

**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 SOUTHERNLINC WIRELESS

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SUMMARY

For several years, SouthernLINC Wireless has lent its voice to the chorus that universal service reform is necessary, but that the Commission should implement reform in a deliberate manner that complies with the requirements of the Communications Act of 1934, as amended (the “Act”). Today, however, despite the attempts by some in the industry to characterize the dissonance of diverging viewpoints as a harmonic consensus, there is no widespread agreement about the proper universal service reforms. Moreover, the “industry consensus” reform proposals set forth for comment would do little to preserve and advance universal service, as required by the Act. Instead, these proposals seek to trade off the successes of the existing universal service system in exchange for intercarrier compensation reform that is likely only to benefit larger carriers and a new high-speed broadband mechanism that would result in the wholesale dismantling of the competitive telecommunications marketplace throughout rural America.

Not only are the proposals upon which the Commission now seeks comment deficient as a matter of policy, but all three disregard both the specific requirements of the Act and the fundamental purpose of the universal service program: establishing a basic equality of telecommunications and information services across the country. All three proposals are fundamentally inconsistent with the requirements of the Act, and they would harm both consumers in rural, insular and high-cost areas as well as the carriers, like SouthernLINC Wireless, that serve them. Rather than representing comprehensive universal service reform, each of the three plans fails to address the flaws in the current system. In this sense, the proposals represent one step forward -- providing overdue intercarrier compensation reform -- and two steps back -- replacing the existing high cost fund with a statutorily problematic broadband fund and keeping certain carriers “whole” in the form of access replacement.

Despite these shortcomings, the Commission has made clear that it intends to release a combined universal service and intercarrier compensation reform Order “this fall.” However,

rushing forward with universal service reform based upon these three proposals will fail both before the courts and, more importantly, in the rural markets that the universal service system was intended to benefit, costing the country far more time and money than taking the additional time necessary to develop true reform. Before leaping into the unknown merely to meet a self-imposed and arbitrary deadline, the FCC should examine the statutory foundation for the universal system and ground any reform to the statute's mandatory principles.

In particular, the FCC must pause to ensure that any reform proposal results in a replacement mechanism that comports with the Act's requirements by (i) ensuring consumers throughout the nation have access to reasonably comparable services at reasonably comparable rates; (ii) using universal service funding to support services subscribed to by the substantial majority of residential consumers, rather than services to which the Commission believes consumers should be subscribing; and (iii) providing "specific, predictable, and sufficient" support to achieve the Act's universal service goals on technologically and competitively neutral basis. The FCC enjoys no discretion to ignore these mandatory statutory requirements. Despite this fact, in the three proposals offered here, universal service appears to be a mere afterthought in the worthy attempt to achieve intercarrier compensation reform.

By failing to take into account the clear language of the Act, the FCC risks irreversibly damaging competitive communications providers like SouthernLINC Wireless and the consumers that rely upon them. For example, under the proposed reforms SouthernLINC Wireless loses all of the support that is necessary to provide reasonably comparable services at reasonably comparable rates in rural, insular and high-cost areas, and it also would be forced to compete with a single subsidized competitor that (through the subsidy) offers a faster broadband service. This double-whammy would make it much more difficult for all other carriers to upgrade their networks to faster broadband speeds than they offer today, if they could continue to

provide service at all. Further, the lost support would not be nearly offset by the savings realized from access charge reform.

SouthernLINC Wireless and other parties have set forth alternative reform frameworks that strive to achieve the policy objectives of broadband deployment while at the same time remaining true to the Act. These proposals illustrate that the choice between either accepting the Commission's broadband-centric vision of reform or idling indefinitely in the inadequate status quo is demonstrably false. Unfortunately, the Commission has neglected to seriously explore any of these promising alternative proposals. Instead, the FCC is left with a series of statutorily deficient alternatives which require fundamental and time-consuming overhauls to bring them into compliance with the Act. It is difficult to imagine how the FCC could possibly salvage these proposals within its self-imposed reform deadline. Fortunately, there is no compelling reason to do so. Such an important and inherently complicated analysis certainly deserves better.

Rather than rushing to meet an arbitrary, self-imposed deadline, the Commission should seriously consider the alternative reform proposals on the record that are designed to achieve the Act's universal service goals in a manner that is consistent with the requirements of the Act. Indeed, getting universal service reform right is far preferable than rushing to implement a reform proposal that would only take one step forward and two steps back in a manner that directly contravenes the Act and threatens the survival of existing communications networks in rural America.

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COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”), by its attorneys, respectfully submits these comments in response to the Public Notice released by Federal Communications Commission (“FCC” or “Commission”) requesting 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 intercarrier compensation (“ICC”) regime.¹ SouthernLINC Wireless submits these comments to supplement the comments of the Universal Service for America Coalition, of which SouthernLINC Wireless is a member.²

¹ *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).

² For brevity, SouthernLINC Wireless does not repeat here all of the points made in the comments of the USA Coalition, which SouthernLINC Wireless hereby incorporates by reference.

As a regional wireless carrier that focuses primarily on rural markets, SouthernLINC Wireless has a vested interest in universal service reform, both as a competitive Eligible Telecommunications Carrier (“CETC”) itself and as a competitor to other universal service support recipients. SouthernLINC Wireless is committed to offering high-quality telecommunications services to rural and underserved areas and offers the most comprehensive geographic coverage of any mobile wireless provider in Alabama and Georgia, servicing extensive rural territories along with major metropolitan areas and highway corridors. As a result, a large percentage of the total handsets SouthernLINC Wireless serves are used by subscribers located outside of major metropolitan areas.

Because of its extensive geographic coverage and its commitment to serving rural areas, SouthernLINC Wireless is widely used by local and statewide governmental institutions, public utilities, and emergency services. SouthernLINC Wireless is also the wireless service provider to the state of Alabama and to many government agencies in Georgia. In fact, approximately 30% of the total handsets SouthernLINC Wireless serves are used by public employees, first responders, or utility personnel,³ which indicates how important the services of SouthernLINC Wireless are to residents in those areas, particularly in times of crises. For instance, during the emergency conditions created by the fifteen-plus named hurricanes and countless ice storms that have struck its service territory since SouthernLINC Wireless began operating in 1995, SouthernLINC Wireless was often the only available means of communications. In the aftermath of Hurricane Katrina, for example, SouthernLINC Wireless services, in many instances, were the only immediate means of communicating in Mississippi and Alabama. Accordingly, SouthernLINC Wireless is the type of competitive ETC Congress intended the universal service fund to support.

³ The services provided to utility personnel facilitate the continued availability of power during emergencies.

Since becoming an ETC in 2008, SouthernLINC Wireless has used USF support to expand and improve its network, providing better and more reliable services to its customers. SouthernLINC Wireless offers these comments in this docket to address its concern that proposals to reduce or eliminate USF support for competitive carriers (including wireless carriers like SouthernLINC Wireless) threaten to undermine the progress rural carriers have made in creating a vibrant, competitive market for wireless services in rural areas.

SouthernLINC Wireless agrees with the Commission that universal service reform is necessary, but it urges the agency to conduct such reform in a deliberate manner that complies with the Act. Unfortunately, all three of the proposals upon which the Commission now seeks comment -- the State Member Plan,⁴ the RLEC Plan,⁵ and the ABC Plan⁶ -- all disregard both the specific requirements of the Act and the fundamental purpose of the universal service program: establishing a basic equality of telecommunications and information services across the country. All three proposals are fundamentally inconsistent with the requirements of the Communications Act of 1934, as amended (the "Act"), and they would harm both consumers in rural, insular and high-cost areas as well as the carriers, like SouthernLINC Wireless, that serve them.

The FCC could best accomplish the mandatory statutory universal service goals by harnessing competition and the threat of competitive entry as the Act requires rather than by choosing a single USF recipient in each service area and assuming that, in doing so, the FCC has the knowledge and ability to satisfy the needs and desires of consumers living and working in rural areas. To be effective, reform must focus on the interests of consumers, rather than the

⁴ 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 Member Comments).

⁵ Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed April 18, 2011) (RLEC Plan).

⁶ 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).

interests of specific carriers, regulators, or other industry planners. Unfortunately, the three plans put forth for public comment by this Commission abandon this objective in favor of pursuing other goals or protecting the interests of specific parties. Rather than representing comprehensive universal service reform, each of the three plans fails to address the flaws in the current system. Indeed, the proposals actually eliminate the good aspects of the current system and permanently lock in the flaws in the name of intercarrier compensation reform and cost control and do so at the expense of consumers. In this sense, the proposals represent one step forward and two steps back.

SouthernLINC Wireless urges the Commission to reject the proposals included in the Public Notice and instead develop a USF reform proposal that complies with the terms of the Act and allows consumers to determine the direction of services. Rushing forward with USF reform that will fail both before the courts and in rural markets will cost the country far more time and money than taking the additional time necessary to develop true reform. Unfortunately, the term “rushing” is appropriate despite years of pending reform. The Commission has followed an administratively flawed path in pursuing USF reform, leaving the industry and the Commission facing an arbitrarily imposed deadline without (a) a coherent, legally-grounded and consumer-oriented reform proposal on the table for fair and thoughtful consideration by interested parties, (b) adequate time for those parties to provide meaningful feedback or for the Commission to actually consider that feedback prior to producing an order. Accordingly, SouthernLINC Wireless respectfully urges the Commission to “stop the insanity” by beginning to follow sound administrative procedures designed to elicit meaningful feedback on detailed mechanisms that reflect the requirements of the Act rather than continuing to announce, informally, desired general outcomes and then providing concerned parties with insufficient time to analyze and provide meaningful comment on the serious reforms being tossed around.

I. THE ACT'S UNIVERSAL SERVICE PROVISIONS MUST BE THE TOUCHSTONE FOR ANY REFORM PROPOSAL

For several years now, SouthernLINC Wireless has repeatedly urged the Commission through over two dozen filings in this docket to ensure that any effort to reform the universal service system is grounded firmly in the Act's mandatory universal service principles and explained why many of the proposals now under consideration do not reflect the requirements of the Act.⁷ Despite its own persistent efforts and those of several other parties both to highlight the flaws in the types of proposals now under consideration and to identify alternatives that would reflect the letter and spirit of the Act, the Commission seemingly is willing to sacrifice the interests of regional and independent wireless service providers who focus on rural consumers in order to adopt intercarrier compensation reform that favors the nation's largest carriers, creating the fiction of the Commission having accomplished reform of both intercarrier compensation and the USF with one fell swoop. This despite the Commission's rhetoric regarding the crucial importance of wireless services and competition to rural consumers. While nearly all parties share the belief that comprehensive universal service reform is necessary, the three proposals offered for comment here come no closer to satisfying the Act's basic requirements than any of the previous reform proposals.

It bears repeating, once again, that the universal service provisions of the Act are mandatory in nature. Although the Commission enjoys discretion regarding implementation of the Act, the agency's decisions must be consistent with the Act's requirements. Among other things, the Act makes clear that the Commission must:

⁷ See e.g., Reply SouthernLINC Wireless Comments, WC Docket No. 05-337, pg. 2 (filed July 2, 2007) ("proposed reform must comply with section 254 of the Act"); Letter from Todd Daubert, SouthernLINC Wireless, to Secretary Marlene Dortch, FCC, WC Docket No. 05-337, pg. 2 (June 23, 2011) (FCC "is required by law to ensure that 'specific, predictable and sufficient mechanisms' it adopts are designed to achieve the reasonable comparability mandated by the Act.").

- Establish and maintain a universal service program that comports with the requirements of the Act even if the Commission believes that the Act’s requirements are outdated and funding could be put to better uses;
- Design the universal service program to ensure that consumers throughout the nation have access to reasonably comparable services at reasonably comparable rates;
- Use universal service funding to support services subscribed to by the substantial majority of residential consumers rather than services to which the Commission believes consumers should be subscribing; and
- Ensure that support is “specific, predictable, and sufficient” to achieve the Act’s universal service goals.

The Commission has no discretion *whatsoever* to depart from these bedrock statutory requirements. Unfortunately, none of the three proposals upon which the Commission now requests comments even attempts to address these statutory requirements. Indeed, universal service appears to be a mere afterthought in the worthy attempt to achieve intercarrier compensation reform. The proposals in essence convert the universal service fund into an access charge revenue replacement mechanism for certain wireline carriers. No matter how important intercarrier compensation reform may be – and SouthernLINC Wireless agrees that it is important – the Act does not permit the Commission to sacrifice universal service in the name of intercarrier compensation reform. Similarly, the Commission lacks the authority to depart entirely from the clear language of the Act in order to subsidize broadband information services at speeds higher than those currently subscribed to by the substantial majority of residential consumers, particularly at the expense of the services that today are actually subscribed to by a substantial majority of residential consumers.

There are two major areas in which the three industry proposals impermissibly, and fatally, deviate from the plain language of the Act. First, the proposals fail to take into account the Act’s clear mandate that the FCC “shall” base its universal service policies for both the “preservation and advancement” of supported services solely upon the principles established in Section 254(b), which include the reasonable comparability of rates and services for rural areas

and the mandate of competitive neutrality. This statutory directive applies both to existing supported services as well as any additional supported services -- such as high speed broadband - - that the FCC establishes pursuant to the Act. Second, all three proposals fail to address the Act's requirement that, when expanding the defined list of supported services, the FCC must find that the particular service has been adopted by a substantial majority of residential consumers.⁸ Thus, even assuming that these reform proposals enjoyed unanimous support from both the FCC and industry, the FCC could only implement recommendations as policy to the extent that they are consistent with the Act as it stands today.

A. Fidelity to the Act Is Particularly Crucial Today As Competitive Communications Options in Rural Areas Continue to Shrink.

As a regional wireless carrier addressing the needs of consumers who live and work in rural areas and improving the nation's emergency response capabilities, SouthernLINC Wireless is one of a shrinking number of carriers who provide the types of telecommunications service alternatives necessary to ensure that consumers and businesses enjoy the benefits of competition in rural and high cost areas.⁹ Indeed, SouthernLINC Wireless is proud of its focus on serving rural communities, and not just the cities and highway corridors upon which larger carriers tend to focus their efforts. The SouthernLINC Wireless network serves as a competitive option to major carriers, one that has been adopted by hundreds of thousands of subscribers in the Southeast. As the Commission itself has recently recognized, competition in the communications

⁸ The State Members Proposal recognizes these statutory pre-requisites. *See* State Members Proposal 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.”).

⁹ *See 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, WT Docket No. 10-133* (rel. June 27, 2011) (“*Fifteenth Wireless Competition Report*”) (making no finding of “effective competition in the [wireless communications] industry,” noting the “highly concentrated” nature of the industry, and finding that prices that are no longer falling for cellular services).

marketplace leads to lower prices, higher consumption, and better quality services, while more concentrated markets impair these benefits.¹⁰ Thus, when considering any universal service reform the FCC must be careful not to damage the competitive landscape of the telecommunications market in the process.

Despite the recognized benefits of competition -- including the mere threat of competitive entry -- to consumers, all three of the proposals would damage the competitive ecosystem of the communications marketplace. The most glaring example of this damage involves the elimination of support for existing, sub-4 Mbps download capable carriers. By withdrawing support from all telecommunications services that do not meet the target speed criteria of 4 Mbps actual download speeds at this time, existing networks that are sub-4 Mbps -- including those that offer up to 3 Mbps -- would lose funding that may still be needed in order to preserve current service coverage, destroying competition not only for the supported broadband service, but for a host of other services as well, including most wireless telecommunications services, depriving the residents of rural areas the service options available to those in urban areas in the process.

It would be difficult, if not impossible, for existing carriers to deploy additional facilities to serve, or continue to serve, areas where a competitor is receiving subsidies from the Connect America Fund ("CAF") that are unavailable to any other carrier. This harm will be compounded by the elimination of current support, which will make it difficult to cover the operating costs of existing infrastructure serving some of the most rural areas with low population densities. This scenario would play out across the country, possibly driving some local and regional carriers out of the market altogether, which would only increase the concentration of service providers in rural areas to the detriment of consumers who live and work there.

¹⁰ *Fifteenth Wireless Competition Report* at ¶ 10.

However, as demonstrated below, the Commission lacks the authority to simultaneously impose a speed threshold for support for a single service -- high speed broadband -- while stripping support for all telecommunications services that are currently supported by high cost mechanisms, absent an FCC finding that the removal of such support would be sufficient to ensure the availability of reasonably comparable telecommunications services and rates in those areas as well as the data to conclude that such a policy would both preserve as well as advance universal service.

B. The Proposals -- Especially Access Replacement and the ILEC Right of First Refusal -- Fail to Satisfy the Act's Mandatory Universal Service Principles

The Act requires the Joint Board and the FCC to work together to establish universal service policies that comport with the requirements of Section 254, and thus the policies must reflect the universal service principles enumerated therein, as well as the principle of competitive neutrality adopted by the Commission pursuant to Section 254(b)(7). Accordingly, the Act requires that universal access to telecommunications and information services be promoted by providing specific, predictable and sufficient support to telecommunications carriers on a competitively neutral basis so as to provide consumers with services and rates reasonably comparable to those enjoyed by consumers in urban areas.¹¹ While the Commission may balance these principles against one another in formulating policy, the federal courts have clearly stated that the FCC may not depart from these principles in order to achieve an unrelated objective, such as implementing intercarrier compensation reform in a manner that compromises the integrity of the rural market in communications.¹²

¹¹ See 47 U.S.C. 254(b), (c), (e).

¹² *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) ("Qwest II").

The Act also provides clear guidance on the process by which the Joint Board and the FCC are jointly required to administer their universal service mandate. Any reform that does not hew closely to these statutory requirements violates the Act. Indeed, the FCC's failure to work within the Act's framework while considering high cost reform unnecessarily undermines the FCC's efforts to establish a sustainable distribution mechanism. In the end, absent a genuine attempt to square reform measures with the Act, the likely outcome of this prolonged rulemaking process will be a torrent of protracted litigation that will impede broadband network deployment and harm existing competition in the telecommunications marketplace.

Core provisions of all three industry proposals lack a firm grounding in the Act. The ABC Proposal, for example, picks and chooses which statutory language meets the needs of its ILEC constituent base. In that proposal, the members engage in a rigorous statutory examination of the Act in order to support its fundamental assertion that "the Commission has ample authority to support broadband services with universal service funding."¹³ In the end, the ABC Proposal reaches only this general conclusion, and SouthernLINC Wireless generally agrees with both the coalition's legal analysis and the end result that the Commission possesses such authority. However, the ABC Proposal completely fails to consider or address the plain language of the Act regarding both the FCC's authority to establish support for the proposed level of broadband services and the Act's mandate that all universal service programs be based upon clearly enumerated principles.

Indeed, the all three proposals impermissibly gives short shrift to the Act's binding requirements, ignoring completely the statutory mandate that universal service mechanisms be "specific, predictable and *sufficient*" to both "*preserve and advance* universal service."¹⁴ For

¹³ ABC Proposal, Attachment 5, pg. 44.

¹⁴ 47 U.S.C. § 254(b)(5) (emphasis supplied).

example, under the ABC Proposal, support under the CAF would be capped, even after taking into consideration its new role under that plan as a access recovery mechanism. During this transition period, existing CETC support would be phased out completely over a five year period.¹⁵ By the very structure of the ABC Proposal, the vast majority support would flow almost entirely to ILECs, with any amount “left over” after support has been distributed available to wireless carriers, satellite service providers and other CETCs up to a maximum of \$300 million.¹⁶ No analysis is offered to justify how the greatly diminished amount of support for CETCs will be “sufficient” to “preserve” existing communications networks, as mandated by statute. Nor is any plausible justification offered that the proposal could realistically be deemed competitively and technologically neutral, given its blatant preference for the ILECs.

One would expect, given the repeated citation to the principles of technological and competitive neutrality throughout other portions of the ABC Proposal,¹⁷ that at least some attempt to justify the transformation of high cost support towards a revenue replacement mechanism for the wireline industry would be forthcoming. Tellingly, however, no such argument was made. The truth is that no rational argument that the ABC Proposal is competitively neutral could be made, especially in light of the recommended ILEC right of first refusal for support and access replacement. At a minimum, these portions of the ABC Proposal cannot 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.

¹⁵ Public Notice at 9; *accord* ABC Proposal, Attachment 1, pg. 1.

¹⁶ ABC Proposal, Attachment 1, pg. 8.

¹⁷ ABC Proposal, Attachment 5, pgs. 7-8, 27, 46, 53.

C. The FCC Cannot Mandate 4 Mbps Broadband Service Until It Finds That Services at That Speed Have Been Adopted by a Substantial Majority of Residential Customers

In addition to the statutory shortcomings addressed above, all three industry proposals (and the ABC Proposal in particular) fail to justify the expansion of the definition of supported universal services to include high speed broadband information services under the Act's requirements. To be clear, SouthernLINC Wireless generally supports the idea that the definition of supported services can and should evolve over time as technologies change and the majority of consumers subscribe to new services, a concept that finds ample support in the statute.¹⁸ However, the necessary evolution of the list of supported services does not occur in a vacuum. The Act requires that the FCC base its evolution upon data that the service proposed for addition to the supported services list be adopted by a sufficient number of residential consumers to justify funding the service out of universal service contributions.¹⁹

Among the four metrics that the Joint Board is required to consider in recommending, and the FCC is required to consider in establishing, a newly defined supported services is the extent to which that service has **“through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers[.]”**²⁰ In this manner, the Act is designed to ensure the definition of supported services evolves by *following* the market in identifying services to be supported. This pragmatic framework serves several important purposes. First, it ensures that the American people, voting with their pocketbook, have demonstrated that the service is sufficiently important so as to be worthy of support from universal service mechanisms. Second, it ensures that the service is sufficiently widespread such

¹⁸ 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.”).

¹⁹ See 47 U.S.C. § 254(c)(1)(C).

²⁰ *Id.* (emphasis supplied).

that deploying the service to the remaining substantial minority of Americans will not be prohibitively expensive. The Act's approach is therefore far more efficient than *pushing* the market towards an aspirational service goal that has 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, and the FCC's own NPRM, fail to demonstrate that the broadband services proposed to be defined as a "universal service" have been adopted by the requisite number of Americans. Notably, the State Members Proposal explicitly recognized that the FCC must make such a finding in order to expand the definition of supported services.²¹ In support of their position, the State Member Proposal refer the FCC to the Joint Board's 2007 finding that a certain level broadband services could be supported. However, that unadopted recommendation was clearly directed at an entirely different set of service characteristics, specifically recommending that the FCC support broadband services capable of 200 kbps download speeds. Because that analysis supports a radically different level of service than the services proposed here, it cannot rationally be read to provide the FCC with blanket authority with which to support broadband at any speed and at any price.

The facts on the ground are not entirely clear, but it appears, by the FCC's own analysis, 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.²² That is, a "substantial majority" of American consumers actually subscribe to broadband information services *below* even 3 Mbps, a much more modest target speed. Adding broadband at the actual

²¹ State Member Proposal at 23-24.

²² Federal Communications Commission, Industry Analysis and Technology Division Wireline Competition Bureau, *Internet Access Services Report* (Mar. 2011).

speeds proposed to the list of supported services without undertaking the mandatory factual analysis would be a textbook example of arbitrary and capricious rulemaking. For all the talk about the data-driven nature of universal service reform, the proposals set forth here unquestionably had failed to undertake this basic analysis. Indeed, it appears overwhelmingly clear that, even assuming that the FCC were to perform the Act's required analysis, it would find that Americans had not yet made the collective judgment that 4 Mbps broadband services are of sufficient necessity so as to qualify 4 Mbps as a service that ought to be supported as a universal service.

D. The FCC Should Use a Statutorily-Based Framework to Evaluate Existing and Future Policy Proposals, and Reject Those That Fail These Tests

When the FCC reaches its final decision regarding the structure of the reformed distribution mechanism, the FCC must ensure that the final policy comports with the Act's statutory mandate. As noted at the inception of the modern universal service system, the driving force of the communications industry is characterized by open competition.²³ Then, as now, universal service programs should be "met by means that enhance, rather than distort, competition."²⁴ By stark contrast, however, the ABC Proposal's ILECs-first framework would grant incumbents a first right of refusal for support and access replacement, in blatant contradiction of the pro-competitive principles of the Act. While it is not surprising that the carriers who would most benefit from such a preference would favor proposals stacked so

²³ 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*").

²⁴ *Id.*

heavily in their favor and to the detriment of their competition, there has been no support offered by any party that could plausibly justify such preferential treatment.

Further, defining high speed broadband as a supported service would require the FCC to either grow the size of the fund or cut support to other programs or services. While the industry proposals, unsurprisingly, express a preference for the latter option, these plans 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 creating additional entry barriers for other providers who will be forced to compete on an uneven playing with a subsidized provider.

As it stands today, none of the three plans upon which the Commission has sought comment are properly grounded in the Act. Instead, the proposals focus on protecting specific carrier revenues, effectively turning 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 as required by statute. By focusing on services that have, through the operation of the market choices -- as opposed to the FCC's preferences -- been subscribed to by a substantial majority of residential customers, 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.

Alternatives have been regularly proposed to the FCC by SouthernLINC Wireless and others for several years, but the Commission has not changed its basic approach to reform. Now, in the FCC's headlong rush to meet a self-imposed and restrictive deadline for an Order on this important matter, all that remains are a series of options that lack the statutory grounding the reformed mechanism will need in order to survive certain judicial review. Structuring the reformed distribution mechanism in a manner consistent with the Act is a superior approach, not least of which because it is required, but also because the act of "pushing" certain services upon an as-yet unreceptive market will inevitably prove to be far more expensive than utilizing the Act's pragmatic approach of following the lead of American consumers.

Fortunately, as SouthernLINC Wireless has demonstrated, the Commission *can* reform the distribution mechanism and facilitate broadband deployment in a manner that is consistent with the requirements of the Act. Unfortunately, however, these promising frameworks have been ignored in favor of alternatives recommended that would not meet the statute's core requirements. Moving forward with any of these three proposals at this point recklessly risks wasting the time and effort spent getting to this point in the reform process. Worse yet, by rushing to implement a statutorily-deficient policy, irreversible damage will be wrought upon supported areas and the carriers that serve them. Instead, the Commission should pause to consider a wider 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.

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 with any of these three frameworks and releases an Order in the near future, as has been publicly promised by the Commissioners,²⁵ these statutory arguments will not simply vanish. Rather, the fight will simply migrate to the federal court system as a part of a certain judicial challenge, where it is likely that a court will find the reform policies are arbitrary, capricious, and otherwise inconsistent with the Act. Before the FCC reaches a point of no return, it should take the time to consider the shortcomings of the instant proposals and restructure reforms in order to comport with the Act.

II. CONSUMER DEMAND, AND NOT THE COMMISSION, SHOULD DRIVE UNIVERSAL SERVICE POLICIES

The three third-party proposals upon which the Commission has requested comment, as well as the Commission's own USF/ICC NPRM all share a fatal flaw: they ignore consumer demand in favor of centrally-planned networks created via regulatory fiat. Such centralized planning will ensure that U.S. markets are inefficient, and will make services available to consumers which they do not demand while ensuring that services they desire will remain unavailable. For this reason, the Commission should reject the plans currently under consideration, and instead look to develop methods whereby the Commission's obligations to promote "affordable service and access to advanced services" can be "met by means that enhance, rather than distort, competition."²⁶

²⁵ 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.").

²⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, ¶ 7 (1996) ("*Local Competition Order*").

A. The Act Requires That Consumer Choice, Rather Than Regulatory Fiat, Drive The List of Supported Services.

As discussed above, Section 254(c)(1) of the Act requires that the Commission extend universal service support only to services that “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.”²⁷ In other words, the USF program is designed to ensure that the Commission and the Joint Board do not set the agenda for the entire telecommunications industry, but rather for those entities to follow where the industry leads by ensuring that consumers in rural, insular, and high-cost areas can benefit from the same technologies as those that are generally available in urban areas.

For their part, SouthernLINC Wireless and other rural carriers have played a key role in ensuring that rural consumers in their service areas receive the benefits of advanced services by deploying and steadily upgrading a robust and reliable wireless network. Unfortunately, the USF/ICC NPRM, and the three proposals upon which the Commission seeks comment, all ignore this fact and instead seek to focus solely on deploying 4 Mbps broadband across the country, almost entirely by funding a single wireline provider in each service area. However, the Commission has not established that consumer demand supports this level of deployment nor that these services are commonly subscribed to in urban areas. Instead, the Commission tacitly assumes that if the services are available, consumers will use them, regardless of desirability or affordability. This runs counter to both common sense and the Act’s pro-market goals and should be rethought prior to adopting USF reform. Indeed, the Commission can make better use of limited USF funding by developing programs to incentivize carriers already offering a wide array of services at different price points to compete for customers and to expand and upgrade their current offerings. By relying on the market to direct USF support rather than on central

²⁷ 47 U.S.C. § 254(c)(1).

planning, the Commission can ensure that consumers will receive access to the best possible service options.

B. Sufficient Support of Wireless Services Is Necessary To Ensure That Consumers in Rural Areas Have Access to Reasonably Comparable Services.

Proposals currently before the Commission that would withdraw support from all telecommunications services that do not meet the 4-Mbps threshold established by the National Broadband Plan would harm rural consumers by encouraging carriers, like SouthernLINC Wireless, to withdraw from unprofitable areas. The harm would be particularly great because many providers – including those that offer up to 3 Mbps – would lose funding that may still be needed in order preserve current service coverage upon which consumers in these areas rely. In addition, the proposed withdrawal of support would also eliminate competition for any supported 4 Mbps broadband service deployed in the future (including any voice services), thereby depriving the residents of supported areas of the benefits of competition (including lower prices, better services, and rapid deployment of new technologies).

Competitive and technological neutrality is particularly essential because consumers are increasingly seeking new options for how and where they go online. For instance, the evidence strongly suggests that consumers are rapidly adopting wireless technologies. Indeed, according to one recent study, 83% of all adult Americans have cell phones, and approximately 35% of the adult population owns a smartphone capable of accessing e-mail and surfing the Internet.²⁸ For many, a mobile device has become the primary means by which they access the Internet. This is particularly true for traditionally underserved demographics, such as African-Americans and Latinos, 44% of whom have smart phones and who are particularly likely to report that they

²⁸ Aaron Smith, *35% of American Adults Own A Smart Phone*, Pew Internet & American Life Project (Jul. 11, 2011).

access the Internet chiefly through these devices.²⁹ Carriers like SouthernLINC Wireless are essential for ensuring that these mobility services are available in rural areas as well as in urban areas, and should be provided the necessary USF support to expand their offerings rather than have their funding redirected to support the often less-desirable wireline broadband services promoted in the current plan.

Unfortunately, all the plans currently under consideration by the Commission include thinly-veiled provisions designed to divert USF support away from wireless carriers and towards traditional wireline networks. For instance, under the ABC Plan, more than 75% of the support competitive ETCs (most wireless carriers) currently receive from the fund is to be redirected to a wireline broadband network.³⁰ The State Members Plan and the RLEC Plan also fail to address the need for support for wireless services, instead focusing on simply funneling as much USF support as possible into wireline networks. Indeed, even the FCC's ICC/USF NPRM proposes significant cuts in support to these types of services,³¹ despite the evidence of increasing demand for these services.³²

Proposals in the ABC Plan and in the Public Notice to create a separate mobility fund for wireless providers are inadequate to address the problem and, as written, would only exacerbate the issue. First, separate support funds for wireline and wireless services contradict the principle

²⁹ *Id.*

³⁰ 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 will remain.

³¹ USF/ICC NPRM ¶¶ 246-258.

³² For instance, in the National Broadband Plan, in an October 2010 Technical paper, the Commission noted that subscriptions to mobile data services increased by 40% in just over six months. *Mobile Broadband: The Benefits of Additional Spectrum*, OBI Technical paper No. 8, FCC, at 4 (rel. Oct. 2010).

of competitive neutrality, and artificially buffers carriers from intermodal competition. As a result, both wireline and wireless providers would be less responsive to competitive pressures, which would reduce the incentive to compete based on price and service quality. In addition, providing support to carriers from a single fund based on the geographic area covered and the number of customers served rather than based on artificial funding limits would encourage carriers to more rapidly expand their service offerings by rewarding expansion into rural areas.

To the extent, however, that the Commission moves forward with separate funds, the ILECs' proposal to allocate \$300 million (or less) to the wireless fund, while reserving more than \$4.2 billion for themselves, will disadvantage wireless carriers unfairly and will delay (and perhaps even reverse) the continued deployment of broadband services. Specifically, it will be difficult, if not impossible, for existing wireless ETCs to deploy additional facilities to serve, or continue to serve, truly high cost areas. Further, the minimal funding for wireless services will provide wireline carriers with an unfair competitive advantage, skewing the market for broadband services in their favor and inhibiting the development and deployment of advanced wireless services – a result that stands in stark contrast to the trends in urban areas and that runs counter to Section 254's mandate of reasonable comparability.

C. Intercarrier Compensation Reform Should Not Be Accomplished By Dismantling the USF Mechanism.

The ABC Plan is less a USF reform proposal than it is an intercarrier compensation plan that proposes specific USF reforms in order to achieve its end. Indeed, upon even cursory analysis, it is clear that the goal of the ABC Plan is to reduce all intercarrier compensation rates to \$0.0007 and to use existing USF support in order to make the proposal a political reality. For the ABC Plan, core USF considerations such as “reasonable comparability” and “affordability” are simply non-issues. Indeed, nowhere in the ABC Plan's supporting documentation does the

plan discuss exactly how its USF proposals would comply with Section 254's mandate that services and rates be "reasonably comparable" to those in urban areas and "affordable" for rural consumers. In contrast, the plan spends nearly 48 pages justifying the transition of all intercarrier compensation rates to \$0.0007. While SouthernLINC Wireless generally supports the goal of intercarrier compensation reform, it should not be accomplished by ignoring the Commission's obligations established in Section 254 to make services available in rural areas "reasonably comparable" to those available in urban areas.

For years, the nation's largest carriers, including AT&T, Verizon, and Qwest, have sought to reduce both intrastate and interstate access charges. Historically, these efforts have been stymied by the opposition of small rural incumbent carriers that rely on high access rates to offset the high costs of serving their territories. In the ABC Plan, the nation's largest carriers have sought to circumvent this political problem. In order to minimize potential dissent as much as possible, the plan protects these rural incumbents from meaningful reform in several ways. First, the plan maintains both the current USF funding levels for these ILECs and the mechanism by which the rural ILECs apply for and receive that support. Second the proposal allows these rural ILECs to recover any lost intercarrier compensation revenues from other sources, including through increased end user charges and through additional USF support. Third, the plan proposes to deliver additional funding for "broadband deployment" both to rural ILECs and to the very carriers that proposed the ABC Plan.

In order to accomplish these objectives, however, the ABC Plan proposes to eliminate USF support for all competitive services in these areas. Specifically, the ABC plan proposes to divert nearly all of the \$1.2 billion in USF funding currently used to support competitive services (including wireless services) in rural areas directly to the nation's incumbent carriers, including the price cap carriers that developed the ABC Plan. The end result of the plan will be the

decimation of the rural wireless network upon which rural consumers rely. In its place, rural consumers will receive the *promise* of future wireline services, which (as discussed above) market trends indicate are less desirable and useful to consumers. The plan proposes this despite the fact that nothing in the record suggests that the additional funding to the ILECs will actually result in additional deployments. Indeed, the ABC Plan specifically allows ILEC USF recipients to declare some areas too costly to serve, and eliminates the obligation to provide service to them, instead shunting responsibility for those areas off to a separate “Advanced Mobility/Satellite Fund.”³³

The diversion of funds 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.³⁴ By providing support for a single carrier in rural areas and denying support to all others, the FCC risks these areas stagnating, with wireline services (at monopolistic prices) the only option available to consumers. This stands in sharp contrast to urban areas, where competition spurs carriers to deploy and promote ever faster networks and cheaper services in an attempt to win and retain customers.

D. Any USF Proposal That Would Provide A Single Carrier With A *De Facto* Monopoly Is Inconsistent With The Act.

Any proposal that would make a single carrier the sole beneficiary of USF support would contradict the policies of competitive and technological neutrality and would deny consumers the

³³ ABC Plan, Attachment 1 at 5 (“[T]he CAF recipient is permitted to exclude from its service obligation those service locations that could be served most efficiently using satellite broadband.”).

³⁴ 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.

benefits of competition. This is true regardless of whether that single carrier is selected by default (i.e, the ILEC), selected via a beauty contest, or selected during a reverse auction. Instead, for consumers to receive the full benefit of the services, service providers in rural areas must be subject to competitive forces, and Commission policies should work in tandem with, rather than opposed to, those forces to promote lower prices and greater access for consumers.

Instead of encouraging competitive entry and the natural price competition that occurs with it, a system that provides support to only a single service provider in an area will install a government-sanctioned monopoly service provider within that area capable of engaging in monopolistic practices. Specifically, the sole-supported carrier will have both the capability and the incentive to price services at a price point designed to maximize profits while ensuring that competitive entry remains infeasible. In contrast, in a market where more than one carrier is eligible for support, the supported carriers can all compete on price, driving the price of service for consumers down closer to the provider's marginal costs while forcing carriers to compete on service quality (including download speeds).

III. THE PROPOSED INTERCARRIER COMPENSATION REFORMS WOULD NOT OFFSET THE LOSS OF USE SUPPORT FOR WIRELESS CARRIERS

Despite assertions to the contrary, intercarrier compensation reform will not significantly offset the reductions in USF support proposed in either the USF/ICC NPRM or in any of the three plans upon which the Public Notice seeks comment. Under the current rules, SouthernLINC Wireless receives approximately **[begin confidential]** _____ **[end confidential]** per month in USF high-cost support to offset the costs of providing wireless services in high-cost areas. According to SouthernLINC Wireless' estimates, re-rating all traffic upon which carriers can currently assess access charges to \$0.0007 would result in a savings of only **[begin confidential]** _____ **[end confidential]** per month. This small savings is not enough to allow SouthernLINC Wireless to construct even one cell site in a year. At best, it would cover the

annual operating costs for approximately [begin confidential] _____ [end confidential] sites in a rural areas.

The reason the proposed intercarrier compensation reform will have relatively little impact is that a large portion of the traffic that SouthernLINC originates is delivered to other SouthernLINC Wireless customers, is delivered to other parties that cannot assess access charges, is exchanged with other wireless carriers under bill and keep, or is already subject to low access charge rates. For example, traffic from SouthernLINC Wireless customers to other SouthernLINC Wireless customers constitutes [begin confidential] _____ [end confidential] of all SouthernLINC Wireless traffic. This traffic is obviously not subject to intercarrier compensation charges, but SouthernLINC Wireless still bears the costs associated with providing the underlying wireless services. Similarly, [begin confidential] _____ [end confidential] of the intercarrier traffic SouthernLINC Wireless delivers to third parties is delivered to other wireless carriers. Because these wireless carriers (like SouthernLINC Wireless itself) cannot assess access charges on traffic they receive, reductions to intercarrier compensation obligations will do nothing to offset the expenses associated with these calls. In short, costs associated with these types of traffic will in no way be offset by intercarrier compensation reform

The same logic applies to traffic delivered to wireline carriers located in urban areas where intercarrier compensation rates are already low and to VoIP carriers that charge only reciprocal compensation rates for delivering traffic pursuant to Section 251(b)(5). For the most part, these carriers already charge rates at or near \$0.0007 – the rate generally proposed as the uniform intercarrier compensation rate. As such, intercarrier compensation reform will result in little savings for SouthernLINC Wireless in these instances as well. Indeed, the only traffic for which SouthernLINC Wireless will see a significant reduction in intercarrier compensation rates

is for traffic delivered to rural LECs – and this traffic makes up only a relatively small portion of SouthernLINC Wireless’ overall traffic pattern.

A quick overview of SouthernLINC Wireless billing records confirms the logic described above. In an average month, SouthernLINC currently pays approximately [begin confidential] _____ [end confidential] in intercarrier compensation to other carriers for terminating minutes that are priced in excess of \$.0007.³⁵ If those minutes were all re-rated to \$0.0007, the total amount owed would be [begin confidential] _____ [end confidential]. However, reducing the rate to \$.0007 will also reduce the intercarrier compensation SouthernLINC currently receives under reciprocal compensation arrangements by approximately [begin confidential] _____ [end confidential] for a net savings of [begin confidential] _____ [end confidential]. Given that SouthernLINC Wireless expects to lose at least [begin confidential] _____ [end confidential] per month under the most generous of the USF reform proposals under consideration, intercarrier compensation reform alone is not enough to ensure that SouthernLINC Wireless can continue to develop and deploy advanced services throughout its territory.

IV. THE COMMISSION SHOULD CONSIDER ALTERNATIVE PROPOSALS BEFORE FINALIZING AND ADOPTING A USF/ICC REFORM PLAN

A. Alternative Proposals Submitted By SouthernLINC Wireless Provide Significant Advantages Over The Proposals Currently Under Consideration

In its previous filings in this docket, SouthernLINC Wireless has provided alternative USF reforms proposals that, unlike the proposals currently under consideration, would promote competition while simultaneously reducing the size of the fund and improving its efficiency. SouthernLINC Wireless urges the Commission to review these proposals and incorporate the core, pro-competitive aspects of them into any final order it adopts.

³⁵ These minutes exclude MOUs delivered to other wireless carriers for which no terminating access fees are owed.

1. SouthernLINC Wireless/USA Coalition New Approach Proposal

As part of its reform efforts, the Commission should consider adopting the New Approach Proposal SouthernLINC Wireless submitted as a member of the USA Coalition.³⁶ 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. 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 Proposals.

Under this New Approach Proposal, 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. This stands in sharp contrast to the ABC Proposal and the others before the Commission, which would require the Commission to commit to supporting only a single provider in each area for an extended period -- often more than 10 years. Similarly, the eligible costs for which ETCs would receive reimbursement 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

³⁶ See Letter from Todd Daubert, USA Coalition, to Julius Genachowski, FCC, WC Docket No. 05-337, at 6 (Oct. 27, 2009).

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.

2. SouthernLINC Wireless Reverse Auction Proposal

Alternatively, if the Commission is committed to using a reverse auction to distribute USF support as proposed in its ICC/USF NPRM, any reverse auction proposal adopted must be consistent both with the terms of the Act and with its pro-competitive goals, and cannot result in only a single supported carrier in each service area. Properly structured reverse auctions, while not ideal, provide a competitively-neutral method for controlling USF costs while still allowing market competition to determine which carriers and technologies succeed -- a result in sharp contrast to any of the proposals currently under consideration.

Under the SouthernLINC Reverse Auction Proposal originally submitted in 2008,³⁷ the Commission would determine which of the communications services that are typically available in urban areas should be supported, and then define two service packages based upon those determinations: one service package with carrier of last resort and open access obligations (the “CLR Package”) and another without carrier of last resort or open access obligations (the “NCLR Package”). Both packages would require the winning bidder to provide a minimum set of features (e.g., single party service, voice grade access to the PSTN, DTMF signaling, access to emergency and operator services, access to interexchange service, etc.) for a set price or less in order to receive the amount of support established by the winning bid for each package provided to a consumer.

³⁷ See SouthernLINC Reverse Auction Proposal, *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, at 16-30 (filed Apr. 17, 2008) (SouthernLINC Reverse Auction Proposal).

The packages would be defined without reference to the technology used to provide the package services or competitive status of the service provider (i.e., incumbent or new entrant). Any type of provider (i.e., wireline, wireless, ILEC, CLEC, cable company) would be able to bid upon either the CLR or NCLR package so long as the provider is capable of providing the services defined in the package and can meet the applicable service standards. The Commission would also have to determine, based upon the characteristics of urban telecommunications and information service markets, how many of each type of package would be auctioned in each auction area. Based upon the record regarding available telecommunications and information services in urban areas, SouthernLINC Wireless submits that the Commission would have to auction, at a minimum, one CLR package and two NCLR packages in each auction area.

The clock-proxy auctions would be conducted on a state-by-state basis using the smallest competitively-neutral geographic support areas that are administratively feasible (*e.g.*, zip code areas, census blocks, or state-defined county boundaries).³⁸ The winning bidders would be required to set the retail price for each supported package at a level that is at or below the maximum price defined by the Commission. Moreover, universal service support would be provided only when a winning bidder sells the supported package to a customer for the full retail price, which would prevent winning bidders from giving service away at uneconomically low rates merely to obtain additional subsidies through inflated “customer acquisition.”

Unlike any of the proposals currently before the Commission, the SouthernLINC Reverse Auction Proposal complies with the touchstone principles of “reasonable comparability” and “affordability” by requiring the Commission to cap the rates winners of its CLR and NCLR packages may charge at “reasonably comparable” and “affordable” rates. Support under the SouthernLINC Reverse Auction Proposal would also be “sufficient” because the winning carrier

³⁸ A comprehensive explanation of “clock-proxy” auctions can be found in the SouthernLINC Reverse Auction Proposal. *Id.*

itself determines the amount of support it receives. This stands in sharp contrast to the proposals currently before the Commission which provide no assurances that, even if such services are ever deployed, consumers in the rural areas will be able to afford them. Finally, by awarding multiple support packages per area, the Commission can allow consumers in rural areas to continue to reap the benefits of competition while reducing the overall size of the fund through the auction process itself, which will both limit the number of supported ETCs in each area and the amount of funding they receive.

B. The Commission Should Seek Industry Input On The Specifics Of Any Plan Before Adopting A New Order.

In the USF/ICC NPRM, the Commission outlined in broad terms its intention to reform both the intercarrier compensation system and the universal service support mechanisms. By necessity, that NPRM sought comment on a wide-range of possible options for reform, including the use of reverse auctions, the use of models, and/or the use of beauty contests to help select USF support recipients. SouthernLINC Wireless, both on its own and as part of various coalitions, has participated regularly in these proceedings. Indeed, SouthernLINC Wireless is one of the few carriers to put forth a workable reverse auction proposal that would both reduce the size of the fund and that would comply with the pro-competitive intent of the Act.³⁹

SouthernLINC Wireless supports the Commission's efforts to explore a wide range of options for reform, and believes that the Commission's USF/ICC NPRM was a good first step. Similarly, the instant Public Notice also was a reasonable step for the Commission to take in order to gain additional information on possible policy alternatives. Unfortunately, the broad nature of both the ICC/USF NPRM and the Public Notice do not provide any meaningful detail

³⁹ SouthernLINC Reverse Auction Proposal, *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, at 16-30 (filed Apr. 17, 2008).

about the reforms the Commission proposes to adopt. Indeed, the instant Public Notice actually seeks comment on three different plans, many of the specifics of which are mutually exclusive. As such, SouthernLINC Wireless and other carriers have not yet had an opportunity to review and provide comment on any proposals the Commission is actually considering adopting.

The Commission's accelerated notice and comment schedule established in the instant Public Notice also raises serious concerns about the Commission's commitment to full industry participation. The issues raised in this Public Notice are complex, and the record is sure to be voluminous. Indeed, in response to the ICC/USF NPRM, the Commission received over 200 sets of comments, and the response to this Public Notice is likely to equal that. As such, the Commission's decision to provide parties with only seven days to file reply comments,⁴⁰ and its rejection of requests for an extension, is almost cynical in aspect. The short turn-around for comments and the agency's repeated statements that it will essentially finalize an order less than a month after reply comments are filed suggests that the agency has already made up its mind, and will no longer seriously consider industry input.

To rectify this situation, prior to voting on any order reforming the USF and ICC mechanisms, the Commission should release a draft order to the public and allow time for parties to comment on it in the record. While the draft order need not reflect the exact conclusions the Commission may come to in its deliberations, it should reflect the fundamental structure of any reform plan, including committing to a specific means for distributing USF support to carriers and a specific level of intercarrier compensation reform. Additionally, the draft order should reflect tentative dollar amounts for funding specific initiatives, and should provide a general

⁴⁰ *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, Order, DA 11-1374 (rel. Aug. 8, 2011).

legal justification for all of the proposals. Failing to provide this opportunity for notice and comment may jeopardize the reform should it be challenged in court, and a minimum will deny the Commission the benefit of industry analysis of its proposals.

CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to heed the comments of the parties in the docket and base its reforms soundly within the requirements of the Act. Local and regional carriers like SouthernLINC Wireless are vital to the Nation's communications networks, yet the Commission's proposals threaten the viability of these providers and in a manner that does not comport with the universal service provisions of the Act. SouthernLINC Wireless, therefore, joins those who oppose the proposed reforms and urges the Commission to explore new proposals that reflect the requirements of the Act and better serve the interests of all consumers, regardless of where they live and work.

Respectfully submitted,



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