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October 27, 2009

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45

Dear Chairman Genachowski:

The Universal Service for America Coalition ("USA Coalition" or "Coalition"), by its attorneys, writes to encourage the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that technological innovation can be implemented into the communications network as rapidly and efficiently as possible.[1] Allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice is the best means for ensuring the vibrancy, robustness, and redundancy of the communications network.[2]

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1 *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 and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies").

2 *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, ¶ 7 (Aug. 8, 1996) ("By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advances services are met by means that enhance, rather than distort, competition.") (*Local Competition Order*). The Senate Committee Report, which discusses the background and need for the Telecommunications Act of 1996, stated:

> Changes in technology and consumer preferences have made the 1934 Act a historical anachronism … Since the 1970s, when competition first began to emerge in the markets for telephone equipment, information services, and long

I. THE COMMISSION SHOULD FOCUS ON THE GOALS OF THE UNIVERSAL SERVICE PROGRAM AND THE REASONS WHY THE PROGRAM IS NECESSARY

A vibrant, robust, and redundant communications network is essential to the economic strength of the United States and the public safety of its citizens. In order to ensure the strength of the communications network in rural, insular, and high-cost areas, service must be affordable to residents of those areas. In some rural, insular, and high-cost areas, however, service will be affordable only with support from the Universal Service Fund ("USF"). In recognition of the public interest benefits that result from the universal availability of affordable service, Congress and the Commission created the universal service fund program.

The Universal Service Fund supports the provision of services where they otherwise would not be available or affordable. The Telecommunications Act of 1996 mandates that universal service evolve over time with the changing needs of consumers. Evolution of the current universal service distribution mechanism is necessary to accomplish the goal of universal service. However, beneficial evolution of the universal service support mechanisms cannot occur if the focus of policymakers' efforts is on the mechanisms themselves rather than the goals the mechanisms are meant to achieve. Funding should not be the sole focus, because lack of funding is not the sole obstacle to universal services. Nonetheless, support must be available where needed to achieve or maintain universal service. In these areas, the support mechanisms should facilitate growth and maintenance of the network rather than create additional obstacles to distributing or accessing support. Ensuring that support is both available where needed and used properly to achieve the goals of universal service is far more important than the precise manner by which funds are distributed.

The best way to achieve universal service is to focus on removing the obstacles that service providers face. The Commission must ask why certain areas are unserved or underserved and identify the specific obstacles to serving those areas. Obstacles to universal wireless service in unserved or underserved areas can include:

- Unavailability of sufficient spectrum;
- Lack of sufficient funding for capital expenditures (*e.g.*, cell site equipment, significant backhaul or transport costs) due to low population density and/or extraordinarily high cost of service in the area;
- Lack of sufficient funding for operational expenditures due to low population density and/or extraordinarily high cost of service in the area;

> distance services, the FCC has struggled to adopt rules that recognize a need to reduce regulatory burdens, especially on new entrants.

S. Rep. No. 104-23, at 5 (1995).

- Burdensome, costly, lengthy, discriminatory, vague or arbitrary regulatory requirements (*e.g.*, the interim funding cap);
- Unavailability of roaming;
- Unavailability or incompatibility of handsets; and
- Lack of sufficient access to necessary rights of way or slow and costly permit approval procedures.

Once the obstacles to universal service have been identified, those obstacles should be eliminated to the greatest extent possible. Under no circumstances should government rules and policies create additional obstacles to service deployment.

Universal service support distribution should be simple – carriers should know how much money they will receive based on their planned expenditures and projected costs. Furthermore, universal service support should not vary based upon meaningless distinctions; support should be made available in a technologically and competitively neutral manner so that technological innovation can be implemented into the communications network as rapidly and efficiently as possible. Favoring one type of technology or class of carriers, whether explicitly or implicitly, will only slow the integration of technological innovation into the communications network and increase inefficiencies. Allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice in a competitive communications services marketplace is the best means for ensuring the vibrancy, robustness, and redundancy of the communications network.

Support also must be allocated and distributed in the manner that best facilitates the universal availability of affordable services. This goal requires the Commission to focus primarily upon the consumer, rather than upon the service provider. Consumers want, and need, the ability to choose among various types of affordable services, service providers, and technologies. The support distribution methodology should neither encourage nor require any carrier to become more inefficient or to comply with unnecessarily burdensome requirements, merely to receive universal service support. At a minimum, mandated inefficiency increases the cost of providing service, which will cause the fund to grow unnecessarily. In a worst case scenario, carriers would choose to forgo support and not offer service, which would limit the options available to consumers in rural, insular, and high cost areas where support is necessary to ensure the availability of affordable services.

In this letter, the USA Coalition offers a series of short and long term actions the Commission can take to achieve the goal of universal service and bring USF support into compliance with both the letter and spirit of section 254 of the Communications Act of 1934, as amended. If the Commission elects to eliminate the identical support rule rather than implementing true portability of support, the Commission should adopt the new distribution mechanism proposed in the attached presentation, which outlines a technologically neutral method of distributing USF support that offers consumers in rural, insular, and high-cost areas access to a competitive and robust market for communications services including both broadband and narrowband services. In the interim, the Commission should immediately provide much needed clarification and instruction to USAC on a variety of fronts, including guidance regarding: (1) the distribution of USF support previously designated for Alltel and Verizon among the remaining competitive ETCs in the areas where those carriers provided service; (2) how prepaid wireless customers using P.O. Boxes for mailing addresses should be included in the line count census; and (3) the fact that ETCs do not need to list all USF services offered as part of the their Lifeline offerings in order to comply with their obligations under 47 C.F.R. § 54.405(b). The USA Coalition and its members welcome the opportunity to discuss these issues in greater detail with you at your convenience.

II. THE COMMISSION SHOULD TAKE A NEW APPROACH TO UNIVERSAL SERVICE REFORM

The USA Coalition and RCA have explained on numerous occasions that the identical support rule is not the cause of the "harms" the Commission seeks to address with universal service reform.[3] To the extent that the Commission nonetheless chooses to eliminate the identical support rule and forego implementing portability of support for incumbent as well as competitive ETCs, the Commission should adopt the reform proposal outlined in the attached presentation entitled "A New Approach to Universal Service Reform."

A. USF Reform Should Focus On Consumers As The Beneficiaries Of Support Rather Than On Carriers As The Recipients Of Support

The language of section 254 of the Act makes clear that the overarching purpose of the universal service program is to improve access to telecommunications and information services for consumers living in rural areas. This goal requires the Commission to focus primarily upon the consumer's options and communications experience rather than upon the service provider's regulatory status or technological platform.[4] As such, any reform effort should seek to shift the emphasis of the USF program away from Byzantine and often meaningless distinctions designed to address deficiencies in the regulatory framework that apply to various types of carriers towards a program designed to ensure the availability and affordability of a variety of service

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3 *See, e.g.*, USA Coalition Letter to Chairman Martin, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 3 (filed Sep. 30, 2008); Comments of RCA and ARC, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 14 (filed Apr. 17, 2008).

4 *See Alenco Commc'ns v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers.").

types and service providers for consumers living in rural, insular, and high-cost areas by directly addressing the obstacles to universal service.[5]

To achieve this goal, the universal service distribution mechanism should seek to ensure that consumers enjoy access to a competitive communications market in which consumers can select the service type, technology, and provider of their choice. To ensure that consumers enjoy access to a competitive communications market, USF reforms should minimize the distribution mechanism's interference with market forces while creating incentives for *all* ETCs to provide advanced services (including mobility and broadband) and offer lower prices for customers in rural areas. Although any government intervention in the communications market invariably creates some market distortion, the intervention should be designed to ensure that the market for communications services remains functional and competitive. When support is limited to specific carriers based on artificial distinctions such as regulatory status or technological platform, market distortions are magnified rather than minimized, and consumers have fewer service options and face higher prices. Thus, to best serve consumers, the Commission should reject policies that would deny support for any particular carrier (*e.g.*, wireless carriers or broadband service providers) based on regulatory status or technological platform.

Universal service support should be used to address directly, and in a predictable manner, the market forces that result in a lack of service options or unacceptably high prices in rural, insular, and high-cost communities. This objective can best be accomplished by crafting the USF distribution mechanism to bolster, rather than distort, competitive market forces without artificially propping up any individual carriers. Support distribution mechanisms that foster a competitive market while mitigating the effects of high-costs and low population density in rural areas will reduce the total amount of support necessary over time. By contrast, mechanisms that provide support for only one, or even two, carriers artificially insulate those carriers from market forces that would otherwise compel them to become more efficient over time, ultimately increasing the amount of support those carriers require. For this reason, to the extent that the Commission determines that support is necessary within an area, all eligible carriers serving the area should be entitled to support, regardless of the carrier's regulatory status or technology platform, as all carriers face the same obstacles to providing service.

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5 Specifically, the Commission should ensure that the availability and affordability of a variety of service types and service providers for consumers living in rural, insular, and high-cost areas is reasonably comparable to the variety and affordability of service types and service providers available to consumers living in urban areas as required by section 254(b)(3) of the Act, 47 U.S.C. § 254(b)(3). The Commission has found that "section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates." *Federal State Joint Board on Universal Service*; *High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice Of Proposed Rulemaking, 20 FCC Rcd 9731, 19736-37, ¶ 10 (2005).

B. The Universal Service Program Should Directly Address the Primary Obstacles that Service Providers Face in Unserved and Underserved Areas

The best way to achieve universal service and to foster the deployment of the fastest and most efficient services is to focus on removing the obstacles that service providers face in unserved and underserved areas in a predictable and technologically neutral manner. Two primary obstacles impact all types of technologies – apart from satellite – and all types of competitors regardless of data transfer rates:

- Low population density (*i.e.*, fewer subscribers from whom to recover costs); and
- Higher cost of service due to harsh terrain (*e.g.*, mountains, swamps, volcanic rock, tundra, lack of access), population distribution issues (*e.g.*, longer and more expensive backhaul) and other issues.

The USA Coalition proposes a new approach to USF support distribution that addresses these twin obstacles directly in order to ensure the effective and efficient use of USF support. By addressing the primary obstacles directly, the new approach eliminates artificial distinctions based on technology (*e.g.*, wireline or wireless), competitive status (*e.g.*, ILEC or CETC), or current speed of service (*e.g.*, "broadband" or "narrowband").

The new approach, described in the attached presentation, would focus on consumers by eliminating obstacles that prevent consumers in rural, insular, and high-cost areas from enjoying the diversity of service and lower prices available in urban areas. Incumbents and competitors would compete for subscribers on a level playing field and would succeed or fail based upon consumer demand for their products and services, in turn, facilitating consumer choice. Support would be distributed based upon the costs that the incumbent and competitive LECs actually incur, with every ETC serving a particular supported area being eligible for reimbursement of an identical percentage of the eligible costs it incurs. Those eligible costs would be clearly defined and easily auditable, and the increased transparency at the beginning of the process would improve the ability of carriers to predict their support levels before distribution and reduce the need for complex and burdensome audits after distribution. Indeed, both incumbent LECs and competitive ETCs would know exactly how much support they would receive before they make a decision regarding network or service expansion, which would facilitate the type of economically rational decision-making that improves the efficiency of USF support. In addition, the new approach would provide support for all types of service and service providers, regardless of technology, speed, or provider type. This new USF approach thus avoids picking winners and losers among technologies and providers, which ultimately will benefit all consumers.

III. THE COMMISSION SHOULD TAKE CERTAIN STEPS IMMEDIATELY TO IMPROVE THE EFFICIENCY OF UNIVERSAL SERVICE SUPPORT

A. The Commission Should Reverse USAC's Decision To Exclude USF Support Disclaimed by Verizon Wireless and Sprint

In order to ensure that consumers living in rural, insular, and high-cost areas have access to communications services and technologies that are "reasonably comparable" to those available to consumers living in urban areas, the Commission must ensure that support is "specific, predictable, and sufficient."[6] As the USA Coalition has made clear in its previous filings, the current cap on funding to competitive ETCs is fundamentally inconsistent with the Act, even on an interim basis – a point which will not be belabored here.[7] Even assuming, however, the continued operation of the interim cap, USAC's unjustified and unauthorized decision to exclude USF support voluntarily forgone by Verizon/Alltel and Sprint/Clearwire as a condition of their mergers from the pool of support available to competitive ETCs under the interim cap must be reversed and the support owed to carriers in the affected regions distributed as soon as possible.

When the Commission implemented the interim cap in May 2008, the Commission capped the amount of support that all competitive ETCs are eligible to receive in a given state at annualized March 2008 levels.[8] The plain language of the *Interim Cap Order* confirms that the cap is static: "[A]nnual support for competitive ETCs in each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008, on an annualized basis."[9] The *Interim Cap Order* further set forth a two step approach for calculating support, where the entry or exit of any specific ETC in any given state has no effect on the available state cap support amount. [10] Indeed, the number of ETCs in a given state is only relevant to the extent that it increases or decreases the state *uncapped* support amount and thus

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6 47 U.S.C. § 254(b)(5).

7 *See, e.g.*, USA Coalition Reply Comments, *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption*, WC Docket No. 08-152, at 7 (filed Sep. 2, 2008).

8 *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, ¶ 5 (2008) (*Interim Cap Order*).

9 *Id.*

10 *Id*. ¶ 27 (describing the process for calculating the amount of support to distributed to carriers in each state).

the percentage of their reimbursable costs that the competitive ETCs within the state will be reimbursed. [11]

As Corr Wireless explained in its Petition, and the USA Coalition expounded upon in its comments,[12] USAC has excluded the USF support previously received by the merged companies through the misapplication of language in the *Verizon Wireless-Alltel Merger Order*,[13] which was adopted in a wholly unrelated proceeding.[14] The Commission did not adopt Verizon Wireless' misinterpretation of the interim cap in the Verizon merger preceding and, indeed, could not have done so in the unrelated merger proceeding.

The Commission must reverse USAC's decision in the affected areas in order to ensure "specific, predictable, and sufficient" funding for carriers providing service in those areas. Failure to do so will distort the market for communications in those areas, slowing down the deployment of both narrowband and broadband services, weakening economic growth in those areas and limiting the opportunities for Americans living in those areas to take advantage of the digital resources available to Americans living in urban areas. Such a result would be in direct contradiction of both the spirit and the letter of section 254 of the Act.

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11 *Id.* ¶ 39 ("These designations [of additional ETCs], however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.")

12 *Request for Review By Corr Wireless Commc'ns, LLC of Decision of Universal Service Administrator*, CC Docket No. 96-45, WC Docket No. 05-337 (Mar. 11, 2009); *USA Coalition Comments on Corr Wireless Request for Review*, CC Docket No. 96-45, WC Docket No. 05-337 (May 11, 2009).

13 *See, e.g.*, Letter from Karen Majcher, USAC, to Mr. Donald Evans, Fletcher, Heald & Hildreth, P.L.C. dated February 25, 2009 (explaining rationale for not including USF support forgone by Verizon and Sprint as a condition to the merger) (attached to Corr Petition).

14 While summarizing commenters' positions on the merger condition, the Commission paraphrased the "understanding" Verizon Wireless expressed in an *ex parte* filing that the reduction in its support would not result in an increase in support to other competitive ETCs. *Applications of Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258 (rel. Nov. 10, 2008) (*Verizon Wireless-Alltel Merger Order*).

IV. THE COMMISSION SHOULD INSTRUCT USAC TO ALLOW COMPETITIVE ETCs TO REPORT SUBSCRIBERS USING P.O. BOXES BASED ON CUSTOMER PROVIDED INFORMATION OR ON POST OFFICE LOCATION

The Commission should also act immediately to clarify the rules regarding how an ETC should report subscribers to USAC that use P.O. boxes rather than street addresses for their wireless phone bills.[15] The current rules require competitive ETCs to report the number of lines they serve in each rural ILEC's service area based on the customer's billing address. When a customer uses a P.O. Box as its billing address, the software commonly used by competitive ETCs to generate these reports cannot automatically identify the rural ILEC study area in which the customer's billing address is located. Under these circumstances, competitive ETCs must attempt to identify manually the rural ILEC serving area in which the customer's billing address is located, which is not always possible.

The Commission should grant the petition filed by Mobi PCS and Cricket Communications that requests Commission approval of two reasonable methods for solving this problem: (1) allowing the carrier to rely upon customer provided information; and (2) relying upon the location of the Post Office location if the area served by the Post Office is located within a single rural ILEC's study area. Neither of these proposals has met with significant resistance, and the Commission could greatly improve the efficiency with which the fund is administered, both for carriers and auditors.

V. THE COMMISSION SHOULD CLARIFY THAT ETCs DO NOT NEED TO ADVERTISE ALL SUPPORTED SERVICES INCLUDED IN THEIR LIFELINE OFFERINGS

The USA Coalition also urges the Commission to overturn USAC's unsupported conclusion that ETCs are required to advertise all of Lifeline's supported services when publicizing the availability of Lifeline services pursuant to Rule 54.405(b). Section 54.405 simply requires carriers to "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for service."[16] Nothing in the language of the current rules requires ETCs to advertise or otherwise publicize the availability of any specific functionality that must be provided as part of the Lifeline service. USAC's decision to place such a requirement on a carrier during the course of an audit is both puzzling and lacking Commission support.

Requiring carriers providing Lifeline services to include in their advertising the technical terms (*e.g.*, "toll blocking" and "dual-tone multi-frequency signaling") specified in the

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15 *See Mobi PCS, Inc. and Cricket Commc'ns, Inc. Petition Requesting the FCC to Provide Guidance to USAC*, WC Docket No. 05-337 (filed May 29, 2009).

16 47 C.F.R. 54.405(b).

regulations as constituting a Lifeline service offering would confuse and distract customers. Typically, there is only a brief opportunity to capture the consumer's attention with any advertising. Enumerating the various supported services would obscure the main message inherent in publicizing the Lifeline service – the availability of subsidized phone service for low-income consumers – and fail to achieve the goal of increasing awareness of, and participation in, the Lifeline program.[17] This goal, and not an unsupported and overly technical reading of the Commission's rules, should govern both the Commission's and USAC's administration of Rule 54.405.

VI. CONCLUSION

Consistent with the proposals set forth in this letter, the USA Coalition encourages the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that technological innovation can be implemented into the communications network as rapidly and efficiently as possible.

Sincerely,

Todd D. Daubert
Counsel to the USA Coalition

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17 USTA Comments at 3.