

**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 UNITED STATES CELLULAR CORPORATION

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

November 26, 2008

TABLE OF CONTENTS

Summary	iii
I. RECOMMENDED ACTIONS	3
A. The Commission Should Take No Action on Universal Service Distribution Reform	3
B. U.S. Cellular Offers an Alternative Proposal for Interim Reform	4
II. SUMMARY OF COMMENTS	6
III. THE COMMISSION’S PROPOSED BROADBAND PLAN DOES NOT COMPLY WITH THE STATUTE; U.S. CELLULAR OFFERS AN ALTERNATIVE.	9
IV. THE COMMISSION SHOULD REJECT A SINGLE-WINNER REVERSE AUCTION METHODOLOGY	15
V. REQUIRING EACH CARRIER, AND EACH CLASS OF CARRIER, TO DEVELOP EMBEDDED COST STUDIES IS GROSSLY INEFFICIENT AND WILL BE EXTRAORDINARILY BURDENSOME FOR THE COMMISSION	23
A. Use of Embedded Costs Will Create the Wrong Incentives and Would Impose Significant Administrative Burdens	23
B. The Particular Components of the Commission’s Proposed Cost Calculation Methodology for Competitive ETCs Would Impose Unwarranted Disadvantages Upon Competitive ETCs and Would Be Harmful to Consumers and Other Users in Rural and High-Cost Areas	26
VI. THE COMMISSION’S PACKAGE OF PROPOSALS AIMED AT WIRELESS ETC FUNDING IS NOT NECESSARY TO CONTROL FUND GROWTH AND WOULD HARM CONSUMERS AND OTHER USERS IN RURAL AND HIGH-COST AREAS	30
A. The Commission’s Assumptions About the Impact of Wireless ETC Funding on High-Cost Fund Growth Are Wrong.	30
B. The Commission’s Package of Proposals Regarding Wireless ETC Support Would Adversely Affect Consumers and Other Users in Rural and High-Cost Areas	33
VI. CONCLUSION	36

SUMMARY

U.S. Cellular Corporation welcomes this opportunity to participate in the Commission's continuing efforts to develop universal service reforms that will promote the delivery of broadband and mobile telecommunications technologies to consumers in rural America.

This path to reform has been long and uncertain and now, U.S. Cellular fears, the Commission may act prematurely and cobble together less than comprehensive reforms that will be harmful to consumers and to the entire telecommunications industry.

U.S. Cellular urges the Commission to avoid these unintended consequences by deferring any action and issuing a Further Notice of Proposed Rulemaking for the purpose of further exploring options and proposals for the optimum delivery of broadband Internet Access and mobile services to consumers in rural and high-cost areas.

If the Commission decides that it must take action at this time, then the Commission should adopt the "Wireless Broadband Expansion Proposal for Rural Areas" that has been developed by U.S. Cellular and that we summarize in the following section. In addition to presenting this Proposal, U.S. Cellular's Comments also address numerous issues and problems raised by various of the Commission's proposals for universal service distribution reform.

Wireless Broadband Expansion Proposal for Rural Areas

U.S. Cellular's Proposal is aimed at achieving several goals that are critical for maintaining and improving the quality and variety of telecommunications services available in rural America, and for ensuring that these services are comparable to those available in urban areas throughout the country.

The Proposal will jump-start the construction of wireless broadband networks in rural America, enable carriers to make rational investment decisions utilizing internally-generated

capital, and provide time for the incoming Commission to develop and enact long-term reform of universal service distributions. The Proposal consists of the following elements:

First, support to competitive eligible telecommunications carriers would be frozen (at December 2008 levels). This has the effect of suspending any further recalculation of per-line support for competitive ETCs and ending identical support between wireline and wireless carriers going forward.

Second, broadband Internet access service, if it is offered on a common carriage basis, would be treated as a supported telecommunications service for the limited purpose of disbursing universal service support. Competitive ETCs would have the option of committing to deploy broadband (with average downlink throughput rates of at least 768 kbps) in their service areas within a five-year period following their commitment. Carriers not electing to provide broadband would have support in a given area reduced according to Commission procedures to be developed after a further notice of proposed rulemaking.

Third, these broadband networks, when completed at the end of year five, must make broadband service available to at least 90% of the population in the carrier's ETC's service area.

Fourth, wireless competitive ETCs will be required to submit annual progress reports to the Commission detailing their progress in deploying broadband networks.

Fifth, following adoption of the proposal, the Commission would promptly commence a proceeding to develop comprehensive and competitively neutral additional reforms that would further advance the interests of consumers throughout rural America. This proceeding, among other things, would take stock of the extent and scope of the actual and forecasted deployment of broadband and all supported services in high cost areas and chart a path forward to address appropriate long range goals for the Universal Service Fund and adopt distribution mechanism de-

signed to be competitively neutral and which will advance the goals established by the Commission.

Sixth, in ETC service areas where no competitive ETC commits to provide broadband, the Commission would allow competitive ETCs to request waivers to obtain additional federal high-cost support needed to achieve the agency's broadband deployment goals.

Several Commission Proposals Would Frustrate Universal Service Goals

U.S. Cellular has offered its Wireless Broadband Expansion Proposal for Rural Areas in part because the Commission has failed to seek comment on a comprehensive broadband plan of its own. The agency's current proposals would not comply with the universal service framework established by Congress, and the Commission's suggestion that broadband deployment can be effectively promoted without allowing the existing support to be used to construct and maintain broadband facilities is not realistic and would fail to accelerate investment in new technologies in rural America.

U.S. Cellular is disappointed by the Commission's continuing insistence that single-winner reverse auctions could somehow benefit consumers in rural and high-cost areas. Single-winner auctions are riddled with problems that the Commission fails to adequately address in the *Further Notice*. For example, because they would result in monopoly (or dominant) service providers in rural and high-cost areas, single-winner auctions cannot be reconciled with the pro-competitive policies of the Telecommunications Act of 1996. Further, the Commission's auction proposal would lead to costly and ineffective "hyper-regulation" of auction winners.

A further disappointment is the proposals' ill-considered view that imposing an embedded cost methodology on competitive ETCs would serve the universal service and competitive goals of the 1996 Act. In addition, since wireless competitive ETCs have never faced regulator-

imposed accounting rules, the Commission would have to construct these rules from whole cloth and, in doing so, attempt to account for the substantial differences in the networks and business operations of incumbent wireline carriers and competitive wireless carriers.

Overall, the Commission's package of proposals would substantially reduce or completely eliminate the ability of competitive ETCs to compete in rural and high-cost markets, and thus would strangle the deployment of wireless services that are in increasing demand in rural and high-cost areas. The Commission, instead of attempting to dismantle the benefits delivered by wireless ETCs in rural America, should focus on ensuring that consumers in rural and high-cost areas receive the current and future services made available by competition and technological innovation.

**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 UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby provides 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 Each of these proposals originated with the Chairman’s office. The first was circulated for Commission consideration on or about October 14 and the other two were circulated just before the November 4 meeting.

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*”).

I. RECOMMENDED ACTIONS.

A. The Commission Should Take No Action on Universal Service Distribution Reform.

After reviewing the Commission's three proposals, U.S. Cellular recommends no action be taken with respect to universal service distributions. As set forth below, each of the 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.⁴ In several places, the Commission inappropriately attempts to legislate without authority. In many places, the Commission reaches conclusions for which there is no supporting evidence in the record. By requiring carriers to provide broadband Internet access service without providing any additional funding or ensuring that carriers can use high-cost support to build broadband, a significant "takings" issue arises under the Fifth Amendment of the United States Constitution.

In sum, after years of inaction, the Commission is now rushing through an incredibly complicated set of reforms in a document that is vague and fraught with the prospect of inflicting unintended consequences on consumers, other telecom users and the entire industry. Adoption of any of the three proposals will almost assuredly be disastrous for consumers and other users 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 services to rural America. Nothing more should be done by this Commission.

⁴ 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)).

Should the Commission determine, however, that it must take some action on distribution reform at this time, U.S. Cellular provides below, in bullet form, actions that will substantially advance the cause of broadband deployment in rural America, by giving the Commission sufficient time to thoughtfully enact long-term reform of the federal universal service distribution mechanism. The reforms below are a refined version of a proposal first provided to the FCC as an ex parte presentation just prior to the scheduled November 4, 2008, open meeting as the Wireless Broadband Expansion Proposal for Rural Areas.⁵

The Commission in the *Further Notice* has renewed its proposal to eliminate the identical support rule. U.S. Cellular has opposed this proposal in its prior comments because, among other reasons, such a step would unfairly skew the marketplace in favor of incumbent carriers. U.S. Cellular continues to believe that the most efficient way to meet the universal service and local competition goals of the Telecommunications Act of 1996 (“1996 Act”) is to retain the identical support rule, avoid the imposition of an embedded cost disbursement method for wireless eligible telecommunications carriers (“ETCs”), and make additional funding available for broadband deployment.

B. U.S. Cellular Offers an Alternative Proposal for Interim Reform.

U.S. Cellular recognizes that the Commission is seeking to pursue alternative means of ensuring that broadband Internet access service will be effectively and rapidly deployed in rural America. U.S. Cellular shares this goal, and believes that the following proposals offer an effective route for enabling wireless ETCs to use their facilities and resources to expand the availability of broadband Internet access services in rural and high-cost areas at the earliest possible date.

⁵ See, e.g. U.S. Cellular’s ex parte presentation of October 28, 2008 in WC Docket No. 05-337.

Adopting U.S. Cellular's Proposal will (1) accelerate the construction of wireless broadband networks, (2) ensure much needed stability for participating carriers, so they can fulfill existing build out commitments made to state commissions and to communities that are expecting new service, (3) permit carriers to make rational investment decisions in the short and medium term with internally-generated capital, and (4) give the incoming FCC panel a fair opportunity to enact long-term reform of universal service distributions. U.S. Cellular recommends the following Wireless Broadband Expansion Proposal for Rural Areas:

- Support to each competitive ETC would be frozen at the level the carrier would receive as of December 2008. There would be no further recalculation of "per-line" support for any competitive ETC going forward. That is, the tie to identical support would be ended, as future per-line support levels continued to be recomputed for wireline carriers. The FCC would, however, adjust high-cost support for wireless carriers periodically as needed to account for inflation.
- Broadband Internet access service, when offered on a common carrier basis, would be defined as a telecommunications service for the limited purpose of receiving universal service support. A competitive ETC would have the option to implement broadband capabilities within its ETC service area in a state within five years of making such commitment. Carriers who opt out of the broadband commitment would continue to receive high-cost support for wireless voice, however support would be reduced according to Commission procedures adopted after a further notice of proposed rulemaking.
- The broadband network must provide an average downlink throughput rate equal to or greater than 768 kbps.
- Upon completion of the five year broadband commitment, the broadband network must provide facilities-based service to not less than 90% of the population residing within the designated ETC service area, measured at the residential address. The carrier must continue to offer and advertise the supported voice services throughout 100% of the ETC service area, using the carrier's facilities, or a combination of facilities and resale, as required by Section 214 of the Act.⁶
- Wireless competitive ETCs will be required to provide the Commission with progress reports each year, including statistical data showing how many network cell sites have broadband and the percentage of population covered for each ETC service area in which the carrier elects to participate in this program;

⁶ 47 U.S.C. § 214.

- During the five-year period following the release of the Commission's order, the FCC would dedicate itself to promulgating rules that would deliver comprehensive and competitively neutral reform that would further advance the telecommunications interests of all rural Americans.
- In states where no carrier has agreed to commit to provide broadband, the FCC would allow competitive ETCs to request waivers to obtain additional federal high-cost support needed to fulfill the broadband commitment set forth above. Waiver requests would be decided on a case-by-case basis.

Again, U.S. Cellular provides this Wireless Broadband Expansion Proposal for Rural Areas in order to propose a meaningful forward looking plan to encourage the introduction of broadband internet access throughout large portions of rural America in the near term while providing a viable bridge to address competitively neutral long-term reform. The proposals provide a rational way for the Commission to take action now on the federal universal service distribution mechanism, without having the rural service program and the goals of universal service grind to a halt.

II. SUMMARY OF COMMENTS.

U.S. Cellular urges the Commission to adopt policies and rules that pursue the twin goals mandated by Congress, to promote universal service and competition, and ensure that consumers in rural and high-cost areas benefit from the efficient and competitively-neutral disbursement of high-cost support.

The Commission aims far too low by considering constraints on funds to competitive carriers offering advanced services. A critical goal of federal universal service reform must be the deployment of broadband Internet access service in rural and high-cost areas. In fact, President-elect Obama has made the rollout of broadband in rural and high-cost areas a central priority of his telecommunications and technology policies.⁷

⁷ See, e.g., Grant Gross, *More Groups Call for National Broadband Strategy*, PC WORLD, Nov. 19, 2008, accessed at http://www.pcworld.com/businesscenter/article/154203/more_groups_call_for_national_broadband_strategy.html.

Recently, the Global E-Sustainability Initiative and The Climate Group released “Smart 2020: Enabling the Low Carbon Economy in the Information Age”, a comprehensive global study of the Information and Communication Technology (“ICT”) sector’s growing significance for the world’s climate.⁸ Among other things, the report provides extensive data and examines how ICT significantly affects carbon emissions. Importantly, the use of broadband technology is a key driver in “dematerialization,” the substitution of high carbon products and activities with low carbon alternatives, such as replacing face-to-face meetings with videoconferencing or replacing hard copy products (*e.g.*, paper, DVDs) with electronic delivery and storage mechanisms. Mobile wireless technology can be a key driver in smart grid technologies, which among other things, enable remote energy control and automation, machine-to-machine communications to monitor system performance and maintenance needs, and many other uses not yet known in 2008.

The Commission, however, has not kept pace with these developments and initiatives, and has failed to come up with a credible broadband plan. Its proposed approaches in the *Further Notice* do not comply with the universal service framework established by Congress in Section 254 of the Act. Moreover, the agency’s apparent view that broadband deployment could be sufficiently achieved simply by mandating it be done as a condition precedent to receiving existing levels of support for voice, without letting that support be used to construct broadband facilities, is not realistic nor does it accelerate investment in new technologies in rural America.

U.S. Cellular opposes the single-winner reverse auctions proposed by the Commission for the disbursement of high-cost support and for the provision of broadband Internet access service. Single-winner reverse auctions, by installing monopoly (or dominant) service providers in rural and high-cost areas, cannot be reconciled with the pro-competitive policies of the 1996 Act,

⁸ A copy of this report can be accessed at: http://www.gesi.org/files/smart2020report_lo_res.pdf.

would also necessitate costly and ineffective “hyper-regulation” of the resulting monopolist providers, essentially recreating the precise problem Congress intended to resolve in 1996.

U.S. Cellular urges the Commission to abandon its proposal to disburse high-cost support to wireless ETCs based on their embedded costs. The Commission itself has been a consistent critic of embedded cost models because they can give carriers the incentive to inflate costs and operate less efficiently. Shifting to embedded costs would require the invention of a new and extensive cost accounting regime to be imposed on competitive carriers. Some of the proposals the Commission has made regarding these cost accounting rules, *e.g.*, that wireless carriers’ spectrum acquisition costs would not be reimbursable, suggest that the cost accounting rules would unfairly disadvantage wireless carriers. Moreover, the Commission’s proposals to limit wireless carriers’ qualification for high-cost support based on incumbent local exchange carrier (“LEC”) cost benchmarks, and to use incumbent LEC line counts to calculate wireless ETCs’ per line costs, make little sense and would have anti-competitive effects.

Finally, at a time when the Commission’s focus should be on ensuring that consumers and other users in rural and high-cost areas receive the benefits of competition and technological innovation, the agency instead has fashioned a package of proposals that would be harmful to consumers and other users. The rules and policies advanced in the *Further Notice*, which would have the likely effect of eliminating the ability of competitive ETCs to compete in rural and high-cost markets, would undercut the deployment of wireless services at the same time these services are in increasing demand and are becoming a necessity in rural and high-cost areas.

III. THE COMMISSION'S PROPOSED BROADBAND PLAN DOES NOT COMPLY WITH THE STATUTE; U.S. CELLULAR OFFERS AN ALTERNATIVE.

The Joint Board recommended that the Commission, in order to meet the goal of ensuring that all Americans have access to broadband, should establish a new broadband fund⁹ and should add broadband Internet service to the list of services eligible for support under Section 254 of the Act.¹⁰

The Commission has rejected these recommendations,¹¹ and instead proposes to make the offering of broadband Internet access service a condition for eligibility to receive high-cost support. In the *Chairman's Draft Proposal*, the Commission explains that all ETCs (including both incumbent LECs and competitive ETCs) “must offer broadband Internet access service . . . to all customers throughout their service areas by the end of a five- or ten-year build-out period”¹² and provides that “[e]xisting competitive ETCs . . . will have the opportunity to commit to offering broadband Internet access service throughout their supported service areas, and will be eligible to receive high-cost support based on their actual costs.”¹³ The Commission further specifies that auction winners also would be subject to the commitment to offer broadband Internet access service as a condition of receiving initial support.¹⁴

In the *Alternative Proposal*, the Commission proposes to restrict the broadband condition requirement to incumbent LECs and auction winners, eliminating the proposed requirement in

⁹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20480-82 (paras. 11-15) (JB 2007).

¹⁰ *Id.* at 20491 (para. 56).

¹¹ *Report and Order* at para. 37.

¹² *Chairman's Draft Proposal* at para. 25.

¹³ *Id.* at para. 20.

¹⁴ *Id.*

the case of competitive ETCs.¹⁵ The Commission makes clear that its proposed requirements regarding the offering of broadband Internet access service would be established in a manner that would not increase the size of the high-cost fund.¹⁶ The Commission explains that it is also proposing that each incumbent LEC ETC's high-cost support will be frozen at the amount of support received by the incumbent LEC ETC in December 2008, annualized on a study area or service area basis.¹⁷ Incumbent LEC ETCs committing to offer broadband Internet access service within a study area consistent with the requirements proposed by the Commission would continue to receive the frozen high-cost support amount for that study area.¹⁸ In the case of competitive ETCs, their support would either be frozen at 2008 levels¹⁹ or completely phased out over a five-year period.²⁰ Finally, the Commission is not proposing to add broadband Internet access service to the list of supported services.²¹

U.S. Cellular believes that the lack of broadband Internet access service in rural and high-cost areas is impeding the ability of consumers, businesses, and governmental agencies and institutions in those areas to take full advantage of all that the Internet has to offer.²² For this reason, U.S. Cellular strongly supports initiatives that will spur the deployment of broadband Internet access service in rural and high-cost areas.²³ U.S. Cellular, however, cannot support the approach proposed by the Commission.

¹⁵ *Compare Alternative Proposal* at paras. 20, 25 with *Chairman's Draft Proposal* at paras. 20, 25.

¹⁶ *Chairman's Draft Proposal* at para. 21, n. 61; *Alternative Proposal* at para. 21, no. 62.

¹⁷ *Chairman's Draft Proposal* at para. 16; *Alternative Proposal* at para. 16 (support for rural rate-of-return LECs would be frozen at 2010 levels).

¹⁸ *Chairman's Draft Proposal* at para. 30; *Alternative Proposal* at para. 30.

¹⁹ *Chairman's Draft Proposal* at para. 17.

²⁰ *Alternative Proposal* at para. 17.

²¹ *Id.* at para. 21, n. 62; *Chairman's Draft Proposal* at para. 21, n. 61.

²² U.S. Cellular *High-Cost Reform NPRMs* Comments at 62.

²³ *Id.* at 60-62.

Most important, the Commission lacks statutory authority for the approach it proposes. Instead of simply adding broadband Internet access service to the list of supported services pursuant to the authority specifically provided in Section 254(c)(2) of the Act,²⁴ the Commission has opted for a convoluted mechanism under which incumbent LEC ETCs, competitive ETCs, and reverse auction winners would be required to agree to provide broadband Internet access service in their service areas as a condition to their receipt of high-cost support for voice.

The Commission argues that its proposed condition on the receipt of high-cost funding would promote “Congress’s overall objectives” reflected in Section 254 of the Act and Section 706 of the 1996 Act,²⁵ and that it “see[s] no reason why” such a condition would not be “permissible under the Commission’s authority to promulgate general rules related to universal service.”²⁶

The problem with the Commission’s reasoning is that it ignores the fact that Congress has established specific parameters governing the terms under which common carriers may receive universal service support, and the Commission’s proposed condition would not be consistent with these parameters. Section 214(e)(1) of the Act provides that a carrier designated as an ETC “shall be eligible to receive universal service support in accordance with section 254”²⁷ so long as it “offer[s] the services *that are supported* by Federal universal service support mechanisms under section 254(c)”²⁸ Thus, under the statute an ETC may receive high-cost support if it uses the funds to provide *supported services*.

²⁴ 47 U.S.C. § 254(c)(2).

²⁵ *Chairman’s Draft Proposal* at para. 21.

²⁶ *Id.* (footnote omitted).

²⁷ 47 U.S.C. § 214(e)(1).

²⁸ 47 U.S.C. § 214(e)(1)(A) (emphasis added). The ETC must also advertise the availability and price of the supported services it offers. 47 U.S.C. § 214(e)(1)(B).

The statute also defines universal service to mean “an evolving level of *telecommunications services . . .*.”²⁹ The statute does not permit support to be used to provide an information service. Since the FCC has previously defined broadband Internet access service to be an information service, *not* a telecommunications service,³⁰ the statute precludes the Commission from defining Internet access to be a supported service. The Commission’s proposal, to require an ETC to use high-cost support to provide an unsupported service, would rewrite the statute, a function that is reserved for Congress.³¹

The Commission seems to suggest that it intends that high-cost funding *would* be available to provide broadband Internet access service. In response to concerns raised by incumbent LECs that “they will not be able to commit to provide broadband Internet access service to all customers within their study areas at the frozen level of support[,]” the Commission indicates

²⁹ 47 U.S.C. § 254(c)(1) (emphasis added).

³⁰ See *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4801 (para. 4) (2002) (cable modem Internet access service), *aff’d*, *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14855 (para. 1) (2005), *aff’d*, *Time Warner Telecom v. FCC*, 507 F.3d 305 3d Cir. 2007) (wireline broadband Internet access service); *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006) (broadband-over-power-line-enabled Internet access service); *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901 (para. 1) (2007) (“*Wireless Broadband Order*”) (wireless broadband Internet access service).

³¹ See Verizon and Verizon Wireless *High-Cost Reform NPRMs* Comments at 31 (footnotes omitted):

The Commission’s authority to use federal high cost subsidies to promote universal service is limited to “telecommunications services.” As the Commission has found, and the courts affirmed, broadband Internet access service is an information service, not a telecommunications service. Thus broadband does not qualify under section 254 as a supported service eligible for high cost subsidies.

that “if an incumbent LEC cannot provide broadband service at the frozen support levels,” then the high-cost support will be provided to the winning bidder in a reverse auction.³² This suggests the Commission’s intent that the frozen funding may be used to provide broadband Internet access service, even though this would be problematic under the statute because Section 254 limits the use of funding to the provision of supported services.

Second, given the Commission’s objective of “spur[ring] deployment [to] ensure that all Americans have access to broadband[,]”³³ and its recognition that “ubiquitous broadband availability does not exist . . . especially for those consumers in rural areas[,]”³⁴ it is remarkable that the Commission has undertaken no analysis of whether proposed funding levels are sufficient to provide consumers with the benefits promised in the Act, as required by Section 254 of the Act.

The Act requires that there must be “sufficient . . . mechanisms to preserve and advance universal service.”³⁵ The Commission is proposing to freeze high-cost support³⁶ and it apparently is also proposing that the frozen funds must be used to provide both supported services and (pursuant to its proposed condition) broadband Internet access service. If existing funding levels are frozen, and no funding is provided for mandated broadband Internet access service, how can the Commission conclude that its funding mechanism is sufficient to preserve and advance universal service? Moreover, providing no funding for a government mandate to build facilities may be properly interpreted as a prohibited taking under the Fifth Amendment of the United States Constitution.³⁷

³² *Chairman’s Draft Proposal* at para. 30, n. 95; *Alternative Proposal* at para. 30, n. 97.

³³ *Chairman’s Proposal* at para. 20; *Alternative Proposal* at para. 20.

³⁴ *Chairman’s Draft Proposal* at para. 23 (footnote omitted); *Alternative Proposal* at para. 23 (footnote omitted).

³⁵ 47 U.S.C. § 254(b)(5).

³⁶ *Chairman’s Draft Proposal* at para. 14; *Narrow Universal Service Reform Proposal* at para. 14; *Alternative Proposal* at para. 14.

³⁷ U.S. CONST. amend. V.

U.S. Cellular fully endorses the Commission's views regarding the importance of broadband deployment, but, because this goal is so important, U.S. Cellular believes the Commission must amend its proposed funding mechanism. Rather than adopting a convoluted rationale that is subject to the substantial criticisms set forth above, U.S. Cellular recommends that the Commission declare that the provision of broadband Internet access is a supported telecommunications service for purposes of Section 254 of the Act if it is offered on a common carrier basis. The Commission has previously ruled that a carrier may offer the transmission component of Internet access as a telecommunications service if it offers it on a common carrier basis.

We think that the easier and sounder path for the Commission is to define broadband Internet access as a supported service when an ETC elects to offer broadband Internet access as a telecommunications service, on a common carrier basis. The Commission has previously declared that when a wireless carrier offers the transmission component of broadband Internet access on a common carrier basis, it is offering a telecommunications service.³⁸

We do not think it a stretch for the Commission to declare that an ETC providing broadband Internet access on a common carrier basis is providing a telecommunications service solely for the purpose of becoming eligible for universal service funding. Such a classification dovetails with the additional regulatory requirements that ETCs take on as a condition of eligibility. Declaring wireless broadband Internet access to be a supported service enables the Commission to avoid the obvious and substantial problems with requiring a carrier to offer an unsupported service as a condition of eligibility to receive universal service funding.

³⁸ *Wireless Broadband Order*, *supra*, 22 FCC Rcd at 5913-14.

IV. THE COMMISSION SHOULD REJECT A SINGLE-WINNER REVERSE AUCTION METHODOLOGY.

In each of the three proposals on which it has sought comment in the *Further Notice*, the Commission proposes to adopt single-winner reverse auctions. In the *Chairman's Draft Proposal*³⁹ and in the *Alternative Proposal*⁴⁰ the Commission proposes to use a single-winner reverse auction method to select recipients of high-cost support for the provision of broadband Internet access service in Unserved Study Areas.⁴¹ In the *Narrow Universal Service Reform Proposal* the Commission proposes to use a single-winner reverse auction mechanism to disburse high-cost support to all entities (both incumbent LEC ETCs and competitive ETCs) that are capable of meeting all ETC requirements at or below a level of support that would be capped by the Commission.⁴² The Commission should not adopt its single-winner reverse auction proposal, for several reasons.

First, awarding what in effect would be a regulatory monopoly in rural service areas, by locking out any new competitors in these markets, would be anti-competitive and in violation of the 1996 Act.⁴³ As the Commission itself has acknowledged, “[i]n the 1996 Act, Congress established principles for the preservation and advancement of universal service in a *competitive telecommunications environment*.”⁴⁴ In fact, subsidizing a single provider of service will recreate

³⁹ *Chairman's Draft Proposal* at paras. 33, 43.

⁴⁰ *Alternative Proposal* at paras. 33, 43.

⁴¹ An “Unserved Study Area” is defined by the Commission to mean a service area with respect to which an incumbent LEC ETC determines that it cannot offer broadband Internet access service at the level of support specified by the Commission. See *Chairman's Draft Proposal* at para. 18.

⁴² *Narrow Universal Service Reform Proposal* at paras. 17-20, 29.

⁴³ See, e.g., Alltel *High-Cost Reform NPRMs* Comments at 40; Cellular South *High-Cost Reform NPRMs* Comments at 5-7; SouthernLINC *High-Cost Reform NPRMs* Comments at 17.

⁴⁴ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No.

the very problem the 1996 Act intended to resolve – namely the competitive barrier to entry that monopoly ILECs enjoyed for decades. The FCC has repeatedly acknowledged this, for example:

Under the current system of federal support, *potential new entrants to the local market in high-cost areas are at a competitive disadvantage relative to incumbents, which have access to much greater implicit support than new entrants.* Converting such implicit support to explicit support that is portable among all eligible telecommunications carriers will significantly lessen this competitive advantage. Consequently, explicit mechanisms may encourage competitors to expand service beyond urban areas and business centers into all areas of the country and to all Americans, as envisioned by the 1996 Act.⁴⁵

[W]e believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government-imposed competitive disadvantage. *Consequently, such a program may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a).*⁴⁶

Congress wisely recognized in the 1996 Act that the best way to ensure that consumers and other users in rural and high-cost areas are not relegated to second-class status, because of their lack of access to telecommunications services and products that are widely available in urban areas throughout the Nation, is to harmonize universal service and pro-competitive policies. This harmonization, Congress concluded, will ensure that the driving forces of market entry and competition will bring innovative and reasonably priced telecommunications offerings to consumers in rural and high-cost areas.

96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11252 (para. 14) (2001) (“*RTF Order*”) (emphasis added), *quoted in* U.S. Cellular *High-Cost Reform NPRMs* Comments at 55.

⁴⁵ Federal-State Joint board on Universal Service, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45 Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8082 (1999) (emphasis added).

⁴⁶ *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934, Memorandum Opinion and Order*, 15 FCC Rcd 16227, 16231(para. 8) (emphasis added) (2000). The program the FCC refers to is a state universal service fund that provides support only to incumbent LECs. A program that provides support to only one carrier suffers from the same infirmities under Section 253 of the Act.

In this regard, we have included with these comments as Appendix A, a paper authored by William P. Rogerson, Professor of Economics at Northwestern University and a former FCC Chief Economist, titled, “An Economic Analysis of Universal Service Payments to Wireless Carriers.” In it, Professor Rogerson echoes the Commission’s longstanding view that it should “attempt to induce entry by more than a single firm, so that consumers of these services will receive the benefits of competition, in as many places as is reasonably possible.”⁴⁷

Our concern is that single-winner reverse auctions will institutionalize by government program a single carrier approach that leaves consumers out of the policy equation, depriving them of the benefits produced by a competitive marketplace. By attempting to pick “winners” through the regulatory fiat of an auction mechanism, instead of allowing the market to reward the most efficient and innovative service providers, the Commission would run the serious risk of failing to meet the statutory mandate to establish support mechanisms that are sufficient to preserve *and advance* universal service.⁴⁸ This is the case because the Commission would be providing support in a manner that would explicitly shut out the benefits derived from competition, including the ability of competition to ensure that consumers in rural and high-cost areas will receive services, and pay rates, comparable to services and rates in urban areas.

Second, although the Commission’s objective is to promote wider deployment of broadband Internet access service in rural and high-cost areas, using single-winner reverse auctions is not an effective way to pursue this objective. Installing a monopoly provider seldom has resulted in the efficient deployment of innovative and reasonably-priced services. The Commission’s broadband policies would be better served by promoting competitive entry and ensuring a level

⁴⁷ Appendix A, Rogerson Paper at p. 4.

⁴⁸ See Section 254(b)(5) of the Act, 47 U.S.C. § 254(b)(5).

playing field for the provision of broadband Internet access service to consumers in rural and high-cost areas. Commissioner Tate has identified the advantages of a market-based solution:

Ensuring broadband access to all Americans—but especially those in low income or rural America—is not only important to our national economy but crucial to our global competitiveness as well. I am proud of the deregulatory road the FCC has forged; serving as a “humble regulator” so that we incent investment and innovation.⁴⁹

Third, the Commission’s longstanding efforts to craft much-needed universal service reform have now been overtaken by ominous national external events, in the form of a burgeoning financial and economic crisis that threatens to rival the dimensions of the Great Depression. These are not the times in which the Commission should roll the dice on its proposition that its single-winner reverse auction mechanism will ensure the requisite level of financial stability and continuity in rural telecommunications markets.

For example, under the Commission’s proposed approach, if a wireless competitive ETC is not a winning bidder in a reverse auction for service areas in which the carrier is currently competing, then the wireless ETC would face the prospect of being unable to maintain and expand its provision of service because of the loss of high-cost funding, as well as being unable to meet state-imposed build-out mandates. In addition, single-winner auctions could exacerbate difficulties faced by rural carriers in raising capital, because the auction mechanism would introduce considerable uncertainty regarding whether carriers would be able to repay loans.⁵⁰ More generally, single-winner reverse auctions, by turning rural and high-cost service areas into the virtually exclusive domains of single providers, would have recessionary effects because investment in those areas would be reduced, employment opportunities would be foregone, and the

⁴⁹ Remarks of Commissioner Deborah Taylor Tate, FCC-NARUC Joint Conference on Advanced Services, Broadband Summit: Connecting America, San Diego, Cal. (Nov. 6, 2008) at 5.

⁵⁰ See *GVNW High-Cost Reform NPRMs Comments* at 20-23.

significant “multiplier” effects that accompany the deployment of telecommunications infrastructure would be sacrificed.

Fourth, the Commission has better options for ensuring that high-cost support is used efficiently to provide services in rural and high-cost areas. The Commission pins its reverse auction proposal on its expectation that winning bids would “approach the minimum level of subsidy required to achieve our universal service goals[,]”⁵¹ and that “a support mechanism based on cost or on a cost model provides little incentive for an ETC to provide supported services at the minimum possible cost.”⁵² Other than citing the same conclusory statements made earlier by the Commission in the *Reverse Auctions NPRM*, and a letter received from Grover Norquist,⁵³ the Commission provides no explanation for its tentative view that a Universal Service Fund (“USF”) support mechanism based on a cost model would not result in the efficient provision of services. In fact, the Commission has reached the opposite conclusion in previous decisions.

The Commission has held, for example, that “[s]upport based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.”⁵⁴ The Commission has further underscored its view that reliance on forward-looking models meets the statutory test of sufficiency by finding that such a model

⁵¹ *Narrow Universal Service Reform Proposal* at para. 18 (footnote omitted).

⁵² *Id.* (footnote omitted).

⁵³ *Id.* at para. 18, n. 59.

⁵⁴ *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8103 (para. 50) (1999) (“*USF Seventh Report and Order*”) (footnote omitted) (emphasis added), *quoted in* U.S. Cellular *High-Cost Reform NPRMs* Comments at 56.

“provides sufficient support without giving carriers an incentive to inflate their costs or to refrain from efficient cost cutting.”⁵⁵

These prior Commission findings regarding the advantages of forward-looking cost models, coupled with the deficiencies and uncertainties associated with a reverse auction scheme that have been identified by U.S. Cellular⁵⁶ and other commenters in this proceeding,⁵⁷ should lead the Commission to conclude that, rather than trying to reinvent the wheel by using single-winner reverse auctions to disburse high-cost funds, the Commission should calculate these disbursements based on competitive ETCs’ forward-looking costs. As the Commission itself has long recognized, such an approach would force carrier efficiencies and thus guard against unwarranted fund growth. Equally as important, adopting this approach would avoid the significant pitfalls that are the unavoidable baggage of a single-winner reverse auction mechanism.

Fifth, in addition to the specific issues and problems discussed in the preceding paragraphs, there is a fundamental conceptual problem with single-winner reverse auctions. The

⁵⁵ *RTF Order*, 16 FCC Rcd at 11252 (para. 14), *quoted in* U.S. Cellular *High-Cost Reform NPRMs* Comments at 56.

⁵⁶ U.S. Cellular has explained, for example, that reverse auctions would not even be feasible unless auctioned service areas are small (defined for example along county boundaries) to ensure that all carriers are able to bid on the same territory. U.S. Cellular *High-Cost Reform NPRMs* Comments at 59. The Commission’s proposal ignores these concerns by tentatively concluding that incumbent LECs’ study areas should be used as the geographic areas for reverse auctions. *Narrow Universal Service Reform Proposal* at para. 22. This approach would not be competitively neutral because it would make it very difficult for other potential service providers to underbid an incumbent LEC bidder.

⁵⁷ *See, e.g.*, Cellular South *High-Cost Reform NPRMs* Comments at 4-5 (noting that reverse auctions with single winners could not be competitively neutral because incumbents have mature networks, which would give them a bidding advantage over competitive ETCs with networks that require further build-out; multiple winner auctions also would be problematic, because bidders submitting true bids likely would not enter the market, since their award from the auction would not cover their costs—this would encourage bidders to “game” the system by submitting artificially high bids); NECA *High-Cost Reform NPRMs* Comments at 27 (arguing that reverse auctions would not provide incentives for build-out, they would eliminate financial stability, and they would degrade service quality; further, reverse auctions are fundamentally unsuited for pricing complex telecommunications network services in rural high-cost areas); NTCA *High-Cost Reform NPRMs* Comments at 30 (explaining that (1) using reverse auctions for determining the distribution of universal service in rural incumbent LEC service areas with preexisting infrastructure and service would be a serious mistake; (2) reverse auctions would be extremely harmful to communities already served by either landline or wireless service, or both; and (3) even in those areas without preexisting infrastructure, reverse auctions are simply too complex, too risky, and too costly to serve as a legitimate means for determining the distribution of high-cost support and limiting the growth in the high-cost fund); Sprint Nextel *High-Cost Reform NPRMs* Comments at 12.

premise of the Commission’s proposal is that the public will benefit from the Commission’s awarding high-cost support to the least cost service provider. While U.S. Cellular strongly endorses high-cost funding policies that encourage efficient carrier investments and operations, it also believes that consumers and other users—through the vehicle of competitive markets—should be empowered to decide which carriers deliver the best services at the best price. A single winner auction provides a powerful incentive for the largest carriers, some of whom have shown little interest in building out rural America, to bid in an anti-competitive fashion. A large carrier can drive out smaller carriers with a low bid, reducing the value of competitors, and providing the minimum regulatory compliance and customer service needed to remain eligible.

Chairman Martin generally has embraced market-based policies as the best means of securing benefits for consumers of telecommunications services. In expressing his enthusiasm for the “exciting new opportunities for wireless broadband[,]”⁵⁸ Chairman Martin expressed his belief that “the market-based policies that the Commission has pursued will continue to provide options for growth and competition in the wireless industry.”⁵⁹ But the Chairman apparently has concluded that the Commission’s market-based solutions should not cross the boundaries into rural and high-cost areas. Instead, the *Chairman’s Draft Proposal*, in its single-winner auction proposal, reflects a view that “command and control” regulatory structures are the best means of disbursing high-cost support and promoting the deployment of broadband Internet access service in rural and high-cost areas.

U.S. Cellular believes that a more effective way to preserve and protect consumer choice, and to promote broadband deployment, is to award high-cost funding in a manner that promotes

⁵⁸ Remarks of Chairman Kevin J. Martin, Wireless Communications Association International, 14th Annual International Symposium and Business Expo, San Jose, Cal. (Nov. 6, 2008) at 4.

⁵⁹ *Id.*

rather than impedes competition, through an even-handed mechanism (such as the identical support rule), and then to make high-cost support portable among all recipients.⁶⁰ Single-winner reverse auctions would deprive consumers of this choice, and instead would make portability irrelevant by installing a monopoly provider that has won the service area franchise by paring down the amount it will spend to deliver services that are purportedly comparable to services available in urban areas. Another likely consequence of a reverse auction regime is that auction winners (as a result of their low bids) would find it difficult to carry out network upgrades and to maintain satisfactory levels of service quality. Such a result would not be consistent with the universal service goals mandated in the 1996 Act.

The Commission might attempt to dampen these negative results by erecting a complicated and burdensome regulatory regime to oversee the operations of auction winners.⁶¹ Such regulatory intervention would be avoided, however, if the Commission simply relied upon consumers and other users to pick the winners and discipline the operations and pricing of multiple service providers.

⁶⁰ The Fifth Circuit Court of Appeals has stressed that:

the [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.

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

⁶¹ Parties in this proceeding have been critical of the Commission’s single-winner reverse auction proposal because it would require the Commission to engage in “hyper-regulation” of auction winners in order to police service quality and to ensure that the auction winners charge reasonable rates to consumers. *See Alltel High-Cost Reform NPRMs* Comments at 40-41. *See also* Wyoming Office of Consumer Advocate *High-Cost Reform NPRMs* Comments at 4-5. (“This new [reverse auction] regulatory regime would be a complete reversal of the recent direction of encouraging competition in lieu of regulation”).

V. REQUIRING EACH CARRIER, AND EACH CLASS OF CARRIER, TO DEVELOP EMBEDDED COST STUDIES IS GROSSLY INEFFICIENT AND WILL BE EXTRAORDINARILY BURDENSOME FOR THE COMMISSION.

In conjunction with its proposal to eliminate the identical support rule, the Commission in the *Chairman's Draft Proposal* proposes that competitive ETCs should receive high-cost support disbursements based upon a submission of an embedded cost study.⁶²

The *Chairman's Draft Proposal* fleshes out its support calculation methodology with the following additional proposals:

- (1) Competitive ETCs would be required to file cost information for the total costs of a service area (from which a cost per line would be developed).
- (2) Spectrum costs would be excluded for purposes of calculating a cost per line.
- (3) Incumbent LEC benchmarks would be applied to determine whether competitive ETCs qualify to receive high-cost support, as follows: (a) in non-rural service areas, the cost per line would be compared to the benchmark threshold for support calculated by the High-Cost Proxy Model; and (b) in rural service areas, support would be determined by comparing the competitive ETC's cost per loop incurred to provide the supported services to the same national average cost per loop used to determine incumbent LEC support for the same service area.
- (4) Instead of using the competitive ETCs' line counts to determine per-line costs, the Commission would use the same line counts used to determine the incumbent LEC cost per line for the same service area.⁶³

A. Use of Embedded Costs Will Create the Wrong Incentives and Would Impose Significant Administrative Burdens.

As U.S. Cellular has explained in previous comments in this proceeding, any decision by the Commission to abolish the identical support rule automatically creates a difficult dilemma for the Commission: How should high-cost support be disbursed to competitive ETCs?⁶⁴ The Commission attempts to answer this question by pointing to competitive ETCs' own costs, but

⁶² *Chairman's Draft Proposal* at para. 53.

⁶³ *Id.* at paras. 53-54.

⁶⁴ U.S. Cellular *High-Cost Reform NPRMs* Comments at 43.

the agency's proposal in the *Chairman's Draft Proposal* to use competitive ETCs' embedded costs for calculating their high-cost support is an ill-conceived approach.

As the Commission itself understands, basing high-cost support on competitive ETCs' embedded costs would give competitive ETCs incentives pointing in the wrong direction. Professor Rogerson echoes this view, stating, "[T]here are vastly superior methods of attempting to accomplish this than the policy of basing support payments to wireless carriers on regulatory determinations of their own embedded costs. Setting levels of support to a carrier based on its own embedded costs is traditional cost-based regulation and the main problem with such a process is that it completely stifles firms' incentives to reduce their costs."⁶⁵ The Commission understands this, having previously declared that "a support mechanism based on . . . a carrier's embedded costs . . . provides no incentives for ETCs to provide supported services at the minimum possible costs"⁶⁶

Although the Commission attempts to brush aside concerns about the administrative burdens associated with basing competitive ETCs' support on their own costs,⁶⁷ these concerns cannot be ignored. As U.S. Cellular has pointed out, a uniform accounting system would be a necessary prerequisite for imposing an embedded cost mechanism upon competitive ETCs.⁶⁸ Professor Rogerson believes the cost of imposing such a methodology to be extraordinary:

[P]ricing decisions by wireless carriers are currently NOT regulated and wireless carriers are NOT required to submit cost data according to some already-established regulatory accounting system. Therefore in order to base carriers' support levels on their own embedded costs, the Commission would have to establish an entirely new regulatory structure for defining, collecting and monitor-

⁶⁵ Rogerson Paper at p. 5.

⁶⁶ See *Reverse Auctions NPRM*, 23 FCC Rcd at 1500 (para. 11).

⁶⁷ *Chairman's Draft Proposal* at para. 53.

⁶⁸ U.S. Cellular *High-Cost Reform NPRMs* Comments at 44 (citing AT&T, Ex Parte Filing in WC Docket No. 05-337, Oct. 4, 2007). See Wood Letter at 4.

ing costs and firms would have to measure, collect and submit these costs according to the rules established by the Commission. To a first order of magnitude it would not surprise me if the Commission's and firms' collective costs of establishing and operating a full-blown regulatory structure of this sort could rival or even exceed the total level of funds available to support high cost wireless service in the first place!⁶⁹

Moreover, the Commission makes no attempt to explain how an ETC would be price regulated in some rural areas, while remaining unregulated in other rural areas where it is not an ETC. We can think of few regulatory regimes more destructive to the growth and development of new technologies in rural America.

In sum, the Commission fails to explain exactly what it would mean for wireless competitive ETCs to report their own costs. As the Wood Letter points out, there are significant differences in cost causation for wireline and wireless networks,⁷⁰ and the Commission has made no attempt to identify these differences or to work out cost reporting methodologies that accurately account for wireless carriers' costs.

Professor Rogerson discusses the need for further examination of the possible use of models, along with targeting support on a more granular basis as a rational means of avoiding the need for extraordinarily expensive embedded cost studies and of avoiding the stifling effect of single winner reverse auctions.⁷¹ Accordingly, U.S. Cellular urges the Commission to adopt a further notice of proposed rulemaking that would seek to, among other things, determine whether a cost model could be used to determine support.

⁶⁹ Appendix A, Rogerson Paper at p. 10-11.

⁷⁰ Wood Letter at 4.

⁷¹ See Appendix A, Rogerson Paper at p. 11-15.

B. The Particular Components of the Commission’s Proposed Cost Calculation Methodology for Competitive ETCs Would Impose Unwarranted Disadvantages Upon Competitive ETCs and Would Be Harmful to Consumers and Other Users in Rural and High-Cost Areas.

The ground rules proposed by the Commission, to be used in the development of competitive ETCs’ per line costs,⁷² would have the inadvertent effect of making it extremely difficult for competitive ETCs to continue to participate in the universal service program. Such a result, of course, cannot be squared with the goals of the 1996 Act to promote both universal service and local exchange competition, or with the Commission’s principle of competitive neutrality. Equally as important, hampering the ability of wireless ETCs to introduce and expand service offerings in rural and high-cost areas would be detrimental to consumers and other users in those areas, moving them further away from access to services and prices comparable to those available in urban markets. Several problems with the Commission’s proposal illustrate these concerns.

First, the Commission’s proposal to exclude spectrum costs from the costs that wireless ETCs are permitted to include in the calculation of their per-line costs is unwarranted and in conflict with the agency’s competitive neutrality principle. The Commission’s rationale for this proposal is that spectrum costs “do not represent a direct investment in facilities and infrastructure for purposes of providing supported services in high-cost areas.”⁷³ This reasoning is not credible. Wireless carriers should be entitled to receive high-cost support for each element of costs that is necessarily incurred in order to deliver services in rural and high-cost areas. The acquisition of spectrum is one such element of costs. Because that is the case, it is incumbent upon the Commission to develop attribution methods that allocate a portion of a wireless ETC’s

⁷² See *Chairman’s Draft Proposal* at paras. 53-54.

⁷³ *Id.* at para. 53, n. 148.

overall spectrum costs to rural and high-cost areas for which the wireless ETC is receiving high-cost support.⁷⁴ Any cost calculation that fails to include such a cost allocation would unreasonably ignore a significant component of wireless ETCs' costs.

As USA Coalition has observed, spectrum is the “physical and logical equivalent of wireline plant for traditional wireline carriers.”⁷⁵ The inclusion of wireline carriers' copper and fiber costs, coupled with the exclusion of wireless ETCs' spectrum costs, would unreasonably discriminate on the basis of technology, in violation of the 1996 Act and the Commission's principle of competitive and technological neutrality.⁷⁶

Second, the Commission offers no rationale, explanation, or support for its proposal that the determination of whether competitive ETCs qualify for high-cost support should be made using the benchmark that is applied to incumbent LECs' costs for support calculated by the High-Cost Proxy Model (for non-rural service areas), or by comparing the competitive ETCs' costs per loop incurred to provide supported services in rural service areas to the same national average cost per loop used to determine incumbent LECs' support for the same service areas.⁷⁷

The import of this proposal is that a wireless carrier will not qualify for high-cost support unless it provides services in rural and high-cost areas less efficiently than incumbent LECs do.⁷⁸ The proposal would thus impose an embedded cost model in a manner that discourages

⁷⁴ See, e.g., Alltel *High-Cost Reform NPRMs* Comments at 33-34; CTIA Letter at 4 (arguing that “[s]pectrum costs should be included in any determination of a wireless carrier's actual costs. Spectrum is a considerable cost of doing business for wireless carriers, akin to a LEC's loop costs.”) (footnote omitted).

⁷⁵ See USA Coalition Ex Parte Filing in WC Docket No. 05-337 and CC Docket No. 96-45, Oct. 28, 2008, at 7.

⁷⁶ *USF First Report and Order*, 12 FCC Rcd at 8801 (para. 47) (finding that universal support mechanisms must “neither unfairly favor nor disfavor one technology over another”).

⁷⁷ See *Chairman's Draft Proposal* at para. 53.

⁷⁸ See Cellular South *High-Cost Reform NPRMs* Comments at 8 (pointing out that “[t]he Commission . . . proposes that support be determined by comparing a competitive ETC's cost per loop to a national average cost per loop for incumbent LECs. This asks competitive ETCs to be as inefficient as incumbent LECs or risk losing USF support.”).

CETC efforts to drive efficiency and completely sever the Commission’s current USF reform efforts from the moorings of the 1996 Act and the agency’s own pro-competitive principles.⁷⁹

The approach proposed by the Commission would deny consumers and other users in rural and high-cost areas the benefits of competitive entry and the availability of affordable service that is an important product of competition. The proposed approach thus ignores the Commission’s own dictum that the agency “must ensure that all *customers* be able to receive affordable basic telecommunications services . . . [and that the] ‘Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*.’”⁸⁰ The use of incumbent LEC benchmarks to determine wireless carriers’ eligibility for high-cost support would lock in funding for incumbent LECs (as a result of virtually excluding wireless carriers from eligibility),⁸¹ and it would also undercut the opportunity of customers to obtain affordable services made available through competition.

Third, the Commission’s proposal to use incumbent LEC line counts for purposes of calculating competitive ETCs’ per line costs would be a further step toward dismantling the agency’s competitive neutrality principle. The fact is that the Commission, by proposing to repeal the identical support rule and shifting to a “carrier’s own costs” methodology for wireless ETC sup-

⁷⁹ See U.S. Cellular *High-Cost Reform NPRMs* Comments at 48 (the problem with the Commission’s benchmark proposal “is that it bases wireless support on *wireline* costs, a problem the Commission identifies as the reason for eliminating the identical support rule”) (emphasis in original); Wood Letter at 4:

A process of support qualification based on comparing wireless costs with the wireline benchmark creates a public policy in which more efficient carriers are penalized while less efficient carriers are rewarded and protected. Surely a superior public policy approach would be to encourage investment and build out by more efficient carriers, while discouraging the perpetual support of less efficient carriers.

⁸⁰ *Interim Cap Order*, 23 FCC Rcd at 8842 (para. 18) (quoting *Alenco*, 201 F.3d at 620) (emphasis in original).

⁸¹ See CTIA Letter at 4 (observing that “[t]he Commission is now considering a mechanism to determine support for wireless ETCs that is not focused on making sure that wireless services are ubiquitously available, but rather is inexplicably intended to eliminate almost all universal service support for wireless carriers.”).

port, has boxed itself into a corner. In order to impose an embedded cost regime upon wireless carriers, the Commission must prescribe a way to calculate wireless carriers' per line costs.

The Commission's original approach was to require that wireless carriers develop projections of the number of their lines.⁸² This approach was problematic because it would not be competitively neutral to base incumbent LECs' support on actual line counts, while basing wireless ETCs' support on projections.⁸³ In addition, the use of projections would introduce a host of administrative and methodological issues, *e.g.*, the need to determine criteria necessary to evaluate the accuracy of projections.⁸⁴

The Commission's proposal to calculate wireless ETCs' support based on incumbent LECs' line counts is not an improvement over the agency's original approach.⁸⁵ Given the Commission's proposed objective of using high-cost support to reimburse wireless carriers for the costs they incur in providing service in rural and high-cost areas—in the same manner that incumbent LECs are reimbursed for their own costs—the Commission must adopt a calculation mechanism that achieves this objective. Basing wireless ETCs' disbursements on incumbent LEC line counts would fail to do this.⁸⁶

⁸² *Identical Support Rule NPRM*, 23 FCC Rcd at 1476 (para. 21).

⁸³ U.S. Cellular *High-Cost Reform NPRMs* Comments at 47.

⁸⁴ *Id.*

⁸⁵ See CTIA Letter at 4 (noting that the Commission's proposal to divide a wireless ETC's costs by the relevant incumbent LEC's switched access lines to arrive at the wireless ETC's average costs "defies common sense").

⁸⁶ For example, if a wireless ETC has \$100 in costs in a service area and serves 15 equivalent lines in that area, while the incumbent LEC serves 20 lines in the same service area, then, under the Commission's proposal, the wireless ETC would be entitled to a per-line reimbursement of \$5.00 (\$100 divided by the incumbent LEC's 20 lines). When this per-line reimbursement is applied to the total number of the wireless ETC's lines in the service area, the wireless ETC would receive a high-cost disbursement of \$75.00 (\$5.00 multiplied by 15 lines), which is less than the wireless ETC's costs. Thus, the wireless ETC, unlike the incumbent LEC, would not be receiving high-cost disbursements based on its own costs. The only way to cure this problem would be to calculate the wireless ETC's high-cost disbursements based upon its own lines, not the lines of the incumbent LEC.

VI. THE COMMISSION’S PACKAGE OF PROPOSALS AIMED AT WIRELESS ETC FUNDING IS NOT NECESSARY TO CONTROL FUND GROWTH, AND WOULD HARM CONSUMERS AND OTHER USERS IN RURAL AND HIGH-COST AREAS.

The Commission seeks to justify the package of proposals discussed in the previous sections of these comments—including single-winner reverse auctions, repeal of the identical support rule, the shift to a “carrier’s own cost” methodology for wireless ETC funding, and a five-year phase-out of high-cost funding available to wireless ETCs—which would have the effect of substantially reducing the ability of wireless ETCs to continue providing services in rural and high-cost areas, by claiming that wireless carriers have been disproportionately responsible for significant growth in the size of the high-cost fund.

This claim is not supported by the facts. Moreover, in advancing its proposals regarding wireless ETC funding, the Commission ignores the impact these proposals would have on the pursuit of statutorily mandated universal service goals in rural and high-cost areas for the benefit of consumers residing in those areas.

A. The Commission’s Assumptions About the Impact of Wireless ETC Funding on High-Cost Fund Growth Are Wrong.

The Commission, in the *Further Notice* and the *High-Cost Reform NPRMs*, reprises its earlier claims that growth in the high-cost fund in recent years “has been due mostly to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive pursuant to the identical support rule.”⁸⁷ The Commission earlier relied upon similar claims in an attempt to justify the high-cost funding cap it has

⁸⁷ *Further Notice* at para. 33. See *Chairman’s Draft Proposal* at para. 8; *Narrow Universal Service Reform Proposal* at para. 8; *Alternative Proposal* at para. 8.

imposed on wireless ETCs,⁸⁸ and it now retreads these same arguments as one of the bases for its proposals that would essentially put an end to high-cost funding for wireless carriers. The Commission's view appears to be that ridding rural and high-cost areas of what the Commission pejoratively refers to as "funded competition"⁸⁹ would be consistent with the 1996 Act's universal service goals.

U.S. Cellular has presented extensive evidence in this proceeding showing that recent growth in the size of the high-cost fund has not placed the fund in any imminent jeopardy, and that continued funding of the operations of wireless ETCs in rural and high-cost areas would not create any "crisis" regarding the size of the high-cost fund that would warrant the extreme measures the Commission has proposed in this proceeding.⁹⁰

The main problem with the Commission's attempt to use the growth in the size of the high-cost fund as grounds for its various proposals affecting wireless ETCs is that the agency has failed to demonstrate that any real problem concerning the growth of the fund actually exists.⁹¹ The fact is that the Commission has not (either in the proceeding leading to the imposition of an interim cap on wireless ETCs or in this proceeding) produced any empirical evidence to support a conclusion about the sufficiency of the overall USF to "preserve and advance" the four universal service programs the USF supports.

The Commission's often-repeated mantra is that the high-cost fund has increased from \$2.6 billion in 2001 to \$4.3 billion in 2007, and that funding to competitive ETCs has increased

⁸⁸ See *Interim Cap Order*, 23 FCC Rcd at 8837-38 (para. 6).

⁸⁹ *Further Notice* at para. 33.

⁹⁰ See U.S. Cellular *High-Cost Reform NPRMs* Comments at 14-25; U.S. Cellular *High-Cost Reform NPRMs* Reply Comments at 7-19.

⁹¹ See *ALLTEL Corp. v. FCC*, 838 F.2d 551, 561 (D.C. Cir. 1988) (noting that "a regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.").

during the same period from \$17 million to \$1.18 billion.⁹² The Commission concludes that this “funded competition” is responsible for the “extraordinary pressure”⁹³ placed on the high-cost fund. From these figures, the Commission concludes that the high-cost fund will continue to grow exponentially, and that wireless ETCs would be responsible for this predicted growth.

Data developed by the Universal Service Administrative Company, however, disprove the assumptions and predictive judgments made by the Commission. These data show that the annual growth rate of competitive ETC support *decreased* every year from 2001 (1,043 percent) through 2007 (20 percent), while the growth rate for total high-cost support *decreased* six of the seven years to a low of 4.65 percent in 2007.⁹⁴ These trends demonstrate that there is no basis for the Commission’s assumption that the high-cost fund is in dire jeopardy because “explosive growth” supposedly will continue in the future. The demonstrated infirmity of this assumption, in turn, removes any credible support for the Commission’s proposals concerning the availability of funding for wireless ETCs.

Finally, it should be noted that the Commission has not only failed to provide any empirical evidence justifying any curtailment in funding available to wireless ETCs, but the agency has also revealed a troubling bias regarding “funded competition” in rural and high-cost areas.⁹⁵ As U.S. Cellular and other parties have repeatedly shown throughout this proceeding, and as the Commission itself has acknowledged,⁹⁶ the 1996 Act established a policy of combining universal service and pro-competitive goals to better serve the needs of consumers in rural and high-cost areas. The identical support rule has been one mechanism whereby the Commission has sought

⁹² See, e.g., *Further Notice* at para. 33.

⁹³ *Id.*

⁹⁴ See Appendix B, Table, “Annual Growth Rates of High-Cost Support and Total USF Disbursements.”

⁹⁵ See, e.g., *Further Notice* at para. 33.

⁹⁶ See, e.g., *RTF Order*, 16 FCC Rcd at 11252 (para. 14) (2001).

to promote competitive entry in these markets, based upon its well-founded view that competition would result in the more efficient provision of services and lower prices.

For the Commission now to criticize “funded competition” and to attempt to devise policies that would mark the end of competition in rural and high-cost markets represents an inexplicable dereliction of the agency’s duty to promote the goals, and to adhere to the requirements of, the 1996 Act.

B. The Commission’s Package of Proposals Regarding Wireless ETC Support Would Adversely Affect Consumers and Other Users in Rural and High-Cost Areas.

The proposals made by the Commission that would virtually eliminate the ability of competitive ETCs to enter and compete in rural and high-cost markets would have a wrenching effect on consumers and other users in rural and high-cost areas. The Commission’s proposals suggest that the agency adheres to the theory that driving competition out of rural and high-cost markets, is the best way to meet the universal service goals of the 1996 Act.

The Commission’s theory is wrong. The agency’s approach ignores its own conclusion that wireless technologies are providing services more efficiently than wireline technologies in rural and high-cost areas,⁹⁷ it disregards the trend of consumer preference moving strongly in the direction of wireless services, and it fails to account for the fact that consumers as well as businesses and government agencies in rural and high-cost areas recognize the value of wireless services and do not want federal support of these services in their communities to be curtailed.

American consumers are increasingly relying on wireless services exclusively for their telecommunications needs.⁹⁸ According to Verizon and Verizon Wireless, 15.8 percent of all

⁹⁷ See *Narrow Universal Service Reform Proposal* at para. 3.

⁹⁸ See U.S. Cellular *High-Cost Reform NPRMs* Comments at 38-42; Kevin J. Martin, Chairman, FCC, Remarks at CTIA Wireless 2008 (Apr. 1, 2008) (accessed at <http://www.fcc.gov/>) at 4 (noting that “wireless is no longer seen as a luxury, but as a vital means of everyday communication [and] the public has growing expectations of how they

households in the United States have “cut the cord” and are using wireless phones exclusively, an additional 13.1 percent of households that have both wireless and wireline service are using their wireless phones almost exclusively, and both those percentages have been increasing steadily.⁹⁹ One reason for this is that, especially in rural areas, wireless services provide important public safety and other benefits.¹⁰⁰

As CTIA has observed, the growing consumer preference for wireless service supports the conclusion “that any universal service policies must, consistent with section 254 of the Act, ensure that wireless carriers have competitively- and technologically-neutral access to high-cost funding.”¹⁰¹ The Commission’s proposals, however, do not measure up to this test. The imposition of the embedded cost methodology proposed by the Commission, combined with the commencement of a phase-out of support available to wireless ETCs, would inevitably reduce the availability of wireless services in rural and high-cost areas. Such a result would work a hardship on consumers and other users in those areas, at a time when demand for wireless services is rapidly increasing.

In addition to this increasing consumer preference for wireless services across the United States, it is also evident that consumers in rural and high-cost areas recognize the value of wire-

will be able to use wireless to meet their everyday needs[,]” and that “[w]e all know that people are relying on cell phones for more and more of their calls . . .”).

⁹⁹ Verizon and Verizon Wireless Ex Parte Filing in CC Docket No. 01-92, WC Docket No. 04-36, and WC Docket No. 06-122, filed Sept. 19, 2008, Attachment at 6-7 (citing Stephen J. Blumberg and Julian V. Lake, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, July-December 2007*, at 1 (May 13, 2008)). See Harris Poll #36, “Cell Phone Usage Continues To Increase,” Apr. 4, 2008 (“Harris Poll #36”) (accessed at http://www.harrisinteractive.com/harris_poll/index.asp?PID=890) (finding that 89 percent of adults have a wireless phone, an increase from 77 percent in October-December 2006, while the percentage of adults with wireline phones has decreased from 81 percent in 2006 to 79 percent in the Harris Poll’s most recent survey), cited in U.S. Cellular *High-Cost Reform NPRMs* Comments at 34, n. 87.

¹⁰⁰ CTIA has noted that “[i]f 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.” CTIA *High-Cost Reform NPRMs* Comments at 4 (quoting New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys* (Apr. 2008) at 16).

¹⁰¹ CTIA Letter at 3.

less services and oppose any decisions by the Commission that would hamper the availability of these services in rural and high-cost markets. For example, at the time the Commission was considering the imposition of a unilateral cap on high-cost fund disbursements to wireless ETCs, more than 3,000 citizens protested, arguing that consumers in rural America deserve the same access to telecommunications services that are available to consumers in other regions of the Nation.¹⁰² These citizens expressed concerns that, if the Commission were to reduce funding available to wireless ETCs, then “many communities may never realize [the] benefits”¹⁰³ of economic growth, and that “[l]ess USF support for rural wireless networks will leave us with poor coverage, dropped calls and dangerous dead zones.”¹⁰⁴

The public safety benefits of wireless services in rural and high-cost areas are important and widely recognized,¹⁰⁵ and also would be adversely affected by funding reductions that would result from the proposals the Commission has put forward in the *High-Cost Reform NPRMs*. Many public safety organizations and other government agencies have indicated their view that wireless service “is a critical instrument in emergency situations”¹⁰⁶ The fact is that wireless networks function as the “carrier of only resort” in many disaster and other emergency situations.¹⁰⁷

¹⁰² See, e.g., Comments of Nancy Roy in CC Docket No. 96-45, *quoted in* U.S. Cellular and RCC 2007 Reply Comments at 35.

¹⁰³ Comments of Robert Hal Phillips in CC Docket No. 96-45, *quoted in* U.S. Cellular and RCC 2007 Reply Comments at 36.

¹⁰⁴ Comments of Michael Lagorio in CC Docket No. 96-45, *quoted in* U.S. Cellular and RCC 2007 Reply Comments at 36.

¹⁰⁵ See, e.g., U.S. Cellular & Rural Cellular Corporation, Comments in WC Docket No. 05-337 and CC Docket No. 96-45, filed June 6, 2007, at 17-20.

¹⁰⁶ Comments of Evan Verbrugge (Sheriff, Rock County Sheriff’s Office) in CC Docket No. 96-45, *quoted in* U.S. Cellular and RCC 2007 Reply Comments at 36.

¹⁰⁷ Comments of SouthernLINC in WC Docket No. 05-337 and CC Docket No. 96-45, filed June 6, 2007, at 21.

VI. CONCLUSION.

Because the Commission and the Joint Board have labored unsuccessfully for so many years in their attempt to fashion universal service reforms, it may be tempting now for the Commission to rush toward adoption of a package of proposals, even though these proposals would inadvertently harm consumers and other users and adversely affect the telecommunications industry. U.S. Cellular respectfully urges the Commission to avoid these harmful and adverse consequences by not taking any action at this time on the high-cost distribution mechanism, and by issuing a Further Notice of Proposed Rulemaking focusing on the best means of delivering broadband and mobile services to rural America.

If the Commission, nonetheless, decides that interim action is a necessity, then U.S. Cellular respectfully requests that the Commission adopt the Wireless Broadband Expansion Proposal for Rural Areas advanced by U.S. Cellular. We urge the Commission to steer clear of the other proposals before the Commission, such as single-winner reverse auctions and an embedded cost methodology for competitive ETCs, that would ill serve consumers, and that would prevent

the Commission from achieving its mandate to further the twin statutory goals of universal service and competition.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



David A. LaFuria
John Cimko

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

Grant Spellmeyer
Director – Regulatory Affairs
United States Cellular Corporation
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

November 26, 2008

APPENDIX A

AN ECONOMIC ANALYSIS OF UNIVERSAL SERVICE PAYMENTS TO WIRELESS CARRIERS

**An Economic Analysis
of
Universal Service Payments to Wireless Carriers*
by
William P. Rogerson****

November 26, 2008

* Prepared for U. S. Cellular Corporation.

** Professor of Economics, Northwestern University. FCC chief economist, 1998-99.

1. INTRODUCTION

A technological fact of life in the telecommunications industry, is that provision of telecommunications services in very rural and less densely populated areas can be dramatically more expensive than provision of the same services in more densely populated areas. A long-standing goal of Federal telecommunications policy has been to guarantee that telecommunications services are available at reasonable cost over all areas of the United States. In the 1996 Act, this principle is manifest in Section 254(b)(3).¹ To this end, the Commission administers a High Cost Fund (HCF) that directs support payments to providers of telecommunications services in high cost areas of the United States to help defray some of the extra costs of providing telecommunications services in these areas. Reflecting the fact that wireless service is now an integral part of the everyday life of Americans² and that it also plays an important role in boosting the competitiveness and productivity of American industry,³ the Commission directs a portion of this support to providers of wireless telecommunications

¹“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. Section 254(b)(3).

²The Commission reports that as of 2006 there were 241.8 million wireless subscribers in the United States which amounts to a penetration rate of 80% and that “virtually everyone in the United States between the ages of 15 and 69 has a wireless phone.” See Federal Communications Commission, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 07-71, Twelfth Report*, February 4, 2008 (“Twelfth Wireless Competition Report”) at para. 244-246.

³See, for example, *The Increasingly Important Impact of Wireless Broadband Technology and Services in the U.S. Economy - A Study for the CTIA*, Roger Entner, Ovum, 2008 (available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10538>), which estimates that in 2005 the productivity value of all mobile wireless services in the United States was \$185 billion.

services, in addition to providing support for traditional wireline service by incumbent local exchange carriers (ILECs).⁴ As of 2007, the HCF directed total payments of \$3.2 billion to ILECs and \$1.1 billion to providers of wireless telecommunications services.⁵

Both the Commission and the Federal-State Board on Universal Service have expressed two concerns with the current set of rules that determine how support from the HCF is made available to wireless carriers. The first concern is with the type of wireless services being supported. In particular, the current system provides support payments for traditional narrow band voice-only wireless service, but does not make any attempt to directly incentivize or support provision of 3G broadband wireless service. The second concern is with the method of determining the level of support that is made available to individual carriers. In particular, under the so-called “identical support” rule that is currently in place, a wireless carrier providing service in a high-cost area receives the same per-line support payment received by the ILEC in that area. The concern is that this method does not attempt in any way to directly determine the minimum level of support payment necessary to support a specified level of wireless service in a specified area and therefore may result either in larger payments than are necessary if the support payment is too high or insufficient provision of services if the support payment is too low. At least for the provision of narrowband services, the concern of both the Commission and the Federal-State Joint Board is mainly that support payments in some cases may be higher than are

⁴Providers of competitive wireline service are also eligible to receive support. However, in reality, very few competitive wireline providers exist in high cost areas, and the vast bulk of payments by the HCF to carriers other than the ILEC go to wireless carriers.

⁵See Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, December 2007, Table 3.2, available at <http://www.fcc.gov/wcg/iatd/monitor.html>.

necessary to support narrow-band services.

As part of a much larger review of its entire universal service program and of inter-carrier compensation policy, the Commission has suggested three possible approaches it might take to addressing these concerns.⁶ I will refer to these as Plans A, B, and C after the letter of the Appendix in which each plan is described. Plan A is the most complex plan to summarize. It recommends that the identical support rule be replaced with a rule that bases payments to individual wireless carriers on their own embedded costs of providing service. However, it also prescribes rules for calculating embedded cost whose main purpose appears to be to virtually guarantee that the level of cost calculated using these rules will be too low to warrant any support.⁷ Another aspect of Plan A is that it requires wireless carriers to make wireless broadband services more available within their service areas as a precondition for receiving support. So long as the currently specified rules for calculating costs are considered an integral part of Plan A, I would interpret Plan A as a rather convoluted method of removing all support for wireless carriers. However, if the currently specified rules were replaced with economically sensible rules for calculating embedded costs, Plan A would become a proposal to base wireless carriers' support on their own embedded costs and to require further rollout of broadband services as a precondition for support. I will comment on both versions of Plan A. Plan B

⁶See Federal Communications Commission, *In the Matter of High Cost Universal Service Support WC Docket 05-337, High-Cost Universal Service Support, CC Docket 96-45, etc., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, November 5, 2008.

⁷For example: (i) the cost of purchasing spectrum is not allowed to be included as a cost and (ii) the average embedded cost per line of a wireless carrier is calculated by dividing its own total costs of providing service in a study area by the total number of lines serviced by the ILEC in that study area. (In most cases the ILEC will have vastly more lines in a study area than any wireless carrier serving part of all of the study area.)

immediately halts all support to wireless carriers. Plan C gradually phases out all support to wireless carriers over a four year period.

In this paper, I will make three major points that I believe are highly relevant to helping the Commission evaluate how it should best proceed to address its concerns with the current rules that govern how high cost support is provided to wireless carriers, while still guaranteeing that it accomplishes the important universal service goals that are part of its mandate.

My first point is that I believe that there are potentially two very legitimate universal service needs with respect to wireless telecommunications services that the Commission needs to gather further information about before undertaking the very radical step of completely halting all support to wireless carriers. The two needs for support of wireless services are for (i) areas that would not sustain any wireless service (narrow band or broad band) in the absence of support and (ii) areas that would not sustain wireless broadband in the absence of support. The approach of simply halting all support to wireless carriers risks throwing out this very valuable and important baby along with the bath water. Furthermore, I will argue that it likely makes sense for the Commission to attempt to induce entry by more than a single firm, so that consumers of these services will receive the benefits of competition, in as many places as is reasonably possible.

My second point is that attempting to control levels of support to wireless carriers by basing support on their own embedded costs would be a profoundly unwise decision totally at odds with the Commission's over-all push to replace cost-recovery rate regulation (which the Commission wisely refrained from applying to wireless carriers) with market-driven practices (including where applicable price caps and proxy models) that provide vastly superior incentives

for efficiency. I think that the Commission has a very valid concern that there be mechanisms in place to help it assess whether current levels of support in particular areas for particular services are too high or too low, and to allow it to adjust these levels of support accordingly. However, there are vastly superior methods of attempting to accomplish this than the policy of basing support payments to wireless carriers on regulatory determinations of their own embedded costs. One obvious approach would be to base support payments on estimates of forward-looking cost calculated using a cost model. However, an even simpler policy might be for the Commission to allow itself to adjust support payments up or down in particular regions depending upon the observed level of services being provided. Neither of these approaches would require elaborate regulatory oversight to monitor and audit costs and neither would create the perverse incentives inherent in a system that pays carriers more if their own costs are higher.

My third point is that the Commission should consider further disaggregation of support payments for wireless services as a method of targeting support more directly to areas that need it. This would allow the Commission to simultaneously control over-all costs of the program while guaranteeing that support was provided where needed. Under its current rules for providing wireless support, the Commission considers the entire study area for an ILEC to be a single region and offers the same per line support payment to wireless carriers for providing service anywhere within the region. However, a typical study area for a high cost ILEC is far from homogenous and instead will generally contain areas with medium-sized towns or major highways where provision of wireless service may be profitable without support payments and more remote less densely populated areas where provision of wireless service is much less likely to be profitable without support payments.

For any given level of support that the Commission provides to a given study area, I think that it would obtain a much higher “bang for its buck” by focusing the support more directly on sub regions within the study area that appear to be most in need of support. In addition to more directly targeting support to areas where it is most needed, such a policy would also provide more direct and stronger incentives for firms to provide service where it is most needed. Under the current system where support payments are paid for provision of service anywhere within a study area, carriers have no specific incentive to attempt to provide better service in the most under-served regions of the study area. Targeting support payments specifically to the most under-served regions of a study area would provide a strong direct incentive for carriers to provide better service in these areas.

The paper is organized as follows. In Sections 2, 3, and 4, I discuss each of my three main points in more detail. Then in Section 5 I suggest possible short-term and medium-term approaches the Commission might take to reforming its policy regarding high cost support to wireless carriers.

2. THE NEED FOR WIRELESS HIGH COST SUPPORT

Three important facts that the Commission should keep in mind when assessing the potential need for supporting wireless service in high cost areas are that: (i) there are very large areas of the country where no carriers provide 3G wireless service, (ii) there are some areas of the country where no carriers provide any wireless service of any sort (narrow or broad band) and (iii) there are many areas of the country currently served by wireless carriers that have this service only because of the current high cost support being provided.

The CTIA has placed some evidence in the record with respect to issue (i) by submitting a study measuring the availability of 3G wireless service across the U.S.⁸ The study reports that 23.2 million or 8% of U.S. residents currently do not have access to 3G mobile broadband service at their primary place of residence.

The Commission itself provides information with respect to issue (ii) in its annual wireless competition reports. According to the twelfth annual report⁹, a relatively small number of people - .5 million or .2% of the U.S. population - live in census blocks that receive no wireless service of any sort from any carrier. However, it is important to note that this figure likely understates the number of people who are unable to receive service at their primary place of residence because, especially in less densely populated areas, census blocks can cover relatively large areas, and the fact that coverage exists in at least some region of a census block does not guarantee that coverage is available to all of the residences within the entire census block. Wireless carriers are continuing to build new towers to serve previously unserved rural areas.¹⁰ However, it seems likely that many, if not most, of these plans for further expansion will hinge on the continued availability of support.

⁸See Cost Quest Associates, *U. S. Mobility Study: Identification of and Estimated Initial Investments to Deploy Third Generation Mobile Broadband Networks in Unserved and Underserved Areas*, in *Comments of CTIA - The Wireless Association, In the Matter of Federal-State Joint Board on Universal Service Seeking Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, April 17, 2008.

⁹See *Twelfth Wireless Competition Report*, Table 1, para. 38.

¹⁰See, for example, *Cellular Phone Service Comes to Wheeler County*, in *The East Oregonian*, July 19, 2008 which reports that a new cell tower built by U.S. Cellular will provide the first-ever wireless service available in parts of Wheeler County in Oregon and U.S. Cellular is planning to build an additional 10-11 towers this year in other rural areas of Oregon.

I am not aware of any studies based on undisputed data which attempt to develop systematic nation-wide information with respect to issue (iii).¹¹ However, U. S. Cellular has already provided the Commission with some illustrative data for the State of Maine. U. S. Cellular receives support from the HCF for providing wireless service in Maine. In an Appendix of this paper, I have included Exhibit 3 from the U. S. Cellular filing,¹² which shows the area of Maine that is served by non-supported wireless carriers and the area of Maine that is served by U. S. Cellular. As can be seen from the map, wireless coverage by non-supported carriers occurs in a fairly small southern swath of the state, while coverage by U. S. Cellular extends through a much larger region of the state. Thus, it appears that a very large region in Maine receives wireless service only from supported carriers. I think that the Commission should attempt to gather better systematic nation-wide information on the extent to which areas of the U.S. only receive coverage from supported wireless carriers and then also investigate the extent to which this coverage might be scaled back or completely eliminated if wireless high cost support was eliminated from these areas, before taking the rather radical step of completely eliminating all

¹¹A study by Criterion Economics (see Nicholas Vantzelfede, *The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds*, June 13, 2007) submitted by Verizon as part of this proceeding, finds that there are 3.2 million people in the lower 48 states whose primary residence receives facilities-based coverage from at least one supported wireless carrier but no facilities-based coverage from any unsupported wireless carrier. However, in subsequent filings (see ex parte filing by U.S. Cellular, *In the Matter of Federal-State Joint Board on Universal Service, WC Docket No. 05-337*, July 24, 2007), U.S. Cellular has disputed this figure and suggested that it is actually much larger, by showing that the Criterion study appears, in some cases, to have classified areas as being served by facilities-based coverage from unsupported carriers, when, in reality, the unsupported carriers only provide non-facilities-based service in these areas through roaming agreements with a supported carrier.

¹²See ex parte filing by U.S. Cellular, *In the Matter of Federal-State Joint Board on Universal Service, WC Docket No. 05-337*, July 24, 2007.

high cost support to wireless carriers.

Furthermore, I think that it is not necessarily correct to conclude that support is somehow being “wasted” or is “too high” if support is paid to more than one carrier serving a single area. Standard economic theory suggests that consumers are likely to receive higher quality service at lower prices if more than one carrier exists to compete for their business. While I doubt that such an argument could be used to justify providing support to 4 or 5 carriers in the same area, it might well be able to justify providing support to 2 or possibly even 3 carriers in an area.

When the Commission and the DOJ review mergers of wireless carriers with overlapping service areas, they both have consistently taken the stand that competition between wireless carriers occurs within local geographic market areas, and that this competition is of direct and substantial benefit to consumers. For instance, in its competitive impact statement explaining its rationale for requiring Verizon and Alltel to divest themselves of overlapping wireless assets prior to consummating their merger, the DOJ stated that without the divestitures “[t]his loss of competition would result in consumers facing higher prices, lower quality service, and fewer choices of mobile wireless telecommunications services providers.”¹³ In its own evaluation of the Verizon/Alltel merger, the Commission also required divestitures of overlapping wireless assets and enunciated the general principle underlying its analysis as follows.

Generally, we find that, in any market in which the transaction would reduce the number of genuine competitors to three or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction. The following five markets, which are the markets where we are requiring business unit

¹³See USDOJ, *United States of America, States of Alabama, California, Iowa, Kansas, Minnesota, North Dakota, and South Dakota vs. Verizon Communications Inc. And Alltel Corporation, Case No. 1:08-cv-01878, Competitive Impact Statement, 10/30/2008.*

divestitures, represent markets in which the acquisition would reduce the number of competitors and result in a significant likelihood of anti-competitive behavior of the combined firm.¹⁴

A reduction in the number of competitors, or in the ability of existing carriers to compete as a result of universal service reform, would have exactly the same effect on wireless customers as a reduction in competition due to a merger.

3. USING EMBEDDED COST TO DETERMINE LEVELS OF WIRELESS SUPPORT

I think that the Commission has a very valid concern that there be mechanisms in place to help it assess whether current levels of support in particular areas for particular services are too high or too low and which allow it to adjust these levels of support accordingly. However, there are vastly superior methods of attempting to accomplish this than the policy of basing support payments to wireless carriers on regulatory determinations of their own embedded costs.

Setting levels of support to a carrier based on its own embedded costs is traditional cost-based regulation and the main problem with such a process is that it completely stifles firms' incentives to reduce their costs. Of potentially equal importance in this particular case, is that pricing decisions by wireless carriers are currently NOT regulated and wireless carriers are NOT required to submit cost data according to some already-established regulatory accounting system. Therefore in order to base carriers' support levels on their own embedded costs, the Commission would have to establish an entirely new regulatory structure for defining, collecting and monitoring costs and firms would have to measure, collect and submit these costs for specific

¹⁴See Federal Communication Commission, *In the Matter of 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 Def Facto Transfer Leasing Arrangements*, WT Docket No. 09-85, at para. 101.

small geographic areas according to the rules established by the Commission. To a first order of magnitude it would not surprise me if the Commission's and firms' collective costs of establishing and operating a full-blown regulatory structure of this sort could rival or even exceed the total level of funds available to support high cost wireless service in the first place!

Of course the current identical support rule exhibits neither of these problems. Since the payment any particular wireless carrier receives is completely independent of its own costs, each wireless carrier has the normal powerful incentives to reduce its own costs found in any competitive market. Since the Commission already calculates the ILEC's own embedded cost per line or uses a wireline cost proxy model for purposes of determining the level of support payment it provides to the ILEC, the incremental cost of using this already-collected data for another purpose is zero.

The potential problem with the identical support rule is that, even assuming that the Commission is able to calculate the correct level of support that an ILEC should receive, this will not necessarily be the correct level of support for a wireless carrier, since the wireless carrier uses a different technology, has a different number of customers, etc. I think that there are at least two strategies that the Commission could adopt to deal with this problem while avoiding the serious problems of the embedded cost approach. One very natural possibility, which the Commission already successfully uses to determine universal service payments for price cap LECs, would be to use a cost model to calculate forward looking wireless cost and base support payment payments on this. A second possibility would be for the Commission to rely on other data such as the number of wireless carriers providing service in an area to help adjust the level of support payment. For example, the Commission could simply take the current level of

support in each study area as a starting point and then begin to adjust it over time in response to the observed levels of service being provided. As I will explain further below, the approaches of using cost models and/or adjusting support payment levels based on measurable levels of competition existing in an area combine naturally with the approach of disaggregating high cost support.

However, I think that it is also important to note that the current policy of using the identical support rule also has some justification. Namely, while many consumers obviously view wireless and wireline service as somewhat different products and purchase both, there is evidence that an increasingly large share of consumers are beginning to view wireless service as potentially being a complete substitute for wireline service, and are adopting wireline service as their only form of telephone service.¹⁶ One goal of the Commission should be to promote this competition in a technology-neutral fashion. Providing the same level of support to different modes of service helps the industry begin to evolve towards the most efficient structure in the sense that no technology is given an artificial advantage over the other.

4. DISAGGREGATION OF HIGH COST SUPPORT

Under its current rules for providing wireless support, the Commission considers the entire study area of an ILEC to be a single region and offers the same per line support payment to wireless carriers for providing service anywhere within the region.¹⁷ However, a typical study

¹⁶See Federal Communications Commission *Twelfth Competition Report* at par. 246, which reports that as of 2006, 11.8 percent of all adults in the United States lived in households with only wireless service. It also reports that this percentage has been growing rapidly over time and is much higher among younger adults.

¹⁷The ILEC serving a study area has the option to ask that its support be disaggregated, in which

area for a high cost ILEC is generally far from homogenous and instead may contain areas with medium-sized towns or major highways where provision of wireless service may be profitable without support payments and more remote less densely populated areas where provision of wireless service is much less likely to be profitable without support payments.

The Commission's concern that high cost support for wireless services may be "too high" is to some extent caused by its observation that there are sub regions within high cost areas with larger towns or major highways where the need for support payments is less apparent. However, as I described above in section 2, these sub regions exist side-by-side with much less densely populated sub regions that have significantly lower levels of service or no service at all. I think that a natural approach for the Commission to consider in order to better target its support would be to disaggregate high cost support for wireless carriers. That is, the Commission should consider subdividing high cost areas into smaller sub regions, and making the per line support payment that a wireless carrier receives depend on the sub region that the service is being provided in.

This raises the issue of how the Commission would determine relative support payment levels across the study area. One possibility would be for the Commission to use its existing data on number of facilities based providers by census block to help determine relative support payment levels. (Areas with more providers would receive lower support payments.) If the Commission used a cost model to determine support payment levels, it might consider calculating separate forward looking cost figures for each sub-region. It would also be possible for the Commission to vary the extent to which it provides differential support for broadband vs.

case high cost support for competitors within the study area is also disaggregated. However, only approximately ten percent of rural ILECs have chosen to disaggregate their support.

narrowband services by sub region. For example, the Commission could provide support for both broadband and narrowband in some sub regions but perhaps only provide support for broadband in others.

Another major advantage of this approach would be that it would provide direct and automatic incentives for wireless carriers to build out facilities and increase the level of service they provide in sub regions of high cost areas that are most in need of additional facilities. Under the current system where carriers receive the same level of support payment for providing service anywhere within a high cost area, carriers receive the same reward for providing an extra line to a resident of a middle sized town as they do for providing service to a resident in a much more remote area. The main counter-veiling force is moral suasion and pressure from the state PUC, which can threaten not to certify the carrier as being eligible to receive high cost payments unless the carrier agrees to build out its facilities to unserved areas. However, even highly vigilant well-staffed state PUCs have a limited amount of bargaining strength, and the extent to which state PUCs have the resources available or desire to closely monitor and pressure wireless carriers varies dramatically from state to state. Therefore a system that automatically provided carriers with a strong and direct financial incentive to build out their facilities to serve more remote areas would represent a significant improvement.

It is also worth noting that the idea of disaggregating high cost support payments has already received considerable support and analysis in studies prepared by the Rural Task Force which was commissioned by the Federal-State Joint Board on Universal service to help provide it with guidance on universal service issues affecting rural telephone companies.¹⁸ The Rural

¹⁸See *Rural Task Force White Paper 6, Disaggregation and Targeting of Universal Service Support*, September 29, 2000 (available at <http://www.w2utc.wa.gov.rtf>).

Task Force primarily considered the possibility of disaggregating support for both the ILEC and competitive carriers serving a study area. The novelty of the approach I am suggesting, is that the Commission could consider disaggregating support to competitive carriers, even if it was not yet ready to disaggregate support to ILECs.

5. SHORT AND MEDIUM RUN POLICY IMPLICATIONS

I believe that an approach to high cost wireless support as described above, that provided some direct incentives for provision of broadband, possibly used a cost model to calculate support payment levels, and that attempted to further disaggregate the provision of high cost support either through using a cost model or through directly measuring existing levels of service in sub regions, would best allow the Commission to simultaneously control expenditure levels in the high cost fund while meeting its mandate to assure that telecommunications services of comparable quality are available at reasonable cost over all areas of the United States. I also think that the Commission will likely conclude that there are potentially too many unexplored complexities associated with such an approach for it to proceed without another round of comments. Therefore I recommend that the Commission continue its temporary policy of freezing payments from the high cost fund to wireless carriers at their current level while it determines a policy for the medium term as expeditiously as possible.

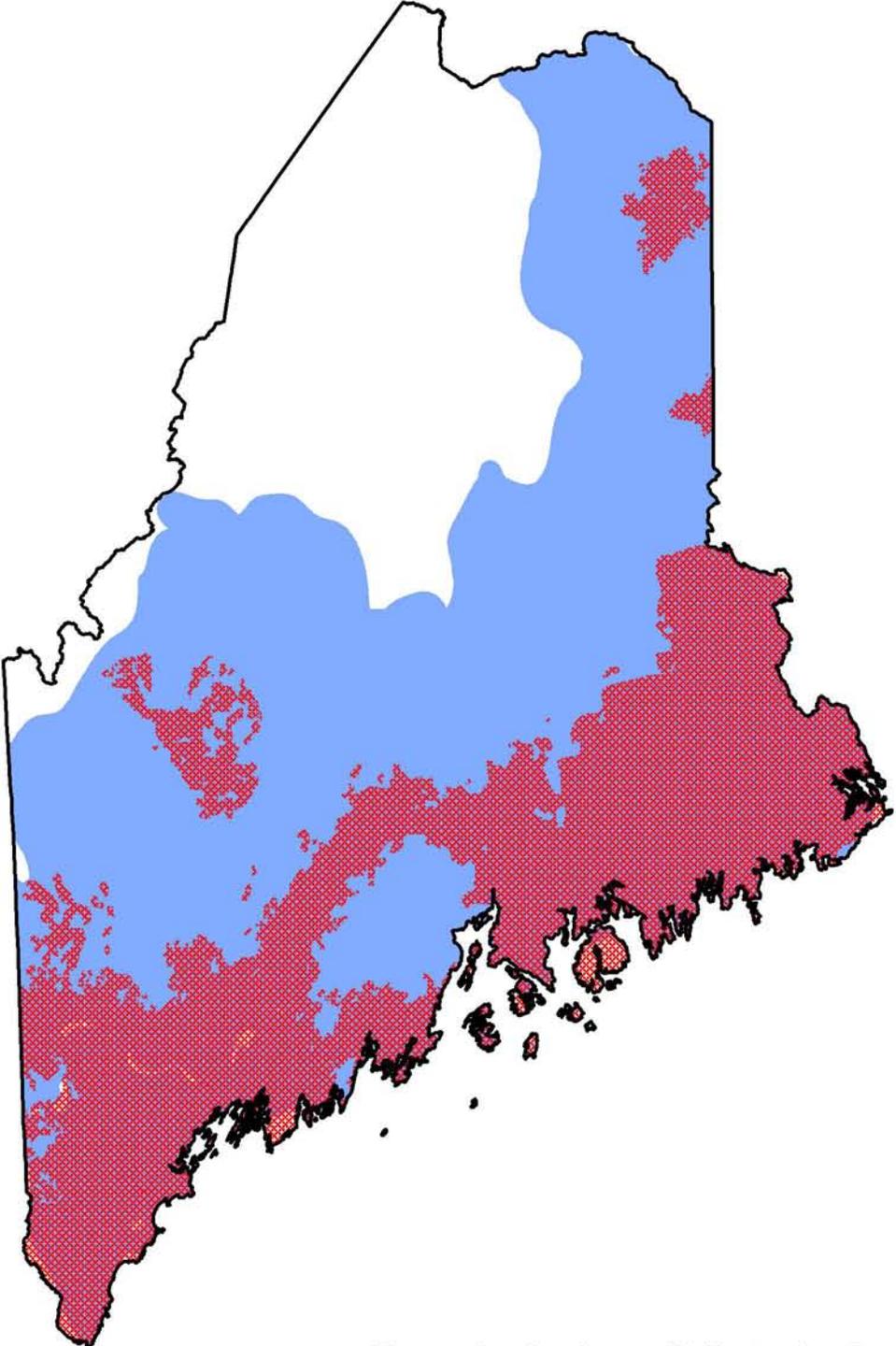
If the Commission decides that it must take some additional action at this time, I think that the “Wireless Broadband Expansion Proposal for Rural Areas” that has been developed by U. S. Cellular would be a very reasonable course of action for the Commission to consider. It would immediately provide some additional impetus for provision of broadband wireless

services in rural areas, while still allowing the Commission to proceed at a more deliberate pace with more fundamental reforms.

APPENDIX
Exhibit 3 from U.S. Cellular Ex Parte Filing¹⁹
Facilities Based Wireless Coverage in Maine
by Unsupported Carriers and by U.S. Cellular

¹⁹See *In the Matter of Federal-State Joint Board on Universal Service, WC Docket No. 05-337*, Ex parte Presentation by U.S. Cellular, July 24, 2007.

State of Maine Facilities-Based Wireless Coverage Map



***Legend**

	Unsubsidized Carriers
	U.S. Cellular

*Coverage based on data provided by American Roamer

APPENDIX B

ANNUAL GROWTH RATES OF HIGH-COST SUPPORT AND TOTAL USF DISBURSEMENTS

SOURCE: 1999-2007 Annual Reports of the Universal Service Administrative Company, available at http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2007.pdf.

Year	ILEC High-Cost (\$)	Delta (%)	CETC High-Cost (\$)	Delta (%)	Total High-Cost (\$)	Delta (%)	USF Disbursements (\$)	Delta (%)
1999	1717400000		500000		1717900000		3556841730	
2000	2233300000	30.04	1500000	200.00	2234800000	30.09	4392054703	23.48
2001	2574700000	15.29	17141000	1042.73	2602457000	16.45	4658608000	6.07
2002	2888900000	12.20	47747000	178.55	2977955000	14.43	5350097000	14.84
2003	3135600000	8.54	131881000	176.21	3273225000	9.92	5633020000	5.29
2004	3152600000	0.54	333062000	152.55	3487572000	6.55	5323784000	5.49
2005	3168600000	0.51	638516000	91.71	3824186000	9.65	6520066000	22.47
2006	3116400000	-1.65	979916000	53.47	4096321000	7.12	6626333000	1.63
2007	3108200000	-0.26	1178503000	20.27	4286733000	4.65	6954836000	4.96