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August 3, 2011

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: 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 an Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Dear Ms. Dortch:

On behalf of RCA—The Competitive Carriers Association, which represents nearly 100 wireless carriers, including many rural and regional providers, I am writing to express our deep concerns regarding the so-called "ABC Plan" for "reforming" high-cost universal service support. RCA intends to comment more fully in response to the Commission's anticipated Public Notice seeking additional input on various pending proposals, but the ABC Plan is sufficiently flawed to warrant a more immediate response. RCA has been committed to genuine reform of the universal service fund ("USF"), and accordingly has supported development of forward-looking cost models to target efficient levels of support to the areas that need it most, including elimination of the identical support rule. Elevating the interests of consumers over those of any particular industry segment, RCA also has urged the Commission to ensure that USF support is allocated in a competitively and technologically neutral manner. The ABC Plan purports to advance such principles,[1] and to reflect an "industry consensus,"[2] but in fact it represents a self-serving ILEC proposal that would misallocate USF support, undermine competition, and deprive rural consumers of access to high-quality wireless services. As the Commission proceeds with its plans to modernize high-cost USF support, it should emphatically reject the ABC Plan's vision of USF as a program that exists almost entirely to prop up wireline carriers.

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[1] *See* Letter of Robert Quinn, Senior Vice President, Federal Regulatory & Chief Privacy Officer, AT&T, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, *et al.* (filed Jul. 29, 2011) ("ILEC Coalition Transmittal Letter").

[2] Letter of Walter B. McCormick, Jr., President and CEO of United States Telecom Association, *et al.*, to Julius Genachowski, Chairman, Federal Communications Commission, *et al.*, WC Docket No. 10-90, *et al.*, at 1 (filed Jul. 29, 2011) ("RLEC Letter").

The ambitiously named "America's Broadband Connectivity Plan" reflects the recommendations of six large ILECs—AT&T, Verizon, Frontier, CenturyLink, FairPoint, and Windstream—and enjoys support from smaller ILECs that would benefit from it. The ABC Plan proposes to allocate $2.2 billion to fund areas served by price cap ILECs,[3] and a minimum of $2 billion for rate-of-return ILECs, with only nominal (if any) opportunities for competitive carriers to participate.[4] The Plan contemplates providing a maximum of only $300 million for support of wireless and satellite services in extremely high-cost areas[5]—*i.e.*, about *10 percent* of the amount that wireless carriers contribute to USF. In total, the ILEC sponsors of the ABC Plan suggest that a whopping $4.2 billion out of $4.5 billion should be devoted to supporting wireline carriers,[6] even though wireless networks typically represent the more cost-effective option for deploying broadband service in rural areas and despite the fact that rural consumers have been abandoning wireline services in droves.[7]

While the ILECs bill their USF proposal as a "technology neutral" means of promoting "efficient deployment, operation, and enhancement of broadband networks in high-cost areas,"[8] even a passing examination of the proposal reveals that precisely the opposite is true. As discussed below, the proposed mechanisms for awarding Connect America Fund ("CAF") support are systemically biased in favor of wireline providers at the expense of wireless providers, and they

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[3] *See* Framework of the Proposal, Attachment 1 to ILEC Coalition Transmittal Letter, at 2 (Jul. 29, 2011) ("Framework").

[4] RLEC Letter at 2. It is unclear whether the RLECs propose to allow *any* continuing opportunity for competitive providers to obtain high-cost support in areas served by rate-of-return ILECs. Although the ABC Plan envisions a limited auction mechanism in areas served by price cap ILECs, RLEC organizations appear to be arguing for a separate fund available only to rate-of-return ILECs. *See, e.g.*, Comments of the National Exchange Carrier Ass'n, Inc., National Telecommunications Cooperative Ass'n, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance, WC Docket No. 10-90, *et al.*, at 27 (filed Apr. 18, 2011) ("RLEC Ass'n Comments") (arguing for an RLEC-specific broadband support fund).

[5] Framework at 8.

[6] The largesse favoring wireline carriers could be even more extreme, as the RLEC Letter proposes adding another $300 million over six years that would be exclusively available to rate-of-return carriers. *See* RLEC Letter at 2.

[7] Local Telephone Competition Report: Status as of June 30, 2010, Industry Analysis and Technology Division, Wireline Competition Bureau, at 24 (Mar. 11, 2011) (showing steady, year-by-year decline in total ILEC end-user switched access lines); Pew Research Center, Pew Internet & American Life Project, *35% of American Adults Own a Smartphone* (Jul. 11, 2011), *available at* http://www.pewinternet.org/Reports/2011/ Smartphones.aspx (detailing how an increasing number of consumers are adopting wireless broadband devices).

[8] *See* Letter of Robert Quinn, Senior Vice President, Federal Regulatory & Chief Privacy Officer, AT&T, *et al.*, to Julius Genachowski, Chairman, Federal Communications Commission, *et al.*, at 1-2, attached to ILEC Coalition Transmittal Letter (Jul. 29, 2011).

would sacrifice consumer preferences for mobile services and breed inefficiency in the deployment and provision of broadband services in rural areas. As such, the ABC Plan does not comport with the Commission's principle of competitive neutrality or its reform principles and goal of promoting universal broadband. The Commission should not countenance such a thinly veiled attempt to entrench ILECs' market position. Instead, the Commission should pursue mechanisms that *actually* are technologically neutral and responsive to consumer preferences. The proposed exclusion of wireless services is all the more startling given Chairman Genachowski's recognition that "broadband is the future of mobile and mobile is the future of broadband."[9] That future would not come to pass if the ABC Plan were adopted.

In contrast to the USF proposals set forth in the ABC Plan, the intercarrier compensation proposals have merit. Although RCA has advocated a bill-and-keep approach, RCA is willing to support establishment of a uniform terminating access rate of $0.0007 per minute.[10] But the relatively modest savings that lower intercarrier compensation rates would generate for rural wireless carriers would be dwarfed by the dramatic reduction in high-cost support for such carriers under the ABC Plan. The upshot would be sharp declines in investment, competition, and consumer welfare, and many rural wireless carriers simply would be unable to carry out their mission of bringing affordable, high-quality broadband services to rural America. The Commission should reject the ABC Plan and its prescription for making rural consumers second-class citizens with access to 20th century fixed access in a 21st century mobile world.

I. THE PROPOSED CAF SUPPORT MECHANISM IS DEEPLY BIASED IN FAVOR OF WIRELINE CARRIERS AND IGNORES CONSUMER PREFERENCES

As noted above, the ABC Plan would require that the Commission set aside a minimum of $4.2 billion (out of $4.5 billion) for a CAF support mechanism with an extraordinary and unacceptable bias against wireless carriers. The most egregious example of this bias is the apparent proposal to give RLECs exclusive access to the $2 billion in CAF support that the ABC Plan suggests allocating to areas served by rate-of-return carriers.[11] Even if the RLECs could be understood as proposing a right of first refusal for those funds—as price cap ILECs propose for "their" portion of the CAF—that, too, would be unacceptable. Although the price cap ILECs appear to downplay this right of first refusal, it is a core element of the ABC Plan. Specifically, the ABC Plan proposes that if the ILEC serving a supported area "has already made high-speed Internet service available to more than 35 percent of the service locations in [its] wire center," the ILEC would be "given the opportunity to accept or decline the baseline support" in that area.[12] If the ILEC accepts CAF support, then competitive broadband providers, including wireless carriers, would be entirely precluded from seeking CAF funding in that area for the full "ten-year term of CAF

[9] Chairman Julius Genachowski, Federal Communications Commission, Prepared Remarks at a Conference of the National Association of Regulatory Utility Commissioners, "Broadband: Our Enduring Engine for Prosperity and Opportunity" (Feb. 16, 2010).

[10] *See* Framework at 9-13.

[11] *See* RLEC Ass'n Comments at 27; RLEC Letter at 1-2 (indicating that the ABC Plan incorporates previous RLEC proposals).

[12] Framework at 6.

support."[13] Accordingly, this right of first refusal would give ILECs a unilateral right to exclude wireless competitors from CAF support, and would institutionalize a bald, technology-based preference for ILECs that undermines the competitiveness of wireless providers.[14]

The supporters of the ABC Plan offer no legitimate justification for placing a thumb so firmly on the scale in favor of ILECs, and there is none. It would make more sense to establish a default preference for *wireless* networks—*i.e.*, wireless carriers that have built out more than 35 percent of a given rural area could be given a right of first refusal with respect to available CAF support. The Commission plainly should not pick winners and losers, but it if it insists on doing so, it at least should prefer the lower-cost technology that consumers prefer. Locking in systemic advantages for rural wireline carriers as they lose more than five percent of their lines each year to mobile providers that are rapidly expanding their offerings and winning customers would be entirely upside-down.

Moreover, the ABC Plan would put wireless providers at a decided disadvantage even in those relatively rare instances where the ILEC is ineligible to receive CAF support or refuses it. In such cases, a wireless carrier seeking CAF support would *only* be afforded the opportunity to participate in a reverse auction, with support going to "the lowest bidder that will meet the specified build out and service requirements" for the supported area.[15] Rural and regional wireless carriers would face significant and potentially insurmountable disadvantages in such auctions, as the ILECs' definition of "supported areas" appears designed to prevent smaller wireless carriers from bidding effectively. Under the ILECs' proposal, the Commission would define "supported areas" by aggregating census blocks within ILEC wire centers, and thus would distribute CAF support "on a wire-center-by-wire-center basis," even if the support were going to a wireless carrier.[16] This approach not only would impose artificial, technology-specific boundaries on an increasingly dynamic broadband industry, but would also frustrate the bidding opportunities of those wireless carriers whose coverage areas do not align with ILECs' wire centers, and who therefore may not be in a position to serve the full, gerrymandered "supported area" under the ILECs' proposed definition. Even where smaller wireless carriers can overcome these hurdles, they still would face the threat that AT&T and Verizon would underbid them and accept support at artificially low levels in order to frustrate competition.

By combining a right of first refusal with a wireline-biased auction proposal, the ABC Proposal would all but ensure a complete lack of participation by wireless providers in the CAF program. In turn, the CAF would only reward inefficient wireline network investment and sacrifice the advantages of wireless technology, which in many cases offers a more efficient and cost-effective means of providing broadband services to rural areas. Moreover, the proposed reforms would entrench those ILECs that accept CAF support by insulating them from competition with

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13 *Id.*

14 Similarly, the RLEC Proposal suggests that the $2 billion set aside for rate-of-return carriers would be available to those carriers alone, thus foreclosing wireless providers from accessing those funds to deploy wireless broadband in rural areas. *See* RLEC Letter at 2.

15 Framework at 6.

16 *Id.* at 4.

wireless providers, which may be unable to compete effectively in the absence of high-cost support. The ABC Plan thus would fly in the face of the longstanding principle of competitive neutrality.[17] While ILECs no doubt want to protect themselves from shifting consumer preferences by foreclosing opportunities for wireless providers in rural areas, the *business* interests of ILECs are no substitute for the *public* interest in the use of cost-effective, consumer-preferred wireless technology to advance the nation's rural broadband deployment goals.

Nor can the ILECs salvage their proposal by throwing rural wireless providers a $300 million bone in the form of an "Advanced Mobility/Satellite Fund" ("AMF").[18] Wireless carriers contribute approximately $3 billion to USF and receive less than one-third that amount of support today, and they depend on that funding to deliver high-quality services to rural areas. Arbitrarily withdrawing the bulk of that support would be unacceptable in its own right, but relegating wireless to compete for the opportunity to serve the very highest-cost areas would prevent them from achieving the scale necessary for efficient network deployment. Accordingly, the AMF does nothing to make the ABC Plan technologically or competitively neutral; instead, it reinforces the pro-ILEC bias endemic in the ABC Plan's CAF proposals.

II. THE COMMISSION SHOULD INSTEAD ADOPT A TRULY NEUTRAL, MARKET-BASED USF REFORM PLAN

As the foregoing discussion makes clear, the Commission should reject the ILECs' self-serving attempt to lock in a structural bias in favor of wireline technology. The Commission instead should adopt genuine reform that focuses on the interests of consumers. In addition to the specific flaws outlined above, the ABC Plan is confusing and convoluted, requiring burdensome FCC oversight of recipients and management of the fund. True reform should be simple and transparent. Although the ABC Plan seeks to deliver on the Commission's goal of refocusing high-cost support on broadband services, in doing so it would sacrifice the remaining principles that the Commission set forth to guide its reform efforts, including (1) instilling fiscal responsibility by providing efficient levels of support, and (2) relying on competitive forces to determine the appropriate allocation of support among service providers.[19] Guided by these principles, RCA recommends the FCC adopt a forward-looking cost model to identify the appropriate level of support, target support in a competitively and technologically neutral manner, provide a sufficient amount of support for consumer-preferred wireless services, and allocate support to providers that successfully attract and retain customers.

RCA has sought to assist the Commission in developing competitively neutral support mechanisms that achieve all of the objectives set forth in the National Broadband Plan and the

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17 *See, e.g., Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶¶ 24-27, 43-52 (1997) ("*USF First Report and Order*").

18 Framework at 8.

19 *Connect America Fund*; *A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 ¶ 10 (2011).

NPRM. Accordingly, RCA has proposed establishing a single, competitively and technologically neutral CAF mechanism that awards support based on forward-looking cost models, thereby abandoning historical preferences favoring wireline technology. RCA continues to believe that an integrated high-cost support mechanism (albeit with separate cost models for wireline and wireless networks) represents the best policy outcome. But if the Commission ultimately decides to establish separate wireline and wireless support mechanisms, it at least should ensure that the overall allocation of resources is equitable, cost-effective, and responsive to consumers' demonstrated preference for mobile wireless services. RCA sets forth a potential framework below for achieving those objectives, and RCA will continue to refine its proposals as the Commission proceeds with its reform efforts.

A. The Commission Should Adopt Forward-Looking Cost Models To Identify Appropriate Support for High-Cost Areas

Despite the ABC Plan's many flaws, RCA agrees with the price cap carriers that forward-looking cost models should provide the principal means of determining the amount of CAF support in any given high-cost area. As RCA has repeatedly stressed, the use of forward-looking cost models 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.[20] As explained above, however, it is wrong to embrace model-based CAF support only for wireline carriers, relegating wireless providers to a wireline-biased auction mechanism in the event that an ILEC has not met the 35-percent buildout threshold or declines support. Eschewing the use of a cost model to determine CAF support for wireless providers would make no sense. As US Cellular has demonstrated, using the same vendor as the ABC Plan proponents, a forward-looking cost model can just as readily be used to determine support for wireless providers as for wireline providers.[21] And providing support for all providers based on model outputs would ensure competitive neutrality, in stark contrast to the biased proposals that make up the ABC Plan.

If the Commission insists on separate wireline and wireless funds, the ABC Plan's suggested allocation of $300 million for wireless and satellite providers is a non-starter. That amount would only be available to support extremely high-cost areas—essentially those areas the ILECs have no interest in serving. Additionally, that level of support would severely curtail rural wireless carriers' network investment and would almost certainly result in the removal of some existing infrastructure.[22] That would obviously undercut the Commission's broadband goals. As noted above, wireless carriers contribute more than $3 billion to USF, based on consumers' overwhelming embrace of their services. Although the ultimate funding allocation should depend on the outputs of

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20 *See, e.g.*, *USF First Report and Order* ¶ 26.

21 *See* Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al.* (filed June 22, 2011) (enclosing *ex parte* presentation materials explaining US Cellular's USF Mobile Broadband Model).

22 *See* Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al.*, at 2 (filed July 28, 2011) ("RCA July 28, 2011 Ex Parte") (explaining that ILEC USF proposals such as the ABC Plan would cause wireless carriers to "incur stranded investment").

the forward-looking cost model, a more appropriate funding target for a wireless-specific mechanism would be $1.5 billion, or *half* of what the wireless industry contributes.[23]

Support for wireline carriers also should be determined based on a forward-looking cost model, but, as discussed further below, ILECs should receive funding only to the extent they actually serve a customer. The era of guaranteed support levels for wireline carriers regardless of how many customers defect for competitive providers should come to an immediate end, as that design flaw is what has led to excessive growth in high-cost support, even apart from its inconsistency with market-based principles. RCA has not yet had the opportunity to examine the cost model data submitted by the ABC Plan proponents, so we cannot comment on what amount should be targeted for a wireline fund. Suffice it to say that the proposals to direct $2.2 billion to price cap carriers and $2 billion to rate-of-return ILECs appear grossly inflated. RCA will address the appropriate funding levels for wireline carriers in greater detail once the Commission seeks additional comment.

B. Broadband Support Should Be Targeted to Geographic Areas in a Competitively Neutral Manner

To avoid providing unfair advantages to incumbents at the expense of more efficient and preferred competitive providers, the Commission should target USF support to geographic areas that are not tied to any particular carrier's service territory. While RCA does not oppose the ILECs' proposal to identify high-cost areas using census blocks, the Commission should reject their proposal to allocate support at the wire center level.[24] Notably, although the ILECs claim that it would be "unwieldy" to distribute USF support to "millions of individual census blocks,"[25] they offer no explanation as to why support is more appropriately or easily targeted at the wire center level instead of a more neutral geographic measure. Just as census blocks can be aggregated at the wire center level, they can be aggregated at other levels (such as RSAs, counties, or census tracts) that would avoid establishing a wireline bias. Moreover, the ILECs propose to allocate broadband support in extremely high-cost areas using individual census blocks,[26] but they fail to explain why a similarly neutral approach should be abandoned for CAF support. To the extent that the Commission establishes separate wireline and wireless funds, the problem of bias would recede, as each set of providers presumably would be funded based on geographic units that are technologically appropriate. But there should be no mistaking the fact that the ABC Plan as written would force wireless carriers to seek CAF support based on the boundaries of ILEC service areas, and that approach would be untenable as explained above.

C. Support Should Be Allocated Based on Carriers' Success in the Marketplace

RCA further recommends that the Commission make ongoing funding success-based and completely portable among carriers—including wireless and wireline, terrestrial and satellite. The

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23 *See id.* at 3.

24 Framework at 4.

25 *Id.*

26 *Id.* at 5 (stating that "the CAF recipient is permitted to exclude from its service obligation those service locations that could be served most efficiently using satellite broadband (up to the number of service locations in the highest-cost census blocks)"); *id.* at 8.

Commission long ago endorsed portability as a means to promote competitive and technological neutrality within the USF,[27] and the time has come for the Commission to fully implement this market-based reform.

A success-based approach that ties USF funding to the subscriber rather than to the carrier is the best way to advance the core principles for universal service reform and to harmonize USF policy with the realities of a competitive marketplace. As the Federal-State Joint Board determined, pegging support to an individual customer "would send more appropriate entry signals in rural and high-cost areas, . . . would be competitively neutral, . . . [and] would protect fund sustainability."[28] Significantly, making USF support truly portable would help address those parts of the ABC Plan that would cause the most problematic competitive distortions. For example, rather than locking in a particular level of support for one provider for 10 years, reallocating per-line support when a subscriber switches carriers would maximize providers' incentives to compete effectively and would enable the Commission to minimize funding needs overall as customers migrate to more efficient providers. In contrast to the identical support rule, RCA proposes that a wireline carrier's support would be determined based on the forward-looking wireline cost model, whereas a wireless carrier's support would be determined based on the separate forward-looking wireless cost model. Moreover, the Commission could reduce the level of ongoing support by periodically adjusting the forward-looking cost models as equipment costs decline over time and more rural consumers are connected.

Similarly, limiting support to one provider per customer and allowing multiple providers to compete for that subsidy would enable the Commission to eliminate potentially duplicative funding while introducing new market-based fiscal discipline that would be altogether lacking under the ABC Plan. Indeed, the ILECs' proposal effectively would tie the Commission's hands for a full 10 years, with funding doled out to incumbent providers based on a minimal showing of broadband deployment and without any adequate assurances that additional facilities will be constructed or that high-quality service will be provided.[29] RCA's recommendation of model-based support that is truly portable, by contrast, would rely on ongoing competition and would thus spur providers to continue to innovate, reduce costs, and improve their service over the life of the funding.

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In summary, RCA appreciates the difficult task of achieving comprehensive reform of the universal service and intercarrier compensation regimes and, to that end, appreciates the efforts of

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27 *See, e.g., USF First Report and Order* ¶¶ 286-290; *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 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).

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

29 *See* Framework at 7 (explaining that the Commission "shall not modify the CAF obligations or other terms of the agreement between the Commission and the CAF recipient"—including the level of support over the 10-year term—"without the CAF recipient's consent").

the ILECs to build consensus within their ranks on these important issues. But the ABC Plan's blatant exclusion of wireless services in an effort to protect legacy support for incumbents is fatally flawed and falls well short of the Commission's reform principles and goal of promoting universal broadband availability. RCA thus proposes that the Commission instead utilize the framework outlined above as a first step towards adopting *true* universal service reform.

Sincerely,

/s/	/s/
Steven K. Berry President & CEO	Rebecca M. Thompson General Counsel