

**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 RCA—THE COMPETITIVE CARRIERS ASSOCIATION

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RCA—The Competitive Carriers Association (“RCA”) hereby submits these reply comments in connection with the Commission’s recent Public Notice on proposals to reform the Universal Service Fund (“USF”) and Intercarrier Compensation (“ICC”) regimes.¹ RCA is encouraged by the groundswell of support for technology-neutral reforms that would put providers of cost-effective and consumer-preferred wireless services on equal footing with wireline incumbents for high-cost support. The path forward should now be clear. The Commission should embrace competitive providers’ proposals as the best blueprint for reform, and categorically reject efforts of incumbent local exchange carriers (“ILECs”) to put their interests ahead of consumers’ under the so-called “ABC Plan.”

¹ Public Notice, *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90 *et al.*, DA 11-1348 (rel. Aug. 3, 2011) (“Public Notice”).

INTRODUCTION

The vast majority of commenters filing in response to the Public Notice share RCA's vision of a truly technologically and competitively neutral support mechanism for high-cost areas. Wireless carriers, satellite operators, cable providers, and competitive local exchange carriers ("CLECs")—that is, all major technological alternatives except wireline incumbents—agree that any support mechanism should elevate the interests of consumers over those of any particular set of providers, operate in a technologically and competitively neutral manner, and avoid automatic preferences for inefficient ILEC networks. RCA looks forward to working closely with the Commission to ensure that the structure of the Connect America Fund ("CAF") reflects this growing consensus for true reform to the inefficient USF and ICC regimes.

As RCA explained in its opening comments, a technologically and competitively neutral support mechanism is necessary to target support to the most efficient provider (which is often wireless) and to honor the growing consumer preference for wireless technologies.² Chairman Genachowski has trumpeted "mobile [a]s the future of broadband,"³ and the Department of Justice recently characterized "mobile wireless telecommunications services" as "indispensable both to the way we live and to the way companies do business throughout the United States."⁴

² Comments of the Rural Cellular Association, WC Docket No. 10-90 *et al.*, at 7-8 (filed Aug. 24, 2011) ("RCA Comments") (citing studies from the Commission, the Pew Research Center, and Morgan Stanley showing an accelerating migration of consumers from wireline to wireless service offerings).

³ Chairman Julius Genachowski, Federal Communications Commission, Prepared Remarks at a Conference of the National Association of Regulatory Utility Commissioners, "Broadband: Our Enduring Engine for Prosperity and Opportunity" (Feb. 16, 2010).

⁴ Complaint, *United States v. AT&T, Inc.*, No. 10-01560, ¶ 1 (D.D.C. Aug. 31, 2011); *see also id.* ("Innovation in wireless technology drives innovation throughout our 21st-century information economy, helping to increase productivity, create jobs, and improve our daily lives. Vigorous competition is essential to ensuring continued innovation and maintaining low prices.").

Indeed, even ILECs admit that consumers are rapidly cutting the cord and opting for wireless services instead, stating that the steady “losses [of subscribers] to wireless carriers, VoIP providers, and other competitors have taken a severe toll on ILECs’ standing in the overall marketplace,” and that “analysts expect the decline in wireline voice services to continue.”⁵ In today’s telecommunications marketplace, with a growing number of competing technologies offering more efficient and cost-effective voice and broadband services to consumers, the Commission should adopt reforms that harness these benefits and ensure that support reaches the most efficient provider, regardless of the technology deployed. In particular, RCA recommends—and a growing number of other parties agree—that the Commission should rely on forward-looking cost models to identify the appropriate level of support for wireline and wireless providers, avoid technological biases in allocating high-cost support, provide a sufficient amount of support for consumer-preferred wireless services, and target support to providers that successfully attract and retain customers.

Meanwhile, the supposed “consensus” that ILECs claim for their wireline-centric ABC Plan appears to consist almost entirely of ILECs—which is no surprise, given that the plan would lavish on ILECs a host of unjustifiable preferences designed to insulate them from competition. The ABC Plan falls well short of offering any legitimate justifications for its major proposals—which appear to include an ILEC right of first refusal covering 93 percent of USF support, and the relegation of competitive providers to an orphan fund comprised of the remaining 7 percent—and the proponents of the Plan fare no better in their opening comments. The Commission should accordingly reject ILECs’ efforts to entrench wireline technology under the

⁵ Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon, and Windstream, WC Docket. No. 10-90 *et al.*, at 31 (filed Aug. 24, 2011) (“Joint ILEC Comments”).

banner of “reform,” and instead adopt the true, technologically and competitively neutral reforms that RCA and others have long endorsed.

DISCUSSION

I. THE RECORD REFLECTS WIDESPREAD SUPPORT FOR ENSURING THAT ANY NEW FUNDING MECHANISM IS TECHNOLOGY-NEUTRAL

The opening comments reveal an emerging consensus among wireless, satellite, cable, and CLEC providers in favor of technology-neutral reforms and opposed to the wireline-centric proposals in the ABC Plan. The National Cable and Telecommunications Association (“NCTA”), for instance, points out that the ABC Plan’s proposals “demonstrate a consistent bias in favor of incumbent LECs at the expense of all other providers” and urges the Commission to eliminate these biases in favor of a “modern, market-based regime.”⁶ The Satellite Broadband Providers coalition similarly condemns the ABC Plan as seeking to institutionalize “systematic biases in favor of wireline incumbents,” and proposes an alternative path forward that would be “competitively and technologically neutral and market-based.”⁷ RCA agrees fully with these observations. The principle of technological neutrality should drive every aspect of the Commission’s USF reform process—in determining the boundaries of supported areas, setting appropriate support levels in those areas, and deciding which providers receive support.⁸

⁶ Comments of the National Cable and Telecommunications Association, WC Docket No. 10-90 *et al.*, at i (filed Aug. 24, 2010) (“NCTA Comments”).

⁷ Comments of Satellite Broadband Providers, WC Docket No. 10-90 *et al.*, at iii, 5 (filed Aug. 24, 2011) (“SBP Comments”).

⁸ Indeed, the principle of technological neutrality should drive the Commission’s reform efforts in other areas as well, such as in addressing the inability of wireless carriers to impose access charges for terminating inter-MTA land-to-mobile calls on their network—an asymmetry repeatedly raised by Sprint in comments in this proceeding and in a formal petition to the Commission. *See* Comments of Sprint Nextel Corp., WC Docket No. 10-90 *et al.*, at 13-15 (filed Apr. 18, 2011) (discussing asymmetry and attempts at reform).

A number of parties support RCA's specific proposals for reform. For instance, RCA has proposed using forward-looking cost models that would account for the cost-effectiveness of wireless and other technologies,⁹ and this proposal finds widespread support among commenters. Wireless providers such as Cellular South explain that such models would "adhere to the principle of competitive neutrality and would help ensure the efficient use CAF support."¹⁰ Cellular One has presented a detailed cost model that would require "divided, rather than duplicate, funding where multiple CETCs exist" (*i.e.*, true portability, or "success-based" support), and would "take advantage of any cost savings or innovations they bring to broadband deployment."¹¹ The use of non-wireline-specific cost models also finds support among VoIP providers such as Comcast, which envisions using such models to take into account "the expected cost difference between competing technologies" when determining support levels.¹² In addition, satellite providers propose the use of a forward-looking cost model as an alternative to their other auction-based proposals, and emphasize that any such model "should be based on the costs of the most efficient provider," without "assum[ing] wireline costs or the use of wireline technologies."¹³ Relatedly, parties also agree that the use of cost models should be

⁹ See RCA Comments at 5-9.

¹⁰ Comments of Cellular South, WC Docket No. 10-90 *et al.*, at 9 (filed Aug. 24, 2011) ("Cellular South Comments").

¹¹ Comments of MTPCS, LLC d/b/a Cellular One, WC Docket No. 10-90 *et al.* (filed Aug. 24, 2011) ("Cellular One Comments").

¹² Comments of Comcast, Corp., WC Docket No. 10-90 *et al.*, at 31 (filed Aug. 24, 2011) ("Comcast Comments").

¹³ SBP Comments at 20-21.

sensitive to the particular geographic challenges in certain areas of the country, such as Alaska, Hawaii, tribal lands, and U.S. territories.¹⁴

Other technology-neutral reforms proposed by RCA—such as eliminating an ILEC right of first refusal (“ROFR”) and defining “supported areas” according to something other than an ILEC’s wire center—also enjoy broad support across different industry segments. Satellite providers oppose “any attempt to . . . provide funding preferences to incumbent wireline providers,” and propose making the ILEC ROFR unavailable in areas that are “served more cost-efficiently by non-incumbent wireline technologies” or in areas that “will be competitive in the near- to mid-term.”¹⁵ RCA agrees with these proposals, and would add that even where an ILEC already provides some form of broadband to a *majority* of households, it *still* should not enjoy an ROFR when a competitive provider could build out to the supported area at lower cost than the incumbent. Thus, RCA also agrees with cable providers such as Time Warner Cable, which has urged the Commission to “reject *any* proposal . . . to establish a right of first refusal” to ILECs.¹⁶ Other cable commenters have echoed this call, pointing out that an ILEC ROFR would actually “increase the size of subsidies needed to support broadband in unserved areas”¹⁷ and ensure that “a more efficient provider would be precluded from the opportunity to offer service at a lower

¹⁴ See, e.g., Comments of General Communication, Inc., WC Docket No. 10-90 *et al.*, Appendix A, at 1 (filed Aug. 24, 2011). RCA also agrees with GCI that “allow[ing] . . . CETC line growth” in Alaska would “reflect[] the need to increase wireless and broadband penetration in Alaska Native lands to ‘catch up’ with the rest of the country.” *Id.*

¹⁵ SBP Comments at 18-19.

¹⁶ Comments of Time Warner Cable Inc., WC Docket No. 10-90 *et al.*, at 3 (filed Aug. 24, 2011) (emphasis added) (“TWC Comments”);

¹⁷ Comcast Comments at 28.

level of support.”¹⁸ It simply makes no sense to give less efficient wireline providers the ability to exclude more efficient wireless providers from high-cost support at a time when the Commission has a mandate to protect consumers from skyrocketing increases in USF costs.

Satellite and cable providers also support RCA’s proposal to use neutral geographic units when identifying high-cost areas and allocating support.¹⁹ Moreover, Google has opposed ILECs’ scheme to allocate support at the wire center level, and suggests in its comments that this proposal appears to be an effort to rig the support mechanism in favor of ILECs. As Google points out, “[u]sing wire centers as the basis for disbursement . . . makes it more likely that incumbents would meet the ‘right-of-first-refusal’ threshold of 35% deployment in a wire center”—which, in turn, would enable ILECs to shut out competitive providers from high-cost support in even greater numbers.²⁰ RCA agrees, and supports Google’s alternative proposal to “[a]ssess[] deployment costs by census blocks rather than by wire centers,” which would “expand the pool of broadband technologies and providers” to wireless and other competitive providers who “may be able to deploy broadband more quickly and efficiently.”²¹

In addition, RCA and its members share the deep concerns of the Satellite Broadband Providers regarding the establishment of separate support funds for wireline and wireless technologies. The Satellite Broadband Providers correctly warn against “relegating competitive providers to separate, underfunded support mechanisms”—particularly mechanisms that would

¹⁸ NCTA Comments at 15.

¹⁹ *See, e.g.*, SBP Comments at 5 (criticizing the ABC Plan for proposing to award support “based on geographic areas defined with reference to the incumbent’s network”); TWC Comments at 18-19 (“By choosing a geographic unit uniquely tied to an ILEC’s network footprint, the ABC Plan of course would make it extremely difficult, if not impossible, for competitors to qualify for support.”);

²⁰ Google Comments at 24 n.75.

²¹ *Id.* at 24.

target only so-called “extremely high-cost areas.”²² RCA agrees with these providers that an integrated high-cost support mechanism that puts all broadband providers on equal footing for CAF support represents the best policy outcome.

If the Commission does choose to create separate funds, then it should at least ensure that its “mobility fund” is geographically co-extensive with the wireline fund and large enough to support broadband service to “households for which competitive technologies are likely to be more efficient than incumbent wireline technologies.”²³ The Satellite Broadband Providers point out that “[t]his would amount to significantly more than the paltry 7 percent of the CAF contemplated by the ABC Plan.”²⁴ Indeed, in contrast to the \$300 million the ABC Plan would set aside for non-wireline technologies, RCA has proposed that a more appropriate funding target for a wireless-specific mechanism would be \$1.5 billion, or *half* of what the wireless industry contributes. RCA’s proposed funding level is in line with proposals appearing in other comments, and would provide sufficient funding to wireless providers to deploy more cost-effective broadband service in supported areas.²⁵

Finally, the record reflects growing support for RCA’s proposal to make ongoing funding success-based and fully portable among carriers. Cellular South notes that portability, which would allow universal service support to follow a switching customer to a new carrier, “is a key to implementing universal service funding in a competitively neutral way,” because it “ensures

²² SBP Comments at 10.

²³ *Id.* at 19.

²⁴ *Id.*

²⁵ *See, e.g.*, Cellular One Comments at 15 (proposing that the Commission should aim to disburse \$1.3 billion a year to wireless carriers, on top of any disbursements to satellite or other technologies); Comments of United States Cellular Corp., WC Docket No. 10-91, at v (filed Aug. 24, 2011) (supporting “a separate mobile broadband fund with an annual

that customer demand,” and not technology-based preferences, “drives funding disbursements.”²⁶ US Cellular likewise points out that full portability “would enhance the level of consumer choice and promote the efficient use of CAF support,” and would likely “minimiz[e] the amount of regulation needed to discipline market participants” by “empower[ing] consumers to change carriers when service quality is poor or prices are too high.”²⁷ RCA also agrees with these commenters that, to the extent the Commission creates separate funds for wireline and non-wireline technologies, it should allow funding “to move within and between each program, to respond to rural consumers’ decisions about which carrier best serves their needs.”²⁸ The Commission therefore should make full portability of funding a cornerstone of its market-based USF reform efforts.

II. ILECS HAVE FAILED TO OFFER ANY LEGITIMATE JUSTIFICATION FOR THE WIRELINE-CENTRIC SCHEME PROPOSED IN THE ABC PLAN

In the face of this broad-based support for truly technology-neutral reforms, ILECs’ continued attempts to justify the wireline-centric proposals in the ABC Plan ring hollow. In comments filed by the six supporters of the ABC Plan, ILECs assert that their plan to advantage wireline incumbents over more efficient competitors somehow “put[s] consumers first”²⁹—and, even more incredibly, that “technological neutrality is an essential element of . . . the ABC Plan.”³⁰ Nothing could be further from the truth. Instead, the ABC Plan would introduce a

budget of at least \$1.3 billion (which is approximately the size of current competitive ETC high-cost support disbursements, capped at 2008 levels”).

²⁶ Cellular South Comments at iv, 9.

²⁷ Comments of US Cellular Corp., WC Docket No. 10-90 *et al.*, at v, 36 (filed Aug. 24, 2011) (“US Cellular Comments”).

²⁸ Cellular South Comments at 10; *see also* US Cellular Comments at v.

²⁹ Joint ILEC Comments at 2.

³⁰ *Id.* at 10.

wireline bias at every step of the funding process, thereby undermining competition from non-wireline providers and ignoring the growing consumer preference for mobile broadband services. In particular, the proposals to grant ILECs exclusive access to funding and/or rights of first refusal, to impose draconian limits on the amount of support available to more cost-effective and consumer-preferred wireless carriers, and to tie CAF support to ILEC wire centers, are as far from a pro-consumer, technology-neutral solution as one can imagine. The justifications offered for these proposals in the ILECs' joint comments only reinforce the self-serving nature of the ABC Plan.

For instance, ILECs assert that a right of first refusal—which would allow a wireline incumbent to block more cost-effective wireless providers from CAF support—is necessary “to avoid the equitable and legal concerns that would arise from stranded LEC investments.”³¹ But a proposal designed merely to protect ILEC investments hardly “put[s] consumers first.” To the contrary, a right of first refusal puts *ILECs* first, at the expense of consumers who prefer wireless technology. Moreover, wireless carriers' concerns about stranded investment are entitled to no less weight than ILECs' concerns. ILECs also argue that “efficiency demands that the Commission leverage [ILEC] investments rather than abandoning them and funding duplicative facilities.”³² But “efficiency” demands no such thing; basic economics teaches that a blind reliance on historical investments, or “sunk costs,” leads to *inefficient* decision-making, and the *Alenco* court instructed the Commission to “ignore[]” such investments in “making the transition from monopolistic to competitive universal service.”³³ The Commission should rely instead on

³¹ *Id.* at 13.

³² *Id.*

³³ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5th Cir. 2000).

the “forward-looking costs” of providing service,³⁴ and should reject the implicit and unsupported assumption that an ILEC serving 35 percent of a high-cost area with minimal Internet speeds would be the most cost-effective provider for delivering robust service to the remaining 65 percent.

ILECs also fail to explain why the establishment of two separate funds—a \$4.2 billion fund for wireline incumbents and a \$300 million fund for wireless and satellite providers—would come close to resembling a technology-neutral or pro-consumer solution. The ABC Plan supporters readily admit that “[t]he amount of funding set aside under the ABC Plan specifically for mobility and satellite service is less funding than is distributed to competitive eligible telecommunications carriers (‘CETCs’) today.”³⁵ A massive reduction in funding for wireless providers is entirely at odds with consumers’ increasing preference for wireless over wireline; if anything, wireless providers’ success in attracting customers should entitle them to more support, not less. ILECs attempt to dispel these concerns by asserting that wireless providers “also would be entitled to compete for CAF support so long as their service offerings satisfy the definition of ‘broadband,’”³⁶ but that is simply not true. The right of first refusal proposed in ABC Plan would prevent wireless providers from competing *at all* with an ILEC that exercises that right. And even absent a right of first refusal, the proposal to allocate support at the wire center level, and not on a more neutral geographic basis, would skew any “competition” for funding strongly in the ILEC’s favor.³⁷ It is impossible for ILECs to maintain that an underfunded,

³⁴ *Id.*

³⁵ Joint ILEC Comments at 8.

³⁶ *Id.* at 7.

³⁷ See RCA Comments at 18 (“Using geographic measures that are tied to ILECs’ service areas would impose artificial, technology-specific boundaries on an increasingly dynamic broadband industry, as well as preclude participation by competitive carriers whose

geographically segregated “mobility fund,” coupled with the severe distortions to “competition” for funding in areas served by price cap ILECs, would place wireless and wireline providers on equal footing when seeking high-cost support.

The ILECs’ other arguments in support of their wireline-centric proposals are equally meritless. For instance, they defend their proposal to allocate support at the wire center level by asserting that a census-block-by-census-block approach “would be administratively unworkable,” but they fail to explain why other neutrally defined geographic areas would be unfeasible.³⁸ They also justify their proposal for an “access replacement” mechanism by citing the need to protect ILEC revenues from “flash cuts,”³⁹ even though every wireless broadband provider in the marketplace faces revenue fluctuations in the normal course of business and enjoys no such revenue guarantees. Without similar treatment for competitive carriers, the protection of ILEC revenues cannot be a legitimate goal of reform.

Nor would it be legitimate to base reform on ensuring that rate-of-return carriers have sufficient funds to repay their Rural Utilities Service (“RUS”) loans, as RLECs often contend.⁴⁰ Section 254(b) sets forth specific principles on which the Commission must base its USF policies, and nowhere does the statute allow the Commission to transform USF into a vehicle for subsidizing loan repayments to another government subsidy program.⁴¹ Indeed, basing reforms

coverage areas do not align with the ILEC’s and, as a result, may not be in a position to serve the full ‘supported area.’”).

³⁸ Joint ILEC Comments at 10.

³⁹ *Id.* at 24.

⁴⁰ See Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 *et al.*, at 16, 43-44 (filed Aug. 24, 2011).

⁴¹ See 47 U.S.C. § 254(b) (identifying principles on which “the Commission shall base policies for the preservation and advancement of universal service,” including “equitable and nondiscriminatory contributions” and “specific and predictable support mechanisms”).

on shoring up ILECs' balance sheets would not only be *ultra vires* under Section 254. Further, it is not clear at all whether RLECs are in danger of defaulting on RUS loans in the first place.⁴² In any event, it would make no sense to use one government subsidy to bail out another; each should promote its own independent statutory objectives.

In light of these serious problems with the ABC Plan, the Commission should not adopt any aspect of it without making significant modifications to incorporate the reforms advanced by RCA and other like-minded parties. The Commission also should disregard ILECs' warnings against upsetting the "carefully crafted compromises" that ILECs say undergird the Plan.⁴³ In particular, ILECs' threat that any modification would "put[] the whole Plan, and the support for it, in jeopardy"⁴⁴ should be irrelevant to the Commission's decision-making process.

Competitive carriers could just as easily assert that their reform proposals must be adopted *in toto*. ILECs apparently have become so accustomed to preferential treatment that they believe any change to USF or ICC policy must receive their blessing. But it is the Commission, not wireline monopolists, that Congress tasked with making these critical policy choices—and thankfully so, given that ILECs' proposals would undermine consumer preferences, frustrate competition, fund inefficient wireline deployment, and drive up the cost of broadband deployment to unserved and underserved areas.

⁴² See Comm Daily Notebook, *Communications Daily*, Aug. 5, 2011, at 9 (reporting that "a 5 percent reduction of Universal Service Fund cash . . . would not necessarily strand at-risk companies, because they might still have enough cash to pay off their debts.").

⁴³ Joint ILEC Comments at 5.

⁴⁴ *Id.*

CONCLUSION

For the foregoing reasons, the Commission should reject the wireline-centric scheme in the ABC Plan, and should instead adopt RCA's pro-consumer and technology-neutral proposals, which find wide support in the record and faithfully reflect the Commission's long-held principles for reform.

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