

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

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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
)	

**COMMENTS
OF SOUTHERNLINC WIRELESS AND THE
UNIVERSAL SERVICE FOR AMERICA COALITION**

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless and the Universal Service for America Coalition¹ (jointly, “Commenters”), by their attorneys, hereby submit these comments in the above-captioned proceeding.² The Commenters respectfully urge the Commission not to amend Section 54.709(b) of the Commission’s rules, 47 C.F.R. § 54.709(b), on a permanent – or interim – basis for the reasons set forth more fully in the attached Petition for Partial Reconsideration that the Commenters filed in this proceeding on September 29, 2010.

In its well-intentioned zeal to implement the *National Broadband Plan*, the Commission has put the cart before the horse and strayed from the requirements of the Communications Act of 1934, as amended (the “Act”). In so doing, the Commission risks undermining its efforts to implement sustainable universal service reform and inciting years of litigation that would slow broadband deployment by creating regulatory uncertainty. For this reason, the Commenters filed a Petition for Partial Reconsideration respectfully urging the Commission to both (1) reconsider

¹ The USA Coalition consists of three of the nation’s leading rural providers of wireless services and is dedicated to advancing regulatory policies that will enable Americans to enjoy the full promise and potential of wireless communications, regardless of where they live and work. The members of the USA Coalition include Mobi PCS d/b/a Coral Wireless LLC, SouthernLINC Wireless, and Thumb Cellular LLC.

² *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010) (“*Corr Wireless Order*”).

the portion of the *Corr Wireless Order* that raises revenue for unspecified uses at an unspecified time and (2) establish a firm legal foundation for universal service reform rather than rushing ahead merely to meet arbitrary and non-binding deadlines set forth in the *National Broadband Plan*. For the same reasons the Commission should grant the Petition for Partial Reconsideration, the Commission should not amend Section 54.709(b) of the Commission's rules, 47 C.F.R. § 54.709(b).

Prior to the *Corr Wireless Order*, the Commission's rules regarding calculation of the contribution factor and the requirement that USAC use all funds within the following quarter served the critical function of ensuring that the universal service fund is consistent with the requirements of the Act and the Origination and Taxing Clauses of the United States Constitution. Specifically, these rules ensured that the mandatory contribution requirement is a fee, rather than a measure to raise revenues or a tax, by (1) explicitly enumerating the expenses for which the contributions are used, (2) ensuring that contributions are no greater than necessary to fund those expenses,³ and (3) requiring that any excess contributions be used to offset expenses in the following quarter.⁴ These rules ensure that the universal service contribution and disbursement mechanisms function as a "pass-through" system, whereby contributions are

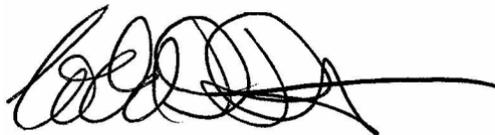
³ See 47 C.F.R. § 54.709(a)(2) (providing that "the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly *expenses* of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of projected contributions. The Commission shall approve the Administrator's quarterly projected costs of the universal service support mechanisms, taking into account demand for support and administrative expenses. The total subject revenues shall be compiled by the Administrator based on information contained in the Telecommunications Reporting Worksheets described in §54.711(a).") (emphasis added).

⁴ 47 C.F.R. § 54.709(b) (providing in relevant part that "[i]f the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter. The contribution factors for the following quarter will take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter.").

expressly tied to expenses of particular programs, and any excess funds collected on an incidental basis are used to reduce the next quarter's contributions rather than "held in reserve" for use at some unspecified future time. In light of the important role that Section 54.709 serves, the Commission should not amend Section 54.709(b) of the Commission's rules, 47 C.F.R. § 54.709(b), on a permanent -- or even interim -- basis.

Rather than continuing to rush headlong down an uncertain path, the Commission first should focus on determining the jurisdictional theory upon which it will base comprehensive universal service reform and adopt any reclassification measures it deems necessary. After the Commission has settled the significant questions regarding the scope of its statutory authority, the agency should develop reform proposals that are fully consistent with the requirements of the Act as it stands *today* (rather than as it ideally should be or as Congress indicates it might be at some point in the future) and, subsequently, provide the public with notice and opportunity to comment on these proposals. Finally, the Commission should determine the appropriate transition measures, which can only be accomplished after the Commission has determined the replacement distribution and contribution mechanisms.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal line extending to the right.

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