Before the
Federal Communications Commission
Washington, DC 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
	)	

To: The Commission

REPLY COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

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SUMMARY

The record in this proceeding reinforces the fundamental point that CTIA made in its initial comments – that the Commission's efforts to reform its high-cost universal service system must take account of the overwhelming importance that consumers today place on mobile and broadband services. As a result of this fundamental technological and marketplace shift, the Commission's universal service reform efforts must focus on ensuring ubiquitous availability of mobile and broadband services in rural and high-cost areas. The CostQuest study that CTIA submitted with its initial comments provides an initial estimate of the enormous scope of the project remaining to deploy advanced mobile services throughout the United States. The scope of this project, combined with the concurrence in the record with supporting mobile and broadband services, strongly supports the adoption of dedicated funding for advanced mobile wireless services.

Until comprehensive reform is enacted, however, additional interim reform is needed. First, the Commission must adopt an interim mechanism to provide urgently needed build-out funding for advanced mobile wireless services. Because this interim funding mechanism would target unserved and under-served rural areas, a grant-type mechanism could be used to select funding recipients, but support must be provided for the deployment of the two predominant, but incompatible, types of advanced wireless technologies currently in use in the U.S. (EvDO and HSDPA).

Interim reform of rural incumbent local exchange carrier (ILEC) support also is urgently needed. Pending more comprehensive reform, the Commission should: (1) Require ILECs with multiple study areas in a given state to combine those study areas before support is calculated; (2) Treat ILECs with more than 50,000 access lines in a state (irrespective of how many study areas they currently comprise) as "non-rural" and provide support for them based on the more-

efficient “non-rural” support mechanisms; (3) Reduce the per-line amount of support that is available to ILECs by eliminating support for corporate operations expenses and allowing a more reasonable rate of return; and (4) Then cap the per-line amount of support available to all ILECs. These modest steps would save the American consumers over $675 million annually and these cost savings could, in part or in whole, be redirected to urgently needed deployment of advanced wireless and broadband networks in unserved areas.

In approaching comprehensive reform, the Commission also must begin with rural ILEC support. The Commission must introduce long-overdue efficiency into support provided to rural ILECs. At minimum, the Commission must reduce ILECs’ support commensurate with these carriers’ loss of lines. This simple step, if it had been adopted just a few years ago, already would have saved substantially more support than competitive ETCs have received in the history of the universal service regime. In the absence of resounding proof that rural ILECs cannot charge affordable rates without access to more universal service subsidies, the Commission also must reject ILEC proposals to provide them with additional support in the access charge reform process.

Although, as CTIA discussed in detail in its initial comments, the Commission may not adopt reform measures that are specifically designed to discriminate against wireless ETCs, the Commission may (and indeed should) take account of legitimate differences between wireless and wireline networks. Wireless networks, for example, serve individual customers, wherever they are located, while wireline networks serve locations, regardless of who is present there (and, indeed, irrespective of whether anyone is present there). As a result, a one-connection-per-household restriction would be consistent with the way consumers use *wireline* networks, but would be inconsistent with the way consumers use *wireless* networks.

The reform effort also should recognize that the Commission's decision to impose a cap on competitive ETCs' support moots some of the proposals under consideration in this docket. Specifically, the cap effectively severs the link between ILECs' support and competitive ETCs' support, eliminating the identical support rule and depriving competitive ETCs of the same "access replacement" support that ILECs receive. These proposals should thus receive no further consideration in this docket.

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REPLY COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

CTIA–The Wireless Association®[1] ("CTIA") files these consolidated reply comments in response to the comments on the three notices of proposed rulemaking released January 29, 2008 seeking comment on proposals for comprehensive reform of the federal universal service mechanisms for rural and high-cost areas.[2] In these reply comments, CTIA reiterates its call for both interim and long-term changes to the high-cost universal service mechanisms that will encourage and reward efficient investment in advanced mobile and broadband technologies.

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[1] CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, and AWS, as well as providers and manufacturers of wireless data services and products.

[2] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. January 29, 2008) *("RD NPRM"); High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. January 29, 2008) *("2008 Auctions NPRM"); High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. January 29, 2008) *("ISR NPRM")*.

I. REFORM OF UNIVERSAL SERVICE MUST REFLECT TECHNOLOGICAL AND MARKETPLACE REALITIES

As discussed in more detail below, the other initial comments in this proceeding do not call into question CTIA's demonstration that consumers today are primarily demanding mobile and broadband services. As a result, the high-cost support mechanism that emerges from this comprehensive reform effort should focus on these services. In particular, it should include a specific and sufficiently funded advanced mobility funding mechanism (or mechanisms). Interim reform measures, too, should reflect these realities.

A. The Comments Affirm the Importance of Mobility and Broadband to Consumers

In CTIA's initial comments, we presented extensive data demonstrating that technology and the marketplace have changed in fundamental ways since the current universal service mechanisms were adopted in 1997.[3] These data show that consumers today primarily value mobility and broadband, while voice has become but one application that rides on modern communications networks.[4] CTIA argued compellingly that the universal service system should reflect these new marketplace and technological realities by focusing on mobility and broadband funding.[5]

The initial comments in this proceeding reveal a striking level of acknowledgement that mobility and broadband are the services that consumers are demanding today. Even many rural ILEC interests acknowledge the very strong consumer demand for broadband and mobility and

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[3] CTIA comments at 2-11.
[4] *Id.*
[5] *Id.* at 7-11.

the need to fund these services, which should be, but are not yet, ubiquitously available.[6] State public utility commissions and NASUCA also point out their constituent citizens' needs for broadband and mobility.[7] The Commission's reform efforts must be fundamentally driven by the need to ensure ubiquitous availability of mobile and broadband services.

B. The Record Supports Adoption of Advanced Mobility Funding

In light of these fundamental marketplace and technological realities, it is unsurprising that there is significant support in the record for the Joint Board's proposal to set aside universal service funding for areas where it is not economical to provide mobile wireless and broadband services absent support.[8]

The CostQuest study that CTIA submitted with its initial comments vividly demonstrates the need for mobility funding in rural portions of the country.[9] Indeed, the CostQuest study reveals that about **23.2 million U.S. residents** live in areas where 3G wireless service has not been deployed, and that over **2.5 million miles of U.S. roads** lack such coverage.[10]

To address these unmet universal service needs, the Commission must adopt the Joint Board's recommendation to dedicate a portion of universal service funding specifically to support mobile networks. Primarily, such funding must promote the extension of advanced mobile wireless networks in areas not adequately served by the two predominant 3G mobile

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[6] *See, e.g.,* GVNW comments at 31; ITTA comments at 8-9; KRITC comments at 4-7; Montana Independent comments at 17; OPASTCO comments at 22; WTA comments at 5-9, 22-23. *See also* USTelecom comments at 24, 34; Rural Tel. Finance Coop. comments at 3.

[7] *See, e.g.,* Connecticut comments at 5; Oklahoma comments at 17; NASUCA RD comments at 21-22.

[8] *See, e.g.,* OPASTCO comments at 21-22; NASUCA comments at 11-13; WTA comments at 3; TIA comments at 1-2; CoBank comments at 4-5; Connecticut DPUC comments at 4.

[9] CTIA comments at Attachment A.

[10] *Id.*

wireless broadband technologies.[11] Secondarily, the revised support mechanism should provide limited support for the maintenance of advanced wireless service in areas that would be uneconomic to serve, even on an ongoing basis, absent support. The mobility fund (like all revised support mechanisms) should be targeted and should reward efficiency.

The creation of separate mobility support mechanisms is a new endeavor for the Commission. The Commission should take great care as it creates funding mechanisms unique to the deployment and maintenance of advanced mobile wireless services in high-cost, rural areas. Moreover, no consensus has developed on how best to support mobile wireless services.[12] Legitimate concerns have been raised regarding each of the leading proposals – reverse auctions, model-based support, embedded cost-based support, and others. Accordingly, CTIA suggests that the Commission consider the creation of a Mobility Task Force to provide concrete recommendations for the creation of the mobility fund. The Task Force would be comprised of representatives from the mobile wireless community, including wireless carriers, wireless consumer groups, and other relevant stakeholders. The Task Force would be tasked with developing proposals consistent with the goals established by the Commission for mobility funding. Moreover, CTIA recommends that the Commission seek further comment on the

[11] To ensure that ubiquitous networks benefit all consumers, universal service must support the deployment of both predominant 3G technologies, EvDO and HSDPA. CTIA comments at 28.

[12] *See*, *e.g.*, Alltel comments at 12-21 (proposing elimination of support for wireline voice networks to fund broadband and mobility); AT&T comments at 9-25 (proposing a new grant- and auction-based broadband fund that would include mobile broadband); Sprint HCS Proposal, WC Docket No. 05-337 (filed May 12, 2008) (proposing revisions to the competitive ETC program that track Sprint's extensive proposals to reform the ILEC support mechanisms); US Cellular comments at 2-54 (proposing retention of the identical support rule); Verizon comments at 8-20 (proposing an auctions-based system of construction grants and ongoing support for wireless deployment).

specific question of how to structure a universal service fund for mobile services, including seeking comment on the specific proposals that have been included in the record thus far.

In certain respects, the Mobility Task Force would be similar to the Rural Task Force (RTF) that the Joint Board convened in 1998 to recommend reform for the high-cost support mechanisms for rural ILECs.[13] It would include representatives from key stakeholders in the reform process at issue – in this case, primarily wireless carriers serving rural and high-cost areas, and consumers of wireless services in those areas.

At the same time, however, the Mobility Task Force would be different from the RTF in significant ways. First, it would be convened by the Commission, not the Joint Board.[14] Second, because the mobility funding mechanism will be available only to wireless carriers that serve consumers in rural and high-cost areas, the membership on the Mobility Task Force can be more focused.

In sum, the prominent role that wireless services now play in consumers' lives militates strongly in favor of a significant, dedicated support mechanism for wireless service. Convening a Mobility Task Force may be a good way to obtain important input for this endeavor.

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[13] *See Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force: Solicits Nominations for Membership on Rural Task Force,* Public Notice, CC Docket No. 96-45, 12 FCC Rcd 15752 (1997); *Federal-State Joint Board on Universal Service Announces Rural Task Force Members,* Public Notice, CC Docket No. 96-45, FCC 98J-1 (rel. July 1, 1998).

[14] The Joint Board has already recommended that the Commission adopt a dedicated mobility funding mechanism. *See RD NPRM.* Thus, the Commission is not obligated to seek further recommendations from the Joint Board to implement that recommendation. *See* 47 U.S.C. § 254(a).

II. INTERIM STEPS SHOULD BE TAKEN WHILE LONG-TERM REFORMS ARE CONSIDERED

The subsequent sections of these comments discuss issues related to the comprehensive reform proposals raised in the *RD NPRM, ISR NPRM*, and *2008 Auctions NPRM,* but the Commission's recent decision to implement an interim cap on support to competitive ETCs[15] raises important issues about additional reform measures that also require immediate attention. This is particularly true given that that the Commission declined the Joint Board's suggestion to impose a hard deadline for the replacement of the interim cap regime with more comprehensive reform.[16] Prior "interim" USF measures have remained in place for extended periods of years.[17]

Because it is unclear how long this new "interim" regime will remain in place, the Commission must take certain additional fine-tuning steps. Specifically, the Commission must

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[15] *High-Cost Universal Service Support, et al.,* WC Docket No. 05-337 *et al.,* Order, FCC 08-122 (rel. May 1, 2008) *("CETC Cap Order").*

[16] *High-Cost Universal Service Support, et al.,* WC Docket No. 05-337 *et al.,* Recommended Decision, 22 FCC Rcd 8998 (Jt. Bd. 2007) *("CETC Cap Recommendation")* at ¶ 8.

[17] One example is the "interim" wireless safe harbor for reporting revenues for universal service contribution, which was originally adopted ten years ago. *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Memorandum Opinion and order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21552 (1998). The level of the safe harbor has been modified since its original adoption, but the safe harbor itself remains an "interim" measure, even after a decade. *See, e.g., Universal Service Contribution Methodology, et al.,* WC Docket No. 06-122 *et al.,* Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) at ¶ 23 (referring to the wireless safe harbor as "interim"). Another example is the interim use of embedded-cost data as the basis of support for rural ILECs, which was intended to be an interim approach in 1997. *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) *("First Universal Service Order")* at ¶ 293 (anticipating that rural carriers could be converted to forward-looking-cost-based support within three years). In 2001, the decision was made to continue embedded-cost-based support for five years, until 2006. Then the Commission extended the "interim" measure indefinitely. *Federal-State Joint Board on Universal Service, et al.,* CC Docket No. 96-45 *et al.,* Order, 21 FCC Rcd 5514 (2006).

adopt interim measures to address wireless build-out needs during the interim regime, and also to address the most urgent reforms that are needed in support that flows to rural ILECs.

A. The FCC Must Ensure that the Interim CETC Cap Does Not Deprive Rural Wireless Consumers of Sufficient Support

The CostQuest study that CTIA filed with its initial comments in this proceeding identifies many areas in the country that remain unserved by 3G wireless services. In many of these areas, "sufficient" support to "advance universal service" will be unavailable as a consequence of the operation of the interim cap.[18] To fulfill its statutory universal service responsibilities, the Commission must therefore, at minimum, make additional support available for build-out of 3G wireless networks in such areas.

In CTIA's initial comments, we described the unique challenge facing wireless build-out as a result of the existence of two predominant technology platforms for wireless services in the United States – on the one hand, GSM for voice and HSDPA for 3G broadband and, on the other, CDMA for voice and EvDO for broadband.[19] Because handsets using one type of technology cannot be used on the other type of network, ubiquitous coverage from both types of networks is necessary to ensure that all consumers, including those roaming from other areas, are able to obtain service in a given area. Consumers using one technology platform should not lose their ability to, for example, make 911 calls simply because they have entered a high-cost area where coverage is supported by universal service.

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[18] 47 U.S.C. § 254(b)(5). For example, the cap levels will be extremely low in Idaho and Nevada – two states identified by the CostQuest study as in need of significant 3G wireless investment. In the *CETC Cap Order*, the FCC did "not … make a final determination regarding the level of support to competitive ETCs that is sufficient." *CETC Cap Order* at ¶ 9.

[19] CTIA comments at 28.

As CTIA noted in its initial comments, it may be reasonable to use a grant-based process to distribute support for building out initial infrastructure in unserved areas.[20] Thus, CTIA proposes that this additional interim support for wireless build-out be provided through a grant and auctions-based mechanism (with auctions only being utilized if competing applications are submitted for a particular geographic area and proposing to utilize the same technology platform).[21] In light of the need to support both of the predominant technology platforms discussed above, there should be two providers selected for additional interim support in each geographic area – one to deploy each technology platform.

In light of the adoption of the interim CETC cap and the urgent need for wireless deployment in unserved areas, CTIA recommends that the Commission implement this additional interim support program without further delay.

B. Interim Steps to Eliminate Excessive Support for Rural ILECs Are Urgently Needed

The interim cap recently adopted by the Commission fails to address the largest issue with the existing support mechanism – support to small and rural ILECs, who collectively receive the majority of high-cost support, and where the potential for waste and abuse is greatest.[22] Therefore, although support to ILECs may be "flat," it is incorrect to believe that bloated rural ILEC support is "exerting less pressure on the universal service fund."[23] As shown

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[20] *See* CTIA comments at 30 n.109 and associated text. *See also* Texas Statewide comments at 5-6; Qwest comments at 2; OPASTCO comments at 20; NASUCA comments at 2, 15.

[21] *See also* AT&T comments at 10-13; Verizon comments at 5-17. Universal service reverse auctions have worked well in unserved areas, but are less proven in areas already served. *See, e.g.*, Texas Statewide comments at 5-6; Qwest comments at 2; OPASTCO comments at 20; NASUCA comments at 2, 15.

[22] *See infra* n. 33 and associated text.

[23] *Id.* at ¶ 10.

below, these measures would be significantly more effective in reducing pressure on the fund than the interim CETC cap.

Accordingly, to fulfill its role as responsible steward of the federal universal service fund, the Commission must move without further delay to take the following interim measures related to ILEC support:

- **Require ILECs with multiple study areas in a given state to combine those study areas before support is calculated.** CTIA estimates that this would save about $48 million per year in Local Switching Support reductions alone.
- **Treat ILECs with more than 50,000 access lines in a state (irrespective of how many study areas they currently comprise) as "non-rural" and provide support for them based on the more-efficient "non-rural" support mechanisms.** CTIA estimates that this would save about $225 million in support annually in High Cost Loop support payments alone. There also would be reductions in other support mechanisms.
- **Reduce the per-line amount of support that is available to ILECs to eliminate the recovery of corporate operations expenses, such as lobbying, from the costs that can be recovered through universal service support and to reflect a more reasonable rate of return** of 8.62%.[24] CTIA estimates that these two changes would save contributors well over $400 million per year.[25]
- **Then, cap the per-line amount of support available to all ILECs.** Although the savings from this proposal are more difficult to estimate than the others, given the variables involved,[26] it is likely that these savings, too, would be substantial.

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[24] AT&T estimated in 2003 that about 50 rate-of-return ILECs earned more than the already-excessive 11.25% rate of return, to the tune of over $400 million, between 1997 and 2002. AT&T ex parte letter, CC Docket No. 96-45 (filed May 9, 2003). The 8.62% value was derived using the cost of equity determined per the *Virginia Arbitration* methodology, a cost of debt determined using standard economic principles, and a capital structure from ARMIS large ILEC filing companies.

[25] This and all of the estimates in this section are based on the best data available. Due to the peculiarities of the current funding mechanisms and the limitations on the availability of data, however, the estimates are necessarily approximations.

[26] To estimate the impact of freezing per-line support would require assumptions about ILEC line loss and competitive ETC line growth that would be highly speculative.

In total, these interim steps will save American consumers well in excess of $675 million annually. These common-sense interim measures are supported by commenters in this proceeding.[27] They will immediately introduce significant economies into the support mechanism without calling into question the sufficiency of support. They are critical steps that must be taken to give the Commission the breathing room it needs to contemplate competitively neutral, comprehensive reform. Moreover, these cost savings could be redirected to fund advanced wireless and broadband buildout in unserved areas.

III. THE RECORD SUPPORTS EFFICIENCY IN THE REFORMED UNIVERSAL SERVICE FUND

A. Efficiency is Long Overdue and Desperately Needed

Twelve years after passage of the 1996 Act, the Commission has made surprisingly little progress in reforming high-cost universal service support for ILECs. Most egregiously, the Commission has yet to make any significant changes to the support mechanisms for non-price-cap and rate-of-return ILECs – who collectively receive over half of all high-cost support while serving only 11% of wireline access lines and <u>4% of total combined wireless and wireline connections in the U.S</u>.[28] The Commission concluded in 1997 that these carriers, too, ultimately should transition to support based on the true, efficient cost of providing service in their service

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[27] *See, e.g.,* Verizon comments at 4; GCI comments at 52-54. *See also* Sprint HCS Proposal, WC Docket No. 05-337 (filed May 12, 2008) at 5.

[28] *See Twelfth Annual CMRS Competition Report*, WT Docket No. 07-71, FCC 08-28, (Feb. 4, 2008) ("*Twelfth Report*") at 6. By year-end 2007, CTIA's semi-annual survey had found wireless subscribership had risen to 255,395,599. *CTIA-The Wireless Association® Announces New Wireless Industry Survey Results,* Press Release, *available at* http://www.ctia.org/media/press/body.cfm/prid/1747 (Apr. 1, 2008), tables and graphics appearing at http://files.ctia.org/pdf/CTIA_Survey_Year_End_2007_Graphics.pdf (for wireless connections). *Local Telephone Competition: Status as of June 30, 2007,* FCC Wireline Competition Bureau, Industry Analysis and Technology Division, March 2008, at Table 1 (for wireline connections).

areas,[29] but no progress has been made to establish a concrete transition plan. The five-year period during which these carriers were to continue receiving support based on their embedded costs expired more than two years ago, and the existing mechanism has been extended indefinitely.[30] Meanwhile, fully two-thirds of ILEC high-cost support is based either directly or indirectly on embedded costs.

Many commenters in this proceeding agree that the FCC must limit all ILEC support to the costs of an efficient carrier,[31] consistent with the Commission's prior determinations.[32] The existing system of providing support to ILECs based on embedded costs results in significant inefficiencies and excessive support.[33] The current system does nothing to discourage – and indeed actively encourages – excessive support. Small and rural ILECs' incentives for inefficiency and abuse must be eliminated as part of the reform process.

The Commission also should examine the role of the National Exchange Carrier Association ("NECA") in the universal service process. NECA is owned and managed by the ILECs, and yet it plays a central role in many aspects of the cost calculations of small and independent ILECs, including the compilation of costs into the NECA access tariffs and the

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[29] *First Universal Service Order* at ¶ 293.

[30] *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 *et al.*, Order, 21 FCC Rcd 5514 (2006).

[31] *See, e.g.,* NASUCA comments at 7; NCTA comments at 12; Sprint Nextel comments at 4-5.

[32] *See, e.g., First Universal Service Order* at ¶ 293; *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 *et al.*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) at ¶¶ 173-77.

[33] *See, e.g.*, Connecticut DPUC comments at 7 ("under the current USF system, opportunities may exist for fraud…. The USF system generally accepts whatever costs the carriers report regardless of whether they operate more efficiently and whether new deployed technologies might offer reduced costs."). *See also* NTCH comments at 12, 14-15; NCTA comments at 21-22.

preparation of average schedules. In these roles, NECA has a pivotal influence on the cost levels that smaller ILECs report. Further, NECA's existence as an intermediary for cost data creates an illusion of oversight, when in fact it would be unrealistic to expect that an organization like NECA would have any motivation to point out instances of excessive cost reported by ILECs. Indeed, the record is devoid of such instances.

The Commission should seek to avoid these problems as it reforms the support mechanisms for rural ILECs.[34] Support for all ETCs should be based on the efficient costs of providing the supported services, and not on a carrier's book costs.[35]

B. The Commission Must Reject Proposals to Prop Up Outdated Business Models

The comments of various rural ILECs and their associations urge the FCC to preserve existing support mechanisms and even create new ones that will serve primarily to bail out these companies' failing business models. As a result of consumer choice, ILECs are losing billions of minutes and millions of customers each year.[36] Not surprisingly, then, some ILECs are asking the Commission to use the universal service fund to overrule consumer choice.[37] Such support mechanisms – both existing and proposed – are contrary to the goal of efficiency and must be rejected.

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[34] *See also* Letter from Alltel Corp., WC Docket No. 05-337 (filed March 6, 2007) submitting into this docket Western Wireless's Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers (filed Oct. 30, 2003).

[35] The Commission also should avoid importing similar inefficiencies into the support mechanisms for competitive ETCs. *See* CTIA comments at 24.

[36] *See* CTIA comments at 2-6.

[37] A recent OPASTCO-commissioned study suggests that increased universal service support will be necessary to avoid loss of revenue from competition, among other sources. *The Next Three Years: Likely Revenue Scenarios for Rural Incumbent Local Exchange Carriers*, prepared for OPASTCO by Dale Lehman (May 22, 2008), available at www.opastco.org/doclibrary/1546/OPASTCOStudyTheNextThreeYears.pdf.

The existing support mechanism already props up the rural ILECs by preserving their support levels in the face of their loss of lines. ILECs served over 181 million lines in 1999, but this number has fallen every year since then; today, ILECs serve fewer than 135 million lines[38] -- a decline of more than 25 percent in less than ten years. **Nevertheless, during this same period, ILEC support has *increased* from $1.72 billion to $3.12 billion.**

If ILEC support declined at the same rate as ILEC access lines, the savings in the High Cost Loop fund alone would be over $175 million in 2008. Savings would be realized in the other support mechanisms as well. Particularly when viewed over a period of time, this demonstrates vividly why the Commission must introduce efficiency into the rural ILEC support mechanisms without further delay.

Despite the substantial inefficiencies in the existing rural ILEC support mechanisms, these carriers are asking for additional support in the intercarrier compensation reform process, through dollar-for-dollar increases in universal service support to offset any reductions in access charges.[39] The universal service subsidies that existed in rural ILECs' access rates were already replaced with the Interstate Common Line Support Mechanism ("ICLS").[40] Moreover, there is no question that replacing rural ILECs' access revenues with explicit universal service support

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[38] *Local Telephone Competition: Status as of June 30, 2007,* FCC Wireline Competition Bureau, Industry Analysis and Technology Division, March 2008, at Table 1.

[39] *See, e.g.,* USTelecom comments at 8; Montana Tel. Ass'n comments at 22; OPASTCO comments at 23-24.

[40] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price-Cap Incumbent Local Exchange Carriers and Interexchange Carriers, et al.*, CC Docket No. 00-256 *et al.,* 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 (2001) at ¶ 3 ("Specifically, we align the interstate access rate structure more closely with the manner in which costs are incurred, and create a universal service support mechanism to replace implicit support in the interstate access charges with explicit support.").

protects those carriers from the competitive forces that the 1996 Act was designed to unleash.[41] Today, access revenues can be lost through competitive forces. Indeed, as the Commission has observed in the universal service contribution context, consumers are making an increasing percentage of all interstate calls on wireless networks, which reduces ILEC access minutes.[42] By converting more of rural ILECs' access cost recovery to universal service, however, the Commission would only further shelter ILECs from the market, in contravention of fundamental goals of the 1996 Act, which was designed to promote competition in the marketplace, not to protect individual competitors from the effects of competition.

There is no basis to believe that additional universal service support in the access reform process would be necessary to ensure "sufficient" support to these carriers. As a result, many commenters rightly oppose providing ILECs with any additional access replacement support.[43] In the universal service reform process, the Commission must ensure that ILECs only recover efficient levels of support.

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[41] The 1996 Act directs the Commission to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 56 (preamble). *See also* H.R. Conf. Rep. No. 104-458 at 113 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 124 (Congress intended "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.").

[42] *See, e.g., Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) at ¶¶ 19, 23 (increasing the wireless interstate safe harbor percentage "to a level that better reflects that industry's interstate revenues in light of the extraordinary growth of wireless services.")

[43] *See, e.g.,* Alltel comments at 37; National Cable & Telecommunications Association comments at 4; NASUCA comments at 48-50; New Jersey BPU comments at 4; Sprint Nextel comments at 11; Centennial comments at 6.

Instead of replacing access revenues with support, the Commission should allow ILECs to recover access revenues that they lose (whether as a result of declines in access minutes or through the process of bringing their rates closer to their efficient costs), if at all, exclusively through increased end-user rates such as the federal subscriber line charge ("SLC"). This will allow consumers to make purchasing decisions based on information that more accurately reflects costs, increasing efficiency. In the alternative, the FCC should preclude ILECs from receiving any additional "access replacement" universal service support until their end-user rates are deregulated at the state and federal levels and they demonstrate that they cannot charge "affordable" rates without additional support.[44]

There is broad agreement that a fundamental goal of the current universal service reform effort is to bring efficiency and economy to the high-cost support system. As the largest recipients of support, rural ILECs must be the first target of that effort.

IV. THE ACT REQUIRES THE COMMISSION TO REJECT PROPOSALS DESIGNED TO DISCRIMINATE AGAINST WIRELESS CONSUMERS

As CTIA pointed out in its comments, the Commission must reject the self-serving proposals that have been submitted in this docket seeking to discriminate against wireless carriers' legitimate receipt of support.[45] At the same time, however, the universal service mechanism should recognize the legitimate differences between wireless and wireline

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[44] A state rate deregulation condition to the provision of additional federal support would be consistent with the "inducements" that the Commission should provide for state universal service efforts. *See Qwest Corp. v. FCC*, 258 F.3d 1191, 1204 (10th Cir. 2001) ("*Qwest I*"). *See also* Comments of AT&T Inc., CC Docket No. 96-45 (filed March 27, 2006) at 23-26 (proposing to support costs of service above an "affordability index" tied to average consumer expenditures on telecommunications services and the average income in each geographic area).
[45] CTIA comments at 12-20.

technologies, and take account of those differences in reforming the universal service support mechanisms.

A. Reforms Must Be Non-Discriminatory

The reform measures that the Commission adopts in this proceeding must ensure that support is provided to competitive ETCs on a non-discriminatory basis. In today's world of intermodal competition, a support mechanism that would discriminate against certain classes of carriers would only harm consumers. Many commenters point to the importance of ensuring that the reformed support mechanisms are competitively neutral.[46]

While it is possible that a separate wireless funding mechanism may be appropriate in the short and long term, given the legitimate differences between wireless and wireline technologies,[47] it would be inappropriate and, indeed, unlawful to place artificial conditions on a separate wireless fund specifically to limit wireless carriers to a lesser amount of support than wireline carriers receive.

Certain proposals in this proceeding would have precisely this effect. For example, proposals to cap wireless ETCs' support at the amount available to the ILEC or to determine wireless ETCs' support using benchmarks based on wireline costs would interject purely discriminatory elements into the high-cost program.[48] If it is reasonable to calculate wireless carriers' support based on wireless costs, then there is no basis for using wireline cost values solely as an excuse to provide less than sufficient support to wireless ETCs.

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[46] *See, e.g.,* Comcast comments at 15-16; SIA comments at 3; USFON comments at 3-4; SureWest comments at 3-8; NCTA comments at 13; New York PSC comments at 4.
[47] *See infra* Section III.B.
[48] *See, e.g.,* Montana Tel. Ass'n comments at 16; Alaska Tel. Ass'n comments at 7; Oklahoma Corp. Comm'n comments at 11; New Jersey BPU comments at 4.

For the same reason, the Commission may not limit wireless carriers to support for network build-out costs, while continuing to provide support to ILECs for their ongoing maintenance and operations costs.[49] Elsewhere in these comments,[50] CTIA discusses the urgent need for support to extend wireless service into unserved and underserved rural areas – as graphically demonstrated in the CostQuest study submitted with CTIA's initial comments in this proceeding.[51] Taken alone, however, build-out funding would not provide "sufficient" support for the "provision [and] maintenance"[52] of the supported services that wireless ETCs provide. In addition, it would flagrantly violate the principle of competitive neutrality for the Commission to support ILECs' operations and maintenance costs, but not wireless ETCs'.[53]

Transitional measures, too, must be equitable. CTIA supports a five-year transition plan from the existing support mechanisms to whatever reformed mechanism the Commission adopts in this proceeding.[54] ILECs and wireless ETCs should be treated the same under any transitional measures the Commission adopts.

B. Legitimate Differences Between Wireless and Wireline Networks Should Be Reflected in the Universal Service Mechanisms

While, as noted above and in CTIA's initial comments, it would violate several statutory principles for the Commission to use references to wireline networks solely as a tool to discriminate against wireless carriers in the support calculation process, this does not mean that

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[49] *See, e.g.*, California PUC comments at 11; Montana Tel. Ass'n comments at 8; New Jersey Division of Rate Counsel comments at 36; Connecticut DPUC comments at 6.

[50] *See infra* Section V.A.

[51] *See* CTIA comments at Appendix A.

[52] 47 U.S.C. § 254(b)(5) (sufficiency requirement); 47 U.S.C. § 254(e) (legitimate use of support includes the provision and maintenance of supported services).

[53] CTIA comments at 16.

[54] CTIA comments at 19.

the Commission cannot recognize the legitimate marketplace and technological differences between wireless and wireline networks in crafting a reformed universal service mechanism.

Most notably, wireless carriers provide service to the individual person, while wireline networks, by contrast, provide service to a home, business, or other premises. Wireless networks' ability to provide service to the individual person, regardless of geography, is unique and should be reflected in the universal service mechanism. The FCC, for example, should reject ILEC proposals to limit support to multiple wireless connections for residents of the same household.[55] Because a wireless phone is associated with an individual, rather than the residence, such a restriction would be fundamentally at odds with the way consumers use mobile technology.

A single-line restriction for wireline carriers, however, is consistent with the way consumers use wireline service. A single wireline connection in a household will ensure service to all residents of that household while they are present in the household. Additional fixed lines to the same residence will not advance the goal of connectivity.

As a result, a rule limiting support to a single *wireline* connection per household would legitimately reflect the way consumers use wireline service, and would also advance the goal of economy in the fund. It would ensure sufficient, but not excessive, support. In contrast, a single-connection-per-household limitation for *wireless* ETCs would be inconsistent with the fundamental nature of wireless technology. Thus, it would restrict consumers' ability to make rational choices in the actual market for telecommunications service. Any economy it would bring to the funding system would be false economy.

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[55] USTelecom comments at 8; Montana Tel. Ass'n comments at 22; OPASTCO comments at 23-24.

V. THE INTERIM CETC CAP MAKES SEVERAL PROPOSALS MOOT

The Commission's adoption of an interim cap on competitive ETC funding fundamentally changes the calculus for calculating wireless ETCs' support.[56] As a result, the interim cap makes certain proposals in this proceeding moot. These proposals therefore should receive no further consideration here.

A. The Identical Support Rule Has Been Effectively Eliminated

With the implementation of the CETC cap, the FCC will have effectively eliminated the identical support rule. This is particularly true given the Commission's decision to set the cap based on support flows at a point in the past (March 2008), and to grant all pending competitive ETC petitions without including support for these carriers in the cap calculation. Under the procedures for calculating support set out in the *CETC Cap Order*, there will no longer be any meaningful connection between the total or per-line support received by ILECs in a given state and the amount of support that ILECs in the state receive.[57] The designation of additional competitive ETCs after March 31 by the Commission and the states will immediately sever the link between ILEC support and wireless support in many states. Over time, the link in any remaining states will quickly erode as wireless carriers' line growth reduces per line support and market share changes alter the relative amount of support that different wireless carriers in each state receive.

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[56] *See generally CETC Cap Order.*
[57] *CETC Cap Order* at ¶ 27.

Thus, in light of the adoption of the interim cap, the Commission need no longer consider proposals to eliminate the identical support rule.[58] Instead of wasting further resources debating the merits of the identical support rule, the Commission should focus on formulating a support mechanism that provides the support required to meet the Act's goals, without inappropriately interfering in consumers' marketplace decisions or propping up business models that consumers no longer favor.[59]

B. Wireless Carriers No Longer Receive "Access Replacement" Universal Service Support

As CTIA discussed in its initial comments, there is no legal basis to deny any form of universal service support to wireless ETCs, including support that previously was implicit in ILECs' access charges.[60] As discussed above, however, the operation of the cap effectively disconnects wireless ETCs' support from the support that ILECs receive from any particular support mechanism.[61] As a consequence, there is no further utility to debating whether wireless carriers should or should not receive "access replacement" universal service support. Instead, the Commission should focus on formulating a support mechanism that provides the support required to meet the Act's goals, without inappropriately interfering in consumers' marketplace decisions or propping up business models that consumers no longer favor.[62]

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[58] *See, e.g.,* ITTA comments at 22-24, 25-27; Missouri PSC comments at 4; NASUCA comments at 5-9; NTCA comments at 18-24; OPASTCO comments at 9-15; USTelecom comments at 15-20.

[59] *See supra* Section II.B.

[60] CTIA comments at 17-18.

[61] *See supra* Section IV.A.

[62] *See supra* Section II.B.

CONCLUSION

The Commission should move expeditiously to adopt comprehensive reforms for the high-cost universal service mechanisms, consistent with CTIA's filings in this proceeding. The Commission also should adopt additional interim measures as discussed above.

Respectfully submitted,

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