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
	)	

To: The Federal Communications Commission

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

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SUMMARY

SouthernLINC Wireless agrees with those parties who observed in their initial comments that neither the Joint Board nor the Commission has adequately explained the "threat" to the fund or provided any analysis to justify the reforms they propose. The record in this proceeding demonstrates that wireless and other competitive ETCs are not responsible for the alleged "crisis" threatening the viability of the universal service fund. However, the record does support the conclusion that universal service support can and should be used more efficiently.

The reforms necessary to improve the efficiency of the universal service support mechanism do not include elimination of the identical support rule. As several parties explained in their initial comments, the Commission has failed to demonstrate that elimination of the identical support rule would have any impact on the factors the Commission claims are causing "rapid growth" of the Universal Service Fund. Indeed, the Commission's discussions of the identical support rule in its order imposing the interim universal service support cap and the currently pending NPRMs make clear that the actual cause of the issues the agency cites as justification for elimination of the identical support rule is the prohibition on the primary line restriction rather than the identical support rule. However, since Congress has prohibited the Commission from imposing a primary line restriction, the agency must seek other means for improving efficiency. As such, departure from the identical support rule for the reasons articulated in the NPRM and the *Cap Order* would be arbitrary and capricious because the identical support rule is not the cause of the issues the Commission has identified as justifying the departure from the identical support rule.

Numerous commenters also agree that the alternatives to the identical support rule identified by the Commission would create greater problems than they would solve. For instance, the Commission proposes imposing a system upon ETCs that would require each ETC

to report its costs to the Commission using a Part-32 like accounting system. However, as numerous parties demonstrated in their comments, the Commission's proposal would be inefficient and infeasible as a practical matter. Indeed, the FCC would have to create and impose a completely new and different accounting system for wireless carriers that is analogous to the one that the ILECs long have found onerous and overly burdensome. Similarly, the Commission has spent years attempting to develop a cost-modeling platform for determining universal service support. However, after years of model development, the Commission remains unable to develop a workable cost model, and nothing in the current record provides any basis for suggesting that this will change in the foreseeable future. In short, nothing relevant has changed since the Commission considered and rejected the proposed alternatives to the identical support rule.

Rather than eliminate the identical support rule, the Commission can and should take other steps to improve the efficiency of universal service support. The best way to achieve the goals of the Act while efficiently managing growth of the high-cost fund is to direct support solely to geographic areas where it is needed and to phase out support once it is no longer needed. SouthernLINC Wireless proposes that the universal service mechanism should provide *full support* in each geographic support area until the area is served by the ILEC and three competitive ETCs. Entry of a fourth ETC would trigger the phasing-out of support to all ETCs serving that geographic area because the presence of the ILEC and three competitive ETCs would demonstrate that support is no longer necessary for that area. This proposal provides a competitively neutral solution that would result in significantly less support flowing to areas not truly in need of it.

If the Commission nevertheless chooses to eliminate the identical support rule, SouthernLINC Wireless then agrees with numerous parties who urge the Commission to distribute universal service support through reverse auctions. SouthernLINC Wireless also agrees with these parties, however, that in order to function appropriately and consistent with the requirements of the Act and the Commission's universal service policies, the reverse auctions will have to be carefully structured in order to ensure that all parties have the necessary incentives to serve rural and high-cost consumers in the most efficient manner possible. The "clock-proxy" reverse auction proposal SouthernLINC Wireless included in its initial comments is the only reverse auction proposal on the record that would distribute support in a technologically and competitively neutral manner that is consistent with the requirements of the Act and the Commission's universal service principles. The SouthernLINC Wireless Reverse Auction Proposal also addresses all of the major concerns raised by both opponents and proponents of reverse auctions.

Finally, SouthernLINC Wireless opposes the Joint Board's proposal to establish three separate high-cost funds: a Broadband Fund, a Mobility Fund, and a Provider of Last Resort Fund. SouthernLINC Wireless joins numerous other commenters in believing that USF support for broadband will only add to the size of the fund at a time when the emphasis is on reducing the amount spent. Additionally, SouthernLINC Wireless maintains its reservations regarding whether universal service funds legally can be used to provide broadband support under Section 254 of the Act. The Commission should focus on improving the efficiency of the current fund before it even considers expanding the goals of the universal service program.

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REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") hereby submits these reply comments in the above-captioned docket.[1] The record in this proceeding demonstrates that wireless ETCs have not created a crisis that is threatening the viability of the universal service fund, but that universal service support can and should be used more efficiently. The reforms necessary to improve efficiency, however, do not include elimination of the identical support rule. Indeed, the record demonstrates that the proposed alternatives to the identical support rule would create even larger problems than the Commission seeks to resolve. Moreover, in light of the practical difficulties associated with implementing the proposed alternatives, the Commission most likely could not implement any of them in a manner that ensures portability of support in a technologically and competitively neutral manner as required by the Act. If the Commission nonetheless chooses to eliminate the identical support rule, it should adopt the reverse auction proposal of SouthernLINC Wireless,

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1 *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. Jan. 29, 2008) (*Identical Support Rule NPRM*); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. Jan. 29, 2008) (*Reverse Auction NPRM*); *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. Jan. 29, 2008) (*Joint Board Comprehensive Reform NPRM*).

which resolves many of the concerns about reverse auctions that parties have expressed in this proceeding.

I. THE IDENTICAL SUPPORT RULE CONTINUES TO BE THE BEST AVAILABLE MEANS FOR DETERMINING COMPETITIVE ETC SUPPORT

The recent order imposing the interim universal service fund cap (the "*Cap Order*") suggests that the Commission has already made up its mind about the identical support rule and will proceed to eliminate it without regard to the record developed in this proceeding. The *Cap Order* confirms that the Commission blames the "explosive growth in the high-cost universal service support disbursement" on wireless carriers.[2] Specifically, the Commission concluded in the *Cap Order* that:

- a "primary consequence of the existing competitive ETC support rules has been to promote the sale of multiple supported wireless handsets in given households";[3]
- wireless competitive ETCs are not "viewed by consumers as substitutes for the incumbent LEC's supported service"[4]; and
- "wireless carriers, rather than wireline competitive LECs, have received the majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support."[5]

The Commission claims that these conclusions "calls into question the rationale for the identical support rule," because competitive ETCs allegedly "have a greater incentive to expand the

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2 *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Commc'ns, Inc. et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122, ¶ 1 (rel May 1, 2008) (*Cap Order*).

3 *Id.* ¶ 9.

4 *Id.* ¶ 20.

5 *Id.*

number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their network."[6]

The *Cap Order* and the pending NPRMs confirm that the wireless industry is being unfairly demonized in the Universal Service debate, as several parties observed in their initial comments.[7] As these parties explain, the Commission has failed to demonstrate that wireless ETCs have created a crisis that threatens the viability of the fund.[8] However, even if wireless ETCs were responsible for creating a crisis that threatens the viability of the fund, the Commission has failed to demonstrate that elimination of the identical support rule will have any impact on the factors the Commission claims are causing the crisis. Moreover, the Commission has not identified any viable replacements for the identical support rule. Nonetheless, the Commission can and should improve the efficiency of the universal service support funding mechanism without eliminating the identical support rule.

A. The Commission Has Not Demonstrated that Near-Term Growth in the Size of the High-Cost Fund Threatens the Viability of the Fund.

SouthernLINC Wireless agrees with the numerous parties who stated in their initial comments that neither the Joint Board nor the Commission has adequately explained the "threat" to the Universal Service Fund or provided any analysis to support the reforms proposed by the Commission.[9] Indeed, "[n]either the Commission nor the Joint Board has provided an explanation of the exact nature of this threat, or described with any precision the confluence of

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6 *Id.* ¶ 21.

7 *See, e.g.,* Comments of RCA-ARC at 3-14; Comments of U.S. Cellular at 14.

8 Comments of U.S. Cellular at 16-18; Comments of Alltel at 24.

9 *See, e.g.,* Comments of RCA-ARC at 18-19; Comments of U.S. Cellular at 14-15.

events that would serve as the tipping point at which the threat would become a reality."[10] SouthernLINC Wireless, joined by other commenters, believes that the only rational and legitimate metric for monitoring the viability of the high-cost support mechanism is not the size of the fund itself, which is only indirectly relevant, but rather the amount individual subscribers pay to reimburse carriers for mandatory contributions to the fund.[11] Based on this metric, the Commission has not demonstrated that a threat exists, as RCA-ARC correctly note in their comments.[12]

In the NPRM, the Commission attempts to justify its proposed radical reform only by noting that the size of the federal Universal Service Fund increased from $2.6 billion in 2001 to $4.1 billion in 2006.[13] However, the increase in the size of the fund is not itself problematic because the increase was offset nearly entirely by an increase in the number of *wireless* telephone customers (both urban and high-cost) paying into the fund. As U.S. Cellular notes, the rapid growth of universal service support provided to wireless ETCs was an anomaly that will not continue as the penetration rates of wireless and other competitive ETCs slow in high-cost areas.[14] Indeed, the rapid growth of wireless services was "to be expected in the early years of competitive ETC market entry because they are the product of the [Commission's own] policies of promoting this entry to extend and enhance services available in rural and other high-cost

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10 Comments of RCA-ARC at 18 (also noting that in its proposal to terminate the identical support rule, the Commission has limited its assessment of the current and future state of the high-cost fund one paragraph).

11 *See, e.g.,* Comments of RCA-ARC at 20; Comments of U.S. Cellular at 17.

12 *Id.*

13 *Identical Support NPRM* ¶ 4.

14 Comments of U.S. Cellular at 20-21; see also Comments of RCA-ARC at 23.

areas."[15] Accordingly, the Commission instead must focus on the amount each customer pays into the fund (either directly as a line item fee or indirectly through increased service rates) in order to determine the magnitude of the threat (if any) to the Universal Service Fund.

Applying the latest contribution factor of 11.3 percent and the wireless safe harbor percentage of 37.1 percent, a wireless consumer with a $50 monthly bill contributes approximately $2.10 to the USF.[16] RCA-ARC notes that the impact of granting all of the pending ETC applications under the current system would require only an additional 3 cents per month on consumer bills.[17] The prospect of this minimal impact on consumers cannot reasonably be described as a "crisis" or justify the imposition of draconian reform measures that cause other types of harm to consumers.[18] Even if this analysis demonstrated a more onerous burden upon the consumer, the analysis alone would not be sufficient to justify the proposed rule changes because the Commission must also consider numerous additional factors (*e.g.*, projections of supported line counts, projected support per line amounts, and projections of total subscriber lines), none of which are on the record.[19] As the U.S. Court of Appeals for the District of Columbia has explained, "we must consider whether the Commission has made out a case for undertaking rulemaking at all since a regulation perfectly reasonable and appropriate in

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15 Comments of U.S. Cellular at 20-21; see also Comments of RCA-ARC at 23.

16 Comments of RCA-ARC at 20.

17 *Id.*

18 *See* Comments of Alltel at 24 ("The *NPRM* is premised on the myopic view that [USF] should be a zero sum game, with competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines. This view is completely contrary to the core Congressional objective in establishing the universal service program: to *expand* rural Americans' access to telecommunications services.") (internal quotations and citations omitted)(emphasis in original).

19 Apart from the recent granting of the pending ETC applications, the Commission has not identified any factors which suggest that the fund – or more importantly the amount each customer pays into the fund (either directly as a line item fee or indirectly through increased service rates) – is going to increase substantially in the near future.

the face of a given problem may be highly capricious if that problem does not exist."[20] In this proceeding, the Commission has not identified sufficient facts to demonstrate that the "crisis" allegedly justifying the Commission's actions actually exists.

B. Elimination of the Identical Support Rule Would Not Address the Issues the Commission Claims Has Led to Explosive Growth in the Fund.

SouthernLINC Wireless agrees with RCA-ARC that the identical support rule does not threaten the sufficiency of the universal service support mechanisms.[21] Specifically, elimination of the identical support rule would not address the issues the Commission claims has led to explosive growth in the fund. Indeed, the issues the Commission has identified relate to the prohibition Congress imposed on adoption of a primary line restriction rather than the identical support rule. Therefore, elimination of the identical support rule would have no impact on the cause of the issues the Commission claims justify its elimination.

1. Eliminating the identical support rule would not address the issues created by the prohibition on a primary line restriction.

The Commission apparently has concluded that the identical support rule must be eliminated because the rule allegedly:

- "promotes the sale of multiple supported wireless handsets in given households;"[22] and
- was based upon the assumptions that support would be portable and that wireline and wireless ETCs would compete for customers, which the Commission claims proved to be untrue because the services of wireless competitive ETCs allegedly are not "viewed by consumers as substitutes for the incumbent LEC's supported service."[23]

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20 *HBO v. FCC,* 567 F.2d 9, 36 (D.C. Cir. 1977)(internal citations omitted).

21 Comments of RCA-ARC at 16-32.

22 *Cap Order*, ¶ 9.

23 *Id.* ¶ 20.

Even if taken as true, elimination of the identical support rule would have no impact on either of these alleged causes of fund growth.

The identical support rule does not promote the sale of multiple supported handsets to given households. Eliminating the identical support rule would merely change the manner in which support for competitive ETCs is calculated, which may or may not change the level of support available to wireless ETCs depending upon the alternative to the identical support rule the Commission adopts.[24] The level of support available to wireless ETCs has no impact upon the number of supported wireless handsets sold to given households: so long as support is distributed on a per-line basis, all ETCs – regardless of the technology they use to provide service[25] – will continue to have the incentive to sell as many lines as possible to any customer who is willing to purchase those lines, including multiple lines per household.

Similarly, whether or not consumers view services offered by wireless ETCs as a substitute for incumbent LEC supported services has no impact upon whether the identical support rule should be eliminated. Consumer opinion on service substitutability is unrelated to, and unaffected by, the relative level of support received by the service providers. Because eliminating the identical support rule would merely change the manner in which support for competitive ETCs is calculated, which may or may not change the level of support available to wireless ETCs, eliminating the identical support rule would not change (or be changed by) consumer purchasing habits or views on service substitutability. As such, even if the

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24 As RCA-ARC points out, there is no evidence on the record regarding the level of support that wireless ETCs would receive if the method for calculating support were changed. *See* Comments of RCA-ARC at 53-56.

25 Indeed, the only difference between wireless and wireline ETCs in this respect is that most households are more likely to want multiple wireless lines than multiple wireline lines.

Commission assumed that consumers would view services offered by wireless ETCs as a substitute for incumbent LEC supported services, the truth or falsity of that assumption cannot be relied upon to justify retention or elimination of the identical support rule.

The Commission's discussions of the identical support rule in the *Cap Order* and currently pending NPRMs make clear that the true cause of the issues the agency seeks to address is not the identical support rule, but rather the Congressional prohibition on imposition of a primary line restriction.[26] For example, a primary line restriction would prevent ETCs from collecting support for multiple lines to the same household.[27] Similarly, a primary line restriction would have prevented support for services that consumers do not view as substitutes for incumbent LEC supported services. In light of the Congressional prohibition on adopting a primary line restriction, the Commission must implement other means for improving the efficiency of the universal service support program, including, for example, the phase-out mechanism SouthernLINC Wireless proposed in its November 2, 2007 Ex Parte Letter.[28] However, departure from the identical support rule for the justifications articulated in the NPRM

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26 On February 27, 2004, the Joint Board recommended that the Commission limit the scope of high-cost support to a single connection per household that provides access to the public telephone network. *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd. 4257, ¶ 3 (2004). Congress subsequently prohibited the Commission from implementing the primary line restriction proposed by the Joint Board, *see* P.L. 109-289, as amended by P.L. 110-5 (2007) and P.L. 110-92 (2007)(expiring on Nov. 16, 2007); *see also* S. Rept. 110-129 (proposing an extension of the prohibition through fiscal 2008, noting that the proposed primary line restriction would be "harmful to small businesses, especially in rural areas, which need a second line for a fax or for other business purposes."); S.Rept. 110-129, Sec. 502.

27 *See, e.g.,* Comments of NJ Board of Public Utilities at 10 (advocating the Commission limit support to primary lines only); Comments of Centennial at 8 ("common sense dictates that a provider who loses customer and provides less service should receive less support, while a provider that gains customers and provides more service should receive more support.")

28 Letter from Todd D. Daubert, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 95-45 (Nov. 2, 2007).

and the *Cap Order*, or in the comments of parties supporting elimination of the rule, would be arbitrary and capricious because the identical support rule does not cause the issues upon which the justifications are based. Although the Commission cannot impose a primary line restriction, the agency can more directly address these issues it has identified without departing from the identical support rule, as described in section I.D.2. below.

2. Eliminating the identical support rule would not create additional incentives for carriers to build out their networks.

The identical support rule does not create incentives for competitive ETCs "to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their network."[29] Eliminating the identical support rule would merely change the manner in which support for competitive ETCs is calculated, which, as explained above, may or may not change the level of support available to wireless ETCs. Although the level of support available to wireless ETCs impacts the ability of wireless ETCs to expand their networks, it has no effect upon the incentives for wireless ETCs to expand their networks.[30] Absent specific regulatory requirements, the sole incentive for any carrier to expand its network is the promise of obtaining new customers that (either with or without universal service support) increase revenue with the goal of earning a profit.

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29 *Cap Order*, ¶ 21.

30 SouthernLINC Wireless notes that every competitive ETCs is required to use all high-cost support they receive to build, upgrade, and maintain the networks and facilities needed to provide rural and other high cost areas. *See* 47 U.S.C. § 254(e); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8932-34 (1997) (*USF First Report & Order*). Failure to comply with this requirement raises an enforcement issue, not a matter to be resolved via a rulemaking proceeding. Comments of RCA-ARC at 34-35. In any event, changing the amount of support available to competitive ETCs by eliminating the identical support rule will have no impact upon how competitive ETCs use the support they receive.

The current mechanism of distributing support on a per-line basis remains the best means for creating incentives for network expansion.[31] When support is distributed on a per-line basis, ETCs have the incentive to provide service to as many lines – and as many customers – as possible, which is consistent with the incentives created by competition.[32] To the extent an ETC cannot serve additional lines without expanding its network, the ETC has the incentive to expand the network in order to serve the additional lines. SouthernLINC Wireless agrees with RCA-ARC that the identical support rule promotes efficient investment by linking support to the acquisition and retention of customers.[33] By contrast, distributing flat amounts of support in defined geographic areas that does not vary by quantity of lines served would create incentives for an ETC to do the minimum amount necessary to secure the support, at which point the ETC would compete for customers only to the extent such competition does not require the carrier to expand its network, make additional facility investments, or incur costs at a rate that is disproportionate with the additional revenues new customers alone can generate.[34]

SouthernLINC Wireless also agrees with RCA-ARC that the identical support rule creates efficient investment incentives for competitive ETCs.[35] The purpose of the identical support rule is to facilitate competition in a technologically neutral manner. Competition promotes efficient investment, and competitive neutrality ensures that competitors are free to

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31 *See* Comments of T-Mobile at 8 ("Making [USF] funds unavailable to CETCs also would discourage wireless and other competitors from offering or expanding service in areas of the country in which the provision of telecommunications is largely dependent on high-cost universal service support.").

32 *See* Comments of GCI at 88 ("[The] 1996 Act expressly rejected the notion that telecommunications would be best provided by local monopolies ... and instead embraced competitive markets.")

33 *See, e.g.,* Comments of RCA-ARC at 33.

34 *Contra* Verizon Reverse Auction Plan, WC Docket No. 05-337, at 12 (filed May 31, 2007) (proposing a flat-rate support amount, rather than a per-line bid).

35 *See, e.g.,* Comments of RCA-ARC at 33-35.

choose the most efficient technology available.[36] Competitive ETCs have the incentive to invest as efficiently as possible in order to maximize returns, which remains true regardless the level of support they receive.[37] So long as the identical support rule is in place, incumbent LECs also have an incentive to invest as efficiently as possible in order to maximize returns regardless of the level of support they receive. This motivation remains true with the identical support rule even if the actual costs of competitive ETCs are lower than those of the incumbent LEC, in which case the incumbent LEC has the incentive to reduce its own costs in order to compete effectively with its competitors given the relative disparity of support.

By contrast, incumbent LECs will be insulted from the incentives to invest efficiently that competition creates if the Commission abandons the identical support rule, a step which would be fundamentally inconsistent with the spirit and the letter of the 1996 Act. Specifically, to the extent the incumbent LECs are guaranteed support in a manner that severs the connection between the amount of support they receive and the amount of support their competitors receive, they will have no incentive to increase efficiency to the extent doing so will lower the amount of support they receive. Moreover, the support they receive would artificially shield the incumbent LECs from the market forces they otherwise would face directly, including the incentive to be more efficient than their competitors.

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36 *See, e.g.,* Comments of Alltel at 11; Comments of Comcast at 12; *Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776, ¶ 48 (1997) ("Our decision here are intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.").

37 Comments of RCA-ARC at 33.

C. Nothing Relevant Has Changed Since the Commission Considered And Rejected The Proposed Alternatives To The Identical Support Rule.

When the Commission adopted the identical support rule, it identified four potential means for calculating support for competitive ETCs:

- Cost-based funding;
- Model-based funding;
- Identical support; and
- Reverse Auctions.

The Commission adopted, and subsequently retained, the identical support rule based upon its conclusion that the costs and inefficiencies of the alternatives, not to mention uncertainties, outweighed their potential benefits.[38] The same analysis and conclusions apply today, and no new evidence to undermine or otherwise negate those conclusions has been presented by – or to – the Commission.

1. Imposing a Part-32 like cost-based accounting system on competitive ETCs would be inefficient and infeasible as a practical matter.

In its *Identical Support Rule NPRM*, the Commission proposes imposing a system upon competitive ETCs that would require each to report its costs to the Commission using a Part-32 like accounting system. However, as numerous parties demonstrated in their comments, the Commission's proposal would be inefficient and infeasible as a practical matter.[39] For

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38 *USF First Report & Order*, 12 FCC Rcd at 8932-34, ¶ 288 ("During the period in which the existing mechanisms are still defining high cost support for non-rural carriers, we find that the least burdensome way to administer the support mechanism will be to calculate an ILEC's per-line support by dividing th ILEC's universal service support payment under the existing mechanism by the number of loops served by the ILEC. That amount will be the support for all other eligible telecommunications carriers serving customers within the ILEC's study area.")

39 Comments of RCA-ARC at 52-55; Comments of Virgin Islands PSC at 11; Comments of Centennial at 6; Comments of GCI at 70.

example, as US Cellular correctly observes, the Commission would have to create and impose a completely new and different accounting system for wireless carriers in order to implement the proposal.[40] By the time the Commission finished the rulemaking necessary to implement the system and the courts resolved the inevitable legal challenges that would follow, technology likely will have evolved enough to make the new distribution system obsolete before it can be implemented.[41] Several commenters object to the imposition of an accounting system on competitive ETCs based on the difficulty of following any such accounting rules, explaining that "[t]here can be no mistaking the overwhelming regulatory paperwork burden that the Commission would create."[42] The proposed system also would have to be closely monitored by both the Commission and competitive ETCs to identify abuses and mistakes. Additionally, a cost-based accounting system for competitive ETCs essentially would duplicate the inefficiencies of the ILEC rate-of-return system, which the Commission long ago determined to be less than ideal.[43] Accordingly, the proposal would be inefficient and infeasible without any advantages over the existing identical support rule.

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40 Comments of U.S. Cellular at 46, 54.

41 *Id.*

42 Comments of GCI at 46; Comments of Verizon at 35.

43 *Compare Petition of AT&T for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Certain of the Commission's Cost Assignment Rules*, WC Docket No 07-21, 05-342, Memorandum Opinion and Order, FCC 08-120, ¶ 36, 43 (rel. Apr. 14, 2008) ("[T]he Cost Assignment Rules, in this case, outweigh their benefits...[T]he Cost Assignment Rules require AT&T to direct considerable financial and personnel resources 'to utilize a complex hierarchy to track, value, and record affiliate transactions, to allocate costs of regulated and non-regulated services, to maintain, update and audit its Cost Allocation Manual, to jurisdictionalize intra and interstate costs and to apportion interstate costs to interstate services baskets...").

2. Cost-modeling would not be a feasible means for determining support for competitive ETCs.

SouthernLINC Wireless agrees with numerous commenting parties that reliance upon cost-modeling to distribute high-cost and rural universal service support would be infeasible.[44] When developing the support mechanisms in 1997, the Commission determined that "a forward-looking economic cost methodology for rural carriers should not be implemented until there is greater certainty that the mechanisms account reasonably for the cost differences in rural study areas."[45] However, in the more than ten years since the *First Report and Order*, the Commission has been unable to develop a workable cost model for providing universal service support.[46] Nothing in the current record provides any basis for suggesting that this will change in the foreseeable future.

The obstacles to creating a feasible cost-model are as great, or greater, than they were in 1997. Specifically, the wide variety of terrain, differences in technologies used to provide service, and population distribution in the United States make cost modeling an infeasible solution. Moreover, as Alltel observes, even if modeling were feasible, existing models were developed based upon ILEC service costs, and thus they would maintain the

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44 *See, e.g.,* Comments of T-mobile at 12; Comments of Verizon at 19, 35; Comments of GCI at 65.

45 *USF First Report & Order*, 12 FCC Rcd at 8945, ¶ 313.

46 *Id.*; *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, ¶ 1 (2004) (*Rural Referral Order*); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11310 (2001) (Rural Task Force Order); *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending Rural Task Force plan).

connection between ILEC costs and competitive ETC support.[47] Furthermore, the use of an embedded cost model would lead to subsidization of inefficient carriers at the expense of efficient carriers by artificially destroying the competitive advantage efficient carriers gain through their efficiency.[48] Such a model would send the wrong message to potential entrants and existing carriers by discouraging prudent investment planning because carriers could receive support for inefficient as well as efficient investments.[49] Thus, implementation of a model based on the costs of rural LECs would not represent a step forward in the evolution of USF support.

3. Most of the reverse auction proposals pending before the Commission are not consistent with the Act.

The Commission correctly noted as far back as its *First Report and Order* that competitive bidding is attractive in theory for its "potential as a market based-approach to determin[e] universal service support ... for any given area" and to reduce the amount of support needed for universal service "by encouraging more efficient carriers to submit bids reflecting their lower costs."[50] However, SouthernLINC Wireless agrees with the vast majority of commenters that most of the currently pending reverse auction proposals would *not* be consistent with the requirements of the Act.[51] Specifically, most of the pending reverse auction proposals are not designed to achieve the goals of the Act, and they would not be competitively or technologically neutral. Moreover, the administrative challenges to implementing any reverse

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47 Comments of Alltel at 31; *see also* Comments of USTA at 18 ("[The USTA] is not in favor of adding onerous layers of regulation to any industry providers whether they are incumbent ILECs or fixed or mobile competitive ETCs").

48 *See* NCTA Comments at 12.

49 *USF First Report & Order,* 12 FCC Rcd at 8901, ¶ 228.

50 *Id.* at 8948, ¶ 320.

51 *See, e.g.,* Comments of ATA at 13; Comments of Cellular South at 4-5; Comments of CoBank at 3; Comments of ITA at 2; Comments of North Dakota PSC at 4; Comments of RICA at 21-22.

auction mechanism on a nationwide basis would be significant. As such, SouthernLINC Wireless agrees with commenters who urge the Commission to retain the identical support rule. Nonetheless, if the Commission eliminates the identical support rule, it should adopt the reverse auction proposal of SouthernLINC Wireless, for the reasons set forth in its initial comments and Section II below.

D. The Commission Should Improve the Efficiency of the Universal Service Support Mechanism Without Eliminating the Identical Support Rule.

SouthernLINC Wireless agrees with the numerous commenting parties who urge the Commission to retain the identical support rule.[52] However, the Commission can and should implement measures to improve the efficiency of the universal service distribution mechanism.

1. The record in this proceeding does not support elimination of the identical support rule.

SouthernLINC Wireless agrees with numerous commenters that the Commission has failed to articulate a rational basis for eliminating the identical support rule.[53] Similarly, none of the comments filed in this proceeding articulate a rational basis for eliminating the identical support rule. Moreover, the record in this proceeding does not contain any evidence to support elimination of the identical support rule. Where, as here, the Commission seeks to change its regulatory course, it bears the burden of producing evidence in the record supporting the change in its rules[54] and supplying a reasoned analysis supporting the proposed change.[55]

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52 *See, e.g.,* Comments of Cellular South at 7; Comments of RCA-ARC at 5; Comments of U.S. Cellular at 5; Comments of Sprint-Nextel at 7.

53 *Id.*

54 *See, e.g., Center for Science in the Public Interest v. Hodel,* 797 F.2d 995, 999 (D.C. Cir. 1986) (the agency bears the "burden ... to justify the change from the status quo").

55 *Action for Children's Television v. FCC*, 821 F.2d 741, 745 (D.C. Cir. 1987) ("It is axiomatic that an agency choosing to alter its regulatory course must supply a reasoned

The Commission cannot shift its burden to parties who oppose the proposed rule change by justifying the elimination of the identical support rule upon the alleged failure of parties to demonstrate why it should be retained.[56]

The record in fact supports retention of the current identical support rule. As the Court in *Alenco Communications, Inc. v. FCC* ruled, the Act requires that support be portable and competitively and technologically neutral so that "both universal service and local competition are realized."[57] Moreover, the universal service program "must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers."[58] As technological innovation continues to advance and create diverse means for providing service, it will become increasingly difficult for the Commission to make assumptions about costs differences between incumbent LECs and competitive ETCs, particularly as incumbent LECs upgrade their networks with new technology. Under these circumstances, the only practical and efficient means for ensuring portability while maintaining technological and competitive neutrality is to have a single support level for which all ETCs, whether incumbent or

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analysis indicating that its prior policies and standards are being deliberately changed, not casually ignored.").

56 *See, e.g., Cap Order*, ¶14 ("We find that the interim cap we adopt is consistent with the principle of sufficiency as defined by the court in *Alenco* because it seeks to eliminate support in excess of that necessary to ensure the Act's universal service goals…[because] there is no reason to believe – and no record data showing – that support subject to an interim cap would necessarily result in insufficient support levels.").

57 *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000).

58 *Id.*

competitive, compete.[59] To do otherwise would create inequality among competing providers in the marketplace and competition among those providers would be unfairly skewed.[60]

Embarq, NASUCA, NTCA, and Verizon, among others, argue that universal service should not involve the promotion of competition or the funding of so-called "duplicate networks."[61] However, as the Commission explained in its *Cap Order*, the Act is about making sure that the "Commission...see[s] to it that both universal service and competition are realized; one cannot be sacrificed in favor of the other."[62] The issue thus becomes whether eliminating the identical support rule would be consistent with the Commission's mandate to ensure that its universal service policies do not sacrifice competition. Given the fact that, as described above in Section I.C., the alternatives to the identical support rule identified by the Commission are either unworkable (*e.g.*, reimbursing based on a cost accounting system), infeasible (*e.g.*, developing an embedded cost model), or prohibited by Congress (*i.e.*, adopting a primary line rule), the Commission is left only with the option of retaining the identical support rule or adopting a reverse auction scheme. Retaining the identical support rule would be the more simple approach, but the Commission should implement the proposal of SouthernLINC Wireless to the extent it chooses to implement a reverse auction mechanism.

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59 Comments of Comcast at 7; Comments of New York PSC at 2 ("In order to maintain competitive neutrality, high cost operational support should be awarded to any ETC, irrespective of the technology platform."); Comments of AllTel at 9; Comments of US Cellular at 28-42; Comments of RCA-ARC at 73.

60 *Id.*

61 Comments of Embarq at 8; Comments of NASUCA on Reverse Auctions NPRM at 10; Comments of NTCA at 21.

62 *Cap Order*, ¶ 15 (citing *Alenco*, 201 F.3d at 615).

2. The Commission should explore other means for improving the efficiency of the fund, including the phase-out proposal of SouthernLINC Wireless.

Rather than eliminate the identical support rule, the Commission can take several other steps to improve the efficiency of universal service support. For example, the best way to achieve the goals of the Act while efficiently managing growth of the high-cost fund is to direct support solely to geographic areas where it is truly needed and to phase out support once it is no longer needed.[63] Put simply, support should be available only where it is absolutely necessary, and then only for as long as it is absolutely necessary to achieve the goals of the Act.[64] The phase-out proposal SouthernLINC Wireless previously submitted in this docket would ensure that support is available only for as long as it is absolutely necessary to achieve the goals of the Act.

SouthernLINC Wireless proposes that the universal service mechanism should provide *full support* in each geographic support area until the area is served by the ILEC and three competitive ETCs.[65] Entry of a fourth ETC would trigger the phasing-out of support to all ETCs serving that geographic area, because the presence of the ILEC and three competitive

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63 *See Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, Public Notice, 22 FCC Rcd 9023, 9025, ¶ 6 (2007).

64 SouthernLINC Wireless Reply Comments, WC Docket No. 05-337 (filed July 2, 2007); Letter from Todd D. Daubert, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket 95-45 (Nov. 2, 2007).

65 The Commission has reported that 98 percent of the total U.S. population lives in counties with at least three different mobile operators. SouthernLINC Wireless Reply Comments, WC Docket No. 05-337, 50 (filed July 2, 2007). As such, consumers in rural, insular and high-cost areas should have access to the services of at least three different mobile operators at rates that are reasonably comparable to the rates available in urban areas.

ETCs would demonstrate that support is no longer necessary for that area. Moreover, each ETC would be limited to receiving support for only two lines for each billing address.[66]

The proposal is based upon the recognition that support may no longer be necessary to facilitate the goals of the universal service provisions of the Act in areas served by an ILEC and three or more competitors. However, the immediate withdrawal of support could, under certain circumstances, create market shocks that lead to undesirable consequences. Therefore, SouthernLINC Wireless proposes that universal service support should be phased out over a period of time:

- Tier I CMRS providers would no longer be eligible for support two years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area.
- Tier II CMRS providers would no longer be eligible for support four years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area.
- Finally, six years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area, the ILEC and all other competitive ETCs would no longer be eligible for support from the universal service fund.

In addition to the scheduled phasing-out of support, the Commission should create a safety valve procedure so support would continue to be available to any ILEC or competitive ETCs which can demonstrate that continued support is necessary to further the goals of the universal service provisions of the Act and prevent harm to consumers in that area.[67]

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66 Moreover, as Congress has found, consumers in rural, insular and high-cost areas should have, at a minimum, access to both a primary line and secondary line from the service provider of their choice. *See* P.L. 109-289, as amended by P.L. 110-5 (2007) and P.L. 110-92 (2007)(expiring on Nov. 16, 2007). *See also* S. Rept. 110-129, Sec. 502 (proposing an extension of the prohibition through fiscal 2008).

67 Specifically, if the phasing out of support in an area would harm consumers in that area by causing prices to rise or service providers to cease service, support should be extended despite the presence of the ILEC and three competitive ETCs. Subsequent ETCs entering

The SouthernLINC Wireless proposal offers several advantages. First, the proposal encourages entry to rural, insular and high-cost areas, but it ends support once competition has taken root and support is no longer necessary to further the Act's goals.[68] Specifically, the phase-out proposal would create incentives for ETCs to begin serving rural, insular and high-cost areas as soon as possible, whether to receive support for themselves or to trigger phase-out of support to their competitors, which is the best way to achieve the Act's goals as efficiently as possible.

Second, since support would be limited to the ILEC and three competitive ETCs, and each of these carriers would be eligible to receive support for a maximum of two lines per billing address, the Commission and USAC could calculate the maximum potential size of the fund without regard to the total number of carriers with ETC designation. Moreover, the fund would never reach the maximum potential size because (1) some regions would be served by the ILEC and less than three competitive ETCs, (2) support would be phased-out in some regions, and (3) support in regions served by the ILEC and three competitive ETCs would likely be phased-out soon.

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the area would not be eligible to receive support under the safety valve absent receiving a waiver of the rules from the Commission. However, the entry of a fourth competitive ETC to the area would again trigger the phasing out of support unless the ETCs currently receiving support could again demonstrate that consumers in the area would be harmed unless support continued.

68 *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 7 (1996) ("By reforming the collection and distribution of universal service funds, the states and the Commission will also ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition."). Specifically, the proposal ensures that support is used to "produce a robustly competitive market with a diversity of efficient providers serving a variety of consumer needs." *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services,* 9 FCC Rcd 7123, ¶ 3 (rel. Nov. 18, 1994).

Third, the proposal complies with both the letter and the spirit of the Act. Congress recognized and intended for competitive entry of telecommunications providers and for competitive prices of their services as described above to supplant the need for high-cost support. In fact, the House Commerce Committee noted of high-cost support in its Report on the Act that, "over time, the [Congressional Budget Office] expects that the operating costs of telephone companies would tend to fall as a result of competitive pressures and that the total amount of subsidies necessary would decline."[69] The proposal is based directly upon this expectation. Moreover, the phase-out triggers are conceptually similar to the impairment test that the Commission adopted to determine eligibility for unbundled network elements,[70] which the U.S. Court of Appeals for the District of Columbia Circuit upheld on appeal.[71] Moreover, the phase-out proposal would not violate the prohibition imposed by Congress upon implementing the February 27, 2004, recommendations of the Joint Board.[72] Specifically, the proposal does not

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69 House Report No. 104-204 at 68 (I) (1995).

70 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, ¶¶ 195-199 (2005) *aff'd Covad Commc'ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006); *See also, e.g. Federal State board on Universal Service*, 18 FCC Rcd 22559 (2003); *Federal-State Joint Board on Universal Service*, 14 FCC Rcd 20432 (1999), *remanded, Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). *See also Access Charge Reform, Sixth Report and Order* in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-240, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12974-77 (2000), *aff'd in part, rev'd in part, and remanded in part sub nom., Texas Office of Public Util. Counsel v. FCC*, 265 F. 3d 313 (5th Cir. 2001), *cert. denied sub nom., NASUCA v. FCC*, 535 U.S. 986 (2002) (After examining the interstate access charge and universal service regulatory regimes for price cap carriers, adopted the "CALLS plan" designed to phase out implicit subsidies and to move toward a market-based approach to rate setting of access charges).

71 *Id.*

72 *See* P.L. 109-289, as amended by P.L. 110-5 (2007) and P.L. 110-92 (2007)(expiring on Nov. 16, 2007). *See also* S. Rept. 110-129, proposing an extension of the prohibition through fiscal 2008). Among the Joint Board's recommendations to the Commission was one that proposed limiting the scope of high-cost support to a single connection per household that provides access to the public telephone network. *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC

violate the Congressional ban because it permits each ETC to receive support for up to two lines for each billing address. Finally, the proposal would be competitively neutral"[73] and "neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another."[74]

3. The Commission should consider requesting comment on additional means for improving the efficiency of universal service support while retaining the identical support rule, including Sprint's proposal.

To the extent the Commission would like to consider additional means for improving the efficiency of universal service support while retaining the identical support rule, the agency should consider requesting comments specifically on those means. For example, on May 12, 2008, Sprint Nextel filed an *ex parte* presentation which contained a new proposal that Sprint Nextel says "comprehensively addresses the concerns about the federal universal service support programs" raised by the Commission, the Joint Board, and commenters in this proceeding.[75] SouthernLINC Wireless is in the midst of fully analyzing Sprint's proposal. However, due to the splintered nature of the currently pending proceedings and the tentative conclusion that the identical support should be abandoned, the Commission should seek comment on Sprint's proposal and other means offered for reforming universal service that do

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Rcd. 4257, ¶ 3 (2004). Congress noted that the Joint Board's proposed primary line restriction would be "harmful to small businesses, especially in rural areas, which need a second line for a fax or for other business purposes." *See* S.Rept. 110-129, Sec. 502.

73 *See, e.g.,* Comments of CTIA at 5 (stressing importance of competitive neutrality); Comments of Sprint-Nextel at 10-11 (same); Comments of Rural Telephone Group at 5 (same); Comments of U.S. Cellular at 19, 33 (same); Comments of Missouri Public Service Commission at 10-11 (same); Comments of RCA-ARC at 32-33 (same).

74 *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, ¶ 47 (rel. May 8, 1997).

75 Letter from Anthony M. Alessi, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC (WC Docket No. 05-337, CC Docket No. 96-45 (May 12. 2008).

not involve elimination of the identical support rule, use of cost-models or the creation of a Part-32 cost-based accounting system for competitive ETCs.

II. IF THE COMMISSION ELIMINATES THE IDENTICAL SUPPORT RULE, IT SHOULD ADOPT THE SOUTHERNLINC WIRELESS REVERSE AUCTION PROPOSAL

To the extent the Commission chooses to eliminate the identical support rule, SouthernLINC Wireless agrees with numerous parties who urge the Commission to distribute universal service support through reverse auctions.[76] SouthernLINC Wireless also agrees with these parties, however, that in order to function appropriately and consistent with the requirements of the Act and the Commission's universal service policies, the reverse auctions will have to be carefully structured in order to ensure that all parties have the necessary incentives to serve rural and high-cost consumers in the most efficient manner possible.[77] As such, SouthernLINC Wireless included in its initial comments a "clock-proxy" reverse auction proposal, which is the only reverse auction proposal on the record that would distribute support in a technologically and competitively neutral manner that is consistent with the requirements of the Act and the Commission's universal service principles. The SouthernLINC Wireless Reverse Auction Proposal addresses all of the major concerns raised by both opponents and proponents of reverse auctions, as explained below.

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76 *See, e.g.,* Comments of Comcast at 7; CTIA Auction Proposal Comments at 2; Comments of GCI at 77; Comments of NJPUC at 5-6; Comments of NCTA at 15-16; Comments of Qwest at 7-8; Comments of T-Mobile at 11; Comments of USTA at 20-25.

77 *See, e.g.,* Comments of NCTA at 15; Comments of California PUC at 3-4; Comments of Comcast at 7; Comments of Connecticut PUC at 7; Comments of NCTA at 15.

A. The Commission Must Answer Key Questions Regarding The Purpose And Goals Of The Universal Service Fund Before Considering Any Reverse Auction Proposal.

SouthernLINC Wireless agrees with the numerous commenters that believe that the Commission must administer the Universal Service Fund in a manner that complies with the terms of the Communications Act, as amended,[78] and therefore "attempting universal service reform without first settling certain threshold, definitional questions is all but useless."[79] Indeed, implementation of the SouthernLINC Wireless proposal would require the Commission to adopt definitions for key statutory terms and to define, in practical terms, the goals of the universal service support program. As SouthernLINC Wireless, NASUCA, and other parties noted in their comments, the Commission has been inexcusably slow to define key terms of the Act that govern the provision of universal service.[80] This omission needs to be remedied as a first step to any long-term reform.

Few parties dispute that the centerpiece of universal service provisions of the Act is the requirement that consumers in rural, insular and high-cost areas have access to services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in rural areas.[81] However, as both SouthernLINC Wireless and NASUCA pointed out in their initial comments, the Commission has failed to adequately define these and other key terms. As NASUCA noted:

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78 *See, e.g.* Comments of CTIA at 12-13; Comments of NASUCA at 8-9; Comments of Sprint-Nextel at 3; Comments of T-Mobile at 4-8.

79 Comments of CCI at 85.

80 Comments of NASUCA on at 9; Comments of the CTIA at 22-23.

81 *See, e.g.,* Comments of Embarq at 11 ("[U]niversal service support is intended to ensure that the rates charged in high-cost areas are reasonably comparable to those charged in lower-cost areas."); Comments of RCA-ARC (stating that the provision of "reasonably comparable services at reasonably comparable rates" is the "most critical of universal service goals.").

> The Commission, although deserving of praise for the amount of energy devoted to the [universal service] debate, appears not to be able to date to come to a resolution in any significant area, and appears to be easily distracted by new or peripheral issues while older an more fundament issues remain unresolved. The prime example is the resolution of the most crucial issue for high-cost universal service support: definition of what constitute "reasonably comparable" and "affordable" rates and services, and what would make the USF "sufficient." These key terms...are the underpinnings and the purpose of the universal service programs, yet remain undefined.[82]

SouthernLINC Wireless agrees with NASUCA and feels that resolving the outstanding issues raised by the *Qwest* courts' remand of the Commission's previous USF orders should be a condition precedent to the adoption of any long term reform of the USF distribution mechanism.[83]

B. The SouthernLINC Wireless Reverse Auction Proposal Would Solve Many of the Concerns Raised In This Proceeding.

1. The SouthernLINC Wireless Reverse Auction Proposal would ensure that services, including rates, in urban and rural areas are "reasonably comparable."

As CTIA has noted, the ability of consumers to choose among a variety of carriers for telecommunications and information services is a distinguishing feature of urban markets, and thus support for multiple carriers must be a part of any universal service mechanism.[84] Section 254(b)(3) requires that rural consumers have access to services that are "**reasonably comparable** to those services provided in urban areas."[85] As GCI noted, the "1996 Act

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82 Comments of NASUCA on at 9.

83 *Qwest Commc'ns Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005)(*Qwest II*); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)(*Qwest I*).

84 CTIA Reply Comments at 3-5 (filed Nov. 8, 2006)(hereinafter "CTIA Auction Proposal Comments").

85 47 U.S.C. § 254(b)(3)(emphasis added).

expressly rejected the notion that telecommunications would be best provided by local monopolies ... and instead embraced competitive markets."[86] "Locking rural America into a single network would not advance universal service – it would do precisely the opposite – much to the advantage of entrenched carriers who can forestall competition. ...This is precisely the ***opposite*** of productive, forward looking [USF] reform."[87] SouthernLINC Wireless agrees that any solution to the perceived problems in the current USF distribution mechanism must also embrace competition, including the principles of competitive neutrality and technological neutrality.

The SouthernLINC Wireless Reverse Auction Proposal does embrace competition. By auctioning off multiple support packages to different carriers in each designated support area as SouthernLINC Wireless has proposed, the Commission can ensure that the "invisible hand of self-correcting market mechanisms," and not "regulatory fiat," determine the identity of firms that thrive in the marketplace.[88] SouthernLINC Wireless agrees with RCA-ARC that a single-winner reverse auction scheme, or any plan that would distribute funding to only a single carrier, would be in clear contradiction of that pro-competitive spirit, as no other carrier would be able to compete with the carrier receiving USF support.[89] Moreover, the lack of competition for customers in a given support area means that there is no incentive for a USF-supported carrier to provide non-USF supported services, as that carrier will be ensured a

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86 Comments of GCI at 88.

87 *See, e.g.,* Comments of RCA-ARC at 73 (emphasis in original).

88 *Id.*

89 *See, e.g.,* Comments of RCA-ARC at 75 ("Auctions that result in a single winner would not promote the availability of reasonably comparable services at reasonably comparable rates in rural areas. This is the most critical of universal service goals."); *see also* CTIA Auction Proposal Comments at 7.

monopoly on the market regardless of service options or quality.[90] These monopolies are not only harmful to competitors but also harm consumers by denying them the "reasonably comparable" services promised in Section 254(b) of the Act.

Diverse commenters also recognize that Section 254 of the Act requires that the rates charged in rural and high cost areas must be "reasonably comparable."[91] Accordingly, the SouthernLINC Wireless Reverse Auction Proposal allows the Commission to ensure that the *rates* charged by telecommunications carriers in high-cost areas are "reasonably comparable" to those found in urban areas. As BellSouth pointed out in a previous round of comments, assuming urban rates are normally distributed, a little more than two-thirds of all rates will fall within one standard deviation (plus or minus) of the mean urban rate.[92] If the Commission caps rates for supported services in rural areas at one standard deviation above the mean of urban rates, as proposed in SouthernLINC Wireless' initial round of comments, it will ensure that rates in rural areas are no higher than the rates of urban carriers whose urban rates are in the 83rd percentile of urban rates nationally. This structure clearly meets the requirement of "reasonable comparability." Thus, the SouthernLINC Wireless Reverse Auction Proposal calls for the Commission to set the rates of its carrier-of-last-resort ("CLR") and non-carrier-of-last-resort ("NCLR") packages at these "reasonably comparable" rates, or whatever other rate the

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90 *See* Comments of RCA-ARC at 76 ("It is intuitively unwise to anoint one entity the winner and sole recipient of support ... essentially placing all of the USF's eggs in one basked and giving the winner little or no incentive to perform well to earn its exclusive status.").

91 *See, e.g.,* Comments of Embarq at 11 ("[U]niversal service support is intended to ensure that the rates charged in high-cost areas are reasonably comparable to those charged in lower-cost areas."); Comments of RCA-ARC (stating that the provision of "reasonably comparable services at reasonably comparable rates" is the "most critical of universal service goals.").

92 Comments of BellSouth, CC Docket No. 96-45, WC Docket No. 05-337, at 15 (filed Mar. 27, 2006)("BellSouth Comments")(noting that this is strictly true for the use of the median as the average, or true for the use of the mean with a symmetrical distribution.).

Commission deems appropriate and "reasonably comparable." Regardless of the exact method chosen by the Commission for determining exactly what constitutes "reasonably comparable" rates, requiring a USF recipient to make a defined USF CLR or NCLR package available at a rate that the Commission has previously determined to be "reasonably comparable" to the rates available in urban areas is the most efficient manner of ensuring that rates for consumers living in high-cost and rural areas meet the statutory requirements.

2. The SouthernLINC Wireless Reverse Auction Proposal would ensure that services in rural and high-cost areas are "affordable."

SouthernLINC Wireless agrees with the NCTA that the FCC and many state commissions have abdicated their responsibility to use the universal service fund to provide "affordable" services.[93] Where ILECs have been deregulated, they provide service based on what the market will bear, and not based on any "affordability" or "reasonable comparability" standard, and yet these ILECs still receive USF support.[94] Adoption of the CLR and NCLR packages SouthernLINC Wireless has proposed will address this problem.[95] When the Commission establishes a rate that it determines to be "reasonably comparable" to the rates available in urban areas in compliance with Section 254(b)(3) of the Act, the Commission will also have the opportunity to demonstrate that the proposed rate is "affordable" as well in accordance with Section 254(b)(1) of the Act. By adopting the proposal of SouthernLINC Wireless to require that support recipients offer CLR and NCLR packages (with certain minimum service requirements) at set rates or less, this failure will be remedied because even

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93 Comments of NCTA at 8-9; Comments of Time Warner at 4-5.

94 *Id.*

95 47 U.S.C. § 254(b)(1).

deregulated carriers will be obliged to provide the USF-mandated packages at the affordable rate set by the Commission or less.

3. The reverse auction proposal of SouthernLINC would reduce the size of the fund while providing "predictable" and "sufficient" support.

The Commission's NPRMs in the Universal Service dockets, along with the Commission's recent decision to cap support to competitive ETCs, make clear that the Commission's primary concern in this docket is limiting the size of the Universal Service Fund.[96] The SouthernLINC Wireless Reverse Auction Proposal is the best option for accomplishing this goal. Numerous parties express their support for the concept of reverse auctions, recognizing that if properly structured, reverse auctions will decrease the size of the fund.[97] For instance, because of the nature of the bidding involved, the SouthernLINC Wireless Reverse Auction Proposal would permit the FCC and state commissions to target support to areas where it is most needed and cease providing support in areas where it is not needed.[98] In geographic areas where the FCC or the relevant state commission believes that support is unnecessary, competing ETCs may bid support down to zero, which would prove that support is not needed in that area. Similarly, the SouthernLINC Wireless Reverse Auction Proposal would permit the Commission to avoid overpayment to carriers currently receiving funds because, as Verizon notes in its comments proposing a reverse auction, the competitors in each area will

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96 *Cap Order,* ¶ 6 ("We agree with the Joint Board's assessment that the rapid growth in high-cost support places the federal universal service fund in dire jeopardy."); *Identical Support Rule NPRM,* ¶ 4-5.

97 *See, e.g.,* Comments of Comcast at 7; CTIA Auction Proposal Comments at 2; Comments of GCI at 77; Comments of NJPUC at 5-6; Comments of NCTA at 15-16; Comments of Qwest at 7-8; Comments of T-Mobile at 11; Comments of USTA at 20-25.

98 Comments of Verizon at 18; CTIA Auction Proposal Comments at 2.

have incentives to bid for the lowest amount of support it can receive and still be profitable, so as to avoid having their competitors gain a competitive advantage over them in the marketplace.[99]

TDS Telecommunications raises the issue of whether or not reverse auctions can provide "sufficient" and "predictable" support.[100] The SouthernLINC Wireless Reverse Auction Proposal would provide both. Under the SouthernLINC Wireless proposal, support would be sufficient because the winning carrier itself determines the amount of support it receives. No other party is in as good a position to determine the minimum amount of support needed than the carrier that will actually have to provide the USF mandated services. With respect to the Act's requirement that support be "predictable," the amount of support is determined at the time the bidder wins the auction, and it lasts for a set period of time. All carriers will know exactly how much they will receive for the entire period governed by the reverse auction. Indeed, funding would be *more* predictable under SouthernLINC Wireless' Reverse Auction Proposal than under the Interim Cap imposed by the Commission, because the winning bidder will receive the support it bids for throughout the term of the auction. By contrast, under the Interim Cap, the amount of support provided to a competitive ETC is dependent upon the total number of competitive ETCs lines receiving funding.

Some commenters express concern that universal service support under a reverse auction system might be insufficient in that it would discourage carriers from investing in their network because the subsidy won by an ETC in the reverse auction will only be guaranteed until

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99 See Comments of Verizon at 18 (claiming the same benefit for Verizon's reverse auction proposal).

100 Comments of TDS at 9.

the next auction.[101] However, SouthernLINC Wireless believes that the five-year cycle it proposes between reverse auctions ensures that auction winners can invest in their network and reap rewards on their investment prior to a new round of auctions occurring. Furthermore, some carriers will realize that investment in their infrastructure may allow them to provide a winning bid when the next auction is held for support, thereby encouraging investment even in the last years of the auction cycle or by companies not yet receiving USF support.

Under the SouthernLINC Wireless Reverse Auction Proposal, the fund would be no larger than necessary. To the extent that the Commission believes that competitive ETCs have been disproportionately responsible for the growth of the Universal Service Fund, the SouthernLINC Wireless Reverse Auction Proposal would mitigate this concern by reducing the amount of support provided to competitive ETCs and ILECs alike through the clock-proxy auction process. Bidding for NCLR support would likely be particularly competitive because CLECs, wireless carriers, and cable companies all compete with one another to provide USF-supported services for the lowest possible support amount.[102] Because the competition among these companies is likely to be significantly more fierce than competition for the CLR-support packages that the ILECs will likely bid upon, the proportion of overall USF support provided to competitive ETCs most likely would drop.

SouthernLINC Wireless joins NCTA and other commenters in recognizing that one source of stress on the USF is the provision of multiple supported lines to a single

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101 Comments of the Rural Telecommunications Associations at 10; Comments of CoBank at 3-4; Comments of Texas Statewide Tel. Coop. at 6.

102 *See* Comments of GCI at 86; Comments of Comcast at 9.

household.[103] The SouthernLINC Wireless Reverse Auction Proposal would address the issue of multiple supported lines being provided to a single household by limiting support to lines purchased at full retail price.[104] By providing support only to consumers who purchase supported lines at full-retail price, the Commission could ensure that abuses of the system are curbed and that USF support is distributed efficiently. Currently, because the marginal cost of providing an additional line to an existing customer typically is low, competitive ETCs may have an incentive to provide additional lines to customers at reduced prices in order to receive the additional support provided for each line.[105] Under the SouthernLINC Wireless Reverse Auction Proposal, carriers would no longer be able to provide consumers with greatly-reduced service simply in order to receive additional support.

4. The reverse auction proposal of SouthernLINC Wireless would be competitively neutral.

SouthernLINC Wireless joins the New York PSC and numerous other commenters who urge the Commission to shape its universal service mechanism to allow carriers using all types of technology to provide supported services.[106] The Commission has recognized that departures from competitive neutrality, no matter how insignificant they may first appear,

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103 *See* Comments of CenturyTel at 24-25 (discussing wireless handsets); Comments of NCTA at 15.

104 In its initial comments, SouthernLINC Wireless proposes requiring recipients of USF support to offer USF packages at a set retail price to all customers. Universal service support would be provided only when a winning bidder sells the supported package to a customer for the full retail price. This approach would prevent any winning bidder from giving service away at uneconomically low rates merely to obtain additional subsidies from the universal service fund through inflated "customer acquisition." Comments of SouthernLINC Wireless at 19-20.

105 Comments of CenturyTEL at 23.

106 *See, e.g.,* Comments of New York PSC at 2 ("In order to maintain competitive neutrality, high cost operational support should be awarded to any ETC, irrespective of the technology platform."); Comments of AllTel at 9; Comments of Comcast at 7; Comments of US Cellular at 28-42.

must be minimized in order "facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier."[107] Accordingly, universal support distribution mechanisms must be designed "so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers."[108] Indeed, as Comcast and CTIA point out, the principle of competitive neutrality is mandated by Commission precedent, and it is an integral component of ensuring that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers.[109] For this reason, the SouthernLINC Wireless Reverse Auction Proposal does not distinguish between CETCs and ILECs in determining eligibility to bid upon either the CLR or NCLR packages.

As commenters as diverse as the New York PSC and Alltel have pointed out in their comments, wireline CLEC, wireless, and IP-based phone service are all sufficiently close substitutes for traditional ILEC wireline service so as to compete with traditional ILECs both for customers and for universal service support. As technology advances and consumer opinion changes, these services will likely become even more widely accepted as substitutes by the public.[110] As such, universal service support should be available to consumers choosing to use new technologies (*e.g.*, wireless and IP based services) as well as consumers using traditional local exchange services. Indeed, a significant percentage of customers has already shown a

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107 *USF First Report & Order*, 12 FCC Rcd at 8801-02, ¶ 48.

108 *Id.*

109 *Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 616 (5th Cir. 2000); Comments of Comcast at 12; Comments of CTIA at 12.

110 Comments of New York PSC at 4; Comments of AllTel at 9-11; Comments of US Cellular at 28-42; Comments of GCI at 89; Comments of Oklahoma Corporation Commission at 16.

willingness to rely upon wireless providers or cable telephony providers for all of their telecommunications needs. One study by the Center for Disease Control determined that 12.6% of adults lived in wireless-only households. This statistic represents an increase of nearly 32% from the previous year and an increase of 182% from the same time period in 2004.[111] Similarly, a recent announcement by the NCTA reported that more than 15.1 million residential phone customers receive service through their cable company as of January 2008.[112] Based on these statistics, SouthernLINC Wireless does not believe the Commission should distinguish between carriers based on the underlying technologies used in providing service during bidding for either the CLR or the NCLR packages. Although SouthernLINC Wireless suspects that wireless carriers will compete more heavily for NCLR packages than for CLR packages, building a technological requirement into the USF support system formalizing this distinction would discourage innovation and ensure that new alternatives to traditional wireline services are not explored in rural and high-cost areas, in direct contradiction of the intended purpose of the Act.

The SouthernLINC Wireless Reverse Auction Proposal conclusively refutes arguments by several commenters that claim that reverse auctions cannot be competitively neutral.[113] The Proposal allows for multiple winners, with each winning bidder receiving 100% of the amount of support they claim to need to provide service in the auction area. Indeed, a unique property of the clock-proxy auction format SouthernLINC Wireless proposed is that carriers may take advantage of individual economies of scale by defining their own proposed

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111 Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release Estimates form the National Health Interview Survey, January-June 2007*, Center for Disease Control (rel. Dec. 10, 2007) *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf.

112 NCTA Homepage, *available at* http://www.ncta.com/Statistic/Statistic/ResidentialTelephonyCustomers.aspx.

113 Comments of Cellular South, Inc. at 4.

service area(s) and needed support. This approach ensures at least two ETCs receiving support for their NCLR packages will receive 100% of the support they need. In addition, the winner of the CLR package will also receive 100% of the support that it requests.

SouthernLINC Wireless joins RCA-ARC, Comcast, NCTA, and GCI in encouraging the Commission to comply with the principle of competitive neutrality by requiring the Commission (or the states) to define support areas to be auctioned off in a competitively neutral manner that will not favor any particular carrier or subscriber.[114] As both NCTA and Comcast point out, basing the universal service support regions to be auctioned on any particular carrier's service footprint would likely give that carrier an unfair advantage in bidding.[115] Additionally, providing support based on competitively neutral geographic areas may encourage network build-out by providing incentives to an ETC to expand its network to provide coverage in all of a given support area, so that the ETC might provide service to the largest number of customers possible and thereby reap additional universal service support.

C. The SouthernLINC Wireless Reverse Auction Proposal Would Eliminate the Identical Support Rule Without Reliance on Models or Cost-Accounting Systems.

To the extent that the Commission is determined to depart from the identical support rule, the SouthernLINC Wireless Reverse Auction Proposal provides the only workable alternative that also complies with the terms of the Act and Commission precedent. Although SouthernLINC Wireless does not believe that the identical support rule is as flawed as both the Commission and many of the commenters in this docket argue (see discussion above), the

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114 Comments of RCA-ARC at 75; Comments of GCI at 89; Comments of NCTA at 16; Comments of Comcast at 9.

115 Comments of NCTA at 16; Comments of Comcast at 9.

SouthernLINC Wireless Reverse Auction Proposal effectively eliminates the identical support rule while avoiding the creation of the cost-based system widely decried in the most recent round of comments[116] or necessitating the creation of a unwieldy embedded cost model.[117] As noted by the New Jersey PUC, reverse auctions would replace the identical support rule as the means by which support is distributed to competitive ETC recipients because the auction would determine the minimum level of support necessary to provide carriers with enough incentive to offer service in high-cost areas, and it would also determine the recipient(s) of the funding for that support area.[118] In other words, the amount paid to the universal service support recipients would no longer be based upon the amount of support paid to the ILEC, or to any other carrier. Furthermore, as T-Mobile noted, reverse auctions would divorce universal service support payments from reported costs entirely, thus avoiding the need for any ETC to conduct Part-32 like analyses to determine the costs associated with providing services.[119] Accordingly, to the extent the Commission persists in its desire to eliminate the identical support rule, reverse auctions provide the most cost-effective means of doing so.

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116 Comments of RCA-ARC at 52-55; Comments of Virgin Islands PSC at 11; *see* Comments of Centennial at 6; Comments of GCI at 70.

117 *See, e.g.,* Comments of T-Mobile at 12; Comments of Verizon a 35; Comments of GCI at 65; NCTA Comments at 12; Cellular South Comments at 8; Verizon Comments at 35-36.

118 See Comments of New Jersey Public Utility Commission at 5 ("The Board recommends the use of reverse auctions to replace all of the various high cost support sub-funds with one payment, as well as eliminate a second major flaw in the current program, the identical support rule.").

119 Comments of T-Mobile at 12.

III. DENYING IAS, ICLS AND LSS SUPPORT TO COMPETITIVE ETCS IS UNSUPPORTABLE AND FUNDAMENTALLY INCONSISTENT WITH THE PRINCIPLE OF COMPETITIVE NEUTRALITY

In the *Equal Support NPRM*, the Commission tentatively concluded that competitive ETCs should no longer receive Interstate Access Support ("IAS") and Interstate Common Line Support ("ICLS"), and asked for comment on whether competitive ETCs should continue to receive Local Switching Support.[120] As GCI pointed out in its comments, "excluding competitive ETCs from these support mechanisms would violate competitive neutrality and erect barriers to entry in rural areas, which would, in turn, undermine universal service by reducing marketplace pressures for incumbents to provide high quality and innovative services."[121] This proposal thus would inhibit the creation of "reasonably comparable" services to those available in urban areas.

The Commission's proposal to cut off IAS and ICLS funding to wireless carriers ultimately contradicts itself. The Commission posits that wireless carriers should not receive IAS and ICLS support because the support is intended to replace implicit subsidies that the incumbent LECs formerly received through access, and since wireless carriers never received access revenues, they should not be entitled to the "replacement support." However, as CTIA points out, the Commission's proposal is logically inconsistent, because if IAS and ICLS funding is merely "access replacement," then they cannot be funded at all through universal service

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120 *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, 23 FCC Rcd 1464, 1477, ¶¶ 23-24 (2008).

121 Comments of GCI at 41-42.

mechanisms.[122] If, however, IAS and ICLS constitute explicit universal service support, then this support must be portable and all ETCs are entitled to the support.[123]

Similarly, the argument that wireless carriers should not entitled to IAS or ICLS support because they can recover revenues lost through elimination of the support by increasing their rates to customers promotes an illogical contradiction to the Act. As Centennial points out in its comments, "[g]iving subsidies to one provider without offering them to competitors is nothing more or less than institutionalized predatory pricing ... [U]nless we are prepared to relegate rural American communities to the status of permanent monopolistic backwaters, support available to one vendor must be available to all."[124] It would, as Alltel claims, "enshrine the outrageous notion that ILECs should be guaranteed significant advantages in the marketplace and left alone in their enjoyment of certain categories of support, because competitive carriers can always just charge higher rates to their subscribers" in the high-cost areas.[125] Essentially, this approach means that the exact same consumers whom the subsidies are designed to help will be faced with higher prices for all competitive ETC services.

Local Switching Support ("LSS"), unlike IAS or ICLS, is provided solely on the basis of the size of the study area. All ILEC study areas below 50,000 ILEC lines can receives LSS.[126] This stipulation is true whether the ILEC serves that study area as a part of a much larger physical network of host and remote switches, whether that study area is contiguous with other commonly-owned study areas, whether the ILEC offers other services using the same

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122 Comments of CTIA at 18;

123 *Id.*

124 Comments of Centennial at 3-4.

125 Comments of Alltel at 39; Comments of T-Mobile at 7.

126 47 C.F.R. § 54.301(a).

switches, or whether the ILEC's per-line costs for switching are above or below the national average.[127] As GCI pointed out, it does not make sense to provide LSS to a standalone ILEC but not to a competitive ETC that may serve the same area, either on a standalone basis or as part of a larger network.[128] Because LSS is not tied to any type of cost benchmark, there is no factual basis for asserting that the ILEC's costs per line served are actually above those of a competitive ETC. Furthermore, it is irrational to discourage competitive ETCs from achieving economies of scale and scope (not to mention expanding their networks) by using subsidies to give ILECs a competitive advantage in small, unserved areas. As GCI concludes, "[d]enying CETCs access to LSS ... simply discourages more efficient entry that could ultimately ensure that universal service can be provided at a lower level of subsidy for all ETCs, whether ILEC or CETC."[129]

IV. THE COMMISSION SHOULD NOT BREAK THE CURRENT UNIVERSAL SERVICE FUND INTO THREE SEPARATE FUNDS

The Joint Board's proposal would establish three separate high-cost funds, each with their own budgets: a Broadband Fund, a Mobility Fund, and a Provider of Last Resort Fund. The Joint Board also proposes that the Commission establish a cap on the total amount of high-cost funding at $4.5 billion – which is approximately equal to the 2007 level of high-cost funding. This budget would allocate $300 million to the Broadband Fund and $1 billion to the Mobility Fund, with the remainder of approximately $3.2 billion being allocated to the Provider of Last Resort Fund. While proponents of this proposal view it as a way of controlling the long-term growth of the fund, in actuality it will do nothing of the kind.

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127 Comments of GCI at 52.

128 *Id.* at 55.

129 *Id.*

SouthernLINC Wireless agrees with Comcast, CTIA, and other commenters that view this three fund approach as a meaningless gesture. The most important flaw in this approach is that the proposed division of the fund would not be competitively neutral. The proposed Provider of Last Resort Fund would cordon off approximately $3.2 billion dollars for rural incumbent LECs and would deny funding for all other carriers, including competitive ETCs making use of new technologies that are, in many cases, more efficient than traditional wireline technologies.[130] As CTIA observes, setting aside almost three times as much high-cost support for the ILECs than is set aside for wireless carriers simply cannot, by any measure, be consistent with the competitive neutrality requirements of the Act.[131]

V. UNIVERSAL SERVICE FUNDS SHOULD NOT BE USED TO SUPPORT BROADBAND SERVICES

SouthernLINC Wireless joints with Verizon in believing that until the Commission can correct the flaws in the current collection and distribution mechanisms for the Universal Service Fund, expanding the use of high-cost funding to support broadband would be unwise as it would only further complicate reform efforts.[132] The cost of adding broadband to the list of USF supported services would increase the burden on the universal service system dramatically at a time when both the Board and the Commission are actively looking to reduce the burden, making the step illogical and intellectually inconsistent. As Verizon noted, the USF regime costs consumers between $0.67 to $1.47 simply to distribute $1 in universal service

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130 *See* Comments of Comcast at 13.

131 Comments of CTIA at 15.

132 Comments of Verizon at 33.

subsidies that go to service providers in high cost areas.[133] Creating a new USF program to subsidize broadband would only exacerbate these inefficiencies.[134]

Furthermore, as both Comcast and the New York Public Service Commission point out, the Commission currently lacks information about the current state of the broadband market that would help it quantify the level of need in rural and high-cost areas.[135] The use of universal service funds for broadband support may also have the effect of skewing existing markets. Many carriers already provide broadband facilities without universal service support. Adding broadband services to the supported services now would disadvantage those carriers by allowing their laggard competitors to catch up using federally supplied funds. Therefore, SouthernLINC Wireless believes that the provision of broadband support using universal service funds at the current time would be wasteful as the market is already taking steps to reach currently underserved areas.

Finally, as both SouthernLINC Wireless and Verizon point out in their initial comments, the Commission may be statutorily barred from using universal service funds to support broadband services.[136] Section 254(c) of the 1996 Act limits high-cost universal service support to "telecommunications services" and does not authorize support for "information services" or even "advanced telecommunications services."[137] The Commission, however, has consistently classified broadband internet access services as "information services" regardless of

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133 *Id.*

134 *Id.*

135 Comments of Comcast at 14-15; Comments of New York PSC at 6.

136 Comments of Verizon at 31-33.

137 47 U.S.C. § 254; Comments of Verizon at 31.

how they are provided.[138] Indeed, when the Joint Board last considered whether to add broadband to the list of supported services, it concluded that if the Commission classified broadband internet access services as "information services," then broadband could not be included within the definition of supported services because section 254(c) limits the definition of supported services to "telecommunications services."[139] The statute has not changed since the Joint Board reached this conclusion. Although SouthernLINC Wireless does not take a position on the legality of any program to support broadband services with universal service funds, it encourages the Joint Board and the Commission to focus first on fundamentally reforming the universal service distribution methodology. Once the distribution methodology has been reformed and implemented and universal service spending is again under control, the Commission and the Joint Board could seek comment and fully consider the issue, including whether any proposals would be permissible under the universal service provisions of the Act.

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138 *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005), *aff'd*, *Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007) (and consolidated cases); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff'd*, *National Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, 21 FCC Rcd 13281 (2006); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53 (rel. Mar. 23, 2007).

139 *Federal-State Joint Board on Universal Service*, Recommended Decision, 17 FCC Rcd 14095, 14102-03, ¶ 19 (2002).

VI. CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to adopt reforms that are consistent with the proposals outlined in its initial comments and these reply comments and to ensure that all reform measures comply with the Act, including the principle of competitive and technological neutrality.

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