

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	
Connect America Fund	WC Docket No. 10-90
A National Broadband Plan for Our Future	GN Docket No. 09-51
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 USA COALITION**

Todd D. Daubert  
J. Isaac Himowitz  
Aaron M. Gregory  
**SNR DENTON US LLP**  
1301 K Street, N.W.  
East Tower, Suite 600  
Washington, DC 20005  
(202) 408-6400  
(202) 408-6399 (facsimile)  
todd.daubert@snrdenton.com

*Counsel for the USA Coalition*

Date: August 24, 2011

## SUMMARY

The Universal Service for American Coalition (“USA Coalition”) urges the Commission to reject the proposals released for comment in the instant Public Notice and instead undertake universal service reform in a manner consistent with the requirements of the Act. These three proposals all disregard the fundamental purpose of the universal service program that is embodied in the statute: to provide consumers in rural, insular, and high-cost areas access to telecommunications and information services that are “reasonably comparable” to those available in urban areas at rates “reasonably comparable” to those charged in urban areas. Instead, the proposals each emphasize important secondary considerations – such as intercarrier compensation – without accounting for the Fund’s statutory universal service mandate. Any USF reform must focus on Section 254’s true purpose – establishing a basic equality of telecommunications and information services across the country.

Allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice to meet their communications needs through an efficiently functioning market is the best means for ensuring that this statutory goal is met. Consumers, not carriers or the Commission, are the best arbiters for determining which services best fit their needs and lifestyle. Rather than mandating broadband services of a specific speed, addressing intercarrier compensation issues, or restructuring the USF mechanism to support specific providers, the Commission should instead clearly define the goals of the universal service program and then develop a plan to address those goals.

All three proposals, but the ABC Proposal in particular, fail to justify their proposed expansion of the universal service support mechanism to include broadband information services of the speed proposed by the Commission. Section 254(c) requires the Commission to support only services that have, “through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.” This requirement is designed to ensure that

the Joint Board and the Commission *follow* the market in identifying services to be supported rather than *push* the market towards an aspirational speed goal by mandating that ETCs provide services that have yet to be subscribed to by the requisite substantial majority of residential consumers. Prior to adopting the 4 Mbps - 768 kbps broadband requirement, the Commission must establish that the inclusion of this service in the list of USF supported services is consistent with the Act.

Further, in its eagerness to deploy broadband services to rural America, the Commission should not take any steps that would relegate wireless services to second-class status or otherwise violate the principle of competitive neutrality. Competitive neutrality is neither optional nor non-essential under the 1996 Act. Wireless services play a key and growing role in keeping America connected, and it is essential that Americans in rural areas also have access to these types of services. Unfortunately, under the proposals put forth for comment by the FCC, support for wireless services would be at best an afterthought, and in no way sufficient to provide rural consumers with “reasonably comparable” access to the same market for services as is available to consumers in urban areas.

Not only would the diversion of funds away from competing providers and technologies harm the wireless network, but would also impede the deployment of advanced wireline services in the future. Specifically, rural incumbents are less likely to deploy the types of high-speed services envisioned by the Commission or to upgrade and expand their networks in the absence of competitive pressure. By providing support for a single carrier in areas and denying support to all others, the FCC risks transforming the communications marketplace in rural and high cost areas into monopolistic backwaters where consumers’ only broadband option is the service provided by the ILEC. The future rural landscape will stand in sharp contrast to that of urban

areas, where competition will spur carriers to deploy and promote ever faster networks and cheaper services in an attempt to win and retain customers.

The Commission should also reject calls to take action based on promises of yet-to-be-developed forward-looking cost models. Nothing in the history of the universal service program suggests that forward-looking models will be the panacea that supporters of the ABC Plan and others suggest. To the extent the FCC wishes to consider any proposed cost model, the agency should continue to distribute support pursuant to current rules while the model is tested and evaluated in a limited number of markets.

The Commission must also take steps to ensure that all parties have opportunity to meaningfully comment on any proposed reform. Of particular concern is the lack of detail regarding the way the Commission intends to distribute USF support in the future. During the most recent iteration of the reform process, the Commission has sought comment on a number of potential plans, including (1) reverse auctions; (2) providing incumbent LECs with rights-of-first refusal for support based on forward-looking cost models; and (3) distributing support to the states for disbursement. In addition, the Commission has sought comment on the benefits of separately supporting mobile broadband services. However, without details to flesh out these proposals, docket participants cannot meaningfully address the pros and cons of each proposal, and can speak only in generalities that will not be useful to the Commission.

Regardless of the nature of the reforms the Commission ultimately adopts, the Commission should refrain from implementing those reforms in areas that have traditionally faced particularly significant deployment challenges, including tribal lands and those areas located outside of the contiguous 48 states. Instead of imposing immediate reform upon these sensitive areas, the Commission should instead maintain the current system for carriers serving these areas until the proposals have been successfully implemented in less sensitive areas. Once

these results become clear, the Commission can consider how the reforms can best be modified to address the circumstances unique to these areas.

## TABLE OF CONTENTS

I.	THE COMMUNICATIONS ACT MUST GOVERN USF REFORM .....	4
A.	The Commission Must Base Its USF Policy On The Mandatory Universal Service Principles Enumerated In Section 254.....	5
B.	The Act Requires that the Commission Follow the Market in Defining Universal Service Rather Than Push Broadband Service.....	9
C.	The Act’s Structure is More Practical and Affordable Than the Three Industry Proposals.....	12
II.	THE USF DISTRIBUTION MECHANISM SHOULD BE DESIGNED TO EFFICIENTLY ACHIEVE THE UNIVERSAL SERVICE GOALS IN A COMPETITIVELY NEUTRAL MANNER.....	15
A.	Competitive Neutrality Is Essential For Ensuring That Rural Consumers Have Access To Services That Are Reasonably Comparable To Those Available In Urban Areas. ....	15
B.	The ABC Plan Sacrifices Competitive Neutrality On The Altar Of Intercarrier Compensation. ....	17
III.	THE FCC SHOULD NOT RELY ON A FORWARD-LOOKING COST MODEL TO CALCULATE PER-LINE SUPPORT AS PROPOSED IN THE ABC PLAN.....	19
A.	The ABC Plan’s Proposal To Rely Upon A Forward-Looking Cost Model As A Basis For Distributing USF Should Be Rejected.....	19
B.	Models May Prove Useful For Determining Support Levels Based On Actual Costs Incurred. ....	21
C.	Any Models Adopted By The Commission Must Be Maintained.....	23
IV.	THE MASSIVE REDUCTIONS IN WIRELESS SUPPORT PROPOSED IN THE ABC PLAN WILL SKEW RURAL MARKETS IN FAVOR OF THE LARGEST NATIONWIDE CARRIERS. ....	23
V.	THE COMMISSION MUST PROVIDE ADDITIONAL DETAIL REGARDING ITS INTENTIONS BEFORE ADOPTING A PLAN.....	24
A.	The Current Record Fails To Provide Commenters With Adequate Insight Into Potential Commission Action. ....	24
B.	The Commission Needs to Consider Alternative Plans That Have Been Submitted Into The Record.....	26
VI.	HAWAII, ALASKA, AND TRIBAL LANDS SHOULD BE EXCLUDED FROM ANY IMMEDIATE REFORM EFFORTS .....	27

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
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 USA COALITION**

The Universal Service for America Coalition (“USA Coalition” or “Coalition”), by its attorneys, respectfully submits these comments on the issues raised by the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice, in which the Commission requested comment on a number of proposals submitted by third parties as well as several specific questions relating to the high-cost universal service fund (“USF”) and the existing intercarrier compensation (“ICC”) regime.<sup>1</sup> While the Coalition generally supports the goals of USF reform, the proposals referenced in the Public Notice are contrary to both the Communications Act of 1934, as amended (the “Act”), and the best interests of consumers.<sup>2</sup>

---

<sup>1</sup> *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 a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Public Notice, DA 11-1348 (rel. Aug. 3, 2011).

<sup>2</sup> *See Preamble*, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (explaining that the purpose of the 1996 Act is “to promote competition and reduce

The three third-party proposals upon which the Commission has requested comment – the State Members Plan,<sup>3</sup> the RLEC Plan,<sup>4</sup> and the ABC Plan<sup>5</sup> – all disregard the fundamental purpose of the universal service program: to provide consumers in rural, insular, and high-cost areas access to telecommunications and information services that are “reasonably comparable” to those available in urban areas at “affordable” prices that are “reasonably comparable” to those charged in urban areas.<sup>6</sup> While many of the issues identified by the Commission and other parties in this and other dockets – including intercarrier compensation reform, ensuring the sustainability of the USF programs, and fostering the deployment of yet-to-be-widely-adopted advanced technologies – are very important, they cannot justify the sacrifice of Section 254’s mandate: ensuring a basic equality of telecommunications and information services across the country. Any reforms adopted by the Commission in this docket must satisfy this statutory goal.

Allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice is the best means for ensuring that this goal is met.<sup>7</sup> Consumers, and not carriers or the Commission, are the best arbiters for

---

regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies”).

<sup>3</sup> Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011) (“State Members Plan”).

<sup>4</sup> Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed April 18, 2011) (“RLEC Plan”).

<sup>5</sup> Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (“ABC Plan”).

<sup>6</sup> 47 U.S.C. § 254(b)(1)-(5); 254(c).

<sup>7</sup> *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, ¶ 7 (1996) (“By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition.”) (“*Local Competition Order*”). The Senate Committee Report, which discusses the background and need for the Telecommunications Act of 1996, stated:

determining which services best fit their needs and lifestyle. Importantly, it is also the best way to expedite the deployment of broadband – both fixed and mobile – throughout the United States without burdening consumers with excessive contribution burdens or robbing them of competitive choices.

Unfortunately, the Commission and most third-parties seem far more interested in pursuing alternative goals that are untethered from the Act’s requirements. For instance, the Commission, in its USF/ICC NPRM made clear that it seeks to repurpose the USF to provide support for a nation-wide network capable offering all users access to 4 Mbps broadband service.<sup>8</sup> As discussed below, while this goal may be laudable, it does not necessarily comport with either Section 254 of the Act or the needs of consumers. Similarly, the ABC Plan proposed by some of the nation’s largest carriers (*e.g.*, CenturyLink, AT&T, and Verizon) focuses more on reducing intercarrier compensation rates and ensuring support for price-cap carriers than providing a meaningful plan for determining whether the nation’s universal service goals are met. Likewise, the RLEC Plan focuses on how to transition existing wireline support to wireline broadband support, but fails to consider whether prices will be “reasonably comparable” to prices in urban areas or whether access to other types of services (including wireless) is essential for ensuring “reasonable comparable” services in rural areas. The State Members Plan also loses

---

Changes in technology and consumer preferences have made the 1934 Act a historical anachronism ... Since the 1970s, when competition first began to emerge in the markets for telephone equipment, information services, and long distance services, the FCC has struggled to adopt rules that recognize a need to reduce regulatory burdens, especially on new entrants.

S. Rep. No. 104-23, at 5 (1995).

<sup>8</sup> *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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) (“USF/ICC NPRM”).

focus on the key objectives of the federal USF program, instead seeking to avoid displacing private investment and advocating for distributing federal USF support to the states for disbursement, with the individual states then taking responsibility for ensuring that the goals of the Act are met.<sup>9</sup>

Rather than mandating broadband services of a specific aspirational speed, addressing intercarrier compensation issues, or restructuring the USF mechanism to support specific providers, the Commission should instead clearly define the goals of the universal service program and then develop a plan to address those goals. The outline of these goals is established in Section 254 of the Act, and by adhering to the Act's mandate of supporting only services that have been subscribed to by a substantial majority of residential consumers, the Commission will be able more easily to determine where support truly is necessary. The goal of the distribution mechanism should be first to ensure that the market conditions in all areas of the country are reasonably comparable and then to let the market decide the best means for serving rural, insular and high-cost.

#### **I. THE COMMUNICATIONS ACT MUST GOVERN USE REFORM**

Any proposed reforms that do not clearly address how the services available in rural areas and the rates charged for those services will meet the requirements of the Act must be rejected. The Act mandates the Joint Board and the Commission "shall base policies for the preservation and advancement of universal service" on the principles established in Section 254(b). This statutory mandate applies to existing services that are supported by universal service mechanisms as well as any newly added supported services – such as high speed broadband – that the Commission establishes pursuant to the Act. However, in expanding the list of supported services to include a new service, any reform must provide a clear definition of what constitutes

---

<sup>9</sup> State Members Plan at 4-6, 68-69.

that new “universal service,” including a finding that those services have been adopted by a substantial majority of residential consumers.<sup>10</sup> Thus, even if the various proposals set forth for comment reflect noble and desirable policy objectives, the FCC only possesses the authority to implement the proposals to the extent that they are consistent with the letter and spirit of the Act as it stands today.

**A. The Commission Must Base Its USF Policy On The Mandatory Universal Service Principles Enumerated In Section 254.**

The Act requires that the Joint Board and Commission establish universal service policies that comport with the requirements of Section 254(b) and the principle of competitive neutrality adopted by the Commission pursuant to Section 254(b)(7). While the Commission may balance these principles against one another, the federal courts have clearly stated that the Commission may not depart from these principles in order to achieve an unrelated objective, including intercarrier compensation reform.<sup>11</sup> As the courts and the Commission have recognized, the Act imposes a mandatory duty upon the FCC to weigh these principles when formulating policy.<sup>12</sup>

The Act makes clear that the overarching purpose of the Universal Service Fund is to ensure, among other things, that consumers living in rural, insular, and high-cost areas have access to “affordable” and “reasonably comparable” communications services at “reasonably comparable” prices and provides clear guidance on the process by which the FCC is to create and administer this universal service mandate. Any reform that does not make these statutory requirements the keystone of the USF program would be inconsistent with the Act. The FCC’s failure to consider the Act’s principles in their totality while considering reforms to the high-cost

---

<sup>10</sup> The State Members Plan recognizes these statutory pre-requisites. *See* State Members Plan at 18 (“the Joint Board has a continuing statutory responsibility to ensure that federal universal service policies are based on a list of articulated principles.”).

<sup>11</sup> *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

<sup>12</sup> *Id.*; *see also* *Connect America Fund*, WC Docket No. 10-90, *et al.* at ¶ 56 (rel. Feb. 9, 2011) (“USF/ICC NPRM”).

support mechanism would unnecessarily undermine the FCC’s efforts to implement sustainable universal service reform and ensure that the ultimate outcome of this prolonged rulemaking process would be a torrent of protracted litigation and related regulatory uncertainty that would impede broadband network deployment.

The ABC Proposal, for example, engages in a rigorous examination of the statutory language of Section 254 of the Act in order to support its assertion that “the Commission has ample authority to support broadband services with universal service funding.”<sup>13</sup> This careful and nuanced analysis of a particular statutory argument stands in stark contrast to the ABC Proposal’s total failure to consider and address the plain language of the Act regarding (i) the means through which additional services are added to the list of services supported by universal service mechanisms, and (ii) the mandate that universal service programs be based upon the Act’s clearly enumerated principles.

To be clear, the USA Coalition wholeheartedly agrees that the FCC can – and should – support broadband services,<sup>14</sup> but the means through which that goal is pursued in the instant proposals impermissibly gives short shrift to the Act’s other requirements, ignoring completely the statutory mandate that universal service mechanisms be “specific, predictable and *sufficient*” to both “*preserve and advance* universal service.”<sup>15</sup> Under the ABC Proposal, the Connect America Fund proposed would be capped at \$4.5 billion, with existing ETC support phased out completely by July 1, 2016.<sup>16</sup> Support would flow almost entirely to ILECs, with any amount “left over” after support has been distributed available to wireless carriers, satellite service

---

<sup>13</sup> ABC Plan, Attachment 5, pg. 44.

<sup>14</sup> See e.g., Comments of the USA Coalition at 7-8 (filed Apr. 18, 2011).

<sup>15</sup> 47 U.S.C. § 254(b)(5) (emphasis supplied).

<sup>16</sup> ABC Plan, Attachment 1, pg. 1.

providers, and other CETCs up to a maximum of \$300 million.<sup>17</sup> No analysis is proffered to justify how the greatly diminished amount of support for CETCs will be sufficient to preserve existing networks, as mandated by statute, nor is any plausible justification offered for a plan that is so blatantly skewed in favor of a particular set of market competitors – the ILECs. One would expect, given the repeated citation to the principles of technological and competitive neutrality throughout other portions of the ABC Proposal,<sup>18</sup> that some attempt to justify the wholesale transformation of support towards a revenue replacement subsidy for the wireline voice industry would be forthcoming. However, no compelling argument has been made – because it cannot be made – that the ABC Proposal can be implemented by the FCC in a manner that is competitively neutral and provides sufficient support to existing universal service mechanisms to meet the express goals of the Act.

In the end, no matter what policy proposal, or combination of policy proposals, eventually carries the day, the FCC must ensure that any reform proposal comports with its statutory mandate. Thus, as a baseline, the USA Coalition respectfully submits that the FCC adhere to the following statutorily-based principles when formulating a reformed distribution mechanism.

**First**, any replacement mechanism should promote consumer choice by ensuring competitive and technological neutrality. Proposals before the Commission that would preserve support for rural wireline carriers while decimating USF support for rural wireless carriers run contrary to the statute. Reserving nearly all support for the wireline voice industry does nothing to “preserve and advance universal service” and cannot be squared with the principle of competitive and technological neutrality. **Second**, the mechanism should be simple, and it must

---

<sup>17</sup> ABC Plan, Attachment 1, pg. 8.

<sup>18</sup> ABC Plan, Attachment 5, pgs. 7-8, 27, 46, 53.

be predictable and sufficient. To the extent that the Commission imposes an overall cap on the size of the universal service fund, the agency must establish that the cap will provide support that is sufficient to achieve the goals of the Act. Similarly, the Commission cannot impose arbitrary cap on wireline or wireless funding. Rather, any such limits must be anchored in an analysis firmly grounded in the requirements established in the Act – an analysis that neither the Commission nor the instant proposals have addressed in a manner that would survive judicial scrutiny. **Third**, the mechanism should foster, not inhibit, competitive markets for supported services. Indeed, the Act requires the Commission to adopt reforms that promote competition. Any reform of the USF should emphasize the use of competitive forces to improve services to rural, insular, and high-cost areas while maintaining fiscal discipline in support recipients.

As noted in the original *Local Competition Order*, the driving force of the communications industry is now – and should continue to be – characterized by open competition.<sup>19</sup> As a result, universal service programs should continue to be “met by means that enhance, rather than distort, competition.”<sup>20</sup> By contrast, the ABC Plan’s recommendation that an incumbent should be granted a first right of refusal or that competitors should be denied USF support contradict the pro-competitive principles of the Act. While it should not be surprising that the carriers who would most benefit from such a preference would overwhelmingly favor proposals stacked so heavily in their favor, there has been no support offered by any such party that could plausibly justify such preferential treatment in a manner consistent with the Act.

---

<sup>19</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, at ¶ 7 (1996) (“By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition.”) (“*Local Competition Order*”).

<sup>20</sup> *Id.*

As it stands, none of the three plans upon which the Commission has sought comment are properly tied to the key terms of the Act. Instead, all of the proposals focus on secondary considerations, such as the protection of specific carrier revenues that would effectively turn the existing universal service fund into an access-replacement mechanism, rather than undertaking the mandatory analysis as to whether the services and rates available to consumers in rural, insular, and high-cost areas are affordable and “reasonably comparable” to those in urban areas. Alternative measures, proposed by the USA Coalition and other parties have been proposed to the FCC repeatedly in the past but have fallen upon deaf ears. Now, in the Commission’s headlong rush to meet a self-imposed and restrictive deadline for an Order on this important matter, the FCC and industry are left with a series of options that lack the statutory grounding the reformed mechanism will need in order to survive the tempest of certain judicial review.

**B. The Act Requires that the Commission Follow the Market in Defining Universal Service Rather Than Push Broadband Service**

All three proposals, and the ABC Plan in particular, fail to justify their proposed expansion of the universal service support mechanism to include broadband information services with speeds of 4 Mbps actual download and 768 kbps upload – both as a required level of service or as an input for modeling support distributions – within the Act’s clear statutory framework. The USA Coalition fully supports the idea that the definition of supported services can and should change over time. Indeed, the Act was carefully designed in order to evolve with the advancing technological landscape.<sup>21</sup> However, the necessary expansion of the list of supported services does not occur in a vacuum. The remaining services that have been previously adopted as “universal services” pursuant to the Act are required to be taken into consideration and supported in a manner that is both specific, predictable and sufficient to both preserve and

---

<sup>21</sup> See 47 U.S.C. § 254(c)(1) (“Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”).

advance those services.<sup>22</sup> The addition of a particular services to the supported services list also must follow the collective judgment of the American public that the service to be added is a sufficient necessity so as to merit inclusion as a supported service.<sup>23</sup>

Specifically, the Act sets forth four metrics that the Joint Board is required to consider when recommending the addition of a new supported service and that the FCC “shall” consider when establishing new definitions for universal services. These considerations must include the extent to which the new services:

- (A) are essential to education, public health, or public safety;
- (B) **have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;**
- (C) are being deployed in public telecommunications networks by telecommunications carriers; **and**
- (D) are consistent with the public interest, convenience, and necessity.<sup>24</sup>

The structure of the Act is designed to ensure that the Joint Board and the Commission *follow* the market in identifying services to be supported, rather than *push* the market towards an aspirational speed goad by mandating that ETCs provide services that have yet to be subscribed to by a substantial majority of residential consumers. Despite this statutory requirement, all three of the proposals set forth for comment here (in addition to the Commission’s latest NPRM on the topic) fail to address the fact that the broadband services proposed to be adopted as a universal service have not been adopted by the requisite number of Americans to satisfy the statutory pre-requisite for inclusion on the list of supported services. Put simply, the Commission must target support based on the choices of a substantial majority of residential customers, although the

---

<sup>22</sup> 47 U.S.C. § 254(b)(5).

<sup>23</sup> 47 U.S.C. § 254(c).

<sup>24</sup> *Id.* (emphasis added).

Commission has rightly ruled that support can – and should – be used for networks that provide both supported services and broadband services that exceed the speeds currently subscribed to by a substantial majority of residential customers.

While the State Members Plan explicitly recognizes that the FCC must make such a finding in order to expand the definition of supported services,<sup>25</sup> the State Members Plan references the findings of the Joint Board in 2007 that a certain level broadband services ought to be supported. However, the Joint Board recommended in 2007 that the FCC establish a broadband services capable of only 200 kbps download speeds, which is a radically slower – and far less expensive – level of service than the 4 Mbps download/1 Mbps upload services proposed here. Moreover, the FCC’s own analysis in the Internet Access Services report clearly demonstrates that while a “substantial majority” of American do subscribe to some level of broadband services, 60% of internet connections have download speeds of *under* 3 Mbps.<sup>26</sup> Adding broadband at the actual speeds proposed to the list of supported services without undertaking the mandatory factual analysis would be a textbook example of arbitrary and capricious rulemaking. The proposals set forth here unquestionably have failed to undertake this analysis and it appears that, even assuming that the FCC undertook the required analysis, it would find that Americans had not yet made the collective judgment that broadband services at the speeds proposed are a sufficient necessity so as to qualify them as a service that ought to be accessible by all Americans.

Adherence to the Act is critical, not for its own sake – although statutory compliance is inarguably required – but because the act of “pushing” the market towards an aspirational speed

---

<sup>25</sup> State Members Plan at 23-24.

<sup>26</sup> Federal Communications Commission, Industry Analysis and Technology Division Wireline Competition Bureau, *Internet Access Services Report* (Mar. 2011).

target would be far more expensive than the Act's pragmatic approach of following the established preferences of American consumers. An inescapable consequence of expansion of the list of supported services to include high speed broadband would be to require either (i) the fund size to grow considerably in contradiction of the FCC's expressed preferences for a constant or shrinking fund size, or (ii) the FCC to cut support to other programs or services that provide the funding needed to meet the statutory requirements that consumers in high cost areas have access to reasonably comparable services and rates as those in urban areas. The three proposals set forth for comment clearly express a preference for the latter option, but they do not wrestle with the key statutory problem regarding how the necessary cuts to existing services could be made in a manner that meets the Act's requirements. Instead, each plan offers up a different "deal with the devil" to buy broadband deployment at the expense of existing services and then creates additional entry barriers for other providers who will be forced to compete on an uneven playing with a subsidized provider.

**C. The Act's Structure is More Practical and Affordable Than the Three Industry Proposals**

By focusing on services that have, through the operation of the market, been subscribed to by a substantial majority of residential customers (as opposed to some arbitrarily selected aspirational goal), the FCC will more easily be able to determine where support truly is necessary due to specific conditions in the local market. Moreover, the unavailability of such services at reasonably comparable rates (in the absence of support from the current fund) provides strong evidence of a market failure since the substantial majority of residential customers are already subscribing to those services in other markets. In these areas, the Act requires the Commission to provide support that is sufficient to permit carriers to offer reasonably comparable services at reasonably comparable rates.

As the USA Coalition has argued in past filings,<sup>27</sup> the best means for providing support where necessary without unnecessarily interfering with the market choices of residential customers would be to reimburse ETCs for a specified percentage of the costs they actually incur to serve the area, and the percentage should be the same for all ETCs who serve that area. The subsidized percentage could be identified by comparing costs in the supported area with those in other areas through any number of means (*e.g.*, cost models or the comparison of various cost inputs), and the percentage could be adjusted as necessary in response to future market conditions (*i.e.*, increased if not enough entry has occurred or decreased if too much entry has occurred). Importantly, providing subsidization for the same percentage of costs to all potential ETCs would ensure that the government does not change the competitive balances between technology types, unlike the RLEC and ABC Plans.

Fortunately, as the USA Coalition and others have demonstrated, the Commission *can* reform the distribution mechanism and facilitate broadband deployment in a manner that is consistent with the requirements of the Act.<sup>28</sup> Unfortunately, however, these promising frameworks appear to have fallen upon deaf ears. By setting forth these three proposals for comment, the Commission has recognized that dialogue with industry members can yield productive results. However, the alternatives recommended by these three proposals contain fatal flaws in that their proposed reforms would not meet the statute's core requirements. Should the FCC move forward with any of these three proposals, and thereby fail to ground the policies it wishes to pursue firmly in the foundation of statutory authority, the FCC's efforts recklessly run

---

<sup>27</sup> Comments of the USA Coalition, WC Docket No. 10-90, et al., at 27-37 (filed Apr. 18, 2011); Comments of the USA Coalition, WC Docket No. 10-90, et al., at 40 (filed July 12, 2010).

<sup>28</sup> See USA Coalition, *A New Approach to Universal Service Reform*, attached. Variations of the USA Coalition's alternative framework has been filed in this docket on several occasions, including October 27, 2009, January 28, 2010, July 12, 2010, and April 18, 2011.

the risk that the time and effort spent developing the reform will prove wasted. Worse yet, by rushing to implement a poorly-constructed policy, irreversible damage will be wrought upon supported areas in the interim. Instead, the Commission should consider the full range of alternative proposals to the reverse auction mechanisms before developing a distribution mechanism that attacks the underlying obstacles to deploying broadband rather creating additional obstacles by introducing distinctions between services and speeds.

Rather than blindly proceeding in a results oriented fashion towards a pre-determined destination, the Commission should consider a full range of alternative proposals that take into account the principles of competitive and technological neutrality, sufficiency of support, and the preservation and advancement of both existing and added universal services. While much work has been done in this docket, the FCC's mission is not yet complete. Until a policy proposal is set forth that addresses the evolving nature of communications networks and the need to comply with the Act's clear mandates, valid objections to these proposals will continue to resonate. If the FCC moves forward, as expected, with an Order based upon these proposals and those contained in February's NPRM, as has been publicly promised by the Commission,<sup>29</sup> these arguments will not simply vanish. Rather, they will reappear in federal court as a part of a certain judicial challenge. Before the FCC leaps into the unknown, it is not too late to ensure that universal service reform is, in the Commission's own words, "guided in the first instance by the Act."<sup>30</sup>

---

<sup>29</sup> See Joint Statement of Chairman Genachowski and Commissioners Copps, McDowell, and Clyburn, *Bringing Broadband to Rural America: The Home Stretch on USF and ICC Reform*, available at: <http://www.fcc.gov/blog/bringing-broadband-rural-america-home-stretch> (accessed Aug. 17, 2011) (promising to release an Order "reforming the distribution side of the universal service equation this fall" and stating that "the release of the Notice [in which these comments are in reply to] marks the final stage of our reform process.").

<sup>30</sup> USF/ICC NPRM at ¶ 77.

## **II. THE USF DISTRIBUTION MECHANISM SHOULD BE DESIGNED TO EFFICIENTLY ACHIEVE THE UNIVERSAL SERVICE GOALS IN A COMPETITIVELY NEUTRAL MANNER**

### **A. Competitive Neutrality Is Essential For Ensuring That Rural Consumers Have Access To Services That Are Reasonably Comparable To Those Available In Urban Areas.**

Support must be allocated and distributed in the manner that best facilitates the preservation and advancement of universal availability of affordable communications services.<sup>31</sup>

This goal requires that any universal service support program focus primarily upon the consumer, rather than upon the service provider. Unfortunately, all of the proposals currently under consideration by the Commission fail this basic test. They are more focused on achieving specific goals extrinsic to the Commission's obligation to promote universal service, or are otherwise designed to protect the revenues of specific carriers rather than meaningfully engage with the issues associated with serving rural, insular, and high-cost areas and communities.

The principle of competitive neutrality was adopted to ensure that the USF would not become a means by which the Commission would centrally plan the country's communications network. The Commission recognized the importance of "competitive neutrality" in 1997 when, at the Joint Board's recommendation, it adopted "competitive neutrality" as a principle coequal to those enumerated in Section 254. In doing so, the Commission committed itself to ensuring that "universal support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another."<sup>32</sup>

This principle remains as important in the age of Internet-based communication as it ever was for traditional voice services.

---

<sup>31</sup> 47 U.S.C. § 254(b).

<sup>32</sup> *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, ¶ 47 (rel. May 8, 1997).

Further, as the Commission recognized when it adopted this principle, competitive neutrality is not optional under the 1996 Act.<sup>33</sup> Rather, because the Commission and Joint Board agreed that “promoting competition is an underlying goal of the 1996 Act and that the principle of competitive neutrality is consistent with that goal,” the Commission concluded that the “principle of competitive neutrality is ‘*necessary* and appropriate for the protection of the public interest.’”<sup>34</sup> Accordingly, the Commission cannot adopt a universal service rule or policy that is not competitively neutral.

In its zeal to deploy broadband services to rural America, the Commission should not take any steps that would relegate wireless services (and thereby, rural wireless consumers) to second-class status or otherwise violate the principle of competitive neutrality. Wireless services offer unique benefits to rural consumers, and the desire to achieve faster average upload/download speeds using today’s technology should not overshadow the importance of wireless services to our nation’s infrastructure. Today, 83 percent of Americans have cell phones, and approximately 35 percent of Americans use a smart phone.<sup>35</sup> Smart phone ownership rates are particularly high among individuals between the ages of 25 to 44 (58%) and among African-Americans and Latinos (44%),<sup>36</sup> and non-white smartphone users and smartphone owners with relatively low income and education levels are particularly likely to report that they go online mostly using their smartphone.<sup>37</sup> These trends have been increasing over time, and as such, wireless services have tremendous promise for advancing the goals of

---

<sup>33</sup> *Id.*, ¶ 46-52.

<sup>34</sup> *Id.*, ¶ 51 (emphasis added).

<sup>35</sup> Aaron Smith, *35% of American Adults Own A Smart Phone*, Pew Internet & American Life Project (Jul. 11, 2011).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

universal service in rural areas, and are particularly important for reaching traditionally disadvantaged communities and demographics in those areas.

Further, as customers increasingly “cut-the-cord” for wireline voice services in favor of wireless voice services, they may, too, in the not distant future, increasingly do the same for broadband services.<sup>38</sup> The Commission’s USF mechanism should not discount nor work against that possibility. Unfortunately, the plans currently under consideration at the Commission would gut the accomplishments of the last decade and half during which the wireless industry has built a robust and competitive marketplace where consumers – even consumers in rural areas – have a choice in services, service providers, and rate plans. The Commission should reject these plans and instead seek to develop plans that are competitively neutral

**B. The ABC Plan Sacrifices Competitive Neutrality On The Altar Of Intercarrier Compensation.**

The ABC Plan, put forth by the largest carriers in the nation, is an intercarrier compensation plan masquerading as universal service reform. The largest carriers, including AT&T, Verizon, and Qwest, have for years sought to reduce both intrastate and interstate access charges. In particular, the high access rates (both interstate and intrastate) charged by rural incumbent and competitive LECs have been a frequent source of regulatory dispute and litigation for the carriers. The ABC Plan seeks to eliminate these disputes by reducing all intercarrier compensation rates to \$0.0007.

Historically, intercarrier compensation reform has been difficult to accomplish in part due to concerns about rural incumbent LECs, which traditionally have relied upon access charges as an important source of revenue and a key component to keep rates for rural customers at

---

<sup>38</sup> CENTER FOR DISEASE CONTROL, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July-December 2010* (June 8, 2011) available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf> (showing that approximately 30% of Americans live in households without a wireline phone).

reasonable levels. To overcome this problem and develop some sort of consensus with rural incumbents, the largest carriers agreed to (1) protect the USF support currently received by these rural carriers, and (2) allow the carriers to recover the lost intercarrier compensation revenue from other sources. However, to accomplish this feat while still obtaining the funding necessary for the largest carriers to build out their own wireline networks to the 4 Mbps standard proposed by the Commission, the rural carriers require additional revenue. For this reason, the ABC Plan diverts more than 75 percent of the support competitive ETCs currently receive from the fund to develop the price cap carriers networks (*i.e.*, the very carriers proposing the reforms).<sup>39</sup> The end result is the decimation of the USF support upon which wireless carriers serving rural areas rely, reduction in intermodal competition for the price-cap carriers, and a less vibrant communications market in rural, insular, and wireless areas..

The diversion of support away from competing providers and technologies will harm not only the wireless network, but also will retard the deployment of advanced wireline services in the future. Specifically, rural incumbents are less likely to deploy the types of high-speed services envisioned by the Commission or to upgrade and expand their networks in the absence of competitive pressure.<sup>40</sup> By providing support for a single carrier in areas and denying support to all others, the FCC risks these areas becoming monopolistic backwaters where consumers' only broadband option is the service provided by the ILEC. This future landscape stands in sharp

---

<sup>39</sup> Under the ABC Plan, mobile carriers will be entitled to “the difference between the overall constraint on the size of the high-cost fund and the sum of support from the CAF for price cap LEC areas, support from the transitional access replacement mechanism for price cap LECs, any remaining legacy support provided to price cap incumbent LEC ETCs and CETCs, and any support provide to rate-of-return incumbent LECs.” ABC Plan, Attachment 1 at 8. Given the costs involved in transitioning to support broadband services, it is unlikely that any funding

<sup>40</sup> Rob Frieden, *Assessing the Need for More Incentives to Stimulate Next Generation Network Investment* at 4 (April 2010) available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1021&context=robert\\_frieden](http://works.bepress.com/cgi/viewcontent.cgi?article=1021&context=robert_frieden).

contrast to that of urban areas, where competition will continue to spur carriers to deploy and promote ever faster networks and cheaper services in an attempt to win and retain customers.

Further, in directing funding to wireline services and away from wireless services, the FCC is engaging in central planning that will ensure that U.S. markets never reach their full potential. Rather than developing a wireline broadband network pursuant to a master plan developed by the Commission (or the industry it regulates), the Commission should focus on addressing market failures through the use of competition and market mechanisms. This approach comports with the *Local Competition Order*, which established the modern universal service system.<sup>41</sup> As noted above, in that Order the Commission specifically established the goals of the universal service program to ensure “*affordable service and access to advanced services are met by means that enhance, rather than distort, competition.*”<sup>42</sup> This objective can only be accomplished, though, if the FCC provides the support and incentives to encourage competitors to offer these services, whether over competing wireline networks or over wireless networks. Under the ABC Plan, however, this support and incentives do not exist. Instead, the single provider selected for support under the ABC plan would have virtually unfettered control over the marketplace within its service territory.

### **III. THE FCC SHOULD NOT RELY ON A FORWARD-LOOKING COST MODEL TO CALCULATE PER-LINE SUPPORT AS PROPOSED IN THE ABC PLAN**

#### **A. The ABC Plan’s Proposal To Rely Upon A Forward-Looking Cost Model As A Basis For Distributing USF Should Be Rejected.**

The Commission should reject the calls found in the ABC Plan to use forward-looking cost models to calculate per-line support for ETC recipients. Using a forward-looking per-line cost model to calculate per-line amounts of support as proposed is inefficient and arbitrary

---

<sup>41</sup> *Local Competition Order* at ¶ 7.

<sup>42</sup> *Id* (emphasis added).

because it necessarily results in excessive support in some areas and insufficient support in others. This overpayment and/or underpayment occurs because the calculation of support on a per-line basis requires the use of an assumed line count and estimated costs of providing service. Unless the ETC by coincidence serves exactly the amount of lines assumed for the calculation and incurs exactly the expected amount of support, the distribution mechanism would not be efficient. For instance, if an ETC serves fewer lines than the amount assumed for calculation of per-line support or incurs higher costs than expected, then support would be insufficient, which violates the Act. Alternatively, if an ETC serves more lines than the amount assumed for calculation of per-line support, then support would be excessive.

Second, and equally important, nothing in the history of the universal service program suggests that forward-looking models will be the panacea that supporters of the ABC Plan and others suggest. Indeed, when developing the current universal service support mechanisms in 1997, the Commission determined that “a forward-looking economic cost methodology for rural carriers should not be implemented until there is greater certainty that the mechanisms account reasonably for the cost differences in rural study areas.”<sup>43</sup> However, in the more than ten years since the *First Report and Order*, the Commission has not developed a workable cost model for providing universal service support, and nothing suggests that any viable models will be developed in the near future.<sup>44</sup> Indeed, as NECA, OPASTCO, and others noted in the RLEC Plan, “[p]ursuit of a model that can address the many variables [in determining the costs of

---

<sup>43</sup> *USF First Report & Order*, 12 FCC Rcd at 8945, ¶ 313.

<sup>44</sup> *Id.*; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order*, 19 FCC Rcd 11538, ¶ 1 (2004) (Rural Referral Order); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Fourteenth Report and Order and Twenty-Second Order on Reconsideration, 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, Report and Order, 16 FCC Rcd 11244, 11310 (2001) (Rural Task Force Order); *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending Rural Task Force plan).

serving an area] is a Sisyphean task: the vast range of circumstances endemic to these areas has disabled such efforts in the past.”<sup>45</sup> Even now, it is doubtful that even the “advanced modeling techniques” included in the ABC Plan can adequately address the needs associated with providing broadband given the high degree of geographic and demographic diversity in the regions the universal service program is designed to benefit. To the extent the FCC wishes to consider any proposed cost model, the agency should continue to distribute support pursuant to current rules while the model is tested and evaluated in a limited number of markets.

**B. Models May Prove Useful For Determining Support Levels Based On Actual Costs Incurred.**

Although the USA Coalition opposes the use of forward-looking cost models in the manner proposed in the ABC Plan, cost models may prove useful for determining “reasonable comparability” and “affordability.” For instance, cost models can be used to measure demographic and geographic data so as to calculate the amount of support necessary to provide services in the future. Indeed, the USA Coalition has previously proposed a reform plan that would analyze costs to provide support based on the extra costs borne by carriers serving rural, insular, and high-cost service areas.<sup>46</sup> Under that plan, support would be distributed based upon the costs that the incumbent and competitive LECs actually incur, with every ETC serving a particular supported area being eligible for reimbursement of an identical percentage of the eligible costs it incurs. Incumbents and competitors would compete for subscribers on a level playing field and would succeed or fail based upon consumer demand for their products and services, in turn, facilitating consumer choice.

---

<sup>45</sup> Comments of NECA, NTCA, OPASTCO, et al., GN Docket No. 09-51, at 90 (filed Apr. 18, 2011).

<sup>46</sup> See Letter from Todd Daubert, USA Coalition, to Julius Genachowski, FCC, WC Docket No. 05-337, at 6 (Oct. 27, 2009); see also fn. 29, *supra*.

Those eligible costs would be clearly defined and easily auditable, and the increased transparency at the beginning of the process would improve the ability of carriers to predict their support levels before distribution and reduce the need for complex and burdensome audits after distribution. Indeed, both incumbent LECs and competitive ETCs would know exactly how much support they would receive before they make a decision regarding network or service expansion, which would facilitate the type of economically rational decision-making that improves the efficiency of USF support. Using these types of analyses, the Commission could determine how service area's costs differ from those of a typical urban area and develop funding mechanisms based on those differences.

In contrast, the forward-looking cost models proposed in the ABC Plan are simply too complex to function efficiently. Indeed, this complexity is self-evident in even subsections of the plan. For instance, in "Subsection 3.2.d – Network Component Development," the ABC Plan proposes to use a "Capex Sub-Module" which "employs a granular approach, the use of spatial analysis, and a set of real-world engineering rules as the approach to modeling the network design."<sup>47</sup> Using this method (which is never clearly defined), the Plan proposes to "take[] into account service locations; efficient road pathing, traffic demanded at or traversing a network node; sizing and sharing of network components resulting from all traffic, and capacity and component exhaustion."<sup>48</sup> Simply put, it seems doubtful that the Commission could ever make such a detailed model work across the broad range of service territories in the United States, and even if it did, it is even more doubtful that the results of such a model would be meaningful and accurate. As such, the Commission could not simply adopt the ABC Plan without developing the

---

<sup>47</sup> ABC Plan, Attachment 3, at 11.

<sup>48</sup> *Id.*

model first and allowing the public to examine it and submit comments on any proposals to actually distribute universal service support pursuant to the model.

**C. Any Models Adopted By The Commission Must Be Maintained.**

If the Commission does move forward with USF reform built around a model, the Commission must sustain that model and keep it up to date. As past experience has shown, technological change can quickly outpace the Commission's regulatory practices without considerable vigilance. Indeed, the current USF and intercarrier compensation reform efforts only highlight the need to address quickly technological change, as the arbitrage opportunities created by VoIP technology, cheaper switches, and conference calling technologies have given rise to numerous disputes. In order to avoid these issues in the future, as part of adopting any models the Commission must develop a mechanism and schedule for ensuring the model remains viable.

**IV. THE MASSIVE REDUCTIONS IN WIRELESS SUPPORT PROPOSED IN THE ABC PLAN WILL SKEW RURAL MARKETS IN FAVOR OF THE LARGEST NATIONWIDE CARRIERS.**

Proposals that would phase out or greatly reduce wireless support in rural, insular, and high-cost areas would skew the market in rural areas in favor of the largest nationwide carriers. As a general rule, wireless carriers offer regional or nationwide plans at a fixed rate across the entire country – carriers do not charge customers that primarily use wireless services in the least profitable areas of the country more for wireless services than in urban areas. In recent years, the largest wireless carriers have been willing to reduce dramatically the amount of USF support they receive in order to obtain regulatory approval of their mergers, knowing that their nationwide footprint and nationwide pricing policies allow them to engage in implicit cross-geographic subsidization. In contrast, smaller carriers and those that focus on high-cost areas rely on USF to offset the higher costs associated with providing service in those areas. By reducing

the amount of high-cost support available, the FCC essentially eliminates the ability of these regional, rurally-oriented carriers to compete with the larger carriers.

The harm created by reducing USF support to rurally-oriented carriers like those in the USA Coalition and to all consumers, not just those living in the rural areas, would be particularly pronounced in this era of massive industry consolidation. Assuming that the AT&T - T-Mobile merger is approved, the number of national wireless carriers will be reduced to three. These three wireless carriers will have less incentive than ever to expand their rural service offerings and, in particular, will have little incentive to make the large expenditures associated with deploying wireless broadband services in rural areas where they are unlikely to ever recoup those costs. Indeed, AT&T has revealed that it does not even aspire to deliver 4G service to many portions of rural America.<sup>49</sup> With no competitive pressure from rural carriers in these areas to encourage deployment by the largest carriers, these attitudes are likely to continue indefinitely.

**V. THE COMMISSION MUST PROVIDE ADDITIONAL DETAIL REGARDING ITS INTENTIONS BEFORE ADOPTING A PLAN**

**A. The Current Record Fails To Provide Commenters With Adequate Insight Into Potential Commission Action.**

Sufficiency of notice is a crucial part of the rulemaking process. In its February 2011 NPRM, the FCC outlined in broad terms its intention to reform the intercarrier compensation system while simultaneously transitioning the current high-cost USF mechanism to provide support for broadband services. In that NPRM, the Commission sought comment on a wide range of possible reforms, many of which were outlined only in minimal detail. While phrased as an NPRM, in practical effect, the language of the USF/ICC NPRM was more suited to a Notice of Inquiry than a proposed rulemaking. Similarly, the instant Public Notice upon which the

---

<sup>49</sup> Karl Bode, *AT&T Blows Smoke to Cover Leaked Document Snafu*, BroadbandDSLReports.com (Aug. 18, 2011) available at <http://www.dslreports.com/shownews/ATT-Blows-Smoke-to-Cover-Leaked-Documentsnafu-115735?nocomment=1>.

Commission seeks comment here offers little more detail, and provides even less insight into the Commission's intentions by seeking comment on three distinctly different visions of USF and intercarrier compensation reform, as well as requesting comment on a number of wide-ranging and often disconnected questions drawn from the three plans and the USF/ICC NPRM.

Basing a final order on the USF/ICC NPRM and/or the instant Public Notice may jeopardize the rule if it is challenged in court. At a minimum, such an approach will result in an incomplete policy analysis as participants will be denied the opportunity to provide meaningful comments on the Commission's proposal.<sup>50</sup> Of particular concern is the lack of detail regarding the way the Commission intends to distribute USF/CAF support in the future. During the most recent iteration of the reform process, the Commission has sought comment on a number of potential plans, including (1) reverse auctions;<sup>51</sup> (2) providing incumbent LECs with rights-of-first refusal for support based on forward-looking cost models;<sup>52</sup> and (3) distributing support to the states for disbursal.<sup>53</sup> In addition, the Commission has sought comment on the benefits of separately supporting mobile broadband services, and while not committing to that solution, has sought comment on how the total amount of support for these purposes should be determined and how carriers should be selected for support.<sup>54</sup> However, without details to flesh out these proposals, docket participants cannot meaningfully address the pros and cons of each proposal and can speak only in generalities that will not be useful to the Commission.

---

<sup>50</sup> The Administrative Procedure Act ("APA") requires a federal agency to provide general notice of a proposed rulemaking which will include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b)(3). Courts have interpreted this duty to mean that the agency must fairly appraise interested persons of the subjects and issues the agency is considering. *United Steelworkers of America v. Schuylkill Metals Corp.*, 828 F.2d 314, 317 (5th Cir. 1987).

<sup>51</sup> USF/ICC NPRM at ¶ 24.

<sup>52</sup> Public Notice at 3.

<sup>53</sup> State Members Plan at 68-77.

<sup>54</sup> Public Notice at 2.

Ultimately, the Commission's USF/ICC NPRM and the instant Public Notice do not provide sufficient detail or even concrete proposals upon which participants in the docket can comment. Rather, the proposals discussed in the NPRM and the Public Notice remain so inchoate as to deny participants in the docket a meaningful opportunity to comment on them. To address this issue, the Commission should release, as an Further Notice of Proposed Rulemaking, proposed language for a final Order that would include any new rules to be adopted by the Commission, as well as a meaningful discussion of the economics behind the proposed changes. Only after participants in these dockets have had an opportunity to examine and comment on these types of detailed proposals will the Commission have developed an adequate record and complied with the spirit of the Administrative Procedure Act.

**B. The Commission Needs to Consider Alternative Plans That Have Been Submitted Into The Record.**

The Commission's USF/ICC NPRM and the instant Public Notice also raise concerns about the ability of smaller parties to receive a fair hearing at the Commission. The USA Coalition, like many coalitions and numerous smaller carriers, has put forth time and effort in providing the Commission with proposals on how to reform the universal service mechanisms and explanations as to why other proposals are inconsistent with the Act; yet the Commission has not seriously examined any of the alternative proposals filed by the USA Coalition or any other entity representing the views of smaller carriers that have been placed on the record. In contrast, within four days of receiving a proposal from some of the nation's largest carriers, the Commission released a Public Notice requesting comment on that proposal.

The USA Coalition is particularly concerned that the Commission has turned a blind eye to viable policy alternatives unless the parties proposing the alternatives come with a ready-made coalition and can provide comprehensive data to support the alternative. This approach harms the ability of smaller parties, including the many small and regional carriers serving rural, insular

and high-cost areas which USF is designed to support, to participate meaningfully in the rulemaking process, as the cost of these types of analyses is prohibitive. It also offers the nation's largest carriers the opportunity to wield undue influence over Commission proceedings. The Commission cannot abdicate its duty to perform the reasoned factual analysis required of it under the Act by steadfastly refusing to consider or independently analyze any alternatives unless the party identifying the alternative is able, on its own, to perform a comprehensive data analysis. In particular, the Commission must consider the proposals raised by smaller organizations and their members, or at least explain why those proposals did not merit further consideration.

**VI. HAWAII, ALASKA, AND TRIBAL LANDS SHOULD BE EXCLUDED FROM ANY IMMEDIATE REFORM EFFORTS**

The Commission has long recognized that specific regions of the United States, and in particular those areas located within tribal lands and those areas located outside of the contiguous 48 states, face particular challenges with respect to the timely deployment of communications services. These challenges, which include both physical impediments to deploying networks and demographic impediments to developing a profitable business, require careful consideration before implementing USF reform in these areas. Because of these concerns, the Commission should delay the imposition of any reforms it ultimately adopts in this proceeding until the proposed changes can be fully evaluated.

Instead of imposing immediate reform upon these sensitive areas, the Commission should instead maintain the current system for carriers serving these areas until the proposals have been successfully implemented in less sensitive areas. Once these results become clear, the Commission can consider how the reforms can best be modified to address the circumstances unique to tribal areas and portions of the U.S. outside the contiguous 48 states. To accomplish this, the USA Coalition proposes a two-year delay in the application of any final order adopted by the Commission to tribal lands and areas located outside of the contiguous 48 states.

## CONCLUSION

For the reasons set forth above, the USA Coalition urges the Commission to base any reforms upon the requirements of the Act and pursue rational and sustainable universal service reform that operates on a fair and technologically neutral basis in order to ensure that people throughout the United States will have access to reasonably comparable telecommunications and information services at reasonably comparable rates. Reform that reflects the requirements of the Act would better ensure that all consumers benefit from broadband and technological advances, regardless of where they live and work, than the proposals currently being considered.

Respectfully submitted,

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

Todd D. Daubert  
J. Isaac Himowitz  
Aaron M. Gregory  
**SNR DENTON US LLP**  
1301 K Street, N.W., Suite 600 East Tower  
Washington, DC 20005  
(202) 408-6400  
(202) 408-6399 (facsimile)  
todd.daubert@snrdenton.com  
aaron.gregory@snrdenton.com

*Counsel for the USA Coalition*

Date: August 24, 2011