

**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
_____)	

**REPLY COMMENTS
OF
SOUTHERNLINC WIRELESS**

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SUMMARY

The record in this proceeding demonstrates that universal service support can and should be used more efficiently, but that the reforms necessary to improve efficiency do not include those recommended in the National Broadband Plan (“NBP”). Indeed, the record demonstrates that the NBP’s reform proposals would create even larger problems than the Commission seeks to resolve, and would be particularly harmful to local and regional carriers like SouthernLINC Wireless. Local and regional carriers, which focus on serving rural consumers and businesses rather than merely providing coverage for highway corridors through rural areas as many larger carriers have done, are key to meeting the Nation’s universal service goals. As such, regulatory programs and government subsidies that make it difficult, if not impossible, for local and regional carriers to compete with national carriers would turn the clock back on the progress that the universal service program has facilitated to date and harm those who live and work in rural America. SouthernLINC Wireless, therefore, joins its voice to the chorus opposing the universal service reform recommendations set forth in the NBP.

The NBP’s recommendations and the Commission’s implementation strategy are substantively and procedurally deficient. Specifically, the arbitrary phasing out of support before the Commission adopts a replacement distribution mechanism would be fundamentally inconsistent with the Communications Act of 1934, as amended (the “Act”). Further, until the Commission adopts a replacement distribution mechanism it cannot begin to determine the appropriate transition mechanism and timeframe. Indeed, no transition should until sufficient spectrum is allocated so as to allow wireless carriers to compete for replacement mechanism support on a competitively-neutral basis. Finally, instead of transitioning to a mechanism that only funds broadband service, which the Commission lacks the authority to adopt, the replacement mechanism should provide support to both telecommunications and information services without an arbitrary speed mandate.

Single-winner reverse auction schemes that distribute funding to a single carrier are fundamentally inconsistent with the Act since they would create *de facto* monopolies in rural areas by making competitive entry impossible as a practical matter. To the extent the Commission wishes to continue considering the use of reverse auctions, despite the overwhelming opposition that the record reflects, the agency must first conduct a trial. The design of the trial should be based upon the SouthernLINC Reverse Auction Proposal, which is the only proposal on the record that would distribute support in a technologically and competitively neutral manner that is consistent with the requirements of the Act and the Commission's universal service principles.

Rather than wasting resources on proposals that would harm consumers and fail to survive judicial scrutiny, the Commission should strive to eliminate the obstacles that slow the deployment of affordable telecommunications and information throughout the Nation in a manner that does not unnecessarily interfere with competition or inadvertently reconstitute the monopolies that the courts and this agency have spent decades dismantling. Specifically, the Commission should implement a competitively and technologically neutral distribution mechanism like the proposal of the Universal Service for America Coalition ("USA Coalition") which directly addresses the obstacles that carriers face in rural, insular, and high cost areas and is consistent with the letter and spirit of the Act. Accordingly, SouthernLINC Wireless respectfully urges the Commission to step back, focus on the universal service requirements of the Act as it stands today, and cure the procedural defects in the current implementation plan by working with the Joint Board to develop an appropriate replacement mechanism before proceeding with a transition.

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To: The Federal Communications Commission

**REPLY COMMENTS OF
SOUTHERNLINC WIRELESS**

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby submits these reply comments in the above-captioned docket.¹ The record in this proceeding demonstrates that universal service support can and should be used more efficiently, but the reforms necessary to improve efficiency do not include the arbitrary elimination of all support for competitive eligible telecommunications carriers (“CETCs”) and the use of so-called “market-based” mechanisms like reverse auctions to support only broadband services for a single carrier in unserved areas. Indeed, the record demonstrates that the NBP’s reform proposals would create even larger problems than the Commission seeks to resolve. The Commission instead should base its reform efforts on the current Act and seek to remove the obstacles that slow the deployment of affordable broadband services throughout the Nation -- rather than wasting resources on proposals that would harm consumers who work and live in rural areas and the local and regional carriers who focus primarily on serving their needs.

¹ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 (rel. Apr. 21, 2010) (“*USF NOI & NPRM*”).

I. THE PROPOSED REFORMS WOULD HARM CONSUMERS WHO LIVE OR WORK IN RURAL AREAS AND THE LOCAL AND REGIONAL CARRIERS WHO FOCUS PRIMARILY ON SERVING THEIR NEEDS

The record in this proceeding demonstrates that the NBP's universal service reform proposals would harm consumers who live and work in the rural areas and the local and regional carriers, including SouthernLINC Wireless, who focus primarily on serving their needs. The proposals could be particularly harmful to regional carriers like SouthernLINC Wireless that traditionally have focused on serving the needs of rural consumers and businesses rather than merely providing coverage for highway corridors through rural areas like many larger carriers traditionally have done.² Local and regional carriers are key to meeting the Nation's universal service goals.³ Regulatory programs and government subsidies that make it difficult, if not impossible, for local and regional carriers to compete with national carriers would turn the clock back on the progress that the universal service program has facilitated to date.

A. Local and Regional Carriers Serve a Crucial Role in the Nation's Communications Network

The importance of local and regional carriers like SouthernLINC Wireless should not be underestimated during the universal service reform process.⁴ SouthernLINC Wireless, a subsidiary of Southern Company, operates an 800 MHz digital radio system on FCC licensed frequencies using Motorola's iDEN technology. Designed to meet the operational requirements of Southern Company's electric utility subsidiaries, the SouthernLINC Wireless network

² See Comments of General Communication, Inc. at 16 ("by expanding service in rural Alaska... individuals have better access to communications, for emergencies, for transacting business, and for keeping in contact with family and friends") ("Comments of GCI"); see also Comments of CTIA at 25 (discussing the public safety benefits of ubiquitous wireless).

³ Comments of Regulatory Commission of Alaska at 12 ("In the last few years, CETCs have deployed infrastructure to provide wireless voice service to remote areas of Alaska, an expansion that would not have occurred without CETC high cost support."); accord Comments of GCI at 14; see also FCC, *The Broadband Availability Gap*, OBI Technical Paper No.1, at 20 ("52% of unserved housing units are in census blocks where one of the three [RBOCs]... is the dominant local exchange carrier.").

⁴ See Comments of Regulatory Commission of Alaska at 12

supports dispatch, interconnected voice, Internet access, and data transmission services that SouthernLINC Wireless provides over mobile phone handsets throughout a rural and urban service territory that includes most of the states of Alabama and Georgia, the panhandle of Florida, and southeast Mississippi. Its service territory also includes the Gulf Coasts of Alabama, Mississippi and the Florida panhandle, as well as the Atlantic Coast of Georgia. To provide the level of service required by its electric utility affiliates, SouthernLINC Wireless's network was designed and built to withstand the varied weather conditions of the Southeast, which includes everything from ice storms to hurricanes.

Since commercial operation began in 1996, SouthernLINC Wireless has focused on serving rural areas, providing wireless coverage to small towns like Opp, Alabama; Claxton, Georgia; Frink, Florida, and Necaize, Mississippi. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless provider in Alabama and Georgia with a network that serves rural areas located far from the major interstates and highways where most of the other carriers choose to focus.⁵ Many hospitals, public safety entities and emergency management agencies in these rural areas have chosen SouthernLINC Wireless as their carrier due to the coverage and rugged design of SouthernLINC Wireless network, not to mention its attractive service offerings. By actively seeking and serving customers in rural areas, SouthernLINC Wireless is furthering the Commission's goals of bringing wireless service to rural areas and ensuring that these areas remain connected during national emergencies and natural disasters.⁶

⁵ *Accord* Comments of Rural Telecommunications Group, Inc. at 14 (“In many rural areas, rural carriers have stepped in to make a commitment to serve areas neglected and ignored by mid-sized and large carriers.”); *see also* Comments of Rural Telecommunications Service Providers Coalition at 9; Comments of Sandwich Isles Communications, Inc. at 10.

⁶ The *National Broadband Plan* itself notes the public safety benefits of commercial wireless networks. *See* Federal Communications Commission, *The National Broadband Plan* at 314. The recent Upper Big Branch mine disaster illustrated the dangers of a lack of coverage.

SouthernLINC Wireless is committed to offering high-quality telecommunications services to rural and underserved areas, and a large percentage of the total handsets that SouthernLINC Wireless serves are used by subscribers located outside of major metropolitan areas. SouthernLINC Wireless is also the wireless service provider to the state of Alabama and to many government agencies in Georgia. In fact, approximately 30% of the total handsets that SouthernLINC Wireless serves are used by public employees, first responders or utility personnel,⁷ which illustrates how important the services of SouthernLINC Wireless are to residents in those areas, particularly in times of crises. Many low-income consumers also rely on the services of SouthernLINC Wireless for their communications needs.

SouthernLINC Wireless serves a crucial role during disasters, and the company has made providing reliable communications during a disaster a high priority. During the emergency conditions created by the fifteen named hurricanes and countless ice storms that have struck its service territory since SouthernLINC Wireless began operating in 1995, SouthernLINC Wireless was often the only available means of communications. In the aftermath of Hurricane Katrina, for example, SouthernLINC Wireless in many instances provided the only immediate means of communicating in Mississippi and Alabama.⁸ SouthernLINC Wireless also took extraordinary

As noted by Senator Rockefeller, Chairman of the Senate Commerce, Science, and Transportation Committee in a recent letter to Chairman Genachowski: “Explosions like what happened at Upper Big Branch may be unique to mining states. But the communications deficit this tragedy exposed is not. The same challenges exist in other rural areas, where the terrible impact of floods, hurricanes, tornados, and even acts of terror, can be made worse still by inadequate communications infrastructure.” *Letter from Sen. Rockefeller to Chairman Genachowski, Chairman of the Federal Communications Commission* (August 2, 2010).

⁷ The services provided to utility personnel facilitate the continued availability of power during emergencies.

⁸ See Remarks of Robert G. Dawson, CEO of SouthernLINC Wireless, *FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks* (Jan. 30, 2006); see also *Wireless Week, News Briefs for September 1, 2005* (“SouthernLINC Wireless reports that as of this morning, 98 percent of its sites are up and running in Alabama, Georgia, Florida and Mississippi, which is providing communications capabilities for emergency and government personnel, as well as individual customers.”).

steps to repair damaged facilities immediately and ensured that vital communications were possible, including, among other things, deploying microwave facilities and cell sites on wheels to replace damaged facilities, and activating approximately 2,500 phones for use by government agencies and public service entities, including the Mississippi EMA, the National Guard, the U.S. Coast Guard and the Singing River Hospital.⁹ Similarly, when calls placed to the 228 area code in Mississippi could not be completed due to heavy call volume, SouthernLINC Wireless quickly provisioned public safety personnel with toll free numbers for their SouthernLINC Wireless phones in order to bypass the overloaded equipment. In so doing, SouthernLINC Wireless enabled public safety personnel, many of whom that were not SouthernLINC Wireless customers prior to the storm, to communicate with other public safety personnel. Accordingly, SouthernLINC Wireless is the type of CETC that Congress intended the universal service fund to support.

In order to continue providing high quality wireless services to underserved rural areas while ensuring that communications will be available throughout the recovery period after disasters, SouthernLINC Wireless must continue to make significant investments in its network. The universal service support that SouthernLINC Wireless receives as a CETC enables significant improvements in coverage and redundancy in rural areas with such low population densities.¹⁰ As such, the universal service fund plays a crucial role in ensuring that consumers who live and work in the rural, insular and high-cost areas that SouthernLINC Wireless serves have access to affordable services that are reasonably comparable to those available in urban areas.

⁹ *Id.*

¹⁰ *See* Comments of USA Coalition at 35 (“allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice is the best means for ensuring the vibrancy, robustness, and redundancy of the nation’s communications networks.”)

B. The NBP's Reform Proposals Would Harm Local and Regional Carriers like SouthernLINC Wireless

The experience of SouthernLINC Wireless illustrates how the NBP's reform proposals would harm consumers who live and work in rural areas and the local and regional carriers who focus on serving their needs. The SouthernLINC Wireless network was designed to meet the cellular and private radio communication needs of Southern Company's electric utilities and the consumers who live and work in its service area, rather than to maximize the amount of support SouthernLINC Wireless could receive from the universal service fund. Indeed, SouthernLINC Wireless began commercial operations in 1996, but did not apply to become a CETC until September 14, 2004. Despite the Commission's commitment to resolve all ETC designation requests within six months of their filing,¹¹ the agency did not act on the request by SouthernLINC Wireless for ETC designation until it imposed the interim cap on CETC funding on May 1, 2008.

Until the Commission designated SouthernLINC Wireless as an ETC in 2008, the company was forced to compete with carriers who were receiving universal service subsidies that were unavailable to SouthernLINC Wireless, including carriers who do not focus primarily on the communities SouthernLINC Wireless serves. As a result, SouthernLINC Wireless was placed at an unfair competitive advantage in its home service area for over six years, which made it more difficult for SouthernLINC Wireless to improve its network in the most rural of areas, including areas that were not served by any other mobile service providers. The competitive inequities created by government intervention in the market harmed the very consumers that Congress intended the universal service fund to help. Only after the Commission designated

¹¹ See *Federal-State Joint Board on Universal Service, Commonwealth of Northern Mariana Islands*, 18 FCC Rcd 10958, ¶ 26 (2003). The Commission based this commitment upon its finding that delay in considering and acting promptly on ETC petitions hurts those living in rural areas, denying them access to competitive phone services and, in particular, wireless phone services.

SouthernLINC Wireless as a CETC was the company able to compete fairly on a level playing field with other CETCs to serve consumers who live and work within its service area, although the cap on CETC funding placed SouthernLINC Wireless and other CETCs at a competitive disadvantage vis-à-vis the ILECs.

The universal service reform proposals the Commission is now considering would again create the type of competitive inequities that harm carriers like SouthernLINC Wireless, Carolina West Wireless,¹² and General Communication, Inc.¹³ to the detriment of consumers who live and work in rural America. Specifically, it will be difficult, if not impossible, to deploy additional facilities to serve, or continue to serve, areas where a competitor is receiving subsidies from the Connect America Fund (“CAF”) that are unavailable to any other carrier, particularly if the subsidies permit the competitor to offer faster data services.¹⁴ This harm will be compounded by the fact that all current subsidies will be eliminated, which will make it difficult to cover the operating costs of serving some of the most rural areas with low population densities.¹⁵ This scenario would play out across various locations across the country, and it could even drive some local and regional carriers out of the market altogether, which would only increase the concentration of service providers in rural areas to the detriment of consumers who live and work there.¹⁶

¹² Carolina West canceled plans to build eight cell sites in its service area as a result of universal service funding reductions. *See* Comments of RCA at 9.

¹³ Comments of GCI at ii (“GCI is in the midst of bringing these [digital wireless services] to remote, rural Alaska villages for the first time – with substantial assistance from high-cost support.”).

¹⁴ Comments of CTIA at 7; Comments of T-Mobile at 10; Comments of Rural Telecommunications Group, Inc. at 16; Comments of RCA at 9.

¹⁵ *See* Comments of RCA at 9 (Rural wireless carriers “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.”); *accord* Comments of GCI at 20.

¹⁶ *See* Comments of Regulatory Commission of Alaska at 12 (Commission’s proposal endangers planned construction of more than sixty new cell sites in 2010 by CETCs).

The Mobility Fund, as currently envisioned, likewise makes little sense for most local and regional providers. SouthernLINC Wireless understands that the point of the Mobility Fund is to provide a one-time funding for the buildout of 3G networks in areas that will be eligible for funding from the CAF so that wireless carriers will be in a position to compete with wireline carriers for CAF subsidies (*i.e.*, to be eligible to bid in reverse auctions for CAF subsidies). However, many local and regional carriers, including SouthernLINC Wireless, may not be in a position to compete for funding from the Mobility Fund or the CAF due to a number of reasons, including lack of available spectrum, unavailability of compatible equipment and other obstacles like the unavailability of data roaming on fair and reasonable terms. If local and regional carriers like SouthernLINC Wireless are unable to meet the bidding eligibility requirements, the single winner structure will only further harm their efforts to serve rural America.¹⁷

Even if wireless carriers like SouthernLINC Wireless are in a position to participate in the Mobility Fund and the CAF, they may choose not to incur the risk of building out their networks with subsidies from the Mobility Fund because there is no guarantee of winning the auction for CAF funding or that the winning bid will provide sufficient funding.¹⁸ In either event, a carrier would not have access to any subsidies for operating expenses, which can pose a substantial obstacle in areas with very low population densities,¹⁹ including the areas likely to be targeted by the Mobility Fund and the CAF.²⁰ In light of these significant risks, local and

¹⁷ Comments of Alaska Communications Systems at 7 (winning bidder “may be willing to serve a market at a loss with the intent of recovering losses via future support funding and, where necessary, via monopoly pricing.”); Comments of USA Coalition at 36-37.

¹⁸ Comments of CTIA at 25. Even if SouthernLINC Wireless *were* the winning bidder, it might have done so at the cost inhibiting its ability to make additional network investments, as a result of the so-called “winner’s curse.” *See* Comments of NECA at 25.

¹⁹ *See* Comments of RCA at 9 (“As networks penetrate deeper into rural America, the standalone profitability of wireless operations only becomes more challenging.”).

²⁰ Comments of Sprint Nextel at 6, n.7; Comments of CTIA at 25.

regional carriers like SouthernLINC Wireless may very well choose not to participate in either fund.

If regional and wireless carriers choose not to participate in the universal service program at all, larger carriers that do not focus primarily upon the needs of consumers and businesses located in rural areas may face less competition, which means that there will be fewer bids to reduce the amount of subsidies distributed in those areas and less competitive forces to create incentives for better service at more affordable rates. Over time, rural America again will be served by monopolies or duopolies, and consumers who live and work in rural America, as well as anyone who needs to call them, will pay the price. This result would be fundamentally inconsistent with the public interest and the requirements of section 254 of the Act as numerous other parties noted in their initial comments.

II. COMPETITION AND COMPETITIVELY-NEUTRAL FUNDING, NOT THE CREATION OF MONOPOLIES, WOULD BEST FACILITATE THE DEPLOYMENT OF FASTER AND MORE AFFORDABLE SERVICES

The Commission has set an ambitious goal of providing 100% availability of 4 Mbps actual download speeds within ten years.²¹ Although well intentioned, a blanket speed requirement that fails to account for the country's demographic and geographic diversity will ultimately prove to be self-defeating. As the NBP itself acknowledges: "the support needs of different geographies are distinct and depend on many factors, including the existing network infrastructure and household density."²² These ongoing challenges that carriers face when serving rural, insular and high-cost areas are further complicated for wireless services by the

²¹ *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, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58, ¶ 9 (rel. Apr. 21, 2010) ("NOI/NPRM").

²² NBP at 138.

unavailability of sufficient spectrum at affordable costs.²³ The Commission should focus its efforts on helping carriers overcome these obstacles, not on erecting additional barriers by subsidizing a single carrier and conditioning eligibility for support upon satisfying a bright line speed test. Among other things, the Commission should, as the Act requires, provide universal service support on a competitively-neutral basis for all services that consumers want and need, including both traditional voice and broadband services. Specifically, the Commission should seek to remove the obstacles that prevent carriers from providing broadband services in some areas, rather than setting an arbitrary speed and funding the one carrier who can provide that speed for the lowest subsidy rate.

A. Tying Eligibility for USF Subsidies to Arbitrary Speed Mandates Will Inhibit the Deployment of Broadband Networks in High Cost Areas

Requiring broadband providers to meet arbitrary, bright-line speed minimums in order to obtain universal service support would actually slow the deployment of affordable broadband services and harm consumers who currently enjoy subsidized services. In markets that are open to entry by competitors, carriers naturally will seek to provide the fastest service speeds possible, including speeds that meet the Commission’s definition of broadband services in the absence of obstacles preventing them from doing so (*e.g.*, lack of sufficient spectrum, lack of available equipment). If customers want or need even faster services than the current carrier is able to provide, then carriers who are able to meet the demand will enter the market to the extent it is economically feasible to do so.

Section 254 of the Act is designed to ensure that competitive entry is economically feasible when the existing carrier is unable or unwilling to provide reasonably comparable services at reasonably comparable rates. Accordingly, Section 254 requires the Commission to

²³ See NBP at 77 (“The growth of wireless broadband will be constrained if government does not make spectrum available to enable network expansion and technology upgrades.”).

provide universal service funding in a competitively-neutral manner in areas where subsidization is necessary to ensure that consumers have access to reasonably comparable services at reasonably comparable rates. By contrast, if the Commission arbitrarily sets a broadband speed that carriers must provide in order to be eligible for support, carriers who cannot meet the requirement for any reason (*e.g.*, lack of sufficient spectrum) may choose not to serve the area at all, which means that there will be less competitive pressure on carriers who do serve the area. Subsidized carriers who do not face competition from other subsidized carriers will provide the minimum speed mandated by the Commission. For this reason, the Commission should continue to fund the deployment of networks which supports both telecommunications and information services using an incremental approach that recognizes the realities of building out networks in high-cost areas.

B. The Act Requires the Commission to Work With the Joint Board in Developing the List of Supported Services

SouthernLINC Wireless agrees with parties who urge the Commission to follow the substantive and procedural requirements of the Act to facilitate the deployment of broadband services.²⁴ Relying upon the more nuanced approach mandated by the Act will speed the sustainable deployment of reasonably comparable services at reasonably comparable rates far more effectively than the radical approach outlined in the NBP of sacrificing everything merely

²⁴ See, *e.g.*, Comments of T-Mobile USA, Inc. at 4; Comments of USA Coalition at 4; Comments of ICORE at 6; Comments of Rural Telecommunications Group, Inc. at 5; Comments of Alaska Communications Systems at 11; Comments of Pioneer Communications at 3; Comments of NECA at 10; Comments of AT&T at 3 .

to provide “broadband” service at an arbitrarily-defined speed in “unserved” areas²⁵ without considering the impact of this effort on consumers in the rest of the Nation.²⁶

The Commission should, and indeed must, seek to achieve the universal service goals by coordinating with the Federal-State Joint Board to modify the list of supported services as necessary to account for “the extent to which such telecommunications services are being deployed in public telecommunications networks by telecommunications carriers” as required by Section 254(c)(1).²⁷ When defining new services eligible for support, the Commission must also consider whether the service has, “through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.”²⁸ Yet, as the NBP itself acknowledges, 4 Mbps speeds are not subscribed to by a “substantial majority” of the Nation, which demonstrates that the proposed reforms are not consistent with the requirements of the Act.²⁹

III. UNIVERSAL SERVICE REFORM MEASURES MUST BE CONSISTENT WITH THE REQUIREMENTS OF THE COMMUNICATIONS ACT

As several parties observed in their initial comments, universal service reform will be effective only if it is grounded upon a solid legal foundation.³⁰ These parties correctly noted that

²⁵ Indeed, as the Broadband Availability Gap Appendix to the NBP itself acknowledges, the number of “unserved” households changes dramatically depending on the speed definition of broadband. *See The Broadband Availability Gap*, OBI Technical Paper No.1, at 17, Exhibit 2-1.

²⁶ *See, e.g.*, Comments of the George Mason University Mercatus Center at 7 (“The 4 mbps /1 mbps definition of broadband does not satisfy Section 254 of the Telecommunications Act simply because it appears in the National Broadband Plan.”).

²⁷ 47 U.S.C. § 254(c)(1); *accord* Comments of Rural Telecommunications Group, Inc. at 9.

²⁸ 47 U.S.C. § 254(c)(1)(B); *accord* Comments the George Mason University at 8.

²⁹ Comments the George Mason University at 8.

³⁰ Comments of T-Mobile at 5; Comments of Pioneer Communications at 3; Comments of AT&T at 3; Comments of Rural Telecommunications Group, Inc. at 3; Comments of BlueSky Communications, Choice Communications & PR Wireless at 8; (“BlueSky”) Comments of United States Cellular at 9; Comments of Rural Cellular Association at 2, 6 (“RCA”); Comments of South Dakota Telecommunications Association at 21; Comments of Kentucky Telephone Association at 11; Comments of Utah Rural Telecom at 5; Comments of NECA at 10;

the Commission’s proposals run afoul of the requirements of Section 254 of the Act, in part because they are based upon a theory of Commission authority that is no longer sound after the *Comcast* decision.³¹ The Commission must address these threshold issues before initiating policies that are more likely to lead to protracted litigation than to helpful reform. Absent a well-defined statutory foundation, universal service reform will not survive judicial review and will fail to achieve the Commission’s stated goals.

A. Reform Proposals That Are Not Competitively Neutral or That Endanger Existing Networks Are Inconsistent with the Act

As the Rural Telecommunications Group correctly noted, the Commission simply cannot “choose to ignore the plain language of section 254.”³² Regardless of the Commission’s policy preferences, the Act *requires* that rural and insular consumers have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates.³³

First and foremost, in order to ensure that consumers have access to reasonably comparable telecommunications and information services, any reform must be competitively

Comments of the Small Company Committee of the Louisiana Telecommunications Association at 3; Comments of USA Coalition at 2. SouthernLINC Wireless adopts, in its entirety, the comments and reply comments of the Universal Service for America Coalition, of which SouthernLINC Wireless is a member.

³¹ *Comcast Corporation v. FCC*, No. 08-1291 (D.C. Cir. Apr. 6, 2010) (“*Comcast*”).

³² Comments of Rural Telecommunications Group, Inc. at 2; *accord* Comments of Rural Telecommunications Service Providers Coalition at 2.

³³ Comments of T-Mobile at 5 (“The reasonable comparability mandate of Section 254(b)(3)... requires that rural consumers have competitive choices similar to those offered to urban consumers”); Comments of Pioneer Communications at 3 (“The FCC’s proposed changes to universal service violate the universal service principles under Section 254 of the Act.”); Comments of AT&T at 3 (“Transitioning support from legacy high-cost mechanisms to a broadband-focused high-cost universal service program in a manner that is consistent with section 254(b)... will take some time.”).

neutral.³⁴ However, many of the Commission's reform proposals are plainly inconsistent with the Act's competitive neutrality mandate as well as the Commission's own precedent.³⁵ The Commission should withdraw several competitively discriminatory proposals, including, but not limited to: (i) the arbitrary phase-out of all support to CETCs for non-broadband services;³⁶ (ii) the subsidization of only one carrier per geographic area for broadband;³⁷ and (iii) the discriminatory timeline for phasing out CETC support compared with other carriers.³⁸ These proposals are flatly inconsistent with the Commission's own requirement that universal service rules should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another."³⁹

Second, the Commission must ensure that the universal service distribution mechanism is explicitly designed to ensure that consumers in rural, insular and high-cost areas have access to services that are reasonably comparable to those available in urban areas at reasonably comparable rates, as required by Section 254 of the Act.⁴⁰ SouthernLINC Wireless agrees with parties who expressed concern that the radical departure from supporting traditional telecommunications services to only supporting an arbitrarily-defined level of broadband services, and then only to one provider in unserved areas, threatens to roll back the successes of

³⁴ Comments of Sprint Nextel at 16 (internal quotations and parentheticals omitted); *accord* Comments of T-Mobile at 3 ("Competitive neutrality is a statutory requirement.").

³⁵ See Comments of T-Mobile at 5, citing *Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776 (1997) ("We adopt this principle [of competitive neutrality] and the principles enumerated by Congress in section 254(b) to preserve and advance universal service while promoting the pro-competitive goals of the 1996 Act."); *id* at 8801-02 ("[A]n explicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote a procompetitive, de-regulatory national policy framework.").

³⁶ Comments of CTIA at 10; Comments of T-Mobile at 10.

³⁷ Comments of TCA at 17; Comments of RCA at 14; Comments of USA Coalition at 35.

³⁸ Comments of CTIA at 10.

³⁹ *First USF Order* at 8801-02 ¶ 47.

⁴⁰ Comments of Indiana Utility Regulatory Commission at 9; Comments of CTIA at 3; Comments of BlueSky at 46; Comments of GCI at 24.

the current universal service mechanism.⁴¹ Specifically, the withdrawal of support would force many carriers to increase consumer rates and scrap expansion plans or face the risk of bankruptcy.⁴² Accordingly, some parts of rural America in which consumers currently have access to reasonably comparable services at reasonably comparable rates areas would, in the absence of universal service support, experience substantial rate increases or become “unserved” altogether.⁴³ Therefore, the Commission must consider the extent to which the withdrawal of support for telecommunications services would lead to higher rates or diminished service coverage rather than arbitrarily phasing out all support across the entire Nation.⁴⁴

B. The Commission Cannot Withdraw All Support From Traditional Telecommunications Services In Order to Support Only Broadband Services

The Commission lacks the statutory authority to pursue its proposed changes for the reasons highlighted in the D.C. Circuit’s recent *Comcast* decision.⁴⁵ As noted by several commenters, the *Comcast* decision illustrated why the Commission lacks the statutory authority to pursue the *NBP*’s proposal to eliminate all support for Title II telecommunications services in

⁴¹ Comments of South Dakota Telecommunications Association at 2.

⁴² Comments of CTIA at 7 (“Cutting support also may lead wireless providers to delay upgrades to their networks, expansion of their coverage areas or, depending on the importance of USF support to individual providers, reduce their coverage.”); Comments of United States Telecom Association at 3 (“It is very important to properly sequence and transition changes to high-cost support... so as not to abruptly impact revenue flows and create hardships and unnecessary regulatory uncertainty for voice and broadband providers and lead to potential rate shock for consumers.”).

⁴³ Comments of Indiana Utility Regulatory Commission at 9; Comments of United States Telecom Association at 3.

⁴⁴ Comments of the Missouri Small Telephone Company Group at 15 (“These proposed schemes would place the MoSTCG’s broadband achievements at risk and threaten the financial viability of the companies.”); Comments of Utah Rural Telecom Association at 4; Comments of Warinner, Gesinger & Associates, LLC at 31; Comments of Home Telephone Company, Inc. at 10-11; Comments of Texas Statewide Telephone Cooperative, Inc. at 17-18.

⁴⁵ *Comcast Corporation v. FCC*, No. 08-1291 (D.C. Cir. Apr. 6, 2010) (“*Comcast*”); accord Comments of USA Coalition at 11-14.

order to support *only* Title I information services like broadband.⁴⁶ As the commenting parties correctly noted, if the Commission eliminates all support for Title II telecommunications services, and then repurposes such funding towards the support of Title I information services, it would have to do so under its ancillary jurisdiction under Section 254.⁴⁷ However, since the Act defines universal service as an “evolving level of *telecommunications* services,” the Commission could not argue that supporting information services at the expense of telecommunications support would be *necessary* to achieve the Act’s underlying *telecommunications* support mandate, as is required after *Comcast*. Simply put, under its current authority the Commission cannot completely eliminate the support for telecommunications services and repurpose the savings to support only broadband.

Reclassification of broadband services as telecommunications services would not resolve the fatal flaws of the NBP’s reform proposals. As the USA Coalition explained, the purpose and goals of the NBP are so radically different and inconsistent with the requirements of Section 254 of the Act that the Commission would lack the authority to implement them even if broadband services were telecommunications services.⁴⁸ However, as noted by AT&T and the USA Coalition, the Commission could support *both* telecommunications and information services (*e.g.*, broadband services) so long as the distribution mechanisms are designed to accomplish the goals, and meet the requirements, of Section 254 of the Act.⁴⁹

⁴⁶ Comments of Rural Telecommunications Service Providers at 2; Comments of Rural Telecommunications Group, Inc. at 6; Comments of Rural Independent Competitive Alliance at 8; *accord* Comments of COMPTTEL at 5; Comments of Small Company Committee of the Louisiana Telecommunications Association at 5.

⁴⁷ Comments of USA Coalition at 12.

⁴⁸ Comments of USA Coalition at 14.

⁴⁹ Comments of AT&T at 4; Comments of USA Coalition at 13.

IV. CONSIDERATION OF COST MODELS IS PREMATURE AT THIS TIME

Despite the effort in developing the Broadband Availability Model (“BAM”) to its current level, many commenters correctly observed that the proposed model remains insufficiently defined to allow for meaningful comment.⁵⁰ As such, many open questions need to be resolved before interested parties will be able to provide meaningful comment. Like any other tool, the usefulness of a model is a question that cannot be adequately answered in the abstract. Just as a hammer is a useful tool for building a wooden fence, but not for building a stone wall: a cost model may be a useful tool for some purposes but not for others. As AT&T explained, without more information about how the Commission intends to use the model, the Commission has “jumped the gun” in asking for detailed comment on modeling issues.⁵¹

To the extent the Commission seeks comment on a distribution mechanism for which a cost model might be a useful tool, the agency must ensure that the model is built in a transparent manner that is accessible to all interested parties. Without a clear understanding of the model’s inputs and assumptions it is difficult to provide sufficiently precise comments to assist the Commission in building a better model. Moreover, to the extent consideration of a cost model becomes appropriate, the Commission should release the model itself, as well as any source code and inputs, in order to allow parties to examine the model further.⁵² Any future release of the model should: (i) “estimate[] the costs of all technologies currently being deployed (or soon to be

⁵⁰ Comments of CenturyLink at 43; Comments of South Dakota Telecommunications Association at 16; Comments of United States Telecom Association at 20; Comments of Pennsylvania Public Utilities Commission at 5 (“The PaPUC also wishes to engage the FCC in a dialogue to develop a better universal service model... Currently, this is not possible because of the lack of transparency regarding the model.”); Comments of T-Mobile at 11 (“Until parties are able to study the specific inputs and concrete outputs of a model, it is impossible to predict whether it would assist universal service goals.”).

⁵¹ Comments of AT&T at 3.

⁵² *Accord* Comments of Pennsylvania Public Utilities Commission at 5.

deployed) that are capable of providing voice service and broadband service;”⁵³ (ii) account for the need for ongoing support in areas that are currently served only because of high-cost support rather than focus solely on “unserved areas;”⁵⁴ (iii) account for the cost of spectrum and backhaul, an essential input to wireless service costs.⁵⁵ Moreover, upon further development, the model should be opened up to further testing and review by the parties.⁵⁶ Only through full disclosure and an iterative testing process can the Commission and interested parties be sure that the proposed model delivers predictable and sufficient results to be used to set or analyze real-world support levels.

V. MOST PARTIES OPPOSE THE IMPLEMENTATION OF A “MARKET-BASED” REVERSE AUCTION DISTRIBUTION MECHANISM

The goal of universal affordability of comparable services would be frustrated by a policy that dismantled competition in rural America by providing support to only one carrier. Any such proposal would artificially protect the supported carrier from salutary competitive forces that would compel the carrier to become more efficient and, over time, decrease the total amount of needed support. Industry stakeholders share SouthernLINC Wireless’ concerns that the Commission’s proposed reverse auction mechanism: (i) are inconsistent with the Act; (ii) would recreate a monopoly system that would require significant oversight, raise performance issues, and effectively preclude competition; and (iii) would raise serious subsidiary questions regarding a supported party’s ongoing viability. Instead, the Commission should adopt a distribution

⁵³ NOI/NPRM at 24-25; *accord* Comments of T-Mobile at 11.

⁵⁴ Comments of T-Mobile at 11.

⁵⁵ *Accord* Comments of Pennsylvania Public Utilities Commission at 6.

⁵⁶ Comments of AT&T at 3; Comments of MACRUC States at 10.

mechanism that is competitively and technologically neutral so that the benefits of choice, innovation, and affordability are offered to all Americans.⁵⁷

A. Single Winner Reverse Auctions Are Plainly Inconsistent With The Act

Allocating support based upon a single winner reverse auction contradicts core universal service principles.⁵⁸ Any mechanism that precludes competition is the antithesis of the competitive neutrality requirement of the Act and should be rejected.⁵⁹ The Act requires more than the ability for multiple competitors to *bid* for the ability to compete in a high-cost area, it requires a system in which competitors may actually compete. As RCA explained: “[w]hile a reverse auction would bring competition within an electronic auction room, it would not have a competitively neutral effect in the marketplace.”⁶⁰ Indeed, Commission precedent requires that “the proper inquiry is whether the effect of the legal requirement, rather than the method imposed, is competitively neutral.”⁶¹ Since a single winner reverse auction would establish a *de facto* monopoly at the expense of competition, such a proposal is fundamentally inconsistent with the plain language of the Act and the Commission’s own precedent.

B. Single Winner Reverse Auctions Would Not Serve the Public Interest

Even if the Commission *could* implement a reverse auction mechanism consistent with the requirements of Section 254, which it cannot, the agency should not. Several parties have correctly noted that the costs associated with monitoring local monopolies, the process of developing service parameters, and the risk of deteriorated service would prove far more costly

⁵⁷ *Accord Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15177 (2000) (“*Western Wireless Order*”).

⁵⁸ Comments of TCA at 17 (“[A]llocating USF based upon the results of a reverse auction would not comply with the statutory requirement for specific, predictable and sufficient support mechanisms to preserve and advance universal service.”); Comments of RCA at 14.

⁵⁹ Comments of T-Mobile at 3 (“Competitive neutrality is a statutory requirement.”).

⁶⁰ Comments of RCA at 17.

⁶¹ *Id.*, citing *Western Wireless Order* at 15177.

over the long term than any initial savings the use of such a system might produce.⁶² As the Commission knows, monopoly environments typically require a system of more extensive regulation than competitive systems.⁶³ For example, since competitive bids would be evaluated primarily on price, the Commission would have to establish a litany of service specifications prior to an auction to ensure that rates, terms, service specifications, and other conditions were sufficiently standardized across competitors in order to engage in an “apples to apples” comparison of the bids.⁶⁴ As noted by AT&T, this alone would be “no small undertaking.”⁶⁵

Following the auction the Commission would be required to continually monitor and enforce the conditions upon which a monopoly subsidy was granted.⁶⁶ Given that a low-bid approach to awarding subsidies would likely incentivize a “race to the bottom” in terms of service quality and ongoing investment,⁶⁷ the Commission would need to continually administer and enforce service quality commitment made by the monopolist at the bid stage, a duty that would require significant resources. The low bidder would have little incentive to improve service quality over the required minimum standard, since doing so would come at increased costs.⁶⁸ As a result, reverse auctions would actually inhibit the deployment of increasingly higher speed broadband in high-cost areas.⁶⁹

⁶² Comments of NECA at 25; Comments of Warinner, Gesinger and Associates LLC at 21.

⁶³ Comments of CTIA at 29.

⁶⁴ These conditions would effectively usher in a new era of rate regulation, since the Commission would need to be assured that the monopolist did not engage in unreasonable pricing activities. Yet, as noted by RCA, such price regulation of mobile providers is prohibited by federal statute.

⁶⁵ Comments of AT&T at 9.

⁶⁶ Comments of Texas Statewide Telephone Cooperative at 18; Comments of NECA at 23.

⁶⁷ Comments of NECA at 23; Comments of Texas Statewide Telephone Cooperative at 18.

⁶⁸ Comments of Utah Rural Telecom Association at 4.

⁶⁹ Comments of Utah Rural Telecom Association at 4.

The incentives of a low-bid auction could also result in a “winner’s curse” for parties who prevail in reverse auctions for universal service support.⁷⁰ In economic theory, a “winner’s curse” is associated with auctions wherein the bidding parties possess imperfect information. Under this theory, the winning bidder of an auction is the party with the most optimistic valuation of the target asset, a perspective that may not be justified by the facts. In this instance, having either underestimated the costs of providing service, the potential revenues to be gained, or both, a winning bidder in a reverse auction is likely to experience shrinking or even vanishing margins, that may result in either higher rates for customers, diminished service quality, or, in the worst instance, the failure of the supported monopolist.⁷¹

These issues raise concerns similar to those raised by Commissioner Copps at the outset of this proceeding and remain an unanswered problem with the Commission’s reform proposal.

In his remarks addressing the *Notice of Inquiry*, Commissioner Copps warned:

[M]any questions that still remain unanswered [regarding reverse auctions]. For instance, how do we ensure that the winning bidder provides the services for which support is received: What happens if the auction winner decides to discontinue its operations in the supported area? Who will pick up the pieces and how will that be decided? What will be the rules of the road and how will they be established? And enforced?⁷²

Finally, the pricing power enjoyed by a reverse auction winner, explored in detail in the USA Coalition’s comments, would allow the winning carrier to price out competition while still capturing the subsidy.⁷³ Providing support to a single carrier would give that carrier a substantial, even insurmountable, competitive advantage, thereby discouraging competitive entry and expansion and denying consumers in those areas the benefits of competition.

⁷⁰ Comments of NECA at 23.

⁷¹ Comments of NECA at 25.

⁷² Statement of Commissioner Michael J. Copps, *Re: 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.

⁷³ Comments of USA Coalition at 34-40.

If the Commission instead adopted a competitively neutral distribution mechanism that permitted additional ETCs to serve the market, the mere threat of entry would give the dominant carrier the incentive to offer competitive pricing, service options, and continue to deliver services that consumers want and need. As the 1996 Act recognized, it is competition that propels affordability and innovation. The Commission should reject any proposal that would dismantle the competitive framework set forth in the Act and revert to a disproven monopoly system.

C. Alternative Reform Proposals Would Be Far Superior To a Single Winner Reverse Auction

SouthernLINC Wireless supports the reform proposal of the USA Coalition over any distribution mechanism that relies on a controversial cost model or a single-winner reverse auction.⁷⁴ The proposal of the USA Coalition is anchored in both the letter and spirit of the Act and would provide consumers with the competitive service options that they have shown an overwhelming preference for.⁷⁵ Instead of blindly proceeding in a result-oriented fashion towards a pre-determined destination, the Commission should develop a distribution mechanism that attacks the underlying obstacles to deploying broadband instead of setting arbitrary, bright-line distinctions between services and speeds.

SouthernLINC Wireless, for its part, has provided the Commission with workable alternative distribution mechanisms in past filings.⁷⁶ To the extent that the Commission is set on using a reverse auction mechanism to distribute support, it should do so in the fashion explored

⁷⁴ Comments of USA Coalition at 41-54.

⁷⁵ See Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, July-December 2009*, Center for Disease Control (rel. May 12, 2010) available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf>. (“*Wireless Substitution Study*”).

⁷⁶ See Comments of SouthernLINC Wireless, *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (dated April 17, 2008), attached hereto.

by SouthernLINC Wireless in past filings by using a multiple package “clock proxy” auction format that could provide a level playing field for bidders while reducing the length of required support.⁷⁷ By providing support for multiple service packages that the Commission has defined based upon the telecommunications and information services available in urban areas, the Commission will comply with both the letter and the spirit of the Act's requirements and encourage competition in a technologically neutral manner. SouthernLINC Wireless respectfully submits that, by providing support in this manner, the Commission will better serve the goals of the Act and create incentives for winning bidders to expand service to unserved and under-served areas without creating opportunities for arbitrage that cause uneconomic fund growth. However, SouthernLINC Wireless respectfully submits that the alternative proposal of the USA Coalition would be a more straightforward means for creating the right incentives in a manner that complies with the requirements of the Act and delivers consumers the services they want and increasingly need at affordable rates.⁷⁸

VI. ABSENT RELIABLE, ONGOING OPERATING SUPPORT THE MOBILITY FUND WILL NOT CREATE A VIABLE WIRELESS BROADBAND NETWORK

The Commission proposes to create a “Mobility Fund” to provide one-time support to bring all states to a minimum level of 3G or better mobile service availability.⁷⁹ Presumably, the Mobility Fund is intended to speed the build-out of the Nation’s 3G network and allow wireless carriers to compete for universal service support under the Commission’s proposed “market-based” distribution mechanism for the CAF. However, without a guarantee that a carrier will

⁷⁷ *Id.* at 17-30.

⁷⁸ *See Wireless Substitution Study* (24.5% of adults lived in wireless-only households as of December 2009, an figure that has nearly doubled the figure from December 2007. In addition, one of every seven American homes (14.9%) possesses a landline yet receives all or almost all calls on wireless telephones).

⁷⁹ NOI/NPRM, ¶ 7; NBP at 146.

receive ongoing support, there would be no incentive for a carrier to participate in the build-out process or continue to service these areas.

As noted by many of the wireless carriers, the NBP's Availability Gap study failed to calculate either the cost of deploying 3G mobile broadband coverage or the incremental cost of upgrading existing facilities to 4G broadband.⁸⁰ These costs include not only upgrades to equipment, but also increased ongoing backhaul costs resulting from additional capacity and throughput.⁸¹ As a result, a wireless CETC would need to expend substantial sums up-front and potentially significant operational expenses simply to meet the requirements to compete for a broadband subsidy without any guarantee that they will be the winning bidder in an auction for ongoing support. Network expansion decisions simply cannot be made under such uncertainty.⁸²

3G and 4G networks would be available in these "unserved" areas if there existed a sufficient business case to build out such a network. This helps to explain the Commission's finding in its Fourteenth Mobile Wireless Competition Report that even "[w]ith wireless market penetration approaching 90 percent as of the end of 2008, overall wireless industry growth has slowed down."⁸³ The reason for this is no mystery, since "[a]s networks penetrate deeper into rural America, the standalone profitability of wireless operations only becomes more challenging."⁸⁴ Simply put, in order to provide universal wireless penetration, there needs to be a sufficient subscriber base over which to defray both fixed and variable costs.⁸⁵

⁸⁰ Comments of Sprint Nextel at 6, n.7; Comments of CTIA at 25; Comments of Independent Telephone & Telecommunications Alliance at 17.

⁸¹ Comments of CTIA at 25.

⁸² *See, e.g.*, Oregon Telecommunications Association and Washington Independent Telecommunications Association at 32.

⁸³ Fourteenth Report at 8.

⁸⁴ Comments of RCA at 9.

⁸⁵ To a lesser extent this is also true of wireline carriers. *See, e.g.* Comments of CenturyLink at 27 ("The cost of providing broadband and voice services is also a function of ongoing OPEX, such as maintenance, repair, customer service, etc., and a large portion of these costs are elevated and fixed in rural regions.").

Under the current mechanism, both ongoing expenses and capital expenditures are subsidized. As a result, carriers could invest in their networks in high-cost areas with the confidence that their network would continue to receive sufficient subsidies to defray the expected costs associated with provided service in that particular area. As noted by one major wireless carrier: “U.S. Cellular can state unequivocally that it is already operating scores of cell sites that would not have been constructed but for the availability of high-cost support.”⁸⁶ In the absence of continuing support, the Commission’s proposal is likely to result in diminished investment.

The Commission must consider what will happen once operating expense support is removed for the wireless carriers. Without the guarantee of support, a wireless carrier is unlikely to be able to maintain these assets. As such, there would be little incentive to participate in the Mobility Fund in the first place.⁸⁷ For those parties that do participate, but that do not win the reverse auction for support from the subsequent CAF, the absence of ongoing support in low density areas raises serious questions about the long-term viability of these assets, which will lead many wireless carriers not to participate in the first place.⁸⁸ Moreover, if the goal is create a nationwide 4G mobile broadband network, then why not fund the build-out of 4G networks in those areas that the Commission deems “unserved” rather than just funding a 3G network in the first place? For the reasons explained here and in the initial and reply comments of the USA Coalition, SouthernLINC Wireless opposes implementation of both the proposed Mobility Fund

⁸⁶ Comments of US Cellular at 25; *accord* Comments of T-Mobile at 12 (“Thus, to the extent that the Commission uses a model as part of a future broadband-focused support mechanism, that model should be capable of determining all areas where support is necessary – including areas only served today because of existing support flows”); Comments of RCA at 9 (Wireless carriers “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.”).

⁸⁷ See Comments of RCA at 9(citing example of Carolina West Wireless chilled investment decisions due to lack of high-cost support).

⁸⁸ Comments of General Communication, Inc. at 20.

and the CAF. The alternative reform proposals of the USA Coalition and SouthernLINC Wireless would better serve the public interest and, unlike the proposals of the NBP, are consistent with the requirements of the Act.

Any proposal that would segregate support funds based on technology or competitive status would violate the principles of competitive and technological neutrality. Specifically, by identifying and subsidizing technology at different rates and pursuant to different rules, the Commission could create incentives for providers to “fit” into the category that receives the most subsidies, which in turn generates disincentives for technological convergence by providers in order to avoid controversies regarding eligibility. Moreover, contributions from certain types of service providers eligible to receive support from one fund would be used to support other funds, which would distort market forces and interfere with customer migration to more efficient or innovative services and technologies. Multiple fund distribution mechanisms also make it much more difficult to ensure that universal service support is sufficient because market forces could result in subscriber shifts to or from particular technologies faster than the Commission would be able to adjust relative funding or change the support distribution rules. With respect to technology, everyone loses when the government tries to pick the winner.

As the Commission has recognized, departures from competitive neutrality, no matter how insignificant they may first appear, must be minimized in order “facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.”⁸⁹ Accordingly, universal support distribution mechanisms must be designed “so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition

⁸⁹ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801-02, ¶ 48 (1997).

by limiting the available quantity of services or restricting the entry of potential service providers.”⁹⁰

VII. IMPLEMENTATION TIMELINES MUST BE COMPETITIVELY NEUTRAL

SouthernLINC Wireless agrees with the overwhelming majority of commenting parties that the proposed phase-out of support to CETCs, as compared to phase-out proposed for the ILECs, violates the competitive and technological neutrality mandates of the Act.⁹¹ As such, the proposed timeline flies in the face of Commission precedent that universal service support and rules “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”⁹² As the Commission provides no justification for the ten-year phase-out of support for wireline carriers as compared to the five year phase-out of wireless support it is unlikely that this provision will survive judicial scrutiny.

Indeed, an accelerated phase-down for wireless CETCs is likely to produce a result at odds with the underlying goals of the NBP.⁹³ In the absence of ongoing high-cost funding it is unlikely that wireless carriers will make the necessary investments to continue to build out the 3G and 4G network.⁹⁴ Existing plans to expand coverage may be scrapped or scaled back while areas currently served may become abandoned. It is for these very reasons that the Commission should strive to fully develop the CAF, along with an appropriate transition plan, before CETC funding is phased out.

⁹⁰ *Id.*

⁹¹ Comments of CTIA at 10.

⁹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (para. 47) (1997).

⁹³ Comments of CTIA at 7.

⁹⁴ Comments of Regulatory Commission of Alaska at 12; Comments of T-Mobile at 10; Comments of Rural Telecommunications Group, Inc. at 16; Comments of RCA at 9 (citing the example of Carolina West Wireless which canceled plans to build eight cell sites in its service area as a result of universal service funding reductions.); Comments of General Communication, Inc. at 22.

The Commission should take note that the parties who recommend an accelerated phase-out of CETC support conveniently fail to explain how such a program could be implemented in a competitively neutral manner as required by the Act. Despite universal recognition that reform efforts can and must be consistent with the Act, no commenters was able to summon statutory support for the facially discriminatory timetable for phasing-out high cost support within the text of the Act. The Commission should adhere to the Act and ensure that any transition timeframe be *the same* regardless of technological platforms or competitive status.

VIII. COLR OBLIGATIONS CANNOT JUSTIFY DISCRIMINATORY OR ANTI-COMPETITIVE DISTRIBUTION MECHANISMS

Certain carriers have made much of the benefits of Carrier of Last Resort (“COLR”) obligations in the first round of comments.⁹⁵ The argument follows that, in order for carriers to fulfill their state-law based statutory duty to provide service to all requesting carriers throughout a designated service area, that COLR obligations justify higher levels of support than competing carriers should receive. However, this argument fails to recognize that the CETCs are already required to fulfill the obligations of the COLR as applicable.⁹⁶ Indeed, Section 214(e) of the Act provides the Commission or the relevant State commission the express authority to require a CETC to provide service to unserved areas.⁹⁷ Therefore, COLR obligations fail to provide an independent basis for supporting one type of carrier or technology over another.

Any type of provider (*i.e.*, wireline, wireless, ILEC, CLEC, cable company) should be able to compete for universal service support so long as the provider is capable of providing the services required. A significant percentage of customers have already shown a willingness to rely upon wireless providers or cable telephony providers for all of their telecommunications

⁹⁵ Comments of Farmers Telecommunications Cooperative, Inc. at 8; Comments of the Border Companies at 14.

⁹⁶ Comments of AT&T at 14.

⁹⁷ 47 U.S.C. § 214(e)(3).

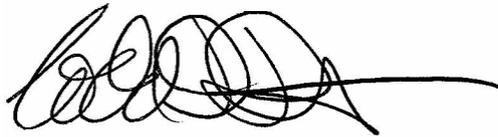
needs. Their choices indicate that many consumers no longer feel a traditional wireline phone is essential for their daily lives -- a trend likely to continue as the services provided by traditional wireline, wireless, and cable carriers converge.⁹⁸ Allowing all types of carriers to bid on all types of packages also has the benefit of increasing the number of bidders for each package, which will increase competition for the subsidies and drive the support that must be paid by the Commission lower than might otherwise occur if carriers faced competition only from other, similar carriers.

⁹⁸ See *Wireless Substitution Study*, *supra* n. 44 (24.5% of adults lived in wireless-only households as of December 2009, up from 12.6% as of December 2007. 14.9% of household possess a landline yet receive all or almost all calls on wireless telephones).

CONCLUSION

For the reasons set forth above, SouthernLINC Wireless respectfully urges the Commission to focus on the requirements of the Act and, therefore, to reject the universal service reform recommendations of the NBP. Absent legislative action, further consideration of these proposals by the Commission would only result in lost time and wasted resources. Instead, the Commission should consider the alternative reform proposal of the USA Coalition. In the interim, the Commission cannot, consistent with the Act, phase-out all support to CETCs as part of a so-called “transition” to a yet-to-be-determined new distribution mechanism.

Respectfully submitted,

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

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