

**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 an 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

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

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The Rural Cellular Association (“RCA”) hereby submits these comments in response to the Commission’s recent Public Notice regarding certain proposals to reform the Universal Service Fund (“USF”) and Intercarrier Compensation (“ICC”) regimes.¹ As an association representing nearly 100 wireless carriers, including many rural providers, RCA is committed to helping the Commission develop a new USF regime that allocates high-cost support in a competitively and technologically neutral manner and that elevates the interests of consumers over those of any particular industry segment. Unfortunately, many of the proposals submitted by incumbent local exchange carriers (“ILECs”) would undercut these important public interest

¹ Public Notice, *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90 *et al.*, DA 11-1348 (rel. Aug. 3, 2011) (“Public Notice”).

principles by favoring outdated wireline technologies, precluding competition, and thwarting consumer choice. As discussed in greater detail below, the Commission should emphatically reject ILEC's self-serving USF proposals, and instead adopt truly neutral, market-based reforms that allow burgeoning competition among wireline, wireless, and other providers in the broadband marketplace to inform the level and allocation of high-cost support. Similarly, while some of ILECs' ICC reform proposals have merit, the Commission should ensure that any new ICC regime eliminates protections for wireline incumbents at the expense of wireless competitors

INTRODUCTION AND SUMMARY

As RCA explained in its August 3 *ex parte* letter,² as well as in comments filed earlier in the USF-ICC transformation proceeding,³ the Commission should undertake genuine USF reform that focuses on the interests of consumers, promotes efficient investment in broadband deployment, and prevents wasteful outlays from the high-cost program. The Commission generally embraced these principles at the outset of this proceeding,⁴ and these goals should continue to guide the Commission's efforts to modernize and streamline the current USF and ICC regimes, including with the instant Public Notice. The best way to achieve these objectives

² Letter from Steven K. Berry, President & CEO, RCA, and Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al.* (filed Aug. 3, 2011) ("RCA August 3 Letter").

³ Comments of the Rural Cellular Association, WC Docket No. 10-90 *et al.*, at 3 (filed Apr. 18, 2011) ("RCA NPRM Comments"); Reply Comments of the Rural Cellular Association, WC Docket No. 10-90 *et al.*, at 2 (filed May 23, 2011) ("RCA NPRM Reply").

⁴ *See 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").

is to distribute high-cost support to those carriers that can build out networks and deploy services most efficiently and cost-effectively—which in many cases will be wireless providers—rather than arbitrarily locking in preferences for wireline technology. Maintaining competitive and technological neutrality is necessary to harness market forces, target support to the most efficient carriers, and honor consumer preferences.

The Commission therefore should adopt the pro-competitive, pro-consumer reforms consistently advanced by RCA in the above-captioned proceedings. In particular, and as discussed in greater detail below, RCA recommends that the Commission rely on forward-looking cost models to identify the appropriate level of support for wireline and wireless providers, 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. Such reforms offer the Commission the best opportunity to transform today’s inefficient and often wasteful USF support regime into a market-based, pro-competitive mechanism that speeds the deployment of broadband to rural areas while maximizing consumer choice.

Unfortunately, in stark contrast to RCA’s blueprint for reform, the principles of maintaining technological neutrality and harnessing the benefits of competition are nowhere to be found in the ILECs’ latest USF reform proposals, as set forth in the price cap carriers’ “ABC Plan”⁵ and in the complementary letter filed by rate-of-return carriers.⁶ To the contrary, the

⁵ Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory & Chief Privacy Officer, AT&T, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attachment 1, WC Docket No. 10-90 *et al.* (filed July 29, 2011) (“ABC Plan”).

⁶ 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.* (filed Jul. 29, 2011) (“RLEC Letter”).

ABC Plan represents nothing more than a self-serving ILEC scheme that would misallocate USF support, harm competition, and deprive rural consumers of access to high-quality wireless services. Indeed, a number of the ILECs' suggestions for "reform"—such as granting ILECs exclusive access to funding and/or rights of first refusal; drastically reducing the amount of support available to lower cost, more efficient wireless carriers; and tying Connect America Fund ("CAF") support to ILEC wire centers, among others—would, if adopted, undermine the stated goals that undergird the Commission's reform efforts. Instead of instilling fiscal responsibility by providing efficient levels of support, and instead of relying on competitive forces to determine the appropriate allocation of support among service providers, the ABC Plan would only reward inefficient wireline network investment and stifle efforts by wireless competitors to offer high-quality broadband service more cost-effectively than the incumbent. By leaving these outmoded preferences for wireline incumbents in place, the ABC Plan would merely replace one broken system with another.

Although ILECs' plans to reform USF generally lack merit, their idea of a simplified and less costly intercarrier compensation regime, though not perfect, does present a helpful starting point for discussion. For instance, while RCA historically has supported replacing the byzantine intercarrier compensation system with a bill-and-keep regime for all carriers, RCA is willing to support the ILECs' proposal to establish a uniform rate of \$0.0007 per minute for all terminating traffic as an improvement to the current system. Critically, however, the limited savings that rural wireless carriers can expect to realize as a result of reduced access charge payments would in no way compensate for the dramatic declines in USF support available for wireless carriers under the ABC Plan. The Commission also should reject proposals to implement an "access replacement" mechanism to protect ILECs' from the prospect of declining revenues. Wireless

providers have never enjoyed such revenue guarantees, and in today’s competitive marketplace, neither should wireline providers.

DISCUSSION

I. THE COMMISSION SHOULD USE FORWARD-LOOKING COST MODELS TO DETERMINE SUPPORT AMOUNTS FOR HIGH-COST AREAS

A. The Use of Forward-Looking Cost Models Would Advance the Commission’s Reform Objectives, As Long As Those Models Are Not Limited to One Technology.

The Public Notice asks whether the Commission should adopt “a forward-looking model to determine support amounts for areas where there is no private sector case to offer broadband,” and notes that “[t]he ABC Plan proposes using one technology to determine the modeled costs of [broadband] service.”⁷ RCA wholeheartedly agrees with the use of forward-looking cost models to determine support levels under the CAF mechanism. However, the Commission should not base such models on “one technology,” as the ABC Plan proposes. The benefits of using forward-looking cost models—including the elimination of technology-specific biases and the creation of incentives to promote efficient investment—would be nullified if a model evaluated only those costs associated with wireline technology.

RCA has long championed the use of forward-looking cost models to determine support under the CAF. Such models appropriately base support on the costs an efficient carrier would incur in providing the required minimum level of broadband service for each area, rather than pegging support amounts to an ILEC’s inefficient cost structure. As the Commission has explained, the fact that a forward-looking cost model “best approximates the costs that would be incurred by an efficient carrier in the market” means that such models “send the correct signals

⁷ Public Notice at 3.

for entry, investment, and innovation.”⁸ Moreover, “a forward-looking economic cost methodology creates the incentive to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting.”⁹ The Commission thus has long recognized that the use of forward-looking cost models is an appropriate way to ensure that support levels are no higher than necessary to achieve the objectives set forth in Section 254.¹⁰

Indeed, the Commission has already expressly endorsed a forward-looking cost model in this proceeding, and the use of such models in other contexts confirms their value here.

According to the Commission’s Notice of Inquiry on USF reform, “[b]asing support on forward-looking costs is consistent with the Commission’s policy adopted in the *Universal Service First Report and Order* that support in high-cost areas should be based on forward-looking economic costs,” whereas using “embedded costs to calculate support would lead to inefficient subsidization of carriers and could create disincentives for carriers to operate efficiently.”¹¹ In keeping with these long-held principles, the Commission currently uses forward-looking cost models in determining high-cost support levels for non-rural carriers.¹² The use of cost models is also gaining traction in contexts outside the USF arena, and is a critical component of Chairman

⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 ¶ 224 (1997) (“*USF First Report and Order*”).

⁹ *Id.* ¶ 226.

¹⁰ *Id.* ¶ 26.

¹¹ *See 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, 25 FCC Rcd 6657 ¶ 23 (2010).

¹² *See Federal-State Joint Board on Universal Service*, Fifth Report and Order, 13 FCC Rcd 21323 (1998) (adopting a forward-looking cost model platform for use in determining federal universal service high-cost support for non-rural carriers).

Genachowski's five-step action plan to improve next-generation 911 ("NG911") deployment.¹³

A forward-looking cost model will, in Chairman Genachowski's words, improve "the cost-effectiveness of the NG911 network infrastructure."¹⁴ Such models in the USF context would likewise help limit the size of the fund while maximizing its effectiveness.

The ABC Plan's proposal to base forward-looking cost estimates on "one technology"—namely, wireline technology—would obviate many of the benefits associated with cost models. A cost model based only on wireline technology would reintroduce the same arbitrary preference for ILECs in determining support levels, and would fail to take into account the ability of wireless carriers to provide service more cost-effectively in many areas. In addition, by locking in a preference for wireline technology, and by ignoring the substantial efficiencies associated with wireless technology, such a model would inflate overall USF expenditures precisely at a time when the government is focused on reining in spending. And most importantly, the ABC Plan's wireline favoritism would disregard consumers' growing preference for mobility. According to figures published in the Commission's latest Local Telephone Competition Report, as well as in a recent study by the Pew Research Center, consumers are increasingly cutting the cord and migrating from wireline to wireless service offerings.¹⁵ Morgan Stanley has identified

¹³ See Federal Communications Commission, *FCC Chairman Genachowski Announces Five Step Action Plan to Improve the Deployment of Next Generation 9-1-1* (Aug. 10, 2011), at 1, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0810/DOC-309005A1.pdf ("To assist 911 authorities and Congress in considering NG911 funding options, the FCC's Public Safety and Homeland Security Bureau will prepare a cost model focused on the cost-effectiveness of the NG911 network infrastructure linking PSAPs and carriers.").

¹⁴ *Id.*

¹⁵ 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*

a parallel trend in wireless broadband Internet access, estimating that mobile access to the Internet will outpace desktop access by the year 2015.¹⁶ The ABC Plan’s proposal to model *only* wireline technology directly contravenes this clear and growing consumer preference for wireless.

Therefore, instead of a single-technology cost-model that focuses on wireline networks to the exclusion of wireless networks, the Commission should develop separate, technology-specific cost models that take into account the varying costs of providing broadband services using wireline and wireless technologies. RCA would accordingly support the proposal—advanced last week in a letter by Google, Sprint, Skype, Vonage and the Ad Hoc Telecommunications Users Committee—to develop models based on “all available data . . . from network providers of all technologies,” instead of “assess[ing] only the cost to deploy wireline broadband service.”¹⁷ Indeed, it is telling that, of all of the proposals advanced by parties representing various telecommunications technologies, only the ILECs’ proposal calls for a model that deliberately ignores technological alternatives to traditional wireline service.

Notably, the adoption of such forward-looking cost models would eliminate the need to establish separate support mechanisms for “rural” and “non-rural” areas, especially since those

Smartphone (Jul. 11, 2011), available at <http://www.pewinternet.org/Reports/2011/Smartphones.aspx> (detailing a dramatic uptick in smartphone ownership, and showing that 25 percent of smartphone users do most of their Internet browsing from their mobile device—that percentage increased dramatically for ethnic minorities and those with less education and income).

¹⁶ Morgan Stanley, *Internet Trends* (Apr. 2010), at 7, available at http://www.morganstanley.com/institutional/techresearch/pdfs/Internet_Trends_041210.pdf (projecting that global mobile Internet users will equal global desktop Internet users by 2014, and will exceed desktop users by 2015).

¹⁷ See Letter from Google, Inc., Sprint Nextel Corp., Skype Communications S.A.R.L., Vonage Holdings Corp., and Ad Hoc Telecommunications Users Committee, to Chairman Julius Genachowski *et al.*, WC Docket No. 10-90 *et al.*, at 4 & n.14 (filed Aug. 18, 2011) (“Google Letter”).

terms have always had more to do with the size of the ILEC that serves a particular area than the cost characteristics of that area. RCA therefore supports the proposal in the Public Notice to “eliminat[e] the current references to rural and non-rural carriers in [the Commission’s] rules.”¹⁸ By the same token, the CAF should award model-based support using the same principles in areas served by price cap ILECs and by rate-of-return ILECs. The proposal to “adopt[] two separate approaches to determining support . . . based on whether [the incumbent] is regulated under rate of return or price caps in the interstate jurisdiction,”¹⁹ would make little sense under a CAF regime that uses forward-looking cost models. Because such models would set the efficient level of support regardless of the size or regulatory status of the incumbent wireline provider, there is no sound reason to establish different rules from one rural area to another.

B. RCA Supports the Proposal to Require Support Recipients to Meet Reasonable Build-Out Milestones and Public Interest Obligations

In awarding model-based support, the Commission should require, as proposed in the Public Notice, “that recipients of support meet specific broadband build-out milestones” and other public interest obligations.²⁰ RCA has long supported tying awards of high-cost support to such obligations, and RCA and its members stand ready to meet reasonable speed and geographic coverage obligations that the Commission may choose to adopt as conditions of CAF support. RCA agrees that all broadband connectivity subsidies should also be subject to specified public interest obligations, including open access.²¹ Significantly, unlike wireline networks, wireless technology is easily scalable. Indeed, wireless data speeds, coverage, and capacity are constantly improving as newer, better technology develops and reaches the

¹⁸ Public Notice at 3.

¹⁹ *Id.*

²⁰ *Id.* at 4.

marketplace. At the same time, any construction benchmarks should be flexible enough to take account of rural carriers' limited access to spectrum, equipment, and devices, especially in the highly concentrated wireless market. Such flexibility also should be reflected in the speed thresholds used to define "broadband" service, which will inevitably change over time as technology and access to spectrum improve. Moreover, it goes without saying that the ability of rural wireless carriers to meet the Commission's support obligations also will depend on their access to existing high-cost support in the near term. While RCA's members have been complying with the Commission's (and state commissions') public interest requirements, the threatened withdrawal of legacy support poses significant risks of forcing carriers to revisit existing deployment plans.

The Public Notice is also correct to point out that Alaska, Hawaii, tribal lands, and U.S. territories pose unique service challenges that may not be reflected in the forward-looking cost models used elsewhere in the United States.²² The Commission should be mindful of these challenges when imposing build-out requirements and determining support levels in such areas.

II. IF THE COMMISSION ESTABLISHES A SEPARATE WIRELESS FUND, IT SHOULD DO SO IN A WAY THAT DOES NOT DISADVANTAGE WIRELESS CARRIERS AND CONSUMERS

The Public Notice seeks comment on proposals to "create two separate components of the Connect America Fund, one focused on ensuring that consumers receive fixed voice and broadband service (which could be wired or wireless) from a single provider of last resort in areas that are uneconomic to serve with fixed service, and one focused on providing ongoing support for mobile voice and broadband service in areas that are uneconomic to serve with

²¹ Google Letter at 6.

²² Public Notice at 9.

mobile service (*i.e.*, a Mobile Connect America Fund).”²³ RCA believes that an integrated high-cost support mechanism (albeit with separate cost models for wireline and wireless networks) represents the best policy outcome, as such a mechanism would put all broadband providers on equal footing for CAF support and eliminate the historical bias in favor of wireline technology. However, in the interest of compromise, RCA would be willing to support separate funds, provided that the overall allocation of resources is equitable and competitively neutral.

Above all, the Commission should reject calls from ILECs to impose unjustifiable limits on the size and geographic range of any wireless fund; indeed, such limits make more sense for wireline funding, given the inherent inefficiencies associated with building out wireline infrastructure in many high-cost areas. In particular, the ABC Plan’s suggested allocation of \$300 million for wireless and satellite providers—an amount that would only be available to support “extremely high-cost areas”—is a non-starter.²⁴ As an initial matter, any separate wireless fund should not be limited to extremely high-cost areas, but rather should be geographically co-extensive with the wireline fund. ILECs would no doubt prefer to shield themselves from competition in high-cost areas by relegating wireless providers to extremely high-cost areas, but ILEC protectionism cannot justify a strict geographic segregation of wireless support areas from wireline support areas. In *any* high-cost area, funding should flow to whichever provider or providers can deliver the requisite services the most cost-effectively. As the Satellite Broadband Operators Coalition said, “the ABC Proposal would create a wireline quota system, designed to preserve and enhance their existing subsidy levels, with just a small percentage of funds being made available for more advanced technologies such as wireless and

²³ *Id.* at 2.

²⁴ ABC Plan at 8.

satellite.”²⁵ RCA couldn’t agree more that the ABC proposal “is designed to benefit the authors of the proposal, not American consumers.”²⁶

Moreover, the ILECs’ suggestion to allocate \$300 million to the wireless fund—while proposing to reserve at least \$4.2 billion for themselves²⁷—would put wireless carriers at a clear and wholly unjustified competitive disadvantage. A \$300 million wireless fund would dramatically undervalue the ability of wireless providers to deliver broadband service to high-cost rural communities. That allocation also would be grossly disproportionate to the \$3 billion that wireless carriers contribute each year to USF. Wireless carriers would, at a maximum, receive a mere *10 percent* of the amount they contribute to USF. Meanwhile, ILECs, which contribute an estimated \$1.5 billion a year to USF, would be entitled to receive roughly 280 percent of their contribution under the ABC Plan. This massive disparity, on its own, compellingly illustrates the arbitrary and capricious nature of ILECs’ self-serving USF reform proposals. The ILECs provide no justification whatsoever for limiting virtually all high-cost funding to wireline-based carriers, and there is none. In fact, such a low level of wireless support would severely hinder investment by rural wireless carriers in deploying broadband-capable networks and would almost certainly lead to the removal of existing wireless broadband

²⁵ Satellite Broadband Operators Coalition Open Letter, Aug. 4, 2011, *available at* <http://www.satelliteguys.us/archive/t-262426.html>.

²⁶ *Id.*

²⁷ The \$4.2 billion that ILECs propose to take for themselves would come in two parts. First, as described below, price cap ILECs propose to give themselves a right of first refusal for the \$2.2 billion that the ABC Plan would allocate to their service areas. *See* ABC Plan at 6. Second, RLECs appear to be proposing that they receive exclusive access to an additional \$2 billion in CAF support that the ABC Plan suggests allocating to areas served by rate-of-return providers. *See* 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

infrastructure.²⁸ Diminished investment and the removal of infrastructure would, in turn, undercut the Commission’s goals of promoting wireless broadband and “foster[ing] additional wireless-wireline competition at higher speed tiers.”²⁹ The Commission should not allow ILECs to harm competition and the nation’s broadband goals by shutting wireless competitors out of over 93 percent of all CAF support.³⁰ Indeed, if the ABC Plan were adopted, it would preclude achievement of Chairman Genachowski’s vision of broadband as “the future of mobile and mobile [a]s the future of broadband.”³¹

Although the ultimate funding allocation should depend on the outputs of a forward-looking cost model, if the Commission wants to engage in arbitrarily setting the levels of funding according to the technology used, a more appropriate funding target for a wireless-specific mechanism would be \$1.5 billion, or *half* of what the wireless industry contributes. Not only would \$1.5 billion represent a more equitable target in light of today’s USF contributions by wireless carriers, but it would also provide the wireless industry with sufficient funding to help meet the nation’s broadband deployment goals. While wireless providers adamantly continue to believe that they should not face any technology-specific cap on support—but rather should be fully eligible for forward-looking, model-based support in any area that requires funding to achieve the nation’s broadband goals—RCA proposes a \$1.5 billion target in the spirit of

Telecommunications Alliance, WC Docket No. 10-90, *et al.*, at 27 (filed Apr. 18, 2011); RLEC Letter at 1-2.

²⁸ 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”).

²⁹ National Broadband Plan at 25.

³⁰ \$4.2 billion for ILECs / \$4.5 billion in total CAF support = approximately 93.3%.

compromise and fiscal restraint, in contrast to ILECs' stratospheric demands for a dedicated \$4.2 billion in CAF distributions.

III. THE COMMISSION SHOULD TARGET BROADBAND SUPPORT TO GEOGRAPHIC AREAS IN A COMPETITIVELY NEUTRAL MANNER

A. The Commission Should Emphatically Reject a Right of First Refusal for ILECs.

The Public Notice also seeks comment on one of the most blatant examples of wireline favoritism in the ABC Plan: the proposal to give ILECs “the opportunity to accept or decline a model-determined support amount in a wire center if the [ILEC] has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center.”³² The Commission correctly characterizes this allocation mechanism as an ILEC “right of first refusal”³³—even though ILECs themselves studiously avoid the term in the ABC Plan,³⁴ perhaps in recognition of the broad opposition in the record to any right of first refusal.³⁵

³¹ 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).

³² Public Notice at 4. For the same reasons discussed below, RCA obviously opposes any proposals to give ILECs exclusive access to support. As RCA has noted, the RLECs' submissions do not make clear whether they seek an unconditional right to receive \$2 billion in CAF support or a right of first refusal (as price-cap carriers would enjoy). *See* RCA August 3 Letter at 2.

³³ Public Notice at 3.

³⁴ *See* ABC Plan at 6

³⁵ *See, e.g.*, Comments of Verizon and Verizon Wireless, WC Docket No. 10-90 *et al.*, at 65 (filed Apr. 18, 2011) (explaining that a right of first refusal would “fail to take into account the potential benefits of new competition from intermodal providers and legitimate consumer preferences for different technologies, particularly in unserved areas”); Comments of T-Mobile USA, Inc., WC Docket No. 10-90 *et al.*, at 16 (filed Apr. 18, 2011) (characterizing a right of first refusal as “blatant favoritism to ILECs”); Comments of MTPCS, LLC, d/b/a Cellular One and N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, WC Docket No. 10-90 *et al.* at vii (filed Apr. 18, 2011) (noting that a “right of first refusal option[] would result in subsidizing inefficient operations” and “could also slow down the workings of the marketplace”); Comments of Time Warner

As it has in the past, RCA adamantly opposes a right of first refusal for ILECs. An ILEC right of first refusal would accomplish precisely what the Commission hoped to avoid in undertaking USF reform. Instead of elevating the interests of consumers over those of providers, a right of first refusal would treat ILECs' interests as paramount, a notion which has no basis in the Act, and would award ILECs a unilateral right to exclude wireless competitors from CAF support, further entrenching them as broadband monopolists in rural America. Institutionalizing a bald, technology-based preference for ILECs not only would undermine the competitiveness of wireless providers, but would also ignore the preferences of consumers, who have been steadily abandoning wireline services in favor of mobile wireless broadband alternatives.³⁶ Moreover, by rewarding inefficient wireline network investment, an ILEC right of first would 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, even apart from the overwhelming consumer preference for mobility. And by entrenching those ILECs that accept CAF support by insulating them from competition with wireless providers, a right of first refusal would fly in the face of the longstanding principle of competitive neutrality.³⁷

Making matters worse, the ILECs propose that their right of first refusal would be triggered in any wire center in which they have satisfied the 35-percent threshold by deploying “high-speed Internet service”—*i.e.*, service with a download speed of merely 200 kbps, *not* the

Cable Inc., WC Docket No. 10-90 *et al.*, at 30-31 (filed Apr. 18, 2011) (a right of first refusal for ILECs “would elevate the interests of particular competitors over those of consumers” by “grant[ing] subsidies to LECs regardless of whether another carrier or an alternative technology would make better use of scarce funds”); Comments of ViaSat, Inc., WC Docket No. 10-90 *et al.*, at 24-25 (filed Apr. 18, 2011) (a right of first refusal “would create inefficiencies, and would not be competitively or technologically neutral”).

³⁶ See notes 15 and 16 *supra* and accompanying text.

³⁷ See *USF First Report and Order* ¶¶ 24-27, 43-52.

far higher-capacity “broadband” service the Commission seeks to deploy through the CAF.³⁸ Thus, the right of first refusal would be based on minimal deployments that in many cases will lag far behind the speeds the rural wireless providers are providing or could provide with sufficient support in overlapping areas. And the net result of the 200 kbps threshold would be to ensure that ILECs possess a right of first refusal in the overwhelming majority of service areas, leaving rural consumers with few, if any, alternatives.³⁹ Locking in preferential (or effectively exclusive) access to funding for less efficient providers deploying slower speeds simply makes no sense. Wireline carriers should not be allowed to continue to enjoy “an automatic expectation of funding”⁴⁰ through a right of first refusal.

In response to these criticisms, ILECs often attempt to justify a right of first refusal by pointing out that USF funding originally flowed only to wireline carriers. But the fact that wireline technology was, for many years, the only technology available to offer voice services or Internet access hardly justifies locking in preferences for such carriers going forward. The ABC Plan is just the latest iteration of the wireline carriers’ attempt to exclude wireless carriers from receiving sufficient support. Today, wireless broadband technology is flourishing, and consumers are flocking to wireless alternatives to traditional wireline offerings by purchasing smartphones, tablets, and other mobile broadband devices in greater and greater numbers. The development of new and better technologies that consumers prefer has always played a key role in decisions to allocate infrastructure subsidies, and the rapid and widespread emergence of wireless broadband is no exception.

³⁸ ABC Plan at 6.

³⁹ *Id.* at 6 n.7 (estimating that “incumbent LECs would have the opportunity to accept or decline CAF support in 82.0 percent of the census blocks that are eligible for CAF support”).

Thus, while RCA continues to believe that the Commission should not pick winners and losers by locking in preferences for any particular type of provider or technology, any right of first refusal should promote further deployment of *wireless* networks, not wireline networks. By adopting a right of first refusal for wireless providers, the Commission at least would be favoring a lower-cost technology that many consumers prefer. The Commission could, for instance, offer *wireless* carriers that have built out more than 35 percent of a given rural area a right of first refusal with respect to available CAF support. In light of Chairman Genachowski's recognition of the pivotal role that wireless broadband should play in the future,⁴¹ a wireless right of first refusal would make far more sense than granting such rights to inefficient wireline providers. And if the Commission declines to grant any party a right of first refusal, it should, at a minimum, ensure that all support is allocated on a "technology neutral" basis without any bias in favor of wireline providers.⁴² RCA thus would support the proposal in the alternative USF reform plan advanced by the Google Letter "to require applicants to make a showing of need, including by assessing all current and foreseeable revenues," instead of "simply assum[ing] any network provider requires assistance based upon geography or history."⁴³

B. The Commission Should Not Define "Supported Areas" in Terms of ILECs' Existing Wire Centers

In addition to rejecting ILECs' proposed right of first refusal, another key prerequisite for competitive neutrality is awarding support based on geographic units that are not tied to a

⁴⁰ Google Letter at 5.

⁴¹ 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).

⁴² See Google Letter at 4 & n.12 (arguing that support for broadband deployment should be distributed on a "technology neutral" basis, and citing RCA's August 3rd letter for support in contrasting that position from an ILEC right of first refusal).

particular provider's service area. Accordingly, RCA agrees with the Commission's suggestion in the Public Notice to ensure competitive neutrality by "aggregating census blocks to something other than a wire center."⁴⁴ The Commission should allocate support based on geographic areas that do not favor any particular type of provider, and should therefore avoid defining "supported areas" according to the preexisting infrastructure of an incumbent wireline provider.

ILECs offer no reasonable justification for their proposal in the ABC Plan to aggregate census blocks to target support at the wire center level.⁴⁵ ILECs claim only that it would be "unwieldy" to distribute CAF support to "millions of individual census blocks,"⁴⁶ but they provide no explanation as to why support is more appropriately or easily targeted at the wire center level instead of a more neutral geographic measure. Census blocks can just as easily be aggregated at other, more technologically neutral levels, such as census tracts, counties, or RSAs. Furthermore, the aggregation of census blocks on a neutral basis would allow for greater allocation transparency, while the use of wire centers would not be transparent. Using geographic measures that are tied to ILECs' service areas would impose artificial, technology-specific boundaries on an increasingly dynamic broadband industry, as well as preclude participation by competitive carriers whose coverage areas do not align with the ILEC's and, as a result, may not be in a position to serve the full "supported area." Accordingly, the Commission should reject ILECs' attempt to gerrymander the boundaries of "supported areas" to advantage themselves over their wireless counterparts, and use a neutral geographic unit instead.

⁴³ *Id.* at 5.

⁴⁴ Public Notice at 4.

⁴⁵ ABC Plan at 6.

⁴⁶ *Id.* at 4.

IV. THE COMMISSION SHOULD ALLOCATE SUPPORT BASED ON CARRIERS' SUCCESS IN THE MARKETPLACE

As RCA has emphasized in past filings, any support mechanism must make ongoing funding success-based and completely portable among carriers.⁴⁷ In plain economic terms, any provider's loss of a customer to another carrier should result in its loss of the corresponding USF support. Today, that principle applies to competitive ETCs, but not ILECs. That disparity makes no sense, and it is a major cause of funding growth in recent years, given the increasing substitution of wireless services for wireline plans.⁴⁸ The Commission has recognized that that a truly efficient and competitively neutral support mechanism should "facilitate a market based approach whereby each end-user comes to be served by the most efficient technology and carrier,"⁴⁹ and has endorsed portability as a means to promote competitive and technological neutrality within the USF.⁵⁰ The Commission should now follow through and make portability a cornerstone of its market-based USF reform efforts.

Portability would advance many of the core principles of USF reform while harmonizing USF policy with the realities of the competitive marketplace. As an initial matter, a portable USF mechanism would stimulate competition among broadband providers by tying funding to the subscriber rather than to the carrier, thereby rewarding carriers that win customers on the merits of their products, services, and prices. In addition, portability would eliminate the

⁴⁷ RCA NPRM Comments at 13-16; RCA NPRM Reply at 9-10.

⁴⁸ See notes 15 and 16 *supra* and accompanying text.

⁴⁹ *USF First Report and Order* ¶ 48.

⁵⁰ 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).

problem of duplicative funding by holding incumbents accountable for the loss of customers to competitors—instead of maintaining support levels to wireline providers that hemorrhage subscribers as more and more consumers opt for wireless technologies. The Federal-State Joint Board identified this same set of benefits when it found that 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.”⁵¹ By reallocating per-line support when a subscriber switches carriers, the Commission would maximize providers’ incentives to compete effectively and minimize funding needs overall as customers migrate to more efficient providers.

It is no answer for incumbents to claim, as they often do, that portability in USF funding would discourage network investment by raising the risk of losing support because of an inability to attract or retain customers. To the contrary, such consumer preferences should be at the heart of the Commission’s support allocation analysis. If a wireless provider offers a superior service that draws customers in high-cost areas away from the incumbent, the Commission should plainly reward the wireless providers’ success in the marketplace and make funding commensurate with the actual number of customers served. By making funding success-based and exposing incumbents to competitive forces, the Commission would give incumbents an incentive to increase the quality of their service and reduce costs. Moreover, competitive providers must routinely rely on anticipated penetration levels in establishing business plans, and there is no reason why incumbents cannot do the same.

If the Commission chooses to segregate CAF support into separate wireline and wireless funds, as discussed above, it should still ensure that funding is success-based within those

⁵¹ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket

distinct funds. The Commission should not allow ILECs to collect support payments for customers they lose to wireline competitors, even if those ILECs receive support from a dedicated wireline fund. The Commission should also explore mechanisms that would allow support to be portable across the separate funds, so that the support mechanisms can account for a customer's switch from an ILEC for a wireless provider, and the Commission can determine each fund's size based on shifting consumer preferences over time.

V. THE COMMISSION SHOULD COMPREHENSIVELY REFORM THE INTERCARRIER COMPENSATION SYSTEM

A. RCA Supports the Adoption of a Low, Uniform Terminating Access Rate As Part of an Eventual Shift to a Bill-and-Keep Model.

In contrast to ILECs' USF proposals, some of the intercarrier compensation proposals appearing in the ABC Plan and in the Public Notice present a helpful starting point for discussion, such as the proposal to reduce terminating access rates.⁵² In the past, RCA has advocated a bill-and-keep approach—a model that the wireless industry has long employed with great success. Bill-and-keep would eliminate the inefficiencies and arbitrage incentives that pervade today's system of inflated and widely divergent rate structures. However, RCA would be willing to support a low, uniform terminating access rate, such as the \$0.0007 rate proposed in the ABC Plan.⁵³ This model would dramatically simplify the current ICC regime and, as others have pointed out, could ultimately represent “a sensible starting point in a transition to a bill-and-keep regime.”⁵⁴

No. 96-45, 19 FCC Rcd 4257 ¶¶ 56, 67 (rel. Feb. 27, 2004).

⁵² Public Notice at 13 & n.49.

⁵³ ABC Plan at 9-13.

⁵⁴ Letter of Donna N. Lampert, Counsel for Google, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al.*, at 2 (filed Jun. 8, 2011).

While a transition to a uniform default rate of \$0.0007 would generate some savings for rural wireless carriers, it bears emphasizing that any such savings would be relatively modest in comparison to the explicit high-cost support at issue in this proceeding. RCA members have estimated that a reduction in the terminating default rate to \$0.0007 would reduce their costs by anywhere from 1 percent to 10 percent of their annual USF support. Thus, these ICC-related savings would be dwarfed by the dramatic reductions in high-cost support that rural wireless carriers would experience under the ABC Plan. As discussed above, ILECs' proposal to take \$4.2 billion in CAF support for themselves and leave wireless and satellite providers with a pittance of \$300 million would remove hundreds of millions in high-cost support from rural wireless providers. Such a drastic reduction in funding—even with the savings generated by the ABC Plan's proposed ICC reforms—would prevent many rural carriers from deploying 4G services (or at least force them to scale back deployment plans considerably), and likewise would jeopardize rural providers' ability to continue operating many existing high-cost facilities. Therefore, while the proposal to rationalize and lower intercarrier compensation rates is sensible, efficient, and pro-competitive, it in no way justifies any reductions in explicit USF support for rural wireless carriers, much less the massive reductions contemplated by the ABC Plan.

B. The Commission Should Reject Calls for Access Replacement or Other Revenue Guarantees for ILECs.

Importantly, rationalizing and reducing intercarrier compensation rates would not justify adoption of ILECs' other proposals for ICC reform, such as the establishment of a “recovery” mechanism for ILECs to replace foregone access revenue. The ABC Plan includes a so-called “transitional access replacement mechanism” for price cap incumbents as part of a “glide path” for phasing down access charges, and characterizes the proposal as “necessary to ensure that the

intercarrier compensation reforms do not jeopardize the operations of broadband providers.”⁵⁵ Likewise, the Public Notice raises the possibility of a mechanism that would provide rate-of-return carriers with “a fixed percentage of recovery (which could be 100%)” that “would lock in revenue streams, including intrastate access revenues.”⁵⁶ But these proposed revenue guarantees for ILECs are not at all “necessary” to accomplish the pro-competitive access rate reforms discussed above; instead, these proposals would distort competition, and they should be rejected accordingly.

In today’s dynamic and competitive broadband marketplace, there is simply no justification for providing revenue guarantees to one class of providers and not to others. Such guarantees for ILECs would give those carriers an unwarranted advantage over wireless providers, who have no means of “locking in” today’s revenue streams without actual success in the market. Revenue guarantees would also drastically reduce ILECs’ incentives to operate efficiently, by eliminating the impetus to cut costs in response to declining revenues. The Commission should subject incumbent wireline providers to the same market forces that their wireless counterparts face on a daily basis. Those competitive pressures have driven wireless providers to offer increasingly better broadband service at lower costs, and would almost certainly have the same effect on incumbents. To the extent retail rates are artificially low, the Commission should authorize increased subscriber line charges and the states should deregulate local rates. The answer is not to provide ILECs with yet additional subsidies that are not available to competitive providers.

⁵⁵ ABC Plan at 9, 12.

⁵⁶ Public Notice at 14.

CONCLUSION

RCA appreciates the difficult task of achieving comprehensive reform to the interlocking USF and ICC regimes, and applauds the Commission for issuing the Public Notice and attempting to advance the reform effort. But the ABC Plan that features prominently in the Public Notice offers the wrong blueprint for USF reform. Every step of the way, the ABC Plan would thwart the use of wireless technology in deploying rural broadband, at a time when such technology is increasingly preferred by consumers and more cost-effective than wireline. The Commission should reject ILECs' attempts to protect legacy support by undermining wireless providers, and should instead force ILECs to compete, like any other carrier, on the merits of their service offerings. RCA thus urges the Commission to adopt the technology-neutral reforms set forth above to ensure that funding is targeted to the most efficient, consumer-preferred, and cost-effective providers in high-cost areas—and not merely to the provider that has been there the longest.

Respectfully submitted,

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