**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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

To: The Commission

## REPLY COMMENTS OF COMMNET WIRELESS, LLC

Commnet Wireless, LLC ("Commnet"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its Reply Comments pursuant to the *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-262, released November 5, 2008 ("*FNPRM*") in the captioned consolidated proceedings.[1] As discussed in its initial Comments, Commnet supports the Commission's efforts to rationalize the high-cost Universal Service Support program to ensure that funding is used to benefit the public in rural

[1] By *Order*, DA 08-2631, rel. Dec. 2, 2008, the Commission extended until December 22, 2008 the deadline for filing Reply Comments in this proceeding. Accordingly, these Reply Comments are timely filed.

and high-cost areas, and opposed perpetuation of the current system that stuffs windfall funds into the pockets of well-heeled carriers.

In these Reply Comments, Commnet agrees with the views of the National Tribal Telecommunications Association ("NTTA") and the San Carlos Apache Telecommunications Utility Authority ("SCATUI") that the special circumstances prevailing on the country's tribal lands justify disparate treatment. Commnet generally supports the positions taken by those two commenters.

Conversely, Commnet disagrees with those commenters who would continue to reward landline carriers for their inefficient policies and continued employment of older technologies for the simple purpose of increasing costs, and therefore also increasing subsidies. Commnet continues to support the notion of reverse auctions, at least with respect to non-tribal lands, and continues to support the Commission's efforts to extend broadband services to rural America.

Auctions have worked superbly to date to accelerate change and innovation and expand telecommunications services, by giving valuable rights to those who value them the most and will put those rights to use expeditiously. Reverse auctions represent the appropriate cure to a broken high-cost support system that rewards inefficiency and encourages the continued reliance upon outmoded technologies in rural areas.

## I. Tribal Lands Deserve Different Treatment

NTTA and SCATUI demonstrate that, unlike the situation prevailing elsewhere in rural America, tribal lands are largely still trying to obtain the fruits of 20th century technology, which past policies were unsuccessful in delivering to Native American communities. To remedy this unique situation, they ask the Commission to focus on bringing to tribal lands all of the benefits of traditional telephone (voice) service, before focusing on broadband services. Accordingly,

they opine that different support rules should apply for tribal lands, at least until the current disparities can be eliminated. Commnet agrees.

Specifically, Commnet agrees that each reservation should constitute a study area, and that the final decision on ETC designation within such study area should rest with the tribal government, not the FCC and not the state government. Because a tribal government is most knowledgable and best equipped to address the needs of its reservation, Commnet agrees that a tribal government should be allowed to make an ETC designation in any manner that comports with procedural due process, and should not be constrained to use reverse auctions, even though reverse auctions are appropriate outside reservation boundaries. Commnet further agrees that ETC rules for tribal lands should provide financial incentives for an ETC to serve *every* reservation resident, and not to provide duplicative service to those residents that are easiest to reach.

Although not specifically discussed by NTTA or SCATUI, Commnet further believes that tribal governments should have the flexibility to initiate novel approaches to achieving 100% penetration, including entering into agreements with wireless carriers to build cells to serve the most remote residents and including the costs of such agreements in calculating high-cost support, where such agreements would be more cost-effective and/or would bring the service to the involved tribal residents more rapidly. The key is to give the local tribal governments (and, where they exist, their tribal-owned telecom companies) the discretion to make these choices.

Commnet also agrees that tribal lands, like those in Alaska, Hawaii and the various Territories, should be exempt from the transitional support caps.

## II. Efficient Wireless Carriers Should Not Be Shut Out by Incumbents

In its Comments, Leap Wireless International, Inc. ("Leap") describes some of the innovative programs it is introducing in rural America. Leap explains that it recently obtained ETC designation in one state and intends to seek designation in additional areas. Based on its Comments, Leap, like Commnet, appears to be a nimble and efficient carrier that should be encouraged to participate in reverse auctions. That Leap, like Commnet, has only recently been designated as an ETC in one state and will not be designated in any other state until 2009 at the earliest shows that Commnet is not alone in experiencing difficulties in obtaining ETC status due to landline carrier opposition.[2]

This reinforces the need for the Commission to base transitional ETC high-cost support funding on the same state-by-state approach adopted last May in the *Interim Cap Order*,[3] and not to calculate each carrier's transitional support by reference to that carrier's collections during December, 2008. Where newer wireless ETCs such as Commnet and Leap add customers between now and the end of the transition, they should be entitled to their fair share of transitional high-cost support. There is no policy reason to protect the non-cost-based subsidies of pre-existing wireless ETCs at the expense of Leap or Commnet. There is every reason to encourage Leap and Commnet to move forward with service during the transition years and to have them participate in reverse auctions to the benefit of the public.

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[2] As discussed in Commnet's Comments herein, at p. 4, Commnet recently was designated as an ETC in parts of its Colorado service area, and has not yet been designated as an ETC elsewhere in its rural service areas.

[3] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, 23 FCC Rcd 8384, 8846 (2008) ("*Interim Cap Order*").

## III. The Commission Should Clarify That Support Funds May Be Used for Broadband Service

In their Joint Comments, at pp. 15-17, the USA Coalition and Rural Cellular Association claim that ETC support funding may not lawfully be used to pay for broadband service, and therefore the Commission's proposal to require ETCs to provide broadband service would be arbitrary and capricious. Commnet does not interpret the rules to prohibit the use of ETC support funding on building and operating broadband services. However, the Commission should eliminate any possible ambiguity. The Commission should state explicitly that ETCs may lawfully use support funding to construct or operate broadband facilities. This would moot the argument that requiring ETCs to provide broadband service is arbitrary and capricious.

## IV. The Commission Should Not Discriminate in Favor of Inefficient Landline Carriers; Wireless Carriers Can Perform as the Carrier of Last Resort

Several commenters make unfounded claims in favor of throwing subsidies at inefficient landline carriers, and eliminating support for more efficient wireless technologies.[4] These claims are generally based on the false premise that only landline carriers can or will serve as a "carrier of last resort" to reach all residents. But a wireless carrier can and will serve as a carrier of last resort, especially if that is a prerequisite for eligibility to participate in reverse auctions. Accordingly, the Commission must reject the demand that it continue to protect the profits of rate-of-return landline carriers that obtain subsidies based on high-cost landline deployment instead of less expensive wireless technology.

Notably, Commnet, like other wireless carriers, is already the "carrier of last resort" for those who find themselves in remote areas during an emergency, and need to call 911. Wireless carriers, due to the nature of the technology, serve areas around a radius of each cell site, not just

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[4] *See, e.g.*, Comments of the National Exchange Carrier Association, Inc. ("NECA"), pp. 20-24.

along the path of a single wire. It would be irrational for the Commission to favor landline technology, which cannot provide incidental services to incoming roamers, over wireless technology, which can and does provide such incidental services to incoming roamers (including especially emergency 911 service). But even for local residents who desire a "home phone" for their rural dwelling, it is almost always less expensive to extend service via wireless than it is to subsidize the laying of miles of copper wire. That would be doubly so if, as proposed by the Commission, the wireless winner of a reverse auction received a monopoly ETC designation.

Public policy is to protect competition, not to protect competitors. The introduction of the automobile devastated the buggy whip industry, but because government policy supported a level playing field among competing forms of consumer transportation, this country realized the benefits of the automobile, and was not condemned to perpetual reliance upon the horse-and-carriage. The same has to be the case here – where remote residents can be served quicker, better and less expensively via wireless technology, the government must not erect artificial regulatory barriers to protect the profits of landline carriers who want to perpetuate an outmoded technology.

The Commission must reject the demand that it protect the profits of rate-of-return landline carriers. For almost a decade now, those landline carriers have been on notice that wireless is a more efficient method of serving remote residents. (That's why the first wireless ETCs asked for an identical-support rule based on the higher costs of landline incumbents; it afforded the wireless carriers windfall profits due to their drastically lower costs.) That those landline carriers went forward with additional capital expenditures on obsolete infrastructure, based solely on the faith they placed in their lobbyists to continue to skew the competitive playing field, is their problem, not the government's and certainly not the Commission's. The

Commission has proposed a reasonable transition period for these rate-of-return landline carriers. That is more than fair.

If the rate-of-return landline carriers really believe that only they are capable of performing as the carrier of last resort, then let "carrier of last resort" be one of the requirements for participating in a reverse ETC auction, with heavy penalties for non-compliance by a reverse auction winner. If wireless carriers are not capable of performing as a carrier of last resort, they will not bid against the landline carrier. But if, as Commnet believes, wireless carriers are ready, willing and able to perform as carriers of the last resort, they will bid, and use resulting ETC support funding to launch or expand efficient wireless networks to serve the public.

## V. If There Is a Separate Mobility Fund, ETCs Still Should Be Selected Via Auction

The CTIA Comments, pp. 8-10, suggest there should be a separate ETC fund to support wireless services in high-cost or rural areas, because "rural consumers have a right to expect the universal service system to ensure their access to wireless services that are 'comparable' to those provided in urban areas." *Id.*, p.9. However, given the growing urban trend toward owning *only* a mobile phone and ceasing to subscribe to landline service at all, even establishing a separate wireless ETC fund is behind the times. If the Commission holds reverse auctions and if wireless carriers are eligible to bid, one can expect most auctions to be won by wireless carriers, which would lead to adequate ETC support funding for wireless, and enable rural consumers to enjoy the same freedom to eliminate their landline subscriptions as their urban cousins. Commnet continues to believe that this is the optimum path.

However, if the Commission chooses to support inefficient landline carriers by protecting them from wireless competition, then the Commission must do as CTIA suggests, by establishing a separate mobility or wireless fund, and setting out separate geographic area

definitions for wireless ETC status (which, in such event, would not need to parallel the wireline ETC geographic area definitions). In such event, Commnet supports selecting a single wireless ETC for a given geographic area via the mechanism of reverse auctions.

To issue multiple wireless ETC designations for the same geographic area would uncouple wireless rates from any rationality. If every wireless carrier in a rural area could be an ETC and be subsidized, every wireless carrier would logically charge one dollar per month for unlimited local and long distance service, and collect the rest from the support fund. Carriers will simply seek to add customers, as their profits will come solely from the subsidies, not from customer revenues. Indeed, carriers will encourage even well-to-do customers not to pay for service, because if everything after the first dollar comes from the support fund, who will care whether the first dollar is collected? The only way to prevent such perverse incentives in the event of a mobility-only support fund is to have the carriers compete upfront, in a reverse auction.

## CONCLUSION

Tribal lands are in a unique situation which calls for them to be treated differently, as described in the Comments filed by NTTA and SCATUI.

For the rest of the continental United States, the current system is set up to protect individual carriers, and not to advance the interests of rural consumers. It is a mechanism for stealing from urban subscribers to give to rural carriers' profits. The Commission should reject those alternative *FNPRM* proposals that would continue to protect the balance sheets of the rate-of-return landline carriers who have been milking the system. Also, the Commission should reject those alternative *FNPRM* proposals to support only pre-existing wireless ETCs during the transition period at the expense of newcomer wireless ETCs.

The Commission should clarify that ETC support funding may lawfully be spent to construct and operate broadband facilities. Then the Commission should provide for conducting reverse auctions for monopoly ETC status within a geographic area, allow all qualified persons to be eligible to bid and, if necessary, designate the auction winner as an ETC after the auction. Among the criteria for bidding eligibility should be the binding promise to be the carrier of last resort, with penalties for post-auction non-compliance.

The Commission should protect competition, not individual competitors, and should implement policies to help consumers. The Commission should stop perpetuating policies and rules that provide perverse economic incentives, as do the current ETC rules.

Respectfully submitted,

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