FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS

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June 2, 2008

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I. INTRODUCTION AND SUMMARY.

The pending notices of proposed rulemaking present the Commission with an unprecedented opportunity to transform the high cost fund, which commenters uniformly agree is in dire need of reform. The Commission took an important first step by capping high cost support to competitive eligible telecommunications carriers ("ETCs"). It should now "move forward on adopting comprehensive reform measures in an expeditious manner."[2] However, real reform requires that the Commission take steps to transform the high cost fund into a more targeted and efficient program that provides concrete benefits to consumers – both consumers who contribute to the fund and consumers in high cost areas who need the services the high cost fund supports. The Commission should accomplish universal service contribution reform by replacing the current revenue-based contribution system with a system based on a per-telephone

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1 In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively "Verizon").

2 *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, WC Dkt. No. 05-337, CC Dkt. No. 96-45, FCC 08-122, ¶ 1 (May 1, 2008) ("*Interim Cap Order*").

number charge. The Commission should accomplish high cost distribution reform by adopting three specific measures.

First, the Commission should provide one-time grants to help construct wireless networks in areas without wireless service today. Although demand for robust wireless services and competition for customers has encouraged the deployment of wireless services in all areas of the country, there are a small number of areas that still do not have wireless coverage. Wireless high cost funding should be restructured so that universal service support is directed to those areas that do not have access to wireless services. The Commission should award these one-time grants through competitive bidding and fund them by reducing universal service support to competitive ETCs in areas of the country where support is excessive, either because multiple competitive ETCs serve an area or where there has not yet been an auctioning of such support.

Second, the Commission should adopt Verizon's proposal to use reverse auctions to reduce high cost funding and the number of ETCs in a particular area. The Commission could immediately hold auctions in those areas with multiple wireless ETCs in order to ensure that the fund supports no more than one wireless ETC in a particular geographic area.

Third, the Commission should put in place an overall cap on the high cost fund as well as adopt other specific measures that will relieve financial burdens on the high cost fund while the Commission puts in place longer term solutions. The goal of these and other reforms should be to award support only in geographic areas where consumers would be denied service absent support and to ensure that carriers receive no more subsidy than required to provide supported services.

Some commenters suggest approaches that would dramatically increase the size and scope of the high cost fund or would add additional layers of complexity to the fund without providing any real benefits to consumers. The Commission should reject these proposals. Specifically, the Commission should reject proposals to replace the identical support rule with a system that requires competitive ETCs to file burdensome cost data in order to receive universal service support. Instead, the Commission should eliminate Interstate Access Support ("IAS") and Interstate Common Line Support ("ICLS") for competitive ETCs, as the Commission tentatively concluded. This action addresses the problem of excessive funding to competitive ETCs without need for a highly regulatory and administratively cumbersome, cost-based approach.

In addition, the Commission should not bring broadband into the universal service program and should be wary of such proposals. While encouraging broadband deployment is a critical national objective, there is little consensus on how to use universal service funds to achieve that goal, as the comments in this proceeding demonstrate. Broadband services are already available to most consumers, and the market is working to expand the reach of broadband networks even further. To the extent a small number of areas remain without access to broadband, there are approaches other than universal service subsidies better suited to bridging this gap – including partnerships at the national, state, and local levels that provide financial incentives and grant funding to help connect Americans.

II. THE COMMISSION SHOULD TRANSITION SOME WIRELESS FUNDING TO A ONE-TIME GRANT PROGRAM THAT WOULD BRING WIRELESS SERVICE TO UNSERVED AREAS.

The Commission should adopt the Joint Board's recommendation to transition a portion of USF funding that is currently distributed to wireless companies to a one-time wireless construction grant program that would help bring wireless service to areas that are not served by any wireless provider today.[3] Many commenters support some form of grant program that would help build out wireless networks to unserved areas. Wireless carriers,[4] incumbent wireline carriers,[5] and cable operators[6] endorse such an approach, as do state commissions in California, Iowa, Oregon, Maine, Wyoming, and Vermont, as well as NASUCA.[7]

Verizon's proposal to transition some wireless support to one-time construction grants for wireless carriers is the most comprehensive, and the Commission should move forward with such a program. More specifically, as Verizon explained in its initial comments, one-time wireless grant funding should be awarded on a project-specific basis through competitive

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3 *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08-22, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Jan. 29, 2008); *Federal-State Joint Board on Universal Service*, Recommended Decision, 22 FCC Rcd 20477, ¶¶ 16-18 (Fed.-State Jt. Bd., Nov. 20, 2007) ("*Recommended Decision*").

4 Comments of Verizon and Verizon Wireless at 8-15 ("Verizon Comments"); *see also* Comments of CTIA – The Wireless Association® at 30-31 ("CTIA Comments"); Comments of AT&T Inc. at 37 (proposing to eliminate legacy wireless ETC funding and "award project-based funding to mobile wireless providers to provide the supported services in areas that are currently unserved by mobile wireless broadband service") ("AT&T Comments").

5 Verizon Comments at 8-15; AT&T Comments at 37; Comments of CenturyTel, Inc. at 24 (noting that "[a]s the Joint Board recommended, the mobility fund should be refocused as soon as possible to one that supports new wireless service to previously unserved territory") ("CenturyTel Comments").

6 Comments of the National Cable & Telecommunications Association at 19 ("NCTA Comments").

7 *See* Comments of the California Public Utilities Commission and the People of the State of California on the Notice of Proposed Rulemaking Regarding Recommendation Of Federal-State Joint Board On Reform Of High-Cost Universal Service Support at 10-11 ("CPUC Recommended Decision Comments"); Comments of Iowa Utilities Board at 1-2; Comments of the Public Utility Commission of Oregon at 3 ("Oregon Commission Comments"); Comments Of Maine Public Utilities Commission, ConnectME Authority, Wyoming Public Service Commission, and Vermont Department Of Public Service at 7-8 ("Joint State Commission Comments"); Comments of National Association of State Utility Consumer Advocates on the Joint Board Recommended Decision at 22-23 ("NASUCA Joint Board Comments").

bidding, and unserved areas could be defined using objective criteria, identified based on available data from American Roamer, and nominated for bidding either by carriers, states, or the Commission. Verizon Comments at 9-15. Support for these grants could come either from savings realized from areas with multiple ETCs in which universal service support is awarded through a reverse auction or out of existing support for wireless ETCs.

Arguments that such a grant program will not provide adequate long-term support for operational costs[8] or that a transition to wireless construction grants is "discriminatory"[9] are misguided. First, under Verizon's proposal, ongoing operational support would be available and determined through the use of reverse auctions, which allows market forces rather than the government to set required subsidy levels. One of the advantages of competitive bidding is that it relieves the Commission of the need to estimate, categorize, or allocate costs. Second, there is nothing "discriminatory" about a program under which any wireless carrier could compete for one-time construction grants through a competitive bidding process in order to bring wireless service to currently unserved areas. On the contrary, such a program would advance "the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas." *Interim Cap Order* ¶ 21 (citing 47 U.S.C. § 254(b)(3)).

A one-time construction grant program promises to bring significant benefits to consumers who currently lack wireless service. However, the Commission, not the states, should determine which projects are to be funded by such grants, although the states should have the opportunity to provide input in identifying the areas that are unserved and lack wireless infrastructure. Moreover, the Commission should subsidize wireless build-out only to unserved

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8 *See* Comments of General Communication, Inc. at 41 ("GCI Comments").

9 *See* Comments of the Rural Telecommunications Group, Inc. at 9-12.

areas, not to areas that are "underserved," since subsidies are unnecessary to ensure that wireless service is available in underserved areas. Verizon Comments at 15-16. As NCTA correctly notes, the Commission must eliminate unnecessary support to multiple carriers and "ensure that support is provided only to the extent that it is absolutely necessary to provide service in areas where it otherwise would not be economic to provide affordable service." NCTA Comments at 19. In addition, a grant program that subsidizes wireless service in areas where it is already available would be difficult to administer and may create overlap between the current program and the new infrastructure grants.

Finally, competitive bidding for infrastructure grants should be as straightforward and transparent as possible. The Commission should define minimum requirements for the infrastructure it expects the winning bidder to deploy. The bids submitted by participants should simply be the amount of subsidy they would require to meet the requirements. The requirements should be flexible enough to allow the bidders to use different technologies and to offer an array of services using the infrastructure. However, these business model differences should not be part of the bidding process itself, as some parties have suggested.[10] If the Commission were to entertain multi-dimensional proposals with different attributes, the bidding process would become a subjective and unworkable "beauty contest."

For similar reasons, the Commission should first determine the areas to be considered, and then open each of those areas to competitive bidding by any qualified party. The Commission may use various criteria in order to select the areas, including the population covered, roads in the area, and other factors, and, as Verizon has proposed, it should entertain

[10] AT&T, for example, contemplates that applicants would submit specific proposals that describe each project in detail, which would be evaluated on a number of different dimensions. AT&T Comments at 19-20.

nominations from carriers and from state commissions as a starting point for that selection process. However, once an area has been selected, a straightforward auction should be held, and the low bid should win.

III. THE COMMISSION SHOULD ADOPT REVERSE AUCTIONS FOR ONGOING COMPETITIVE ETC SUPPORT.

In addition to using grants to encourage wireless deployment in areas without wireless service today, the Commission should overhaul the current system of ongoing high cost subsidies and adopt Verizon's proposal to award ongoing support through reverse auctions in those areas where consumers would not have access to service without support. As the Commission tentatively concluded, reverse auctions will allow bidders themselves to determine the appropriate level of high cost support, will create incentives for providers to operate more efficiently in high cost areas, and will eliminate duplicative subsidies.[11] Many commenters agree with the Commission's tentative conclusions. For example, NCTA states that, "a properly structured auction mechanism eliminates the need for the Commission to determine the cost of serving a particular area and the amount of support that is needed, and instead relies on the market to make such determinations." NCTA Comments at 15. Likewise, Comcast notes that "[r]everse auctions, in principle, could reduce the size of the high-cost fund significantly from current levels." Comcast Comments at 7; *see also* Comments of the Information Technology Industry Council at 7 ("ITI Comments").

Consumer-focused organizations also recognize that reverse auctions will ultimately reduce the financial strain on the fund and the escalating USF surcharges consumers must pay. *See, e.g.,* Letter from Grover Norquist, Americans for Tax Reform to Marlene Dortch, Secretary,

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[11] *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08-5, WC Docket No. 05-337, CC Docket No. 96-45, ¶ 11 (rel. Jan. 29, 2008) ("*Reverse Auctions NPRM*").

FCC, at 1 (filed Apr. 14, 2008) ("[r]everse auctions will benefit all taxpayers"); Letter from Kristina Rasmussen, Director of Governmental Affairs, National Taxpayers Union to Marlene Dortch, Secretary, FCC, at 1 (filed Apr. 14, 2008) (reverse auctions "will create inducements for companies, whether incumbent or new to the market, to operate at maximum efficiency in order to offer low bids in the auctions").

Many state regulators also support reverse auctions. For example, consistent with Verizon's proposal, the Connecticut Department of Public Utility Control notes that "implementation of reverse auctions would be simple and eliminate the need for expensive cost of service studies relying instead on the prospective provider to make a determination as to whether it would offer service based on its own costs," and "the use of reverse auctions places the burden on the carrier to estimate the demand for its product and the corresponding costs of providing its service while eliminating the redundant support going to multiple providers serving a single area."[12] The New York Public Service Commission also endorses reverse auctions, noting that "[c]onsumers would no longer be funding duplicative networks, and the competitive bidding process would drive support levels closer to the actual costs incurred."[13] Likewise, according to the New Jersey Board of Public Utilities, reverse auctions "will assist in the distribution of the funds in a more appropriate manner" and "will also finally put an end to the inappropriate use of the Fund as a stimulus to competitive entry into areas where it is uneconomical for even one provider to operate."[14]

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12 Comments of the Connecticut Department of Public Utility Control at 6-7 ("Connecticut Department Comments").

13 *See* Comments of the New York State Public Service Commission, Attachment at 2. ("NYPSC Comments").

14 Comments of the New Jersey Board of Public Utilities at 5 ("NJ Board Comments"); *see also* Comments of Pennsylvania Public Utilities Commission at 17 ("Pennsylvania Commission

Several wireless carriers express a preference for reverse auctions compared to the current broken system.[15] Among the most fervent supporters of reverse auctions is SouthernLINC Wireless, a rural wireless carrier serving many high cost areas in the southeastern United States, which advocates a clock-proxy reverse auction that it believes would "dramatically reduc[e] the amount spent on universal service support." Comments of SouthernLINC Wireless at ii. Although Verizon does not support all of the proposals of SouthernLINC or other reverse auction proponents and specifically objects to "multiple winner" auctions, the support for the concept of reverse auctions among multiple wireless carriers is telling.

Of course, not all wireless carriers endorse reverse auctions. In particular, several wireless carriers that have reaped the benefits from the subsidization of multiple networks and thus have a financial interest in maintaining the status quo raise a host of objections to reverse auctions, none of which has merit.[16] For example, U.S. Cellular flatly claims that reverse auctions "fail[] to uphold the Commission's own goal of advancing the dual goals of universal service and competition and denies Americans the very benefits that universal service was intended to deliver." U.S. Cellular Comments at 56-57. Likewise, with minimal elaboration and no factual support, Cellular South insists that reverse auctions will actually harm, not benefit consumers. Cellular South Comments at 3. However, international experience with reverse auctions demonstrates otherwise. A recently released paper examining reverse auctions for

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Comments"); Comments of the California Public Utilities Commission and the People of the State of California on Notice of Proposed Rulemaking Regarding Use of Reverse Auctions at 3.

[15] *See* Comments of Alltel Communications, LLC at 40 ("Alltel Comments"); CTIA Comments at 23.

[16] *See, e.g.*, Comments of United States Cellular Corporation at 55-59 ("U.S. Cellular Comments"); Comments of Cellular South at 3-5 ("Cellular South Comments").

universal service support in several countries reveals that "reverse auctions have proven themselves both feasible and effective mechanisms for reducing expenditures on universal service and for revealing information about the true costs of supplying service in rural areas."[17]

The Rural Telecommunications Group speculates that reverse auctions would relegate rural consumers to "cut-rate, secondhand" wireless services. Rural Telecommunications Group Comments at 2-6. But, in the vast majority of areas in the United States, including rural areas, consumers already have a choice of at least three wireless operators.[18] If a winning wireless carrier in a reverse auction offered "cut-rate, secondhand" service, it would almost certainly lose customers to its competitors. Furthermore, under Verizon's reverse auction proposal, a winning bidder must enter into a contract that sets forth its service obligations, including applicable service quality requirements and any penalties for non-performance.[19] Competitive bidding is the process normally used to procure goods and services for government, and the quality of those goods and services is critical. If parties are concerned that particular aspects of wireless service might be neglected, then they should suggest appropriate contract requirements to address those concerns.

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17 Scott Wallsten, Technology Policy Institute, Reverse Auctions and Universal Telecommunications Service: Lessons from Global Experience at 17 (April 2008), *available at* http://www.techpolicyinstitute.org/files/wallsten_global_reverse_auctions-1.pdf.

18 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services,* Twelfth Report, WT Docket No. 07-71, FCC 08-28, ¶ 2 (rel. Feb. 4, 2008) (noting that more than 95 percent of the U.S. population lives in areas with at least three wireless operators).

19 *See* Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45 (filed May 31, 2007), Attachment - Modernizing Universal Service: Verizon's Plan for Comprehensive Reform, at 17 (filed May 31, 2007) ("*Verizon Reform Plan*").

Verizon's proposal more than adequately addresses the impact of reverse auctions on rural incumbent LECs,[20] provider of last resort requirements,[21] and the quality of telephone service in rural areas.[22] Specifically, Verizon proposes that, in the event an incumbent LEC loses a wireline reverse auction – only possible in a very limited number of study areas with multiple wireline ETCs – the Commission would provide a sufficient transition period, perhaps one year, for the reverse auction winner to take on the responsibilities of the incumbent LEC, and the Commission and the state commission should consider relieving some or all of the incumbent LEC's carrier of last resort obligations as well as unbundling and resale obligations. *Verizon Reform Plan* at 19-20. And, as discussed above, under Verizon's proposal the winning bidder and the state commission would enter into a contract that lays out the specific responsibilities and obligations of the winning bidder and provides for penalties in the event of breach. *Verizon Reform Plan* at 16-18.

Under Verizon's reverse auction plan, the Commission should introduce auctions in areas with multiple wireless ETCs. These auctions would reduce the number of supported wireless ETCs in these areas to one. Wireless auctions would not result in a reduction of support to incumbent wireline providers. The Commission, rather than the states, should administer these auctions to ensure regularity and standardization during the process, to increase the Commission's experience with auctions, and to avoid unnecessary administrative burden on carriers and state commissions.

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20 *See, e.g.,* Comments Of The Kansas Rural Independent Telephone Companies On Reverse Auctions at 3-7; Comments of the Independent Telephone and Telecommunications Alliance at 36-39 ("ITTA Comments"); Comments of the Alaska Telephone Association at 13-15.

21 *See, e.g.*, Comments of GVNW Consulting, Inc. at 26 ("GVNW Comments").

22 *See, e,g,*, ITTA Comments at 39-40; GVNW Comments at 24-25.

IV. THE COMMISSION SHOULD PERMANENTLY CAP THE HIGH COST FUND.

At the same time it adopts reverse auctions in areas with multiple ETCs, the Commission should ensure the sustainability of the high cost fund in the near term until comprehensive reform is complete. The Commission should adopt the Joint Board's recommendation to cap the high cost fund permanently in order to relieve financial burdens on the fund. *See Recommended Decision* ¶ 26. The Joint Board's proposal is consistent with the premise that government programs should operate on a budget and correctly recognizes that many aspects of the universal service program are already subject to a cap, including the schools and libraries program and high cost loop support to incumbent LECs.

Many commenters support a permanent cap on the high cost fund, noting the importance of protecting consumers from increasing universal service fees while the Commission moves forward with comprehensive long-term reform.[23] State public service commissions and other state regulatory agencies also endorse an overall cap as part of the transition to a new universal service regime.[24]

Those opposing a permanent cap generally consist of ETCs and public service commissions in states that are net recipients of universal service subsidies. Nonetheless, as the Commission recently observed in capping high cost support to competitive ETCs, universal service is designed to ensure "sufficient funding of *customers*, not *providers*." *Interim Cap*

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23 Comcast Comments at 3; NCTA Comments at 6; *see also* ITI Comments at 7.

24 *See* CPUC Recommended Decision Comments at 13-14; Connecticut Department Comments at 4; Comments of the Florida Public Service Commission at 8-9 ("Florida PSC Comments"); NYPSC Comments at 7; Comments of the Public Utilities Commission of Ohio Regarding High-Cost Universal Service Reform at 12 ("Ohio Commission Comments"); Oregon Commission Comments at 3; Pennsylvania Commission Comments at 6-7; NJ Board Comments at 13; NASUCA Comments at 5; Comments of the New Jersey Division of Rate Counsel at 10; Comments of National Consumer Law Center *et al.* at 1-2.

Order ¶ 18 (*quoting Alenco Commc'ns, Inc. v. FCC,* 201 F.3d 608, 620 (5th Cir. 2000)) (emphasis added).

It is important for the Commission to establish a firm limit on the cost of high cost programs. First, as comments in this proceeding illustrate, there will always be demand for increases in subsidies. Any proposal that would increase funding should be paid for through reductions elsewhere and also establish that the proposed funding would serve the public interest better than displaced support. Second, while the interim cap is an important step, it "will remain in place only until the Commission adopts comprehensive high-cost universal service reform." *Id.* ¶ 1. However, as the Joint Board has recognized, comprehensive reform should not allow a return to the steep growth trajectory of the fund prior to adoption of the interim cap. By proposing a permanent cap on the entire fund, the Joint Board acknowledged the need for budget discipline to be an ongoing feature of long-term reform.

Finally, even under the interim cap, further growth in the fund is still possible. In the *Interim Cap Order* the Commission adopted an exception to the cap when "a competitive ETC ... files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC." *Id.* ¶ 31. While it is too early to tell how many competitive ETCs will avail themselves of this provision, a system that rewards carriers for higher costs is not well designed to encourage efficiency. Experience suggests that when there is an incentive for carriers to demonstrate high costs, they will do so. Further, while competitive ETC support is now capped and the rural high cost fund was already capped, other components of incumbent LEC support, such as local switching support and ICLS, are not. Absent a permanent cap these programs remain free to grow over time with increases in incumbent LEC revenue requirements.

V. THE COMMISSION SHOULD NOT REPLACE THE IDENTICAL SUPPORT RULE WITH A COST-BASED MODEL BUT INSTEAD SHOULD ADOPT ITS TENTATIVE CONCLUSION TO ELIMINATE ACCESS REPLACEMENT SUPPORT TO COMPETITIVE ETCs.

Numerous commenters support eliminating the identical support rule, which is no longer justified in today's marketplace. As the Commission recently noted in the *Interim Cap Order*, the identical support rule has caused significant and unsustainable growth in the high cost fund and is neither required by the Communications Act nor consistent with sound public policy.[25] However, the Commission should not simply replace the identical support rule with a discredited cost-based system, as some commenters advocate.[26]

Extending this discredited cost-based system to competitive ETCs will not solve the fund's fundamental problems; it will instead exacerbate them. At the same time, the Commission would incur significant expense and burden in creating and administering such a regime. As many commenters agree, the Commission should instead spend such resources on meaningful long-term reform.[27]

A better solution would be for the Commission to ease unnecessary burdens on the high cost fund by adopting its tentative conclusion to eliminate access replacement support (support from the IAS and ICLS funds) to competitive ETCs – a proposal many commenters endorse.[28]

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25 *Interim Cap Order* ¶ 6 ("[i]n recent years, [universal service fund] growth has been due to increased support provided to competitive ETCs"); *see also id.* ¶¶ 17-21.

26 *See, e.g.,* CenturyTel Comments at 22; Comments of the National Exchange Carrier Association at 22-26.

27 *See also* Comments of Sprint Nextel, Inc. at 9-10, Comcast Comments at 5-6; GCI Comments at 65-75; NCTA Comments at 12-13; Cellular South Comments at 8-9; Oregon Commission Comments at 5-6; Comments of the Rural Cellular Association and the Alliance of Rural CMRS Carriers at 51-60.

28 Comments of the Montana Telecommunications Association at 11; Comments of the Missouri Small Telephone Group at 6-77; CenturyTel Comments at 23-24; Comments of

These funds were created to address circumstances specific to incumbent wireline LECs and were never intended to be available to competitive ETCs.[29] Eliminating this support will create immediate cost savings for the fund and will present a much more straightforward near-term solution than a cost-based system.

VI. THE COMMISSION SHOULD NOT SUPPORT BROADBAND WITH UNIVERSAL SERVICE FUNDS.

As Verizon demonstrated in its initial comments, adding broadband to the list of supported services or otherwise subsidizing broadband with USF support is inconsistent with the Communications Act and is not sound public policy. Verizon Comments at 31-34. Instead, the Commission should continue to explore the use of public-private partnerships, which have an established track record of providing Americans with increased access to the benefits of broadband service. Market forces are working to expand the reach of broadband networks without subsidies, and public-private partnerships have proven effective at identifying those areas that lack access to broadband services and incenting providers to offer service in those areas.

Other parties agree. For example, several commenters express concern that supporting broadband with USF funds would unacceptably increase the size of the high cost fund.[30] Other commenters are concerned that adding broadband to the fund is premature given the rapid

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Embarq at 12-14; Florida PSC Comments at 3-4; Comments of Frontier Communications at 6 (supporting the elimination of ICLS and IAS for wireless ETCs); Comments of Iowa Telecommunications Association to *Identical Support Rule NPRM* at 4-5; ITTA Comments at 28-31; Comments of Qwest Communications International, Inc. at 7.

[29] *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 08-4, WC Dkt. No. 05-337, CC Dkt. No. 96-45, ¶ 23 (rel. Jan. 29, 2008) ("*Identical Support Rule NPRM*").

[30] NJ Board Comments at 7; Comments of the MACRUC Member States at 4.

expansion of broadband, the need for additional data, and the availability of other funding for build-out, including subsidized Rural Utility Service broadband loans.[31] Indeed, competition and network construction continues to emerge in the broadband market absent new broadband subsidies. For example, Clearwire and Sprint-Nextel recently announced a combination of their wireless broadband units that has received financial backing from Intel Corp., Google, Inc. and three cable companies. Using WiMAX technology, this new company plans to reach up to 140 million people by 2010 and ultimately plans to reach 200 million people.[32]

The case for supporting broadband with universal service funding is complicated further because the Commission lacks authority to add broadband to the high cost fund. Parties that advocate using high cost support to subsidize broadband deployment do not explain how broadband lawfully could be brought into the USF when the Commission's authority to use federal high cost subsidies to promote universal service is limited to "telecommunications services." 47 U.S.C. § 254(c).[33]

Commenters also do not agree on how such a broadband plan would work. For example, several commenters argue that the Commission should allow the states to award project-specific, broadband grants subject to Commission oversight.[34] Others propose a program under which block grants would be made directly to each state, which would then award grants on a project-

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[31] *See* Comments of NTCH, Inc. at 21-22; NYPSC Comments at 5; Comments of the United States Telecom Association at 32-36.

[32] *See* "Clearwire, Sprint Nextel To Join Forces," Associated Press (May 7, 2008).

[33] *See, e.g.,* NASUCA Joint Board Comments at 16-17; U.S. Cellular Comments at 60-61. As Verizon explained in its initial comments, because the use of federal high cost subsidies to promote universal service is limited to "telecommunications services," broadband Internet access service does not qualify as a supported service eligible for high cost subsidies under section 254, since it has been defined by the Commission as an information service.

[34] CPUC Recommended Decision Comments at 4-9; Connecticut Department Comments at 5.

specific basis. Joint State Commission Comments at 6-7. Some support the Joint Board's proposal to establish a new broadband fund limited to $300 million, while others note that a great deal more funding will be necessary.[35] Similarly, while one party supports broad funding for the operational expenses and depreciation of broadband infrastructure,[36] another proposes that companies receiving construction grants not receive any operational subsidies for five to ten years.[37]

Many of the various broadband proposals pose more questions than answers. A good illustration is AT&T's proposal that the Commission establish two new broadband funds: the "Broadband Incentive Fund" (for fixed networks) and the "Advanced Mobility Fund" (for mobile wireless networks). AT&T Comments at 1-6. Although AT&T's proposal would utilize an "auction-like" process for awarding support for broadband deployment in areas that lack broadband services today, the process AT&T outlines would not provide the transparency and efficiency of an actual auction. There also is no price tag for AT&T's proposal, since the primary variables affecting cost (*e.g.*, the speed of the broadband service to be provided, the period of time over which service must be provided) are left open. AT&T also does not address the fact that it stands to be a primary beneficiary of its proposal even though AT&T is well positioned to expand the reach of its broadband services without subsidies from the USF.

In addition, other than the expediency provided by an existing system for raising and distributing funds, there is no reason for broadband to be made part of the high cost fund. New

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35 *Compare* Comments of Connected Nation at ii (supporting " the recommendation by the Federal-State Joint Board on Universal Service to create a $300 million annual Broadband Fund") *with* Comments of the Benton Foundation at 27-29 (proposing a "$3 billion annual revenue requirement" to fully fund broadband buildout).

36 Alltel Comments at 18-19.

37 CPUC Recommended Decision Comments at 7.

build-out programs should more appropriately be considered by Congress or state legislatures, which can balance the costs and benefits of such programs, evaluate priorities, and make appropriate judgments.

Moreover, adding broadband to the USF would actually be contrary to the broader goals of universal service – even aside from the fact that the Commission lacks authority to support broadband with universal service funds. Broadband is available to the vast majority of all Americans, yet not all subscribe to broadband services.[38] Universal service funding for broadband would increase the burden that consumers face every month on their bills, which would only discourage some households from subscribing to broadband.

One of the greatest weaknesses of the current universal service program is that it pays ETCs to do things that, in many cases, they would do without subsidy. Given the rapid growth in the broadband market, a great challenge in designing any policy to promote broadband is to distinguish between areas where broadband is likely to be provided by the market from those areas were broadband could only be provided if subsidized. Proposals by commenters in this proceeding would generally provide subsidy in any area that is not served today, without regard to whether broadband would otherwise be provided, or whether other policy measures might promote deployment of broadband by the market.

The risk involved if a program is not sufficiently targeted is illustrated by available cost estimates associated with broadband deployment. According to one industry estimate, the cost of providing all citizens in the United States with access to mobile broadband service could be as high as $22 billion, which is more than five times the annual size of the entire high cost fund.

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38 About 94 percent of U.S. households have wireline broadband Internet access service available to them, but only about 51 percent of households actually subscribe to broadband. *See* "Internet Use Supplement to the October 2007 Current Population Survey," U.S. Census Bureau (available at http://www.ntia.doc.gov/reports/2008/networkedNation.html).

See Letter from Paul W. Garnett, CTIA, to Marlene H. Dortch, FCC, WC Docket No. 05-337 (May 8, 2008) (attaching study by CostQwest Associates). NECA estimates that it would cost approximately $12 billion (about three times the current high cost fund) to upgrade rural telephone access lines to a level capable of delivering a basic multimedia package.[39] Using universal service subsidies to fund such costs would "render the amount of high-cost support unsustainable and could cripple the universal service fund." *Interim Cap Order* ¶ 22 (adopting an interim cap on competitive ETC support due to the "crisis" caused by the more than 65 percent increase in such support).

A better and more consumer friendly approach would be for the Commission to promote public-private partnerships at the state level, which have proven to be an effective tool in increasing broadband availability. Such initiatives are effective because they have the unique ability to examine all of the relevant factors that affect broadband demand and deployment at the local level. Public-private partnerships are considerably better positioned than the federal high cost program to identify and overcome barriers to broadband subscribership, such as lack of understanding of the Internet and lack of a computer.[40] By addressing all aspects of the market in each area and improving the business case for prospective broadband providers, these programs have demonstrated an ability to attract private investment in broadband, without new sources of subsidy. In short, the Commission should focus on addressing the underlying problems with the high cost fund, not create new problems by adding broadband to the fund.

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39 *See* NECA, The Packet Train Needs to Stop at Every Door (June 2006) (available at http://www.neca.org/source/NECA_Publications_4729.asp).

40 *See* Letter from Gerry Anderson, General Manager, Mid-Rivers Communications to Meredith Atwell Baker, Acting Asst. Secretary for Communications and Information, NTIA, WC Dkt. No. 07-38 (filed Feb. 25, 2008); Verizon Comments at 26-31.

VII. THE COMMISSION SHOULD REJECT PROPOSALS THAT WILL NOT SOLVE THE HIGH COST FUND'S PROBLEMS OR THAT WILL COMPLICATE THE PROGRAM FURTHER.

The Commission should reject proposals that would not solve the fundamental problems confronting the high cost fund, such as CTIA's proposal for multiple winner auctions and Alltel's proposal to provide high cost support for multiple wireless and wireline ETCs.[41] As Verizon previously has explained, providing support to multiple carriers in the same geographic area only perpetuates the "uneconomic practice of subsidizing multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier," violating the "sufficiency" requirement of the universal service program. *See Reverse Auctions NPRM* ¶ 14. While programs that award subsidies to multiple carriers in the same area would undoubtedly be attractive to carriers receiving such subsidies, these programs would only exacerbate the problems confronting the high cost fund and further burden the consumers who pay for it. Verizon agrees with CTIA that competitive bidding is the appropriate way to determine wireless subsidies. But an auction in which no one ever loses is unlikely to produce the benefits that competitive bidding should create.

Embarq points out that the current system does not target support to all areas that are costly to serve, proposing to retarget support at a more granular level by requiring mandatory disaggregation of all support to a wire center level or "zones-within-wire-centers." *See* Embarq Comments at 18. Verizon supports the use of small geographic areas to better target subsidies in the context of reverse auctions for ongoing support, but not through the current funding system. For many of the same reasons that traditional cost-based methods should not be applied to wireless carriers, they also should not be used, on a mandatory basis, to reallocate incumbent LEC high cost support, and should certainly not provide the basis for increasing support levels.

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41 *See* CTIA Comments at 30-31; Alltel Comments at 15-16.

A better way to address Embarq's concerns and the issues raised by the Tenth Circuit remand in *Qwest Communications Int'l Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*"), would be to use a portion of the savings realized from reverse auctions to provide new support in certain areas that do not receive support today, as Verizon proposes. *Verizon Reform Plan* at 25-28. This approach would allow efficiency gains to pay for service in those areas. Competitive bidding for any such new subsidies also would allow the Commission to determine the appropriate level of support for each area.

The Commission should reject proposals seeking to expand the size of the fund to the benefit of particular parties. Qwest, for example, proposes to "replace the current non-rural support mechanism with federal support targeted to the highest cost wire centers."[42] While ostensibly designed to address the *Qwest II* remand issues, Qwest's proposal is aimed at eliminating statewide averaging of non-rural carrier costs, an aspect of the Commission's high cost program that the Tenth Circuit expressly upheld. *Qwest Corp. v. FCC*, 258 F.3d 1191, 1202, n.9 (10th Cir. 2001) ("*Qwest I*"); *see also Qwest II*, 398 F.3d at 1227. Rather than resolving the *Qwest II* remand issues, Qwest's proposal would do little more than provide more universal service support to Qwest, and at a huge cost to all consumers who pay for the high cost fund. According to Qwest's estimates (the bases for which are not disclosed), redesigning the non-rural support program as Qwest proposes would result in a $1.2 billion annual increase in the high cost fund. *Qwest Proposal,* attachment at 4. Qwest would be a primary beneficiary of the additional $1.2 billion it seeks to layer on to the high cost fund with $200 million in new support flowing to Qwest. *Id.* at 4-5.

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[42] Letter from R. Steven Davis, Qwest Inc. to Marlene H. Dortch, FCC, WC Dkt. No. 05-337, at 2 (May 5, 2008) ("*Qwest Proposal*").

Qwest also proposes a more "modest" $322 million increase if its larger proposal is determined to be too expensive, with new support available only to "medium-size ILECs," which Qwest creatively defines so as to include itself but to exclude only Verizon and AT&T. *Id.* Qwest's proposal is flawed for a number of reasons. First, the "medium-sized" incumbent LEC distinction that Qwest seeks to create is irrelevant to and wholly inconsistent with the principles that must guide the Commission's standards for ensuring universal service under section 254(b) of the Communications Act, including access to affordable service in rural and high cost areas and the Commission's additional universal service principle of competitive neutrality. 47 U.S.C. § 254(b)(3), (7); *see also Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶¶ 46-52 (1997). Qwest ignores the purpose of these guiding principles, which is to ensure that service is affordable for *consumers* in all areas of the country.

Second, like Qwest, both Verizon and AT&T are legacy Regional Bell Operating Companies that "serve thousands of rural wire centers with very high costs," *Qwest Proposal*, attachment at 12, and thus Qwest's attempt at line drawing so that it would benefit from a huge increase in high cost support, while Verizon and AT&T would not, is arbitrary and capricious.[43] Third, Qwest's primary rationale for excluding Verizon and AT&T from the new high cost support Qwest proposes does not strike the right policy balance. Qwest essentially claims that

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[43] When attempting to draw distinctions between carriers, the Administrative Procedure Act ("APA") requires the Commission to "do more than enumerate factual differences, if any . . . *it must explain the relevance of those differences to the purposes of the . . . Communications Act.*" *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965) (emphasis added). Furthermore, to withstand scrutiny under the APA, an agency must (1) identify a problem, and (2) show that its solution is related to the problem it has identified. *Alltel Corp. v. FCC*, 838 F.2d 551, 559 (D.C. Cir. 1988). Qwest's proposal is arbitrary and capricious because it bears "no relationship to the underlying regulatory problem." *Id.* (internal quotation marks and citation omitted); *see also Eagle- Picher Indus. v. EPA*, 759 F.2d 905, 921 (D.C. Cir. 1985) ("Under the arbitrary and capricious standard we look to see if the agency has ... articulated a rational explanation for its action."); *see also BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1056 (D.C. Cir. 2006).

Verizon and AT&T should be penalized for attempting to keep pace in vibrantly competitive markets by investing in fiber to upgrade wireline networks and building large national wireless networks. *Id.* In today's competitive environment, all network providers have no choice but to innovate in order to adapt to new and better technologies and offer the next generation products and services that consumers demand. Verizon's and AT&T's decisions to upgrade and build out their networks benefit consumers and necessarily result from competitive pressures that no carrier can ignore. It makes no sense, as Qwest suggests, to penalize carriers that innovate, while rewarding those that do not with new federal subsidies.

In addition, though Sprint's recently released proposal to reform universal service is aimed at reducing the size of the fund, it is similarly flawed.[44] This proposal is aimed at reducing the high-cost fund in a series of strategic moves that will harm Sprint's competitors, in particular incumbent LECs, but will do nothing to ensure that universal service is funded or targeted in a manner consistent with the Commission's goals in this proceeding.

Regardless, at the end of the day this proceeding is about comprehensive reform of the USF to better meet the needs of all consumers, not strengthening the balance sheets or improving the financial fate of individual providers. Verizon has put forth comprehensive reform proposals that would benefit consumers rather than just carriers – proposals the Commission should adopt.

[44] *See* Letter from Anthony M. Alessi, Senior Counsel, Sprint-Nextel to Marlene Dortch, Secretary, FCC (filed May 12, 2008).

VIII. CONCLUSION.

The Commission should adopt the Verizon proposals in this proceeding and move forward immediately with long-term reform of the high cost fund.

Respectfully submitted,

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June 2, 2008