

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

REPLY COMMENTS of CELLULAR SOUTH, INC.

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September 6, 2011

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SUMMARY

The *Public Notice* issued by the Commission a little over a month ago sought comment on the merits of various proposals—principally from the wireline industry—to overhaul the Commission’s universal service and intercarrier compensation rules and policies ostensibly for the purpose of ensuring that these mechanisms will be more effective in achieving the Commission’s broadband deployment goals.

The record has now provided convincing evidence that these proposals are substantially at odds with the Commission’s policy objectives or the public interest, and therefore should be rejected.

■ **Connect America Fund Budgets.**—The wireline industry has embarked on an effort to expropriate as large a share of CAF funding as possible, through disbursements that would be made available to incumbents for a ten-year period. The ABC Plan, for example, would increase price cap carriers’ share of universal service support from its current 12 percent to approximately 50 percent. There is substantial objection to these proposals in the record, with numerous commenters criticizing the incumbent LECs’ efforts to advance their own interests at the expense of consumers, small wireless carriers, and the Commission’s principles promoting competitive and technological neutrality.

Commenters offer straightforward solutions: The Commission should “rebalance” the incumbents’ skewed budget proposals, so that CAF funding is sufficient for both wireline and mobile wireless broadband deployment in rural areas. Further, the Commission should establish two separate funding mechanisms for wireline and mobile broadband, an approach that the Rural Associations support as part of their RLEC Plan. Separate funds—each with sufficient levels of support—would be an effective means of advancing mobile broadband deployment.

▪ **Rate-of-Return and Embedded Cost Mechanisms.**—A further effort by wireline incumbents to avoid meaningful reform of the Commission’s universal service mechanism is their insistence that rate-of-return and embedded cost mechanism continue to be used to disburse support to rural incumbents. There is strong support in the record, however, for Cellular South’s recommendation that the Commission end the protectionism and inefficiencies that are the hallmark of these outmoded mechanisms, and instead disburse CAF support to all funding recipients through the use of a forward-looking economic cost model.

▪ **Right-of-First Refusal Proposal.**—Still another angle played by the incumbents in their pursuit of the lion’s share of CAF support is the proposal in the ABC Plan that incumbent LECs should be given an opportunity to accept or deny funding in their service areas before funding is made available to any other service providers. Numerous commenters object to this proposal because it would stifle competition and hinder the deployment of both wireline and mobile wireless broadband networks.

▪ **Access Recovery Subsidies.**—In addition to attempting to increase substantially the level of their support disbursements, the price cap carriers also seek to turn the universal service mechanisms into a guarantor of their revenue streams, in the event their access revenues are reduced by the Commission’s intercarrier compensation reforms. This proposal has been greeted with strong criticism, with various commenters pointing out that the subsidy would harm consumers, it is anti-competitive, it would interfere with the efficient use of universal service funds, and there is no evidence the subsidy is needed.

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REPLY COMMENTS of CELLULAR SOUTH, INC.

Cellular South, Inc. (“Cellular South”), by counsel, hereby submits these Comments, pursuant to the Public Notice issued by the Wireline Competition Bureau in the above-captioned proceeding.¹ The *Public Notice* seeks comment on the America’s Broadband Connectivity Plan

¹ *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, 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), 76 Fed. Reg. 49401 (Aug. 10, 2011) (“*Public Notice*” or “*Notice*”), Erratum (rel. Aug. 8, 2011). The due date for reply comments in response to the *Public Notice* is September 6, 2011. *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, *Life-*

(“ABC Plan”),² the RLEC Plan,³ the Joint Letter,⁴ and the State Member Plan.⁵ The ABC Plan, RLEC Plan, and Joint Letter are referred to collectively in these Reply Comments as the “Wireline Companies Proposals”.

I. INTRODUCTION.

The record has provided the Commission with a clear and convincing answer to the further inquiry framed in the *Public Notice*: Proposals recently submitted to the Commission would dramatically tilt the Commission’s universal service rules and mechanisms to serve the interests of wireline incumbent carriers.

The Commission’s goal in transforming its universal service funding mechanisms is to ensure that ubiquitous deployment of advanced broadband networks in rural areas is achieved as quickly and efficiently as possible. Both wireline and mobile wireless broadband services available to consumers in rural areas should be comparable to those available to consumers living in

line and Link-Up, WC Docket No. 03-109, Order, DA 11-1471 (rel. Aug. 29, 2011) (granting in part and denying in part motions for extension of the deadline for reply comments).

² 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 (“Price Cap Carriers”), to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011).

³ Comments of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association (“NTCA”), Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and Western Telecommunications Alliance (“WTA”) (the “Rural Associations”), WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) (“RLEC Plan”).

⁴ Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011) (“Joint Letter”).

⁵ 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 Plan”).

urban areas. The budgets proposed in the Wireline Companies Proposals and the State Member Plan would make it virtually impossible for the Commission to achieve this goal.

Numerous commenters point out that the budgets proposed for mobile broadband are simply insufficient to meet the Commission's deployment goals. In fact, it would be difficult for some mobile wireless broadband providers to deploy any additional broadband network facilities in high cost rural areas under the budgets proposed in the Wireline Companies Proposals and the State Member Plan.

At the same time, the record makes it clear that these wireline proposals are crafted with the objective of substantially increasing universal service funding disbursements for wireline incumbents, and to lock in a large portion of Connect America Fund ("CAF") support for ten years. Commenters explain that these funding proposals would not serve the Commission's pro-competitive universal service policies, nor would they be responsive to increasing consumer demand for mobile wireless broadband services.

The record provides support for the conclusion that the Commission should reject the self-serving budget proposals put forward by the wireline incumbents, and instead establish budget targets that allocate disbursements in a competitively and technologically neutral manner, and that ensure sufficient support for the continued deployment of mobile broadband networks needed to meet consumer demand throughout rural America.

II. DISCUSSION.

Numerous commenters confirm the view expressed by Cellular South in its Comments that the wireline budget proposals ignore the rapidly growing consumer demand for mobile broadband services, and that these proposals are driven by the agenda of the incumbents to protect and expand their universal service disbursements and to fend off access to universal service

support by competitive service providers. The record also supports Cellular South's recommendation that the Commission reject these wireline proposals in favor of CAF budgets that, at a minimum, maintain current levels of support for mobile services.

There also is substantial support in the record for Cellular South's position that the anti-competitiveness and inefficiency that would result from the wireline incumbents' budget proposals would be further compounded by the incumbents' proposal to lock in support for ten years. Commenters argue that the proposal would act as an insurance policy for incumbents against declining benchmarks or modeled cost levels, and that the lock-in mechanism would virtually foreclose competitive entry.

Commenters also agree with Cellular South that rectifying the one-sided budget proposals made by the wireline incumbents should be joined with a decision by the Commission to establish separate funding mechanisms for wireline and mobile wireless broadband.

Another important step in transforming the Commission's universal service rules and policies, according to many commenters, is for the Commission to reject the continued use of rate-of-return and embedded cost mechanisms to disburse support to rural incumbent local exchange carriers ("LECs"), and to instead use a forward-looking cost model to disburse CAF support to all fund recipients.

A key component of the wireline incumbents' budget proposals is the ABC Plan's recommendation that incumbent LECs be given a right of first refusal that would enable them to receive all CAF support disbursements in their service areas, thus excluding any funding for existing service providers or potential competitors. There is strong opposition to this proposal in the comments, confirming Cellular South's view that there is no reasonable policy basis for excluding other carriers from receiving CAF support in incumbents' service areas.

Another wireline incumbent proposal drawing sharp criticism in the comments is the access recovery mechanism, which would use universal service funds to make incumbent LECs whole in the wake of any reduction in their access charge revenue streams resulting from the Commission's intercarrier compensation reforms.

A. Numerous Commenters Demonstrate That the Universal Service Budgets Proposed in the Wireline Companies Proposals and the State Member Plan Would Undercut the Commission's Goals for Mobile Wireless Broadband Deployment in Rural Areas.

Cellular South makes the case in its Comments that there is a wide chasm between, on the one hand, the growing demand for mobile wireless broadband services and the benefits these services bring to consumers and businesses in rural areas, and, on the other hand, the anemic CAF support allocations suggested by the incumbent LECs for mobile wireless broadband.⁶

This mismatch between mobile broadband demand and benefits and proposed funding levels has emerged as one of the most critical issues confronting the Commission in the wake of the submission of the Wireline Companies Proposals. The choice presented to the Commission by these proposals is whether the Commission's transformation of its universal service regime and mechanisms should protect the interests of incumbents at the expense of facilitating access by consumers and businesses to advanced mobile wireless broadband networks throughout rural America.

CTIA agrees that much is at stake. It observes that the inadequacy of the \$300 million in funding for mobile broadband proposed in the ABC Plan is illustrated by a 2008 CTIA cost study

⁶ Cellular South Comments at 11-13. *See* T-Mobile USA, Inc. ("T-Mobile") Comments at 22 (arguing that the \$300 million budget proposal for mobile wireless broadband thwarts an overwhelming consumer preference of mobile services).

that showed that a \$22 billion investment would be necessary to accomplish ubiquitous 3G deployment in unserved areas.⁷ CTIA cautions the Commission that it:

must ensure that consumer preferences do not take a back seat to legacy technologies or business models. New support mechanisms should therefore be set and sized in an amount that is commensurate with the importance of a service to consumers. In so doing, the Commission must weigh carefully whether the framework it adopts will help or impede the twin goals of maintaining and advancing the United States' mobile broadband leadership and fulfilling the Act's mandate that it ensure access to "reasonably comparable" services in rural areas through "specific, predictable and sufficient" support mechanisms.⁸

SouthernLINC Wireless agrees that the CAF funding proposals made by the incumbent carriers would have alarming and far-reaching effects in rural areas, arguing that the proposals "will disadvantage wireless carriers unfairly and will delay (and perhaps even reverse) the continued deployment of broadband services."⁹ SouthernLINC Wireless indicates specifically that "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."¹⁰

Free Press explores the reasons for the wide mismatch between what consumers and businesses are demanding in the rural telecommunications marketplace, and the funding proposals advanced by wireline carriers, and concludes that the incumbents' proposals "merely represent each group—large price cap incumbents and small rate-of-return incumbents—offering

⁷ CTIA—The Wireless Association® ("CTIA") Comments at 14.

⁸ *Id.* at 16 (footnote omitted).

⁹ Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") Comments at 21.

¹⁰ *Id.* SouthernLINC Wireless also argues that:

[T]he 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.

a plan that promotes that group’s own self-interest, at the expense of consumers and small wireless carriers.”¹¹ U.S. Cellular agrees, pointing out that “[i]t is wrong to remove support from the wireless industry, then claim that the fund size would have to be increased to accommodate the needs of wireless consumers. *In fact, the ABC Plan represents the theft of support from one class of carrier, for the benefit of another.*”¹² U.S. Cellular concludes that this “theft is from wireless consumers, who pay into the fund but will not see the benefits that Congress intended to deliver.”¹³

Another troubling aspect of the ABC Plan is its proposal to lock in support to funding recipients for ten years.¹⁴ NASUCA points to two problems with the Price Cap Carriers’ proposal. First, “frankly speaking, [it] is absurd”¹⁵ to “assume[] that, in this continually-changing broadband world, neither the benchmark cost nor the modeled cost of providing broadband in a

Id.

¹¹ Free Press Comments at 7. Free Press notes that, “[c]urrently, price cap incumbent carriers receive about \$500 million in annual High Cost Fund support, or about 12 percent of the total. Under the Joint Industry Framework, this support would increase to \$2.2 billion, or half of the total.” *Id.*

¹² United States Cellular Corporation (“U.S. Cellular”) Comments at 16 (emphasis in original).

¹³ *Id.* Ad Hoc explains that:

Both the ABC Plan and RLEC Plan focus on preserving USF funding for traditional wireline services, directing only limited amounts to the use of alternative technologies such as wireless and satellite which are often more cost-effective for broadband deployments in high cost areas. Indeed, the Carrier Plans propose that nearly every dollar currently included in the HCF [high cost fund] be reserved for price cap carriers and rate of return carriers.

Ad Hoc Telecommunications Users Committee (“Ad Hoc”) Comments at 7.

¹⁴ The ABC Plan proposes \$2.2 billion in funding per year for price cap carriers, with broadband providers receiving support for a term of ten years. *See* ABC Plan, Attach. 1, at 2. NASUCA explains that the ten-year funding guarantee will be phased in, *i.e.*, the guarantee will be in effect for ten years beyond the date that each Census Block receives support. National Association of State Utility Consumer Advocates (“NASUCA”) Comments at 38 n.83.

¹⁵ NASUCA Comments at 38.

currently-unserved area will change.”¹⁶ Thus, the ten-year lock-in proposal could amount to an insurance policy for price cap carriers to protect their CAF support levels even if benchmark and modeled cost levels decline. And, second, the Price Cap Carriers propose that “the entry of an unsupported broadband competitor . . . does not affect the level of CAF support.”¹⁷ NASUCA criticizes the proposal to keep CAF support levels stable during a ten-year period even if cost or revenue factors in the service area have changed sufficiently to prompt competitive entry.¹⁸

On the other hand, a third problem is that competitive entry may not be very likely. In fact, as U.S. Cellular points out, the proposed ten-year lock in of CAF support could pose a barrier to competitive entry. “A new entrant would not be able to access funding to improve services, even if consumers preferred the new entrant’s offerings.”¹⁹ This is a circumstance that Congress intended to prevent in the Telecommunications Act of 1996 (“1996 Act”),²⁰ “when it made support available to newcomers. It reduced the barrier to competition and consumer choice that implicit support mechanisms previously represented.”²¹

The budget proposals made by the incumbent LECs add up to a triple whammy for consumers and businesses in rural areas seeking affordable access to advanced mobile wireless broadband networks. First, the incumbents’ proposals would dramatically increase their own

¹⁶ *Id.*

¹⁷ ABC Plan, Attach. 1, at 3.

¹⁸ NASUCA Comments at 39. *See* U.S. Cellular Comments at 8. *Cf.* Ad Hoc Comments at 11 (footnote omitted) (observing generally that “[b]y locking in technology and carrier choices, the Carrier Plans will necessarily result in less broadband deployment to fewer subscribers than a competitively designed disbursement program that permits all types of carriers to use a variety of technologies to serve high cost locations that remain unserved or underserved today”).

¹⁹ U.S. Cellular Comments at 8.

²⁰ Pub. L. No. 104-104, 110 Stat. 56 (1996).

²¹ U.S. Cellular Comments at 8.

share of universal service support, and lock it in for ten years. Second, support available to wireless competitive ETCs would be sharply reduced from current (capped) levels.²² And, third, the incumbents would constrict overall CAF funding levels,²³ thus preventing any growth in support available for mobile broadband.

These budget proposals hardly represent a foundation for the Commission's transformation of its universal service regime, unless, as Cellular South has observed, the Commission desires to turn the regime into a means for protecting the interests of incumbents at the expense of consumers and businesses in rural areas throughout the country. Such a choice would not constitute sound public policy, and Cellular South therefore joins with other commenters in urging the Commission to reject the incumbents' budget proposals and to adopt support mechanisms that provide for a relatively even distribution of support between wireline and mobile wireless broadband networks, taking into account factors such as consumer demand.

U.S. Cellular, for example, has proposed an annual funding level of \$1.3 billion for mobile wireless broadband networks and services,²⁴ and RCA has suggested a funding level of \$1.5 billion annually.²⁵ Cellular South endorses these proposals, since providing this level of support for mobile broadband (which is roughly equivalent to the level of capped support currently avail-

²² See, e.g., MTPCS, LLC d/b/a Cellular One ("MTPCS") Comments at 3 (indicating that "CETCs would receive only any amounts the ILECs do not take, as little as zero and never more than one-quarter of the firmly-capped amounts CETCs receive today").

²³ See, e.g., Joint Letter at 2 (explaining that the incumbents' funding proposals are intended "to constrain the size of the total high cost fund within a \$4.5 billion per year budget").

²⁴ Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, FCC, WC Docket No. 05-337 *et al.* (filed July 29, 2011), at 5.

²⁵ RCA Comments at 13-14 (proposing a \$1.5 billion target "in the spirit of compromise and fiscal restraint"). RCA notes that "the ultimate funding allocation should depend on the outputs of a forward-looking cost model" *Id.*

able to competitive ETCs) would materially advance the Commission’s goals for bringing mobile broadband to consumers and businesses in rural areas.

B. There Is Strong Support in the Record for the Adoption of Separate Funding Mechanisms for Wireline and Mobile Wireless Broadband Networks.

The Commission in the *Public Notice* sought comment “on providing separate funding for fixed broadband (wired or wireless) and mobility[.]”²⁶ and Cellular South has urged the Commission to take such a step, pointing out that separate funding mechanisms for wireline and mobile wireless broadband have been suggested in the Wireline Companies Proposals and the State Member Plan.²⁷ Several commenters agree.

ITTA, for example, indicates that “[f]ixed and mobile broadband services are sufficiently different in nature and price that the Commission should develop separate support programs for each within the CAF.”²⁸ The Rural Associations also support the adoption of separate funding mechanisms, explaining that “[i]t will be far more efficient and effective for the Commission to adopt separate fixed and mobile support mechanisms than to seek a ‘one-size-fits-all’ mechanism that is likely to be too unwieldy to address successfully the needs of either rural wireline or wireless carriers, or their customers.”²⁹

U.S. Cellular also “strongly advocate[s] in favor of two funds,”³⁰ indicating that, “[i]rrespective of whether mobile networks prove to be a complete substitute [for wireline networks] within a home or business for all data needs, each platform is distinct, both have value to

²⁶ *Notice* at 2.

²⁷ Cellular South Comments at 7.

²⁸ Independent Telephone and Telecommunications Alliance, *et al.* (“ITTA”) Comments at 6. *See* Rural Independent Competitive Alliance Comments at 5 (arguing that “separate fixed and mobile support mechanisms should be established”).

²⁹ Rural Associations Comments at 12.

the country, and funds must be devoted to ensuring that both are properly developed in rural and high-cost areas.”³¹ In addition, while RCA expresses the view that using a single funding mechanism for both wireline and mobile wireless broadband could have certain advantages,³² RCA indicates that it “would be willing to support separate funds, provided that the overall allocation of resources is equitable and competitively neutral.”³³

This support in the record confirms Cellular South’s view that there are strong policy grounds for establishing a separate CAF mechanism for mobile wireless broadband deployment—with *sufficient* levels of funding. Cellular South thus reiterates its suggestion that the Commission take this approach.

C. Several Parties Agree with Cellular South That the Commission Should Cease Using Rate-of-Return and Embedded Cost Mechanisms To Disburse High Cost Support.

Cellular South in its Comments recommends that the Commission should heed its own prior conclusions by transforming its universal service mechanisms in a manner that excludes any further use of rate of return or embedded costs as funding mechanisms.³⁴ The record presents substantial support for the Commission’s leaving these mechanisms behind.

Viaero Wireless goes to the root of the problem: “Linking CAF support to rural incumbent LECs’ embedded costs would be the antithesis of reform.”³⁵ The Wood Paper presents a

³⁰ U.S. Cellular Comments at 20.

³¹ *Id.*

³² Rural Cellular Association (“RCA”) Comments at 11.

³³ *Id.*

³⁴ Cellular South Comments at 15-17.

³⁵ N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“Viaero Wireless”) Comments at 15.

detailed explanation of the basis for the conclusion reached by Viaero Wireless: The drawbacks of rate-of-return regulation include the fact that this regulation:

- (1) Creates incentives for rural incumbents to over-invest in network facilities.
- (2) Provides no incentives for carriers to develop and implement cost-control mechanisms.
- (3) Does not give carriers any incentives to share network facilities or engage in joint ventures or other arrangements for purposes of investing in common facilities.
- (4) Provides no incentives for carriers to maximize the level of consumer demand for their services.³⁶

The Wood Paper concludes that:

The result of this [rate-of-return] regulatory legacy is that much of the country's rural area continues to be served by a larger number of small carriers. These carriers have weak incentives to control their costs, and no incentives to look outward to explore other means of operating more efficiently. At present, over two billion dollars are being devoted annually to an effort to permit these carriers to recover their "actual" level of cost, with no ability to determine how much of this support is necessary to support the operations of efficient carriers operating in high-cost areas, and how much represents wasteful and inefficient spending.³⁷

These difficulties inherent in rate of return and embedded (or "actual") costs as a basis for high cost support disbursement have led commenters to encourage the Commission to end its reliance on these mechanisms as it moves to transform the universal service regime. Ad Hoc, for example, emphasizes "the need for the Commission to move away from use of embedded costs or rate of return based distribution mechanisms for allocation of CAF funds."³⁸ Ad Hoc pre-

³⁶ See Viaero Wireless Comments, Exhibit 2, Don Wood, "No Steps Forward, Two Steps Back: An Analysis of the RLEC Plan for Regulatory Reform" ("Wood Paper"), at 36-50.

³⁷ *Id.* at 3-4.

³⁸ Ad Hoc Comments at 24.

viously has been critical of the embedded cost model, describing it as a “guaranteed cost recovery mechanism, which rewards poor judgment and wasteful investment”³⁹

Free Press shares these reservations, criticizing the joint wireline industry proposal for offering no meaningful reform of the high cost mechanism for rate-of-return carriers. “The proposal preserves the current broken system of treating rural rate-of-return carriers different from larger, ‘non-rural’ price cap carriers. The plan does nothing to reform the inefficiencies and perverse incentives inherent in the historical cost support methodology.”⁴⁰

RCA points to the inefficient subsidization of carriers that results from using embedded costs to disburse high cost support, as well as the possibility that the embedded cost mechanism creates disincentives for carriers to operate efficiently, and concludes that the use of cost models would be a more effective means of disbursing CAF support.⁴¹

Finally, U.S. Cellular expresses concern regarding the prospect of the Commission’s continuing the use of rate-of-return and embedded cost mechanisms for disbursing CAF support, indicating that “[i]f the RLEC Plan is adopted, it would extend rate of return another ten years, out to 2022, keeping in place an inefficient subsidy mechanism that benefits carriers and not consumers, over a quarter of a century after the 1996 Act.”⁴² Such an outcome would be regrettable, especially in light of the conclusion reached in the Broadband Plan that “[r]ate-of-return regulation was not designed to promote efficiency or innovation; indeed, when the FCC adopted price-

³⁹ Ad Hoc Reply Comments, CC Docket No. 96-45 (filed Nov. 30, 2000) at 13-14.

⁴⁰ Free Press Comments at 8.

⁴¹ RCA Comments at 6 (citing *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6667-68 (para. 23) (2010)).

⁴² U.S. Cellular Comments at 38.

cap regulation in 1990, it recognized that rate of return does not provide sufficient incentives for broad innovations in the way firms do business.”⁴³

The record provides ample support for a conclusion by the Commission that rate-of-return and embedded cost support disbursement mechanisms have no place in a transformed universal service regime, one of the hallmarks of which will be to encourage and support broad innovations and efficient operations by carriers in their efforts to achieve ubiquitous deployment of advanced broadband networks.

D. The Record Supports Denying Incumbent LECs Any Right of First Refusal in Connection with the Disbursement of CAF Support.

In its Comments, Cellular South has strongly opposed the proposal to provide incumbent LECs with a right of first refusal (“ROFR”) regarding the disbursement of high cost support in their service areas.⁴⁴ The record provides substantial support for Cellular South’s position.

The ROFR proposal—by definition—would exclude wireless competitive eligible telecommunications carriers (“ETCs”) in areas in which incumbents exercise their ROFR exclusivity rights. Such a result would be inimical to the interests of consumers throughout rural America. For example, “more than a million Mississippians . . . rely daily and exclusively on wireless technology to communicate with loved-ones, conduct business, receive critical healthcare or further their education”⁴⁵ Governor Haley Barbour is concerned that the ROFR proposal

⁴³ Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) (“Broadband Plan”), at 147 (footnote and internal quotation marks omitted), *quoted in* U.S. Cellular Comments at 40 n.106.

⁴⁴ *See* Cellular South Comments at 14-15.

⁴⁵ Letter from Haley Barbour, Governor, State of Mississippi, to Julius Genachowski, Chairman, FCC, WC Docket No. 10-90, *et al.* (filed Aug. 22, 2011), at 2.

threaten[s] to undermine competition, stifle access and slow broadband adoption (wireless or otherwise) in Mississippi and other rural parts of the United States.”⁴⁶

In addition, the Mississippi PSC points out that, “[b]y granting ILECs [a] right of first refusal, the ABC Plan proposal would effectively remove a state’s ability to (1) designate carriers as eligible to receive funding and (2) perform the necessary public interest analysis [before awarding any carrier USF eligibility].”⁴⁷ The Mississippi PSC concludes that “[t]he right of first refusal would give ILECs a unilateral right to exclude competitors from USF support (or the proposed ‘Connect America Fund’ support) without any state participation or input.”⁴⁸

U.S. Cellular points out that, if the ROFR proposal were adopted, then “almost all of the available support over the next ten years [would be distributed] to fixed wireline incumbents[,]”⁴⁹ and that cutting off wireless carriers from this support would be a mistake because “[i]n ten years, a ubiquitous LTE deployment would generate far more economic benefit to our country than the extension of last-mile DSL-speed services that are useful only at the home or business site.”⁵⁰

Cellular South agrees with CompTel that, since “neither the ABC Plan nor its legal analysis provides any justification for the . . . notion that the ILEC should get 100% of proposed funding . . . the Commission should reject [the] proposed right of first refusal.”⁵¹ CompTel is also critical of the proposal that the ROFR would be triggered if an incumbent LEC has made

⁴⁶ *Id.*

⁴⁷ Mississippi Public Service Commission (“Mississippi PSC”) Comments at 2.

⁴⁸ *Id.*

⁴⁹ U.S. Cellular Comments at 32.

⁵⁰ *Id.*

⁵¹ CompTel Comments at 25-26.

broadband service available to at least 35 percent of locations in its service area,⁵² and RCA criticizes the 35 percent threshold as well as a download speed trigger “of merely 200 kbps,”⁵³ concluding that:

[T]he right of first refusal would be based on minimal deployments that in many cases will lag far behind the speeds the rural wireless providers are providing or could provide with sufficient support in overlapping areas. And the net result of the 200 kbps threshold would be to ensure that ILECs possess a right of first refusal in the overwhelming majority of service areas, leaving rural consumers with few, if any, alternatives.⁵⁴

MTPCS persuasively describes a fundamental problem with the ROFR proposal, pointing out that “[n]o carrier should have a right of first refusal over a portion of the Fund—certainly not as to support for areas where several carriers have made significant investments. All carriers serving an area deserve an equal opportunity to continue providing service to consumers.”⁵⁵ Cellular South would add to this the fact that the ROFR proposal is also problematic because giving incumbents the unilateral opportunity to lock in high cost support would stymie competitive entry, thus depriving consumers and businesses in rural areas of competitive broadband service choices.

Even if one were to accept the Commission’s tentative view that CAF support should be awarded only to a single carrier in a service area⁵⁶—which Cellular South does not⁵⁷—the ROFR

⁵² *Id.*

⁵³ RCA Comments at 15.

⁵⁴ *Id.* at 16 (footnote omitted).

⁵⁵ MTPCS Comments at 25.

⁵⁶ The *CAF NPRM* proposes that “only one entity in any given geographic area receive support in the first phase of the CAF” and seeks comment on whether its long-term reforms also should limit support to one broadband provider in a service area. See *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*

proposal must be rejected because it is not competitively neutral to give only the incumbents the opportunity to claim CAF support and, in doing so, keep such support away from other service providers.

By cementing a single carrier into a dominant position throughout great stretches of rural America, the Commission will adversely affect the marketplace, perhaps for decades. Consumers will be less able to choose the carrier that best suits their needs and the marketplace will not discipline carriers. In its very first order following the 1996 Act, the Commission stated:

Federal universal service support will be distributed based on the interstate portion of the difference between the forward-looking economic cost of providing service and a nationwide revenue benchmark. The amount of support will be explicitly calculable and identifiable by competing carriers, ***and will be portable among competing carriers, i.e., distributed to the eligible telecommunications carrier chosen by the customer.***⁵⁸

A critical component of making universal service mechanisms work with competitive markets is ***portability***, that is, providing support only to the carrier that a consumer chooses. The

Board on Universal Service, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4648 (para. 281), 4677 (para. 402) (2011) (“*CAF NPRM*”).

⁵⁷ Cellular South agrees with USA Coalition’s argument that:

By providing support for a single carrier in areas and denying support to all others, the FCC risks these areas becoming monopolistic backwaters where consumers’ only broadband option is the service provided by the ILEC. This future landscape stands in sharp contrast to that of urban areas, where competition will continue to spur carriers to deploy and promote ever faster networks and cheaper services in an attempt to win and retain customers.

Universal Service for America Coalition (“USA Coalition”) Comments at 18-19.

⁵⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8786 (para. 15) (1997) (“*USF First Report and Order*”) (subsequent history omitted) (emphasis added).

Commission has always embraced portability, even though it has not been fully implemented,⁵⁹ and the courts have ruled that the statute requires portability.⁶⁰

The proposed mechanism would cut against the statutory mandate that consumers in rural areas should have access to broadband services⁶¹ comparable to those available in urban areas. If wireless competitive ETCs are blocked from being eligible to receive a substantial portion of CAF support, as a result of the ROFR mechanism, then consumers in rural areas would have no realistic opportunity to obtain mobile wireless broadband services comparable to those available in urban areas.

E. Proposals for Access Recovery Subsidies Should Be Rejected.

The Wireline Companies Proposals suggest that the Commission should provide Access Recovery Mechanism (“ARM”) subsidies from universal service support mechanisms to replace a substantial portion of revenue reductions that incumbent LECs would experience if they are required to transition their terminating per-minute rates for some services to \$0.0007.⁶² Cellular

⁵⁹ See, e.g., *id.* at 8788, and 8944; *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, *Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 8078, 8113 (1999); *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, *Memorandum Opinion and Order*, 15 FCC Rcd 16227, 16232 (2000).

⁶⁰ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000).

⁶¹ Cellular South notes that it has challenged the view that the Commission has jurisdiction to provide universal service support to providers of information services such as broadband access services. Cellular South has demonstrated that the Commission currently lacks such jurisdiction, and that it must take steps to remedy this lack of jurisdiction as a prerequisite to any decision to allocate universal service support to broadband providers. See Cellular South Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011), at 6-28; Cellular South Comments at 2 & Appendix (“Commission Jurisdiction To Fund Broadband Services with Universal Service Support”).

⁶² See ABC Plan, Attach. 1, at 12-13; *Notice* at 14 (seeking comment on an option that “would provide [for rate-of-return carriers] a fixed percentage of recovery (which could be 100%) of all reduced terminating access charges (both intrastate and interstate) This recovery mechanism would lock in revenue streams, including intrastate access revenues”).

South agrees with numerous commenters who argue that the Commission should not adopt the ARM proposal.

The record provides several reasons supporting a conclusion that the Commission should reject the ARM proposal. *First*, there is no evidence that it is needed. As Free Press explains, “the access replacement fund is misguided. It merely exists to ensure already unnecessary subsidies continue, albeit under a different name. No carrier, neither rate of return nor price cap, has demonstrated that any access replacement fund is necessary”⁶³ T-Mobile points out that “[n]either the ABC Plan nor the Joint Letter propose any showing that ARM support is necessary to preserve ILEC service in any area”⁶⁴

Second, the access recovery proposals would harm consumers. As Google observes, ARM would amount to “continued implicit subsidies that impede progress and impose inefficient costs on subscribers.”⁶⁵ Sprint indicates that, “[i]n its proposed form, the ARM would burden consumers with a price tag in the hundreds of millions of dollars.”⁶⁶ In addition, T-Mobile argues that, to the extent consumers have other competitive options to services provided by incumbents, providing ARM subsidies to incumbents from Universal Service Fund (“USF”) or CAF mechanisms would arguably violate “the statutory principle that universal service should ‘benefit the customer, not the carrier.’”⁶⁷

⁶³ Free Press Comments at 14-15.

⁶⁴ T-Mobile Comments at 14. *See* Sprint Nextel Corporation (“Sprint”) Comments at 22 (noting that “[t]he proposed ARM would require no demonstration of the need for support”).

⁶⁵ Google Inc. (“Google”) Comments at 14.

⁶⁶ Sprint Comments at 22.

⁶⁷ T-Mobile Comments at 15 (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) (“*Alenco*”).

Third, the proposal is anti-competitive. RCA, for example, argues that the ARM subsidies “would distort competition[,]”⁶⁸ and concludes that “[i]n today’s dynamic and competitive broadband marketplace, there is simply no justification for providing revenue guarantees to one class of providers and not to others.”⁶⁹ SouthernLINC Wireless explains that the ARM proposal, which would involve “the transformation of high cost support towards a revenue replacement mechanism for the wireline industry[,]” could not possibly be considered competitively neutral.⁷⁰ T-Mobile concludes that the proposal would violate Section 254 of the Communications Act of 1934 (“Act”).⁷¹

And, *fourth*, the proposed ARM subsidies would impair the efficient use of universal service funds. According to RCA, “[r]evenue guarantees would . . . drastically reduce ILECs’ incentives to operate efficiently, by eliminating the impetus to cut costs in response to declining revenues.”⁷²

For all these reasons, Cellular South joins with other commenters in urging the Commission to reject the proposed ARM subsidies. The Commission’s transformation of its universal service and intercarrier compensation regimes should not provide unilateral benefits to incum-

⁶⁸ RCA Comments at 23.

⁶⁹ *Id.*

⁷⁰ SouthernLINC Wireless Comments at 11. Sprint observes that the ARM subsidy “would be available exclusively to ILECs, yet would be funded by contributions from service providers (or, more accurately, their end user subscribers) that derive no benefit from the ARM.” Sprint Comments at 21. Sprint also notes that “[t]he fact that many USF contributors compete against the ILEC or the ILEC’s corporate affiliates only exacerbates the anti-competitive impact of a revenue guarantee mechanism that is available only to select carriers.” *Id.* at 21-22.

⁷¹ T-Mobile Comments at 15 (arguing that “[t]he ARM proposed in the ABC Plan would not be consistent with the statutory requirements of ‘competitively-neutral funding’ and portability and would result in ‘protection [of ILECs] from competition, the very antithesis of the Act’”) (footnote omitted) (quoting *Alenco*, 201 F.3d at 620, 622)).

⁷² RCA Comments at 23.

bent LECs and should not be carried out on the backs of consumers and carriers competing against the incumbents.

III. CONCLUSION.

The Commission has before it “consensus” proposals from the wireline industry, for universal service and intercarrier compensation reform, that demonstrate the wireline industry’s ability to agree with itself, but that fail to outline any reasonable or acceptable path for the transformation of the Commission’s universal service and intercarrier compensation rules and policies.

Cellular South respectfully urges the Commission to reject the wireline industry’s proposals, and instead to adopt policies and rules for universal service and intercarrier compensation that are not driven by the wireline industry’s agenda and instead ensure that the Commission will meet its goals for the ubiquitous deployment of both wireline and mobile wireless broadband networks in rural America.

Respectfully submitted,
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September 6, 2011