
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)
A National Broadband Plan for Our Future) GN Docket No. 09-51
)
High-Cost Universal Service Support) WC Docket No. 05-337
)

To: The Commission

REPLY COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

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SUMMARY

The Commission has correctly recognized that the universal service system is on an unsustainable path, and currently ill-designed for supporting reasonably comparable mobile and broadband services for rural Americans. Reform is therefore urgently needed, and will require tough decisions to be made regarding changes and transition plans. The path to reform should begin with consumers, by focusing on the mobile and broadband services they demand. Ultimately, the Commission's universal service policies must be measured against the National Broadband Plan's goals of ubiquitous mobile broadband, so the Commission must ensure that its short-term and long-term proposals for universal service are designed to achieve those goals.

High cost program reforms must be conducted in a prudent and competitively neutral manner. The record shows that existing wireless ETCs are using legacy support to deploy wireless facilities in rural areas. Given that these funds are helping drive wireless networks further into Rural America, and that they are the foundation for ubiquitous mobile broadband services and applications, it makes little sense to phase out wireless ETCs' support before an alternative mechanism is implemented or on a faster timeline than for incumbent LECs, whose rural voice networks are mature and have enjoyed the bulk of the high cost funding under the legacy high cost program. By contrast, past growth in wireless ETCs' support merely tracked consumers' increasing preference for mobile services, and mirrored shifting consumer demand in the industry overall. Moreover, wireless support is now subject to an overall cap, such that support for wireless providers in rural areas will not create any pressure on the overall universal service burden for consumers.

The Commission has correctly recognized that the United States must lead the world in mobile broadband, but it has yet to clarify its long-term vision for how the reforms proposed in this proceeding will advance those goals. The proposed Mobility Fund appears far too limited to assure the availability of mobile services everywhere people live, work, and travel, and it is unclear whether the Connect America Fund will support mobile services. Rather than eliminating mobile wireless support before developing alternative mechanisms -- and in advance of other industry participants -- the Commission should commit to developing comprehensive reform and should permit explicitly mobile wireless providers to use existing support for the deployment of mobile broadband services.

As the Commission has recognized, and as the record in the initial comment round again made clear, the reformed universal service mechanisms must represent real change, and must not simply append broadband to the existing, deeply flawed mechanisms. The Notice puts forth a number of sound proposals to increase the efficiency of the legacy fund pending comprehensive reform, and CTIA has proposed others. Rural incumbent LECs, who have received the lion's share of support under the legacy support mechanisms, unsurprisingly attempt to throw up barriers to reform, but none of these has merit. In particular, arguing based on "engineering" grounds for a higher Broadband Availability Target will, as Chairman Julius Genachowski has correctly noted, simply move the goal of reasonably comparable service out of the country's reach.

Undefined state carrier of last resort ("COLR") obligations are another talisman that the rural incumbent LECs wave to ward off reform, but they too are a red herring. Strong obligations already exist under the Act for eligible telecommunications providers to meet

consumer needs in their service areas. Moreover, as the Commission recognized in the National Broadband Plan, the Commission has more than adequate authority to develop appropriate provider of last resort obligations that provide uniform and consistent protection for consumers across the country. While States may choose to develop more stringent COLR obligations in certain circumstances, ill-defined or open-ended assertions about COLR requirements cannot be foisted as a barrier to meaningful reform of the federal universal service system, nor can they be used to impose burdensome contributions on consumers in the rest of the country. Indeed, federal law bars state universal service policies from “burdening” the federal fund. The federal support mechanisms should support *federal* universal service goals, and state COLR rules impose no impediment to the Commission’s reform effort.

As CTIA explained in its initial comments, the Commission should instead focus on high cost universal service reform efforts on proposals that:

- Refrain from implementing reductions to existing CETC support until an alternate mechanism is in place;
- Phase out legacy high cost support on the same timeline for all participants;
- Adopt the NPRM’s common sense proposals for reform of legacy incumbent LEC funding; and
- Adopt long-term reforms that are competitively neutral and ensure sufficient support (including on-going support) for the unique attributes and functionalities of mobile broadband services.

Together, these changes would ensure that the Commission’s high cost universal service support program meets the needs of American consumers, who now predominantly rely upon mobile wireless networks for voice communications and are rapidly coming to rely on mobile wireless networks for their data and video services.

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To: The Commission

REPLY COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

I. INTRODUCTION

CTIA–The Wireless Association® (“CTIA”)¹ hereby files this reply in response to comments filed on the Commission’s Notice of Inquiry and Notice of Proposed Rulemaking (“Notice”) and urges the FCC to adopt forward-looking universal service policies that reflect the services that consumers need and prefer.² As Senator Jay Rockefeller recently stated, “Everyone in this country, no matter who they are or where they live, deserves access to modern communications services, *including* broadband and *wireless services*.”³ As Senator Rockefeller

¹ CTIA–The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 (rel. April 21, 2010) (“Notice”).

³ Letter from Sen. Jay Rockefeller to Chairman Julius Genachowski (Aug. 2, 2010) at 2 (emphasis added).

also notes,⁴ this responsibility is the law: Section 254 directs the Commission to ensure that all Americans – especially those in rural and high-cost areas – have access to reasonably comparable services at reasonably comparable rates.⁵ Consistent with Congressional directives, the National Broadband Plan sets out a long-term vision that focuses on the two essential functionalities that should be supported by universal service: broadband and mobility.⁶ The Commission is correct to pursue competitively and technologically neutral reform that focuses on those functionalities and in its initial comments CTIA suggests modest changes to the Commission’s proposals to meet that goal.⁷

As Chairman Julius Genachowski has stated, “universal service policies must be based on the future, not the past. Technology is changing. The market is changing. The opportunities and challenges are changing. Our policies must reflect these changes.”⁸ The NBP makes clear that all current high cost recipients will need to make adjustments to accommodate comprehensive reform, but those adjustments must be competitively neutral. The NBP contemplates the development of new high cost support mechanisms and the transition from legacy support mechanisms – yet, at this point in time, only wireless carriers have been asked to reduce their support to meet the needs of the fund.⁹ To date, the CETC cap has cut funding to

⁴ *Id.* at 1.

⁵ 47 U.S.C. § 254(b)(3).

⁶ *Connecting America: The National Broadband Plan* (2009) (“NBP” or “Plan”) at 9-10 (establishing 6 “Goals for a High-Performance America,” of which broadband access is Goal Nos. 1 and 3 and world-leading mobile broadband speeds Goal No. 2).

⁷ CTIA comments at 19-20.

⁸ Prepared Remarks of Chairman Julius Genachowski, 47th Annual OPASTCO Summer Convention and Trade Show, Seattle, Washington (July 28, 2010) at 4.

⁹ *High-Cost Universal Service Support*, WC Docket No. 05-337, Order, 23 FCC Rcd 8834 (2008) (“*CETC Cap Order*”).

CETCs by nearly \$800 million.¹⁰ As described in CTIA’s initial comments, and as many commenters explain, the Commission must reject proposals to further curtail support for wireless services in rural areas before implementing an alternative support mechanism. Such proposals fly in the face of the Act and fail to deliver on the overarching goals of the NBP. Moreover, it is critical that all future reductions in legacy support be targeted and timed neutrally across all industry participants.

As CTIA explained in its initial comments, the Commission should instead focus on high cost universal service reforms that:

- Refrain from implementing reductions to existing CETC support until an alternate mechanism is in place;
- Phase out legacy high cost support on the same timeline for all participants;
- Adopt the NPRM’s common sense proposals for reform of legacy incumbent LEC funding; and
- Adopt long-term reforms that are competitively neutral and ensure sufficient support (including on-going support) for the unique attributes and functionalities of mobile broadband services.

Together, these changes would ensure that the Commission’s high cost universal service support program meets the needs of American consumers, who now predominantly rely upon mobile wireless networks for voice communications and are rapidly coming to rely on mobile wireless networks for their data and video services.

II. THE RECORD SHOWS THAT PREMATURE PHASE-OUT OF CETC SUPPORT WOULD BE UNWISE

The record in this proceeding underscores the beneficial impact of universal service support on rural wireless development. According to one commenter, “[t]hese past

¹⁰ Analysis of USAC quarterly projections reveals that the cap reduced CETC support by \$393.3 million in 2009 and will reduce it by \$468.8 million in 2010.

investments of high-cost support are the reason that literally hundreds of small rural communities across the country have high-quality mobile wireless service today. Without high-cost support, these types of communities will not have high-quality mobile wireless service, much less mobile broadband.”¹¹ Another commenter notes that wireless CETCs “are already operating a number of cell sites that would not have been constructed, and could not continue operating profitably, but for the availability of high-cost support.”¹²

The benefit of universal service support to the availability of rural wireless service seems unsurprising as an economic matter. By covering a portion of wireless carriers’ costs in rural areas, such support supplements the revenues these carriers can earn, thereby making areas that were uneconomic to serve economically viable. The National Broadband Plan also acknowledged the beneficial impact of support on wireless deployment by recommending the creation of a Mobility Fund.¹³ This is the same economic logic by which high-cost support mechanisms enable service to more Americans by *all* carriers, which is why wireless carriers should be treated similarly with respect to such support. Indeed, relative to incumbent LECs, wireless carriers have received far less support from legacy high cost mechanisms. Given the relatively nascent nature of wireless technology compared to wireline technology, wireless providers have had less time to fully build out their networks in rural areas.¹⁴ These factors counsel against premature phase out of funding for mobile wireless services and, particularly

¹¹ U.S. Cellular comments at 23. (Unless otherwise noted, citations in this reply refer to parties’ initial comments in this proceeding filed on or about July 12, 2010.)

¹² RCA comments at 9.

¹³ NBP at 146 (recommending a Mobility Fund to expand wireless deployment in states with below-average 3G buildout). As explained more fully in CTIA’s initial comments, there are significant questions about whether the Mobility Fund as proposed is sufficient to ensure ubiquitous mobile broadband services.

¹⁴ See *infra* Section III. See also CTIA comments at 25.

given increasing consumer demand for mobile services, for a careful approach that does not discriminate against mobile wireless services.

In the NBP and elsewhere, the Commission has committed itself to basing its policies on a “data-driven” understanding of their impact. The NBP acknowledges, however, that the Commission has not yet made an assessment of how much existing voice, mobile, and broadband service depends on existing high cost support.¹⁵ CTIA urges the Commission, in reforming its high-cost support mechanisms, to acknowledge the benefits of high cost funding for mobile wireless deployment in rural areas -- and, most importantly, for consumers in rural areas. Before moving to eliminate existing wireless support, the Commission must develop alternative mechanisms that are calibrated to meeting the NBP’s goals and the Act’s requirements regarding support for mobile broadband services.

The Commission must resist unjustified invitations to slash support for wireless services prematurely. Contrary to some commenter claims, there is no evidence that current CETC support levels are unreasonable. Given the tectonic shift in consumer preference toward mobile services, it is not surprising that support to competitive ETCs has grown. As CTIA has demonstrated previously, consumer demand for wireless services has skyrocketed, for both voice and broadband services.¹⁶ Wireless penetration has reached 91%, and nearly one-quarter of American households are “wireless only.”¹⁷ The number of wireless subscribers has more than

¹⁵ Notice at ¶ 33 & n.76.

¹⁶ Letter from C. Guttman-McCabe, CTIA, to M. Dortch, FCC, WT Docket No. 09-66, GN Docket No. 09-157, and GN Docket No. 09-51 (filed April 29, 2010) at 14-17.

¹⁷ CTIA, U.S. Wireless Quick Facts (Year End Figures), *avail. at* http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Aug. 6, 2010).

doubled since 2000, and grown more than eight-fold since the passage of the 1996 Act.¹⁸ When given a choice to subscribe to wireless service, including that made possible by high-cost support, consumers in high-cost areas have followed the general trend toward mobile wireless. Competitive ETC support thus tracks the shift in consumer demand to mobile services. In contrast to the dramatic increase in demand for wireless services, however, wireline subscriptions actually *decreased by 33%* over the same period.¹⁹ Despite this declining demand for wireline services, high-cost support to incumbent LECs has grown substantially since the Act was passed, jumping nearly 40% between 2000 and 2008.²⁰

Given this context, it is at once inaccurate and unfair to lay blame for the growth in high-cost support disproportionately at the feet of wireless carriers, as the proposal to eliminate competitive ETC support, and to do so quickly, suggests. Wireless carriers have given consumers in high-cost areas new choices and the numerous opportunities that come from mobile services. These carriers have used support to serve consumers consistent with their obligations under the Act and the Commission’s reporting requirements.²¹ Moreover, there need not be any further debate about the propriety – or impact – of the “identical support rule,” as the rule effectively was eliminated when the Commission imposed the cap on competitive ETC

¹⁸ *Id.*

¹⁹ See Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2008* (June 2010), avail. at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0625/DOC-299052A1.pdf, at 12 (incumbent LEC lines decreased from 177 million in December 2000 to 118 million in 2008).

²⁰ See Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, *Universal Service Monitoring Report*, CC Docket No. 98-202 (2009), at 3-15, avail. at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf (“*USF Monitoring Report*”) (total high-cost support for incumbent LECs rose from \$2.23 billion in 2000 to \$3.09 billion in 2008).

²¹ See, e.g. 47 C.F.R. §§ 54.202, 54.209.

support. In fact, the growth of the high-cost fund is most properly laid at the feet of the former Commission, which decided to allow incumbent LECs to continue receiving the same amounts of support despite a dramatic reduction in the number of consumers they serve.²² That approach, which was inconsistent with the proposals of the Rural Task Force, has rewarded incumbent LECs with increasing support levels at the very time they are losing customers. If there is any element of the current high cost mechanisms which warrants change, it is this anachronistic and competition-distorting approach.

This favoritism of incumbent LECs is outdated, inconsistent with the vision of the NBP, and certainly cannot be justified by the questionable arguments about “carrier of last resort” obligations made by some commenters.²³ As discussed below, vague or open-ended state carrier-of-last resort (“COLR”) obligation must not be a barrier to comprehensive reform and must be rejected as a basis for disparate treatment as the Commission considers short-term universal service reforms.²⁴ CTIA urges the Commission to recognize this and develop an approach less likely to undermine the many benefits wireless recipients of high-cost support have brought consumers than the proposed elimination of competitive ETC support.

As CTIA explained in its initial comments and as other commenters confirm, the Commission should not phase out support for wireless CETCs prior to development of an

²² *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45 and 00-256, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11293-11299 ¶¶ 120-135 (2001).

²³ *See infra* Section V.

²⁴ *See infra* Section V.

alternative mechanism.²⁵ The record amply demonstrates that, given the numerous benefits of high-cost support to rural wireless deployment, the Commission should move cautiously in reforming support for these services, so as to minimize harm to consumers and unnecessary disregard of wireless carriers' legitimate reliance interests.

Eliminating current wireless competitive ETC support will change investment decisions and likely decrease investment in low density, rural areas. Elimination of support, in particular, may lead providers to cut expansion of their service territories or, in some cases, to reduce their service areas. Other commenters agree. For example, General Communications states that sunseting competitive ETC support would have a devastating effect on broadband and basic voice service in Alaska.²⁶ Similarly, U.S. Cellular argues that the phase-down of wireless carriers' support only reduces the ability of carriers to construct new cell sites in remote areas.²⁷

CTIA also shares other commenters' concerns regarding how the proposed elimination of competitive ETC support fits into the larger context of universal service reform.²⁸ First, it would undermine the Commission's commitment to competitive and technological neutrality to phase out competitive ETC support more quickly than support to wireline carriers. As T-Mobile explains, the premature termination of support to competitive ETCs, while continuing to support

²⁵ CTIA comments at 6-9. *See also, e.g.*, AT&T comments at 23; T-Mobile comments at 9-10; US Cellular comments at 27; USA Coalition comments at 24.

²⁶ General Communications comments at 2, 22-24. *See also* Regulatory Commission of Alaska comments at 13-14 (urging exemption from phase-out of support to competitive ETCs because it could affect investment in wireless facilities).

²⁷ U.S. Cellular comments at 27.

²⁸ *See also infra* Section III.

incumbent LECs, would be anti-competitive and force wireless carriers to subsidize incumbent LECs.²⁹

Second, and more generally, the proposed elimination of competitive ETC support would be premature pending development of new support mechanisms. Many commenters confirm the need to develop and implement alternative mechanisms before eliminating support for wireless services. AT&T, which previously has proposed transitions for wireless support, highlighted the need for an alternative mechanism, observing that, in contrast to the NBP's proposal simply to phase CETC support out, "under AT&T's proposal, the Commission would shift legacy competitive ETC support to an Advanced Mobility Fund"³⁰ Simply stated, "[t]he FCC cannot adopt a rational transition plan until it has adopted long-term universal service reform."³¹ In particular, the Commission should be careful not to remove support before mobile broadband funds are operational.³²

Rather than eliminating competitive ETC funding on an interim basis, the FCC should, as CTIA has proposed, explicitly permit CETCs to use existing funding for mobile broadband deployments while it develops alternative high cost mechanisms.³³

As the Commission contemplates accommodating new demands for high cost support, it is critical to note that the Commission may not simply "stockpile" any money that results from funding reductions for future use. Any reductions in support must be used to reduce the universal service contribution factor. By requiring that support be "specific" and "predictable"

²⁹ T-Mobile comments at 3, 9. *See also* U.S. Cellular comments at 26.

³⁰ AT&T comments at 23.

³¹ USA Coalition comments at 23.

³² T-Mobile comments at 3.

³³ CTIA comments at 8.

section 254 effectively prohibits the Commission from collecting contributions from providers for USF mechanisms that do not exist or exist in name only.³⁴ Further, section 254(d) expressly provides that a necessary prerequisite to collecting universal contributions is that USF “mechanisms [be] *established* by the Commission.”³⁵ Thus, in addition to the reasons noted above, the Commission may not move forward with premature phase out of support for wireless services with the intention of stockpiling those funds for alternate future uses.

In sum, the FCC should not phase out support for wireless CETCs any sooner than it phases out support for other carriers, nor prior to development of an alternative mechanism.

III. THE FCC MUST CLARIFY ITS LONG-TERM VISION FOR SUPPORTING MOBILE BROADBAND

To create a high-performance America, the NBP observes that the United States must “lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.”³⁶ Unquestionably, the “most extensive” wireless networks should be available wherever people need them – at their homes and offices, certainly, but also on roads and in other areas people routinely work and travel. Indeed, the full Commission recently observed that “[ubiquitous] mobile data networks will be essential to achieve the goal of making broadband

³⁴ 47 U.S.C. § 254(b)(5) and (d).

³⁵ 47 U.S.C. § 254(d) (emphasis added). Indeed, the Fifth Circuit has suggested that a decision to collect USF contributions from all current customers of telecommunications carriers with the intent to spend the funds on a future program intended to benefit new broadband customers could violate the Constitution’s origination and taxing clauses. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 428 n.56, 443 (5th Cir. 1999).

³⁶ NBP at 9, Goal No. 2.

connectivity available everywhere in the United States.”³⁷ This conclusion is unquestionably correct and must sit at the heart of universal service reform.

Senator Rockefeller’s recent letter to Chairman Genachowski further confirms this important purpose of universal service. His letter vividly illustrates the way tragedy can be compounded when wireless services are not available, describing hardships endured by rescue workers and family members because there was no wireless service in the hills above the Upper Big Branch Mine.³⁸

Initial comments in this proceeding share Senator Rockefeller’s sentiment. As one commenter put it, “[i]n order for rural consumers to have access to reasonably comparable services, as set forth in Section 254, ... a mobile phone must work throughout the area where rural consumers live, work and travel.”³⁹

Yet, as CTIA and other commenters observe, the Commission has not yet explained how the new Connect America Fund (“CAF”) and Mobility Fund will work together to achieve the Plan’s goal of ubiquitous and affordable mobile and broadband services.⁴⁰ The NBP, for example, estimates a relatively small need to support wireless services based on the current availability of 3G services only at *residences*, leaving out the substantial road mileage and other areas currently lacking service (as demonstrated, for example, in Senator Rockefeller’s recent

³⁷ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4182 ¶ 1 (2010) (“*Roaming Order*”).

³⁸ Letter from Sen. Jay Rockefeller to Chairman Julius Genachowski (Aug. 2, 1010).

³⁹ US Cellular comments at 4.

⁴⁰ CTIA comments at 22-26; Sprint comments at 2; US Cellular comments at 3-11; USA Coalition comments at 5-10.

letter).⁴¹ The NBP also acknowledged that it made no inquiry into the extent current support is enabling existing wireless service, and proposed a shorter phase-out of legacy support for competitive ETCs (such as wireless carriers) than for incumbent LEC ETCs.⁴² In the CAF, the NBP sees a significant potential role for wireless service in filling the National Broadband Gap, but apparently only on a fixed basis.⁴³ The Commission has yet to explain how these proposals will work together to achieve the Commission's and the Plan's goals or the statute's requirements for ubiquitous mobile broadband services.

CTIA therefore urges the Commission in this proceeding to ensure that its reform efforts are designed to advance the goals that animate them. Specifically, the Commission must ensure that the new CAF and Mobility Fund will work together to ensure that consumers have access to high-quality mobile broadband everywhere they need it. The Commission also must set out a transition plan for legacy CETC support that is competitively neutral and does not undermine existing service.

IV. COMPREHENSIVE REFORM WILL REQUIRE MORE THAN SIMPLY APPENDING BROADBAND TO EXISTING BACKWARD-LOOKING MECHANISMS

As the FCC itself has noted, universal service reform must be forward-looking, not backward looking, in terms of technology.⁴⁴ The Commission should not be dissuaded from this vision by the salvos of incumbent commenters who seek to lock the Commission into supporting

⁴¹ See CTIA comments at 22-26.

⁴² See *id.*; see also Notice at ¶ 60.

⁴³ Notice at App. C, THE BROADBAND AVAILABILITY GAP, at 66.

⁴⁴ See, e.g., Notice at ¶¶ 49-50, citing *Joint Statement on Broadband*, GN Docket No. 10-66, *Joint Statement on Broadband*, 25 FCC Rcd 3420 (2010). See also Prepared Remarks of Chairman Julius Genachowski, 47th Annual OPASTCO Summer Convention and Trade Show, Seattle, Washington (July 28, 2010) at 4 (“universal service policies must be based on the future, not the past”).

networks and services simply because they have received support for generations. Indeed, after years of guaranteed rates of return and USF contributor subsidies for their investments, many RLEC comments suggest that the Commission should not undertake comprehensive reform or refocusing of high cost support.⁴⁵ As the courts have recognized, the “purpose of universal service is to benefit the customer, not the carrier.”⁴⁶ Rural Americans, not providers, must ultimately choose the services supported and the providers who deserve their patronage.

Moreover, backward-focused visions for high cost support will not promote the evolving hybrids of technology that are evolving. As the NBP recognizes, it will be important to have a mixture of both wireless and wireline facilities in rural America.⁴⁷ That will require changing the current support mechanisms, and the Commission must resist calls to simply perpetuate the current inefficient subsidy flows.

Under the legacy USF mechanisms, RLECs have been permitted to build networks with little to no regard for their costs, and without penalty for losing customers. RLEC commenters would have the Commission retain a universal service fund that insulates incumbents from declining business models and makes available funding only for networks that have already received massive amounts of federal funding, while denying funding for newer technologies like wireless, which consumers demand. Such an approach would fail the goals of the Communications Act, the Recovery Act, and the National Broadband Plan.

Thus, it is critical that the FCC devise a new approach to universal service that focuses on the services that consumers need and demand. While the Commission must think carefully about

⁴⁵ See, e.g., NECA *et al.* comments at 45-52; Utah Rural Telecom Association comments at 5-6.

⁴⁶ *Alenco Comms. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000).

⁴⁷ See, e.g., NBP at 9-10, Goals No. 1-3.

transitions, it can move forward now with several steps to improve the efficiency of the fund. The Commission is therefore entirely correct in its proposal to cap incumbent LEC support and eliminate rate-of-return regulation,⁴⁸ since the current approach undermines innovation incentives and is inconsistent with a competitive environment.⁴⁹ Some commenters argue that rate-of-return regulation should be maintained because rate-of-return carriers have deployed broadband to more of their customers than price-cap carriers.⁵⁰ This does not in any way suggest that such an uneconomic system must be maintained in order to ensure broadband access. As the Commission itself has observed, there are far more targeted and efficient ways to ensure universal service, even where no business case can be made for it.⁵¹

Other prudent interim steps also can be taken now to inject greater efficiency into the universal service fund. As CTIA argued in its comments,⁵² the Commission should:

- Require incumbent LECs with multiple study areas in a given state to combine those study areas at the parent company level within each state before support is calculated.
- Treat incumbent LECs with more than 50,000 access lines in a state -- at the parent company level, and irrespective of how many study areas they currently comprise -- as “non-rural” and provide support for them based on the more-efficient “non-rural” support mechanisms.
- Reduce the per-line amount of support by eliminating the recovery of excessive corporate operations expenses that can be recovered through universal service support.

⁴⁸ Notice at ¶ 55.

⁴⁹ NBP at 147, Rec. 8.6. *See also, e.g.*, CTIA comments at 16-17; Ohio PUC comments at 25-26; Sprint comments at 12-13; Verizon comments at 18-19; Windstream comments at 25, 33-37.

⁵⁰ *See, e.g.*, Blooston Rural Carriers comments at 16; Indiana URC comments at 8-9; Pennsylvania PUC comments at 11.

⁵¹ *See, e.g.*, NBP at 143, Comprehensive Reform.

⁵² CTIA comments at 19-20.

These proposals are entirely consistent with the Commission’s long-term goals for universal service reform and would save hundreds of millions of dollars in support during the transition to new long-term mechanisms.

As the Commission develops a plan to implement universal service, it should reject self-serving rural incumbent LEC proposals that seek to undermine the Commission’s commitment to technological neutrality. Perhaps the most egregious example is the paper on “Good Engineering Practices Relative to Broadband Deployment in Rural Areas,” filed by NECA and a group of rural incumbent LEC associations.⁵³ The paper reflects the view of an industry that is divorced from the reality of consumer demand.

Central points of the paper are that rural broadband customers will need speeds significantly higher than the National Broadband Availability Target of 4 Mbps downstream and 1 Mbps upstream and that fiber networks are more efficient in rural areas than other types of networks, including wireless broadband networks.⁵⁴ In fact, this is a blatant attempt to perpetuate the rural incumbent LECs’ strategy of using scarce USF contributor dollars to fund the deployment of fiber-to-the-premise (“FTTP”) networks in their service areas while the customers of other carriers go wanting. The rural incumbent LEC position is inconsistent with the reality of the marketplace, the inherent limitations of universal service, and the vision of the NBP.

As Chairman Genachowski recently noted, using the universal service fund to support those kinds of speeds would lead to “massive and unprecedented new funding requirements, and

⁵³ NECA *et al.* comments at App. B.

⁵⁴ *See generally id.*

significant increases in the required contributions to the fund.”⁵⁵ As Chairman Genachowski succinctly stated, “We can’t do that.”⁵⁶

The unrealistic and self-serving nature of these proposals comes into even sharper relief when one considers that they do not provide for the mobile services – including mobile broadband services – that consumers demand. CTIA has placed extensive data in the record of this proceeding regarding consumers’ overwhelming and growing demand for mobile services.⁵⁷ The Commission itself has noted that “[u]biquitous [mobile] coverage will enhance the unique social and economic benefits that a mobile service provides by enabling consumers to access information wherever they are, while competition will help promote investment and innovation and protect consumer interests.”⁵⁸ Thus, fiber-based technologies can only fully meet the needs of rural Americans when they are providing connectivity to mobile wireless solutions.

In sum, the legacy universal service mechanisms have permitted rural incumbent LECs to earn handsome rates of return while insulating them from the competitive and innovative forces that other market participants face. It is therefore unsurprising that they would marshal arguments to perpetuate the current system, or incorporate significant elements of the existing system into the reformed mechanisms. To ensure consumers truly benefit from reform, however, the Commission must make hard choices to transition from legacy systems on a competitively-

⁵⁵ Prepared Remarks of Chairman Julius Genachowski, 47th Annual OPASTCO Summer Convention and Trade Show, Seattle, Washington (July 28, 2010) at 6.

⁵⁶ *Id.*

⁵⁷ *See, e.g.*, CTIA comments, WC Docket No. 05-337 (filed May 8, 2009) at 2-5. In addition, the percentage of the total fund supported by wireless contributions has increased from 3.3% in 1997 to 43.1% in 2009. TELECOMMUNICATIONS INDUSTRY REVENUES (WTB IATD 2009) at 3, cht. 2.

⁵⁸ *Roaming Order*, 25 FCC Rcd at 4184 ¶ 3.

neutral basis and replace them with efficient, targeted support for broadband and mobile services.

V. THE FEDERAL USF SHOULD SUPPORT REASONABLY COMPARABLE BROADBAND AND MOBILE SERVICES – NOT UNDEFINED STATE COLR OBLIGATIONS

Another red herring advanced by parties seeking to retain the inefficient legacy high-cost support mechanisms is that they are necessary for carriers to fulfill state carrier-of-last-resort (“COLR”) obligations.⁵⁹ As explained in these comments, the FCC should not -- indeed, may not -- burden the federal universal service fund with open-ended state obligations. In fact, the COLR arguments in the record are nothing more than proxies for advocating regulatory stasis.

Strong obligations already exist under the Act for eligible telecommunications providers to meet consumer needs in their service areas. Federal law provides a clear set of obligations under 47 U.S.C. § 214(e). Most fundamentally, ETCs are required to offer the supported services throughout their designated service areas.⁶⁰ Where unserved areas exist, the states or the FCC may designate ETCs to serve those areas.⁶¹ And ETCs may not abandon their ETC obligations unless another ETC remains in the area.⁶² Moreover, as the Commission recognized in the National Broadband Plan, the Commission has more than adequate authority to develop appropriate provider of last resort obligations that provide uniform and consistent protection for consumers across the country.

⁵⁹ See, e.g., NECA *et al.* comments at 28-33; Indiana URC comments at 2; Nebraska and North Dakota PSCs comments at 12.

⁶⁰ 47 U.S.C. § 214(e)(1).

⁶¹ 47 U.S.C. § 214(e)(3).

⁶² 47 U.S.C. § 214(e)(4).

While States may choose to develop more stringent COLR obligations in certain circumstances, ill-defined or open-ended requirements cannot be raised as a barrier to meaningful reform of the federal universal service system, nor can they be used to impose burdensome contributions on consumers in the rest of the country. Under the Act, States cannot impose COLR obligations that depend on federal support.⁶³ State universal service mechanisms or policies are only permitted if they “do not rely on or burden Federal universal service support mechanisms.”⁶⁴

Moreover, it is far from clear from the record precisely what state COLR obligations specifically entail for any given state, service area, or specific provider. Even if it were legal for state COLR obligations to depend on federal support, it would be impossible, on the current record, to tailor federal support to those obligations.⁶⁵ The record also does not clarify the extent to which incumbent LEC obligations to serve are offset by rights to impose “line extension charges,” which may be substantial. In fact, this docket contains evidence of incumbent LEC line extension charges as high as \$22,000 for a single customer.⁶⁶ Also, different states have widely varying COLR requirements; if nothing else, there is no reason for states with less generous COLR obligations to fund more generous obligations in other states.

The reformed federal universal service mechanisms should be designed to achieve *federal* universal service objectives. To the extent States may impose additional COLR

⁶³ *But see* Indiana URC comments at 2; Nebraska and North Dakota PSCs comments at 12.

⁶⁴ 47 U.S.C. § 254(f).

⁶⁵ NECA *et al.*, for example, provides five “broad categories” into which the various state COLR obligations typically fall, and a long list of “various state COLR obligations,” without any citations or even reference to specific states. NECA *et al.* comments at App. C.

⁶⁶ Letter from David L. Sieradzki, Counsel to DialTone Services, L.P., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (filed May 16, 2007).

obligations beyond the federal requirements, the Commission should make clear that the State must fund them with state support. In no event should the Commission allow the specter of ill-defined and widely-varying COLR requirements to create barriers to comprehensive, forward-looking high cost reform that focuses on the services that are most important to U.S. consumers, mobile and broadband services.

CONCLUSION

CTIA urges the Commission to reform the high-cost universal service mechanisms without delay and consistent with these comments.

Respectfully submitted,

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