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
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Numbering Resource Optimization	)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF T-MOBILE USA, INC.

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T-Mobile USA, Inc. ("T-Mobile") submits these comments on the Commission's Further Notice of Proposed Rulemaking regarding three alternative intercarrier compensation ("ICC") and universal service fund ("USF") reform plans ("*ICC/USF Notice*").[1] ICC and USF reform is long overdue, and the Commission should take final action immediately after this pleading cycle is completed.

[1] *High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, FCC 08-262 (Nov. 5, 2008) ("*ICC/USF Notice*") (73 Fed. Reg. 66821 (Nov. 12, 2008)).

I. INTRODUCTION AND SUMMARY

The alternative reform plans attached to the *ICC/USF Notice* reflect the benefits of several years of legal and policy analysis and address the significant interests at stake. The comprehensive ICC/USF reform solutions presented in Appendices A and C to the *ICC/USF Notice* -- the Draft Proposal circulated on October 15, 2008 ("Draft Proposal") and the draft Alternative Proposal circulated on November 5, 2008 ("Alt. Proposal") -- represent significant progress toward urgently needed reform. Their comprehensive focus is far preferable to the Narrow Universal Service Reform Proposal attached as Appendix B to the *ICC/USF Notice* ("USF Proposal"). Because it retains the existing ICC regime, the USF Proposal on its own would undermine the competitive and efficiency goals of ICC and USF reform.

Of the two comprehensive alternatives, the Draft Proposal presents a more balanced approach to ICC/USF reform. Following a transition during which no existing intercarrier rates could be increased, the Draft Proposal would establish an ICC/USF regime that greatly unifies and reduces intercarrier termination rates to a level of $0.0007 per minute or lower, subjects all Internet Protocol ("IP") traffic to exclusive federal jurisdiction, and permits local exchange carriers ("LECs") to increase subscriber line charges ("SLCs") above current SLC caps. This plan goes a long way toward achieving the Commission's reform goals and, among the alternatives, is most likely to encourage broadband deployment.

With certain modifications and clarifications, the Draft Proposal would substantially implement the long-awaited goals of reducing the inefficiencies, arbitrage behavior, and disputes generated by the current ICC/USF regime. In particular, the Draft Proposal's ten-year transition toward reduced and unified terminating rates is far too long.[2] A five-year maximum transition

[2] Because we view the Draft Proposal as far superior to the other two plans attached to the *ICC/USF Notice*, our comments will focus on that plan, except for differences between the

(Footnote continues on next page.)

would allow more than enough time for the industry and state commissions to adapt. The ultimate goal of the transition should be an extremely low nationwide terminating rate, or at least uniform statewide terminating rates. This goal could be achieved through the use of the incremental cost methodology discussed in the Draft Proposal and the setting of a default termination rate (such as $0.0007 per minute), that would govern unless a state commission chose another rate using the Commission's pricing standards. To advance the efficiency goal of symmetrical rates set forth in the Draft Proposal, CMRS providers should be authorized to assess terminating access rates starting at the beginning of the transition.

T-Mobile supports the classification of IP-to-public switched telephone network ("PSTN") and PSTN-to-IP calls as information services under the Communications Act of 1934 ("the Act") but asks the Commission to clarify that this classification does not affect the interconnection rights of wholesale carriers. The interconnection rules set forth in the Draft Proposal also should be modified to remove discrimination, particularly as to IP-based services.

There are two critical omissions in the Draft Proposal. The first is the failure to discuss incumbent LEC ("ILEC") transport rates. The reform of termination rates will accomplish very little if ILEC bottleneck control over transport facilities remains unchecked. Accordingly, transport rates should be reduced to cost-based levels. Second, the Draft Proposal defers resolution of important questions regarding tandem transit services and obligations. Any comprehensive ICC reform must necessarily affirm that ILECs should be required to provide tandem transit services upon request, and ILEC tandem transit rates should be reduced to cost-based levels.

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Draft Proposal and the other two plans that require discussion. Any comments on the Draft Proposal apply equally to parallel provisions in the Alt. Proposal.

The USF reform provisions in the Draft Proposal, while promising, also should be modified to ensure the Commission's goal of competitive neutrality. The proposed USF contribution methodology should be adjusted to provide a 50 percent discount on all numbers after the first number used with a wireless family share plan. This would advance competitive neutrality by avoiding market distortions. Similarly, the supplemental high-cost USF funding provided to replace "lost" ILEC revenue in the Draft Proposal would not pass legal scrutiny, as it is far too lavish and fails to treat all eligible telecommunications carriers ("ETCs") equally. Any legally valid high-cost USF support must be fully portable to competitive ETCs ("CETCs"), and supplemental funding for rate-of-return ("ROR") ILECs should be subject to the same conditions as for any other ILEC or CETC.

The procedures for distributing current high-cost support also should be modified to be competitively neutral. ROR rural ILECs ("RLECs") should be treated the same as all other ILECs (and CETCs) in the distribution of high-cost support. Furthermore, as with CETCs, ILECs should be subject to a loss of high-cost support when they lose access lines.

Finally, T-Mobile urges the Commission to adopt the proposed Broadband Lifeline/Link Up Pilot Program in the Draft Proposal because it would provide an efficient means of delivering broadband service to low income consumers and would be far more effective than other proposals currently before the Commission, including the "free broadband" plan for the AWS-3 spectrum band. T-Mobile also supports the proposed exceptions for Alaska, Hawaii and U.S. Territories and possessions. Because of their unique geography and isolation, they should continue to be governed by the current ICC/USF regime until reform can be tailored to their circumstances.

II. THE INTERCARRIER COMPENSATION REFORM PROVISIONS IN THE DRAFT PROPOSAL SHOULD BE MODIFIED TO ENCOURAGE COMPETITION AND ENHANCE EFFICIENCY.

Although the Draft Proposal represents a very positive step in the move toward much needed reform of the ICC regime, several of the proposed ICC measures are insufficient to accomplish the Commission's goals. Specifically, the terminating rate reduction and unification transition should last no more than five years and should not discriminate against CMRS providers. The proposed interconnection rules also should be modified, for example, to require all carriers to permit the exchange of IP-based traffic. Similarly, the Commission should reject the unreasonably discriminatory "rural transport rule" in the Alt. Proposal.

A. The Commission Should Implement a Five-Year Maximum Transition With the Goal of a Relatively Uniform Low Nationwide Terminating Rate.

1. A Ten-Year Transition Is Too Long.

The transition to reduced and unified terminating intercarrier rates over a ten-year period denies consumers the full benefits of an efficient and fair marketplace for far too long, while the arbitrage incentives and anticompetitive distinctions of the current regime continue.[3] A decade from now, technological changes will have long since eroded the legacy circuit-switched business model underlying the ICC regime, rendering the transition irrelevant and providing yet another example of technology overtaking regulation. The transition should be reduced to no more than five years.

In the evolving telecommunications industry, wireless and IP-based services are rapidly replacing traditional wireline circuit-switched networks. ILECs should not be allowed to retard technical and market progress by charging their competitors uneconomic rates for another decade. A five-year maximum transition will facilitate rather than delay the technological and

[3] Draft Proposal at ¶¶ 188-206.

competitive transformation of the industry while providing carriers and state regulators an adequate opportunity to adapt to the required rate reductions, particularly given the replacement funding that the Draft Proposal would provide to ILECs.

2. The Transition Should Result in a Relatively Uniform Nationwide Termination Rate.

The *ICC/USF Notice* asks whether the final termination rates at the end of the transition should be carrier-specific or statewide uniform rates.[4] Statewide rates clearly would be preferable to individual carrier rates. Different carrier-specific rates would perpetuate and escalate many of the arbitrage behaviors and inefficiencies of the current regime and also would sacrifice all of the competitive and efficiency benefits of symmetrical rates discussed in the Draft Proposal.[5] Statewide termination rates would significantly reduce those inefficiencies and would be far easier to administer than individual carrier rates. Rather than dozens of individual carrier rate proceedings, each state commission could conduct a single proceeding to determine a uniform termination rate.

An even better outcome, however, would be relatively uniform rates nationwide. A single national termination rate would eliminate arbitrage and other uneconomic behavior entirely and would foster administrative efficiency. As long as there are substantial differences in terminating rates among different states, the opportunity to engage in arbitrage of traffic termination by selective traffic stimulation and strategic location of facilities will remain. The Commission could achieve a high degree of uniformity by proposing a default rate for the state commissions to adopt unless a state finds that the default rate would not satisfy the

[4] *ICC/USF Notice* at ¶ 41.

[5] Draft Proposal at ¶¶ 276-81 (benefits of symmetrical termination rates).

Commission's pricing standards under Sections 251 and 252 of the Act, whether on an interim basis or otherwise.[6]

3. The Commission Should Instruct the States To Use an Incremental Cost Methodology.

The *ICC/USF Notice* also asks whether to use an incremental cost or total element long run incremental cost ("TELRIC") methodology in establishing a pricing standard for states to apply in setting termination rates under the "additional costs" provision of Section 252(d)(2).[7] The incremental cost methodology is far preferable because, as the Draft Proposal notes, some applications of TELRIC methodology have produced excessive reciprocal compensation rates, and some carriers dispute any application of TELRIC pricing methodology to traffic termination. By reflecting all common costs, TELRIC does not necessarily produce efficient prices and thus retards competition.[8]

An incremental cost methodology will produce lower rates that will result in more efficient use and development of carrier networks. Because the incremental cost methodology properly excludes common costs, it also more closely follows the "additional costs" standard of Section 252(d)(2). Achieving this standard will help to remove the ILEC "tollgate" at the terminating end of most calls that has hampered intermodal competition and inflated end user per-minute rates, to the detriment of consumers. More reasonable termination rates also will

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[6] *See* letter from Suzanne A. Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Chairman Kevin Martin, *et al.*, at 5-6, CC Docket No. 01-92 (Oct. 28, 2008) (proposing a default terminating rate of $0.0007 per minute that will apply if the state does not conduct cost proceedings). Each state commission would still have the final say in setting interim or final termination rates, as required by Sections 251(b)(5) and 252(d)(2). *See Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000) (subsequent history omitted).

[7] *ICC/USF Notice* at ¶ 41.

[8] Draft Proposal at ¶¶ 236-74.

deter arbitrage behavior and traffic stimulation disputes. The terminating rates generated by an incremental cost methodology also should be low enough to preclude a substantial variation among the states. The uniformly low level of incremental cost-based rates will be another factor, in addition to the use of a default rate of $0.0007, tending toward nationwide uniformity. Thus, requiring state commissions to employ an incremental cost methodology in setting termination rates in conjunction with a default rate will best achieve the Commission's goals for ICC reform.

B. The Commission Should Authorize CMRS Providers To Impose Termination Charges on All Calls From the Beginning of the Transition.

The Commission should authorize CMRS providers to impose termination charges on all calls starting at the *beginning* of the transition period, not at the end of the transition period as now proposed.[9] CMRS providers have never been able to impose access charges unilaterally even though they always have had to pay access charges to their dominant ILEC competitors, enabling the ILECs to subsidize their retail services. In 1996, the Commission commenced a rulemaking addressing wireless carriers' recovery of access charges from interexchange carriers ("IXCs"), "tentatively conclud[ing] that CMRS providers should be entitled to recover access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks."[10] Although the Commission noted that "any less favorable treatment of CMRS providers would be unreasonably discriminatory," it never adopted a final order in that proceeding.[11]

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[9] *Id.* at ¶ 197.

[10] *See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5074-76 (1996) ("*CMRS Access Charge NPRM*").

[11] *Id.*

Moreover, precluding CMRS providers from assessing access charges during the entire transition conflicts with the bedrock Draft Proposal principle of symmetrical rates. As the Draft Proposal explains, equivalent, symmetrical termination rates between LECs and wireless providers and other competitive carriers would enhance efficiency by driving carriers toward lower cost operations, thwarting arbitrage and encouraging competition.[12]

Also, under the Draft Proposal, most wireless providers will continue to fund ILEC high-cost support and to pay access charges to ILECs while receiving neither. In the name of equal USF treatment between ILECs and others, the Draft Proposal would eliminate high-cost USF support to CETCs unless they can make a cost demonstration that few wireless providers will be able to satisfy.[13] As a result, given the Draft Proposal's intent to treat wireless CETCs "in the same manner as" ILECs for purposes of high-cost support,[14] it would be unreasonable for the Commission not to treat wireless carriers in the same manner as ILECs for access charge purposes. Accordingly, CMRS providers should be authorized to impose termination charges on non-local calls starting at the beginning of the transition, subject to the rate unification and reduction requirements of the transition.[15]

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[12] Draft Proposal at ¶¶ 276-81.

[13] *Id.* at ¶ 53.

[14] *Id.*

[15] Although CMRS providers may not file tariffs, the Commission could order all carriers to pay CMRS providers the terminating rates established in the transition. Alternatively, the Commission, under Sections 201(b) and 332(c) of the Act, could require all carriers exchanging traffic with CMRS providers to negotiate termination charges at the transition rates. In either case, the Commission should make clear that other carriers are required to pay the CMRS providers' access charges.

C. The Commission Should Clarify That the Information Service Classification of VoIP and Other IP-Enabled Services Does Not Affect the Interconnection Rights of Carriers Exchanging IP-Based Services.

T-Mobile supports the tentative decisions in the Draft Proposal to classify voice-over-IP ("VoIP") and other IP-PSTN and PSTN-IP services as information services and to include those services within the scope of the termination rate reduction and unification transition.[16] T-Mobile also supports the rationale for finding those services to be within the scope of Section 251(b)(5).[17] The Commission should clarify, however, that the classification of IP-PSTN and PSTN-IP traffic as an information service does not affect the interconnection rights of carriers using next-generation networks to provide voice and other services. As the *Time Warner Ruling* points out, the regulatory classification of a VoIP or other service provided to end users has no bearing on the interconnection rights under Section 251(a) and (b) of a telecommunications carrier that supplies wholesale telecommunications service to the VoIP provider.[18] The Commission also should reiterate that classification of VoIP or other IP service as an information service does not affect the Section 251(a) interconnection rights of carriers providing VoIP or IP-based services through the same interconnections as their telecommunications services.[19]

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[16] Draft Proposal at ¶¶ 208-11

[17] That provision covers the transport and termination of "telecommunications," a statutory classification that is broader than "telecommunications services." *Id.* at ¶¶ 208-29 & n.564.

[18] *Time Warner Cable Request for Declaratory Ruling*, 22 FCC Rcd 3513, 3520-21 (2007) ("*Time Warner Ruling*").

[19] *Id.* at 3520 n.39.

D. The Proposed Interconnection Rules Should Be Modified To Remove Discriminatory Burdens.

1. The Commission Should Not Adopt the "Rural Transport Rule."

The Commission should not adopt the unreasonably discriminatory "rural transport rule" in the Alt. Proposal, as requested by the RLECs.[20] Under the proposed rule, the typical allocation of responsibility for the transmission and routing of a call to the network edge of the called party service provider is shifted when a ROR RLEC subscriber calls a non-rural carrier subscriber. In that situation, rather than requiring the RLEC to deliver the call to the non-rural carrier's edge, as is required of *all other* originating carriers, the proposed rule would require the RLEC to carry the call only to the non-rural carrier's point of presence ("POP") within the RLEC's service area or, if the non-rural carrier's POP is outside the RLEC's service area, to the RLEC's meet point with the non-rural carrier.[21]

There is no justification for this arbitrary shift in transmission responsibility, which would confer a discriminatory benefit on ROR RLECs at the ultimate expense of other carriers' consumers. Imposing this additional transport cost on the terminating carrier, particularly where the terminating carrier's POP is located outside the RLEC's service area, would be especially burdensome for CMRS and other competitive carriers and, ultimately, their customers. By offloading RLEC transport costs onto competitive carriers and their customers, RLECs would be able to negate some of the effects of ICC reform, thereby retaining the discriminatory

[20] *See* Alt. Proposal at ¶ 270; letter from John N. Rose, President, OPASTCO, and Kelly Worthington, Executive Vice President, WTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 2 (Oct. 29, 2008). Other than the rural transport rule, the interconnection rules in the Draft Proposal at ¶ 275 and the Alt. Proposal at ¶ 270 are identical. For convenience, this discussion of the proposed interconnection rules will refer primarily to the version in the Alt. Proposal.

[21] Alt. Proposal at ¶ 270.

distinctions that ICC reform is supposed to eliminate and undermining competition in rural areas.[22]

2. The Interconnection Rules Should Accommodate IP-Based Traffic.

Given the increasing convergence of communications technologies, all carriers should be required to permit the exchange of IP-based traffic. The proposed interconnection rules thus should make clear that the termination charge at each stage of the transition period includes all necessary multiplexing and conversions, including protocol conversions. Otherwise, the ICC scheme ultimately implemented by the Commission would lag far behind the development of technology and discriminate against providers that use innovative technologies. Delivering and terminating VoIP or IP-based calls that undergo a net protocol conversion should not cost more than terminating circuit-switched calls, particularly when regulators are encouraging industry and consumers to adopt new technologies to further broadband.

Alternatively, if the Commission chooses not to include multiplexing and necessary conversions in the specified termination charge, it should clarify that the originating carrier may deliver traffic to any technically compatible point in the same LATA as the called party without any financial obligation for transport of the traffic from the compatible point to the edge associated with the called party. The fast-growing need to convert IP-based calls to circuit-switched calls and vice-versa will impose greater cost burdens and present opportunities for

[22] Together with the proposed elimination of high-cost support for most CMRS providers and the delay of CMRS termination charges on all calls until the end of the transition, the rural transport rule completes a trifecta of anticompetitive discrimination that seems tailored to support RLEC business plans.

arbitrage unless originating carriers are permitted to deliver traffic to technologically compatible points wherever possible.[23]

3. Interconnection Rules Should Not Impose Unduly Burdensome Requirements on Competitive Carriers.

The freedom to designate efficient edges under the rules is especially important for CMRS providers and other competitive carriers that are not deployed like ILEC legacy networks and must depend on ILECs for transport and other network facilities. Based on wireline network conventions, the Commission's inflexible proposed "edge" definition designates, as the edge for calls to any given called party, the point "which PSTN routing conventions (e.g., NPAC or LERG) associate with the called party telephone number. . . ."[24]

It may be more efficient, however, for a wireless or other competitive carrier to use another point, sometimes in another carrier's network, to deliver calls to the called party number, especially in an area where the terminating carrier does not have facilities. To avoid imposing unnecessary edges on wireless and other carriers, thus increasing their termination costs, the Commission should clarify that a competitive terminating carrier may designate a point in another carrier's facilities as the edge for calls to the called party, even where that point is not one that "PSTN routing conventions . . . associate with the called . . . number."[25]

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[23] Accordingly, if the terminating carrier's edge for a particular called party is technically incompatible with the traffic sent by an originating carrier, and the terminating carrier has another point in the same LATA that is compatible with the traffic sent by the originating carrier, the originating carrier should be allowed to deliver its traffic through that compatible point at no extra charge for transporting the traffic to the terminating carrier's edge.

[24] Alt. Proposal at ¶ 270. There is one exception to this definition not relevant to this discussion.

[25] *Id.* The Commission also should clarify that carriers interconnecting at a CMRS provider's edge do not have an automatic right of collocation at that edge and that an originating CMRS provider interconnecting at a terminating carrier's edge should not be required to

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E. Transport and Transit Issues Are Fundamental To Effective ICC/USF Reform.

The Commission should address, in conjunction with the other issues raised in the Further Notice within the Draft Proposal, the reform of transport pricing.[26] Under the proposed rules, the originating carrier is responsible for transmission to the terminating carrier's edge, and it often has to purchase such transport from the terminating carrier.[27] Because transport rates are excessive, failing to address those rates will undermine much of the efficiency and competitive gains from ICC reform. Particularly where transport must be obtained from a terminating RLEC, transport rates, rather than ICC charges, could become the primary tollbooth used by dominant carriers to impose burdensome costs on their competitors. Thus, the Commission should consider requiring significant reductions in transport service rates and, while the Further Notice is pending, it should cap transport rates at current levels.

Similarly, pending resolution of the issue of transit pricing raised in the Further Notice within the Draft Proposal, the Commission should cap transit rates at current levels and require ILECs to provide transit service on request.[28] ILEC refusals to provide tandem transit services can undermine competition and effectively force inefficient interconnection arrangements on competitors. Accordingly, the Commission should use its authority under the Act to ensure that

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(Footnote continued from previous page.)

collocate at that edge. Requiring or demanding collocation in these circumstances unnecessarily adds to costs.

[26] Draft Proposal at ¶¶ 345-49 (Intercarrier Compensation Further Notice).

[27] Alt. Proposal at ¶ 270.

[28] Draft Proposal at ¶ 347.

dominant tandem transit providers do not undermine ICC reform by obstructing the transmission of calls to terminating carriers.[29]

III. THE UNIVERSAL SERVICE REFORM PROVISIONS IN THE DRAFT PROPOSAL SHOULD BE MODIFIED TO PROMOTE COMPETITIVE AND TECHNOLOGICAL NEUTRALITY AND TO MAINTAIN THE VIABILITY OF THE USF.

A. The Proposed USF Contribution Methodology Should Be Adjusted To Take Into Account Different Types of Wireless Services.

T-Mobile supports the reforms to the USF contribution methodology described in the Draft Proposal, but urges the Commission to adjust the methodology's residential per-number monthly assessment of $1.00 for wireless family plans sharing a "bucket of minutes."[30] To ensure that adoption of a residential number-based contribution methodology does not disproportionately burden wireless consumers and unreasonably influence their economic choices, non-primary lines in a wireless family share plan should be assessed at 50 percent of the standard contribution fee for assessable numbers.

A discount for all numbers except the first primary number in a family share plan would be competitively and technologically neutral and would avoid market distortions that could

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[29] The Commission has broad authority under Section 201(a) of the Act to require carriers to establish "physical connections" with other carriers and "through routes," as well as to adopt regulations governing those "through routes." 47 U.S.C. § 201(a). Section 251(a) requires telecommunications carriers to "interconnect directly or indirectly with facilities and equipment of other telecommunications carriers." *Id.* § 251(a). *See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039, 27101-02 (WCB 2002) (suggesting that ILEC may have a duty under Section 251(a) to provide transit service). Section 251(c)(2) requires ILECs to provide interconnection for the "transmission and routing" of local exchange traffic, regardless of whether the traffic is originated or terminated by the ILEC, the requesting carrier, or a third party. Section 332(c)(1)(B) authorizes the Commission to require common carriers to establish physical connections with CMRS providers. 47 U.S.C. §§ 251(c)(2); 332(c)(1)(B). *See also id.* § 152(b).

[30] Draft Proposal at ¶¶ 135-39, 145.

unfairly burden consumers. A family share plan discount recognizes that a family using the plan is an economic unit sharing one "bucket" of minutes and that each family member will need a mobile phone, with its own number, to replace the single wireline number formerly used by the entire family. A discount for the non-primary numbers will lessen the disparity in USF contribution burdens between those borne by one type of wireless customer account -- the family share plan -- and those borne by the single wireline number that it typically replaces. Disproportionate fee increases for families, like large fee increases for low income consumers, are inequitable and are likely to dampen demand for these services.

The Draft Proposal provides an adjustment of the residential per-number monthly assessment of $1.00 for wireless prepaid users,[31] and the USF Proposal imposes different contribution assessments for business service connections based on capacity.[32] A discount for non-primary lines in a family share plan similarly would minimize market distortions.

The proposed contribution methodology also should be modified to ensure that the definition of "Assessable Numbers" does not include innovative non-voice information services that do not replace "plain old telephone service" and that have not had to contribute to the USF program previously.[33] For example, a "machine-to-machine" service that does not provide a dial tone or an underlying PSTN access arrangement and does not enable the user to make an outgoing call should not be subject to a USF contribution. The Commission should expressly exclude new non-voice information services from USF obligations in order to avoid hampering

[31] The Draft Proposal recognizes lower than average usage patterns by wireless prepaid users, resulting in an expected average assessment of less than $1.00 per month per wireless prepaid number overall. *Id.* at ¶¶ 137-38.

[32] USF Proposal at ¶¶ 81-82.

[33] Draft Proposal at ¶ 116.

innovation and discouraging investment in these services, particularly in this challenging economic environment.

B. T-Mobile Supports the Draft Proposal's Lifeline/Link Up Pilot Program.

T-Mobile urges the Commission to adopt the proposed Broadband Lifeline/Link Up Pilot Program.[34] As a vehicle to bring broadband service to low income consumers, this program is far superior to the illusory promise of "free broadband" service for the AWS-3 band presented by M2Z Networks, Inc. ("M2Z").[35] Because the M2Z plan does not target consumers in need of government assistance and is limited to only one wireless provider in one spectrum band, it would do nothing to advance the Commission's goal of increasing broadband availability to those lacking the means to obtain such service. Nor is M2Z's proposed service actually "free" or "broadband."[36]

If anything, M2Z's plan would undermine the availability of wireless broadband by creating harmful interference to customers of services provided by T-Mobile and other companies in the AWS-1 band. These companies are spending billions of dollars *today* to provide real broadband throughout the country. Expansion of the Commission's Lifeline/Link Up program to cover broadband would do far more to bring advanced services to low income

[34] *Id.* at ¶¶ 64-91.

[35] *See Applications for License and Authority to Operate in the 2155-2175 MHz Band*, 22 FCC Rcd 16563 (2007) (denying M2Z's Advanced Wireless Services broadband application) (subsequent history omitted).

[36] The Commission has proposed a 768 Kbps speed for the portion of the AWS-3 band required to be dedicated to the "free broadband" service, which M2Z proposes to be supported by advertisements. 768 Kbps is slow by today's standards and will be wholly inadequate for consumer use by the time the network could be constructed.

consumers than M2Z's proposed offering of a non-targeted, slow, advertisement-laden Internet access service that will not be widely available to consumers for four or five years.[37]

C. The Lavish Replacement Funding Provided in the Draft Proposal and Alt. Proposal Should Be Reduced and Made Portable.

The Draft Proposal and Alt. Proposal would establish new supplements to Interstate Common Line Support ("ICLS") for ROR ILECs and Interstate Access Support ("IAS") for price-cap ILECs to replace "lost" revenues. These supplemental high-cost funds would not be available to CETCs but would be a bonanza for ILECs, especially ROR RLECs, thus violating the requirements of competitive and technological neutrality and portability.[38]

1. The Supplemental Funding Provided in the Draft Proposal Violates the Statutory Requirements of Competitive Neutrality and Portability.

The creation of non-portable supplemental high-cost funds would violate the statutory requirements of competitive neutrality and portability, as well as the requirement of technological neutrality. Relying on the directive in Section 214(e) of the Act that "all 'eligible telecommunications carriers . . . shall be eligible to receive universal service support,'" the U.S. Court of Appeals for the Fifth Circuit held that the principle that the universal service program "*must treat all market participants equally . . . . is made necessary . . . by statute*."[39] The *Alenco*

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[37] *See* letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-109, CC Docket No. 96-45, WT Docket Nos. 07-195 and 04-356 (Oct. 17, 2008).

[38] Draft Proposal at ¶¶ 311-25; Alt. Proposal at ¶¶ 306-21.

[39] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir, 2001) ("*Alenco*") (emphasis added) (quoting 47 U.S.C. § 214(e)(1)). *See also Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8801 (1997) ("*First USF Order*") (subsequent history omitted).

court also held that "*portability . . . is dictated by* principles of competitive neutrality and the *statutory command* [of Section 254(e) of the Act]."[40]

Under the Draft Proposal, ILECs would receive additional high-cost universal service support that would not be portable to competitive carriers serving the same areas that have already been found to be "eligible" to receive high-cost support under Section 214(e), thus violating *Alenco's* mandate that "all" ETCs "shall be eligible to receive universal service support.'"[41] ILECs already receive almost 70 percent of total high-cost support under existing rules.[42] The addition of even more non-portable ICLS and IAS funds would violate the statutory requirement of "competitively-neutral funding,"[43] undermine the pro-competitive goals of those funds,[44] and result in "protection [of the ILECs] from competition, the very antithesis of the Act."[45]

The Commission's attempted justification for non-portability -- that CETCs have more discretion than ILECs to recover reduced access revenue through higher end user charges[46] --

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[40] *Alenco*, 201 F.3d at 622 (emphasis added).

[41] *Id.* at 616 (quoting 47 U.S.C. § 214(e)(1)).

[42] For the first quarter of 2009, ILECs are projected to receive 69.55 percent of total high-cost support. *See* Universal Service Administrative Company, First Quarter Appendices - 2009, HC01 - High Cost Support With Capped CETC Support Projected by State by Study Area - 1Q2009, *available at* http://www.usac.org/about/governance/fcc-filings/2009/quarter-1.aspx (last visited Nov. 18, 2008).

[43] *Alenco*, 201 F.3d at 620 (high-cost funding must be "sufficient and competitively-neutral").

[44] *See, e.g., Access Charge Reform,* Sixth Report and Order, 15 FCC Rcd 12962 13039-40, 13053 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand,* 18 FCC Rcd 14976 (2003) (pro-competitive goals of IAS).

[45] *Alenco*, 201 F.3d at 622.

[46] *See, e.g.,* Draft Proposal at ¶¶ 318-19.

fails because all high-cost universal service funds are intended "*to benefit the customer, not the carrier*."[47] The purpose of ICLS and IAS is to cover the cost of serving high-cost *customers*, irrespective of which *carrier* provides the service or the regulatory treatment of the serving carrier.[48] Moreover, because *Alenco* holds that any USF support must be portable, any fund that is not available to all CETCs by definition cannot be treated as a universal service fund under Section 254. The Commission thus has no authority under Section 254(d) to require carriers to contribute to a non-portable fund.

2. The Commission Should Limit ILEC Access To Proposed Supplemental High-Cost Funding.

a. The Commission Should Not Adopt the Special Treatment for ROR ILEC Supplemental Funding Provided in the Alt. Proposal.

The most troublesome example of laxity in high-cost supplemental funding standards is the *absence* of any such standards for ROR ILECs in the Alt. Proposal. There are no conditions at all with regard to retail rates or the rate of return placed on ROR ILECs' entitlement to receive supplemental ICLS to replace "lost" intercarrier revenue in the Alt. Proposal.[49] Moreover, for ROR RLECs, the Alt. Proposal would replace lost revenue resulting not only from reduced intercarrier rates but also from *any* reductions in minutes of use or loss of access lines.[50] The

[47] *Alenco*, 201 F.3d at 621 (emphasis added).

[48] *See, e.g., CALLS Order*, 15 FCC Rcd at 13039-49 (discussing IAS).

[49] Alt. Proposal at ¶ 320.

[50] *Id.* at ¶ 321.

Alt. Proposal provides no justification for this unprecedented bail-out for ROR RLEC competitive losses, other than their request for it.[51]

It is not in the public interest to provide replacement high-cost funding -- totaling $500 million in the fifth year of the transition -- for ROR RLECs' losses in traffic volume and access lines that could occur because of successful competition or ILEC mismanagement. All high-cost universal service funds, including ICLS, must be designed "to benefit the customer, not the carrier."[52] The Alt. Proposal acknowledges the principle that high-cost subsidies should be "targeted carefully to situations where they are most crucially needed,"[53] but then effectively abandons any such notion for ROR ILECs, particularly in the case of replacement funding for ROR RLEC competition-related losses. Without any standards targeting high-cost funding to areas where it benefits high-cost customers, the supplemental funding in the Alt. Proposal, to which all consumers contribute, cannot be legally valid. Funding to replace revenue lost to competition would be especially unsupportable because its sole purpose is "protection from competition, the very antithesis of the Act."[54] Accordingly, the Commission should not adopt the supplemental high-cost funding for ROR ILECs provided in the Alt. Proposal.

b. Any Supplemental High-Cost Funding for ILECs Should Sunset After a Brief Transition.

With regard to both the Draft Proposal and Alt. Proposal, any supplemental high-cost funding should sunset after a transition of three to five years. Because the supplemental funding

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[51] *Id.* The only condition on the supplemental funding to replace lines and traffic lost to competition is that an RLEC must make the broadband deployment commitment. *Id.*

[52] *Alenco*, 201 F.3d at 621.

[53] Alt. Proposal at ¶ 308.

[54] *Alenco*, 201 F.3d at 622.

presented in the proposals is geared toward protecting carriers rather than customers, it rests on questionable legal grounds.[55] Rather than undermining comprehensive reform by creating permanent ILEC dependency on a new entitlement, the Commission instead should phase down any new supplemental funding during a short transition in which ILECs must adapt to reduced intercarrier revenues.

D. The Procedures for Distributing Existing High-Cost Support Also Should Be Modified To Ensure Competitive Neutrality.

1. Current ROR RLEC Support Mechanisms Should Not Continue To Operate Through 2010.

There is no reason for current ROR RLEC support mechanisms to continue to operate through 2010, as the Alt. Proposal provides,[56] while all other ETC support would be frozen at 2008 levels.[57] The Alt. Proposal provides no justification for this ROR RLEC favoritism, again, other than, apparently, that the RLECs requested it.[58] ROR RLECs should be treated similarly to other ILECs -- and CETCs -- for USF purposes,[59] and ROR RLEC support should be frozen at December 2008 levels, like all other ETC support under the Draft Proposal.[60]

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[55] *Id.* at 621 (high-cost support intended “to benefit the customer, not the carrier”).

[56] Alt. Proposal at ¶ 16.

[57] *See* Draft Proposal at ¶¶ 14-16.

[58] Alt. Proposal at ¶ 16 n.57.

[59] *Alenco*, 201 F.3d at 620.

[60] *See* Draft Proposal at ¶¶ 14-16.

2. Like CETCs, ILECs Should Lose High-Cost Support When They Lose Lines.

One step that would advance competitive neutrality and help maintain the viability of the high-cost program would be to implement full portability by reducing ILECs' support when they lose access lines, as is the case with CETCs.[61] The high-cost fund is growing in part because RLECs do not lose support when they lose customers, which increases their support per access line and reduces their incentives for improved efficiency.[62] The result is an ever-ballooning fund at the expense of consumers. In contrast, CETCs receive support only for access lines that they win.[63] As Chinook Wireless pointed out, if total ILEC high-cost support had declined commensurately with ILEC line counts from 2001 to 2007, the high-cost fund savings would have far exceeded the *entire amount of high-cost support received by CETCs* in the same period.[64] The Commission should not delay this obvious reform any longer.

IV. CONCLUSION.

The Draft Proposal establishes a useful framework for comprehensive ICC/USF reform. Modification of a number of its provisions, as T-Mobile suggests, however, is necessary to achieve the Commission's ICC/USF reform goals consistent with the Communications Act. Without the changes presented in these comments, the resulting regime could undermine the

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[61] *See* Comments of CTIA - The Wireless Association® at 3-5, 10, *High-Cost Universal Service Support*, WC Docket No. 05-337 (June 6, 2007).

[62] CETC support growth reflects the recent surge in consumer demand for wireless services and wireless carriers' late start in receiving support.

[63] *Compare* 47 C.F.R. § 36.603 (RLEC HCLS) *with* 47 C.F.R. § 54.307 (CETC high-cost support).

[64] *Implementing Portability for ILECs Will Save Far More USF Support Than Any CETC Cap Could Accomplish*, at 3, attached to Letter from Julia Tanner, General Counsel, MTPCS, LLC d/b/a Chinook Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (Feb. 28, 2008).

competitive and technological neutrality that is necessary for a pro-competitive, pro-consumer ICC/USF structure.

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