

**FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE EN BANC HEARING
ON HIGH-COST UNIVERSAL SERVICE SUPPORT IN AREAS SERVED BY RURAL
CARRIERS**

CC Docket No. 96-45

PANEL 2: BASIS OF SUPPORT FOR CETCS AND TRANSFERRED EXCHANGES

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PANEL INQUIRY

For this hearing, the members of Panel 2 were asked to address the following:

Panel 2: What methodology should the Commission use to calculate the basis of support for eligible telecommunications carriers? Should a competitor receive support based on the incumbent carrier's costs or its own costs? If the latter, how should those costs be calculated?¹ For the reasons set forth in these comments, we advocate that an Incumbent Local Exchange Carrier's ("ILEC") support should be based on forward-looking costs and that a competitive eligible telecommunications carrier ("CETC") should continue to receive support based on the ILEC per line support.

INTRODUCTION

Curbing growth in the size of the universal service fund, a major concern for all parties involved, can best be accomplished through examination and reform of the underlying support mechanisms. The starting point for any discussion regarding the appropriate methodology to calculate support for eligible telecommunications carriers must be an understanding and acknowledgment of the twin goals of the 1996 Telecommunications Act ("the Act") – advancement of universal service and promotion of competition in rural areas. Some parties have advocated that the growth in the fund be curbed by paying CETCs based on their own costs. That mechanism would be antithetical to those twin goals.

(1) If a CETCs costs are lower than those of the ILEC, then such a system rewards the least efficient provider by providing them more support and a competitive cost advantage. As a result, the customer is deprived of the benefits of competition; lower prices and new and innovative technologies. The ILEC is not incented to become more efficient because to do so would reduce the amount of support available to the ILEC, reducing its competitive advantage over the CETC. The CETC, while more efficient, will be unable to match the artificial consumer price for ILEC services resulting from the ILEC inefficient subsidy, and therefore will not enter or expand in those high-cost areas. Alternatively, if the CETC sought to level the playing field

¹ The Commission also asked the panel to address whether "the Commission modify rule 54.305 which provides that a carrier that acquires exchanges from an unaffiliated carrier shall receive universal service support for those acquired exchanges at the same per-line support levels?" These comments do not address that issue.

with the ILEC, it may artificially increase its infrastructure spending in the high-cost area, which would increase the support to the CETC. Such a result would not provide efficient benefits to consumers and would cause the fund to balloon.

(2) If the CETCs costs are higher than the ILEC, then, unless CETCs are denied support for providing service in that high-cost area, the total size of the fund would increase.

To achieve the goals of universal service, the FCC should develop a simplified, unified, forward-looking high-cost support mechanism that replaces the current modified embedded cost mechanism, which was originally developed to serve as a means to ease LEC transition toward forward-looking costs. Uniform levels of universal service support should be available to facilities-based incumbent and competitive carriers serving areas where neither the incumbent nor competitors could or would be motivated to provide the supported services at an affordable rate without access to universal service subsidies. The high-cost universal service mechanisms should encourage economic efficiency so that required support amounts are rational and eventually stabilize or decline, depending upon advances in efficiencies and technologies.

Whatever changes are made to the high-cost mechanisms, universal service support must continue to be distributed in both a competitively and technologically neutral manner, as required by the Act. That way, consumers in rural and high-cost areas, the intended beneficiaries of universal service, will have access to the same types of telecommunications and information services that are available to consumers in urban areas, both in terms of quality and cost.

I. THE CURRENT REALITY OF HIGH COST SUPPORT

a. **The Growth of the Fund is Caused Primarily by ILECs Not CETCs.**

The wireless industry is a major contributor to universal service and a limited recipient of high-cost support, and is therefore uniquely situated to comment on proposals to reform the high-cost support mechanisms. In 2003, CMRS providers were responsible for \$1.4 billion or 22% of federal universal service contributions, while receiving only \$175 million or 3% of all federal universal service subsidies.² In contrast, local exchange carriers (LECs) were responsible for

² Universal Service Administrative Company, 2003 Annual Report, at 26, *available at* <http://www.universalservice.org/Reports/>; Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99- 200, 95-116, 98-170, Public Notice, FCC 03-31, at 5 (rel. Feb. 26, 2003) (*Staff Study Public Notice*).

\$1.7 billion or 27% of federal universal service contributions, while receiving \$4.4 billion or 78% of all federal universal service subsidies.³

From 2000 through 2003, the FCC's high-cost universal service mechanisms grew approximately 46%.⁴ In spite of alarmist rhetoric about growth in support going to competitive ETCs, the vast majority of growth in the high-cost fund is the result of increased support for incumbent LECs. In fact, from 2000 through 2003 incumbent LECs were responsible for 87% of growth in the high-cost fund.⁵ From 2000 through 2003, incumbent LEC support increased by roughly \$900 million, from \$2.2 billion to over \$3.1 billion.⁶

During this period, incumbent LECs received approximately \$55.73 for every \$1.00 of support received by competitive ETCs.⁷

Although in percentage terms the wireless industry's share of high-cost support has grown over the last few years, its take in real numbers remains very small. The reality is that incumbent LECs continue to receive approximately 93% of high-cost funding even though there are now almost as many wireless handsets (approx. 169 million) as incumbent LEC access lines (approx. 180 million).⁸ In 2003, rural incumbent LECs, which serve only approximately 12% of

³ Universal Service Administrative Company, 2003 Annual Report, at 26, *available at* <http://www.universalservice.org/Reports/>; *Staff Study Public Notice*, FCC 03-31, at 5.

⁴ *See*, Universal Service Administrative Company, 2003 Annual Report, at 26, *available at* <http://www.universalservice.org/Reports/>; Universal Service Administrative Company, 2000 Annual Report, at 30, *available at* <http://www.universalservice.org/Reports/>.

⁵ *See*, Universal Service Administrative Company, 2003 Annual Report, at 26, *available at* <http://www.universalservice.org/Reports/>; Universal Service Administrative Company, 2000 Annual Report, at 30, *available at* <http://www.universalservice.org/Reports/>.

⁶ Universal Service Administrative Company, 2000 Annual Report, at 30, *available at* <http://www.universalservice.org/Reports/>; Universal Service Administrative Company, 2003 Annual Report, at 26, *available at* <http://www.universalservice.org/Reports/>.

⁷ Based on USAC data *available at* <http://www.universalservice.org/hc/whatsnew/072004.asp> (visited 7/30/04) (Approximately \$11.18 billion for incumbent LECs versus \$200.6 million for competitive ETCs).

⁸ *See* Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004*, at Appendix HC05 (filed Apr. 30, 2004). Given that it can take many months (if not years) for a competitor to obtain its ETC designation and begin receiving support, CTIA's analysis rightly excludes those competitors

the nation's wireline access lines, received approximately three-quarters of high-cost universal service support.⁹

b. Providing Support to CETCs Based on ILEC Per Line Costs Supports the Goals of the Act.

Some have commented that because wireless providers are more efficient in the provision of service in high-cost areas than the ILECs, wireless CETCs receive a “windfall” under the current mechanism. This is simply not true. The entire purpose of a per-line support methodology is to encourage carriers that are more efficient than the incumbent to enter the market. If it is more efficient, then it will enter. However, a competitor will not receive more support in total than the incumbent, simply because at the outset it will have far fewer lines in service than the incumbent. Thus, even a very efficient competitor will need every dollar of support to construct, improve and maintain new networks to compete with the incumbent and respond to all reasonable requests for service.

Perhaps most importantly, however, the amount of support received cannot be fairly characterized as a windfall because, any so-called excess funding to a competitor must be invested in its network facilities, which only serves to accelerate the competitor's ability to construct new wireless infrastructure to better serve consumers. In short, a competitor is forced to use the funds for the benefit of consumers. Likewise, there is little doubt that efficient competition provides a parallel incentive for rural ILECs to reduce their costs as well, easing the long-term burden on the fund.

The customer benefits under the current system because, competitors are encouraged to enter high-cost markets. But competition is not an end unto itself. It is merely a means by which to achieve the underlying goals of the Act; lower costs and new and innovative services (increased customer value). Competitors will not seek investment dollars and investors will not provide such dollars when the competitor has to create a business model that not only provides a

listed on USAC's charts that have ETC petitions still pending or are otherwise not yet eligible to receive support by operation of the time lags in the FCC's line count reporting rules.

⁹ Universal Service Administrative Company, 2003 Annual Report, at 26, *available at* <http://www.universalservice.org/Reports/>; Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004, at Appendix HC05 (filed Apr. 30, 2004).

more efficient, higher customer value proposition than the incumbent provider, but also must be so much more efficient, and create so much more value that it can also offset the unequal financial subsidization provided to the incumbent. Under the current mechanism, a competitor entering the market starts on a level playing field with the ILEC, with regard to USF. If the CETC is or becomes more efficient than the ILEC, then it will succeed and the customer will benefit. If the CETC is not more efficient and does not believe that it will be able to achieve those efficiencies, it will not expand in those areas, and support will not be wasted in those areas.

c. The Current Support Mechanism Promotes ILEC Inefficiency.

The FCC's embedded cost mechanism creates incentives and opportunities for ILECs to have higher embedded costs to receive more support. As far back as 1997, the FCC agreed with the Joint Board that "support based on embedded cost could jeopardize the provision of universal service."¹⁰ In particular, the FCC observed that:

[E]mbedded cost provide[s] the wrong signals to potential entrants and existing carriers. The use of embedded cost would discourage prudent investment planning because carriers could receive support for inefficient as well as efficient investments. . . . [T]he use of embedded cost to calculate universal service support would lead to subsidization of inefficient carriers at the expense of efficient carriers and could create disincentives for carriers to operate efficiently.¹¹

These incentives for inefficiency result in increased costs and corresponding demands for support. Between 2000 and 2003, the national average loop cost for rural ILECs grew from approximately \$337 per loop per month to approximately \$378 per loop per month. Therefore, despite industry-wide efficiency gains, advances in technology, and amortization of depreciated equipment, high-cost universal service subsidies continue to increase rather than decrease in size over time.

In practice, the FCC's high-cost support mechanisms compound incentives for inefficiency inherent in embedded cost support mechanisms. For example, the high-cost support mechanisms discourage ILECs from taking advantage of economies of scale normally associated with combining operations. This is because under the high-cost loop support mechanism smaller

¹⁰ See *Universal Service First Report and Order*, 12 FCC Rcd 8776 at 8901 para. 228.

¹¹ See *id.*

rural ILECs are eligible for more high-cost loop support than larger ILECs.¹² In addition, the local switching support mechanism arbitrarily makes ILECs with less than 50,000 access lines in a study area eligible for switching support.¹³ ILECs that increase their customer base risk qualifying for less or no high-cost support.

The embedded high-cost mechanisms' preference for small carriers also creates incentives for carriers to appear small when, in fact, they are much larger. Incumbent LECs do this by maintaining numerous "study areas" in a given state. High-cost loop support and local switching support are based on a rural incumbent LEC's embedded costs averaged at the "study area" level.¹⁴ By acquiring partial or complete study areas or by virtue of having operated more than one study area in a given state prior to November 15, 1984 (when study area boundaries were frozen), numerous carriers currently operate in more than one study area in a given state.

By operating in multiple study areas in a given state, certain carriers receive more high-cost universal service support than they would receive if their study areas within a state were combined.¹⁵ If these carriers were required to combine their study areas to reflect their actual service territory in a given state, they (and their CETC competitors) potentially would qualify for less support. Even if carriers combine their operations within a state for universal service purposes, they still have incentives to balkanize their operations among the various states – because support would be based on costs average at the state level.

Finally, the embedded cost mechanisms often do not target support to high-cost areas. Support for rural and rate-of-return incumbent LECs is based on the carrier's average "study area" costs. Study areas often include both high-cost and low-cost wire centers. This is especially true for larger rural incumbent LECs that in some cases serve several 100,000 customers in a state. While rural incumbent LECs have the option of disaggregating support to

¹² See 47 C.F.R. § 36.631 (providing more support to rural incumbent LECs with less than 200,000 working loops in a study area).

¹³ See 47 C.F.R. § 54.301. It is noteworthy that the local switching support mechanism also does not require qualifying carriers to have high costs in order to receive support. See *Referral Order*, FCC 04-125, at para. 10.

¹⁴ See 47 C.F.R. §§ 36.601-36.631.

¹⁵ See *Referral Order*, FCC 04-125, at para. 12.

high-cost and low-cost zones, disaggregation is not required.¹⁶ A rural incumbent LEC's failure to effectively disaggregate support to high-cost zones could result in an over payment of the CETC in portions of a study area where costs are actually low but because support is averaged over the entire study area, the CETC support level is artificially high.

II. THE NECESSARY REFORM

a. ILEC Support Mechanism.

The FCC must transition rural ILECs to a single high-cost mechanism that calculates support based on forward-looking economic costs. In 1997, the FCC specifically determined that universal service support should be based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services, it was also determined that rural carriers must eventually shift to a forward looking cost model. In May 2001, through the Fourteenth Report and Order, rural LECs were again put on notice that competition is coming and that they must use the five year transition period provided by the modified embedded cost system to become more efficient and prepare for the day when they must compete on a level playing field with other carriers seeking to enter their markets.

The ultimate result of reform would be a single high-cost support mechanism that replaces the modified embedded high-cost mechanisms currently in place. Under such a mechanism, support for all eligible carriers will be based purely on efficient, forward-looking economic costs of serving a geographic area. Necessary reform will likely result in a short-term increase in the high-cost fund for both wireline incumbents and wireless competitors, but such reforms are necessary to encourage efficient carriers to enter so as to protect the long-term viability of universal service. Over time, however, such reforms will decrease the need for universal service subsidies by encouraging and rewarding efficiency and better targeting the right amount of support to high-cost areas.

b. CETCs Must Receive the Same Per-Line Support as the ILEC.

i. CETC Support Based on its Own Costs Would Benefit ILECs at the Expense of Consumers.

Proposals to give the incumbent and competitive ETCs in a particular market unequal support levels must be rejected. Specifically, the Joint Board should reject blatantly

¹⁶ See 47 C.F.R. § 54.315. Approximately 20% of rural carriers filed disaggregation plans.

discriminatory proposals to give CETCs support based on their own embedded or forward-looking costs when those costs are less than the incumbent carrier's costs, but not when competitive ETC costs are the same or more than the incumbent's costs. An unequal support mechanism is exactly the type of implicit subsidy that the Act required to be removed. Such a mechanism will significantly handicap CETCs in the competitive marketplace and retard consumers' ability to choose the service that best suits their needs. In short, if regulators slow wireless carriers' ability to invest in rural areas, consumers are harmed because they will not have the benefit of high-quality networks that enable them to choose wireless as their primary source of telephone service.

Moreover, consumers will be denied the benefits of the CETC efficiency. Where support is equal for the ILEC and the CETC, potential CETCs can evaluate whether they can provide greater customer value (either lower cost or increased service), while still providing the CETC with a return on their investment. If the CETC can offer such efficiency, then it will enter the market. That is happening today. In Minnesota and Wisconsin, for example, Midwest Wireless was designated as an ETC in its service territories in 2003. Since that time, Midwest Wireless has deployed infrastructure in rural, high-cost areas that provides, among other benefits: emergency health and safety benefits (E-911, emergency service provider ability to communicate while reacting to an emergency situation, etc.), mechanisms to prevent emergencies (e.g., calling for help when stranded in inclement weather or for roadside assistance in very rural areas), increased economic development (farmers, service professionals, sales personnel and others are able to conduct business when away from a stationary land-line connection), and high-speed (Broadband) Internet in rural areas, in the form of a 1xRTT network that operates in conjunction with Midwest Wireless' wireless voice network and a 802.11 network that shares facilities with the wireless voice network.¹⁷

If potential CETCs are faced with the prospect of unequal support they will not choose to enter the high-cost markets. By way of example, assume an ILEC's cost is \$10.00 to provide

¹⁷ Likewise, wireless ETCs have brought universal service to other rural and insular areas that traditionally have been underserved or unserved by ILECs. The FCC and certain States have recognized that certain regions of the country (e.g., Appalachia, the Mississippi Delta, Tribal Areas, areas of North Dakota) have lower telephone penetration rates than other regions in the country and that the wireless industry can be a key player in deploying services to these areas.

service to a customer in a high cost area and the potential CETC's cost is \$7.00 to provide service to the same customer. Each carrier adds a desired margin to their cost of \$1.00. In an environment where support is equal between carriers (for purposes of this example, support = \$5.00 based on the ILEC's costs, using the modified embedded cost methodology, the CETC, as a result of its efficiency, has \$3.00 per customer with which to reduce prices or increase value. In that environment, potential CETCs should choose to enter the market and the resulting competition will benefit consumers by forcing the various providers to compete based on price, service quality, service variety, customer service and other mechanisms. In short, the consumer benefits.

If each carriers' support is based on its own cost, consumers will be denied the benefit of competition, either because there will be no competition, or because carriers will use support inefficiently. CETCs would have little or no incentive to compete and/or invest in high-cost areas in which they can provide efficiency. Under the example above, if the support were based on each carriers' respective costs, (\$5.00 for the ILEC and \$3.00 for the CETC) then the CETC is unlikely to enter the market because their ability to entice customers away from the ILEC has been effectively eviscerated. The CETC would have little or no money with which to add value to the customer. While preservation of monopoly certainly would benefit the ILEC, it will not benefit the consumer as contemplated by the Act.

Moreover, the ILECs would have no motivation to become more efficient under such a mechanism, because reduced cost would decrease support, thereby reducing their advantage over the CETC. Again, the consumer is denied the benefits of competition.

ii. Support Must Be Competitively Neutral

In working towards reformation of the current high-cost support mechanisms, the Act demands that such support must be available on a technologically- and competitively-neutral basis. The goal of competitive neutrality in the distribution of universal service funds is not just worthwhile policy goal. It is required by statute. As the Rural Task Force noted during the course of its deliberations, "Section 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service."¹⁸ The FCC noted this statutory mandate in the First Report and Order, when it stated

¹⁸ Rural Task Force, *White Paper 5: Competition and Universal Service*, at 8 available at <http://www.wutc.wa.gov/rtf> (hereinafter "White Paper 5") (2000).

that “universal service mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”¹⁹

c. Accurately Targeting Support to High Cost Areas Will Limit Fund Growth.

The importance of accurately targeting high-cost support increases with each new CETC designation. As more new CETCs are designated in areas served by rural ILECs that have chosen Path 1 disaggregation, the problem of over- and under-compensation are exacerbated. For example, Virginia Cellular was designated in a very high-cost area where the support levels are inordinately low due to Path 1 disaggregation by the rural ILEC. At the same time, Virginia Cellular was denied ETC status in a lower-cost wire center of another Path 1 ILEC because the FCC concluded the averaged per-line support would be excessive.²⁰

The Rural Task Force took this issue up five years ago and concluded, with a consensus of wireless and wireline carriers, that disaggregation is needed to more accurately target support and protect rural ILECs from subsidized competitive entry in low-cost areas. Without any supporting evidence whatsoever, the FCC speculated in its *Highland Cellular* decision that disaggregation may not always protect ILECs,²¹ and the Joint Board regurgitated the same statement in its recent recommendation.²² States that have carefully considered this matter have properly rejected this unwise and unsupported policy shift.²³

It is widely accepted that disaggregating support to the wire center level is not an onerous task, even for small rural ILECs. The Commission should modify its rules to require all ILECs to

¹⁹ See *Universal Service First Report and Order*, 12 FCC Rcd at 8801 para. 47.

²⁰ See *id.* at 1579-81.

²¹ *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6437-38 (2004) (“*Highland Cellular*”).

²² See *2004 Recommended Decision*, *supra*, 19 FCC Rcd at 4279.

²³ See Supplemental Comments of the Minnesota Public Utilities Commission in CC Docket 96-45, filed May 14, 2004; Supplement to Petition by the Colorado Public Utilities Commission in CC Docket 96-45, filed May 14, 2004; Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) at pp. 10-12 (“Dakota Cellular Order”); AT&T Wireless PCS of Cleveland, LLC, Docket No. UT-043011 (Wash. Util. & Transp. Comm’n, 2004) at p. 9 (“AT&T Washington Order”); Easterbrooke Cellular Corp., Recommended Decision, Case No. 03-0935-T-PC (W.V. PSC, May 14, 2004) at p. 55 (“Easterbrooke Cellular”).

immediately disaggregate support under Path 2, at least to the wire center level. This one action will greatly improve the transparency of the system so that competitors can make a more reasoned choice as to whether to enter some areas. If support is moved out of low-cost areas, some carriers will likely decline to enter. Alternatively, the Commission should require such disaggregation immediately upon designation of a competitive ETC in any portion of an ILEC study area.

d. The System Should Reward Efficiency and Reduce the Long-term Need for Support

If properly designed, a forward-looking methodology for calculating high-cost universal service will do a far better job than an embedded cost system at directing appropriate levels of high-cost support to eligible carriers serving high-cost areas. Because a forward-looking mechanism provides an objective measure of efficient costs, it also will provide the appropriate incentives for investment, innovation, and entry into the marketplace.²⁴ As the FCC observed in the *Universal Service First Report and Order*, in comparison to embedded cost support, “a forward-looking economic cost methodology creates the incentives for carriers to operate efficiently and does not give carriers any incentives to inflate their costs or to refrain from efficient cost-cutting.”²⁵ Moreover, “in the long run, forward-looking economic cost best approximates the costs that would be incurred by an efficient carrier in the market.”²⁶

A forward-looking mechanism such as that currently used for non-rural incumbent LECs also targets support to small geographic areas, thereby ensuring that “sufficient” support is available in high-cost areas. A forward-looking mechanism, therefore, will better ensure that consumers in high-cost areas have access to telecommunications services that are comparable to those available in urban areas, in terms of both rates and quality. Over time, a high-cost support system based on forward-looking costs also will reduce the need for support.

The FCC has squarely rejected arguments that the FCC indefinitely should maintain embedded cost support mechanisms for rural carriers.²⁷ The FCC concluded that “after a

²⁴ See *Universal Service First Report and Order*, 12 FCC Rcd 8776 at 8899 para. 224.

²⁵ See *id.* at 8900 para. 226.

²⁶ See *id.* at 8899 para. 224.

²⁷ See *id.* at 8934-35 paras. 291-292.

reasonable period, support for rural carriers also should be based on their forward-looking economic cost of providing services designated for universal service support.”²⁸ In the *Rural Task Force Order*, the FCC described numerous flaws with the Rural Task Force’s conclusion that forward-looking support was not suitable for rural telephone companies.²⁹ Indeed, the FCC concluded that all of the Rural Task Force’s complaints about forward-looking support could be addressed by updating model inputs and using different benchmarks and averaging conventions.³⁰

In the *Rural Task Force Order*, the FCC also stated “[w]e disagree” with arguments that “only an embedded cost mechanism will provide sufficient support for rural carriers.”³¹ The *Rural Task Force’s* complaints about forward-looking support entirely overlooked the fact that universal service reform first and foremost is about ensuring that *consumers* in high-cost areas have access to telecommunications and information service at rates that are reasonably comparable to rates charged for similar services in urban areas.³² Courts have emphasized that the Act demands sufficient funding for *customers*, the intended beneficiaries of universal service, not *providers*.³³ Moreover, excessive support can violate the “sufficiency” requirement in the Act.³⁴ The FCC, therefore, must move forward with necessary reforms to the high-cost universal service mechanisms.

CONCLUSION

Passage of the 1996 Telecommunications Act provides an explicit expression of the twin goals of competition and advancement of universal service. Achieving these explicit goals requires a fundamental reform of the high-cost universal support mechanisms. Reform must produce a forward looking high cost mechanism which is distributed in a competitively and

²⁸ *See id.* at 8934 para. 291.

²⁹ *See Rural Task Force Order*, 16 FCC Rcd 11244, at para. 175.

³⁰ *See id.*, 16 FCC Rcd 11244, at para. 175-176.

³¹ *See id.*, 16 FCC Rcd 11244, at para. 174.

³² *See* 47 U.S.C. § 254(b)(3).

³³ *See Alenco Commun. Inc. v. FCC*, 201 F.3d 608, at 622.

³⁴ *See id.* at 619.

technologically neutral manner. To do otherwise will only grow the fund unnecessarily and encourages inefficiency, to the detriment of all consumers, most notably those in high-cost and/or rural area.