
**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
)

To: The Commission

COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

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SUMMARY

The basic questions raised in this remand proceeding – how much universal service support is “sufficient” to satisfy statutory universal service goals and achieve “reasonably comparable” rates and services in rural and high-cost areas – have significance well beyond this immediate case; the Commission must confront similar issues in the pending proceedings to develop a Rural Broadband Strategy and a National Broadband Plan. In all of these proceedings, the Commission must carefully consider the seismic shifts that have occurred in consumer preferences and marketplace conditions, fueled by remarkable changes in technology. The experience of the past ten years makes clear that consumers demand and need access to mobile broadband services. To reflect these changes, and to respond to the Tenth Circuit’s remand, the Commission must reform the universal service mechanisms to focus on mobile and broadband services.

As the Administration and Congressional leadership have emphasized, broadband and mobility can improve education, economic opportunity, and public health. It is thus vitally important that the Commission’s policies promote the deployment and adoption of mobile and broadband capabilities in all parts of the country, including in rural and high-cost areas.

The existing universal service system, with its emphasis on legacy wireline voice technology, is in danger of becoming more of a hindrance than a help if it is not modernized soon. Reform of the universal service system should be integrated with rural and national broadband deployment planning, and should focus on the deployment of mobile broadband services, which have the ability to bring the benefits of broadband not only to the home but to the person.

A universal service system that promotes the deployment and provision of advanced wireless and broadband capabilities in rural and high-cost areas will more readily satisfy all of the statutory universal service principles, as required by the Tenth Circuit. In responding to the court’s direction to re-assess its analysis of the “reasonable comparability” requirement in section 254(b)(3), the Commission must bear in mind that the statute does not mandate “identical” rates but does require that *services* as well as rates be reasonably comparable as between urban and rural areas. Thus, given the broad and increasing availability of wireless broadband services in urban areas, comprehensive reform should provide for the availability of such services to customers in rural and high-cost areas. Moreover, in responding to the Tenth Circuit’s remand, the Commission can best fulfill the statutory goals – including balancing the requirement for sufficiency with the need to keep service affordable for all contributors -- by providing support based on efficient costs.

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CTIA – The Wireless Association® (“CTIA”) submits the following comments in response to the Commission’s Notice of Inquiry (“NOI”)¹ to refresh the record regarding the issues raised by the decision of the United States Court of Appeals for the Tenth Circuit in *Qwest Corp. v. FCC* (“*Qwest II*”).² As discussed in more detail below, the Commission’s order addressing the Tenth Circuit’s remand must focus on consumers and reflect the way mobile wireless and broadband services are changing Americans’ lives. The high-cost universal service support system is, as CTIA has noted on numerous occasions, in desperate need of reform. To foster the unique benefits that mobile and broadband services bring to consumers and to fulfill all of the statutory principles, as the court has required, the Commission should adopt a system based on the efficient cost of providing service in rural and high-cost areas.

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Inquiry, FCC 09-28 (rel. April 8, 2009) (“NOI”).

² *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”).

In this proceeding, the Commission must respond to the Tenth Circuit's remand by defining central elements of the statutory universal service mandate, including what it means for rates and services to be "reasonably comparable" and how much support is "sufficient" to achieve universal service goals. These definitions have broad significance well beyond the non-rural support mechanism at issue in the remand. Over the course of the next year, the Commission must make a number of weighty decisions regarding how best to ensure that all consumers and businesses can reap the benefits of today's mobile, broadband-enabled society. During this time, the Commission also must develop both a Rural Broadband Strategy³ and a comprehensive National Broadband Plan.⁴ As the Commission moves forward to address the issues raised by the Tenth Circuit, it must realize that all of these proceedings are interrelated, and will be vital to the speed and durability of America's recovery from the current economic crisis, as well as our long-term future.

I. UNIVERSAL SERVICE REFORM MUST FOCUS ON CONSUMERS AND REFLECT CONSUMERS' PREFERENCE FOR MOBILITY AND BROADBAND

Over the last decade, the technologies and marketplace of America's communications sector have evolved in ways that demonstrate the high value American consumers now place on mobile voice and broadband services. In 1997, there were approximately 55 million wireless

³ *Comment Date Established for Report on Rural Broadband Strategy*, Public Notice, GN Docket No. 09-29, DA 09-561 (rel. Mar. 10, 2009), *citing* Pub. L. No. 110-246, 122 Stat. 1651 (2008) ("2008 Farm Bill").

⁴ *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, FCC 09-31 (rel. April 8, 2009), *citing* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 at § 6001(k)(2), 123 Stat. 115 (2009) ("Recovery Act").

telephone subscribers.⁵ By December 2008, that number had risen almost five-fold, to more than 270 million.⁶ Just this week, the Centers for Disease Control and Prevention reported that the number of U.S. households opting for only wireless phones has for the first time surpassed those that just have a traditional wireline phone.⁷ The percentage of households that are wireless-only has been steadily increasing. In fact, the 2.7-percentage-point increase in the most recent survey (from the first 6 months of 2008) is the largest 6-month increase observed since the government began collecting data on wireless-only households in 2003.⁸ And the number of wireless broadband subscribers is growing even more dramatically. The Commission's data show that, since 2005, mobile wireless providers have been the fastest-growing providers of both high-speed lines (over 200 kbps in at least one direction) and advanced service lines (over 200 kbps in both directions), with subscriber counts more than *doubling* in both categories in *each* of the last five *six-month* periods.⁹ As of December 2007, mobile wireless providers served more than 15 million customers with advanced-service lines – more than 60% as many as DSL.¹⁰ Data from

⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Third Annual CMRS Competition Report*, 13 FCC Rcd 19746, app. B, at B-2 (1998).

⁶ “Wireless Quick Facts” available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>.

⁷ Twenty percent of U.S. households only had wireless phones in the second half of 2008 – which is three points higher than the 17 percent of households with only a wireline phone but no wireless phone. Other than the 1.9% of households with no telephone service of any kind, all other households had both wireless and wireline phones. See Blumberg SJ, Luke JV. *Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2008*. National Center for Health Statistics. May 2009. Available at: <http://www.cdc.gov/nchs/nhis.htm>.

⁸ *Id.*

⁹ HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2007, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (rel. Jan. 2009) at tbls.1-2.

¹⁰ *Id.* at tbl. 2.

the Pew Internet & American Life Project reveal that, in December 2007, 58 percent of adults have used mobile devices for non-voice activities, and 41 percent of adults have logged onto the Internet wirelessly.¹¹ There is no doubt that these wireless growth trends will continue, and will continue to transform America's communications networks.

In keeping with the growth in wireless subscribership, wireless contributions to the universal service fund have grown considerably as well. Wireless carriers are now collectively responsible for approximately 41 percent of contributions to universal service. At the same time that wireless contributions increase and consumer use of wireless services continues to grow, distributions from the Fund to wireless providers, and as a result to wireless subscribers, will decrease as a result of the cap on funding to competitive eligible telecommunications carriers.¹² Further, and even more perplexing, despite the dramatic growth in consumers' reliance on mobile wireless services and wireless carriers' growing contributions to the fund, incumbent local exchange carriers ("incumbent LECs") continue to receive almost three quarters of all high-cost support – over \$3 billion of the roughly \$4.3 billion fund in 2007.¹³

Businesses and policymakers alike have recognized that wireless networks have evolved into powerful drivers of economic development that are essential to the health of their communities. The benefits of wireless services are perhaps most pronounced in rural areas, where distances make mobility an essential element of family life, economic development,

¹¹ John Horrigan, Associate Director, Pew Internet & American Life Project, Data Memo, *Mobile Access to Data and Information 1* (March 2008)) available at <http://www.pewinternet.org/Press-Releases/2008/Mobile-Access-to-Data-and-Information.aspx> at 1 ("Pew Study").

¹² See *High-Cost Universal Service Support*, WC Docket No. 05-337, 23 FCC Rcd 8834 (2008).

¹³ Universal Service Administrative Company, 2007 Annual Report at 45. According to the report, competitive eligible telecommunications carriers ("ETCs") received less than \$1.2 billion.

safety, and public health. Recent studies confirm that the mobile phone is “a huge boon to an individual’s economic productivity and earning power.”¹⁴ Further, as House Subcommittee on Communication, Technology and the Internet Chairman Rick Boucher noted in his comments on the groundbreaking of a tower in his rural Virginia district that previously lacked mobile coverage, “businesses seeking to expand often consider the availability of mobile communications services when choosing new business locations.”¹⁵

While these fundamental changes have taken place in the market, the universal service system remains a vestige of the last century, designed to support wireline voice networks in a monopoly environment. The universal service system must be revised to reflect the new technological and marketplace realities by focusing on efficient support for today’s communications services. Ubiquitous mobility, and mobile broadband specifically, must be an important goal of the FCC’s universal service rules and policies.

II. THE HIGH-COST UNIVERSAL SERVICE SYSTEM IS IN NEED OF COMPREHENSIVE REFORM

As CTIA has stated on numerous occasions in the past, the existing universal service system is broken and in desperate need of reform.¹⁶ The Tenth Circuit’s remand focuses on the support mechanism for consumers served by non-rural incumbent LECs, but its central finding – that the Commission has never validly defined core statutory principles – applies to all consumers served by all carriers, using all technologies, in all parts of the country. Thus, in

¹⁴ *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, Nicholas P. Sullivan, New Millennium Research (April 2008) available at

http://newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf (“Sullivan”).

¹⁵ *Alltel Breaks Ground on Cell Tower to Serve Pound Residents*, Kingsport Times-News, March 11, 2008, at 3B.

¹⁶ *See, e.g.*, Comments of CTIA, WC Docket No. 05-337 (filed November 26, 2008).

responding to the Tenth Circuit, the Commission should adopt comprehensive reform that relies on efficient mechanisms to meet all of the requirements of the Act and serve the needs of consumers in all regions of the nation.¹⁷

The Tenth Circuit has twice directed the Commission to articulate how its universal service rules advance the principles set out in Section 254(b) of the Act, including how much support is “sufficient” to achieve “reasonably comparable” services and rates that are “affordable” to consumers in all regions of the nation. To respond to the *Qwest II* decision, the Commission should review its rules comprehensively, and must take into account the realities of the current market environment. Reform requires the Commission to define the statutory terms in a manner that considers and balances the Act’s principles, targeting support to ensure that incumbents and competitors receive no more support than is necessary to achieve the goals of universal service.

Moreover, reform of the universal service support mechanisms must be a central element of the Commission’s Rural Broadband Strategy required by the 2008 Farm Bill¹⁸ and its National Broadband Plan required by the Recovery Act,¹⁹ and all of these decisions must be made in less than one year’s time.²⁰ These tasks have very similar fundamental goals – ensuring that all Americans have access to the communications and information technologies that they

¹⁷ See NOI at ¶ 21 (seeking comment on the scope of the Commission’s response to the remand).

¹⁸ See *supra* note 3.

¹⁹ See *supra* note 4.

²⁰ The Rural Broadband Strategy must be prepared by May 22, 2009. The National Broadband Plan must be prepared by February 17, 2010. And the FCC has committed to the Tenth Circuit that it will issue a final order responding to the remand by April 16, 2010. NOI at Statement of Chairman Michael J. Copps; Statement of Commissioner Robert M. McDowell.

need to succeed. Redirecting universal service support to mobility and advanced wireless broadband services is thus critical to all three of these efforts.

III. THE COMMISSION CAN BEST GIVE EFFECT TO ALL OF THE STATUTORY PRINCIPLES BY PROVIDING SUPPORT BASED ON EFFICIENT COSTS

The Tenth Circuit rejected the Commission’s earlier efforts at defining “sufficient” support because of its reliance on the principle of reasonable comparability, without considering the other principles in section 254(b).²¹ Similarly, the Tenth Circuit disapproved of the Commission’s definition of reasonable comparability because it focused on “preserving” existing rural rate levels, relative to urban rate levels, without considering the concomitant obligation in section 251(b)(3) to “advance” universal service.²² The Tenth Circuit thus tasked the Commission on remand with developing a universal service support mechanism that gives appropriate effect to all of the principles in the statute. The best way for the Commission to do so is to “advance” universal service by acknowledging today’s new marketplace and technological realities, and crafting a support mechanism based on efficient costs.

A. The Revised High-Cost Support Mechanism Must Balance All of the Statutory Universal Service Principles

To craft a high-cost universal service mechanism that will pass muster on remand, the Commission must balance the full range of principles set out in section 254(b). To date, the Commission’s analysis of its non-rural high-cost support system has focused on section 254(b)(3), which states that consumers in all regions of the nation should have access to

²¹ *Qwest II*, 398 F.3d at 1233-34.

²² *Id.* at 1234-37.

reasonably comparable services at reasonably comparable rates.²³ Indeed, the Tenth Circuit criticized the Commission’s implementation of the principle of sufficiency (found in section 254(b)(5)) because of its sole reliance on reasonable comparability. The court also found fault with the Commission’s implementation of the principle of reasonable comparability because it sought to preserve existing rate differences between rural and urban areas, while the statute requires the Commission to “advance” as well as “preserve” universal service. Thus, as discussed below, it is crucial on remand that the Commission define reasonable comparability by emphasizing the importance of advancing universal service through service comparability as consumer preferences and needs evolve.

Although the Commission’s existing non-rural high-cost mechanism was designed to preserve (*i.e.*, prevent the widening of) the gap between urban and rural rates, section 254(b)(3) actually requires that the Commission ensure that both rates *and services* are reasonably comparable as between rural and urban areas.²⁴ Thus, on remand, the Commission’s analysis of reasonable comparability must encompass both statutory elements. This is particularly crucial given the seismic marketplace and technological changes that have occurred since the passage of the Act (indeed, even since the court’s most recent decision).²⁵ The revised high-cost mechanism must be directed toward the services – such as mobile broadband services – that consumers are embracing in today’s rapidly-changing marketplace. Mobile services, and more specifically, mobile broadband services, are broadly available in urban areas and highly valued

²³ 47 U.S.C. § 254(b)(3).

²⁴ “Consumers in all regions of the Nation ... should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas *and* that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3) (emphasis added).

²⁵ *See supra* Section I.

by all consumers. Thus, 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.

Indeed, service comparability is the true remaining universal service challenge in rural and high-cost areas. As the Commission itself has observed, rates for wireline service are actually often lower in rural and high-cost areas than they are in urban areas.²⁶ Moreover, nationwide wireless rate plans impose considerable discipline on wireline rates, even in rural areas. Because mobile phones can be purchased in one area and used in another, consumers can effectively arbitrage geographic price differences between urban and rural wireless carriers. CTIA is unaware of any significant difference between urban and rural rates for wireless services. Similarly, the Commission’s CMRS Competition Report does not discuss any geographic rate differentials.²⁷

Although wireless carriers have made great strides in deploying service across the nation, there remain rural areas that lack basic access to mobile wireless services, and even more that lack reasonably comparable access to mobile broadband services. To quantify the extent to which such areas exist in the United States, CTIA commissioned CostQuest Associates (“CostQuest”), a business and consulting firm, to analyze commercially available data about 3G wireless broadband coverage.²⁸ On remand, the Commission’s analysis of reasonable comparability should focus on advancing service comparability and CTIA urges the Commission to consider the CostQuest data as part of its review.

²⁶ See, e.g., NOI at n.53 and associated text.

²⁷ *Thirteenth CMRS Competition Report* at ¶¶ 188-95.

²⁸ CostQuest Associates, “U.S. Ubiquitous Mobility Study: Identification of and Estimated Initial Investments to Deploy Third Generation Mobile Broadband Networks in Unserved and Underserved Areas,” *attachment to Comments of CTIA*, WC Docket No. 05-337 (filed April 17, 2008) (“Wireless Broadband Study”).

Focusing on service comparability is also a better use of scarce resources than seeking to narrow any purported gap between rural and urban wireline rates (to the extent rural rates are not already lower). Through its choice of the reasonable comparability standard, Congress itself rejected the notion that urban and rural rates must be identical, a standard that Congress could have adopted if it had so desired. In fact, it would not be unreasonable for a customer in a high cost, rural area to pay somewhat more for communications services than a customer in a low-cost urban area. By definition, paying a higher rate in an area that is more expensive to serve is “reasonable,” creates incentives for efficiency and innovation, and is entirely consistent with the competing principles of Section 254.

Section 254(b)(1) states that quality services should be available at just, reasonable and affordable rates. Although the *Qwest II* court took issue generally with the Commission’s failure to address the other section 254(b) principles, it seemed particularly concerned that the Commission, on remand, must address affordability in determining whether the support mechanism is sufficient.²⁹ It is important to note, however, that the court did not in any way determine that rural rates are currently unaffordable – it merely insisted that the Commission examine the concept in defining a sufficient fund.

An efficient high-cost mechanism will best ensure that quality services are made available at just, reasonable, and affordable rates. On remand, the Commission should demonstrate to the court’s satisfaction that rural rates that are reasonably comparable with urban

²⁹ See, e.g., *Qwest II*, 398 F.3d at 1234 (“The Commission has not demonstrated ... why reasonable comparability conflicts with or outweighs the principle of *affordability*, or any other principle for that matter, in this context.”) (emphasis added); *id.* (“We are troubled by the Commission’s seeming suggestion that other principles, including *affordability*, do not underlie federal non-rural support mechanisms.”) (emphasis added).

rates are also affordable. As the Commission acknowledges in the NOI, ILECs' rates in rural areas are often *lower* than the ILECs' rates in metropolitan areas – even though the cost of service in rural areas is generally much higher.³⁰ Further, there is no reason to believe that rural consumers are any less able than urban consumers to afford the cost of service.³¹ Rather, the Commission can satisfy the principle of “affordability” by applying a national rate benchmark, set above the national average urban rate. Then, the Commission should subsidize a percentage of efficient costs above the affordable rate benchmark. Thus, if a carrier's imputed rate is thirty dollars and the forward-looking economic cost to serve the relevant geographic area is fifty dollars, the carrier would be eligible for some portion of the difference between fifty and thirty dollars. If, on the other hand, a LEC's rate is set at seventeen dollars, and the national average urban rate is thirty dollars, the carrier may receive a subsidy, but only to the extent to cover some portion of the costs above the national average urban rate, not the carrier's artificially lower rate. This will prevent unreasonably low incumbent LEC rates in rural areas from overburdening the support mechanism and those customers that fund it.³²

Finally, although providing additional support to lower rural rates further might arguably make service even more affordable for rural customers, the Commission must also consider the

³⁰ NOI at n.53 and associated text.

³¹ The Tenth Circuit noted no such evidence. *See also* Comments of CTIA, WC Docket No. 05-337 (filed March 27, 2006) at 5 (citing data showing that, although rural incomes are somewhat lower, rural consumers face significantly lower housing costs).

³² By establishing a national average urban rate benchmark, and subsidizing a percentage of carriers' costs that exceed that benchmark, the Commission also can further the role Congress intended for states under Section 254(f). Under this paradigm, states that continue to regulate incumbent LEC rates would still be able to preserve carriers' low rates, if such rates can be justified, or increase those rates after examining a carrier's operations. This also potentially would create incentives for carriers to seek rate reviews or, in the case of competitive markets, rate deregulation.

burden of additional support on all universal service contributors. Noting this point, the Tenth Circuit concluded that “excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the [affordability] principle.”³³ Thus, providing additional support to further reduce incumbent LEC rates in rural and high-cost areas could interfere with the affordability of service for urban consumers. For this reason, too, the Commission can conclude that a funding level that ensures reasonably comparable rates also will ensure affordable rates.

Section 254(b)(2) states that all regions of the nation should have access to advanced telecommunications and information services. This principle reinforces the need (discussed above with regard to reasonable comparability) for the reformed high-cost support mechanism to focus on mobile broadband services. Wireless carriers are aggressively deploying mobile broadband networks throughout the country, including in rural areas. That said, as CTIA has shown, there remain many areas where advanced wireless services are still unavailable.³⁴ In order for consumers in rural and high-cost areas to have access to the same advanced mobile broadband services that are available in urban areas, the Commission’s high-cost mechanism should be focused on completing deployment projects in areas where it is uneconomic for carriers to do so without support.

Section 254(b)(5) requires that the support mechanisms be specific, predictable, and sufficient not only to preserve but also to advance universal service. The current multi-part high-cost mechanisms have become so complicated that they utterly fail the specific and predictable requirements of the Act. Thus, the system must be simplified. A single mechanism for all

³³ *Qwest II*, 398 F.3d at 1234.

³⁴ *See* Wireless Broadband Study, *supra* note 28.

carriers and all areas, particularly one that rewards efficient use of public funds, would be considerably more specific and predictable than the existing Byzantine structure.³⁵

The high-cost mechanism should be measured as “sufficient” if it is adequate, but not larger than necessary, to satisfy the goals of the Act. A sufficient mechanism would provide enough support to ensure that all of the statutory principles are met, as discussed herein, including the reasonable comparability of rates and services between urban and rural areas, without overburdening the customers who ultimately contribute to universal service. A support system based on efficient costs will best further this mandate.

As discussed above with regard to reasonable comparability, the best way to ensure that the mechanism advances, and does not merely preserve, universal service is to identify the true existing challenges to the reasonable comparability of services and rates as between urban areas, on the one hand, and rural and high-cost areas, on the other, and to design the mechanism specifically to address those concerns. Today’s challenge is the availability of mobile and broadband services in rural and high-cost areas. Thus, the revised support mechanism should advance universal service by focusing specifically on remedying those issues.

Finally, the revised high-cost support system must comport with the principle of competitive neutrality, adopted by the Commission pursuant to section 254(b)(7). In its implementation of the statutory universal service principles in 1997, the Commission concluded that universal service mechanisms should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”³⁶

³⁵ See *infra* Section III.B.

³⁶ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801 ¶ 47 (1997) (subsequent history omitted).

Similarly, the United States Court of Appeals for the Fifth Circuit stated that the universal service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.”³⁷ The current high-cost program funds provides three times as much support for fully deployed legacy wireline technology as it provides for new technologies, such as mobile wireless, that are more highly valued by consumers and not yet fully deployed in rural and high-cost areas.³⁸ Additionally, the recent cap on wireless will further exacerbate the gap between wireline and wireless recipients. As stated above, this makes no sense particularly in light of the fact that wireless consumers are responsible for 41 percent of universal service contributions. There needs to be a significant reconsideration of the inequity that is systemic throughout the universal service program.

Leading policymakers have affirmed the need to adopt a non-discriminatory approach to universal service. In 2007, then-Senator Obama and Senator Durbin urged the Commission to focus on comprehensive universal service reform that will “ensure our nation’s rural areas have access to a universal and modern telecommunications network that includes wireless and broadband.”³⁹ Senators Rockefeller, Pryor, Dorgan, Klobuchar, and Smith all opposed a cap on high-cost universal service support, “especially one imposed only on certain carriers.”⁴⁰

³⁷ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000).

³⁸ *See supra* note 13 and associated text.

³⁹ Letter from Sen. Obama and Sen. Durbin to Chmn. Kevin Martin (dated July 26, 2007).

⁴⁰ Letter from Sens. Rockefeller, Pryor, Dorgan, Klobuchar, and Gordon Smith to Comr. Deborah Taylor Tate and Chmn. Ray Baum (dated March 21, 2007).

Similarly, Senators McCain, DeMint, and Ensign voiced their opposition to “any plan that would cap only one select group of providers but not others.”⁴¹

Favoritism towards wireline networks violates the principle of competitive neutrality and belittles the emerging role of wireless providers in the broadband marketplace.⁴² The status quo for universal service – which dedicates over three billion dollars of uncapped funding to incumbent LEC services, yet subjects wireless providers to an arbitrary cap -- is neither sustainable nor good policy. In keeping with section 254(b)(7), the Commission should move quickly to adopt comprehensive reform.

B. Providing Support Based on Efficient Costs Best Balances the Statutory Principles

As CTIA has long argued, adopting a reformed high-cost support mechanism based on efficient costs is the surest way to ensure that the mechanism achieves all of the statutory principles in section 254(b). Specifically, support based on efficient costs balances the mandates to ensure sufficient support so that consumers in rural, high-cost areas have access to affordable and reasonably comparable services, against the burden on consumers that ultimately pay for universal service.

In prior comments in this proceeding, CTIA has advocated both short-term and long-term proposals that would base support on efficient costs. CTIA urges the Commission to consider these options carefully in its re-assessment of high-cost universal service support. Pending comprehensive reform, and to the extent that the Commission decides to respond narrowly to the Tenth Circuit’s remand, CTIA has encouraged the Commission to retain a forward-looking high-

⁴¹ Letter from Sens. Sununu, McCain, DeMint, and Ensign to Comr. Deborah Taylor Tate (dated April 13, 2007).

⁴² *See supra* Section I.

cost mechanism for non-rural carriers, and has proffered numerous proposals to update and improve the current forward-looking cost methodology.⁴³

As described above, CTIA continues to believe that the Commission should adopt comprehensive reform of universal service, eventually transitioning to a single, high-cost mechanism that provides support to both incumbents and competitors based on the most efficient technology and the most efficient use of scarce public funds.⁴⁴ CTIA is also open to other market-based approaches, including certain competitive bidding or reverse auction proposals that would achieve the goals of universal service while improving upon the current inefficient rural high-cost universal service mechanisms that often do not target support where it is needed. CTIA has even submitted a specific proposal for implementation of an appropriate competitive bidding mechanism to award universal service support.⁴⁵ However, these efforts need to be comprehensive, inclusive of both wireline and wireless recipients, not simply additional “interim” methods designed solely to drive down wireless support. Finally, CTIA has also encouraged the Commission to consider adopting dedicated mechanisms that would support both the deployment of advanced wireless infrastructure and the maintenance of such infrastructure in high-cost areas.⁴⁶

Each of these proposals has been offered at various points in the debate, often in the spirit of compromise, and always in an effort to offer constructive suggestions to achieve reform of the

⁴³ See, e.g., Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2008); Comments of CTIA, WC Docket No. 05-337 (filed April 17, 2008).

⁴⁴ See, e.g., Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2008) at 16.

⁴⁵ James Stegeman, Dr. Steve Parsons, Robert Frieden, and Mike Wilson, “Controlling Universal Service Funding and Promoting Competition Through Reverse Auctions,” *attachment to Reply Comments of CTIA*, WC Docket No. 05-337 (filed Nov. 8, 2006).

⁴⁶ See, e.g., Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2008) at 9-15.

high-cost support mechanism that is consistent with the statute and good for consumers. While each of these proposals has taken a different approach, they all have shared the common element of basing support on efficient costs. This should be the Commission's goal in its response to the Tenth Circuit's remand, as well as its efforts at developing a Rural Broadband Strategy and a National Broadband Plan.

CONCLUSION

The Commission should respond to the Tenth Circuit's remand by formulating a high-cost support mechanism that appropriately balances all of the statutory principles. Such a mechanism will target support to ensure the deployment in rural and high-cost areas of the mobile broadband services that consumers both need and demand today.

Respectfully submitted,

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