
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
International Comparison and Consumer) GN Docket No. 09-47
Survey Requirements in the Broadband Data)
Improvement Act)
)
A National Broadband Plan for Our Future) GN Docket No. 09-51
)
Inquiry Concerning the Deployment of) GN Docket No. 09-137
Advanced Telecommunications Capability to)
All Americans in a Reasonable and Timely)
Fashion, and Possible Steps to Accelerate Such)
Deployment Pursuant to Section 706 of the)
Telecommunications Act of 1996, as Amended)
by the Broadband Data Improvement Act)

To: The Commission

**COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®
ON NBP PUBLIC NOTICE #19**

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SUMMARY

In order to achieve the goals of the National Broadband Plan, it will be necessary to comprehensively reform the existing universal service and intercarrier compensation mechanisms. The existing regimes were designed for a world where wireline telephony was the only product offered and only limited competitive options were available. That world has changed, and the existing programs are no longer well-targeted to the services that consumers demand, namely mobility and broadband.

Nowhere is the disparity between program focus and consumer demand more apparent than the High Cost Fund, which directs nearly three times more support to wireline voice technology than to mobile technology, despite the fact that wireless subscribers now double the number of incumbent wirelines. CTIA fully agrees with Chairman Julius Genachowski's assessment that "[t]o be the global leader in innovation 10 years from now, we need to lead the world in wireless broadband."¹ Yet the universal service system is not designed to support wireless broadband. The universal service system must be revised to direct efficient support to mobile and broadband services.

Fund Size. With the contribution burden on carriers and consumers at record-high levels, any reform effort must provide greater incentives for efficiency. The current system rewards inefficiency and discourages the deployment of innovative technologies. Twelve years ago, under then Chairman Bill Kennard, the Commission set a course to transition rural ILECs to support based on efficient costs. Regrettably, that commitment remains unfulfilled. With even greater demands on the program now, CTIA believes that a support mechanism based on efficient costs best balances the need to ensure that consumers in rural, high-cost areas have access to affordable and reasonably comparable services against the burden of paying for that access.

Contribution Methodology. The existing contribution mechanism is unsustainable and incompatible with today's multi-dimensional marketplace. The contribution factor has swelled to record levels, and carriers struggle to allocate their services between interstate and intrastate and between telecommunications and information services. The extensive record before the Commission counsels for a numbers- and connections-based approach.

Transition in the High Cost Fund. Reform must focus on consumers and reflect the fundamental technological and marketplace changes that have occurred in recent years. Consumers are demanding mobile and broadband services in overwhelming numbers and, as Chairman Genachowski has aptly observed, the largest pool of money that the Commission administers "continues to support yesterday's communications infrastructure."² The

¹ Prepared Remarks of Chairman Julius Genachowski, "Innovation in a Broadband World," The Innovation Economy Conference, Washington, DC (Dec. 1, 2009) at 7 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294942A1.pdf) ("December 2009 Remarks of Chairman Genachowski").

² December 2009 Remarks of Chairman Genachowski at 7.

development of a National Broadband Plan creates the perfect opportunity for the Commission to refocus its universal service programs toward the services consumers demand: mobility and broadband.

Revenue Flows. The universal service and intercarrier compensation mechanisms should not prop up any one segment of the competitive communications industry. The existing universal service and intercarrier compensation mechanisms both were designed for the fixed wireline marketplace, but there are now more than *twice* as many wireless phones as ILEC switched access lines. In addition to an overhaul of the universal service support mechanisms, the Commission must complete intercarrier compensation reform. The current intercarrier compensation regime imposes arbitrary jurisdictional, regulatory, and technological distinctions that tilt the competitive marketplace and burden consumers with legacy costs and monopoly abuses, limiting their choices and raising rates they pay for services. CTIA continues to believe that the revised system should be a unified, cost-based rate for all traffic as a transition to a bill-and-keep system. CTIA's Mutually Efficient Traffic Exchange ("METE") proposal is a holistic approach to these reform needs. With regard to any reform – universal service or intercarrier compensation – the Commission should reject ILEC proposals that would ensure "revenue neutrality," and should instead narrowly target support to where it is really needed.

Competitive Landscape. Competitive and technological neutrality are even more important today than they were when the Commission first discussed them in universal service policy in 1997. Courts have confirmed the centrality of the principle. The status quo for universal service – which dedicates over three billion dollars of uncapped funding to ILEC services, yet subjects wireless providers to an artificial cap – is neither sustainable nor good policy.

Oversight. The integrity of the high-cost support system is crucial, so appropriate oversight mechanisms and performance measures are necessary. The existing Commission audit system, however, is linked too closely to an overzealous interpretation of the Improper Payments Information Act, and insufficiently focused on preventing real problems in the funding mechanism. There are also numerous mechanical problems with the existing audits system, including materiality thresholds, timeliness, and auditor training, that must be resolved.

Low Income Support. The Commission should consider pilot projects to gain experience with how best to repurpose the Lifeline and Link-Up programs to make broadband more accessible to low-income consumers.

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**COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®
ON NBP PUBLIC NOTICE #19**

CTIA–The Wireless Association® (“CTIA”) submits the following comments on NBP Public Notice #19 seeking comment on the role of universal service and intercarrier compensation in the national broadband plan.³ The National Broadband Plan gives the Commission an important opportunity to articulate a vision for comprehensive reform of the universal service and intercarrier compensation mechanisms. The current mechanisms reward inefficiency, inhibit deployment of innovative technologies, and do not direct support toward the services that consumers demand – namely, broadband and mobility. As discussed in these

³ *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, Pleading Cycle Established, NBP Notice #19, Public Notice, DA 09-2419 (rel. Nov. 13, 2009) (the “PN”).*

comments, the Commission should reform its universal service and intercarrier compensation systems to provide greater incentives for efficiency and to meet the demand for mobile and broadband services.

Broadband and mobility are the services that consumers require today, yet the current universal service and intercarrier compensation mechanisms are not designed to support these services.⁴ Indeed, wireless carriers and their customers now foot the bill for an increasingly large portion of the universal service fund, yet are artificially restricted from receiving support. Wireless carriers and their customers are also disadvantaged by the antiquated intercarrier compensation scheme, which rewards line loss, discourages innovation, and tilts the competitive landscape. To remedy this increasing disconnect between consumer demand and program direction, the Commission must repurpose universal service support to focus on mobility and broadband, and reform the intercarrier compensation system.

Maximizing the utility of universal service support is crucial because of the magnitude of the task at hand. The Commission's own research suggests that deploying broadband nationwide will cost between \$20 and \$350 billion.⁵ CTIA previously filed the *Ubiquitous Mobility Study*, which provides a detailed analysis of the areas without mobile broadband and the projected cost

⁴ The 2009 Rural Youth Telecommunications Survey, conducted jointly by the Foundation for Rural Service (FRS) and the National Telecommunications Cooperative Association (NTCA), found that a significant number of rural Americans between the ages of 14 and 23 view their wireless telephone service as more essential than traditional telephone service. Nearly nine out of ten of the rural respondents indicated they have a cell phone, and that they use their phone for both voice and data services (survey release available at <http://www.allbusiness.com/media-telecommunications/13071140-1.html> (last visited Dec. 6, 2009)).

⁵ National Broadband Initiative Presentation, September Commission Meeting (Sept. 29, 2009) at 45 (available at http://www.fcc.gov/openmeetings/2009_09_29-ocm.html).

to build out broadband-capable 3G wireless networks in these areas.⁶ Based on commercially available data, the study revealed that, as of late 2007, roughly 23.2 million U.S. residents lacked access to broadband-capable wireless service at their primary place of residence, and that more than 2.5 million miles of roads were not covered by a broadband-capable wireless signal.⁷ The study put the cost of completing the initial effort to construct dual-mode 3G EVDO and HSPA broadband-capable networks in these areas at approximately \$22 billion. The study illustrates that, despite carriers' considerable success in deploying wireless networks in rural and high-cost areas, there remains a critical need for dedicated support for mobile broadband networks.

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 artificial cap – fails to meet consumer demand and squanders critical resources that could be used to meet our nation's communications goals. In short, reform is critical.

I. *SIZE OF THE UNIVERSAL SERVICE FUND – UNIVERSAL SERVICE MECHANISMS MUST PROVIDE GREATER INCENTIVES FOR EFFICIENCY.*

A. *The Current Universal Service System Lacks Incentives for Efficiency.*

As the Commission contemplates modernizing the universal service programs, it is critical that the Commission not simply layer additional wireline-centric broadband support on top of the existing bloated, backward-looking support mechanisms. A laser-like focus on

⁶ 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) (“*Ubiquitous Mobility Study*”).

⁷ *Id.*

promoting efficiency and carefully targeting support is critical because, as the courts have recognized, excessive subsidization can be detrimental to universal service goals.⁸

The extensive record in the universal service docket reveals that the current outdated policies create incentives for inefficiency, inhibit broadband deployment by reducing providers' incentives to adopt innovative technologies, and are no longer sustainable in today's technological and marketplace conditions. Indeed, almost fourteen years after passage of the 1996 Act, the Commission has made surprisingly little progress in reforming high-cost universal service support for ILECs, particularly rate-of-return and other non-price-cap ILECs. The Commission concluded in 1997 that these carriers, too, ultimately should transition to support based on the efficient cost of providing service in their service areas.⁹ 12 years from that commitment, no progress has been made to establish a concrete transition plan. Instead, the five-year period during which these carriers were to continue receiving support based on their embedded costs expired almost four years ago, and the existing mechanism has been extended indefinitely.¹⁰ Meanwhile, fully two-thirds of ILEC high-cost support is based either directly or indirectly on embedded costs.

As Chairman Genachowski has noted, successful universal service reform will require that we “wring savings out of the system.”¹¹ Many commenters in this proceeding agree that the

⁸ *Qwest Corp. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (“*Qwest II*”).

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8935 ¶ 293 (1997) (subsequent history omitted) (“*First USF Order*”).

¹⁰ *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 *et al.*, Order, 21 FCC Rcd 5514 (2006).

¹¹ Prepared Remarks of Chairman Julius Genachowski, “Innovation in a Broadband World,” The Innovation Economy Conference, Washington, DC (Dec. 1, 2009) at 7 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294942A1.pdf).

FCC must limit universal service support to the costs of an efficient carrier,¹² consistent with the Commission’s prior determinations.¹³ The existing system of providing support to ILECs based on embedded costs results in significant inefficiencies and excessive support.¹⁴ The startling growth in the universal service contribution factor – already 12.3% and expected to increase next quarter to over 14% – signals a renewed need for the Commission to focus on revamping universal service to create incentives for efficiency.¹⁵

B. Clear Goals and Performance Metrics Are Needed.

The development of a National Broadband Plan also provides the Commission with an opportunity to articulate clear program goals – coupled with carefully designed performance metrics – for the universal service program. As the Commission is well aware, it has been criticized by courts, the Government Accountability Office (“GAO”), and the Office of Management and Budget (“OMB”) for the lack of clear objectives and performance measures for the universal service program. GAO reported last year that:

GAO was unable to identify performance goals or measures for the program. While FCC has begun preliminary efforts to address

¹² See, e.g., NASUCA comments, WC Docket No. 05-337 (filed April 17, 2008) at 7; NCTA comments, WC Docket No. 05-337 (filed April 17, 2008) at 12; Sprint Nextel comments, WC Docket No. 05-337 (filed April 17, 2008) at 4-5.

¹³ See, e.g., *First Universal Service Order* at ¶ 293; *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 *et al.*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11,244 (2001) at ¶¶ 173-77.

¹⁴ See, e.g., Connecticut DPUC comments, WC Docket No. 05-337 (filed April 17, 2008) at 7 (“under the current USF system, opportunities may exist for fraud.... The USF system generally accepts whatever costs the carriers report regardless of whether they operate more efficiently and whether new deployed technologies might offer reduced costs.”). See also NTCH comments, WC Docket No. 05-337 (filed April 17, 2008) at 12, 14-15; NCTA comments, WC Docket No. 05-337 (filed April 17, 2008) at 21-22.

¹⁵ *Proposed Fourth Quarter 2009 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 24 FCC Rcd 11,842 (2009).

these shortcomings, the efforts do not align with practices that GAO has identified as useful for developing successful performance goals and measures.... In the absence of performance goals and measures, the Congress and FCC are limited in their ability to make informed decisions about the future of the high-cost program.¹⁶

Similarly, OMB's periodic Program Assessment Rating Tool ("PART") process rates the universal service high-cost program as "NOT PERFORMING" and finds that the program's "RESULTS [ARE] NOT DEMONSTRATED."¹⁷ OMB did *not* find that "the program design [is] effectively targeted so that resources will address the program's purpose directly and will reach intended beneficiaries" *or* that the program has "a limited number of specific long-term performance measures that focus on outcomes and meaningfully reflect the purpose of the program."¹⁸ The Commission must definitively address these threshold questions to design a successful universal service support program.

The Tenth Circuit Court of Appeals also has faulted the Commission's efforts to lay out the program's purpose, finding that the Commission has failed to define the fundamental statutory terms "sufficient" and "reasonably comparable."¹⁹ Though that issue was remanded to the Commission in 2005, it has yet to be resolved.²⁰

¹⁶ *FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, GAO-08-633 (June 2008) (available at <http://www.gao.gov/new.items/d08633.pdf>).

¹⁷ OMB ExpectMore.gov Program Assessment: Universal Service Fund High Cost (available at www.whitehouse.gov/omb/expectmore/summary/10004451.2005.html) (all caps in original).

¹⁸ OMB ExpectMore.gov Detailed Information on the Universal Service Fund High Cost Assessment (available at www.whitehouse.gov/omb/expectmore/detail/10004451.2005.html).

¹⁹ *Qwest II*, *supra* note 8.

²⁰ See *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, 24 FCC Rcd 4281 (2009) ("10th Circuit Remand NOI"). See also "FCC Items on Circulation" (http://www.fcc.gov/fcc-bin/circ_items.cgi) (indicating that a notice of proposed rulemaking was circulated on Nov. 25, 2009).

Just as important as properly defining the goals, however, is the establishment of performance metrics and accountability standards to ensure that the program meets the goals selected. While performance metrics analyzing the administration and efficiency of the program are certainly important, “output” metrics are also crucial to determine whether the public interest goals of the high-cost program are actually being met.²¹

In other words, the Commission must find ways to quantify and measure the outcomes articulated in the high-cost program’s explicit goals. Support should be targeted specifically to achieve these goals. By the same token, support that is not necessary for the achievement of the goals should be eliminated. This is one of the most serious shortcomings of the existing support mechanisms. There is no way to know whether the support is advancing universal service, not only because the Commission has never defined what it means to “advance universal service,” but also because – except for competitive ETCs, which have generally been required to demonstrate how support received will be and has been used to support or expand service in the designated ETC service areas – there has never been an effort to correlate the payments made to carriers under the program and the specific outcomes produced.²² If support were reduced to any given funding recipient, would any rural or high-cost customers lose access to the supported services? Would the carrier be able to recover its costs and earn a reasonable return by selling the supported services (and other services that can be provided on the same network) at market-based rates, without support? If so, would such rates still be affordable and reasonably

²¹ See Comments of Mercatus Center, WC Docket No. 05-195 (filed Oct. 17, 2005) at 4-10.

²² 47 C.F.R. §§ 54.202(a), (c); 54.209. The CETC reporting rules require wireless ETCs designated by the FCC to submit detailed 5-year service improvement plans describing how support will be used in the designated area, as well as annual reports on progress under the plans. *Id.* The rules also require such CETCs to report on unfulfilled service requests, outages, and other issues. *Id.*

comparable?²³ Alternatively, if the carrier could not recover its costs and earn a reasonable return absent support, could rural and high-cost customers obtain the supported services from another provider at an affordable rate? The Commission has never made any serious effort to answer any of these questions.

C. Basing Support on Efficient Costs Would Achieve Policy and Statutory Imperatives.

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) of the Act.²⁴ 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 sought to work constructively with the Commission by advocating both short-term and long-term proposals that would base support on efficient costs.²⁵ CTIA urges the Commission to consider these options carefully in its re-assessment of high-cost universal service support. Specifically, CTIA has encouraged the Commission to retain a forward-looking high-cost mechanism for non-rural carriers, while transitioning all eligible carriers to new mechanisms that target support for mobile and

²³ The Tenth Circuit, for example, hoped the FCC would return with data supporting the program's success in achieving rate comparability following the first remand, but the FCC did not do so. *Qwest II*, 398 F.3d at 1237. Significantly, however, even if better data on the comparability of rates between rural and urban areas could be presented, it does not appear that any data exist to quantify the role that the high-cost mechanisms played in influencing rural rates one way or the other.

²⁴ See 47 U.S.C. § 254(b); Comments of CTIA, WC Docket No. 05-337 (filed May 8, 2009).

²⁵ See Comments of CTIA, WC Docket No. 05-337 (filed Apr. 17, 2009); Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2009).

broadband services based on efficient costs.²⁶ CTIA has proffered numerous proposals to update and improve the current forward-looking cost methodology,²⁷ and has offered numerous proposals to reduce inefficient support for rural ILECs. If the Commission declines to adopt a unified mechanism, CTIA has been open to dedicated mechanisms that would support both the deployment of advanced wireless infrastructure and the maintenance of such infrastructure in high-cost areas.²⁸

Similarly, CTIA believes that there are 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.²⁹ It is imperative, however, that such an approach must be applied on a competitively neutral basis to both wireline and wireless recipients at the same time, and not simply as band-aid efforts to drive down wireless carriers' support.

In any event, if the Commission decides to create new support mechanisms to explicitly fund the deployment of broadband, these mechanisms should not only create incentives for efficient investment but should also explicitly provide for a phase-down of inconsistent existing support mechanisms (including existing ILEC support).

²⁶ See, e.g., Comments of CTIA, WC Docket No. 05-337 (filed March 27, 2006) at 11-12.

²⁷ 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).

²⁸ See, e.g., Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2008) at 9-15.

²⁹ 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).

II. CONTRIBUTION METHODOLOGY – THE COMMISSION MUST ELIMINATE ARBITRAGE OPPORTUNITIES.

There is no question that the existing contribution methodology, based on interstate end-user telecommunications revenues, is unsustainable. The contribution factor has swung from 9.5% to over 14% during the past year alone.³⁰ Based on historical trends and anticipated demand, there is little reason to believe that the contribution factor will decline without major changes to the distribution mechanisms or without reallocating the contribution burden to a broader base of support. With this in mind, the Commission must focus on significant revision of the contribution methodology.

The existing system is also incompatible with the multi-dimensional telecommunications market. Contributors face enormous difficulties today in separating interstate revenues from intrastate revenues, and separating telecommunications revenues from non-telecommunications revenues. Wireless providers and VoIP providers struggle to identify the jurisdiction of revenues and traffic for services that are inherently mobile or at least nomadic.³¹ The growth of

³⁰ *Proposed First Quarter 2009 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 23 17947 (2008) (9.5% contribution factor for first quarter 2009). “Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2010,” Universal Service Administrative Company (Nov. 2, 2009) (available at <http://www.usac.org/about/governance/fcc-filings/2010/Q1/1Q2010%20Quarterly%20Demand%20Filing.pdf>) and “Federal Universal Service Support Mechanisms Quarterly Contribution Base for the First Quarter 2010,” Universal Service Administrative Company (Dec. 2, 2009) (available at <http://www.usac.org/about/governance/fcc-filings/2010/Q1/1Q2010%20Contribution%20Base%20Filing.pdf>) (together indicating a contribution factor above 14% for first quarter 2010).

³¹ Jurisdictional separations for mobile and IP customers are difficult to determine and can be unreliable.

broadband services also strains the universal service contribution system, since the Commission has classified the provision of Internet access as an information service.³²

The extensive record before the Commission militates towards a numbers- and connections-based approach. A numbers- and connections-based approach would more fairly distribute the responsibility for the program and more effectively sustain the base that supports the program. Such an approach can be carefully tailored to ensure that low-income and low-average-revenue per-unit customers do not bear an unreasonable share of the contribution obligations.

Any reform of the contribution methodology must also treat fairly the over 44 million wireless pre-paid and over 70 million wireless family-plan customers. Usage patterns on pre-paid wireless phones often differ considerably from postpaid customers' usage patterns. Pre-paid phones are sometimes bought by consumers that want a wireless phone available for safety but may generate no usage at all during most months. The contribution level for pre-paid wireless connections should recognize the particular characteristics of this service. Like wireless pre-paid connections, wireless family plan connections generate substantially less revenue per customer than other connections. The issue of wireless family plan connections is also unique

³² *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, et al.*, GN Docket No. 00-185 *et al.*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff'd*, *NCTA v. Brand X*, 545 U.S. 967 (2005) (cable modem). *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, CC Docket Nos. 02-33 *et al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14,853 (2005) (*Wireline Broadband Order*), *aff'd*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007) (wireline). *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901 (2007) (*Wireless Broadband Classification Order*) (wireless). *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13,281 (2006) (broadband over power lines).

because of its scope – there are over 70 million customers that would be affected, creating a significant rate shock problem that must be managed responsibly.³³

CTIA and other providers have filed extensive data on the impact of transitioning the contribution methodology to a numbers- or connections-based approach.³⁴ The data show that, if properly structured, a numbers- or connections-based contribution methodology will impose *less* of a burden on residential consumers than the current system – and will also be more predictable and understandable for consumers.

The existing universal service contribution methodology is unsustainable. A numbers- or connections-based system will put support on a stable footing for the broadband world.

III. *TRANSITIONING CURRENT HIGH-COST UNIVERSAL SERVICE SUPPORT MECHANISMS – REFORM MUST FOCUS ON CONSUMERS AND REFLECT FUNDAMENTAL TECHNOLOGICAL AND MARKETPLACE CHANGES.*

U.S. consumers are demonstrating an overwhelming demand for mobility and broadband. The number of wireless subscribers has increased five-fold since adoption of the current universal service support mechanisms, while ILEC lines and minutes of use continue to decline steadily. In 1997, there were approximately 55 million wireless telephone subscribers.³⁵ Since that time, consumers have continued to rapidly adopt mobile wireless services. According to

³³ See Letter from CTIA to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed Oct. 10, 2008) at 2.

³⁴ Letter from CTIA to Marlene Dortch, FCC, WC Docket No. 06-122 (filed Sept. 30, 2008), att. at 5 (endorsing the joint AT&T/Verizon proposal filed Sept. 11, 2008). See also, e.g., AT&T Petition for Immediate Commission Action to Reform Its Universal Service Contribution Methodology, WC Docket No. 06-122 (filed July 10, 2009); Letter from John Windhausen, USF by the Numbers Coalition, to Marlene Dortch, FCC, WC Docket No. 06-122 (filed Oct. 28, 2008).

³⁵ *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 19,746 app. B, at B-2 (1998),.

CTIA's Semi-Annual Survey, the number of wireless subscribers is now at 276.6 million.³⁶ Moreover, by the second half of 2008, more than one in five Americans (20.2%) had "cut the cord" and used wireless phone service as their only phone service.³⁷

Wireless providers are now providing not only mobile voice but also mobile broadband services, and consumers are rapidly adopting these new services. 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).³⁸ With more than 59 million high speed subscribers, mobile wireless broadband now accounts for 45% of all broadband connections in the United States.³⁹ 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.⁴⁰ Given that consumers in urban areas have had the opportunity to embrace the power of wireless broadband, the Commission's universal service programs should be directed at providing "reasonably comparable" access for rural consumers.⁴¹

³⁶ 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*").

³⁷ 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>.

³⁸ HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF JUNE 30, 2008, Industry Analysis and Technology Division, WTB (August 2009) at tbls. 1-2.

³⁹ *Id.* at tbl. 2.

⁴⁰ 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>).

⁴¹ See 47 U.S.C. § 254(b)(3).

Businesses and policymakers alike have recognized that wireless networks have evolved into powerful forces for economic development that are also critical for education, health care, efficient energy use, and public safety. As Chairman Genachowski has observed, “[t]o be the global leader in innovation 10 years from now, we need to lead the world in wireless broadband.”⁴² 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. Indeed, studies confirm that the mobile phone is “a huge boon to an individual’s economic productivity and earning power.”⁴³ The tangible impact of wireless services was eloquently described by House Subcommittee on Communication, Technology and the Internet Chairman Rick Boucher in his comments on the groundbreaking for a tower in a community in his rural Virginia district that previously lacked mobile coverage. As Chairman Boucher stated, “businesses seeking to expand often consider the availability of mobile communications services when choosing new business locations.”⁴⁴

In keeping with the growth in wireless subscribership, wireless carriers – and their customers – have become full partners in *funding* universal service. Indeed, wireless contributions to the universal service fund have grown rapidly. In 1997, wireless contributions

⁴² Prepared Remarks of Chairman Julius Genachowski, “Innovation in a Broadband World,” The Innovation Economy Conference, Washington, DC (Dec. 1, 2009) at 7 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294942A1.pdf).

⁴³ 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.

⁴⁴ Alltel Breaks Ground on Cell Tower to Serve Pound Residents, *Kingsport Times-News*, March 11, 2008, at 3B.

made up only 3.3 percent of the contribution base.⁴⁵ Now, as of the third quarter 2009, wireless carriers contribute 43.1 percent of the fund.⁴⁶

Yet despite the tectonic shifts in consumer preference, distributions from the universal service system continue to embrace a backward-looking focus, designed to support wireline voice networks in an environment without competitive options. Although wireless carriers now serve more than twice the number of wireline lines, incumbent LECs receive roughly three times the support available to wireless providers. And while wireless subscriber continues to climb, wireless carriers are now subject to a cap on overall support, artificially restricting wireless carriers from receiving support commensurate with the provision of wireless services in high-cost areas.⁴⁷

The universal service system must be revised to reflect the new technological and marketplace realities by focusing on efficient support for mobile and broadband services. Ubiquitous mobility, and mobile broadband specifically, must be an important goal of the FCC's universal service rules and policies.

IV. CHANGES IN REVENUE FLOWS – REFORM SHOULD NOT PROP UP ONE SEGMENT OF THE COMPETITIVE TELECOMMUNICATIONS MARKET.

In light of the profound technological and marketplace changes described above,⁴⁸ the Commission must reject universal service and intercarrier compensation reform proposals that

⁴⁵ Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Telecommunications Industry Revenues: 2006*, at 3 (rel. Sept. 3, 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293261A2.pdf.

⁴⁶ *Id.*

⁴⁷ *High-Cost Universal Service Support*, WC Docket No. 05-337, Order, 23 FCC Rcd 8834 (2008) (“*CETC Cap Order*”).

⁴⁸ *See supra* Section III.

serve merely to prop up one segment of the competitive marketplace. As previously noted, in 1997, the last time the Commission comprehensively revised its universal service rules, there were approximately 55 million wireless telephone subscribers.⁴⁹ The number of wireless subscribers is now at 276.6 million.⁵⁰ Meanwhile, wireline switched access lines peaked at 191.6 million in December 2001, and since have fallen precipitously to 155 million in June 2008.⁵¹ Of these, fewer than 125 million were provided by ILECs.⁵² Thus, there are now nearly two and a half times as many wireless lines as ILEC lines.

Universal Service. Despite the significant reductions in the numbers of customers that ILECs serve, the amount of high-cost universal service they receive has not declined to any significant degree.⁵³ Indeed, ILECs' ICLS has increased steadily year over year.⁵⁴ If ILEC support declined at the same rate that ILEC access lines decline, there would be considerable savings for the high-cost support mechanism. There should be a clearer connection between ILECs' support and consumers' demand for their services. As described extensively above, the Commission must repurpose its high cost universal service programs to efficiently support the services that consumers demand.

⁴⁹ *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 19,746 app. B, at B-2 (1998).

⁵⁰ *See CTIA Survey Summary*.

⁵¹ Industry Analysis and Technology Division, FCC, *Local Telephone Competition: Status as of June 30, 2008*, tbl. 1 (July 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf.

⁵² *Id.*

⁵³ *See, e.g.,* USAC 2003 Annual Report at App. B (ILECs receive \$3.1 billion in high-cost support); USAC 2008 Annual Report at 49 (incumbent ETCs receive \$3.1 billion in high-cost support). (USAC's annual reports are available at <http://www.usac.org/about/governance/annual-reports/>.)

⁵⁴ *See* Letter from Mary Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 05-337 (filed Nov. 24, 2009), Attachment at 9.

Intercarrier Compensation. There is also wide agreement that the current intercarrier compensation system, too, severely distorts the competitive marketplace and undermines the efficient deployment of next generation voice, data, and video services delivered over broadband-capable facilities. In the absence of meaningful reform of the notoriously inefficient intercarrier compensation rules, Congress's vision for a competitive telecommunications market with ubiquitous access to affordable, high quality telecommunications and broadband is increasingly in jeopardy. The current intercarrier compensation rules, aptly recognized by Commissioner Copps as "Byzantine and broken,"⁵⁵ are premised on monopoly wireline carriers providing regulated plain old telephone services. The regime is a patchwork of policies and rules that may have been individually justifiable at some point, but have over time become inconsistent, anticompetitive, and increasingly irrational and irrelevant to today's multi-dimensional telecommunications market.

Under the Commission's arcane regulations, the amount of intercarrier compensation a carrier receives is based upon the technology it uses, the type of service it provides, and the classification of the carrier. The rules not only arbitrarily impose different rates for identical functions, but also disincent new technologies. The current regime is primarily wireline-centric and is not designed to accommodate technological innovations such as wireless and Voice over Internet Protocol ("VoIP") services that provide valuable consumer benefits.

This system suffers not only from antiquated distinctions but also fosters competitive imbalances. For example, wireless carriers are expected to recover their costs for terminating

⁵⁵ See Separate Statement of Commissioner Michael J. Copps, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4796 (2005).

long distance calls from their own subscribers, while LECs are permitted to bill those costs to long distance carriers.⁵⁶

These arbitrary jurisdictional, regulatory, and technological distinctions burden consumers with legacy costs and monopoly abuses, limit consumer choice and raise consumer rates, and invite arbitrage. Furthermore, the sheer complexity of the existing regimes creates unnecessary administrative and transaction costs that are ultimately borne by end users.

The revised intercarrier compensation system should enable consumers, rather than regulators or service providers, to determine the development of communications services. To accomplish this task, the Commission must reform the current intercarrier compensation system by embracing a unified, cost-based rate for the termination of all telecommunications traffic as a transition to a bill-and-keep system.⁵⁷ CTIA has developed a Mutually Efficient Traffic Exchange (“METE”) proposal as a holistic approach to the reform of both regimes.⁵⁸ CTIA’s proposal represents the best means of promoting economic efficiency and facilities-based competition through a competitively neutral intercarrier compensation regime that maximizes benefits for consumers and minimizes administrative complexity.

In addition, the Commission should reject ILEC proposals that would overrule consumer choice. For example, the Commission must not provide universal service support to ensure “revenue neutrality” to any group of carriers, but instead must ensure that any new universal service subsidies are targeted carefully to situations where they are most crucially needed. Additional support should not be provided to *any* carrier unless it can show that it cannot earn a

⁵⁶ *Petitions of Sprint PCS and AT&T Corp., for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13,192 (2002).

⁵⁷ *See* Comments of CTIA, CC Docket No. 01-92 (filed Nov. 26, 2008) at 21-33.

⁵⁸ *See id.* at 29; Comments of CTIA CC Docket No. 01-92 (filed May 23, 2005).

return on investment, taking account of all revenue opportunities available from the supported network, and assuming increases in SLCs and end-user rates.

Further, it would be legally indefensible to deny Interstate Access Support (“IAS”), Interstate Common Line Support (“ICLS”), or other forms of universal service support to wireless carriers on the grounds that these mechanisms are “access replacement,” rather than universal service. The Commission has consistently recognized that universal service support must be available to all carriers on a competitively neutral basis. ICLS was created in the *MAG Order* “to replace *implicit support* in the interstate access” rate structure.⁵⁹ Similarly, the \$650 million IAS fund was created in the *CALLS Order* to “replac[e] the *subsidies*” implicit in interstate access charges “with explicit . . . universal service support.”⁶⁰ Because the Commission has determined that funding such as IAS and ICLS is necessary for the provision, maintenance, and upgrading of the supported services in a given geographic area, it must be made available to all ETCs on a neutral basis under Sections 214(e) and 254(e) of the Act.⁶¹

The revenue flows in the current universal service and intercarrier compensation systems are vestiges of an earlier era and do not serve the needs of today’s mobile, broadband world. Both regimes must be modified to reflect today’s consumers’ need for broadband and mobility.

⁵⁹ *Mult-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, et al.*, CC Docket No. 00-256 *et al.*, Order, 16 FCC Rcd 19613, 19617 ¶ 3 (emphasis added). Conversely, if IAS and ICLS are not necessary for universal service, then they are being collected illegally. If IAS and ICLS are merely “access replacement” and not universal service, then no carrier or consumer can be required to contribute to them.

⁶⁰ *Access Charge Reform*, 15 FCC Rcd 12,962, 12,975 (2000) (“*CALLS Order*”), rev’d and remanded in part on other grounds, *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), Order on Remand, 18 FCC Rcd 14,976 (2003) (emphasis added).

⁶¹ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000); 47 U.S.C. §§ 214(e), 254(e).

The new rules must treat competitive mobile and broadband providers equitably, and not serve to prop up declining business models or products that are on the downward slope of their natural life cycles.

V. COMPETITIVE LANDSCAPE – UNIVERSAL SERVICE MUST BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL.

As discussed at length above, a data-driven analysis reveals that consumers are demanding mobile and broadband services.⁶² Given this evolution of technology and the marketplace, competitive and technological neutrality have become an even more crucial element of universal service policy than they were in 1997. In its implementation of the universal service principles in section 254, 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.”⁶³ 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.”⁶⁴ As the Fifth Circuit noted, non-discriminatory competitor and incumbent access to high-cost support “is made necessary not only by the realities of competitive markets *but also by statute.*”⁶⁵

The current high-cost program provides three times as much support for fully deployed legacy wireline technology as it provides for new technologies that are highly valued by

⁶² See *supra* Sections III and IV.

⁶³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 ¶ 47 (1997) (subsequent history omitted).

⁶⁴ *Alenco*, 201 F.3d at 616.

⁶⁵ *Id.* (*emphasis added*).

consumers and not yet fully deployed in rural and high-cost areas.⁶⁶ There needs to be a significant reconsideration of the inequity that is systemic throughout the universal service program. The Commission can no longer afford to perpetuate the current universal service system – which dedicates over \$3 billion of uncapped funding per year to ILEC services, yet subjects wireless providers to an artificial cap on support. In keeping with section 254(b)(7), the Commission should move quickly to adopt comprehensive reform, rather than allowing a purportedly “interim” cap to deprive rural wireless consumers of sufficient support. In that comprehensive reform, the Commission must reject proposals that are inconsistent with a competitively and technologically neutral mechanism.

VI. HIGH-COST FUNDING OVERSIGHT – THE COMMISSION MUST DEVELOP RATIONAL, EFFICIENT AND FAIR AUDIT MECHANISMS

The integrity of the high cost program is crucial. As noted above, CTIA believes that a carefully-designed set of performance metrics is vital to a revised universal service program. CTIA also supports an effective and efficient program of audits to guard against fraud and to improve operation of the fund. The current audit program, however, results in misleading statistics. The existing Commission audit program is too closely tied to an overzealous interpretation of the Improper Payments Information Act (“IPIA”),⁶⁷ which undermines the credibility of the audits and the universal service program. For example, while the IPIA may require reporting of both over- and underpayments,⁶⁸ underpayments to support recipients are a demonstrably different case from a practical perspective, and do not represent over-recovery.

⁶⁶ See *Ubiquitous Mobility Study*.

⁶⁷ P.L. 107-300, 116 Stat. 2350, *codified at* 31 U.S.C. § 3321.

⁶⁸ IPIA § 2(d)(2).

The Commission can meet its obligations under the IPIA while designing an oversight program that better serves the actual needs of the universal service fund.

The Commission's existing IPIA audit program is also substantially more burdensome than necessary. As USAC itself has noted, the Commission's interpretation of the IPIA "appears to be unique among federal entities."⁶⁹ The Commission's existing audit program "is not required by the IPIA," and "alternate approaches ... would enable the FCC to achieve IPIA compliance and improve USF administration."⁷⁰ CTIA supports USAC's proposal to adopt procedures used by other federal agencies, such as a combination of random and targeted agreed-upon-procedures or performance audits, to reduce the burden on USF participants, the Commission, and USAC.

An appropriate audit program should be based, at least in part, on an actual assessment of likely risk. There must be objective criteria for determining which contributors and recipients are chosen for targeted audits. Such criteria might include a certain percentage increase in funds requested in a given year or a certain threshold amount of support requested overall.

In any event, a number of other improvements to the audit program must be made. Thresholds for materiality and error must be established that account for the size of the auditee. Audit reports must be produced, and any appeals resolved, in a timely fashion. Better auditor training is crucial; far too many of the outside auditors in past audits have had insufficient background in the communications sector and lacked basic understanding of relevant Commission rules, including current and past document retention rules.

⁶⁹ "Analysis of the Federal Communications Commission Office of Inspector General 2008 Reports on the Universal Service Fund," USAC (Feb. 12, 2009) at 1.

⁷⁰ *Id.*

An effective and efficient audit program is crucial to protect the universal service program against waste, fraud, and abuse. The existing program should be improved in significant respects in order to achieve these goals.

VII. *LIFELINE/LINK-UP* – THE COMMISSION SHOULD EXPLORE THE USE OF TECHNOLOGICALLY-NEUTRAL LOW INCOME PROGRAMS TO SUPPORT BROADBAND ADOPTION

The Commission should give careful consideration to supporting low-income consumers' access to mobile broadband services by repurposing universal service funds through modernized Lifeline and Link-Up programs. Such an approach would direct subscription discounts to the Americans who most need it.⁷¹ The Commission's Lifeline and Link-Up programs have made local telephone service widely available at an affordable rate for low-income consumers. The programs would benefit from a modernization effort to better reflect the current marketplace. As described below, one element of this effort could be repurposing existing funds toward mobility and broadband.

Any such programs must be competitively and technologically neutral, and should empower consumers to choose the broadband service that best suits their needs. Providing low-income Americans with a subscription discount through a universal service subsidy would enable consumers, not the government, to choose the broadband service and provider that best meets the consumer's needs and would promote competition. In order to provide low-income Americans with this level of choice, the Commission should ensure that any targeted program is open to all eligible providers regardless of technology. Consumers' ability to choose among

⁷¹ See generally Comments of CTIA, WC Docket No. 05-337 *et al.* (filed Nov. 26, 2008) at 17.

competing broadband providers is critically important to the continued growth of broadband in the U.S.

Given that the Commission must accomplish dual purposes – modernizing universal service while also carefully managing fund growth – the Commission should consider adopting time-limited pilot projects that would repurpose low income support for technologically-neutral broadband access. This approach would allow the Commission to gain experience with the appropriate level of support, the role of state support, and other critical implementation issues.

A competitively neutral, consumer-focused approach would best serve low-income consumers, would not tilt the competitive marketplace, and would target broadband support to low-income communities which have historically had lowest levels of broadband adoption. Thus, these should be the elements of any Commission low income support program for broadband.

CONCLUSION

The Nation cannot achieve its broadband goals without comprehensive reform of the universal service support mechanisms and intercarrier compensation system. CTIA urges reform consistent with these comments.

Respectfully submitted,

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