Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board On Universal Service	))	CC Docket No. 96-45
	)	
Smith Bagley, Inc.	)	
	)	
Request for Review of Decision by Universal Service Administrator	))	

REPLY COMMENTS OF
SMITH BAGLEY, INC.

Smith Bagley, Inc. ("SBI"), by its undersigned counsel and pursuant to §§ 54.721 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.721 and 54.722, hereby files its reply to comments filed in response to SBI's Request for Review concerning certain aspects of the implementation of the *Interim Cap Order*.[1]

I. NO PARTY HAS OPPOSED SBI'S REQUEST FOR UNCAPPED SUPPORT IN COVERED LOCATIONS

In its Request for Review, SBI requested that the Commission order the Universal Service Administrative Company ("USAC") to follow the clear directive set forth in the *Interim Cap Order* to provide uncapped high-cost support to carriers serving Covered Locations. SBI noted that the *Interim Cap Order*, and the follow-on *Covered Location Waiver Order*, state explicitly that carriers serving Covered Locations are to receive support pursuant to Section 54.307 of the Commission's rules, which mandates that Competitive Eligible

[1] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd. 8834, 8850 (para. 38) (2008) ("*Interim Cap Order*"), *aff'd, Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

Telecommunications Carriers ("CETCs") "***will receive the full amount of universal service support that the incumbent LEC would have received for that customer***."

Neither USAC nor any other stakeholder opposed SBI's request that support in covered locations be fully uncapped. Given that the language of the *Interim Cap Order* plainly requires support in such areas to be uncapped completely, and given the lack of opposition, SBI requests that the Commission grant its Request for Review and direct USAC to make the necessary adjustments as soon as administratively possible.

II. QWEST AND CENTURYLINK FAIL TO OVERCOME THE EXPLICIT REQUIREMENT THAT INTERSTATE ACCESS SUPPORT BE REDUCED TO REFLECT INCUMBENT LINE COUNT LOSSES

Along with its Request for Review, SBI included a request for a declaratory ruling that the Interstate Access Support ("IAS") paid to price cap incumbent local exchange carriers ("ILECs") must be reduced to reflect the line losses experienced each year by price cap ILECs as set forth in the *Interim Cap Order*. SBI pointed out that the *Interim Cap Order* requires USAC to ensure that the amount of capped IAS available to ILECs is "indexed annually ***for line growth or loss*** by incumbent price cap LECs." (emphasis added)[2] This plain language requires USAC to adjust IAS to ILECs upwards or downwards at the same rate of growth or loss in ILEC line counts.

Despite their attempts to obfuscate the plain language of the *Interim Cap Order*, the comments of Qwest Communications International, Inc. ("Qwest") and its soon-to-be acquirer, CenturyLink, do not provide any authority for or persuasive reasons to interpret the language in a manner different from SBI. For example, Qwest is simply wrong in stating that "[t]he annual indexing referenced in the second sentence is the process that USAC already uses to calculate

[2] *Id.* at 8849 (para. 35).

IAS, expressly applied to the ILEC pool."[3] If that were the case, then it would not have been necessary for the Commission to engage in any discussion of indexing in setting forth the mechanism for capping IAS for ILECs. Indeed, the Commission made specific mention of indexing ILEC support to reflect changes in line counts, and then went on to state: "***Subject to these constraints***, we direct USAC to calculate and distribute IAS for each pool to eligible carriers consistent with the existing IAS rules."[4] Clearly, therefore, the Commission intended for indexing for line count gains and losses to be something separate and apart from the ordinary and existing operation of the IAS rules.

Qwest claims, without citing authority, that "the whole point of splitting the IAS was to prevent ***any*** reduction in IAS to ILECs."[5] That claim is unsupported in the record and demonstrably incorrect. The FCC split IAS into two pools in order to protect price cap ILECs from losing support as a result of ***continued growth in competitive ETC lines***.[6] The FCC's stated rationale in paragraph 35 for splitting price cap ILECs and CETCs into two pools was based in large part on a letter from US Telecom, which advocated:

> To account for line losses or line gains, USAC should be directed to adjust the total amount of IAS available to price cap ILECs annually by the percentage loss or gain in lines among all price cap ILECs in the previous year as reflected in the lines reported by those carriers to USAC.[7]

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[3] Qwest Comments at p. 2.
[4] *Interim Cap Order* at ¶ 35 (emphasis added).
[5] Qwest Comments at p. 3.
[6] *Interim Cap Order* at ¶ 35 ("Even with the total amount of support provided to competitive ETCs being capped, continued growth in competitive ETC lines would have the effect of reducing the amount of interstate access support (IAS) received by incumbent LECs, due to the operation of the formula for calculating IAS. To prevent the implementation of the interim cap on competitive ETC support from having this unintended consequence on incumbent LEC support, we find it necessary to adjust the calculation of IAS for both incumbent LECs and competitive ETCs." (footnote omitted).
[7] Letter from David B. Cohen, Vice-President, Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 05-337, CC Docket 96-45 (filed Nov. 21, 2007).

There is absolutely nothing in the record supporting Qwest's assertion that IAS for ILECs should continue at some specified level even when ILEC line counts are dropping rapidly. By that logic, price cap ILECs would continue to receive the same level of IAS even if they each had only one customer left. Nothing in the *Interim Cap Order* contemplates such a result.

Instead, the Commission sensibly elected to tie ILECs' IAS to their success in the marketplace, just as CETCs receive greater or lesser amounts of IAS depending on whether their line counts increase or decrease. Whatever the logic there was in acting to protect ILEC support from being affected by CETC growth, the FCC reasonably expected ILEC support to decline as a result of ILEC line loss.

CenturyLink is plainly mistaken in arguing that adjusting IAS to ILECs downwards with their line losses would somehow violate the $650 million targeted IAS cap.[8] As CenturyLink concedes, the $650 million cap is only a target. Moreover, a cap sets forth a level that cannot be exceeded; support may fall below the cap. CenturyLink provides no support for its statement that IAS must total $650 million. Indeed, we cannot identify any year in which the total support has equaled $650 million. Prior to the imposition of the CETC cap, the nationwide IAS total frequently exceeded $650 million, and in each of the two years since the cap's implementation, the nationwide total has been well below that amount. The $650 million cap can coexist just fine with the indexing requirement in the *Interim Cap Order*.

III. CONCLUSION

SBI requests that the Commission grant its uncontested Request for Review and direct USAC to provide Uncapped Support on SBI's lines in Covered Locations, and make all necessary prior period adjustments to restore the support to the same level of per-line support

[8] CenturyLink Comments at p. 2.

received by the ILECs in those areas. In addition, Qwest and CenturyLink provide no persuasive reasons to conclude that IAS, under the separate cap applicable to ILECs, should not be reduced in direct proportion to the line losses experienced each year by price cap ILECs. With roughly 30% of Americans having already cut the cord, and with access line loss accelerating, there is no public policy reason to "make whole" declining technologies, while short-changing advanced technologies that consumers are choosing, and in the case of rural areas, attempting to choose.

Respectfully submitted,

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