Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Coalition for Equity in Switching Support Petition for Clarification	)	
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To: The Commission

COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

CTIA–The Wireless Association® ("CTIA") submits these comments in response to the Commission's Notice of Proposed Rulemaking seeking comment on a proposal to modify the Universal Service Local Switching Support ("LSS") rules to permit incumbent local exchange carriers ("LECs") that lose lines to receive more LSS.[1] For the reasons discussed below, CTIA opposes this proposal, which is inconsistent with the Commission's broader efforts to make more efficient use of limited universal service funds and to better direct those funds toward the mobile and broadband services that consumers require. Rather than granting this backward-looking petition, CTIA urges the Commission to instead focus its efforts on comprehensive reform of the universal service fund.

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[1] *High-Cost Universal Service Support; Coalition for Equity in Switching Support Petition for Clarification*, Order and Notice of Proposed Rulemaking, FCC 09-98 (rel. Oct. 9, 2009) (the "NPRM").

I. UNIVERSAL SERVICE SHOULD SUPPORT THE SERVICES CONSUMERS DEMAND, RATHER THAN REWARDING BACKWARD-LOOKING TECHNOLOGIES OR FAILING BUSINESS MODELS.

There is broad consensus that the universal service support mechanisms, of which LSS is a part, must be reformed to support the services that consumers demand – and that those services are mobility and broadband.[2] To increase LSS now – particularly for incumbent LECs that are losing lines – would be a step in the wrong direction and a diversion from the pressing need for comprehensive reform. The Commission should focus its attention on designing a universal service system that works for the twenty-first century consumers.

The proposal to increase universal service support for legacy wireline voice technology is inconsistent with the Commission's goals for universal service and fails a data-driven analysis. First, consumers are demonstrating their preference for mobile and broadband services over fixed voice services. 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 telephone subscribers.[3] According to the most recent Commission data, that number had risen almost five-fold, to more than 263 million by December

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[2] *See, e.g.*, "America's Mobile Broadband Future," Prepared Remarks of Chairman Julius Genachowski, FCC, at CTIA Wireless IT & Entertainment, San Diego, CA (Oct. 7, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf ("mobile is essential to the future of broadband"); *High-Cost Universal Service Support, et al.*, WC Docket No. 05-337 *et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6903 (2008) (Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate, and Robert M. McDowell) (there is a "growing measure of consensus on … emphasizing the importance of broadband to the future of universal service.")

[3] *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).

2007.[4] Since that time, consumers have continued to rapidly adopt mobile wireless services. According to CTIA's Semi-Annual Survey, the number of wireless subscribers is now at 276.6 million.[5] Moreover, by the second half of 2008, more than one in five Americans (20.2%) had "cut the cord" and use wireless phone service as their only phone service.[6]

The number of mobile 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).[7] With more than 59 million subscribers, mobile wireless broadband now accounts for 45% of all broadband connections in the United States.[8] Data from 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.[9] There is no doubt that these wireless growth trends will continue to transform America's communications networks.

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[4] *See 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*, WT Docket No. 08-27, Thirteenth Report, DA 09-54, (WTB rel. Jan. 16, 2009) ("*Thirteenth CMRS Competition Report*") at ¶ 197.

[5] *See* June 2009 CTIA Semi-Annual Wireless Industry Survey, *available at* http://www.ctia.org/advocacy/research/index.cfm/aid/10316 (last accessed Oct. 21, 2009) ("CTIA Survey Summary").

[6] United States Centers for Disease Control and Prevention, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2008," (rel. May 6, 2009), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.pdf.

[7] *High-Speed Services For Internet Access: Status As Of June 30, 2008*, Industry Analysis and Technology Division, WCB (August 2009) at tbls.1-2.

[8] *Id.* at tbls. 1, 6.

[9] 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 ("Pew Study") at 1.

Businesses and policymakers alike have recognized that wireless networks have evolved into powerful drivers of economic development and that they 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, safety, and public health.[10] Recent studies confirm that the mobile phone is "a huge boon to an individual's economic productivity and earning power."[11] Further, as House Subcommittee on Communication, Technology and the Internet Chairman Rick Boucher noted in his comments on the groundbreaking for a tower in a community 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."[12]

Given these developments, 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 and consumers' requirements. As CTIA has consistently advocated, ubiquitous mobility, and mobile broadband specifically, must be an important goal of the FCC's universal service rules and policies.

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[10] *See, e.g.,* "September 29, 2009 - Survey Explores Young Rural Americans' Telecom Usage, Preferences," National Telecommunications Cooperative Association (citing Rural Youth Telecommunications Survey findings that a significant number of today's young rural Americans view cellular telephone service as more essential than traditional telephone service) *available at* http://www.ntca.org/index.php?option=com_content&view=article&id=3191&Itemid=807.

[11] Nicholas P. Sullivan, New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys,* 5 Nicholas P. Sullivan (April 2008), *available at* http://newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf ("Sullivan").

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

Not only does the petitioners' proposal divert limited universal service funding away from the services that consumers desire, but by directing increased support for inefficient legacy technology it also fails to "encourage least-cost solutions."[13] LSS explicitly funds incumbent LECs' high switching costs, which have been rendered largely obsolete by advances in switching technology. As the record in the Commission's universal service and intercarrier compensation proceedings demonstrates, soft switch technology is available today that can provide switching capability that is much less expensive and more scalable than the traditional circuit switches that LSS was designed to support.[14] While some incumbent LECs have questioned whether it is reasonable to expect them to deploy this new technology immediately,[15] there is certainly no rationale for providing additional support that would reduce incentives to deploy new, more efficient technology, particularly in the absence of any concrete showing of harm to consumers. Indeed, providing additional support here only will impose additional costs on all telecommunications consumers, who ultimately support the universal service fund. As was aptly observed by the staff of the FCC's Omnibus Broadband Initiative, the existing high cost mechanism already suffers from the "structural problem" of "not encourag[ing] least-cost solutions."[16] The proposed rule change would only exacerbate this problem.

Providing the requested support would not only direct scarce public funds toward inefficient legacy technology, but would also serve to reward failing business models. It is

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[13] *See* "Broadband Gaps," FCC Omnibus Broadband Initiative Staff Presentation (Nov. 18, 2009) at 10 ("FCC OBI Broadband Gaps Presentation").

[14] *See, e.g.,* Letter from Henry Hultquist, AT&T Services, Inc., to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 05-337, 96-45, 99-68, 07-135 (filed Oct. 4, 2008).

[15] *See, e.g.,* Letter from Eric N. Einhorn, Windstream Communications, to Marlene H. Dortch, FCC, CC Docket Nos. 96-45, 99-68, 01-92 and WC Docket Nos. 05-337, 06-122, 07-135, 08-152 (filed Oct. 27, 2008).

[16] FCC OBI Broadband Gaps Presentation at 9.

notable that the petitioners seek additional support not to provide new and innovative services, but because they are losing customers. Rewarding providers with additional support for losing customers, despite record-high universal service contribution factors, only reinforces the perception that the universal service system remains a vestige of the last century, designed to support wireline voice networks in a stable monopoly environment. Particularly given that the Commission has deemed it necessary to take the extraordinary step of capping all support to competitive eligible telecommunications carriers ("ETCs"), the petitioners' proposal flies in the face of Commission efforts to control the size of the universal service fund.[17]

The petitioners' protestations notwithstanding, creating an entitlement in rural incumbent LECs to even more support for declining wireline voice products and antiquated technology will only make it more difficult to adopt the USF reform that is truly needed: transitioning the fund to the mobile and broadband services and technologies that consumers demand today. Modification of the LSS rules as requested would undermine the Commission's ability to achieve its broadband goals. As a result, the Commission should reject the petitioners' proposal to provide additional LSS.

II. THERE IS NO POLICY JUSTIFICATION FOR THE PROPOSAL, EVEN WHEN CHARACTERIZED AS A "MINOR CHANGE TO AN EXISTING RULE."

Implicitly conceding that the petitioners' proposal fails to advance broader universal service reform, the NPRM characterizes the proposal as "a relatively minor change to an existing

[17] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (2008) ("*2008 CETC Cap Order*").

rule," and notes petitioners' claims of potential hardship and inequity as policy justifications.[18] Neither of these rationales supports the proposed rule change.

Neither the petitioners nor any commenter has made any concrete showing of hardship to *customers*. There is absolutely no evidence that the current LSS rules do not provide sufficient support to allow incumbent LECs to meet the affordability standard of section 254. The Petition does not suggest that petitioners' rates are or will become unaffordable under the existing rules,[19] and the record is similarly devoid of any specific evidence that the existing rule has threatened the affordability of LSS recipients' rates. In absence of such a showing of harm to consumers, the Commission should decline this invitation to increase LSS funding.

Moreover, the courts have made clear that the statutory universal service mandate "requires sufficient funding of *customers*, not providers."[20] There would be no basis under the statute to direct additional universal service support to ensure that any *carrier* can earn any particular return on investment or even compete at all.[21] Even if such support could be justified, however, neither the petitioners nor commenters in support of the Petition have provided any

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[18] NPRM at ¶¶ 13-14.

[19] *See generally* Petition. In an *ex parte*, Petitioners cite an unrelated Bureau decision connecting LSS to affordability, but did not tie this statement to their own rates in any way. *See* Letter from John Logan, counsel to Coalition for Equity in Switching Support, to Marlene Dortch, FCC, WC Docket No. 05-337, CC Docket No. 80-286 (filed April 30, 2009), Attachment at 9. *See also* Comments of NECA, NTCA, OPASTCO, ERTA, and WTA, WC Docket No. 05-337 (filed April 20, 2009) ("NECA *et al.* Comments") at 5.

[20] *Alenco Comm's v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

[21] *Id.* ("The Act does not guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.")

concrete evidence of hardship to the affected incumbent LECs. The petitioners and other commenters make generalized statements about the rural nature of their service areas and the effect of the current rule on their support, but provide no concrete evidence or examples of actual harm. For example, there is no evidence that any carrier is not earning the Commission's prescribed rate of return. As the Commission is well aware, the small rural incumbent LECs that generally qualify for LSS already receive the vast majority of high-cost universal service support.[22] There is, in short, simply no evidence of hardship to support the proposed rule change.

Some parties in this proceeding also assert that the LSS rule should be changed to avoid inequity among LSS recipients.[23] No party, however, has explained why this justifies the proposed rule change – particularly given that the incumbent LECs that receive LSS support do not compete with one another. It is therefore unclear how the disparate impact of the existing rule negatively affects incumbent LECs or undermines any statutory universal service purpose. Moreover, as noted above, in light of the Commission's decision to impose a cap on the support for competitive ETCs, it is difficult to see how the Commission could justify additional support for incumbent LECs on competitive-neutrality grounds.

For all these reasons, changing the LSS rules to provide additional support to incumbent LECs whose line counts fall below current thresholds cannot be justified, even as a "minor change to an existing rule." Further, given the pressing need for comprehensive reform, the Commission should focus its efforts on the long-term goal of aligning support with the need to

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[22] *See, e.g.,* FCC Omnibus Broadband Initiative Staff Presentation, Open Commission Meeting (Sept. 29, 2009) at 47.

[23] *See, e.g.,* NECA *et al.* Comments at 4. *See also* NPRM at ¶ 13.

bring mobile and broadband services to consumers as efficiently and cost-effectively as possible, not on proposed rule changes that are inconsistent with this goal.

III. ANY RULE CHANGE WOULD BE SOLELY PROSPECTIVE.

As discussed above, CTIA is opposed to the proposed rule change. However, if the Commission moves forward with this request, it must confirm that any changes are prospective in nature only. Petitioners acknowledge that any rule change would operate "on a prospective basis,"[24] and it is black letter law that rule changes adopted in rulemaking proceedings can apply only prospectively.[25] The draft rules attached to the NPRM, however, would leave potential ambiguity as to how a new rule should be applied.[26] Specifically, the proposed revisions to sections 36.125(j) and 54.301(a)(2)(ii) would appear to apply to any changes in incumbent LEC line counts in "1997 or any successive year."[27] In the event any rule changes are ordered,[28] the Commission should clarify, for USAC's benefit, that no adjustments should be made to support for periods prior to the effective date of any new rule.

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[24] Petition at 17.
[25] *Bowen v. Georgetown University Hospital,* 488 U.S. 204 (1988).
[26] *See* NPRM at Appendix (Proposed Rules).
[27] *Id.*
[28] As explained above, no rule changes should be ordered. *See supra* Sections I-II.

CONCLUSION

The proposal to revise the LSS rules to provide additional high-cost universal service support to carriers that lose lines in order to support inefficient, legacy wireline voice technology fails to further any cognizable policy goal and is a step in the wrong direction for universal service. The proposed rule change must be rejected.

Respectfully submitted,

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