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 ALLTEL COMMUNICATIONS, LLC

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Alltel Communications, LLC ("Alltel") respectfully submits these reply comments in response to earlier submissions in the proceedings initiated by the Commission's three Notices of Proposed Rulemaking, released on January 29, 2008.[1]

OVERVIEW AND SUMMARY

At first glance, the diverse parties in this proceeding appear to be surprisingly unanimous in their support for the same over-arching set of principles. First, everyone seems to favor comprehensive reform of the high cost funding system to more effectively advance the nation's core universal service goals, rather than piecemeal or interim quick-fixes. Second, there appears to be wide recognition of the need to revamp aspects of the intercarrier compensation system that closely relate to high cost universal service reform.[2] Third, everyone seems to agree that greater accountability is needed for how funds are used. Fourth, all of the parties say they support stabilizing the size of the fund and limiting its growth. Last but not least, nobody seems to be

[1] *High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) ("*Identical Support NPRM*"); *High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) ("*Auctions NPRM*"); *High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 ("*Joint Board NPRM*") (2008); *see also High-Cost Universal Service Support*, Recommended Decision, 22 FCC Rcd 20477 (Jt. Bd., Nov. 20, 2007) ("*Joint Board RD*").
[2] *See* Public Notice, "Interim Cap Clears Path for Comprehensive Reform: Commission Poised to Move Forward on Difficult Decisions to Promote and Advance Affordable Communications for All Americans" (released May 2, 2008) ("*May 2 Public Notice*") (indicating that the Commission is poised "to now move forward expeditiously on comprehensive reform of both the universal service program and intercarrier compensation").

advocating (at least not overtly) that as a matter of principle, the universal service system should be competitively biased instead of competitively neutral.

Of course, the consensus for these basic goals falls apart when it comes to specific proposals to implement them. There are right ways and wrong ways to advance each of these goals – principled approaches that actually take the goals seriously and try to effectuate them in the new 21st century market environment, and unprincipled approaches that feign support for these goals but actually are designed to protect particular categories of carriers rather than consumers.

The Commission needs to make choices that are consistent with Congress' clearly stated desire to advance America's real universal service needs by ensuring that rural customers have access to multiple, affordable choices from various providers of an evolving level of universal service. This is precisely the spirit that permeates Sections 214(e) and 254 of the 1996 Act.

- The Commission can adopt true comprehensive universal service reform – transforming the program to focus on the services that rural America really needs and wants (advanced mobility and high-speed broadband). Or the Commission can go along with politically expedient measures that would de-fund the services that rural consumers increasingly prefer (*i.e.*, wireless), while shoring up a dead or dying business model – the provision of fixed, voice-grade, "local" plain old telephone service.
- The Commission can fulfill the statutory mandate that "all consumers, regardless of where they live, should enjoy the benefits of competition" by adopting policies that "seek to support all new entrants and do not favor one technology or industry over another."[3] The Commission can act in a consistent and principled manner to fulfill its "commitment

[3] Statement of Chairman Kevin J. Martin, *Promotion of Competition in Local Telecommunications Markets*, 23 FCC Rcd 5385 (rel. March 21, 2008).

to ensure we achieve regulatory parity by applying a consistent regulatory framework across platforms."[4] Or the Commission can abandon its Congressionally mandated pro-competitive principles, as it lamentably began to do in the recent *CETC Cap Order* by beginning to "disburse unequal support per line" for the first time since enactment of the 1996 Act,[5] departing "temporarily" from the principle of competitive neutrality (although pretending not to do so "as a matter of policy"),[6] and setting a course toward reverting the universal service program to its pre-1996 status as an exclusive preserve of the incumbent local exchange carrier ("ILEC") monopolies.[7]

- The Commission can move intercarrier compensation reform forward – reducing excessive access charges and termination fees that stifle economic growth. Or the Commission can unwind the progressive intercarrier compensation reforms that it has already achieved over the past decade, by converting the Interstate Access Support ("IAS"), Interstate Common Line Support ("ICLS"), and Local Switching Support ("LSS") mechanisms back into revenue guarantee funds that insulate former monopolists from competitive pressure.

- The Commission can make the universal service program truly accountable by adopting performance goals that ensure that carriers receive funds only when they succeed in satisfying these goals by providing services that consumers in high-cost areas actually want to buy. Or the Commission can continue to reward incumbent carriers for their

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[4] *Id.*
[5] *High-Cost Universal Service Support*, Order, FCC 08-122, ¶ 19 (rel. May 1, 2008) ("*CETC Cap Order*").
[6] *Id.* ¶ 22.
[7] The *CETC Cap Order* flagrantly disregards the admonishments of leading members of the Senate Commerce Committee to "consider other more thoughtful measures to limit the growth of the USF instead of arbitrarily capping the fund. Rather than looking at how to make the program work more effectively and efficiently, the Joint Board and the FCC appear to be taking a step that may not achieve the goal of strengthening the program in the long term. Instead of limiting rural consumers' options, the Joint Board should focus its efforts on even-handed interim and long-term measures." Letter from Senators Rockefeller, Pryor, Dorgan, Klobuchar, and Smith to Commissioners Deborah Taylor Tate and Ray Baum (March 21, 2007).

competitive failures by increasing their per-line support when they lose customers. In short, modern-day accountability requires funding portability. **<u>"Lose a customer, lose support. Win a customer, win support."</u>**

- The Commission can stabilize the existing voice grade fund by capping and gradually reducing support for all eligible telecommunications carriers ("ETCs") across the board – incumbents and competitive entrants alike – which would free dollars for more important priorities. Or the Commission can adopt any number of unprincipled, inconsistent, and impractical proposals designed only to push down dollar amounts to competitive ETCs by any means necessary, but do nothing to address the irrational system of funding for the incumbent local exchange carriers ("ILECs") or ensure that the dollars are well spent.

By choosing real reform, rather than picking winners and losers to the ultimate detriment of consumers, the Commission would fulfill its statutory duty and the public policy imperative to bring access to 21st century telecommunications services to consumers in all areas of the nation.

ARGUMENT

I. ADOPT COMPREHENSIVE REFORM TO BRING MOBILITY AND BROADBAND TO RURAL CONSUMERS – NOT TO PROTECT REVENUE STREAMS FOR THE INCUMBENTS

Everyone seems to agree that comprehensive universal service reform is long overdue. Even NECA concedes that "[e]xisting ILEC high cost programs were designed for traditional circuit-switched telephone networks. With broadband deployment now a key national priority, the Commission needs to take a more comprehensive and forward-looking view of high cost support programs."[8] Rural Americans truly want and need improved wireless coverage,

[8] NECA Comments at 15; *see also* AT&T Comments at 40 and n.65; CenturyTel Comments at 1; Comcast Comments at 1; CTIA Comments at ii; Iowa Utilities Board Comments at 1; New Jersey Board of Public Utilities Comments at 15; NTCA Comments at 2; Qwest Comments at 2; Sprint Nextel Comments at 13; TDS Comments at

advanced mobile services, and higher-speed broadband service, but the existing rules promote those objectives, if it all, only by accident and not by design. This proceeding offers an opportunity for the Commission to completely transform the program to focus on our nation's true universal service goals.

A number of parties have offered potentially promising comprehensive reform proposals. Alltel, for example, has advanced a concrete program to establish new funds targeted to support advanced mobility and high-speed broadband services in the highest-cost parts of rural America, while at the same time transitioning away from and ultimately eliminating the legacy voice-grade oriented funding mechanisms.[9] Under Alltel's plan:

- Mobility and broadband support would be targeted to geographic areas that are highest cost to serve – rather than selecting areas that are "unserved" as of a particular date, which would penalize "early adopter" states and carriers that have already begun to deploy these services.
- The new mobility and broadband funds would support the high costs incurred on an ongoing basis for operations and maintenance in rural areas, and would not be limited to a one-time payment for capital deployment.
- Alltel's plan would ensure that rural consumers – not government regulators – pick competitive winners and losers in the new advanced mobility and broadband markets, respectively, by directing mobility and broadband funds to the service providers selected by consumers in the competitive marketplace. Thus, more than one service provider could qualify for mobility and/or broadband funding in each geographic area (although

2; USTA Comments at 3; Verizon Comments at 2. (For ease of reference, all citations to initial comments filed in these proceedings, submitted in WT Docket No. 05-337 and/or CC Docket No. 96-45 during the April 17, 2008 commenting round, will use the format above – *i.e.*, citing only the filing party's name and the relevant page numbers in that party's comments.)

[9] *See* Alltel Comments at 7-22.

each would have to meet rigorous eligibility standards), and the new mobility and broadband funds would be portable among qualifying service providers. However, since the competitively neutral support payments would only be made for each customer served, the total amount of support for each service should remain the same in each area for the same number of customers served – regardless of whether there is one provider or several.

- The current version of the "identical support rule" [10] would not be necessary in the new mobility and broadband programs, each of which would support distinct functionalities with different cost structures. However, during the transition period, as long as the legacy funds remain in place – all of which are defined to support basic "voice service" – all providers of such substitutable services must receive competitively neutral amounts of support.

In addition to Alltel's plan, a number of alternative comprehensive reform proposals have been advanced by other carriers and groups. Some of these proposals may hold considerable promise.[11] However, the Commission must not be misled by proposals that may be mischaracterized as "comprehensive reform" but actually amount to little more than de-funding competitive ETCs and locking in ILEC revenue streams that are immune from competitive pressure.[12] There are numerous legal and policy justifications for rejecting the unlawful, blatantly non-neutral, and ultimately ineffective band-aid proposals foisted on the Commission by parties that would purport to "save" universal service simply by diminishing or eliminating

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[10] *See* 47 C.F.R. § 54.307(a)(1). As we noted in our initial comments, the rule does not assure "identical support" because it guarantees ILEC revenue streams even when they lose customers but provides CETCs with support only to the extent they gain customers. Moreover, the Commission's recent adoption of the CETC cap already has ensured that CETCs will receive lower amounts of per-line support than ILECs, and not "identical support." *See CETC Cap Order* ¶ 1.

[11] *See, e.g.*, *Ex parte* letter from Anthony M. Alessi, Sprint Nextel, CC Docket No. 96-45 (filed May 12, 2008) ("Sprint Comprehensive Reform Proposal"); CTIA Comments at 23-29; NCTA Comments at ii, 13-17.

[12] *See, e.g.*, GVNW Comments at 10-15; NTCA Comments at 19-30; Panhandle Telecommunications Systems, Inc. Comments at 3-8; USTA Comments at 9-18.

various forms of support for CETCs while doing nothing to reform ILEC funding mechanisms. The Commission should move to adopt comprehensive reform now, and should reject discriminatory and unlawful short-term fixes that would do nothing to re-focus the fund in ways needed to provide tomorrow's universal service.

II. ADHERE TO THE PRINCIPLE OF COMPETITIVE NEUTRALITY

Several ILEC commenters bemoan the advent of uneconomic, unsustainable, or unfair competition that has sprung up because high-cost support is available to CETCs such as wireless carriers.[13] These parties conveniently forget the true lessons of the *Alenco* decision, one of which is that universal service funds cannot lawfully be used to provide "protection from competition, the very antithesis of the Act."[14] Granting all available support for any particular high-cost territory to a single carrier, either via a "winner-takes-all" auction approach or by eliminating CETC eligibility for funding, would cement a monopoly in place in favor of facilitating competition.[15] Any such result clearly would fly in the face of the duty to "see to it that <u>both</u> universal service and local competition are realized," as neither of these dual statutory goals may "be sacrificed in favor of the other."[16] Any approach giving the Commission's imprimatur to wireline incumbent monopolies in high-cost areas would also ignore the unique and crucial benefits derived from mobile service in these areas, and it would violate the fundamental pro-competition and competitive neutrality principles of the Act.

The benefits of mobile services in high-cost areas are manifest and beyond dispute. Although voice service provided over wireline and wireless platforms are indeed substitutes for

[13] *See, e.g.*, Alaska Telephone Comments at 4; Alexicon Comments at 2-3; Embarq Comments at 8; NECA Comments at 32; NTCA Comments at 41-42; NTCH Comments at 8-9; Oregon PUC Comments at 5; RTG Comments at 8; TracFone Comments at 8-9; USTA Comments at 37; Verizon Comments at 21.

[14] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (2000) (finding that what the ILEC petitioners in the case sought was "not merely predictable funding mechanisms, but predictable market outcomes" guaranteeing their continued success).

[15] *See* Alltel Comments at 40.

[16] *Alenco Communications, Inc. v. FCC*, 201 F.3d at 615 (emphasis in original).

one another, as discussed in greater detail below, mobility brings with it a host of unique economic, social, and public safety benefits, as well as a degree of convenience and personal connectedness unmatched by wireline offerings.[17] Recent announcements by the State of Vermont underscore the importance and potential uses of mobile services. The Vermont Telecom Authority has decided to use "the majority of its $40 million in bonding authority" in order "to build scores of towers for wireless broadband and cellphone service in areas that now lack service" because "wireless tower construction is 'critical' to bringing broadband to the maximum possible number of rural residents with the limited resources available."[18] The FCC also has recognized the public safety potential of wireless services, and the potential for even greater benefits that might be achieved in this arena with the use of universal service support, seeking comment in the recent 700 MHz D Block re-auction notice on its authority to use universal service funding to support the proposed Public Safety Broadband Licensee's operational expenses.[19]

Using USF as a means to pick winners and losers deprives rural consumers of the benefits of competition and violates the fundamental pro-competitive principles of the Act. While it is true that USF should not "artificially" promote competition, it should not artificially restrict competition either, whether through the creation of a POLR fund available only to ILECs and designed to preserve revenue streams, or through the adoption of rules that eliminate CETC eligibility for "access replacement" mechanisms IAS, ICLS, and LSS. Either approach, or any

[17] *See, e.g.*, AT&T Comments at 16-18; Centennial Comments at 4-5; CTIA Comments at 11, 27 n.97; Chinook Wireless Comments at 3; New York PSC Joint Board NPRM Comments at 4; New Jersey Rate Counsel Comments at 36; North Dakota PSC Comments at 2; SouthernLINC Comments at 1-2; T-Mobile Comments at 10; *see also* Alltel Comments at 4.

[18] *See* Communications Daily, May 19, 2008, at 7.

[19] *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, Second Further Notice of Proposed Rulemaking, FCC 08-128, ¶ 43 (rel. May 14, 2008).

other proposal that similarly ignores the principles of competitive and technological neutrality,[20] would deprive consumers in high-cost areas of the benefits of a competitive marketplace and also violate provisions in the Act that "dictate[ ]" a neutral approach.[21] Any such approach also would ignore Congress's and the Commission's prior determinations that "competition is critical to achieving successful, sustainable universal service at the lowest overall cost to society."[22]

Calls to carve out revenue guarantees for ILECs, either in the form of POLR funds closed to CETCs or reconfigured access mechanisms that eliminate CETC eligibility for IAS, ICLS, and LSS, are thus shortsighted and flawed. "[A]ny mechanism that is available only to ILECs" as well as any plan that calls for "subsidizing an ILEC indefinitely" no matter its line count or its investment in advanced network deployment, would have the effect of "discourag[ing] facilities-based alternatives from developing"[23] – meaning that such an approach would allow ILEC monopolies to further ensconce themselves in affected service territories. The Commission should go about adopting comprehensive universal service reforms, not picking winners and losers in the marketplace based on a wireline-centric view of the basic services and facilities that are worthy of support.[24] As Cellular South suggests, the Commission should view high-cost support as a way of promoting competitive markets where none would otherwise exist so that rural consumers enjoy the same benefits as their urban counterparts.[25] Promoting competition through the use of fully portable funding for CETCs does not lead to "explosive growth" in the overall size of the fund, because "competitive ETCs must compete for customers"; "they only receive support when they attract customers"; and most importantly, "competitive ETCs lose

[20] *See, e.g.*, ATN Comments at 3.
[21] *Alenco Communications, Inc. v. FCC*, 201 F.3d at 622.
[22] GCI Comments at 31.
[23] NCTA Comments at 3.
[24] *See, e.g.*, Cellular South Comments at 5 ("When regulators pick the 'winner' in an area, the government chooses the winning provider and technology instead of leaving that choice to consumers in the market. . . . There is a reason that this model fails. Consumers are better situated than the government to pick market winners.").
[25] *See id.* at 2.

support when they lose customers."[26] The real problem contributing to the growth of the fund is the fact that ILECs do not lose funding when they lose lines and customers, and instead continue to receive the same amount of funding – albeit at a higher per-line level every time their number of lines shrinks.[27]

Some persist in spreading the myth that wireless and wireline services are not complete or perfect substitutes for one another, meaning that the Commission's competitive neutrality principle established at the outset of the universal service program is no longer valid or beneficial today.[28] The Commission itself seems to have fallen into this trap in the *CETC Cap Order*.[29] This argument not only ignores the evidence that a significant number of consumers already have "cut the cord" and completely given up their circuit-switched landline telephone service, but more significantly, ignores evidence that this trend is on the rise and that more and more consumers will take this path in the near future. Furthermore, the argument that wireline and wireless voice services are not "complete substitutes" for one another ignores the fact that these services are functional equivalents, based on the fact that voice services delivered over mobile platforms and those delivered over legacy voice-grade wireline networks are in many ways indiscernible from one another in terms of their most common uses.

And with due respect, it simply false to claim that, in adopting fund portability and the competitive neutrality principle, the FCC and the Joint Board did not foresee that, "[i]nstead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of

[26] *See id.* at 2, 6.
[27] *See, e.g.*, Centennial Comments at 6; Cellular South Comments at 7-8. ("[W]hen a customer leaves a carrier, the support for that customer should also leave. This is the system that is currently in place for competitive ETCs and should be in place for incumbent LECs. The problem is not that all ETCs in a high-cost area receive the same amount of per-line support, it is that incumbents continue to receive the same levels of total USF support even though they are hemorrhaging customers.").
[28] *See, e.g.*, GCI Comments at 37 n.68; GVNW Consulting Comments at 30 (quoting *Identical Support NPRM* ¶ 9); NECA Comments at 9-11; NJ Rate Counsel Comments at 6; NTCA Comments at 41; OPASTCO Comments at 12; USTA Comments at 25 n.39; Western Telecommunications Alliance Comments at 22.
[29] *CETC Cap Order*, ¶¶ 19-21.

subscriber lines, the certification of wireless competitive ETCs [would lead] to significant increases in the total number of supported lines."[30] The rule itself entitles CETCs to support not only "to the extent that the competitive eligible telecommunications carrier captures the subscriber lines" of an ILEC, but also to the extent that it "serves new subscriber lines" in the ILEC's service area.[31] The Act contemplates that the universal service program should expand rural consumers' access to telecommunications services, not that designated carriers would simply fight over market shares in a zero-sum game.

Alltel cited ample evidence in our initial comments that wireless substitution is on the rise among America's consumers, and especially among younger consumers, with more and more individuals and households ditching their wireline telephone service in favor of wireless alone or a combination of wireless and broadband platforms to receive voice service.[32] The Commission itself recently recognized that "wireless substitution has grown significantly in recent years," "due to the relatively low cost, widespread availability, and increased use of wireless service."[33] "A number of mobile wireless providers offer service plans designed to compete directly with wireline local telephone service."[34] The most recent data compiled by the Centers for Disease Control's National Health Interview Survey, which was released in mid-May after initial comments were due in this proceeding, suggests that the number of American homes using only wireless telephones was already approaching one in six by the end of last year[35] – a

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[30] *Id.* ¶ 21.
[31] 47 C.F.R. § 54.307(a) (emphases added).
[32] *See, e.g.*, Alltel Comments at 10-11.
[33] *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 Radio Services,* Twelfth Report, 23 FCC Rcd 2241, ¶¶ 246, 249 (2008) ("*2008 CMRS Competition Report*").
[34] *Id.* ¶ 250.
[35] *See* Centers for Disease Control, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2007," at 1 (rel. May 13, 2008). The most recent CDC figures showed that 15.8% of American homes had only a wireless telephone during the latter half of 2007, while another 13.1% reported

figure nearly double the 2005 total previously cited by the Commission in the *Identical Support NPRM* and in the *CETC Cap Order*.[36]

OPASTCO, of all people, provided additional evidence just last week for the fact that wireless and wireline services are direct substitutes for one another. OPASTCO submitted a study confirming the trend toward "wireless substitution" for wireline access lines and toward substitution "of VOIP and wireless minutes for switched access minutes," also observing that rural ILEC "[r]evenues driven by the number of lines are seen as vulnerable, as wireless, VOIP, and competition continue to erode the number of lines. Minutes of use are expected to decline rapidly for the same reasons."[37]

Even more striking evidence of this point was provided last week by the North Dakota Public Service Commission, reported by Bismarck, North Dakota's KFYR-TV news station as follows:

> More and more North Dakotans are giving up the stability of a home phone number, and switching to cellular. The North Dakota Public Service Commission just released a study showing that thousands of people are cutting the cord on landline phones. . . .
>
> That's a trend Public Service Commissioner Tony Clark says is continuing. "There were over 23,000 new wireless phones added in North Dakota just last year," Clark says. "At the same time, landlines dropped."
>
> According to a study just released by the P.S.C, North Dakotans dropped about 11,000 landlines. And one of those dropped lines belonged to Commissioner Clark.
>
> "The service coverage has expanded, so really, within our house, we couldn't tell the difference between our cell phone and our land line," he says. "The quality was very similar, so we finally decided to cut the cord." . . .[38]

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receiving all or almost all of their calls on a wireless phone despite the presence of a landline telephone in the home. *See id.*

[36] *See Identical Support NPRM* ¶ 9 n.27; *CETC Cap Order* ¶ 21 n.65.

[37] Dale Lehman, "The Next Three Years: Likely Revenue Scenarios for Rural Incumbent Local Exchange Carriers," at 2, 8, 12 ("OPASTCO Economic Study") (submitted as an attachment to *ex parte* letter from Stuart Polikoff, OPASTCO, WC Docket No. 05-337 and CC Docket No. 96-45, filed May 27, 2008).

[38] Emily Catalano, "Making the Wireless Switch," KFYR-TV News Stories, May 29, 2008, *available at* http://www.kfyrtv.com/News_Stories.asp?news=18959. The video of this news story can be viewed at

At present, voice-grade wireline services and wireless voice services are increasingly viewed as complete substitutes for one another by consumers in the marketplace. In the ultimate analysis, voice service is becoming just an "application" that can be accessed over multiple technological platforms. Viewed in that frame, advanced mobility services and high-speed broadband delivered over wireline facilities may not be direct substitutes. Once the FCC adopts comprehensive high-cost universal service reform and realigns the funds to promote Mobility and Broadband deployment goals, elements of the current fund such as the identical support rule will no longer be necessary.

To the extent that the Commission preserves funds designed to promote simple voice service availability, however, those funds should provide nondiscriminatory support to all ETCs that provide that service. The "complete substitute" analysis proffered in the *Identical Support NPRM* and the *CETC Cap Order*, and taken up by parties suggesting further departures from competitive neutrality principles, ignores the fact that voice service is just an "application" at this point – one that can ride over legacy, circuit-switched wireline networks, wireless networks, or advanced broadband networks.[39] Furthermore, the cramped substitution analysis put forward in the *Identical Support NPRM* and the *CETC Cap Order* does not recognize the fact that consumers may view wireless service as a substitute for wireline telephone service even if they do not cut the cord completely.[40] The Commission must not continue down the path of abandoning competitive neutrality for ILEC-only funding mechanisms and eligibility on the theory that wireless service is merely complementary to wireline offerings. Mobility has its own

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http://www.kfyrtv.com/News_video.asp?news=18959. The North Dakota PSC's news release is available at http://www.psc.state.nd.us/media/news-releases/5-27-08-wireless-phones-increase.pdf.

[39] *See, e.g.*, Alltel Comments at 5.

[40] *See, e.g.*, U.S. Cellular Comments at 32-33; *see also supra* note 35 (noting that 13.1% of American households reported receiving all or almost all of their calls on a wireless phone by the end of 2007, despite the presence of a landline telephone in the home).

unique benefits, but voice service offered over a wireless platform and voice service offered over a wireline platform are substitutes for one another – and the demand for wireless service is on the rise while demand for traditional wireline offerings declines.[41]

III. CONTINUE PROGRESS TOWARD INTERCARRIER COMPENSATION REFORM, RATHER THAN PUTTING IAS, ICLS, AND LSS REVENUES OFF LIMITS TO COMPETITORS

Alltel welcomes the renewed calls for progress on intercarrier compensation reform, which is inextricably linked with universal service reform.[42] In particular, we believe Sprint's proposal to gradually raise and ultimately eliminate the artificial cap on ILECs' subscriber line charges ("SLCs"), while reducing IAS and ICLS funds for all ETCs, warrants additional serious consideration.[43] At the same time, it is highly ironic that some seek to roll back the progress on intercarrier compensation reform that has already been achieved, by turning the IAS, ICLS, and LSS funds back into ILEC-only "revenue replacement" mechanisms rather than keeping them as explicit and competitively neutral universal service funds.[44]

The cross subsidies generated by the SLC cap are the root cause of many of the problems plaguing both the intercarrier compensation and universal service regimes. For years, the ILECs have invoked the SLC cap as justification for obtaining revenues from anyone other than their own customers. To this day, small rural ILECs typically receive over 60 percent of their regulated local revenues from someone other than their own customers – either long distance companies (access charges) or other telecommunications carriers' consumers (*i.e.*, universal

[41] *See, e.g.*, U.S. Cellular Comments at 33; *see also* RTG Comments at 13 (noting the illogical nature of placing a cap on wireless CETC funding "[i]n an age where consumers are migrating toward mobile technologies").
[42] *See May 2 Public Notice.*
[43] *See, e.g.*, Sprint Comprehensive Reform Proposal at 2-5.
[44] *Identical Support NPRM*, ¶¶ 23-24; *see also* CenturyTel Comments at 24; Embarq Comments at 12-13; Iowa Telecommunications Association Identical Support Comments at 4; USTA Comments at 12; Windstream Comments at 23 (arguing that "CETCs have no legitimate need for access charge replacement funding").

service fund contributors).[45] This heavy dependence on subsidies from outside parties is an indication of a failing business model. In essence, OPASTCO's study confirms that its members are "wards of the state."

In the past, excessive access charges were used to cross subsidize the SLC – in essence, long distance companies were forced to pay inflated fees to "buy down" ILEC end user rates. That system of implicit cross subsidies artificially raised prices and restricted demand for long distance service, while also limiting competitive entry into local service, for which rates were held artificially low. And its impact on universal service was questionable, at best. Ultimately, it proved to be unsustainable with the emergence of broad-scale competition.

Access charge reform began in 1997, when the FCC raised the SLC cap and reduced access charges to a limited extent.[46] But the most significant steps forward to date were the *CALLS Order* in 2000 (with respect to price cap ILECs) and the *MAG Order* in 2001 (with respect to rural ILECs).[47] Those orders eliminated the problem in part, by raising the SLC caps (*i.e.*, reducing the subsidies to a certain extent) while reducing access charges. Beyond that, some subsidies remained but their economic inefficiencies were ameliorated somewhat by shifting both the source and the destination of the subsidies. Instead of drawing the subsidy funds from access charges, the *CALLS Order* and *MAG Order* moved them into the universal service funds paid for by all contributors (*i.e.*, telecommunications consumers). Instead of disbursing the subsidies exclusively to ILECs, they were converted into new competitively neutral universal service mechanisms – the IAS and the ICLS. While establishment of the IAS

[45] *See* OPASTCO Economic Study at 5-6.
[46] *Access Charge Reform*, First Report and Order, 12 FCC Rcd 16642 (1997), *subsequent history omitted.*
[47] *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *rev'd in part and remanded sub nom. Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *on remand*, 18 FCC Rcd 14976 (2003); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613 (2001) ("*MAG Order*").

and the ICLS funds did not eliminate the subsidies, they changed them from implicit subsidies that had been biased to benefit the ILECs (because only wireline LECs could extract access fees from someone other than their own customers) into explicit and competitively neutral forms of support. The fact that the IAS and ICLS funds were portable meant that those revenues were exposed to competition.

Sprint's proposal and other similar proposals on the record[48] apparently would take these progressive measures to their logical next steps – increase SLC caps further, especially for rural ILECs with relatively low end user rates, and concomitantly phase down the IAS and ICLS funds in a competitively neutral manner. Universal service fund contributors (*i.e.*, other carriers' customers) should not be forced to buy down rural ILECs' end user rates, especially where rural ILECs charge rates significantly lower than those in other parts of the country. Instead, universal service subsidies could be targeted more narrowly to advance customers' needs, rather than to keep ILECs "whole" and protect them from competitive market forces.

By contrast, several ILECs are echoing the proposal in the *Identical Support NPRM* to preserve the IAS, ICLS, and LSS funds for the ILECs but cut them off for CETCs.[49] These anti-competitive proposals could cut federal high cost funding to CETCs by over $700 million per year – nearly 60% of total CETC funding – which undoubtedly would force wireless CETCs to curtail a substantial degree of their network deployment and service quality improvements in rural areas.[50] Moreover, as a policy matter, these parties fundamentally mischaracterize the IAS, ICLS, and LSS funds as "access revenue replacement" mechanisms. Even to the extent these revenues were formerly included in access charges, they do not correspond to ILEC costs, and

[48] *See* Sprint Comprehensive Reform Proposal at 2-5; *see also* AT&T Comments at 29; GCI Comments at 43-44.
[49] *See supra* note 44.
[50] Analysis based on USAC Appendix HC01 for 3rd quarter 2008.

the ILECs have no entitlement to continue receiving these arbitrary amounts.[51] Either the IAS, ICLS, and LSS funds should be eliminated for ILECs (as well as CETCs), or they should be fully portable among all ETCs. **"<u>Lose a customer, lose support; win a customer, win support</u>."**

The problem is not limited to the IAS and ICLS funds, which were created in tandem with access charge reform orders. The other three existing mechanisms – LSS, as well as the High Cost Loop ("HCL") and High Cost Model ("HCM") mechanisms, also have little or nothing to do with the ILECs' actual costs. GCI explains that "LSS is a particularly arcane USF support mechanism" developed from exaggerated weighting of interstate minutes, and that "an ILEC receives LSS solely because of the size of its study area, and not as a function of the level of ILEC switching costs relative to a benchmark."[52] All ILEC study areas below 50,000 lines can receive LSS – without regard to the ILEC's actual per-line costs for switching in that study area, and even if the ILEC only dips below 50,000 lines because it loses lines to competition.[53] Thus, as GCI correctly demonstrates, "while LSS was initially provided based on some <u>assumptions</u> about economies of scale and scope, there is no tie in the actual support mechanism between those assumptions and the receipt of LSS."[54]

GVNW Consulting opens its initial comments with the pronouncement that "[t]he time has come to put an end to the irrational and costly system of supporting wireless carriers based on the cost of wireline incumbents."[55] Yet just a few pages later, GVNW reveals that "[t]he current cap [for HCL] is not administered using a national average that is reflective of the costs of the wireline carriers."[56] How can this be, if universal service funding for ILECs is truly based

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[51] *See* Alltel Comments at 35-39; CTIA Comments at 17-19; GCI Comments at 43-45, 48-50.
[52] GCI Comments at 51-52.
[53] *See id.* at 52.
[54] *Id.* (emphasis in original).
[55] GVNW Consulting Comments at 4.
[56] *Id.* 15.

on wireline incumbents' costs? GVNW provides no answer, either ignoring or failing to notice the patent contradiction between its claims, as it casually explains that "[t]he '<u>fictitious' or 'fabricated' national average used in computing HCL distributions has no basis in the actual cost of the participating companies</u>."[57]

Time Warner Telecom confirms that the HCM mechanism "provides sufficient support to pay for a network built from the ground up," and notes that "incumbents have largely paid for the construction of their circuit-switched voice networks," meaning that "investments by incumbents in copper networks, which have been in place for many years, have been largely recovered."[58] The current model is thus based on the replacement cost for these circuit-switched copper networks, even though non-rural ILECs are not incurring any such costs: they are instead deploying more advanced networks and technology, and incurring costs with respect to circuit-switched copper plant only to maintain such legacy networks in "steady state."[59]

Alltel explained at length in our initial comments the unlawful nature of any steps the Commission might take to cut off CETC eligibility for IAS, ICLS, and LSS.[60] Several other commenters concurred in the view that "depriving CETCs of access to IAS, ICLS, and LSS would violate the competitive neutrality and portability requirements of the Act."[61] As Alltel and these other parties have noted repeatedly in these proceedings and elsewhere, proposals to control the growth of the fund simply by targeting CETC funding for elimination are ineffective

[57] *Id.* (emphasis added); *see also* RICA Comments at 14 ("[T]he model does not accurately predict forward-looking cost for any particular rural exchange or small area.").
[58] Time Warner Telecom Comments at 8.
[59] *See id.* at 9-10. Time Warner Telecom further notes that the cost of building new fiber optic and packet-based networks need not be factored into the cost estimates for existing mechanisms because support for advanced networks should come from the new Broadband Fund, and explains that the only conceivable function of any POLR Fund "would be to make sure that the existing voice network does not deteriorate until replaced." *Id.* at 10.
[60] *See* Alltel Comments at 35-40.
[61] *Id.* at 35-36; *see also* CTIA Comments at 18; RCA Comments at 63; Sprint Nextel Comments at 10-11 ("[D]espite the Commission's promises to undertake comprehensive review of the High Cost Support programs, these NPRMs are narrowly targeted at CETCs, and with respect to ILECs, they do little more than institutionalize current support flows"); U.S. Cellular Comments at 53.

at best, since they leave untouched the large majority of high-cost funds that flows to ILECs.[62] Yet another counter-intuitive result of preserving ILEC support at present levels, despite the fact that ILECs are "hemorrhaging customers,"[63] is that the Commission would continue incentives to invest in the least efficient technology rather than wireless (or broadband) networks that could be more efficient and economical to deploy in many areas.[64]

In sum, Alltel believes it would be appropriate to revisit intercarrier compensation reform to take further steps to eliminate implicit cross-subsidies that benefit only the ILECs, and to harmonize the irrational welter of intercarrier compensation rules. But the Commission should reject proposals to undo existing reforms by placing billions of IAS, ICLS, and LSS dollars into competition-free zones for ILECs only.[65]

IV. STABILIZE THE FUND SIZE IN A COMPETITIVELY NEUTRAL MANNER

There are right ways and wrong ways to stabilize growth of the fund, and eventually reduce and eliminate the voice-grade mechanisms to be replaced by mobility and broadband funds. The right ways to achieve this goal are (1) to impose competitively neutral caps on all ETCs, as initially proposed by former consumer advocate Billy Jack Gregg, endorsed by the

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[62] *See* Alltel Comments at 3; Centennial Comments at 6; Sprint Nextel Comments at 8; T-Mobile Comments at 10-11.

[63] Cellular South Comments at 8 (noting that any proposal suggesting CETC eligibility for support only where CETC costs are higher than ILEC costs effectively "asks competitive ETCs to be as inefficient as incumbent LECs or risk losing USF support").

[64] *See supra* note 18 and accompanying text. The *CETC Cap Order* asserts that the identical support rule does not create effective incentives for CETCs to invest in networks in high-cost rural areas, but rather creates incentives to expand the number of subscribers. *CETC Cap Order* ¶ 21. This argument is illogical. How could any facilities-based telecommunications carrier expand the number of subscribers without investing in the network facilities used to serve those subscribers? To the extent the existing funding mechanisms disburse support to ILECs in "the lower cost part of high cost [study] areas," *id*., they also fail to provide accurate investment incentives to the ILECs. But the *CETC Cap Order* fails to address or even consider these obvious logical flaws, and simply ignores the inefficiencies of the ILEC funding streams. This is because the entire purpose of that order is not to advance universal service, but simply to slash funding for a disfavored group of companies – wireless CETCs.

[65] Based on an analysis of USAC Appendix HC01 for the 3rd quarter of 2008, ILECs are slated to receive $1.9 billion annually from the IAS, ICLS, and LSS funds.

Joint Board, and supported by the NCTA and other parties;[66] and (2) restore true portability of funds. **"Lose a customer, lose support. Win a customer, win support."** This would eliminate the phenomenon of per-line fund growth due to ILEC line counts shrinking while the ILECs' total funding remains constant or even increases.

OPASTCO reports that over the past 6 years, the 921 small rural ILECs in the OPASTCO study (covering the vast majority of the sector) experienced, on average, a 3.2% increase in regulated costs, a 4.4% increase in universal service revenues, and a 6% reduction in access line counts.[67] This trend can be confirmed by a direct analysis of the data reported by USAC. Among those rural ILECs receiving HCL support, the number of loops has decreased by 12.4 percent from 2002 (third quarter) to 2008 (third quarter projected), while the total amount of HCL support received by these carriers increased by 9.4 percent during the same period. For rural ILECs receiving ICLS support, the number of loops has decreased by 10.7 percent from 2004 (third quarter) to 2008 (third quarter projected), but the total amount of ICLS support received by ILECs increased by 51.9 percent. Finally, in the case of rural ILECs receiving LSS support, the total amount of support from 2002 (third quarter) to 2008 (third quarter projected) has actually decreased by 13.5 percent, but the number of these carriers' loops has decreased by nearly twice that amount (26.6 percent).[68] It is hard to understand why the fund should increase even as line counts decrease – and even more difficult to rationalize why universal service support would be growing more rapidly than costs, if support is, as OPASTCO contends, based

[66] *See Joint Board RD* ¶¶ 26-28; *see also* NCTA Comments at 11-14; California Public Utilities Commission Joint Board Comments at 2; National Consumer Law Center Comments at 1-2; Verizon Comments at 7.

[67] OPASTCO Economic Study at 7-9.

[68] The high-cost loop calculations are drawn from USAC Appendix HC04 (2002) and USAC Appendix HC05 (2008), the ICLS calculations are drawn from USAC Appendix HC09, and the LSS calculations are drawn from USAC Appendix HC05 (2002) and USAC Appendix HC08 (2008). The third quarter of 2004 is used for the ICLS calculation (instead of the third quarter of 2002, which was used for the other calculations) because ICLS did not exist as a separate support category before that time.

on the rural ILECs' actual costs. A cap on all ETCs' per-line support would be an important first step toward addressing these anomalies.

Meanwhile, the ILECs offer a plethora of wrong ways to stabilize fund levels. They pull every possible trick out of the magic hat to reduce CETC support while doing nothing to address the amount of support flowing to ILECs that provide fewer and fewer consumer lines.

(1) Even the major ILECs (AT&T and Verizon) and others recognize that the WiCAC methodology as set forth in the *Identical Support NPRM* is unworkable and overly regulatory.[69] It makes no sense to require non-dominant wireless carriers to use ILEC accounting categories and benchmarks to measure their embedded costs. Imposing such a burdensome regulatory scheme on wireless carriers is not necessary and would increase administrative expenses and burdens on CETCs. Such an approach runs completely contrary to all the deregulatory steps the FCC has taken over the past 28 years, going back to the 1980 *Competitive Common Carrier* decision to stop imposing entry regulation and other dominant carrier requirements on non-dominant companies.[70] It also would be fundamentally inconsistent with the trend of the Commission's decisions over the most recent few years, up to and including last month's decision to forbear from requiring AT&T to comply with cost assignment rules and file ARMIS data.[71]

GVNW facetiously wonders why CETC employees with the requisite technical and financial expertise to obtain CETC status in the first place would not be "capable of mapping to twenty-three (23) accounts and posting the account balances to an algorithm data request that is

[69] AT&T Comments at 38; Verizon Comments at 19, 36-37; *see also* Comcast Comments at 4-5; NCTA Comments at 12.
[70] *See In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1 (1980).
[71] *Petition of AT&T, Inc. for Forbearance Under Section 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, 23 FCC Rcd 7301 (2008).

transmitted to the fund Administrator."[72] It is not a question of capability, however, but rather a question of the need for such an upheaval and the waste of time and resources that could be put to better use. Presumably, wireline ETCs are also staffed by some of the "capable and talented individuals" that GVNW seeks on wireless carriers' payrolls. Yet, as AT&T notes, the process begun in 1978 to transition wireline carriers to the Part 32 System of Accounts "amply demonstrates [that] adopting a system of accounts as GVNW proposes is not only unnecessary but also likely would be very time-consuming and prohibitively expensive."[73] That transition, though it was entrusted undoubtedly to the most capable and talented individuals that the ILECs could muster, took nearly ten years to complete by AT&T's count, and parties to that proceeding estimated that the transition costs "would range between $685 million to $1.1 billion in 1986 dollars."[74]

U.S. Cellular and others note that "[t]he Commission has consistently avoided the imposition of cost accounting requirements on non-dominant, competitive telecommunications carriers, recognizing that marketplace incentives obviate the need for burdensome and restrictive cost reporting obligations."[75] Sprint Nextel explains that "[r]equiring wireless carriers to undertake a process of separations and accounting similar to that used by ILECs under Part 32 would be disruptive and expensive," because wireless carrier costs for elements such as spectrum, cell sites, base station controllers, and mobile telephone exchanges "cannot easily be shoe-horned into a legacy wireline-based accounting system."[76] As Comcast concludes, implementation of any scheme to introduce Part 32-style rules for CETCs "would doubtless be

[72] GVNW Consulting Comments at 11.
[73] AT&T Comments at 39.
[74] *Id.*
[75] U.S. Cellular Comments at 43; *see also* RCA Comments at 52.
[76] Sprint Nextel Comments at 9.

both costly as well as administratively complex for the Commission and the industry."[77] The Commission should reject any proposal to create additional layers of regulation for non-dominant carriers, or to require their use of wholly inapposite accounting categories in tracking the actual costs incurred by wireless carriers to deploy and maintain their networks.[78]

(2) The "Panhandle" plan[79] is even worse than the WiCAC proposals. That plan would not only require wireless CETCs to undergo traditional embedded cost-based accounting and reporting procedures; it also would require <u>all</u> wireless carriers – even those that do not choose to become CETCs – to account for and report such data (because it relies on national average wireless costs, and averages cannot be computed unless all carriers report the same data). Moreover, by granting privileged treatment to certain wireless carriers over others based on the size of their holding company, the Panhandle proposal would reward carriers just for being small and inefficient, and would perpetuate some of the most pernicious features of the existing voice-oriented mechanisms such as the HCL and LSS funds. For example, such a policy would give large or mid-size wireless carriers artificial incentives to sell off rural service areas even where doing so would be inefficient and more costly, just because a smaller, purchasing entity would receive greater USF support. Finally, the Panhandle plan would impose detailed rate regulation on roaming charges – a course the FCC has consistently rejected.[80] The marketplace is working well for roaming, as evidenced by the decline in roaming charges and revenues in recent years.[81]

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[77] Comcast Comments at 4; *see also* NCTA Comments at 12.
[78] *See* Alltel Comments at 30-35 (detailing the numerous problems associated with imposing ILEC accounting requirements on wireless CETCs – especially where various proposals put forward in these proceedings would call for even more stringent advance reporting requirements to be placed on non-dominant carriers than those presently in place for incumbents).
[79] Panhandle Telecommunications Systems, Inc. Comments at 3-8.
[80] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 22 FCC Rcd 15817, ¶¶ 37-40 (2007).
[81] *2008 CMRS Competition Report* ¶ 155.

And in any case, roaming regulation has nothing to do with USF and is outside the scope of this proceeding.

(3) Qwest offers a "quick and dirty" proposal to save what it claims to be $500 million by allowing wireless CETCs to receive only one support payment per account rather than payments for multiple handsets.[82] While superficially appealing, why should such a restriction be imposed on wireless carriers but not on ILECs? ILECs arguably incur even less additional costs for providing second lines, since they typically use the same copper infrastructure to do so (whereas wireless carriers incur incremental usage sensitive costs for every call placed from every cell phone on a customer's account). More significantly, a major factor in ILEC line loss is that households are deciding to drop their wireline "second lines" and instead acquire additional cell phones or broadband services.[83] Like some of the other proposals under review, Qwest's proposal would penalize wireless CETCs for their success and reward ILECs for their failure. For that matter, it makes even less sense to reduce wireless carriers' per-line funding when they provide more service to consumers, while retaining the current system that gives ILECs more per-line funding when they provide less service. Instead, the FCC should say **"Lose a customer, lose support. Win a customer, win support."**

V. MAKE THE HIGH COST PROGRAM MORE ACCOUNTABLE

Alltel strongly agrees with those who call for greater accountability in the disbursement of funding. Carriers – and the fund structure – should be subject to performance measures.[84] If a carrier succeeds in increasing the uptake of universal service, it should receive the funds needed

[82] *See* Qwest Comments at 3 (citing Qwest July 9, 2007 *ex parte* Letter from Ms. Melissa E. Newman, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45).
[83] *See* OPASTCO Economic Study at 8.
[84] FCC-designated CETCs like Alltel are already subject to strict requirements to submit detailed data on their network deployment plans and how they are utilizing the support revenues they receive. 47 C.F.R. § 54.209. ILECs are under no such obligation in most states.

to support that increase; and if a carrier fails by losing customers, it should lose support. In short, accountability requires funding portability.

Moreover, the current program lacks accountability in that it disburses funding to carriers for continuing to provide the plain old telephone services of the last century, while doing little to create incentives for carriers to deploy and provide the services that consumers most need – advanced mobility and high-speed broadband. The program spends a great deal of money based on the 1996 study area configurations of rural ILECs (large corporate entities receive funding as if they were much smaller and less efficient if they acquired entities that had small "study area" boundaries as of 1996), without examining the relationship between the money spent and results achieved. And the administration of the largest portions of the fund are entrusted to NECA, an entity owned and controlled by the ILECs and that serves as a valiant and partisan advocate for increasing funding for rural ILECs and reducing funding for CETCs. Entrusting the henhouse to the fox is the antithesis of accountability.

In sum, the fund needs to be transformed in a comprehensive manner to ensure greater accountability and to confirm that taxpayers' dollars are well spent.

CONCLUSION

For the reasons stated above and in Alltel's initial comments, the Commission should adopt comprehensive reforms to the universal service high cost support program as proposed by Alltel, and should reject arguments to the contrary.

Respectfully submitted,

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