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

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In the Matter of

High-Cost Universal Service Support

WC Docket No. 05-337

### COMMENTS OF T-MOBILE USA, INC.

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T-Mobile USA, Inc. ("T-Mobile") supports the Joint Board's consideration of the reforms of the high-cost universal service program presented in its Public Notice ("Notice").<sup>1</sup> The use of properly structured "reverse auctions," techniques to target high-cost support at more granular levels, mandatory disaggregation of support, and competitively neutral support rules will help achieve the Commission's goal of efficiently supporting customers with a more stable high-cost fund. The steady erosion of the universal service contribution base and the accelerating demands placed on the high-cost program require immediate Joint Board and Commission attention to the pending 2002 and 2004 referrals addressing high-cost universal service support mechanisms and to the issues raised by the Notice.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> FCC Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Long-Term, Comprehensive High-Cost Universal Service Reform*, FCC 07J-2, WC Docket No. 05-337; CC Docket No. 96-45 (May 1, 2007) ("Notice").

<sup>&</sup>lt;sup>2</sup> See Federal-State Joint Board on Universal Service, 17 FCC Rcd 22642 (2002); Federal-State Joint Board on Universal Service, 19 FCC Rcd 11538 (2004). See also Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support, 21 FCC Rcd 9292 (2006).

#### I. INTRODUCTION AND SUMMARY

The proper focus of the high-cost universal service program should be "sufficient funding of customers, not providers," and incentives for efficiency and technological evolution, rather than a guarantee of "a sufficient return on investment" for incumbents' legacy costs.<sup>3</sup> To that end, high-cost reform must target support to high-cost areas, base the level of support on the forward-looking costs of the least-cost technology in each area, and be technologically and competitively neutral.<sup>4</sup> Only then can the Commission's goals of stabilizing the high-cost fund and generating efficiencies be realized.<sup>5</sup> Any proposals to reform the high-cost program should be weighed against these criteria.

Reverse auctions offer great promise in reforming the distribution of high-cost support. Of the reverse auction proposals in the record, those submitted by CTIA - The Wireless Association® ("CTIA") and T-Mobile present the best opportunity to drive the level of support down to the forward-looking costs of the most efficient technology in each area, preserve the high-cost fund, generate optimal efficiencies, and distribute support in a competitively and technologically neutral manner. The reverse auction proposal submitted by Verizon, by contrast, fails to meet any of these criteria.

T-Mobile also endorses the use of geographic information systems ("GIS") technology and network cost modeling to target support at more granular levels and the mandatory disaggregation of support to limit support for both incumbent eligible telecommunications carriers ("ETCs") and competitive ETCs ("CETCs") to properly circumscribed high-cost areas.

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<sup>&</sup>lt;sup>3</sup> Alenco Communications, Inc. v. FCC, 201 F.3d 608, 620 (5th Cir, 2001) ("Alenco"). <sup>4</sup> Id. at 615-16, 620.

<sup>&</sup>lt;sup>5</sup> Notice  $\P 4$ .

All of these techniques will help preserve the high-cost fund by restricting its distribution to areas and customers where it is most needed.

The same principles of efficiency and neutrality require that both incumbents and CETCs have the same opportunity to receive high-cost support based on the forward-looking costs of the most efficient technology in each area, whether that level is the same as the incumbent's costs, the CETC's costs, or neither. Only a neutral least cost standard can generate the incentives necessary to foster competition and more efficient operations and to ensure the long term viability of the high-cost fund. One way of implementing this standard would be to distribute high-cost support through reverse auctions.

In this environment, T-Mobile also counsels against adding broadband to the list of services supported by the universal service fund. Expanding the fund with additional mandates before comprehensive reform takes hold will only lead to instability and competitive arbitrage in the long run. Moreover, the Commission can encourage broadband deployment without making it a supported service. If the Joint Board and Commission, nonetheless, consider adding broadband to the list of supported services, they should not act until after the high-cost program has been overhauled and placed on a sound foundation.

### II. PROPERLY STRUCTURED REVERSE AUCTIONS WOULD PROVIDE TARGETED HIGH-COST SUPPORT BASED ON COMPETITIVELY DETERMINED COSTS.

Reverse auctions would distribute support to the carrier(s) offering to provide services for the least amount of universal service support, thereby driving all carriers toward efficient operations, minimizing the burden on the high-cost fund and restraining its growth. Numerous competitive wireless, wireline, and satellite providers, as well as some incumbent carriers, support reverse auctions as the best approach to reforming the high-cost universal service

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<sup>program. 6</sup> T-Mobile, CTIA, and other parties have emphasized that for reverse auctions to drive the level of support down to the actual forward-looking costs of the most efficient technology in each area, all ETCs, including the incumbent, must participate in the same auction. If there are separate auctions for wireline and wireless carriers, or if only CETCs are required to participate, incumbent wireline carriers will largely avoid the efficiency-generating rigors of competitive auctions. Most of the 80-plus percent of total high-cost support that currently flows to incumbent local exchange carriers ("ILECs") thus would be maintained at current inefficient levels, notwithstanding the decline in wireline subscribers, and consumers would continue to bear the brunt of the resulting exorbitant costs.<sup>7</sup>

Both CTIA and T-Mobile submitted reverse auction proposals, under which the incumbent and all other wireline and wireless ETCs in each area would participate in the same auction. Under CTIA's approach, the lowest bidder in each auction would receive more support than the other bidders, but the others would receive some support, although at a lower level.<sup>8</sup> T-Mobile proposed a variation on CTIA's approach under which all ETCs whose bids were within a certain percentage above the lowest bid (the "award range") would receive the same support.

<sup>7</sup> T-Mobile Reply at 6 & n.16.

<sup>8</sup> See CTIA Reply at 7, and attachment, James Stegman, Dr. Steve Parson, *et al.*, *Controlling Universal Service Funding and Promoting Competition Through Reverse Auctions* at 19-22 ("CTIA Attachment"); Comments of CTIA - The Wireless Association® at 5-10, *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337 (Oct. 10, 2006) ("CTIA Comments").

<sup>&</sup>lt;sup>6</sup> See Reply Comments of T-Mobile USA, Inc., Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support, WC Docket No. 05-337 (Nov. 8, 2006) ("T-Mobile Reply"); Reply Comments of CTIA - The Wireless Association® at 2, Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support, WC Docket No. 05-337 (Nov. 8, 2006) ("CTIA Reply").

An incumbent whose bid was above the award range would receive a lower level of support, but CETCs whose bids were above the award range would receive none. Incumbents would be expected, after a reasonable transition period, to submit bids that would not be accorded any special treatment.<sup>9</sup> Under both approaches, a losing incumbent would retain some high-cost support, at least for a transition period, thereby minimizing the risk of stranded investment.<sup>10</sup> Accordingly, adoption of either CTIA's or T-Mobile's proposal would achieve the Commission's universal service goals while generating efficiency incentives among incumbents with minimal disruption.

In any event, both CTIA's and T-Mobile's approaches are far preferable to Verizon's reverse auction proposal, which, for the most part, would shield incumbents from wireless competition, thereby forfeiting efficiency incentives and violating competitive and technological neutrality. <sup>11</sup> Initially, only wireless CETCs would participate in auctions under Verizon's approach, thus insulating the more than 80 percent of high-cost support now flowing to ILECs from any threat of competitive bidding.<sup>12</sup> Verizon proposes separate wireline ETC and wireless ETC auctions as the next step, which would still leave slightly under 95 percent of wireline study areas unaffected by auctions because wireline CETCs have entered so few markets.<sup>13</sup> By

<sup>10</sup> See id. at 8-9; CTIA Attachment at 22; CTIA Comments at 8-9.

<sup>11</sup> See Letter from Kathleen Grillo, Vice President, Federal Regulatory, Verizon, to the Hon. Deborah Taylor Tate, Federal Chair, and the Hon. Ray Baum, State Chair, Federal-State Joint Board on Universal Service ("Verizon Plan"), and Appendix, *Modernizing Universal Service: A Design for Competitive Bidding*, WC Docket No. 05-337 (Feb. 9, 2007).

<sup>12</sup> T-Mobile Reply at 6 & n.16.

<sup>13</sup> See Verizon Plan at 8 (wireline CETCs in about 90 study areas today). According to USAC data, there are 1,604 study areas in the U.S. in which ILECs are receiving high-cost (Footnote continues on next page.)

<sup>&</sup>lt;sup>9</sup> T-Mobile Reply at 7-10.

avoiding any auction or bidding process, most ILECs would not have to increase efficiency and could continue to burden the high-cost universal service fund, the cost of which is ultimately borne by consumers.

Verizon argues that separate wireline and wireless auctions are necessary because wireless costs are different.<sup>14</sup> As explained below, however, high-cost support should be based on the forward-looking costs of the most efficient technology in each area.<sup>15</sup> Only if all potential providers (even if using different technologies), participate in a single auction, can reverse auctions accurately identify the amount of support that is based on the forward-looking cost of the most efficient technology in each area. Cost and efficiency differences demand a single auction that includes both incumbents and CETCs, not separate auctions, as Verizon suggests.

The Commission, courts, and Congress have consistently affirmed the requirement of technological and competitive neutrality for the distribution of universal service support. In the *USF Order*, the Commission stated 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."<sup>16</sup> Chairman Martin reiterated this principle,

<sup>15</sup> See Part IV infra.

<sup>(</sup>Footnote continued from previous page.)

support. Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007* (Jan. 31, 2007), Appendix HC01, *available at* <u>http://www.usac.org/about/governance/fcc-filings/2007/Q2/HC01%20-%20High%20Cost%20Support%20Projected%20by%20State%20by%20Study%20Area%20-%202Q2007.xls</u>. Ninety study areas constitute slightly over five percent of the total of 1,604 study areas in which ILECs are receiving high cost-support.

<sup>&</sup>lt;sup>14</sup> Verizon Plan at 7-8.

<sup>&</sup>lt;sup>16</sup> *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8801 (1997) (subsequent history omitted).

emphasizing that "all providers of the same service must be treated in a similar manner regardless of the technology that they employ."<sup>17</sup> Similarly, the U.S. Court of Appeals for the Fifth Circuit held in *Alenco* that the principle that the universal service program "*must treat all market participants equally*" is mandated "by statute."<sup>18</sup> Separate wireline and wireless high-cost support reverse auctions would directly violate this statutory requirement.

Accordingly, the Joint Board should recommend implementation of a reverse auction mechanism along the lines of the CTIA and T-Mobile proposals. Auctions including both incumbents and CETCs would best fulfill Chairman Martin's expectation that "reverse auctions could provide a technologically and competitively neutral means of controlling fund growth and ensuring a move to most efficient technology over time."<sup>19</sup>

#### III. NETWORK COST MODELING AND DISAGGREGATED SUPPORT OFFER A WAY TO TARGET HIGH-COST SUPPORT MORE EFFECTIVELY.

The Joint Board should recommend utilization of GIS technology and cost modeling techniques to enable the Commission to target support only to those areas most in need. Typically, ETCs receive high-cost support representing an average of high and low cost portions of a given study area. The demographic variations within a typical study area obscure the actual

<sup>19</sup> Notice  $\P$  4.

<sup>&</sup>lt;sup>17</sup> Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV; Delivered via Satellite from Washington, D.C., 2005 FCC LEXIS 5797 (Oct. 26, 2005).

<sup>&</sup>lt;sup>18</sup> Alenco, 201 F.3d at 616 (emphasis added).

cost of serving the highest cost portions. Modeling techniques would allow more precise targeting of high-cost support and guide how to modify the high-cost program efficiently<sup>20</sup>

The Joint Board also should recommend mandatory disaggregation of support below the study area level in order to limit both incumbents and CETCs to the minimum level of support necessary to serve high-cost areas. Incumbents should be required to identify the high-cost portions of their study areas, even if that policy results in a loss of high-cost support for other portions of those study areas. According to the Notice, an overwhelming majority of rural ILECs chose not to disaggregate their high-cost support.<sup>21</sup> This conduct suggests that most rural ILECs have determined that they are better off maintaining high-cost support in relatively lower cost portions of their study areas that might not qualify under disaggregation than they would be if they received support only in their highest cost areas. Such a determination also means that CETCs serving the same study areas similarly collect support for the relatively lower cost portions of those study areas. ILEC decisions not to disaggregate thus unnecessarily burden the fund.

In addition, any GIS mapping and disaggregation methodologies should be based on technology-neutral geographic criteria, such as zip codes, county boundaries, or other geographic units that do not favor one technology over another. All telecommunications providers, regardless of their chosen technology, can adhere to these universally recognized geographic boundaries without undue burden, so there is no reason to continue requiring CETCs to base their line count filings on wire centers unique to ILECs. Application of these techniques, using

<sup>&</sup>lt;sup>20</sup> See, e.g., CostQuest Associates, *Universal Service and Network Modeling* (Jan. 2007), *available at* <u>http://www.costquest.com/costquest/default.aspx</u> (follow "QBits" hyperlink, then follow "Joint Board Webinar on Universal Service" hyperlink).

<sup>&</sup>lt;sup>21</sup> See Notice  $\P$  6.

technology-neutral criteria, therefore, would ensure that support is provided to all ETCs at the most granular level, without giving any ETC a competitive advantage.

#### IV. HIGH-COST SUPPORT SHOULD BE BASED ON THE ACTUAL FORWARD-LOOKING COSTS OF THE MOST EFFICIENT TECHNOLOGY IN EACH AREA.

The Notice asks whether "the Commission should replace the current identical support rule with a requirement that competitive ETCs demonstrate their own costs in order to receive support."<sup>22</sup> Focusing on whether CETCs should receive the same level of high-cost support as incumbents, or should receive support based on their own costs, however, will not lead to fund stability. *Neither incumbents nor CETCs* should automatically receive support based on their own costs. Rather, the Joint Board should recommend that all ETCs receive an amount of support based on the forward-looking costs of the most efficient technology in each high-cost area, whether that is wireline, wireless, cable or otherwise.<sup>23</sup>

Unless support is based on the forward-looking costs of the most efficient technology, carriers will not be encouraged to act as efficiently as possible, and they will not be held to a uniform, neutral standard.<sup>24</sup> Support should be sufficient to serve a customer in a high-cost area, not to guarantee "a sufficient return on investment" for incumbents.<sup>25</sup> Guaranteeing support to an incumbent based on its own costs, rather than the forward-looking costs of the most efficient

 $^{22}$ *Id.* ¶ 7.

 $<sup>^{23}</sup>$  As discussed below, reverse auctions would be an effective means of identifying such costs.

<sup>&</sup>lt;sup>24</sup> See Alenco, 201 F.3d at 615-16, 620 (high-cost support should be competitively neutral and based on forward-looking costs).

<sup>&</sup>lt;sup>25</sup> *Id.* at 620.

technology, thus, violates core universal service principles. Furthermore, subjecting wireless ETCs to different support rules from incumbents would contravene competitive and technological neutrality as well as the principle that support is for the benefit of consumers, not carriers.<sup>26</sup>

As CTIA points out, reverse auctions offer an effective way to determine the forwardlooking cost of the most efficient technology in each area.<sup>27</sup> Auctions would force bidders to identify the minimum amount of support needed to provide the supported services. This competitive "natural selection" process would identify the most efficient technology, without any time-consuming cost analyses or other administrative procedures. Reverse auctions also would enable multiple ETCs to serve a given area without unduly burdening the high-cost fund, especially under CTIA's or T-Mobile's suggested approach of providing less support to auction participants other than the lowest bidder. In addition, reverse auctions would promote cost-based efficiency, as they would distribute funds to all CETCs and incumbents on a per line basis, and any carrier, including the incumbent, losing a customer also would lose support for that line.

Accordingly, properly structured reverse auctions would moot the identical support issue or the need to calculate any ETC's costs. Each auction would identify the amount of support that is sufficient to serve customers in a high-cost area using the most efficient technology. The incumbent's actual costs or any particular CETC's costs would become irrelevant to the amount of high-cost support to be distributed, except insofar as the most efficient auction participant determines the level of support through its bid. By driving the amount of support down to forward-looking efficient costs and distributing support only on a per-line basis, reverse auctions

<sup>26</sup> *Id*.

<sup>&</sup>lt;sup>27</sup> CTIA Comments at 6.

also would help maintain the viability of the high-cost program while allowing for the distribution of support to multiple participants.

#### V. BROADBAND DEPLOYMENT SHOULD BE PROMOTED BY MEANS OTHER THAN ITS DESIGNATION AS A SUPPORTED SERVICE.

Although T-Mobile is a significant contributor to the universal service program, which subsidizes the ILECs with which T-Mobile increasingly competes, T-Mobile does not receive any high-cost universal service support.<sup>28</sup> T-Mobile's unique circumstances provide a useful perspective on whether broadband should be added to the list of services supported by the universal service program. Given the rapid growth of broadband services and the increased pressures on the high-cost fund, the Commission should use other means to encourage the deployment of broadband services.

Even without subsidies, carriers like T-Mobile are rolling out broadband services. In addition to its extensive network of over 8,000 wireless HotSpots, T-Mobile offers mobile Internet access through its GPRS service. T-Mobile also recently invested nearly \$4.2 billion for 120 licenses across the United States in the Advanced Wireless Service ("AWS") auction. Assuming that spectrum relocation efforts for government and commercial incumbents in the 1.7 and 2.1 GHz bands occur in a timely fashion, T-Mobile will soon be rolling out nonsubsidized broadband services on AWS frequencies to its fast growing nationwide customer base.

Although some observers have expressed concern that the United States has lagged in broadband deployment,<sup>29</sup> others disagree. For example, White House telecommunications

<sup>&</sup>lt;sup>28</sup> T-Mobile has not yet sought designation as an ETC.

<sup>&</sup>lt;sup>29</sup> See, e.g., Dissenting Statement of Commissioner Michael J. Copps, *High-Cost* Universal Service Support, Recommended Decision, WC Docket No. 05-337, FCC 07J-1 (May 1, 2007) ("Recommended Decision").

advisor Richard Russell has disputed the Organization for Economic Co-operation & Development ("OECD") data showing that the U.S. has slipped in rank on broadband penetration. He pointed to the "new technologies that are rolling out in the U.S.," cited what he regarded as internal contradictions in the OECD statistics and concluded that the U.S. needs better tools for measuring broadband progress.<sup>30</sup>

Recent data support the view that more subsidies are not needed to fund already rapidly growing broadband deployment.<sup>31</sup> According to Commission data, 64.6 million high-speed lines were in service in the U.S. as of June 30, 2006,<sup>32</sup> which represents access for over 30 percent of the total U.S. adult population.<sup>33</sup> Wireless service is becoming an increasingly vital source of broadband access, fueled by the efficiencies of innovative wireless broadband services, and, in some cases, indirectly through access to portable universal service support for the wireless networks used to provide broadband services.<sup>34</sup> The need for direct high-cost support to encourage additional broadband deployment for these services thus is open to debate.

<sup>32</sup> Industry Analysis and Technology Division, FCC Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of June 30, 2006* at 1 (Jan. 2007). For purposes of this report, "high-speed" is synonymous with broadband. *Id.* at n.4.

<sup>33</sup> The U.S. population as of July 1, 2006, was 299.4 million. U.S. Census Bureau Population Estimate, July 1, 2006, *available at* <u>http://www.census.gov/popest/datasets.html</u> (follow "Population, Population change and estimated components of population change: April 1, 2000 to July 1, 2006 CSV" hyperlink). According to the 2000 census, 70 percent of the population was 21 years or older. *See* Profile of General Demographic Characteristics: 2000, *available at* <u>http://censtats.census.gov/data/US/01000.pdf</u>.

<sup>34</sup> Letter from Paul Garnett, Assistant Vice-President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-337; CC Dkt. No. 96-45 (Feb. 21, 2007), (Footnote continues on next page.)

<sup>&</sup>lt;sup>30</sup> Discovery Channel Promotes 'Weapons' via Multimedia Bombardment, Washington Internet Daily, May 8, 2007.

<sup>&</sup>lt;sup>31</sup> See Comments of CTIA – The Wireless Association® on the Missoula Plan at 34-35, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (Oct. 25, 2006).

Opening up universal service support to broadband or other new services could impose a crushing burden on the high-cost program. With the contribution factor at an unsustainable level of 11.7 percent and the universal service contribution base eroding, the precarious position of the high-cost program should not be further threatened by the additional burden of supporting high-end competitive broadband services, at least not until the program is reformed and put on a more solid footing.<sup>35</sup>

Rather than increasing the burden on the already stretched high-cost fund, the Commission should take alternative steps to encourage broadband deployment that would not incur such costs and risks. Although broadband access is not a supported service, the Commission has recognized that "the network is an integrated facility that may be used to provide both supported and non-supported services," and has committed to "ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services."

One way to encourage broadband deployment with indirect high-cost support would be to implement high-cost universal service reverse auctions and focus them on high-cost areas lacking broadband services. Although the resulting funding would be solely for currently supported telecommunications services, targeting support at areas unserved or inadequately served by broadband would maximize the secondary benefits of such support for broadband

<sup>36</sup> Federal-State Joint Board on Universal Service, 18 FCC Rcd 15090, 15095-96 (2003).

<sup>(</sup>Footnote continued from previous page.)

attaching "Written Testimony of Paul W. Garnett Before the Federal-State Joint Board on Universal Service" at 3-5 (Feb. 20, 2007).

<sup>&</sup>lt;sup>35</sup> See FCC Public Notice, *Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 07-1330 (Mar. 15, 2007).

services offered through the same facilities. Such targeting also would further the Section 254(b)(2) universal service goal that "[a]ccess to advanced telecommunications and information services . . . be provided in all regions of the Nation."<sup>37</sup>

#### VI. CONCLUSION

The current high-cost universal service program is unsustainable. To avert a meltdown of the fund, the Joint Board should recommend the steps discussed above, particularly implementation of technologically and competitively neutral reverse auctions along the lines of CTIA's and T-Mobile's proposals, mandatory disaggregation of support, and adoption of a competitively neutral least-cost measure of support for both incumbents and CETCs. Until the

<sup>&</sup>lt;sup>37</sup> 47 U.S.C. § 254(b)(2). "Advanced services" are a "subset of high-speed services," which are synonymous with broadband. *High-Speed Services* at 1 nn.1, 4. Alltel proposes a similarly broadband-focused reverse auction pilot program, but Alltel would treat broadband itself as a supported service and provide additional high-cost funding for broadband. Letter from Gene DeJordy, Vice President, Regulatory Affairs, Alltel, Steve R. Mowrey, Vice President, Public Policy, Alltel, and Mark Rubin, Vice President, Federal Government Affairs, Alltel, to the Hon. Deborah Taylor Tate, Federal Chair, and the Hon. Ray Baum, State Chair, Federal-State Joint Board on Universal Service, attachment, *Alltel Universal Service Reform Proposals* at 1-4, WC Docket No. 05-337 (Feb. 16, 2007). Alltel's proposal, therefore, suffers from the same financial and policy risks of stretching the high-cost fund to support broadband discussed above.

high-cost program can be placed on a firmer footing, moreover, broadband should not be a

supported service.

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