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
CELLULAR SOUTH LICENSES, INC.
NE COLORADO CELLULAR, INC.
MTPCS, LLC d/b/a CellularOne
THE CELLCOM COMPANIES

David A. LaFuria
David L. Nace
John Cimko
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102
(703) 584-8678

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SUMMARY

The Alliance offers the following recommendations for interim universal service support reforms. While there are many reforms that can be implemented within the intercarrier compensation and universal service mechanisms, we are convinced that reform of federal high-cost distributions should not be undertaken because the process to date has not given the Commission appropriate options. ***Accordingly, with respect to the proposed universal service support distribution mechanism, the Commission should adopt a Further Notice of Proposed Rulemaking to enable the next FCC, and perhaps the Congress, to determine how best to deliver broadband and mobility to rural America.***

There are a number of actions the Commission can take at this time and we offer the following recommendations:

- Intercarrier compensation rates should be harmonized at $0.0007 per minute of use.
- All support is made fully portable to competitive carriers.
- Define Carrier of Last Resort ("COLR") and require all ETCs to accept COLR obligations.
-
- All ETCs are permitted to use support to provide broadband Internet access service.
- Hold harmless provision put in place for small carriers through transition period.
- Disaggregate support to more accurately target funds to highest-cost areas.
- Reject a step-down of support to competitive ETCs.

These recommendations are discussed in more detail below. We urge the Commission to reject any solutions that reduces investment in advanced telecommunications services in rural areas. At this critical time in our nation's economy, investment should be increased so that rural consumers can see the benefits of improved wireless and broadband services, as well as the multiplier effect of job creation flowing from such investment.

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Cellular South Licenses, Inc. NE Colorado Cellular, Inc., MTPCS, LLC d/b/a Cellular One, and The Cellcom Companies ("Alliance Carriers"), by counsel, hereby provide comments

on proposals contained in the Further Notice of Proposed Rulemaking released by the Commission in the above-referenced dockets on November 5, 2008.[1] The Commission has sought comment on three specific proposals, noting that the general public, Congress, and members of the telecommunications industry urged the agency to take this step before reaching any decisions in the pending proceedings.[2] Although the Commission and the Federal-State Joint Board on Universal Service ("Joint Board") have been exploring ways to reform the Commission's universal service high-cost fund program for several years, the three proposals appended to the *Further Notice* are the progeny of three notices of proposed rulemaking adopted and released by the Commission in January of this year.[3]

I. EXECUTIVE SUMMARY OF RECOMMENDED ACTIONS.

After reviewing the Commission's three proposals, it is apparent that no action should be taken at this time with respect to universal service distributions. As set forth below, each of the

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[1] *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*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, released Nov. 5, 2008, 73 Fed. Reg. 66821, Nov. 12, 2008 ("*Report and Order*" and "*Further Notice*"). Comments are due on November 26, 2008. *See* 73 Fed. Reg. at 66821; FCC Public Notice, *Comment Dates Established for Comprehensive Intercarrier Compensation and Universal Service Fund reform Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-45, 96-98, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, DA 08-2486, rel. Nov. 12, 2008.

[2] *Further Notice* at para. 40. The three proposals are (1) *Further Notice*, App. A, Chairman's Draft Proposal, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ("*Chairman's Draft Proposal*"); (2) *Further Notice*, App. B, Narrow Universal Service Reform Proposal, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ("*Narrow Universal Service Reform Proposal*"); and (3) *Further Notice*, App. C, Alternative Proposal, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ("*Alternative Proposal*"). *Id*.

[3] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) ("*Identical Support NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) ("*Reverse Auctions NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) ("*Joint Board Comprehensive Reform NPRM*") (collectively, "*High-Cost Reform NPRMs*").

three proposals contains multiple provisions which violate the basic principles set forth in Section 254 of the Communications Act of 1934 ("Act"), as well as the FCC's own core principle of competitive neutrality. In several places, the Commission makes proposals that extend beyond its authority under the Act and would amount to the agency's attempting to usurp the legislative prerogatives of Congress. In many places, the Commission reaches conclusions for which there is no supporting evidence in the record. By requiring eligible telecommunications carriers ("ETCs") to provide broadband without providing any additional funding or ensuring that carriers can use high-cost support to build broadband, the Commission cannot demonstrate that support will be sufficient to advance the goals of the Act, as required by 47 U.S.C. Section 254. Moreover, a significant "takings" issue arises under the Fifth Amendment of the United States Constitution.

In sum, after years of inaction, the Commission is now attempting to rush through an incredibly complicated set of reforms in a document that is vague and fraught with unintended consequences. Adoption of any of the three proposals will almost assuredly be disastrous for consumers and mire the Commission in litigation for years to come.

Accordingly, with respect to the proposed universal service support distribution mechanism, the Commission should adopt a Further Notice of Proposed Rulemaking to enable the next FCC, and perhaps the Congress, to determine how best to deliver broadband and mobility to rural America.

Should the Commission determine that it must take some action on distribution reform at this time, Alliance Carriers provide below, in summary form, actions the FCC should take at the

scheduled December agenda meeting to reform the federal universal service distribution mechanism. The reforms proposed below were contained in an ex parte presentation provided to the Commission prior to the scheduled November 4, 2008 meeting.[4]

- Intercarrier compensation rates should be harmonized at $0.0007 per minute of use.
- All support is made fully portable to competitive carriers.
- Define Carrier of Last Resort ("COLR") and require all ETCs to accept COLR obligations.
- All ETCs are permitted to use support to provide broadband Internet access service.
- Hold harmless provision put in place for small carriers through transition period.
- Disaggregate support to more accurately target funds to highest-cost areas.
- Reject a step-down of support to competitive ETCs.

In these comments, the Alliance Carriers intend to provide the Commission with some rational way to take action now on the federal universal service distribution mechanism, even though it is Alliance Carriers' position that there is no emergency with respect to distributions, there never has been an emergency, and long-term reforms must comply with the core principles set forth in Section 254 of the Act, as well as the FCC's own core principle of competitive neutrality.[5]

[4] *See, e.g.* Ex Parte Presentation of Cellular South and Alliance of Rural CMRS Carriers, September 15, 2008 in WC Docket No. 05-337 and CC Docket No. 01-92.

[5] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8801 (para. 48) (1997) ("*USF First Report and Order*") (subsequent history omitted) (finding that competitive neutrality is consistent with Section 254(d), is required by Section 254(h)(2), and is embodied in the requirements of Sections 214(e) and 254(f)).

II. INTERCARRIER COMPENSATION RATES SHOULD BE TEMPORARILY HARMONIZED TO $0.0007 AND A PROCEEDING COMMENCED TO DETERMINE COST-BASED RATES OR BILL-AND-KEEP.

Many parties have amply demonstrated that the current patchwork of rates for interstate and intrastate traffic provides unnecessary opportunities for arbitrage that ultimately are harmful to consumers. The ultimate answer here is for all carriers to move to a bill-and-keep regime, which would greatly reduce costs for all carriers. Any revenue shortfalls that result must be funded through a universal service mechanism, which provides support on a competitively neutral basis, so that the most efficient carriers have an incentive to enter rural and high-cost markets and consumers do not pay excessive universal service charges.

The Commission has already set its course on these long-term solutions, but has only recently stalled, as carriers seeking "revenue neutrality" have veered "competitively neutral" reforms off track. There is no opportunity to complete this aspect of the proceeding, here, however the Commission can do substantial good by temporarily setting a $0.0007 rate for all interstate traffic. With respect to intrastate traffic, the Commission may condition the receipt of federal universal service support on an agreement by carriers to reduce their termination charges to the $0.0007 rate.

Access charge reductions have set off enormous consumer benefits, far in excess of the universal service charges consumers are today paying. For example, in 1998, consumers were paying over 29 cents per minute for wireless. As of 2006, even with the contribution factor set at

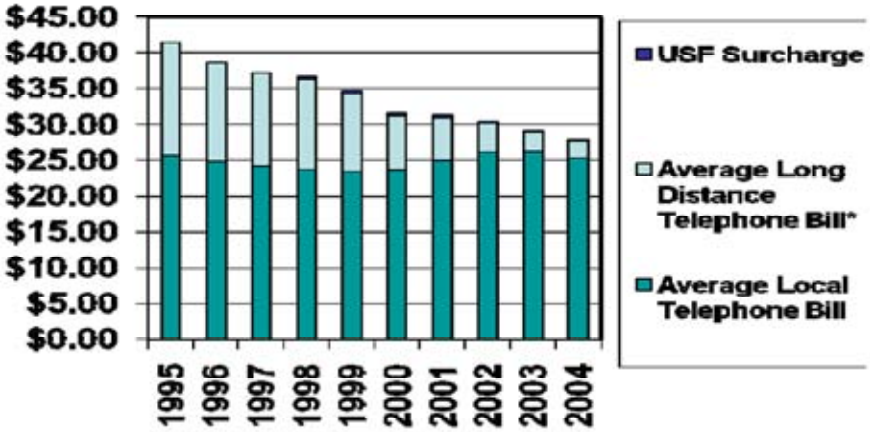
11.4%, they are paying only 6.7 cents per minute, and usage has exploded. Here is a table of wireless charges with the most recently available data:

Year	Average Revenue Per Voice MOU ($)	Average Contribution Factor (%)	Cost of Contribution Factor Per MOU ($)	Total Cost Per MOU ($)
1998	0.2900	3.1625	0.0092	0.2992
1999	0.2200	3.0143	0.0066	0.2266
2000	0.1800	5.6980	0.0103	0.1903
2001	0.1200	6.8445	0.0082	0.1282
2002	0.1100	7.1625	0.0079	0.1179
2003	0.1000	8.7701	0.0088	0.1088
2004	0.0800	8.8000	0.0079	0.0879
2005	0.0600	10.5500	0.0074	0.0674
2006	0.0600	10.1750	0.0071	0.0671

Consumers using wireline telephone service have seen their long-distance charges drop dramatically as well, decreases that have more than offset increases in USF surcharges. The amount of USF charges is so negligible as to cause one to question how the FCC reached its conclusion that the universal service mechanism is "exploding" or that consumers are being harmed by increasing universal service assessments,[6] when lower prices have offset universal service contributions by several orders of magnitude.

[6] *See, e.g.*, *Further Notice* at para. 33; *Chairman's Draft Proposal* at para. 8; *Narrow Universal Service Reform Proposal* at para. 8; *Alternative Proposal* at para. 8.

Moving support to the high-cost fund has had the intended effect: Long distance charges have been reduced far more than the nominal USF surcharge consumers must pay.



Further reductions in access charges that are transferred to universal service mechanisms would bring enormous consumer benefits.

Alliance Carriers understand that in the short-term, small rural carriers could suffer shocks if their current access charges, some of which are several cents per minute, are reduced to $0.0007. Alliance Carriers recommend a transition period during which small rural incumbent local exchange carriers ("ILECs") would be held harmless from access charge reductions. Alliance Carriers provide two scenarios for holding rural ILECs harmless.

- Scenario 1: ILECs up to 5,000 access lines can be held harmless for up to 20% of access line loss for $165 million (3 cents/mo.)
- Scenario 2: ILECs up to 10,000 access lines can be held harmless for up to 20% of access line loss for $266 million (5 cents/mo).

Whatever the Commission chooses, the amount of hold harmless can be easily implemented and adjusted.

III. ALL SUPPORT MUST BE PORTABLE.

On numerous occasions, the Commission has affirmed that support must be made portable, that is, support should go to whichever carrier the consumer chooses.[7] Support mechanisms are intended to work within competitive markets and should not be used to prevent competition. This is the fundamental problem with many of the policy choices currently under consideration. They recreate precisely the problem the 1996 Act[8] intended to resolve.

Alliance Carriers urge the Commission to issue a further notice on the federal high-cost distribution mechanism. If the Commission follows this course, it would be advisable to refrain from declaring that identical support should be eliminated in order to allow the next Commission to have the greatest possible latitude in making policy choices. For example, vouchers, disaggregation of support, and using models to distribute support are all mechanisms that would target support to an area and allow support to be portable to any carrier that a customer chooses. Simply declaring identical support to be disfavored, without reconciling that declaration with the statutory imperative that support be portable, leaves the next FCC in a difficult position.

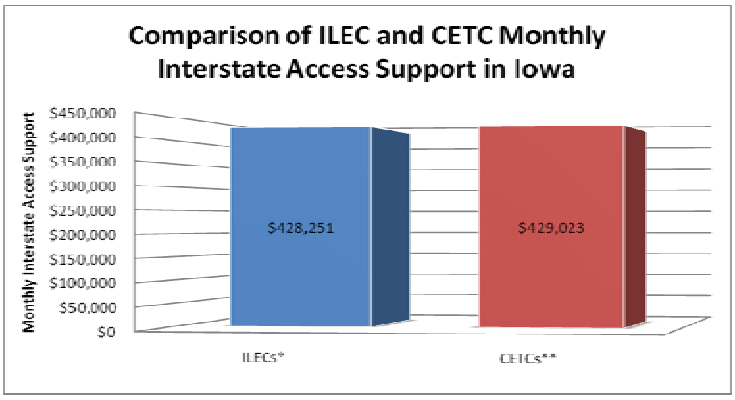
To illustrate how portable support is currently working in the wireless world, we offer the following recent example of Interstate Access Support ("IAS") in Iowa, where there are thirty-eight competitive eligible telecommunications carriers ("CETCs") covering a patchwork of overlapping service areas within an area served by five ILECs. The amount of support being provided to the competitors is roughly the same as the ILECs, and consumers are seeing many choices in service providers. When the CETCs win and lose customers, support moves with the consumer choices. Ideally, reform would determine the amount of support needed in this area

[7] *See, e.g.*, *USF First Report and Order*, 12 FCC Rcd at 8788 (para. 19).

[8] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

and make it portable among both the competitors and the ILECs. That would stabilize the fund and force the ILEC to offer services efficiently as well.

Comparison of thirty-eight CETCs serving an area served by five ILECs



- Five ILECs in Iowa receive Interstate Access Support (IAS). Access support shown includes rural and non-rural ILECs.

** Thirty-eight CETCs in Iowa receive IAS in areas served by the five ILECs.

Source: Universal Service Administrative Company, Second Quarter 2008 Projections (Appendix HC12).

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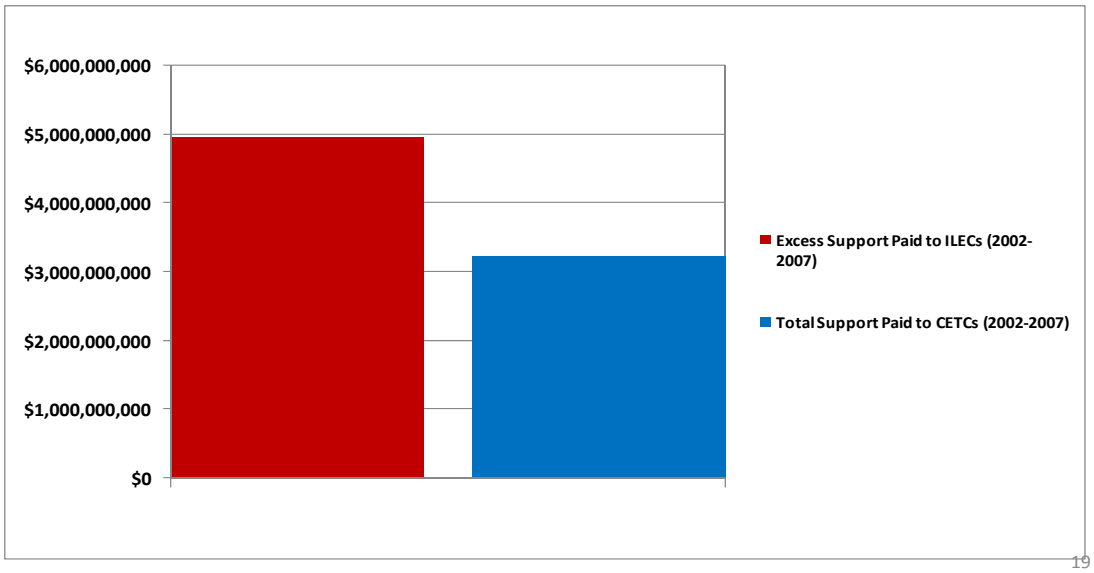
This example is not a "one-off." It is powerful evidence of how universal service support mechanisms can work within a competitive environment to both preserve and advance universal service. The Commission should examine Universal Service Administrative Company ("USAC") data more closely to develop a record that supports a move to full portability, which Alliance Carriers believe will restrain fund growth while promoting consumer choices in rural areas.

Had the FCC made support fully portable from the outset, as it originally intended, the amount of support provided to CETCs would have been ***more than offset*** by support reductions to ILECs as a result of access line reductions. This is shown in the chart below.

Savings from Reduction of ILEC Support as Loop Counts Declined Would Have More Than Offset ALL Support to CETCs from 2002 to 2007



Again, if the FCC has reservations about full portability (which it should not, based upon its own earlier findings about the benefits that portability provides to consumers), we have shown above how a "hold-harmless" mechanism could be temporarily implemented to ease the transition for rural ILECs moving from a monopoly environment to one with competition. Given that we are now 13 years after the enactment of the 1996 Act, this transition is overdue.

IV. DEFINE COLR OBLIGATIONS AND IMPOSE THEM ON ALL CARRIERS.

COLR obligations are defined variously in the states, and in many states a CETC must take on state COLR obligations as a condition of being designated as an ETC. Alliance Carriers are not aware of states that require service to be provided to all consumers, even when the carrier

involved cannot be provided with an opportunity to earn a return on its investment. That is the essence of "reasonable request for service."[9]

The better course is for the Commission to affirm that a COLR obligation means that a carrier must offer and advertise its service to all consumers within its ETC service area and provide service in response to a reasonable request for service, using either its own facilities, or a combination of facilities and resale, consistent with Section 214 of the Act. It is this resale opportunity which prevents the "duplicative networks" that the Commission has expressed concern about. For example, if a consumer can be served only through construction of $1 million of facilities, or through resale, a carrier could reasonably fulfill that request without incurring the cost of building a duplicate facility to that consumer.

The Commission should also study the extent to which COLR obligations are even required in areas where competitors are providing service.

As a part of a further notice, the Commission should develop a well thought out policy that provides appropriate incentives for all carriers to build facilities and to serve all consumers upon reasonable request.

V. ALLOW ALL ETCs TO USE SUPPORT TO DELIVER BROADBAND SERVICE TO RURAL AREAS.

The Commission's notice attempts to justify requiring CETCs to use support for broadband as a condition of receiving existing levels of universal service support.[10] Such requirements are fraught with legal peril. Rather than take such tremendous legal risks, that could mire the agency in litigation for years, the Commission should simply allow carriers to use support for

[9] Unfortunately, the Commission has misstated the applicable requirement that ETCs must meet. See, e.g., footnote 115 of the Chairman's Draft Proposal, which erroneously states that an ETC must provide service throughout a designated area. In fact, Section 214 of the Act requires a carrier to offer and advertise service throughout the area, using either its own facilities or a combination of facilities and resale.

[10] *See, e.g., Chairman's Draft Proposal* at para. 20.

broadband service during this interim period until the FCC can properly define the service or Congress fixes the legal concerns with appropriate legislation.

This will free up carriers receiving significant levels of support to expand broadband at an accelerated pace, while not requiring underfunded carriers to do so as they are attempting to build out voice facilities in states such as New Hampshire, Virginia, North Carolina, Tennessee, Montana, and others that have been left behind to varying degrees as a result of delays in obtaining ETC status and the harmful effects of the Commission's interim cap imposed on wireless ETCs.[11]

VI. TARGET SUPPORT MORE ACCURATELY.

The Commission's rules, 47 C.F.R. Section 54.315, permit rural ILECs to target support more accurately through the disaggregation process. In every study area where CETCs have entered, the ILEC should be required to disaggregate support, at least to the wire center level. The Commission can implement this requirement very quickly and the expected results will be a lowering of overall support in the program, combined with greater incentives for CETCs to invest in rural areas. This is an easy fix that has no downside for the Commission or incumbent carriers. Wireless carriers would suffer a reduction of support in the short term but would receive higher per-line support every time they invest in higher cost areas, providing the very benefits that consumers in such areas need.

VII. THE COMMISSION SHOULD REJECT A STEP-DOWN OF SUPPORT TO CETCs.

The Commission proposes to implement a "step-down" of support to CETCs over a four year period.[12] We strongly urge the Commission to reject this proposal. There is simply no way

[11] *See High-Cost Universal Service, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008), *appeal docketed*, No. 08-1284 (D.C. Cir. Aug. 29, 2008).
[12] The Commission states that the step down would be 20% over five years, however the plan as proposed would zero out support to CETCs within four years.

such a course can square with the Congressional mandate that support be sufficient to preserve and advance universal service. There is no underlying record that CETCs do not need the support they are receiving to fulfill the obligations they have undertaken, (1) pursuant to Section 214 of the Act, to offer and advertise service throughout the designated ETC service area, and (2) to respond to all reasonable requests for service. In short, a "step-down" is legally unsustainable.

From a practical perspective, a step-down is 180 degrees from the desired course. At this critical time in our nation's economy, any action that ***reduces*** investment in our nation's infrastructure, especially in rural areas, must be disfavored. The Commission should be looking for ways to increase investment. Instead of cutting funding to carriers offering service in rural areas, it should focus more on accountability – ensuring that carriers are investing funds for the benefit of consumers.

VIII. CONCLUSION.

For all of the reasons set forth above, the carriers below urge the Commission to take the steps set forth above to stabilize the system, ensure that consumers continue to see investments in

modern infrastructure, and commit to develop a high-cost distribution mechanism that fulfills the congressional mandate to preserve ***and*** advance universal service.

Respectfully submitted,

CELLULAR SOUTH LICENSES, INC.
NE COLORADO CELLULAR, INC.
MTPCS, LLC d/b/a CellularOne
THE CELLCOM COMPANIES

David A. LaFuria
David L. Nace
John Cimko

Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102
(703) 584-8678

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