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

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

REPLY COMMENTS OF CELLULAR SOUTH, INC.

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SUMMARY

The discussion on reforming the Universal Service Fund is plagued by misconceptions about the true state of the fund and the causes of growth in the high-cost fund. The high-cost fund is not "exploding," but instead the rate of growth due to wireless CETCs is reducing. This is particularly significant, because increasing numbers of consumers are choosing wireless service as a substitute for wireline service.

The Commission should retain the identical support rule because it ensures competitive neutrality in USF distributions. If the Commission is seeking uncomplicated ways to curtail short-term growth, it could cap per-line support and make that support fully portable among all ETCs.

It is disturbing that the Commission is considering excluding wireless competitive ETCs from funding through IAS and ICLS because those systems were created as explicit support. As explicit support, these programs are part of the larger body of Universal Service support that is required by the 1996 Act to be available to all ETCs. Therefore, the Commission must not change the current eligibility for IAS and ICLS funding.

Finally, reverse auctions may hold some intuitive appeal, but in practice reverse auctions would reduce or eliminate competition and strip rural consumers of the benefits of a competitive market. This would include a lower quality of service for rural Americans which would not be comparable to that in urban areas.

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Cellular South, Inc. ("Cellular South")[1] hereby submits its Reply Comments to the Federal Communication Commission's following three Notices of Proposed Rulemaking in the above-captioned proceeding: *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*); *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*); *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) (*Recommended Decision NPRM*).

I. INTRODUCTION

Cellular South is a competitive Eligible Telecommunications Carrier ("ETC") in Mississippi and in Alabama and has participated in the Universal Service Fund ("USF") since 2002. Because of the availability of USF support, Cellular South has successfully deployed

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

advanced wireless services in many rural areas that it would not otherwise be economic to serve. Dramatic changes to the Universal Service system – including many of the proposals offered in the three NPRMs – will jeopardize these services for rural Americans. Carriers extend service in high-cost areas based on the availability of USF support. If that support is reduced or removed, wireless carriers will be forced to make decisions as to which portions of their networks will be turned off and, consequently, which rural communities will lose connectivity.

The Commission has an opportunity in the USF NPRMs to correct flaws in the Universal Service system, but the system must be examined completely and with an honest review of all portions of the program. In adopting the *Interim Cap Order*, the Commission essentially has imposed a "time out" on high-cost fund growth (though the "time out" comes at the expense of network deployment in rural areas). While the *Interim Cap Order* is in place, the Commission has a choice as to whether the time will be utilized to the fullest by considering comprehensive reform, or whether the time under the cap will ultimately be wasted by adopting only piecemeal changes that are solely at the expense of wireless competitive ETCs.

Cellular South asks that the Commission give thorough consideration to the need to adopt true comprehensive reform. There is no advantage in adopting individual reform measures that do not consider the high-cost fund in its entirety. This Commission has made great strides in advancing the Universal Service debate and it must not ignore the opportunity for comprehensive reform in an attempt to adopt piecemeal reform for expediency's sake.

II. CURRENT REFORM PROPOSALS ARE BASED ON MISCONCEPTIONS ABOUT THE STATE OF THE UNIVERSAL SERVICE FUND

At the outset, one must note that many of the reform proposals under consideration are based on presumptions that have no foundation in the data. Even some of the Commission's assumptions about the state of the High Cost Fund fail when considered against the available evidence.

A. The High-Cost Fund Is Not "Exploding" Due to Unsustainable Growth

First, the High Cost Fund is not "exploding" as a result of unsustainable growth. As Cellular South noted in its Comments, the High Cost Fund has seen measured growth in recent years, and the contribution factor was near its three year low as recently as the first quarter of this year.[2] Given that the current contribution factor translates into an average charge of about thirty cents on consumers' telephone bills, it is not clear how the Commission justifies its claim that the high-cost fund is experiencing "explosive" growth[3] that would justify the proposals currently being discussed.

Another important point for the Commission to recognize is that the fund's *rate* of growth has declined dramatically since 2002.[4] This reduction in the pace of growth is likely a result of slower growth in wireless penetration. As carriers reach new high-cost markets, they acquire new subscribers. As the number of unserved high-cost markets decreases, growth in the fund will continue to slow. This is an expected result for mechanisms designed to provide funding to underserved or unserved areas, and one recognized by Centennial which stated that "growth of the fund driven by pure subscribership growth will, necessarily, slow down in the near future."[5]

While the Commission notes that wireless competitive ETCs' support has grown over the years and has contributed to overall Fund growth, it fails to consider how that growth is justified.

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[2] Cellular South Comments at 2 (citing FCC Public Notice, "Proposed First Quarter 2008 Universal Service Contribution Factor," CC Docket No. 96-45, DA 07-5007 (rel. Dec. 14, 2007)).
[3] *Interim Cap Order* at para. 1.
[4] RCA and ARC Comments at 25 (noting that the annual rate of growth in competitive ETC funding has declined from 181 percent between 2002 and 2003 to 20 percent between 2006 and 2007).
[5] Centennial Comments at 8.

Worse, the Commission's reform proposals do not consider the support going to rural incumbent LECs and examine whether it is justified to maintain the rural incumbent LECs' levels of support.

Wireless subscriber numbers continue to grow each year, suggesting that dollars invested in wireless competitive ETCs are supporting the technology that consumers demand. At the same time, consumers are abandoning their legacy wireline connections at an increasing pace. However, the rural incumbent LECs are not losing USF support at all, much less at a rate corresponding to their customer losses. These LECs actually receive greater amounts of per-line support when they lose customers. Accordingly, the High Cost Fund is failing to follow consumer demand and is instead becoming a mechanism to sustain businesses plans that refuse to adapt to market changes.

Cellular South encourages the Commission to consider the suggestions offered by CTIA to improve efficiency in the high-cost fund. One of CTIA's suggestions is to improve accountability by evaluating support given to carriers as it correlates to the carrier's advancement of universal service goals through that support.[6] CTIA also suggests changes to the way in which support is calculated for incumbent LECs with multiple study areas in a state,[7] and for those incumbent LECs with more than 50,000 access lines in a state.[8] If the Commission truly intends to enact comprehensive reform to the high-cost system, these proposals should be considered and included in a FNPRM so that they can be fully explored.

B. Wireless is Rapidly Becoming a Substitute for Wireline Service

It should have been expected that consumers would not immediately substitute their landline service for wireless service due to the immature networks that were initially in place for

[6] CTIA Comments at 22.
[7] *Id*. at 26.
[8] *Id*.

wireless carriers. However, as wireless penetration has increased and wireless networks have matured, the convenience and reliability of wireless services have given consumers the ability to disconnect their landline service. Today, wireless service is rapidly becoming a complete substitute for landline service as consumers "cut the cord" in growing numbers.[9] This is contrary to the Commission's recently expressed view that wireless service is not a substitute for traditional landline service.[10]

Furthermore, the rate of consumers substituting wireless service in place of their legacy wireline connections will increase as demographic changes continue in the market. For today's youth that have never had their own landline connection, it is inconceivable to them that their communications could be limited to point-to-point connectivity. This group of consumers has grown up with the expectation of person-to-person connectivity. For today's college students, stories of roommates sitting down to calculate the amount each owes on the shared landline bill are as foreign as stories of winding up the phonograph player to listen to vinyl analog recordings. This trend will not reverse itself, meaning that the number of wireless-only consumers will continue to increase over time. If the current number of wireless-only consumers is not great enough to officially constitute true substitutability today, it is only a matter of time until that level is reached. The Commission has a duty to recognize consumer trends in the industry and to craft its rules in a manner that evidences awareness of these trends. It would be shortsighted for the Commission find that wireless is not a substitute for wireline, because that determination will inevitably be outdated in the very near future.

[9] *The Harris Poll* #36 (April 4, 2008) "Cell Phone Usage Continues to Increase" available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=890 (last visited June 1, 2008), noting that 14% of U.S. adults use only cell phones (up from 11% a year before).

[10] *Identical Support Rule NPRM*, 23 FCC Rcd at 1473 (para. 12).

III. IDENTICAL SUPPORT IS COMPETITIVELY NEUTRAL AND SHOULD BE RETAINED

It would be a mistake to abandon the identical support rule, particularly because there is no clear understanding of what would take its place. A number of Commenters joined Cellular South in opposing the idea of putting wireless competitive ETCs on a cost-reporting mechanism.[11]

A. The *Interim Cap Order* Effectively Eliminated Identical Support

First, the Commission should recognize that the *Interim Cap Order* applying only to competitive ETCs effectively eliminated the identical support rule. Under the *Interim Cap Order* competitive ETCs will not receive USF support equal to their landline competitors. Incumbent LECs will continue to see their per-line amounts increase as they lose customers, but competitive ETCs will no longer receive support based on those amounts because competitive ETCs have been capped.

If the sole concern in enacting short-term reform was to stop the Fund from increasing, then the *Interim Cap Order* largely achieves that goal. Accordingly, the Commission can afford to be methodical in its approach to comprehensive reform. Since the identical support rule is effectively gone under the *Interim Cap Order*, there should be no rush to "officially" abandon the identical support rule.

B. The Identical Support Rule Is Competitively Neutral

The identical support rule is competitively neutral and should be maintained. Because the current USF system is designed to provide support according to the costs of incumbent LECs, the way to maintain competitive neutrality is to assign an equal value to the customer without regard as to whether the customer chooses wireline or wireless technology. Accordingly, the

[11] *See, e.g.* GCI Comments at 65-70; NCTA Comments at 12; RCA and ARC Comments at 4-5, 52-54; USTA Comments at 18; Verizon Comments at 19, 35-36; Windstream Comments at 6.

per-line calculation for awarding support for competitive ETCs is a competitively neutral mechanism.[12]

By adopting a cost-reporting mechanism (which would not be competitively neutral), the Commission would be providing a benefit to the least efficient service providers that would otherwise be forced to improve their operations to remain competitive in the market. The Commission even made this observation in its *Reverse Auctions NPRM*, noting that "a support mechanism based on either a carrier's embedded costs or on a forward-looking cost model provides no incentives for ETCs to provide supported services at the minimum possible costs."[13]

Cellular South is concerned with the Commission's curious statement in its *Interim Cap Order* regarding identical support and its relationship to competitive neutrality. Though claiming that competitive neutrality continues as a matter of policy, the Commission stated "it is not clear that identical support has, in reality, resulted in competitive neutrality."[14] In fact, the existence of identical support in and of itself is a competitively neutral result. When customer lines receive equal support – whether those lines are wireline or wireless – the customer is valued equally in the eyes of the high-cost fund. If all customers are valued equally, then no provider receives an advantage due to their operating inefficiencies being subsidized. This means that the support used to provide the end-user's service – the actual connection between the consumer and the network – is equal between technologies and providers. Therefore, identical support is inherently competitively neutral.

[12] Of course, this shows that the current *Interim Cap Order* is not competitively neutral because it gives incumbents the advantage of receiving cost-based support while competitors' support is locked. Essentially, the incumbents' customers are assigned a greater value than competitive ETCs' customers.
[13] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500 (para. 11).
[14] *Interim Cap Order* at para. 22.

C. The Commission Could Build Upon Its *Interim Cap Order* to Ensure Competitive Neutrality by Capping Per-Line Amounts and Making Support Portable

Alltel's Comments recognize that "[o]ver time, ILECs' voice-grade line counts have declined with virtually no corresponding reductions in their subsidy funding, and as a result the per-line amount of support disbursed to ILECs has ballooned, causing unnecessary fund growth that achieves no valid policy objective."[15] The per-line amount increases because support is not portable for incumbent LECs. By contrast, Chinook notes that support is portable among wireless competitive ETCs – when a wireless ETC loses a customer, it loses the corresponding high-cost support for that customer.[16] The Commission could maintain its principle of competitive neutrality and reduce growth in the fund by freezing per-line support and making it portable. In making support fully portable, the Commission would be following the mandates of the Telecommunications Act of 1996 ("1996 Act").[17]

CTIA proposes a plan under which per-line support in an area would be frozen upon the entry of a second ETC in that area. This freeze would apply to all ETCs, including incumbent LECs.[18] Cellular South recognizes the potential advantages with this plan and encourages the Commission to explore the CTIA proposal in a Further Notice of Proposed Rulemaking.

D. If the Commission Chooses to Use Cost-Reporting for Competitive ETCs, then the Proceeding Should Be Continued to Examine Allowable Costs

If the Commission adopts cost reporting for competitive ETCs, then this proceeding should be continued through a subsequent FNPRM to determine which costs are eligible for

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[15] Alltel Comments at 3. *See also* Cellular South Comments at 7-8 ("The problem is not that all ETCs in a high-cost area receive the same amount of per-line support, it is that incumbents continue to receive the same levels of total USF support even though they are hemorrhaging customers.").

[16] Chinook Comments at 5.

[17] *See Alenco*, 201 F.3d at 616.

[18] CTIA Comments at 26.

inclusion in competitive ETC reporting. It is not clear to Cellular South exactly what costs would be compensable in a cost-based reporting mechanism. It is assumed that tower expenses and backhaul connections would be included, but it is not clear whether switching equipment, retail locations, equipment subsidies, and many other related costs would be allowable as well. Additionally, what of spectrum costs?

In order to do implement such a plan equitably, the Commission should examine the allowable costs for ILECs and outline those costs and their justification in a further notice so that wireless competitive ETCs can comment on the equivalent costs for wireless carriers and offer suggestions on implementing a cost-based mechanism for competitive ETCs. Cellular South has doubts that any cost-based mechanism would satisfy the requirement of competitive neutrality between ILECs and competitive ETCs. However, if this type of mechanism is to be competitively neutral, then it must be given a thorough opportunity for comment in a FNPRM.

If the Commission chooses to continue its push for competitive ETC cost reporting, then it should additionally be prepared to reduce ILEC support if it is found that competitive ETCs can serve customers more efficiently than the ILEC in an area. The Commission has previously recognized that, if the competitive ETC "can serve the customer's line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC."[19]

E. The Benchmark for Competitive ETC Support Cannot Be ILECs' Costs

One critical piece in shifting competitive ETCs to cost-based support is determining a benchmark for establishing high-cost lines that is specific to wireless competitive ETCs. Any mechanism that would calculate wireless competitive ETC costs and then base support on an ILEC benchmark is inherently unfair wireless carriers.

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

The suggestion that wireless carriers be required to adopt cost-reporting and then be subject to the incumbent LEC benchmark has caused some carriers to question (rightly in the view of Cellular South) the veracity of the *Identical Support NPRM* as a step towards comprehensive reform.[20] Cellular South attempted to point this out in its Comments when recognizing that this proposal would incentivize competitive ETCs to operate as inefficiently as incumbent LECs in order to continue receiving support.[21] Even Commenters in favor of imposing cost-based modeling on wireless competitive ETCs recognize that the wireline benchmark is not the proper measure for determining support for wireless competitive ETCs.[22]

In summary, the fund will not see a significant reduction until the mechanism changes from one that rewards ILECs for wasteful spending. If the Commission is truly concerned with competitive neutrality, it should cap per-line amounts in all study areas, apply that amount to all eligible carriers in that area, and make support portable so that lost lines equal lost support. If the Commission continues its interest in abandoning competitive neutrality and adopting cost-based reporting for competitive ETCs, then it must accept that the proceeding should be extended in a further notice to adequately craft a cost-based mechanism that is equitable for competitive ETCs. Such a proceeding could also lead to high-cost fund savings through modifications to the ILECs' allowable costs.

IV. EXCLUDING CATEGORIES OF ETCs FROM IAS/ICLS IS UNWARRANTED AND IS CONTRARY TO THE 1996 ACT

Cellular South is concerned that the Commission would consider eliminating IAS and ICLS funding to wireless competitive ETCs. Support for this idea seems to stem from a belief that IAS and ICLS is not necessary to wireless carriers because it originated from access

[20] Alltel Comments at 28.

[21] Cellular South Comments at 8.

[22] GVNW Comments at 15.

revenues that were eliminated when the 1996 Act mandated that support should be explicit rather than implicit. According to this argument, wireless carriers never received access revenues and, therefore, they should not receive IAS and ICLS support.[23]

In its Comments, CTIA recognizes the clear flaw in this reasoning. If IAS and ICLS are access replacement, then they should not be considered part of the Universal Service system. On the other hand, if IAS and ICLS are explicit USF support, then the funding must be portable and available to all ETCs and not just incumbent LECs.[24] Alltel comments on this issue, noting that the Commission established the IAS and ICLS funds in order to convert these implicit subsidies into explicit support.[25] There has been no explanation from the Commission or from other Commenters as to the justification for the FCC to eliminate a class of ETCs from eligibility for IAS and ICLS support. IAS and ICLS funding – whatever their origins – are components of the broader Universal Service Fund today and, therefore, must be available to all ETCs.

Cellular South joins RCA and ARC[26] in urging that the Commission reject the idea of disqualifying an entire class of ETCs from receiving support through IAS and ICLS, and instead continue to follow Commission precedent that support from these sources is available to all ETCs.

V. REVERSE AUCTIONS ARE NOT APPROPRIATE MECHANISMS FOR DISTRIBUTING UNIVERSAL SERVICE SUPPORT

In its Comments, Cellular South noted that reverse auctions are contrary to the principles embodied in the 1996 Act because reverse auctions would re-establish monopolies in areas that

[23] *See* ATA Comments at 7; CenturyTel Comments at 23; Embarq Comments at 12; NTCA Comments at 23; Qwest Comments at 7; Verizon Comments at 38; Windstream Comments at 23.
[24] CTIA Comments at 18.
[25] Alltel Comments at 37 (citing *Identical Support Rule NPRM*, 23 FCC Rcd at 1477 (para. 23)).
[26] RCA and ARC Comments at 63 (citation omitted).

are now open to competition.[27] A number of Commenters joined Cellular South in recognizing this effect of reverse auctions.[28]

A. Reverse Auctions Would Reduce or Eliminate Competition

The first flaw in a reverse auction mechanism is the obvious anti-competitive result in limiting who can compete in a market. While there would be a degree of competition in the auction process, the practical result of the process would be a monopoly grant to a single carrier and no competition for consumers in the market.

As Cellular South detailed in its Comments, high-cost areas receive support because it is uneconomic for carriers to serve consumers in those areas without USF dollars.[29] If the number of carriers receiving USF support in an area is limited, then unsupported carriers will cease to provide service in that area because they cannot offer service without USF support. After all, if it were possible for carriers to provide service in a given area without the benefit of USF support, then that area would not be a high-cost area.

Further, incumbent providers have the virtually insurmountable advantage of already having mature networks in place. This gives incumbents the advantage of submitting artificially low bids which would not be possible for competitors to match, much less to beat. There has been no reverse auction proposal thus far that offers a solution to this type of potential for "gaming" the system.

B. Reverse Auctions Put the Government in the Position of Choosing Winners in a Market

It is also problematic that reverse auctions put the government in the position of choosing technology winners. The market does a much better job than the government of selecting

[27] Cellular South Comments at 6-7.
[28] Alltel Comments at 40; GVNW Comments at 21; RCA and ARC Comments at 66-68; SouthernLINC Comments at 17; WTA Comments at 33.
[29] Cellular South Comments at 2.

business winners. Competition encourages efficiency and innovation, and consumer choice is a better tool than the bureaucratic process for selecting market winners. With reverse auctions, the Commission is forced to determine which technology is available to consumers in particular areas and which businesses are the winners.

C. Single-Winner Reverse Auctions are Particularly Problematic

As Cellular South pointed out in its Comments, reverse auctions that select single winners are particularly problematic.[30] Other Commenters share this view.[31] There are obvious detriments to consumers served by monopoly providers – particularly in the field of telecommunications. This was a driving factor behind the 1996 Act which specifically opened markets to competition in telecommunications services.

If reverse auctions only support one carrier in an area, the effect would be to re-establish monopolies in high-cost areas across the nation. That is contrary to the intent of the 1996 Act and is certainly not beneficial for the consumer.

D. Reverse Auctions Would Lower the Quality of Service in Rural Areas

Several Commenters recognized that quality of service would suffer under reverse auctions.[32] It is not clear how the Commission proposes to address quality issues which will inevitably arise as carriers cut corners on service quality in order to submit the lowest bid.

Unlike other products put out for bid, telecommunications service is not a commodity. There are differences and some providers are simply better than others. For example, one carrier may operate its network at a higher cost but with enough capacity so that subscribers rarely experience blocked or dropped calls. A second carrier may offer the cheapest service possible, even if it means customers routinely suffer from blocked or dropped calls. Based purely on cost,

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[30] Cellular South Comments at 6-7.
[31] *See, e.g.* RCA and ARC Comments at 68-69.
[32] *See, e.g.* MSTCG Comments at 12; WTA Comments at 30.

the second carrier would win the auction by providing the minimum possible level of service for the consumer. After winning the auction, the carrier would have an incentive to cut costs – and quality – further to maximize its revenues. Consumers will expect the Commission to ensure that bidders offer adequate service, but the Commission should not put itself in the position of having to decide how carriers should configure their networks. These are decisions best left to the market rather than a system of "hyper-regulation"[33] that would result if the Commission were to insert itself in network management decisions.

For all of these reasons, Cellular South once again asks the Commission to reconsider the idea of using reverse auctions to award universal service support.[34]

VI. CONCLUSION

The purpose of the high-cost fund is not to ensure that all carriers are competitive regardless of inefficiencies, it is to promote telecommunications services in rural and high-cost areas by helping those areas become markets that are economic for carriers to serve.

Cellular South encourages the Commission to recognize the value in the competitively neutral identical support rule, and to retain this system for distributing high-cost support. There is no evidence that the high-cost fund is exploding, but there is mounting evidence that growth is slowing and will continue to do so. Furthermore, there is significant opposition to the Commission's proposal to implement a cost-based mechanism for wireless competitive ETCs. If the Commission insists on abandoning the identical support rule, then there must be a Further Notice of Proposed Rulemaking in order to determine what will take its place.

The Commission could reduce the size of the fund and improve overall efficiency by capping per-line amounts and making support fully portable. Additionally, CTIA's proposals to

[33] Alltel Comments at 40-41.
[34] Cellular South Comments at 3-7.

modify incumbent LEC support would help to improve efficiency and would result in greater accountability.

The Commission should not adopt the proposal to exclude competitive ETCs from receiving support through IAS and ICLS. These support mechanisms are explicit support within the Universal Service program and must be available to all ETCs. A decision that excludes wireless competitive ETCs from these sources of support would be contrary to the 1996 Act.

Finally, Cellular South encourages the Commission to recognize the anti-competitive results that would follow from a reverse auction mechanism and, consequently, abandon the reverse auction proposal. Reverse auctions would re-institute monopoly carriers in areas that now enjoy the benefits of competitive service providers.

Respectfully submitted,

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