

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matters 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	)	

**COMMENTS OF UNITED STATES CELLULAR CORPORATION**

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## SUMMARY

The Commission's decision to seek comment on the role of universal service and inter-carrier compensation in the National Broadband Plan, and on policy options to make advanced broadband services universally available throughout the Nation, provides an important opportunity to examine how the regulatory framework for universal service should be overhauled to promote national broadband goals.

U.S. Cellular demonstrates in its Comments that one of the keys to advancing these broadband goals is for the Commission to redirect universal service support away from the old and outmoded infrastructure designed to provide plain old telephone service, shifting this support to fund the deployment of infrastructure that can deliver fixed and mobile broadband services to all consumers, including those residing in rural America.

A central part of the Commission's plan for revamping existing funding mechanisms should be the portability of funding, because portability helps to ensure that consumers in rural areas are able to choose service providers that best meet their needs. The Commission also should require the geographic disaggregation of support, in order to target support where it is most needed in rural areas, but the Commission should refrain from capping broadband funding, because a cap would interfere with the accomplishment of all the broadband goals established by the Commission.

U.S. Cellular disagrees with concerns about multiple Universal Service Fund-supported competitors providing broadband in the same geographic area. Broadband funding should be available to partially fund competing networks in the same geographic area, so that multiple carriers receive sufficient universal service support, enabling them to serve consumers in rural areas by combining this support with their own investment.

Carrier-of-last-resort obligations, in U.S. Cellular's view, do not necessitate any preferential level of support. Incumbent local exchange carriers are not uniquely burdened by these obligations, since wireless eligible telecommunications carriers effectively face the same type of service obligations. Consequently, the Commission should be cautious regarding any COLR-driven need for preferential support levels as the agency seeks to establish competitively-neutral policies to make advanced broadband universally available.

The Commission should adopt competitively neutral broadband funding oversight and accountability mechanisms, based on its existing rules and on rules adopted by various state commissions. These rules have worked effectively, making it unnecessary for the Commission to impose more burdensome oversight and accountability requirements.

The goal for a low-income broadband program should be to empower consumers by enabling them to select broadband services that best meet their needs. The Commission's rules should authorize consumers to purchase any compatible device that supports broadband access, and the Commission also should update the existing Lifeline program to take into account the fact that many households are "cutting the cord," choosing to use wireless services while dropping wireline telephone service.

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	)	

**COMMENTS OF UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby responds to a Public Notice issued by the Commission regarding the role of the Universal Service Fund (“USF”) and intercarrier compensation in the National Broadband Plan (“Plan”) that Congress has required the Commission to prepare and submit to Congress in February of 2010.<sup>1</sup>

U.S. Cellular provides Personal Communications Service and cellular services in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation. U.S. Cellular has received eligible telecommunications carrier (“ETC”) status and is currently receiving high-cost support for its operations in Washing-

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<sup>1</sup> FCC Public Notice, “Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan,” DA 09-2419, rel. Nov. 13, 2009 (“*NBP Notice # 19*”). The deadline for comments is December 7, 2009. Only one round of pleadings was established by *NBP Notice # 19*.

ton, Iowa, West Virginia, Illinois, Wisconsin, Kansas, Oregon, Maine, Missouri, Nebraska, New Hampshire, North Carolina, Virginia, Tennessee, New York and Oklahoma.

## **I. INTRODUCTION.**

The Commission currently is at a turning point that presents important opportunities for the development of its telecommunications policies. The agency faces the challenge of adopting a National Broadband Plan that delivers on the commitment made 75 years ago to ensure that “communication by wire and radio [is] available . . . to all the people of the United States . . . .”<sup>2</sup>

The task faced by the Commission is important because of the overarching importance of advanced broadband technologies and services. As the Commission has noted, “[h]igh-speed ubiquitous broadband can help to restore America’s economic well-being and open the doors of opportunity for more Americans, no matter who they are, where they live, or the particular circumstances of their lives. It is technology that intersects with just about every great challenge facing our nation.”<sup>3</sup> The framework established by the Commission in the Plan has the potential for significantly advancing the Nation’s efforts to realize, for all Americans, the benefits that can be delivered by broadband.

The Commission’s universal service mechanisms provide the agency with an important tool to meet this challenge. In this regard, *NBP Notice # 19* takes a significant step in seeking comment and in requesting specific information and proposals for reforming universal service, and intercarrier compensation, to “further the goal of making broadband universally available to all people of the United States.”<sup>4</sup> U.S. Cellular therefore welcomes this opportunity to partici-

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<sup>2</sup> Section 1 of the Act, 47 U.S.C. § 151.

<sup>3</sup> *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 4343 (para. 1) (2009) (“*Broadband Notice of Inquiry*”).

<sup>4</sup> *NBP Notice # 19* at 1 (citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009)).

pate in the process initiated by the Commission, by responding to specific questions posed in *NBP Notice # 19* in the following sections.

In U.S. Cellular's view, a key component of the Plan must be to devise effective means of bringing broadband, both fixed and mobile, to rural America. In this regard, broadband is the same as plain old telephone service: The Commission has long recognized that the goal must be to provide "all the people" with telephone service, because the Nation as a whole benefits from the ubiquitous deployment of the service. The same is true, of course, for broadband.

The Nation's economy, as well as its educational institutions, health care facilities, public safety agencies, governmental bodies and organizations, and cultural centers, will be the beneficiaries if the Commission is successful in crafting a plan that accomplishes the wide-scale deployment of high-speed broadband throughout the Nation, including rural and high-cost areas.

One of the key challenges faced by the Commission with respect to its universal service policies is how to redesign universal service mechanisms so that they can be used effectively to promote the Commission's broadband goals. U.S. Cellular believes that the central part of the Commission's effort should be to begin to shift the focus of universal service support away from a copper wire, voice-centric telecommunications infrastructure, and toward mobile and fixed broadband, IP-based networks using diverse technologies.

The world of communications is now undergoing this quantum shift to broadband systems.<sup>5</sup> As the Commission has observed, "[t]oday, the majority of U.S. businesses and households have broadband connections, and access to the Internet through a variety of technologies . . . is an integral and critical part of American life."<sup>6</sup> The task for the Commission, in developing

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<sup>5</sup> See, e.g., Industry Analysis & Tech. Div., FCC, "*High-Speed Services for Internet Access: Status as of December 31, 2007*," at Table 2 (rel. Jan. 2009) (there were 80 million Internet connections with speeds exceeding 200 kbps in both directions in 2007, an increase from 4 million in 2000).

<sup>6</sup> *Broadband Notice of Inquiry*, 24 FCC Rcd at 4343 (para. 2).

the National Broadband Plan, is to provide an effective roadmap to guide and facilitate this transition to broadband and IP-based communications.

Another unprecedented development is accompanying the shift to broadband: More and more consumers are “cutting the cord” and relying upon wireless as their exclusive source for telecommunications services. According to a recent National Health Interview Survey (“NHIS”) conducted by the National Center for Health Statistics, 20.2 percent of all households in the United States are using wireless phones exclusively, a 2.7 percent increase from the most recent previous survey. This is the largest increase since NHIS began collecting data on wireless-only households in 2003.<sup>7</sup>

The NHIS survey also shows that 14.5 percent of all American homes “received all or almost all calls on wireless telephones, despite having a landline telephone in the home.”<sup>8</sup> One reason for this remarkable trend toward the use of wireless phones is that, especially in rural areas, mobile services provide huge advantages in terms of public safety and other benefits.<sup>9</sup>

Wireless technology is also playing a key role in the deployment of broadband infrastructure and the provision of broadband services. For example, CTIA has reported that, since 2005, mobile wireless providers have been the fastest-growing category of providers of both high-

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<sup>7</sup> See Stephen J. Blumberg & Julian V. Luke, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, July-December 2008*, at 1 (May 5, 2009).

<sup>8</sup> *Id.*

<sup>9</sup> CTIA—The Wireless Association™ (“CTIA”), for example, has noted that “[i]f one of the drivers behind universal service is to insure that people have telephone access in a health or safety emergency, the phone of choice for the vast majority of Americans—young and old, male and female, poor and rich—is a cell phone.” CTIA Comments on *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008), at 4 (quoting New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys* (Apr. 2008) at 16).

speed lines and advanced service lines. Wireless carriers' subscriber counts for high-speed lines more than doubled, and advanced service lines more than tripled, in the most recent year measured by the Commission. As of mid-2009, consumers had access to more than 40,000 wireless broadband applications. That number has continued to grow, with 20,000 additional applications scheduled to be available to consumers by the end of this year. In addition, the United States has a higher percentage of consumers utilizing mobile Internet capabilities than any other country for which these measurements are made.<sup>10</sup>

While this shift to broadband—by both wireline and wireless customers—is rapidly changing the face of telecommunications in America, the transition is proceeding much more rapidly in urban areas, with rural areas lagging behind the Nation as a whole. This should be an important consideration for the Commission, as it reviews responses to *NBP Notice # 19* regarding the agency's universal service policies and regarding policy options for making broadband universally available. Commissioner Copps (in a report issued during his tenure as Acting Chairman) has summed up the problem:

[W]e have not succeeded in bringing broadband to everyone. For years, large parts of rural America have languished on the sidelines of the digital revolution. Home to the homesteaders, pioneers, and the rich and diverse Native American cultures that contribute so much to our national identity, rural America has for most of our history been deemed too remote, too sparsely populated, or too inaccessible to be fully connected with our nation's infrastructures.<sup>11</sup>

The fact is, as Commissioner Copps goes on to observe, that “[r]ural communities have long been unserved or underserved by broadband technology, but the full implication of this divide

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<sup>10</sup> Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, Ex Parte Communication, RM-11361, GN Docket No. 09-51, WC Docket No. 07-52, May 12, 2009, at 2.

<sup>11</sup> Michael J. Copps, Acting Chairman, FCC, BRINGING BROADBAND TO RURAL AMERICA, REPORT ON A RURAL BROADBAND STRATEGY, 2009 WL 3362778 (para. 1) (2009).

has only emerged as the Internet has become less and less a novelty, and more and more a necessity.”<sup>12</sup>

The growing shift toward reliance on broadband technologies to meet the Nation’s telecommunications needs, combined with the fact that rural America is lagging behind as this transition continues,<sup>13</sup> underscores the importance of the Commission’s adopting universal service policies that meet the challenge of deploying advanced broadband in rural areas. In U.S. Cellular’s view, the Commission’s reform of its universal service mechanisms must provide for a transition from using high-cost support for fixed voice services toward using this support for both fixed and mobile broadband services.

## **II. RESPONSES TO QUESTIONS IN NBP NOTICE # 19.**

U.S. Cellular addresses several of the questions raised in *NBP Notice # 19* in the following sections. The Act requires the Commission to ensure that the size of the USF is sufficient to meet statutory universal service goals, and, as noted above, a central part of U.S. Cellular’s argument is that a key priority of the National Broadband Plan and the Commission’s universal service policies should be to transition current funding mechanisms to a new funding program used to support the deployment and provision of broadband services.

With regard to how the Commission should carry out the transition of existing funding mechanisms to support broadband, portability of universal service funding should be a central component of the Commission’s plan for revamping existing funding mechanisms. The portabil-

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<sup>12</sup> *Id.* at para. 15.

<sup>13</sup> Surveys have shown that only 31 percent of rural Americans have broadband connections, and that only 31.3 percent of farms in rural counties have broadband connections. “Broadband Connection Highs and Lows Across Rural America,” DAILY YONDER, Feb. 11, 2009, accessed at <http://www.dailyyonder.com/print/1921> (citing a survey conducted by the Pew Internet and American Life Project). The rural broadband penetration rate is 75 percent, well below the national rate of 89 percent. “Broadband in Rural Spreading Quickly, Firm Says,” DAILY YONDER, Aug. 21, 2009, accessed at <http://www.dailyyonder.com/broadband-rural-spreading-quickly-firm-says/2009/08/21/2308> (citing a study done by a market research firm).

ity of funding helps to ensure that consumers are in a position to choose the service provider that best meets their needs in as many rural areas of the country as possible, which in turn helps to ensure that the funding flows to efficient providers. U.S. Cellular favors geographic disaggregation of support, which would more accurately target support in areas where it is most needed, and also believes that operating expenses should be part of the ongoing universal service support for rural broadband providers. Finally, U.S. Cellular opposes placing any cap on broadband funding, in part because imposition of a cap would be tantamount to conceding that the Commission will fall short of accomplishing all of its defined broadband goals.

U.S. Cellular believes that concerns about multiple USF-supported competitors providing broadband in the same geographic area are overstated. The Commission's goal should be to ensure that multiple carriers receive enough support so that, when they combine this support with their own funding, they are able to serve consumers in rural areas. Encouraging this competitive entry, while at the same time requiring the portability of universal service support, is the best way to increase the choices available to rural consumers while controlling fund growth.

In U.S. Cellular's view, carrier-of-last-resort ("COLR") obligations do not necessitate any preferential level of universal service support. Incumbent local exchange carriers ("LECs") cannot claim to be uniquely burdened by these obligations, because wireless ETCs effectively are subject to the same type of service obligations. As a result, the Commission should be cautious regarding any need for preferential support levels (based on COLR obligations) as the agency seeks to establish competitively-neutral policies to make advanced broadband universally available.

U.S. Cellular urges the Commission to adopt competitively neutral broadband high-cost funding oversight and accountability mechanisms that are based on existing Commission rules

and on rules adopted by numerous state public utility commissions. Many states require ETCs to file annual reports providing detailed information about their use of USF funding. These requirements have worked effectively, and, therefore, the Commission should refrain from adopting more burdensome regulatory schemes, such as dollar-for-dollar accounting, trend-line analyses, or the reporting of incremental spending.

Finally, in devising a low-income broadband program, the goal should be to empower consumers so that they can select broadband offerings that best serve their needs. Consumers should be permitted to purchase any compatible device that supports broadband access and that is compatible with the network of their choice. U.S. Cellular also encourages the Commission to update the existing Lifeline program to reflect the fact that many households are “cutting the cord,” choosing to rely on wireless service while ceasing to use wireline telephony.

**1. Size of the Universal Service Fund.**<sup>14</sup>

**1.a. *Is the relative size of funding for each support mechanism appropriate to achieve the objective of universalization of broadband?***

U.S. Cellular notes at the outset that Section 254 of the Act<sup>15</sup> requires the USF to be “sufficient” to achieve the statute’s universal service objectives. That is, the Commission must adjust fund size to meet program goals. Recent Commission decisions have improperly attempted to add the word “sustainable” to the statute, claiming erroneously that the statute charges the Commission both with the task of making sure USF funding mechanisms are sufficient to carry out statutory objections, and of ensuring that these mechanisms will be sustainable over time.<sup>16</sup>

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<sup>14</sup> The numbering and lettering of headings in this and the following sections correspond to the designations used in *NBP Notice # 19*.

<sup>15</sup> 47 U.S.C. § 254.

<sup>16</sup> This is a gravamen of the Rural Cellular Association’s challenge to the Commission’s interim cap on high-cost support to competitive ETCs. See *High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*), appeal docketed, *Rural Cell. Ass’n v. FCC*, Nos. 08-1284 & 08-1285 (D.C. Cir. Aug. 29, 2008).

Congress gave the Commission a set of goals and ordered that universal service support be sufficient to achieve them. If the Commission cannot develop sufficient contribution mechanisms to meet congressional goals—then Congress must step in and amend the statute to sustain the program.

(1) ***High-Cost Support Mechanism.*** The high-cost support mechanism must be transitioned over time to support broadband. Initially, it may not be possible to repurpose existing support from mobile and fixed voice services to broadband, because of limitations faced by existing carriers with respect to issues such as plant depreciation or commitments made to state public utility commissions to build out networks in rural areas.

Furthermore, while U.S. Cellular believes that all voice services will ultimately be provisioned over IP-based, broadband networks, that transition will take many years. Carriers planning to deploy the Fourth Generation (“4G”) Long Term Evolution (“LTE”) technology, for example, are still debating options for eventual deployment of voice on LTE and are pursuing plans for the co-existence of increasingly efficient circuit-switched voice with LTE for some time to come. Premature transition away from supporting mobile voice services could lead to extended gaps in the extension of mobile voice services to unserved and under-covered areas.

The size of the high-cost fund must be driven by how quickly the Commission seeks to achieve its goals. In the short-term, the fund should grow to accelerate broadband investment, especially by mobile wireless carriers. For example, U.S. Cellular is rapidly building new cell sites with existing universal service funding, but cannot use universal service support to invest in new broadband infrastructure.

If the Commission simply permitted competitive ETCs to use support for broadband investments, this would enable U.S. Cellular to accelerate its investment curve in the most remote

areas where it is using support to construct cell sites. Put simply, new cell sites in high-cost areas, constructed with support, would all have modern broadband infrastructure included in the initial construction package, so that rural consumers may have immediate access to mobile broadband.

The biggest near-term investment for mobile wireless broadband is towers and related infrastructure, which have a relatively long lifespan. Long-term, the overall size of the high-cost support mechanism may be reduced because operations and maintenance expenses are lower than the initial construction expenses.<sup>17</sup> Accordingly, the overall size of the fund should be looked at from the perspective of how quickly the Commission seeks to achieve a robust build out of new infrastructure in rural America. *From U.S. Cellular's perspective, the fund needs to get bigger before it gets smaller, to accelerate new investment in more efficient plant, that can be operated and maintained at lower levels in future years.*

(2) ***Lifeline and Link Up Programs.*** U.S. Cellular supports new Lifeline support for broadband, and also supports setting aside universal service funding for consumer education, to ensure that low-income users understand the value of broadband and increase their participation in our society. In particular, mobile broadband applications are becoming a larger part of American life, and ever widening gaps between “have” and “have-not” consumers present significant challenges to providing employment, health care, and basic public safety.

U.S. Cellular is an active participant in the current Lifeline/Link Up programs and understands fully how vital a link to advanced telecommunications and information services can be to low-income Americans, many of whom depend on a cell phone for a lifeline much more than

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<sup>17</sup> One example of this involves the Sandwich Isles Telephone Company, which is incurring large initial costs (and correspondingly high universal service draws) to pay for the deploying fiber infrastructure in remote high-cost areas of the Hawaiian Islands chain.

higher-income citizens. The current programs must include broadband, and funding for the programs should be increased significantly to drive broadband adoption. U.S. Cellular discusses low-income broadband programs in greater detail in Section II.7., below.

**3. Transitioning the Current Universal Service High-Cost Support Mechanism To Support Advanced Broadband Deployment.**

**3.b. *What would be the impact of designing a broadband support mechanism so that a provider's competitive loss of a subscriber results in the loss of associated funding?***

The Commission has long taken the view that funding portability (*i.e.*, providing that, if a carrier loses a subscriber, then it also loses universal service support associated with service provided to that subscriber) is competitively neutral and forms a critical element of universal service funding mechanisms. The Commission endorsed portability based upon its conclusion that “[i]f the CLEC can serve the customer’s line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC. The presence of a more efficient competitor will require that ILEC to increase its efficiency or lose customers.”<sup>18</sup> The Fifth Circuit U.S. Court of Appeals, in its *Alenco* decision, also emphasized the importance of portability, as well as its statutory mandate, stressing that:

the [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.<sup>19</sup>

The Commission’s policies were successful in promoting both universal service and local competition in the early years of the universal service program. Wireless competitive carriers began qualifying as ETCs and entering rural markets. Their ability to deploy infrastructure more

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<sup>18</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8933 (para. 289) (1997) (“*First Report and Order*”) (subsequent history omitted).

<sup>19</sup> *Alenco Communications v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) (“*Alenco*”) (emphasis added).

quickly, and at less cost, than wireline carriers, began to bring services (including highly sought after mobile services) to rural areas that previously had been unserved or underserved.

Importantly, this deployment was accomplished in a cost-effective manner because of the efficiencies inherent in wireless infrastructure. Competitive entry not only placed pressure on incumbents to operate more efficiently, it also brought private investment into rural and high-cost areas, a result of the fact that many wireless competitive carriers combined their high-cost support with their own investments to provide competitive services in their newly-entered markets.

While endorsing the funding portability policy, the Commission also chose to delay the implementation of the policy with respect to high-cost fund support received by rural incumbent LECs.<sup>20</sup> The resulting protection afforded to rural incumbent LECs (by allowing them to retain per line universal service support, even after they lose the line to a competing carrier) cannot be justified, in U.S. Cellular's view, in the current universal service regime and certainly deserves no place as part of new broadband support mechanisms developed by the Commission. Today, support among *competitive ETCs* is fully portable, and this policy not only promotes competitive entry<sup>21</sup> but also provides incentives to a competitive ETC to operate efficiently in order to avoid losing customers to a more efficient competitor. The same approach should be applied to rural incumbent LECs.

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<sup>20</sup> *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 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 11244, 11294-95 (para. 125) (2001) (holding the portability requirement in abeyance to permit rural incumbent LECs to transition to a fully portable mechanism).

<sup>21</sup> *See First Report and Order*, 12 FCC Rcd at 8788 (para. 19) (finding that "universal service [should] be sustainable in a competitive environment; this means both that the system of support must be competitively neutral and permanent and that all support must be targeted as well as portable among eligible telecommunications carriers").

A strong advantage of portability is that it has the effect of taking universal service support away from inefficient carriers, thus lowering the overall level of disbursed support, as well as ensuring that support is provided to carriers that will use the support efficiently. Had portability been in place from the outset in connection with the disbursement of support to rural incumbent LECs, the growth in the size of the high-cost support mechanism (which has been a matter of such great concern for the Commission in recent years) would have been reduced considerably.

Stated another way, if portability had been in effect in the case of rural incumbent LECs, it would have paid for the growth in the high-cost funding mechanism resulting from competitive entry by wireless ETCs, since the disbursements to the wireless ETCs would have been offset by reductions in the level of support to rural incumbent LECs.<sup>22</sup>

In sum, designing a broadband support mechanism so that a provider's competitive loss of a subscriber results in the loss of associated funding would have two important impacts. It would decrease the rate of growth of the broadband fund. Given the reasonable expectation that substantial funding levels will be necessary to effectively administer the National Broadband Plan designed to bring broadband services to rural and remote areas of the Nation, requiring funding portability would serve as an important and effective to mitigate broadband funding growth.

In addition, portability encourages competitive entry, which, in turn, benefits consumers. American consumers—including consumers in rural and high-cost areas—should have the benefits of a competitive marketplace that drives down price and encourages technological innovation and the development of services that meet consumer demand. Portability helps to deliver these

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<sup>22</sup> See Exhibit A (attached), "Failure to Implement Portability Will Constrain Investment in New Technologies," which illustrates the concept discussed in the text.

benefits by removing subsidies to incumbents to the extent these incumbents are ineffective in competing for customers based on price and service.

**3.c. *Would the size of any broadband funding mechanism be appreciably different if support were calculated based on a forward-looking cost model designed to calculate the lowest total cost of ownership on a technology-neutral basis, as opposed to individual provider submission of actual costs?***

From U.S. Cellular's perspective, the overall size of the fund is less important than whether the fund is sufficient to accomplish congressional goals. Generally, forward-looking costs, which look at the design of an efficient network, should yield a smaller fund size than the submission of actual costs. Moreover, the regulatory effort to monitor every carrier's submission of actual costs is much greater than maintaining and periodically updating a model.

It is unclear to U.S. Cellular whether a model would in practice yield a smaller fund size. U.S. Cellular supports the investigation of a cost model as a means of right sizing the fund on a technology-neutral basis, so that consumers have an opportunity to receive service from carriers who can do so based on an efficient amount of available support.

**3.d. *The current high-cost support mechanism provides a return on net investment (currently 11.25 percent) for rate-of-return carriers, but does not provide direct reimbursement for capital expenditures (capex). Should high-cost broadband funding be limited to supporting a direct one-time reimbursement for new capital expenditures, or should it support both capital and operational expenses? If a new broadband fund did not support broadband operational expenses, how would carriers distinguish between legacy expenses and broadband expenses? If commenters believe support for ongoing operational expenses is necessary, explain why.***

A high-cost support mechanism must fulfill congressional goals set forth in the statute. Congress directed the Commission to provide sufficient support to rural and high-cost areas so that rural consumers have access to services that are reasonably comparable to those available in urban areas, at reasonably comparable prices. The agency cannot implement a mechanism that fails to achieve these goals without falling short of its mandate.

With respect to wireless technology, as support is deployed deeper into rural networks, in sparse and remote locations, there are going to be cell sites that do not generate sufficient revenues to meet the cost of ongoing operations and maintenance expenses. If support is not provided for carrier operating expenses, and revenues are insufficient to cover costs, then carriers are going to have to raise prices, repurpose equipment to profitable areas, or otherwise take actions that make business sense.

Accordingly, U.S. Cellular strongly believes that operating expenses must be a part of ongoing support for rural broadband providers. Getting the support level right is key, because there are surely some rural areas where operating expenses are not needed, and there are surely other areas where operating expenses will be critical for a carrier to sustain the original investment.

**3.f. *In disbursing support under a high-cost broadband mechanism, should the Commission take into account broadband grants issued by NTIA or RUS, and, if so, how?***

The Commission should take into account stimulus grants made under the American Recovery and Reinvestment Act (“ARRA”), to the extent that carriers participating in the universal service program must not be able to double dip. For example, a carrier that receives a grant to do a 4G overlay on its existing rural network must not be permitted to go to the universal service fund for an identical investment. On the other hand, receipt of stimulus grants should not automatically disqualify an ETC from receiving USF support for other investments or from operations support.

**3.g. *One option for a broadband mechanism would be to more narrowly target universal service high-cost support to smaller geographic areas and to areas in which broadband service is not available today from any provider. If the Commission were to develop a new broadband support mechanism that is targeted at such areas, what would be the appropriate geographic area for determining the appropriate amount of support? What would be the impact of basing support on the cost of providing broadband in a wire center, a Census Block, a Census Tract, or an area defined by the proposed broadband***

*provider? Explain why the proposed geographic area is preferable to alternatives, and how that would impact the overall size of the high-cost fund. Should the presence of one broadband service provider using any technology preclude support to any provider, or might support still be targeted to a provider offering features that are not available from the existing service, e.g., a mobile broadband service provider where only fixed broadband service is available?*

U.S. Cellular favors a broadband support mechanism that is competitively and technologically neutral. Over the past eight years, the use of incumbent LEC study areas and wire centers as a default boundary for support mechanisms has been nothing less than vexing for both carriers and state public utility commissions. Some carriers have multiple study areas within a single state. Wire center boundaries sometimes shift as a result of mergers and acquisitions, new construction in previously unserved areas, or other regulatory reasons.

There is no national database of study areas and wire centers that provides a definitive and indisputable set of wire center boundaries. In U.S. Cellular's experience, private data-bases contain errors and oftentimes prove difficult to align with state boundaries. Some states rely on wireline carriers to provide wire center boundaries. In sum, the Commission's National Broadband Plan must develop a new set of boundaries to avoid the difficulties associated with the current use of incumbent LEC wire centers.

In the ARRA, the use of census blocks as the building block for grant applications has proven very difficult. Census blocks are simply too small. U.S. Cellular supports a larger set of competitively neutral boundaries, with census tracts being a possible solution.

The presence of one provider must not preclude the entry of another. Again, the statute requires that support mechanisms provide reasonably comparable services at reasonably comparable prices to rural America. Limiting support to one carrier essentially re-creates the very problem that the Telecommunications Act of 1996 intended to solve, namely, the presence of a single dominant carrier that requires intensive rate regulation, as well as Section 251-style obli-

gations to open markets. Providing support to a single provider cuts directly against the statute's mandate that all consumers deserve the benefits of competition and that universal service mechanisms are a means to achieve these benefits in rural areas.

Accordingly, U.S. Cellular strongly advocates a universal service mechanism that delivers high-quality fixed and mobile broadband services to rural citizens, using a methodology that is competitively neutral and efficient.

**3.h. *What would be the impact of capping the funding available under such mechanisms? How should any such cap be calculated, and should it apply on a per-carrier basis, or to a geographic area, and why?***

Placing a cap on the broadband fund, in U.S. Cellular's view, would run the risk of contradicting and undercutting the purposes and objectives for which the fund would be established. The Commission's goal is "for every American citizen and every American business to have access to robust broadband services[, and] for the United States to be a model for the world in creating a partnership between government and industry to ensure that all citizens have access to broadband."<sup>23</sup>

The Commission's approach, therefore, should be to determine, through the use of measures and analyses that achieve as much precision as possible, the size of the broadband fund necessary to accomplish these goals, and then to devise the means that fairly and effectively generate contributions to the fund sufficient to meet these goals. Capping the broadband fund, almost by definition, would mean that the Commission has decided it cannot fully achieve any of its defined broadband goals.

If the Commission nonetheless decides, however, that there is some need to cap broadband funding, then U.S. Cellular believes that two principal considerations should govern the

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<sup>23</sup> *Broadband Notice of Inquiry*, 24 FCC at 4344 (para. 5).

structure and application of the cap. The cap should be applied in a competitively and technologically neutral fashion, so that no class of broadband service providers is unfairly advantaged or disadvantaged by the cap. The cap also should avoid interfering with the capability of carriers to meet their pre-existing commitments (*e.g.*, to state public utility commissions) regarding the deployment of broadband infrastructure. Any such interference would disadvantage consumers in rural and remote areas where this deployment would be targeted.

**3.i. *Certain ETC requirements today are premised on the provision of voice service. If the Commission were to create a new high-cost support mechanism for broadband, should current ETC requirements be revised, and if so, how?***

Generally, U.S. Cellular does not support reopening the rules for qualifying to be a competitive ETC. With respect to including broadband to the list of supported services, U.S. Cellular believes that if a carrier has already met the qualifications to be an ETC, and if it commits to deliver broadband as required by the Commission, then it should be able to move forward quickly without going through another proceeding.

U.S. Cellular also supports the Commission's providing states with clear direction on two related issues. First, states should not be permitted to conduct additional proceedings to qualify existing competitive ETCs for broadband. States may of course conduct annual review proceedings to see whether support is being used lawfully, but U.S. Cellular is concerned about the length of proceedings at state commissions. The company has expended millions of dollars in litigation costs, much of it unnecessarily responding to other parties more interested in delaying U.S. Cellular's entry than upholding the public interest. State commissions are more than capable of overseeing universal service support.

Second, the Commission should remind states that Section 253 of the Act requires state universal service mechanisms to be competitively neutral. Many states that have their own uni-

versal service mechanisms effectively preclude competitors from accessing funds. Such mechanisms are subject to Commission preemption, and the Commission should ask states to ensure that competitive carriers get fair access to state support so that substantial litigation delays do not ensue.

**4. Impact of Changes in Current Revenue Flows.**

**4.a. *What factual analyses should the Commission undertake to test the validity of such arguments?***

Some have argued for years that virtually any reduction in support will jeopardize their ability to continue to serve customers. Yet private companies have never been required to produce hard evidence of when such dire consequences will occur. Other public companies are paying dividends at a rate of over 10%, providing excessive cash flows to shareholders.

If the Commission intends to conduct an “actual cost” analysis, similar to the current system, which provides support on a “cost plus” basis to wireline carriers, then a substantial data request of all major carriers, equivalent to a rate case, must be undertaken. U.S. Cellular believes such a factual undertaking and corresponding analysis are unnecessary.

Instead of commencing such a massive undertaking, U.S. Cellular believes the Commission should first explore whether the use of a cost model can wring efficiencies out of the universal service mechanism. U.S. Cellular has worked with private companies that understand models and we are advised as follows:

- Cost models have been used for non-rural carriers, covering some of the most remote rural areas in the country. It can be done.
- The current Business Planning and Cost Model is outdated and does not provide support equitably.
- Computing power in 2009 is light years ahead of where it was in 1996. The ability of models to operate on very granular levels eliminates many objections that a model is a one size fits all solution that does not work for smaller carriers.

- Mapping software is light years ahead of where it was in 1996. Current commercial programs such as, for example, MapInfo, provide designers with the ability to target support more accurately and estimate costs with much greater precision than thirteen years ago.

A model that provides support at an efficient level eliminates all need to pull data from carriers and to regulate market behaviors with respect to issues such as related party transactions. If a carrier receives an efficient level of support and is required to offer service throughout a supported area, then there is little or no room for support to be wasted.

There is precedent for U.S. Cellular's views. This Commission has previously struggled with the issue of analyzing carrier cost data, rejecting that approach in favor of a cost model:

The use of a carrier's book costs, by contrast, would not allocate support in a competitively neutral manner among potentially competing carriers. Instead, such a system would tend to distort support payments because current book costs are influenced by a variety of carrier-specific factors, such as the age of the plant, depreciation rates, efficiency of design, and other factors. Support based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.<sup>24</sup>

In sum, undertaking the exercise of testing the validity of arguments that carriers are over- or under-compensated by existing support mechanisms can be avoided by determining carrier costs based on a model.

**4.b. *What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already is at least one competitor offering broadband (using any technology) today that does not receive any high-cost support?***

This question presumes that a competitor is providing relatively perfect competition in terms of quantity and quality of service. In the wireline world, if a competitor strings a wire to

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<sup>24</sup> *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8103 (para. 50) (1999) ("*Seventh Report and Order*") (footnotes omitted).

every home and business in a high-cost area, then reducing or eliminating universal service support to both carriers can be explored by regulators. The quantity of service (that is, whether every house is passed) is relatively easy to measure. In the wireless world, however, measuring coverage levels throughout an area at a granular level, to determine the quantity and quality of service, is a much more complex undertaking.

U.S. Cellular does not believe it would be a prudent or productive public policy to attempt to shrink the size of the broadband universal service fund by reducing or eliminating support in areas in which a competitor is providing broadband service without receiving any disbursements from the broadband fund. The reason for this is that, in all likelihood, the unfunded competitor would be cream-skimming by providing broadband service in the lower-cost regions of the geographic area involved, while not attempting to build out services in the higher-cost areas. On the other hand, the incumbent broadband provider (receiving universal service broadband funding) would have a responsibility to serve the higher-cost areas, and, consequently, reducing or eliminating funding to that carrier would lessen the prospect that consumers in these higher-cost areas would actually receive advanced broadband service.

Rather than reducing or cutting off funding to the incumbent provider, there are easier ways to accomplish the twin goals of conserving broadband funding resources while also bringing service to consumers in higher-cost areas. For example, the Commission's current rules, which permit but do not require disaggregation of support, could be made mandatory in order to more accurately target support for advanced broadband services in areas served by rural telephone companies.<sup>25</sup> Such a step would more clearly identify high-cost areas requiring support and reduce support to competitors who only serve low-cost areas.

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<sup>25</sup> See 47 C.F.R. § 54.315.

**4.c. *What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there are already multiple competitors offering broadband (using any technology), with more than one of those providers receiving high-cost service support.***

On its face, reducing or eliminating support in any geographic area is going to have positive financial impacts, if reducing the size of the broadband fund is a goal.

This question, however, does require a short examination of how support is provided to competitive ETCs. Today, even though more than one competitor may receive high-cost support, the mechanism only supports one competitive network throughout each incumbent LEC service area. One unit of support is provided for each competitive ETC customer in the service area and the competitive ETC carrier that gets the customer also gets the associated unit of support. Over the years, U.S. Cellular has consistently advocated that, no matter what methodology is used to determine the level of support, portability of that support is an essential component of competitive neutrality, which aligns with the Commission's longstanding position: "We agree with the Joint Board that competitive neutrality is a fundamental principle of universal service reform, and that portability of support is necessary to ensure that universal service support is distributed in a competitively neutral manner."<sup>26</sup>

When U.S. Cellular wins a customer from another competitive ETC, it gains customer revenue and support, while the other competitive ETC loses customer revenue and support. This is as it should be, because each carrier's incentives to offer high-quality service, reduce prices, and gain customers is aligned with the awarding of support. Accordingly, the number of carriers in a particular area is driven by the marketplace which, again, is as it should be.

Rural consumers must be empowered by providing them with choices in the marketplace, and areas where only one carrier (or no carrier) can survive without some level of support are

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<sup>26</sup> *Seventh Report and Order*, 14 FCC Rcd at 8113.

precisely those areas where support should be provided. Some recent Commission pronouncements have stepped away from this concept, questioning the wisdom of providing support if it supposedly only serves as a means of promoting artificial competition.<sup>27</sup> U.S. Cellular believes such an approach interprets the statute exactly backward—that is, universal service funding must be provided only in areas that do not support competition on their own, to avoid the Commission’s promoting or sustaining artificial monopolies.

U.S. Cellular’s Chief Executive Officer, Jack Rooney, has testified before the Senate Commerce, Science, and Transportation Committee on the importance of portability in empowering consumers.<sup>28</sup> Mr. Rooney noted that one of the biggest problems with the current mechanism is that incumbent carriers do not lose universal service support when they lose customers.<sup>29</sup> Before the Commission decided to allow incumbents to retain 100% of their support, it properly ruled:

Moreover, it would eviscerate the concept of “portable” support if the loss of customers to a competitor did not change the incumbent’s support amounts. We conclude, therefore, that incumbent LECs will not be held harmless for reductions in their federal high-cost support amounts that result from competitive LECs capturing that incumbent LEC’s customers.<sup>30</sup>

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<sup>27</sup> See *Interim Cap Order*, 23 FCC Rcd at 8841-42 (para. 15), 8843-44 (para. 20).

<sup>28</sup> See Statement of John E. Rooney, Chief Executive Office, United States Cellular Corporation, before the U.S. Senate Committee on Science, Commerce and Transportation (June 12, 2007), accessed at [http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing\\_ID=37f1f667-9824-460f-a4b6-c678b6c815d0&Witness\\_ID=a559f153-f278-4787-bd26-dd01d1e96c32](http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=37f1f667-9824-460f-a4b6-c678b6c815d0&Witness_ID=a559f153-f278-4787-bd26-dd01d1e96c32).

<sup>29</sup> *Id.* (“Why should wireline carriers get subsidized even when they lose customers? Wireline carriers in rural areas have lost 10% of their access lines over the past three years; however, they continue to draw \$3 billion annually. When we lose customers, we lose support, and that’s the way it should be. As consumers increasingly choose wireless for their voice needs, we should be receiving an increasing share of the fund so we can provide rural consumers with the high-quality service they deserve. If any one sector deserves heightened scrutiny, I would argue it’s the landline providers that continue to benefit from the program while being insulated from financial and market realities.”).

<sup>30</sup> *Seventh Report and Order*, 14 FCC Rcd at 8114 (para. 74).

Some have argued that the current “per-line” mechanism is inefficient because wireless carriers have more lines than wireline networks, since every person can carry a handset while normally only one or two access lines run to a home. Such arguments assume, incorrectly, that a wireless phone is used in the same fashion as a wireline phone. Wireline carriers provision service at a home and no place else. Wireless carriers must provision service throughout a wide area. That is, when five adults, each of whom has a wireless handset, live in one household, they do not use the wireless network exclusively at that one point. Each day they may scatter throughout the community and expect their wireless service to be provided everywhere they live, work, and travel.

***The proper answer is not to limit the number of handsets or lines that can be supported, but to right-size the fund so that all consumers have access to a high-quality network that provides service throughout the service area.***

If support is provided at an efficient level, accurately targeted to high-cost areas, and is made portable to the carrier that gets the customer, then multiple carriers can enter to compete for customers and universal service support. Under this approach, the Commission would set support amounts but would not micro-manage the marketplace. This is a vastly superior system to one that picks a single winner and requires monopoly-era regulation of a dominant carrier, or one that props up antiquated telecommunications technology despite the clearly expressed desire of consumers to move to modern platforms.

With this as background, U.S. Cellular unequivocally agrees with the concept that support mechanisms should not pay to construct duplicate networks. Instead, broadband funding should be available to partially fund competing networks in the same geographic area. Under this approach, broadband support mechanisms should be properly sized so that multiple carriers

receive sufficient support, when combined with their own funding, to enter an area to provide rural consumers with choices and service quality that are reasonably comparable to that which is available in urban areas. Support should flow with a consumer's choice so that prospective new entrants that have better service, lower costs, or higher service quality, are encouraged to compete and are not shut out by monopoly protections.

In sum, U.S. Cellular believes that an efficient level of support, accurately targeted to high-cost areas and made portable to the carrier that wins the customer, can fulfill the goals set forth in Section 254 of the Act. If the Commission makes this the focus of its universal service reform, developed in conjunction with its National Broadband Plan, then rural consumers who need improved service, as well as urban consumers who pay into the high-cost fund, will both be well served.

**4.d. *To what extent are existing ICC revenues and high-cost support being used to pay debt obligations. To what extent do carriers securitize high-cost support and/or ICC cash flows and, if this is occurring, how often and why? Identify lenders who are willing to securitize ICC and high-cost support cash flows.***

As a wireless carrier, U.S. Cellular does not receive intercarrier compensation in the form of access charges. Reciprocal compensation arrangements yield little revenues because the flow of local traffic between wireless and wireline networks is relatively equal. If a carrier builds facilities in a rural area prior to receiving support, when it gets customers and support begins to flow, support may be used to pay down debts incurred in such construction projects.

In U.S. Cellular's case, it increases its capital and operating budgets consistent with expected levels of support and then receives support into its general operating fund for that market, to pay all such expenses, which may include debt service.

**4.e. For individual carriers . . . please provide revenue, Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) and cap ex for study areas that receive high-cost funding.**

U.S. Cellular does not have EBITDA figures for study areas that receive high-cost funding because its competitive ETC service areas encompass multiple study areas. It is not possible, absent an extraordinarily burdensome accounting effort, to break EBITDA down by study areas.

**4.f. For individual carriers or groups of carriers, what percentage of free cash flow (defined as EBITDA minus capex) do high-cost support and/or ICC represent?**

U.S. Cellular's operations are such that there is no readily available data that is responsive to this question. That is, U.S. Cellular is a competitive ETC in some, but not all, states where it operates, and in most states it is not a competitive ETC throughout all of its operating areas. This is an unfortunate consequence of states being reluctant to redefine service areas consistent with the Commission's rules. Comparing U.S. Cellular's overall free cash flow to its high-cost support would not be an apples-to-apples comparison because U.S. Cellular is not a competitive ETC throughout its entire licensed territory.

**5. Competitive Landscape.**

*NBP Notice # 19* reflects the debate's fundamental confusion about carriers of last resort. In U.S. Cellular's view, COLR obligations do not necessitate preferential levels of support. In *NBP Notice # 19*, the Commission claims that "virtually all incumbent local exchange companies operating in rural high-cost areas have carrier of last resort (COLR) obligations for voice service, while other providers that are offering voice, video and/or broadband in such areas do not."<sup>31</sup> This assertion is not accurate, and is reflective of a misperception that must change as the Com-

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<sup>31</sup> *NBP Notice # 19* at 6.

mission explores competitively-neutral policy options to further its “goal of making broadband universally available to all people of the United States.”<sup>32</sup>

While the Commission expressly rejected proposals to impose COLR obligations as a condition of ETC designation in the *First Report and Order*,<sup>33</sup> all ETCs, *including wireless ETCs*, have an obligation to respond to reasonable requests for service—effectively a COLR equivalent.<sup>34</sup> In addition, Section 214(e)(3) of the Act,<sup>35</sup> which gives the Commission (with respect to interstate services) or a state public utility commission (with respect to intrastate services) authority to order a common carrier to provide service to an unserved community, is equally applicable to both wireline and wireless carriers.

Similarly, Section 214(e)(4) of the Act<sup>36</sup> gives state public utility commissions authority to apply COLR obligations to wireless carriers in situations where a wireless ETC becomes the only ETC in an area. In addition, several states require a wireless ETC, as a condition of designation, to be a COLR in the event that it is the last ETC serving a particular area.<sup>37</sup>

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<sup>32</sup> *Id.* at 1.

<sup>33</sup> See *First Report and Order*, 12 FCC Rcd at 8857-58 (para. 144) (“Several ILECs assert that the Joint Board’s recommendation not to impose additional criteria is in conflict with its recommended principle of competitive neutrality because some carriers, such as those subject to COLR obligations or service quality regulation, perform more burdensome and costly functions than other carriers that are eligible for the same amount of compensation. ***The statute itself, however, imposes obligations on ILECs that are greater than those imposed on other carriers, yet section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs.***”) (emphasis added) (footnotes omitted).

<sup>34</sup> See 47 U.S.C. § 214(e)(1) (requiring all ETCs to “offer the services that are supported by Federal universal service mechanisms” “throughout the service area for which the designation is received”); see also 47 C.F.R. § 54.202(a) (requiring any common carrier in its application to be designated an ETC to “commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service.”); 47 C.F.R. § 54.202(a)(1)(i).

<sup>35</sup> 47 U.S.C. § 214(e)(3).

<sup>36</sup> 47 U.S.C. § 214(e)(4).

<sup>37</sup> See, e.g., RCC Minnesota, Inc., Docket No. UM-1083 at p. 10 (Or. PUC, June 24, 2004); PSC 160.13(1)(a) (Wisconsin Administrative Code) (“ [An ETC] is eligible to receive universal service fund-

Incumbent LECs have historically argued that the Commission and state public utility commissions should not reduce their high-cost support because doing so will allegedly undermine the incumbent LECs' ability to comply with their COLR obligations. In U.S. Cellular's view, this argument has never been backed up with supporting data or even anecdotal instances illustrating such a problem. COLR obligations are rarely the reason why a carrier builds out its network to reach new customers. For example, an incumbent LEC—and, in a competitive market, a competitive LEC—will build facilities to a new residential development because the revenue opportunity from serving the new units justifies the investment. In a market with facilities-based, last-mile competition, the incumbent LEC has a market incentive to extend its network so that it can have the opportunity to serve these customers, rather than ceding that opportunity to a competitor. Build-out by the incumbent LEC in these cases is clearly not attributable to its COLR obligations.

Even in cases in which the incumbent LEC must extend its network pursuant to its COLR obligations, this requirement often is limited by the terms and conditions of the carrier's line extension tariff, which mitigate substantially any burden—economic or otherwise—on the incumbent LEC.<sup>38</sup> In fact, COLR obligations are generally cash generators for incumbent LECs, because wireline carriers are not required to forgo a fair return on investment when fulfilling COLR obligations. To cite just one example, U.S. Cellular is today attempting to provision ser-

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ing under both applicable federal and state universal service programs for an area, if it," among other things, "holds itself ready to offer service to all customers in the area.").

<sup>38</sup> See, e.g., Reply Comments of General Communication, Inc., CC Docket No. 96-45 (filed Dec. 14, 2004), at 17-19 (explaining that the line extension tariffs of a particular incumbent LEC competitor require any customer that is more than 1,000 feet away from existing facilities to pay the full cost of extending those facilities beyond 1,000 feet. The incumbent LEC customer must also agree to pay, in advance, for four years of basic local service, which is offset against construction fees. In addition, if the customer moves or otherwise drops service for any reason, the customer loses the prepaid service fees. Moreover, the cost of the first 1,000 feet of a line extension is further offset by other revenue the COLR receives from the customer during its four years of prepaid basic local service, as well as enhanced services such as vertical feature revenue or toll calling.).

vice to a requesting customer in a rural area where no wireline service is available. The incumbent COLR has quoted this potential customer a price of over \$52,000 to extend a voice line to the customer's residence. The carrier is acting well within its published tariff and within the state commission's COLR rules. That said, it is somewhat disingenuous for a carrier to claim that a COLR obligation is burdensome or should confer a regulatory advantage.

State commissions often ensure that a return will be earned on such investments, and federal mechanisms continue providing support even when consumers discontinue service. By contrast, competitive ETCs have the equivalent of COLR obligations with no such guaranteed return on investment, and no continuing support when consumers discontinue service. Thus, rather than imposing a substantial net burden on rural incumbent LECs, COLR requirements actually provide the incumbents with a significant competitive advantage over wireless ETCs.

Every new wireless entrant that seeks ETC status must accept the statutory requirement that it might be asked to serve all customers within its service territory at some future date. Therefore, because wireless ETCs face effectively the same service obligations as incumbent LECs, there is absolutely no reason to provide incumbent LECs with a preferential level of high-cost support to counteract their supposedly unique COLR obligations. Any USF reform measures should reflect this reality, particularly if the Commission wants to uphold its guiding policymaking principle of competitive neutrality.

## **6. High-Cost Funding Oversight.**

The Commission should adopt competitively neutral oversight and accountability mechanisms modeled after the current ETC reporting and compliance rules of the Commission and many state public utility commissions. Under Section 214(e)(2) of the Act,<sup>39</sup> a state has exclu-

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<sup>39</sup> 47 U.S.C. § 214(e)(2).

sive jurisdiction to designate competitive ETCs unless it expressly cedes this jurisdiction to the Commission. State commissions have discretion under that section, subject to other constraints imposed by Congress, including the requirement to impose competitively neutral rules and preempting rate and entry regulation of Commercial Mobile Radio Service carriers.

Although not required by the statute, the vast majority of state commissions exercising their ETC designation authority have conducted extensive fact-finding, witness testimony, evidentiary hearings, and legal briefing over the span of a year or longer before a final decision is reached. States have also generally been thoughtful in considering and adopting rules governing ETC designation, ongoing compliance, and certification. Some states, however, have attempted to extend wireline-style rules to competitors, with adverse consequences for the deployment of telecommunications infrastructure and the availability of high-quality service to consumers in rural areas.

As U.S. Cellular has discussed, competitive neutrality is a core universal service principle,<sup>40</sup> and the Commission has made competitive neutrality the cornerstone of its current ETC compliance rules. The Commission should similarly adopt competitively neutral rules governing the use of high-cost support for the deployment of advanced broadband services. To reduce the burdensome rules and regulatory uncertainty, the Commission itself should take full responsibility for reviewing and approving the cost data for high-cost broadband funding purposes. Given the fact that the high-cost broadband fund would be a federal program that disburses federal dol-

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<sup>40</sup> See *First Report and Order*, 12 FCC Rcd at 8801 (para. 47) (“Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”).

lars, it would be inappropriate for the Commission to delegate cost data review functions to the state public utility commissions.

In addition, such a step would place substantial burdens on state commissions as well as competitive carriers, and would inevitably lead to conflicting precedents and decisions regarding the treatment of cost data that would impose further burdens on wireless competitive ETCs and hamper the efficient operation of the broadband funding disbursement process. This burden would be extraordinary for carriers providing services in multiple states.

Alternatively, should the dual federal-state system of overseeing USF compliance be preserved, U.S. Cellular urges the Commission to continue to encourage states to adopt rules and to refrain from imposing legacy regulations from the monopoly era on wireless carriers.

A competitively neutral tracking mechanism for broadband funding could follow the approach of many states that require ETCs to provide detailed annual reports demonstrating how they are using their high-cost support. Carriers are typically required to report the amount of high-cost support received during the previous year, the various types of capital and operational expenditures for which the support was used during the previous year, and the planned uses of high-cost support for the next year. Several state commissions have adopted such a requirement after thorough consideration of alternatives.<sup>41</sup>

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<sup>41</sup> See, e.g., Eligibility, Certification, and Reporting Requirements for Eligible Telecommunications Carriers [199 IAC 39], Docket No. RMU-06-1 (Iowa Util. Bd., Oct. 6, 2006), *recon. denied*, Nov. 20, 2006); Staff Investigation to Establish Requirements for Initial Designation and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support, Docket No. UM-1217, Order No. 06-292 (Or. PUC, June 13, 2006); In the Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible Telecommunications Carrier Designations for Receipt of Federal Universal Service Fund Support, Case no. TX-2006-0169, Order of Rulemaking (Mo. PSC, March 7, 2006), *reh'g and clarif. denied*, Apr. 14, 2006); In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, to add rules for designating eligible telecommunications carriers in Nebraska for the purpose of receiving federal universal service support, Rule and Regulation No. 165, Certificate of Adoption (Neb. PSC, Sept. 21, 2005); In the Matter of Amending WAC 480-120-399, Adopting WAS 480-123-020 through WAC 480-123-080, and WAC 480-123-999, Relating to Designa-

Proposals to require competitors to provide access to their accounting books, to provide dollar-for-dollar accounting or “trend-line analyses,” or to demonstrate “incremental” spending, have been properly rejected when given proper consideration at the state level. The Commission also should exclude such proposals as it moves forward with its universal service reform efforts in conjunction with its development of a National Broadband Plan.

The Commission also should take note of the reasoned decisions many state commissions have issued, after due consideration of differing proposals, to require ETCs to report USF receipts and expenditures in a way that is detailed enough to provide regulators with an accurate picture of how the money is being spent, yet is not so burdensome as to be tantamount to a rate-making proceeding.<sup>42</sup>

## **7. Lifeline/Link Up.**

### **7.a. *How should any devices necessary for a low-income broadband program be supported?***

**7.a.i. *Who would own such devices, and what would become of these devices should a consumer exit the program or seek to upgrade his/her device?***

**7.a.ii. *How would consumers purchase such devices—through vouchers, reimbursement, and/or some other means?***

Support for devices should be provided in a manner similar to the way in which support is provided pursuant to the existing Lifeline program. Eligible low-income consumers could purchase devices that best meet their needs in connection with accessing broadband services, and the providers of these devices would be eligible for reimbursement from Lifeline funds for the revenue forgone as a result of the discounts.

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tion and Certification of Eligible Telecommunications Carriers (ETCs), Docket No. UT-053021, Order Amending and Adopting Rules Permanently (Wash. Util. & Transp. Comm’n, June 28, 2006).

<sup>42</sup> In addition to the examples noted in footnote 41 above, the annual ETC certification review by the Maine Public Utilities Commission is another good example of a rigorous examination that is sensibly focused on how an ETC’s investments have benefited consumers. Filings related to U.S. Cellular can be found under case ID 2009226 on the MPUC’s “EasyWeb” online docket, at: [http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb\\_query](http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_query).

Under this proposal, it would be unlikely that the cost of tracking devices and having them returned by consumers when they exit the program would be less than the cost of simply allowing participating low-income consumers to keep the devices once purchased. As for customers upgrading devices, the Commission could consider establishing a timeframe in which eligible low-income consumers could make initial discounted purchases and subsequent upgrades (e.g., discounted upgrade purchases, for which providers would be eligible for reimbursement, could be made every two years after the customer's initial purchase of a device).

**7.a.iii. *Should the Commission limit the types of devices available to consumers participating in the program? Commenters should identify with specificity any implementation issues.***

**7.a.iv. *Should the Commission determine some sort of minimum specification for supported devices? If so, how should these specifications be set initially and how should they change over time as technology evolves? Commenters should identify with specificity any implementation issues.***

The Commission should adopt policies that permit low-income consumers to purchase any device that enables broadband access. The Commission should not determine minimum specifications, other than that the device must be capable of accessing the Internet through the customer's chosen broadband provider. Consumers are in the best position to determine which device, at which price point, works best for them, and the Commission's broadband Lifeline rules should not limit consumers' purchases to low-end devices.

**7.b. *Commenters should provide estimates of the anticipated demand for a low-income broadband program.***

**7.b.i. *How should the Commission determine the appropriate support amounts for devices and for service? Please provide data supporting the proposed support levels and identify all assumptions.***

**7.b.ii. *Should funding be initially capped for a trial period, and if so, at what level?***

**7.b.iii. *How much low-income support would be necessary in the aggregate to enable all eligible consumers to participate in a low-income broadband program? Commenters should identify all assumptions.***

U.S. Cellular does not have the means to provide estimates regarding how much Lifeline funding will be needed to fully enable low-income consumers to access broadband. U.S. Cellular accordingly suggests that a pilot program established by the Commission in several large cities, and on Native American lands, is an appropriate way for the Commission to make such determinations. Support levels for devices, and demand for various devices, can be measured more accurately and extrapolated nationwide if a one-year pilot program were implemented by the Commission.

**7.c. *What eligibility requirements should apply to consumers participating in a low-income broadband program?***

**7.c.i. *Should these eligibility requirements be the same as or different from the eligibility criteria in the existing low-income program?***

**7.c.ii. *If the consumer eligibility requirements should be the same, then should current subscribers in the existing low-income program be automatically enrolled in the low-income broadband program?***

**7.c.iii. *If the consumer eligibility requirements should be different from those applied in the existing program, what should these different eligibility requirements be?***

**7.c.iv. *How should the Commission define “household” and “head of household” for purposes of determining eligibility for any low-income broadband program that the Commission might establish?***

U.S. Cellular believes that the broadband Lifeline program should use the same or similar eligibility requirements as those used by the Commission in the existing Lifeline and Link Up programs, except that the list of eligible programs and income thresholds should be comprised of a single nationwide standard. U.S. Cellular also suggests that currently eligible households should automatically qualify for participation in the new broadband Lifeline program.

In addition, the term “household,” for broadband Lifeline purposes, should be defined in a manner that ensures that low-income residents of homeless shelters, other group living facilities, and multiple-family dwellings prevalent in Native American communities are not lumped

together and treated as members of a single household (which would have the effect of disqualifying many of these residents from participation in the broadband Lifeline program).

**7.d. *How can the Commission provide flexibility to consumers to select the service offerings that meet their needs under a broadband Lifeline/Link Up program?***

U.S. Cellular strongly endorses the policy that consumers must be empowered to select services that best meet their needs. The best way to implement this policy is to continue the current Lifeline program requirement, which is that an eligible low-income consumer is entitled to service from a single provider, and it may receive a discount from any qualifying provider. In this fashion, providers will have an incentive to serve low-income markets, and low-income consumers will find the best service for them, just as any other customer is able to do.

**7.e. *One option would be to permit carriers who are not eligible telecommunications carriers (ETCs) to be eligible to participate in a low-income broadband program.***

**7.e.i. *What would be the impact of allowing non-ETCs to be eligible to participate?***

**7.e.ii. *Should ETCs currently participating in the existing low-income program automatically be eligible to participate in a low-income broadband program? Why or why not?***

**7.e.iii. *What would be the impact of having requirements for carriers participating in a low income broadband program that differ from the requirements imposed on existing ETCs? If commenters believe there should be different requirements, what should these different requirements be?***

**7.e.iv. *What would be the impact of requiring providers participating in a low-income broadband program to conduct outreach to inform potential eligible consumers about the program? Quantify the impact on carriers and identify any operational issues. If such outreach is required, should the outreach be the same as or different from the outreach requirements in the existing low-income program? Why or why not?***

In U.S. Cellular's view, the advantage of having only ETCs participate in a broadband Lifeline program is that, under such an approach, regulators would have the responsibility to pass on basic qualifications, and ETC participants would be obligated to provide legally binding assurances that the regulators' program rules would be followed. Under this approach, the likelih-

ood of unscrupulous or other undesirable operators being able to participate in the broadband Lifeline program would be minimized.

ETCs currently eligible to participate in the Lifeline and Link Up programs should be automatically eligible to participate in any new low-income broadband program, simply because they have shown their qualifications to take on the public trust associated with being an ETC, they are familiar with the program generally, and they are building broadband networks in rural areas that consumers participating in a new broadband Lifeline program will use.

The requirements for a carrier's participating in the low-income broadband program should be the same as for the existing Lifeline and Link Up programs. U.S. Cellular does not believe there is any reason to impose any new qualification requirements, beyond those currently in place for being an ETC.

U.S. Cellular currently engages in Lifeline outreach activities, and the methods it uses would also be effective in increasing consumer awareness of a broadband Lifeline program. U.S. Cellular advertises the availability of Lifeline discounts and it places information in its stores to inform low-income consumers about the Lifeline program.

The Commission could also require display advertisements in department stores selling broadband devices to make consumers aware of the availability of discounts on devices and services for qualifying customers, referring them to carriers for further information. In U.S. Cellular's view, such efforts would undoubtedly lead to collaborative actions by carriers and retail stores to inform consumers of discounts on both devices and broadband services.

**7.f. *How could a newly-established federal low-income broadband program work in concert with existing and/or future state low-income broadband programs? Could the cooperation between the states and the Commission regarding the existing state and federal low-income programs serve as a model for federal-state cooperation in the context of a federal low-income broadband program?***

U.S. Cellular believes that a newly-established broadband Lifeline program could be operated effectively in concert with state programs, similar to cooperative arrangements that exist today in connection with the management of existing Lifeline and Link Up programs. It is U.S. Cellular's experience that current federal and state Lifeline programs work fairly well, and that the biggest issue is ensuring that eligible consumers are aware of program discounts.

**7.g. *If the Commission establishes a low-income broadband program, what implications would such a program have for existing Lifeline and Link Up programs? For instance, would creation of a new low-income broadband program have any impact on current enrollment levels in the existing Lifeline and Link Up programs?***

While it is difficult to tell, U.S. Cellular is aware of survey data indicating that rural consumers value mobile telecommunications services as much as, or more than, their broadband connections. The link provided by mobile services to family and friends, as well as the safety aspect of a mobile handheld device, is a must-have in today's world. Accordingly, U.S. Cellular does not believe that low-income consumers are going to give up their handsets in exchange for a broadband laptop or netbook. Generally, they are going to want to have both.

In U.S. Cellular's view, any consumer education efforts will likely increase enrollment in existing Lifeline and Link Up programs in areas where Lifeline enrollment is well below the level of eligible households.

**7.h. *If commenters believe that corresponding changes should be made to the existing Lifeline and Link Up programs, what would be an appropriate transition timeline and what implementation issues would need to be addressed and why?***

The existing Lifeline program should be updated to reflect the fact that many households do not use wireline telephony. In addition, in cases in which there are two working adults living in a household that is Lifeline-eligible, the Commission's rules should provide that discounted telephone service will be available to both adults. U.S. Cellular also urges the Commission to

grant the clarification that has been sought by Tracfone,<sup>43</sup> which would ensure that consumers in homeless shelters each have access to Lifeline service, as well as residents of tribal lands, who sometimes live in multi-family dwelling units.

**7.i. *How can the Commission protect against waste, fraud, and abuse in any low-income broadband program it establishes?***

**7.i.i. *Particularly, how can the Commission protect against waste, fraud, and abuse related to any hardware or devices used in the program?***

**7.i.ii. *How can the Commission ensure that consumers cannot obtain the same supported service from two different providers?***

While guarding against waste, fraud, and abuse in any low-income broadband program is an important concern and should be given careful consideration by the Commission as it develops broadband Lifeline and Link Up programs, U.S. Cellular believes that the Commission should avoid developing burdensome requirements that could risk undermining the effectiveness of the programs.

If the Commission were to adopt rules that weigh down low-income consumers in paperwork and subject them to restrictive and burdensome requirements, these consumers would likely become reluctant to participate in the programs. In addition, if carriers are faced with costly and burdensome reporting requirements, or are assigned the *de facto* role of policing the way in which consumers seek to participate in the low-income broadband programs, then carriers may lack a sufficient incentive to utilize the low-income broadband programs.

The current Lifeline and Link Up programs rely upon various certification, self-certification, and verification requirements<sup>44</sup> to protect against waste, fraud, and abuse, while at

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<sup>43</sup> See Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program “One-Per-Household” Rule As Applied to Group Living Facilities, WC Docket No. 03-109, Public Notice, DA 09-2257, 2009 WL 3393068 (rel. Oct. 21, 2009).

<sup>44</sup> See 47 C.F.R. §§ 54.410, 416.

the same time avoiding more burdensome requirements that could prove to be counter-productive. U.S. Cellular encourages the Commission to use these mechanisms as a model for low-income broadband programs.

### **III. CONCLUSION.**

There is wide agreement that the Commission's current universal service and intercarrier compensation rules and mechanisms need to be overhauled, and U.S. Cellular applauds the Commission for seeking comment on the role that both universal service and intercarrier compensation reform should play with regard to the National Broadband Plan.

In addressing universal service, the Commission should focus on several key issues. As U.S. Cellular has demonstrated in its Comments, funding for broadband should be portable among service providers, and should be provided on a targeted, disaggregated basis. The Commission should also devise means to fund multiple competing carriers by providing incentives for carriers to combine universal service funding with their own investment to extend broadband services in rural areas. In addition, the Commission should rely on existing rules regarding funding oversight and accountability, since there is no need for more burdensome requirements, and should develop a low-income broadband program that empowers consumers by making it possible for them to select broadband services that best meet their needs.

Finally, and importantly, the success of the National Broadband Plan will largely hinge on the Commission's adopting an effective transition from the current universal service high-cost funding mechanism to support the deployment of advanced broadband infrastructure and servic-

es, especially in rural America. U.S. Cellular urges the Commission to make the development of this transition a central focus of its universal service reform.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



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## **EXHIBIT A**

# Failure to Implement Portability Will Constrain Investment in New Technologies

