

**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
)	
To: Wireless Telecommunications Bureau		

**COMMENTS
OF THE
RURAL TELECOMMUNICATIONS GROUP, INC.**

**RURAL TELECOMMUNICATIONS
GROUP, INC.**

Caressa D. Bennet
Michael R. Bennet
Anthony K. Veach
Bennet & Bennet, PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814
(202) 371-1500

Its Attorneys

Date: August 24, 2011

TABLE OF CONTENTS

SUMMARYi

I. The Amount of Support for Mobility Proposed in the RLEC and ABC Plans Will Not Ensure Access to Mobile Broadband in all High-Cost Areas Throughout the Country.....3

II. The Proposed Mobility Fund Inequitably Shifts the Burden of USF Reform to Mobile Wireless Carriers.....5

III. The ABC Plan’s Advanced Mobility/Satellite Fund Is an Afterthought. Support for Satellite Internet Access Service Should not Come at the Expense of Mobile Broadband.....6

IV. The ABC Plan’s Proposed ICC Transition Will Not Offset the Damage to Rural Wireless Networks Caused by the Elimination of Competitive ETC Support.....7

V. Any New Universal Service Mechanism Must Provide Adequate Ongoing Support for Mobile Services in Rural, High-Cost Areas.....8

VI. The USTelecom Jurisdictional Arguments are Based on a Faulty Legal Framework.....10

VII. CONCLUSION.....12

Summary

RTG is generally supportive of industry efforts to reach sensible USF and ICC reform, but it cannot support the “consensus framework” submitted by the Rural Associations and USTelecom. These wireline industry-developed proposals are highly flawed, and are not a product of any overall *wireless* industry consensus. The wireless sections contained in both the *RLEC Plan* and the *ABC Plan* fail to reflect the concerns of rural wireless carriers or address the need for ongoing wireless support in high-cost areas. It is a given that mobile wireless will play the most important role in the country’s broadband future and any order resulting from this proceeding should ensure the continual growth of wireless broadband. The Commission should reject the wireless portions of the wireline-centric plans submitted by the Rural Associations and USTelecom, and adopt the proposals contained herein and in previous comments submitted by RTG.

Specifically, the size of any mobility fund would have to be substantially larger than \$300 million and should reflect specific, ongoing support in order to spur investment and ensure the availability of existing wireless services and the expansion of mobile broadband networks. In addition to being adequately funded, any Mobility Fund should address the need for ongoing wireless high-cost support in remote and rural areas. Regarding the proposed phase-out of support, RTG members have used support from the current USF to construct and maintain wireless networks in rural areas, and any phase out of support should provide for a transition over at least ten years given the highly capital intensive nature of wireless telecommunications expenditures. Additionally, wireless carriers should not be required to share funding with satellite carriers because they will not be the ones receiving help from satellite carriers to serve their territories. Any support for satellite service should come out of the funding that is reserved for incumbent wireline carriers.

**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

To: Wireless Telecommunications Bureau

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, hereby submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice² in the above-captioned proceeding. The Public Notice seeks

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG’s members have joined together to speed delivery of new, efficient, and innovative communications technologies to the populations of remote and underserved sections of the country. Many of RTG’s members are competitive eligible telecommunications carriers. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies each of whom serves less than 100,000 subscribers.

² *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos.

Rural Telecommunications Group, Inc.

August 24, 2011

Page 1 of 12

WC Docket No. 10-90
WC Docket No. 05-337
WC Docket No. 07-135
GN Docket No. 09-51
CC Docket No. 01-02

comment on proposals submitted by various parties to reform universal service fund (“USF”) and intercarrier compensation (“ICC”) mechanisms, including a proposal by the State Members of the Federal-State Joint Board on Universal Service,³ the *RLEC Plan* submitted by the National Exchange Carrier Association (“NECA”), the National Telecommunications Cooperative Association (“NTCA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and the Western Telecommunications Alliance (“WTA”) (“Rural Associations”),⁴ and the *ABC Plan* filed by members of the U.S. Telecom Association (“USTelecom”).⁵ RTG is generally supportive of industry efforts to reach sensible USF and ICC reform, but it cannot support the “consensus framework”⁶ submitted by the Rural

01-92, 96-45; GN Docket No. 09-51, Public Notice, DA 11-1348 (rel. Aug. 3, 2011) (*Public Notice*).

³ Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al., 68-73 (filed May 2, 2011) (*State Members Plan*).

⁴ Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed Apr. 18, 2011) (*RLEC Plan*).

⁵ 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*).

⁶ The consensus framework is comprised of the *ABC Plan* and the *RLEC Plan* with certain modifications. The Rural Associations and USTelecom consider the consensus framework to be the best means for reasonable USF and ICC reform and have urged the FCC to expeditiously adopt the proposed reforms. See Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al., 2 (filed July 29, 2011) (*Consensus Framework Letter*). RTG and other representatives of rural wireless carrier interests were not asked to be nor are they part of any such “consensus” agreement.

Associations and USTelecom. These wireline industry-developed proposals are highly flawed, and are not a product of any overall *wireless* industry consensus. The wireless sections contained in both the *RLEC Plan* and the *ABC Plan* fail to reflect the concerns of rural wireless carriers or address the need for ongoing wireless support in high-cost areas. The Commission should recognize that wireless will play the most important role in the country's broadband future and reject the wireless portions of the wireline-centric plans submitted by the Rural Associations and USTelecom, and adopt the proposals contained herein and in previous comments submitted by RTG.⁷

I. The Amount of Support for Mobility Proposed in the RLEC and ABC Plans Will Not Ensure Access to Mobile Broadband in all High-Cost Areas Throughout the Country.

The framework submitted by NECA, NTCA, OPASTCO, WTA and USTelecom sets a measly \$300 million funding target for vital mobile telecommunications services and suggests the amount could be phased-in over time to help the high-cost fund stay within an overall budget.⁸ The plans provide no basis for the selection of the \$300 million target, and this arbitrary amount of USF support for wireless is completely inadequate to effectively support and expand mobile broadband in rural areas. The meager amount of proposed mobility support shows that the landline authors of the RLEC and ABC plans are oblivious to the rapid changes taking place in the marketplace or have chosen to ignore them. Consumers want and expect to

⁷ See Comments of RTG, WC Docket No. 10-90 et al. (filed Apr. 18, 2011); Comments of RTG, WT Docket No. 10-208 (filed Dec. 16, 2010).

⁸ *Consensus Framework Letter* at 2; see also *ABC Plan Attachment 1* at 8.

have the ability to access broadband when they want and wherever they want, and the only way to meet this expectation is through mobility.⁹

The size of any mobility fund would have to be substantially larger than \$300 million and should reflect specific, ongoing support in order to spur investment and ensure the availability of existing wireless services and the expansion of mobile broadband networks in rural areas. A larger mobility fund is necessary for the Commission to comply with its obligations under the Communications Act of 1934, as amended (“Act”). The Act directs the Commission to craft universal service policies that provide access to advanced telecommunications and information services in all regions of the nation,¹⁰ ensure consumers in rural and high cost areas have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates,¹¹ and create specific, predictable and sufficient universal service mechanisms.¹² Adequate funding for mobility that reflects current support flowing to non-Tier I wireless carriers will enable the Commission to not only distribute sufficient support to all areas that do not have mobile broadband service and sustain that service, but also to areas that completely lack any wireless service.

⁹ According to one recent survey, data traffic on wireless networks in the last six months of 2010 totaled 226.5 billion megabytes for an increase of 110 percent when compared to the last six months in 2009 during which such traffic totaled 107.8 billion megabytes. *See* CTIA-The Wireless Association, *CTIA-The Wireless Association Announces Semi-Annual Survey Results*, Press Release (Mar. 22, 2011). Along with an increase in the U.S. wireless penetration rate, the wireless industry has also recently experienced growth in wireless subscriber connections, minutes of use, and the number of active smartphones, web-capable wireless devices, and wireless-enabled tablets, laptops and modems. *Id.*

¹⁰ 47 U.S.C. § 254(b)(2).

¹¹ *Id.* at § 254(b)(3).

¹² *Id.* at § 254(b)(5).

II. The Proposed Mobility Fund Inequitably Shifts the Burden of USF Reform to Mobile Wireless Carriers.

Under the *RLEC* and *ABC Plans*, wireless carriers that receive USF support as competitive ETCs unfairly bear the brunt of USF reform. Competitive eligible telecommunications carriers (“ETCs”) received approximately \$1.2 billion in support in 2010.¹³ Under the proposal to fund a Mobility Fund at \$300 million, competitive ETCs would lose approximately 75% of their current support. In contrast, incumbent wireline carriers would lose only one third of their current support. Incumbent wireline carriers received a total of \$3 billion in USF support in 2010,¹⁴ but under the consensus framework, such carriers would have an annual funding target of \$4.2 billion, with rate-of-return carriers allocated \$2 billion (with the possibility of reaching \$2.3 billion) and price cap carriers allocated \$2.2 billion.¹⁵ This data shows that the entities sacrificing the most on behalf of USF reform are competitive ETCs, most of which are wireless providers. No data has been provided that justifies reducing a higher percentage of support for wireless than wireline. The consequences of applying such a large reduction of support to competitive ETCs will be a shrinking or elimination of many rural wireless networks.

Moreover, the small amount of support is not reflective of the considerably large amount that wireless carriers pay into the USF. Consumers are increasingly cutting the cord and

¹³ *Connect America Fund*, et. al, WC Docket No. 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, ¶20, figure 2 (Feb. 9, 2011) (*USF NPRM*).

¹⁴ *Id.*

¹⁵ *Consensus Framework Letter* at 2.

dropping their legacy landlines. As mobile connections rise,¹⁶ wireless carriers pay more and more into the USF, but stand to have the support they receive from the USF drastically reduced. Neither the consensus framework nor alternative proposals provide a justification for failing to ensure an equitable sacrifice among all types of carriers.

III. The ABC Plan’s Advanced Mobility/Satellite Fund Is an Afterthought. Support for Satellite Internet Access Service Should not Come at the Expense of Mobile Broadband.

The *ABC Plan* proposes a separate advanced mobility/satellite fund (“AMF”) that would begin operation at the same time as the CAF and inequitably provide support for two different technologies—mobile broadband and satellite service—instead of focusing all support on the one technology—mobile broadband—that truly needs it. The AMF would support the provision of mobile broadband service in high-cost areas that will not receive service as a result of planned commercial mobile broadband deployments.¹⁷ The *ABC Plan* also proposes using AMF support to offset a portion of the installation costs for a limited number of broadband satellite customers in the highest-cost areas. Specifically, the *ABC Plan* would allow a CAF recipient to exclude the highest-cost census blocks from service obligations in its supported areas. The excluded areas would then be served by a satellite carrier, with support coming from the AMF.

¹⁶ Mobile wireless connections increased to 290.7 million. The number of mobile wireless Internet access (3G or 4G) subscribers totaled more than 55 million at the end of 2009, and this number will climb astronomically as LTE becomes more prevalent. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, WT Docket No. 10-133, FCC 11-103, ¶158 (June 27, 2011). Additionally, more and more consumers are using more than one mobile device—particularly non-voice devices, such as Internet access devices (e.g., wireless modem cards, netbooks, and mobile Wi-Fi hotspots), e-readers, and tablets. *Id.* at ¶159.

¹⁷ *ABC Plan*, Attachment 1 at 8.

Although it is unlikely that satellite service will be able to deliver speeds that are close to the broadband threshold proposed by the *ABC Plan*, any support for satellite providers should not come out of a funding mechanism that is designated for mobile broadband. Satellite carriers provide a fixed Internet access service, and should not receive support from a fund purposed for ensuring that consumers enjoy the benefits of mobility. Moreover, the proposal is created by large price cap carriers who are likely to rely on satellite service in order to avoid having to serve the highest-cost areas. Wireless carriers should not see their support further reduced by wireline carriers' inability or unwillingness to serve a high-cost area. Any support for satellite service should come out of the funding that is reserved for incumbent carriers.

IV. The ABC Plan's Proposed ICC Transition Will Not Offset the Damage to Rural Wireless Networks Caused by the Elimination of Competitive ETC Support.

The *USF NPRM* recommended eliminating high-cost support for competitive ETCs over a five-year period and transitioning the reclaimed support to a new funding mechanism. The *Public Notice* asks to what extent projected savings associated with ICC reform for wireless carriers as proposed in the *ABC Plan* would help offset reductions in high-cost support for CETCs. The proposed ICC reform will not offset the harm to rural wireless networks caused by the elimination of competitive ETC support. Notwithstanding any savings that may or may not result from ICC reform, RTG opposes the FCC proposal to phase-out competitive ETC support over five years. RTG members have used support from the current USF to construct and maintain wireless networks in rural areas, and any phase out of support should provide for a transition over at least ten years given the highly capital intensive nature of wireless telecommunications expenditures. To the extent the Commission proceeds to phase down

current competitive ETC support, it should adopt an equitable recovery mechanism for Competitive ETCs in the form of an extended transition period and a larger mobility fund.

V. Any New Universal Service Mechanism Must Provide Adequate Ongoing Support for Mobile Services in Rural, High-Cost Areas.

In addition to being adequately funded, any Mobility Fund should address the need for ongoing wireless high-cost support in remote and rural areas. Only by ensuring that support is ongoing can the FCC satisfy the requirement of the Communications Act that rural and high-cost areas have advanced services that are reasonably comparable to those in urban areas.

RTG opposes the State Members Plan proposal to create an incremental fund which would begin at \$50 million in the first year and reach a \$500 million maximum in year six.¹⁸ Any mobility fund that is incremental or phased-in will cause major harm to consumers dependent on rural wireless carriers' networks. Consumers served by these carriers will experience delayed network upgrades, and more importantly could lose service as these carriers will not be able to sustain current operations under a mobility fund that distributes such a small amount at its commencement. These carriers will be forced to shut down cell sites to continue providing some service as a result of such a drastic reduction of support. It is critical that the maximum amount of funding is distributed from the outset of any mobility fund or rural areas will become newly unserved or underserved. Once much-needed USF support for competitive

¹⁸ *State Members Plan* at 68-73.

ETCs disappears, rural areas served today by mobile networks will become unserved or underserved tomorrow.¹⁹

USTelecom members' *ABC plan*, though lacking any specific details on implementation, suggests a mobility fund capped at a maximum \$300 million per year for wireless service, with no guaranteed minimum amount of support per year.²⁰ This proposal should be rejected outright. Without a guaranteed minimum amount, the *ABC Plan's* mobility funding structure is speculative and fails to meet the requirement that USF mechanisms be specific, predictable, and sufficient.²¹ Further, the Commission should design a mobility fund that is based on wireless carriers' actual costs. Use of actual costs to determine the amount of high-cost support for each wireless competitive ETC will make certain that mobility support is directed where it is needed the most and reflects the true needs of each rural carrier.

The availability of wireless service allows consumers to access emergency services in the most remote rural areas. Eliminating support for wireless networks will result in a diminished ability of Americans to reach Public Safety. Wireless networks are the primary Public Safety tool in many rural areas. For example, in rural states such as Montana, which has an overall population density of less than seven people per square mile and many extremely remote areas,

¹⁹ See Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC (July 1, 2011). NTCA argues that reduced USF support due to the elimination of certain support mechanism would put at risk substantial investments made in reliance on existing rules, and advocates taking measured steps to promote *and sustain* wireline broadband availability and affordability in unserved areas. RTG attests that the same premise applies in the wireless space as well.

²⁰ *ABC Plan*, Attachment 1 at 8.

²¹ 47 U.S.C. § 254(b)(5).

the only way to contact Public Safety, including the highway patrol, in case of an emergency is through the use of a wireless phone.²² Public Safety entities such as the Montana highway patrol recognize that if rural wireless carriers lose their universal service support, it could result in a reduction of communication services in rural and remote areas, negatively impacting their ability to respond to emergencies.²³ The critical need to provide support for wireless service in order for consumers in remote and rural area to reach Public Safety justifies the creation of a mechanism to provide ongoing support for mobility. Absent ongoing support, the benefits of mobile access to emergency services will be lost in many rural areas.

VI. The USTelecom Jurisdictional Arguments are Based on a Faulty Legal Framework.

Parties to the “consensus framework” have filed a legal white paper that advances a handful of novel legal theories in an attempt to concoct Commission authority to adopt all of the USF and ICC reform proposals found in the proposed framework.²⁴ Specifically, they claim that the Commission has authority to direct universal service funds to non-ETCs.²⁵ To support the assertion that any carrier that provides broadband may receive universal service support, the white paper incorrectly concludes that because broadband Internet access is an information service that is jurisdictionally interstate and subject to exclusive FCC jurisdiction, the provisions of Section 214(e) and 254(e) restricting universal service support to telecommunications carriers

²² See Letter from Michael T. Tooley, Chief, Montana Highway Patrol, to Julius Genachowski, Chairman, FCC, WC Docket 10-90 (May 16, 2011).

²³ *Id.*

²⁴ See *ABC Plan*, Attachment 5.

²⁵ See *Id.* at 58 (arguing that the FCC has the authority to create a separate process for evaluating which providers should be eligible for support from new broadband funding mechanisms).

do not apply. However, contrary to these parties' assertions, the FCC's ability to make broadband a supported service does nothing to negate the applicability of these sections of the Act that set out which carriers may receive universal service support to provide supported services.

The plain language in the Act supports the funding of telecommunications carriers / common carriers. This is not an ambiguous concept as alleged in the ABC legal white paper. This "ambiguity" argument is a legal strawman intended to invoke agency deference pursuant to *Chevron*.²⁶ A simple and unambiguous reading of the Act allows the FCC to support broadband that is provided by telecommunications carriers. In fact, the FCC is supporting broadband today provided by telecommunications carriers and is in no way in violation of the Act. The ABC Plan legal conclusion on this matter risks tying up its wireline-based compromise in court and having it overturned because of this faulty legal theory.

The FCC's authority and ability to eliminate or modify certain aspects of universal service is expressly restricted and clearly defined by Sections 254 and 214(e) of the Act. Section 254(e) provides that only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.²⁷ Section 214(e) of the Act requires support to flow only to "common carriers" that are "eligible *telecommunications* carriers."²⁸ There is nothing ambiguous about Congress' intent that support for "advanced" and "information" services flow *only* to telecommunications providers.

²⁶ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

²⁷ 47 U.S.C. § 254(e).

²⁸ 47 U.S.C. 214(e) (emphasis added).

VII. Conclusion

Labeling the framework submitted by the Rural Associations and USTelecom a “consensus plan” is a gross mischaracterization since it is limited to the interests of rate-of-return and price cap landline carriers and does not include input from small wireless carriers that provide vital mobile services in rural, high-cost areas. The Communications Act calls for the USF to support access to advanced services, such as mobile broadband, in rural areas. Without ongoing support, rural, high-cost areas risk losing current generation wireless networks and never acquiring advanced mobile broadband networks. RTG urges the Commission to create an ongoing mobility fund that is large enough to ensure mobile broadband reaches all areas of the country. In addition, the Commission must limit support to telecommunications carriers as required by Sections 254(e) and 214(e) of the Act. If the needs of small, rural wireless providers are not incorporated in any so-called consensus agreement, any wireless rule modifications based on such agreement are unlikely to survive judicial review.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

By: */s/ Caressa D. Bennet*

Caressa D. Bennet
Michael R. Bennet
Anthony K. Veach
Bennet & Bennet, PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814
(202) 371-1500