

**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
SOUTHERNLINC WIRELESS**

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SUMMARY

SouthernLINC Wireless joins the many commenters who believe that prior to considering any permanent reforms to the high-cost support mechanism created by the Telecommunications Act of 1996 (the “Act”), the Joint Board must ensure that its recommendations are consistent with the explicit terms of the Act. In particular, any proposed reform must comply with section 254. To be consistent and compliant, the Commission must define key terms of section 254, including the terms “reasonably comparable,” “sufficient,” and “affordable” as ordered by the Tenth Circuit in *Qwest II*. The failure to define key terms of section 254 and to analyze whether reform proposals are consistent with the requirements and goals of the Act would cripple the Commission’s reform efforts, produce perverse results, and derail sustainable universal service reform. Currently, none of the proposed orders meets this threshold.

Permanently capping the fund and phasing out relief before the Commission adopts a replacement mechanism would be fundamentally inconsistent with the Act. To the extent the Commission is determined to eliminate the identical support rule, it should expeditiously adopt a replacement mechanism rather than capping the fund or arbitrarily phasing out relief before a replacement mechanism has been adopted. SouthernLINC Wireless agrees with commenters who believe that the Commission should eventually transition to a single, high-cost universal service support mechanism that provides the same “per-line” support to both incumbent and competitors based on the costs of the most efficient technology to serve a particular geographic area.

SouthernLINC Wireless joins its voice to the chorus opposing the method of determining wireless costs included in Proposal A. As pointed out by others, the cost showing requirements of Proposal A appear to be designed solely to prevent wireless ETCs from

participating in the universal service support program, which cannot be justified under the Act. Similarly, SouthernLINC Wireless agrees that the record demonstrates that the Commission should reject proposals to determine support for competitive ETCs based on their actual or embedded costs because the expense involved for a competitive ETC to calculate its costs as a basis for receiving support outweighs the benefits.

SouthernLINC Wireless supports commenters who call upon the Commission to reject single-winner reverse auctions, which were prominently featured in all three proposals published by the Commission. Any single-winner reverse auction scheme, or any plan that would distribute funding to only a single carrier, would award a *de facto* regulatory monopoly in rural service areas by locking out any new competitors in these markets, and would be anti-competitive and in violation of the 1996 Act. In addition, the proposed single-winner reverse auction proposals violate the principle of competitive neutrality because they use the study area of the incumbent LEC as the auction area for the reverse auction. Any reverse auction proposal adopted by the Commission must first be attempted on a limited trial basis and should hew closely to the *SouthernLINC Reverse Auction Proposal* utilizing a “Clock-Proxy” format.

The most efficient way to facilitate broadband deployment in rural areas is to make support for broadband facilities available to all ETCs in a competitively and technologically neutral manner. The Commission should not implement an “unfunded mandate” that would ultimately result in wireless carriers withdrawing from the USF program.

SouthernLINC Wireless agrees with numerous commenters arguing that hybrid contribution systems are less desirable than the current revenues-based methodology. Because of the complexity associated with a pure numbers-based methodology, the Commission should instead issue a further notice requesting comment on a pure connections-based methodology.

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REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless

(“SouthernLINC Wireless”) hereby submits these reply comments in the above-captioned dockets.¹ SouthernLINC Wireless operates a commercial digital 800 MHz ESMR system using

¹ 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 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).

Motorola's proprietary Integrated Digital Enhanced Network (iDEN) technology to provide dispatch, interconnected voice, Internet access, and data transmission services over mobile phone handsets. SouthernLINC Wireless is licensed by the Commission to provide cellular communications services in Alabama, Florida, Georgia, and Mississippi, where it serves nearly 250,000 subscribers over 127,000 square miles. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless provider in Alabama and Georgia, servicing extensive rural territory along with major metropolitan areas and highway corridors, and as such is widely used by local and statewide governmental institutions, public utilities and emergency services.

SouthernLINC Wireless is committed to offering high-quality telecommunications services in rural and underserved areas, and approximately half the total handsets SouthernLINC Wireless serves are used by subscribers located outside of major metropolitan areas. SouthernLINC Wireless is also the wireless service provider to the state of Alabama and to many government agencies in Georgia. In fact, approximately 30% of the handsets SouthernLINC Wireless serves are used by public employees, first responders or utility personnel,² which illustrates how important the services of SouthernLINC Wireless are to residents in those areas, particularly in times of crisis. During the emergency conditions created by the twenty-two named hurricanes and countless ice storms that have struck its service territory since SouthernLINC Wireless began operating in 1995, SouthernLINC Wireless was often the only available means of communications. In the aftermath of Hurricane Katrina, for example, SouthernLINC Wireless in many instances provided the only immediate means of communication in Mississippi and Alabama. Accordingly, SouthernLINC Wireless is the type of

² The services provided to utility personnel facilitate the continued availability of power during emergencies.

competitive ETC Congress intended the universal service fund to support and, therefore, has a vested interest in ensuring the fundamental fairness and long-term stability of the fund.

In addition to supporting the comments of the USA Coalition and RCA in their entirety,³ SouthernLINC Wireless submits the following reply comments:

I. ALL REFORMS MUST BE CONSISTENT WITH THE REQUIREMENTS OF THE UNIVERSAL SERVICE PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

In considering any permanent reforms to the high-cost support mechanism created by the Telecommunications Act of 1996 (the “Act”), the Joint Board must ensure that its recommendations are consistent with the explicit terms of the Act. In particular, any proposed reform must comply with section 254 and, as ordered by the Tenth Circuit in *Qwest II*, the Commission must define key terms of section 254, including “reasonably comparable,” “sufficient,” and “affordable.”⁴ SouthernLINC Wireless agrees with US Cellular, the USA Coalition and RCA that until the Commission adopts specific definitions for these terms, proposals for reform of the universal service distribution mechanism cannot be analyzed to determine which would best further the goals of the Act. Similarly, until the Commission adopts specific goals for the universal service program based upon the requirements of the Act, the agency cannot reasonably determine which reform proposal would best implement the universal service provisions of the Act.⁵

³ See, generally, USA Coalition & RCA Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, WC Docket No. 05-337 (filed Nov. 26, 2008) (“USA Coalition & RCA Comments”).

⁴ *Qwest II*, 398 F.3d at 1234-36.

⁵ See USA Coalition Comments at 5 n.12 (noting that on September 12, 2008 the Commission released a Notice of Inquiry seeking comment on the goals of the universal service provisions of the Act. See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Notice of Inquiry, WC Docket No. 05-195, ¶¶27-29 (rel. Sept. 12, 2008)).

As the USA Coalition and RCA demonstrated, the failure to define key terms of section 254 and to analyze whether reform proposals are consistent with the requirements and goals of the Act would cripple the Commission's reform efforts and derail meaningful and sustainable universal service reform.⁶ Therefore, the Commission must comply with the Tenth Circuit's Order by defining key terms of the Act, articulating concrete and measurable goals for the universal service program, and adopting reform that is designed to achieve these goals in a manner that is consistent with the Act's requirements. None of the proposed orders could withstand such scrutiny.

II. ADOPTING A PERMANENT CAP OR PHASING OUT RELIEF BEFORE A REPLACEMENT MECHANISM IS IN PLACE WOULD BE FUNDAMENTALLY INCONSISTENT WITH THE ACT

SouthernLINC Wireless agrees with CTIA, the USA Coalition and RCA that permanently capping the fund and phasing out relief before the Commission adopts a replacement mechanism would be fundamentally inconsistent with the Act.⁷ Eliminating support on a flash-cut basis would be not only unlawful but also irresponsible.⁸ To the extent the Commission is determined to eliminate the identical support rule, it should expeditiously adopt a replacement mechanism rather than capping the fund or arbitrarily phasing out relief before a replacement mechanism has been adopted.⁹

SouthernLINC Wireless also agrees with CTIA that the Commission should eventually transition to a single, high-cost universal service support mechanism that provides the same "per-line" support to both incumbent and competitors based on the costs of the most efficient technology to serve a particular geographic area. As CTIA correctly observes, such a

⁶ USA Coalition & RCA Comments at 7.

⁷ CTIA at 14-16; USA Coalition & RCA Comments at 13.

⁸ CTIA at 17.

⁹ CTIA at 16.

mechanism would create incentives for efficiency and provide support based upon the number of customers an ETC serves.¹⁰ As explained below, the Commission should consider implementing a trial of the reverse auction proposal of SouthernLINC Wireless to determine whether the potential benefits of the proposal outweigh the burdens associated with reverse auctions.

In any event, a cap on, or phase-out of, support in the interim would be unnecessary because the Commission could take several other steps to improve the efficiency of universal service support. For example, the best way to achieve the goals of the Act while efficiently managing growth of the high-cost fund is to direct support solely to geographic areas where it is truly needed and to phase out support once it is no longer needed.¹¹ Put simply, support should be available only where it is absolutely necessary and then, only for as long as it is absolutely necessary to achieve the goals of the Act.¹² The phase-out proposal SouthernLINC Wireless previously submitted in this docket would ensure that support is available only for as long as it is absolutely necessary to achieve the goals of the Act.¹³ Contrary to the arbitrary step-down proposal, SouthernLINC's proposal complies with both the letter and the spirit of the Act.¹⁴

¹⁰ CTIA at 16.

¹¹ *See Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, Public Notice, 22 FCC Rcd 9023, 9025, ¶ 6 (2007).

¹² SouthernLINC Wireless Reply Comments, WC Docket No. 05-337 (filed July 2, 2007); Letter from Todd D. Daubert, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket 95-45 (Nov. 2, 2007).

¹³ SouthernLINC Wireless Reply Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, WC Docket No. 05-337 (filed June 2, 2008).

¹⁴ In addition to the scheduled phasing-out of support, the Commission should create a safety valve procedure so support would continue to be available to any ILEC or competitive ETCs which can demonstrate that continued support is necessary to further the goals of the universal service provisions of the Act and prevent harm to consumers in that area. Specifically, if the phasing out of support in an area would harm consumers in

The SouthernLINC Wireless proposal stands in stark contrast to the recently noticed proposals, the clear goals of which are to limit artificially (a) the quantity of eligible ETCs, (b) the number of eligible ETCs that actually receive support, or (c) the amount of total support available to eligible ETCs. Each of these goals would be fundamentally inconsistent with the universal service provisions of the Act. The proposal would not only create incentives for eligible ETCs to enter rural, insular and high-cost areas as soon as possible, but also would end support as soon as it is no longer needed. Not only would the proposal control overall fund size, but it would also target support to areas where it is most needed. Finally, because all carriers would be eligible for support and treated similarly under the distribution methodology, support will be distributed in a competitively and technologically neutral manner.

III. THE METHOD FOR DETERMINING WIRELESS COSTS IN PROPOSAL A IS FUNDAMENTALLY INCONSISTENT WITH THE ACT

SouthernLINC Wireless joins CTIA, US Cellular and the USA Coalition and RCA in opposing the method for determining wireless costs in Proposal A. As these parties explained:

- Subjecting competitive ETCs to archaic, embedded cost-type accounting would be senseless;¹⁵
- Requiring wireless ETCs to maintain and report their costs would be extraordinarily difficult and burdensome both for the carriers and the Commission;¹⁶
- Implementing Proposal A would not result in wireless ETCs recovering their costs in the same manner as incumbent LECs;¹⁷

that area by causing prices to rise or service providers to cease service, support should be extended despite the presence of the ILEC and three competitive ETCs.

¹⁵ CTIA at 11.

¹⁶ CTIA at 12.

¹⁷ CTIA at 12-13.

- Excluding spectrum costs in calculating wireless ETCs' costs would be baseless;¹⁸
- Dividing a CETC's costs by the ILEC's line counts, rather than its own, to determine a per-line cost value would be absurd;¹⁹
- Comparing wireless ETC's per-line costs (however calculated) to a national ILEC cost per line would be bizarre;²⁰ and
- Limiting support to an arbitrarily chosen capped amount would be inconsistent with the spirit and the letter of the universal service provisions of the Act.²¹

As CTIA, US Cellular and the USA Coalition and RCA observe, the cost showing requirements of Proposal A appear to be designed solely to prevent wireless ETCs from participating in the universal service support program, which cannot be justified under the Act.²²

Aside from the specifics of Proposal A, the record demonstrates that the Commission should reject proposals to determine support for competitive ETCs based on their actual or embedded costs.²³ The expense to industry of requiring a competitive ETC to calculate its costs as a basis for receiving support outweighs the benefits.²⁴ Any such system would have

¹⁸ CTIA at 13-14.

¹⁹ CTIA at 14.

²⁰ CTIA at 14.

²¹ CTIA at 114-15.

²² CTIA at 11-15.

²³ General Communication Comments at 13 (“[T]he proposal in Appendix A to move to an ‘own costs’ mechanism would obliterate competitive neutrality and would significantly blunt the ability of the market to drive cost-effective delivery of universal service”); Sprint Comments at 28-31.

²⁴ ACS Wireless Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45; WC Docket No. 05-337, at 6 (filed May 31, 2007); U.S. Cellular Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, WC Docket No. 05-337, at 46, 54 (filed May 31, 2007); Comments of Verizon, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45; WC Docket No. 05-337, at 35 (filed Apr. 17, 2008). Additionally, a cost-based accounting system for competitive ETCs essentially would duplicate the inefficiencies of the ILEC rate-of-return system, which the Commission long ago determined to be less than ideal. *Compare* *Petition of AT&T for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Certain of the*

to be monitored both by the company and by the Commission to prevent abuses.²⁵ Furthermore, a system based on a carrier's own costs essentially duplicates and applies to the competitive ETCs all the inefficiencies of the ILEC rate-of-return system.²⁶ By requiring competitive ETCs to receive funding based on their own costs, the competitive ETC would be rewarded with greater support as its costs increased and would be "penalized" by receiving less support as it reduced costs.²⁷ This approach is inefficient and creates perverse incentives to *drive up costs*.²⁸ In short, as numerous parties demonstrated in their comments, the Commission's proposal would be inefficient and infeasible as a practical matter.²⁹

Commission's Cost Assignment Rules, WC Docket No 07-21, 05-342, Memorandum Opinion and Order, FCC 08-120, ¶ 36, 43 (rel. Apr. 14, 2008) ("[T]he Cost Assignment Rules, in this case, outweigh their benefits...[T]he Cost Assignment Rules require AT&T to direct considerable financial and personnel resources 'to utilize a complex hierarchy to track, value, and record affiliate transactions, to allocate costs of regulated and non-regulated services, to maintain, update and audit its Cost Allocation Manual, to jurisdictionalize intra and interstate costs and to apportion interstate costs to interstate services baskets...").

²⁵ GVNW Consulting Comments at 11 (recognizing the need for a cost-based solution to be "auditable and administratively workable solution").

²⁶ General Communication Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45; WC Docket No. 05-337, at 27 (filed May 31, 2007); *see also* Old Dobson Cellular Systems Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45; WC Docket No. 05-337 at 7 (filed May 31, 2007).

²⁷ Particularly onerous is the requirement in both Proposal A and Proposal C mandating that competitive ETCs winning reverse auctions offer supported services at a retail price comparable to the retail price charged by the incumbent LEC in that same study area for the same or equivalent service. Appendix A ¶ 40; Appendix C ¶ 40. Many incumbent LECs receive support from state universal service funds that artificially lower the prices below what a competitive ETC can afford to charge for service. Limiting competitive ETCs' support amounts while simultaneously constraining the rates they can charge is nonsensical and designed to discourage competitive ETCs from participating in the auction.

²⁸ *Id.*

²⁹ RCA-ARC Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45; WC Docket No. 05-337, at 52-55 (filed Apr. 17, 2008); Virgin Islands PSC Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45; WC Docket No. 05-337, at 11 (filed Apr. 3, 2008); GCI Comments, *High-Cost Universal Service Support;*

IV. SINGLE-WINNER REVERSE AUCTIONS ARE FUNDAMENTALLY INCONSISTENT WITH THE ACT.

Single-winner reverse auctions, featured in all three proposals published by the Commission, are fundamentally inconsistent with the Act, as numerous parties demonstrated in their comments.³⁰ Any proposal that would award support to only one or two auction winners is fundamentally inconsistent with the Act’s goal of promoting competition and new technological development.³¹ SouthernLINC Wireless agrees with U.S. Cellular that a single-winner reverse auction scheme, or any plan that would distribute funding to a single carrier, would “award[] what in effect would be a regulatory monopoly in rural service areas, by locking out any new competitors in these markets, [and] would be anti-competitive and in violation of the 1996 Act.”³² Furthermore, as U.S. Cellular points out, “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 [and] employment opportunities would be foregone.”³³ Actions that might negatively impact the economy of rural areas must be carefully considered given the current recession.³⁴

SouthernLINC Wireless joins with the USA Coalition and RCA in believing that the single-winner reverse auction proposals also violate the principle of competitive neutrality

Federal-State Joint Board on Universal Services, CC Docket No. 96-45; WC Docket No. 05-337, at 70 (filed Apr. 17, 2008).

³⁰ See, e.g., U.S. Cellular Comments at 15-22.

³¹ See Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (explaining that the purpose of the 1996 Act is “to promote competition ... regardless of where [Americans] live and work.”).

³² U.S. Cellular Comments at 15.

³³ U.S. Cellular Comments at 19.

³⁴ See Windstream Comments at 52 (“Designing and implementing the reverse auctions process could take years to complete, while in the meantime carriers would be cautious or discouraged from deploying broadband due to the uncertainty of continued funding.”).

because they use the study area of the incumbent LEC as the auction area.³⁵ The use of this study area creates an uneven playing field, as incumbent LECs would not be required to modify their service areas in order to bid in the proposed reverse auctions. In contrast, many competitive ETCs would likely have to expand their network in order to provide service, driving up their costs. This disparity allows the incumbent LECs to undercut the competitive ETCs because the incumbents need not bear any additional costs to satisfy their bid.

SouthernLINC Wireless agrees with NASUCA that any reverse auction proposal must first be attempted on a limited trial basis.³⁶ Regardless of the exact rules of any auction, reverse auctions would be complicated, expensive to administer, and uncertain as to the end result. To the extent the FCC moves forward with a reverse auction proposal, the agency must conduct geographically limited trials to determine the viability of the mechanism. During the trial period, the identical support rule should be maintained for all non-participating regions and their respective competitive ETCs, and the interim cap should be removed in order to ensure that universal service in rural communities does not suffer during the trial period.

Any reverse auction implemented by the Commission during the trial period must comply with the Act's pro-competitive framework and the principles enumerated in the Act.³⁷ In contrast to the Commission's proposals' approach to reverse auctions, SouthernLINC has described how a reverse auction could be constructed in a compliant, consistent manner. It uses the requirements of the Act and the needs of consumers as its starting point, and does not require

³⁵ USA Coalition & RCA Comments at 25.

³⁶ NASUCA Comments at 30 ("The Chairman's Draft Proposal is not a pilot program, where the concept can be tried out in action. Rather, reverse auctions are proposed as an across-the-board policy.").

³⁷ SouthernLINC Reverse Auction Proposal, *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45 (filed Apr. 17, 2008).

that the Commission adopt an arbitrary limit on the number of eligible ETCs, the number of ETCs actually receiving support, or the total amount of available support. To the extent that the Commission legitimately wants to explore the reverse auction concept, SouthernLINC Wireless believes that the Commission should begin with the type of approach that it has undertaken.

Under the *SouthernLINC Reverse Auction Proposal*, the Commission would determine which of the services that are typically available in urban areas should be supported, and then define two service packages based upon those determinations: one service package with carrier of last resort and open access obligations (the “CLR Package”) and another without carrier of last resort or open access obligations (the “NCLR Package”). Both packages would require the winning bidder to provide a minimum set of features (*e.g.*, single party service, voice grade access to the PSTN, DTMF signaling, access to emergency and operator services, access to interexchange service, *etc.*) for a set price or less in order to receive the amount of support established by the winning bid for each package provided to a consumer. The packages would be defined without reference to the technology used to provide the package services or competitive status of the service provider (*i.e.*, incumbent or new entrant). Any type of provider (*i.e.*, wireline, wireless, ILEC, CLEC, cable company) would be able to bid upon either the CLR or NCLR package so long as the provider is capable of providing the services defined in the package and can meet the applicable service standards. The Commission would also have to determine, based upon the characteristics of urban telecommunications and information service markets, how many of each type of package would be auctioned in each auction area. Based upon the record regarding available telecommunications and information services in urban areas, SouthernLINC Wireless submits that the Commission would have to auction, at a minimum, one CLR package and two NCLR packages in each auction area.

The clock-proxy auctions would be conducted on a state-by-state basis using the smallest competitively-neutral geographic support areas that are administratively feasible (*e.g.*, zip code areas or state-defined county boundaries). The winning bidders would be required to set the retail price for each supported package at a level that is at or below the maximum price defined by the Commission. Moreover, universal service support would be provided only when a winning bidder sells the supported package to a customer for the full retail price, which would prevent winning bidders from giving service away at uneconomically low rates merely to obtain additional subsidies through inflated “customer acquisition.”

The *SouthernLINC Reverse Auction Proposal* complies with the touchstone principle of “reasonable comparability” by requiring the Commission to cap the rates winners of its carrier-of-last-resort (“CLR”) and non-carrier-of-last-resort (“NCLR”) packages may charge at “reasonably comparable” rates.³⁸ Adoption of the CLR and NCLR packages SouthernLINC Wireless has proposed will also address issues of “affordability”³⁹ because any rate that the Commission determines is “reasonably comparable” to the rates available in urban areas in compliance with section 254(b)(3) of the Act will also be “affordable” in accordance with section 254(b)(1) of the Act.⁴⁰ Support under the *SouthernLINC Reverse Auction Proposal* would also be “sufficient” because the winning carrier itself determines the amount of support it

³⁸ 47 U.S.C. § 254(b)(3); If the Commission caps rates for supported services in rural areas at one standard deviation above the mean of urban rates, it will ensure that rates in rural areas are no higher than the rates of urban carriers whose urban rates are in the 83rd percentile of urban rates nationally. This structure clearly meets the requirement of “reasonable comparability” established by the Tenth Circuit. *See Qwest II*, 398 F.3d at 1234-36.

³⁹ 47 U.S.C. § 254(b)(1).

⁴⁰ Nothing in the record suggests that rates “reasonably comparable” to urban rates would not be “affordable” within the meaning of section 254.

receives;⁴¹ no other party is in as good a position to determine the minimum amount of support needed than the carrier that will actually have to provide the USF mandated services. With respect to the Act’s requirement that support be “predictable,” the amount of support is determined at the time the bidder wins the auction, and it lasts for a set period of time. All carriers will know exactly how much they will receive for the entire period governed by the reverse auction – the very definition of “predictable.”

The *SouthernLINC Wireless Reverse Auction Proposal* is also competitively neutral as it does not distinguish between competitive ETCs and incumbents in determining eligibility to bid upon either the CLR or NCLR packages. Rather, the rules proposed allow carriers utilizing all types of technologies (*e.g.*, wireline, wireless, and IP based services – or any future technology) to bid on both the NCLR and CLR packages. Although SouthernLINC Wireless suspects that wireless carriers will compete more heavily for NCLR packages than for CLR packages, building a technological requirement into the USF support system formalizing this distinction would discourage innovation and ensure that new alternatives to traditional wireline services are not explored in rural and high-cost areas, in direct contradiction of the intended purpose of the Act.

V. THE COMMISSION SHOULD FACILITATE BROADBAND DEPLOYMENT, NOT MANDATE IT

SouthernLINC Wireless agrees with the USA Coalition and RCA that the broadband proposals amount to nothing more than an ultimatum that every ETC commit to providing broadband Internet access service to every subscriber or lose USF support altogether.⁴²

⁴¹ 47 U.S.C. §§ 254(b)(5), 254(e).

⁴² The proposals would condition continued USF support on ETCs “offer[ing] broadband Internet access service, along with all supported services, to all customers throughout their service areas by the end of a five- or ten-year build-out period.” Appendix A ¶ 52, 25; Appendix C ¶ 25; *see also* Appendix A ¶ 20 (“We make offering broadband Internet

Since the proposals would not add broadband Internet access to the list of universal service supported services, ETCs would still be prohibited from using any USF support to deploy broadband Internet access services, making the broadband mandate an entirely unfunded one.⁴³

As such, the obvious goal of the proposed unfunded broadband mandate is to discourage competitive ETCs from seeking universal service support by imposing conditions so onerous that continued participation in the universal service program becomes infeasible. This goal is fundamentally inconsistent with many of the universal service principles and it would not advance universal service.

SouthernLINC Wireless agrees with other parties that the proposed orders not only would inhibit the deployment of wireless broadband services in rural, high-cost and insular areas, but the proposals also would slow deployment of *all* wireless services in some areas.⁴⁴ SouthernLINC also agrees that the annual build out requirement would disproportionately impact wireless carriers. As other parties have demonstrated, this requirement would, as a practical matter, force a wireless ETC to complete the build out of its broadband services in its first year because wireless services, unlike wireline broadband services, cannot be rolled out on a neighborhood-by-neighborhood or line-by-line basis.⁴⁵ For this reason, the unfunded broadband mandate and annual build out requirements would force most, if not all, wireless ETCs to forego participation in the universal service program altogether. SouthernLINC Wireless also agrees with other parties that the Commission's proposal in Appendix A and C to hold reverse auctions in areas where the incumbent LEC is unable or unwilling to provide the mandated broadband

access a condition of being eligible to receive high-cost support... [Only t]hose who make [a broadband] commitment will continue to receive their support"); Appendix B ¶ 20 (same).

⁴³ Appendix A ¶ 21, n.61; Appendix C ¶ 21, n.62.

⁴⁴ USA Coalition & RCA Comments at 4; CTIA Comments at 33-35.

⁴⁵ Appendix A ¶ 59.

services is illogical and unrealistic – unless the true objective is to keep *all* competitive ETCs from receiving universal service support while freeing the incumbent LEC from the broadband requirement altogether.

SouthernLINC Wireless also agrees that the Commission cannot adopt any mechanism to facilitate broadband deployment without fully considering all of the statutory principles that govern administration of the Universal Service Fund.⁴⁶ The proposed orders do not even attempt to address these issues. In any event, to the extent the broadband measures do not apply in Alaska, Hawaii and the other U.S. Territories and possessions, SouthernLINC Wireless agrees with the USA Coalition and RCA that they similarly should not apply to Tier II and Tier III carriers and carriers serving Tribal Lands who also still need universal service support to continue deploying wireless service to the nation’s highest costs areas.⁴⁷

The most efficient way to facilitate broadband deployment is to make support for broadband facilities available to all ETCs in a competitively and technologically neutral manner. Lifting the prohibition on using USF support to fund deployment of broadband facilities, networks and services would be a much more effective way of ensuring that “broadband Internet access service is deployed quickly to all areas of the country, including rural and insular areas”⁴⁸ than the proposals attached to the Commission’s most recent order in this docket. Specifically, the Commission should permit, but not require, ETCs who voluntarily agree to provide the transmission

⁴⁶ The Commission’s findings as to the need for the broadband mandate is that “making the offering of broadband Internet access service a condition of receiving universal service high-cost support can bring [service to those] who await its deployment.” Appendix A ¶ 23; Appendix C ¶ 23.

⁴⁷ Letter from Rural Cellular Association (RCA) and the Alliance of Rural CMRS Carriers (ARC) to The Hon. Marlene H. Dortch, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, at 5 (Oct. 28, 2008) (“[ARC and RCA] believe that the proposed ‘carve-out’ should also be extended to Tier II and Tier III carriers and carriers serving Tribal Lands who also still need universal service support to continue deploying wireless service to the nation’s highest cost areas.”).

⁴⁸ Appendix A ¶ 12; Appendix C ¶ 12.

component of broadband Internet access as a telecommunications service to use support for broadband services.

Section 254(c) limits the definition of supported services to “telecommunications services.”⁴⁹ Broadband Internet is generally defined as an “information service,” and the underlying transmission component as “telecommunications” rather than a “telecommunications service,” and as such universal service funds may not be used to support it.⁵⁰ However, a provider of broadband Internet services can voluntarily agree to offer the underlying transmission component of Internet access as a telecommunications service (*i.e.*, as a common carrier) rather than telecommunications, in which case the regulatory regime appropriate to the nature of a telecommunications services would apply.⁵¹ As such, the Commission could rule that universal service funds could be used for the transmission component of broadband services to the extent that an ETC voluntarily agrees to provide it as a telecommunications service. However, to the extent an ETC voluntarily provides the transmission component of broadband services as a telecommunications service, those services would be subject to a USF contribution requirement. By so ruling, the Commission could facilitate broadband deployment without adopting radical reform measures that would interfere with the ability of wireless carriers to serve rural, high-cost and insular areas.

⁴⁹ *Federal-State Joint Board on Universal Service*, Recommended Decision, 17 FCC Rcd 14095, 14102-03, ¶ 19 (2002).

⁵⁰ SouthernLINC Wireless Reply Comments, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Services*, CC Docket No. 96-45; WC Docket No. 05-337, at 42 (May 2, 2008).

⁵¹ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5914-15 (2007) (“Should the facility provider choose to offer the transmission component of wireless broadband Internet access as a telecommunications service, the regulatory regime appropriate to the nature of the telecommunications service will apply. For example, if a wireless broadband Internet access provider chooses to offer the telecommunications transmission component as a telecommunications service, then it is a common carrier service subject to Title II.”).

VI. THE COMMISSION SHOULD REJECT ANY HYBRID CONTRIBUTION METHODOLOGY

SouthernLINC Wireless agrees with Verizon, Verizon Wireless, AT&T, and the USA Coalition and RCA that hybrid contribution systems are less desirable than the current revenues-based methodology.⁵² Because of the complexity associated with a pure numbers-based methodology, SouthernLINC Wireless urges the Commission instead to issue a further notice requesting comment on a pure connections-based methodology.

VII. CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to adopt reforms that are consistent with the proposals outlined in the initial comments of the USA Coalition and RCA and these reply comments and to ensure that all reform measures comply with the Act, including the principle of competitive and technological neutrality.

Respectfully submitted,



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⁵² Verizon and Verizon Wireless at 36; AT&T at 46 (explaining why proposals A and C would be nearly impossible to implement).