Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	

To: The Commission

COMMENTS OF T-MOBILE USA, INC.

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T-Mobile USA, Inc. ("T-Mobile") submits the following comments in response to the Commission's above-captioned Notice of Inquiry ("NOI") and Notice of Proposed Rulemaking ("NPRM") initiating the reform of the existing universal service fund ("USF") high-cost support program and redirecting it toward the support of broadband services.[1]

T-Mobile is a Competitive Eligible Telecommunications Carrier ("CETC") in several states. CETCs are a critical link in the delivery of universal services to underserved consumers. Reform of the current universal service system, as the National Broadband Plan ("NBP") contemplates, is necessary, but T-Mobile urges the Commission to reconsider certain reform measures proposed in the NPRM, such as the discriminatory proposal to phase out universal service support only for CETCs, that would be contrary to the basic universal service framework established in the Telecommunications Act of 1996.[2]

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[1] *Connect America Fund*, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) ("NOI" or "NPRM," as appropriate).

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*

I. INTRODUCTION AND SUMMARY

The NBP describes broadband as "*the* great infrastructure challenge of the early 21st century."[3] The NBP recognizes that, in order to meet that challenge, current universal service mechanisms, which were already in need of repair, must be reformed "to support deployment of broadband and voice in high-cost areas."[4] This means that it will now be necessary to "shift from supporting legacy telephone networks to directly supporting high-capacity broadband networks."[5] T-Mobile agrees that in implementing this shift, the Commission should focus first on unserved areas that require lower amounts of subsidy to maximize the number of households that can be served quickly and over time address those areas that are the hardest to serve,[6] while maintaining support for the competitive voice services that consumers have chosen.

Although there will be unavoidable "distributional consequences for existing recipients" from the massive shift envisioned in the NBP,[7] the Commission should take steps to minimize any negative effects that might result from an unreasonably abrupt shift from the existing structure now providing support for the provisioning of universal service to current customers. Some of the proposals in the NPRM "could have transitional impacts" that will harm some "'providers' ability to continue to provide voice service and … future broadband network deployment strategies.'"[8] Because "[s]udden changes in USF and ICC could have unintended

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[3] Federal Communications Commission, *Connecting America: The National Broadband Plan* at 3 (rel. Mar. 16, 2010) ("NBP") (emphasis in original).

[4] *Id.* at 9.

[5] *Id.* at 140.

[6] *Id.* at 141.

[7] *Id.* at 147.

[8] NPRM, 25 FCC Rcd at 6678, ¶ 53 (quoting NBP at 147).

consequences that slow progress,"[9] the Commission should be careful not to remove support flows before new broadband funds are operational. To ensure that "the market, and not … regulators, determines who shall compete for and deliver services to customers,"[10] the Commission also should reject policies that prematurely terminate support to CETCs serving increasing numbers of customers, while continuing support flows to incumbent local exchange carriers ("ILECs") regardless of the continuing decline in their customer numbers.

Commission reform of the universal service high-cost support program to advance the goals of the NBP should follow certain fundamental principles. First, universal service reform should be competitively neutral and treat all market participants equally. Competitive neutrality is a statutory requirement.[11] Therefore, the Commission is required to provide equal transition periods for CETCs and ILECs as it makes changes to the structure of the support mechanisms. Second, the high-cost program should ensure that consumers can choose the services most useful to them. Consumers show a clear preference for mobile services, and this should be reflected in the revised universal service high-cost mechanisms. Third, any changes in current support levels should be accomplished through a properly measured transition that allows entities time to revise business plans and protects consumers against loss of service, while maintaining a committed schedule leading to comprehensive reform. Fourth, the Commission should not transition support out of existing mechanisms until the new Connect America Fund ("CAF") and Mobility Fund ("MF") are in place. Because the Commission does not propose to assess how much

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[9] NBP at 141.

[10] *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) ("*Alenco*").

[11] *Id.* at 616, 621-22.

existing support is necessary to preserve existing service, it would be premature to withdraw existing support until new "predictable and sufficient" mechanisms are in place.

Finally, any reform measures must adhere to all of the requirements of Section 254 of the Communications Act of 1934, as amended ("the Act").[12] Of particular significance to the interests of wireless carriers' rural customers is Section 254(b)(3) of the Act. This provision requires that consumers in rural and high-cost areas be provided access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[13] Reform measures must also adhere to Section 254(b)(4), which requires that all telecommunications service providers make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.[14]

DISCUSSION

II. EXISTING HIGH-COST SUPPORT MECHANISMS SHOULD BE TRANSITIONED TO BROADBAND IN A COMPETITIVELY NEUTRAL MANNER

Any plan to "refocus universal service funding" to "create a pathway to a more efficient and targeted mechanism for funding broadband,"[15] must be competitively and technologically neutral. The principle that the universal service program "must treat all market participants equally …. is made necessary not only by the economic realities of competitive markets but also

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[12] 47 U.S.C. § 254.

[13] *Id.* § 254(b)(3).

[14] *Id.* § 254(b)(4).

[15] NPRM, 25 FCC Rcd at 6677, ¶ 50.

by statute."[16] Thus, "universal service support mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another."[17] In addition, any reductions in existing support levels should be made through a reasonable and prudent transition, and only when the new CAF and MF are put in place and operating effectively and efficiently. The reasonable comparability mandate of Section 254(b)(3) also requires that rural consumers have competitive choices similar to those offered to urban consumers.

A. ILEC High-Cost Support Should Be Capped

Capping high-cost outlays to ILECs is "an essential first step toward repurposing the universal service fund,"[18] as well as returning to some semblance of competitive neutrality. The economic distortions caused by the current high-cost program can be lessened only by transitioning ILECs away from guaranteed subsidies and requiring them to compete equally with other service providers. Data recently provided by the Commission to the House Committee on Energy and Commerce demonstrates the ILECs' substantial dependence on high-cost subsidies. The two largest ILECs alone received more than $1.1 billion in high-cost support in 2009.[19]

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[16] *Alenco*, 201 F.3d at 616.

[17] *Federal-State Joint Board on Universal Service,* Report & Order, 12 FCC Rcd 8776, 8801-02 ¶ 47 (1997) ("*First USF Order*"), *aff'd sub nom. Texas Office of Pub. Util. Counsel v. FCC,* 183 F.3d 393 (5th Cir. 1999).

[18] NPRM, 25 FCC Rcd at 6677, ¶ 51.

[19] *See* Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of June 15, 2010 ("FCC Response"): Part 1, Top Ten Recipients of High-Cost Support (2009, 2008, 2007), Annual High-Cost Payments by Year-End Holding Company Structure: 2007-2009, *available at* http://energycommerce.house.gov/documents/20100708/Request1.pdf.

Many small ILECs receive substantial subsidies per line. Five study areas had more than $10,000 in per-line support in 2009.[20]

CETC support – which is received almost entirely by wireless carriers – has been capped since March 2008,[21] and, notwithstanding that ILEC high-cost support was not capped at the same time, competitive neutrality dictates that the Commission do so now.[22] Accordingly, the proposed ILEC cap should be imposed on a per-line basis in each study area, based on the per-line support received in the study area in the first quarter of 2008, consistent with the support freeze proposal of the Rural Task Force,[23] and as proposed more recently by the Alliance for Rural CMRS Carriers.[24]

In the last several years, most ILECs have experienced continuous and ongoing declines in total access lines without corresponding reductions in high-cost support, despite the fact they are serving fewer customers. In essence, ILECs are receiving significantly more high-cost support per access line. When a telephone company is guaranteed the same amount in high-cost

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[20] FCC Response: Part 3, Largest Per-Line Subsidies, by Study Area, Study Areas with the Highest Support per Line in 2009, *available at* http://energycommerce.house.gov/documents/20100708/Request3.pdf.

[21] *High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834 (2008), *aff'd Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009) ("*CETC Cap*").

[22] 47 U.S.C. § 254(b)(7) (permitting the Joint Board to recommend, and the Commission to adopt, additional universal service principles); *First USF Order*, 12 FCC Rcd at 8801 ¶ 47 (adopting the competitive neutrality principle). Because it has been validly adopted under Section 254(b)(7), the competitive neutrality principle applies to the Commission with the same force as the other Section 245(b) principles. *Alenco*, 201 F.3d at 621-22.

[23] *See Federal-State Joint Board on Universal Service,* Fourteenth Report and Order, 16 FCC Rcd 11244, 11294-96 (2001) (rejecting Rural Task Force's recommendation to freeze ILEC support on a per-line basis upon competitive entry).

[24] *See* NPRM, 25 FCC Rcd at 6678, ¶ 52 & n.117 (citing Alliance for Rural CMRS Carriers proposal).

funds whether it serves 50 customers or 150 customers, there is no incentive for that company to operate efficiently or to innovate. To avoid perpetuating these circumstances and to ensure that consumers living in rural areas have the same opportunity as urban consumers to receive innovative and high quality services, all ETCs must be held to the same efficiency standards. Imposing a per-line cap based on the per-line support received in the first quarter of 2008 would reduce ILEC support commensurate with consumer preferences, "so that the market, and not … regulators, determines who shall compete for and deliver services to customers."[25]

B. Rate-Of-Return Carriers Should Be Moved to Incentive Regulation

The NBP correctly describes rate-of-return regulation as a vestige of 1960s monopoly-era regulation that has no place in today's competitive environment.[26] It provides no incentive to invest efficiently and – perhaps most significantly – no incentive to innovate to deliver high-technology services in the most cost effective manner.[27] Shifting rate-of-return ILECs to price caps would spur efficiency and innovation by forcing them to reduce costs to retain higher earnings.[28]

If the Commission does not cap ILEC support on a per-line basis, it should cap Interstate Common Line Support ("ICLS") on a per-line basis as part of a conversion of all rate-of-return ILECs to price cap regulation, similar to the price cap conversions that have been undertaken on

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[25] *Alenco*, 201 F.3d at 616.

[26] NBP at 147.

[27] *Id.*

[28] The benefits of eliminating rate-of-return regulation were detailed in a petition for rulemaking that has been pending before the Commission for over half a decade. *See* Western Wireless Corporation, *Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822, CC Docket No. 96-45 (filed Oct. 30, 2003) (*available at* http://fjallfoss.fcc.gov/ecfs/comment/view?id=5510442629).

a voluntary basis.[29] Freezing ILEC ICLS on a per-line basis is necessary to maintain competitive neutrality, because CETCs receive support only on a per-line basis.

C. Interstate Access Support Should Be Phased Out in a Competitively Neutral Manner

T-Mobile agrees that the elimination of Interstate Access Support ("IAS") would be an affirmative step in the transformation of universal service support.[30] This transition, however, must occur in a competitively neutral manner, as required by statute.[31] Because CETCs' per-line IAS effectively has been reduced by the CETC cap, any phase-out of IAS should begin with the reduction of ILEC per-line IAS to the per-line level of IAS received by CETCs in the same state.[32] Once all ETCs are on an equal footing, IAS should be phased out in a prudent and competitively neutral manner. The phase-out should occur over a period of no less than five years. As the NBP cautions, there should be "[n]o flash cuts. New rules should be phased in over a reasonable time period" to "give service providers and investors time to adjust to a new regulatory regime."[33] Because both price cap ILECs and CETCs receiving IAS will need time to adjust to the elimination of IAS, the Commission should establish a competitively neutral transition applicable to all recipients.

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[29] *See* NPRM, 25 FCC Rcd at 6680, ¶ 56.

[30] *See id.* at 6680-81, ¶ 57.

[31] *See Alenco*, 201 F.3d at 616.

[32] In any state where per-line CETC IAS has not been reduced, ILEC and CETC per-line IAS will already be the same, requiring no further ILEC reduction prior to phasing out IAS for all ETCs in the state.

[33] NBP at 143.

D. CETC Support Should Be Reformed in a Competitively Neutral Manner, Once the CAF And MF Are Implemented

The stated rationale for phasing out CETC support is that support for multiple CETCs in a given service area and for multiple lines in family plans is "inefficient."[34] But it is consumer demand for wireless services (and not regulatory anomalies) that has led to the growth in CETC support. Thus, the market has disproven the "inefficiency" allegation. Now, with the CETC cap in place, CETCs are receiving less support, but are providing more services. Universal service support should be maintained for the service that consumers prefer – wireless service. High-cost programs are intended "to benefit the customer, not the carrier,"[35] and eliminating support to the service that customers demand most ignores this goal.[36] Even though multiple CETCs are receiving support in some geographic areas, the universal service fund is not subsidizing multiple networks. Instead, multiple CETCs are sharing a capped amount of support that, in total, is less in most study areas than the support received by the ILECs in the same geographic area.

Technological and competitive neutrality cannot be achieved if CETC support, but not ILEC support, is phased out in the near term. As the Commission acknowledges, one of the problems with the current regime is that eligibility for high-cost funding is based on company size or classification, rather than the cost of serving a given area.[37] Requiring wireless customers to subsidize ILEC services while denying support to wireless networks would be anti-competitive and result in "protection [of the ILECs] from competition, the very antithesis of the

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[34] *Id.* at 148.

[35] *Alenco*, 201 F.3d at 621.

[36] Family plans with multiple lines are also in high demand among consumers. ILECs currently receive support for providing multiple lines to the same household.

[37] NOI, 25 FCC Rcd at 6659, ¶ 3.

Act."[38] Furthermore, a phase-out of CETC support over the next five years would have a significant negative impact on wireless deployment and expansion in rural areas, depriving rural consumers of the reasonably comparable access guaranteed by Section 254(b)(3). A phase out of CETC support also would have the unintended consequence of compromising the ability of wireless carriers to compete for "the next great challenge and economic opportunity" of deploying "mobile broadband."[39] For this reason, existing CETC funding should not be phased out until the new efficient funding mechanisms (the CAF and MF) are fully implemented.

Finally, no funding obtained from the elimination of CETC support should be used for "potential revenue replacement resulting from intercarrier compensation reform."[40] Eliminating CETC support in the name of efficiency only then to assign part of the savings to the least efficient use of funding, namely the replacement of ILEC revenues "lost" to intercarrier compensation reductions, would be arbitrary and discriminatory. As the NBP points out, many ILEC intercarrier compensation charges are too high and should be reduced.[41] Moreover, there is no reason to believe that any of these revenue streams are necessary for the preservation of universal service. Guaranteeing an endless revenue stream to ILECs will further undermine their incentives to be efficient and innovate and erase any efficiencies that could otherwise result from the proposed reforms.

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[38] *Alenco*, 201 F.3d at 622.

[39] NBP at 9.

[40] *Id.* at 148.

[41] *Id.* at 142.

III. AN ECONOMIC MODEL COULD BE USEFUL IF PROPERLY STRUCTURED

"Whether the Commission should use a model to help determine universal service support levels in areas where there is no private sector business case to provide broadband and voice services"[42] cannot be answered in the abstract. If designed correctly, an economic model could be of some benefit in determining the appropriate level of universal service support in the broadband era. Any economic model, however, is going to be burdened with a number of inherent limitations, such as rapid ongoing technological change, that could render it obsolete as soon as it is developed. Given that these models are enormously complex and take a substantial amount of time to construct, troubleshoot and validate against real market data, they are of limited utility. Until parties are able to study the specific inputs and concrete outputs of a model, it is impossible to predict whether it would assist universal service goals. Accordingly, a better approach would be for the Commission to conduct pilot studies of support mechanisms over a period of time to evaluate their accuracy, reliability and utility.

Consistent with the NBP's proposals that eligibility for CAF support should be "company- and technology-agnostic," based on the "least-cost, most-efficient technology," consistent with the Commission's universal service principle of "competitive neutrality," T-Mobile agrees that any model must "estimate[] the costs of all technologies currently being deployed (or soon to be deployed) that are capable of providing voice service and broadband service that meets the national broadband availability target."[43] In particular, given that a "core goal" of the NBP is to ensure that the United States has "the fastest, most robust, and most

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[42] NOI, 25 FCC Rcd at 6658, ¶ 2. *See also id.* at 6664-65, ¶ 13.

[43] *Id.* at 6668, ¶¶ 24-25.

extensive mobile broadband networks, and the most innovative mobile broadband marketplace in the world,"[44] the model needs to reflect wireless network costs. This is also consistent with consumers' overwhelming preference for mobile services. In addition, the inclusion of wireless networks in any model will help control the size and burden of the fund, given that wireless service is often the least-cost, most-efficient technology in high-cost areas.[45]

The NOI acknowledges that the NBP model evaluates only *unserved* areas, and provides no insight into "how much support would be necessary to maintain broadband and voice services in areas currently receiving high-cost support."[46] This obvious shortcoming of the NBP model must be remedied before the model could be used in connection with the universal service high-cost support mechanism. Thus, to the extent that the Commission uses a model as part of a future broadband-focused support mechanism, that model should be capable of determining all areas where support is necessary – including areas only served today because of existing support flows.

The NBP model also evaluates the costs of *fixed*, but not mobile, wireless networks, yet the NBP acknowledges the significant importance of mobile broadband. To determine if the proposed Mobility Fund is sufficient to ensure that rural customers have reasonably comparable

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[44] Julius Genachowski, Chairman, FCC, Prepared Remarks at New America Foundation, *Mobile Broadband: A 21st Century Plan for U.S. Competitiveness, Innovation and Job Creation* at 2 (Feb. 24, 2010).

[45] In fact, under the NBP model's outputs, fixed wireless is the least-cost technology for about 90 percent of all unserved housing units. *See* NOI/NPRM, 25 FCC Rcd at 6745. That said, the Commission must ensure that consumers have access to *mobile* broadband. *See* Section II.D, *supra*.

[46] NOI, 25 FCC Rcd at 6671, ¶ 33.

access to mobile broadband, a model should determine the economic viability of providing mobile broadband -- including in areas already served today.

Because of the significant potential impact on future universal service support mechanisms, any economic model must be accurate and reliable and deliver predictable and verifiable results. The only way to ensure that a model works as expected is through disclosure of the model's inputs and outputs to all interested parties and use of it in a trial period through several varied scenarios. The Commission should facilitate review of the model by parties that are not modeling experts by releasing, in a readily reviewable fashion, tables of the proposed model inputs and sample model run outputs.

CONCLUSION

T-Mobile urges the Commission to ensure that any reform of the high-cost universal service system comports with the principles described in these comments.

Respectfully submitted,

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