

**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

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

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

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*

I. RECOMMENDED ACTIONS.

We offer the following brief commentary on our recommended actions.

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

We note in particular the materials submitted by CostQuest, which hold the promise of accomplishing most, if not all of the goals set forth in the 1996 Act. There is much to learn from their presentation, notably that the tools which can be used for modeling costs are light years ahead of where they were ten years ago. CostQuest's submission challenges assumptions the Rural Task Force reached ten years ago concerning whether there is a rational justification for having different funding mechanisms based on ownership. As the CostQuest comments demonstrate, tools are now available to measure the efficient cost of providing service at a much more granular level, and to identify high-cost areas more accurately.²

As a result, we believe the Commission should incorporate the CostQuest presentation, along with those of Free Press and CTIA (and others if they have merit) into a further notice that sets the stage for comprehensive reform. In so doing, all stakeholders must have a fair opportunity to present relevant information and advocacy to the Commission.

2. We continue to believe that the recommendations set forth in our comments remain the best way for the Commission to take some limited but effective action, since there is no record evidence supporting a comprehensive restructuring of the federal high-cost distribution mechanism. They are as follows:

- Intercarrier compensation rates should be harmonized at \$0.0007 per minute of use.

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 See *id.* at 8-9 (summarizing CostQuest's proposal for the use of an Advanced Services Model).

Most commenting parties acknowledged the need to decrease terminating access rates. We urge the Commission to do so, in order to increase competition in rural areas and to bring access rates closer to actual cost, and reduce arbitrage opportunities.

- All support must be made fully portable to competitive carriers.

All support must be portable. We are struck with how boldly both the *Chairman's Draft Proposal* and the *Alternative Proposal* reject portability because, “incumbent LECs, as a result of their classification as dominant carriers, have had their end-user charges regulated (both in terms of rate levels and rate structures), they have less flexibility than other carriers to recover decreased intercarrier revenues through end-user charges.”³ The Commission has tentatively concluded that competitive carriers, who are not rate regulated, have flexibility to raise end user prices to make up for lost access or universal service support.⁴

This reasoning is diametrically opposed to the Commission’s longstanding universal service policy that all support must be portable, that is, the company that gets the customer gets the support, while the company that loses the customer loses the support. That is how it works for competitive ETCs today.

The FCC rightfully and successfully defended this concept before the courts, resulting in the Fifth Circuit’s *Alenco* ruling that portability is required by statute.⁵ The FCC repeatedly reiterated its commitment to portability, as soon as universal service mechanisms could be restructured. In fact, the Commission made all Interstate Access Support (“IAS”) fully portable in the *CALLS Order*, explaining that the proposal adopted by the Commission replaced the

³ *Chairman's Draft Proposal* at para. 319; *Alternative Proposal* at para. 315.

⁴ *Chairman's Draft Proposal* at para. 319; *Alternative Proposal* at para. 315.

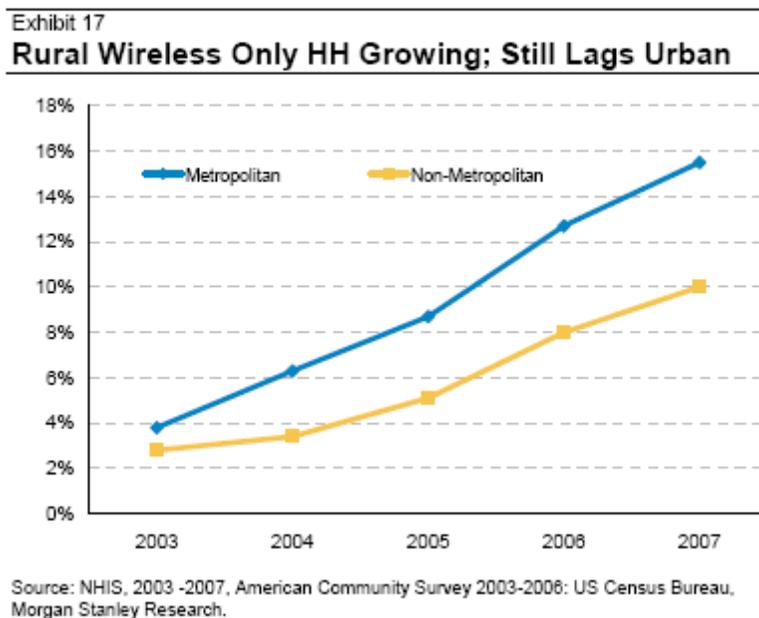
⁵ The *Alenco* court concluded that:

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).

access “subsidies with explicit interstate access universal service support [that is] *fully portable* among eligible telecommunications carriers.”⁶

Another reason to make support fully portable is the rapidly accelerating rate of landline substitution. A recent Morgan Stanley report sees wireless substitution reaching between 33% and 44% in just three to four years.⁷ Most important for the Commission’s purposes, the chart below demonstrates how rural areas lag behind urban areas, a problem identified in the report to be primarily the result of “dead zones in rural areas,” that is, a lack of high-quality service that permits cord-cutting. This situation is precisely why the high-cost fund is so important – some twenty years after the first commercial mobile wireless services were licensed in rural areas, there remain enormous challenges to building and maintaining cell sites, leading to the inevitable conclusion that high-cost support is the bridge between poor service and high-quality service.



Whatever the Commission decides in the long run, it must return to the concept of portability and ensure that all carriers can access support mechanisms on a competitively neutral playing field.

⁶ *CALLS Order*, 15 FCC Rcd at 12975-76 (para. 32) (footnote omitted) (emphasis added).

⁷ Telecom Services, *Cutting the Cord: Voice First, Broadband Close Behind*. Morgan Stanley Research North America, October 1, 2008.

- Define Carrier of Last Resort (“COLR”) and require all ETCs to accept COLR obligations.

A few years back, a witness for SBC (now, AT&T), when asked in an ETC designation proceeding whether a state commission has the ability to require wireless companies to be a provider of last resort, similar to what the incumbent has, testified, “The problem for me with carrier of last resort -- and I'm sorry if I speak too much here – is that in dealing with it in 13 states with SBC, I've never gotten a real solid answer to what exactly it meant.”⁸ Undersigned counsel could not agree more. In our advocacy in roughly 25 states, we also have never gotten a real solid answer as to what it means. We know that in virtually every instance, a carrier is not required to build out to every customer that requests service, no matter what the circumstances. We believe it to mean that a carrier is required to respond to all reasonable requests for service, as set forth in the Act and the Commission’s rules.

The FCC should develop a definition for COLR obligations and limit COLR requirements to only those areas or circumstances where no carrier agrees to provide service and one must be selected. We think the Commission should consider eliminating COLR obligations in any area where competition exists, or alternatively, declare all ETCs to be COLRs – eligible to be selected to extend service to a customer living in an otherwise difficult to serve area. In such cases, a funding mechanism would need to be developed.

- All ETCs are permitted to use support to provide broadband Internet access service.

There appears to be strong support for making broadband Internet access a supported service. We think the legal hurdles to doing so are low and the Congress can be called upon to

⁸ Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Case No. TO-2005-0384, Transcript of Hearing held October 26-27, 2005, at p. 426, lines 2-14 (cross-examination of James E. Stidham, Associate Director – Corporate Regulatory Planning and Policy for AT&T Services, Inc.):

shore up any early efforts the FCC makes in this regard. We urge the Commission to permit carriers to use high-cost support on the provision of broadband Internet access service.

We strongly urge the Commission to reject any proposal that would force carriers to deliver broadband Internet access service without providing support, or allow support to be invested in broadband without making it a supported service. Eligibility to be an ETC requires the carrier to “offer the services that are supported by [the USF].” 47 U.S.C. § 214(e)(1)(A). The FCC’s proposal would make an ETC eligible to receive USF support *only if it agrees to provide a non-supported service* — broadband internet access service. Such a course would effectively rewrite the statute and undoubtedly lead to court challenges that would have a high likelihood of success.

- Hold harmless provision put in place for small carriers through transition period.

While we unequivocally support full portability for all support, we noted in our comments that for a relatively small amount, the Commission could adopt a hold-harmless provision for small carriers during a transition period to lessen the shock on rural consumers. No party objected to such a proposal and we remain committed to the idea that a reasonable hold-harmless is a much better response to rural carrier needs than indefinite and open-ended protectionism.

- Disaggregate support to more accurately target funds to highest-cost areas.

As we noted in our comments above concerning the CostQuest submission, use of a model is one effective way to more properly target support to the highest-cost areas. Maps included with CostQuest’s submission indicate clearly that high- and low-cost areas can be accurately identified. For example, CostQuest notes that population density is one driver, but not necessarily the primary driver of costs. Given that the FCC has structured a service area redefinition regime around population density as a driver of costs, it is clear that much work needs to be done to more accurately target support to high-cost areas.

- Reject a step-down of support to competitive ETCs.

Stepping down support over a four-year period must be rejected. This proposal violates the Act because phasing out high-cost support currently available to wireless competitive ETCs would result in de-certifying and de-funding these carriers, and the Commission has no authority under the statute to take such an action.⁹ Section 214(e) of the Act provides that a carrier designated as an ETC “shall be eligible to receive universal service support.”¹⁰ The Commission’s proposal to phase out this support completely over a five-year period would turn Section 214(e) into a nullity.¹¹

The proposal is arbitrary and capricious because the Commission offers no explanation of why the elimination of competitive ETC funding is required to advance universal service goals or to protect the sufficiency of the high-cost fund. Phasing out competitive ETC support is not necessary to relieve upward pressure on the high-cost fund, because the Commission has failed to demonstrate that any such pressure exists.¹²

The proposal to phase out all high-cost support to competitive ETCs is bad public policy because it disregards the interests of consumers in rural and high-cost areas. Leaving incumbent LECs’ current funding levels intact, while phasing out funding to competitive ETCs, would undermine competition and ignore the growing demand for wireless services throughout rural America.¹³ Given the current state of the national economy, it makes little sense for the Commission to propose to reduce investment in telecommunications infrastructure in rural and

⁹ See Centennial Communications Comments at 4.

¹⁰ 47 U.S.C. § 214(e).

¹¹ See Rural Independent Competitive Alliance Comments at 19 (the Commission’s proposal would “amount to an administrative repeal of a statutory provision”); USA Coalition & Rural Cellular Association Comments at 13-14.

¹² See U.S. Cellular Comments at 31-32.

¹³ See CTIA – The Wireless Association® (“CTIA”) Comments at 2-7; U.S. Cellular Comments at 33-35.

high-cost areas.¹⁴ The Commission's policy focus should be on enhancing the availability of wireless services in rural and high-cost areas¹⁵ to meet consumer demand and ensure comparability with services available in urban areas.¹⁶ Instead, the Commission's proposal turns its back on these consumers, pulls the plug on competition in rural and high-cost areas, and serves only to protect the domain of incumbent carriers in rural America.

If the Commission insists upon imposing a funding phase-out on competitive ETCs, then this "phase-out of support [under existing support mechanisms] *should not begin* until the phase-in of support under the successor mechanism begins. The transition of CETC support thus would begin once a successor mechanism is adopted."¹⁷ Proceeding in tandem, as CTIA suggests, could introduce some degree of relief for competitive ETCs, although it would not necessarily cure the discriminatory, arbitrary, and capricious nature of the Commission's step down proposal.

Some of the commission's proposals present great opportunity for mischief. For example, the auction proposal would define the geographic area to be the ILEC's entire study area and require the winning bidder to be the COLR. However, ILECs are authorized to "identify the distribution of support by geographic area" within the study area for purposes of transferring support as the winning bidder serves additional portions of the study area. While that concept is perhaps unclear, we interpret it to mean that a winning bidder must serve the whole study area at some point, but until it does, the ILEC can control the spigot and decide how much support is available for the competitor to build out to the rest of the study area. This may be a major opportunity for ILECs to thwart auction winners' build-out efforts and it is just one

¹⁴ Alliance Carriers Comments at 13. See Corr Wireless Communications Comments at 6-7 (arguing that any withdrawal of competitive ETC support should be deferred for at least five years because competitive ETCs have made capital expenditure commitments that are dependent in part upon continuing receipt of high-cost funding).

¹⁵ See 47 U.S.C. § 254(b)(2).

¹⁶ See 47 U.S.C. § 254(b)(3).

¹⁷ CTIA Comments at 17 (emphasis added). See Sprint Nextel Comments at 30-31 (arguing that any elimination of existing competitive ETC support should be tied to adoption and implementation of a new support mechanism).

example of how the fine points set forth in the auction proposal skew in favor of incumbent carriers.

Respectfully submitted,

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December 22, 2008