

**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

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

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

(“SouthernLINC Wireless”), by its attorneys, hereby submits these reply comments in the above-captioned proceeding in response to the *Notice of Inquiry* requesting commenters refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit in the *Qwest II* decision.¹ SouthernLINC Wireless urges the Federal Communications Commission (“FCC” or “Commission”) to respond to the Tenth Circuit’s order as a part of its ongoing USF reform efforts and adopt competitively neutral definitions of the universal service statute that ensure consumers in rural areas have access to a choice of service types, service providers, and service rates reasonably comparable to those available to consumers in urban areas.

SouthernLINC Wireless operates a commercial digital 800 MHz ESMR system using 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, Georgia, the panhandle of Florida, and Southeast Mississippi, where it serves nearly 250,000 subscribers over 127,000 square miles.

SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile

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) (*Qwest II Remand NOI*).

wireless provider in Alabama and Georgia, servicing extensive rural territory along with major metropolitan areas and highway corridors, and as such SouthernLINC Wireless' services are widely used by local and statewide governmental institutions, public utilities, and emergency services.

SouthernLINC Wireless is committed to offering high-quality telecommunications services to rural and underserved areas, and approximately half of the total handsets SouthernLINC Wireless supports 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 total 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 fifteen 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 communication. In the aftermath of Hurricane Katrina, for example, SouthernLINC Wireless in many instances provided the only immediate means of communication in Mississippi and Alabama. As such, SouthernLINC Wireless is the type of competitive eligible telecommunications carrier ("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.

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

I. THE COMMISSION MUST VIEW THE QWEST II REMAND AS AN INTEGRAL PART OF ITS ONGOING USF REFORM EFFORTS

The Commission cannot develop its response to the Tenth Circuit’s *Qwest II* order in a vacuum, sealed away from the other reform efforts currently on its docket.³ The *Order on Remand* at issue in *Qwest II* was limited in application to the non-rural high-cost fund, which makes up only part of the high-cost mechanism, which in turn is only part of the universal service mechanism.⁴ However, the terms the court identified in *Qwest II* as being insufficiently defined apply to the entire universal service fund – not just to the non-rural high-cost mechanism. Therefore, the Commission must consider the impact of the definitions it adopts in response to the Tenth Circuit’s *Qwest II* remand order upon the entire USF program, not just the non-rural high-cost program.⁵

In *Qwest II*, the Tenth Circuit remanded the Commission’s *Order on Remand* in part because the Commission had failed to adequately consider the Commission’s obligation “to advance” universal service as required by section 254.⁶ The best way for the Commission to advance universal service is by acknowledging today’s new technological and market realities, including the growing preference of consumers for mobile telecommunications and high-speed broadband services.⁷ The Commission cannot simply pour more money into the traditional ILEC

³ Time Warner Comments at 2 (“While the Commission must address the well-established problems with the non-rural mechanism, they cannot be solved in a vacuum.”).

⁴ *Qwest Commc’ns Intl’l, Inc. v. FCC*, 398 F.3d 1222, 1234-36 (10th Cir. 2005) (*Qwest II*) (remanding *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, FNPRM, and Mem. Opinion and Order, 18 FCC Rcd 22559 (2003) (*Order on Remand*)); accord RCA Comments at 2 (noting that the Commission “continues to consider initiatives intended to produce comprehensive reform of the high-cost mechanisms for rural and non-rural carriers”).

⁵ See Time Warner Comments at 2 (noting that “because all of the high-cost programs are plagued by the same core problems” the Commission should “await more comprehensive action.”).

⁶ 47 U.S.C. §254(b)(5) (“There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.”).

⁷ See, e.g., CTIA Comments at 7.

network while excluding providers of mobile and broadband services from the program and legitimately claim to be “advancing” the cause of universal service.⁸ Likewise, the Commission cannot simply make minor changes to its various “benchmarks” while maintaining the funding cap on competitive ETCs, or excluding them from participating altogether, and declare itself in compliance with the Act. Rather, the Commission must adapt its USF plan to the market conditions found across the country, including consumers’ increasing desire for mobile and broadband services, and adopt definitions for the key terms of section 254, including “reasonable comparability,” “affordability,” and “sufficiency,” that reflect those market conditions.

II. CONSUMERS IN RURAL AREAS SHOULD HAVE A CHOICE OF SERVICE TYPES, SERVICE PROVIDERS, AND SERVICE RATES REASONABLY COMPARABLE TO THOSE AVAILABLE TO CONSUMERS IN URBAN AREAS

The language of section 254 makes clear that the overarching purpose of the universal service program is to “preserve and advance” universal service.⁹ The Commission can best advance universal service by ensuring that consumers in all areas of the country have access to a competitive market for telecommunications and information services and can choose the service type, service provider, and service rates they wish to receive.¹⁰ Universal service support should be used to correct failures in specific markets that have led to the lack of reasonably comparable service options for consumers in those markets, because the value and utility of the communications network is higher if everyone can connect to it anywhere in the United States. It is well established that a strong communications network is crucial to the health of the

⁸ See AT&T Comments at 5; RCA Comments at 36.

⁹ Accord Embarq Comments at 5 (“[I]mportantly for this proceeding, the support mechanism must be ‘specific predictable and sufficient ... to preserve and advance universal service.’”)

¹⁰ USA Coalition Comments at 5 (“Universal service support should be used to address the market failures that lead to a lack of service options and unacceptably high prices in rural, insular, and high-cost communities.”).

economy, and thus the universal service program must facilitate a strong, diverse and modern communications network.¹¹

In *Qwest II*, the Court rejected the Commission’s *Order on Remand* in part because the Commission had focused exclusively upon the principle of “reasonable comparability” enumerated in section 254(b)(3), and ignored the other principles in section 254(b).¹² Importantly, although the Court held that the Commission could not rely *solely* upon the principle of reasonable comparability, it did not reject the idea that the Commission might weigh principles against one another or suggest that an emphasis on the “reasonable comparability” principle would be mistaken.¹³ As such, the Commission should continue to treat the principle of “reasonable comparability” as the key element of the universal service system.¹⁴ However, the Commission must also make findings that address issues relating to “affordability” and “sufficiency” as well.

To comply with the principle of “reasonable comparability,” the Commission must ensure that the choices available to consumers in rural, insular, and high-cost regions of the United States are “reasonably comparable” to those in urban areas. In determining whether choices are “reasonably comparable” between urban and rural areas, the Commission must look to three factors: service types available, service providers available, and service rates available.¹⁵

¹¹ See CTIA Comments at 4 (explaining that the benefits of wireless service are most pronounced in rural areas, where distances make mobility an essential element of family life, economic development, safety, and public health).

¹² *Qwest II*, 398 F.3d at 1234 (rejecting Commission’s USF definitions for failure to adequately consider all the principles enumerated in 47 U.S.C. § 254, including “reasonably comparable,” “just, reasonable and affordable,” and “sufficient.”).

¹³ *Id.* (“The FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal.”).

¹⁴ See, e.g., NASUCA Comments at 35; RCA Comments at 9; Embarq Comments at 14-15; GCI Comments at 5.

¹⁵ See, e.g., CTIA Comments at 20; USA Coalition Comments at 9-10.

- Service Types: With respect to service types, consumers in high-cost areas should have access to service offerings that are generally available in urban areas (*e.g.*, voice, mobility, broadband, text messaging, etc.).
- Service Providers: Consumers in high-cost areas should also be able to choose among a selection of telecommunications and information service providers that is “reasonably comparable” to that available to consumers living in urban areas. Indeed, the ability of consumers to choose among providers is essential to encouraging providers to offer the best possible service at the lowest possible rate in a service area.
- Service Rates: Finally, the FCC must also ensure that rates within a rural area are “reasonably comparable” to urban rates. This can be done either by comparing rates directly to an average urban rate (*i.e.*, rural rates must be within 120% of the average urban rate)¹⁶ or by using the standard deviation for the average urban rate (*i.e.*, rural rates must be within 1.0 standard deviations of the rural rate). To the extent the Commission believes it easier to continue to rely upon a carrier’s demonstrated costs rather than upon a carrier’s rates in determining whether support should be available in an area, the Commission must first find that these costs are an adequate proxy for rates before using them to distribute funding.¹⁷

With respect to the Commission’s obligation to ensure that rates are “affordable,” the Commission should simply find that rates in high-cost, rural, and insular areas are generally “affordable” if they are “reasonably comparable” to rates for similar services in urban areas. To the extent the Commission is concerned about the ability of low income consumers to obtain access to telecommunications or information services, the Commission should rely upon the Lifeline and Link-up programs to provide support on a more individualized basis rather than upon the high-cost mechanism, which operates on a much larger geographical level.¹⁸ Despite the language in *Qwest II* requiring the Commission to balance the principle of affordability against the other principles in section 254, nothing in the order would prevent the Commission from justifying its reliance on the “reasonable comparability” standard on this basis.

¹⁶ See Comments of Vermont Public Service Board, Vermont Dept. of Public Service, and Maine PUC, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, High-Cost Universal Service Support, WC Docket No. 05-337 (filed Mar. 27, 2006).

¹⁷ GCI Comments at 6; *accord* NASUCA Comments at 26.

¹⁸ See NASUCA Comments at 38-39; CTIA Comments at 8; RCA Comments at 20; USA Coalition Comments at 8.

The Commission should also define “sufficiency” in terms of the principle of “reasonable comparability.” Support should be deemed “sufficient,” as the term is used in section 254(e) and in section 254(b)(5), when there is enough USF support available to ensure the three “reasonable comparability” standards (*i.e.*, service type, service provider, and service rates) enumerated above are met throughout the country. Such a definition is also consistent with the goal of “advancing” universal service discussed above, as it ensures that consumers in rural areas will have access to services roughly equivalent to those available to consumers in urban areas.

III. USE SUPPORT MUST BE DISTRIBUTED IN A COMPETITIVELY NEUTRAL MANNER

Universal service support must be made available in a technologically and competitively neutral manner so that technological innovation can be implemented in the communications networks as rapidly and efficiently as possible. As the Commission has recognized, departures from competitive neutrality, no matter how insignificant they may first appear, must be minimized in order to “facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.”¹⁹ To this end, the Commission’s reform of the universal service distribution mechanism should facilitate growing confidence in alternatives to traditional wireline telephone service and not create an artificial price bias in favor of circuit switched incumbent services.²⁰ Indeed, a recent study by the Center for Disease control revealed that one out of every five American homes (20.2%) had only mobile

¹⁹ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 47 (1997) (*First Report & Order*); accord USA Coalition Comments at 5; GCI Comments at 9.

²⁰ RCA Comments at 37 (“The growing demand for mobile wireless services in both rural and urban areas, and the public safety and economic benefits of mobile wireless services in rural areas, highlight the direction in which technology is driving the telecommunications and information services marketplace.”).

telephones during the second half of the year – an increase of 2.7% in just the last six months.²¹ USF policies should reflect, and not stymie, these consumer preferences.

Because of the important role played by competitive carriers in urban areas (*i.e.*, mobile services, broadband, IP-based phone service), both the principle of reasonable comparability and that of competitive neutrality favor the rejection of any proposal designed to deny support to competitive carriers.²² Currently, competitive carriers, and wireless carriers in particular, contribute significantly more money to the USF fund than they receive from it.²³ Despite this imbalance, many incumbents propose to further skew the playing field. For instance, the Qwest proposal would provide an additional \$1.2 billion in increased funding to incumbent LECs, while denying any increase in funding to the ILECs' competitors.²⁴ Embarq's proposal to limit support to a single incumbent ETC and a single competitive ETC in each area would also deny support to the majority of competitive carriers, and skew markets by creating a virtual duopoly, as no other carrier could enter the area and compete with the subsidized prices of the two carriers receiving USF support. The end result would be higher rates for rural consumers, because service rates would no longer be forced downward by competitive pressures. Verizon's proposal to require all wireless carriers, and only wireless carriers, to bid to receive

²¹ See Stephen J. Blumberg and Julian V. Lake, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey*, July-December 2008, at 1 (May 6, 2009).

²² See also RCA Comments at 36 (opposing proposals that include single-winner reverse auctions, repeal of the identical support rule, and the imposition of a carrier's-own-cost methodology as "substantially reduc[ing] the ability of wireless carriers to continue providing supported services in rural and high-cost areas.").

²³ Compare FCC, *Trends in Telephone Service*, Table 19.18 (Aug. 2008) with Federal State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 3.2 (2008).

²⁴ See Qwest's Proposal for Implementing the Tenth Circuit's Remand in Qwest II, Federal State Joint Board on Universal Service, High Cost Universal Service Support, CC Docket No. 96-45, WC Docket No. 05-337, 22 (filed May 6, 2008).

USF support violates the principle of competitive neutrality on its very face.²⁵ Radically different USF treatment of incumbent and competitive services is the exact outcome the Commission sought to avoid when it adopted the principle of competitive neutrality in the *First Report & Order*. SouthernLINC Wireless has submitted its own reverse auction proposal, but it has consistently maintained that reverse auctions must apply to all carriers equally, and must still result in sufficient competition such that consumers maintain a choice among service types, service providers, and service rates.²⁶ Verizon's proposal fails on all counts.

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

The Commission should reject calls to condition USF support on the provision of broadband service. Such a proposal amounts to little more than an ultimatum that every ETC commit to providing broadband service to every subscriber or lose USF support altogether. 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. 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.

²⁵ Verizon Comments at 28.

²⁶ SouthernLINC Wireless Comments, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed Apr. 17, 2008).

Instead of mandating the provision of broadband service, the Commission should extend the list of USF supported services to include broadband.²⁷ This support would provide the impetus for many carriers to begin deploying broadband services in areas where such services are not currently available. Lifting the prohibition against using USF support to fund deployment of broadband facilities is the most effective and least expensive way of stimulating broadband deployment in rural areas.

V. CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to adopt competitively neutral definitions of the universal service statute that ensure consumers in rural areas have access to a choice of service types, service providers, and service rates reasonably comparable to those available to consumers in urban areas.

Respectfully submitted,



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²⁷ See RCA Comments at 39 (“In order for Commission policies to continue to advance universal service, the next horizon for the Commission to pursue is the utilization of high-cost support to promote the deployment of broadband service in rural and high-cost areas.”).