

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 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
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION**

Steven K. Berry  
Rebecca Murphy Thompson  
Rural Cellular Association  
805 15th St. NW, Suite 401  
Washington, DC 20005

April 18, 2011

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY .....	2
DISCUSSION .....	6
I. THE COMMISSION SHOULD WORK WITH CONGRESS TO SHORE UP ITS AUTHORITY TO SUPPORT BROADBAND SERVICES BEFORE PROCEEDING WITH DEVELOPMENT OF THE CONNECT AMERICA FUND.....	6
II. TO THE EXTENT THAT THE COMMISSION MOVES FORWARD WITH HIGH-COST REFORM, IT SHOULD EMPLOY A TECHNOLOGY- NEUTRAL, FORWARD-LOOKING COST MODEL TO DETERMINE SUPPORT ON A HIGHLY DISAGGREGATED BASIS .....	9
III. THE COMMISSION SHOULD MAKE FUNDING SUCCESS-BASED AND TRULY PORTABLE.....	13
IV. SINGLE-WINNER REVERSE AUCTIONS WOULD BE LESS EFFECTIVE IN PURSUING THE CONSENSUS GOALS OF ENSURING THAT SUPPORT IS EFFICIENT, SUFFICIENT, AND COMPETITIVELY NEUTRAL.....	17
V. IF THE COMMISSION SUPPORTS BROADBAND SERVICES THROUGH THE CONNECT AMERICA FUND, IT SHOULD NOT WITHDRAW CRITICAL SUPPORT PREMATURELY .....	19
CONCLUSION.....	21

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

In the Matters of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION**

The Rural Cellular Association (“RCA”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking regarding reform of the Universal Service Fund (“USF”) and intercarrier compensation system.<sup>1</sup> RCA represents the interests of nearly 100 competitive wireless carriers, including many rural and regional carriers. Many RCA members receive high-cost USF support, and RCA accordingly focuses its comments on USF reform.

---

<sup>1</sup> *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (rel. Feb. 9, 2011) (“*NPRM*”).

## INTRODUCTION AND SUMMARY

RCA agrees with a broad cross-section of stakeholders that USF reform is necessary to ensure that high-cost support is awarded on an efficient, pro-competitive, and sustainable basis, and to promote the universal availability of broadband networks and services. But the Commission must address flaws in the existing high-cost regime without sacrificing the vital economic and social benefits that high-cost support delivers today. RCA has long advised the Commission that data roaming, device interoperability, and sustainable and efficient USF support are essential prerequisites to continued investment in wireless broadband networks and services, which in turn spurs job growth and other benefits. Indeed, a recent RCA study demonstrated that rapid deployment of wireless broadband infrastructure in unserved and underserved areas will result in the creation or retention of 117,000 jobs in 19 states.<sup>2</sup> RCA applauds the Commission's recent decision to require data roaming, and we hope that the Commission will further advance a pro-investment and pro-jobs agenda through appropriate USF reform.

As an initial matter, RCA submits that the Commission should work with Congress to enact legislation before implementing some key proposals set forth in the *NPRM*. Particularly given the central importance of broadband funding to the Commission's proposals, the Commission should ask Congress to update the Communications Act and eliminate significant questions regarding the extent of its existing authority to support broadband Internet access before establishing new support mechanisms or eliminating existing programs. By the same token, the Commission should not seek to distribute high-cost support using reverse auctions

---

<sup>2</sup> See Raul L. Katz, et al., "Economic Impact of Wireless Broadband In Rural America," available on RCA's website at <http://rca-usa.org/advocacy/economic-study/economic-study/914276>.

under its existing authority, because the Telecommunications Act of 1996 established a fundamentally different approach to determining eligibility for funding. Congress should be the arbiter of whether to undertake a sea-change in the distribution of high-cost USF support.

If the Commission chooses to proceed with its proposal to establish a broadband-focused Connect America Fund (“CAF”) in spite of its uncertain authority to do so—or to the extent that the Commission moves ahead with reforms of the existing high-cost mechanisms while deferring consideration of new support for broadband services—it should ensure that any new rules are competitively and technologically neutral so that the benefits of reform accrue to consumers, rather than to particular competitors. In particular, as RCA has explained in prior proceedings, the Commission should adhere to several key principles in pursuing reform of the high-cost support mechanism:

- **Efficiency.** USF should avoid incentives for unnecessary expenditures and should encourage efficient use of support to deliver service in rural and high-cost areas. The use of a forward-looking cost model has long been recognized as an appropriate way to ensure that support levels are efficient and no higher than necessary to achieve the objectives set forth in Section 254 of the Communications Act.
- **Sufficiency.** The Commission must ensure that funding is sufficient to preserve and advance universal service goals, including affordability and the reasonable comparability of services and rates in urban and rural areas.
- **Competitive and Technological Neutrality.** USF should support whichever competitors and whichever technology can best deliver on the promise of extending affordable and high-quality services to rural areas and low-income consumers. The Commission should not pick winners and losers, and in particular should not

disadvantage wireless carriers in light of the inherent efficiencies of wireless network architecture and strong consumer demand for mobile services.

- **Success-Based Funding.** To prevent excessive funding while promoting competition and efficiency, the Commission should implement a truly “portable” support mechanism, rather than continuing to fund the incumbent provider even after it loses a customer. By awarding “success-based” per-line support to the carrier that wins a customer, the Commission will harness market forces to direct support to carriers that are meeting consumers’ needs.
- **Appropriately Targeted Support.** The Commission should award support on a highly disaggregated basis to ensure that it is targeted to those areas that truly need it.
- **Transition to Broadband.** Consistent with the increasingly essential nature of broadband, the USF program should eventually transition from its current focus on voice services to a broadband-centric approach. But voice support must not be withdrawn prematurely, and any new broadband mechanism must comport with the principles set forth above.

Based on these principles, RCA has supported use of a forward-looking cost model to establish efficient and highly disaggregated funding levels, and to allocate *all* support on a competitively and technologically neutral basis. RCA also has supported an appropriate transition from narrowband to broadband-based funding (ideally based on more explicit statutory authority), as long as existing support is not withdrawn prematurely from those carriers that require support to preserve universal service.

The *NPRM* generally recognizes the need to make the existing high-cost mechanism more efficient and to ensure sufficiency while avoiding excessive funding.<sup>3</sup> But the *NPRM* unfortunately features several proposals that would sacrifice competitive and technology neutrality by placing a thumb on the scale in favor of wireline carriers. In particular, the *NPRM* seeks comment on supporting a single provider per geographic area,<sup>4</sup> or alternatively supporting one fixed and one mobile provider while relying on a cost model or reverse auctions to determine support for wireless carriers alone.<sup>5</sup> Although the *NPRM* embraces “market-based” reforms, imposing such limits on the number of providers *eligible* for support (as opposed to refraining from supporting multiple providers in connection with a given household) would threaten to entrench monopolies in many high-cost areas. The better approach would be to establish a cost model to determine efficient support levels for all carriers, and then to enable eligible carriers to compete for customers along with any associated per-line support. Such a success-based approach that ties funding to the subscriber rather than to the carrier will best advance the core principles that the *NPRM* endorses. The Commission at least should refrain from embracing single-winner reverse auctions until it gains greater experience with them through its proposed Mobility Fund trial.

Whatever approach the Commission ultimately takes, it would make no sense and would be unlawful to relegate wireless carriers to second-class status in determining eligibility for support. Wireless networks hold tremendous promise for advancing the twin goals of universal service and competition in rural areas, and consumers increasingly are exhibiting a clear preference for services with mobile capabilities. USF policy accordingly should ensure equal

---

<sup>3</sup> See, e.g., *NPRM*, ¶¶ 11, 77-82, 412-416.

<sup>4</sup> *NPRM*, ¶¶ 281-283, 402-403.

<sup>5</sup> *NPRM*, ¶¶ 403-407.

treatment of wireless and wireline carriers, whether support is determined based on a cost model, reverse auctions, or some other means. Thus, to the extent that the Commission proceeds with high-cost reforms (notwithstanding the absence of clear authority to support broadband services), it should make several key changes to the proposals set forth in the *NPRM* to ensure that consumers, rather than particular competitors, are the clear beneficiaries.

## DISCUSSION

### **I. THE COMMISSION SHOULD WORK WITH CONGRESS TO SHORE UP ITS AUTHORITY TO SUPPORT BROADBAND SERVICES BEFORE PROCEEDING WITH DEVELOPMENT OF THE CONNECT AMERICA FUND**

There is little doubt that broadband networks and services have become a vital engine of growth and prosperity in American society, and there is a strong public policy interest in funding the deployment and maintenance of broadband networks in unserved, underserved, and other high-cost areas. While that interest understandably lies at the heart of the *NPRM*, RCA questions whether the Commission has put the cart before the horse by preparing to shift high-cost support from voice services to broadband in the absence of congressional authorization. Accordingly, RCA submits that the Commission should work with Congress to shore up its authority to support broadband services before proceeding with its development of the Connect America Fund.

Although Congress expressly authorized support for information services through the schools and libraries mechanism,<sup>6</sup> Section 254(c)(1) of the Act defines universal service as an

---

<sup>6</sup> See 47 U.S.C. § 254(h)(2)(A) (directing the Commission “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications *and information services* for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries”) (emphasis added); see also 47 U.S.C. § 254(c)(3) (authorizing the Commission to support services beyond those identified under section 254(c)(1) for schools, libraries, and health care providers).

evolving level of “telecommunications services.”<sup>7</sup> That definition calls into question the Commission’s authority to provide high-cost support for information services. The Commission has made clear that broadband Internet access services are “information services,” whether they are provided using wireline networks,<sup>8</sup> wireless networks,<sup>9</sup> cable facilities,<sup>10</sup> or power lines.<sup>11</sup> Therefore, as the *NPRM* recognizes, broadband Internet access services may be ineligible for direct universal service support under the Act.

Indeed, while the *NPRM* suggests the Commission possesses the requisite statutory authority, previous statements by the Commission and the Federal-State Joint Board on Universal Service express considerable doubt. For example, when the Joint Board last considered whether to add broadband Internet access to the list of supported services, it concluded that the classification of that service as an information service meant that it “could not be included within the definition of supported services, because section 254(c) limits the definition of supported services to telecommunications services.”<sup>12</sup> The Commission adopted

---

<sup>7</sup> 47 U.S.C. § 254(c)(1).

<sup>8</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005).

<sup>9</sup> *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 (2007).

<sup>10</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff’d*, *National Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

<sup>11</sup> *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006).

<sup>12</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, 18 FCC Rcd 2943 ¶ 19 (2002); *see also id.* at ¶ 39 (rejecting a proposal that support be provided for voicemail, stating: “As a threshold matter, we note that voicemail services are ineligible for federal universal service support because they are information services, not telecommunications services.”) (footnote and citations omitted).

the same reasoning in holding that customer premises equipment is ineligible for support.<sup>13</sup>

Moreover, the U.S. Court of Appeals for the Fifth Circuit observed that providing support for information services through the high-cost program would contravene Congress's intent.<sup>14</sup>

It is possible that a reviewing court ultimately would uphold the Commission's authority to establish a broadband funding mechanism under Section 254, Section 4(i), or Section 706 of the 1996 Act, but the foregoing discussion makes clear that the Commission's authority is far from clear. RCA therefore submits that, rather than building a new broadband support edifice on a shaky foundation, the Commission should work with Congress to shore up its USF authority and to update the statute to fit the broadband era more broadly. This approach would minimize the uncertainty that will threaten to suppress investment in unserved and underserved areas if the Commission proceeds in the absence of new legislation. If a broadband provider must rely on USF support that could well be withdrawn following judicial proceedings, its ability to commit further capital as well as its willingness and ability to raise capital will inevitably be diminished. Especially now that the Commission has made the case for a broadband support mechanism in the National Broadband Plan,<sup>15</sup> it makes sense to defer to Congress to determine whether to endorse that key proposal.

---

<sup>13</sup> *Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, 18 FCC Rcd 15090 ¶ 23 (2003) (“*2003 Universal Service Order*”) (ruling that customer premises equipment is ineligible for universal service support “because section 254(c) expressly limits the definition of universal service to ‘telecommunications services’”).

<sup>14</sup> *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 441-42 (5th Cir. 1999) (expressing doubt as to whether the Commission could extend support to non-telecommunications services even for schools and libraries, and characterizing as “implausible” any reading of the statute that would allow other portions of section 254(c) to “be broadened to include non-telecommunications services”).

<sup>15</sup> See Federal Communications Commission, *Connecting America: The National Broadband Plan*, at xiii, 135-136, 144-46 (2010).

The same concerns apply to the Commission’s proposal to distribute CAF support using reverse auctions. In enacting Section 214(e) of the Act, Congress directed the states—or, where the relevant state commission lacks jurisdiction, the FCC—to designate eligible telecommunications carriers to receive USF support based on their satisfaction of enumerated criteria and a more general public interest analysis.<sup>16</sup> In contrast, where Congress intended for the Commission to rely on competitive bidding mechanisms, it has provided the Commission with explicit auction authority.<sup>17</sup> Just as the Commission has concluded that Congress should enact legislation before the Commission implements “incentive auctions” to repurpose broadcast spectrum for mobile broadband services, the Commission should seek express authority from Congress before distributing USF support based on a reverse-auction mechanism.

**II. TO THE EXTENT THAT THE COMMISSION MOVES FORWARD WITH HIGH-COST REFORM, IT SHOULD EMPLOY A TECHNOLOGY-NEUTRAL, FORWARD-LOOKING COST MODEL TO DETERMINE SUPPORT ON A HIGHLY DISAGGREGATED BASIS**

Whether the Commission awaits updated legislation or proceeds with some or all of its contemplated reforms in the near term, it should focus on eliminating the systematic bias in favor of wireline carriers that is built into the high-cost program. Of particular concern, existing high-cost support has become bloated in large part because funding is pegged to incumbent local exchange carriers’ (“LECs”) embedded costs. That approach, together with rate-of-return regulation, eliminates appropriate incentives for incumbent LECs to operate efficiently. The *NPRM* thoroughly documents various flaws in the existing support mechanism, all of which have conspired to induce many wireline carriers to invest imprudently.<sup>18</sup> The record establishes that

---

<sup>16</sup> See 47 U.S.C. §§ 214(e)(2), (6).

<sup>17</sup> See, e.g., 47 U.S.C. § 309(j).

<sup>18</sup> See, e.g., *NPRM*, ¶¶ 178, 184, 190.

existing high-cost support effectively encourages incumbent LECs to over-invest in order to reap additional high-cost support, while deterring them from pursuing efficient business operations driven by market forces.

Therefore, the Commission should implement reforms to make its funding mechanisms competitively and technologically neutral. The Commission has long recognized the importance of competitive neutrality, establishing it as one of the core principles to guide USF policymaking.<sup>19</sup> In recent years, the Commission has given that vital principle short shrift, for example in capping high-cost support for competitive providers but *not* incumbent LECs, and exacerbating the effects of that policy by impounding relinquished funds in a manner that further reduces the support available to wireless carriers.<sup>20</sup> But whatever the merits of such interim decisions, long-term reforms must embrace competitive and technological neutrality for the Commission to achieve its key objectives of introducing *market-based* support and eliminating the wasteful inefficiencies baked into the current regime. The Commission also should target support to granular, disaggregated service areas to encourage efficient levels of investment.

A properly designed cost model is the best mechanism to determine support levels based on whatever technology can be employed most efficiently. From the earliest days of establishing USF policy, the Commission has recognized that a forward-looking cost model offers an

---

<sup>19</sup> See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶¶ 24-27, 43-52 (1997) (“*USF First Report and Order*”).

<sup>20</sup> 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) (“*Interim Cap Order*”); *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*, 25 FCC Rcd 12854 (2010) (“*Corr I Order*”); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 25 FCC Rcd 18146 (2010) (“*Corr II Order*”).

appropriate means of ensuring efficient support.<sup>21</sup> The time has come to award high-cost funding based on a cost model to rural and non-rural providers, and wireline and wireless carriers, alike. A forward-looking cost model will force providers in high-cost areas to become more efficient by awarding support based on the cost structures that would prevail in a competitive marketplace.

Just last year, the Commission in its *CAF Notice of Inquiry* confirmed that “a forward-looking economic cost model that estimates the costs of various technologies would enable the Commission to identify the least-cost, most-efficient technology currently being deployed, and thereby, provide only as much support as needed to achieve the Commission’s goals for universal service.”<sup>22</sup> The Commission reaffirmed the justification set forth in the *USF First Report and Order* for employing a forward-looking cost model; there, the Commission found that “a forward-looking economic cost methodology creates the incentive for carriers to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting.”<sup>23</sup> A forward-looking cost model prompts the appropriate level of investment because it “best approximates the costs that would be incurred by an efficient carrier in the market” and consequently “will send the correct signals for entry, investment, and innovation.”<sup>24</sup> Thus, if the Commission finally establishes a genuinely neutral cost model that will calculate support amounts based on the lowest-cost technology for a given service area, it

---

<sup>21</sup> See, e.g., *USF First Report and Order*, ¶ 26.

<sup>22</sup> *Connect America Fund*, 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, ¶ 25 (2010) (“*CAF Notice of Inquiry*”).

<sup>23</sup> *USF First Report and Order*, ¶ 226.

<sup>24</sup> *Id.* ¶ 224

will avoid creating incentives to invest in network equipment that is needlessly expensive and wasteful.

By the same token, calculating the need for support and awarding it on a highly disaggregated basis will further promote efficient levels of funding. To this end, RCA supports the *NPRM*'s proposal to require mandatory disaggregation of support within existing rural LEC study areas beginning in 2012, and to begin redrawing study areas to facilitate competitively neutral funding in the long term.<sup>25</sup>

While the *NPRM* contemplates potential use of a model to determine wireless-specific support,<sup>26</sup> or to determine support for an ILEC that exercises a right of first refusal,<sup>27</sup> it appears to disfavor the use of a consolidated model to determine an efficient support level for which all eligible telecommunications carriers (“ETCs”) could compete. Reinforcing the inherent bias in favor of wireline networks that is reflected in the existing support mechanisms would be a serious mistake. Establishing differential support based on technology—and, even more indefensibly, granting a right of first refusal for inefficient legacy carriers—would undermine the Commission’s goals of imposing fiscal discipline and harnessing market forces by putting a thumb on the scale in favor of certain carriers regardless of whether they are the most efficient provider. The key advantage of a forward-looking cost model is that it eliminates such biases and creates market incentives that promote the best interests of consumers, rather than of particular competitors.

For these reasons, as described further below, a cost model should not be used in conjunction with an anticompetitive right of first refusal or used for segregated wireless support.

---

<sup>25</sup> See *NPRM*, ¶¶ 375, 384.

<sup>26</sup> *NPRM*, ¶ 405.

<sup>27</sup> *NPRM*, ¶ 432

Rather, it should be the foundation for a genuinely pro-competitive and neutral funding mechanism.

### **III. THE COMMISSION SHOULD MAKE FUNDING SUCCESS-BASED AND TRULY PORTABLE**

While the Commission years ago endorsed the principle of “portable,” disaggregated support to promote competitive neutrality,<sup>28</sup> it fell short of making existing support truly portable. Rather than awarding per-line support to the carrier that wins the customer, the Commission opted for a mechanism that resulted in duplicative support—*i.e.*, it held incumbent LECs harmless against reductions in support regardless of their loss of customers to competitors—thus driving funding levels dramatically higher.

The Commission can significantly reduce funding needs while promoting competition and efficiency by expressly tying support payments to a carrier’s success in capturing the customer. The Commission long ago recognized that an efficient and competitively neutral support mechanism should “facilitate a market based process whereby each end-user comes to be served by the most efficient technology and carrier.”<sup>29</sup> Likewise, the Joint Board more recently found that pegging support to an individual customer “would send more appropriate entry signals

---

<sup>28</sup> See, e.g., *USF First Report and Order*, ¶¶ 286-290; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket Nos. 96-45, 98-77, 98-166, 00-256, Second Report and Order and Further Notice of Proposed Rulemaking Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 ¶¶ 143-144 (2001); *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 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, ¶ 145 (2001).

<sup>29</sup> See *USF First Report and Order*, ¶ 48 (1997).

in rural and high-cost areas ... would be competitively neutral ... [and] would protect fund sustainability.”<sup>30</sup> If carriers compete for customers and any associated support, they will be forced to avoid bloated and inefficient cost structures.

Incumbent LECs historically have attacked proposals for truly portable funding on the ground that they would be discouraged from investing in new facilities if they were at risk of receiving support based the number of customers who actually purchase service, as opposed to receiving assurances of support for their entire network regardless of their success in enrolling and maintaining customers. But such criticisms are misplaced, as they ignore the fact that competitive providers (not only in the telecommunications marketplace, but universally) must routinely rely on anticipated penetration levels in establishing business plans. In particular, whenever a wireless carrier contemplates entering a rural area, it must estimate the number of customers it will serve over time—which in turn will determine the level of retail revenue and available high-cost support—in order to calculate an efficient and sustainable level of investment. There is no reason to exempt incumbent LECs from such commonplace financial modeling. And now that wireline and wireless carriers can rely on their networks to generate multiple revenue streams (including voice and broadband data services, and potentially video services), it makes all the more sense for the Commission to shift to a success-based approach to USF, because any other approach would distort competition not only in the provision of voice services, but in the broadband arena as well.

The *NPRM* proposes to eliminate identical support simply by redirecting competitive ETC support elsewhere and, in doing so, would subject competitive ETCs to discriminatory

---

<sup>30</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, ¶¶ 56, 67 (Feb. 27, 2004).

treatment vis-à-vis incumbent providers.<sup>31</sup> There is no sound basis for concluding that CETC support is any less necessary or beneficial for consumers than support provided to incumbent LECs. To the contrary, adopting a reflexive preference for supporting incumbent LECs would reward inefficient network investment and sacrifice the advantages of wireless technology, which often offers a more cost-effective means of delivering narrowband and broadband services to rural areas. Thus, if the Commission seeks to redirect funding to a newly created CAF (in spite of the legal concerns outline above), it at least should do so on equal terms for *all* carriers—*i.e.*, by transitioning *all* high-cost support to a per-line, success-based model, over an equal time frame for wireless and wireline providers alike.

Similarly, the *NPRM*'s proposal to limit support to a single provider per service area in the second phase of the CAF<sup>32</sup> would threaten irreparable harm to wireless carriers and to consumers. The selection of a single carrier almost certainly would be biased in favor of incumbent LECs. Of course, a right of first refusal for incumbent LECs would represent the starkest form of favoritism and the most egregious violation of competitive neutrality. But even assuming that ill-conceived proposal is rejected, incumbent LECs still would benefit if support were awarded on a single-provider basis. Incumbent LECs enjoy a host of advantages including a laborious process for competitors to become ETCs and a similarly cumbersome process for modifying service areas to avoid tying support to the incumbent LEC's territorial boundaries. Whereas a competitor gives up per-line support any time it loses a customer (or fails to attract a customer in the first place), incumbent LECs are effectively held harmless against the loss of customers because the amount of per-line support they receive increases as the number of lines

---

<sup>31</sup> *NPRM*, ¶¶ 247-255.

<sup>32</sup> *See NPRM* ¶ 402.

served declines.<sup>33</sup> Moreover, competitive carriers face additional limits on available funding given the discriminatory cap imposed by the Commission in 2008.

In light of these various preferences, incumbent LECs inevitably would become the support recipient in most instances if funding were limited to a single provider. And while the Commission has suggested making a modest amount of funding available to wireless competitors through the proposed Mobility Fund, shunting wireless carriers into a separate and limited support mechanism would not enable genuine competition on the basis of efficiency, consumer benefits, or other key attributes. Thus, providing support only for one provider inevitably would result in the large-scale exclusion of wireless carriers and would deprive consumers of the many benefits of wireless services.

Significantly, the Commission can achieve the same fiscal discipline that it seeks from single provider support without sacrificing competition by limiting support to one provider per customer, and allowing multiple providers to compete for that subsidy. Making available a single subsidy per customer will eliminate duplicative funding while introducing market-disciplining forces. It also will foster *ongoing* competition (as opposed to competition simply at the time of an auction), which will drive carriers to continue to innovate and increase their efficiency.

---

<sup>33</sup> See *Federal-State Board on Universal Service*, Fourteenth Report and order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11294 ¶ 125 (2001) (“If the incumbent’s lines decreased while its fixed costs remained roughly the same, its per-line costs would increase. Consequently, the incumbent would be entitled to higher support per line.”).

#### **IV. SINGLE-WINNER REVERSE AUCTIONS WOULD BE LESS EFFECTIVE IN PURSUING THE CONSENSUS GOALS OF ENSURING THAT SUPPORT IS EFFICIENT, SUFFICIENT, AND COMPETITIVELY NEUTRAL**

In conjunction with proposing only minimal use of a forward-looking cost model, the *NPRM* suggests employing “competitive bidding everywhere” for long-term CAF support.<sup>34</sup> This proposal appears superficially competitively neutral by making wireline and wireless carriers alike eligible to bid. In reality, however, a single-winner approach would most likely undermine competition, rather than promote it.

Even apart from the concern that Congress did not authorize the Commission to employ reverse auctions to distribute USF support,<sup>35</sup> single-winner reverse auctions would threaten to entrench monopoly providers.<sup>36</sup> Such an auction mechanism by its nature would create a monopoly provider (or, at best, a duopoly if there were separate funding mechanisms for wireline and wireless). The fact that the monopoly would be government-created would not obviate the characteristic harms that arise from monopoly power, including decreased innovation, higher prices, and lower quality. Single-winner reverse auctions also would create practical problems. Even apart from the various structural advantages noted above, an incumbent LEC with significant sunk costs too often would be willing to accept diminished support to prevail in an auction that would eliminate existing and potential competition from wireless carriers and other new entrants. Thus, auctions would cement legacy monopolies without offering genuine competition on cost, quality, or other factors that benefit consumers. Entrenching legacy

---

<sup>34</sup> *NPRM*, ¶¶ 418-430.

<sup>35</sup> *See supra* at 9.

<sup>36</sup> *See Reply Comments of Rural Cellular Association, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, at 16-19 (filed Aug. 11, 2010); Comments of Rural Cellular Association, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, at 14-19 (filed July 12, 2010).*

incumbent LEC monopolies also would result in the exclusion of mobile providers, and consequently impair rural consumers' ability to obtain the mobility that Americans increasingly demand.

By contrast, as explained above, a portable, success-based regime would enable multiple carriers to compete for customers and any associated support. Incumbent LECs would be forced to compete on an ongoing basis by offering prices, service, and quality that are attractive to consumers. A portable, success-based system also would promote innovation on an ongoing basis. The Commission at least should refrain from embracing single-winner reverse auctions until it gains greater experience with them through its proposed Mobility Fund trial. It would make no sense to base the future of high-cost support on an auction framework before ascertaining whether such an approach is even workable.

If the Commission proceeds with an auction framework for CAF support in spite of these serious concerns, it at least should take action to preserve competitive neutrality. Most significantly, the Commission should emphatically reject any right of first refusal for incumbent LECs. A right of first refusal would be grossly anticompetitive and would simply preserve legacy inefficiencies and ensure higher costs and diminished innovation. It is directly contrary to the Commission's announced principles for reform.<sup>37</sup> In addition, any auction mechanism should be based on auction areas (whether census blocks, counties, or some other neutral geographic unit) that are not tied to a particular provider's service territory in order to avoid unfair advantages (as would occur if auction areas were tied to the incumbent LEC's study area). Any auction framework also should allow sufficient time for the build-out of new network facilities to avoid according undue advantages to incumbent providers.

---

<sup>37</sup> See *NPRM* ¶ 10.

While reliance on reverse auctions should obviate the need for any cap on support, the Commission at a minimum must eliminate the unprincipled and competition-distorting policy of capping competitors' support but not incumbents' support. No policy that favors some providers over others can create true competition. For the same reasons, the Commission should avoid preferential revenue protections for incumbent providers (through "recovery" funding and other proposals to maintain particular revenue levels) that ignore the availability of expanded revenue opportunities beyond voice services and that ignore the realities of a competitive marketplace. Any evaluation of incumbent LECs' "needs" must account for all of their revenue streams, including data services and even sometimes multichannel video programming services.

**V. IF THE COMMISSION SUPPORTS BROADBAND SERVICES THROUGH THE CONNECT AMERICA FUND, IT SHOULD NOT WITHDRAW CRITICAL SUPPORT PREMATURELY**

RCA agrees with the Commission that the focus of USF *ultimately* should be on deploying broadband services. Aside from the legal concerns noted above, RCA as a policy matter supports establishing new funding for broadband Internet access, as long as wireless providers are not subject to competitive disadvantages. In particular, the proposed minimum speed thresholds of 4 Mbps down and 1 Mbps up should be reduced slightly to avoid excluding the significant number of wireless providers that will rely on 3G technology for the foreseeable future. Indeed, because 3G wireless networks will represent the technology of choice for many providers bringing broadband capabilities to currently unserved and underserved areas, it would directly undercut the Commission's broadband-deployment goals to make high-cost support contingent on the deployment of networks that exceed 3G capabilities. Notably, in proposing to acquire T-Mobile, AT&T concedes that it does not even *aspire* to deliver 4G service to the remaining 5 percent of Americans—in other words, areas comprising a substantial portion of

rural America. The Commission would do a grave disservice to such rural communities if it made 3G services ineligible for high-cost support.

Moreover, while a transition to broadband support is inevitable, the Commission must not prematurely withdraw existing support for voice services. The *NPRM* proposes to reduce the interim cap on competitive ETC support and then redirect those funds to the CAF for redistribution.<sup>38</sup> Although broadband and other IP-enabled services represent the future of telecommunications, the Commission should not lose sight of the reality that narrowband voice service remains an indispensable service, particularly for rural America. It will be many years before broadband service becomes a ubiquitous replacement for voice service in high-cost areas. The Commission should not disadvantage the large swath of Americans who depend on USF-supported telephone service and who would not be able to replace such service with IP-based broadband service in the near future. It is especially important for the Commission to avoid prematurely withdrawing support for voice service in light of the uncertainty of its legal authority for creating a new broadband support mechanism.

As noted above, USF support for voice services also provides clear economic benefits. It creates jobs, economic development, and critical infrastructure in rural America. The Commission should not eliminate vital funding that is instrumental in furthering such investments and the ensuing benefits to consumers and businesses until the alternative funding mechanism is firmly established.

Thus, during the potentially lengthy transition to a fully broadband-based economy, the Commission should not allow its understandable desire to raise CAF support to come at the expense of existing wireless ETCs. Regardless of whether a cost model or auction mechanism

---

<sup>38</sup> *NPRM*, ¶ 248.

determines the level of support, funding should be available (at least for the foreseeable future) both to providers that offer bundled voice/broadband services and to those that offer voice service but cannot offer sufficiently widespread broadband service to qualify for both types of support. The Commission in the *Corr Wireless* orders withdrew additional competitive ETC support in the interest of setting aside funds for broadband support, but in doing so the Commission jeopardized wireless carriers' ability to continue investing in rural areas.<sup>39</sup> The Commission should reverse that policy to ensure that wireless providers can continue advancing universal service during the transition to new support mechanisms.

### CONCLUSION

RCA supports the Commission's efforts to reform USF, but the Commission should strongly consider deferring to Congress to confer clear authority to provide new funding for broadband services. In any event, the Commission should ensure that any reforms it undertakes are competitively and technologically neutral, harness market forces, and impose fiscal discipline. RCA hopes to be a constructive resource to the Commission as it continues to explore how best to preserve and advance universal service.

Respectfully submitted,

/s/ Steven K. Berry

---

Steven K. Berry  
Rebecca Murphy Thompson  
Rural Cellular Association  
805 15th St. NW, Suite 401  
Washington, DC 20005

April 18, 2011

---

<sup>39</sup> *Corr I Order*, ¶ 11 (2010); *Corr II Order*, ¶¶ 5-7.