

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:	
High-Cost Universal Service Support	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link Up	WC Docket No. 03-109
Universal Service Contribution Methodology	WC Docket No. 06-122
Numbering Resource Optimization	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	CC Docket No. 99-68
IP-Enabled Services	WC Docket No. 04-36

**Reply Comments of the USA Coalition & RCA**

The Universal Service for America Coalition (“USA Coalition”) and Rural Cellular Association (“RCA”) (collectively, the “Joint Commenters”),<sup>1</sup> by their attorneys, hereby submit these reply comments in the above-captioned proceeding in response to the Further Notice of Proposed Rulemaking issued on November 5, 2008.<sup>2</sup>

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<sup>1</sup> The members of the USA Coalition include Carolina West Wireless, Cellular One, Cellular South, Corr Wireless Communications, Mobi PCS, SouthernLINC Wireless, Thumb Cellular LLC and US Cellular.

<sup>2</sup> See *High-Cost Universal Service Support*; *Federal-State Joint Board on Universal Services*; *Lifeline and Link Up*; *Universal Service Contribution Methodology*; *Numbering Resource Optimization*; *Implementation of the Local Competition Provisions in the telecommunications Act of 1996*; *Developing a Unified Intercarrier Compensation Regime*; *Intercarrier Compensation for ISP-Bound Traffic*; *IP-Enabled Services*, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109; WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket

The Joint Commenters applaud the Commission's decision to move forward in a more deliberate manner rather than rushing to act before an arbitrary deadline. The initial comments reflect widespread agreement that none of the currently pending proposals represent meaningful and sustainable reform of the universal service fund. Indeed, as a result of the Commission's failure to define key terms and adopt practical and measurable goals for the universal service program, the record regarding potential replacements for the identical support rule is woefully incomplete. Without this crucial foundation, the Commission cannot hope to adopt meaningful and sustainable universal service reform. Therefore, the Joint Commenters urge the Commission to focus first on building the foundation for reform by (1) proposing definitions for key terms in the Act and measurable goals for the universal service program, and (2) requesting comment on those proposals.

**I. THE FCC MUST DEFINE KEY TERMS AND ADOPT MEASURABLE GOALS BEFORE REFORM PROPOSALS CAN BE PROPERLY ANALYZED**

Any reform adopted by the Commission must be consistent with the universal service provisions of the Telecommunications Act. The Joint Commenters join with Qwest, AT&T, and numerous others in urging the Commission first to comply with the Tenth Circuit's remand order in *Qwest II* before attempting to adopt comprehensive universal service reform.<sup>3</sup> As Qwest pointed out, "[t]he Commission still has an obligation under *Qwest II* to demonstrate that any new high-cost funding mechanisms enable reasonably comparable rates and services between rural and urban areas and provide sufficient funding for currently supported services in

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No. 99-68, WC Docket No. 04-36, Order on Remand & Report & Order & Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008).

<sup>3</sup> Qwest Comments at 4 (citing *Qwest v. FCC*, 398 F.3d 1222, 1239 (10th Cir. 2005) ("*Qwest II*").

high-cost areas.”<sup>4</sup> AT&T also recognizes the need for the Commission to explain how the Commission’s proposed orders “relate[] to the issues raised by the Tenth Circuit in its *Qwest II* decision” and urges the Commission to “issue a separate order [apart from any reforms] resolving any such issues.”<sup>5</sup>

To address these concerns, the Commission must define key terms of the Act, including the principles of “reasonable comparability,” “sufficiency,” and “affordability” set forth in section 254. As the Joint Commenters have demonstrated in past filings, the principle of “reasonable comparability” found in section 254(b)(3) is the touchstone for the universal service program.<sup>6</sup> However, as the Tenth Circuit made clear in *Qwest II*, this principle must be weighed and balanced against other principles enumerated in the Act, including those of “sufficiency” and “affordability”<sup>7</sup> to develop practical and measurable goals for the universal service program. Put simply, rather than articulating platitudes, the Commission must adopt concrete goals against which market data can be compared in order to determine whether the universal service fund is operating efficiently. Only after the Commission knows where it wants to go can it determine the best way to get there.

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<sup>4</sup> *Id.* at 37.

<sup>5</sup> AT&T Comments at 45 (“If the Commission takes no action on the Tenth Circuit’s remand but caps the high-cost fund and limits high-cost dollars to those states where carriers receive them today ... it will only perpetuate the flaws of the non-rural carrier funding mechanism and undermine the ability of non-rural carriers to offer broadband service in their high-cost and unserved areas.”).

<sup>6</sup> *See, e.g.*, USA Coalition Letter to Chairman Martin, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, at 5 (filed Sep. 30, 2008). The Commission has found that “section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates.” *Federal State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice Of Proposed Rulemaking, 20 FCC Rcd 19731, 19736-37, ¶ 10 (2005).

<sup>7</sup> *See, generally, Qwest II*, 398 F.3d at 1234 (rejecting Commission’s USF definitions for failure to adequately consider all the principles enumerated in 47 U.S.C. § 254, including “reasonably comparable,” “just, reasonable and affordable,” and “sufficient”).

## **II. THE RECORD BEFORE THE COMMISSION LACKS SUPPORT FOR ANY OF THE PROPOSED REPLACEMENTS FOR THE IDENTICAL SUPPORT RULE**

All of the proposals pending before the Commission are based upon the complete elimination of the identical support rule. However, the record regarding any of the potential replacements for the identical support rule is just as incomplete today as it was in 1997 when the Commission first adopted the identical support rule because none of the other options in the record offered a justifiable and workable alternative.<sup>8</sup> At the time, the Commission viewed the identical support rule as a temporary solution, to be used only until the Commission could move to a system where federal support would “be calculated by determining the forward-looking economic cost of providing the supported services reduced by a nationwide revenue benchmark calculated on the bases of average revenue per line.”<sup>9</sup> In the same order, the Commission considered and rejected both embedded cost models and competitive bidding proposals for a variety of reasons.<sup>10</sup> In short, the Commission in 1997 backed into the identical support rule because it was the only workable system consistent with the terms of the Act.

Despite more than a decade of effort, the Commission has yet to develop a workable model for forward-looking costs or any other practical replacement for the identical support rule that is consistent with the Act.<sup>11</sup> In the most recent notice of proposed rulemaking,

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<sup>8</sup> *Federal State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776, 8932-34, ¶¶ 287-88 (1997) (*First Report & Order*) (implementing the identical support rule because it was the “least burdensome” method of providing USF support to competitive ETCs).

<sup>9</sup> *Id.* at 8899, ¶ 223.

<sup>10</sup> *Id.* at 8900-01, ¶¶ 227-228 (rejecting arguments for basing the support mechanisms on a carrier’s embedded costs because the use of embedded costs “provide[s] the wrong signals to potential entrants and existing carriers.”); *id.* at 8885, ¶ 195 (explaining that the Joint Board supported the use of competitive bidding but “could not recommend a particular competitive bidding proposal because no proposal before it was sufficiently detailed to support a recommendation.”).

<sup>11</sup> *Federal-State Joint Board On Universal Service*, Order, 19 FCC Rcd 11538, ¶¶ 4, 6 (2004) (explaining that in 2000, rather than attempting to modify the Commission’s

the Commission requested comment on two concepts it already has fully considered and rejected (embedded cost models and reverse auctions). Worse yet, the concepts were merged in a way that would exacerbate the potential flaws of both, as the overwhelming majority of commenters agreed. In short, the proposals in the current record are nothing more than new combinations of the same proposals the Commission rejected in 1997, and the record still lacks any evidence bolstering the Commission's claims that the identical support rule is unworkable or untenable, or supporting the adoption of any of the proposed alternatives to the identical support rule.

**A. The Commission Should Not Impose An Expensive And Burdensome Cost Study Requirement Upon Competitive ETCs**

The Joint Commenters join with AT&T, Verizon, U.S. Cellular and many others in urging the Commission to reject expensive and burdensome cost study requirements for competitive ETCs. As Verizon noted, “[e]xtending a cost-based approach to competitive ETCs ... will not make the system more rational, more efficient, or more effective; in fact the opposite is true.”<sup>12</sup> Rather, “[t]he Commission and the industry would incur significant expense and burden in trying to create and administer such a system, without providing any tangible benefits to consumers.”<sup>13</sup> Furthermore, the Commission has failed to provide adequate details on how any such cost-recovery system would work, and the Joint Commenters (among others) believe that the record-keeping costs associated with such a system would make the system inefficient.<sup>14</sup>

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forward-looking economic cost mechanism the Rural Task Force instead proposed a slightly modified version of the embedded cost system for a five-year period ... to permit the Joint Board to consider the appropriate rural mechanism to succeed the plan”); *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending the Rural Task Force's plan indefinitely).

<sup>12</sup> Verizon Comments at 29.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*; U.S. Cellular at 24.

U.S. Cellular also objects to the adoption of a cost-study requirement, pointing out that any proposal that would base high-cost support on competitive ETCs' embedded costs "would give competitive ETCs incentives pointing in the wrong direction" by "completely stifl[ing] firms' incentives to reduce their costs."<sup>15</sup> Indeed, U.S. Cellular notes that the Commission itself has accepted this proposition in its NPRM on Reverse Auctions where it found that "a support mechanism based on ... a carrier's embedded costs ... provides no incentives for ETCs to provide supported services at the minimum possible cost."<sup>16</sup> Furthermore, cost studies for competitive ETCs are unnecessary because the current rules require all ETCs to use USF support solely for the maintenance or expansion of the ETCs' networks.<sup>17</sup> To the extent the FCC nonetheless chooses to impose a new cost requirement upon competitive ETCs, the agency must (1) articulate the purpose allegedly served by the requirement and (2) demonstrate that the requirement is narrowly tailored to achieve that purpose in the least burdensome manner possible that is consistent with the requirements of the statute.

**B. The Record Does Not Contain Any Evidence Of A Viable Forward-Looking Cost Model**

When developing the current universal service support mechanisms in 1997, the Commission determined that "a forward-looking economic cost methodology for rural carriers should not be implemented until there is greater certainty that the mechanisms account reasonably for the cost differences in rural study areas."<sup>18</sup> However, in the more than ten years since the *First Report and Order*, the Commission has not developed a workable cost model for

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<sup>15</sup> U.S. Cellular at 24.

<sup>16</sup> *Id.* (citing *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, FCC 08-5 ¶ 11 (rel. Jan. 29, 2008)).

<sup>17</sup> *USF First Report and Order*, 12 FCC Rcd at 8932-34, ¶¶ 286- 290.

<sup>18</sup> *Id.*, 12 FCC Rcd at 8943, ¶ 309.

providing universal service support, and nothing suggests that any viable models will be developed in the near future.<sup>19</sup> Some parties like CostQuest Associates have provided interesting suggestions regarding cost modeling, but these models require significantly more study and analysis.<sup>20</sup> The record regarding these proposals is incomplete, and merely requesting comments from the public is insufficient to determine whether the flaws that caused the Commission to reject cost modeling in 1997 have indeed been overcome. To the extent the Commission wishes to consider any proposed cost model, the agency should continue to distribute support under the current system while the model is tested in a variety of different limited geographic regions.

### **C. The Record Regarding Reverse Auctions Is Incomplete**

The Commission has considered reverse auctions since its adoption of the *USF First Report and Order* in 1997.<sup>21</sup> The Joint Commenters agree with Windstream and other parties that the reverse auctions proposed in the Commission's most recent NPRMs are unproven, unacceptable and fundamentally inconsistent with the Act.<sup>22</sup> Indeed, no evidence placed on the record since the Commission last rejected reverse auctions in 1997 is sufficient to justify the adoption of reverse auctions at this time.

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<sup>19</sup> *Id.*, 12 FCC Rcd at 8945, ¶ 313; *see also Federal-State Joint Board on Universal Service, Order*, 19 FCC Rcd 11538, ¶ 1 (2004) (Rural Referral Order); *see also Federal-State Joint Board on Universal Service, Order*, 16 FCC Rcd 11244, 11310 (2001) (*Rural Task Force Order*); *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, Order*, 21 FCC Rcd 5514 (2006) (extending *Rural Task Force Order* plan).

<sup>20</sup> CostQuest Associates at 8 (proposing an “advanced services model” for funding all high-cost mechanisms for ETCs and CETCs).

<sup>21</sup> *USF First Report & Order*, 12 FCC Rcd at 8814, ¶ 70 (noting that “the Joint Board anticipated that competitive bidding may become an efficient method of determining universal service support amounts).

<sup>22</sup> Windstream Comments at 53 (“Windstream also would support the use of reverse auctions to further reduce the level of total funding and promote efficiency [but] all three of the FNPRM proposals ...fail to meet this condition.”); U.S. Cellular Comments at 17 (“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.”).

### III. THE INTERIM CAP IS FUNDAMENTALLY INCONSISTENT WITH THE ACT AND THUS MUST BE ELIMINATED IMMEDIATELY

The interim cap must be eliminated immediately because (1) the cap is fundamentally inconsistent with the Act, as the Joint Commenters and other parties have repeatedly demonstrated;<sup>23</sup> (2) the cap no longer serves the interim function the FCC claimed justified its imposition; and (3) the cap is unnecessary. The cap cannot be squared with the requirements of the Act, which is why the Commission characterized it as an “interim, emergency cap” that would not apply past November 4 because the Commission was “commit[ed] to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the [then] pending Reform Notices.”<sup>24</sup> Under the current circumstances, failure to lift the cap would merely confirm the fears of numerous commenters that the interim cap would become a permanent cap,<sup>25</sup> which would be particularly egregious since recent events confirm that the cap is unnecessary.<sup>26</sup>

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<sup>23</sup> See, e.g., USA Coalition/RCA Comments at 8-11; Sprint-Nextel Comments, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-46, at 6-11 (filed June 6, 2007) (explaining that a cap on funding fails to “advance” universal service as required by the Act); Centennial Communications Corp. Comments, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-46, at 5-9 (filed June 6, 2007) (explaining that the interim cap is not competitively neutral).

<sup>24</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-46, Order, 23 FCC Rcd 8834, 8834, ¶¶ 1, 37 (rel. May 1, 2008) (*Interim Cap Order*),

<sup>25</sup> *Id.* ¶ 37 n.112 (noting that Dobson, Alltel, and CTIA all proposed a fixed sunset date for the interim cap).

<sup>26</sup> The universal service contribution factor will drop 16.9 percent in the first quarter of 2009. *Proposed First Quarter 2009 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 08-2706 (rel. Dec. 15, 2009) (announcing contribution factor of 9.5 percent). Moreover, as a condition of the Commission’s approval of the Verizon/Alltel merger and the Sprint/Clearwire merger, those companies committed to phase down competitive support over five years. See *Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holding For Consent to Transfer Control of Licenses, Authorization, and Spectrum Manager and DE Facto Transfer Leasing Arrangements*, File Nos. 0003463892, ISP-PDR-20080613-00012, WT Docket No. 08-95, Memorandum Opinion & Order & Declaratory Ruling, ¶ 197 n.690 (rel. Nov. 10,

#### **IV. THE COMMISSION SHOULD REJECT THE PROPOSED HYBRID NUMBERS/CONNECTIONS-BASED CONTRIBUTION MECHANISM**

The Joint Commenters join the many parties who oppose the proposed hybrid numbers/connections-based contribution mechanism as inefficient and unfair. The Joint Commenters agree with Verizon in encouraging the Commission to “be careful to avoid adding unnecessary complexity [to the USF contribution mechanism], which harms consumers and providers alike by increasing administrative and compliance costs.”<sup>27</sup> Indeed, as Verizon explains, “[e]ach category of telephone numbers excluded from the contribution obligation raises compliance and administrative costs for the industry, creates incentives for gaming and evading contribution obligations, and complicates rather than simplifies the USF contribution system.”<sup>28</sup> For these reasons, the Commission should reject any administratively complex contribution mechanism, including all hybrid numbers/connections-based mechanisms, which are, by definition, complex.

As the Joint Commenters explained in their initial comments, a pure connections-based contribution methodology would be easier to administer than a hybrid system because a pure connections-based contribution methodology would eliminate the need for all of the distinctions necessary under the proposed hybrid systems. The Commission can assess any interstate connection of a given capacity (with contribution levels tied to capacity levels). Service providers could rely upon decades of precedent regarding the jurisdictional classification

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2008); *Sprint Nextel Corp. and Clearwire Corp. Applications for Consent To Transfer Control of Licenses, Leases, and Authorizations*, File Nos. 0003462540 *et al.*, WT Docket No. 08-94, Memorandum Opinion & Order, FCC 08-259, ¶ 108 (rel Nov. 7, 2008)

<sup>27</sup> Verizon Comments at 34.

<sup>28</sup> *Id.* at 36; *see also* Windstream Comments at 62 (recommending “that the Commission provide exemptions from universal service assessments only when individuals are truly unable to bear the burden of contribution to the universal service fund” such as in the case of Lifeline customers).

of connections in order to classify the connections they offer to their customers, which would eliminate the problematic jurisdictional issues associated with numbers-based contribution methodologies. Because connections are the foundation of all telecommunications and information services provided to end users, a connections-based methodology would be much more stable and predictable than a hybrid-methodology that involves either a numbers- or revenues-based component, which can fluctuate much more rapidly than connections and are significantly more subject to arbitrage. Moreover, as the basis for all services provided to end users, connections more directly reflect the benefit that particular end users gain from universal service. To the extent the Commission tentatively concludes that a pure-connections based contribution methodology would be superior to the current revenues approach, it should publish a further notice of proposed rulemaking regarding details of the reforms.

## V. CONCLUSION

For the reasons set forth above, the USA Coalition and RCA urge the Commission to reject the proposals published in the *Order & NPRM*, and to carefully consider alternatives that are competitively and technologically neutral.

Respectfully submitted,



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