

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Request for Review of Decision of Universal)	
Service Administrator by Corr Wireless)	
Communications, LLC)	

To: The Commission

REPLY COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

CTIA–The Wireless Association® (“CTIA”) files these Reply comments in response to the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking (“NPRM”) on “reclaimed” universal service support,¹ and agrees with the many initial commenters who counsel the Commission not to amend its rules to reserve reclaimed support in anticipation of new support mechanisms that have not yet been adopted or implemented. CTIA instead urges the Commission to move forward with comprehensive reform that addresses all segments of the high cost universal service fund (“USF”) rather than placing the burden of reform solely on one set of service providers. As CTIA has previously explained, it would be indefensible – and inconsistent with the goals of the National Broadband Plan (“NBP”) – for the Commission to target support reductions solely at the expense of wireless providers and those

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010) (“NPRM”).

who would benefit from USF-supported wireless broadband services. As explained in these Reply Comments, rather than adopting legally suspect rule changes to permit stockpiling of reclaimed universal service support, the Commission should instead focus on comprehensive reform of the universal service support mechanisms that addresses all segments of the industry on a competitively-neutral basis and that targets efficient support toward the services that consumers demand, namely broadband and mobile services.

I. INTRODUCTION

Recommendations in the National Broadband Plan call for the adoption of new support mechanisms focused on broadband and mobile broadband services, as well as propose “near term opportunities” to shift funds from existing universal service support programs.² Among those proposed steps, the National Broadband Plan calls for the implementation of the commitments of Sprint and Verizon Wireless to reduce their high cost funding and also for the phase-out of support for competitive eligible telecommunications carriers (“CETCs”).³ In the present NPRM, the Commission seeks comment on whether to amend its rules so that it may reserve these “reclaimed” funds as the Commission considers broadband universal service reform.⁴

CTIA strongly supports the Commission’s goal of transforming the universal service fund to support the broadband and mobile services that consumers demand today.⁵ CTIA is also encouraged that the Commission is contemplating the adoption of a technology-agnostic Connect

² FCC, *Connecting America: The National Broadband Plan*, Recommendations 8.2, 8.3, and 8.6, at 145-48 (Mar. 16, 2010) (“National Broadband Plan”).

³ *Id.* at 147-148.

⁴ NPRM at ¶ 25.

⁵ *See, e.g.*, CTIA Comments on NBP PN #19, GN Docket Nos. 09-47, 09-51, and 09-137 at 2 (filed Dec. 7, 2009); CTIA Comments on NOI/NPRM, WC Docket No. 10-90, GN Docket No. 09-51, and WC Docket No. 05-337 at 2-4 (filed July 12, 2010) (“CTIA NOI/NPRM Comments”).

America Fund and has proposed the adoption of a Mobility Fund targeted at 3G mobile broadband availability. While these proposals are commendable, initial comments correctly observe that it may take many months or even years for the Commission to craft and implement reforms that meet these objectives.⁶ Indeed, the Commission has not yet analyzed the extent to which existing mobile voice and broadband services depend on current universal service support flows, especially in rural areas. For these and other reasons, CTIA has counseled the Commission to: 1) refrain from implementing reductions to existing CETC support until an alternate mechanism is in place to address mobile services; 2) phase out legacy high-cost support on the same timeline for all participants; and, 3) adopt long-term reforms that are competitively neutral and that ensure sufficient support for the unique attributes and functionalities of mobile broadband.⁷ Pending such efforts, the Commission should not stockpile universal service contributions for as-yet-undetermined support mechanisms and, without question, must resist calls to redirect relinquished or reclaimed CETC support to legacy support mechanisms for wireline incumbents.

II. COMPREHENSIVE USF REFORM MUST ENSURE SUFFICIENT SUPPORT FOR MOBILE BROADBAND SERVICES AND MUST NOT PLACE THE BURDEN OF REFORM SOLELY ON ONE SEGMENT OF THE INDUSTRY

As the Commission proceeds with its reform efforts, it must ensure that it provides sufficient support for mobile broadband services. CTIA has observed that the Commission has a statutory obligation to provide “sufficient” support to ensure that rural consumers have access to mobile wireless services that are “reasonably comparable” to those available to urban

⁶ See, e.g., Comments of Sprint, WC Docket No. 05-337 at 4 (Oct. 7, 2010).

⁷ See CTIA NOI/NPRM Comments.

consumers.⁸ The Commission has recognized, however, that “[m]illions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas.”⁹ As the Commission has noted, there remain areas of the country in which no private business case can be made to provide affordable, high-quality services.¹⁰ Moreover, the National Broadband Plan acknowledges that the Commission has not yet made an assessment of how much existing voice, mobile, and broadband service depends on existing high-cost universal service support.¹¹ Although the Commission has sought comment on the creation of a Mobility Fund, there is no indication that it will support existing service and, in any event, it has not yet been implemented.¹² The Commission, however, now proposes to eliminate the very support that facilitates deployment of mobile services to unserved and underserved regions, without a suitable alternative mechanism that will ensure that all consumers have access to reasonably comparable services.

As CTIA has explained in prior comments, universal service support currently received by wireless carriers is *not* “excess”¹³ – it is used today to enable the provision of wireless services in rural and high-cost areas. The record in the high-cost reform proceeding underscores the beneficial impact of universal service support on rural wireless development. According to one commenter, for example, “[t]hese past investments of high-cost support are the reason that

⁸ 47 U.S.C. § 254(b)(3), (b)(5), (e).

⁹ *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, FCC 10-182 at ¶ 1 (rel. Oct. 14, 2010) (“*Mobility Fund NPRM*”).

¹⁰ *See id.* at ¶ 9.

¹¹ OBI, *The Broadband Availability Gap*, at 35 (model used in National Broadband Plan “assumes that existing networks will be available on an ongoing basis”).

¹² *See Mobility Fund NPRM* at ¶ 11, *passim* (proposed Mobility Fund would support service where it is currently unavailable).

¹³ NPRM at ¶¶ 24, 25.

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.”¹⁴ 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.”¹⁵ It would therefore be premature to adopt a phase out of CETC support, such as that proposed in the April 2010 “USF Near Term Steps” NPRM,¹⁶ that takes away existing high-cost support for rural mobile networks before the Commission’s larger universal service reform efforts are complete.

CTIA recognizes that, in order to achieve the long-term reforms contemplated in the National Broadband Plan, changes will be required for all participants in the legacy support mechanisms. The burden of reform, however, cannot be borne solely by one industry segment and its customers. It is indefensible that during the current economic crisis, and in the face of falling incumbent local exchange carrier (“ILEC”) line counts, wireless consumers would be forced to further subsidize the support mechanisms from which they would be excluded. As the Commission’s reports clearly show, even as wireline subscriptions have decreased by 33% since the Telecommunications Act of 1996 (“1996 Act”) was passed,¹⁷ high-cost support to ILECs has grown substantially, jumping nearly 40% between 2000 and 2008.¹⁸

¹⁴ U.S. Cellular Comments, WC Docket No. 05-337 at 23 (filed July 12, 2010).

¹⁵ RCA Comments, WC Docket No. 05-337 at 9 (filed July 12, 2010).

¹⁶ *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, 25 FCC Rcd 6657 (2010).

¹⁷ See Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2008* (June 2010), avail. at (continued on next page)

Given the National Broadband Plan's identification of extensive mobile broadband networks as a key communications goal for our nation, and the fact that consumers are adopting mobile wireless services at an unprecedented rate – it would be untenable to solely target wireless providers for significant support reductions. Such an approach would be particularly bewildering given that CETCs are also the only high-cost recipients that are subject to a hard, state-by-state cap on the total amount of support available to them.¹⁹ CETCs have already forfeited over \$650 million in high-cost support as a result of the CETC cap. At the same time, ILEC funding, particularly under the interstate common line support (“ICLS”) program, has been left uncapped. Drawing down CETC support further, without making similar changes to ILEC funding levels, places the burden of USF reform solely on one class of providers and one set of customers.

This is particularly problematic because, as the market demonstrates, consumers increasingly prefer wireless technology. Even before the CETC cap was imposed, the amount of high-cost support that wireless carriers received was quite modest in light of marketplace and technological conditions. Given the tectonic shift in consumer preference toward mobile services, it is not surprising that support to CETCs had grown. As CTIA demonstrated previously, consumer demand for wireless services has skyrocketed, whether considering voice

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).

¹⁸ 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).

¹⁹ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Order*, 23 FCC Rcd 8834 (2008).

or broadband services.²⁰ Wireless penetration has reached 91%, and nearly one-quarter of American households are “wireless only.”²¹ The number of wireless subscribers has more than doubled since 2000, and grown more than eight-fold since the passage of the 1996 Act.²² When given a choice to subscribe to wireless or wireline services, including those made possible by high-cost support, many consumers in high-cost areas have followed the general trend toward mobile wireless. CETC support thus tracks the shift in consumer demand to mobile services. In spite of this tectonic shift, wireline incumbent LECs still receive roughly three times the support available to wireless providers.

Given these trends, and as CTIA has previously explained, the Commission must develop alternative mechanisms calibrated to meet the National Broadband Plan’s goals and the 1996 Act’s requirements regarding support for mobile broadband services before taking additional steps to eliminate support for wireless service in high-cost areas. Similarly, the Commission should be wary of stockpiling reclaimed support for as-of-yet undetermined support mechanisms and should instead focus on developing competitively-neutral reforms that address all legacy support comprehensively.

III. THE COMMISSION LACKS LEGAL AUTHORITY TO HOLD UNIVERSAL SERVICE CONTRIBUTIONS IN RESERVE

According to the NPRM, the purpose of the proposed rule change is to enable the Commission to “reclaim” existing CETC high-cost support and reserve it for future use.²³

²⁰ 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 at 14-17 (filed April 29, 2010).

²¹ CTIA, U.S. Wireless Quick Facts (Year End Figures), *avail. at* http://www.ctia.org/media/industry_info/index.cfm/AID/10323.

²² *Id.*

²³ *See, e.g.*, NPRM at ¶¶ 2, 24, 25, *passim*.

However, as numerous parties have stated, such stockpiling of USF funding raises substantial legal questions.²⁴ As CTIA has previously explained, by requiring that support be “specific” and “predictable,”²⁵ section 254 effectively prohibits the Commission from collecting contributions from providers for USF mechanisms that do not exist, or exist in name only.²⁶ The rule changes proposed in the NPRM disregard these provisions and allow the Commission to collect universal service contributions for unspecified, unpredictable future use.

Section 254(d) also expressly provides that a necessary prerequisite to *collecting* universal contributions is that USF “mechanisms” be “*established* by the Commission.”²⁷ Although CTIA supports the general concept of creating new universal service mechanisms to support the mobile and broadband services that consumers demand, the Commission’s proposal to collect USF contributions from wireless subscribers without knowing the purpose for which they will be used conflicts with the Commission’s statutory duty under section 254.²⁸

IV. THE COMMISSION SHOULD DECLINE CALLS TO REDIRECT CETC SUPPORT TOWARDS LEGACY ILEC SUPPORT MECHANISMS

A handful of commenters in this proceeding invite the Commission to simply redirect relinquished CETC support to recipients of legacy ILEC support.²⁹ As the Commission correctly

²⁴ See, e.g., Joint Comments of SouthernLINC Wireless and Universal Service for America Coalition, WC Docket No. 05-337 at 2-3 (Oct. 7, 2010); Comments of Verizon and Verizon Wireless, WC Docket No. 05-337 at 5-6 (Oct. 7, 2010); Comments of Rural Telecommunications Group, WC Docket No. 05-337 at 3 (Oct. 7, 2010).

²⁵ 47 U.S.C. § 254(b)(5), (e).

²⁶ CTIA Reply Comments on NOI/NPRM, WC Docket No. 10-90, GN Docket No. 09-51, and WC Docket No. 05-337 at 9-10 (filed Aug. 11, 2010).

²⁷ 47 U.S.C. § 254(d) (emphasis added).

²⁸ See also *infra* Section IV.

²⁹ See, e.g., Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 05-337 at 3-5 (Oct. 7, 2010); Comments of CenturyLink, WC Docket No. 05-337 at 2-4 (Oct. 7, 2010).

recognized, however, the legacy ILEC support mechanisms are not designed to promote efficiency or innovation.³⁰ Moreover, as CTIA has previously observed, wireless carriers already provide a considerable subsidy to wireline providers through the universal service fund. Consumers in rural America would be ill-served if the Commission were to eliminate support of wireless services in high-cost areas while simultaneously shifting support to programs that solely support wireline service. Such an approach would not only violate the principle of competitive neutrality adopted by the Commission, but it would also run counter to the National Broadband Plan's goal of redirecting support toward the mobile and broadband networks that consumers overwhelmingly prefer.³¹ Rather than exacerbate the current, excessive subsidy flows from wireless customers to wireline companies, the Commission should move forward quickly with comprehensive reform that addresses *all* segments of the industry on a competitively neutral basis.

³⁰ National Broadband Plan at 147.

³¹ *See, e.g.*, CTIA NOI/NPRM Comments at 2-4, 13-19.

CONCLUSION

CTIA supports the Commission's broad goal to transform the universal service mechanism to support mobility and broadband, but the NPRM's proposal to pool reclaimed support risks undermining rather than advancing that goal. The proposal therefore should be rejected.

Respectfully submitted,

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