
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
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

To: The Commission

COMMENTS OF CTIA—THE WIRELESS ASSOCIATION®

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SUMMARY

Comprehensive universal service and intercarrier compensation reform is necessary to address fundamental changes in technology and the marketplace. To that end, CTIA applauds the Commission's recent efforts. Today, mobility and broadband are the services most highly valued by consumers, and new means of providing these services have emerged, while others are on the cusp of emerging. Wireless networks have evolved into powerful drivers of economic development and economical means of assuring broadband deployment in rural areas. Reform of the universal service and intercarrier compensation mechanisms must focus on consumers and acknowledge and account for these tectonic shifts in the communications landscape. As discussed herein, CTIA generally advocates the adoption of Plan C for high-cost universal service reform, Plan B for contribution reform, and Plan A for intercarrier compensation reform.

With regard to the high-cost universal service support system, reform should account for the crucial importance of wireless networks by providing a specific and predictable support mechanism for the deployment of advanced wireless networks in rural and high-cost areas. Support under the existing system, based on ILEC costs, should be phased out over five full years, concurrent with the phase-in of the successor mechanism. The successor support system for advanced wireless networks – like the universal service support system as a whole – should be based on an objective measure of cost that encourages and rewards efficient investment in next generation technologies. Such a successor mechanism must set aside sufficient levels of funding to ensure that advanced mobile wireless services are both available and maintained in the higher-cost rural areas of this country. Plan C, with the minor modifications noted herein, best captures the needed reform in this area. CTIA also concurs that the Lifeline and Link-Up programs should be expanded to help ensure low-income consumers' access to broadband services.

CTIA supports a pure numbers- and connections-based contribution methodology, such as that proposed in Plan B. However, appropriate provisions must be made for prepaid wireless calling plans and wireless family plans to ensure that the new methodology is equitable and non-discriminatory.

CTIA generally supports the Commission's proposals in Plans A and C to reform the intercarrier compensation system. With regard to traffic originating or terminating on CMRS networks, the Commission's plenary jurisdiction is helpful in the reform effort and should be reaffirmed. CTIA supports an efficient cost standard, such as the additional cost rule proposed in Plans A and C. The proposals' default network interconnection rules are also sensible and should be adopted (indeed, they are generally similar to CTIA's prior proposals). The "rural transport rule" included in Plan C, however, must be rejected as it would lead to inefficiencies and inequities and violate the provisions of the statute.

CTIA urges the Commission to shorten the transition to the new compensation system by at least half, to no more than five years (which would dovetail with proposed timelines involving universal service support). The Commission must reject any effort to ensure "revenue neutrality" for any group of carriers in the transition or under the new system. No carrier should be provided with additional revenue recovery opportunities unless the carrier can meet the stringent requirements set out in Plan A, which calculation should include revenues from all services that can be provided on the supported network (including non-regulated services such as

broadband). The revenues attributed to the carrier for all services should be based on benchmark revenue amounts tied to the national averages, to avoid allowing for revenue recovery based on parochial state ratemaking rules or bad business decisions. In this regard, the proposal in Plan C to allow revenue recovery for rate-of-return ILECs without requiring them to make any prior showing of need would demonstrate wanton disregard of the Commission's role as steward of the fund and must be rejected.

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To: The Commission

COMMENTS OF CTIA—THE WIRELESS ASSOCIATION®

CTIA—The Wireless Association®¹ (“CTIA”) submits the following comments on the Commission’s three proposals for comprehensive universal service and intercarrier compensation reform.² As discussed herein, CTIA generally advocates the adoption of Plan C

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

² *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*; WC Docket No. 05-337; CC Docket No. 96-45; WC Docket No. 03-109; WC Docket (continued on next page)

for high-cost universal service reform, Plan B for contribution reform, and Plan A for intercarrier compensation reform. CTIA proposes modest changes to each of these proposals to ensure that the Commission's universal service and intercarrier compensation systems work for American consumers, who – like consumers around the world – now predominantly rely upon mobile wireless networks for voice communications and are rapidly coming to rely upon Third Generation (3G) (and soon Fourth Generation (4G)) mobile wireless networks for data and video services.

I. INTRODUCTION

CTIA commends the Chairman and the Commissioners for committing to broad intercarrier compensation and universal service reform. Reform is crucial to ensure that providers are able to invest in infrastructure, deploy broadband, and make innovative services available to all Americans. Such services are essential to the country's economic growth and global competitiveness in the twenty-first century.

Over the last decade, the technologies and marketplace of America's communications sector have changed significantly. Mobile voice and broadband networks now deliver the services most valued by consumers. In 1997, the last time the Commission comprehensively revised its universal service rules, there were approximately 55 million wireless telephone subscribers.³ By mid-2007, the number of wireless subscribers had risen almost five-fold, to

No. 06-122 122, CC Docket No. 99-200; CC Docket No. 96-98; CC Docket No. 01-92; CC Docket No. 99-68; WC Docket No. 04-36; Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (the "*Order and Notice*").

³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Third Annual CMRS Competition Report*, 13 FCC Rcd 19746 app. B, at B-2 (1998).

more than 240 million.⁴ Meanwhile, wireline switched access lines peaked at 191.6 million in December 2001, and since have fallen precipitously to 163 million in June 2007.⁵ Of these, fewer than 135 million were provided by ILECs.⁶ Thus, by mid-year 2007 there were fully 178 percent as many wireless lines as ILEC lines.

The growing popularity of wireless services is easy to understand. Mobility brings with it a level of convenience unmatched by fixed-line communications, allowing people to be reached wherever they may be located at any given moment. Like broadband, the availability of mobile services is recognized as a condition for economic growth. Representative Rick Boucher, commenting on the groundbreaking for a tower in a community in his rural Virginia congressional district that previously lacked mobile coverage, noted that “businesses seeking to expand often consider the availability of mobile communications services when choosing new business locations.”⁷ Recent studies confirm that the mobile phone is “a huge boon to an individual’s economic productivity and earning power.”⁸

⁴ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 07-71, *Twelfth Annual CMRS Competition Report*, WT Docket No. 07-71, 23 FCC Rcd 2241, 2246 ¶ 2 FCC 08-28 (rel. Feb. 4, 2008) (“*Twelfth Report*”) at 6. By year-end 2007, CTIA’s semi-annual survey had found wireless subscribership had risen to 255,395,599. Press Release, CTIA – The Wireless Association, *CTIA - The Wireless Association® Announces New Wireless Industry Survey Results*, available at <http://www.ctia.org/media/press/body.cfm/prid/1747> (Apr. 1, 2008), tables and graphics appearing at http://files.ctia.org/pdf/CTIA_Survey_Year_End_2007_Graphics.pdf.

⁵ Industry Analysis and Technology Division, FCC, *Local Telephone Competition: Status as of June 30, 2007*, tbl.1 (March 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.pdf.

⁶ *Id.*

⁷ Alltel Breaks Ground on Cell Tower to Serve Pound Residents, *Kingsport Times-News*, March 11, 2008, at 3B.

⁸ Nicholas P. Sullivan, New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, at 5 (April 2008), available at http://newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf.

Mobile phones also increase public safety exponentially by allowing people to call for help from virtually any location. In fact, the National Emergency Number Association estimates that about half of all E-911 calls in 2006 were placed from wireless phones.⁹ The safety benefit of wireless networks was brought into sharp relief in the wake of Hurricanes Katrina and Rita, when wireless networks were restored long before others, and quickly became the sole means of communication for many first responders, public officials, and displaced individuals. A recent New Millennium Research study concluded the following:

The [study's] results on the value of a cell phone for safety and emergencies are overwhelmingly uniform, segment by segment, in naming "emergency use" as the primary use of the mobile phone—and in naming the mobile phone as superior in that regard to the landline phone. This carries implications for policy makers. If one of the drivers behind universal service is to insure that people have telephone access in a health or safety emergency, the phone of choice for the vast majority of Americans—young and old, male and female, poor and rich—is a cell phone.¹⁰

The Commission has recognized the growing importance of wireless communications in Americans' lives. As Chairman Martin said in his remarks during CTIA WIRELESS 2008@:

It is difficult to envision how the communications landscape will look in 15, 10, or even five years from now. But one thing is certain – our communications will be increasingly mobile.... We are seeing unprecedented growth and dramatic innovation.... [W]ireless is no longer seen as a luxury, but as a vital means of everyday communication.¹¹

⁹ NENA - homepage, "Cellular and Wireless," www.nena.org/pages/ContentList.asp?CTID=10 (last visited Nov. 24, 2008).

¹⁰ Sullivan, *supra* note 8, at 16.

¹¹ Remarks of Kevin J. Martin, Chairman, FCC, CTIA WIRELESS 2008@, Las Vegas, NV (Apr. 1, 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281259A1.pdf.

Similarly, in 1997 only a negligible number of residential customers purchased broadband connections,¹² while today that number has risen to over 100 million.¹³ Today, broadband connectivity is recognized as an important engine for economic growth and prosperity.¹⁴ At the same time, IP-enabled service providers have begun to offer voice service over broadband connections. Voice over IP (“VoIP”) is offered by many broadband service providers as an adjunct to broadband service, and also by stand-alone VoIP providers.¹⁵ Thus, voice is becoming one of many applications that can be delivered over broadband networks, rather than the primary purpose for the network itself, as was the case when wireline networks were first conceived and constructed.

Increasingly, too, wireless carriers are providing *both* mobility and broadband. U.S. wireless providers are offering steadily faster broadband data services,¹⁶ and consumer take rates

¹² By mid-2000, when the Commission began collecting data, only 4 million customers subscribed to high-speed lines, and only 2.6 million subscribed to advanced services lines. Industry Analysis and Technology Division, FCC, *High-Speed Services for Internet Access: Status as of June 30, 2007*, tbls. 1-2 (March 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280906A1.pdf.

¹³ The FCC reports that, in June 2007, 100 million customers subscribed to high-speed lines, and 70 million subscribed to advanced services lines. *Id.*

¹⁴ See, e.g., Remarks of Kevin J. Martin, Chairman, FCC, Meeting of the American Health Information Community (AHIC), Chicago, Illinois (Nov. 13, 2007) (“Since becoming Chairman, I have made broadband deployment the Commission’s top priority. Broadband technology is a key driver of economic growth.”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278126A1.pdf; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, Fifth Report, 23 FCC Rcd 9615, 9685 (2008), Dissenting Statement of Commissioner Michael J. Copps (“Our economy and our future will be driven by how quickly and completely we deploy broadband.”).

¹⁵ See, e.g., Comcast Digital Voice, <http://www.comcast.com/Corporate/Learn/DigitalVoice/digitalvoice.html?lid=3LearnCDV&pos=Nav> (last visited Nov. 24, 2008); <https://www.comcast.com/Localization/Localize.ashx?Referer=/shop/buyflow/default.ashx&area=6#> (Comcast Digital Voice); Vonage home page, <http://www.vonage.com> (last visited Nov. 24, 2008).

¹⁶ See, e.g., Press Release, AT&T, *AT&T Plans Major Expansion of 3G Wireless Broadband Service in 2008: Company to Expand 3G Service to More than 80 New Cities, Complete Upload Broadband Speed* (continued on next page)

are rising. In its recent *Wireless Broadband Order*, the Commission emphasized its view that “wireless broadband will play a critical role in ensuring that broadband reaches rural and underserved areas, where it may be the most efficient means of delivering these services.”¹⁷ In his separate statement, Chairman Martin noted that “[w]ireless service is becoming increasingly important as another platform to compete with cable and DSL as a provider of broadband.”¹⁸

The Commission’s data show that, since 2005, mobile wireless providers have been the fastest-growing providers of both high-speed lines (over 200 kbps in at least one direction) and advanced service lines (over 200 kbps in both directions), with subscriber counts more than doubling in both categories in each of the last five six-month periods.¹⁹ As of June 2007, mobile wireless providers served more than nine million customers with advanced-service lines – almost half as many as DSL.²⁰ Data from the Pew Internet & American Life Project reveals that, in December 2007, 58 percent of adults had used mobile devices for non-voice activities, and 41 percent of adults had logged onto the Internet wirelessly.²¹

Wireless broadband access stands at a pivotal moment in its evolution. The technology that enables mobile wireless Internet access at speeds as fast as or even faster than fixed-line

Enhancements, (Feb. 6, 2008) available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25146>.

¹⁷ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5908 at ¶ 17 (2007) (“*Wireless Broadband Order*”).

¹⁸ *Wireless Broadband Order*, 22 FCC Rcd at 5926 (statement of Chairman Kevin J. Martin).

¹⁹ *High-Speed Services for Internet Access: Status as of June 30, 2007*, *supra* note 12, at tbls.1-2.

²⁰ *Id.* at tbl. 2.

²¹ John Horrigan, Associate Director, Pew Internet & American Life Project, Data Memo, *Mobile Access to Data and Information* at 1 (March 2008) available at http://www.pewinternet.org/pdfs/PIP_Mobile.Data.Access.pdf (“Pew Study”).

applications like DSL or cable modem is being deployed by wireless carriers.²² At the same time, significant new blocks of spectrum have just been licensed, or are on the brink of being licensed, and are expected to be used to provide broadband access.²³ As a result, marketplace and infrastructure deployment decisions are even more susceptible than usual to disruption in the event regulatory policies fail to treat all broadband technologies fairly and equally.

Although consumers increasingly depend on wireless communications for their voice and broadband needs, an enormous deployment task remains to make advanced wireless services universally available in rural areas. A comprehensive analysis commissioned by CTIA reveals that about **23.2 million U.S. residents** live in areas where 3G wireless service has not been deployed, and that over **2.5 million miles of U.S. roads** lack such coverage.²⁴

As a result of all of these factors, intercarrier compensation and universal service reform must reflect new technological and marketplace realities. Because broadband deployment, economic opportunity, and technological innovation are no longer exclusively or even predominantly wireline issues, the FCC must account for how its policies affect the deployment and availability of mobile wireless voice, data, and video services. Policies designed solely to benefit certain competitors or technologies will disserve consumers and violate the Act.

As discussed in more detail below, Plan C is the best of the three options with regard to high-cost universal service, and Plan A is the better plan for intercarrier compensation reform, while Plan B is superior with regard to universal service contributions. Particularly with regard

²² See, e.g., Letter from Paul Garnett, CTIA, to Marlene Dortch, FCC, WC Docket Nos. 05-337, 05-271 and 04-36; CC Docket Nos. 96-45 and 02-33 (filed Feb. 20, 2007) attachment (“Regulatory Classification of Wireless Broadband Internet Access”) at 3 (chart showing wireless broadband speeds).

²³ See, e.g., *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, WT Docket Nos. 06-150, et al., Second Report and Order, 22 FCC Rcd 15289 (2007) (“700 MHz Order”).

²⁴ CostQuest Associates, *Ubiquitous Wireless Mobility Study* (Attachment 1 to Comments of CTIA, WC Docket No. 05-337 (filed April 17, 2008)).

to high-cost universal service reform, however, the Commission must ensure that the federal program reflects fundamental changes in technology and consumer preference, as required by statute, and does not merely become a means to prop up outdated technology and failing business models.

II. HIGH-COST UNIVERSAL SERVICE REFORM

The central role of wireless networks as engines of economic development and broadband deployment in rural areas demonstrates that any universal service policies must ensure that federal high-cost universal service mechanisms provide support for wireless voice and broadband services. To quote Senator Richard J. Durbin and now President-Elect Barack Obama, “we should be studying and implementing comprehensive reforms that ensure our nation’s rural areas have access to a universal and modern telecommunications network that includes wireless and broadband services.”²⁵ Of the three draft orders, Plan C comes closest to recognizing the need for dedicated universal service support for delivering advanced wireless service to rural Americans. There is broad support for setting aside universal service funding for areas where it is otherwise uneconomic to provide mobile wireless services.

Further, the reform effort must ensure competitive and technological neutrality, and cannot be based on any outdated assumptions about networks’ capabilities. For example, Appendices A and C both would permit ILEC eligible telecommunications carriers (“ETCs”) to retain their support amounts provided they commit to providing broadband services throughout their study areas within five years – in essence granting ILECs a right of first refusal to become

²⁵ See Letter from Senators Richard J. Durbin and Barack Obama to Chairman Kevin J. Martin, FCC (Jul. 26, 2007).

the supported broadband provider in their current service territories.²⁶ Such favoritism towards ILEC wireline broadband facilities violates the principle of competitive neutrality and also disregards the emerging role of wireless providers in the broadband marketplace.

A. Separate Mobility Fund

Given the urgent need to support investment in infrastructure for the mobile broadband services that rural consumers demand,²⁷ the Commission must adopt “an appropriate universal service mechanism (or mechanisms) focused on the deployment and maintenance of advanced mobile wireless services in high-cost and rural areas,” as recognized in Plan C.²⁸ While the specifics of this new mechanism or mechanisms may be worked out in future orders, the decision to support mobile wireless service should be made now.

In light of the new realities of technology and consumer demand discussed above,²⁹ the statute requires the Commission to commit funding for the deployment and maintenance of advanced wireless networks. Section 254 of the Act demands that universal service support mechanisms provide “specific, predictable, and sufficient” support to ensure that consumers in high-cost rural areas have access to services that are “comparable” to those available in urban areas.³⁰ Mobile services are broadly available and highly valued by consumers.³¹ Thus, rural consumers have a right to expect the universal service system to ensure their access to wireless services that are “comparable” to those provided in urban areas. The universal service principle

²⁶ *Order and Notice*, app. A ¶ 19; app. C ¶ 20.

²⁷ *See supra* Section I.

²⁸ *Order and Notice*, app. C ¶¶ 52, 339.

²⁹ *See supra* Section I.

³⁰ 47 U.S.C. §§ 254(b)(5), (e).

³¹ *See supra* Section I.

of competitive neutrality³² also requires that the system treat wireless services, and the carriers that provide them, evenhandedly. Accordingly, federal mechanisms that support rural consumers' access to wireline service must similarly support rural consumers' access to the benefits of wireless service.

As the language in Appendix C notes, the new mechanism should direct universal service support for *both* the deployment of advanced wireless infrastructure and the maintenance of such infrastructure in high-cost areas.³³ CTIA respectfully requests that the Commission give serious consideration to the establishment of two complementary mechanisms: (1) One grant-based mechanism focused on *extending* advanced mobile wireless networks to underserved areas; and (2) One model-based mechanism focused on ensuring that advanced mobile wireless services are *maintained* in objectively identified high-cost rural areas. This is consistent with the statutory language providing for support for the “provision, maintenance, and upgrading of facilities” used to provide supported services,³⁴ and also with the principle of competitive neutrality, given that support is provided for all these purposes to ILEC ETCs.

³² 47 U.S.C. § 254(b)(7) (permitting the Joint Board to recommend, and the Commission to adopt, additional universal service principles); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report & Order, 12 FCC Rcd 8776, 8801 ¶ 47 (1997) (“*First Universal Service Order*”), *aff’d sub nom. Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (adopting the competitive neutrality principle). Because it has been validly adopted under Section 254(b)(7), the competitive neutrality principle applies to the Commission with the same force as the other statutory Section 254(b) principles.

³³ *See also* 47 U.S.C. § 254(e) (universal service support shall be used “for the *provision, maintenance, and upgrading* of facilities and services for which the support is intended”) (emphasis added).

³⁴ 47 U.S.C. § 254(e).

Any support mechanism devoted to wireless carriers should be based on wireless costs and wireless benchmarks. It makes little sense to provide specific support for wireless networks, but to base that support on ILEC costs, access lines, or benchmarks.³⁵

To that end, CTIA opposes the proposal in Appendix A for determining wireless ETCs' support, which would exclude spectrum costs, divide costs by ILEC lines, compare the wireless ETC costs to a wireline benchmark, and then limit support to capped support amounts.³⁶ The proposal for funding wireless ETCs in Appendix A would be bad policy, contrary to the statute, and arbitrary and capricious.

First, as CTIA and others have argued before, competitive carriers such as wireless carriers should not be subjected to archaic, embedded cost-type accounting. Wireless carriers should not be required to file their embedded costs, and support based on ILECs' embedded costs should be phased out. As CTIA and other filers have shown, basing support on embedded costs would only promote inefficiency.³⁷

Moreover, specific proposals to require wireless ETCs to maintain and report their costs in a manner akin to the Part 32 Uniform System Accounts currently applicable to ILECs, such as the "WiCAC" and "Panhandle" proposals,³⁸ seriously underestimate the difficulties of this

³⁵ See Comments of CTIA – The Wireless Association, WC Docket No. 05-337 (filed April 17, 2008) at 16-17.

³⁶ *Order and Notice*, app. A ¶¶ 53-55.

³⁷ See, e.g., Comments of CTIA – The Wireless Association, WC Docket No. 05-337 (filed April 17, 2008) at 24-25. None of the proposed orders attached to the *Notice* addresses these arguments, in violation of governing precedent. See also, e.g., *AT&T Corp. v. FCC*, 86 F.3d 242, 247 (D.C. Cir. 1996) (remanding a challenged order to the FCC for complete failure to address an argument in the record). In this case, because the FCC is hereby being given the opportunity to correct this error, the correct remedy for a failure to respond to opposing arguments in the record would be reversal rather than remand.

³⁸ See Letter from Advocates for Regulatory Action to Marlene H. Dortch, FCC, WC Docket No. 05-337, and CC Docket No. 96-45 (filed July 12, 2007, by GVNW Consulting, Inc.) ("WiCAC Proposal"); Letter (continued on next page)

approach.³⁹ As AT&T has pointed out, a transition to an embedded wireless cost approach would be lengthy and burdensome.⁴⁰ Unlike wireline costs, wireless costs are driven at least as much by minutes of use as by the number of customers served. Moreover, because of the way wireless networks are licensed and constructed, wireless carriers do not keep financial records on a study area basis – or often even on a statewide basis. WiCAC also would require wireless carriers to allocate costs like salaries and rents to functional categories such as switching or cable and wire facilities – an allocation which is largely artificial, and which wireless carriers do not generally perform today.

The impulse to provide support for wireless ETCs based on their “embedded” costs rests on the false assumption that ILECs receive support on that basis. In fact, it is simply incorrect that all ILECs receive high-cost universal service support based on their actual costs. For example, interstate access support, model-based support, local switching support, high-cost loop support for average schedule ILECs, and transferred section 54.305 support are all based on factors other than an ILEC’s actual or embedded costs. We conservatively estimate that these components account for about \$1.3 billion, or about 40 percent, of annual ILEC high-cost universal service support.⁴¹

from Panhandle Tel. Co. to Marlene H. Dortch, FCC, WC Docket No. 05-337 (filed April 16, 2008) (“Panhandle Proposal”).

³⁹ Letter from AT&T to Marlene H. Dortch, FCC, WC Docket No. 05-337 (filed Oct. 5, 2007), at attachment (citing the 18-month transition from Part 31 to Part 32 accounting which cost between \$600 million and \$1.6 billion in 1986 dollars).

⁴⁰ *Id.*, attachment at 3-4.

⁴¹ This is based on an analysis of Universal Service Administrative Company quarterly filings with the FCC. Moreover, ILECs that receive support based on their “embedded costs” also receive a guaranteed universal service rate of return of 11.25% percent. That guaranteed universal service profit would need to be included in any calculation of “embedded cost” support for competitors.

While embedded costs should be avoided as a basis of support for wireless carriers or any other ETCs, CTIA does not oppose basing high-cost support on an objective assessment of carriers' actual costs – for example, as determined by an economic cost model. The Ubiquitous Mobility Study filed with CTIA's April 17, 2008 comments in this proceeding is an example of the beginnings of such a study. Appendices A and C implicitly condone the use of cost modeling in the intercarrier compensation context in approving an additional cost standard.⁴²

Second, the proposal in Appendix A to exclude spectrum costs in calculating wireless ETCs' costs is entirely baseless.⁴³ Wireless spectrum is an integral component of the networks that wireless carriers use to provide the supported services; it is analogous to the copper or fiber lines that wireline networks use to serve customer premises. The Commission itself has concluded that, in determining the cost of providing universal service, “[a]ny network function or element ... necessary to produce supported services must have an associated cost.”⁴⁴ There is therefore no basis to assert that spectrum costs “do not represent a direct investment in facilities and infrastructure for purposes of providing supported services in high-cost areas.”⁴⁵ It is also immaterial that spectrum investments “represent investment in an intangible asset with an indefinite life rather than a direct investment in facilities with a limited useful life.”⁴⁶ Many investments in wireline networks are eligible for universal service support even though they are intangible and/or have indefinite useful lives – most notably rights of way (which are both intangible and may have indefinite useful lives) and ownership interests in land (which have

⁴² See, e.g., *Order and Notice*, app. A ¶ 259, app. C ¶ 254.

⁴³ *Id.* at app. A ¶ 53, n.148.

⁴⁴ *First Universal Service Order*, 12 FCC Rcd at 8913 ¶ 250.

⁴⁵ *Order and Notice*, app. A at n.148.

⁴⁶ *Id.*

indefinite useful lives), but also intellectual property rights included in the cost of equipment deployed and software costs. Moreover, given that new spectrum blocks are sold at auction, spectrum is leased in the secondary market, and wireless licenses are routinely valued in corporate transactions, determining the cost of spectrum would not be difficult from an economic perspective.

Third, the system proposed in Appendix A for determining competitive ETCs' ("CETC") support also must be rejected because it would divide a CETC's "costs" (however determined) by the *ILEC's* line counts, rather than its own, to determine a per-line cost value.⁴⁷ This proposal is patently absurd as an element of a plan to determine CETCs' own costs, and appears designed solely to create a further obstacle to wireless ETCs' ability to meet the standard.

Fourth, the proposal must be rejected because it would compare wireless ETCs' per-line costs (however they are calculated) to the national average *ILEC* cost per line. It is simply bizarre that the proposal would continue to compare CETC costs to ILEC costs, given that one of the primary reasons advanced by Appendix A for requiring CETCs to prove up their own costs is to disconnect CETC support from ILEC costs. The draft orders offer no justification for why an ILEC cost benchmark represents a standard that would, as required by section 254 of the Act, lead to sufficient support or why such a comparison would not violate the competitive neutrality requirement.

Finally, even if a wireless carrier is able to surmount the prodigious but baseless obstacles that the proposal would interpose and show that its costs exceed the wireline benchmark, the proposal would simply continue to provide the CETC with the current level of

⁴⁷ *Id.* at app. A ¶ 54.

funding, without making any effort to determine whether this amount is sufficient to ensure the reasonable comparability of wireless services and rates in rural and high-cost areas.⁴⁸ In other words, the high-cost wireless ETC would receive no more support than it received under the cap. So, those high-cost rural areas that do not currently qualify for support under the “interim” cap would remain unsupported.

That outcome effectively would make the “interim cap” permanent as some FCC Commissioners and many Members of Congress fear. Senators Rockefeller, Pryor, Dorgan, Klobuchar, and Smith stated “although the cap is reported to be a temporary cap, we are concerned that it would become a de facto permanent cap.”⁴⁹ In expressing their concerns that an interim cap on wireless carrier support would “unfairly skew the marketplace,” Senators Sununu, McCain, DeMint, and Ensign observed that “[m]any interim measures enacted by the Federal Communications Commission in past have lived far longer than intended when proposed.”⁵⁰ Senators Durbin and Obama worried that “[a]ccepting rural inequity of access to wireless telecommunications runs counter to that [universal service] spirit and would place those communities at a competitive disadvantage.”⁵¹ Moreover, such an outcome would “penalize most harshly the very states that heeded calls for discretion in the designation process.”⁵²

⁴⁸ 47 U.S.C. §§ 254(b)(3); (e).

⁴⁹ See Letter from Senator Jay Rockefeller IV, Senator Mark Pryor, Senator Byron L. Dorgan, Senator Amy Klobuchar, and Senator Gordon Smith to Commissioners Tate and Baum (Mar. 21, 2007).

⁵⁰ See Letter from Senator John E. Sununu, Senator John McCain, Senator Jim DeMint, and Senator John Ensign to Joint Board Chairman Tate (Apr. 13, 2007).

⁵¹ See Letter from Senators Richard J. Durbin and Barack Obama to Chairman Kevin J. Martin, FCC (Jul. 26, 2007).

⁵² See *In re: High-Cost Universal Service Support*, WC Docket No. 05-337, 23 FCC Rcd 8834 (2008) at Dissenting Statement of Commissioner Jonathan Adelstein.

Notwithstanding the positions discussed herein, CTIA continues to believe the Commission should eventually transition to a single, high-cost universal service support mechanism that provides the same “per-line” support to both the incumbent and competitors based on the costs of the most efficient technology to serve a particular geographic area. Such a mechanism would disassociate a company’s support from its own inefficiencies, but would provide support that is sufficient based on an objective measure of efficiency. Providing the same per-line amount of support to all ETCs creates an incentive for efficiency. Such a mechanism is consistent with elimination of the identical support rule because it would provide support based on the number of customers an ETC serves; so, although it would provide the same “per-line” support, it would not provide all competitors in a particular geographic area the same or identical amount of high-cost support.

B. Further Notice of Proposed Rulemaking

The FCC’s proposed FNPRM in Plan C provides stakeholders a perfect opportunity to take the time necessary to develop a successor universal service mechanism or mechanisms specifically designed to ensure the deployment and maintenance of advanced mobile wireless services in high-cost areas.⁵³ It is CTIA’s desire and expectation that the Commission will expeditiously complete a proceeding to develop any mobile wireless high-cost support mechanism(s) – and that it will do so prior to any reduction of support determined under current support mechanisms.⁵⁴

⁵³ See *supra* Section II.A.

⁵⁴ See *infra* Section II.C.

C. Transition

Because it would be irresponsible and unlawful to eliminate CETCs' support on a flash-cut basis, the transition proposal in Plan C is significantly superior to either Plan A or Plan B.⁵⁵ CETCs have implemented business plans in reliance on current support levels, and are currently serving customers in areas that are uneconomic to serve absent support. The dislocation that would result from a flash-cut withdrawal of support mandates a reasonable transition plan.⁵⁶

While preferable, Plan C could still be improved and should be conformed to the CTIA *ex parte* submission it was intended to implement.⁵⁷ First, it should be a true five-year transition, rather than a four-year plan as articulated in Plan C.⁵⁸ During that five-year transition, support currently provided to CETCs would be phased out in equal increments *and* funding provided under any successor mechanism(s) would be phased in (*see supra* Section II.B.). The phase-out of support currently received under the identical support rule and the phase-in of support provided under any successor mechanism(s) would occur concurrently so that both are complete at the end of a five-year period.⁵⁹ The phase-out of support thus should not begin until the phase-in of support under the successor mechanism begins.

The transition of CETC support thus would begin once a successor mechanism is adopted. Current support would be reduced by twenty percent *at the end of the first year* and in

⁵⁵ *See Order and Notice*, app. A ¶ 55; app. B ¶ 20 n.64.

⁵⁶ A transition for CETCs is also mandated by the competitive neutrality requirement, given that all three proposals would provide a transition mechanism for any support removed from an ILEC ETC.

⁵⁷ "Appendix C incorporates changes [to Appendix A] proposed in the *ex parte* presentations attached as Appendix D," including CTIA's Oct. 22, 2008 filing in this docket. *Order and Notice* at ¶ 40 and app. D.

⁵⁸ *Id.* at app. C ¶ 52 (proposing that all CETC support would be eliminated at the end of the fourth year following the beginning of the transition).

⁵⁹ Letter from CTIA to Marlene H. Dortch, FCC, WC Docket No. 05-337 (filed Oct. 22, 2008) at 2 (also included in *Order and Notice*, app. D) (calling for "the same five-year transition period" for CETC support changes as for reductions in intercarrier compensation charges).

equal increments at the end of each succeeding year (to allow for a full transition in five, not four, years). On the same schedule, support provided under any successor mechanism(s) would be phased in, also in twenty percent increments. When this transition is adopted, the FCC should eliminate company-specific conditions that currently apply to Verizon Wireless and Sprint Nextel,⁶⁰ as they will be superseded by the new provisions of general applicability.

III. BROADBAND FOR LIFELINE/LINK-UP CUSTOMERS

Appendices A and C both propose to expand the Lifeline and Link-Up programs to encourage broadband access by low-income consumers.⁶¹ Both Appendices cite to recent petitions from TracFone and CCIA advocating such expansion. As these petitions show, the principal barrier to low-income consumers' broadband subscribership is in many cases financial. Both petitions cite to recent data from the Pew Internet & American Life Project showing that broadband adoption rates vary widely by income, with only 25 percent of Americans with incomes below \$20,000 subscribing to broadband – substantially below the average of 55 percent and well below the 85 percent of households with incomes above \$100,000 that subscribe to broadband.⁶² CCIA also convincingly catalogs the considerable benefits that broadband service could provide to low-income consumers.

⁶⁰ See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, et al.*, WT Docket No. 08-95 *et al.*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258 (rel. Nov. 10, 2008); *Sprint Nextel Corp. and Clearwire Corp. Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, *et al.*, Memorandum Opinion and Order, FCC 08-259 (rel. Nov. 7, 2008).

⁶¹ *Order and Notice*, app. A ¶¶ 64-91, app. C ¶¶ 60-87.

⁶² See *Lifeline and Link Up, Federal-State Joint Board on Universal Service*, WC Docket No. 03-109, CC Docket No. 96-45, Petition for Rulemaking to Enable Low-Income Consumers to Access Broadband Through the Universal Service Lifeline and Link Up Programs (filed Oct. 7, 2008) (“*CCIA Petition*”) at 2; *Lifeline and Link Up, Federal-State Joint Board on Universal Service*, WC Docket No. 03-109, CC (continued on next page)

CTIA therefore strongly supports the fundamental proposal in Appendices A and C that the Commission should expand the Lifeline program to bring broadband service within reach of more low-income consumers.

IV. REFORM OF UNIVERSAL SERVICE CONTRIBUTIONS

As discussed in more detail below, CTIA supports the intention in all three proposals to assess contributions based primarily on telephone numbers. As a member of the USF By the Numbers Coalition, CTIA has consistently maintained that the existing revenue-based contribution methodology has become unsustainable in the current environment.⁶³ As all three draft orders appended to the *Order and Notice* observe, it is increasingly difficult to identify assessable interstate end-user telecommunications revenues.⁶⁴ The Commission should adopt a numbers- and connections-based contribution methodology, and establish a prompt but reasonable transition to that mechanism. CTIA therefore urges the Commission to adopt a pure numbers- and connections-based contribution methodology along the broad lines set out in Appendix B to the *Order and Notice*.

In order to meet the statutory requirement that the contribution methodology be “equitable and non-discriminatory,” however, the new rules must contain appropriate provisions for prepaid wireless services and wireless family plans.⁶⁵

All three draft orders correctly recognize that wireless prepaid plans are uniquely situated and should not be subject to the standard per-number assessment level.⁶⁶ Indeed, usage patterns

Docket No. 96-45, Petition to Establish a Trial Broadband Lifeline/Link Up Program (filed Oct. 9, 2008) (“*TracFone Petition*”) at 2.

⁶³ See, e.g., Letter from John Windhausen, USF by the Numbers Coalition, to Marlene Dortch, FCC, WC Docket No. 06-122 (filed Oct. 28, 2008); Letter from CTIA to Marlene Dortch, FCC, WC Docket No. 06-122 (filed Sept. 30, 2008), att. at 5 (endorsing the joint AT&T/Verizon proposal filed Sept. 11, 2008).

⁶⁴ *Order and Notice*, app. A ¶ 97, app. B ¶ 44, app. C ¶ 93.

⁶⁵ 47 U.S.C. § 254(b)(4).

on prepaid wireless phones often differ considerably from postpaid customers' usage patterns. Prepaid phones are typically bought by customers that seek to control their spending by controlling their usage, and are sometimes bought by consumers that want a wireless phone available for safety but may generate no usage at all during most months. The contribution level for prepaid wireless connections should recognize the particular characteristics of this service.

Wireless family plan customers also are uniquely situated such that modification of the per-numbers assessment is appropriate. Like wireless prepaid connections, wireless family plan connections generate substantially less revenue than other connections. The issue with wireless family plan connections is also unique because of its scope – there are over 70 million customers that would be affected, creating a significant rate shock problem that must be managed responsibly.⁶⁷ The draft orders are also unpersuasive in characterizing a wireless family plan exception as not competitively neutral.⁶⁸ There is no evidence that market pricing structures for wireline second lines would be as drastically affected as wireless family plan lines, nor that the scope of the problem is nearly as significant in the wireline context.⁶⁹

CTIA urges the Commission to adopt a pure numbers- and connections-based contribution mechanism, such as that proposed in Appendix B, and to make appropriate modifications for prepaid wireless services and wireless family plan connections.

⁶⁶ *Order and Notice*, app. A ¶¶ 35-39, app. B ¶¶ 83-88; app. C ¶¶ 131-135.

⁶⁷ See Letter from CTIA – The Wireless Association to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed Oct. 10, 2008) at 2.

⁶⁸ *Order and Notice*, app. A ¶ 145, app. B ¶ 93, app. C ¶ 140.

⁶⁹ In addition, it is ironic that the draft orders are concerned about competitive neutrality in the contribution context, when it works against wireless carriers, but ignore the principle altogether in the high-cost reform context, where its consideration would appropriately balance wireless ETCs' interests.

V. INTERCARRIER COMPENSATION

With certain exceptions discussed below, CTIA supports the Commission’s proposals with respect to intercarrier compensation reform. CTIA has long championed such reform, and applauds the proposed shift to a unified, cost-based rate for the termination of all telecommunications traffic. The adoption of a unified, cost-based rate will limit marketplace distortions, promote efficiency, and reduce costs for consumers. CTIA proposes certain modifications to Plans A and C to ensure that distortions are minimized, efficiencies are captured, and consumers – not specific providers – reap the benefits of reform.

A. Legal Authority for Comprehensive Reform

CTIA agrees with the Plan A and Plan C determination that all telecommunications service traffic, whether local, intrastate, or interstate, should be brought within the ambit of section 251(b)(5) and thus subject to uniform federal pricing standards. As the Commission explains in the *Order*, section 251(b)(5) is worded to encompass all “telecommunications,” and is not limited either geographically or by service type.⁷⁰ Indeed, Congress expressly contemplated in section 251(g) that non-local traffic would be brought into the reciprocal compensation regime when the Commission deemed such migration appropriate.⁷¹ In any event, as the Commission explains, it would be entitled to revise its interpretation of section 251(b)(5) even absent such an explicit provision, so long as it set forth valid reasons for doing so.⁷²

⁷⁰ See *Order and Notice* at ¶ 8.

⁷¹ That provision preserved the Commission’s pre-1996 Act rules regarding “exchange access, information access, and exchange services for such access,” but only until they were “explicitly superseded by regulations prescribed by the Commission.” 47 U.S.C. § 251(g).

⁷² See *Order and Notice*, Appendix app. A ¶ 262, (quoting *Nat’l Cable & Telecommunications Assoc. v. Brand X*, 545 U.S. 967, at 981 (2005)) (internal citations and quotations removed); *Chevron U.S.A. Inc. v. Nat’l Res. Def. Council*, 467 U.S. 837, 863–64 (1984) (“*Chevron*”); *Motor Vehicle Mfrs. Ass’n of United* (continued on next page)

Moreover, having brought toll traffic within the ambit of section 251(b)(5), the Commission is clearly empowered to prescribe a specific pricing methodology for application by the states. In *Iowa Utilities Board*, the Supreme Court explained that there was no need to decide whether the federal government had jurisdiction to regulate traffic subject to section 251: “With regard to the matters addressed by the 1996 Act, it unquestionably has.”⁷³ Section 251 had specifically required the Commission to promulgate implementing rules. As a consequence, the Court held, “the Commission has jurisdiction to design a pricing methodology” for states to employ when exercising their section 252 responsibilities.⁷⁴

CTIA specifically supports the Commission’s reiteration of exclusive federal jurisdiction over CMRS interconnection in all cases. As the *Order on Remand* explains, “[t]he Commission unquestionably has authority to regulate ... rates charged by CMRS providers,”⁷⁵ and it has long preempted “‘state and local regulations of the kind of interconnection to which CMRS providers are entitled’ based on its authority under sections 201 and 332.”⁷⁶ Moreover, “in permitting LEC-CMRS interconnection to be addressed through the section 251 framework, the Commission did not in any way lose its independent jurisdiction or authority to regulate that traffic under other provisions of the Act.”⁷⁷ Thus, CTIA asks the Commission to emphasize that

States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 59 (1983) (“*State Farm*”) (Rehnquist, J., concurring in part and dissenting in part).

⁷³ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999).

⁷⁴ *Id.* at 384-85; *see also id.* at 378 (“The FCC has rulemaking authority to carry out the ‘provisions of this Act,’ which include §§ 251 and 252, added by the Telecommunications Act of 1996.”).

⁷⁵ *Order and Notice* ¶ 17.

⁷⁶ *Id.* ¶ 19 (quoting *Implementation of Sections 3(n) and 332*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1498 ¶ 230 (1994)). *See also id.* at app. A ¶¶ 213-214.

⁷⁷ *Id.* ¶ 20. *See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 16005 ¶ 1023 (1996) (“By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction.”) (“*Local Competition*” (continued on next page)

the actions it takes to impose uniform rates for the transport and termination of traffic do not in any manner surrender the federal government's exclusive jurisdiction over LEC-CMRS interconnection.

CTIA likewise supports the Commission's proposed determination that IP-PSTN and PSTN-IP traffic is properly classified as "information service" traffic and subject to federal jurisdiction.⁷⁸ In rendering this determination, however, the Commission should not limit itself to the "net protocol conversion" rationale cited in the draft orders.⁷⁹ This rationale, for example, might be understood to *exclude* IP-to-IP traffic, which arguably involves no net protocol conversion, but which obviously is at least as deserving of an "information service" classification as IP-PSTN traffic. Thus, the Commission should recognize that many IP-PSTN and IP-to-IP services offer "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications,"⁸⁰ and that they therefore constitute "information services" for reasons other than (or in addition to) net protocol conversion.

As more and more communications offerings migrate to IP-based platforms, the proposed "information services" classification could throw doubt on parties' numbering and interconnection rights in the absence of Commission action. As the Commission has observed, providers of information services, including interconnected VoIP providers, are generally not directly entitled to numbers or interconnection, both of which are limited to "telecommunications

Order"); *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997), vacated and remanded in part on other grounds, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁷⁸ See *Order and Notice*, app. A ¶¶ 209-11, app. C ¶¶ 204-06.

⁷⁹ See *id.* at app. A ¶ 209, app. C ¶ 204.

⁸⁰ 47 U.S.C. § 153(20) (defining "information service").

carriers.”⁸¹ These providers must therefore enter into “commercial arrangements with one or more traditional telecommunications carriers.”⁸² As the proportion of carriers offering IP-based voice communications grows, these commercial-agreement requirements will become increasingly costly to end users, and will need to be addressed.

B. Additional Cost Standard

CTIA strongly supports the proposed “additional cost” standard for establishing rates for the transport and termination of traffic. Reliance on “additional cost,” derived by computing “the stand alone cost of a network which incorporates all existing services except call termination (including call origination, switching, etc.) and then subtracting this amount from a comparable estimate of the total cost of providing all the same existing services, including call termination,”⁸³ will promote efficiency and deter arbitrage.

As an initial matter, the Commission enjoys clear legal authority to adopt a different pricing standard for transport and termination under section 252(d)(2) than for unbundled network elements (“UNEs”) under section 252(d)(1). As the Commission notes, the two provisions use different language, and “additional cost” is the statutory touchstone for transport and termination pricing.⁸⁴ Whether or not the Commission deemed the language used in these sections to be “sufficiently similar to permit the use of the same general pricing methodologies for establishing rates” in 1996,⁸⁵ they clearly differ from one another, suggesting that Congress

⁸¹ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15719 ¶ 19 n.47 (2007); *Telephone Number Requirements for IP-Enabled Services Providers, et al.*, WC Docket No. 07-243, et al., Report and Order, 22 FCC Rcd 19531, 19542 ¶ 20 (2007).

⁸² *Telephone Number Requirements for IP-Enabled Services Providers*, 22 FCC Rcd at 19549 ¶ 34.

⁸³ *Order and Notice*, app. A ¶ 251.

⁸⁴ 47 U.S.C. § 252(d)(2).

⁸⁵ *Local Competition Order* ¶ 1054.

expected the Commission to adopt distinct pricing mechanisms for the different contexts and objectives at issue, and certainly providing ample basis for the Commission to set different standards for them.⁸⁶

The “additional cost” standard is also superior to TELRIC as a means of assessing section 252(d)(2) rates. First, while the inclusion of joint and common costs may be appropriate in the UNE context, it is not appropriate in the context of transport and termination. Carriers relying on UNEs are serving customers who are not the ILEC’s end users (at least with respect to the service at issue), and therefore are generating joint and common costs that the ILEC would otherwise avoid; thus, it is appropriate for them to bear some portion of joint and common costs. But terminating carriers would incur all joint and common costs associated with transport and termination even absent that additional traffic. Under these circumstances – where the additional traffic imposes no joint costs not already attributable to the carrier’s own end-user customers – it is appropriate to exclude those costs from transport and termination rates.

Second, it is appropriate to exclude fixed costs from section 252(d)(2) rates. The TELRIC methodology includes such costs⁸⁷ because that methodology aims to replicate the forward-looking cost a carrier would incur if it in fact constructed an efficient network to serve users, adjusted to reflect the relevant increments of service.⁸⁸ In contrast, transport and termination rates are properly concerned only with the additional costs of terminating third-party

⁸⁶ See, e.g., *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53, 63 (2006) (internal quotations and citations omitted) (“We normally presume that, where words differ as they differ here, Congress acts intentionally and purposely in the disparate inclusion or exclusion. There is strong reason to believe that Congress intended the differences that its language suggests, for the two provisions differ not only in language but in purpose as well.”).

⁸⁷ See *Local Competition Order*, 11 FCC Rcd at 15851 ¶ 692. See also *Order and Notice*, app. A ¶ 244 (“Long-run incremental cost refers to the cost of an increment when all inputs are variable.”).

⁸⁸ Thus, TELRIC is “essentially an average cost methodology” rather than a true “incremental cost” methodology. *Order and Notice*, app. A ¶ 251.

traffic over the existing network. Under these circumstances, the carriers that hand this traffic off for termination do not prompt new fixed costs, and there is no economic basis for assigning such costs to them.

Finally, to the extent possible, the Commission should use language designed to ensure that states implementing the additional cost standard do so correctly. For example, a rate that excluded joint and common costs but retained some allocation of fixed costs (or that eliminated fixed costs but retained joint and common costs) would be incompatible with the standard adopted. The Commission should make this point clear.

C. Importance of a Unified Rate

CTIA urges the Commission to reject proposals calling for carrier-specific final termination rates.⁸⁹ Such rates would increase costs for consumers and would be incompatible with the additional-cost methodology contemplated by the Commission's proposals.

First, the preservation of carrier-specific termination rates would maintain opportunities for inefficient arbitrage and would therefore disserve consumers. In the 2005 *Further Notice*, the Commission cited “the need to replace the existing patchwork of intercarrier compensation rules with a unified approach,” noted that “the current rules make distinctions based on artificial regulatory classifications that cannot be sustained in today’s telecommunications marketplace,” and observed that “[t]hese distinctions create both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions.”⁹⁰ A regime that unified rates on a per-carrier, per-state basis would eliminate *some* arbitrage opportunities, but leave other

⁸⁹ See *Order and Notice* ¶ 41 (“[S]hould the terminating rate for all § 251(b)(5) traffic be set as: (i) a single, statewide rate; or (ii) a single rate per operating company?”).

⁹⁰ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4685, 4687 ¶ 3 (2005).

worrisome opportunities in place. For example, the “access stimulation” problem arises from the fact that some carriers enjoy termination rates substantially higher than others, permitting them to share access revenues with business partners who attract enormous call volumes but whose services could not survive if not subsidized by interexchange providers.⁹¹ This kind of scheme could continue if different providers were entitled to differing access rates. Moreover, in light of the terminating access monopoly and geographic rate averaging in the long-distance market, competitive pressures that would otherwise promote reliance on carriers with lower termination costs will not be available, raising the specter of inefficient network usage even absent willful arbitrage.

Second, the “additional cost” standard itself weighs heavily in favor of unified state-wide rates. If the relevant figure is the difference between (1) the forward-looking short-run incremental cost of terminating all traffic terminated over the network and (2) the forward-looking short-run incremental cost of terminating all traffic except for that of third-party carriers, then there is no reason to expect significant variation in the “additional costs” faced by different providers. This “forward-looking” approach must assume use of the most efficient technologies, irrespective of whether a particular carrier would or even could adopt such technologies. As explained in Plans A and C:

[The claim that the additional cost standard should account for a particular provider’s network technologies] fundamentally misconstrues the purpose of a forward-looking cost methodology. The adoption of a forward-looking cost standard does not imply in any way that existing carriers should replace fully functional plant and equipment simply because a more recent vintage of

⁹¹ See generally *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989 (2007); *Qwest Communications Corp. v. Farmers & Merchs. Mut. Tel. Co.*, File No. EB-07-MD-001, Memorandum Opinion and Order, 22 FCC Rcd 17973 (2007).

replacement equipment is available. Forward-looking costs are simply a measure of the economic value of future investments, and in a competitive marketplace, these values should determine the appropriate investment decisions regarding replacement of existing plant. More importantly, these values should be used as an appropriate guide in setting efficient prices for the utilization of existing plant and equipment.⁹²

In short, while the particular characteristics of a state might affect costs (and even forward-looking costs) for all providers in a state, the particular technology choices a specific provider has made or will make should have no role in a forward-looking cost mechanism, and adoption of carrier-specific rates within a state is therefore incompatible with the proposed additional cost standard.⁹³

Given the importance of a unified, symmetrical rate, CTIA also supports the proposed limitations on both the scope and the duration of section 251(f) exemptions from the rates adopted.⁹⁴ For reasons discussed herein, the additional cost methodology will promote the public interest and engender efficient use of the network. Furthermore, even setting aside the provisions that CTIA opposes herein, the proposals already contemplate mechanisms whereby carriers can recoup additional costs to the extent necessary – in the form of increased SLCs and retail rates where possible, and then (but only then) additional Interstate Access Support or Interstate Common Line Support support. These various provisions will help ensure that carriers do not require significant section 251(f) exemptions, and the Commission should work to ensure that they do not attempt to use this provision to undermine the public-interest benefits of the proposed plan.

⁹² See *Order and Notice*, app. A ¶ 259, app. C ¶ 254.

⁹³ See, e.g., *Local Competition Order*, 11 FCC Rcd at 16040 ¶ 1085 (“Both the incumbent LEC and the interconnecting carriers usually will be providing service in the same geographic area, so the forward-looking economic costs should be similar in most cases.”).

⁹⁴ See *Order and Notice*, app. A ¶¶ 282-90, app. C ¶¶ 277-85.

D. Default Interconnection Rules

As discussed below, CTIA supports the default interconnection rules described in Plan A, but opposes the “rural transport rule” modification set forth in Plan C. This modification would be inequitable and unlawful, and must be rejected. In the event the Commission does adopt a “rural transport rule,” it must at least enact protections similar to those contemplated in the so-called Missoula Plan to ensure that the carriers that will bear transport costs have an opportunity to minimize those costs.

The default interconnection rules set forth in Plan A are sensible, and largely track those proposed by CTIA earlier in this proceeding. Under Plan A, the calling party’s network provider must bring traffic to the edge of the called party’s network, using any combination of its own facilities and other providers’ facilities. The calling party’s provider is responsible for paying the terminating rate, while the called party’s network is responsible for all functions associated with delivery. If the called network does not permit interconnection at its edge, it must provide transport at no charge to that location from another location in the same LATA. The calling party’s network has exclusive discretion over whether to connect directly or indirectly with a called network.⁹⁵ These default rules effectively mirror the principles set forth in CTIA’s “Mutually Efficient Traffic Exchange” (“METE”) proposal.⁹⁶ Thus, CTIA supports the Plan A interconnection rules.

⁹⁵ See *id.* at app. A ¶ 275.

⁹⁶ Under the METE proposal, an “originating carrier would be responsible for assuming the costs of delivering an interconnected call, including the securing of any necessary transport services, to the terminating carrier’s network edge and could determine how to provision facilities to deliver traffic to the terminating carrier,” Comments of CTIA, CC Docket No. 01-92, at 22 (filed May 23, 2005), and “the terminating carrier would be responsible for assuming all of the costs of delivering the traffic from the receiving edge to its end user customer,” *id.* at 23.

However, CTIA strongly opposes the Plan C “rural transport rule” modification. Under this modification, when the non-rural terminating carrier’s POP is located outside the rural rate-of-return ILEC’s service area, the rural rate-of-return ILEC’s transport and provisioning obligation ends at its meet point, and the non-rural terminating carrier is responsible for the remaining transport to its POP.⁹⁷

Whether considered now or later,⁹⁸ the rural transport rule should be rejected as contrary to the public interest and legally deficient. If adopted, the rule would permit rural LECs to foist inefficient legacy wireline network costs onto their competitors and those competitors’ customers. It would also forego the “substantial benefits of symmetrical rates” – benefits that are extolled at length in the passage of Plan C immediately following the default interconnection rules.⁹⁹ In fact, just two pages after proposing the rural transport rule, Plan C concludes that “requiring symmetrical compensation arrangements without any exceptions is proper,” and that “an exception to symmetrical rates [even] where traffic is out of balance is not warranted.”¹⁰⁰ Of course, to require a non-rural terminating carrier to bear the costs of transporting traffic from a meet point to the edge of its network even though the rural carrier bears no reciprocal burden when *it* terminates traffic is to reject rate symmetry, no less lopsided than an outright imposition of disparate per-minute rates would be. In both cases, the non-rural carrier pays more to

⁹⁷ *See Order and Notice*, app. C ¶ 270.

⁹⁸ Notably, this rule would constitute the only aspect of the Order that would set rules regarding transiting and transport rates. At the very least, then, consideration of the rural transport rule should be postponed until the Commission undertakes the broader examination of ancillary issues contemplated in the Further Notice attached to Plans A and C. *See id.* at app. A ¶¶ 345-49, app. C ¶¶ 342-46.

⁹⁹ *See id.* at app. C ¶¶ 271-76.

¹⁰⁰ *Id.* at app. C ¶ 276.

terminate traffic to the rural carrier than the rural carrier pays to terminate its traffic to the non-rural carrier.

This unfair and discriminatory rule would not only be bad public policy, it also would violate the Act. The Commission does not enjoy unfettered discretion to establish rates. Rather, its pronouncements must be supported by the statute. Under the Commission’s intercarrier compensation reforms, such compensation would be governed by section 251(b)(5). That section requires the terminating carrier to perform (and be compensated for performing) “transport” and “termination,” defined as transmission “from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party” or equivalent facility¹⁰¹ and “the switching of traffic that is subject to section 251(b)(5) at the terminating carrier’s end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party’s premise,”¹⁰² respectively. The rural transport rule, however, would require a *terminating* non-rural carrier to also incur the costs relating to transport beyond the scope of its own network – functions that section 251(b)(5), as it has been interpreted, does not include within the definition of “termination.” And while the Commission could in theory change its definition of “transport” for section 251(b)(5) purposes to require terminating carriers to bear the costs of transporting traffic from a designated “meet point,” it may *not* adopt one definition of that term for traffic exchanged between rural and non-rural carriers while retaining *another* definition for all other traffic. That approach would be arbitrary and capricious, and

¹⁰¹ *Local Competition Order*, 11 FCC Rcd at 16015 ¶ 1039.

¹⁰² *Id.* at 16015 ¶ 1040.

could not withstand judicial review.¹⁰³ Likewise, section 202(a) provides that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service.” But this would be precisely the result of the rural transport rule: Non-rural carriers would be required to apply one set of “charges, practices, [and] classifications” with respect to other non-rural carriers, and another set to rural carriers, notwithstanding the absence of any reasonable basis for the distinction. In short, there is no statutory support for the rural transport rule.

In the event the Commission adopts the rural transport rule notwithstanding these critical problems, it must at the least adopt the protections contemplated in the Missoula Plan’s original iteration of the rule.¹⁰⁴ Specifically, to the extent a terminating provider bears transport costs that would ordinarily be borne by the originating provider, the terminating carrier must be permitted to choose between direct and indirect termination to ensure efficient interconnection. Absent this important caveat, rural carriers would be able to force other carriers to bear whatever costs their networks impose, without any opportunity for these other carriers to opt out and seek more efficient means of interconnection. Moreover, the rural carrier’s incentives to reduce costs would be eroded by the guarantee that other carriers will shoulder a substantial portion of their

¹⁰³ See, e.g., *Clark v. Suarez Martinez*, 543 U.S. 371, 380-81 (2005) (interpretation of statutory text may not change on a case-by-case basis); *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (obligation to “interpret the statute consistently” mandated uniform application in criminal and non-criminal contexts).

¹⁰⁴ See Missoula Plan Supporters, THE MISSOULA PLAN FOR INTERCARRIER COMPENSATION REFORM 33 (2006) (“Missoula Plan”), *attachment to* Letter from Tony Clark, Chair, NARUC Committee on Telecommunications et. al., to Kevin J. Martin, Chairman, FCC, CC Docket No. 01-92, Attachment at II(E)(3)(e)(i)(2) (filed July 24, 2006) (“Missoula Plan”) (“A Track 1 carrier also will bear the financial obligation for provisioning the interconnection transport to carry traffic (in both directions) between its Edge and the meet point with the Track 3 ILEC. *The Track 1 carrier will determine whether the interconnection transport should be provided through direct interconnection or through an indirect arrangement.*”) (emphasis added).

transport costs. Thus, while this exception from the otherwise-applicable interconnection regime would not cure the rural transport rule's legal infirmities, it would mitigate the moral hazard that would otherwise plague interconnection between rural and non-rural carriers under that rule.

E. Transition

CTIA respectfully asks the Commission to modify the proposed transition proposal in four ways. Specifically, the Commission should (1) reduce the proposed transition period by half, from ten years to five years; (2) make clear that wireless providers currently collecting terminating access charges pursuant to contract will not be precluded from doing so during the transition; (3) specify that *all* wireless providers are entitled to collect charges for transport and termination once rates within a state have been unified (but before they have migrated to the final "additional cost" standard); and (4) clarify that the Order's symmetry requirements with respect to section 251(f) will apply during the transition period.

First, the Commission should reduce the proposed 10-year transition period to five years. As the Commission has made clear, dramatic change in the telecommunications market has placed immense strains on the existing intercarrier compensation regime, and providers are paying above-cost rates for almost every minute of traffic that traverses the network. Moreover, the near future is likely to see at least as much upheaval as the recent past, with users shifting away from traditional offerings and toward mobile wireless and IP offerings provisioned over a variety of physical infrastructures. Under these circumstances, there is no basis for maintaining the outdated intercarrier compensation framework any longer than is absolutely necessary. Thus, CTIA supports a transition that would eliminate inefficient implicit subsidies and not unnecessarily extend the time it takes for the benefits of cost-based rates to reach American consumers. Such a five-year transition plan might be designed along the lines suggested by Verizon, which proposes "to cap intrastate terminating access rates at interstate levels by the end

of the first year; to cap terminating rates at a rate no higher than the state's average reciprocal compensation rate by the end of the third year; and to unify all terminating rates at the final terminating rate by the end of the fifth year.”¹⁰⁵

Second, to the extent a CMRS provider currently collects charges for transport and termination of traffic pursuant to contract, the Commission should make clear that the new regime does not abrogate the terms of that contract, and that, subject to those terms, the provider is entitled to continue collecting charges during the transition. Citing the Commission's mandatory detariffing requirements, Plans A and C appear to assume that CMRS providers are not currently collecting any revenues for transport and termination.¹⁰⁶ But at least some CMRS providers are collecting access charges today pursuant to contract. There is no reason why their ability to collect such charges should be rescinded, and in fact the draft proposals never suggest any intention to that effect. Thus, CTIA asks the Commission to modify any order to make clear that it is not intended to abrogate or modify such contracts.

Third, once statewide transport and termination rates are unified at the close of the transition's second phase, all CMRS providers should be entitled to collect compensation for performing those functions. The Commission's suggestion that this would amount to an “increase [in] rates during the transition”¹⁰⁷ is misplaced. Unlike providers whose rates are below the interim rate because regulators have decided that higher rates would be unwarranted or illegal, CMRS providers are only precluded from collecting transport and termination charges

¹⁰⁵ Letter from Susanne A. Guyer, Senior Vice President, Verizon, to Kevin J. Martin, Chairman, FCC, WC Docket Nos. 04-36, 05-337, 06-122, CC Docket Nos. 96-45, 01-92, at 5 (filed Oct. 28, 2008).

¹⁰⁶ “We note that because CMRS providers may not tariff terminating access today, and we do not permit a carrier to increase rates during the transition, CMRS providers therefore will not be permitted to charge for terminating access until the end of the transition period.” *Order and Notice*, app. A ¶ 197, app. C ¶ 192.

¹⁰⁷ *Id.* at app. A ¶ 197, app. C ¶ 192.

because providers refuse to negotiate with them and the Commission’s rules prohibit them from tariffing access charges as other providers do. Thus, a CMRS provider’s application of terminating access charges would not constitute backsliding toward an implicit subsidy, but rather would correct for an existing distortion in the competitive landscape.

Finally, there is no reason to postpone the application of the Order’s symmetry requirements with respect to section 251(f) until the end of the transition period. As drafted, Plans A and C currently suggest that the limitations on section 251(f) would only take effect “at the end of the transition period.”¹⁰⁸ For the reasons discussed above, however, these symmetry requirements will promote the public interest and ensure that the benefits of reform are not undermined. This is particularly true with regard to the arbitrage concerns discussed above. These requirements should therefore be effective during the transition to ensure that all providers migrate toward unified cost-based rates together.

F. Revenue Recovery Opportunities

The Order is correct that the Commission must not provide universal service support to ensure “revenue neutrality” to any group of carriers, but instead must “ensure that any new universal service subsidies are targeted carefully to situations where they are most crucially needed.”¹⁰⁹ Thus, the Commission should apply the standards set out for price cap ILECs in Appendix A to *all* ILECs, including rate-of-return ILECs. In other words, additional support should not be provided to *any* carrier unless it can show that it cannot earn a return on investment, taking into account all revenue opportunities available from the supported network, and assuming increases in SLCs and end-user rates to the maximum degree.

¹⁰⁸ *Id.* at app. A ¶ 289, app. C ¶ 284.

¹⁰⁹ *Id.* at app. A ¶ 313.

There is no basis in today's competitive market to fund the bloated rate-of-return system with additional universal service support. More than five years ago, Western Wireless submitted a detailed petition cataloging the strong public policy benefits of eliminating rate-of-return regulation altogether, including preventing waste, fraud, and abuse; preventing cross-subsidies and mis-allocation of costs; enhancing incentives for innovation; and removing barriers to competition in rural areas.¹¹⁰ The Commission cannot provide additional support to prop up the rate-of-return system without addressing the detailed data and cogent arguments in that petition.¹¹¹

In addition, to the extent that any ILECs are permitted to recover some portion of revenues reduced as a result of intercarrier compensation reform through additional universal service support, the revenue recovery calculation should consider ILECs' revenues for all services that can be provided over the supported network, regulated and non-regulated (including broadband). To ensure that the fund does not support parochial state rate-making rules or bad ILEC business decisions, the calculation should impute revenue based on rate benchmarks derived from the average sales prices of these services (rather than looking at individual carrier revenues). There is simply no justification for burdening the customers who ultimately fund universal service unless the Commission has concluded that reform will result in real hardship.

¹¹⁰ See *Western Wireless Corp. Petition for Rulemaking, To Eliminate of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822, CC Docket No. 96-45 (filed Oct. 30, 2003), submitted in the instant docket by Alltel ex parte, Letter from David L. Sieradzki, Counsel to Alltel, to Marlene Dortch, FCC, WC Docket No. 05-337 (filed March 6, 2007).

¹¹¹ See, e.g., *AT&T Wireless Services, Inc. v. FCC*, 270 F.3d 959, 968 (D.C. Cir. 2001) (basic principles of administrative law require the FCC to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.") (quoting *U.S. Telecom. Ass'n v. FCC*, 227 F.3d 450, 461 (D.C. Cir. 2000)).

