

**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 a 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
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL
SERVICE-INTERCARRIER COMPENSATION TRANSFORMATION
PROCEEDING**

Charles A. Acquard, Executive Director
NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

September 6, 2011

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
I. REPLIES TO SELECTED COMMENTS.....	7
A. BRIGHT HOUSE NETWORKS	7
B. AMERICAN CABLE ASSOCIATION.....	9
C. COMPTEL.....	9
D. GREENLINING INSTITUTE	11
E. METROPCS.....	12
F. PUBLIC KNOWLEDGE/BENTON FOUNDATION.....	13
G. THE TECH INDUSTRY PROPOSAL.....	14
H. VONAGE.....	16
II. THE ABC PLAN PROPONENTS' OPPOSITION TO EARNINGS REVIEW IS ANOTHER PART OF THE PROPOSED "HEIST."	16
III. CONCLUSION.....	19

**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 a 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
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL
SERVICE-INTERCARRIER COMPENSATION TRANSFORMATION
PROCEEDING**

I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”) submits these reply comments in response to the August 3, 2011 Public Notice in this proceeding.¹ These reply comments must be brief, given the still unjust and unreasonable (if not unconscionable) period of less than two weeks (eight business days) that the Federal Communications Commission (“FCC” or “Commission”) has allowed for reply

¹ DA 11-1348 (rel. August 3, 2011).

to what turned out to be 126 comments consisting of over 2800 pages.² Due to this limited time for review, most of the comments reviewed were merely skimmed for the key issue³: their view on the ABC Plan.⁴

As anticipated in NASUCA's initial comments, despite the Commission's muddying of the waters in the Public Notice, the focus of most of the comments was on the ABC Plan. And those comments – including by the ABC Plan supporters – show clearly that the Plan, despite being presented as an unprecedented “Grand Compromise,” really represents a “difficult compromise”⁵ among only large and small ILECs and their affiliates. Omitted from this compromise are all other segments of the telecommunications industry, including regulators and, more importantly from NASUCA's perspective, **consumers**, who will be asked to pay for this Plan that benefits the ILECs.⁶

² The original due date for reply was August 31, 2011. On August 25, 2011, NASUCA filed a motion requesting a mere 12 additional days for the reply comments. On August 26, 2011, the Rural Cellular Association also moved for an extension on the reply comments. On August 29, 2011, the Commission granted an extension to September 6, citing the volume of the initial comments and the impact of Hurricane Irene.

³ Especially because of the numerosity of the comments and the short time for review, NASUCA apologizes to any commenter that believes its comments have been mischaracterized or miscategorized here.

⁴ 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”). See also 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”). The Joint Letter also adopted many, but not well-specified portions of the Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011) (“RLEC Plan”).

⁵ See, e.g., Letter (July 29, 2011) at 1; letter to Congress (August 11, 2011) at 1.

⁶ It should be noted that the ABC Plan/Joint Letter's support is narrower – in terms of industry segments – than the CALLS Plan, the Missoula Plan or Chairman Martin's Proposal.

As stated by XO Communications LLC (“XO”),

the specific reform proposals targeted for comment in the Notice are a far cry from the “industry consensus” touted by the proponents of the ABC Plan (for price-cap LECs) and the RLEC Plan (for rate-of-return LECs). First, the Commission must surely see the farce in each group simply creating individual reform plans that suit their own interests and then together filing a “Joint Statement” asking for Commission adoption of these individual plans as a “consensus framework.” This “consensus” cannot be considered meaningful when neither of the individual proposals impacts the other group of LECs. Second, the Commission must bear in mind that neither the ABC Plan nor the RLEC Plan includes input or agreement from competitive carriers, despite the dramatic impacts on them. Thus, there is similarly no meaningful basis for describing the joint submission of those plans as “industry” consensus proposals. XO urges the Commission not to be swayed by the ILEC admonishment not to “disrupt a delicate balance of interests and collapse a breakthrough compromise,” since this so-called compromise is made of smoke and mirrors anyway.⁷

Many groups not included in the ABC Plan have in fact filed comments opposing the ABC Plan. This includes NASUCA,⁸ other public interest groups,⁹ state regulatory commissions,¹⁰ wireless carriers¹¹ and others.¹² NASUCA has already submitted

⁷ XO Comments at 1-2; see also Comments of LLC Communications LLC (“Level 3”) at i.

⁸ NASUCA associate member AARP filed a separate ex parte letter on August 24, 2011 supporting NASUCA’s comments and stressing opposition to subscriber line charge (“SLC”) increases and to preemption of state authority, both of which are key elements of the ABC Plan.

⁹ Free Press, Greenlining.

¹⁰ Understandably, the state commissions’ main opposition is to the essentially preemptive nature of the ABC Plan. This includes the California Public Utilities Commission; Connecticut Public Utilities Regulatory Authority; Delaware Public Service Commission; Indiana Utility Regulatory Commission; Iowa Utilities Board; Louisiana Public Service Commission (see also separate statements of Commissioners Holloway and Skrmetta); Maine Public Utilities Commission, Vermont Public Service Board and Vermont Department of Public Service; Massachusetts Department of Telecommunications and Cable Michigan Public Service Commission; National Association of Regulatory Utility Commissioners; Nebraska Public Service Commission; New Hampshire Public Service Commission; New York Public Service Commission; Pennsylvania Public Utilities Commission; Public Service Commission of the District of Columbia; Public Service Commission of the State of Missouri; Public Service Commission of Wisconsin; Public Utilities Commission of Ohio; Public Utility Commission of Oregon; South Dakota Public Utilities Commission; Tennessee Regulatory Authority; Virginia State Corporation Commission Staff; Washington Utilities and Transportation Commission.

¹¹ Cellular South, Inc.; MTCPS LLC, d/b/a Cellular One Comments; N.E. Colorado Cellular, Inc. d/b/a

extensive comments regarding the questionable legality of the ABC Plan and supports NARUC's comments that clearly demonstrate that the legal analysis submitted with the ABC Plan is flawed.¹³

Other commenters, whose opposition may or may not be overt, also propose major changes to the Plan that certainly would disturb the ABC Plan proponents' "delicate balance."¹⁴ None of these commenters support the ABC Plan as an indivisible whole, as the Plan's proponents insist it must be taken.

Those supporting the ABC Plan are, of course, the original ABC Plan ILEC supporters,¹⁵ RLECs,¹⁶ state ILEC associations,¹⁷ and their consultants.¹⁸ But some that

Viaero Wireless; Panhandle Telecommunications Systems, Inc.; Rural Cellular Association; Rural Telecommunications Group, Inc.; SouthernLinc Wireless; Sprint Nextel Corporation; T-Mobile USA Comments; United States Cellular Corporation; USA Coalition (the USA Coalition also expresses opposition to the State Members Plan).

¹² Ad Hoc Telecommunications Users Group; American Cable Association; Bright House Networks Information Services, LLC; Cbeyond, Inc.; Coalition for Rational Universal Service and Intercarrier Reform; Integra Telecom, Inc., and TW Telecom Inc. Comments; Comcast Corporation; Dave Burstein; EarthLink, Inc.; Free Conferencing Corporation; Pac-West Telecomm, Inc.; PAETEC Holding Corp.; Rural Independent competitive Alliance; Senator Deb Fisher, District 43, Nebraska; Satellite Broadband Providers; SureWest Communications; Vonage Holdings Corp.. NASUCA's reference to these commenters' opposition to the ABC Plan should not necessarily be construed as agreement with those parties' positions.

¹³ Comments of National Association of Regulatory Utility Commissioners at 9.

¹⁴ ADTRAN, Inc.; Charter Communications; Cox Communications, Inc.; COMPTTEL; CTIA – The Wireless Association; Level 3 Comments at i-iii; MetroPCS Communications, Inc.; Mobile Future (Mobile Future's membership would appear to bring it close to being what is known as an "astroturf" organization; see <http://www.mobilefuture.org/content/pages/membership>); National Cable & Telecommunications Association; Telecommunications Industry Association; Time Warner Cable; Voice on the Net Coalition; XO. Google cites to its own proposal (the so-called "Tech/Users" proposal) that was submitted to the Commission on August 18, 2011. Providers of service on tribal lands also raise specific concerns. See Comments of Gila River Telecommunications, Inc.; National Tribal Telecommunications Association; Native Telecom Coalition for Broadband; Smith Bagley, Inc. See also IT&E Comments.

¹⁵ See "Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream" and Comments of NECA, NTCA, OPASTCO and WTA.

¹⁶ Kansas Rural Independent Telephone Companies, State Independent Telephone Association, and Rural Telecommunications Management Council; Nevada Telecommunications Association; Rural Arkansas Telephone Systems, Inc.; South Dakota Telecommunications Association; TDS Telecom Comments; Western Associations.

might have been expected to support the Plan actually raise significant questions and objections about the details,¹⁹ raising concerns about whether there are cracks in the supposedly monolithic compromise. And some ILECs explicitly oppose the ABC Plan.²⁰

A good example of the lack of industry support comes from U.S. Cellular, which states: “The proposal put forth by price cap carriers (the ‘ABC Plan’) amounts to a blueprint for a heist, having the effect of shifting approximately \$1 billion in universal service support from wireless to wireline carriers.”²¹ Given the amounts involved, hyperbole is to be expected.

All of this points to the conclusion that the ABC Plan serves the interests of its proponents, but is not in the **public** interest. The Commission cannot and should not adopt the ABC Plan as a whole and without change. As argued by NASUCA and NARUC, the plan is not legal because it usurps state authority and would create unlawful rates. Indeed, the Commission must reject major portions of the Plan, including the elimination of all COLR and most ETC obligations, the virtually total preemption of state authority over intrastate rate setting and, concomitantly, the notion of a single close-to-zero uniform nationwide intercarrier compensation rate. Increases in the subscriber line

¹⁷ Illinois Independent Telecommunications Association; Ohio Telecom Association; Wisconsin State Telecommunications Association.

¹⁸ TCA

¹⁹ See Alexicon Telecommunications Consulting; Alaskan Communications System Group Inc. Comments; Cincinnati Bell, Inc. Comments; Communications Workers of America Comments; Consolidated Communications Holdings, Inc. Comments; General Communications, Inc. Comments; GTA Telecom LLC Comments; GVNW Comments; Hargray Telephone Company Comments; Hawaii Telecom, Inc. (see also Comments of the State of Hawaii); ICORE, Inc. Comments; Independent Telephone and Telecommunications Alliance, et al. Comments; Moss Adams LLP Comments; Nebraska Rural Independent Companies Comments; Puerto Rico Telephone Company; Rural Broadband Alliance; Small Telephone Committee of the Louisiana Telephone Association..

²⁰ Texas Statewide Telecommunications Cooperative, Inc.

²¹ United States Cellular Comments at iii.

charge (“SLC”) as a result of using the SLC as a revenue-replacement mechanism utterly divorced from cost, must also be rejected. The ABC Plan also appears to ignore and contradict many of the provisions of the Telecommunications Act of 1996, which remains the law of the land.

Where does that leave the FCC? Given the problems with these “global” solutions to the problems of ICC, USF, and the promotion of broadband deployment and adoption, NASUCA again submits that the best approach is the measured, iterative approach suggested in NASUCA’s various comments in this proceeding. Failing that, NASUCA again commends to the Commission the broad proposal of the State Members of the Federal-State Joint Board on Universal Service (“State Members Plan”).²²

Again, given the limited time available for reply, these reply comments must be limited in scope. Based on a quick review of the ABC Plan supporters’ comments,²³ it does not appear that they have added anything significant to the justification for the Plan. AT&T et al. have included a “Budget” for the ABC Plan that purports to show how the Plan will not increase the burden on the USF.²⁴ But such a budget, even if it were accurate to the penny (which it assuredly is not), does not provide support for the many questionable individual items that make up the budget.

The remainder of these reply comments will address selected issues from the comments of non-ABC Plan supporters.

²² Noting NASUCA’s issues with certain elements of the State Members Plan. See NASUCA Comments (August 25, 2011) at 13-14.

²³ See footnotes 15-18, *supra*.

²⁴ Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, Appendix A.

I. REPLIES TO SELECTED COMMENTS

Discussion here of points from a particular stakeholder's comments should not be construed as agreement with other points from that stakeholder's comments.

A. BRIGHT HOUSE NETWORKS

Bright House is

a competitive local exchange carrier ("CLEC") affiliated with Bright House Networks, LLC, a provider of video, voice and data services, Bright House provides local exchange telecommunications services to its cable affiliate, which uses those telecommunications services in conjunction with the Voice over Internet Protocol ("VoIP") services provided to its own subscribers. Bright House interconnects directly and indirectly with other entities on the public switched telephone network ("PSTN") that send traffic to, or receive traffic from, the interconnected VoIP subscribers served by our cable affiliate. As a result, 100% of the traffic that Bright House exchanges with other entities on the PSTN would count as "VoIP traffic" in the sense that term is used by the proponents of the so-called "ABC Plan."²⁵

As such, Bright House's description of one of the central issues here deserves quotation at length:

The ABC Plan's proposed treatment of so-called "VoIP traffic" is based on a fiction. That fiction is that there is some technically or economically meaningful distinction between different "types" of calls on the PSTN based on the technology used to originate or terminate them. A natural, logical understanding of the term "VoIP Traffic" would be voice traffic that is *actually being transmitted and routed* using IP technology. Yet what the ABC Plan evidently means by the term "VoIP traffic" is plain old PSTN traffic that – before or after it actually is on the PSTN – might have *originated* or *terminated* using IP technology.

That isn't "VoIP traffic" in any meaningful sense. That's just plain old telephone service, getting calls from here to there, in circuit-switched, time-division-multiplexed ("TDM") format. Once a call is on the PSTN, being handled in standard circuit-switched, TDM format, the type of technology used to originate or terminate it has nothing to do with how it is handled. Traffic on the PSTN is just that – traffic on the PSTN. Calls on the PSTN use

²⁵ Bright House Comments at 1-2.

the same signaling format, are transmitted and routed using the same equipment, and impose the same costs on network operators, no matter whether those calls start or end on an old analog telephone, a wireless handset, a digital PBX, a modern VoIP PBX, a Skype-out connection, or anything else. Claiming that calls *on the PSTN* should be treated in some special way because they use IP equipment before or after they hit the PSTN makes no more sense than it would have made, back in the 1980s, to claim that calls using new-fangled “digital” PBXs, or that made their way to an ILEC’s PSTN switch using a gee-whiz “fiber” loop, should get special treatment. There is no technical or economic reason to make such distinctions.

Because there is no technical or economic distinction between “VoIP Traffic” (as the ABC Plan uses that term) and any other PSTN traffic, introducing a rule that requires such traffic to be treated in some special manner for rating purposes is guaranteed – with 100% certainty – to introduce distortions in sensible economic behavior in order to exploit the arbitrage opportunities created by the new rule. It would be odd indeed for the Commission, in the course of a proceeding intended to harmonize and unify intercarrier compensation, and to eliminate arbitrage opportunities, to start off by introducing a new and highly contentious one.²⁶

This realistic assessment of how the network really works calls into significant question many of the central tenets, not only of the ABC Plan, but of positions espoused by a number of other industry participants, some of which are addressed here.

And Bright House also zeroes in on another crucial point:

[The] application of the ancient maxim, “cui bono?” – who benefits? – shows that this is the real impact of this aspect of the ABC Plan. The plan’s proponents try to frame their VoIP compensation proposal as a way to encourage or promote the use of modern IP-based technology, but it does no such thing. This aspect of the ABC Plan is simply a slightly disguised effort to manipulate the Commission into using its regulatory powers to transfer wealth *from* the competitors who have invested in new technology – the cable operators – *to* the competitors who haven’t – the ILECs.²⁷

²⁶ Bright House Comments at 2-3 (footnotes omitted, emphasis in original).

²⁷ Id. at 5 (emphasis in original).

Likewise, Bright House also trenchantly criticizes the ABC Plan's consumer benefits analysis²⁸ and its legal analysis.²⁹

B. American Cable Association

ACA and NCTA filed a joint ex parte letter on August 23, 2011, that contained some good points. Unfortunately, in its comments, NCTA presents an Amended ABC Plan that does not significantly improve the Plan,³⁰ and appears unreasonably friendly to the ABC Plan. But ACA's key points in **its** comments are much more consistent with opposition. ACA seeks to :

- Adopt a Permanent Cap on Support in High-Cost Areas.
- Distribute Funding on a Competitively Neutral Basis.
- Limit any Access Replacement Mechanism.
- Accelerate the Phase-Out of Legacy Price Cap Support Mechanisms.³¹

NASUCA agrees with these principles.

C. COMPTTEL

"COMPTTEL supports the core recommendation of the ABC Plan, that the Commission should bring all types of traffic (i.e., interstate, intrastate, local, VoIP and circuit-switched) under Section 251(b)(5) of the Act."³² NASUCA and others have shown the legal impediments to such claims of Commission authority.

But COMPTTEL's comments actually demonstrate the circularity of its (and the

²⁸ Id. at 6-7.

²⁹ Id. at 7-8.

³⁰ NCTA Comments, Attachment.

³¹ ACA Comments at ii.

³² COMPTTEL Comments at iv.

Commission's, and the ABC Plan's) arguments:

Indeed, the statute requires this approach to the extent the Commission asserts jurisdiction over the transport and termination of all traffic. The Commission cannot preempt the states' authority and regulate the transport and termination of all traffic as interstate access under Section 201 of the Act because the *federal statute* requires that transport and termination be regulated pursuant to Section 251(b)(5). Nor can the Commission preempt, or otherwise eliminate, the states' role defined by the *federal statute* in Section 252 to review, approve and arbitrate the interconnection agreements that will, among other terms and conditions, address the requirements of Section 251(b)(5).³³

Thus these gyrations are necessary only "to the extent the Commission asserts jurisdiction over the transport and termination of all traffic...." This is something the Commission cannot and should not do.

COMPTEL also submits a "Competitive Amendment to the ICC Provisions of the ABC Plan."³⁴ Although NASUCA strongly supports COMPTEL's position that ICC should be cost-based,³⁵ the use of the ILEC's ICC rate as a proxy for CLECs³⁶ perpetuates the very idea of a uniform rate that COMPTEL otherwise seeks to avoid. Separately, NASUCA objects to COMPTEL's proposal to preempt state access recovery mechanisms³⁷ as both unnecessary and unwarranted.

Finally, with respect to the desirability of uniform intercarrier compensation rates, the supporters of the ABC Plan conflate the need for uniformity with a rate level that is far below the cost of interconnection. Even if it were the case that uniformity is desirable, their proposed rate of \$0.0007 is absurdly low in relation to costs of service. That excessively

³³ Id. (emphasis in original).

³⁴ Id., Attachment 1.

³⁵ Id. at [1].

³⁶ Id.

³⁷ Id. at [7].

low-level provides the plan supporters' justification for increasing the up-front charges on the bills of millions of consumers, but it has no legitimate purpose with respect to the public interest. Traffic pumping and phantom traffic can easily be addressed by reforming intercarrier compensation without lowering the rate to a level that is below even the cost of billing. Moreover, the Commission should recognize that the two largest supporters of the ABC together share a huge portion of both the interstate message toll and wireless markets in the United States, and AT&T currently seeks to further enlarge its wireless market share with the acquisition of T-Mobile. It seems likely that AT&T and Verizon will greatly benefit from excessively low ICC rates because of their interstate long distance and wireless divisions. It is not so clear how other ILECs will fare.

D. Greenlining Institute

The Greenlining Institute focuses its comments on issues that are crucial to the success of any national approach to broadband policy: affordability and accountability of fund recipients. These comments echo and expand upon arguments raised by NASUCA in its Initial Comments, and in previous comments filed with the FCC on broadband and universal service issues in these dockets. Greenlining correctly points out that,

[i]n order to truly advance the proposed universal service goals of ubiquitous broadband, customers must not only have access to broadband, they must also adopt it. Unfortunately, especially for end users in certain communities, affordability is a strong barrier to adoption. Thus, the CAF [Connect America Fund] should include affordability as one of its central missions.³⁸

Greenlining therefore endorses the State Members Plan, correctly observing that the State Members Plan best addresses the issue of affordability, including affordability as a component of the plan and proposing specific mechanisms to maintain affordability.

³⁸ Greenlining Institute Comments at 1.

This is in stark contrast to the ABC Plan, which would prohibit any regulation of pricing, including pricing of broadband services supported with public funds.³⁹ As Greenlining states:

The State Members Plan proposes effective mechanisms to procure the data from fund recipients that will allow efficient monitoring for affordability. In contrast, the ABC Plan and RLEC Plan do not provide nearly the amount of accountability required to ensure affordability (or best use of the funds.) In order to efficiently achieve its objectives of advancing broadband deployment and voice telephony over broadband, the Commission should establish the necessary reporting, certification and enforcement mechanisms to support its actions. The Commission should not shy away from its responsibilities under the Communications Act and the Telecommunications Act.⁴⁰

Greenlining also supports the recommendation that funding recipients “make interconnection points and backhaul capacity available on a reasonable basis, so that local unserved areas can provide their own broadband access.”⁴¹ This is consistent with the net neutrality provisions contained in BTOP middle mile grants, and a position that NASUCA wholeheartedly endorses.

Finally, Greenlining rejects the ABC Plan’s elimination of all state and federal regulation, a core component of that plan. In doing so, Greenlining nicely sums up the very essence of the ABC Plan: “[T]he incumbent carriers seek a monopoly on CAF funding under a regime of no regulation.”⁴²

E. MetroPCS

³⁹ Id. at 1-3.

⁴⁰ Id. at 3.

⁴¹ Id. at 5.

⁴² Id. at 6.

MetroPCS “generally supports the direction in which the RLEC Plan and the ABC Plan are heading but believes that comprehensive reform needs to occur sooner.”⁴³ Thus, MetroPCS does not want to be subject to any costs in terminating traffic onto others’ networks. MetroPCS also states, “In the interim, the Commission should not subject traffic that is not subject to access charges today to any form of access charge.”⁴⁴

Yet MetroPCS also complains that

the current ICC regime discriminates against wireless carriers by refusing to allow them to collect ICC for interMTA calls except by voluntary agreement. Since wireless carriers are increasingly competing with wireline services ... the inability of wireless carriers to receive ICC for interMTA calls puts wireline carriers at an unfair competitive advantage.⁴⁵

Of course, MetroPCS simply overlooks the competitive advantage that wireless carriers have enjoyed by being able to treat all **intra**MTA traffic as local.

NASUCA’s oft-expressed position is that all carriers should be able to enter into voluntary agreements for the exchange of traffic. **But**, in the absence of such agreements, all carriers should be able to collect cost-based rates for terminating other carriers’ traffic – where the cost in question include the joint and common costs of the network.

F. Public Knowledge/Benton Foundation

NASUCA supports the Public Knowledge/Benton Foundation proposal that the Commission “should ensure that local providers are able to connect their communities to the rest of the Internet, and

⁴³ MetroPCS Comments at 2.

⁴⁴ Id.

⁴⁵ Id. at 4.

should make funds available to fund local broadband projects. " ⁴⁶

Public Knowledge/Benton raise many intriguing points in support of their proposal. Unfortunately, the Commission's emphasis on selected elements of the ABC plan likely means that the issues raised by Public Knowledge/Benton will get lost in the shuffle. NASUCA and other parties have been forced to expend a significant amount of resources in a very short time frame to address the profound ramifications of the ABC Plan. This is all the more reason for the Commission to eschew the all-or-nothing ABC proposal and pursue the more measured approach advocated by NASUCA. The Public Knowledge/Benton proposal deserves closer scrutiny, and parties who truly care about improving the provision of broadband service to unserved, high cost areas deserve the opportunity to provide feedback on the issues and suggestions raised therein.

G. The Tech Industry Proposal

On August 18, 2011, as another aspect of the continuously-moving target that stakeholders (and the Commission) are having to deal with, a Group of Five – Ad Hoc Telecommunications Users Committee; Google, Inc.; Skype Communications S.A.R.L.; Sprint Nextel Communications; and Vonage Holdings Corp. – submitted a proposal that

⁴⁶ Public Knowledge/Benton Foundation Comments at 5.

has been dubbed the “Tech Industry Proposal.”⁴⁷ It should not be surprising that, given that Google, Skype, Sprint and Vonage all have minimal investments in local networks but depend heavily on the existence of those networks, these companies support “a very low rate for [Time Division Multiplexing] TDM-to-TDM traffic exchange, which ultimately could be phased out as networks become all IP.”⁴⁸

The letter cites an estimate of the very low incremental cost of terminating traffic on an IP network that was found in Chairman Martin’s Proposal.⁴⁹ Fundamentally, this estimate – accurate or not – is of **incremental** cost, which excuses the payer from making any contribution to the joint and common costs of the carrier on whose network the call is terminated.⁵⁰ This is fundamentally wrong, as previously argued by NASUCA.⁵¹

That said, NASUCA does agree with the Tech Industry Plan that “the Commission possesses the authority to ensure that IP-to-IP interconnection is timely and efficiently implemented, and to protect end-users from abusive practices and unreasonable rates.”⁵² This is a crucial element of ensuring the consumer benefits and protections of an open Internet.⁵³

⁴⁷ As if other stakeholders, including other consumers, were not part of the Tech Industry.

⁴⁸ Tech Industry Proposal at 8. Ad Hoc, as a group of very large customers, apparently has decided that below-cost access charges are in its members’ business interest.

⁴⁹ Id., citing *In the Matter of High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking (“2008 Order and ICC/USF FNPRM”), 24 FCC Rcd 6475, ¶ 261 (2008).

⁵⁰ 2008 Order and ICC/USF FNPRM, ¶ 251.

⁵¹ See, e.g., NASUCA Comments (April 18, 2011) at 96-109.

⁵² Tech Industry Proposal at 9.

⁵³ *In the Matter of Preserving the Open Internet*, GN Docket No. 09-191; *Broadband Industry Practices*, WC Docket No. 07-52, FCC No. 10-201 (rel. December 23 16, 2010) (“Open Internet Order”).

H. Vonage

Following on from Bright House's *cui bono* theme (and its description of network usage), we have Vonage, which has created a business plan based mostly on evading any responsibility to pay for its use of other carriers' networks. Regardless of whether the network uses IP or TDM,⁵⁴ calls could not be completed without the network, and those that have constructed the network should be compensated for such use.

Vonage understandably supports the Tech Industry Proposal discussed above. Vonage argues that "[b]ill-and-keep, as advocated by Vonage and the Tech Industry Proposal, provides an incentive for carriers to transition to IP networks."⁵⁵ This makes sense, but not in a good way: The "incentive" of bill-and-keep is to deny compensation for networks, and to encourage some parties to dump traffic onto the already-constructed networks of others. Vonage touts the ABC Plan's claims of consumer benefits, and says that bill-and-keep – rather than the ABC Plan's non-compensatory \$0.0007 – would "produce even greater benefits to consumers."⁵⁶ But as shown in NASUCA's comments, the benefits of the \$0.0007 rate are illusory,⁵⁷ and mandated bill-and-keep would likely be even more harmful.

II. THE ABC PLAN PROPONENTS' OPPOSITION TO EARNINGS REVIEW IS ANOTHER PART OF THE PROPOSED "HEIST."⁵⁸

In the initial comments in this round, NASUCA provided extensive analysis and

⁵⁴ See Vonage Comments at 2.

⁵⁵ Vonage Comments at 3.

⁵⁶ *Id.* at 4.

⁵⁷ NASUCA Comments at 15-26.

⁵⁸ United States Cellular Comments at iii.

rebuttal to the ABC Plan, and we will not repeat all of those arguments in response to the comments of AT&T, et. al. However, there is one point, expressed by the ABC Plan authors in criticism of the State Members Plan, that must be responded to: AT&T et. al.’s opposition to a financial review to determine the need for CAF funding. The ABC Plan sponsors object to this aspect of the State Member’s plan, on the grounds that it is “unworkable” and “regressive.”⁵⁹

The ABC Plan authors are wrong on both counts. By labeling a prudent requirement that there be verification to determine that additional funding for a particular carrier is truly necessary as “regressive,” they are showing their true colors and highlighting a fatal flaw in the ABC Plan.

These carriers want the federal government to hand them billions of dollars in ratepayer money, without verifying that the recipient is not already over-earning, and thus able to deploy facilities without additional public support. And they want to do this within a framework that contains no enforcement of build-out requirements, no affordability requirements and a nearly complete elimination of existing public interest obligations. The ABC Plan proponents wish to be accountable to no one other than their own stockholders. This should be deemed unacceptable on its face. Entities that receive funding must held be accountable to ensure that the funds are used appropriately.

At a fundamental level, the ABC Plan, with its absence of financial scrutiny, would be an extremely unwise approach to broadband funding. There is broad consensus that the expansion of broadband to unserved households is vitally important. There is equally broad consensus that neither the federal government nor the states have a surfeit

⁵⁹ Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, Windstream at 4-5

of funds to spend on **any** programs, including broadband. It is vitally important that the FCC ensures that universal service funds are targeted to those situations where the funds are truly needed. ILECs, including both RoR and price-cap ILECs, that are earning excessive returns should not receive additional funding. If broadband is to be added to the services supported as universal service, this must be done legally (in accordance with 47 USC 254(c))⁶⁰, broadband services must contribute to the support,⁶¹ and the provision of broadband must be subject to public interest obligations. The ABC Plan would amount to a check drawn on ratepayers' accounts being written to "CASH," and it should be rejected.

As for the notion that a financial review is "unworkable," AT&T and its partners are simply wrong. Both Nebraska and Maine apply earnings tests to their universal service funds.

The Nebraska Public Service Commission ordered the use of an earnings test in Application No. C-1628.⁶² Findings and Conclusions, entered January 13, 1999, pages 6-7. In Application No. NUSF-26, the Commission again ordered the earnings test requirement.⁶³ The Nebraska Universal Service Fund earnings test continues to be utilized.

In Maine, the earnings test is codified in Chapter 288, Section 3C of the Maine

⁶⁰ NASUCA Comments at 50-51.

⁶¹ Id., at 60-61.

⁶² Nebraska Public Service Commission, Application No. C-1628. Findings and Conclusions, entered January 13, 1999, pages 6-7. <http://www.psc.state.ne.us/home/NPSC/usf/Orders/C-1628%20NUSF.1999.01.13.Findings%20&%20Conclusions.pdf>.

⁶³ Nebraska Public Service Commission, Application No. NUSF-26, Findings and Conclusions, entered November 3, 2004, paragraph 61. <http://www.psc.state.ne.us/home/NPSC/usf/Orders/NUSF-26.2004.11.03.Findings%20and%20Conclusions.doc>.

Commission's rules. This section determines support as part of a rate case make whole process. The section is styled as a "Determination of Need" and requires that prior to a rural ILEC receiving funding, the Commission must first determine in a rate proceeding the carrier's revenue requirement and that absent USF support, the carrier would be unable to meet the revenue requirement.⁶⁴

It should also be noted that an earnings review is in fact part of the RLEC Plan supported by the Joint Letter. As explained by NTCA in an August 26, 2011 ex parte, "[a]n annual regulated intrastate earnings test will be applied to ensure that any company earning more than 10% on intrastate regulated service has the interstate portion of its restructure mechanism reduced to the extent it is in excess of 10%."⁶⁵ One can quibble over the details – the target return, the interstate/intrastate distinctions,⁶⁶ or the remedy – but this is an earnings test. The argument that a financial review is "unworkable" is clearly incorrect and should be dismissed.

III. CONCLUSION

Again, the simplest conclusion for these comments would be to repeat what was said in the Introduction to NASUCA's initial comments. The Commission must:

- Reject the ABC Plan;
- Dispense with attempts to address these complex issues in a global,

⁶⁴ Maine Public Utilities Commission Rules, Chapter 288, MAINE UNIVERSAL SERVICE FUND, §3 (C)

⁶⁵ NTCA ex parte (August 26, 2011), Attachment at [2].

⁶⁶ Indeed, the fact that intrastate overearnings are used to reduce interstate recovery argues for the total company approach proposed by the State Members.

hurried fashion and instead take a more measured approach; but

- If it must adopt a “global” plan, adopt the State Members Plan, with the targeted changes identified by NASUCA.

None of the comments filed by other stakeholders changed these views.

Respectfully submitted,

/S/

Charles A. Acquard, Executive Director
NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380