

**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

**REPLY COMMENTS OF T-MOBILE USA, INC.**

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T-Mobile USA, Inc. (“T-Mobile”) submits its reply comments regarding 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.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Competitive eligible telecommunications carriers (“CETCs”) like T-Mobile and other competitive carriers and commenting parties support a number of the proposals in the NPRM and NOI aimed at stabilizing the USF program and making it more efficient while the Commission begins the transition to broadband funding. In particular, a wide range of responses to the NPRM acknowledges the statutory requirement that, because CETC funding has been capped,

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<sup>1</sup> *Connect America Fund*, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) (“NOI” or “NPRM,” as appropriate).

incumbent local exchange carrier (“ILEC”) high-cost funding must also be capped.<sup>2</sup> A diverse group of parties supports the Commission’s proposals to cap ILEC support on a per-line basis, convert rate-of-return carriers to incentive regulation and freeze their Interstate Common Line Support (“ICLS”) on a per-line basis, and phase out Interstate Access Support (“IAS”) in a competitively neutral manner.<sup>3</sup> Some ILECs, including AT&T, suggest that capping or phasing out ILEC high-cost support should be conditioned on increased flexibility in subscriber line charge (“SLC”) limits.<sup>4</sup> T-Mobile supports increased SLC flexibility so that ILECs can be paid more for their services by their own customers, rather than seeking subsidies from their competitors.

The rural ILECs’ (“RLECs”) uniform insistence on continued asymmetrical high-cost support is unreasonable. RLECs ask the Commission to eliminate high-cost support for CETCs while maintaining existing uncapped support for ILECs as well as giving them additional support for broadband deployment.<sup>5</sup> These ILEC requests to retain all existing revenue flows at all costs, increasingly funded by CETCs and their customers, should be rejected. To ensure that “the market, and not . . . regulators, determines who shall compete for and deliver services to customers,”<sup>6</sup> USF reform should shift funding out of the legacy mechanisms for both incumbent

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<sup>2</sup> See *Alenco Commc’ns, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) (“*Alenco*”) (principle that universal service program “must treat all market participants equally . . . is made necessary not only by the economic realities of competitive markets but also by statute”).

<sup>3</sup> See, e.g., Comcast Comments at 3-6; CTIA Comments at 13-19; Qwest Comments at 22-23; Time Warner Comments at 8-9; Sprint Comments at 11-14. The initial comments, submitted on July 12, 2010, will be cited in this abbreviated manner throughout.

<sup>4</sup> See, e.g., AT&T Comments at 21.

<sup>5</sup> CenturyLink Comments at 31-32, 35-42; ITTA Comments at 20-24, 27-28; US Telecom Comments at 14-19.

<sup>6</sup> *Alenco*, 201 F.3d at 616.

and competitive carriers into the proposed Connect America Fund (“CAF”) and Mobility Fund in a competitively and technologically neutral manner.

## **II. HIGH-COST REFORM SHOULD BE IMPLEMENTED IN A COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL MANNER**

### **A. ILEC Funding Should Be Capped**

As T-Mobile argued in its initial comments, because CETC support has already been capped to guard against uncontrolled fund growth, ILEC support must be capped as well.<sup>7</sup> Competitive carriers and other service providers and some large ILECs support the NPRM’s proposal to cap ILEC high-cost support at current levels, and many agree that the cap should be on a per-line basis.<sup>8</sup> Some even advocate phasing out legacy ILEC funding altogether.<sup>9</sup> T-Mobile supports these proposals.

A few ILECs argue that capping ILEC support should be conditioned on the flexibility to recover any lost revenues from end users or up-front Commission assurance of new broadband funding.<sup>10</sup> T-Mobile supports increased SLC flexibility, but does not support a delay in capping ILEC support until implementation of the CAF. Because CETC support has been capped since 2008, the statutory competitive neutrality requirement can be satisfied only if ILEC support is also capped immediately.<sup>11</sup>

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<sup>7</sup> T-Mobile Comments at 5-7.

<sup>8</sup> See, e.g., Comcast Comments at 3-6; CTIA Comments at 13-19; Qwest Comments at 22-23.

<sup>9</sup> CTIA Comments at 16; Sprint Comments at 11-12.

<sup>10</sup> AT&T Comments at 21-23; CenturyLink Comments at 31-32, 35, 39; US Telecom Comments at 10-12, 19; ITTA Comments at 2, 6.

<sup>11</sup> T-Mobile Comments at 6-7. See also *Alenco*, 201 F.3d at 616 (competitive neutrality is “made necessary . . . by statute”), 621-22.

RLECs argue that, in order to ensure that their services are reasonably comparable in price and quality to those available to urban consumers, as required by Section 254(b)(3) of the Communications Act (“the Act”), their support should not be capped.<sup>12</sup> T-Mobile disagrees. The RLECs cannot explain why Section 254(b)(3)’s rural/urban reasonable comparability goals should trump the statutory competitive neutrality requirement, now that CETC support, including rural CETC funding, has been capped.

**B. Rate-Of-Return Incumbent Carriers Should Be Converted to Incentive Regulation**

T-Mobile agrees with the many competitive carriers and service providers, as well as some ILECs, who argue that rate-of-return regulation is inefficient and must be replaced with price cap or other incentive regulation and that ICLS should be capped on a per-line basis.<sup>13</sup> RLECs argue that converting to price caps, which they say has not been conducive to rural broadband deployment, and freezing ICLS would jeopardize rural broadband.<sup>14</sup> Contrary to the RLECs’ view, the Commission found two decades ago and recently reiterated in the National Broadband Plan (“NBP”) that rate-of-return regulation is inherently inefficient.<sup>15</sup> To the extent that broadband deployment has been slower in price cap service areas relative to rate-of-return service areas, such delay illustrates only that the current “USF and [intercarrier compensation]

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<sup>12</sup> Joint Comments of NECA, *et al.*, at 34-36 (“Joint RLEC Comments”). See 47 U.S.C. § 254(b)(3).

<sup>13</sup> CTIA Comments at 16-18; Time Warner Comments at 8-9; Windstream Comments at 33-37.

<sup>14</sup> Joint RLEC Comments at 46-52.

<sup>15</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6790, ¶¶ 29-30 (1990) (“*LEC Price Cap Order*”), *aff’d*, *Nat’l Rural Telecom Ass’n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993). See also Federal Communications Commission, *Connecting America: The National Broadband Plan* at 147 (rel. Mar. 16, 2010) (“NBP”).

regulations were designed for . . . voice service over circuit-switched networks,” not “to support broadband directly.”<sup>16</sup> None of the RLECs argues that price cap carriers have not fully deployed standard voice telephone service throughout the rural portions of their service areas. The problem therefore is the absence of a high-cost mechanism focused on broadband, not price cap regulation.

Moreover, the few cases in which rate-of-return carriers have managed to deploy broadband in rural areas more successfully than price cap carriers only serve to demonstrate the advantage to rate-of-return carriers of the “cost-plus,” highly subsidized business model on which rate-of-return regulated service is based--a model that makes it easier for carriers to commit high-cost funds than to use their own finite earnings.<sup>17</sup> As one AT&T executive notes, AT&T’s footprint covers about 30 percent of the nation’s rural homes, but it receives only about four percent of all high-cost support, while a group of RLECs covering about 38 percent of the nation’s rural homes receives almost 60 percent of all high-cost support.<sup>18</sup>

Finally, there is no need to wait until the CAF or other “revenue replacement” is implemented before rate-of-return regulation is replaced by incentive regulation, as some ILECs demand.<sup>19</sup> Under the Commission’s proposal, transitioning from rate-of-return to price cap regulation will not flash cut eliminate high-cost funding but will simply freeze ICLS on a per-

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<sup>16</sup> NBP at 140.

<sup>17</sup> *LEC Price Cap Order*, 5 FCC Rcd at 6789, ¶ 22 (characterizing rate-of-return regulation as similar to “‘cost-plus’ contract”).

<sup>18</sup> Wireline, *Communications Daily*, July 29, 2010, at 8.

<sup>19</sup> AT&T Comments at 21; ITTA Comments at 27.

line basis.<sup>20</sup> As T-Mobile has pointed out, that freeze merely will put the transitioning rate-of-return carriers on a roughly level playing field with CETCs.<sup>21</sup>

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

T-Mobile agrees with competitive carriers who support the elimination of IAS in a competitively neutral manner.<sup>22</sup> ILECs argue that elimination of IAS should be conditioned on other adjustments, such as increased SLC flexibility.<sup>23</sup> T-Mobile would support increased SLC flexibility to enable ILECs to obtain more of their revenues from their own customers, rather than from their competitors. Any conditions that are placed on the phasing out of IAS must be competitively neutral.<sup>24</sup>

**D. CETC Support Should not Be Phased Out before ILEC Support or prior to Implementation of the CAF and Mobility Fund**

Wireless carriers and others agree that CETC high-cost support should be phased out only in conjunction with the elimination of ILEC support and not before the CAF and Mobility Fund are up and running.<sup>25</sup> RLECs, on the other hand, argue for the elimination of CETC support while ILEC funding is maintained.<sup>26</sup> If this were to happen, CETCs, which already contribute disproportionately to ILEC high-cost support, would bear an even greater universal

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<sup>20</sup> NPRM, 25 FCC Rcd at 6679-80, ¶¶ 55-56.

<sup>21</sup> T-Mobile Comments at 8.

<sup>22</sup> CTIA Comments at 19; Sprint Comments at 13-14.

<sup>23</sup> *See, e.g.*, AT&T Comments at 22-23.

<sup>24</sup> *See* T-Mobile Comments at 8.

<sup>25</sup> CTIA Comments at 2, 5-12; GCI Comments at 3, 21-25; Sprint Comments at 14.

<sup>26</sup> CenturyLink Comments at 31-32, 35-42; ITTA Comments at 20-24, 27-28; US Telecom Comments at 14-19.

service funding burden, as ILEC access lines and revenues--and consequently ILEC contributions to the USF--continue to decline, while CETCs would lose all of the high-cost support that they receive now.<sup>27</sup>

None of the RLEC arguments for elimination of CETC support withstands analysis:<sup>28</sup> First, because CETC support has been capped, the prior growth of CETC support is irrelevant.<sup>29</sup> Competitive neutrality now requires capping of ILEC support. Second, ILEC assertions regarding their carrier of last resort (“COLR”) obligations do not justify the elimination of wireless CETC support.<sup>30</sup> The scope of state COLR obligations is undefined, and, in fact, those obligations vary by state. All ETCs, including wireless CETCs, have an obligation under Section 214(e) of the Act to respond to reasonable requests for service.<sup>31</sup> Moreover, Section 214(e)(4) of the Act authorizes state commissions to ensure that at least one ETC remains available to all customers. State-imposed ILEC COLR obligations are also typically limited by the ILEC’s line extension tariff, which mitigates economic and other burdens on the ILEC.<sup>32</sup> Most significantly, however, Section 254(f) of the Act prohibits states from implementing

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<sup>27</sup> CTIA Comments at 10-11, 15, 17-18.

<sup>28</sup> Joint RLEC Comments at 34-35 (elimination of CETC support does not require capping or phasing out RLEC support because CETCs do not bear COLR obligations); ITTA Comments at 21-22, 27-28; US Telecom Comments at 14-16, 18-19; CenturyLink Comments at 40-42.

<sup>29</sup> See ITTA Comments at 21; US Telecom Comments at 14-15.

<sup>30</sup> See Joint RLEC Comments at 34-35; CenturyLink Comments at 40.

<sup>31</sup> See CTIA Comments at 10; 47 C.F.R. § 54.202(a) (requiring any common carrier in its ETC application to “[c]ommit to provide service throughout its proposed designated service area to all customers making a reasonable request for service”).

<sup>32</sup> See Letter from David A. LaFuria, Counsel for the Alliance of Rural CMRS Carriers, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 8 (Apr. 28, 2010).

universal service policies that burden federal universal service support mechanisms.<sup>33</sup> To the extent that states wish to impose COLR obligations on ETCs that exceed federal standards, they must fund them with state support.<sup>34</sup> Accordingly, state COLR policies cannot legally justify an unlawful, anticompetitive, and discriminatory allocation of high-cost support between ILECs and CETCs.<sup>35</sup>

Third, CETCs are prohibited from “creamskimming” low-cost portions of RLEC service areas by the Commission’s public interest requirements governing ETC applications for rural service areas, as well as by its disaggregation and service area redefinition procedures.<sup>36</sup> An ETC applicant for only a portion of an RLEC’s service area must also request that the RLEC’s service area be redefined to conform to the ETC’s requested service area and must demonstrate that its intended service area is not disproportionately high density and thus lower cost than the RLEC’s overall service area.<sup>37</sup> The Commission noted that RLECs’ ability to disaggregate their high-cost support among different portions of their service areas also reduces creamskiimming incentives by reducing per-line support in the higher-density, lower cost portions.<sup>38</sup>

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<sup>33</sup> 47 U.S.C. § 254(f).

<sup>34</sup> *Id.*

<sup>35</sup> *Alenco*, 201 F.3d at 616 (principle that universal service program “must treat all market participants equally . . . is made necessary not only by the economic realities of competitive markets but also by statute”).

<sup>36</sup> *See Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, 6392-95, 6403-04, ¶¶ 48-53, 73-75 (2005) (setting forth “creamskiimming” analysis to be applied to ETC designation and service area redefinition applications and discussing impact of disaggregated support on creamskiimming opportunities).

<sup>37</sup> *Id.* at 6392-95, 6403-04, ¶¶ 48-53, 73-75.

<sup>38</sup> *Id.* at 6393-94, ¶ 51.

Finally, that wireless CETCs never collected access charges is irrelevant to their statutory right to portable, “competitively-neutral funding.”<sup>39</sup> Once implicit support in access charges is made explicit in the form of high-cost support, it must be distributed in a neutral manner, irrespective of the RLECs’ characterization of that support as “access charge replacement” funding.<sup>40</sup> All high-cost universal service funds are intended “to benefit the customer, not the carrier.”<sup>41</sup> Whether a carrier may impose access charges or whether certain high-cost mechanisms replaced implicit support in access charges thus are irrelevant to the portability of high-cost support for the carrier’s customers. Unless the Commission eliminates the funds altogether or converts them to intercarrier charges, it cannot escape the statutory requirements under which they must operate.

Moreover, under the statutory competitive neutrality and portability requirements applicable to universal service mechanisms, any fund that is not available to all CETCs by definition cannot be treated as a universal service fund under Section 254, and the Commission

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<sup>39</sup> See *Alenco*, 201 F.3d at 616, 620-22 (equal treatment of “all market participants” and portability are statutory requirements).

<sup>40</sup> CenturyLink Comments at 41. In fact, the orders creating the high-cost mechanisms that replaced implicit support in access charges required that the funding be portable. See, e.g., *Access Charge Reform*, 15 FCC Rcd 12962 13053, ¶¶ 209-10 (2000), *aff’d in part, rev’d in part and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5<sup>th</sup> Cir. 2001), *on remand*, 18 FCC Rcd 14976 (2003) (IAS is fully “portable among all eligible telecommunications carriers serving a supported customer, regardless of whether they are incumbents or competitors and regardless of the technology they use”); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613, 19678-79, ¶¶ 151-54 (2001) (subsequent history omitted) (ICLS portable). Similarly, the Commission first spelled out the portability of universal service support in *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8932-33, ¶¶ 286-89 (1997), *aff’d sub nom. Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999).

<sup>41</sup> *Alenco*, 201 F.3d at 621.

has no authority other than Section 254(d) to require carriers to contribute to these mechanisms. Thus, neither wireless carriers nor any other category of service provider could be required to contribute to a fund that excluded wireless CETCs from its benefits. Finally, as AT&T points out, there is no assurance that the elimination of CETC support prior to the implementation of the CAF and Mobility Fund would comport with Section 254(b) goals.<sup>42</sup>

### **III. THE COST MODEL MUST USE FORWARD-LOOKING INCREMENTAL COSTS AND ACCOMMODATE ALL BROADBAND TECHNOLOGIES**

The Commission should view with caution ILEC suggestions that “actual” broadband costs are higher than the proposed NBP cost model predicts.<sup>43</sup> If accepted, such arguments could increase actual broadband costs by increasing the costs predicted by the model and thus the costs assumed in setting support levels. Wireless and other carriers endorse the use of forward-looking, incremental economic costs of the least-cost technology, as opposed to embedded wireline costs, which could lead to subsidization of inefficient carriers.<sup>44</sup> They agree that, to avoid the inherent inefficiencies of rate-of-return regulation discussed in Part II.B above, and to move carriers to incentive regulation, RLEC arguments against a forward-looking cost model should be rejected.<sup>45</sup> Wireless carriers also agree that the model should accommodate both fixed

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<sup>42</sup> AT&T Comments at 23.

<sup>43</sup> CenturyLink Comments at 46-52; Joint RLEC Comments at 13, 52-59. *See also* AT&T Comments at 16 (model incorrectly omits the cost of wireless spectrum).

<sup>44</sup> CTIA Comments at 20-22; Qwest Comments at 14-16; Sprint Comments at 3-4. *See also* Ohio PUC Comments at 10-11, 15-18.

<sup>45</sup> *See, e.g.*, Joint RLEC Comments at App. A, The FCC’s Broadband Assessment Model, Rural Association Staff Analysis, at 10-11. The Joint RLEC “Staff Analysis” criticizes the NBP cost model’s use of a forward-looking cost methodology on the grounds that it does not take into  
(continued on next page)

and mobile wireless technologies, and the model should calculate fixed and mobile costs separately.<sup>46</sup>

There is widespread agreement, however, that the model cannot be evaluated, let alone adopted, unless and until it is made available to parties who can vary inputs and test key methodologies.<sup>47</sup> Making any judgment now would be premature.

Some commenters argue that the development of a reliable, accurate model will be so difficult that the Commission should not try to use a model and instead should distribute support using reverse auctions.<sup>48</sup> If the Commission ultimately decides to use reverse auctions to distribute support, either with or without the assistance of a cost model, T-Mobile would support a reverse auction methodology along the lines of a “winner-takes-more” approach, as proposed by CTIA and Sprint.<sup>49</sup> Under these proposals, the lowest bid would win the most high-cost support, but other bidders meeting designated criteria also could be eligible for a lesser amount of support, thereby both reinforcing incentives to submit a low bid and preventing the monopolization of the market in the winning bidder’s service area by ensuring the presence of competition.<sup>50</sup>

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account the variable local conditions found in rural areas, but it does not explain why a forward-looking approach could not be tailored to local conditions in a given service area.

<sup>46</sup> US Cellular Comments at 21; RICA Comments at 21-22.

<sup>47</sup> AT&T Comments at 14; CenturyLink Comments at 44-45; Comcast Comments at 11-12; ITTA Comments at 9; Pennsylvania PUC Comments at 18-19; Qwest Comments at 12-13.

<sup>48</sup> Verizon Comments at 26-30; MACRUC States Comments at 5, 8-9; NCTA Comments at 20.

<sup>49</sup> *See* CTIA Comments at 28-30; Sprint Comments at 10-11.

<sup>50</sup> *See* Sprint Comments at 10-11.

#### IV. CONCLUSION

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

Respectfully submitted,

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