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

REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES

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SUMMARY

Many commenters in this proceeding recognize that the existing high-cost support system for rural ILECs, based on their embedded network costs, has been highly successful and accountable and should be retained. Commenters point to the direct link the system establishes between the actual cost of rural carriers' network investments and the support amounts they receive. This link enables rural ILECs to function as reliable COLRs, making available high-quality telecommunications services at affordable rates to all of the consumers in their territories. Also, the success of many rural ILECs in making advanced services available to a significant percentage of their customer base is, in large part, attributable to the embedded cost-based support system.

The Commission should reject the suggestion that rural ILECs' support be made "fully portable" by freezing or capping their per-line support. This suggestion fails to grasp that the high-cost support rural ILECs receive as COLRs is not intended to support individual lines; it is intended to encourage investment in high-quality *networks* capable of delivering *universal* service throughout high-cost service areas. In addition, the proposal to develop a unified support system for all ILECs fails to consider the substantial market and operational differences between rural and non-rural carriers.

While wholesale changes to the existing rural ILEC support system are uncalled for, there are several updates to the system that the Commission should make in order to reflect the emerging broadband-oriented marketplace for communications services. First, an access charge replacement mechanism should be established for rural RoR ILECs to address the downward trend in their billable access minutes. Second, the Commission should provide support to offset the high transport costs that many rural ILECs incur in

reaching the Internet backbone. Finally, the Commission should remove the indexed cap on the HCLS mechanism to provide rural ILECs with greater incentives and ability to upgrade their loop facilities. At the very least, the cap should be re-based.

A long list of commenters recognize that the identical support rule has been responsible for all of the unnecessary growth in the High-Cost program and has likely provided many competitive ETCs with support amounts that exceed any reasonable definition of "sufficiency." As many commenters recommend, support for competitive ETCs should be based on a demonstration of their own costs, at least in rural service areas. As it does for rural ILECs, cost-based support for competitive ETCs would ensure that their funding is no more than "sufficient." It would also establish accountability for how these carriers use the support they receive and would provide the proper incentives for its use in high-cost areas. There is nothing inappropriately regulatory or unnecessarily burdensome about requiring a carrier that voluntarily applies for ETC status to document its own costs before it may qualify for funds that are ultimately collected from the nation's ratepayers.

A number of commenters, like OPASTCO, support the establishment of mechanisms for mobility and broadband services that are separate and distinct from the mechanisms designed for rural ILECs that serve as COLRs. These new mechanisms, however, should not reduce in any way the funding that rural ILECs presently receive through the existing cost-based mechanisms that also support broadband-capable facilities. In addition, the Commission should not adopt an overall cap on the High-Cost program, which fails to consider the level of funding necessary to achieve the universal service objectives of Congress and the Joint Board. Instead, it should wait to observe the significant savings that will likely result from eliminating the identical support rule. It should also require all facilities-based broadband Internet access providers to contribute equitably to the USF.

Finally, a diverse group of commenters oppose the adoption of a reverse auction support mechanism, at least for determining the COLR and its support amount in rural service areas. Reverse auctions would discourage investment in rural wireline infrastructure due to the loss of confidence rural ILECs would have regarding the ability to recover their network costs. In addition, the uncertainty of rural ILECs' cost recovery would reduce their ability to secure financing for network upgrades. Reverse auctions also fail to consider the reliance of non-wireline services, such as wireless and VoIP, on the public switched network.

Of the relatively small number of commenters that are supportive of reverse auctions, most focus almost entirely on their ability to drive down the size of the USF to the lowest level possible. However, these commenters fail to explain how the universal service objectives of the 1996 Act would be achieved. At best, reverse auction winners would be incented to do the bare minimum necessary to fulfill the universal service obligations established by the Commission. At worst, winners would fail to fulfill their universal service obligations, and there may not be a backup carrier willing or able to take over the role of COLR for rural consumers. Therefore, the Commission should retain the embedded cost-based support system for rural ILECs so that consumers in these territories can continue to gain access to affordable and "reasonably comparable" communications services, including advanced services, as called for by the 1996 Act.

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I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to comments filed on the three Notices of Proposed Rulemaking (NPRM) released on January 29, 2008 addressing proposals for comprehensive reform of the High-Cost universal service program.[1] OPASTCO is a national trade association representing over 600 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 5.5 million customers. Almost all of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). OPASTCO

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

members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. These include broadband Internet services, video services, mobile wireless services, long distance resale, and competitive local exchange service.

The record in this proceeding supports maintaining the existing embedded cost-based support system for rural ILECs, which has enabled these carriers to efficiently and accountably achieve the relevant universal service goals established by Congress in the Telecommunications Act of 1996 (1996 Act, the Act) and by the Federal-State Joint Board on Universal Service (Joint Board). This includes the ubiquitous provision of affordable, high-quality wireline telecommunications services by a reliable carrier of last resort (COLR) and the widespread deployment of broadband Internet services. However, the support system for rural ILECs should be updated to reflect the emerging broadband-oriented marketplace by establishing mechanisms for access charge replacement and high transport costs. Also, the cap on high-cost loop support (HCLS) should be lifted or, at the very least, re-based.

OPASTCO agrees with the overwhelming number of commenters that call for the elimination of the identical support rule for competitive eligible telecommunications carriers (ETCs). This rule has been the cause of all of the unnecessary growth in the High-Cost program and has generally failed to encourage competitive carriers to extend service into truly high-cost areas. In its place, at least in rural service areas, competitive ETCs should receive support based on a demonstration of their own costs.

There is support in the record for establishing support mechanisms for mobility and broadband, separate and apart from the mechanisms utilized by rural ILECs that serve as COLRs. However, care should be taken that these mechanisms do not negatively affect the mechanisms utilized by rural ILECs. In addition, the Commission should not adopt an arbitrary overall cap on the High-Cost program, which fails to consider the cost of achieving the program's goals. Furthermore, an overall cap may not even be necessary once other measures are taken, such as elimination of the identical support rule and requiring all facilities-based broadband Internet access providers to contribute to the Universal Service Fund (USF).

Finally, the Commission should abandon its consideration of a reverse auction mechanism, at least for determining the COLR and its support amount in rural service areas. Many commenters discuss the numerous and substantial risks that reverse auctions would pose to the provision of universal service in high-cost areas. There is no point in jeopardizing the availability of affordable, high-quality communications services to consumers in rural service areas when the existing support system for rural ILECs has been a proven success in achieving the universal service objectives of the 1996 Act and the Joint Board.

II. THE EXISTING SUPPORT SYSTEM FOR RURAL ILECS HAS BEEN HIGHLY SUCCESSFUL AND ACCOUNTABLE IN ACHIEVING THE GOALS OF UNIVERSAL SERVICE AND THEREFORE ONLY REQUIRES UPDATING TO REFLECT AN INCREASINGLY BROADBAND-ORIENTED MARKETPLACE

A. The existing high-cost support system for rural ILECs should remain intact, based on their study area embedded network costs

Many commenters, like OPASTCO, recognize that the existing high-cost support system for rural ILECs, based on their study area embedded network costs, has been a tremendous success and should be retained.[2] These commenters point to the direct link that the embedded cost-based support system establishes between rural carriers' network investments and the support amounts they receive. This link provides rural ILECs with a necessary degree of certainty that they will have the opportunity to recover a portion of the costs of those investments and related operating expenses. Without the connection between support received and actual costs incurred, it would be exceedingly difficult for rural ILECs to function as COLRs, making available modern, high-quality telecommunications services at affordable rates to all of the consumers in their territories, no matter how high-cost they may be to serve.[3]

Also, as the Joint Board recognized, the achievements of many rural ILECs in making advanced services available to a significant percentage of their customer base is, in large part, attributable to the embedded cost-based support system.[4] Even AT&T acknowledges that rate of return (RoR)-regulated ILECs (which, in most cases, are also rural ILECs), "…have in large part accomplished this progress [in the deployment of broadband facilities] primarily through the funding they receive from the existing federal

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[2] *For example,* CenturyTel, Inc. (CenturyTel), pp. 18-19; TDS Telecommunications Corporation (TDS), p. 5; Independent Telephone and Telecommunications Alliance (ITTA), pp. 5-8; Western Telecommunications Alliance (WTA), p. 15; National Exchange Carrier Association, Inc. (NECA), pp. 14-17; Alaska Telephone Association (ATA), p. 8; Montana Telecommunications Association (MTA), p. 20; Iowa Telecommunications Association (ITA) (Reverse Auctions comments), p. 4; Utah Rural Telecom Association (URTA), p. 5; Missouri Small Telephone Company Group (MoSTCG), pp. 2, 4; GVNW Consulting, Inc. (GVNW), p. 26; National Telecommunications Cooperative Association (NTCA), p. 18.

[3] *See*, WTA, p. 14 ("If the high-cost support that comprises a critical portion of their revenue streams becomes unpredictable and/or insufficient, most rural ILECs will be unable to maintain their existing POLR networks, much less to make the substantial future broadband infrastructure investments that will be required to provide reasonably comparable services.").

[4] *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20484, ¶30 (2007) (Recommended Decision).

high-cost mechanisms."[5] Consequently, AT&T does not recommend any major change in the support system for these carriers.

Commenters also point to the fact that the embedded cost-based support system for rural ILECs is highly accountable to the public. As ITTA explains, "USF is provided only for verifiable costs subject to intense scrutiny for adherence to NECA, USAC, and often state commission requirements."[6]

Competitive ETC interests, mostly wireless carriers, trot out their same tired argument that rural ILECs' support system is economically "inefficient" because they do not lose support when a customer cancels their service subscription, thereby causing the per-line support for the remaining customers to increase. Their solution is that rural ILECs' support should become "fully portable," which could be achieved by freezing or capping their per-line support when a competitive ETC has entered the market.[7] The majority of these commenters offer this recommendation as a way to perpetuate the highly flawed identical support rule, and to continue to receive support based on costs unrelated to their own.

More importantly, though, the "full portability" proposal fails to grasp that the high-cost support rural ILECs receive as COLRs is not intended to support individual lines; it is intended to encourage investment in high-quality *networks* capable of

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[5] AT&T Inc. (AT&T), p. 24. *See also*, TDS, p. 5 ("…the structure of the current universal service funding system for rural ILECs provides incentives to continually increase this level of [advanced services] availability.).

[6] ITTA, p. 10. *See also,* CenturyTel, p. 18 ("Embedded costs are also especially amenable to auditing, as support is based on investment already made.").

[7] Rural Cellular Association and the Alliance of Rural CMRS Carriers (RCA-ARC), pp. 11, 16, 30, 59, 65, 75; United States Cellular Corporation (U.S. Cellular), pp. 9, 14, 58; Alltel Communications, LLC (Alltel), pp. 5, 22; Cellular South, Inc. (Cellular South), pp. 7-9; Centennial Communications Corp. (Centennial), pp. 6-7; MTPCS, LLC d/b/a Chinook Wireless (Chinook Wireless), pp. 4-5; Time Warner Telecom Inc. (TWTC), pp. 12, 15; T-Mobile USA Inc. (T-Mobile) pp. 10-11; National Cable & Telecommunications Association (NCTA), p. 13; Verizon and Verizon Wireless (Verizon), p. 24; CTIA – The Wireless Association (CTIA), p. 26.

delivering *universal* service throughout high-cost service areas. It is these networks, and not just the lines themselves, that enable carriers to provide high-quality voice-grade and advanced communications services. Although a rural ILEC's per-line support increases when its line count decreases, its total network support remains the same, holding other variables constant.

Major components of a rural ILEC's network costs are fixed and, within a reasonable range of output, do not go up or down significantly as individual lines are added or disconnected by consumers.[8] The loops in a rural ILEC's network are a sunk cost; they are already in place and represent real cost, regardless of whether or not they are being utilized at a particular point in time. Also, in many states, ILECs must maintain disconnected lines under COLR obligations that require them to reinstate service within a specified timeframe, and must provide E911 service to otherwise "disconnected" lines.[9] These regulations further narrow the difference between maintaining a live or "lost" line. The FCC has even recognized that "…an incumbent carrier's loss of subscriber lines…is unlikely to be offset by a corresponding reduction in its total embedded cost of service."[10] As a result, the Commission previously declined to freeze per-line support, finding that it may have the unintended consequence of discouraging investment in rural

[8] *See*, CenturyTel, p. 15 ("The major expense and risk for providers of last resort remain in the construction of networks, whether the customers are few or many, whether the product bundle is a basic service or includes multiple features.").

[9] *See*, NECA, pp. 12-13 ("These carriers must 'stand ready' to act as the consumers' safety net and provide services to customers presently served by other carriers who choose to cease operations. As carriers of last resort, ILECs are also responsible for deploying network facilities to provide service, as well as maintaining in-place networks to handle 'just-in-case' situations in the event a customer opts to drop service from the competitive service provider.").

[10] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11294, ¶125 (2001)(Rural Task Force Order).

infrastructure.[11] Nothing has changed since that time to alter the soundness of that conclusion.

Indeed, if rural ILECs were to lose support whenever service on a line was canceled, it would have a chilling effect on network investment since carriers would be uncertain as to whether they will have the opportunity to recover the costs of those investments. For certain, rural carriers' ongoing efforts to deploy and improve broadband services throughout their territories would be severely hampered. In addition, a cap or freeze on per-line support would be particularly problematic in the aftermath of a natural disaster, such as an ice storm or hurricane, when facilities need to be restored. Moreover, it must be remembered that "[i]t is the…carriers of last resort that supply the backbone of the country's public switched telephone system, on which competitive carriers typically rely for backhaul and interconnection."[12] Thus, if rural ILECs' networks deteriorate as a result of unpredictable and/or insufficient support, so too will the services offered by other providers, including mobile wireless and Internet protocol (IP)-enabled services.[13]

Also, to the extent that rural ILECs are losing lines, the primary cause is not wireless carrier competition. As the Commission recently acknowledged, "…wireless competitive ETCs do not capture lines from…incumbent LEC[s] to become a customer's sole service provider, except in a small portion of households."[14] Rather, as NECA states, "…loss of lines in rural telephone company areas is more likely attributable

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[11] *Id.*, 16 FCC Rcd 11296, ¶129.
[12] ATA, pp. 7-8.
[13] *See,* CenturyTel, p. 14 ("The popular view that IP and wireless services are replacing wireline services distorts the critical reliance of these services on the modern wireline network.").
[14] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 08-122 (rel. May 1, 2008), ¶20 (Competitive ETC Interim Cap Order).

to…the replacement of second lines by broadband and cable (where available) for connection to the Internet…"[15] Therefore, the Commission should not institute a "full portability" rule that would actually penalize rural ILECs for losing lines as a result of their broadband availability. This would only serve to discourage and hinder these carriers' continued efforts to extend and upgrade their broadband service offerings, contrary to the goals of sections 254 and 706 of the 1996 Act.

Another proposal made by a few commenters is to truncate the definition of "rural" for high-cost universal service purposes, whereby rural ILECs with some arbitrary number of lines in a state would be transitioned to the support mechanism used for non-rural carriers (or a variation thereof).[16] Some other commenters go even further and recommend that the Commission proceed with developing a unified support mechanism for all ILECs.[17] The Commission should reject all of these proposals and continue to bifurcate the High-Cost program for ILECs based upon whether or not a carrier meets the 1996 Act's definition of "rural telephone company."

Those parties recommending that a certain subset of larger rural telephone companies receive support via the non-rural support mechanism generally assert that those companies have characteristics that are more similar to non-rural carriers. But what these commenters fail to recognize is that just because a carrier is "rural" for high-cost universal service purposes does not guarantee that it will receive high-cost support. Under the rural High-Cost program, a rural ILEC receives HCLS only to the extent that

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[15] NECA, p. 11.

[16] Verizon, pp. 23-24; CTIA, p. 26; National Association of State Utility Consumer Advocates (NASUCA) (Recommended Decision comments), pp. 37-38.

[17] Connecticut Department of Public Utility Control (CTDPUC), p. 5; Maine Public Utilities Commission, ConnectME Authority, Wyoming Public Service Commission, and Vermont Department of Public Service (ME PUC, WY PSC, VT DPS), p. 10; NASUCA (Recommended Decision comments), pp. 56-57.

its embedded costs exceed certain cost benchmarks. Therefore, if a rural carrier has characteristics that help to lower its costs, such as economies of scale or a more densely populated service territory, it will automatically factor into the amount of support that it receives, if any, under the rural program.

While there is no chance of any rural ILEC receiving unjustified high-cost support if the statutory definition of "rural telephone company" continues to be used as a bifurcation point, narrowing the definition of "rural" poses great risk to the customers of the affected carriers. Under a narrowed definition, rural ILECs serving high-cost areas that are arbitrarily deemed "non-rural" for universal service purposes would likely receive insufficient support to maintain and upgrade their network infrastructure, causing service quality to decline. Insufficient support would also place significant upward pressure on local rates, potentially causing them to no longer be reasonably comparable with urban rates, and possibly even unaffordable.

Regarding the suggestion that a unified support system be developed for all ILECs, this fails to consider the substantial market and operational differences that exist between rural and non-rural carriers.[18] Non-rural ILECs are some of the nation's largest corporations, and the rural territories that they serve comprise just a very small portion of their entire service areas. Rural ILECs, in stark contrast, are small and mid-size carriers that serve only a tiny fraction of the lines served by the largest non-rural carriers. Their territories, in most cases, are almost entirely rural and lack the large, low-cost urban centers that have enabled non-rural carriers to counterbalance the cost of serving their high-cost customers.

[18] *See*, WTA, p. 10 ("…major differences between service areas, financial resources, investment incentives and support needs of small and large ILECs warrant the continued maintenance of separate...mechanisms and programs for rural and non-rural carriers."). *See also*, ATA, pp. 10-11.

Had Congress believed that the same policies and regulations should be applied to all ILECs serving rural areas, it would have never bothered to establish a "rural telephone company" definition, or crafted special provisions for the designation of additional ETCs in these carriers' service areas.[19] In addition, the FCC has acknowledged that "[i]n implementing the universal service provisions of the 1996 Act, the Joint Board and the Commission have consistently recognized that rural carriers face diverse circumstances and that 'one size does not fit all' in considering universal service mechanisms that are appropriate for rural carriers."[20] Therefore, the Commission should continue to maintain a distinct rural high-cost support program for all ILECs that fall under the Act's definition of "rural telephone company," which has been effective in targeting the proper amount of support to carriers serving predominantly rural and high-cost areas.

Finally, a handful of commenters recommend that the existing "voice-grade" or "narrowband" support mechanisms be phased out and that only broadband services be supported.[21] In most cases, these commenters do not propose precisely what the existing support mechanisms would be replaced with, and where they do, the recommendations are ill-conceived at best.[22] While some of these recommendations may be well-meaning, they should nevertheless all be dismissed.

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[19] 47 U.S.C. §214(e)(2).

[20] Rural Task Force Order, 16 FCC Rcd 11247, ¶4.

[21] Benton Foundation, pp. 3-4, 36; Information Technology Industry Council (ITI), p. 2, 5; Telecommunications Industry Association (TIA), pp. 6-7; Alltel, pp. 12-14, 21-22; Cellular South, p. 12.

[22] Alltel's proposal, for example, would eliminate the existing support mechanisms, and permit wireline carriers to receive high-cost support *only* through a Broadband Fund that requires them to provide services *faster* than "standard wireline DSL services." Mobile wireless providers, on the other hand, would be able to receive support via a Mobility Fund for providing "3G" services, which provide data speeds far slower than what would be required of wireline carriers. Clearly, this plan is designed to make it much more difficult for wireline carriers to qualify for support vis-à-vis wireless providers and should therefore be discarded.

The existing support mechanisms utilized by rural RoR ILECs are specifically designed to address the unique challenges faced by small and mid-size carriers serving as COLRs, providing them with the opportunity to recover their costs from the provision of regulated services and earn a prescribed rate of return on their interstate net investment. Moreover, the support mechanisms have already enabled many of these carriers to offer advanced services to a substantial majority of their customers. Therefore, there is no need for the Commission to upset a support system for rural ILECs that has worked so well, not only providing rural consumers with a reliable COLR for voice-grade services, but also promoting the dissemination of affordable broadband services in rural service areas.

Instead, the Commission should focus its attention on reforming the support system for those providers for whom the existing rules have not produced results consistent with the universal service objectives of the 1996 Act and the Joint Board. As discussed *infra*, these reforms should include elimination of the identical support rule, basing support for competitive ETCs in rural service areas on their own costs, and establishing separate support mechanisms for mobility and broadband.

B. In order to update the existing rural ILEC support system for an increasingly broadband-oriented marketplace, the Commission should (a) establish an access charge replacement mechanism, (b) provide support for high transport costs, and (c) remove the cap on HCLS

As stated previously, the existing support system for rural ILECs has done very well to encourage these carriers to prudently invest in modern infrastructure and ubiquitously provide telecommunications services that are reasonably comparable in quality and price to those offered in urban areas. The system has also allowed many rural

ILECs to offer broadband Internet access services at affordable rates to a significant portion of the population in their service territories. Thus, it would be unwise for the FCC to "mess with success" and make wholesale changes to this support system. However, there are updates the Commission can make to the existing system to reflect the emerging landscape for communications services where broadband platforms and IP networks are becoming increasingly central in the service offerings that consumers subscribe to.

First, OPASTCO was encouraged by the Commission's May 2, 2008 News Release, which announced its intention to move forward expeditiously with reform of both the High-Cost universal service program and intercarrier compensation, "…two carrier compensation regimes that are directly interrelated."[23] In recent years, rural RoR ILECs have been experiencing a downward trend in billable access minutes due, in part, to the proliferation of broadband and voice over Internet protocol (VoIP) services, as well as unbillable "phantom" traffic. Several commenters recognize that this necessitates a restructuring of the existing intercarrier compensation regimes that would ensure that rural RoR ILECs continue to have the opportunity to recover their costs and earn a fair return on investment.[24] As NTCA states, "[i]f the future loss of access revenues is not recognized and addressed, then many rural LECs will have neither the revenue streams nor the investment certainty needed to cover the costs of the network or to deploy and upgrade their broadband infrastructure."[25]

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[23] "*Interim Cap Clears Path For Comprehensive Reform,*" FCC News Release (May 2, 2008).
[24] AT&T, pp. 24, 27-29; United States Telecom Association (USTelecom), pp. 8-9; TDS, pp. 11-13; NTCA, pp. 12-15.
[25] NTCA, p. 14.

To its credit, AT&T's framework for universal service reform recommends that the Commission establish an access replacement mechanism that provides explicit support to RoR-regulated ILECs when they reduce their intrastate access charges to interstate levels.[26] This proposal is similar to the Restructure Mechanism for Track 3 ILECs in the Missoula Plan for Intercarrier Compensation Reform,[27] which OPASTCO continues to support. It should be noted that such a mechanism would not completely fix intercarrier compensation for rural RoR ILECs since it would not address the continuing decline in billable interstate access minutes. Nevertheless, it would address the arbitrage that is occurring as a result of the disparity between inter- and intrastate access rates, thereby making it an excellent first step in intercarrier compensation reform for rural RoR carriers. Ideally, the Commission should adopt an access replacement mechanism for rural RoR ILECs as part of its comprehensive reform of the High-Cost program. However, if the Commission determines that this is not feasible, at the very least, its reform of the High-Cost program should "…not inhibit the restructuring of intercarrier compensation that would logically follow."[28]

Second, as recommended by a number of commenters,[29] the Commission should provide support to offset the high transport costs of rural ILECs. In its Recommended Decision, the Joint Board correctly noted that support for transport costs is presently nonexistent for rural carriers and overlooking these costs can be harmful.[30] Indeed, as

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[26] AT&T, pp. 24, 27-29.
[27] Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92 (fil. July 24, 2006) (attaching Missoula Plan for Intercarrier Compensation Reform), pp. 73-74.
[28] USTelecom, p. 8.
[29] NECA, p. 16; WTA, p. 15; ATA, pp. 9-10; MTA, p. 20; NTCA, pp. 49-51.
[30] Recommended Decision, 22 FCC Rcd 20483, ¶21.

broadband service availability and usage rise, "...the transport costs of some rural ILECs will increase substantially and threaten affordable service for their rural customers…."[31]

The cost of access to the Internet backbone is based upon mileage, among other factors. Generally, the further removed a carrier is from a backbone facility, the higher their cost of backbone access. When end users utilize more bandwidth, rural ILECs must upgrade their backbone access. But the increase in the total cost of broadband deployment that results from the higher backbone expense risks making faster bandwidth speeds unaffordable to end users. In other words, as NECA states, the "…the high cost of transport to the Internet backbone often makes it difficult or impossible for small LECs to offer true high-speed access in rural areas."[32] The Commission should therefore establish a mechanism for supporting the high transport costs of rural ILECs. This would improve the likelihood that consumers in all rural service areas will have access to broadband services that are reasonably comparable in quality and price to those offered in urban areas, consistent with the goals of Congress, the Joint Board, and the FCC.

Lastly, as OPASTCO discussed in its initial comments, the Commission should remove the indexed cap that presently exists on the HCLS mechanism.[33] As rural ILECs have increasingly invested in broadband-capable loop plant, the cap has raised the threshold loop cost amount that a carrier must exceed to qualify for HCLS to well above 115 percent of the national average cost per loop (NACPL).[34] As the Joint Board recognized, this has "…significantly reduce[d] support over time for carriers whose costs

[31] WTA, p. 15
[32] NECA, p. 16.
[33] OPASTCO, pp. 23-28. *See also*, URTA, p. 5 ("…enable rural local exchange carriers to expand the work they are doing for the further benefit of rural customers by removing the cap on the high-cost loop support mechanism.").
[34] *See*, 47 C.F.R. §36.631.

have remained relatively constant[,]"[35] although still in excess of 115 percent of the NACPL.

Based on the most recent data filed by NECA, the true NACPL is $311.98.[36] However, the cap presently requires the NACPL to artificially be set at $354.43. Consequently, instead of a rural ILEC qualifying for HCLS when its cost per loop exceeds 115 percent of the true NACPL ($358.78), it does not qualify until its cost per loop exceeds approximately 130 percent of the national average ($407.59). It should be noted that there is no guarantee that state commissions or the market will allow a rural ILEC to recover the lost high-cost support through end-user rates, which potentially leaves carriers with a shortfall in their cost recovery.

If permitted to continue, the existing cap has the potential to adversely impact rural ILECs' broadband deployment and upgrade efforts. The Commission should keep in mind that while rural ILECs have generally done an admirable job, thus far, of deploying broadband services, their work is far from over. As WTA explains:

> …whereas some rural ILECs have made impressive starts in upgrading their networks to offer access to advanced services to more and more customers, much more investment will be necessary to offer broadband services to remote communities and customers, to extend existing DSL and fiber optic facilities closer and closer to customer homes, and to install and upgrade the electronics to increase the bandwidth to greater and greater levels in response to customer demands.[37]

Lifting the cap on HCLS, therefore, would provide rural ILECs with greater incentives and ability to upgrade their loop facilities so that their communities can keep pace in the

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[35] Recommended Decision, 22 FCC Rcd 20483, ¶22. *See also*, ME PUC, WY PSC, VT DPS, p. 12 ("Finally, the freeze on total loop cost support has caused problems for those carriers whose loop costs are high but are not increasing as the average High Cost Loop has increased. Under the current total cap, the support has decreased over time for carriers whose investment has remained relatively stable.").
[36] *Universal Service Fund 2007 Submission of 2006 Results*, National Exchange Carrier Association, Inc. (fil. Sept. 28, 2007).
[37] WTA, p. 13.

fast-moving broadband revolution. However, if the Commission decides not to lift the cap entirely, at the very least it should "re-base" the cap,[38] as it did in the Rural Task Force Order.[39] In that Order, the Commission recognized that more than seven years had passed since it originally implemented the indexed cap on HCLS and thus found it reasonable to re-base because it did not want to stifle prudent investment.[40] Now that another seven years has passed since that time, re-basing HCLS would be appropriate absent a complete uncapping of the mechanism.

III. THERE IS AMPLE SUPPORT IN THE RECORD FOR ADOPTING THE COMMISSION'S TENTATIVE CONCLUSION TO ELIMINATE THE IDENTICAL SUPPORT RULE AND TO BASE SUPPORT FOR COMPETITIVE ETCS IN RURAL SERIVCE AREAS ON THEIR OWN COSTS

The list of commenters recommending that the identical support rule be abolished is both long and diverse.[41] These commenters, like OPASTCO, recognize that the identical support rule has been responsible for all of the unnecessary growth in the High-

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[38] *See*, ITTA, pp. 19-20; AT&T, p. 25.
[39] Rural Task Force Order, 16 FCC Rcd 11262-11264, ¶¶40-43. *See also*, 47 C.F.R. §§36.603-604.
[40] *Id.*, 16 FCC Rcd 11263-11264, ¶¶41-42.
[41] *For example*, Rural Telecommunications Group (RTG), pp. 3, 7-9; Rural Independent Competitive Alliance (RICA), pp. 13-16; PetroCom License Corporation (PetroCom), pp. 2-3; Vanu, Inc., pp. 4-5; NASUCA (Identical Support Rule comments), p. 5; Wyoming Office of Consumer Advocate (WYOCA) (Identical Support Rule comments), pp. 2, 6; ME PUC, WY PSC, VT DPS, p. 3; North Dakota Public Service Commission (NDPSC), p. 3; Oklahoma Corporation Commission (OCC), pp. 8-10; Florida Public Service Commission (FPSC), pp. 2-3; Indiana Utility Regulatory Commission, pp. 8-10; Public Utilities Commission of Ohio (Ohio Commission) (Identical Support Rule comments), pp. 4-5; ITA (Identical Support Rule comments), pp. 2-3; Navajo Nation Telecommunications Regulatory Commission (NNTRC), p. 2; Embarq, p. 10; Qwest Communications International Inc. (Qwest), pp. 6-7; Windstream Communications, Inc. (Windstream), pp. 21-22; CenturyTel, pp. 21-22; Rural Telephone Finance Cooperative (RTFC), p. 6; CoBank, ACB (CoBank), pp. 2-3; MoSTCG, pp. 5-8; Texas Statewide Telephone Cooperative, Inc. (TSTCI), p. 10; Rural Iowa Independent Telephone Association (RIITA) (Identical Support Rule comments), pp. 1-3; Panhandle Telecommunication Systems, Inc. (Panhandle), pp. 2, 3; Alexicon Telecommunications Consulting (Alexicon) (Identical Support Rule comments), p. 3; Montana Independent Telecommunications Systems (MITS), pp. 6-8; Kansas Rural Independent Telephone Companies (KRITC) (Identical Support Rule comments), pp. 2-6; Public Utility Commission of Oregon (Oregon Commission), pp. 2, 5; Rural Telecommunications Associations, pp. 5-6; ITTA, pp. 25-28; URTA, p. 7; ATA, pp. 3-7; Telephone Association of Maine (TAM), pp. 1-2; Frontier Communications (Frontier), p. 4; John Staurulakis, Inc. (JSI), pp. 3-4; MTA, p. 11; GVNW, pp. 8-9; TCA, Inc. – Telcom Consulting Associates (TCA), pp. 13-14; AT&T, pp. 36-37; National Consumer Law Center (NCLC), pp. 2-3; New Jersey Division of Rate Counsel (Rate Counsel), pp. 3, 60-62; Sacred Wind Communications, Inc. (SWC) (Identical Support Rule comments), pp. 7-8; NTCA, pp. 19-22.

Cost program. It has also likely provided many competitive ETCs, wireless carriers in particular, with support amounts that far exceed any reasonable definition of "sufficiency."[42] Furthermore, the identical support rule fails to incent most competitive ETCs to extend service into truly high-cost areas.[43] Instead, it drives them to grow their number of lines – or, more typically, active handsets – in households and areas that they were already successfully serving absent any support.[44] In short, the identical support rule has failed to further the objectives of the High-Cost program, resulting in a waste of limited public funding. It should therefore be terminated. In its place, as many commenters recommend, support for competitive ETCs should be based on a demonstration of their own costs,[45] at least in rural service areas.

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[42] *See, for example*, FPSC, p. 3 ("…to the extent that one carrier's cost is significantly different, basing the support on the higher cost carrier's network results in a revenue windfall for the second carrier."); CenturyTel, p. 22 ("…[A]bsent effective standards, equity analysts treat wireless competitive ETC support as practically pure margin.").

[43] *See, for example*, TAM, p. 2 ("The Identical Support Rule…encourage[es] CETCs, especially wireless CETCs, to claim large high cost areas as their service territory, use the underlying LEC's costs to establish their recovery, and then proceed to simply invest in competitively active locations in the State."); Rate Counsel, p. 60 ("…[T]here is no evidence that the support has subsidized the deployment of services to underserved or unserved areas.").

[44] *See, for example*, USTelecom, p. 17 ("Since the identical support rule awards universal service funding based on the number of lines served by the CETC, not the geography in which service is made available, there is a strong incentive to increase the number of lines within a particular geographic area, and little incentive to expand the geographic availability of service."); Embarq, p. 15 ("The incremental cost of providing service to an additional wireless handset is extremely small for a wireless provider; hence, wireless carriers are incented to maximize their subscribership and, as a result, their USF draw."); MTA, p. 7 ("…[W]ireless CETCs receive universal service for each handset deployed, since support currently is based on a per-line allocation. Thus, a household with one supported wireline phone may have four or more supported wireless handsets.").

[45] *For example*, RTG, pp. 7-9; RICA, pp. 16-18; Panhandle, pp. 3, 5, 8; PetroCom, pp. 2-3; Qwest, p. 7; MoSTCG, pp. 5-8; NDPSC, p. 3; NNTRC, p. 2; FPSC, p. 3; OCC, pp. 10-11; GVNW, pp. 10-18; CoBank, p. 3; Frontier, p. 4; CenturyTel, pp. 21-22; Embarq, p. 10; TAM, pp. 2-3; JSI, p. 3; URTA, p. 8; MTA, pp. 12-17; RIITA (Identical Support Rule comments), p. 3; Rural Telecommunications Associations, p. 6; MITS, pp. 6-8; KRITC (Identical Support Rule comments), pp. 4, 6-8; Alexicon (Identical Support Rule comments), pp. 3-5; ATA, pp. 3-7; ITA (Identical Support Rule comments), pp. 3-5; SWC (Identical Support Rule comments), pp. 8-11; NTCA, pp. 22-27.

The few commenters that still cling to the identical support rule raise competitive neutrality as their main argument for the rule's continuance.[46] The primary fallacy with this is that in a competitive environment in which carriers are so differently situated, it does not adhere to the principle of competitive neutrality to provide all ETCs serving an area with the same per-line support. As commenters explain, rural ILECs are subject to many stringent state and federal regulations that competitive ETCs are not required to adhere to, including COLR obligations, service quality standards, rate regulation, and tariffing requirements, among others.[47] In addition, the fact that rural ILECs must demonstrate their costs before they can qualify for support, while competitive ETCs are able to receive support without any cost showing of their own is, in itself, not competitively neutral.[48] Therefore, if the Commission wishes to establish competitive neutrality in the distribution of support to ETCs serving rural service areas, it should utilize the same basic *methodology* for determining the support amount for each carrier – *i.e.*, a demonstration of each ETC's own costs.

As it does for rural ILECs, cost-based support for competitive ETCs in rural service areas would ensure that their funding is no more than "sufficient," as required by the 1996 Act.[49] Equally as important, cost-based support would establish sorely-needed accountability for how competitive ETCs in rural service areas use the support they

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[46] *For example,* RCA-ARC, pp. 3-66; US Cellular, pp. 2-55; Alltel, pp. 5, 11; Cellular South, pp. 7-8; Sprint Nextel Corporation (Sprint Nextel), pp. 7-9; Centennial, pp. 3-4; Chinook Wireless, p. 4; ITI, p. 8.

[47] *For example*, TCA, p. 9 ("In addition to POLR responsibilities, rural LECs are also frequently required to (1) comply with extensive customer service rules; (2) meet numerous service quality standards; and (3) undergo intrusive and prolonged proceedings to modify rates for services, depreciable lives and qualify for state support mechanisms."); CenturyTel, p. 22 ("…ILEC support is based on expenses and investment already incurred – including those created by state and federal regulatory requirements not imposed on wireless CETCs…"). *See also,* Indiana Utility Regulatory Commission, pp. 9-10.

[48] *See*, KRITC (Identical Support Rule comments), p. 6 ("Incumbent wireline recipients are obliged to commit the significant resources necessary to make the initial determination of appropriate support. Under the equal support rule, a competitive carrier reaps the benefits of this commitment of resources without sharing the burden of that determination.").

[49] 47 U.S.C. §§254(b)(5), (e).

receive and would provide the proper incentives for its use in truly high-cost areas. It is logical that once competitive ETCs must actually incur above-average costs in order to qualify for support, they will have every incentive to improve "…coverage, signal strength, or capacity that would not occur absent the receipt of high-cost support," as the FCC has called for.[50]

A handful of commenters contend that basing competitive ETCs' support on their own costs would create incentives for inefficiency.[51] However, this argument fails to recognize that high-cost support is no carrier's sole source of revenue. All ETCs operating in today's highly competitive environment have ample incentive to strive to improve their efficiency and lower their costs in order to create value for consumers and increase demand for their service offerings. As a result, just like rural ILECs, competitive ETCs receiving support based on their own costs can be expected to incur costs only as necessary to meet consumer demand.

The most common argument put forward by those commenters opposing a cost-based support system for competitive ETCs is that such an approach is "overly regulatory" and "unnecessarily burdensome."[52] To start with, there is nothing inappropriately regulatory about requiring an otherwise unregulated carrier that *voluntarily* applies for ETC status to document its own costs before it may qualify for funds that are ultimately collected from the nation's ratepayers. Responsible stewardship of limited public funding, as well as consistency with the principle of competitive

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[50] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6380, ¶21 (2005).

[51] *For example*, CTIA, p. 23; Alltel, p. 28; Cellular South, p. 8; Comcast Corporation (Comcast), pp. 5-6; Verizon, pp. 35-36.

[52] *For example*, Centennial, p. 6; Sprint Nextel, pp. 7, 9-10; NCTA, p. 12; General Communication, Inc. (GCI), pp. 69-75; CTIA, p. 25; Southeast Telephone, Inc. and Momentum Telecom, Inc., p. 8.

neutrality, demands such an approach. Otherwise, it is likely that the support received by many competitive ETCs will be more than "sufficient," it could very well be excessive.

With regard to the contention that a cost-based support system for competitive ETCs is unnecessarily burdensome, this is simply not a legitimate argument when it comes to receiving money from a ratepayer-generated fund. To offer an analogy, the Internal Revenue Service does not offer exemptions from filing an income tax return to individuals or businesses who find the forms to be unnecessarily burdensome. In particular, taxpayers that receive refunds must first file a tax return demonstrating that they are actually owed one. If a taxpayer finds the forms to be too burdensome or complicated, then they hire a tax professional to assist them. This is precisely what many rural ILECs that file cost studies do – they hire a consultant to assist them. They do not assert that they should be entitled to universal service support absent a demonstration of their costs.

Considering that most competitive ETCs are much larger entities than the rural ILECs with which they compete, the contention that cost reporting would impose too great a burden on them is disingenuous. Of course, competitive ETCs would never be required to incur the regulation and burden of a cost-based support system. For those that did not wish to demonstrate their costs and be held accountable for their use of consumer-provided funding – just as rural ILECs are – they would have the option of forgoing eligibility for high-cost support.

There is support in the record for both the Wireless Carrier Actual Cost (WiCAC) proposal[53] and the proposal from Panhandle Telecommunication Systems, Inc.

[53] CTDPUC, p. 3; MTA, pp. 12-13; SWC (Identical Support Rule comments), pp. 9-10; RICA, p. 17; MoSTCG, p. 7; ATA, p. 6; GVNW, pp. 10-18; NTCA, pp. 26-27.

(Panhandle).[54] These proposals contain feasible methodologies for determining competitive ETCs' costs and calculating the support amounts they receive. It is worth noting that RTG, a trade association representing small, rural wireless carriers, is supportive of the Panhandle proposal. Likewise, MTA states in its comments that according to its members that have operated wireless companies, "…the 23 Part 32 accounts targeted by the WiCAC proposal would not be difficult to capture."[55] These comments damage the credibility of large wireless entities claiming that a cost-based support methodology would be unworkable or overly burdensome for wireless ETCs.

In addition to establishing a cost reporting methodology for competitive ETCs, the Commission should consider developing an average schedule-like option that would provide these carriers with a choice between submitting their own annual cost study and relying on formulas that would simulate the costs of similarly situated carriers using the same technology. This would afford competitive ETCs the same options as rural ILECs and give them the same opportunity to avoid the administrative costs of developing an annual cost study. Even CTIA indicates that it would be accepting of wireless average schedules.[56] It should be recognized, however, that the average schedule formulas that some rural ILECs utilize to determine their support payments are developed, in part, from actual cost data filed by similarly situated "cost companies." Therefore, an average schedule option for wireless ETCs will still require some wireless carriers to submit their actual costs, so that data can be obtained to develop reasonably accurate average schedule formulas.

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[54] OCC, pp. 3-8; RTG, pp. 7-9; RICA, pp. 17-18; MTA, pp. 12-13; NECA, pp. 24-25; Nex-Tech, Inc., p. 13; Panhandle, pp. 2-8; NTCA, pp. 26-27.
[55] MTA, p. 13.
[56] CTIA, p. 26. *See also*, ITA (Identical Support Rule comments), p. 3

Even though initially it may be challenging for some competitive ETCs to report their costs in a manner that conforms with new Commission rules, this is not a legitimate reason for exempting these carriers from having to do so. Just like rural ILECs, competitive ETCs in rural service areas that seek public funding should be required to demonstrate that their costs are above average and exceed a certain threshold. This will go a long way toward ensuring that all ETCs in rural service areas are receiving "sufficient" support and that the funding is being used only for its intended purposes, as required by section 254(e) of the 1996 Act. The system needs to be accountable to those who ultimately pay for it – ratepayers nationwide.

IV. THE COMMISSION SHOULD ESTABLISH SEPARATE SUPPORT MECHANISMS FOR MOBILITY AND BROADBAND; HOWEVER, THESE MECHANISMS SHOULD NOT NEGATIVELY IMPACT THE SUPPORT MECHANISMS UTILIZED BY RURAL ILECS AND AN OVERALL CAP ON THE HIGH-COST PROGRAM SHOULD NOT BE ADOPTED

A number of commenters, like OPASTCO, support the Joint Board's recommendation to establish support mechanisms for mobility and broadband services that are separate and distinct from the mechanisms designed for rural ILECs that serve as COLRs.[57] Mobility and broadband are both important services that are demanded by consumers throughout the nation, yet they are not ubiquitously available. Therefore, the support mechanisms created for these services should, among other things, encourage their deployment in unserved areas. Equally as important, the creation of separate mobility and broadband mechanisms will make it easier for the Commission to leave the existing support mechanisms for rural ILECs to continue to operate essentially as they do

[57] *For example*, ITTA, pp. 8-25; WTA, pp. 10-26; CenturyTel, pp. 20-32; TDS, pp. 2-4; Frontier, pp. 10-12; AT&T, pp. 8-25.

today for these carriers.[58] As URTA states, "…there is no purpose in altering current POLR mechanisms when they are working."[59]

In particular, it should be made clear that the new broadband mechanism is primarily intended for supporting broadband in service territories where availability is presently non-existent. It should not be used to supplant funding that rural ILECs presently receive through the existing cost-based mechanisms that support broadband-capable facilities. Those mechanisms have proven to be highly successful in enabling rural ILECs to deploy advanced services widely in their service areas and there is no reason for them to be partially or fully replaced. Furthermore, funds should not be "reassigned" from the existing rural ILEC support mechanisms in order to fund the broadband mechanism.[60]

Of course, transferring dollars out of the existing support mechanisms utilized by rural ILECs would not even need to be considered so long as the Commission does not prematurely impose an overall cap on the High-Cost program. Those commenters supporting an overall cap[61] focus solely on controlling the Fund's growth or reducing its size, while conveniently ignoring the language of section 254 of the 1996 Act that calls for "sufficient" support to achieve the purposes of that section. However, as the many

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[58] *For example*, CenturyTel, p. 18 ("…there is no reason for the FCC to reform that part of USF that is not broken. For rate-of-return carriers, most of which are small, an embedded cost approach works very well."); TDS, p. 4 ("…rural ILECs, have a proven track record of furthering the goals of universal service without applying undue pressure on the Fund. Funding of POLR service accordingly should remain largely as it is today.").
[59] URTA, p. 5
[60] *See*, NECA, p. 21 ("It would be arbitrary for the Commission to move funds from a successful program to a new, untested fund…); Rural Telecommunications Associations, p. 17 ("Care should be taken that a new Broadband Fund does not displace existing programs.").
[61] *For example*, Comcast, pp. 11-12; Verizon, pp. 5-8; Qwest, p. 3; CTDPUC, pp. 5, 9; NYPSC (Recommended Decision comments), p. 7; Rate Counsel, pp. 10, 53; NASUCA (Recommended Decision comments), pp. 5, 11; NCLC, p. 2.

commenters in opposition to an overall cap[62] explain, such an arbitrary limit on support – particularly one based on 2007 support levels – fails to consider the level of funding that is necessary to achieve the universal service objectives of Congress, let alone those articulated by the Joint Board.[63]

Indeed, it is simply unrealistic to expect that the Joint Board's stated goals of providing universal access to affordable and "reasonably comparable" wireline COLR services, broadband Internet services, and mobile wireless services[64] can be accomplished under a cap based on 2007 or even current support levels.[65] As commenters point out, the adoption of an overall cap would create a zero-sum game, where an increase in dollars for one support mechanism would necessarily result in a loss for another, regardless of whether or not the loss would result in insufficient support for its original purpose.[66]

While it is certainly appropriate for the Commission to ensure that the High-Cost program remains sustainable and does not impose an unreasonable burden on consumers, the adoption of an overall cap is premature when other, more rational, measures have yet to be taken. Specifically, the Commission should wait to observe the significant savings

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[62] ME PUC, WY PSC, VT DPS, pp. 13-15; NDPSC, p. 7; Frontier, p. 7; TDS, pp. 2, 8-9; KRITC (Recommended Decision comments), pp. 7-9; Rural Telecommunications Associations, pp. 19-20; TCA, p. 10; JSI, p. 6; MTA, pp. 21-22; ATA, pp. 11-13; URTA, p. 4; ITTA, pp. 18-19; WTA, pp. 15-16, 26-28.

[63] *For example*, JSI, p. 6 ("The Joint-Board has made no findings to demonstrate that $4.5 billion is sufficient to fulfill the current purposes of the fund without even considering expanding federal universal service aims to include a mobility and broadband component); URTA, p. 4 ("There are no findings or analyses in the Joint Board's *Recommended Decision* showing that $4.5 billion is sufficient to fulfill the purposes of the fund.").

[64] Recommended Decision, 22 FCC Rcd 20478, 20480-20481, ¶¶4, 11.

[65] *See, for example*, WYOCA (Reverse Auctions comments) p. 9 ("Capping the fund at current levels and providing universal broadband service are fundamentally inconsistent."); NDPSC ("Any current discussion of a program cap is premature and does not comprehensively address the need to provide sufficient support for all federal universal service goals.").

[66] *For example*, MTA, p. 22 ("An overall fund cap creates a zero sum game, in which one fund's gain is another fund's loss. Such a proposal could indeed threaten the statutory requirements for sufficient and predictable universal service."); KRITC (Recommended Decision comments), p. 8 ("…although fund growth would be blocked, fund purposes would be frustrated. Recipients of support under the existing cap would be obliged to devote more and more effort and attention to maximizing their individual respective portions of an artificially limited universe of fund resources.").

that will likely result from the elimination of the identical support rule and basing support for competitive ETCs on their own costs.[67] In addition, as several commenters recommend, all facilities-based broadband Internet access providers should be required to contribute equitably to the USF.[68] This would allow for prudent growth in the High-Cost program, since there are already more than 100 million high-speed lines in service in the United States and that number continues to grow at a rapid pace.[69] Surely, if broadband Internet access service is to become an explicit beneficiary of high-cost support, then providers of the service should be required to contribute their fair share to the Fund.

In sum, an overall cap on the High-Cost program at this time is unnecessary and ill-advised. Rather than adopting a "…'top-down' approach that does not accommodate actual needs or costs",[70] the Commission should remain focused on ensuring that there is sufficient support to achieve the goals of the program, as established by the 1996 Act and the Joint Board.

In any event, under no circumstance should the Commission cap the major support mechanisms utilized by rural RoR ILECs that are not already capped.[71] This includes local switching support (LSS) and interstate common line support (ICLS).[72] Capping these mechanisms would seriously jeopardize the sufficiency of rural ILECs'

[67] *See, for example*, ATA, p. 13 ("…the imposition of this arbitrary mechanism should be unnecessary in light of the other elements of universal service reform that the Commission and Joint Board have proposed. If the identical support rule is eliminated…the substantial strain of windfall profits currently underwritten by the high-cost support program should be materially lifted."); Rural Telecommunications Associations, pp. 19-20 ("…it is not at all clear that a cap is required. The Commission has recognized that the cause of the escalating pressure on the high-cost funds is the support going to CETCs. The removal of the identical support rule should provide immediate relief to much of this upward pressure.").
[68] *For example*, NECA, pp. 33-34; TDS, p. 11; NCLC, p. 5; AARP, pp. 30-31; NTCA, pp. 9-12.
[69] *High-Speed Services for Internet Access: Status as of June 30, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau (Mar. 2008), p. 1.
[70] ITTA, p. 18.
[71] *See*, NECA, pp. 17-20; TDS, p. 9; TCA, pp. 10-11; JSI, p. 6; Frontier, pp. 6-7; MTA p. 21.
[72] Also, as discussed in Section II.B., *supra*, the Commission should lift the cap on HCLS or, at the very least, re-base it.

support amounts, making it far more challenging for them to continue meeting their COLR obligations and placing significant upward pressure on end-user charges.[73] Moreover, when rural ILECs' common line costs increase due to investment in broadband-capable loop facilities, their ability to recover a portion of those costs through ICLS is essential. Consequently, as NECA warns, "[a]dditional caps on universal service support…will likely bring broadband deployment in RLEC serving areas to a screeching halt."[74]

V. THE RECORD IN THIS PROCEEDING IS CLEAR: RURAL ILECS SHOULD NOT BE SUBJECT TO A REVERSE AUCTION SUPPORT MECHANISM

A wide range of commenters, including LEC interests,[75] consumer advocates,[76] state commissions,[77] wireless carriers,[78] and lenders,[79] oppose the adoption of a reverse auction support mechanism, at least for determining the COLR and its support amount in rural service areas. These commenters recognize the substantial and numerous risks that reverse auctions pose to the continued provision of universal service in high-cost rural service areas, which auction supporters have never been able to adequately address. There is no rational justification for subjecting rural ILECs and their customers to a high-risk, untested reverse auction mechanism when the existing embedded cost-based support

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[73] *See*, NECA, p. 19 ("…imposition of caps on ICLS funding will require raising existing caps on subscriber line charges, or reinstituting some form of interstate carrier common line (CCL) charge").
[74] *Id.*, p. 18.
[75] WTA, pp. 29-37; ITA (Reverse Auctions comments), pp. 1-7; KRITC (Reverse Auctions comments), pp. 2-10; RIITA, pp. 1-8; TCA, pp. 15-18; ATA, pp. 13-16; TSTCI, pp. 3-7; MoSTCG, pp. 8-19; URTA, pp. 8-12; MITS, p. 18; MTA, pp. 22-23; TAM, pp. 3-4; GVNW, pp. 19-26; Alexicon (Reverse Auctions comments), pp. 1-5; JSI, p. 4; Qwest, p. 8; Rural Telecommunications Associations, pp. 8-15; USTelecom, pp. 24-26; Panhandle, p. 2; Embarq, pp. 17-19; Frontier, p. 7; ITTA, pp. 36-42; RICA, pp. 21-23; SWC, pp. 5-6; NTCA, pp. 30-46.
[76] NASUCA (Reverse Auctions comments), pp. 1-20; WYOCA (Reverse Auctions comments), pp. 1-10; Rate Counsel, pp. 54-55, 57.
[77] NDPSC, pp. 4-5; Ohio Commission (Reverse Auctions comments), pp. 1-11; Oregon Commission, p. 2; OCC, pp. 13-17.
[78] Centennial, p. 6; Sprint Nextel, pp. 12-12; Cellular South, pp. 3-7; RTG, pp. 4-6.
[79] CoBank, pp. 3-4; RTFC, pp. 2-7.

system has proven to be effective, efficient, and accountable in achieving the relevant universal service objectives of Congress and the Joint Board.

First and foremost, commenters explain that reverse auctions would discourage investment in rural wireline infrastructure.[80] This is due to the loss of confidence rural ILECs would have regarding their ability to fully recover the costs of their investments. As TSTCI correctly explains, rural ILECs "…will be hesitant to make further investments, including upgrades, because of the uncertainty of cost recovery if future universal service support can be lost due to auctions."[81]

A reverse auction mechanism would discourage investment regardless of the length of time between auctions. If the auction term is short, or is approaching completion, a rural ILEC that faces the distinct possibility of losing all of its high-cost support in just a few years will be reluctant to make substantial investments in long-lived infrastructure.[82] Longer auction terms are also problematic, because cost assumptions made by the winning bidder will be locked in for the life of the auction term. This will make it difficult, if not impossible, for the auction winner to deploy new technologies and services that could never have been anticipated at the time of the auction. In either case, consumers in rural service areas would soon find themselves without access to communications services that are reasonably comparable to those available in urban areas.

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[80] *For example*, JSI, p. 4; National Tribal Telecommunications Association (NTTA), p. 11; MoSTCG, pp. 9-10; URTA, p. 9; MTA, p. 23; TSTCI, p. 6.
[81] TSTCI, p. 6.
[82] *See*, Rural Telecommunications Associations, p. 9 (" In many states, the depreciation life for outside plant approaches twenty years, not ten years. In addition, funding mechanisms for rural telecommunications infrastructure development generally have loan terms in excess of ten years, whether through the Rural Utilities Service, the National Rural Telecommunications Cooperative or CoBank ACB."). *See also*, WTA, p. 31; NASUCA (Reverse Auctions comments), p. 19.

CoBank and RTFC, major lenders to rural ILECs, both discuss how the uncertainty of rural ILECs' cost recovery under a reverse auction mechanism would reduce the ability of these carriers to secure the financing necessary for network upgrades.[83] Lenders to carriers in the capital-intensive telecommunications industry require a reasonable degree of assurance that borrowers will have the cash flows necessary to make on-time payments over the term of the loan and repay their debt in full.[84] Yet, as RTFC states, "[t]he possibility of relatively sudden and possibly total loss of high-cost universal service support at some point in the life of the loan creates an insurmountable level of uncertainty that the borrower will be able to service its debt."[85] As a result, "…lenders will restrain the amount of debt made available."[86]

Of the relatively small number of commenters that are supportive of reverse auctions, most focus almost entirely on their ability to drive down the size of the USF to the lowest level possible.[87] However, these commenters fail to explain how the universal service objectives of section 254 of the Act would be achieved. Under a mechanism where the lowest bidder receives the support, participants will have every incentive to "low-ball" their bids in an attempt to win the auction and receive at least some high-cost support, rather than none at all. At best, this would incent reverse auction winners to do the bare minimum necessary to fulfill the universal service obligations established by the

[83] CoBank, pp. 3-4; RTFC, pp. 2-7.
[84] *See*, TCA, pp. 16-17; Rural Telecommunications Associations, pp. 10-11; WTA, pp. 29-30; URTA, p. 9.
[85] RTFC, pp. 3-4.
[86] CoBank, p. 4.
[87] *For example*, T-Mobile, p. 11; National Taxpayers Union (NTU), p. 1; The Seniors Coalition (TSC), p. 3; New Jersey Board of Public Utilities (NJ Board), p. 5; California Public Utilities Commission and the People of the State of California (CPUC) (Reverse Auctions comments), p. 4; CTDPUC, pp. 6-7; SouthernLINC Wireless, pp. 28-29, NCTA, p. 25; TracFone Wireless, Inc., pp. 3-4; Atlantic Tele-Network, Inc. (ATN), p. 12.

Commission.[88] At worst, winners would fail to fulfill their universal service obligations, and there may not be a backup carrier willing or able to take over the role of COLR.

Commenters opposing reverse auctions also recognize the reliance of non-wireline service providers on the public switched network.[89] For example, wireless carriers are dependent upon wireline switching and transport facilities to complete many of their calls.[90] Therefore, should a rural ILEC fail to win an auction, the resulting degradation of the wireline network will prevent wireless services in the area from existing at their present level of reliability. In this sense, a reverse auction that includes both wireless and wireline carriers simply makes no sense, as they are providing different services, and one relies heavily on the existence of the other.

In addition, a rural ILEC's total loss of high-cost support would likely leave many rural consumers without access to affordable broadband service. Also, the carrier's ongoing efforts to deploy broadband to additional consumers as well as upgrade existing broadband service would almost certainly come to an end. Of course, a broadband connection is a prerequisite for subscribing to VoIP service.

Furthermore, as the Commission recognized in the Identical Support Rule NPRM, the majority of consumers do not view wireline and wireless services to be direct substitutes.[91] Rather, they view them as complimentary services. Yet, should a wireless carrier prevail in a reverse auction, some high-cost rural consumers may no longer have access to highly-reliable wireline telecommunications services at affordable rates.

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[88] *See*, TSTCI, p. 5; KRITC, p. 5.
[89] *For example*, NASUCA (Reverse Auctions comments), p. 12; CenturyTel, p. 14; MTA, p. 23; WYOCA (Reverse Auctions comments), p. 3; CoBank, pp. 3-4; RIITA, p. 6.
[90] *See*, OCC, p. 15; NASUCA (Reverse Auctions comments), p. 12; GVNW, p. 24; USTelecom, p. 25.
[91] Identical Support Rule NPRM, 23 FCC Rcd 1471, ¶10.

Commenters also point out that reverse auctions would present jurisdictional difficulties since COLR obligations are sometimes imposed by state statute.[92] Thus, as AT&T states, "…unless the Commission believes it can and should preempt the states under section 253(d)…an ILEC could be placed in the untenable position of having its COLR obligations under state law continue but without any federal universal service support if the relevant state does not grant the ILEC COLR relief."[93]

Before subjecting rural ILECs to a reverse auction mechanism, the Commission should consider the experiences of California, Massachusetts, and Florida, which have used competitive bidding to select providers of telecommunications relay services. As a couple of commenters discuss, these experiences included substantial declines in service quality, consumer complaints, and demands from auction winners for increased compensation.[94]

The Commission should also take notice of the advice provided by a variety of entities to property owners regarding the selection of a contractor. For example, the Federal Trade Commission provides tips to consumers for selecting a contractor for home renovations and repairs, one tip being, "[d]on't automatically choose the lowest bidder."[95] Similarly, the Certified Contractors Network cautions residential and commercial property owners that, "…most dissatisfaction involves the low-bid contractor."[96] Finally, the PBS show "Hometime" advises consumers on its website to be wary of the lowest bidder, stating, "[t]his contractor either doesn't understand the scope of the job or

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[92] FPSC, pp. 7-8; AT&T, pp. 34-35.
[93] AT&T, pp. 34-35.
[94] NECA, pp. 28-31; NTCA, pp. 37-40.
[95] Federal Trade Commission: Facts for Consumers, Home Sweet Home Improvement, available at http://www.ftc.gov/bcp/conline/pubs/services/homeimpv.shtm.
[96] CERTIFIED CONTRACTORS NETWORK, HOW TO MAKE A SUCCESSFUL CONSTRUCTION INVESTMENT (1997).

deliberately underbid to get the job and will likely discover several unexpected problems that are not covered in the original contract and will require additional cash outlay."[97] If choosing the lowest bidder is inadvisable for personal property renovation and repair, then certainly such an approach presents too great a risk for selecting the carriers that will build, maintain, and upgrade critical telecommunications infrastructure in the high-cost areas of the nation.

Finally, in early May 2008, the FCC received two letters from 46 members of Congress requesting that the Commission cease further consideration of reverse auctions.[98] Reflecting the views of so many commenters in this proceeding, the letters advised that auctions, "…leave too many unanswered questions about stranded investment and the lack of incentive for a carrier to improve and expand their network…." OPASTCO wholeheartedly agrees with the 35 members of the House of Representatives who state that, "…it makes little sense to require rural carriers to provide advanced telecommunications services to the most costly areas of the country while simultaneously advancing proposals that would pull the rug out from under their investments." Both letters conclude that reverse auctions, "…would in all likelihood leave Americans living in rural and high-cost areas without adequate, affordable communications services."

Therefore, the Commission should follow the advice of commenters, as well as members of Congress, and cease consideration of a reverse auction mechanism for determining the COLR and its support amount in rural service areas. Instead, the

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[97] PBS: Hometime, About Your House, Hiring a Contractor, available at http://www.pbs.org/hometime/house/contract.htm.
[98] Letter from Congresswoman Barbara Cubin, *et al.*, to Chairman Kevin Martin, Federal Communications Commission (May 5, 2008); Letter from Senator Byron Dorgan, *et al.*, to Chairman Kevin Martin, Federal Communications Commission (May 6, 2008).

Commission should retain the embedded cost-based support system for rural ILECs so that the consumers in these territories can continue to gain access to communications services that are affordable and reasonably comparable to those available in urban areas, as called for by the 1996 Act.

VI. CONCLUSION

For the reasons discussed in the foregoing comments, the Commission should be guided by the following recommendations as it proceeds with comprehensive reform of the High-Cost universal service program:

- Retain the existing high-cost support system for rural ILECs, based on their study area embedded network costs.
- Update the rural ILEC support system by (a) establishing an access replacement mechanism, (b) providing support for high transport costs, and (c) removing the cap on HCLS.
- Eliminate the identical support rule and, at least in rural service areas, base support for competitive ETCs on a demonstration of their own costs.
- Establish support mechanisms for mobility and broadband that are separate from the mechanisms utilized by rural ILECs and that, among other things, encourage deployment of these services in unserved areas.
- Ensure that the new mobility and broadband support mechanisms do not negatively affect the mechanisms utilized by rural ILECs.
- Do not adopt an overall cap on the High-Cost program.
- Require all facilities-based broadband Internet access providers to contribute equitably to the USF.
- Do not adopt a reverse auction support mechanism, at least for determining the COLR and its support amount in rural service areas.

By following these recommendations, the Commission will establish a High-Cost program that is effective, accountable, and sustainable for the long term. Equally as important, it will ensure that consumers in high-cost rural service areas have access to a full array of communications services, including advanced services, that are reasonably comparable to those available in urban areas and at affordable and reasonably comparable rates.

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June 2, 2008

CERTIFICATE OF SERVICE

I, Brian J. Ford, hereby certify that a copy of the comments of the Organization of the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 2nd day of June, 2008, to those listed on the attached list.

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