

**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 GENERAL COMMUNICATION, INC.

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SUMMARY

The Commission's adoption of the interim CETC high cost support cap, with an exception for tribal lands and Alaska Native regions, marked a critical juncture in its efforts to reform, rationalize, and ensure sustainability of the Universal Service Fund ("USF"). This decision placed some needed, near-term brakes on the rapid growth of the high cost fund, while ensuring that America's tribal lands and Native Alaskan regions can continue to receive the support needed to bring these chronically underserved areas up to a level of service more comparable to the rest of the country. General Communication, Inc. ("GCI") is fully committed to delivering new, modern services to all Alaskans, including the 90,000 that live outside of Alaska urban, suburban and regional centers. But continued universal service support remains critical to financing the investment needed to deploy these networks and services.

The long-term communications needs of residents and business in tribal lands and Alaska Native regions are no less acute than their needs during the period of the interim cap. It would be wholly counterproductive for long-term reform to undercut the support for investment in tribal lands and Alaska Native regions that the *Cap Order* recognized and affirmed through the tribal lands and Alaska Native regions exception.

In addition to ensuring reforms do not harm tribal lands and Alaska Native regions, the Commission should limit all ETCs to one support payment per residential/single line business account, and move forward with numbers-based contribution reform, as a wide variety of commenters also suggest.

As many commenters pointed out, there is no legal basis for eliminating IAS, ICLS and LSS support to CETCs on the grounds that CETCs either do not charge access charges or are not limited in their access charge recovery. As the Commission made clear in the *CALLS Order* and *MAG Order*, IAS and ICLS were both created to remove universal service support from access charges, explicitly fund the support, and distribute it through Section 254's competitively neutral mechanisms. LSS similarly was created to remove universal service costs from access charges levied by NECA on interexchange carriers. If IAS, ICLS and LSS were access recovery mechanisms and not universal support mechanisms, then they could never properly have been funded through Section 254(d)'s mandatory contributions. Moreover, no commenter provides a reasoned basis, supported by microeconomic analysis, for concluding that CETCs can recover last-mile or switching costs, for which the ILEC would receive universal service support but the CETC would not, by charging higher prices than the subsidized rates charged by the ILEC. Indeed, the Commission has previously concluded that providing subsidy only to the ILEC and not to the CETC creates a barrier to entry.

Furthermore, the Commission should not eliminate the "Equal Support Rule" (as modified by the interim cap) for CETCs that provide services that predominantly substitute for, rather than complement, ILEC supported services. The Commission recognized as much in its *Interim Cap Order* when it created the tribal lands and Native Alaska regions exception based on the fact that it "[did] not believe that competitive

ETCs are merely providing complementary services in most tribal lands, as they do generally.” USTA similarly recognized as much, proposing to continue the Equal Support Rule for wireline ETCs.

Numerous commenters agree that comprehensive universal service reform cannot just focus on CETCs and must include the 75% of high cost funding that is received by incumbent LEC ETCs. Sprint recently filed its proposal for high cost reform which looks to reform all high cost support, not just CETC support. While GCI is still reviewing Sprint’s proposal, and certainly has concerns with at least some aspects of the plan, it agrees that Sprint’s proposal should be put out for full public comment, so that all parties have full notice and can provide the Commission with comment.

Comprehensive universal service reform can only proceed effectively if the Commission finally defines the outputs it wishes to achieve through high cost support, including which services are to be supported, and what rates for those services are “reasonably comparable and affordable.” Whether for voice communications, mobile communications or broadband, these fundamental questions must be answered before new funds are created. The Commission cannot reform high cost support in any sustainable or rational way without defining its objectives.

Finally, the Commission must reject a “single provider” approach to universal service. The “single provider” approach was rejected by Congress, which expressly constructed a statutory regime that permits competition in the provision of universal service, even in rural areas. No party advocating a single provider approach explains how regulators can achieve the perfect regulation necessary to ensure both that the single provider is not collecting excessive support and that the single provider will continue to invest and innovate to modernize the services available. As Congress recognized in the 1996 Act, competition, not regulation, will best ensure that consumers receive the most advanced services at the lowest possible rates. The Commission, in carrying out long term reform, can only truly effectuate the 1996 Act’s promise of comparable services and rates for rural and urban areas by embracing, rather than shunning, competition in rural areas like Alaska.

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REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

I. Introduction and Next Steps

The FCC’s adoption of a cap to address the growing pressure on the high cost universal service fund marked a critical juncture in its efforts to reform, rationalize, and ensure sustainability of the fund. General Communication, Inc. (“GCI”) particularly commends the Commission for its decision to recognize the unique circumstances facing tribal lands and Alaska Native regions by maintaining existing support mechanisms for these areas.¹ As the Commission turns to long-term and comprehensive reform, it must ensure that all providers – including CETCs – have continued access to much needed support for service in these chronically underserved areas. The need for service and the challenges of providing service for these areas have not changed in the brief time since the FCC adopted the interim cap.

Even here, however, the FCC wisely constrained uncapped support by limiting residential support to a single payment per residential account, ending support for

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, FCC 08-122, 2008 FCC LEXIS 3628 (¶ 32) (2008) (“*Cap Order*”).

multiple handsets in a wireless family plan in the areas in which a CETC elects the tribal lands and Alaska Native regions exception.² The FCC should consider extending this simple, common sense limitation to all high cost support for residential lines. This easily administrable step could immediately reduce outlays by limiting support to those lines most likely to serve as substitutes for existing telephone service, thereby addressing directly the Commission's concern that high cost support is subsidizing wireless handsets that are purchased in addition to, rather than as a substitute for, incumbent LEC universal services.³

In addition, the Commission must turn its attention to the vast amount of support flowing to ILECs. *Comprehensive* long term reform cannot ignore the three-quarters of the fund distributed to these providers. In the *Cap Order*, the Commission recognized the potential for inefficiencies in this portion of the fund and indicated it would address these inefficiencies "in the context of comprehensive universal service reform."⁴ There can be no doubt that existing ILEC support mechanisms encourage inefficiency.⁵ As Alltel explains, "it has long been clear that the Rate of Return rules that form the basis of the HCL, LSS, ICLS, and IAS funds create incentives for the ILECs to operate and invest

² For all other lines, the Commission made clear that it was "permit[ting] competitive ETCs serving Covered Locations to continue to receive uncapped high-cost support for lines served in those Covered Locations." *Cap Order* ¶ 32.

³ *Cap Order* ¶ 20.

⁴ *Cap Order* ¶ 11.

⁵ See, e.g., *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd. 8776, 8935 (¶ 292) ("*First Universal Service Report and Order*") ("[C]alculating high-cost support based on embedded cost is contrary to sound economic policy.").

inefficiently.”⁶ These inefficiencies are compounded by the Commission’s failure to implement “portability” in a way that actually allows ILECs to lose support when they lose customers. Indeed, the inability of the fund to incorporate and benefit from the efficiencies that flow from a competitive marketplace is its most critical and obvious failing. The current one-sided version of portability undermines the ability of competition to drive down universal service costs by permitting ILECs that lose in the market to nonetheless be rewarded with increased per line USF subsidies. The Commission must undertake reforms that harness competition to discipline *all* suppliers, including ILECs. The Commission should, for example, invite comment on Sprint Nextel’s recently filed proposal for reforming the entire high cost program.⁷

The Commission’s approach to USF in Anchorage, where the incumbent carrier requested and received substantial forbearance relief with implications for universal service, likewise offers a model of reform that preserves and advances both competition and universal service. There, the Commission granted ACS forbearance from much dominant carrier regulation, but conditioned that grant on, among other things, specific limits on ACS’s receipt of universal service.⁸ After forbearance, ACS’s ICLS support

⁶ Comments of Alltel Communications LLC at 26, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Alltel Comments”).

⁷ Letter from Anthony M. Alessi, Senior Counsel, Sprint Nextel to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337; CC Docket No. 96-45 (filed May 12, 2008). While GCI is still reviewing Sprint’s proposal, and certainly has concerns with at least some aspects of the plan, it agrees that Sprint’s proposal should be put out for full public comment, so that all parties have full notice and can provide the Commission with comment.

⁸ *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local*

(the only high cost support it receives) was frozen and is distributed to ACS and CETCs on a per-line basis, rendering support truly portable and truly equal between incumbent and competitive providers. This competitively neutral approach to reform could easily be applied to all high cost support, and would both effectively limit growth of the high cost fund from ILEC line loss and ensure that competition could continue to bring efficiency and service improvements to all consumers.

Reforms that preserve and harness competition will do far more to limit the high cost fund than the legally suspect proposal to eliminate ICLS, IAS, and LSS support for competitive providers. Such reforms will also preserve marketplace incentives for all carriers to continue to introduce and upgrade networks and services, so that rural America can have a hope of having reasonably comparable services to urban America – the core goal of universal service. Eliminating ICLS, IAS and LSS support for CETCs alone would:

- cripple competition in supported areas,
- violate principles of competitive neutrality,
- ignore without any basis the Commission’s prior determinations in the *Universal Service First Report and Order*, *CALLS Order* and *MAG Order* that such funding is and always has been in support of universal service,
- contravene the Telecommunications Act of 1996’s (the “1996 Act” or the “Act”) requirement that this implicit support must be moved from access charges and made explicit, and
- contravene the statutory mandate that support be sufficient to meet universal service goals.

Finally, now that the Commission has adopted a cap on the high cost fund, it should turn promptly to contribution reform and adopt a numbers-based contribution

Exchange Carrier Study Area, Memorandum Opinion and Order, 22 FCC Rcd. 16304, 16336-37 (¶¶ 69, 70) (2007) (“*ACS Forbearance II Order*”).

method. A numbers-based system would help ensure that the USF remains stable for years, would better reflect the way that service is provided today, and would be easier to administer and for consumers to understand.

II. Any Reform Must Not Harm Tribal Lands and Alaska Native Regions.

In its *Cap Order*, the Commission wisely recognized that the work of the Universal Service Fund is far from complete in tribal lands and Alaska Native regions, and thus largely maintained existing per line support for these areas.⁹ As the Commission considers long-term and comprehensive reform, it must continue to structure reforms in a way that preserves¹⁰ existing per line support in these areas,¹¹ which have substantially lower penetration rates for basic service than the rest of the United States.¹² GCI's statewide wireless and broadband deployment plans, along with wireline services delivered via upgraded cable plant where available, demonstrate the power of universal service funding and competition to ensure that rural America – particularly tribal lands and Native Alaskan regions – receives services comparable to urban America. Just as it did during the interim cap, the Commission should recognize that competitors replace and often improve on existing services offered in tribal lands and Alaska Native regions by maintaining existing support for competitors as part of any long term reform. The

⁹ *Cap Order* ¶ 32-34.

¹⁰ In all areas, of course, equal and competitively neutral reduction of support for all suppliers would be appropriate if supported services can be delivered at a lower subsidy.

¹¹ *See, e.g.*, Comments of National Tribal Telecommunications Association at 8, WC Docket No. 05-337 (filed Apr. 17, 2008) (“NTTA Comments”) (“As the Commission considers the impact of reforming federal universal service policy, including spending even more money on areas that are already connected to the public communications network, it must keep the other side of the divide – namely, tribal lands – at the forefront of its consideration. All efforts to ‘reform’ universal service policy must be specifically considered as to their effect on tribal lands.”).

¹² *Cap Order* ¶ 32.

Commission's *Cap Order* demonstrates that it is possible to adopt reforms that do not deny support to those that need it most, and the Commission must continue this approach in future reforms if it is to ensure that universal service policy no longer "fail[s] in Indian Country."¹³

III. Denying Competitive Providers ICLS, IAS, and LSS is Unlawful and Would Undermine Universal Service Goals.

In its initial comments, GCI demonstrated how the elimination of ICLS, IAS and LSS support for CETCs would violate the principle of competitive neutrality and erect potentially insurmountable barriers to effective competition in rural areas.¹⁴ As GCI demonstrated, the proposal would, in many instances, treat GCI differently than the ILEC ETC simply because of the ILEC's status as the incumbent and not for reasons of sound economics or network engineering. With few exceptions, GCI's CETC operations and the ILEC's wireline operations are indistinguishable, both in network design and in the historical ability to levy access charges. Denying competitors ICLS, IAS, and LSS support for such arbitrary reasons would mute competition (or prevent competitive entry altogether), reduce or eliminate marketplace pressure on incumbent providers, and remove incentives for efficient and innovative delivery of supported services, contrary to the intent of the Act.

One of the few justifications offered for this one-sided proposal is the notion that "access replacement" may be treated differently than other universal service support funds. But this revisionist rationalization has no support in the Commission's prior

¹³ NTTA Comments at 4.

¹⁴ Comments of General Communication, Inc. at 41-56, WC Docket No. 05-337 (filed Apr. 17, 2008) ("GCI April 17, 2008 Comments").

decisions.¹⁵ As the Courts have recognized, “the plain language of § 254(e) does not permit the FCC to maintain any implicit subsidies.”¹⁶ Thus, once the Commission recognized that the payments to ILECs that were being made through the “DEM weighting” mechanism and through the interstate carrier common line (CCL) charges were implicit subsidies for universal service, the FCC had no choice but to remove the amounts of those subsidies from access charges and to support universal service instead through Section 254. The Commission expressly acknowledged as much in the *MAG Order* when it rejected pleas to retain the CCL charge, holding: “[t]o the extent that the MAG proposal leaves the removal of identifiable implicit support from the interstate access rate structure to the discretion of individual carriers, . . . it is inconsistent with the mandate of the 1996 Act.”¹⁷

With respect to each of ICLS, IAS, and LSS, the FCC determined that the amounts being shifted into explicit universal service support were implicit universal service, and not simply interstate access recovery. For LSS, the Commission recognized

¹⁵ The FCC determined in its access reforms adopted in the *CALLS Order* and the *MAG Order* that the support now recovered through explicit “access replacement” mechanisms was implicit universal service support that was being inappropriately assessed on consumers through access charges, and expressly made that support available to both competitive and incumbent carriers. See *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd. 12962 (2000) (“*CALLS Order*”); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd. 19613, 19617 (¶ 3) (2001) (“*MAG Order*”).

¹⁶ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999); *Alenco Commc’ns., Inc. v. FCC*, 201 F.3d 608, 623 (5th Cir. 2000).

¹⁷ *MAG Order* ¶ 66.

that “DEM weighting assistance is an implicit support mechanism recovered through switched access rates charged to interexchange carriers.”¹⁸ With respect to the carrier common line charge, which had preceded both IAS and ICLS, the Commission expressly rejected arguments that the CCL was an “efficient pricing mechanism” that “[did] not include implicit support,” and instead found, “[i]t is well-established that rate elements like the CCL charge which recover above-cost rates from some end users to support below-cost rates for others constitute implicit support.”¹⁹

Moreover, as CTIA notes, the Commission has no source of authority other than Section 254 to assess carriers (and indirectly consumers) for support subsidies; consequently, if ICLS, IAS, and LSS support is something other than universal service support, it is being collected illegally.²⁰ If ICLS, IAS, and LSS were simply forms of access charge recovery, they could not have been funded through the Section 254(d) mandatory contribution mechanism, as they have been. Section 254(d) commands all telecommunications carriers to contribute to “specific, predictable, and sufficient mechanisms to preserve and advance universal service,” and not simply to mechanisms for ILEC interstate cost recovery.²¹ The Commission cannot simply revisit its conclusions that ICLS, IAS, and LSS are universal service support; were it to do so, it would have to be prepared to fund these classes of support from an entirely new mechanism outside of Section 254(d).

¹⁸ *First Universal Service Report & Order*, 12 FCC Rcd. at 8941 n.777.

¹⁹ *MAG Order* ¶ 68.

²⁰ Comments of CTIA-The Wireless Association at 18, WC Docket No. 05-337 (filed Apr. 17, 2008) (“CTIA Comments”).

²¹ 47 U.S.C. § 254(d).

Critically, the proposal to eliminate ICLS, IAS, and LSS for CETCs would violate the statutory dictate that support be “sufficient” to meet universal service goals.²² Among the Act’s universal service goals is that “consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications services, that are reasonably comparable to those services provided in urban areas”²³ No commenter supporting the elimination of ICLS, IAS, or LSS for CETCs provides a plausible explanation of how rural America will receive telecommunications and information services comparable to those available to urban America if innovation in urban areas is driven by vibrant marketplace competition, but competition in rural and high cost areas is throttled by universal service support mechanisms that deny whole categories of support to CETCs solely because they are CETCs. The central premise of the 1996 Act was that regulated monopoly is inadequate to deliver innovation and new services. This is no less true in rural America than in urban America. As GCI illustrated in its initial comments, an asymmetrical reduction of support would cripple a competitor’s ability to compete in the market with the subsidized incumbent, particularly where the competitor is offering service that predominantly provides a complete substitute for the incumbent’s service.

In addition, a support mechanism that puts its thumb on the scales based on misconceptions of regulatory history or economically irrational distinctions between the imposition of direct, rather than indirect, price limitations, as the proposed elimination of ICLS, IAS, and LSS for CETCs would do, interferes with the market’s ability to deliver cost-effective and innovative access to telecommunication and information services,

²² 47 U.S.C. § 254(e).

²³ 47 U.S.C. § 254(b)(3).

including advanced services, and thus cannot be “sufficient.” As the Commission and the Courts have emphasized, “sufficient” support means not just that too little support cannot be provided, but also that support must not be excessive.²⁴ Proponents of denying CETCs access to ICLS, IAS and LSS cannot explain how eliminating competition can be consistent with preventing excessive support. As discussed further below, the history of telecommunications regulation is the history of the failure of a government-sanctioned monopoly to provide service efficiently, at the lowest possible total cost. Competition is much more effective than regulation at revealing when unsubsidized markets can deliver universal service rates below the upper limits of affordability and reasonable comparability, and thus when universal service support can be reduced without violating the command that services be affordable and reasonable comparable.

Moreover, all providers provide the functions – last mile connections, local switching, and interstate access – that ICLS, IAS, and LSS ostensibly support.²⁵ The Commission has not explained how support for these functions can be simultaneously necessary for incumbent providers and unnecessary for competitors.²⁶ Support certainly cannot meet the statutory test of sufficiency if it is necessary for such functions as last mile connections and local switching but is nonetheless entirely unavailable to competitive providers. As CTIA correctly notes, “[i]f the Commission has determined that funding such as IAS and ICLS is necessary for the provision, maintenance, and

²⁴ *Cap Order* ¶ 8; *see generally Alenco*, 201 F.3d at 620.

²⁵ *See* Comments of T-Mobile at 7-8, WC Docket No. 05-337 (filed Apr. 17, 2008) (“T-Mobile Comments”).

²⁶ Eliminating this support for a single class of providers cannot be reconciled with the Act.

upgrading of the supported services in a given geographic area, it must be made available to all ETCs on a neutral basis under Sections 214(e) and 254(e) of the Act.”²⁷

The Commission rests its proposals to eliminate so-called “access replacement” support on assumptions about the way in which ILECs and CETCs recover costs and set rates. These assumptions, which both have not been tested and defy any known principles of microeconomics, do not provide a sufficient basis for the Commission’s treatment of this support as somehow necessary for ILECs but not necessary for CETCs. The Commission has certainly failed to offer any reasoned basis for reversing its earlier decisions that such support should be available to competitive carriers. As Sprint notes, the Commission, despite its reliance on these assumptions, has “no plan to review current cost recovery and ratemaking practices of ILECs to determine whether IAS and ICLS are still necessary” and likewise “there is no planned review of the ILEC local switching function using modern networking and technologies to determine whether the economies of scope and scale have changed over the years.”²⁸

Finally, as AT&T points out, the immediate elimination of ICLS, IAS, and LSS support would violate Section 254(b)(5),²⁹ which requires that support mechanisms be “predictable and sufficient.”³⁰ AT&T wisely argues against “immediate, complete elimination of this support”³¹ and in favor of more “rational and predictable” reforms.³²

²⁷ CTIA Comments at 18-19; *see also* Comments of United States Cellular Corporation at 52-54, WC Docket No. 05-337 (filed Apr. 17, 2008) (“US Cellular Comments”).

²⁸ Comments of Sprint Nextel Corporation at 11, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Sprint Nextel Comments”).

²⁹ Comments of AT&T Inc. at 40, WC Docket No. 05-337 (filed Apr. 17, 2008) (“AT&T Comments”); *see also* Comments of the United States Telecom Association at 13, WC Docket No. 05-337 (filed Apr. 17, 2008) (“USTA Comments”).

³⁰ 47 U.S.C. § 254(b)(5).

³¹ AT&T Comments at 40 n.65.

IV. Universal Service Goals and Statutory Requirements Cannot be Met if Support is only Available to a Single Provider in Each Market.

Many commenters support reform approaches that would abandon competition in favor of supporting a single provider in each market. But such an approach is foreclosed by the statute and at odds with universal service goals and the public interest. As Congress has recognized, rural America will not receive access to reasonably comparable advanced telecommunications and information services without competition, and all of America will be forced to overcontribute to Universal Service – in violation of Section 254(e)’s directive that support be sufficient – if the FCC eschews the efficiencies of competition in favor of regulated monopoly.

A. Congress has Chosen Competition.

Congress has wisely embraced competition as the only way to successfully meet the Act’s universal service goals. The 1996 Act has as fundamental goals the introduction of competition to the telecommunications marketplace and preservation of universal service.³³ As explained by the Senate Commerce Committee, these goals are mutually reinforcing, with competition and innovation critical to ensuring that universal service goals will be met, over time, at the lowest overall cost to society:

Competition and new technologies will greatly reduce the actual cost of providing universal service over time, thus reducing or eliminating the need for universal service support mechanisms as actual costs drop to a level that is at or below the affordable rate for such service in an area.³⁴

³² *Id.* at 40.

³³ *Qwest Communications Int’l Inc. v. FCC*, 398 F.3d 1222, 1226 (10th Cir. 2005) (“*Qwest II*”).

³⁴ S. Rep. No. 104-23, sec. 103 (1995).

The Fifth Circuit has likewise explained that in the wake of the 1996 Act, “[t]he FCC must see to it that both universal service and local competition are realized; one cannot be sacrificed in favor of the other.”³⁵

These statutory interpretations lead to the inevitable conclusion that competition is necessary to fulfill the statutory mandate that support be sufficient. As the federal courts have explained, “excessive funding may itself violate the sufficiency requirements of the Act . . . by causing rates unnecessarily to rise thereby pricing some consumers out of the market.”³⁶ Competition, properly implemented, will subject universal service distribution to the unflagging discipline of the market and is by far the best tool the Commission has to limit universal service support to the minimum amount necessary to meet universal service goals.

Commenters that argue otherwise fail to address the statute’s clear endorsement of competition. In Section 214(e)(2) of the Act, Congress indicated that state commissions “shall . . . designate more than one common carrier as an eligible telecommunications carrier” in areas other than those served by a “rural telephone company” as defined in the Act, and may designate more than one ETC in rural telephone company areas.³⁷ In Section 214(e)(1), Congress explained that ETCs “shall be eligible to receive support in accordance with Section 254.”³⁸ The Commission in its *Cap Order* argues that Section 214 is satisfied merely by ensuring “eligibility” for CETCs to receive support, suggesting that a support mechanism that systematically denied support to

³⁵ *Alenco*, 398 F.3d at 615.

³⁶ *Id.* at 620; *see also Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001) (“*Qwest I*”) (noting that “excessive subsidization of universal services by long distance may violate the principle [of sufficiency]”).

³⁷ 47 U.S.C. § 214(e)(2).

³⁸ 47 U.S.C. § 214(e)(1).

competitive carriers would be permitted.³⁹ The adverse economic effects of this anticompetitive reading of the statute cannot be reconciled with the Act’s command that universal service make affordable and reasonable comparable services available to all Americans⁴⁰ or with the dictate that support be “sufficient to achieve [universal service] goals.”⁴¹

The Commission has failed, furthermore, to explain its retreat from the principle of competitive neutrality. As the Rural Cellular Association points out, the Commission offers no factual or legal support for its tentative conclusion that universal service should not support multiple providers in certain areas.⁴² Indeed, as GCI’s own history and plans demonstrate, universal service will sometimes be best served by the CETC, rather than by the ILEC ETC.

B. A Sole Supplier Model Cannot Meet Universal Service Goals.

Proponents of the sole supplier model fail to explain how a sole-supplier can efficiently and consistently deliver affordable and reasonably comparable service to rural America over time. Economic theory and the history of ILEC regulation demonstrate that this outcome is theoretically possible, but unachievable as a practical matter. A single supplier, unconstrained by competition, will deliver efficient service only in under highly unrealistic conditions of “perfect regulation.”

³⁹ The Commission should certainly not prejudge this issue, which has been squarely raised in its *Equal Support NPRM* and on which the FCC is still receiving comment.

⁴⁰ 47 U.S.C. § 254(b)(3).

⁴¹ 47 U.S.C. § 254(e).

⁴² Comments of the Rural Cellular Association and the Alliance of Rural CMRS Carriers at 66-67, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Rural Cellular Association Comments”).

To put the problem in concrete terms, a regulator can duplicate the effects of competition only if:

- The regulator is able to select the most efficient provider of the supported services in each relevant geographic area. To do this, the regulator must have detailed, comprehensive knowledge of prevailing production technologies of all potential suppliers of supported services. In addition, regulators must know how the production technologies and associated costs of potential suppliers will change over time. The regulator will also need to know the value of the supported service to being able to offer non-supported services, and economies of scope in providing the supported services in conjunction with non-supported services.
- The regulator is able to act on this extensive knowledge without political or other interference to select the most efficient rather than the most powerful supplier of supported services.
- The regulator is able to induce the sole supplier to operate as efficiently as possible and to continue to do so over time.
- The regulator is able to induce the sole supplier to continually discover more efficient technologies.
- The regulator is able to determine the most efficient geographic scope of operation, and to allow that to change as technologies and costs change.
- The regulator must be certain that economies of scale are pervasive within each of the identified geographic service areas.⁴³

It is simply not realistic to assume that these conditions will be met, and that a regulator will be able to continuously ensure that a single supplier of supported services is supplying those services as efficiently as possible.⁴⁴

Among the proposed reforms, reverse auctions alone could, if properly structured, harness market forces to constrain prices at the time of an auction. But that solves only half of the problem. Because support is limited to a single supplier, once that single

⁴³ *Federal-State Joint Board on Universal Service*, GCI Ex Parte Letter, attachment, David E.M. Sappington, *Harnessing Competitive Forces To Foster Economical Universal Service*, CC Docket No. 96-45 at 1 (filed Dec. 19, 2003) (“Sappington”).

⁴⁴ *Sappington* at 18.

supplier “wins” the auction, unachievable perfect regulation would again be necessary to ensure that the single supplier continues to deliver high-quality service as efficiently as possible. In the words of the Rural Telecommunications Group, “[u]nlike competition, reverse auctions create no incentive to deploy better quality service. In fact, reverse auctions would stifle competition, and therefore, the development of new technology and services in rural areas.”⁴⁵

C. Competition, Properly Harnessed, Will Ensure Efficient Delivery of Universal Service Support.

Implementing the competition model to determine and distribute universal service support would be far simpler. Unfortunately, the Commission has not yet taken the steps necessary to successfully implement fully the competition model, and it is those failures – not the competition model itself – that have given rise to the current problems faced by the high cost fund.

Efficient delivery of supported service through competition requires far less regulatory intervention than implementing the single supplier model. To successfully implement the competition model the Commission must:

- Determine which services will be supported.⁴⁶
- Determine what rates are “reasonably comparable” and “affordable.”⁴⁷
- Determine the amount of support necessary to permit the market to deliver the supported services at affordable and reasonably comparable rates and adjust the amount of support if it is higher than necessary to achieve affordable and reasonably comparable rates or if it is not sufficient to induce any provider to provide service.

⁴⁵ Comments of the Rural Telecommunications Group, Inc. at 5, WC Docket No. 05-337 (filed Apr. 17, 2008). (“RTG Comments”).

⁴⁶ The determination should include any specific service quality, geographic area, or similar requirements that must be satisfied to receive support.

⁴⁷ 47 U.S.C. § 254(b)(1) & (2).

- Distribute support to the supplier that wins a customer's business at the specified reasonable and comparably affordable rates.⁴⁸

The market will do the rest. Competitive discipline will work to minimize supplier costs, reduce prices, and drive new and better services to consumers. And regulators can achieve these benefits without undertaking such herculean tasks as cataloguing and monitoring the precise capabilities of the most efficient suppliers or the degree of scale economies with which they operate.⁴⁹

Proponents of the single supplier model suggest that some areas are too small for competition. But under the competition model, the market can and will determine when a market can support more than one supplier.⁵⁰ And the threat of competition entry will discipline the sole supplier to deliver service efficiently in order to forestall entry by a new supplier.⁵¹ GCI's experience illustrates how the presence of a competitor can drive all suppliers to improve price and service, to the benefit of all consumers.⁵²

D. Equal Support Should be Available for Predominantly Complete Substitutes.

In the *Cap Order*, the Commission recognized that in tribal lands and Alaska Native regions, CETCs were likely to be providing substitute and not complementary services, and thus that full support at the ILEC's per line support level remained appropriate. The Commission, on the other hand, found (albeit overbroadly) that CETCs in remaining areas offer supported services that are not "complete substitutes" for the

⁴⁸ *Sappington* at 19.

⁴⁹ *Id.*

⁵⁰ In GCI's experience, even remote villages in Alaska may be well-served by multiple suppliers.

⁵¹ *Sappington* at 16-17.

⁵² Comments of General Communication, Inc. at 7-20, WC Docket No. 05-337 (filed May 31, 2007) ("GCI May 31, 2007 Comments").

ILEC's supported services and that that these providers "do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households,"⁵³ and consequently imposed the CETC cap. This distinction – between CETCs that provide predominantly substitute supported services and those that provide predominantly complementary supported services – offers a principled basis for limits on the equal support rule and would hew closely to the principle of competitive neutrality by providing equal support where it is most needed – when the CETC competes head-to-head with the ILEC – but not where the CETC is not directly competing with the ILEC.

Implicit in the FCC's discussion of complete substitutes is its recognition that competition in and of itself has not caused the immense growth in the high cost fund. Complementary wireless service is the largest source of fund growth precisely because these services do *not* directly compete with the ILEC's services. Consequently, competition should not be a casualty of attempts to reform the fund. Growth in the fund can be traced, instead, to the failure to fully implement the competition model and, in particular, to the failure to ensure that identical support is available only where competitors offer services that predominantly substitute for ILEC supported services. Commenters like NTCA that blame the growth of the fund on competition⁵⁴ fail to recognize that where support is both portable and available only for substitute service, competition will not lead to significant fund growth, but rather will reveal where

⁵³ *Cap Order* ¶ 20. The Commission has elsewhere recognized the capability of various technologies to be used to provide both as substitute and complementary services. *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 07-71, 23 FCC Rcd 2241, 2252 (¶ 9), 2344-45 (¶ 257) (2008).

⁵⁴ Initial Comments of National Telecommunications Cooperative Association at 41-42, WC Docket No. 05-337 (filed Apr. 17, 2008) ("NTCA Comments").

supported services can be provided with a lower universal service subsidy. Similarly, the Commission's suggestion that it should address the acknowledged failure to limit support to substitute services by eliminating the identical support rule for *all* CETCs, including those that do provide predominantly substitute supported service, runs off the rails by failing to tailor its solution to the problem diagnosed.

Diverse commenters recognize and address this flaw in the Commission's long term reform proposals. USTA explains that because wireline CETCs compete directly with ILECs for subscriber lines, "there is no need to abandon the identical support rule" for these providers.⁵⁵ The Oklahoma Corporation Commission likewise recognizes that "[s]ervices provided by incumbent LECs and wireline ETCs are directly substitutable."⁵⁶ Even those who argue for elimination of the equal support rule focus on the support it provides for services that do *not* substitute for ILEC service.⁵⁷ As GCI pointed out in its comments, the key distinction – and one which could provide a sound analytical basis for elimination of the equal support rule for the vast majority of supported lines – is the distinction between services that are sold in a way such that the supported lines are predominantly substitutes and services that are sold in a way such that the supported are predominantly complements, irrespective of the technology used.

⁵⁵ USTA Comments at 32.

⁵⁶ Comments of the Oklahoma Corporation Commission at 16, WC Docket No. 05-337 (filed Apr. 17, 2008) ("Oklahoma Corporation Commission Comments").

⁵⁷ Comments of the Utah Rural Telecom Association at 7, WC Docket No. 05-337 (filed Apr. 17, 2008) ("URTA Comments") ("Customers have not treated wireless service as a substitute for wireline service and as a result, the number of lines supported by the universal service fund has multiplied beyond expectations."); Comments of GVNW Consulting, Inc. at 29-30, WC Docket No. 05-337 (filed Apr. 17, 2008) ("GVNW Comments").

However, the Commission should not adopt a categorical treatment of wireless as a complementary, rather than a substitute, to universal service. As the Joint Board (including Chairman Martin and Commissioner Tate) previously observed when rejecting GCI's proposed distinction between wireless and wireline CETCs for the purposes of the interim cap, "[w]e are not aware of anything in the Commission's current rules that provides a precedent for such a technology-based differentiation within universal service policy."⁵⁸ GCI statewide rural wireless services will be offered predominantly as substitutes for ILEC service, rather than mere complements. Thus, USTA's and the Oklahoma Corporation Commission's proposed distinction can and should be adopted, if done on a technologically neutral basis by focusing on the actual distinction between predominantly substitute and predominantly complementary supported services.⁵⁹

Focusing on services that are predominantly complete substitutes, as distinguished from services that are predominantly complements to the ILEC service, also answers Alltel's call for competitively neutral reforms, but in a principled manner that addresses the Commission's specific concerns. Alltel is correct that there is a small minority of consumers that have foregone landline service entirely⁶⁰ – approximately 15.8% according to the latest CDC estimates.⁶¹ But while this number has grown over the past

⁵⁸ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Recommended Decision*, 22 FCC Rcd. 8998, 9601 (¶ 7) (“*Recommended Decision*”).

⁵⁹ Lifeline customers must choose a single service to which to apply their Lifeline discount. When a Lifeline customer chooses wireless service as its Lifeline supported service, that service should be treated presumptively as a substitute.

⁶⁰ Alltel Comments at 8-11.

⁶¹ See <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>. 14.5% of adults were in wireless only households; see also April 22, 2008 Letter from Brad. E. Mutschelknaus, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-97, Kent Mikkelsen, *Mobile Wireless Service to “Cut the Cord” Households in FCC*

several years, it still clearly remains the case that the vast majority of wireless subscribers have both landline and wireless service – 63.2% of adults according to the CDC.⁶² The vast majority of wireless CETCs today are receiving support for wireless connections that predominantly complement, rather than replace, the landline connection. Thus, it is also quite likely, from an economic perspective, that these wireless CETCs operate in a distinct product market.

One alternative for reducing support for complementary lines that could be adopted and implemented quickly has already been adopted in the Commission’s *Cap Order* for carriers electing the tribal lands and Alaska Native regions exception. In those areas, the Commission created the exception because, *inter alia*, it found that suppliers likely offer substitute, and not complementary, service.⁶³ The Commission further limited the potential to support complementary rather than substitute services by limiting residential support under the exception to a single support payment per each residential account.⁶⁴ By extending this simple limitation to all CETCs, irrespective of whether they elect the tribal lands exception, the Commission could reduce CETC support substantially – by an estimated \$500 million according to certain commenters.⁶⁵

Analysis of Wireline Competition, Economists Incorporated at 8 (“At some point in time, mobile wireless service may be a sufficiently close substitute for wireline service that it would serve as a competitive check on wireline prices. However, there is insufficient evidence to support this conclusion.”); *see generally id.*, Exhibit 1, Joseph Gillian, *Properly Estimating the Size of the Wireless-Only Market* (explaining how the CDC Survey may overstate wireless-only penetration).

⁶² See <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>, at Table 1.

⁶³ *Cap Order* ¶ 32.

⁶⁴ *Id.* ¶ 33.

⁶⁵ GCI April 17, 2008 Comments at 61; Reply Comments of Qwest Communications International Corp. at 3, WC Docket No. 05-337 (filed July 2, 2007) (“Qwest Reply Comments”).

E. The Commission Must Clearly Define the Outputs Sought for Each and Every High Cost Support Mechanism It Creates.

As many commenters point out, the Commission must clearly and precisely define supported services, including defining the product market for those services. But the Commission has not taken this step, even with respect to its existing high cost support mechanisms, and does not indicate that it will do so for the Joint Board's proposed new mobility and broadband funds. As discussed above, the Commission has failed to articulate whether universal service should fund service in every home or on every hip. As the numerous commenters further point out, the Commission has yet to respond to the United States Court of Appeals for the 10th Circuit and define with any specificity the key statutory terms of "affordable," "reasonably comparable" and "sufficient," notwithstanding the Court's directive that the Commission "expeditious[ly]" define key statutory terms.⁶⁶ GCI shares Qwest's "increasing concern[]" that the "shifting focus" of universal service reform is "causing the Commission to unnecessarily and inappropriately delay addressing the Tenth Circuit remand of *Qwest II*."⁶⁷ As the Mercatus Center cogently explains, "[t]o know whether universal service programs have or are likely to provide access to reasonably comparable services at reasonable rates, the FCC must first define and measure what counts as availability of service and 'reasonably comparable' rates."⁶⁸

The Joint Board's proposals for a mobility fund and a broadband fund compound these problems, and similarly cry out for an output-oriented definition of what these

⁶⁶ *Qwest II*, 398 F.3d at 1239.

⁶⁷ Comments of Qwest Communications International Inc. at 5, WC Docket No. 05-337 (filed Apr. 17, 2008) ("Qwest Comments").

⁶⁸ Mercatus Center, Public Interest Comment on High Cost Universal Service Support at 3, WC Docket No. 05-337 (filed Mar. 27, 2008) ("Mercatus Center Comments").

programs are supposed to achieve. Before engineering a new set of universal service problems by forging ahead (again) without defined terms and clear goals, the Commission should establish necessary first principles and reform USF in a manner that serves those principles. For example, the Commission should consider adopting a clear definition of unserved areas, as suggested by the NTTA.⁶⁹ Notably, the definition should not be determined solely with reference to ILEC service areas, as that would create a barrier to service where competitive carriers' service areas do not perfectly track ILEC service areas. This would be particularly harmful in areas where competitors are already using USF to bring service to unserved areas that unsubsidized carriers do not reach.⁷⁰

The Commission could not stop here, but would need to answer additional fundamental questions before proceeding with the various proposed reforms. In the context of both mobile and broadband services, what is the basic level of service that is expected to be provided? For mobile service, does it include mobile service in both GSM and CDMA, or just one of the predominant air interfaces? For broadband, Qwest suggests that the minimum data speed should be approximately 1.5 Mbps. But if that is the case, then why would the Commission exclude mobile services from broadband funding, as this is clearly within the range of existing mobile broadband technologies? Similarly, at what level are rates for mobile and broadband services no longer affordable and reasonably comparable?

⁶⁹ NTTA Comments at 4-5.

⁷⁰ See US Cellular Comments at Exhibits 3 & 4.

Defining the outputs actually sought to be achieved specifically and in measureable terms is the key to preventing waste, fraud and abuse.⁷¹ Without such outcome measures, there can be no real measure of whether funds are being expended where they are not needed. Long term, comprehensive reform must finally define the measureable objectives of the high cost fund.

V. The Artificially Defined POLR, Mobility, and Broadband Funds Are Backward-Looking and Will Prevent Market Forces From Benefitting Consumers.

In addition to skipping the critical step of actually defining what it seeks to achieve, the Joint Board's proposal to distribute high-cost support through three distinct funds is particularly backward-looking and will consign high-cost consumers to yesterday's technologies. By compartmentalizing support according to technology, this approach will hamper efforts to develop innovative solutions to bring better services at lower cost to rural consumers. Rather, as discussed above, the Commission should instead define which services the program will support and the desired outcomes, as outlined above, and allow providers to receive support based on those criteria rather than technology used to provide those services.

⁷¹ *See, e.g.*, Government Performance and Results Act of 1993, Pub. L. No. 103-62, § 2, 107 Stat. 285 (codified in scattered sections of 31 U.S.C.) (finding that “(1) waste and inefficiency in Federal programs undermine the confidence of the American people in the Government and reduces the Federal Government’s ability to address adequately vital public needs; (2) Federal managers are seriously disadvantaged in their efforts to improve program efficiency and effectiveness, because of insufficient articulation of program goals and inadequate information on program performance; and (3) congressional policymaking, spending decisions and program oversight are seriously handicapped by insufficient attention to program performance and results”)

A. The Three Funds Proposal Will Not Only Contravene Long-Standing Policies of Technological and Competitive Neutrality, But Will Also Destroy Consumer Choice.

As an initial matter, basing support eligibility solely on the technology used, by definition, violates the Commission’s long-held principles of technological and competitive neutrality. The Joint Board overlooks not only its own acknowledgement that there is no “precedent for such a technology-based differentiation within universal service policy,”⁷² but also the Commission’s long-held neutrality goals in proposing a three-fund support system that will only exacerbate current universal support problems.

Comments filed in this proceeding echo these concerns. Comcast, for example, recognizes that the Joint Board’s proposal “would undermine the core principle of competitive and technological neutrality without offering a reasoned explanation for such a drastic departure from the Commission’s commitment to that principle.”⁷³ By funding different technologies differently, the Joint Board’s proposal will inevitably provide an artificial competitive advantage to certain providers or technologies, thus evoking the truism that “[w]ith respect to technology, everyone loses when the government tries to pick the winner.”⁷⁴

Artificially linking support to specific technologies is not only competitively imbalanced, but also will hinder technological innovation. SouthernLINC, for instance, correctly notes that “by identifying and subsidizing technology at different rates and pursuant to different rules, the Commission would create incentives for providers to ‘fit’

⁷² *Recommended Decision* ¶ 7.

⁷³ Comments of Comcast Corporation at 11, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Comcast Comments”).

⁷⁴ Comments of SouthernLINC Wireless at 14, WC Docket No. 05-337 (filed Apr. 17, 2008) (“SouthernLINC Comments”).

into the category that receives the most subsidies, which in turn generates disincentives for technological convergence by providers in order to avoid controversies regarding eligibility.”⁷⁵ GCI’s use of multiple technologies to rollout fixed, wireless, and broadband service to rural Alaska perfectly illustrates SouthernLINC’s point. It is unclear how or to what extent GCI could receive support for its hybrid deployment designed to provide a variety of services. USFon put it well, stating that “[a]rtificial distinctions between ‘providers of last resort,’ broadband, and mobile service ... expose a long-existing yet dangerous flaw in our national communications policy: a commitment to obsolete communications technologies and business models disguised as a multi-pronged approach to supposedly distinct uses of what are in fact interrelated technologies.”⁷⁶ Rather, USFon argues that the Commission should “[r]eject the Joint Board’s arbitrary disaggregation of mobile, broadband, and voice support, and instead adopt a forward-looking Universal Service policy that explicitly recognizes the public, interconnected nature of all networks, ‘voice’, ‘data’, or otherwise.”⁷⁷

As reflected in GCI’s initial comments, the market-distorting effect of three separate funds will be more glaring where support is calculated differently for providers supplying substitute, as opposed to complementary, services. GCI, for example, will employ an innovative mix of technologies to provide basic voice services that compete

⁷⁵ *Id.* at 13.

⁷⁶ Comments and Proposals of USFon, Inc. at 2, WC Docket No. 05-337 (filed Apr. 17, 2008) (“USFon Comments”).

⁷⁷ USFon Comments at 7; see *also* Comments of the New York State Department of Public Service at 1, 4, WC Docket No. 05-337 (filed Apr. 17, 2008) (“New York DPS Comments”) (stating that “any reform should be technology and platform neutral” and that the creation of three funds “smacks of designing a solution for the perceived problems of today, not implementing a flexible solution that can accommodate technological change”).

directly with incumbent voice services. Yet, if GCI's voice services were eligible for support only from the Mobility Fund, which is limited to construction costs, while incumbent providers were permitted access to the Mobility Fund *and* POLR Fund, which is not so restricted, the competitive scale tipping would be significant. In this, GCI is not alone. Nex-Tech, a CETC that provides competitive landline service in rural northwest Kansas, points out that “[t]here is no rational justification for allowing ILECs and wireless CETCs to continue to receive full USF support through the POLR and Mobility Funds, while restricting landline CETCs to receiving limited support from the Broadband fund for high-speed Internet access.”⁷⁸ A much better approach would be for the Commission to define supported services and permit providers to compete and innovate in an attempt to deploy supported services in the most efficient manner possible, regardless of technology.

Consumer demand, not outdated regulatory classifications fossilized into the structure of the High Cost Support mechanisms, should determine the technologies that providers use and develop. Increasingly, consumers are interested in obtaining a variety of communications services from a single provider.⁷⁹ Consumers do not want silos of services. Technologies are converging and American consumers more and more are accessing non-voice data services and the Internet using mobile devices. Indeed, a recent

⁷⁸ Comments of Nex-Tech, Inc. at 10, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Nex-Tech Comments”).

⁷⁹ See, e.g., Sarah Reedy, *Pivots Demise Leaves Quad-Play Opportunity to Telcos*, Telephony Online, Apr. 24, 2008, http://telephonyonline.com/wireless/news/telcos_quad_play_0424/. (“[M]ost consumers would be interested in buying their wireless service from their existing cable or telco provider. This interest in bundles has increased 55% from July of 2007 to last month, creating a market opportunity for telecom service providers to ramp up their presence in a sector cable competitors appear to be rethinking.”).

study conducted by the Pew Internet & American Life Project concludes that “62% of all Americans are part of a wireless, mobile population that participates in digital activities away from home or work.”⁸⁰ Again, artificially separating technologies fails to account for these changing, and increasingly mobile, communications needs and priorities.

Universal service support should encourage, not hinder, the deployment of converged services like GCI’s rural mobile broadband to even the most remote and difficult to serve areas.

Not only will the three-fund approach crush market competition, but there is not a shred of evidence that it will significantly reduce the amount of high-cost support.

Comcast has noted that “[p]erhaps, the most fundamental flaw in the Joint Board’s reform proposal is that it would not produce any meaningful reductions in the size of the Fund.”⁸¹ “At best,” Comcast continues, “it would saddle contributors to the fund and their customers with the continued burden of the present excessive contribution levels.”⁸²

The Broadband and Mobility funds also fail to incorporate the need to maintain and improve their services.⁸³ As discussed above, support that merely supports deployment, rather than ensuring that providers receive the support necessary to provide

⁸⁰ John Horrigan, *Data Memo: Mobile Access to Data and Information*, Pew Internet & American Life Project, Mar. 5, 2008, http://www.pewinternet.org/pdfs/PIP_Mobile.Data.Access.pdf.

⁸¹ Comcast Comments at 11.

⁸² *Id.*

⁸³ Comments of Cellular South, Inc. at 10-11, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Cellular South Comments”); *see also* CTIA Comments at 16 (noting that distributing support through three funds would create inequalities stemming not only from the asymmetric caps, but also from limiting mobility and broadband support to construction costs, as opposed to the POLR fund, which would cover necessary costs for network operation, maintenance, and upgrades).

service after initial deployment would violate the statutory requirement that support be sufficient.⁸⁴

Moreover, SouthernLINC correctly points out that as a practical matter support separated according to technology “would be increasingly impossible to administer over time as technology converges.”⁸⁵ How, for instance, would GCI obtain support for its rural deployment that employs fixed, satellite, and mobile technologies to provide broadband, mobile, and fixed services?

AT&T’s proposal to create and move all price cap and wireless ETCs to what it calls a “Broadband Incentive Fund” and an “Advanced Mobility Fund” suffers from the same infirmities as the Joint Board’s proposed three funds.⁸⁶ Namely, AT&T’s proposed funds remove competition as a driver of price reduction and consumer benefits. Indeed, by suggesting that further incentives would be needed under its proposal to encourage rate-of-return carriers to provide broadband service, AT&T implicitly acknowledges the benefits of competition.⁸⁷ As GCI and many other CETCs have demonstrated, competition is the best incentive to drive down prices and improve service. Moreover, AT&T’s proposal would simply recreate the problems attendant to the now-disfavored spectrum comparative hearing process, by forcing the Commission to pick “winners” through an application process.⁸⁸ The Commission should not accept this invitation to adopt such a backward-looking approach to reform.

⁸⁴ 47 U.S.C. § 254(e).

⁸⁵ SouthernLINC Comments at 15; *see also* USFon Comments at 2.

⁸⁶ AT&T Comments at 23-25.

⁸⁷ *See, e.g., id.* at 24-25.

⁸⁸ *See, e.g., Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd. 25162, 25172 (¶ 24 n.54) (2003) (rel. Nov. 25, 2003) (“The comparative hearing process was complex and often led to

B. The POLR Fund Would Entrench and Exacerbate Current Competitive Inequalities, Thus Limiting Innovative Services Available in High-Cost Areas.

By limiting the POLR fund to a single, incumbent wireline carrier, the Joint Board effectively stunts potential competition and innovation that could benefit rural consumers. It is competition (including the possibility of competition), not federal regulation, that forces ILECs to innovate and upgrade service offerings. Nex-Tech explains in its comments that ILECs “are generally not interested in providing advanced telecommunications services in small rural towns,” and will only do so “begrudgingly” if required by the state public service commission “or if they are faced with a competitor with the appropriate resources to provide better and higher quality service.”⁸⁹ The Rural Independent Competitive Alliance is even more pointed in its criticism of the POLR Fund, stating that excluding wireline CETCs from any high-cost support “would be devastating to customers in many rural areas because all the benefits of improved communications to the public would be lost and the ILEC would be free to return to ignoring its rural areas.”⁹⁰

Moreover, “by isolating incumbent LECs from competitive pressures,” the Commission is speeding away from its guiding “tenet that ultimately the way to limit or

proceedings that substantially delayed the award of licenses.”); *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Second Report and Order, 9 FCC Rcd. 2348, 2359 (¶ 64) (1994) (stating that comparative hearings “are likely to be lengthy, contentious, and complex”).

⁸⁹ Nex-Tech Comments at 4; *see also* Comments of SureWest Broadband at 7, WC Docket No. 05-337 (filed Apr. 17, 2008) (“SureWest Broadband Comments”) (arguing that the POLR fund would undercut the small, but growing number of wireline CETCs that offer rural customers a competitive alternative).

⁹⁰ Comments of the Rural Independent Competitive Alliance at 3, WC Docket No. 05-337 (filed Apr. 17, 2008) (“RICA Comments”).

lower the size of the fund would be to increase facilities-based competition.”⁹¹ Indeed, the POLR fund proposal would simply continue existing ILEC support, offering no meaningful reform. As Sprint Nextel explains, “the Joint Board’s proposal to replace existing HCS with three new funds would preserve existing subsidies, create new subsidies where they have not been shown to be needed, and would distort competitive markets that are already developing in previously underserved areas.”⁹² Cellular South and others have recognized another significant problem with the POLR Fund, namely that “[k]eeping the incumbent LECs on the same funding mechanisms that they currently enjoy is a guaranteed way to ensure that the companies continue their operating inefficiencies” and that “the Commission offers no incentive for those carriers to streamline their operations or improve efficiency.”⁹³

As a practical matter, moreover, POLR-based restrictions make no sense, because all ETCs have obligations similar to POLRs. As Time Warner notes in its comments, “[a]ll eligible telecommunications carriers commit to essentially the same obligation to serve all customers in an area, making it logical to allow all carriers to obtain access to subsidies.”⁹⁴ Significantly, all ETCs must be ready to ensure “that all customers served

⁹¹ Comcast Comments at 16-17.

⁹² Sprint Nextel Comments at 4.

⁹³ Cellular South Comments at 12; *see also* USFon Comments at 6-7 (“The current USF proposals present a stark choice. We can retain an increasingly strained taxonomy of communications technologies: ‘voice,’ ‘advanced services,’ ‘mobile,’ ‘broadband,’ and so forth. Or, we can choose to recognize the reality that has existed for several years: ‘voice’ is merely another form of data, whether transmitted through the air or a wire, whether sent through an old Stromberg-Carlson step-by-step switch or via Skype; artificial distinctions that permit legacy carriers to charge consumers for data sent by objectively less efficient means are preventing desperately-needed reforms of our communications industry.”).

⁹⁴ Comments of Time Warner Telecom Inc. at 3, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Time Warner Comments”).

... will continue to be served,” should any carrier – including the ILEC – give up its ETC status.⁹⁵ Likewise, NECA’s complaints that POLRs have increased burdens ring hollow.⁹⁶ Most of the obligations that NECA identifies – *e.g.*, the duties to file access charge tariffs and to negotiate interconnection agreements – bear no relation to the provision of universal service. NECA even complains that absent the POLR Fund restrictions, POLRs lose support if they lose customers because of “portable” support,⁹⁷ even though portability rules have not been fully implemented for the support mechanisms that apply to the vast majority of NECA members.⁹⁸

Comments from Embarq and other ILECs simply highlight the backwards thinking of the POLR Fund. Embarq asserts that “it is only through ILECs fulfilling their POLR obligations that broadband services and mobility services are (or can be made) available in high-cost, rural areas.”⁹⁹ This kind of reasoning is not only untrue, but also would lock out innovation and competition, the hallmarks of this nation’s economy. As discussed below, Embarq’s purported “best way to promote broadband deployment in extreme rural areas”¹⁰⁰ has not, in fact, promoted such services. Reducing barriers to entry and fostering competition is a much more effective way to support those services. Indeed, the recent OECD Report demonstrates that competitive cable companies, not

⁹⁵ 47 U.S.C. § 214(e)(4). The Act provides for a period for the acquisition or construction of facilities by the remaining ETCs, not to exceed one year. *Id.*

⁹⁶ *See* Comments of the National Exchange Carrier Association, Inc. at 4-8, WC Docket No. 05-337 (filed Apr. 17, 2008) (“NECA Comments”).

⁹⁷ *Id.* at 8.

⁹⁸ *See, e.g.*, GCI Ex Parte Letter at 3-5, CC Docket No. 96-45 (filed June 29, 2005) (“GCI June 29 Ex Parte Letter”) (explaining the Commission’s failure to implement portable support). Portable support, does, however, apply to the IAS and HCM funds.

⁹⁹ Comments of Embarq Corporation at 19, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Embarq Comments”).

¹⁰⁰ *Id.* at 19.

incumbent phone companies, are much more efficient in using their existing facilities to deliver broadband Internet service. “High-speed cable modem service is available to 96% of end-user premises in the United States where the cable systems offer cable television,” whereas “DSL service is available to 79% of end-user premises in the United States where the incumbent local exchange carrier offers local telephone services.”¹⁰¹ Without competition, incumbent phone companies have failed to upgrade their services to rural communities. The Joint Board should not further entrench this monopolistic inertia.

Finally, and in light of the recent expansion of high-cost support and the failure of many ILECs and POLRs to achieve universal service in many of the nation’s remote areas, requests for additional funding for a POLR fund should be rejected out of hand.¹⁰²

C. The Broadband Fund Proposal Not Only Fails to Define the Specific Services to be Supported, But Also Fails to Establish Whether, Where, and How Much Support May be Needed.

To the extent that the Joint Board outlines specifics of its Broadband Fund proposal, those specifics are not supported by any empirical data. As Comcast aptly states, “the \$300 million annual federal funding level for the Broadband Fund appears to have been plucked from thin air.”¹⁰³ Despite recognition that an effective universal support system for broadband will require a “*detailed knowledge*” of the areas in which effective terrestrial broadband service is unavailable, the Joint Board presents neither the necessary detailed knowledge nor a rational path for obtaining that knowledge before

¹⁰¹ *Broadband Growth and Policies in OECD Countries: Ministerial Background Report* at 28, Organization for Economic Co-Operation and Development, 2008, available at <http://www.oecd.org/dataoecd/32/57/40629067.pdf> (“OECD Report”).

¹⁰² Comments of TCA at 8-11, WC Docket No. 05-337 (filed Apr. 17, 2008) (“TCA Comments”); see also URTA Comments at 4-5.

¹⁰³ Comcast Comments at 13; see also RICA Comments at 12 (The Rural Independent Competitive Alliance notes simply, “[t]he sufficiency and source of funding for the broadband fund are unclear.”).

implementing the Broadband Fund.¹⁰⁴ Even the Telecom Consulting Associates, which generally supports separate funds, recognizes that the Broadband Fund proposal is insufficiently detailed, stating that “the Joint Board [is unable] to identify the purpose and the nature of the proposed separate Broadband Fund.”¹⁰⁵

Clearly, we do not yet have sufficient data to create a Broadband Fund.¹⁰⁶ Several commenters explain, for example, the importance of basic mapping to measure need and progress.¹⁰⁷ But even mapping may be insufficient. As Connected Nation points out, “[i]dentifying those areas requires far more than drawing a map – it also requires hands-on coordination, discussion, and planning between community leaders, local businesses and public officials, IT professionals, and broadband providers.”¹⁰⁸ Connected Nation has undertaken at the community and state level what the Joint Board has failed to undertake or successfully promote at the national level, *i.e.*, the collection of critical information to provide an “understanding as to what technology infrastructure exists within communities, how and why residential consumers and businesses are using (or not

¹⁰⁴ Comcast Comments at 14 (citing *Recommended Decision* ¶ 13).

¹⁰⁵ TCA Comments at 11; *see also* New York DPS Comments at 1 (“The FCC also should obtain more granular data on the deployment and adoption of broadband services before considering funding broadband services via the high cost support mechanism.”); Comments of Texas Statewide Telephone Cooperative, Inc. at 10–12 WC Docket No. 05-337 (filed Apr. 17, 2008) (arguing that the establishment a broadband fund is premature).

¹⁰⁶ *See* AT&T Comments at 32 & n.42. Indeed, it is unclear whether the Act even authorizes the Commission to convert high-cost support to block grants.

¹⁰⁷ Comments of Connected Nation at 23-24, WC Docket No. 05-337 (filed Apr. 17, 2008) (“Connected Nation Comments”); *see also* Comments of California Public Utilities Commission at 5-10, WC Docket No. 05-337 (filed Apr. 17, 2008); Comments of Connecticut Dep’t of Pub. Util. Control at 5, WC Docket No. 05-337 (filed Apr. 17, 2008); Comments of AARP at 12-13, WC Docket No. 05-337 (filed Apr. 17, 2008).

¹⁰⁸ Connected Nation Comments at 3.

using) available technology, and which demographic disparities might define the digital divide for each community.”¹⁰⁹ Furthermore, there is no data to use to define what constitutes an “affordable” or “reasonably comparable” broadband rate. Without this information, the Commission runs the substantial risk of providing subsidies where they may not be needed – repeating the mistakes of its high cost support mechanism for voice services. The Commission should not attempt to subsidize broadband without a fuller understanding of where subsidies are truly needed.

Additional support to cover transport costs, furthermore, is unnecessary. Notably, GCI’s planned deployment of advanced services in rural Alaska, as well as the presence of at least two facilities-based transport providers serving rural Alaska, shows that special “transport” subsidies are not needed to deliver advanced services to high-cost areas. Indeed, GCI’s planned rural statewide rural wireless and broadband deployment demonstrates the importance of maintaining competition so that providers continue to have a market-based incentive to use the most efficient and cost-effective means to deliver broadband services. GCI’s deployment does not depend on receipt of new subsidies for transport service. GCI has already detailed the inefficiencies driving at least one proposal to subsidize transport.¹¹⁰ The Commission should greet similar proposals to expand subsidies with skepticism, and decline to slice and dice the provision of advanced services in order to provide yet more subcategories of specialized subsidy for incumbent providers.

Any effort to improve broadband deployment must recognize the critical role competition plays in bringing advanced services to consumers. ATA claims “that rural

¹⁰⁹ *Id.* at 7.

¹¹⁰ *See* GCI June 29 Ex Parte Letter.

LECs in particular have succeeded commendably in delivering both voice and broadband services to their subscribers on the basis of existing funding mechanisms.”¹¹¹ As the maps GCI has previously filed show,¹¹² however, this RLEC “success” has largely been focused on the urban, suburban and regional centers, spurred by competition from GCI’s own cable broadband services or the threat of competitive entry from GCI’s rural wireless broadband deployment.¹¹³ In the remote Alaska bush communities outside the regional centers, the Alaska RLECs are not delivering access to advanced services comparable to those available in the rest of Alaska and the United States. Broadband over 1 mbps is usually not available, despite the fact that ILECs have been able to include the costs of upgrading copper loops to broadband capable loops in their High Cost Loop Support cost studies and thus can receive HCLS and ICLS support for their fiber upgrades. Indeed, our nation’s lagging broadband deployment relative to other developed countries is well documented: the recent OECD Report ranks the U.S. 17th out of 30 countries with regard to broadband penetration growth. Although the U.S. has the 3rd highest GDP per capita, it ranks only 15th in broadband penetration.¹¹⁴ This broadband gap is widely recognized.¹¹⁵ Creating a system that would lock GCI and other

¹¹¹ Consolidated Comments of the Alaska Telephone Association at 8, WC Docket No. 05-337 (filed Apr. 17, 2008) (“ATA Comments”)

¹¹² GCI April 17, 2008 Comments at 11-15.

¹¹³ *Id.*

¹¹⁴ OECD Report at 25-27.

¹¹⁵ *See, e.g., More Than Rhetoric Needed to Close Broadband Gap*, Benton Foundation, available at <http://www.benton.org/node/8947> (“When the Organization for Economic Co-operation and Development (OECD) first collected data on broadband penetration in 2001, the US ranked 4th among the 30 nations surveyed. In June 2004, President Bush noted that America then ranked 10th amongst the industrialized world in per capita broadband penetration. ‘That’s not good enough,’ he said at the US Department of Commerce. ‘We don’t like to be ranked 10th in anything. The goal is to be ranked 1st when it comes to per capita use of broadband technology. It’s in our

CETCs from increasing market competition is exactly the wrong approach to comprehensive universal service reform and encouraging deployment of advanced services.

At least some comments suggest demand-side approaches, such as expanding Lifeline support to broadband,¹¹⁶ that would not only be more effective than a Broadband Fund, but that would also be competitively and technology neutral. Windstream, for example, asks the Commission to “evaluate the demand-side component of broadband adoption, before focusing its attention entirely on supply-side issues.”¹¹⁷ In particular, Windstream suggests that the Commission “should give serious consideration to using Lifeline-like dollars to increase broadband adoption,” noting that “[b]roadband subscribership rates depend not only on a consumer’s geographic access to broadband, but also on a consumer’s economic access to broadband.”¹¹⁸ Such suggestions promise more helpful reform, particularly for those for whom service is least likely to be affordable, than any of the three funds proposed by the Joint Board.

nation’s interest. It’s good for our economy.’ According to OECD June 2007 data, After several years of steady decline in the rankings, the US ranked 15th among industrialized nationals in broadband subscriptions per 100 inhabitants.”); *Cap Order*, Dissenting Statement of Commissioner Michael J. Copps, (noting that while “this country continues to lag in so many international broadband rankings and as consumers and competitors around the world are receiving high-speed and high-value services, Americans in urban and rural areas and on tribal lands are falling further behind.”); *Cap Order*, Dissenting Statement of Commissioner Jonathan S. Adelstein (“[U]niversal service must evolve, as Congress intended. In particular, universal service can and must be an integral part of meeting our nation’s broadband challenge [t]he time is now to tackle these issues in earnest, lest time and technology render our policies obsolete.”).

¹¹⁶ See Windstream Comments at 17-18; Connected Nation Comments at 4; Initial Comments on the Federal-State Joint Board Recommended Decision by the National Consumer Law Center, on behalf of Texas Legal Services Center and Edgemont Neighborhood Coalition at 4-5, WC Docket No. 05-337 (filed Apr. 17, 2008).

¹¹⁷ Windstream Comments at 18.

¹¹⁸ *Id.* at 18.

D. The Mobility Fund Would Similarly Limit Competition and Provide Insufficient Support.

The Mobility Fund would, again, artificially limit support to a single wireless provider, thus stifling competition. This approach is not well thought out. As many commenters explain, there are two predominant and incompatible air interfaces, CDMA and GSM, in the United States.¹¹⁹ Unless there is a single carrier that can support both air interfaces – which generally is not the case today – selecting only a single carrier with a single air interface would lock out all users of the other air interface from even being able to roam in the single supported carrier’s area. In essence, the area would remain unserved for the users of the other air interface, an outcome at odds with the goal of universal service.

In addition, by creating rural wireless monopolies, the Joint Board may unwittingly force the Commission to regulate roaming fees in those areas. A single wireless provider could charge other carriers and their customers, with whom they have no relationship, exorbitant roaming fees. This would either raise rates for other wireless carriers, or lead carriers to drop roaming, again running counter to the universal service goal of providing access to advanced telecommunications and information services in all regions of the country.¹²⁰

And, while many commenters lament the possibility of supporting “duplicative” networks,¹²¹ a properly structured competitive system will not provide “duplicative” support. As Former FCC Chief Economist Dr. David Sappington has pointed out, “where

¹¹⁹ *See, e.g.*, CTIA Comments at 30-31.

¹²⁰ 47 U.S.C. § 254(b)(2).

¹²¹ *See, e.g.*, AT&T Comments at 33; Comments of Verizon and Verizon Wireless at 22, WC Docket No. 05-337 (filed Apr. 17, 2008); RICA Comments at 9.

scale economies are sufficiently pronounced, the market may result in *de facto* monopoly, *i.e.*, only one firm may ultimately serve customers.”¹²² But “[a]n absence of entry barriers will help to ensure that monopoly provision arises only when such provision is in the best interests of consumers, and that competitive provision will re-emerge if the incumbent supplier ceases to pursue the best interests of consumers.”¹²³

In any event, the Commission should not so quickly reject the benefit of multiple, redundant networks. In other contexts, the Commission has recognized the public and public safety benefits redundancy provides. One of the Commission’s explicit goals after the communication outages caused by Hurricane Katrina “is to support state, tribal and local 911 commissions in their efforts to enhance the *redundancy*, interoperability, and resiliency of their operations.”¹²⁴ The final rules contained in the *Katrina Order* were promulgated expressly to “help ensure the resiliency, redundancy and reliability of communications systems, particularly 911 and E911 networks and/or systems.”¹²⁵ The Commission similarly requires all wireless carriers to forward all 911 calls over a compatible air interface to the appropriate PSAP, even if the calls are placed by subscribers to another carrier, a requirement that is substantially more meaningful in areas where all air interfaces are supported.¹²⁶ Providing universal service support that allows competition to drive redundant networks that support a variety of technologies will therefore increase the chance that emergency communications will be available when

¹²² *Sappington* at 16-17 (emphasis added).

¹²³ *Id.* at 17.

¹²⁴ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd. 10541, 10567 (¶ 82) and Appendix B (2007) (emphasis added) (“*Katrina Order*”).

¹²⁵ 47 C.F.R. § 12.1.

¹²⁶ *Id.* § 20.18(b).

they are most needed. By contrast, limiting universal service support to a single provider would ensure many consumers will not be able to access 911 through their wireless phones if their wireline network goes down.

VI. Equal Support Should Be Retained For CETCs Providing Substitute Services, and Efficiency Incentives Should Be Preserved For CETCs Providing Complementary Services.

While the merit of the equal support rule is contested in the comments, one thing is clear. CETCs providing services that substitute for, and compete with, ILEC supported services should receive the same level of per line support as the ILEC. CETCs are not all alike. While some CETCs provide predominantly complementary services used by consumers in addition to an ILEC's supported service, others – including, as the Commission's *Cap Order* recognized,¹²⁷ the CETCs serving tribal lands – provide predominantly substitute services. As GCI has already explained, the Commission should retain the equal support rule for substitute CETCs.¹²⁸ Providing the same levels of support to CETC substitutes and ILECs, which are similarly situated for purposes of universal service support, serves Congress's twin goals of competition and universal service, adheres to competitive neutrality, and comports with fundamental principles of reasoned decision-making.

Even setting aside the crucial distinction between CETC substitutes and CETC complements, however, the *Equal Support NPRM* and most proponents of eliminating the equal support rule wrongly place the blame for system-wide failings, common to both ILECs and CETCs, on CETCs alone. The one-sided, anti-CETC nature of many of the *Equal Support NPRM* proposals was readily apparent to commenters. Even commenters

¹²⁷ *Cap Order* ¶ 32.

¹²⁸ *See supra* at 14-17.

that would eliminate the equal support rule were critical of an approach that “fails to make any reform measures to incumbent high-cost support but instead focuses solely upon competitive ETC high-cost support funding.”¹²⁹ Alltel puts a finer point on it, calling the *Equal Support NPRM* proposals “baldly designed to reduce support available for CETCs while retaining without change the ILECs’ legacy voice oriented revenue flows via the HCL, LSS, ICLS, HCM and IAS funds.”¹³⁰ This is hardly the path forward to comprehensive reform. Eliminating the equal support rule may look like a short-cut, but the comments reveal it to be a misguided detour over impassable road that moves universal service no closer to a rational, sustainable end.

Supporters of the Commission’s proposals to eliminate the equal support rule complain that CETCs receive support without cost justification while failing to deliver universal service. The Iowa Telecommunications Association, for example, argues that the rule permits CETCs “to receive potentially excessive and unjustified support unrelated to actual investment for the benefit of consumers in rural, high-cost areas.”¹³¹ But this CETC scapegoating ignores the real failings of the current system, in which *all* high cost support, whether provided to an ILEC or a CLEC, is divorced from carriers’ actual costs. As Alltel points out, “none of the existing high-cost funding mechanisms accurately reflect[] the costs incurred by ILECs.”¹³² As GCI and others have explained, this disconnect stems from the lack of support portability – ILECs do not lose

¹²⁹ Comments of Missouri Public Service Commission at 6, WC Docket No. 05-337 (filed Apr. 23, 2008).

¹³⁰ Alltel Comments at 22.

¹³¹ Comments of Iowa Telecommunications Association at 3, WC Docket No. 05-337 (filed Apr. 17, 2008).

¹³² Alltel Comments at 25 (citing CTIA’s study estimating that 40 % of ILEC support was not cost based and discussing ILECs incentives to misreport costs to inflate universal service support).

funding even when they lose customers. Another point lost in this facile “debate” is that the lopsided implementation of portability, whereby CETCs alone receive support *only* for customers actually served, virtually ensures that CETCs undertake substantial investment expense that is largely recovered from end user rates, *not* a network-funding lump-sum payment like that issued to ILECs. And perhaps most importantly, the current system gives ILECs no incentives to find ways to reduce their costs and become more efficient.

Commenters’ critique that the equal support rule fails to provide CETCs efficient investment incentives is likewise flawed. Any alleged effect on investment incentives from disconnect of cost and support is common to CETCs and ILECs alike. Indeed, as U.S. Cellular explains, the equal support rule actually encourages efficient CETC investment by facilitating the competitive provision of service and “linking support to the acquisition of customers.”¹³³ The record on this is undeniable, especially where the RLECs have elected to disaggregate support. The current equal support rule has *made possible* facility investments in remote locations that bring needed services to rural, hard-to-reach consumers. And with disaggregation, a CETC cannot receive support simply for serving the low-cost parts of a study area; instead, a CETC will receive higher per line support only for service in higher cost areas. GCI’s investment and planned deployment of services to the remote villages of Alaska proves the point. To the extent the funds “have any cost basis at all,” Alltel points out, they “fail to give ILECs incentives to deploy or upgrade facilities because they are based largely on past spending and

¹³³ US Cellular Comments at 25-26.

historical revenues.”¹³⁴ And in the absence of any real discipline on overearnings, the incentives are to invest only what is necessary to sustain (or expand) current funding levels. As GCI explained in its initial comments, investment incentives are best addressed through support disaggregation, not changes to the equal support rule.¹³⁵

While supporters of the *Equal Support NPRM* baldly claim that *CETCs* are not delivering universal service, the record fails to demonstrate that *ILECs* are delivering universal service either – or using universal service funds to improve the quality and capabilities of the services they offer. To the contrary, some *ILECs* have received substantial funds for years while doing little, or nothing, to bring needed services to the hardest-to-reach consumers. As noted in GCI’s opening comments, for example, TelAlaska has collected \$70 million in universal service support over the last 10 years, but has yet to provide wireless services to the communities its serves.¹³⁶ And as the maps GCI previously filed show,¹³⁷ the Alaska *ILECs* have not brought broadband to remote communities outside of the regional centers. Only investment by a *CETC* – GCI – will finally bring modern, advanced services to those communities.

Finally, the record confirms that the Commission’s proposal to replace equal support with support based on an “own costs” mechanism is irrational and unworkable. While several proponents jump on the “own costs” bandwagon, no party has actually put forth a viable proposal for providing support to *CETCs* based on their own costs.¹³⁸ The record thus far strongly suggests that there is no way to move to own costs that would not

¹³⁴ Alltel Comments at 26.

¹³⁵ See GCI April 17, 2008 Comments at 61-65.

¹³⁶ *Id.* at 38.

¹³⁷ GCI April 17, 2008 Comments at 11-15.

¹³⁸ Cellular South Comments at 8-9.

impose unworkable, unnecessary, and costly regulatory burdens on competitive providers and the Commission.

The Commission, in its recent *AT&T Cost Accounting Forbearance Order*, held that forcing competitive and converging services into old-style “uniform” accounting is unnecessary, unworkable, and against the public interest.¹³⁹ The Commission explained that “uniform cost accounting rules are slow to change and may not adapt to the quickly evolving characteristics of competitive markets, particularly where those markets may vary from carrier to carrier” and that this “uniform treatment could impose unnecessary regulatory burdens on carriers, which could in turn negatively affect the provision of new services to consumers.”¹⁴⁰ This would be no less true of the CETC cost accounting rules envisioned in the *Equal Support NPRM*. Having just relieved ILECs of their over-regulatory burdensome accounting rules, the Commission should not impose the same sort of over-regulatory burdensome accounting rules on diverse competitive carriers. As in the *AT&T Cost Forbearance Order*, the Commission “cannot justify” such cost assignment rules, when “more focused” regulatory reforms would achieve the goals of universal service.¹⁴¹

The comments echo GCI’s concerns with the “own cost” mechanism. Even those commenters that support an “own costs” mechanism for CETC support concede that an “own costs” based regime would “impose added burdens on wireless companies and will

¹³⁹ *Petition of AT&T for Forbearance under 47 U.S.C. § 160(c) With Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Memorandum Opinion and Order, FCC 08-120, WC Docket Nos. 07-21 & 05-342, 2008 LEXIS 3570 (2008) (“*AT&T Cost Forbearance Order*”).

¹⁴⁰ *Id.* ¶ 23.

¹⁴¹ *Id.* ¶ 28.

take some time and resources to implement.”¹⁴² The Rural Telecommunications Group puts it bluntly: “[c]onverting non-rural ILEC ETCs to the arcane rural ILEC accounting system makes no sense.”¹⁴³ CETC commenters explain that requiring CETCs to allocate and report costs as if they were rate of return regulated carriers would create an “oppressively regulatory environment,”¹⁴⁴ lead to “endless series of rate regulation disputes,”¹⁴⁵ and provide no incentive to supply services at minimum cost.¹⁴⁶ Even setting aside these issues, the record makes clear that such a proposal is administratively unworkable. Devising wireless CETC embedded cost studies is a near “impossible task.”¹⁴⁷ Moreover, GCI agrees with Alltel that requiring pre-approval of CETC cost studies, when ILECs are not subject to similar advance review, must be rejected.¹⁴⁸ Even supporters of own costs reject the notion CETC should have submit their costs to the Commission for review as an “overly regulatory response that would do nothing to further universal service.”¹⁴⁹

VII. The Comments Reveal Multiple Problems With Any Reverse Auction That Forecloses, Rather than Harnesses, Competition.

As GCI’s initial comments explained, any reverse auction mechanism adopted by the Commission must not, and need not, undermine the 1996 Telecommunications Act’s overall purpose – pro-competitive communications markets. Only a *properly structured*

¹⁴² Comments of CenturyTel at 22, WC Docket No. 05-337 (filed Apr. 17, 2008).

¹⁴³ RTG Comments at 9.

¹⁴⁴ CTIA Comments at 23-25.

¹⁴⁵ Comcast Comments at 4-6.

¹⁴⁶ US Cellular Comments at 43-44.

¹⁴⁷ See Rural Cellular Association Comments at 51; see also US Cellular Comments at 47-48.

¹⁴⁸ See Alltel Comments at 34.

¹⁴⁹ AT&T Comments at 38-39.

and implemented auction mechanism will allow the market to continually identify the most efficient provider of supported service, thereby minimizing the amount of universal service needed to support a given area and reducing the amount of the overall fund. Specifically, if the Commission decides to adopt reverse auctions, they should be structured as a technology-neutral competitive bidding process used to determine the amount of subsidy necessary for an efficient and capable provider to serve the market, not to pick a single winning provider to serve the market.

A. The Comments Confirm That Single-Winner Auctions Will Harm Consumers.

As set forth above, *see supra* at 8-19, designating a sole USF-supported provider will meet neither Congress's universal service objectives nor the terms of the statute. This is no less true if the Commission employs competitive bidding to pick a single universal service winner. As GCI's initial comments explained, a single-winner auction would sacrifice competition *in the market* at the altar of competition *for the market*, an unnecessary trade-off with consequences that would significantly undermine any cost-saving benefits from a competitive bidding approach.

The comments reiterate the multitude of problems caused by single-winner auctions. Alexicon Telecommunications Consulting, for example, explains that "a single winner format would appear to create an artificial barrier to competition," which is "prohibited by the 1996 Act."¹⁵⁰ Alltel makes a similar point, explaining that a single-winner auction would "effectively be handing a long-term monopoly to the auction

¹⁵⁰ Comments of Alexicon Telecommunications Consulting at 3, WC Docket No. 05-337 (filed Apr. 17, 2008).

winner.”¹⁵¹ Auctions that lock-out post-auction competition also curtail investment incentives. As GVNW Consulting, Inc. observes, “[r]everse auctions would create no incentive to invest after the contract,” a problem that “would be especially acute in the later years” of the auction cycle.¹⁵² Finally, several commenters point out that a single winner auction will require more, not less, regulatory intervention. Without any competitive pressure or discipline, the Commission and the states will be forced to police the winning bidder to ensure compliance with auction requirements, just and reasonable retail pricing and quality of service.¹⁵³ The WYOCA, for example, “anticipates that regulation may need to become more heavy-handed under a regulatory scheme that only allows for one provider” to win the auction, which “would be a complete reversal of the recent direction of encouraging competition in lieu of regulation.”¹⁵⁴

Some commenters, including Windstream and USTA,¹⁵⁵ suggest that the Commission should hold reverse auctions to select a single supported wireless provider. But those proposals raise additional problems. To begin with, imposing auctions only for wireless providers only abandons the key competitive and technological neutrality principles central to universal service policy. But, even more troubling, selecting a single wireless provider raises public safety concerns and technological problems because it would lock in consumers and public safety operators that rely on back-up commercial communications systems to a single air interface. In addition, limiting support to a sole

¹⁵¹ Alltel Comments at 40.

¹⁵² GVNW Comments at 23.

¹⁵³ *See, e.g.*, Alltel Comments at 40-41.

¹⁵⁴ Comments of the Wyoming Office of Consumer Advocate at 4, WC Docket No. 05-337 (filed Apr. 17, 2008).

¹⁵⁵ USTA Comments at 22-23; Windstream Comments at 24-25.

wireless provider over one air interface cannot be reconciled with the Commission's recently adopted policy of relying on market forces to discipline rates for common carrier roaming obligations. If a reverse auction selects a single wireless provider, the Commission will likely be forced to reverse course and regulate roaming prices because competition will not be available to discipline roaming rates.

B. Auctions Must Be Implemented For All Carriers In A Market, With No Special Protections Or Advantages For Incumbents.

To be successful, reverse auctions must treat all qualified providers equally. In its comments, Comcast explains that “flawed rules can effectively determine auction winners and losers” and cautioned the Commission against “tilting the playing field strongly in favor of the incumbent LEC.”¹⁵⁶ Indeed, Cellular South questions whether a single-winner auction could ever be competitively neutral given that the incumbent presumably already has a “mature network” and an incentive to “foreclose support to competitors and drive them out of the market.”¹⁵⁷ To guard against such incumbent advantage, auction rules should not entitle incumbents to any extra support that is not available to other bidders and should exclude the incumbent on the same basis as any other bidder. Otherwise, the auction will be impermissibly biased because ILECs will have no incentive to bid their cost-efficient level of support. In addition, other carriers will be substantially disadvantaged if they must modify their bids to offset ILEC advantages. As a result, the auction would fail to fulfill its main purpose – accurately determining the efficient level of universal service support in a market.

¹⁵⁶ Comcast Comments at 8-9.

¹⁵⁷ Cellular South Comments at 4-5.

More generally, the Commission should either adopt reverse auctions for all carriers in a market or not adopt reverse auctions at all. As GCI has explained above, insulating incumbent carriers from reforms applied to their competitors is fundamentally inconsistent with the statute and guiding universal service principles. A CETC-only auction, for example, would neither ensure that consumers are served by efficient providers nor yield the efficient level of support. Exempting ILECs from an auction would shield them from any competitive pressures to keep costs down or otherwise check the ongoing flow of excessive ILEC support.

Conclusion

The Commission should not abandon the benefits of competition in the name of universal service reform. Regulation cannot duplicate the power of the market to drive down costs and improve services for all consumers, including consumers in high cost areas. It is critically important, as well, that any reforms do not harm chronically underserved and unserved tribal lands and Alaska Native regions, areas most in need of universal service. Instead of adopting ill-conceived and legally unjustifiable “reforms” that will undermine competition and entrench ILEC providers, the Commission should condition all high-cost support on the one-support payment per residential account limitation it adopted in conjunction with the tribal lands exception to the interim cap, and move quickly to adopt numbers-based contribution reform. As it considers additional reforms, the Commission should in particular refuse to eliminate the ICLS, IAS, or LSS category of support for competitive providers, as there is no sound technical, legal, or policy basis for eliminating this support to competitive providers alone.

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