, Notice of Proposed Rulemaking, FCC 08-4, 23 FCC Rcd 1467 (2008) (“*Identical Support NPRM*”); *High-Cost Universal Service Support*, Notice of Proposed Rulemaking, FCC 08-5, 23 FCC Rcd 1495 (2008) (“*Auctions NPRM*”); *High-Cost Universal Service Support*, Notice of Proposed Rulemaking, FCC 08-22, 23 FCC Rcd 1531 (“*Joint Board NPRM*”) (2008). See also *High-Cost Universal Service Support*, Recommended Decision, 22 FCC Rcd 20477 (Jt. Bd., Nov. 20, 2007) (“*Joint Board RD*”); *Federal-State Joint Board on Universal Service Statement on Long Term, Comprehensive High-Cost Universal Service Reform*, Public Notice, 22 FCC Rcd 17236 (Jt. Bd., Sept. 6, 2007) (“*Joint Board Policy Statement*”).

such as proposals that ignore the inefficient subsidies flowing to incumbent local exchange carriers (“ILECs”) and instead advocate imposing limitations or cuts in funds for competitive eligible telecommunications carriers (“CETCs”). These proposals fail to address the real problems with the existing system, and they thwart progress toward true comprehensive universal service reform that would benefit rural consumers.²

Make no mistake: the real problem with the existing system is not support for wireless service in rural areas. To the contrary, the funds disbursed to facilitate the expansion, deployment and maintenance of rural wireless services have generated some of the greatest success stories, as evidenced by the dramatic increase in wireless service availability in rural areas that is directly attributable to the receipt of universal service support by wireless CETCs. Nor is there any real debate that an increasing number of consumers who live, work, and travel in high-cost areas rely primarily on wireless service for their communications needs.³ Furthermore, despite the unsupported rhetoric on the issue, competitive neutrality and portability of support are not “problems” that need to be remedied; they are fundamental universal service principles “dictated” by the Act, and ignoring these bedrock principles would pose significant risk of litigation and reversal of the Commission’s decisions on appeal.⁴ The Commission would violate its statutory mandate and betray the fundamental national policy framework of “opening all telecommunications markets to competition”⁵ if it were either to impose caps on support for wireless CETCs and their customers (but not ILECs),⁶ or to execute the even more draconian

² See Dissenting Statement of Commissioner Michael J. Copps, *High-Cost Universal Service Support*, Recommended Decision, FCC 07J-1, 22 FCC Rcd 8998 (Fed.-State Joint Board 2007).

³ See Alltel Reply Comments, WC Docket No. 05-337 (filed July 2, 2007), Exh. 1 (maps showing impact of universal service funding on wireless coverage in Montana, South Dakota, and the Pine Ridge Indian Reservation).

⁴ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-22 (5th Cir. 2000); see also *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 406 (5th Cir. 1999).

⁵ Telecommunications Act of 1996, Conference Report, H.R. Rpt. 104-458 (Jan. 31, 1996), at 1.

⁶ See *High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007).

proposals in the so-called *Identical Support NPRM* (which should more appropriately be referred to as the “Discriminatory Support NPRM”).

The real problem is that the existing universal service program still is tailored to support traditional voice-grade services, while technological changes and increasing competition are transforming rural consumers’ telecommunications needs. Over time, ILECs’ voice-grade line counts have declined with virtually no corresponding reductions in their subsidy funding, and as a result the per-line amount of support disbursed to ILECs has ballooned, causing unnecessary fund growth that achieves no valid policy objective. Meanwhile, ILECs continue to receive about three-quarters of high-cost support funding, while wireless carriers’ customers contribute substantially greater amounts into the fund than do the ILECs’. Ultimately, the legacy high-cost funds “reach very few of those that they are intended to help and have a strong ‘last-century’ bias in favor of landline phone service.”⁷

The Commission must take bold action to transform the high-cost support program in order to effectively promote the true goals of universal service in the 21st century. This proceeding should not be merely a well choreographed exercise in preserving revenue flows for favored categories of carriers while at the same time reducing revenue flows to others. Universal service reform must advance the needs of rural consumers, not the parochial agendas of certain industry sectors.

As the Joint Board wisely acknowledged in its September 2007 statement of principles, it is time to reorient and redirect the high-cost universal service system to promote consumers’

⁷ New Millennium Research Council, News Release: “Study: Phoning In A Major Economic Boost For U.S.?”, at 2 (Mar. 26, 2008), available at http://www.newmillenniumresearch.org/news/Sullivan_Release_032608.pdf, (“New Millennium Research Council Release”) (summarizing Nicholas P. Sullivan, “Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys” (April, 2008), available at http://www.newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf). The study focuses on low income consumers and the impact of the low income universal service mechanisms, but the same conclusion applies to the high-cost programs.

access to mobile wireless and broadband services,⁸ the two most critically sought after communications technologies today, and not merely to promote voice-grade service. The universal service program should create incentives for investment in mobility and broadband services in rural and insular areas, where the costs of network deployment and operations are high, and where deployment of these services has lagged. The existing high-cost mechanisms advance these goals only collaterally and by accident. The time has come to establish a new system of support that is actually “designed to accelerate rapidly private sector deployment of advanced [mobile and broadband] telecommunications and information technologies and services to all Americans” – for the good of all Americans.⁹

Consumer demand is growing rapidly for both mobile services and broadband services. As the Commission has emphasized repeatedly, these services are critical for Americans to compete effectively in the increasingly global economy, and are necessities for education, economic development opportunities, public safety, and simply connecting with people across the country and around the world. Consumers in rural areas need mobility even more than those in urban areas, because they need to travel longer distances between home, school, and businesses, and as a result have greater needs for access to mobile communications while in transit. Broadband services are also critical for consumers in rural areas in order to have access to economic, educational, and cultural resources comparable to the access enjoyed by people in the rest of the country. Broadband also is vital in rural areas because it allows for important services and options (such as telemedicine and teleworking) that may not be otherwise available in sparsely populated areas. Despite the increased demand, deployment of wireless and other

⁸ See *Joint Board Policy Statement* (“Support mechanisms for the future will focus on: (a) Voice; (b) Broadband; [and] (c) Mobility.”). Thus, the universal service program should be “evolving” to “take[e] into account advances in telecommunications and information technologies and services.” 47 U.S.C. § 254(c)(1).

⁹ Telecommunications Act of 1996, Conference Report, H.R. Rpt. 104-458 (Jan. 31, 1996), at 1 (emphasis added).

advanced networks in rural and high-cost areas are lagging behind the deployment in urban areas. Universal service support can and must be used to help close the gap.

To be sure, voice-grade services remain essential and should be supported in high-cost areas. But voice-grade services can and will be provided as “applications” over mobile wireless networks and broadband facilities. Once the new mobility and broadband support mechanisms are fully established, it will no longer be necessary or prudent to continue pouring money into the antiquated copper infrastructure of the past, which may once have been a “last resort,” but now is being replaced.

The legacy voice-grade support mechanisms should be phased out by transferring dollars from those accounts into the new Mobility and Broadband Funds. During this limited transition period, the legacy funding rules should be modified to ensure that all of the mechanisms are fully “portable to whichever ETC [wins] the customer. The ETC gaining the customer [should win] the subsidy, the ETC losing the customer [should lose] the subsidy.”¹⁰ And in order to avoid restricting customer choices among voice-grade service providers or violating the well-established principle of competitive neutrality,¹¹ all eligible voice-grade ETCs, including ILECs and CETCs, using whatever technology, must receive the same dollar amount of funding per customer served from the old voice-grade mechanisms – an amount that would be reduced as the new funding accounts targeted to mobility and broadband are established during the transition period.

¹⁰ Testimony of Billy Jack Gregg, Director, Consumer Advocate Division, Public Service Commission of West Virginia, Before the U.S. Senate Committee on Commerce, Science, and Transportation, “The Challenge of Adapting Universal Service to a Competitive Environment,” at 8 (March 1, 2007) (available at http://commerce.senate.gov/public/files/Testimony_BillJackGregg_WVPubServiceCommiss_BillyJackGreggTestimonySenateCommerce3107.pdf) (“Gregg Testimony”).

¹¹ See *supra* note 4.

These comments set forth a vision and framework for comprehensive universal service reform, consistent with the Act and serving the needs of consumers:

First, we set forth our concrete plan to advance the objectives of universal service – deploying, operating, and maintaining mobile and broadband networks for rural consumers – by establishing new mobility and broadband funding mechanisms. These new funding mechanisms will be cost based, sufficient, and competitively neutral, and will allow rural consumers to benefit from the availability of supported mobile and broadband services from more than one ETC. Our proposed plan will control the overall size of the high-cost fund and avoid excessive fund growth by disbursing funds only to support service in the highest cost areas, establishing and enforcing rigorous accountability standards, and transitioning away from the existing voice-grade funding mechanisms. These proposals are comparable in some respects to the comprehensive reform proposals in the *Joint Board NPRM*; in the comments below, we highlight the similarities and differences, and explain the advantages of our proposals over the Joint Board’s.

Second, we explain why the proposals and tentative conclusions in the so-called *Identical Support NPRM* should be rejected. The problems with the current rules cannot be solved just by deleting one portion of the existing funding structure – *i.e.*, simply “eliminating the identical support rule” – without responsibly determining what system will replace it. But the proposals in the *Identical Support NPRM* not only fail to solve the overall problems with today’s system; they are clearly and systematically designed to reduce or eliminate support for wireless carriers and other competitive entrants, while retaining the legacy funds in place for the ILECs without change. Such an approach poses a litigation risk that the Commission should view as unacceptable: the Telecommunications Act of 1996 and 12 years of judicial and FCC precedents

confirm that the Commission may not adopt universal service measures that restrict competition or discriminate against any particular category of service providers or technologies. Moreover, in many respects the proposals in the *Identical Support NPRM* are internally contradictory and illogical. If the Commission is intent on developing a system for supporting Mobility ETCs based on the actual costs of wireless networks, then the same cost analysis would be needed for comprehensive long term reform and for a short term “patch.” It makes far more sense to do it once and do it right. Alltel is not arguing for the status quo as it pertains to complementary services (*i.e.*, mobility vs. broadband). However, the Commission must not, in haste to do “something,” pursue anti-competitive measures that would harm consumers and limit the services available in rural areas.

Third, in response to the *Auctions NPRM*, we discuss how a properly structured system of reverse auctions could be valuable in determining the proper amounts of support funds, as long as such auctions are not used to preclude competition or thwart consumers’ ability to obtain their choice of services or service providers.

I. COMPREHENSIVE REFORM OF HIGH-COST UNIVERSAL SERVICE IS NEEDED TO SUPPORT ADVANCED MOBILITY AND BROADBAND NETWORKS IN RURAL AMERICA

We set forth below a concrete program for comprehensive reform to the high-cost universal service program, including specific measures that would more effectively advance the nation’s universal service goals. Alltel concurs with the proposal in the *Joint Board RD* to establish new funds targeted to support mobility and broadband, but we would go further and make these two funds the centerpiece of universal service policy. To ensure that rural consumers obtain the full benefits of high quality, advanced mobile telecommunications and broadband

services, these new funds should support ongoing operations and maintenance as well as the initial deployment of such networks.

The new Mobility and Broadband Funds would be oriented to the cost of each of the respective services. Thus, this comprehensive plan establishing the Mobility and Broadband Funds would supersede the legacy voice-grade funding system, including the current version of the so-called “identical support rule.”¹² During the transition period, however, the Commission’s obligation to ensure competitive neutrality requires that ILECs and CETCs continue receiving the same amounts of support under the legacy voice-grade funding mechanisms for each customer line that they serve, until the legacy funds are entirely replaced by the Mobility and Broadband Funds.

A. Applying The Competitive Neutrality Principle to Voice-grade, Mobility, and Broadband Services

The goals of promoting universal service and opening all communications markets to competition are both necessary and reinforce one another.¹³ The universal service support

¹² That rule does not really assure “identical support” because it unfairly guarantees ILEC but not CETC revenue streams, and provides CETCs with support only to the extent they gain customers but maintains ILEC support even when they lose customers.

¹³ Some mistakenly characterize the goals of universal service and competition as conflicting with one another, and have expressed “concerns with the Commission’s policy of using universal service support as a means of creating ‘competition’ in high-cost areas.” See Dissenting Statement of Commissioner Kevin J. Martin, *Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2003) (“*Virginia Cellular*”). The Commission, however, has soundly rejected this view since 1997, shortly after the enactment of the Telecommunications Act of 1996. “Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges.” *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 50 (1997) (“*Universal Service First Report and Order*”) (emphasis added). Portable high-cost support funding for a competitive entrant as well as for an ILEC does not artificially “create competition.” Rather, it removes an artificial barrier to competition that was imposed by the pre-existing, monopoly-oriented universal service regime. See generally *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168 (2000) (“*South Dakota Declaratory Ruling*”).

program should neither artificially promote competition nor artificially restrict it.¹⁴ Furthermore, Alltel shares Chairman Martin’s belief that “[a]ll consumers, regardless of where they live, should enjoy the benefits of competition.”¹⁵ Competitive and technological neutrality requires equal treatment for carriers that compete to provide similar services that serve as substitutes for one another. Disbursing different amounts of funding for different carriers or technologies that compete in what might be characterized as the same “product market” would create artificial competitive advantages for carriers or technologies receiving greater funding, and artificial disadvantages for those that receive less. The analysis may be different, however, for complementary services in different product markets that do not compete directly with one another.

1. Competitive Neutrality Requires Equal Treatment of ETCs Providing Substitute Services Competing in the Same Product Market, Such as Voice-grade Wireless and Wireline

ILECs, CLECs, wireless carriers, and other providers of voice-grade communications services compete directly with one another, and there is ample evidence demonstrating that consumers view the voice-grade services of these various operators as inter-modal and intra-modal substitutes for one another. It is no accident that the numbers of conventional ILEC

¹⁴ The notion that a competitively neutral universal service program improperly “support[s] multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier,” *Identical Support NPRM*, Separate Statement of Chairman Kevin J. Martin, is based on a fundamentally false premise. The high-cost support program is intended not only to support areas where only one (presumably wireline) carrier can provide service economically, but rather to support comparable and affordable service for consumers in high-cost areas, including areas where more than one carrier is operating. Moreover, this apparent objection to the designation of multiple ETCs flies in the face of the 1996 Act’s clear directive to designate multiple ETCs, and its “dictate” of portability and competitive neutrality.

¹⁵ See *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, WT Docket No. 99-217, FCC 08-87, Statement of Chairman Kevin J. Martin (rel. Mar. 21, 2008). Alltel also believes that the Commission’s policies should “seek to support all new entrants and [] not favor one technology or industry over another,” and that the Commission must “ensure we achieve regulatory parity by applying a consistent regulatory framework across platforms.” *Id.*

telephone lines are declining rapidly while wireless subscribership continues to grow rapidly.¹⁶ Wireless is increasingly considered to be a complete substitute for wireline voice services as more consumers “cut the cord.” The most recent survey data from the Centers for Disease Control’s National Center for Health Statistics confirm that 13.6% of American households lack traditional landline phones and use only wireless phones.¹⁷ Significantly, the highest proportions of wireless-only households are among young adults, indicating that the trend of “cord-cutting” will continue to accelerate in the future, and among low income and minority consumers.¹⁸ Recent polling data collected by Harris Interactive shows that only 79% of adults in the U.S. had a landline phone by the end of 2007, with the remainder using only a wireless phone or a combination of wireless and VoIP service.¹⁹ By contrast, 89% of adults reported having a wireless phone.²⁰ Morgan Stanley’s analysis concludes that “wireless substitution could reach almost one-third of households by 2012.”²¹

Moreover, according to a study by the Pew Center on the Internet and American Life, 51% of survey respondents who use cell phones report that it would be “very hard to give up” their cell phones, as compared with only 40% of landline users who say it would be “very hard to give up” their traditional landline telephones.²² A recent study conducted by MIT scholar

¹⁶ According to the FCC’s data, mobile wireless subscribership more than doubled from June 2001 through June 2007 – from 114 million to 238 million lines. Over the same time period, ILEC access line counts declined by about 25 percent, from 175 million to 134 million lines. See Industry Analysis and Technology Division, Wireline Competition Bureau, “Local Telephone Competition: Status as of June 30, 2007,” Tables 10 & 14, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.pdf.

¹⁷ Centers for Disease Control, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey,” January-June 2007 (rel. Dec. 10, 2007) (“NHIS 2007 Survey”), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf>.

¹⁸ *Id.*

¹⁹ See Harris Interactive Poll No. 36, Cell Phone Usage Continues to Increase (Apr. 4, 2008), available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=890.

²⁰ See *id.*

²¹ Morgan Stanley Research – Telecom Services, “Cutting the Cord: Wireless Substitution is Accelerating,” at 1 (Sept. 27, 2007) (available as an attachment to CTIA *ex parte*, WC Docket No. 05-337, filed Feb. 6, 2008).

²² Pew Internet & American Life Data Memo, at 1 (Mar. 2008), available at http://www.pewinternet.org/pdfs/PIP_Mobile.Data.Access.pdf.

Nicholas P. Sullivan confirms that “[n]early three out of five Americans (58 percent) say if they had to choose only one phone, it would be a cell phone rather than a landline phone; and, when asked to choose the most important phone in an emergency situation, Americans now favor cell phones over landlines by a more than three-to-one margin.”²³ This gives new meaning to “carrier of last resort.”

To the extent that universal service programs continue to focus on supporting voice-grade service, then wireless and wireline technologies must be viewed as inter-modal substitutes, not merely complementary.²⁴ Because voice-grade service is the focus of the existing high-cost support mechanisms, and wireless and wireline voice services are competitive substitutes, maintaining the equal per-line support rule for all ETCs – ILECs and CETCs – during the phase-out of those legacy support mechanisms is the only way to avoid distorting competition in the markets for voice-grade service. Imposing caps on CETC support, or adopting any of the discriminatory proposals in the *Identical Support NPRM*, would violate this principle and undermine competition for voice-grade service.

2. The Current Form of the Identical Support Rule Will Not Be Necessary For the New Mobility and Broadband Support Programs

By contrast with wireless and wireline voice-grade service, which consumers view as competitive substitutes, consumers place a value on mobile access to telecommunications that may be distinguishable from the valuation they place upon high speed broadband functionality that at present is available mostly over wired networks. If universal service were restructured to focus on “mobility” and “broadband,” rather than voice, then these functionalities could be considered complementary rather than competitive substitutes. To ensure competitive neutrality, support would still need to be portable among competing providers of mobile service, and among

²³ See New Millennium Research Council Release, *supra* note 7, at 2.

²⁴ *Contra, Identical Support NPRM*, ¶¶ 9-10.

competing providers of broadband. In other words, the unit amount of support funds for a particular consumer's mobile (or broadband) service in a high-cost area should be the same regardless of which mobile (or broadband) ETC the consumer chooses. The funds should be portable with the customer, so that if an ETC attracts more customers it would receive more support, and if its subscribership declines it would receive less support.

However, the unit amounts of support for mobile service probably would not be the same as those for broadband service. These distinct, complementary services would not necessarily receive "identical support." Each service would be funded based on its respective costs, as discussed below. If the universal service program were restructured in this manner, and if voice-grade support mechanisms were phased out, then the identical support rule in its current form would no longer be necessary or appropriate. Both the Mobility Fund and the Broadband Fund should be portable and competitively neutral, but without today's version of the identical support rule.

B. The Commission Should Implement Alltel's Principled, Pro-Competitive, and Comprehensive Plan for Universal Service Reform

The Commission should establish two new high-cost universal service funding mechanisms – a Mobility Fund and a Broadband Fund – which would be separate from the existing legacy voice-oriented support mechanisms, and targeted to support mobile and broadband services, consistent with the Joint Board's September 2007 statement of principles.²⁵ As noted above, voice service will continue to be supported under the new Mobility and Broadband Funds because both mobile and broadband facilities can be used for voice telephony

²⁵ See *Joint Board Policy Statement; Joint Board RD*, ¶¶ 11 *et seq.* The differences between the recommendations in the *Joint Board RD* and the plan proposed here are highlighted below.

as well. However, the new funds will be structured to promote the deployment and operation of mobile and broadband facilities rather than to prop up legacy voice-grade networks.

Ultimately, as the new Mobility and Broadband Funds are phased in, the legacy voice-grade support mechanisms should be reduced and eliminated over a transition period. Alltel suggests adoption of a transition period of no longer than 4 to 5 years. This approach will give existing providers incentives and opportunities to upgrade their networks to provide Mobility and Broadband services, while ensuring the continued availability of voice-grade services. At the same time, this plan will enable new providers to enter the market and offer new forms of mobility and broadband services to consumers in high-cost areas, and will help control costs.

1. The Commission Should Adopt Challenging But Achievable Definitions of the Supported Mobility and Broadband Services

The new Mobility Fund and Broadband Fund should support providers of services that satisfy new definitions of mobility and broadband, respectively. For example, the Commission could define “mobility” for purposes of this new high-cost fund as a “mobile service” (consistent with 47 U.S.C. § 153(27)) that complies with generally accepted industry standards for third generation or 3G service. “Broadband” could be defined in the same manner as in the FCC’s *Broadband Data Gathering Order* – for example, the definition could be consistent with the definitions of Tiers 2 or higher broadband services (1.5 Mbps or above) in that *Order*.²⁶

These definitions of both Mobility and Broadband are based on standards that are commercially available and in wide use today, but are not yet fully deployed in rural areas.

Under this approach, funding for Mobility ETCs would be targeted to support the very

²⁶ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership; Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, WT Docket No. 07-38 & WC Docket No. 07-45 (adopted Mar. 19, 2008), Statement of Chairman Kevin J. Martin.

considerable costs of deploying “3G” services to reach unserved or under-served consumer locations and roads across the country, in order to enable Mobility ETCs to upgrade their networks to “3G” standards.²⁷ Similarly, standard wireline DSL services would not qualify for Broadband funding; an ILEC would have to upgrade to higher speed broadband services in order to participate in the new program. Such challenging, but realistically achievable, definitions would create incentives for service providers to invest in and improve their network facilities so as to provide these services ubiquitously.

The definitions should be adjusted within 3 years to reflect the technologies, consumer demands, and deployment needs at that time. Alltel generally concurs with the Joint Board’s analysis regarding the basis for concluding that such new mobility and broadband definitions are consistent with the definition of supported services set forth in § 254(c)(3) of the Act.²⁸ The Commission should adopt service definitions on a national basis that apply uniformly in all states.

2. Rigorous Mobility and Broadband ETC Designation Procedures and Service Obligations Will Ensure Accountability and the Benefits of Competition

Every Mobility ETC and every Broadband ETC should be required to comply with strict service quality requirements and rigorous accountability standards regarding the proper use of universal service funds. Alltel proposes that, in order to qualify as a Mobility ETC or a Broadband ETC, a carrier would have to demonstrate that it is a common carrier, that it advertises the availability of supported services throughout the service area using media of

²⁷ Importantly, under Alltel’s proposal, a carrier would not have to be providing ubiquitous service satisfying these demanding standards before commencing operations as an ETC under the new Mobility or Broadband Funds; rather, it would need to demonstrate its capability and commitment to doing so within a reasonable period of time. As the Commission has held, “requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service,” finding that “[t]he language of the statute does not require the actual provision of service prior to designation [and] that a telecommunications carrier’s inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.” *South Dakota Declaratory Ruling*, ¶¶ 12, 14, 17.

²⁸ *Joint Board RD*, ¶¶ 55-68.

general distribution, and that it has the capability and commitment to provide service consistent with the service definitions described above. Moreover, each Mobility ETC and Broadband ETC would be required to submit data regularly demonstrating that it is using support funds for the intended purposes by submitting data (as CETCs do today pursuant to § 54.209 of the Commission’s rules). All would be subject to independent audits.

Consistent with the Joint Board’s recommendations, the state commissions should continue to designate ETCs for purposes of the new Mobility and Broadband Funds as they do today for the voice-grade oriented funds pursuant to § 214(e)(2) of the Act, with the FCC stepping in under § 214(e)(6) only if a state lacks authority.²⁹ The states and the FCC must apply a rigorous and uniform set of ETC designation criteria for the new Mobility and Broadband programs, to be established at a national level by the Commission.

In the new Mobility and Broadband support programs, more than one ETC providing each such service should be able to qualify for funding in each geographic area, consistent with the Act’s directive to “designate more than one common carrier as an eligible telecommunications carrier”³⁰ – so long as each ETC satisfies the strict designation criteria and accountability standards adopted for the new Mobility and/or Broadband programs. Thus, the Commission should reject the Joint Board’s proposal to select, for each area, only a single Mobility ETC, a single Broadband ETC, and a single so-called “provider of last resort” (and presuming that the ILEC plays that role in each area).³¹ Each Mobility ETC and each Broadband ETC would independently have to provide the requisite services in a manner that qualify them as a “provider of last resort” for such services, as required by § 214(e) of the Act. This approach

²⁹ *Id.*, ¶ 46.

³⁰ 47 U.S.C. § 214(e)(2), (e)(6).

³¹ *Joint Board RD*, ¶¶ 37, 43.

would not lead to excessive or “duplicative”³² funding because each Mobility ETC and Broadband ETC would receive funds only to the extent consumers decide to buy its services.

Allowing multiple carriers to qualify as ETCs for each service would facilitate competition without regulatory distortions that either artificially restrict it, artificially promote it, or favor one competitor over another. Selecting a single ETC for each service could lock in existing service providers, technologies, and market structures, and would distort the marketplace by directing subsidies only to one ETC and withholding them from others. The approach proposed here would avoid such an undesirable outcome. Enabling multiple common carriers to be designated as Mobility ETCs and Broadband ETCs would empower consumers – not regulators – to decide which providers and which services best suit their needs.

Moreover, a market-based system that allows for multiple Mobility ETCs and Broadband ETCs could entail less pervasive regulation than if regulators were to pick a single ETC for each service. If the regulator were to select a single “winner” for universal service purposes, with all other potential competitors deemed to be “losers,” then it might be necessary to impose pervasive monopoly regulation upon these “sole suppliers,” such as pricing regulation and highly detailed oversight of such monopolists’ terms, conditions, and service quality. By contrast, a regulatory environment that permits a competitive marketplace to emerge for each supported service would achieve these objectives in part through market incentives, since an ETC offering sub-standard service quality or excessive rates would lose customers and thereby lose support funds. Such incentives for “[e]fficient investment by ETCs would lower the amount of high-cost support necessary, helping to keep universal service support sufficient.”³³

³² *Id.*, ¶¶ 3, 35, 53-54.

³³ *Identical Support NPRM*, ¶ 10 n.32.

The Commission also should decline to adopt the Joint Board’s proposal to structure the new Mobility and Broadband support programs as “construction grants” administered by state commissions.³⁴ The Joint Board proposes that such grants would support only capital expenditures for a single network, not ongoing operational costs; as discussed below, the ongoing costs of both Mobility and Broadband in rural areas are substantial, and a fund limited to capital expenditures would not be “sufficient” to ensure the availability of service in high-cost areas on an ongoing basis. Moreover, giving states broad and essentially standardless flexibility to select carriers could be abused in an arbitrary manner in some cases, and would fail to establish a clear-cut and “predictable” federal policy. The Joint Board’s proposal also would be difficult to implement, especially for smaller state commissions with limited resources. And most fundamentally, as discussed above, this proposal is geared to support only a single ETC per geographic area, thereby depriving rural consumers of access to a range of service choices comparable to those available in urban areas.

3. Mobility and Broadband Support Should Be Based on the Cost of Deploying and Operating Service in High-cost Areas

Alltel proposes that separate cost methodologies – one for Mobility and one for Broadband – be used to determine the amounts of funding in each geographic area for the Mobility and Broadband Funds, respectively, thereby superseding the current version of the identical support rule. In the case of the Mobility Fund, the starting point should be a cost analysis that reflects how mobile carriers actually incur costs.³⁵ This cost analysis should be

³⁴ *Id.*, ¶¶ 13-14, 17-18, 47-48.

³⁵ See *infra* Section II.B (cost analysis proposals in the *Identical Support NPRM* proposals are the wrong way to proceed because they are premised on ILEC network configurations and fail to reflect the way wireless carriers incur cost). The discussion in this section focuses primarily on the Mobility Fund, but the same rationale could be applied to the Broadband Fund as well.

based on cost data that are readily available or can easily be projected, based on real-world wireless operations.

The Mobility Fund cost analysis should include not only the costs of initial capital expenditures for network deployment in areas that have no wireless service at all, but also the ongoing costs of depreciation, maintenance, operating expenses, and the like for networks already operating in high-cost areas. For example, wireless carriers incur high-costs for operating and maintaining cell sites in remote rural areas, backhaul of traffic, and interconnection with other carriers. The cost of capital, taxes, depreciation expenses, and corporate operations are real costs and need to be taken into account in analyzing wireless carriers' costs (just as they were in both the embedded cost and forward-looking cost analyses used in connection with some of the existing voice-grade oriented mechanisms). In addition, the economic costs of wireless spectrum – regardless whether such spectrum was purchased in an FCC auction, in an open market, through acquisition of a company or its assets, or otherwise³⁶ – are significant and need to be incorporated into the cost analysis. All of these factors – not just capital expenditures for initial construction costs – must be taken account to “reflect real investment in rural and other high-cost areas of the country, and [to] create[] greater incentives for investment in such areas.”³⁷

To limit the Mobility Fund to supporting only capital expenditures, as the Joint Board proposes,³⁸ would result in funding that is not “sufficient” to assure the “provision, maintenance, and upgrading of facilities and services for which the support is intended,”³⁹ because it would fail to recognize a substantial part of the costs incurred by providers of the supported mobile

³⁶ *Identical Support NPRM*, ¶¶ 18-19.

³⁷ *Identical Support NPRM*, ¶ 5.

³⁸ *Joint Board RD*, ¶¶ 16, 36.

³⁹ 47 U.S.C. § 254(b)(5) & (e).

services. Moreover, it would be unfair and unreasonable to deny funding to states or carriers that have already begun investing in Mobile networks in rural areas where the costs of service are high, just because they were “early adopters” and began deploying the necessary facilities prior to the inception of the new funding mechanisms. Finally, to continue the existing support for the ongoing operating costs of the ILECs (so-called POLR voice-only services), but not those of new Mobility and Broadband providers, would irrationally provide greater funding for the legacy services that have already been deployed and less funding for the new services that are most needed in rural areas. Such a disparate approach to funding ILEC voice networks vs. new Mobility and Broadband operations also would violate competitive neutrality and run serious litigation risks.

Mobility costs should be analyzed based on narrowly disaggregated geographic areas, reflecting the higher costs of service in more sparsely populated rural areas. The geographic units of analysis must be defined in a manner that is competitively neutral and is consistent with the manner in which wireless mobile carriers operate. In addition, the geographic areas for which support is distributed should be relatively small, so that support distributions are focused on the areas that are the highest cost to serve. Prioritizing support for truly high-cost areas, rather than the “holes in the donut” that may be less costly to serve, could help control the overall size of the fund. Such geographic disaggregation also would avoid creating incorrect investment signals and would ensure that support funds are used to advance the goals of these new universal service programs.⁴⁰

⁴⁰ See Testimony of Brian K. Staihr, Director of Policy and Regulatory Economist, Embarq Corp., before the U.S. Senate Committee on Commerce, Science, and Transportation (Mar. 1, 2007), *available at* http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=0471dcd4-6c80-4c5c-b0c6-d9bbb6a61edc&Witness_ID=0f2ac3b3-5eb3-4ab0-b20a-7a6f407ca58a.

Alltel proposes that support be distributed to Mobility ETCs using a formula based on the costs to serve each defined geographic area, minus a “benchmark” derived from the national average costs of mobile service. Equal support per unit would go to all Mobility ETCs serving any given geographic location. Thus, as discussed above, disbursements from the Mobility Fund (as well as from the Broadband Fund and the legacy voice-grade funding mechanisms) should be portable and follow consumers’ choices in a competitive marketplace, such that if a customer purchasing a supported service from one ETC decides to change to a different ETC, the support should go to the ETC selected by the customer rather than to the original carrier.

The Commission could manage the geographic units of analysis and the benchmark levels to ensure that the overall level of funding is sufficient but not excessive. By contrast, the Joint Board’s proposals regarding fund levels might result in major reductions in support for Mobility, since it would support only new network facilities and not the cost of upgrading existing networks in high-cost areas to support 3G and other advanced services, let alone the cost of ongoing operations.⁴¹ The Joint Board’s approach also would provide patently inadequate support for Broadband service in rural areas – only \$300 million annually. By way of comparison, the total cost of deploying mobile broadband throughout the high-cost areas where consumers live, work, and travel could be in the billions of dollars.⁴² It would be irresponsible to apply arbitrary caps on the funds without considering whether fund size would be “sufficient” to achieve defined goals.⁴³

⁴¹ *But see Joint Board RD*, ¶ 28.

⁴² *Id.*, ¶ 29.

⁴³ *Id.*, ¶ 26.

4. Over a Transition Period, the New Mobility and Broadband Support Funds Should Replace the Legacy Voice Mechanisms and Supersede the Current Version of the Identical Support Rule

Alltel submits that the existing voice-grade oriented funds – *i.e.*, the High-Cost Loop (HCL), Local Switching Support (LSS), Interstate Common Line Support (ICLS), High-Cost Model (HCM), and Interstate Access Support (IAS) funds – should be reduced gradually until these funds are eliminated altogether. This transition could be implemented in equal steps over no longer than a 4-5 year period (with waivers available in cases where an ETC can demonstrate hardship). This approach would avoid unnecessary fund growth and ensure that the funds are transitioned to the new system that more effectively advances the true goals of universal service. Although Alltel’s proposal is generally consistent with the Joint Board’s proposal to establish a transition period during which existing funding mechanisms would be reduced and the savings transferred to the new funds,⁴⁴ we believe the work must begin now to replace the existing voice-grade fund mechanisms altogether. The Commission should reject the Joint Board’s suggestion “to maintain, for the present, the existing RLEC support mechanisms, distributed through the proposed POLR Fund”⁴⁵ or to make, at most, minor incremental changes to non-rural ILEC funding.⁴⁶

Most critically, during the transition period, equal amounts of support per line must continue to be disbursed from the legacy voice-grade funds, to ILECs and CETCs alike, as discussed above. The same percentage reductions to the legacy support amounts should apply equally to ILECs and CETCs, so as to ensure competitive and technological neutrality with respect to voice-grade service.⁴⁷ In addition, during this transition period, the Commission

⁴⁴ *Id.*, ¶ 27; *see generally* ¶¶ 19-34.

⁴⁵ *Id.*, ¶ 39.

⁴⁶ *Id.*, ¶¶ 40-42.

⁴⁷ *Id.*, ¶ 32.

should reinstate the portability rule – *i.e.*, an ILEC should lose support when a customer drops a line – for the voice-grade support mechanisms so as to end one of the major causes of increases in per line funding.⁴⁸

II. THE COMMISSION MUST REJECT THE ANTI-COMPETITIVE AND ANTI-CONSUMER PROPOSALS IN THE *IDENTICAL SUPPORT NPRM*

The pervasive problems with the current universal service funding structure cannot be addressed by merely deleting one rule provision (47 C.F.R. § 54.307) in isolation. To be sure, the current version of the identical support rule, together with the entire system of legacy voice-oriented funding mechanisms, are deeply problematic and should be superseded by new funds targeted (as discussed above) to support mobility and broadband. But the proposals set forth for comment in the *Identical Support NPRM* do nothing to improve the high-cost support program's effectiveness in advancing the nation's universal service goals. Rather, these proposals are baldly designed to reduce support available for CETCs while retaining without change the ILECs' legacy voice oriented revenue flows via the HCL, LSS, ICLS, HCM and IAS funds. Such blatantly anticompetitive proposals would reduce the availability of wireless service in rural areas while doing nothing to spur the investment in critically needed mobility and broadband infrastructure. The Commission must decline the invitation in the *Identical Support NPRM* to turn back the clock to a time when universal service support meant nothing more than implicit subsidies for voice-grade services delivered over a monopoly ILEC's copper wires.

A. The *Identical Support NPRM* is Premised Upon A Competition Analysis That Is Fundamentally Erroneous And Turns The Facts On Their Head.

The rationale underlying the *Identical Support NPRM* ignores the pertinent facts and relies on a completely flawed public policy analysis.

⁴⁸ See *supra* note 10 and accompanying text.

1. Contrary to the *NPRM*'s Analysis, Wireless and Wireline Are Substitutes for Voice Service.

The *NPRM* wrongly takes the view that CETC support is problematic because, “rather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer’s existing wireline service. . . . [T]he majority of households do not view wireline and wireless services to be direct substitutes”⁴⁹ This contention relies on obsolete data and is simply incorrect in 2008. As set forth in detail above in Section I.A.1 of these comments, more and more Americans in fact do view wireless service as a “complete substitute” for traditional wireline voice service – and in many respects, a superior service. The *Identical Support NPRM* cites 2005 statistics indicating that “approximately 8 percent of U.S. households relied exclusively on wireless phones” when this data was gathered three years ago.⁵⁰ But the *NPRM* turns a blind eye to the fact that wireless substitution has increased dramatically over the past few years. A December 2007 update of the same study relied upon to make this claim in the *Identical Support NPRM* showed that this figure had risen to 13.6% of U.S. households by the first half of 2007 – an increase of 70% over the outdated figure cited in the *NPRM*.⁵¹ Survey data from many other reputable sources confirm that increasing numbers of Americans view wireless and wireline voice service as substitutes.⁵²

To the extent that wireless service and wireline service are not “complete” substitutes, it is because wireless is uniquely suited to deliver mobile functionality, while wireline has had comparative advantages in the delivery of higher broadband data speeds – at least up until now,

⁴⁹ *Identical Support NPRM*, ¶¶ 9-10.

⁵⁰ *Id.*, ¶ 9 n.27 (citing *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report, 21 FCC Rcd 10947, ¶ 205 (2006)).

⁵¹ See NHIS 2007 Survey, *supra* note 17.

⁵² See *supra* Section I.A.1.

but perhaps not in the future. But the *Identical Support NPRM* ignores the Joint Board's forward-thinking analysis of the future purposes of universal service support, and would thwart progress toward establishing new Mobility and Broadband universal service mechanisms.⁵³

2. Contrary to the *NPRM*'s Analysis, Universal Service Need Not Be a Zero Sum Game.

The *NPRM* is premised on the myopic view that the universal service program should be a “zero sum game,” with “competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines.”⁵⁴ This view is completely contrary to the core Congressional objective in establishing the universal service program: to expand rural Americans' access to telecommunications services. It is true that “the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines.”⁵⁵ But this result is hardly unanticipated. To the contrary, the FCC in 1997 expressly provided that CETCs would receive support for “new customer lines” as well as for lines “capture[d]” from the ILECs.⁵⁶ Contrary to the *NPRM*, the increased availability of wireless service in rural areas, and rural consumers' decisions to purchase services from wireless CETCs, are not problems; they are among the greatest successes of the fund to date.

3. Contrary to the *NPRM*'s Analysis, Neither ILEC Nor CETC Support Is Based on Actual Costs or Provides Effective Investment Incentives.

The *Identical Support NPRM* focuses narrowly on problems with wireless CETC support and misses the more fundamental problems that plague the entire system: the lack of any relationship between support amounts and the real costs of either wireline or wireless services and networks, and the high-cost support system's failure to create efficient incentives for

⁵³ See *Joint Board Policy Statement*; cf. Dissenting Statement of Commissioner Michael J. Copps, *High-Cost Universal Service Support*, Recommended Decision, FCC 07J-1, 22 FCC Rcd 8998 (Fed.-State Joint Board 2007).

⁵⁴ *Identical Support NPRM*, ¶ 10.

⁵⁵ *Id.*

⁵⁶ *Universal Service First Report and Order*, ¶ 287.

investment in advanced networks. The facile observation that CETCs receive support that is not based on their own “actual costs”⁵⁷ ignores the inconvenient truth that none of the existing high-cost funding mechanisms – HCL, LSS, ICLS, HCM or IAS – accurately reflect the costs incurred by ILECs either.

CTIA has estimated that approximately \$1.3 billion, or about 40% of annual ILEC high-cost universal service support as of 2007, was not based on ILECs actual or embedded costs, thanks to the average schedule system and the non-cost-based components and character of the HCL, LSS, IAS, and ICLS mechanisms.⁵⁸ This estimate is way too conservative. In fact, none of the funds accurately reflects costs incurred by the ILECs. The HCL, LSS, ICLS, and IAS funds are derived from Rate of Return rules that were designed over the past four decades, not as an accurate cost recovery mechanism, but for the primary purpose of generating cross-subsidies and/or shifting revenues between the state and federal jurisdictions. There is no reason to think that the revenues driven by these existing rules have any relationship even to the “reality” generated by accounting costs, especially given the lack of independent review of the ILEC accounting reports and the opportunities and incentives for Rate of Return ILECs to misreport costs in a manner that would improperly augment universal service disbursements.⁵⁹

The supposedly forward-looking HCM mechanism also fails to truly reflect costs. The HCM is so skewed by statewide averaging formulas that only 10 states receive any support at all,

⁵⁷ See, e.g., *id.*, ¶ 13.

⁵⁸ See Comments of CTIA – The Wireless Association, WC Docket No. 05-337, at 10 (filed May 31, 2007); see also *infra* Part III.C (detailing the revenue replacement rationale for the IAS and ICLS funds).

⁵⁹ See generally Western Wireless Corp. Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers, CC Docket No. 96-45 (filed Oct. 30, 2003); Economics & Technology, Inc., “Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers Into Corporate Welfare for the RLECs” (Feb. 2004) (filed as attachment to Western Wireless Comments, CC Docket No. 96-45, filed Oct. 15, 2004).

and the HCM rules have been reversed and remanded twice by the Tenth Circuit Court of Appeals for failing to articulate how they advance the statute's objectives.⁶⁰

What's more, these funds as presently constituted and distributed fail to give ILECs incentives to deploy or upgrade facilities because they are based largely on past spending and historical revenues, to the extent they have any cost-basis at all. It has long been clear that the Rate of Return rules that form the basis of the HCL, LSS, ICLS, and IAS funds create incentives for the ILECs to operate and invest inefficiently.⁶¹ As discussed below, ILEC incentives to provide more efficient service are distorted further by the fact the amounts disbursed to them generally do not fluctuate when an ILEC loses lines, and support does not depend on the ILEC's service quality or the reasonableness of its rates. The *Identical Support NPRM* expresses concerns about CETCs' investment incentives, but fails to even consider the counterproductive impact of the existing fund mechanisms on ILEC investment incentives.⁶²

The main problem with the current portability rules is not that CETCs gain funding; the real problem is that ILECs do not lose funding even when they lose customers. ILEC funding has been roughly static over the past five years, even though major ILECs access lines plummeted by approximately 25 percent from 2001 to 2007.⁶³ The Commission initially conceived of portability as a method for providing equal amounts of support to carriers in a high-cost area depending upon (1) which carrier competed successfully to obtain that customer's

⁶⁰ *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001); *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

⁶¹ See, e.g., *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993); *Universal Service First Report and Order*, ¶ 292 ("We find that the current support mechanisms neither ensure that ILECs are operating efficiently nor encourage them to do so. Indeed, by guaranteeing carriers recovery of 100 percent of all loop costs in excess of 150 percent of the national average loop cost, the current high-cost funding mechanisms effectively discourage efficiency. Thus, we agree ... that calculating high-cost support based on embedded cost is contrary to sound economic policy.").

⁶² *Identical Support NPRM*, ¶¶ 5, 10.

⁶³ See *supra* note 16.

business and (2) a CETC's ability to serve new customer lines in the ILEC's service territory.⁶⁴

The Commission unwisely departed from that approach in 1999 and 2000, however, by removing a provision in Section 54.307 of its rules that had operated to reduce support to an ILEC when the ILEC lost a line and a CETC obtained a new customer.⁶⁵ The Commission should not continue down the wrong path by not only cementing incumbent support in place but abandoning the identical support rule with no suitable substitute in place for CETCs.

Preservation of universal service does not mean preservation of ILEC revenues at all costs, because “[t]he purpose of universal service is to benefit the customer, not the carrier.”⁶⁶

The answer to the portability challenge is not to eliminate the identical support rule for CETCs that bring the benefits of competition and new services to customers in high-cost areas, but rather to comprehensively reform the universal service system, as discussed above. It should be axiomatic that proposals that single out a particular technology or category of carriers for funding cuts while preserving voice-grade oriented funding for other, favored carriers, would violate the 1996 Act and would not withstand judicial review.⁶⁷ The *Identical Support NPRM*'s proposal to simply wipe out the equal support rule without providing for an adequate replacement would violate the tenets of competitive neutrality, which the Commission recognized as vital for universal service in a competitive environment and necessary to “avoid limiting providers of universal service to modes of delivering that service that are obsolete or not cost effective.”⁶⁸ And as shown below, the *Identical Support NPRM*'s suggestion that CETC support instead be based on competitive carriers' actual costs not only ignores the fact that ILEC

⁶⁴ *Universal Service First Report and Order*, ¶ 311; see also Gregg Testimony at 8.

⁶⁵ *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, ¶ 90 (1999); see also Gregg Testimony at 9.

⁶⁶ *Alenco Communications, Inc. v. FCC*, 201 F.3d at 621.

⁶⁷ Fund portability is indeed “dictated by principles of competitive neutrality and the statutory command that universal service support be spent ‘only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.’” *Id.* at 622 (quoting 47 U.S.C. § 254(e)).

⁶⁸ *Universal Service First Report and Order*, ¶ 49.

support is largely untethered from cost, it makes a mockery of what CETCs' actual costs might look like if measured in good faith.

B. The Proposals in the *Identical Support NPRM* Are Distorted So As to Reduce Support for CETCs, Rather Than to Support CETCs Based On Their Own “Actual Costs.”

Wireless CETCs' costs cannot properly be measured by historical or embedded costs. The *Identical Support NPRM* fails to recognize that the “actual costs” for which wireless CETCs need USF support are, in substantial part, costs to be incurred in the future for deploying and extending their Mobility networks in rural areas.⁶⁹ Indeed, under the FCC's rules, FCC-designated wireless CETCs are required to show how support funds will be used over a future five year period. Embedded cost-based funding distorts competitive markets and creates incentives for inefficiency, by providing greater subsidies per line to carriers that incur higher costs (*i.e.*, are less efficient) in providing the same supported services.

Even if CETCs' “actual costs” were an appropriate basis for support, the proposals for measuring such costs that appear in the *Identical Support NPRM* are irrational, and appear to be blatantly and intentionally “jerry-rigged” to deprive wireless CETCs of support. The proposed methods for measuring CETC costs are largely based on ILEC accounting categories that are wholly inapposite and inadequate for measuring wireless carriers' costs. The *Identical Support NPRM* further offers the outlandish suggestion that CETCs should comply with burdensome dominant carrier-style cost structures and reporting requirements that are in fact far more stringent than anything the ILECs must do to certify their supported costs. In sum, the notice's suggestions for methods of measuring CETC costs bear no resemblance to any rational or forward-looking system for analyzing how mobile providers (and broadband providers) actually

⁶⁹ See, *e.g.*, 47 C.F.R. § 54.202(a)(1)(ii) & 54.209(a)(1).

incur costs. The Commission should reject the backward-looking and illogical suggestions in the *Identical Support NPRM*, and should instead adopt rational long-term reforms fashioned after our proposals in these comments.

1. The Commission Should Reject the Proposal to Place a Ceiling on CETC Per-Line Support Based on ILEC Funding Levels.

The proposal in the *Identical Support NPRM* to cap CETC support at ILEC levels⁷⁰ is self-contradictory and clearly reveals that the true purpose of this entire exercise is simply to reduce CETC funding rather than moving toward funding based on CETCs’ “actual costs.”⁷¹ If support to wireless CETCs were to be based on their actual costs, then the required amount of funding for deployment and operation of mobile networks could be very substantial; and in any event, ILEC support amounts should be irrelevant. And if the Commission truly wishes to “avoid rewarding [any category of] ETCs for being inefficient and reduce incentives for [such carriers] to inflate their costs,”⁷² then the ceiling should work both ways – CETCs should be capped at ILEC levels if ILECs are more efficient, and ILECs should be capped at CETC levels if CETCs are more efficient. Instead of seeking such a solution to provide support calibrated to the costs of the most efficient carrier serving a particular service territory, the *Identical Support NPRM* proposes to drive down CETC support in areas where competitive carriers incur higher entry and maintenance costs, while leaving untouched and unchanged support available to ILECs in areas where CETCs provide service more efficiently. The Commission should reject this transparent attempt to reduce the funding available to CETCs by way of such blatantly biased and non-competitively neutral means.

⁷⁰ See *Identical Support NPRM*, ¶ 25.

⁷¹ See *id.*, ¶ 13 (citing the “WiCAC Proposal” set forth in the Letter from Jeffrey H. Smith, Advocates for Regulatory Action, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 & CC Docket No. 96-45 (filed July 12, 2007)).

⁷² *Id.*, ¶ 25.

2. The Commission Should Reject Proposals That Diminish and Distort Wireless Carriers' Costs By Applying Wireline Cost Structures

Equally nonsensical and non-competitively neutral are the proposals in the *Identical Support NPRM* suggesting computation of wireless carriers' costs based on ILEC cost structures or legacy monopoly rules.⁷³ A cost-based Mobility support system should indeed reflect the “fundamental differences between wireline and wireless network design,”⁷⁴ but such a system should be implemented as part of comprehensive reform rather than on a shoe-horned piecemeal basis. Most importantly, no purportedly cost-based system for measuring CETC costs could disregard the manner in which wireless carriers incur costs to provide supported services, nor could it conceivably be based on the inappropriate ILEC accounting categories, geographic service areas, or benchmarks proposed in the *Identical Support NPRM*. The Commission must reject the proposals and tentative conclusions set forth for comment in this notice.

a. ILEC Separations and Cost Accounting Categories Should Not Be Imposed on CETCs

The notice proposes measuring wireless carriers' (and other CETC) costs using a Part 32-like accounting system, and suggests accounting for CETC expenditures by reference to possible equivalents for wireline network components such loop, switching, and transport costs.⁷⁵ Forcing CETC costs into ILEC categories in this manner would not accurately reflect the costs of deploying or operating wireless services over facilities designed according to a completely different network architecture than the one underlying wireless networks and legacy accounting rules. Furthermore, such an approach is totally unworkable as a practical matter because unregulated wireless carriers do not track their investments and expenditures in this manner, and

⁷³ See *id.*, ¶¶ 13-22.

⁷⁴ *Id.*, ¶ 19; see also *id.*, ¶ 22 (noting that “[w]ireless networks may be very different from wireline networks, potentially resulting in very different costs,” but failing to appreciate that measuring such “very different” costs may require different accounting methodologies and recognition of divergent cost categories).

⁷⁵ See *id.*, ¶ 15 & n.44.

never have done so. By relying on accounting data that do not exist today, the proposal essentially would force wireless CETCs to invent data out of thin air.

The *Identical Support NPRM* notes that the Commission “traditionally [has] not regulated the manner in which non-dominant carriers record their costs and revenues.”⁷⁶ Abandoning this eminently sensible practice now would impose extraordinarily costly administrative burdens on wireless carriers, as well as imposing such burdens on the Commission staff and state regulators that would be required to review and verify this data.⁷⁷ Creating a parallel accounting system that would make any sense for wireless carriers would be a difficult and contentious task, but consigning CETCs to use of Part 32 accounting categories without undertaking this difficult process would only result in greater costs to CETCs and greater demands on agency resources.

b. Geographic Units From ILEC Networks Cannot Be Used to Assess Wireless CETCs’ Costs

In order to target support in a geographically granular manner in a genuine Mobility support system, the geographic units would have to be defined in a manner consistent with the way wireless networks are structured. The *Identical Support NPRM* instead proposes continued CETC use of ILEC geographic units, such as wireline study areas, wire centers, or disaggregation zones, to assess wireless carriers’ costs.⁷⁸ This approach is plainly contrary to the notice’s purported policy goal of using CETCs’ “own costs”⁷⁹ as basis of support, because disaggregation modeled after and dependent on ILEC geographies does not reflect the manner in which wireless carriers incur their costs. Even worse, the proposal in the *Identical Support*

⁷⁶ See *id.*, ¶ 15.

⁷⁷ See AT&T *Ex Parte* Notification, WC Docket No. 05-337, at 2-3 (filed Oct. 4, 2007) (“AT&T *Ex Parte*) (explaining that wireless carriers do not record expenditures for wages and salaries, assets, benefits, or rents in ILEC-specific functional basis accounts such as land and building expense, central office expenses, and wire facilities expense categories); Letter to Commissioners Deborah Taylor Tate and Ray Baum, Co-Chairs, Federal-State Joint Board on Universal Service, from Gene DeJordy, Steve R. Mowery, and Mark Rubin, Alltel, WC Docket No. 05-337 & CC Docket No. 96-45, App. C (filed Feb. 16, 2007) (“Alltel February 2007 Proposal”).

⁷⁸ See *Identical Support NPRM*, ¶ 16.

⁷⁹ See, e.g., *id.*, ¶ 20.

NPRM would systematically understate wireless carriers' costs in high-cost areas by allocating costs based on active telephone numbers or number of customers served.⁸⁰ This would artificially lower the costs that wireless carriers could show for providing service in sparsely populated areas – including along highways,⁸¹ where demand may be high and mobile service may be especially critical in case of a need to call 911 – decreasing the support available even though those areas are the highest cost to serve.

These proposals are thus patently unfair, and as such, pose litigation risks that the Commission should view as unacceptable. They appear to have been intentionally designed to eliminate support for wireless carriers, because no wireless carrier could ever “demonstrate that it has maintained separate cost accounts by individual study area.”⁸² The geographic disaggregation proposal again begs for an explanation as to why wireless service providers should be required to measure their “actual costs” using wireline network configurations unless the Commission would likewise consider requiring wireline carriers to begin measuring their costs using wireless geographies. Wireless carriers should not be required to fit a square peg into a round hole, as it were, based on the improper and unlawful theory that universal service is inherently the province of wireline carriers, even though such non-competitively neutral assumptions permeate the *Identical Support NPRM*.

c. ILEC Cost Benchmarks Cannot Be Used to Derive “Cost-Based” Support Amounts for Wireless Carriers

Calculating wireless carriers' universal service support by subtracting out benchmarks drawn from average wireline costs⁸³ also would create a systematic, downward bias for wireless

⁸⁰ See *id.*, ¶ 16.

⁸¹ See *AT&T Ex Parte* at 2.

⁸² See *Identical Support NPRM*, ¶ 16.

⁸³ See *id.*, ¶ 16 (proposing the development of likely imprecise per-line costs for wireless carriers, which would then be compared against the High-cost Proxy Model benchmark used for non-rural carriers or the NECA benchmark established for rural carriers pursuant to 47 C.F.R. § 36.613).

support to the extent that wireless costs are lower (*i.e.*, generally more efficient) than wireline costs. This counterintuitive result, like the others proposed in *Identical Support NPRM*, is not competitively neutral. Besides that, the proposal is untenable in its own regard if universal service is to provide support for the most efficient carriers. Finally, the suggestion is contradictory to the professed aim of the notice. If indeed Mobility support is to be based on wireless-specific cost analyses, a wireless specific benchmark would have to be used to determine the appropriate level of support for wireless CETCs.

d. Wireless Specific Costs, Including Spectrum Costs, Must Be Properly Taken Into Account

The *Identical Support NPRM* finally hits upon a rational suggestion for moving toward a Mobility support system when it proposes including spectrum acquisition costs in any accounting of wireless carrier expenses.⁸⁴ However, the notice's irrational proposal to value spectrum on a backward-looking basis and to permit wireless carriers to recover spectrum costs only to the extent that they purchased it at auction, but not if they purchased it by acquiring a company or the assets of a company,⁸⁵ once again betray thinking that is improperly mired in historical costs rather than focused on the forward-looking expenditures necessary to provide robust universal service in the future. Although we agree that support for wireless carriers should account for spectrum costs, such factors must be calculated on a forward-looking basis rather than tied to amounts paid in the past. The *Identical Support NPRM*'s proposal to consider spectrum costs otherwise would lead to an indefensible outcome, making certain wireless carriers eligible to receive more support than others simply because of the times that different providers acquired their spectrum.

⁸⁴ See *id.*, ¶ 17.

⁸⁵ *Id.*, ¶ 17 & n.47.

CETCs' costs for their ongoing operations and their continued provision of supported services, including the cost of capital, depreciation, operating expenses, and corporate overhead, must indeed be included in CETC cost calculations.⁸⁶ As discussed above, we oppose the Joint Board's proposal to limit support to capital expenditures. Although we agree with the *Identical Support NPRM*'s proposal to account for these types of CETC expenditures, these costs should not be calculated in the wireline-centric manner that the notice proposes.⁸⁷

e. It Would Be Unfair To Require Advance Review of CETCs' Costs When ILECs' Costs Are Not Subject to Similar Advance Review

The *Identical Support NPRM*'s unfair proposal for determination of CETC costs, which would require advance regulatory approval of CETCs' cost submissions without requiring similar approvals for ILEC costs, is another example of unjustifiable and blatantly unfair treatment for non-incumbents.⁸⁸ The D.C. Circuit recently overturned a comparable FCC decision that would have imposed burdensome advance-approval requirements on data submitted by one category of service providers but not on others.⁸⁹ Rural ILECs' costs are rarely, if ever reviewed meaningfully except by NECA – an advocacy organization that is owned and controlled by the ILECs themselves. Meanwhile, large ILECs submit ARMIS data without any advance or post-hoc review of underlying data, and are arguing for elimination of even that minimal reporting requirement.⁹⁰

⁸⁶ See *id.*, ¶ 18.

⁸⁷ *Id.*, ¶¶ 18-19.

⁸⁸ See *id.*, ¶ 13.

⁸⁹ *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

⁹⁰ See, e.g., Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273 (filed Nov. 26, 2007); Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204 (filed Nov. 13, 2007); Petition of Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204 (filed Oct. 19, 2007); Petition of Qwest Corporation for Forbearance from the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-204 (filed Sept. 13, 2007; corrected Oct. 1, 2007); Petition of AT&T Inc. for

f. Requiring CETCs to Use Projected Line Counts While ILECs Use Historic Line Counts Would Be Patently Discriminatory

The *Identical Support NPRM* proposal to base the amount of high-cost support per-line on projected line counts (rather than actual line counts)⁹¹ also creates an unfair, systematic bias against wireless CETCs, whose line counts are growing. If this approach were applied consistently to ILECs their support could be substantially reduced, due to ILECs' aggregate loss of supported lines, but of course the notice makes no mention of applying such methodologies to determine ILEC support amounts. Nevertheless, no matter which class of carriers such far-flung and untested methodologies may advantage or disadvantage, the rapidly changing nature of the telecommunications markets and telecom technologies virtually assures that accurate projections would be impossible to come by. The Commission must reject this proposal and all of the others in the *Identical Support NPRM* addressed in this section of our comments, as each of these proposals consists of little more than plainly anticompetitive means to reduce CETC support while increasing CETC reporting and compliance burdens.

3. The Commission Should Reject Unlawful and Anticompetitive Proposals to Eliminate CETC Eligibility for IAS, ICLS, and LSS Funds.

The Commission should reject the proposals in the *Identical Support NPRM* to discontinue CETCs' receipt of Interstate Access Support (IAS), Interstate Common Line Support (ICLS), and Local Switching Support (LSS).⁹² These proposals irremediably conflict with the basic reasons for these funds' existence. To the extent that the Commission preserves these legacy voice-grade support mechanisms for ILECs, these funds should remain available to CETCs as well, because depriving CETCs of access to IAS, ICLS, and LSS would violate the

Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-139 (filed Jun. 8, 2007).

⁹¹ See *Identical Support NPRM*, ¶ 21.

⁹² See *id.*, ¶¶ 23-24.

competitive neutrality and portability requirements of the Act. Conversely, if the Commission decides to eliminate these funds for CETCs, it should do the same with respect to ILECs as well.

The Commission established the IAS and ICLS funds in 2000 and 2001, respectively, with the express purpose of “*eliminating the implicit support found in common line access charges*”⁹³ that previously subsidized ILECs’ local rates but were unavailable to CETCs. These two funds thus were intended to collect and distribute such support in an explicit, competitively neutral manner. The IAS and ICLS funds do not correspond directly to any actual ILEC costs.⁹⁴ The Commission repeatedly acknowledged when establishing IAS and ICLS that the mechanisms were designed to replace implicit subsidies built into access revenues, and that “determining the amount of implicit universal service support” in the access charge structure “is an imprecise exercise at best.”⁹⁵ The IAS fund can hardly be characterized as cost based – it was derived from large ILECs’ access charge levels in 1999 when the *CALLS* plan was adopted – a decade after access charges were de-linked from costs pursuant to price cap regulation. And as noted above, the Rate of Return rules that are used generate ICLS amounts cannot be relied upon as an accurate gauge of costs.⁹⁶

⁹³ *Id.*, ¶ 23 (emphasis added) (citing *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶¶ 31-32 (2000) (“*CALLS Order*”) *aff’d in part*, *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *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; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, 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, ¶¶ 128-131 (2001) (“*MAG Order*”).

⁹⁴ See, e.g., *MAG Order*, ¶¶ 129-32 (describing ICLS support as based on rate-of-return carriers’ embedded costs but acknowledging that the size of the fund was drawn from a “range of reasonable solutions” with a primary focus on “safeguarding [an] important revenue stream” for these carriers).

⁹⁵ *CALLS Order*, ¶ 39; see also *id.*, ¶¶ 201-05; *MAG Order*, ¶ 130 (noting that the problem of identifying the amount of implicit support received by rate-of-return carriers is particularly difficult, “given their size, diversity, and regulatory history,” and thus relying on the Commission’s expertise and reasonable balancing to determine explicit support amounts under ICLS).

⁹⁶ See *supra* note 59.

Similarly, the Commission created the LSS fund to preserve a flow of subsidy revenues previously assured only to rural ILECs through a complex formula of derived by weighting the costs of circuit-switched usage (dial equipment minute or “DEM”) factors.⁹⁷ Most ILECs are in the process of phasing out the Class-5 circuit switches upon which the DEM weighting formula was based. Therefore, to the extent that the LSS mechanism incorporates assumptions regarding costs “that are not likely to be accurate for competitive ETCs,”⁹⁸ those assumptions are “not likely to be accurate” with respect to ILEC costs either.

The lack of definitive relationships between ILEC costs and the amount of access revenues and subsidies safeguarded for ILECs by IAS, ICLS, and LSS demonstrates that no cost-based justification suffices to explain ILECs’ continued receipt of the three funds.⁹⁹ Accordingly, these funds specifically discussed by the *Identical Support NPRM* either should be preserved for both CETCs and ILECs, or preferably should be eliminated for both as part of a comprehensive reform plan. The *Identical Support NPRM* correctly identifies the Commission’s main goal in establishing IAS, ICLS, and LSS in the first place – to make explicit the formerly implicit subsidies found in common line access charges and access rate structures, as mandated by Section 254(e) of the Act.¹⁰⁰ The Commission cannot force the genie back into the bottle by turning these explicit support funds back into monopoly-only implicit subsidies.¹⁰¹

⁹⁷ *Universal Service First Report and Order*, ¶ 304.

⁹⁸ *Identical Support NPRM*, ¶ 24.

⁹⁹ See, e.g., *MAG Order*, ¶ 12 (“[W]e are adopting a cautious approach which rationalizes the access rate structure and converts identifiable implicit subsidies to explicit support, without endangering this important revenue stream for rate-of-return carriers”); *CALLS Order*, ¶¶ 41, 195-96, 205-05; *Universal Service First Report and Order*, ¶ 304 (indicating that LSS would be calculated by looking to “the carrier’s annual unseparated local switching revenue requirement” multiplied by a local switching support factor based on the difference between historical weighted and unweighted interstate factors).

¹⁰⁰ *Id.*, ¶ 23; see 47 U.S.C. § 254(e) (“Any [Federal universal service] support should be explicit and sufficient to achieve the purposes of this section.”).

¹⁰¹ See *id.*; *id.* § 214(e); *Universal Service First Report and Order*, ¶¶ 46-48, 286-90.

The Commission made it clear that it created the LSS, IAS, and ICLS funds so as to make those revenue flows explicit, portable, and competitively neutral, as required by the Act.¹⁰² Creation of these support mechanisms also served to eliminate the distortion that these formerly implicit subsidies caused in the market for voice services by limiting competitive entry and artificially skewing rates.¹⁰³ Judicial decisions upholding the Commission's various access charge reform orders recognized the fact that "[t]he 1996 Act . . . required that the implicit subsidy system of rate manipulation be replaced with explicit subsidies for universal service," that implicit subsidies are inconsistent with marketplace realities in a competitive environment, and that universal service funds must be portable in order to achieve Congress's goals.¹⁰⁴

Undoing the Commission's past decisions by walling off CETCs' eligibility for IAS, ICLS and LSS and converting these revenue streams back into monopoly-preservation subsidies for incumbent carriers would violate everything the Commission has tried to achieve in this arena since 1996. The Commission cannot lawfully deny these funds to CETCs on the basis that these previously implicit subsidies were once enjoyed by ILECs alone. The *Identical Support NPRM* proposal to strip CETC eligibility for these funds seemingly relies on the preposterous conclusion that these mechanisms should no longer be portable or competitively neutral precisely

¹⁰² See, e.g., *MAG Order*, ¶¶ 120, 151 (noting that the Commission would "replace the CCL charge with explicit support that will be available to all eligible telecommunications carriers on an equitable, non-discriminatory, and competitively neutral basis" and that ICLS would be portable to competitive eligible telecommunications carriers); *CALLS Order*, ¶ 186 ("[C]onsistent with the principles of the 1996 Act, [IAS] will provide explicit support that is specific, predictable, and sufficient Moreover, this support mechanism will provide support that is portable among competing carriers"); see also *id.*, ¶ 197 ("Any adjustments to the [IAS] support mechanism shall be consistent with the principles that support should be explicit, portable and competitively neutral."); *Universal Service First Report and Order*, ¶¶ 303-304.

¹⁰³ See, e.g., *CALLS Order*, ¶¶ 36, 42; *MAG Order*, Dissenting Statement of Commissioner Michael J. Copps ("[W]e have identified, and made explicit, the subsidies embedded in access charges for price cap carriers in order to reduce distortions in the marketplace that serve as impediments to competition."); *Universal Service First Report and Order*, ¶ 48 ("[E]xplicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote 'a pro-competitive, de-regulatory national policy framework.'") (citing Joint Explanatory Statement at 113).

¹⁰⁴ *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d at 318; see also *Alenco Communications, Inc. v. FCC*, 201 F.3d at 621-22.

because the previously implicit subsidies replaced by IAS, ICLS, and LSS were available to ILECs alone before access charge reform. The proposal thus would enshrine the outrageous notion that ILECs should be guaranteed significant advantages in the marketplace and left alone in their enjoyment of certain categories of support, because competitive carriers can always just charge higher rates to their subscribers – meaning the very consumers that should reap the benefits of competition in the form of reduced prices and improved services.¹⁰⁵

Furthermore, it would be logically inconsistent to enable ILECs, but not CETCs, to recover interstate-allocated costs through universal service mechanisms such as IAS, ICLS, and LSS. To the extent there is a hypothetical and tenuous relationship between these three funds and ILEC costs, the funds clearly represent recovery of costs allocated to the interstate jurisdiction.¹⁰⁶ Just as ILECs do, CETCs (including wireless carriers) incur loop and switching costs – the equivalent of the costs purportedly recovered by the IAS, ICLS, and LSS – and these competitive carriers use their networks to provide services that hypothetically could be allocated to both intrastate and interstate services. If CETC support is supposed to correspond to each CETC’s own “actual costs,” it would be logically inconsistent and unfair to maintain a supposedly cost-based system for ILECs to recover costs allocated to both the intrastate (HCL, HCM) and interstate (IAS, ICLS, LSS) jurisdictions while simultaneously depriving CETCs of

¹⁰⁵ See *Identical Support NPRM*, ¶ 23 (asserting that “because competitive ETCs’ rates generally are not regulated and they are not subject to SLC caps, they are able to recover their revenues from end users and have no need . . . [for] universal service”). The *Identical Support NPRM* indicates that the IAS and ICLS funds recover interstate loop costs that the ILECs forego due to SLC caps, but that CETCs can recover on their own without universal service support. See *Identical Support NPRM*, ¶ 23. The solution to this asymmetry should be to eliminate SLC caps and permit ILECs to recover these amounts from their end users – if they can do so in an increasingly competitive marketplace. See, e.g., *NASUCA v. FCC*, 372 F.3d 454 (D.C. Cir. 2004) (affirming SLC increases adopted by the Commission and deferring to the Commission’s judgment that the increases were necessary to balance the competing aims of reducing implicit subsidies while maintaining universal service); *FPC v. Hope Nat. Gas*, 320 U.S. 591, 603-05 (1944) (holding that regulated carriers are entitled only to a reasonable opportunity to recover costs, not a revenue guarantee).

¹⁰⁶ See, e.g., *MAG Order*, ¶ 3 (indicating that Interstate Common Line Support is intended to “create a universal service support mechanism to replace implicit support in the interstate access charges with explicit support that is portable to all eligible telecommunications carriers”); *CALLS Order*, ¶¶ 3, 26.

any opportunity to recover their jurisdictionally interstate costs via federal universal service funding.

III. PROPERLY STRUCTURED REVERSE AUCTIONS COULD HELP DETERMINE THE PROPER LEVELS OF SUPPORT

In the *Auctions NPRM*, the Commission seeks comment on the merits of using reverse auctions to determine the amount of high-cost universal service support provided to ETCs serving rural, insular, and high-cost areas. As Alltel has discussed in past comments,¹⁰⁷ a properly structured system of reverse auctions might be a valuable tool in determining the appropriate amount of high-cost support, limiting fund growth, and distributing support in an efficient and competitively neutral manner, as long as such auctions are not used to select a single supported carrier or to thwart consumers' ability to obtain their choice of services. In particular, auctions could be a useful tool to gauge the amount of support needed in the context of new Mobility and Broadband Fund mechanisms in some circumstances.

In no event, however, should the Commission use auctions to restrict support to a single auction winner, but rather it should design any auction system to ensure that multiple ETCs are eligible for support.¹⁰⁸ By eliminating high-cost subsidies to all ETCs other than the winning bidder, the Commission would effectively be handing a long-term monopoly to the auction winner, providing the winner with "protection from competition, the very antithesis of the Act."¹⁰⁹ As discussed above, a "winner-takes-all" approach also could require a "hyper-regulatory" post-auction approach to ensure that the winning bidder satisfies service quality and

¹⁰⁷ See, e.g., Alltel Comments, WC Docket No. 05-337 & CC Docket No. 96-45 (filed Oct. 10, 2006); Alltel Reply Comments, WC Docket No. 05-337 & CC Docket No. 96-45 (filed Nov. 8, 2006); Alltel February 2007 Proposal (proposing pilot reverse auctions focused on broadband).

¹⁰⁸ *Auctions NPRM*, ¶¶ 13-14.

¹⁰⁹ *Alenco Communications, Inc. v. FCC*, 201 F.3d at 622.

other obligations. By contrast, not restricting support to the auction winner would encourage all ETCs to compete to serve consumers in high-cost areas as contemplated by the Act.

The Commission seeks comment in the *Auctions NPRM* on Alltel's February 2007 proposal to conduct a pilot reverse auction for broadband in unserved areas.¹¹⁰ Such a pilot program could be a productive way to test an auction-based system for determining high-cost support before applying it more broadly. At the same time, the pilot proposal would further the Commission's broadband goals by facilitating broadband deployment in one or a few unserved and underserved geographic areas.

¹¹⁰ *Auctions NPRM*, ¶ 51.

CONCLUSION

For the foregoing reasons, the Commission should adopt comprehensive and thorough reforms to the high-cost support program, and should reject proposals that are crafted to preserve revenue flows for certain carriers and reduce support for others.

Respectfully submitted,

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