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

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In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. <u>96-45</u>
)	
Alltel Communications, Inc., <i>et al.</i>)	
Petitions for Designation as Eligible)	
Telecommunications Carriers)	
)	
RCC Minnesota, Inc. and RCC Atlantic, Inc. New)	
Hampshire ETC Designation Amendment)	

ORDER

Adopted: April 29, 2008

Released: May 1, 2008

By the Commission: Chairman Martin and Commissioners Tate and McDowell issuing separate statements; Commissioners Cops and Adelstein dissenting and issuing separate statements.

I. INTRODUCTION

1. In this Order, we take action to rein in the explosive growth in high-cost universal service support disbursements. As recommended by the Federal-State Joint Board on Universal Service (Joint Board), we adopt an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive.¹ Specifically, as of the effective date of this Order, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. We also adopt two limited exceptions from the specific application of the interim cap. First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier (LEC). Second, we adopt a limited exception for competitive ETCs serving tribal lands or Alaska Native regions. The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform.² The Commission plans to move forward on adopting comprehensive reform measures in an expeditious manner. The Commission commits to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the pending Commission Notices regarding

¹ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (*Recommended Decision*).

² The Commission is required by statute to act within one year after receiving a recommendation from the Joint Board. 47 U.S.C. § 254(a)(2).

comprehensive reform.³ Finally, we resolve most of the petitions for ETC designation currently pending before the Commission.⁴

II. BACKGROUND

2. For the past several years, the Joint Board has been exploring recommending modifications to the Commission's high-cost universal service support rules. In 2002, the Commission asked the Joint Board to review certain of the Commission's rules related to the high-cost universal service support mechanisms.⁵ Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC provides service.⁶ In response, the Joint Board made a number of recommendations concerning the designation of ETCs in high-cost areas, but declined to recommend that the Commission modify the basis of support (i.e., the methodology used to calculate support) in study areas with multiple ETCs.⁷ Instead, the Joint Board recommended that it and the Commission continue to consider possible modifications to the basis of support for competitive ETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.⁸

3. In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order*.⁹ In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service support mechanisms for rural carriers.¹⁰ The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.¹¹ Since that time, the Joint Board has sought comment on a variety of specific proposals for addressing the issues of universal service support for rural carriers and the basis of support for competitive ETCs, including proposals developed by

³ See *infra* para. 4.

⁴ See *infra* para. 39, App. B.

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002).

⁶ *Id.*

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (Fed.-State Jt. Bd. 2004) (*2004 Recommended Decision*).

⁸ *Id.* at 4294, para. 88.

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*); *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11268-70 (2001) (*Rural Task Force Order*); see also *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending the *Rural Task Force Order* plan).

¹⁰ See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (Fed.-State Jt. Bd. 2004).

¹¹ See *id.* at 16094, paras. 36-37.

members and staff of the Joint Board, as well as the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs.¹²

4. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support for competitive ETCs while the Joint Board considered proposals for comprehensive reform.¹³ Specifically, the Joint Board recommended that the Commission cap competitive ETC support at the amount of support received by competitive ETCs in 2006.¹⁴ The Joint Board recommended that the cap on competitive ETC support be applied at the state level.¹⁵ Finally, the Joint Board recommended that the interim cap apply until one year from the date that the Joint Board makes its recommendation regarding high-cost universal service reform.¹⁶ On May 14, 2007, the Commission released a Notice of Proposed Rulemaking, seeking comment on the Joint Board's recommendation.¹⁷ On November 19, 2007, the Joint Board submitted to the Commission recommendations for comprehensive reform of high-cost universal service support.¹⁸ On January 29, 2008, the Commission released three notices of proposed rulemaking addressing proposals for comprehensive reform of the high-cost universal service support program.¹⁹ Comments on the *Reform Notices* were due by April 17, 2008 and reply comments are due by May 19, 2008.²⁰

¹² See *Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (Fed.-State Jt. Bd. 2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006). In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions and geographic information systems to determine support for ETCs. See *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, WC Docket No. 05-337, Public Notice, 22 FCC Rcd 2545 (Wireline Comp. Bur. 2007).

¹³ See *Recommended Decision*, 22 FCC Rcd at 8999-9001, paras. 4-7. The Joint Board committed to making recommendations on comprehensive reform within six months (i.e., by November 1, 2007), and sought comment on comprehensive reform in a public notice released on the same day as the *Recommended Decision*. See *id.* at 8; *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 9023 (Fed.-State Jt. Bd. 2007) (*Joint Board 2007 Public Notice*).

¹⁴ *Recommended Decision*, 22 FCC Rcd at 9003, para. 13.

¹⁵ *Id.* at 9002-03, paras. 9-12.

¹⁶ *Id.* at 9002, para. 8.

¹⁷ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007) (*Notice*).

¹⁸ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007) (*Comprehensive Reform Recommended Decision*).

¹⁹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform NPRM*) (collectively *Reform Notices*).

²⁰ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; WC Docket No. 05-337, Order, DA 08-674 (rel. Mar. 24, 2008) (extending comment and reply comment dates).

III. DISCUSSION

5. We adopt, with limited modifications, the Joint Board's recommendation for an emergency, interim cap on high-cost support for competitive ETCs.²¹ This action is necessary to halt the rapid growth of high-cost support that threatens the sustainability of the universal service fund. As described below, annual support for competitive ETCs in each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008, on an annualized basis. As further discussed below, we also create a limited exception to the cap to allow competitive ETCs that serve tribal lands or Alaska Native regions to continue to receive support at uncapped levels.²²

A. Need for a Cap on Competitive ETC Support

1. A Cap on Competitive ETC Support is Required to Preserve the Sustainability and Sufficiency of Universal Service

6. We agree with the Joint Board's assessment that the rapid growth in high-cost support places the federal universal service fund in dire jeopardy. In 2007, the universal service fund provided approximately \$4.3 billion per year in high-cost support.²³ In contrast, in 2001, high-cost universal service support totaled approximately \$2.6 billion.²⁴ In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat since 2003,²⁵ competitive ETC support, in the seven years from 2001

²¹ The interim cap adopted in this Order supersedes the interim caps on high-cost, competitive ETC support adopted in the *ALLTEL-Atlantis Order* and the *AT&T-Dobson Order*. See *Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee For Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 07-185, Memorandum Opinion and Order, 22 FCC Rcd 19517 (2007) (*ALLTEL-Atlantis Order*); *Applications of AT&T Inc. and Dobson Communications For Consent to Transfer Control of Licenses and Authorizations File Nos. 003092368 et al.*, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007) (*AT&T-Dobson Order*).

²² See Letter from Tina Pidgeon, Vice President, Federal Regulatory Affairs, General Communications Inc. (GCI), to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 96-45, at 2 (filed May 31, 2007) (GCI May 31 *Ex Parte* Letter).

²³ Universal Service Administrative Company, 2007 Annual Report 43 (2007), available at http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2007.pdf (*USAC 2007 Annual Report*).

²⁴ See *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared by the Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 3.2 (2007) (*Universal Service Monitoring Report*).

²⁵ Incumbent LECs received \$3.136 billion in high-cost support in 2003; \$3.153 billion in 2004; \$3.169 billion in 2005; \$3.116 billion in 2006; and \$3.108 billion in 2007. *Universal Service Monitoring Report*, Table 3.2 (for 2003, 2004, 2005, and 2006 data); *USAC 2007 Annual Report* at 41 (for 2007 data). In 2001, much of the growth in high-cost support was attributable to removing implicit subsidies from access charges and the inclusion of these amounts in explicit universal service mechanisms adopted in the *CALLS Order* and the *MAG Plan Order*. See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*); *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.

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through 2007, has grown from under \$17 million to \$1.18 billion – an average annual growth rate of over 100 percent.²⁶ We find that the continued growth of the fund at this rate is not sustainable and would require excessive (and ever growing) contributions from consumers to pay for this fund growth.²⁷

7. We conclude that immediate action must be taken to stem the dramatic growth in high-cost support. Therefore, as recommended by the Joint Board, we immediately impose an interim cap on high-cost support provided to competitive ETCs until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years.²⁸ The interim cap that we adopt herein limits the annual amount of high-cost support that competitive ETCs can receive in the interim period for each state to the amount competitive ETCs were eligible to receive in that state during March 2008, on an annualized basis.

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96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*MAG Plan Order*), recon. pending.

²⁶ *Universal Service Monitoring Report*, Table 3.2; USAC 2007 Annual Report at 45.

²⁷ Support for the fund derives from assessments paid by providers of interstate telecommunications services and certain other providers of interstate telecommunications. See 47 C.F.R. § 54.706. Fund contributors are permitted to, and almost always do, pass those contribution assessments though to their end-user customers. See 47 C.F.R. § 54.712. Fund assessments paid by contributors are determined by applying the quarterly contribution factor to the contributors' contribution base revenues. In the second quarter of 2007, the contribution factor reached 11.7 percent, which is the highest level since its inception. See *Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 5074 (Off. of Man. Dir. 2007). The contribution factor has since declined slightly to 11.3 percent in the second quarter of 2008. *Proposed Second Quarter 2008 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 4087 (Off. of Man. Dir. 2008).

²⁸ The interim cap received widespread support from commenters. See ATA Comments; Alexicon Comments; AT&T Comments; CenturyTel Comments; Blackfoot Comments; Comcast Comments; Embarq Comments; Fred Williamson & Associates Comments; Frontier Comments; GVNW Comments; ITTA Comments; Iowa Telecommunications Ass'n Comments; Iowa Utilities Board Comments; Minnesota Independent Coalition Comments; Montana Telecommunications Ass'n Comments; NASUCA Comments; NECA Comments; NTCA Comments; Nebraska Rural Independent Cos and South Dakota Telecommunications Ass'n Comments; New Jersey Board of Public Utilities Comments; New York Department of Public Service Comments; OPASTCO Comments; Rural Iowa Independent Telephone Ass'n Comments; Rural Telecommunications Group Comments; Small Company Committee of the Louisiana Telecommunications Ass'n Comments; State Independent Telephone Ass'n of Kansas and Independent Telecommunications Group; TCA Comments; TDS Comments; Telephone Ass'n of Maine Comments; Tennessee Telecommunications Ass'n; Texas Statewide Telephone Cooperative, Inc. Comments; Totah Communications, Inc. *et al.* Comments; USTelecom Comments; Valley Telephone Cooperative Comments; Verizon and Verizon Wireless Comments; Western Telecommunications Alliance Comments; Windstream Comments; Wisconsin State Telecommunications Ass'n Comments. Other commenters, however, opposed the cap. See Alltel Comments; Centennial Comments; Chinook Wireless Comments; ComspanUSA Comments; COMPTEL Comments; CTIA Comments; DialToneServices Comments; Dobson Comments; GCI Comments; Kansas State Corporation Comm'n Comments; Rural Cellular Ass'n and Alliance of Rural CMRS Carriers Comments; South Carolina Office of Regulatory Staff Comments; SouthernLINC Comments; Sprint Nextel Comments; Surewest Comments; US Cellular and Rural Cellular Corp. Comments. In addition many individuals and public safety officials filed brief comments or *ex parte* letters, both in favor and in opposition to the interim cap. See, e.g., Letter from Senator J. Brian Bingman, Oklahoma State Senate, to Chairman Martin, Federal Communications Commission, WC Docket No. 05-337 (filed June 22, 2007) (urging the quick adoption of an interim cap); Letter from Lt. S.C. O'Dwyer, Commander of Communications, Office of the Sheriff of Effingham County, Georgia, to Kevin J. Martin, Chairman, Michael J. Copps, Commissioner, Jonathon S. Adelstein, Commissioner, Deborah Taylor Tate, Commissioner, and Robert M. McDowell, Commissioner, Federal Communications Commission, WC Docket No. 05-337 (filed July 11, 2007) (opposing the adoption of the interim cap). Appendix A contains a list of all commenters in this proceeding.

8. We find that adopting an interim cap is consistent with the requirement of section 254 of the Communications Act of 1934, as amended (the Act), that support be “sufficient” to meet the Act’s universal service purposes.²⁹ The Commission previously has concluded that the statutory principle of “sufficiency” proscribes support in excess of that necessary to achieve the Act’s universal service goals.³⁰ Notably, the Commission has previously adopted cost controls, including adopting an indexed cap on the high-cost loop support mechanism, which the U.S. Court of Appeals for the Fifth Circuit held to be consistent with the Act’s universal service mandate.³¹

9. Similarly, our action today applies interim cost controls to the aspect that most directly threatens the specificity, predictability, and sustainability of the fund: the rapid growth of competitive ETC support.³² A primary consequence of the existing competitive ETC support rules has been to promote the sale of multiple supported wireless handsets in given households.³³ We do not today make a final determination regarding the level of support to competitive ETCs that is sufficient, but not excessive, for achieving the Act’s universal service goals because we expect to take further action to enact fundamental reform.³⁴ Instead, today we take the reasonable, interim step of capping annual competitive ETC support for each state at the amount competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. Doing so will provide a necessary constraint on the growth of support until comprehensive reform is adopted.

10. We do not find it necessary to adopt additional caps on support provided to incumbent LECs at this time because, as the Joint Board noted in its *Recommended Decision*, high-cost support to incumbent LECs has been flat and is therefore exerting less pressure on the universal service fund.³⁵ Moreover, incumbent LEC high-cost loop support is already capped, and incumbent LEC interstate access support is subject to a targeted limit.³⁶ Incumbent LEC disbursements from other support mechanisms,

²⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* 47 U.S.C. § 254(b)(5) (“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”), (e) (“any such [universal service] support should be predictable and sufficient to achieve the purposes of this section”).

³⁰ *MAG Plan Order*, 16 FCC Rcd at 19669-70, paras. 131-32; *Rural Task Force Order*, 16 FCC Rcd at 11257-58, para. 27; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22581-82, paras. 36-37 (2003), *remanded*, *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005); 47 U.S.C. § 254(b).

³¹ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) (“[t]he agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service”).

³² See 47 U.S.C. § 254(b)(5).

³³ See *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5218, para. 17 (2007) (stating that a majority of presubscribed interexchange customers also subscribe to mobile wireless service); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 07-71, Twelfth Report, 23 FCC Rcd 2241, at para. 246 (2008) (citing survey reporting that only approximately 11.8 percent of U.S. households relied exclusively on wireless phones in 2006) (*2007 Commercial Mobile Services Report*).

³⁴ See *Alenco*, 201 F.3d at 619 (“excessive funding may itself violate the sufficiency requirements of the Act”).

³⁵ *Recommended Decision*, 22 FCC Rcd at 9001, para. 5; see also *supra* para. 6.

³⁶ See 47 C.F.R. §§ 36.603, 54.801(a). We are unconvinced by Alltel’s arguments that the existing caps on incumbent LEC support also effectively cap competitive ETC support. Alltel Comments at 10-11. Competitive ETC support has grown rapidly while, during the same period, incumbent LEC support has not grown significantly.

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like local switching support and interstate common line support, have been stable in recent years.³⁷ Further, although high-cost model support has no actual cap, it does have built-in restraints on growth, which derive from the fact that support is based on stable statewide average estimated costs. Accordingly, we limit the interim cap we adopt today to high-cost support provided to competitive ETCs.

11. Some parties argue that inefficiencies in high-cost support for incumbent LECs are the root cause of the high-cost support growth, and that the Commission must address these inefficiencies to stabilize the fund.³⁸ Although addressing inefficiencies in incumbent LEC support may be necessary for comprehensive reform, we disagree that such review of incumbent LEC support is necessary immediately to rein in the growth of high-cost support for an interim period. First, as we have noted, total incumbent LEC support has not grown in recent years and does not have the same potential for rapid explosive growth competitive ETC support does. Second, although increases in incumbent LEC high-cost support may contribute indirectly to growth in high-cost support for competitive ETCs, the interim cap on competitive ETC support we adopt today will eliminate that growth potential.³⁹ To the extent that there may be inefficiencies in incumbent LEC high-cost support, we anticipate addressing those in the context of comprehensive universal service reform.

2. An Interim Cap on Competitive ETC Support Is Consistent With the Act

12. We disagree with arguments that capping support for competitive ETCs violates the Act. As a general matter, the Commission's discretion to establish caps on high-cost support has been upheld.⁴⁰ Moreover, as we discuss further below, we find no merit in the arguments raised by commenters in this proceeding that this particular cap violates the Act.

13. We disagree with comments that this cap violates the Act's statutory principles. CTIA argues that the cap would violate the Act's requirements that rates in rural areas should be reasonably comparable to those in urban areas.⁴¹ CTIA, however, fails to provide any data demonstrating that, or analysis explaining why the cap would result in rural rates that are not comparable with those in urban areas. Instead, it merely asserts that "[t]he proposed cap will deny customers access to reasonably

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See supra para. 6. To the extent there are exceptions to the incumbent LEC caps (e.g., an index on high-cost loop support and the availability of the safety net additive), these exceptions are warranted due to the additional regulatory burdens faced by incumbent LECs. Competitive ETCs are able to raise their rates when necessary to recover their increased expenses, while many incumbent LECs are subject to rate regulation and cannot do so. Furthermore, we note that we are adopting a limited exception to the competitive ETC cap for carriers that serve tribal lands or Alaska Native regions. *See infra* paras. 31-34.

³⁷ Local switching support for incumbent LECs ranged between \$363 million and \$379 million annually from 2003 through 2007. Interstate common line support (including its predecessor, Long Term Support) for incumbent LECs ranged between \$877 million and \$985 million annually from 2003 through 2007. *See Universal Service Monitoring Report*, Table 3.2 (2007 support based on actual and projected data).

³⁸ *See* CTIA Comments at 5-6; Centennial Comments at 4-5.

³⁹ Because competitive ETCs receive the same per-line support as the incumbent LEC, any increase in the incumbent LEC's cost per loop, whether due to inefficiencies or line loss, could contribute to competitive ETC support growth rates. For example, if the underlying incumbent LEC per-line (but not total) support increases year over year (due to line loss, for example), the competitive ETC will receive both more per-line support and more total support, even in a service area where a competitive ETC's lines remain constant year over year.

⁴⁰ *See Alenco*, 201 F.3d at 620.

⁴¹ CTIA Comments at 21-22.

equivalent rates, and to reasonably equivalent services.”⁴² There simply is no support in the record for this contention. To the contrary, many wireless carriers that do not receive high-cost support compete against wireless competitive ETCs that do receive support, and many wireless competitive ETCs served high-cost territories before they were designated as eligible to receive support.

14. CTIA, along with Dobson, also contends that the cap violates the universal service principle of sufficiency.⁴³ Neither commenter, however, provides any support for its contentions. To the contrary, as we explain above, we believe that the statutory principle of sufficiency is not inconsistent with the interim “cost controls” we adopt herein.⁴⁴ We find that the interim cap we adopt is consistent with the principle of sufficiency as defined by the court in *Alenco* because it seeks to eliminate support in excess of that necessary to ensure the Act’s universal service goals.⁴⁵ Further, because competitive ETC support is based on the incumbent LEC’s costs, rather than on the competitive ETC’s own costs, there is no reason to believe – and no record data showing – that support subject to an interim cap would necessarily result in insufficient support levels.⁴⁶ Dobson also argues that the cap will violate the universal service principle of predictability because the effects of the cap “will be driven by factors that are not at all ‘predictable.’”⁴⁷ Adoption of the interim cap, however, makes competitive ETC support more predictable, in that it sets an upper, definitive bound on the amount of support available in a state. Moreover, Dobson ignores the fact that, as the court concluded in *Alenco*, the Act’s requirement of predictability requires only that the rules governing distribution, not the resulting funding amounts, must be predictable.⁴⁸

15. We are not persuaded by CTIA’s argument, citing *Alenco*, that the Act requires the promotion of competition in high-cost areas through the provision of equal per-line support amounts to all carriers.⁴⁹ Rather than requiring the use of universal service support to subsidize competition, the court in *Alenco* was concerned with the sustainability of universal service in a competitive environment. Specifically, the court found that “[t]he Commission therefore is responsible for making the changes necessary to its universal service program to ensure that it survives in the new world of competition.”⁵⁰ The court stated that the Commission “must see to it that *both* universal service and competition are

⁴² *Id.*

⁴³ CTIA Comments at 22, Dobson Comments at 4-5.

⁴⁴ See *supra* para. 8 (discussing the *Alenco* court’s conclusion that the Commission may adopt universal service cost controls).

⁴⁵ See *Alenco*, 201 F.3d at 619.

⁴⁶ See *id.* at 620 (“The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers.”).

⁴⁷ Dobson Comments at 5.

⁴⁸ *Alenco*, 201 F.3d at 623. Further, we note that Dobson’s criticism is equally applicable to the cap on high-cost loop support, which was affirmed by the court in *Alenco*. *Id.* at 620.

⁴⁹ CTIA Comments at 19.

⁵⁰ *Alenco*, 201 F.3d at 615 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780-82, paras. 1-4, 8788, para. 20 (1997) (*Universal Service First Report and Order*) (stating that the Commission, through its work with the Joint Board, “ensure[s] that this system is sustainable in a competitive marketplace, thus ensuring that universal service is available at rates that are ‘just, unreasonable [sic], and affordable’ for all Americans”)).

realized; one cannot be sacrificed in favor of the other.”⁵¹ We therefore find that our action today is not only consistent with, but is supported by, the court’s holding in *Alenco*.

16. Similarly, we are not persuaded by Alltel’s argument that competitive ETCs and incumbent LECs must receive the same amount of support on a per-line basis.⁵² Although Alltel correctly notes that, in upholding the cap on high-cost loop support, the court in *Alenco* “rejected the premise that [incumbent LEC] revenue flows must be protected at all costs, and thus that any reductions in disbursements needed to prevent undue fund growth must be borne by [competitive ETCs] rather than [incumbent LECs],”⁵³ Alltel fails to explain why the court’s holding requires equal per-line support for all competitors. Put simply, while the court rejected the idea that any reductions in disbursements necessary to curtail fund growth had to be borne by competitive ETCs and not incumbent LECs, the court did not prohibit the Commission from imposing reductions or limits on competitive ETC disbursements.⁵⁴

17. CTIA argues that adoption of the interim cap would not comport with the court’s statement in *Alenco* that “the program must treat all market participants equally . . . so that the market, and not local or federal government regulators, determines who shall compete for and deliver service to customers.”⁵⁵ The cited language, however, does not require the Commission to continue to provide identical levels of support to all carriers. It merely requires that all ETCs must be eligible to receive support, an unremarkable conclusion given the plain text of the statute.⁵⁶

18. Alltel and CTIA both ignore key aspects of *Alenco*, in which the court expressly found that the Commission must ensure that all *customers* be able to receive affordable basic telecommunications services.

Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act.⁵⁷

Nowhere in the court’s decision did it require that all *providers* must receive equal per-line support amounts.

⁵¹ See *Alenco*, 201 F.3d at 615.

⁵² Alltel Comments at 15-18.

⁵³ *Id.* at 15.

⁵⁴ Alltel also relies the court’s decision in *TOPUC* to support its argument that high-cost support must be portable on a per-line basis. *Id.* at 15-16 (citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) (*TOPUC*)). Alltel, however, only cites *TOPUC*’s requirement that implicit subsidies be replaced with explicit universal service subsidies. *Id.* That requirement, however, does not require that universal service support continue on a per-line basis under the identical support rule.

⁵⁵ CTIA Comments at 20 (quoting *Alenco*, 201 F.3d at 616).

⁵⁶ The quotation that CTIA relies on specifically cites section 214(e)(1) of the Act, which requires that all “eligible telecommunications carriers . . . shall be eligible to receive universal service support.” 47 U.S.C. § 214(e)(1). See also *infra* para. 29.

⁵⁷ *Alenco*, 201 F.3d at 620.

19. In arguing that the interim cap would not comport with the identical support rule because it would disburse unequal support per line, Alltel also cites various Commission precedents related to the establishment and implementation of the identical support rule, which, at the time, the Commission found to be consistent with its principle of competitive neutrality.⁵⁸ In justifying this portability requirement, both the Joint Board and Commission made clear that they envisioned that competitive ETCs would compete directly against incumbent LECs and try to take existing customers from them.⁵⁹ The predictions of the Joint Board and the Commission have proven inaccurate, however.

20. First, they did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service.⁶⁰ Second, wireless carriers, rather than wireline competitive LECs, have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support.⁶¹ These wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households.⁶² Thus, 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.⁶³

⁵⁸ Alltel Comments at 16-17 (citing *Federal-State Joint Board on Universal Service*, Ninth Report and Order, 14 FCC Rcd 20432, 20480, para. 90 (1999)).

⁵⁹ See *Universal Service First Report and Order*, 12 FCC Rcd at 8932, para. 287, 8944, para. 311; *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 238, para. 296 (Fed-State Jt. Bd. 1996).

⁶⁰ SouthernLINC argues that "consumers in rural, insular and high-cost areas should also have access to competitive wireless services at reasonable rates in order to complement their wireline service." SouthernLINC Comments at 7-11. Essentially, SouthernLINC is arguing that mobility should be added to the list of supported services. We find that issue beyond the scope of the current proceeding.

⁶¹ See Letter from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, Attach. The Effects of Providing Universal Service Subsidies to Wireless Carriers at 16-18, App. B (filed June 13, 2007) (Criterion Report) (claiming that, in 2006, 68 percent – 192 out of 281 – of all competitive ETC service areas were wireless service areas, and that 94 percent – \$770.5 million out of \$820.5 million – of all competitive ETC support went to wireless competitive ETCs).

⁶² See *2007 Commercial Mobile Services Report*, 23 FCC Rcd 2241, at para. 246 (citing survey reporting that only approximately 11.8 percent of U.S. households relied exclusively on wireless phones in 2006). Even the data on which CTIA relies show that less than 13 percent of households have replaced wireline with wireless service. CTIA Comments at 10.

⁶³ CTIA's reliance on a survey showing that less than 13 percent of households have replaced wireline with wireless service fails to demonstrate that wireless ETCs are a complete substitute for wireline ETCs. See CTIA Comments at 10. Nor does CTIA's second cited survey – in which respondents were asked to identify the single service, wireline or wireless, that they would retain if they could only retain one (a fictitious assumption) – demonstrate complete substitutability. See *id.* at 10-11.

In 2004, the Joint Board tried to address these developments by recommending that support be limited to "a single connection to the public telephone network." *2004 Recommended Decision*, 19 FCC Rcd at 4282, para. 62. Congress, however, has prohibited the Commission from implementing this recommendation. On December 8, 2004, Congress passed the 2005 Consolidated Appropriations Act, which prohibits the Commission from utilizing appropriated funds to "modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service payments." Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat. 2809 (2004) (2005 Consolidated Appropriations Act); Science, State, Justice, Commerce and Related Agencies Appropriations Act 2006, Pub. L. No. 109-108, § 622, 119 Stat. 2342 (2005) (extending prohibition until September 30, 2006); Revised Continuing Appropriations Resolution 2007, Pub.

(continued....)

21. This has created a number of serious problems for the high-cost fund, and calls into question the rationale for the identical support rule.⁶⁴ Instead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines, the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines.⁶⁴ Because the majority of households do not view wireline and wireless services to be direct substitutes,⁶⁵ many households subscribe to both services and receive support for multiple lines, which has led to a rapid increase in the size of the fund.⁶⁶ In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs. Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas.⁶⁷ Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their network. The Commission is currently considering eliminating the identical support rule.⁶⁸

22. We also find that the Commission's universal service principle of competitive neutrality does not preclude us from adopting an interim, limited cap under existing circumstances.⁶⁹ As discussed

(...continued from previous page)

L. No. 110-5, § 105, 121 Stat. 9 (2007) (extending prohibition until September 30, 2007); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 511, 121 Stat. 1998 (2007) (extending prohibition until September 30, 2008).

⁶⁴ Between November 1, 2002, and February 1, 2008, the total number of lines served by all ETCs receiving interstate common line support or interstate access support, including competitive ETCs and incumbent LECs, increased by approximately 35.7 million. Competitive ETC line counts, which grew by approximately 31.7 million during that period, drove the increase. See Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2008*, App. HC09, HC12 (filed Feb. 1, 2008); Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2003*, App. HC08, HC14 (filed Nov. 1, 2002).

⁶⁵ See *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5218, para. 17 (2007) (stating that a majority of presubscribed interexchange customers also subscribe to mobile wireless service); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 11027, para. 205 (2006) (citing survey reporting that approximately 8 percent of U.S. households relied exclusively on wireless phones in 2005).

⁶⁶ See Congressional Budget Office, *Factors that May Increase Future Spending from the Universal Service Fund* at 12 (2006) ("The fact that wireless entrants are providing additional telephone service rather than replacement service in many cases is part of the reason that total spending for support grows when wireless carriers enter a market covered by the USF.").

⁶⁷ See 47 U.S.C. § 254(b)(3).

⁶⁸ *Identical Support Rule NPRM*, 23 FCC Rcd 1467.

⁶⁹ *Universal Service First Report and Order*, 12 FCC Rcd at 8801-03, paras. 46-52 (subsequent history omitted) ("[W]e define this principle, in the context of determining universal service support, as: COMPETITIVE NEUTRALITY – Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

above, high-cost support has increased by \$1.7 billion – more than 65 percent – from 2001 to 2007.⁷⁰ Continued growth at this rate would render the amount of high-cost support unsustainable and could cripple the universal service fund. To avert this crisis, it is necessary to place some temporary restraints on the fastest-growing portion of high-cost support, i.e., competitive ETC support. Moreover, as discussed above, it is not clear that identical support has, in reality, resulted in competitive neutrality. We therefore find that, rather than departing from the principle of competitive neutrality, as a matter of policy, we instead are temporarily prioritizing the immediate need to stabilize high-cost universal service support and ensure a specific, predictable, and sufficient fund.⁷¹

23. Finally, we reject arguments that the cap should not be adopted because it will not be truly interim in nature.⁷² The interim cap will remain in place only until the Commission adopts comprehensive, high-cost universal service reform.⁷³ Thus, we are satisfied that the interim cap's life will be of limited duration.

3. Cap on Competitive ETC Support Would Not Inhibit Broadband Deployment in Rural America

24. Several commenters argue that the interim cap on competitive ETC support will inhibit the deployment of broadband services.⁷⁴ With the exception of GCI, these commenters provide only anecdotal evidence of the possible effect of the interim cap on particular deployments, and do not systematically analyze the effect of the interim cap on broadband deployment.⁷⁵ Moreover, although high-cost support for rural incumbent LECs has been capped for many years, that does not appear to have inhibited the deployment of broadband service to areas served by rural incumbent LECs.⁷⁶ Indeed, high-cost universal service support may be used to invest in facilities to provide broadband service if those facilities are also necessary to provide voice grade access.⁷⁷

25. In light of the foregoing, we decline to adopt specific requirements for competitive ETCs regarding the provision of broadband Internet access services. Rather, we find that the role of high-cost support mechanisms in promoting broadband deployment is better addressed in a rulemaking of general applicability. In fact, the Commission currently is considering proposals to provide high-cost support for broadband service.⁷⁸

⁷⁰ See *supra* para. 6.

⁷¹ See 47 U.S.C. § 254(b)(5), (d). Moreover, as we explain below, the statute does not mandate that ETCs receive support, but rather that ETCs be eligible to receive support. See *infra* para. 29.

⁷² Alltel Comments at 7-9; CTIA Comments at 23.

⁷³ The Commission is required by statute to act within a year after receiving a recommendation by the Joint Board. 47 U.S.C. § 254(a)(2); see also *Recommended Decision*, 22 FCC Rcd at 8998, para. 1; *Joint Board 2007 Public Notice*, 22 FCC Rcd at 9023, para. 1.

⁷⁴ See, e.g., CTIA Comments at 6-9; ComspanUSA Comments at 9-11; MidRivers Comments at 7; SouthernLINC Comments at 16-17.

⁷⁵ See GCI May 31 *Ex Parte* Letter at 2.

⁷⁶ See *NTCA 2007 Broadband/Internet Availability Survey Report*, National Telecommunications Cooperative Association, 3 (Sept. 2007) (survey of NTCA member companies that serve primarily rural areas showed that 99 percent of 2007 respondents offer broadband to some parts of their customer base, compared with only 58 percent of respondents in 2000).

⁷⁷ See *Rural Task Force Order*, 16 FCC Rcd at 11321-23, paras. 199-201.

⁷⁸ See *supra* note 19.

B. Design and Implementation of the Cap

1. Operation of the Cap

26. We adopt a cap on competitive ETC support for each state, as recommended by the Joint Board, subject to two limited exceptions described below.⁷⁹ A competitive ETC cap applied at a state level will effectively curb growth, but, given a state's role in designating ETCs, will allow a state the flexibility to direct competitive ETC support to the areas in the state that it determines are most in need of such support.⁸⁰ An interim, state-based cap on competitive ETC support also will avoid creating an incentive for each state to designate as many new ETCs as possible for the sole purpose of increasing support to that state at the expense of other states, which could occur had we adopted a single, nationwide cap. A state-based cap will require newly-designated competitive ETCs to share funding with other competitive ETCs within the state.

27. Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received under the existing (uncapped) per-line identical support rule,⁸¹ and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.

28. For example, if, in State A, the capped amount is \$90 million, and the total uncapped support is \$130 million, the reduction factor would be 69.2 percent ($\$90/\130). In State A, each competitive ETC's uncapped support would be multiplied by 69.2 percent to reduce support to the capped amount. If, in State B, however, the capped amount is \$100 million, and the total uncapped support is \$95 million, there would be no reduction factor because the uncapped amount is less than the capped amount. Finally, if, in State C the base period capped amount is \$0 (i.e., there were no competitive ETCs eligible to receive support in State C in March 2008), then no competitive ETCs would be eligible to receive support in that state during the interim cap. Each quarter, for the duration of the cap, a new reduction factor would be calculated for each state.

⁷⁹ See *infra* paras. 31-34.

⁸⁰ In addition to capping competitive ETC support by state, the Joint Board considered, but declined to recommend, capping competitive ETC support nationwide or by study area. The Joint Board felt that a nationwide cap would provide an incentive for states to designate additional competitive ETCs to increase their share of competitive ETC capped support and would result in competitive ETC support shifting to those states that aggressively designate competitive ETCs during the period of the interim cap. The Joint Board found that capping support at the study area level would foreclose the possibility of support for the duration of the cap for those study areas that currently have no competitive ETCs and would be administratively burdensome. The Joint Board noted that establishing the cap by any particular geographic area would not change the total amount of competitive ETC support available for all competitive ETCs in the nation, but the scope of the geographic territory for the cap affects the distribution of capped support and the administrative complexity of computing capped support. See *Recommended Decision*, 22 FCC Rcd at 9002, para. 9 n. 24. We agree with this analysis by the Joint Board.

⁸¹ See 47 C.F.R. § 54.307.

29. Some commenters argue that, in states where there currently are no competitive ETCs designated, subsequently designated competitive-ETCs will receive no high-cost support while the interim cap remains in place.⁸² The Act does not, however, require that all ETCs must receive support, but rather only that carriers meeting certain requirements be *eligible* for support.⁸³ Section 214(e)(1) of the Act states, "A common carrier designated as an eligible telecommunications carrier . . . shall be *eligible* to receive universal service support in accordance with section 254[.]"⁸⁴ Likewise, section 254(e) of the Act states, "[O]nly an eligible telecommunications carrier designated under section 214(e) shall be *eligible* to receive specific Federal universal service support."⁸⁵ This language indicates that designation as an ETC does not automatically entitle a carrier to receive universal service support.⁸⁶ Moreover, in section 254 of the Act, Congress distinguished between those who are merely "eligible" to receive support and those who are "entitled" to receive benefits.⁸⁷ We find that Congress's careful delineation demonstrates an intention to ascribe different statutory rights. Accordingly, even if imposition of the interim cap results in no support for some competitive ETCs, this result is not inconsistent with the Act.⁸⁸

30. Moreover, there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. Indeed, TracFone Wireless, Inc. (TracFone) sought forbearance from section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support.⁸⁹ TracFone took this step because "offering prepaid plans which make wireless service available to low income users . . . has been a critical component of TracFone's business strategy since the company's inception."⁹⁰ Other ETCs may have

⁸² See, e.g., Alltel Comments at 17-18; Rural Cellular Ass'n Comments at 27; SC Off. of Reg. Staff Comments at 2.

⁸³ 47 U.S.C. §§ 214(e)(1); 254(e) (emphasis added).

⁸⁴ 47 U.S.C. § 214(e)(1) (emphasis added).

⁸⁵ 47 U.S.C. § 254(e) (emphasis added).

⁸⁶ See *Universal Service First Report and Order*, 12 FCC Rcd at 8853, para. 137 ("Indeed, the language of section 254(e), which states that 'only an eligible telecommunications carrier designated under section 214(e) shall be *eligible* to receive' universal service support, suggests that a carrier is not automatically entitled to receive universal service support once designated as eligible."); *Alenco*, 201 F.3d at 620 ("The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*.").

⁸⁷ Compare 47 U.S.C. § 254(e) with 47 U.S.C. § 254(h)(1)(A) (providing that carriers offering certain services to rural health care providers "shall be entitled" to have the difference between the rates charged to health care providers and those charged to other customers in comparable rural areas treated as an offset to any universal service contribution obligation); see also *Transbrasil S.A. Linhas Aereas v. Dep't of Transp.*, 791 F.2d 202, 205 (D.C. Cir. 1986) ("[W]here different terms are used in a single piece of legislation, the Court must presume that Congress intended the terms have different meanings.").

⁸⁸ Some of the Commission's current rules, including sections 54.307(a) and 54.309(a), provide that ETCs "shall receive" universal service support if certain conditions are met. See, e.g., 47 C.F.R. § 54.307(a), 54.309(a). But see 47 C.F.R. § 54.201(d) ("A common carrier designated as an eligible telecommunications carrier . . . shall be *eligible* to receive universal service support in accordance with section 254[.]" (emphasis added)). These rules, which were never intended to mandate support to all ETCs, unduly narrow the Commission's discretion under the statute, which states merely that ETCs "shall be eligible" to receive such support. 47 U.S.C. § 214(e)(1).

⁸⁹ See TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45 (filed June 8, 2004). Forbearance was granted in 2005. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005)

⁹⁰ TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45, 3 (filed Nov. 9, 2004) (Tennessee Petition). This petition was granted in an order (continued....)

similar business strategies. Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service.⁹¹ This would increase a competitive ETC's base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level.⁹²

31. We adopt two limited exceptions to the operation of the interim cap.⁹³ First, consistent with the *ALLTEL-Atlantis Order* and the *AT&T-Dobson Order*, we find it in the public interest to adopt a limited exception to the interim cap if a competitive ETC submits its own costs.⁹⁴ Specifically, a competitive ETC will not be subject to the interim cap to the extent that it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC.

32. Second, we also adopt a limited exception to the interim cap for competitive ETCs that serve tribal lands or Alaska Native regions (the Covered Locations).⁹⁵ We permit competitive ETCs serving Covered Locations to continue to receive uncapped high-cost support for lines served in those Covered Locations. Because many tribal lands have low penetration rates for basic telephone service, we do not believe that competitive ETCs are merely providing complementary services in most tribal lands, as they do generally.⁹⁶

33. Participation in this limited exception to the interim cap is voluntary and will be elected by the competitive ETC on a study area by study area basis. Therefore, any competitive ETC that does not or cannot opt into the limited exception, or that does not or cannot opt into the limited exception for a particular Covered Location, will remain subject to the interim cap as described herein. Support for competitive ETCs that do opt into the limited exception will continue to be provided pursuant to section

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released on April 11, 2008. *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, FCC 08-100 (rel. April 11, 2008) (granting petitions for designation as an eligible telecommunication carrier for the purpose of low-income universal service support in 11 states and the District of Columbia).

⁹¹ See *id.* at 15.

⁹² See, e.g., KAN. STAT. ANN. § 66-2008 (2006) (providing for the creation of a Kansas universal service fund (KUSF) and requiring that carriers be designated as an ETC pursuant to section 214(e)(1) of the Act to receive support from the KUSF).

⁹³ Alaska Telephone Association (ATA) criticized proposals for a limited exception to the interim cap largely because ATA opposed the continued operation of the identical support rule. ATA Reply Comments at 3-4. This issue is better addressed in a rulemaking of general applicability.

⁹⁴ See *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19521, paras 9-10; *AT&T-Dobson Order*, 22 FCC Rcd at 20329-30, paras. 70-72.

⁹⁵ Specifically, Covered Locations are tribal lands or Alaska Native regions as those terms are defined in section 54.400(e) of the Commission's rules. See 47 C.F.R. 54.400(e) (tribal lands or Alaska Native regions are "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments."); see also 47 C.F.R. §§ 54.403(a)(4), 54.409(c) (providing for additional Lifeline and Link Up support for eligible residents living in tribal lands or Alaska Native regions).

⁹⁶ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Report and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11794, 11795, para. 2 (2000) (concluding that "existing universal service support mechanisms are not adequate to sustain telephone subscriberhip on tribal lands.").

54.307 of the Commission's rules, except that the uncapped per line support is limited to one payment per each residential account.⁹⁷ If a competitive ETC serves lines in both Covered Locations and non-Covered Locations (or only Covered Locations), the universal service administrator shall determine the amount of additional support – after application of the interim cap – necessary to ensure that a competitive ETC receives the same per-line support amount as the incumbent LEC for the lines qualifying for the exception.⁹⁸

34. Finally compliance with the terms of this limited exception will be verified through certification and reporting requirements.⁹⁹ Specifically, a competitive ETC seeking to receive high-cost support pursuant to this limited exception must certify the number of lines that meet the limited exception requirements.¹⁰⁰ The competitive ETC also must provide a specific description of how it confirmed that it had met the certification threshold.¹⁰¹

35. Even with the total amount of support provided to competitive ETCs being capped, continued growth in competitive ETC lines would have the effect of reducing the amount of interstate access support (IAS) received by incumbent LECs, due to the operation of the formula for calculating IAS.¹⁰² To prevent the implementation of the interim cap on competitive ETC support from having this unintended consequence on incumbent LEC support, we find it necessary to adjust the calculation of IAS for both incumbent LECs and competitive ETCs. Accordingly, we divide IAS into separate pools for incumbent LECs and competitive ETCs and separately cap the amount of IAS support for both types of carriers.¹⁰³ The annual amount of IAS available for incumbent LECs shall be set at the amount of IAS that incumbent LECs were eligible to receive in March 2008 on an annual basis.¹⁰⁴ This amount shall be indexed annually for line growth or loss by price cap incumbent LECs.¹⁰⁵ The annual amount of IAS available for competitive ETCs shall be set at the amount of IAS that competitive ETCs were eligible to receive in March 2008 on an annual basis.¹⁰⁶ Subject to these constraints, we direct USAC to calculate and distribute IAS for each pool to eligible carriers consistent with the existing IAS rules.¹⁰⁷

⁹⁷ 47 C.F.R. § 54.307.

⁹⁸ For example, if the uncapped per-line support amount in a competitive ETC's service area is \$10 per line, but the application of the interim cap reduces the per-line support amount to \$8 per line, the competitive ETC would receive an additional \$2 for each qualifying line in a Covered Location.

⁹⁹ See GCI May 31 *Ex Parte* Letter at 3.

¹⁰⁰ In order to qualify for the exception, the competitive ETC must certify the number of qualifying lines each time it files line count data with the universal service administrator.

¹⁰¹ Competitive ETCs must also comply with the document retention requirements for any such documentation. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16383-84, para. 24. (2007).

¹⁰² See 47 C.F.R. §§ 54.800-54.808; see also Letter from David B. Cohen, Vice-President, Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 96-45 (filed November 21, 2007) (USTelecom IAS Letter).

¹⁰³ See USTelecom IAS Letter at 1-2.

¹⁰⁴ See *infra* section III.B.3 (Base Period for the Cap).

¹⁰⁵ See USTelecom IAS Letter at 2.

¹⁰⁶ See *infra* section III.B.3 (Base Period for the Cap).

¹⁰⁷ Nothing in this order is intended, or shall be construed by USAC, to alter the annual IAS targeted cap amount of \$650 million. See 47 C.F.R. § 54.801(a).

2. Length of Time

36. In light of the harm to the sustainability of the universal service fund posed by the dramatic growth of support to competitive ETCs, we find that the cap we adopt today should become effective as soon as possible.¹⁰⁸ The cap will, therefore, commence as of the effective date of this Order.

37. We emphasize that the cap on competitive ETC support that we adopt here is only an interim measure to slow the current explosion of high-cost universal service support while the Commission considers further reform. We remain committed to comprehensive reform of the high-cost universal service support mechanisms. The Commission has three outstanding rulemaking proceedings that consider comprehensive reform of high-cost universal service support.¹⁰⁹ The Commission plans to move forward on adopting comprehensive reform measures in an expeditious manner. The Commission commits to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the pending *Reform Notices*.¹¹⁰ We therefore do not believe that a fixed sunset date, as proposed by some commenters, is necessary or provides additional benefit.¹¹¹

3. Base Period for the Cap

38. Although we adopt the Joint Board's recommendation that the cap on competitive ETC support be set at the level of competitive ETC support actually distributed in each state, rather than set such a cap at the level of support actually distributed in 2006, we find it is more appropriate to set such a cap at the level of support competitive ETCs were eligible to receive during March 2008 on an annualized basis. Specifically, for each state, the annual interim cap shall be set at twelve times the level of support that all competitive ETCs were eligible to receive in that state for the month of March 2008. Using March 2008 data allows use of more recent actual support amounts than 2006. Use of March 2008 as the base period, moreover, will ensure that funding levels will not undermine the expectations underlying competitive ETC investment decisions or result in immediate funding reductions.¹¹² Further, consistent with our decision to cap competitive ETC support on an interim basis, we find it inappropriate and counterproductive to index the cap to a growth factor.

39. Although the interim cap that we adopt today applies only to the amount of support available to competitive ETCs, it does not restrict the number of competitive ETCs that may receive support. In fact, as part of this Order, we grant, to the extent described in Appendix B, numerous applications for ETC designation currently pending before the Commission. As described in more detail in Appendix B, we find that the applicants have met the Commission's requirements for designation. We also amend an ETC designation as described in Appendix C. These designations, however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.

¹⁰⁸ Because the limited exception that we adopt herein will trigger additional Paperwork Reduction Act requirements, the limited exception will not become effective until the relevant reporting and recording requirements are approved by the Office of Management and Budget.

¹⁰⁹ See *infra* note 19.

¹¹⁰ See *infra* para. 4.

¹¹¹ See Alltel Comments at 21-23.

¹¹² See Dobson Comments at 14 ("The Commission should not disturb competitive ETCs' expectations by picking a point in the past as the base period for the cap."); see also Alltel Comments at 20-21; CTIA Comments at 28-29.

IV. PROCEDURAL MATTERS**A. Final Regulatory Flexibility Analysis**

40. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") of the possible significant economic impact on small entities of the policies and rules addressed in this Order.¹¹³ The FRFA is set forth in Appendix D.

B. Paperwork Reduction Act Analysis

41. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹¹⁴ It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."¹¹⁵

42. In this present document, we have assessed the effects of demonstrating compliance with the exception to the interim cap, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. First, we note that compliance with the exception is voluntary – small business concerns are not required to comply with the information collection. In addition, compliance with the exception will be elected by carriers on a study area by study area basis. Carriers need only provide additional information on the study areas for which they elect to rely on the exception to the interim cap.

C. Congressional Review Act

43. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹¹⁶

V. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 303(r), 403, 405, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 303(r), 403, 405, and 410, that this Order in CC Docket No. 96-45 and WC Docket No. 05-337 IS ADOPTED.

45. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), the petitions for eligible telecommunications carrier designation as set forth in Appendix B ARE GRANTED, DENIED, OR DISMISSED WITHOUT PREJUDICE to the extent described therein and, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), SHALL BE effective thirty days after publication in the

¹¹³ See 5 U.S.C. § 604.

¹¹⁴ Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

¹¹⁵ Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

¹¹⁶ See 5 U.S.C. § 801(a)(1)(A).

Federal Register, except where redefined service areas require the agreement of a state commission as described therein.

46. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 54.207(d) and (e) of the Commission's rules, 47 C.F.R. §§ 54.207(d) and (e), the requests to redefine the service areas of the rural telephone companies described in Appendix B, ARE GRANTED, DENIED, or GRANTED IN PART AND DENIED IN PART to the extent described therein and SUBJECT TO the agreement of the relevant state commissions with the Commission's redefinition of the relevant service areas, if not previously redefined as described therein.

47. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted by the Office of the Secretary to the relevant state commissions and the Universal Service Administrative Company.

48. IT IS FURTHER ORDERED that the petitioners set forth in Appendix B SHALL SUBMIT additional information pursuant to sections 54.202(a) of the Commission's rules, 47 C.F.R. §§ 54.202(a).

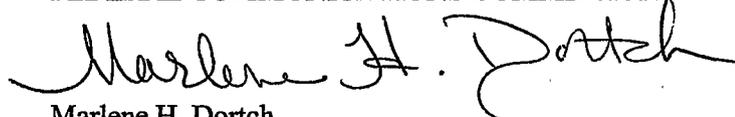
49. IT IS FURTHER ORDERED that NEP Cellcorp, Inc.'s Motion to Strike IS DISMISSED AS MOOT as described in Appendix B.

50. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), RCC Minnesota, Inc. and RCC Atlantic, Inc.'s ETC designation in New Hampshire is amended as set forth in Appendix C.

51. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

52. IT IS FURTHER ORDERED, that this Order SHALL BE EFFECTIVE thirty days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Initial Comments

<u>Commenter</u>	<u>Abbreviation</u>
Alaska Telephone Association	ATA
Alexicon Telecommunications Consulting	Alexicon
Alltel Communications, Inc.	Alltel
AT&T Inc.	AT&T
Blackfoot Telecommunications Group	Blackfoot
California Public Utilities Commission	CPUC
Centennial Communications Corp.	Centennial
CenturyTel, Inc.	CenturyTel
Chinook Wireless	
MTPCS, LLC d/b/a Chinook	Chinook Wireless
Comcast Corporation	Comcast
COMPTEL	COMPTEL
ComspanUSA	ComspanUSA
Corporation Commission of the State of Kansas	KCC
Corr Wireless Communications, LLC	Corr
CTIA – The Wireless Association®	CTIA
DialToneServices, L.P.	DialToneServices
Dobson Cellular Systems, Inc.	Dobson
Embarq Corporation	Embarq
ETS Telephone Company, Inc.	
f/k/a Kingsgate Telephone, Inc.	ETS
Fred Williamson and Associates	Fred Williamson & Associates
Frontier Communications	Frontier
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Idaho Public Utilities Commission	IPUC
Independent Telephone and Telecommunications Alliance	ITTA
Iowa Telecommunications Association	Iowa Telecommunications Ass'n
Iowa Utilities Board	IUB
Corporation Commission of the State of Kansas	Kansas State Corporation Comm'n
Maine Public Utilities Commission	MPUC
Midcontinent Communications	Midcontinent
Mid-Rivers Telephone Cooperative, Inc.	MRTC
Minnesota Independent Coalition	MIC
Montana Public Service Commission	MTPSC
Montana Telecommunications Association	MTA
National Association of State Utility Consumer Advocates	NASUCA
National Exchange Carrier Association, Inc.	NECA
National Telecommunications Cooperative Association	NTCA
Navajo Nation Telecommunications Regulatory	
Commission	NNTRC
Nebraska Public Service Commission	NPSC
Nebraska Rural Independent Telephone Companies	

and South Dakota Telecommunications Association	Nebraska Rural Independent Cos and South Dakota Telecommunications Ass'n
New Jersey Board of Public Utilities	New Jersey Board of Public Utilities
New York State Department of Public Service	New York Department of Public Service
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Public Utilities Commission of Ohio	Ohio Commission
Rural Cellular Association and the Alliance of Rural CMRS Carriers	Rural Cellular Ass'n and Alliance of Rural CMRS Carriers
Rural Independent Competitive Alliance	RICA
Rural Iowa Independent Telephone Association	Rural Iowa Independent Telephone Ass'n
Rural Telecommunications Group, Inc.	Rural Telecommunications Group
Small Company Committee of the Louisiana Telecommunications Association (Louisiana Rural Telephone Companies)	Small Company Committee of the Louisiana Telecommunications Ass'n
South Carolina Office of Regulatory Staff	South Carolina Office of Regulatory Staff
Southern Communications Services, Inc. d/b/a SouthernLINC Wireless	SouthernLINC
Sprint Nextel Corporation	Sprint Nextel
State Independent Telephone Association of Kansas and Independent Telecommunications Group	State Independent Telephone Ass'n of Kansas and Independent Telecommunications Group
SureWest Communications	SureWest
TCA, Inc. – Telecom Consulting Associates	TCA
TDS Telecommunications Corp.	TDS
Telecommunications Association of Michigan	TAMI
Telephone Association of Maine	Telephone Ass'n of Maine
Tennessee Telecommunications Association	Tennessee Telecommunications Ass'n
Texas Statewide Telephone Cooperative, Inc.	Texas Statewide Telephone Cooperative, Inc.
Total Communications, Inc.	Total Communications, Inc. et al.
FairPoint Communications (formerly Chouteau Telephone Company)	TracFone
Pine Telephone Company, Inc.	Unicom
Pine Cellular Phones, Inc.	
Grand Telephone Company, Inc.	
TracFone Wireless, Inc.	
Unicom, Inc.	
United States Cellular Corporation and Rural Cellular Corporation	US Cellular and Rural Cellular Corp.
United States Telecom Association	USTelecom
Valley Telephone Cooperative, Inc.	Valley Telephone Cooperative
Verizon and Verizon Wireless	Verizon and Verizon Wireless
Western Telecommunications Alliance	Western Telecommunications Alliance
Windstream Communications, Inc.	Windstream

Wisconsin State Telecommunications Association

Wisconsin State Telecommunications
Ass'nReply Comments

<u>Commenter</u>	<u>Abbreviation</u>
Alaska Telephone Association	ATA
Alltel Communications, Inc.	Alltel
Arizona Corporation Commission	Arizona Commission
CTIA – The Wireless Association	CTIA
DialToneServices, L.P.	DialToneServices
Dobson Cellular Systems, Inc.	Dobson
Embarq Corporation	Embarq
Five State Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners	Five MACRUC States
Florida Public Service Commission	FPSC
Fred Williamson and Associates, Inc.	Fred Williamson & Associates
General Communication, Inc.	GCI
Golden West Telecommunications Cooperative, Inc.	Golden West
GVMW Consulting, Inc.	GVMW
Independent Telephone and Telecommunications Alliance	ITTA
Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services and Panhandle Telecommunication Systems, Inc.	Chariton
Montana Telecommunications Association	MTA
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
Nebraska Rural Independent Telephone Companies and South Dakota Telecommunications Association	Nebraska Rural Independent Cos and South Dakota Telecommunications Ass'n
New Jersey Division of Rate Counsel	NJ Rate Counsel
New York State Telecommunications Association, Inc.	NYSTA
Ohio Telecom Association	OTA
Oregon Telecommunications Association Small Company Committee and Washington Independent Telephone Association	WITA
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pennsylvania Public Utility Commission	PaPUC
Qwest Communications International Inc.	Qwest
Rural Cellular Association and the Alliance of Rural CMRS Carriers	Rural Cellular Ass'n and Alliance of Rural CMRS Carriers
Rural Iowa Independent Telephone Association	Rural Iowa Independent Telephone Ass'n
Scott Wallsten, Sr. Fellow and Director of Communications Policy Studies at the Progress & Freedom Foundation Small Company Committee of the Louisiana Telecommunications Association	Wallsten

(Louisiana Rural Telephone Companies)

South Carolina Telephone Coalition
Southern Communications Services, Inc. d/b/a
SouthernLINC Wireless
Sprint Nextel Corporation
State Independent Telephone Association of Kansas
and Independent Telecommunications Group

SureWest Communications
TDS Telecommunications Corp.
Texas Statewide Telephone Cooperative, Inc.

T-Mobile U.S.A., Inc.
Totah Communications, Inc.
FairPoint Communications (formerly
Chouteau Telephone Company)
Pine Telephone Company, Inc.
Pine Cellular Phones, Inc.
Grand Telephone Company, Inc.
TracFone Wireless, Inc.
United States Cellular Corporation and
Rural Cellular Corporation
Verizon and Verizon Wireless
Western Telecommunications Alliance

Small Company Committee of the
Louisiana Telecommunications Ass'n
SCTC

SouthernLINC
Sprint Nextel

State Independent Telephone Ass'n of
Kansas and Independent
Telecommunications Group

SureWest
TDS
Texas Statewide Telephone
Cooperative, Inc.
T-Mobile

Totah Communications, Inc. *et al.*
TracFone

US Cellular and Rural Cellular Corp.
Verizon and Verizon Wireless
Western Telecommunications Alliance

APPENDIX B

Alltel Communications, Inc., et al.
Petitions for Designation as Eligible Telecommunications Carriers

I. INTRODUCTION

1. As stated in paragraph 44 of this Order, we grant, deny, or dismiss without prejudice as discussed below 22 petitions for designation as eligible telecommunications carriers (ETCs) filed by 14 entities pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act) (collectively, Petitions).¹ We also redefine the service areas of certain rural telephone companies to the extent described herein.

II. BACKGROUND**A. The Act**

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."² Pursuant to section 214(e)(1) of the Act, a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.³

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁴ Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject

¹ 47 U.S.C. § 214(e)(1). A list of the Petitions is set forth in Exhibit 1. We note that many of the Petitioners filed amendments and/or supplements to their petitions. The term Petitions, as used herein, includes any such amendments and supplemental filings. Exhibit 1 also provides abbreviations for the entities, petitions, amendments, and supplemental filings cited in this Order.

We note that AT&T Wireless Services, Inc. (AWS) initially filed a petition for designation as an ETC in the state of Alabama for itself and on behalf of AirCom PCS, Inc., Tritel C/F Holding Corp., Tritel A/B Holding Corp, AT&T Wireless PCS, LLC, and QuinComm, Inc. *See generally* AWS Alabama Petition. After its merger with AWS, Cingular Wireless LLC filed amendments to the petition to reflect the merger, remove all rural study areas, and amend the non-rural areas for which it requests designation. *See* Cingular Alabama Amendment. Cingular Wireless LLC now wholly owns or controls all of the licenses at issue in the instant matter: New Cingular Wireless PCS, LLC, Blue Licenses Holding, LLC, and Orange Licenses Holding, LLC. *See id.* at 2 and Exhibit D. We refer to Cingular Wireless LLC and any of the associated entities holding the licenses at issue herein collectively as Cingular. Based on Cingular's representations, we evaluate the AWS petition and the Cingular amendments as unified pleadings.

We further note that U.S. Cellular acquired control of Tennessee RSA No. 3 Limited Partnership d/b/a Eloqui (Eloqui) after Eloqui filed its petition for designation as an ETC in the state of Tennessee. *See* U.S. Cellular Tennessee Amended Petition at 2. We evaluate the Eloqui Petition and the U.S. Cellular amendments thereto as unified pleadings.

² 47 U.S.C. § 254(e).

³ 47 U.S.C. § 214(e)(1); *see also* 47 C.F.R. § 54.201(d).

⁴ 47 U.S.C. § 214(e)(2); *see Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

to the jurisdiction of a State commission.”⁵ Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).⁶ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁷

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner meets the definition of a “rural telephone company” under section 3(37) of the Act, the identity of its study area, or, if the petitioner is not a “rural telephone company,” a detailed description of the geographic service area for which it requests an ETC designation from the Commission.⁸

5. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.⁹ Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service (Joint Board), the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.¹⁰ These additional requirements are mandatory for all ETCs designated by the Commission.¹¹ ETCs already

⁵ 47 U.S.C. § 214(e)(6).

⁶ *Id.*

⁷ *Id.*

⁸ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*); see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004) (*Highland Cellular Order*).

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*).

¹⁰ See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, 4261, para. 5 (Fed-State Jt. Bd. 2004)).

¹¹ 47 C.F.R. § 54.202(a).