

**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
)	

To: The Federal Communications Commission

**COMMENTS OF
SOUTHERNLINC WIRELESS**

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SUMMARY

As a provider of telecommunications services to rural and high-cost areas throughout Alabama, Georgia, the panhandle of Florida and Southeast Mississippi, SouthernLINC Wireless appreciates the Federal Communications Commission's resolve to reform the distribution mechanism for universal service funds. SouthernLINC Wireless respectfully urges the Commission to focus on achieving the goals of the universal service provisions of the Communications Act of 1934, as amended ("the Act"), as efficiently as possible, which is the best way to ensure that the fund is no larger than necessary. In order to do so, the Commission must first define, in practical terms, the goals of the universal service support program. The Act requires that consumers in rural, insular and high-cost areas have access to 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." As such, the Commission must determine the fundamental characteristics of the services available in urban areas, including the rates for such services, and adopt measures designed to ensure that consumers in rural, insular and high-cost areas have access to reasonably comparable services at reasonably comparable rates.

The support provided by the universal service distribution methodology to achieve this goal must be explicit, sufficient, and technologically and competitively neutral. Any proposal that would segregate support funds based on technology or competitive status, including the recommendation of the Joint Board to create three separate funds, would violate the principles of competitive and technological neutrality and, thus, must be rejected. Similarly, each of the reverse auction proposals pending before the Commission must be rejected as

inconsistent with the requirements of the Act and the Commission's universal service rules and policies.

To the extent the Commission wishes to adopt a reverse auction, the "clock-proxy" combinatorial auction format could provide a fair playing field for all types of carriers while dramatically reducing the amount spent on universal service support. However, in order to meet the requirements of the Act, the reverse auction must have the features SouthernLINC Wireless proposes in these comments.

Under the proposal SouthernLINC Wireless sets forth in these comments, the Commission would determine which of the services that are typically available in urban areas should be supported, and then define two service packages based upon those determinations: one service package with carrier of last resort and open access obligations (the "CLR Package") and another without carrier of last resort or open access obligations (the "NCLR Package"). Both packages would require the winning bidder to provide a minimum set of features (*e.g.*, single party service, voice grade access to the PSTN, DTMF signaling, access to emergency and operator services, access to interexchange service, *etc.*) for a set price or less in order to receive the amount of support established by the winning bid for each package provided to a consumer. The packages would be defined without reference to the technology used to provide the package services or competitive status of the service provider (*i.e.*, incumbent or new entrant). Any type of provider (*i.e.*, wireline, wireless, ILEC, CLEC, cable company) would be able to bid upon either the CLR or NCLR package so long as the provider is capable of providing the services defined in the package and can meet the applicable service standards.

The Commission would also have to determine, based upon the characteristics of urban telecommunications and information service markets, how many of each type of package

would be auctioned in each auction area. Based upon the record regarding available telecommunications and information services in urban areas, SouthernLINC Wireless submits that the Commission would have to auction, at a minimum, one CLR package and two NCLR packages in each auction area.

The clock-proxy auctions would be conducted on a state-by-state basis using the smallest competitively-neutral geographic support areas that are administratively feasible (*e.g.*, zip code areas or state-defined county boundaries). The winning bidders would be required to set the retail price for each supported package at a level that is at or below the maximum price defined by the Commission. Moreover, universal service support would be provided only when a winning bidder sells the supported package to a customer for the full retail price, which would prevent winning bidders from giving service away at uneconomically low rates merely to obtain additional subsidies through inflated “customer acquisition.”

By providing support for service packages that the Commission has defined based upon services available in urban areas, the Commission will comply with both the letter and the spirit of the Act’s requirements and encourage competition in a technologically neutral, straightforward, transparent, and objectively measurable manner. This proposal is the only proposal before the Commission that is both (1) consistent with the Act and the Commission’s USF regulations and policies, and (2) likely to result in the smallest fund necessary to achieve the goals of the Act. Moreover, the proposal would resolve many of the complex issues associated with other reform proposals currently pending before the Commission.

Until the Commission can correct the flaws in the current collection and distribution mechanisms for the universal service fund, expanding the use of high-cost funding to support broadband services would be unwise because it would only further complicate reform

efforts. The cost of adding broadband to the list of USF supported services would increase the burden on the universal service system dramatically when the Commission is trying to reduce that burden. Similarly, the Commission should not adopt additional requirements for eligible telecommunications carriers at this time.

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COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless

("SouthernLINC Wireless") hereby submits these comments in the above-captioned docket.¹

SouthernLINC Wireless operates a commercial digital 800 MHz ESMR system using Motorola's proprietary Integrated Digital Enhanced Network (iDEN) technology to provide dispatch, interconnected voice, Internet access, and data transmission services over mobile phone handsets. SouthernLINC Wireless is licensed by the Commission to provide cellular communications services in Alabama, Georgia, the panhandle of Florida and Southeast Mississippi, where it serves nearly 300,000 subscribers over 127,000 square miles.

SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless provider in Alabama and Georgia, servicing extensive rural territory along with major metropolitan areas and highway corridors, and as such is widely used by local and statewide governmental institutions, public utilities and emergency services.

¹ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. Jan. 29, 2008) (*Reverse Auction NPRM*); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. Jan. 29, 2008) (*Joint Board Comprehensive Reform NPRM*).

SouthernLINC Wireless is committed to offering high-quality telecommunications services to rural and underserved areas, and approximately half of the total handsets SouthernLINC Wireless supports are used by subscribers located outside of major metropolitan areas. SouthernLINC Wireless is also the wireless service provider to the state of Alabama and to many government agencies in Georgia. In fact, approximately 30% of the total handsets SouthernLINC Wireless serves are used by public employees, first responders or utility personnel,² which illustrates how important the services of SouthernLINC Wireless are to residents in those areas, particularly in times of crises. During the emergency conditions created by the fifteen named hurricanes and countless ice storms that have struck its service territory since SouthernLINC Wireless began operating in 1995, SouthernLINC Wireless was often the only available means of communications. In the aftermath of Hurricane Katrina, for example, SouthernLINC Wireless in many instances provided the only immediate means of communication in Mississippi and Alabama. As such, SouthernLINC Wireless is the type of competitive eligible telecommunications carrier (“ETC”) Congress intended the universal service fund to support and, therefore, has a vested interest in ensuring the fundamental fairness and long-term stability of the fund.

I. ALL REFORMS MUST BE CONSISTENT WITH THE REQUIREMENTS OF THE UNIVERSAL SERVICE PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

Any reform to the high-cost support mechanism created by the Act, whether interim or permanent, must be consistent with the Act. Reforms must also be consistent with the Commission’s current rules and policies unless the agency articulates a compelling reason for departing from those rules and policies. The 1996 Act “codified the historical commitment of

² The services provided to utility personnel facilitate the continued availability of power during emergencies.

the Commission and state regulators to promote universal service by ensuring that consumers in all regions of the nation have access to affordable, quality telecommunications services.”³ As such, a major objective of the universal service provisions of the Act is to ensure the existence of affordable access to telecommunications services for consumers living in areas where the costs of services would otherwise be prohibitively high.⁴ This objective must guide the Commission in reforming the universal service support distribution methodology.

The Act provides a set of universal service principles that must be balanced against one another to develop a coherent set of regulations:⁵

- 47 U.S.C. § 254(b)(1): Quality services should be available at just, reasonable, and affordable rates.
- 47 U.S.C. § 254(b)(2): Access to advanced telecommunications and information services should be provided in all regions of the nation.
- 47 U.S.C. § 254(b)(3): Consumers in all regions of the nation...should have access to 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.
- 47 U.S.C. § 254(b)(4): All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the universal service fund.
- 47 U.S.C. § 254(b)(5): There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.
- 47 U.S.C. § 254(b)(6): Access to advanced telecommunications services for schools, health care, and libraries: Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services.

³ *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19732, ¶ 2 (2005).

⁴ *Federal-State Joint Board on Universal Service*, NPRM & Order, 17 FCC Rcd 2999, 3001, ¶ 3 (2002).

⁵ 47 U.S.C. § 254(b).

The Act also empowers the Commission to adopt additional principles as it sees fit.⁶ The Commission has exercised this power to add the following principle:

COMPETITIVE – NEUTRALITY. 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.⁷

The Commission added this principle based upon its finding that competitive and technological neutrality in the distribution of universal service funds is consistent with congressional intent and necessary to promote “a pro-competitive, de-regulatory national policy framework.”⁸ The United States Court of Appeals for the Fifth Circuit similarly has held that competitive neutrality is an integral component of ensuring that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers.⁹

Any reform to the support distribution methodology must be consistent with all seven principles. The Commission has considerable “discretion to balance the principles against one another when they conflict, but it may not depart from them altogether to achieve some other goal.”¹⁰ Therefore, the Commission cannot adopt any proposal to limit growth of the fund that departs from one or more of the seven universal service principles.

⁶ 47 U.S.C. § 254(b)(7).

⁷ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 47 (1997)(*First Report & Order*).

⁸ *See, e.g., Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 at ¶ 23 (1996) (*Joint Explanatory Statement*) (cited in *First Report & Order*, 12 FCC Rcd at 8802, ¶ 48).

⁹ *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000).

¹⁰ *Qwest Commc’ns Int’l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005)(*Qwest II*) (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)(*Qwest I*)).

II. THE COMMISSION MUST DEFINE KEY STATUTORY TERMS AND ESTABLISH OBJECTIVE, MEASURABLE GOALS BEFORE ADOPTING LONG TERM REFORM

The Commission cannot adequately consider any reform proposal until it has adopted objective, measurable goals for universal service support that are consistent with the Act and the Commission's universal service policies. Specifically, the Commission will be able to determine the advantages or disadvantages of any of the currently pending reform proposals only after the agency has articulated the metrics for evaluating those proposals.

Unfortunately, the Commission has yet to adopt definitions for several of the key terms in the universal service provisions of the Act, including "reasonable comparability," "affordability," and "sufficiency."¹¹ Indeed, the United States Court of Appeals for the Tenth Circuit has twice invalidated the Commission's universal service orders because the agency failed to adequately consider the principles enumerated in the Act or key terms of statutory mandates.¹² These cases make clear that the Commission must better describe the objectives of the Universal Service Fund, along with how the achievement of those objectives will be determined, before it can adopt any reforms that will survive judicial review.¹³ Therefore, the Commission first must define various key terms in the Act before taking any further action. The agency must then adopt goals for universal support that are consistent with the Act and specific enough that success or failure in achieving the goals is transparent and objectively measurable.¹⁴

Only at this point, having articulated clear goals for the universal service program that can

¹¹ Found in 47 U.S.C. § 254(b)(3), 47 U.S.C. § 254(b)(1), and 47 U.S.C. § 254(b)(5) respectively.

¹² *Qwest II*, 398 F.3d at 1226; *Qwest I*, 258 F.3d at 1199-1200.

¹³ *Qwest II*, 398 F.3d at 1226; *Qwest I*, 258 F.3d at 1199-1200.

¹⁴ For example, the Commission could adopt, based upon study of telecommunications and information services in urban markets, a goal that 95% of the consumers in rural, insular and high cost areas have access to a well-defined bundle of services that offers, among other things, unlimited local and a specified minimum number of domestic long distance minutes at or below a specified monthly rate. The goal must be based directly upon the statutory standards and record evidence about services available in urban markets.

survive judicial review, may the Commission consider which of the proposed universal service reform proposals would most efficiently achieve the articulated goals, consistent with the requirements of the Act and the Commission’s rules and policies.

A. The Commission Must Ensure that Rural Consumers Have Access to Services that Are Reasonably Comparable To Those Provided in Urban Areas at Reasonably Comparable Rates

Section 254(b)(3) requires that rural consumers have access to 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.”¹⁵ Until recently, the Commission has defined “reasonably comparable” services narrowly – limiting it to the “core” services that include little beyond basic telephone service.¹⁶ This definition has been left largely untouched since it was adopted in 1997. The Commission has previously defined “reasonably comparable” rates as rural rates that are within two standard deviations above the national average urban rate.¹⁷ The Tenth Circuit, however, rejected this definition because of the Commission’s failure to adequately consider all of the principles enumerated in section 254(b).¹⁸ Thus, the Commission must define “reasonably comparability” based on the entirety of the language in section 254(b)(3), taking into account the nature and rates of services available to consumers in urban and rural areas.

The Commission then must determine the fundamental characteristics of telecommunications and information service markets in urban areas before it can determine

¹⁵ 47 U.S.C. § 254(b)(3)(emphasis added).

¹⁶ *First Report & Order*, 12 FCC Rcd at 8808, ¶ 60.

¹⁷ *See, e.g.*, *First Report & Order*, 12 FCC Rcd at 8994, ¶ 311; *Federal-State Joint Board on Universal Service*, Seventh Report and Order, 14 FCC Rcd 8078, 8113, ¶ 72 (1999)(*Seventh Report & Order*); *Federal-State Joint Board on Universal Service*, Ninth Report and Order, 14 FCC Rcd 20432, 20480, ¶ 90 (1999).

¹⁸ *Qwest II*, 398 F.3d at 1234.

whether rural consumers have access to 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.”¹⁹ In making this determination, the Commission should consider, at a minimum, (1) the extent of choice in service providers available to urban consumers, (2) the types of telecommunications and information services offered by service providers in urban areas, and (3) the rates charged for those services in urban areas.

Consumer choice among telecommunications and information service providers has become a hallmark of the urban telecommunications landscape. With respect to wireless services, 95.5% of the U.S. population has access to three or more wireless service providers.²⁰ More densely populated counties averaged 4.3 mobile competitors, while less densely populated counties have an average of only 3.6 mobile carriers.²¹ With respect to wireline services, there was at least one CLEC servicing customers in 82.3% of the nation’s zip codes in June 2007.²² These zip codes accounted for approximately 98% of U.S. households.²³ These statistics demonstrate that access to multiple service providers is a fundamental characteristic of today’s urban telecommunications markets, which the Commission must consider when determining whether rural consumers have access to services that are “reasonably comparable to those

¹⁹ 47 U.S.C. § 254(b)(3).

²⁰ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, Twelfth Report, FCC 08-28, ¶ 38 (rel. Feb. 4, 2008)(2008 CMRS Report).

²¹ *Id.*

²² The 17.7% of zip codes that do not have CLEC services available likely align closely with the rural communities that the Universal Service Fund is designed to support.

²³ Industry Analysis and technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2007*, Federal Communications Commission (rel. Mar. 8, 2008) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.pdf.

services provided in urban areas.” Specifically, the record demonstrates that consumers in urban areas have access to one carrier of last resort and, at the very least, two other carriers.

The ability of consumers to choose among a variety of telecommunications and information services is another distinguishing feature of urban markets. In urban areas, the vast majority of service providers offer telecommunications services bundled with common information services like voicemail and caller ID services, and many service providers offer plans that include free long distance and three way calling. The Commission should survey the urban markets in order to define a standard bundle of services, as well as the standard rates for those services, that are available to the majority of urban consumers.

The Commission also must consider the rates charged by telecommunications carriers in urban areas. Section 254(b) requires that the consumers living in rural, insular, and high-cost areas have access to telecommunications and information services at rates that are at or near levels found in urban areas. In its previous order, the Commission defined “reasonably comparable” rates in terms of this national urban rate benchmark – rates were presumed be “reasonably comparable” if they fell within two standard deviations of the national average urban rate contained in the Wireline Competition Bureau’s annual rate survey.²⁴ The Tenth Circuit invalidated this decision, finding that “by designating a comparability benchmark at the national urban average plus two standard deviations, the FCC has ensured that significant variance between rural and urban rates will continue unabated” despite Congress’s intention to the contrary.²⁵

²⁴ *Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22578, 22582, ¶¶ 30, 38 (2003) (Order on Remand), remanded, Qwest II, 398 F.3d 1222.*

²⁵ *Qwest II, 398 F.3d at 1236.*

Despite the Tenth Circuit’s ruling that using two standard deviations resulted in a variance between rural and urban rates that was unreasonably large, the Commission should not simply attempt to impose the average rate itself as the criterion for determining reasonable comparability of a given state’s rural rates. As BellSouth noted in its March 2006 Comments in this docket, even if one were to compare urban rates alone (holding aside the consideration of rural rates), approximately one-half of the nation’s urban rates are necessarily above the average rate, and approximately one-half are below the average rate (assuming the average rate is computed as a simple mean, without adjustment).²⁶ Setting rural rates based on this average rate thus makes little sense and is not statutorily mandated.²⁷ Rather, any statistically rational benchmark for “reasonable comparability” must reflect the underlying distribution of values, rather than simply using the mean or median.²⁸

The best method of overcoming this problem would be to use one standard deviation rather than two standard deviations.²⁹ Assuming urban rates are normally distributed, a little more than two-thirds of all rates will fall within one standard deviation (plus or minus) of the mean.³⁰ If the Commission caps rates for supported services in rural areas at one standard deviation above the mean of urban rates, it will ensure that prices in rural areas are no higher

²⁶ *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Comments of BellSouth, CC Docket No. 96-45, WC Docket No. 05-337, at 14 (filed Mar. 27, 2006)(“BellSouth Comments”)(noting that this is strictly true for the use of the median as the average, or true for the use of the mean with a symmetrical distribution.).

²⁷ The Act requires “reasonable comparability” and not any specific value. If Congress had intended to require absolute equivalency with urban rates, they could have done so. The failure to do so suggests that something less than equivalency is required by the requirement that rates be “reasonably comparable.”

²⁸ BellSouth Comments at 14.

²⁹
$$\sigma = \sqrt{\frac{1}{N} \left(\sum_{i=1}^N x_i^2 - N\bar{x}^2 \right)}.$$

³⁰ BellSouth Comments at 15.

than prices of urban carriers whose rates are in the 83rd percentile. A recent study by the FCC of the telecommunications market found that the average residential rate for local service in urban areas was \$25.27.³¹ The standard deviation among sample cities was \$4.78,³² which would amount to targeting rural rates at approximately \$5 per month more than the average rate charged in urban areas.³³ Both as a statistical analysis and as a practical matter, this should meet the requirement that rates be “reasonably comparable” between urban and rural areas.

B. Rural Consumers Must Have Access to Quality Services at Just, Reasonable and Affordable Rates

Section 254(b)(1) provides that “[q]uality services should be available at just, reasonable, and affordable rates.”³⁴ However, the Act does not define “affordable” and provides few clues as to how the Commission should interpret this provision. In *Qwest II*, the Tenth Circuit rejected the Commission’s most recent definition of “reasonable comparability,” in part because the Commission failed to adequately discuss how the principle of “reasonable comparability” interacted with the principle of “affordability.”³⁵ The Commission must rectify this shortcoming prior to adopting a long term plan to reform the Universal Service Fund.

In *Qwest II*, the Tenth Circuit stated that the Commission can make one principle subsidiary to another, as long as it considers all of the principles. The Commission has found that “section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income,

³¹ Universal Service Monitoring Report, CC Docket No. 98-202, Table 7.6 (2007).

³² *Id.*

³³ Based on a standard deviation of \$4.78 reported in Universal Service Monitoring Report, CC Docket No. 98-202, Table 7.6 (2007).

³⁴ 47 U.S.C. § 254(b)(1) (emphasis added).

³⁵ *Qwest II*, 398 F.3d at 1234.

should have access to the network at reasonably comparable rates.”³⁶ When rates in rural and urban areas are “reasonably comparable,” they are more likely to be affordable for all consumers.³⁷ As such, the Commission need not attempt to engage in the costly and complicated task of attempting to set rates in geographic areas based on income or other methods of determining affordability – a task likely to result in an inefficient outcome regardless of the diligence with which it is pursued. Rather, the Commission should simply find rates in high-cost, rural and insular areas are deemed “affordable” to the extent they are “reasonably comparable” to rates for similar services in urban areas.

Furthermore, the Commission can choose (and has chosen) to address the issue of “affordability” in another way – through the Lifeline and Link-Up programs. Indeed, the Commission created the Lifeline and Link-up programs for low-income consumers who might find local service rates unaffordable no matter where they live, having previously determined that it was better to address the affordability issues unique to low-income consumers through programs specifically designed for this purpose.³⁸ *Qwest II* does not undermine that conclusion in any way.

³⁶ *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Comments of NASUCA, WC Docket No. 05-337, CC Docket No. 96-45, at 32 (filed Mar. 27, 2006)(citing *Federal State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice Of Proposed Rulemaking, 20 FCC Rcd 19731, 19736-37, ¶ 10 (2005).

³⁷ *Id.* at 32-33.

³⁸ *Id.*; see also *Seventh Report & Order*, 14 FCC Rcd at 8096-97, ¶ 39; *First Report & Order*, 12 FCC Rcd at 8844-45, ¶ 124.

C. Support Must Be Specific, Predictable and Sufficient To Achieve the Goals of Universal Service

Section 254(e) requires that universal service support be “explicit and sufficient” to achieve the goal of providing universal service throughout the country.³⁹ In *Qwest II*, the Tenth Circuit overturned the FCC’s *Order on Remand* on the grounds that the Commission had defined “sufficient” funding only with respect to “reasonable comparability” and not with respect to the other six universal service principles defined in statute and regulation.⁴⁰ Before establishing its goals for the universal service fund or adopting a new plan to achieve those goals, the Commission must establish a definition of “sufficient” support capable of surviving judicial review.

SouthernLINC Wireless believes that the Commission should still afford the greatest weight to the principle of “reasonable comparability” enumerated in § 254(b)(3) even after the agency considers the principle of “sufficiency” in light of the other principles of universal service. Section 254(b)(3) is the only principle of the seven that is targeted at the preservation and advancement of universal service in high-cost areas and, therefore, should carry the most weight.⁴¹ The remaining principles should carry comparatively lesser weight because they lack as strong a nexus to ensuring access in high-cost areas, and they do not provide additional clarity as to what is required for support to be “sufficient.”⁴² The Commission can comply with the Tenth Circuit’s decision in *Qwest II* by providing a reasoned explanation for

³⁹ 47 U.S.C. § 254(e).

⁴⁰ *Qwest II*, 398 F.3d at 1233-34.

⁴¹ BellSouth Comments at 40.

⁴² *Id.* For instance, § 254(b)(1) requires that service be available “at just, reasonable, and affordable rates.” However, none of these terms are defined, and as discussed above, the existence of rates in high cost areas that are “reasonably comparable” to rates available in urban markets is a strong indicator that services in high-cost areas are “affordable” within the meaning of § 254(b)(1).

why the principle of “reasonable comparability” is weighted more heavily than others in defining sufficiency.⁴³

III. USF SUPPORT COLLECTED FROM ALL SERVICE PROVIDERS MUST BE DISTRIBUTED USING A SINGLE FUND THAT IS COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL

The Commission asks for comment on the Joint Board’s recommendation that “high-cost universal service support in the future be delivered through three distinct “funds,” each of which with separate distribution mechanisms and separate funding allocations.⁴⁴ This “Three Fund Proposal,” like any multiple fund proposal, is inherently inconsistent with the requirements of the Act and the Commission’s rules and, thus, must be rejected.

A. Multiple Funds for High-Cost Support Would Not Be Technologically or Competitively Neutral, and Might Result in Insufficient Support

Any proposal that would segregate support funds based on technology or competitive status, including the Three Fund Proposal, would violate the principles of competitive and technological neutrality. Specifically, by identifying and subsidizing technology at different rates and pursuant to different rules, the Commission would create incentives for providers to “fit” into the category that receives the most subsidies, which in turn generates disincentives for technological convergence by providers in order to avoid controversies regarding eligibility. Moreover, contributions from certain types of service providers eligible to receive support from one fund would be used to support other funds, which would distort market forces and interfere with customer migration to more efficient or innovative services and technologies. The Three Fund Proposal would also make it much more difficult to ensure that

⁴³ BellSouth Comments at 40-41.

⁴⁴ *High-Cost Universal Service Support; Federal State Joint Board on Universal Service, Recommended Decision*, 22 FCC Rcd 20477, 20480-83, ¶ 11-23 (rel. Nov. 20, 2007); (describing proposal); *Joint Board Comprehensive Reform NPRM* ¶ 8 (requesting comment on proposal).

universal service support is sufficient because market forces could result in subscriber shifts to or from particular technologies faster than the Commission would be able to adjust relative funding or change the support distribution rules. With respect to technology, everyone loses when the government tries to pick the winner.

As the Commission has recognized, departures from competitive neutrality, no matter how insignificant they may first appear, must be minimized in order “facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.”⁴⁵ Accordingly, universal support distribution mechanisms must be designed “so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.”⁴⁶

The Commission’s choices with respect to the universal service should facilitate growing confidence in alternatives to traditional wireline telephony service and not create an artificial price bias in favor of circuit switched incumbent services. Indeed, a significant percentage of customers have already shown a willingness to rely upon wireless providers or cable telephony providers for all of their telecommunications needs. One study by the Center For Disease Control determined that 12.6% of adults lived in wireless-only households. This statistic represents an increase of nearly 32% from the previous the year and an increase of 182% from the same time period in 2004.⁴⁷ Similarly, a recent announcement by the National Cable

⁴⁵ *First Report & Order*, 12 FCC Rcd at 8801-02, ¶ 48.

⁴⁶ *Id.*

⁴⁷ Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release Estimates form the National Health Interview Survey, January-June 2007*, Center for Disease Control (rel. Dec. 10, 2007) available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf>.

Telecommunications Association reported that more than 15.1 million residential phone customers receive service through their cable company as of January 2008.⁴⁸

Given these trends, and the Commission's own commitment to competitive and technological neutrality, the Commission should avoid any decisions that might artificially interfere with consumer choice. The market is the most efficient means for deciding which technology ultimately should prevail, and the government should avoid creating subsidies that artificially support certain types of technologies at the expense of others.⁴⁹ The rules for distributing universal service support should be identical for all ETCs without regard to the type of technology they use or the type of competitor (*e.g.*, incumbent or competitor) they are.

B. Separate Funds for Different Technologies Would Be Increasingly Impossible To Administer Over Time

In addition to the fundamental inconsistency of the Three Fund Proposal with the principles of competitive and technological neutrality, administering multiple funds for different types of technology will become increasingly impractical as technology converges and changes. For example, service providers are increasingly introducing services that can operate as a mobile or nomadic service while the user is traveling and as a fixed service while the user is at home or in the office.⁵⁰ Similarly, providers are introducing innovative services that choose the best

⁴⁸ NTCA Homepage, *available at* <http://www.ncta.com/Statistic/Statistic/ResidentialTelephonyCustomers.aspx>.

⁴⁹ *See, e.g., Joint Explanatory Statement*, 12 FCC Rcd at 101, ¶ 23 (cited in *Federal-State First Report & Order*, 12 FCC Rcd at 8802, ¶ 48).

⁵⁰ *T-Mobile Introduces Unlimited Calling Over Wi-Fi With the National Launch of T-Mobile HotSpot @ Home*, Press Release (Jun. 27, 2007) *available at* http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20070627&title=T-Mobile%20Introduces%20Unlimited%20Calling%20Over%20Wi-Fi%20With%20the%20National%20Launch%20of%20T-Mobile%20HotSpot%20@Home; *Vonage V-Portal*, Phone Adapter with 1 Port Router *available at* http://www.vonage.com/device.php?type=VPORTAL&refer_id=WEBPR0706010001W1&lid=product_more_VPORTAL ("The Vonage V-Portal is small and fully portable.

technology for the user at the moment, switching between CMRS, satellite and traditional wireline broadband services via a WiFi or WiMax connection. For these reasons, the traditional distinctions between types of service (*e.g.*, wireless and wireline) are becoming increasingly irrelevant to consumers, who tend to focus on functionality that meets their specific needs rather than on the types of technological distinctions the Commission would have to make in order to adopt the Three Funds Proposal. As such, administering technology based funds would become increasingly difficult over time as innovative services could potentially meet the definition of multiple funds.

IV. THE COMMISSION SHOULD USE THE “CLOCK-PROXY” AUCTION SOUTHERNLINC WIRELESS PROPOSES HERE TO DISTRIBUTE UNIVERSAL SERVICE FUNDS

On January 29, 2008, the Commission released a Notice of Proposed Rulemaking requesting comments “on the merits of using reverse auctions to determine the amount of high-cost universal service support provided to eligible telecommunications carriers serving rural, insular, and high-cost areas.”⁵¹ Each of the reverse auction proposals mentioned in the notice are flawed, and none are consistent with the requirements of the Act or all of the universal service principles. For example, none of the proposals are designed specifically to ensure that “[c]onsumers in all regions of the nation...have access to 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.”⁵² For this reason alone, they must be rejected. In addition, any proposal that awards flat amounts of support in each auction area that do not vary by quantity of consumers served would

Simply unplug the device and take it wherever you want. Just plug it into any broadband Internet connection, connect a phone, and your Vonage line is ready to go!”).

⁵¹ *Reverse Auctions NPRM* ¶ 1.

⁵² 47 U.S.C. § 254(b)(3).

not create incentives for carriers to serve as many customers as possible.⁵³ Granting support to only one ETC in a given area would also deny consumers in that area the full benefits of competition that consumers in urban areas enjoy.⁵⁴ However, proposals to grant winning bidders more support and losing bidders less support would create disincentives for aggressive bidding in the reverse auctions, which could result in greater than necessary support payments and which would, by definition, result in insufficient support for the losing bidders.⁵⁵ Moreover, conducting separate reverse auctions to distribute support based upon technology used to provide service would be fundamentally inconsistent with the competitive and technological neutrality requirement.⁵⁶

SouthernLINC Wireless respectfully submits that, to the extent the Commission implements a reverse auction in order to distribute universal service funds among ETCs serving high-cost areas, the “clock-proxy” combinatorial auction format could provide a fair playing field for all types of carriers while dramatically reducing the amount spent on universal service

⁵³ See, e.g., Letter from Kathleen Grillo, Vice President Federal Regulatory, Verizon, to Deborah Taylor Tate, Federal Chair, and Ray Baum, State Chair, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Appendix (Modernizing Universal Service: A Design for Competitive Bidding) (dated Feb. 9, 2007) at 10.

⁵⁴ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, Twelfth Report, FCC 08-28, ¶ 38 (rel. Feb. 4, 2008) (stating that more densely populated counties average 4.3 mobile competitors); Industry Analysis and technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2007*, Federal Communications Commission (rel. Mar. 8, 2008) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.pdf (stating that there was at least one CLEC offering service in approximately 82.3% of the nation’s zip codes in June 2007).

⁵⁵ See *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, Comments of Western Telecom Alliance, WC Docket No. 05-337, CC Docket No. 96-45, at 13 (filed June 31, 2007).

⁵⁶ *First Report & Order*, 12 FCC Rcd at 8801, ¶ 47-48.

support.⁵⁷ However, in order to meet the requirements of the Act, the reverse auction must have the features SouthernLINC Wireless proposes here for the reasons set forth in greater detail below.

A. The Commission Should Define Two Types of Supported Service Packages Upon Which Auction Participants Could Bid

A key issue is to define what the Commission will auction.⁵⁸ As discussed above, the Act focuses entirely upon the services available, and the rates for those services, in urban areas. Accordingly, SouthernLINC Wireless proposes that the Commission determine which services should be supported based upon typical availability in urban areas. Then, the Commission should define two service packages based upon those determinations: one service package with carrier of last resort and open access obligations (the “CLR package) and another without carrier of last resort or open access obligations (the “NCLR Package”). Both packages would require the winning bidder to provide a minimum specified set of features (*e.g.*, single party service, voice grade access to the PSTN, DTMF signaling, access to emergency and operator services, access to interexchange service, *etc.*) for a set price or less in order to receive the amount of support established by the winning bid for each package provided to a consumer.

⁵⁷ Lawrence M. Ausubel, Peter Cramton, and Paul Milgrom, *The Clock-Proxy Auction: A Practical Combinatorial Auction Design*, COMBINATORIAL AUCTIONS, MIT Press, Ch. 5, 115-138 (2003) available at <http://www.cramton.umd.edu/papers2000-2004/ausubel-cramton-milgrom-the-clock-proxy-auction.pdf>. Verizon has also put forth a proposal based upon a “Clock-Proxy Hybrid” auction. However, while the auction itself would function similarly, key elements of the proposal differ. For instance, Verizon proposes separate wireline and wireless auctions in violation of the Commission’s competitive and technological neutrality policies. Furthermore, Verizon proposes a single flat payment made to a carrier in a region, which would create disincentives for serving additional consumers. SouthernLINC Wireless proposes that support be provided on a per-subscriber basis so that support is directly tied to the services the carrier actually is providing.

⁵⁸ *Reverse Auction NPRM* ¶ 18 (“We seek comment on the manner in which a subsidy should be computed and distributed”).

The packages would be defined without reference to the technology used to provide the package services or competitive status of the service provider (*i.e.*, incumbent or new entrant).

The Commission would also have to determine, based upon the characteristics of urban telecommunications and information service markets, how many of each type of package would be auctioned in each auction area. Based upon the record regarding available telecommunications and information services in urban areas, SouthernLINC Wireless submits that the Commission would have to auction, at a minimum, one CLR package and two NCLR packages in each auction area.⁵⁹ Winning bidders could compete both with other winning bidders and with carriers not receiving any support by offering (1) additional services and features (*e.g.*, extra lines) at the package's maximum price (*i.e.*, for no additional charge), (2) the package at a lower price than that required by the Commission, (3) better customer service, or (4) any combination of the above. The multiple winners in each territory will have incentives to compete for customers, ensuring technological innovation, lower prices, and quality service.

The winning bidder would be required to set the retail price for each supported package at a level that is at or below the maximum rate defined by the Commission. Moreover, this retail price would have to be available to all customers, and universal service support would be provided only when a winning bidder sells the supported package to a customer for the full

⁵⁹ See, *e.g.*, 2008 CMRS Report ¶ 38 (finding that more densely populated counties averaged 4.3 mobile competitors, while less densely populated counties have an average of only 3.6 mobile carriers); Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2007*, Federal Communications Commission (rel. Mar. 8, 2008) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.pdf (finding that there was at least one CLEC servicing customers in 82.3% of the nation's zip codes in June 2007, which accounts for approximately 98% of U.S. households). In light of these statistics, SouthernLINC Wireless submits that limiting support to only one ETC in each area, or even one carrier of last resort and one competitive ETC, would violate the universal service provisions of the Act by failing to provide consumers in rural, insular and high cost areas with access to reasonably comparable services to those available in urban areas, and by failing to facilitate competition in those areas.

retail price established by the winning bidder. This approach would prevent any winning bidder from giving service away at uneconomically low rates merely to obtain additional subsidies from the universal service fund through inflated “customer acquisition.” Of course, the winning bidder could offer second lines or handsets for free or at a reduced rate, but the winning bidder would not receive additional universal service support for doing so. Similarly, customers could choose to pay more and receive services not included within the definition of the package required by the Commission (*e.g.*, caller-ID or voicemail), but the consumer’s decision would not impact the amount of support a winning bidder received unless the consumer chose to buy an additional supported package at full retail price.

Importantly, the Commission should define the packages in a manner that comports with its principle of competitive and technological neutrality.⁶⁰ Any type of provider (*i.e.*, wireline, wireless, ILEC, CLEC, cable company) should be able to bid upon either the CLR or NCLR packages so long as the provider is capable of providing the services defined in the package and can meet the applicable service standards. A significant percentage of customers have already shown a willingness to rely upon wireless providers or cable telephony providers for all of their telecommunications needs.⁶¹ Their choices indicate that many consumers no longer feel a traditional wireline phone is essential for their daily lives – a trend likely to continue as the services provided by traditional wireline, wireless, and cable carriers converge.

⁶⁰ *First Report & Order*, 12 FCC Rcd at 8801, ¶ 47.

⁶¹ A study by the Center For Disease Control determined that 12.6% of adults lived in wireless-only households. This was an increase of nearly 32% from the previous the year and an increase of 182% from the same time period in 2004. Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release Estimates form the National Health Interview Survey, January-June 2007*, Center for Disease Control (rel. Dec. 10, 2007) available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf>. In addition, the National Cable Telecommunications Association reports that more than 15.1 million residential cable voice customers as of December 2007. NTCA Homepage, available at <http://www.ncta.com/Statistic/Statistic/ResidentialTelephonyCustomers.aspx>.

Allowing all types of carriers to bid on all types of packages also has the benefit of increasing the number of bidders for each package, which will increase competition for the subsidies and drive the support that must be paid by the Commission lower than might otherwise occur if carriers faced competition only from other, similar carriers.

By providing support for service packages that the Commission has defined based upon the telecommunications and information services available in urban areas, the Commission will comply with both the letter and the spirit of the Act's requirements and encourage competition in a technologically neutral way. SouthernLINC Wireless respectfully submits that providing support only for those packages actually provided to consumers will best serve the goals of the Act and create incentives for winning bidders to expand service to unserved and under-served areas without creating opportunities for arbitrage that cause uneconomic fund growth. As networks are built-out to serve rural, insular and high-cost areas, the amount of support needed in those areas should decline over time. SouthernLINC Wireless opposes auctioning flat amounts of support in each auction area that do not vary by quantity of consumers served.⁶² Distributing support in this manner would create incentives for carriers to do the minimum amount to secure support and then to compete for customers only to the extent such competition does not require the carrier to expand its network, make additional facility investments, or incur costs at a rate that is disproportionate with the additional revenues new customers generate.

⁶² Letter from Kathleen Grillo, Vice President Federal Regulatory, Verizon, to Deborah Taylor Tate, Federal Chair, and Ray Baum, State Chair, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Appendix (Modernizing Universal Service: A Design for Competitive Bidding) (dated Feb. 9, 2007) at 10 (proposing a flat rate payment for offering universal service throughout an auction area).

B. The USF Auction SouthernLINC Proposes Would Consist of Two Stages: a “Clock” Stage Followed by a “Proxy” Stage

The clock-proxy auction, which would be used to establish support within defined geographic areas on five-year intervals, would consist of two stages: the “Clock” stage and the “Proxy” stage. Each stage is described below.

1. The “Clock” Stage

The mechanics of the “Clock” stage of the auction are simple. In each round of the “Clock” stage of the auction, the Commission will offer a certain amount of per-line support available for each CLR and NCLR package in each support area.⁶³ In response, each bidder can answer “yes” or “no” with respect to whether the bidder would be willing to offer the CLR or NCLR package at the support amount available for that round.⁶⁴ All bids are submitted anonymously. Rounds would be conducted at regular intervals, and if more bidders at the end of the round indicate a willingness to provide service in the support area at the subsidy level offered by the Commission (*e.g.*, three bidders indicate that they desire to provide an NCLR package in an area where there are only two NCLR packages available), the Commission would reduce the subsidy being offered in that area for the CLR or NCLR package at issue and commence a new round of bidding at a lower subsidy level. When the number of bidders willing to provide a particular CLR or NCLR package at the subsidy level available in a particular round equals the total number of CLR or NCLR packages available in the support area, the auction ends.⁶⁵ The

⁶³ The Commission would start bidding at current support levels.

⁶⁴ In each auction area, a carrier could submit bids for both the CLR package and one NCLR package, but not for multiple NCLR packages. However, if a bidder won both the CLR and the NCLR packages, the bidder would be awarded the CLR package and the NCLR package would be awarded to the next lowest bidder.

⁶⁵ A bidder who has bid for a CLR or NCLR package in a particular support area at a particular level of support may withdraw its bid or transfer its bid to another support area in any round in the clock stage as long as a bid it has made in another support area is simultaneously reduced. Also a carrier may not bid on a bundle of support areas in the

winning bids in each auction area would set the “reserve” price for that area in the Proxy Stage.⁶⁶ This design makes it difficult for a bidder to use the amount of its bid to signal other bidders and helps ensure a fair auction.

2. The “Proxy” Stage

During the Proxy Stage of the auction, auction participants can submit bids for bundled support areas. In other words, the Proxy Stage allows auction participants to take into account economies of scale by placing a single bid for which it would provide a CLR or NCLR package across multiple support areas.⁶⁷

In order to participate in the Proxy Stage, bidders would create a list of the “lowest” subsidy amount they would be willing to accept to provide a CLR or NCLR package across a bundled support area they have defined (*i.e.*, specific multiple auction areas identified by the bidder). In other words, the bidders identify the lowest subsidy amount they would be willing to accept to provide a CLR or NCLR package if they were assured of receiving support for providing that package across the entire support area they have defined. Bidders can create as many different bundled support areas as they choose, including bundled support areas that overlap with each other.

proxy stage unless it has bid in support areas that are equal to or greater than that bundle in the clock stage. These two provisions are known collectively as the clock stage’s activity rule. For more details on activity rules please see, “The Clock-Proxy Auction: A Practical Combinatorial Auction Design.”

⁶⁶ The winning bids in the Clock Stage would also become opening bids in the Proxy Auction, which means that the bids would win the auction as a whole if no superior bids were submitted for that area by other bidders during the Proxy stage.

⁶⁷ In the Clock Stage, economies of scale cannot be assumed because bidding is conducted on a single auction area-by-auction area basis.

The bidders then submit their list of “bundled” bids to a “proxy,” which submits bids on behalf of each bidder.⁶⁸ In each round of the Proxy Stage, each proxy determines the bid that would both (1) defeat the winning bid from the previous round and (2) best maximize the amount of support available to the bidder if the bidder wins this round. The auctioneer then compares all of the bids submitted by the proxies to determine which combination of bids in all previous rounds would result in the lowest possible aggregate support payment from the universal service fund. This process would continue until the proxies had no further bids to submit. At this point, the winning bids are made public, and the auction is concluded.

C. The Clock-Proxy Auctions Should Be Conducted On a State-by-State Basis With Auction Areas That Are As Small As Administratively Feasible

The Commission should conduct clock-proxy auctions on a state-by-state basis using the smallest competitively-neutral geographic support areas that are administratively feasible.⁶⁹ Small geographic support areas have numerous advantages over other divisions of universal service funding. First, attempting to distribute universal service funding based on current ILEC boundaries is difficult, as ILEC service boundaries are irregular and oftentimes non-contiguous. This approach creates a significant barrier to entry for competitive carriers and is particularly unfair to cable companies, one of the fastest growing ILEC competitors.⁷⁰ Second, defining smaller regions for carriers to bid upon will ensure support flows where needed

⁶⁸ The “proxy” that does the bidding on behalf of the bidder is simply a computer program that bids according to preset rules (which are the same for all bidders), given the bids submitted.

⁶⁹ *Reverse Auction NPRM* ¶ 19 (“We seek comment on the appropriate geographic areas for reverse auctions.”).

⁷⁰ *See Federal State Board on Universal Service, Declaratory Ruling*, 15 FCC Rcd 15168, 15174-75, ¶ 17 (2000) (“We believe that requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service.”).

while avoiding providing funds for areas where support is not needed.⁷¹ The Commission has found that when support is targeted among small geographic areas, per-line support is more closely associated with the cost of providing service.⁷² This conclusion holds true for any system for distributing universal service funds, including one making use of reverse auctions.

In practice, this means the Commission should hold auctions at a level no larger than a county and perhaps at a level as small as a zip code. These areas are small enough (and likely to be homogeneous enough) that carriers will be able to accurately assess the costs for providing service in these areas, and the Commission will be able to target support only to areas that actually need it. It is essential to ensuring fair competition, however, that the Commission adopt neutral service areas and not rely on the ILECs' traditional study areas. Neutral service areas allow fair competition between ILECs and the wireless and cable operators that traditionally have had different service area boundaries from the ILECs, and it would be unreasonable to expect a new entrant to build beyond its existing footprint to match the entire service area of the incumbent. For these reasons, SouthernLINC Wireless proposes the use of counties as auction areas.

D. The “Clock-Proxy” Auction Proposal of SouthernLINC Wireless Best Meets the Goals of the Act While Minimizing Fund Size

The Clock-Proxy Auction proposal of SouthernLINC Wireless is the only proposal before the Commission that is both (1) consistent with the Act and the Commission's USF regulations and policies, and (2) likely to result in the smallest fund necessary to achieve the goals of the Act. Indeed, the proposal of SouthernLINC Wireless is the only proposal

⁷¹ *Federal State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 4257, ¶ 54 (2004).

⁷² *Id.* at 4257, ¶ 53; *Rural Task Force Order*, 16 FCC Rcd at 11302, ¶ 145.

currently before the agency that fulfills the enumerated USF principles, Moreover, the proposal would resolve many of the complex issues associated with other reform proposals currently pending before the Commission.

1. The proposal best satisfies the requirements of the Act and the Commission's policies, including the enumerated USF principles.

The Clock-Proxy Auction proposal SouthernLINC Wireless sets forth here is the only proposal that is directly based upon the requirement of Section 254(b)(3) that “[c]onsumers in all regions of the nation...should have access to 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.” The statute focuses solely upon the services available in urban areas, as well as the rates for those services, and then requires that consumers in rural, insular and high cost areas have access to services that are “reasonably comparable” at rates that are “reasonably comparable.”

Under this proposal, the Commission would first identify the services that are available in urban areas. Then, based upon the new definition of “reasonably comparable” that the Commission must adopt, the agency would define a package of supported services that are “reasonably comparable” to services available in urban areas. Similarly, the Commission would identify the rates charged for the services available in urban areas. Then, based upon the new definition of “reasonably comparable” the Commission must adopt, the agency would define the price for the package of supported services that are “reasonably comparable” to the rates charged for similar services available in urban areas. Finally, the Commission would determine the average number of carriers from which consumers in urban areas can choose service, and then it would define the number of supported packages that should be auctioned in each auction area to

ensure that consumers in rural, insular and high-cost areas have competitive choices that are “reasonably comparable” to those available in urban areas.

The Commission can, and should, define separate CLR and NCLR packages to reflect the additional responsibilities, and costs, that accompany carrier of last resort and open access obligations that must be borne by some, but not all, carriers in an area. Only one carrier of last resort in each auction area is necessary, so the Commission should only auction off one CLR package in each auction area, and this package should include the standard service definitions as well as well-defined carrier of last resort and open access obligations. In light of the additional obligations, the winning bidder for the CLR package presumably will receive more support than the winning bidder for a NCLR package, and the clock-proxy auction will help ensure that the support is sufficient. By contrast, the NCLR package will have neither carrier of last resort nor open access obligations, and the lower support amount that the winning bidders presumably will receive will reflect the lesser obligations.

SouthernLINC Wireless respectfully submits that no other proposal could hew more closely to the letter and intent of Section 254(b)(3) and the rest of the Act. Moreover, the proposal permits the Commission to comply with the Act in a straightforward, transparent, and objectively measurable manner. Indeed, the proposed mechanism would be specific and predictable to the Commission, state regulatory authorities, winning bidders, and other carriers whether they participated in the auction or not, and the support resulting from the clock-proxy auction would be, by definition, sufficient, as required by Section 254(b)(2).

The proposal would also ensure that quality services are available to consumers in rural, insular and high cost areas at just, reasonable and affordable rates as required by Section 254(b)(1). Indeed, the Commission would define the supported service packages with specificity

as well as the maximum rates that could be charged for the supported service package. As explained above, however, carriers would be free to depart from those definitions in ways that benefit the consumer and give the carriers flexibility to respond to competition in the way each carrier deems best. By creating market-based incentives for carriers to build out their networks while ensuring they have the flexibility to compete effectively in the marketplace, the Commission would facilitate access to advanced telecommunications and information services in all regions in the nation, as required by Section 254(b)(1).

The proposal would also be truly competitively and technologically neutral, as required by the Act and the Commission’s universal service rules and policies. As explained above, the supported service packages would be defined without regard to the technology used to provide the services or the competitive status of the winning bidder. As such, every ETC would have an equal opportunity to participate in the auction. This result is not only consistent with and required by the Act, but it also offers the best outcome for consumers since it will create the right incentives for the marketplace. The proposal would also provide the Commission with more flexibility to reform, if necessary, the contribution mechanism in a manner that is equitable and nondiscriminatory as required by Section 254(b)(1).⁷³

2. The proposal would result in the smallest fund necessary to achieve the goals of the Act.

The clock-proxy auction format SouthernLINC Wireless proposes here is designed to ensure that USF expenditures are as low as possible to achieve the statutory universal service goals. The rules are designed to create incentives for carriers to bid as low as possible to ensure that their competitors do not get subsidies that would be unavailable to them if

⁷³ To the extent the Commission adopted a distribution mechanism that distinguishes based upon technology or competitive status, the Commission would have less flexibility to reform the contribution methodology while complying with the “equitable and nondiscriminatory” requirement of Section 254(b)(1).

they lose the auction. The Clock Stage is a simple, straight-forward process that allows bidders to discover how the other bidders value each service package and then bid accordingly. This establishes the lowest cost for providing universal support for each individual package. The Proxy Stage then creates incentives for carriers to bid aggressively on providing service to multiple areas to take advantage of economies of scale, further reducing the USF payment necessary to provide service to those areas. The price discovery in the Clock Stage coupled with the package bidding in the Proxy Stage allows for the package to be awarded in a way that yields the lowest possible support payment by the government. Indeed, where support is not necessary, bidding should reduce support down to zero.

3. The proposal would resolve many of the complex USF issues currently pending before the Commission

SouthernLINC's proposal also eliminates the need to address the issues raised in the Commission's Notice of Proposed Rulemaking released on January 29, 2008. The *Identical Support Rule NPRM* sought comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive ETCs.⁷⁴ However, if the Commission adopts the "clock-proxy" auction described above, USF payments would no longer be based directly upon the costs born by carriers, but rather upon the bids those carriers placed during the auction. As such, issues such as whether or not to retain the "identical support rule" or how the costs of wireless carriers should be calculated would be irrelevant to the distribution of universal service funds. Similarly, the Commission would no longer need to cap funds provided to competitive ETCs, as the outcome of the auctions would determine where the USF subsidies flowed.⁷⁵ Finally, regardless of whether incumbent ETCs or competitive ETCs win the auction,

⁷⁴ *Identical Support Rule NPRM* ¶ 1.

⁷⁵ *Id.* ¶ 25.

the price of support packages auctioned by the Commission and the number of lines those packages support will be the sole factors in determining the cost of universal service support program. Distinctions between competitive ETCs, incumbent ETCs, and wireless ETCs will become irrelevant.

V. **UNIVERSAL SERVICE FUNDS SHOULD NOT BE USED FOR BROADBAND SUPPORT, AND SUPPORT SHOULD NOT BE CONTINGENT ON OFFERING BROADBAND SERVICES**

Until the Commission can correct the flaws in the current collection and distribution mechanisms for the universal service fund, expanding the use of high-cost funding to support broadband would be unwise because it would only further complicate reform efforts. The cost of adding broadband to the list of USF supported services would increase the burden on the universal service system dramatically at a time when both the Board and the Commission are actively looking to reduce the burden, making the step an illogical and intellectually inconsistent one. The use of universal service funds for broadband support may also have the effect of skewing already existing markets. Many carriers already provide broadband facilities without universal service support. Adding broadband services to the supported services now would disadvantage those carriers by allowing their laggard competitors to catch up using federally supplied funds. Therefore, SouthernLINC Wireless believes that the provision of broadband support using universal service funds at the current time would be wasteful as the market is already taking steps to reach currently underserved areas.

Finally, the Commission may be statutorily barred from using universal service funds to support broadband services. Section 254(c) of the 1996 Act limits high-cost universal service support to “telecommunications services” and does not authorize support for “information services.”⁷⁶ The Commission, however, has consistently classified broadband

⁷⁶ 47 U.S.C. § 254.

internet access services as “information services” regardless of how they are provided.⁷⁷ Indeed, when the Joint Board last considered whether to add broadband to the list of supported services, it concluded that if the Commission classified broadband internet access services as “information services,” then broadband could not be included within the definition of supported services because section 254(c) limits the definition of supported services to “telecommunications services.”⁷⁸ The statute has not changed since the Joint Board reached this conclusion. Although SouthernLINC Wireless does not take a position on the legality of any program to support broadband services with universal service funds, it encourages the Joint Board and the Commission to focus first on fundamentally reforming the universal service distribution methodology. Once the distribution methodology has been reformed and implemented and universal service spending is again under control, the Commission and the Joint Board could seek comment and fully consider the issue, including whether any proposals would be permissible under the universal service provisions of the Act.

VI. CHANGES IN THE REQUIREMENTS TO BECOME CERTIFIED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER ARE UNNECESSARY

The Commission should not adopt additional requirements for eligible telecommunications carriers at this time. In its NPRM, the Commission asked whether it should impose equal access or similar requirements upon reverse auction winners, or make winners

⁷⁷ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005), *aff'd*, *Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007) (and consolidated cases) (3rd Cir. filed Oct. 26, 2005); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff'd*, *National Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, 21 FCC Rcd 13281 (2006); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53 (rel. Mar. 23, 2007).

⁷⁸ *Federal-State Joint Board on Universal Service*, Recommended Decision, 17 FCC Rcd 14095, 14102-03, ¶ 19 (2002).

acknowledge that they may be subject (at the Commission's discretion) to the same.⁷⁹ As technological convergence between the services offered by traditional phone companies (*i.e.*, ILECs and CLECs), wireless companies, and cable companies increases, equal access requirements no longer make sense for many carriers – particularly for wireless carriers and cable operators. Indeed, many cable operators and most wireless carriers offer plans without long distance charges, and some ILECs and CLECs are following suit. Any attempt by the Commission to establish equal access requirements could only skew a marketplace that is clearly working. Rather, competition in the marketplace will ensure that long distance prices remain reasonable without the Commission adopting any new equal access requirements on the carriers. To the extent the Commission implements the reverse auction proposal of SouthernLINC Wireless, carrier of last resort and open access obligations would be considered for inclusion in the CLR package auctioned in each support area.

Similarly, the Commission need not require carriers receiving USF support to make additional showings that they can remain functional in emergency situations.⁸⁰ During the process of becoming an ETC, a carrier must already demonstrate its capabilities to remain operational during disasters and to handle the additional traffic such events generate.⁸¹ Requiring an additional showing of this capability upon the award of universal funds would be superfluous. However, SouthernLINC supports the Commission's current requirements requiring a showing of emergency readiness at the time the ETC application is filed. Likewise, the Commission should not impose additional requirements regarding consumer protection,⁸²

⁷⁹ *Reverse Auction NPRM* ¶ 12.

⁸⁰ *Reverse Auction NPRM* ¶ 32.

⁸¹ *ETC Designation Order*, 20 FCC Rcd at 6386, ¶ 35.

⁸² *Reverse Auction NPRM* ¶ 33.

network build-outs,⁸³ local calling,⁸⁴ five-year development plans⁸⁵ or financial qualifications.⁸⁶

These requirements are unnecessary and would serve merely to increase service costs for consumers.

⁸³ *Id.* ¶ 28.

⁸⁴ *Id.* ¶ 30.

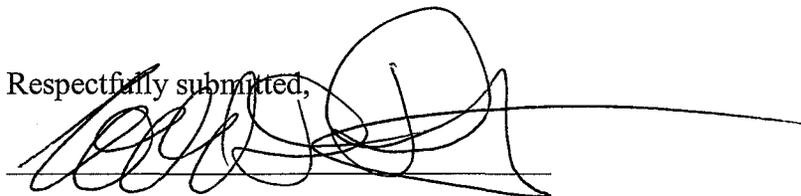
⁸⁵ *Id.* ¶ 29.

⁸⁶ *Id.* ¶ 34.

CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to adopt reforms that are consistent with the proposals outlined in these comments, and to ensure that all reform measures comply with the Act, including the principle of competitive and technological neutrality.

Respectfully submitted,



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