

**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 96-45
	)	
Lifeline and Link-Up	)	WC Docket 03-109

To: Wireless Telecommunications Bureau

**REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group, Inc. (“RTG”),<sup>1</sup> by its attorneys, hereby submits its reply comments in response to comments filed pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice<sup>2</sup> in the above-captioned proceeding.

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<sup>1</sup> 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. On August 24, 2011, RTG filed comments in this proceeding.

<sup>2</sup> *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. 01-92, 96-45; GN Docket No. 09-51, Public Notice, DA 11-1348 (rel. Aug. 3, 2011) (“*Public Notice*”).

In its Comments, RTG discussed numerous flaws in the so-called “consensus” framework, including the insufficiency of the proposed amount of support for mobility, the proposed Mobility Fund’s inequitable shift of the burden of universal service reform to mobile wireless carriers, the need for adequate ongoing support for mobile services in rural, high cost areas, the inappropriateness of requiring wireless carriers to share funding with satellite providers, and the faulty legal framework used by USTelecom to buttress its jurisdictional arguments. These reply comments focus on the comments filed by other parties as they relate to two specific issues, the size of the proposed Mobility Fund and the proposed elimination of the role of states in implementing universal service.

The record in this proceeding demonstrates that the “consensus” framework consisting of the *ABC*<sup>3</sup> and *RLEC Plans*<sup>4</sup> is in no way representative of a true industry consensus. Indeed, these plans only further the interests of incumbent wireline providers. Moreover, many aspects of the plans are legally suspect and prohibited by the Communications Act of 1934, as amended (“Act”).

The Comments have exposed the *ABC* and *RLEC Plans* as an attempt by incumbent local exchange carriers (“ILECs”) to essentially perpetuate the universal service status quo at the expense of other carriers, especially mobile wireless carriers. The record also demonstrates that the *State Members Plan*<sup>5</sup> fares no better and fails to recognize the vital importance of supporting

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<sup>3</sup> Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (“*ABC Plan*”).

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

<sup>5</sup> Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al., (filed May 2, 2011) (“*State Members Plan*”).

mobile broadband in rural, high-cost areas.<sup>6</sup> As discussed below, the Commission must reject these proposals that would harm the ability of rural Americans to obtain mobile broadband services. In order to be effective, universal service reform must benefit consumers by supporting the mobile services that that consumers are overwhelmingly choosing over other services. Before the Commission adopts its universal service fund (“USF”) reform Order, it should ensure that any new framework reflects actual industry-wide input and promotes the buildout of vital mobile broadband services in rural, high-cost areas based on the proposals outlined in RTG’s previous comments filed in this and other proceedings.<sup>7</sup>

**I. Only a Robust Mobility Fund Will Provide Broadband Benefits to Consumers Who Continue to Migrate to Wireless.**

In its comments, RTG explained that the *RLEC Plan*, *ABC Plan*, and *State Members Plan*’s treatment of wireless failed to reflect the concerns of rural wireless carriers or address the need for ongoing wireless support in high-cost areas. The plans are highly-flawed wireline industry-developed proposals, and not a product of any overall *wireless* industry consensus. Numerous commenters have echoed these sentiments, taking issue with the meager amount of mobility funding proposed in the wireline carriers’ alternative plans and the *State Members Plan*.<sup>8</sup> These comments show the proposed \$300 million budgeted for the mobility fund is nowhere near the level of support that is needed to sustain mobile broadband networks in high-

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<sup>6</sup> See Comments of RTG, WC Docket No. 10-90 et al, 7 (filed Aug. 24, 2011) (showing that the *State Members Plan*, which would phase-in mobile broadband support starting with \$50 million in support the first year, would cause major harm to consumers dependent on rural wireless carriers’ networks).

<sup>7</sup> See Comments of RTG, WC Docket No. 10-90 et al. (filed Apr. 18, 2011) (“*RTG USF Comments*”); Comments of RTG, WT Docket No. 10-208 (filed Dec. 16, 2010) (“*RTG Mobility Fund Comments*”); Comments of RTG, WC Docket 10-90 et al. (filed July 12, 2010).

<sup>8</sup> See Comments of RCA at 12; Comments of MTPCS LLC, d/b/a Cellular One at 6 -7; Comments of U.S. Cellular at 23 – 24; and Comments of SouthernLINC Wireless at 19 – 21.

cost, rural areas.<sup>9</sup> The size of any mobility fund must be sufficiently large in order to achieve Congress' goals of increased mobile broadband coverage<sup>10</sup> and meet the requirements of the Act.<sup>11</sup>

The alternative plans propose funding targets for wireline carriers equal to the amount of support those incumbent carriers are currently receiving, but propose a funding target for mobile wireless that is nowhere close to the level of support currently received by CETCs. RTG agrees with RCA that an allocation of \$300 million for wireless is unacceptable.<sup>12</sup> Similar to the proposed funding target for wireline carriers which will actually increase the amount of support received, a suitable starting point for a funding target for a mobile wireless support mechanism should be somewhere near half of what wireless carriers currently pay into the USF<sup>13</sup> and the amount of support currently distributed to competitive eligible telecommunications carriers ("CETCs").<sup>14</sup> A mobility fund that conforms to this size (\$1.3 to \$1.5 billion) of support is more appropriate.<sup>15</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> The National Broadband Plan has a mission to create an America "in which affordable broadband is available everywhere and everyone has the means and skills to use valuable broadband applications," and lists six goals to help serve as a roadmap for completing the mission. The second goal challenges the U.S. to "lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation." FCC, *Connecting America: The National Broadband Plan*, at 9 (2010).

<sup>11</sup> See Comments of CTIA at 14 - 18 (demonstrating that the proposed \$300 million funding level is insufficient and that, because consumers are increasingly choosing mobile services, the Commission must base its policies on the universal service principles of 254(b)).

<sup>12</sup> Comments of RCA at 11.

<sup>13</sup> Wireless carriers contribute an estimated \$1.5 billion in to the USF. Comments of RCA at 13.

<sup>14</sup> CETC support remains capped at approximately \$1.366 billion per year. *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*").

<sup>15</sup> See Comments of RCA at 13; see also Comments of T-Mobile at 22 - 23 (showing that a more realistic funding amount for mobile broadband would be about \$1.3 to \$1.5 billion, which is roughly the size of the capped CETC fund or half the amount wireless carriers contribute to the USF); Comments of Cellular One at 14 (maintaining that mobile broadband should receive not

As RCA correctly points out, allowing wireless carriers to draw half of what they pay into the USF reflects a “spirit of compromise and fiscal restraint, in contrast to ILECs’ stratospheric demands for a dedicated \$4.2 billion in CAF distributions.”<sup>16</sup> Not only is the funding set aside for wireless insufficient, but the proponents of the alternative plans provide no evidence justifying why wireline ILECs should be favored over every other carrier.

When setting the funding target for mobility, the Commission must take into consideration its separate, open Mobility Fund proceeding that is expected to provide one-time support for deployment of 3G networks, in order to bring all states to a minimum level of 3G or better mobile service availability.<sup>17</sup> Rural wireless carriers that receive one-time support from the separate Mobility Fund will require ongoing support from any new universal service mechanism so that the newly constructed advanced wireless networks can continue to provide mobile broadband services to consumers in high-cost, hard-to-serve areas.<sup>18</sup> Only a permanent, fund that provides sufficient ongoing support for mobility will ensure that mobile broadband networks built using one-time funding will not become a stranded investment.

## **II. Eliminating the States’ Role in Promoting Universal Service is Both Prohibited Under the Communications Act and Bad Policy.**

Since its inception, universal service has been a cooperative program administered by the Federal-State Joint Board on Universal Service, the FCC, and state commissions. This reflects the mandate of Congress that the FCC and the states share in the responsibilities of implementing

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less than \$1.3 billion annually); Comments of Mobile Future at 3 (calling for additional mobile broadband funding because a \$300 million fund may prove inadequate to bridge the mobile broadband availability gap).

<sup>16</sup> Comments of RCA at 13 – 14.

<sup>17</sup> *In re Universal Service Reform: Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, FCC 10-182 (Oct. 14, 2010) (“*Mobility Fund NPRM*”).

<sup>18</sup> *See RTG Mobility Fund Comments* at 5 – 6.

universal service laws.<sup>19</sup> In the first universal service Order, the FCC recognized that the Act directs “the Commission and states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans” and the FCC immediately began setting up the Federal-State Joint Board on universal service as required by Congress.<sup>20</sup> In contrast, the *ABC Plan* proposes the Commission take USF reform in a direction that can only be characterized as a sharp deviation from the original intent of the universal service provisions of the Communications Act by effectively dissolving state regulatory powers. The deregulatory proposals outlined in the *ABC Plan* are highly problematic and illegal.

The final section of price cap carriers’ *ABC Plan* proposes a general “policy of nonregulation for broadband and other information services” because a policy of nonregulation will encourage private sector investment in IP-based broadband networks.<sup>21</sup> Specifically, price cap carriers request that the FCC conclude that VoIP services are interstate services, reaffirm that broadband services are interstate services, and preempt any state regulation of VoIP and broadband services that is inconsistent with price cap carriers’ desired federal policy of nonregulation.<sup>22</sup> Price cap carriers also call for the Commission to preempt state authority over all intercarrier compensation and eliminate ETC and carrier of last resort obligations.<sup>23</sup> In one

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<sup>19</sup> See 47 U.S.C. § 254(a)(1) which states that “... the Commission shall institute and refer to a Federal-State Joint Board under section 410 (c) of this title a proceeding to recommend changes to any of its regulations in order to implement sections 214 (e) of this title and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410 (c) of this title, one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates.”

<sup>20</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶1 *et seq.* (1997).

<sup>21</sup> *ABC Plan*, Attachment 1 at 13.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

fell swoop, the *ABC Plan* astonishingly advocates for a complete elimination of significant state regulatory authority over communications providers going forward.

In addition to ignoring the states' legal role in the implementation of federal universal policies and state jurisdiction over intrastate matters,<sup>24</sup> it would be bad policy to eliminate the states' role in implementing universal service. The *ABC Plan's* recommendations would leave the FCC with an overwhelming amount of universal service oversight responsibilities in the future. It is questionable whether the FCC, based in Washington D.C., would be able to provide proper oversight for fifty diverse states under this type of regulatory regime. Preemption of all state authority is not only contrary to the Communications Act which creates an important regulatory role for the states and acknowledges the ability of the states to monitor and target universal service support, wiping out the states' role in overseeing universal service support will compromise all accountability of the universal service program. State commissions are subject matter experts when it comes to the degree, quality, and costs of broadband deployment in individual states, and are much more likely than the Commission to be able to implement universal service mechanisms in a way that is targeted and efficient.<sup>25</sup> A purely federal universal service regime will abandon state-based accountability to the detriment of the public interest.

In its *USF NPRM*, the Commission enunciated four principles that guide its reform of the USF.<sup>26</sup> One of these guiding principles for reform is accountability, which requires companies

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<sup>24</sup> The Communications Act establishes a dual Federal and state regulatory scheme, which grants the FCC authority over interstate communications but reserves wholly intrastate matters for the states. *See Louisiana Pub. Ser. Comm'n v. FCC*, 476 U.S. 355, 360 (1986); *see also MetroPCS California, LLC v. FCC*, 644 F.3d 410, 415-16 (D.C. Cir. 2011).

<sup>25</sup> *See* Comments of the National Association of State Utility Consumer Advocates, WC Docket 10-90, 29 (filed Aug. 24, 2011).

<sup>26</sup> *USF NPRM* at ¶10; *see also Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420, 3421 (2010) (calling for reform that increases accountability).

receiving support to use the funding for its intended purposes.<sup>27</sup> Currently, the ETC requirements, which are administered by state regulators, uphold and enforce accountability in the universal service program. It is hard to imagine how accountability will be increased if the power of state regulators is eliminated, contrary to the Act. Proposals that shut out any notion of accountability cannot be accepted by the Commission and are inconsistent with the FCC's stated goals.

The only way to ensure accountability is to ensure support flows to ETCs, as currently required by the Communications Act. The carriers that are legally eligible to receive USF support – telecommunications carriers – are subject to strict accountability rules pursuant to the Act, FCC regulations, and state regulations.<sup>28</sup> Section 254(e) of the Act limits the class of entities that may receive universal service support to eligible ETCs designated under Section 214(e), and pursuant to Section 214(e) of the Act, ETCs must be both telecommunications carriers and common carriers.<sup>29</sup> Congress mandated that the states have a defined and necessary role in designating carriers eligible for high-cost support<sup>30</sup> and the FCC may not ignore this role as suggested by the price cap carriers in their legally flawed *ABC Plan*.

### **III. Conclusion**

RTG and other commenters have noted that the alternative USF reform proposals discussed in the Public Notice turn a blind eye to the benefits of mobile wireless – the least cost broadband technology – by proposing an insufficient \$300 million fund for mobile services. The

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<sup>27</sup> *Id.*

<sup>28</sup> 47 U.S.C. § 254; *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (2005) (adopting a more rigorous ETC designation process which, when applied by the Commission and state commissions, will improve the long-term sustainability of the USF).

<sup>29</sup> *See RTG USF Comments* at 8.

<sup>30</sup> 47 U.S.C. § 214(e)(2) (requiring states to designate common carriers as ETCs).

results of such an arbitrarily limited mobility fund will be inadequate deployment of advanced mobile broadband networks and the inability of rural consumers and businesses to compete in the new mobile broadband world. Such results would deliver a crushing blow to rural economic development.

To benefit *all* consumers, the Commission must ensure that it adopts policies that provide sufficient support for mobile broadband, and the only way to do this is to alter the high-cost fund target set by the wireline companies' so-called "consensus framework." The Commission should disregard hollow threats made by the incumbent wireline carriers that warn of support for the consensus being lost if the Commission alters their proposals in any way,<sup>31</sup> and adopt reform that balances support for both wireline and mobile broadband in an equitable way.

Respectfully submitted,

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<sup>31</sup> See Comments of NECA, NTCA, OPASTCO, and WTA WC Docket 10-90 et al, 2 (filed Aug. 24, 2011) (claiming the compromises within the so-called consensus framework will likely not survive if individual portions are modified in any significant respects); *see also* Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, WC Docket 10-90 et al, 5 (filed Aug. 24, 2011).