

**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
UNITED STATES CELLULAR CORPORATION**

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SUMMARY

THE STAKES ARE HIGH

After attempts at universal service and intercarrier compensation reform that stretch back for years, and in the wake of the National Broadband Plan and the Commission's comprehensive notice of proposed rulemaking in this proceeding, the Commission now has before it eleventh-hour proposals from the wireline industry that, if adopted, would transfer a billion dollars to the wireline industry, provide almost no funding for mobile broadband, and maintain the *status quo* universal service structure for ten more years. Collectively, these proposals make a mockery of the process and undercut critical areas of the Commission's regulatory responsibility.

As the Commission reviews these proposals, and the strong opposition to them from many quarters, it is important to keep in mind that the stakes are high, and that many stakeholders are relying upon the Commission to arrive at judgments and decisions that will best serve the Commission's stated goals and objectives and the interests of consumers and businesses in rural America. U.S. Cellular suggests that the Commission's review should be guided by several considerations.

■ ***The Key Role of Mobile Broadband.***—The benefits of advanced mobile broadband service, epitomized by what the Wall Street Journal has branded the “smartphone revolution,” will not show up in rural America if the Wireline Industry Proposals are adopted. As required by statute, the Commission's focus should be on ensuring that consumers and businesses in rural America have access to mobile broadband services comparable to those available in urban areas. The incumbents' proposals pay virtually no heed to this issue, which is central to the interests of consumers, public safety, and economic growth in rural areas.

■ ***Advancing the Status Quo.***—The Wireline Industry Proposals reflect a simple agenda: Protect what we have, take more, keep it as long as possible, and achieve near complete deregulation. This sums up a wireline plan that would lock in \$42-45 billion of support to fixed broadband technology over ten years, with leftovers of \$0-3 billion remaining for mobile broadband. The wireline industry cannot be faulted for looking out for its own interests, but neither can its suggested approach be mistaken for responsible public policy commensurate with congressional directives, the Commission’s goals, and the mobile broadband agenda set out by President Obama. A better course, and one that has its moorings in longstanding Commission policy, is to allow universal service support to flow with the choices consumers are making in the marketplace.

■ ***The Wireline Industry v. The President and the Chairman.***—Both the President and Chairman Genachowski have made clear that a key public policy goal is the ubiquitous deployment of mobile broadband services in rural America. Investing in mobile broadband will drive enormous benefits for consumers, public safety, and businesses in rural areas over the next ten years. The Commission’s challenge is to adopt universal service and intercarrier compensation rules and policies now that ensure that the communications marketplace—in both urban and rural America—is as it could be in ten years. The Wireline Industry Proposals offer no blueprint for getting from here to there.

■ ***Procedural Problems.***—As the Commission approaches the final innings of its universal service and intercarrier compensation transformation efforts, it seems to be switching sports with the seasons by launching into a two-minute drill. Seeking comment on three new industry plans in July, and announcing intentions to take final action by October, is not a formula for reasoned, deliberate rulemaking. To take one example that receives considerable scrutiny in the record, the ABC Plan’s forward-looking economic cost model requires careful review and input

from interested parties, a process that cannot be completed within the period presently allotted by the Commission. Additionally, the Commission has not yet defined broadband as a supported service, which requires a fact-based analysis in four parts, as set forth in Section 254(c)(1) of the Communications Act of 1934. Until the Commission completes the required steps to support broadband, it cannot allow carriers to invest support funds in broadband projects.

■ ***Lack of Transparency.***—The authors of the Wireline Industry Proposals have made it clear that these proposals have been advanced as “take it or leave it” propositions. Any unwanted tinkering by the Commission, these authors warn, would risk a collapse of support from the wireline industry. The wireline proposals were fashioned behind closed doors, with other stakeholders—including the wireless industry—informed of the plans through the Commission’s Electronic Comment Filing System. This is not how government operates. This is not open government. Corrective procedural measures are needed from the Commission to ensure that interested parties have a meaningful opportunity to review the Wireline Industry Proposals and participate in the rulemaking process.

SPECIFIC ISSUES

U.S. Cellular focuses on several specific issues in its Reply Comments, highlighting widespread concerns in the record regarding many key aspects of the Wireline Industry Proposals and other plans.

■ ***Funding Budgets.***—Commenters criticize budget proposals made by the wireline incumbents, and by the State Members of the Federal-State Joint Board on Universal Service, because they would dramatically increase the level of support currently received by the incumbents, while sharply reducing funding for providers of mobile broadband. In addition, there is concern that the proposals would make the availability of this reduced funding for mobile broad-

band contingent on the Commission's first using support to provide budgeted outlays to the incumbents, including outlays designed to protect incumbents' current revenue streams. The ABC Plan, for example, would have the effect of locking in \$42 billion in universal service funding for incumbent local exchange carriers for ten years, closing off wireless competitive ETCs' eligibility for this funding.

The record documents the harms to consumers and businesses in rural areas that would occur if the wireline incumbents' lopsided budget proposals were to be adopted, as well as the damage to competitive rural telecommunications markets. There is strong support in the record for a more balanced approach, including the establishment of separate funding mechanisms for wireline and mobile wireless broadband, and the allocation of between \$1.3 and \$1.5 billion annually for mobile broadband deployment and operations.

■ ***Cost Models v. Rate-of-Return Mechanisms.***—Numerous parties agree with U.S. Cellular that the Commission's transformation of its universal service rules and policies should include a decision to jettison any further reliance on rate-of-return and embedded cost mechanisms for the disbursement of high-cost support. Commenters indicate that the Commission itself has long recognized the deficiencies of the rate-of-return and embedded cost mechanisms, and argue that the use of a forward-looking economic cost model to disburse support for all recipients would better approximate an efficient carrier's costs, and send correct signals for entry, investment, and innovation by broadband providers.

■ ***Wireless Carriers' Funding Offsets.***—Commenters encourage the Commission to reject proposals to offset universal service support that wireless mobile broadband providers would otherwise receive, to reflect "savings" these carriers may realize from the Commission's inter-carrier compensation transformation decisions. On information and belief, so-called savings from

lower intercarrier compensation rates will be a small fraction of reductions in universal service support. Moreover, any such savings will be competed away by wireless carriers, ultimately benefiting consumers.

■ ***Right of First Refusal.***—The suggestion in the ABC Plan that incumbent LECs should be given the first choice for the receipt of Connect America Fund support in their service areas is roundly criticized in the record. Such a mechanism—which is transparently designed to further the interests of incumbents—would more than double incumbents’ current levels of high-cost support, undermine competition, hinder broadband deployment, and give the incumbents the equivalent of a government entitlement.

■ ***Eliminating “Legacy” Regulations.***—An even more astounding proposal from the incumbents calls for the Commission to eliminate all remaining federal rate and service regulations imposed on price cap LECs. The proposal has nothing to do with universal service or intercarrier compensation reform, and, even worse, the incumbents urge the Commission to take this sweeping deregulatory action without any examination of the competitiveness of the markets in which the price cap carriers operate.

■ ***Rate Benchmarks.***—There is support in the record for the adoption of rate benchmarks to ensure that incumbent carriers do not receive federal universal service support that acts as a subsidy for the carriers’ artificially low local rates. The New York Public Service Commission, for example, points out that it would be unfair for residents in other states to make up the difference (through their USF surcharge payments) for carriers’ artificially low rates in states that have not raised intrastate end user rates.

■ ***Access Replacement Mechanism.***—The ABC Plan proposes an access replacement mechanism for price cap carriers, which would give universal service funds to these carriers to

make up for any reductions in their access revenues resulting from the Commission's intercarrier compensation reforms. The proposal is greeted with substantial criticism in the record. Many commenters object to the assumption that such an entitlement should be given to price cap carriers, especially since the incumbents fail to make any showing that the subsidy is necessary to ensure that rural rates and services are reasonably comparable to urban rates and services.

■ ***Increased SLC.***—The wireline industry proposals would permit subscriber line charges to increase by up to \$3.75 per month, a significant burden on consumers, and well over \$3 billion in implicit support that comes with no strings attached. That is, SLC revenue need not be invested to build, maintain, or upgrade networks. Instead of handing revenue to the wireline industry, the Commission could raise roughly half a billion dollars, funds that would be required to be invested in advanced networks, by simply raising the universal service contribution factor enough to increase the USF line item by just ten cents (\$0.10) per month. That is a far more equitable and effective means of increasing broadband investment in rural America.

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UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Reply Comments, in the above-captioned proceeding.¹ Pursuant to the *Public Notice*, comments

¹ See *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.

filed by interested parties have addressed the America’s Broadband Connectivity Plan (“ABC Plan”),² the RLEC Plan,³ the Joint Letter,⁴ and the State Member Plan,⁵ as well as certain other proposals and issues. The ABC Plan, RLEC Plan, and Joint Letter are referred to collectively in these Reply Comments as the “Wireline Industry Proposals.”

I. INTRODUCTION.

Before turning to specific issues raised in pleadings filed in response to the *Public Notice*, U.S. Cellular first provides an overview of what is at stake in this proceeding, including the disconnect between the Obama Administration’s position on the critical need for high-quality mobile broadband in rural areas, and what is contained in the Wireline Industry Proposals. Put simply, the Wireline Industry Proposals represent a potentially catastrophic misallocation of scarce resources to yesterday’s technology.

If the Wireline Industry Proposals are adopted, the Commission will not have the opportunity to commence *real* universal service reform until 2021, some 25 years after passage of the

96-45, *Lifeline 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 Wireline 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 (“Consensus Framework Parties”), 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 (“State Members”), WC Docket No. 10-90 *et al.* (filed May 2, 2011) (“State Member Plan”).

Telecommunications Act of 1996 (“1996 Act”), and after spending over \$75 billion in explicit support to wireline technology compared to less than \$10 billion on mobile wireless.⁶ The \$75 billion figure does not include various implicit support contained within carrier rates that amount to many billions more. That result should be abhorrent to rational policymakers.

Some have argued that even a small increase in the federal universal service fund to accommodate all of the program’s needs would be an undue burden on consumers. U.S. Cellular disagrees. A ten-cent increase in the universal service fee would generate nearly \$500 million per year in support. Yet, the Wireline Industry Proposals include an increase in the Subscriber Line Charge (“SLC”) for wireline carriers of up to \$3.75 per month, unarguably a significant additional burden on many consumers and \$3.6 billion in additional revenue for landline carriers.⁷

A small increase in the high-cost fund, accompanied by rules that ensure the funds are efficiently invested in rural infrastructure, will have a significant positive impact on rural infrastructure. The same cannot be said for SLC increases, which represent revenue that comes with no strings attached. If the Commission will not seriously consider a small increase in the size of the high-cost fund, then surely it should reject significant SLC increases that represent implicit support that is shielded from accountability and portability. If carriers require additional revenues, they are free to increase their rates, which will send consumers clear signals about price and value.

■ **A Robust Mobile Broadband Network in Rural America Is Critical to Narrowing the Digital Divide.**

Last week, an article in the Wall Street Journal pointed out that:

⁶ U.S. Cellular estimates that the total explicit universal service support to the wireline industry to date is in excess of \$30 billion, and less than \$7 billion to competitive carriers.

Officials who still cling to such statistics as fixed-broadband access, and regulators who make policy around them, overlook the emerging reality brought about by rapid technological progress, business innovation and a dynamic wireless market. *The smartphone revolution enables people to take matters into their own hands and find effective ways to narrow the digital divide.*⁸

In the quote above, the last sentence extolling the smartphone revolution is only true, *if the smartphone works everywhere that people live, work, and travel*. The revolution will not come to areas struggling with dead zones, dropped calls, and slow throughput. In many areas without any broadband (defined as 4Mb download/1Mb upload), mobile wireless technology will be a more efficient means of delivering broadband. A simple overlay on existing networks will deliver broadband to far more areas than using a similar amount of support to extend wireline networks. Moreover, a well-designed program that drives investment in additional infrastructure will dramatically increase the functionality and reliability of mobile wireless technology.

U.S. Cellular has consistently advocated that available statistics significantly overstate the availability of mobile wireless service in rural areas. While more than 90 percent of Americans may have access to two or more wireless providers, there is insufficient hard data concerning the quality of service that rural Americans receive. No data source has accurately captured the extent to which rural Americans are exposed to dead zones, dropped calls, and lower data speeds as a result of there being insufficient coverage due to less-developed infrastructure.⁹

⁷ See Free Press Comments at 11-12 (noting that such SLC revenue increases would exceed the estimated “replacement” needs by over \$1 billion).

⁸ Lucy Hood, *Smartphones are Bridging the Digital Divide*, WALL ST. J., Aug. 29, 2011 (“Hood Article”) (emphasis added), accessed at <http://online.wsj.com/article/SB10001424053111903327904576526-732908837822.html>.

⁹ In particular, the oft-cited American Roamer data represents what carriers report to American Roamer, not an independent analysis of where service is actually available or the quality of such service in areas shown to be covered.

As a wireless provider, U.S. Cellular can state with certainty that there remain rural areas that require additional investment in order for citizens living there to have access to services “*that are reasonably comparable to those in urban areas.*” That is the standard set forth by Congress in Section 254 of the Communications Act of 1934 (“Act”). If the Commission intends to fulfill its statutory mission, it must foster the development of a robust mobile broadband infrastructure in rural America.

Recent statistics—showing that young people, low-income, and minority populations use smartphones to access the Internet at much higher rates than older people, those with higher incomes, and non-minority populations—should provide a huge wake-up call for the Commission when it comes to high-cost reform. National surveys reveal that more than 60 percent of Latino, black, and young smartphone users “often or even always use smartphones for their Internet connections.”¹⁰

If mobile broadband is unavailable, or of poor quality, the ability of these three groups to narrow the digital divide is limited, and the harm is greater than to others who use multiple means to connect to the Internet.

■ **Plans Put Forth by the Incumbent LECs Extend the Status Quo for Ten Years and Catastrophically Misallocate Precious Capital.**

Reforming federal high-cost support requires the Commission to choose how to invest in America’s future infrastructure. The Commission has asked all stakeholders to come up with a plan that would accomplish the goals set forth in the Act, within a budget of roughly \$4.5 billion per year. In response, the wireline industry has put forth a ten-year plan that would allocate \$42-45 billion to fixed broadband technology and \$0-3 billion to mobile broadband. Is anyone sur-

¹⁰ Hood Article.

prised that when the wireline companies created their plan, they allocated all of the money for themselves?

Consider this issue from the perspective of an investor in America's future. Given a pot of \$45 billion to work with over ten years, and a goal of expanding broadband to the greatest effect, would any rational investor devote over 90 percent of the funds to the technology that everyone, including wireline carriers, agrees is the least cost-effective way to deliver broadband to rural areas?

The large price cap carriers promise to deliver 4 Mb download/768k upload service to four million households in ten years if they receive \$20 billion in support. If a fact-based proceeding were to determine that mobile wireless LTE networks could cover the same number of households for the same price, then from an investment perspective one would invest in LTE, because of the additional benefit of mobility. U.S. Cellular believes that mobile wireless technology will reach a much greater number of people for the same \$20 billion, and deliver service at data rates far in excess of 4Mb/768k, and deliver mobility. At the very least, this decision deserves careful analysis.

The ABC Plan proposes to set aside support for incumbent carriers, in the form of a right of first refusal ("ROFR"), so that neither the Commission nor competitive carriers can pry that support away for ten years, once the ROFR is exercised. For rural citizens, this could be a catastrophic misallocation of resources that denies them access to high-quality mobile services for years to come. From a legal perspective, reserving support for any class of carrier strikes at the core of competitive and technological neutrality, effectively erecting a barrier to entry for more efficient alternatives. Moreover, funding only one carrier pursuant to an ROFR effectively

preempts the states from designating additional competitive eligible telecommunications carriers (“ETCs”), in violation of congressional directives set forth in Section 214(e) of the Act.

The number of fixed access lines in America continues to decline, with the rate of decline accelerating in urban areas, where the quality of service delivered by mobile wireless networks is sufficient to make it a replacement. The decline is irreversible. In rural America, if 4G LTE networks are built, wireline access line loss will continue to accelerate in every community that receives high-quality service. The ABC Plan seems to be designed to combat this reality by ensuring that these mobile broadband networks are never built.

The correct policy response is to allow support to flow with the choices consumers are making in the marketplace, to enable our rural citizens to take advantage of the same tools that are available to their urban cousins. Anyone who believes that the best way to invest in rural America is to implement a \$42 billion to \$3 billion ratio of support in favor of fixed wireline technology, cannot be thinking about the national interest. Based on what we know today about broadband adoption, it is inconceivable that broadband usage will be split along these lines ten years from now.

The explanation for a 42-to-3 ratio is obvious—a desire to maintain the *status quo* to the greatest extent possible, and to reduce investment by competitors. The proposed transfer of \$1 billion from wireless to wireline support mechanisms each year, much of which will benefit AT&T and CenturyLink, would be a wealth transfer to some of the Nation’s most profitable telecommunications companies, some of which have chosen not to invest in mobile broadband technology.

No rational policymaker who even skims the Wireline Industry Proposals would give them a second thought. This country is not going to move forward boldly into the 21st Century

by investing \$45 billion in fixed wireline technology! We are going to do the most good when subsidies flow with the services consumers are *actually* using, and those that consumers *actually* want. An industry plan that misallocates all available resources on yesterday's technology is a non-starter.

- **The ABC and RLEC Plans Contradict the President and FCC Chairman Genachowski.**

In his 2011 State of the Union speech, President Obama explained to the Nation how important mobile broadband infrastructure is, and promised to deliver it to 98 percent of Americans within five years.¹¹ Chairman Genachowski has repeatedly spoken about the need for mobile broadband throughout the Nation. Funds expended by the American Recovery and Reinvestment Act of 2009 are now exhausted, and there is no further government investment in sight when it comes to the Nation's telecommunications infrastructure. The only funds available to fulfill the vision set forth by the President and Chairman Genachowski reside within the universal service mechanism.

A recent report by Deloitte Consulting indicates that every billion dollars invested in mobile broadband infrastructure will yield 15,000 jobs and a substantial GDP multiplier effect in the economy.¹² At a time when the Nation badly needs infrastructure investment, especially in rural areas, landline companies propose to spend at least \$42 billion on wires and at most \$3 billion on mobile broadband. If one considers the world as it was ten years ago, as it is today, and as it could be ten years from now, it is evident how short-sighted and self-serving these proposals are.

¹¹ Remarks of President Barack Obama in State of the Union Address—As Prepared for Delivery (Jan. 25, 2011), accessed at <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-barack-obama-state-union-address-prepared-delivery>.

¹² Deloitte Consulting LLP, *The Impact of 4G Technology on Commercial Interactions, Economic Growth and U.S. Competitiveness* (Aug. 2011), accessed at <http://www.deloitte.com/us/impactof4g>.

Put simply, you cannot get to the world of 2021 as described below by investing \$42 billion out of \$45 billion into fixed broadband.

2001 – AS IT WAS	2011 – AS IT IS	2021 – AS IT COULD BE
<ul style="list-style-type: none"> ■ Internet access is primarily dial-up. ■ Mobile broadband does not exist. 	<ul style="list-style-type: none"> ■ Internet access is predominantly broadband in urban/suburban areas, and less so in rural areas. ■ Mobile broadband available in some urban areas. 	<ul style="list-style-type: none"> ■ Internet access is broadband nationwide ■ Mobile broadband is available nationwide.
<ul style="list-style-type: none"> ■ Mobile phones make calls. 	<ul style="list-style-type: none"> ■ Mobile phones make calls and access the Internet through narrowband infrastructure. ■ 4G LTE and HSPA+ is rolling out in largest cities. ■ New mobile devices coming on line. ■ Latest mobile devices either not available, or of limited utility in many rural areas. 	<ul style="list-style-type: none"> ■ Throughout the country, thousands of types of mobile devices access the Internet over broadband connections at high data rates – above 50 Mbps. ■ All devices are available and useful in rural areas.
<ul style="list-style-type: none"> ■ Mobile devices have few applications. 	<ul style="list-style-type: none"> ■ Mobile device applications proliferating, especially in urban areas. ■ Mobile device applications of limited utility in many rural areas. 	<ul style="list-style-type: none"> ■ Throughout the country, critical applications for advanced 911, mobile payment, energy savings/smart grid, health care monitoring, mobile diagnostics, utility monitoring, surveillance, and near-field communications are available to all citizens.

■ **The Procedures Followed to Date on These Plans Are Completely Inadequate.**

The Commission placed three new plans on public notice for comment in early August, with a goal of releasing a final order at this year’s October meeting, adopting some combination of the plans, or another plan flowing from the *CAF NPRM*.¹³ This is the single most complex task the Commission has undertaken since the adoption of the 1996 Act.

¹³ *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.

A look back at the Commission's history reveals at least 23 significant orders implementing universal service and intercarrier compensation provisions, over a five-year period between 1996 and 2001. The task is no less complex now, and these new plans are so difficult to understand that it is impossible for an outsider to reach reasoned conclusions concerning numerous issues. Under any ordinary time schedule, the Commission would either refer the plans to the Joint Board for examination and a recommendation, or it would conduct a searching inquiry, including the gathering of data from industry participants to validate assumptions and conclusions set forth in the plans.

In 1999, the Commission implemented major reform of the so-called "non-rural" support mechanism, capping a three-year effort.¹⁴ While U.S. Cellular does not suggest that three years is needed to reform universal service, to start from scratch on the Wireline Industry Proposals and bring them to fruition within three months, reforming both universal service and intercarrier compensation mechanisms, is extraordinary. The proposals set forth in the ABC Plan and the RLEC Plan are complex, in many areas they lack transparency, and represent a new starting point in this process. For example, Dr. Lee L. Selwyn, founder and president of Economics and Technology, Inc., explains how the use of census blocks and wire centers artificially increases support levels and how the ABC Plan fails to provide sufficient information to understand how costs are attributed.¹⁵

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 (2011) ("CAF NPRM").

¹⁴ See *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order, 14 FCC Rcd 8078 (1999).

¹⁵ See Lee L. Selwyn, Helen E. Golding & Colin B. Weir, Economics and Technology, Inc., *The Price Cap LECs' "Broadband Connectivity Plan": Protecting Their Past, Hijacking the Nation's Future* (Sept. 2011) (prepared for U.S. Cellular) ("Selwyn Paper") at 11-12.

While the model submitted with the ABC Plan reflects significant work and development, it is not possible for policymakers to adopt it without careful analysis and public input that can only be done in a workshop or similar environment. It is possible that several iterations of the model will need to be developed in order to reach appropriate conclusions about a number of inputs and assumptions contained therein. In addition, as U.S. Cellular has previously argued, the Commission has not yet defined broadband for universal service purposes, which requires a fact-based analysis in four parts, as set forth in Section 254(c)(1) of the Act. Until the Commission completes the required steps to define broadband, it cannot allow carriers to invest universal service support funds in broadband projects.¹⁶

■ **As of This Date, the Lack of Transparency in the Process Is Remarkable.**

It is disturbing how the Wireline Industry Proposals describe themselves as so fragile that nothing can be changed or the entire structure falls apart. This is simply a different way of telling the government that this is a “take it or leave it” proposition. This not how government operates. Regulators make rules pursuant to the Administrative Procedure Act (“APA”)—they do not take proposals from private parties, put them on public notice, and remake entire industries in 90 days without affording the public an opportunity to properly understand what is being proposed. If the object were to jam something through before the public fully understands what is going on, and to simply declare victory that reform has been achieved, then the industry proposals are tailor-made for that, both in their complexity and the timing of when they were submitted.

Throughout the spring and summer, wireline industry representatives have been meeting behind closed doors to put together the ABC Plan. The RLEC Plan was developed among rural

¹⁶ See U.S. Cellular Reply Comments, WC Docket No. 10-90, *et al.* (filed May 23, 2011) at 4-7.

wireline telephone company interests. As U.S. Cellular understands it, some members of the Joint Board have participated in the ABC Plan process. Independent wireless carriers and their associations, such as the Rural Cellular Association, were not invited to participate in the ABC Plan process, and the plan was not submitted into the record for review until late July 2011.

Both plans include a number of recommendations that do not include sufficient supporting information to permit a reasoned response. In a rulemaking proceeding, the Commission sets forth proposals which are developed by all interested parties. That has not yet happened here, and it cannot happen in the time afforded to date and without an appropriate process to examine what is behind the summary information presented to date. Interested parties must be given the opportunity to work through the plans in the same fashion as the program participants.

U.S. Cellular urges the Commission to consider how poorly a rushed process, led by one industry segment, with the Commission's assistance (including a 36-day comment cycle) to the exclusion of parties adversely affected by the proposals, reflects upon the President's open government directive, in which all federal agencies were ordered to take steps to increase transparency and public participation in the process of adopting rules and effectively governing.¹⁷ Adopting these industry plans within 90 days of public comment, without going through a process that is compelled by the APA and the President's open government directive, effectively prevents many interested parties from participating, and undermines public confidence in government.

The Chairman should not circulate an item proposing to adopt these proposals, nor should any member of this Commission, irrespective of their position on the merits, participate in any

¹⁷ "Transparency and Open Government, Memorandum for the Heads of Executive Departments and Agencies," accessed at http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.

item that is the product of fundamentally defective procedures. To do so would contradict the Administration's good governance pledge and such action cannot be saved by claiming that the perfect is the enemy of the good. In terms of procedure, what is contemplated here is far from good.

II. DISCUSSION.

The Connect America Fund ("CAF") funding budgets proposed by the incumbent local exchange carriers ("LECs") are designed to serve the interests of wireline carriers, but would not be effective in advancing the Commission's goals for the deployment of advanced broadband networks in rural areas. U.S. Cellular does agree, however, with one proposal made by the incumbent LECs, namely, to establish separate CAF funding mechanisms for wireline and mobile wireless broadband, so long as the Commission provides sufficient funding for each of the separate funds.

CAF support should be disbursed to all funding recipients based on forward-looking economic cost models that take into account and encourage deployment of efficient technologies. The use of rate-of-return and embedded cost mechanisms to provide support should not be a part of the Commission's transformation of its universal service program.

The Commission should reject proposals that any "savings" that wireless carriers may receive as a result of the Commission's intercarrier compensation reforms should be used to offset universal service support that the wireless carriers otherwise would be eligible to receive. In addition, the Commission should reject a proposal in the ABC Plan to establish a right of first refusal for incumbent LECs that would give them a unilateral option to foreclose the receipt of CAF support by any other broadband providers in the LECs' service areas.

The Price Cap Carriers argue for a proposal that attempts to use this rulemaking as a vehicle for their shedding a wide array of federal rate and other service regulations. The proposal does not merit consideration by the Commission and should be rejected.

The Commission also should reject an access replacement mechanism proposed in the ABC Plan, which is designed to enable price cap carriers to tap into universal service funding as a means of making them whole in the wake of reductions in their revenue streams as a result of intercarrier compensation reform. Finally, the Commission should adopt a proposal to adopt rate benchmarks to ensure that universal service support is not used to subsidize exceptionally low rates charged by incumbent carriers.

A. The Commission Must Establish Funding Budgets and Allocations That Will Be Effective in Achieving Mobile Broadband Deployment Goals.

Numerous commenters focus on the fact that the CAF budgets suggested by the Wireline Industry Proposals and the State Member Plan would result in substantial increases in the level of funding provided to incumbent LECs, in comparison to their current level of high-cost fund disbursements, and that these proposals attempt to keep funding within an overall cap by reducing support to competitive ETCs by at least between 62 and 77 percent, compared to current capped funding levels.

The record also presents convincing analysis that a more equitable division of funding between wireline and mobile wireless broadband networks and services would bring significant benefits to consumers and businesses throughout rural America.

1. The Record Contains Considerable Criticism of the CAF Funding Budgets and Allocations Proposed by Incumbent LECs.

U.S. Cellular argues in its Comments that the budgets for two separate fixed and mobile broadband funds¹⁸ should be set as evenly as possible, “to encourage the development of new technologies across the board.”¹⁹ The record provides substantial support for this approach, and also reflects considerable opposition to the lopsided and self-serving budget proposals advanced in the Wireline Industry Proposals.

At the outset, several commenters challenge claims by the Consensus Framework Parties that their funding budget proposals are the product of an “industry consensus”²⁰ that permeates all the key components of the Wireline Industry Proposals. Google points out the obvious: The “industry consensus” claimed by the incumbent LECs may include the wireline industry but it “excludes the rest of the telecommunications and Internet ‘ecosystem’”²¹ The Pennsylvania PUC agrees:

It is obvious that major segments of the telecommunications and communications industries have not signed on to the USTA proposal. State regulators, state consumer advocates (e.g., NASUCA), and consumer groups at best have been sketchily informed on the substance of the USTA proposal. Furthermore, the consensus that is being advertised as existing among the participating parties in the USTA proposal can best be characterized as a forced accommodation or as a “shotgun marriage” of convenience.²²

SouthernLINC Wireless explains that the proposals advanced by the incumbent LECs “in essence convert the universal service fund into an access charge revenue replacement mechanism

¹⁸ U.S. Cellular discusses, in Section II.B., *infra*, support in the record for the establishment of two separate funding mechanisms.

¹⁹ U.S. Cellular Comments at 25.

²⁰ Joint Letter at 1. *See* Rural Wireline Associations Comments at 8.

²¹ Google Inc. (“Google”) Comments at 14.

²² Pennsylvania Public Utility Commission (“Pennsylvania PUC”) Comments at 3.

for certain wireline carriers[,]”²³ and Ad Hoc observes that the wireline industry’s proposals would merely entrench the *status quo* with regard to the distribution of universal service support.²⁴ In short, it is disingenuous to claim an industry consensus for budget proposals that, as U.S. Cellular states in its Comments, represent the theft of support from one class of carrier, for the benefit of another.²⁵

U.S. Cellular agrees with commenters who indicate that there is no record support for the incumbent LECs’ funding proposals.²⁶ Therefore, the residual allocations for mobile broadband proposed by the incumbent LECs are best understood as a solution to a dilemma faced by the incumbents. The Consensus Framework Parties want a much larger share of universal service funding,²⁷ but they also find it necessary to demonstrate support for the Commission’s policy of budgetary restraint.²⁸ The most convenient way to meet these twin objectives is to steal funding from competitive ETCs.²⁹ As Free Press explains, the proposed influx of support for incumbent

²³ Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) Comments at 6.

²⁴ Ad Hoc Telecommunications Users Committee (“Ad Hoc”) Comments at 9. *See* N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (“Viaero Wireless”) Comments at 10-11.

²⁵ U.S. Cellular Comments at 16 (discussing the ABC Plan).

²⁶ *See, e.g.*, Ad Hoc Comments at 11 (noting that “[n]othing in the current record supports setting aside \$2.2 billion per year of the total CAF for the exclusive use of the price cap ILECs”).

²⁷ As Free Press explains, the wireline proposals “merely represent each group—large price cap incumbents and small rate-of-return incumbents—offering a plan that promotes that group’s own self-interest, at the expense of consumers and small wireless carriers.” Free Press Comments at 7. Free Press further observes 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 [presented in the Joint Letter], this support would increase to \$2.2 billion, or half of the total.” *Id.*

²⁸ *See, e.g.*, Joint Letter at 2 (indicating that the Consensus Framework Parties’ proposals have been designed “to constrain the size of the total high-cost fund within a \$4.5 billion per year budget”).

²⁹ The Price Cap Carriers may object to this conclusion by contending that, under the ABC Plan, wireless carriers have access to the proposed \$2.2 billion CAF mechanism, so long as wireless technology meets the bandwidth levels, and the wireless competitive ETCs meet the service and other requirements, adopted by the Commission. *See* Price Cap Carriers Comments at 7-8. The opportunity of wireless com-

LECs “is accomplished largely through the redistribution of the current funding allocated to competitive eligible telecommunications carriers . . . , who in most cases are wireless providers.”³⁰ Surely, the Commission should examine whether the amount of support proposed to be

petitive ETCs to receive disbursements from the \$2.2 billion funding pool would be severely reduced, however, if the Commission were to adopt the CostQuest Broadband Analysis Tool (“CQBAT”) cost model proposed by the Price Cap Carriers. The Rural Cellular Association (“RCA”) explains that, by basing costs exclusively on a wireline technology, CQBAT would reintroduce an arbitrary preference for incumbent LECs in determining support levels. RCA Comments at 7. U.S. Cellular discusses this issue further in Section II.C.2., *infra*. Moreover, Dr. Selwyn identifies numerous aspects of the ABC Plan’s proposals that support his conclusions that “the ABC Plan makes it difficult—if not impossible—for mobile wireless providers to vie for CAF support[.]” Selwyn Paper at 25, and that “the constraints under which the ILEC plan would extend broadband availability into currently unserved and underserved areas gives almost no effect to the growing demand for *mobile* broadband access.” *Id.* at 26 (emphasis in original). *See, e.g., id.* at 11 (the proposal freezes competing carriers out of the funding process through use of the ROFR mechanism); 13-14 (the Price Cap Carriers’ cost model considers only wireline technology and provides no additional credit for the incremental functionality of mobility, thus failing to attempt to identify or evaluate the most efficient, least cost means of providing broadband); 16-17 (the model’s use of wire centers, a uniquely incumbent LEC network architecture, may overstate costs associated with wireless networks (relative to costs associated with wireline networks), which are designed for deployment in service areas larger than wire centers). Time Warner agrees with Dr. Selwyn’s concerns regarding the use of wire centers in the ABC Plan’s proposed cost model, arguing that, “[b]y 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.” Time Warner Cable Inc. (“Time Warner”) Comments at 18-19.

³⁰ Free Press Comments at 8. Free Press explains that, “[a]t its heart, the Joint Industry Framework merely shifts support from competitive carriers to the large price cap incumbent carriers without addressing or properly assessing such beneficiaries’ actual need for subsidies. *Id.* at 7. *See* Cellular South, Inc. (“Cellular South”), Comments at 12-13. U.S. Cellular also agrees with objections raised by Rural Telecommunications Group, Inc. (“RTG”) to a component of the State Member Plan. Specifically, the State Member Plan suggests phasing in CAF support for mobile broadband, beginning with \$50 million in the first year, and increasing to \$500 million in the sixth year. RTG argues that:

Any mobility fund that is incremental or phased-in will cause major harm to consumers dependent on rural wireless carriers’ networks. Consumers served by these carriers will experience delayed network upgrades, and more importantly could lose service as these carriers will not be able to sustain current operations under a mobility fund that distributes such a small amount at its commencement. These carriers will be forced to shut down cell sites to continue providing some service as a result of such a drastic reduction of support.

RTG Comments at 8. U.S. Cellular indicates in its Comments that it conceptually supports an approach suggested in the ABC Plan in which a transition period for phasing down existing universal service funding would begin on July 1, 2012, and be completed on July 1, 2016, while CAF support would be phased in pursuant to the same timetable, and would be fully funded by July 1, 2016. *See* U.S. Cellular Comments at 46.

redistributed bears some resemblance to the statutory requirement that support be sufficient to deliver the supported services to rural areas, while spending no more than is necessary to deliver such services efficiently.

Another aspect of the ABC Plan that is criticized by commenters is the lock down of approximately \$42 billion in support to incumbent LECs over a ten-year period.³¹ NASUCA, for example, argues that the proposal to lock in a fixed level of support for ten years is “simply a wishful-thinking guarantee to the [incumbent] carriers[,]”³² pointing out that it “is absurd” to assume that “in this continually-changing broadband world, neither the benchmark cost nor the modeled cost of providing broadband in a currently-unserved area will change” over a ten-year period.³³ Google agrees, opposing “the static view of broadband provisioning and operating costs described in the Wireline Incumbent Proposal, which locks in funding for ten years regardless of actual need.”³⁴

U.S. Cellular reiterates its view that the Commission should reject proposals to lock up CAF funding for a decade, since doing so would inevitably result in the inefficient use of CAF funds and would also reduce the opportunity for competitive ETCs to receive disbursements from the locked-in pool of support even if they demonstrate their ability to provide broadband

³¹ See ABC Plan, Attach. 1 at 2 (stating that “[b]roadband providers that elect to receive support from the CAF will receive a fixed level of support for a term of ten years from the date on which support is awarded”). U.S. Cellular has objected to this proposal in its Comments. See U.S. Cellular Comments at 26-27, 30.

³² National Association of State Utility Consumer Advocates (“NASUCA”) Comments at 39.

³³ *Id.* at 38.

³⁴ Google Comments at 24-25 (footnote omitted).

services more efficiently and economically.³⁵ The likelihood for extraordinary waste, especially in later years, is likewise, extraordinary.

Arguments advanced by the Rural Wireline Associations, intended to defend their proposal to limit funding for mobile broadband deployment to not more than \$300 million annually, are not persuasive. The Rural Wireline Associations assert that a cautious approach to funding mobile broadband is mandated, to conserve limited public funding, while the nature, extent, and needs for mobile deployment in unserved rural areas become more clear.³⁶ The Rural Wireline Associations claim that several factors contribute to the present uncertainty regarding the future need for mobile broadband deployment in rural areas, *i.e.*, continued expansion of wireless 3G/4G networks such as those operated by AT&T, Verizon Wireless, and Sprint; commitments made by Verizon Wireless and Sprint to phase out their wireless universal service support; and the “likely similar commitment made by AT&T as it seeks approval of its proposed merger with T-Mobile”³⁷

While it certainly is the case that considerable doubt surrounds the intentions of the national wireless carriers regarding the extent to which their business plans will accommodate

³⁵ See Viaero Wireless Comments at 12 (arguing that the ten-year lock-in proposal is not competitively or technologically neutral). Another problematic aspect of the ABC Plan’s proposal to lock in an incumbent LEC’s CAF funding for ten years is a companion proposal that would give the incumbent LEC five years from the time it is awarded support to “make broadband service available to a minimum number of service locations in the supported areas for which it receives CAF support.” ABC Plan, Attach. 1, at 7. Dr. Selwyn explains that “[s]imply put, the entire first half of the ten-year support period can elapse before the support recipient provides any actual service. There are no intermediate benchmarks for deployment and no role for state or federal regulators with respect to service quality standards or pricing.” Selwyn Paper at 12.

³⁶ Rural Wireline Associations Comments at 12-13.

³⁷ *Id.* The prospects for the merger of AT&T and T-Mobile have been placed in doubt by the recent suit filed by the U.S. Department of Justice. See Michael J. de la Merced & Jeffrey Cane, *U.S. Moves To Block AT&T Merger with T-Mobile*, N.Y. TIMES, Aug. 31, 2011, accessed at <http://dealbook.nytimes.com/2011/08/31/u-s-moves-to-block-att-merger-with-t-mobile/?hp>.

bringing advanced mobile broadband networks and services to rural consumers and businesses, the Rural Wireline Associations are incorrect in suggesting that it would be prudent public policy to hold universal service support for mobile wireless broadband providers in abeyance while waiting for an answer to that question. Doing so would flout the Commission's mandate to adopt and implement policies based on the statutory principles that funding mechanisms should be sufficient to ensure services in rural areas that are comparable to those available in urban areas.³⁸

Moreover, the Rural Wireline Associations do not evaluate whether the national wireless carriers, in continuing the expansion of their 3G/4G networks, might actually conclude that there is a business case for their deployment of advanced broadband networks in sparsely-populated rural areas. In U.S. Cellular's view, such a conclusion is not very likely. In fact, the "broadband availability gap" defined by the Broadband Plan is based on the premise that there is no such business case.³⁹

With regard to the phase-out of universal service support by Verizon Wireless and Sprint (and potentially by AT&T), the nexus between these phase-outs and the level of CAF funding

³⁸ The Rural Wireline Associations presumably would not embrace a corollary to their argument: Given the precipitous loss of access lines that has been experienced by incumbent LECs for several years, it would be prudent to hold back or reduce universal service support until their situation either stabilizes or is otherwise resolved. U.S. Cellular of course would not consider such an approach to be sound public policy, just as it would make little sense to jeopardize the operations and broadband deployment efforts of competitive ETCs while awaiting the formulation and implementation of the national wireless carriers' business plans.

³⁹ The Broadband Plan concludes that:

[The] broadband availability gap is greatest in areas with low population density. Because service providers in these areas cannot earn enough revenue to cover the costs of deploying and operating broadband networks, including expected returns on capital, *there is no business case* to offer broadband services in these areas. As a result, it is unlikely that private investment alone will fill the broadband availability gap. The question, then, is how much public support will be required to fill the gap.

Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) ("Broadband Plan"), at 136 (emphasis added) (footnote omitted).

available for mobile broadband deployment is not clear. The Commission has explained that one use of the high-cost funding reclaimed by such phase-outs would be the support of broadband deployment.⁴⁰ It thus is not evident why these phase-downs “mandate a cautious approach” to the funding of mobile broadband deployment. Perhaps the Rural Wireline Associations mean to suggest that, since the *Corr Wireless Order* has indicated that a portion of reclaimed funds may be used to support a Mobility Fund, it would be prudent to limit funding for mobile wireless broadband to \$300 million while waiting to see the extent to which reclaimed funds actually are allocated for that purpose, and whether doing so is sufficient to meet the needs for mobile deployment in unserved rural areas.

Such a view is not persuasive. The disposition of reclaimed high-cost support pursuant to the *Corr Wireless Order* is not relevant to determining a sufficient level of funding for mobile broadband deployment and operations. The issue is whether there is any compelling policy basis to reduce the current level of annual support for competitive ETCs (approximately \$1.3 billion, pursuant to the interim cap imposed more than three years ago) to \$300 million. There is not. Neither the Rural Wireline Associations nor any other parties have provided any policy basis for slashing the level of support available for mobile broadband. The extent to which reclaimed support may be allocated for mobile broadband has no bearing on determining the level of support

⁴⁰ See *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, Order and Notice of Proposed Rulemaking, 26 FCC Rcd 12854, 12662 (2010) (“*Corr Wireless Order*”), *recon. pending* (directing the Universal Service Administrative Company “to reserve any reclaimed funds as a fiscally responsible down payment on proposed broadband universal service reforms, as recommended in the National Broadband Plan, including to: . . . support a Mobility Fund to improve 3G wireless broadband service in states with the worst coverage today; . . . and, in the long term, directly support broadband Internet services for all Americans”) (footnote omitted).

needed to ensure that funding is sufficient for the deployment of mobile broadband networks and services.

Section 254 of the Act compels the Commission to ensure that support is sufficient to provide rural consumers with access to supported services. If the Commission defines broadband as a supported service at speeds recommended in the Wireline Industry Proposals, it is possible, if not probable, that mobile broadband could serve more households with less support. At the very least, a fact-based process must be conducted, and if mobile broadband is a more efficient platform, then in furtherance of its mandate, the Commission should devote more resources, not less, into the more efficient platform, to spread broadband as widely as possible with available funds.

Finally, it is unreasonable for the Rural Wireline Associations to express concern regarding the need “to conserve limited public funding” while at the same time seeking to garner a substantial portion of future CAF support. A solution to the Rural Wireline Associations’ purported conservation concerns would be to leave the size of the pie precisely as it is, but to slice it in a manner that provides a more reasonable allocation (from the perspective of public policy and the interests of rural consumers and businesses) for mobile broadband deployment.

The approach taken by the ABC Plan in suggesting a \$300 million cap on funding for the proposed “Advanced Mobility/Satellite Fund” (“AMF”) poses additional problems. For example, the ABC Plan specifies that:

The available AMF support in a given year is the difference between the overall constraint on the size of the high-cost fund and the sum of support from the CAF for price cap LEC areas, support from the transitional access replacement mechanism for price cap LECs, any remaining legacy support provided to price cap

incumbent LEC ETCs and CETCs, and any support provided to rate-of-return incumbent LECs.⁴¹

Thus, the \$300 million funding level, in any given year, could be driven down to a much lower amount.⁴² In addition, the ABC Plan specifies that AMF funding is available only “in those high-cost areas that will not receive service as a result of planned commercial mobile broadband deployments.”⁴³ This restriction could amount to a significant limitation on wireless broadband providers’ access to support, since, as Dr. Selwyn explains, the ABC Plan provides “no elaboration or definition of exactly what constitutes a ‘planned deployment,’ whose ‘plan’ is to be evaluated or, for that matter, how any such ‘plan’ would be brought to the attention of the FCC or the administrators of the AMF.”⁴⁴

2. An Equitable Distribution of CAF Funding Between Wireline and Mobile Wireless Broadband Would Benefit Rural Consumers and Businesses.

U.S. Cellular agrees with the conclusion reached by Ad Hoc that the incumbent LECs’ proposals “offer self-serving . . . changes to the USF [Universal service Fund] system They protect the financial interests of industry participants but do not effectively or efficiently promote the Commission’s public interest and broadband deployment goals.”⁴⁵ Fortunately, the incumbent LECs are not the arbiters of public policy. As Ad Hoc reminds us, it is “the Commission [that] has a statutory mandate to protect the public interest—not the interest of specific industry

⁴¹ ABC Plan, Attach. 1, at 8.

⁴² See Selwyn Paper at 26 n.58.

⁴³ ABC Plan, Attach. 1, at 8.

⁴⁴ Selwyn Paper at 26.

⁴⁵ Ad Hoc Comments at 6.

participants in preserving their subsidies—and ensure sufficient but not excessive funding for universal service programs.”⁴⁶

As the Commission makes its public policy choices for CAF funding budgets and allocations, it should give consideration to the concerns expressed in the record regarding the imbalance in the incumbent LECs’ funding proposals. RICA, for example, criticizes the ABC Plan because the level of support it proposes for a mobility fund “appears grossly inadequate”⁴⁷ This view is echoed by CTIA, which concludes that the \$300 million in funding for mobility proposed by the ABC Plan “appears insufficient to meet the needs of mobile broadband consumers in high-cost areas[,]”⁴⁸ and that the level of funding for mobile broadband should not be a residual number that is the remainder “after the need for fixed broadband support has been determined.”⁴⁹

T-Mobile argues that the \$300 million funding proposal is “woefully inadequate[,]”⁵⁰ and would ignore an investment gap for providing ubiquitous mobile wireless broadband services estimated at \$12.9 billion.⁵¹ USA Coalition explains that the ABC Plan, in providing the “left overs” of CAF support for mobile broadband, amounts to a “wholesale transformation of support towards a revenue replacement subsidy for the wireline voice industry”⁵² SouthernLINC

⁴⁶ *Id.* at 9.

⁴⁷ Rural Independent Competitive Alliance (“RICA”) Comments at 5 (footnote omitted).

⁴⁸ CTIA—The Wireless Association® (“CTIA”) Comments at 14. Dr. Selwyn explains that “[t]he functional specification of the service(s) to be supported must necessarily be driven by the needs and demands of the users they are intended to serve” Selwyn Paper at 6.

⁴⁹ CTIA Comments at 17 (footnote omitted).

⁵⁰ T-Mobile USA, Inc. (“T-Mobile”) Comments at 21.

⁵¹ *Id.*

⁵² Universal Service for America Coalition (“USA Coalition”) Comments at 7.

Wireless itemizes the harms that would flow from the incumbent LECs' proposals for mobile broadband funding:

[I]t will be difficult, if not impossible, for existing wireless ETCs to deploy additional facilities to serve, or continue to serve, truly high cost areas. Further, the minimal funding for wireless services will provide wireline carriers with an unfair competitive advantage, skewing the market for broadband services in their favor and inhibiting the development and deployment of advanced wireless services—a result that stands in stark contrast to the trends in urban areas and that runs counter to Section 254's mandate of reasonable comparability.⁵³

In addition to chronicling the disadvantages of the funding suggestions made in the Wireline Industry Proposals, the record also reinforces arguments advanced by U.S. Cellular in favor of a more balanced approach to the allocation of CAF support between wireline and mobile wireless broadband providers. *First*, a greater level of CAF support for mobile broadband would reflect a growing consumer preference for mobile broadband services. As RTG indicates, “[c]onsumers want and expect to have the ability to access broadband when they want and whenever they want, and the only way to meet this expectation is through mobility.”⁵⁴

Second, the record documents “the enormous and ever-increasing value of mobile services to all consumers, particularly rural and low-income consumers.”⁵⁵ MTPCS, for example, discusses the fact that mobile carriers' network infrastructure and operations bring jobs and associated economic development benefits to rural areas.⁵⁶

⁵³ SouthernLINC Wireless Comments at 21.

⁵⁴ RTG Comments at 3-4 (footnote omitted). *See* Cellular South Comments at 13; MTPCS, LLC d/b/a Cellular One (“MTPCS”) Comments at 7-10; SouthernLINC Wireless Comments at 19; USA Coalition Comments at 16-17.

⁵⁵ CTIA Comments at 15 (footnote omitted).

⁵⁶ MTPCS Comments at 11. *See* T-Mobile Comments at 21.

Third, there is record evidence that wireless technology is a cost-effective means of deploying broadband service for many locations.⁵⁷

Fourth, a more even balance in the distribution of CAF funding between fixed and mobile wireless broadband providers would enhance competition in rural markets. Thus, U.S. Cellular agrees with Google that “[b]roadband competition in USF supported areas can be increased by expanding USF support beyond incumbent wireline carriers[,]”⁵⁸ but the extent of this increase in competition is dependent upon the level of funding available for mobile broadband deployment. U.S. Cellular also agrees with Ad Hoc that a more equitable distribution of CAF funding would reduce the subsidization of incumbent LECs’ control of last-mile facilities, thus enhancing the development of broadband competition for millions of Americans.⁵⁹

And, *fifth*, as RTG points out, a more even distribution of CAF funding would be consistent with the fact that “[a]s mobile connections rise, wireless carriers pay more and more into the USF”⁶⁰

In light of the abundant documentation in the record regarding both the harms that would be visited upon consumers in rural areas if the Commission were to adopt the proposals to short change funding for the deployment of mobile wireless broadband, as well as the benefits that would be realized by a more even distribution of funding, U.S. Cellular reiterates its proposal that CAF funding dedicated to mobile broadband be set at an annual level of \$1.3 billion.⁶¹

⁵⁷ Ad Hoc Comments at 11 n.14.

⁵⁸ Google Comments at 13 (footnote omitted).

⁵⁹ See Ad Hoc Comments at 7.

⁶⁰ RTG Comments at 5 (footnote omitted). See T-Mobile Comments at 20 (the \$300 million in funding proposed in the ABC Plan amounts to approximately 10 percent of the amount that wireless carriers contribute to USF).

⁶¹ See Notice at 2 n.5; U.S. Cellular Comments at 50 n.144.

MTPCS supports U.S. Cellular’s proposal, concluding that “the Fund could accomplish its purposes” at this level of funding for mobile broadband deployment.⁶² T-Mobile suggests that a “realistic funding amount would be about \$1.3 billion, which is roughly the size of the capped CETC fund, or \$1.5 billion, which is about half the amount that wireless carriers contribute to the USF.”⁶³

B. Many Commenters Agree with U.S. Cellular That the Commission Should Adopt Separate CAF Funding Mechanisms for Wireline and Mobile Wireless Broadband.

U.S. Cellular has been a strong supporter of the Commission’s designating separate CAF funding mechanisms for wireline broadband service and for mobile wireless broadband service.⁶⁴ The Rural Wireline Associations join U.S. Cellular in this advocacy.

Although, as U.S. Cellular has discussed in the previous section, there is disagreement regarding funding levels for wireline and mobile broadband, the Rural Wireline Associations argue that, “[t]o the greatest extent possible within the confines of [applicable] funding targets, consumers in high-cost rural areas should have access to both fixed and mobile broadband services that are reasonably comparable to the fixed and mobile broadband services provided in urban areas at reasonably comparable rates.”⁶⁵

In order to accomplish these goals, the Rural Wireline Associations support “a separate high-cost support mechanism . . . for mobility objectives.”⁶⁶ The Rural Wireline Associations

⁶² MTPCS Comments at 15. *See* Cellular South Comments at 13; Viaero Wireless Comments at 12.

⁶³ T-Mobile Comments at 22-23 (footnotes omitted). *See* RCA Comments at 13-14.

⁶⁴ *See* U.S. Cellular Comments at 20. Dr. Selwyn provides an analysis of the advantages of adopting a separate support mechanism for mobile wireless broadband. *See* Selwyn Paper at 28.

⁶⁵ Rural Wireline Associations Comments at 10.

⁶⁶ *Id.* at 12. *See* Cellular South Comments at 7-11; Telecommunications Industry Association (“TIA”) Comments at 10-11 (unpaginated); Viaero Wireless Comments at 9-10.

explain that a separate mechanism is necessary “because of the substantial differences in network design, investment requirements, equipment and bandwidth needs, congestion and maintenance issues, and service quality expectations between fixed and mobile networks and services.”⁶⁷ The Rural Wireline Associations conclude 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.”⁶⁸

Although RCA expresses concerns regarding the adoption of separate support mechanisms for wireline and mobile wireless broadband, these concerns are grounded in RCA’s belief that a single, integrated fund would facilitate putting all providers on an equal footing and would “eliminate the historical bias in favor of wireline technology.”⁶⁹ In U.S. Cellular’s view, these concerns would be ameliorated if the Commission, as U.S. Cellular and other commenters are recommending, provides for a relatively even allocation of support to the separate funds. Doing so would be in recognition of the fact that mobile wireless broadband provides significant benefits to consumers and businesses throughout rural America, and that there is a considerable and growing demand for mobile wireless broadband services.⁷⁰ In fact, RCA states that it would sup-

⁶⁷ Rural Wireline Associations Comments at 12.

⁶⁸ *Id.* See Independent Telephone and Telecommunications Alliance, *et al.* (“ITTA”) Comments at 6; RICA Comments at 5.

⁶⁹ RCA Comments at 11.

⁷⁰ As Dr. Selwyn explains, the ABC Plan, in proposing to shrink the amount of universal service support available for mobile broadband deployment, fails to take this demand for mobile broadband into account. “There is no basis for the value judgment, implicit in the ABC Plan, that ‘fixed’ deserves priority over ‘mobile’ for broadband access. In fact, the overall ABC Plan all but ignores the exploding demand for mobile broadband; its extreme focus upon fixed location services is anything but forward-looking.” Selwyn Paper at 27.

port the use of separate funds “provided that the overall allocation of resources is equitable and competitively neutral.”⁷¹

SouthernLINC Wireless also expresses reservations regarding the use of separate funds for CAF support, arguing that separate funds would not be competitively neutral and would discourage intermodal competition.⁷² U.S. Cellular disagrees. If the levels of funding provided to the separate funds is equitable and sufficient to make both wireline and mobile wireless available in rural areas, and comparable to services available in urban areas, then the use of two funds would be consistent with the Commission’s principle of competitive neutrality. By the same token, parity between the two funds would significantly accelerate mobile wireless deployment above the \$300 million level, thus increasing intermodal competition.⁷³

Finally, there is support in the record for U.S. Cellular’s view that, if the Commission adopts two separate funds, then funding should be fully portable within each fund. U.S. Cellular observes in its Comments that “[m]aking funding fully portable within each separate fund would enhance the level of consumer choice and promote the efficient use of CAF support.”⁷⁴ RCA agrees, noting generally that “[p]ortability would advance many of the core principles of USF

⁷¹ RCA Comments at 11.

⁷² SouthernLINC Wireless Comments at 20-21.

⁷³ MetroPCS objects to “us[ing] any excess USF resources for the purposes of creating a new [mobility] fund.” MetroPCS Communications, Inc. (“MetroPCS”), Comments at 19. MetroPCS’s suggested alternative is to use these resources to lower the level of USF contributions applicable to wireless carriers, thus better enabling them to deploy broadband networks “in small, rural and mid-tier markets.” *Id.* at 20. In U.S. Cellular’s view, it is highly unlikely that carriers would be able to deploy broadband networks in high-cost, sparsely populated rural markets in the absence of CAF support because there is no sound business plan for deployment in these markets. Solving this problem with respect to high-cost areas, of course, is the universal service program’s *raison d’être*.

⁷⁴ U.S. Cellular Comments at v.

reform while harmonizing USF policy with the realities of the competitive marketplace[.]”⁷⁵ and also concluding that:

If the Commission chooses to segregate CAF support into separate wireline and wireless funds . . . , it should still ensure that funding is success-based within those distinct funds. The Commission should not allow ILECs to collect support payments for customers they lose to wireline competitors, even if those ILECs receive support from a dedicated wireline fund.⁷⁶

C. There Is a Consensus That Cost Models Are Superior to Rate of Return As a Mechanism for Disbursing CAF Support.

There is support in the record for U.S. Cellular’s view that the strengths associated with cost models as a basis for the disbursement of CAF funding warrant using cost models for all aspects of the CAF program, including distribution of support to rural LECs. Criticism in the record of any continued use of rate-of-return mechanisms for rural LECs’ support bolsters this view.

1. The Transformation of the Commission’s Universal Service Policies Should Not Include Any Continued Use of Rate-of-Return Mechanisms.

As U.S. Cellular notes in its Comments, the Commission has paved the way in this proceeding for finally breaking away from the use of rate-of-return and embedded cost mechanisms to disburse high-cost support, by indicating that “if support is based on cost, it should be based on forward-looking economic cost, not embedded costs, and that there may be significant problems inherent in indefinitely maintaining separate mechanisms based on different economic principles.”⁷⁷ There is support for the Commission’s view in the record.

⁷⁵ RCA Comments at 19.

⁷⁶ *Id.* at 20-21.

⁷⁷ *CAF NPRM*, 26 FCC Rcd at 4690 (para. 448) (footnotes and internal quotation marks omitted), *quoted in* U.S. Cellular Comments at 38 n.99.

Free Press, for example, criticizes the “Consensus Framework” proposed in the Joint Letter because it “does nothing to reform the inefficiencies and perverse incentives inherent in the historical cost support methodology.”⁷⁸ Ad Hoc points to the Commission’s own findings in 1997 that determining high-cost support by using an embedded cost mechanism contradicts sound economic theory.⁷⁹

RCA opposes adopting two separate support mechanisms depending upon whether an incumbent carrier is regulated as a rate-of-return or price cap carrier, and instead favors use of cost models in all cases “[b]ecause such models would set the efficient level of support regardless of the size or regulatory status of the incumbent wireline provider”⁸⁰

The Commission has known and acknowledged since 1997 that its universal service program is not well served by using rate-of-return, embedded cost mechanisms to disburse support. If the Commission is intent upon transforming its universal service policies, then now is the time to eliminate the use of rate-of-return, embedded cost mechanisms. Doing so will benefit consumers in rural America by enhancing competition, ensuring more efficient use of CAF funds, and accelerating these consumers’ access to advanced broadband networks.

⁷⁸ Free Press Comments at 8.

⁷⁹ Ad Hoc Comments at 25 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8935 (para. 292) (1997) (“*USF First Report and Order*”) (subsequent history omitted)). See Cellular South Comments at 16-17; Viaero Wireless Comments at 15-16.

⁸⁰ RCA Comments at 9. CTIA suggests that, even if the Commission decides that rate-of-return mechanisms should be retained for some period, the Commission still should “form[] a task force to recommend a glide path for elimination of rate-of-return regulation.”

2. The Record Includes Support for Employing Cost Models To Disburse CAF Support, As Well As Constructive Suggestions for Refining the Use of Cost Models.

The record reinforces the Commission’s long-held view that a forward-looking cost model “best approximates the costs that would be incurred by an efficient carrier in the market” and that cost models “send the correct signals for entry, investment, and innovation.”⁸¹ The use of forward-looking economic costs as a basis for disbursing high-cost support enhances efficient carrier operations and removes any incentive for carriers to inflate costs or avoid efficient reductions in their costs.⁸² Moreover, using cost models “in the USF context would . . . help limit the size of the fund while maximizing its effectiveness.”⁸³

A key issue explored in the record regarding the use of a cost model for CAF support is whether modeling should be limited to a single technology. Google points out, for example, that, “[c]onsistent with the FCC’s regulatory principle of technological neutrality, it should look beyond wireline broadband cost structures and assess whether providers with lower costs (*e.g.*,

⁸¹ *USF First Report and Order*, 12 FCC Rcd at 8899 (para. 224), *quoted in* RCA Comments at 5-6. Dr. Selwyn explains that the Commission’s competitive policies are also served by the use of forward-looking mechanisms for universal service support disbursements:

Decisions as to the distribution of support for universal broadband should be driven by forward-looking considerations whose goal should be rooted in the core principle of economic regulation—i.e., to achieve a “competitive outcome” in the presence of market failure. Where the confluence of high cost and low demand (resulting from low population density) are incapable of encouraging entry by multiple firms—i.e., where market failure is present—the support mechanism should still attempt to employ market forces to the greatest extent possible, so that support flows to the most efficient and competitively responsive provider.

Selwyn Paper at 5.

⁸² RCA Comments at 6.

⁸³ *Id.* at 7.

cable modem or mobile/satellite) could meet our national deployment goals.”⁸⁴ NASUCA criticizes the CQBAT model proposed in the ABC Plan because it was a poor decision by the model’s designers to assume the use of only one type of technology.⁸⁵ NASUCA concludes that “[i]t is a major structural deficiency in the model because the model, by definition, is precluded from using the most least cost, efficient type of technology to include in the construction of broadband networks.”⁸⁶ Dr. Selwyn also explains an additional problem associated with the CQBAT model’s focus only on wireline technology:

The overstatement of “forward looking” costs that would result from a cost model that expressly *excludes* consideration of a potentially lower-cost technology, coupled with the presumptive incumbent LEC “right of first refusal” bias, will bloat the aggregate level of support to be provided under the CAF mechanism and, since the aggregate level of CAF support will be a major determinant of the aggregate level of explicit contribution to be made to the Fund, will result in excessive prices for all services that are to be subject to such contribution requirements, which will in turn have broad negative impacts on the economy overall.⁸⁷

U.S. Cellular agrees that basing CAF support disbursements on a cost model designed to include only costs associated with wireline technologies would be a mistake. The use of separate CAF funds for disbursing support to wireline and mobile wireless broadband providers, however, offers a solution to the problems associated with limiting modeling to one type of technology. In addition to supporting the use of two separate funds, U.S. Cellular has developed a USF Mobility

⁸⁴ Google Comments at 23 (footnotes omitted). ITTA notes that “[i]t clearly is in the public interest for the Commission to encourage the deployment and utilization of the most efficient available technologies.” ITTA Comments at 10-11. *See* National Cable and Telecommunications Association (“NCTA”) Comments 14-15.

⁸⁵ NASUCA Comments at 83. *See* TIA Comments at 9 (unpaginated) (opposing the ABC Plan’s proposal to use one technology to determine modeled costs for 4 Mbps download/768 kbps upload service, because the Commission, in creating support for mobile voice and broadband, should “adhere to its long-standing technology neutrality principles and avoid setting technical requirements gauged to particular technologies”).

⁸⁶ *Id.*

⁸⁷ Selwyn Paper at 15 (emphasis in original).

Model designed to facilitate the disbursement of CAF support from a separate mobile wireless broadband funding mechanism.⁸⁸ Using separate funds—with separate cost models—for wireline and mobile wireless broadband support would help to ensure that efficiency is the principal driver for fund disbursement. This would not only reduce the size and growth of CAF funding mechanisms, but would also enhance access to advanced broadband networks and affordable broadband services.⁸⁹

Finally, U.S. Cellular notes considerable concern in the record that the CQBAT model proposed by the Price Cap Carriers has not yet been made available for review and comment by interested parties.⁹⁰ U.S. Cellular agrees with these criticisms, since the Commission cannot make informed judgments regarding the strengths, weaknesses, and workability of the CQBAT model in the absence of input from interested parties that is informed by their opportunity to subject the model to rigorous review. For example, Dr. Selwyn raises substantial concerns about how the CQBAT model uses census blocks as a unit of measure for CAF funding.⁹¹ The Commission should ensure that sufficient time is made available for the generation of this public input before taking any action with respect to the Price Cap Carriers' proposal.

⁸⁸ See Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.*, (filed Aug. 6, 2011) (attaching U.S. Cellular USF Mobility Model Report (“Model Report”)), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021700907>. MTPCS also has developed a wireless cost model. See MTPCS Comments at 2.

⁸⁹ RICA argues that, because, in its view, the use of any cost model could produce errors with respect to the costs incurred by smaller carriers, the use of a model by the Commission should include a process by which a carrier is given an opportunity to demonstrate that an area served by the carrier is, in fact, a high-cost area for which a level of support greater than the amount predicted by the model would be appropriate. U.S. Cellular is not unsympathetic to this concern, and suggests that the Commission should take steps to examine further the merits of RICA's arguments.

⁹⁰ See, *e.g.*, Ad Hoc Comments at 15-16; ITTA Comments at 4, 9-10; National Association of Regulatory Utility Commissioners Comments at 8-9; NASUCA Comments at 40; Nebraska Public Service Commission Comments at 12-13; RICA Comments at 11.

⁹¹ See, *e.g.*, Selwyn Paper at 11-12.

D. Purported Savings for Competitive ETCs from Intercarrier Compensation Reform Are Not a Basis for Reducing the Budget for Competitive ETCs' CAF Support.

The Commission has sought comment regarding the “extent [to which] projected savings associated with intercarrier compensation reform for wireless carriers as proposed in the ABC Plan [would] help offset reductions in high-cost support for competitive ETCs”⁹² A number of parties reject any suggestion that such an offset would occur, and U.S. Cellular agrees. CTIA for example, explains that, in the wireless industry, “any intercarrier compensation savings will be ‘competed away’—benefiting consumers through lower rates, increased capacity and coverage, and improved service quality—rather than being retained by wireless carriers.”⁹³

U.S. Cellular also agrees with CTIA’s further point that the Commission should not undertake a unilateral assessment of whether cost reductions for wireless carriers from intercarrier compensation reform would offset reductions in universal service support, “given that intercarrier compensation reform will lower costs for a broad range of providers.”⁹⁴ The Commission should reject arguments from parties seeking to seize upon purported savings that wireless carriers would realize from intercarrier compensation reform as an excuse for cutting back the level of CAF disbursements to wireless competitive ETCs.

E. Providing Incumbents with a Right of First Refusal for CAF Funding Would Be Inefficient and Anti-Competitive.

In its Comments, U.S. Cellular opposes establishing a right of first refusal for incumbent LECs, explaining that “[s]etting aside funding for a particular class of carrier would be inimical

⁹² *Notice* at 2.

⁹³ CTIA Comments at 17-18 (footnote omitted). *See* SouthernLINC Wireless Comments at 24-25; RTG Comments at 7.

⁹⁴ CTIA Comments at 18.

to competitive neutrality, efficiency, and ultimately consumer welfare.”⁹⁵ The record reflects substantial support for U.S. Cellular’s position.

Governor Haley Barbour sums up the problem with the ROFR proposal, explaining that the proposal “to limit USF support to only one carrier or class of carrier in a given area, threaten[s] to undermine competition, stifle access and slow broadband adoption (wireless or otherwise) in Mississippi and other rural parts of the United States.”⁹⁶ Sprint documents the practical effects of the proposal, indicating that:

Assuming that the ABC [Plan] ILECs do in fact accept all of their right of first refusal subsidies, their CAF receipts would *more than double* their current high-cost support—\$1.808 billion under the ABC Plan, versus the \$893.5 million received in 2010—an increase made possible largely by the proposed transfer of support from CETCs to ILECs and from the on-going net contributions from Sprint and other wireless carriers.⁹⁷

The Gately Declaration states this another way, calculating that the ROFR, combined with other proposals in the ABC Plan, would result in incumbent price cap LECs receiving “almost \$1.80 for every \$1.00 USF dollar flowing to those same carriers today.”⁹⁸ Numerous commenters agree with U.S. Cellular and Governor Barbour that the ROFR proposal should be rejected because it is anti-competitive.⁹⁹ RCA, calling the ROFR proposal “one of the most blatant examples of

⁹⁵ U.S. Cellular Comments at 31.

⁹⁶ 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. *See* Cellular South Comments at 14 (concluding that the ROFR proposal “is anti-competitive on its face”); Pennsylvania PUC Comments at 7 (noting that the ROFR proposal “suffers from a series of serious foundational problems”); Viaero Wireless Comments at 14.

⁹⁷ Sprint Nextel Corporation (“Sprint”) Comments at 23 (emphasis in original) (footnote omitted). *See* U.S. Cellular Comments at 31-32.

⁹⁸ Ad Hoc Comments, App. A, Declaration of Susan M. Gately (“Gately Declaration”), at 14 (footnote omitted).

⁹⁹ *See, e.g.*, Free Press Comments at 8; General Communication, Inc. (“GCI”), Comments at 13 (arguing that “[a]n ILEC-centric one-network support regime, including a ROFR for ILECs, would be disastrous for ETCs like GCI and the customers they serve, would turn back the clock on rural wireless and broad-

wireline favoritism in the ABC Plan[,]”¹⁰⁰ criticizes the proposal because it would treat incumbent LECs’ interests as paramount and would give them the “unilateral right to exclude wireless competitors from CAF support, further entrenching them as broadband monopolists in rural America.”¹⁰¹

ACA characterizes the ROFR proposal as a “new government entitlement”¹⁰² and rejects the “specious rationale” offered by the Price Cap Carriers that the ROFR should be adopted because price cap LECs have already made substantial investments and therefore can accelerate broadband deployment and avoid inefficient duplication of facilities:¹⁰³

[I]f they are in fact the most effective and efficient providers of broadband to unserved or underserved areas, the Price Cap incumbents would have nothing to fear from a competitively neutral distribution process. The fact that they want to skew the process in their favor demonstrates this is not the case, and the Commission should eschew their proposal for CAF distribution both because it is not competitively neutral and because it is not fiscally responsible.¹⁰⁴

It is also important to note that the ABC Plan structures the ROFR in a manner that carries an extra windfall for incumbent LECs. The proposal would give an incumbent carrier an ex-

band deployment, and more importantly, would harm public safety”) (footnote omitted); MTPCS Comments at 25; NASUCA Comments at 84 (arguing that an ROFR would give an advantage to incumbent LECs); SouthernLINC Wireless Comments at 23-24; T-Mobile Comments at 24 (arguing that “[a] ROFR would subvert the Commission’s stated goals of making eligibility for CAF support company- and technology-agnostic and ensuring that USF reform will not unfairly advantage one provider over another or one technology over another”) (internal quotation marks and citations omitted); USA Coalition Comments at 18. GCI also argues that the ABC Plan’s ROFR proposal “ignores the fact that some states have sought innovative ways to share carrier of last resort responsibilities among multiple carriers.” GCI Comments at 13 n.19.

¹⁰⁰ RCA Comments at 14.

¹⁰¹ *Id.* at 15.

¹⁰² American Cable Association (“ACA”) Comments at 11.

¹⁰³ *Id.*

¹⁰⁴ *Id.* (footnote omitted). *See* Comcast Corporation Comments at 28 (arguing that “the proposal would simply give incumbent LECs an unwarranted advantage in receiving CAF support [and] would increase

clusive right to receive *all support* in its service area “[i]f the incumbent LEC that serves the wire center has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center”¹⁰⁵ Dr. Selwyn explains that the 35 percent threshold applies to an incumbent LEC’s *entire wire center*, not just the areas eligible for CAF support. This makes it possible for the incumbent LEC to “acquire right of first refusal status with respect to the ‘supported area’ without having made *any investment at all* to provide broadband access to those customers” located in the supported area.¹⁰⁶

In addition, Dr. Selwyn explains that the purported justification for the ROFR (*i.e.*, that the incumbent LEC has made substantial embedded investment in infrastructure that warrants providing the incumbent LEC with exclusive access to ongoing CAF support) is subject to an important qualification. Specifically, the incumbent’s installed base of broadband “might well

the size of subsidies needed to support broadband in unserved areas, thereby unnecessarily increasing the financial burden on consumers”).

¹⁰⁵ ABC Plan, Attach. 1, at 6.

¹⁰⁶ Selwyn Paper at 21-22 (emphasis added). *See* Pennsylvania PUC Comments at 9 (pointing out that the ABC Plan’s ROFR proposal fails to clarify whether an incumbent LEC must demonstrate whether the broadband service it has made available to more than 35 percent of service locations meets the proposed speed standard of 4 Mbps downstream and 786 kbps upstream); *id.* at 10 (criticizing the 35 percent threshold as “a very low figure [that] will result in ‘gaming’ so that price cap carriers can either avoid deploying broadband in high-cost rural wire centers or not extend existing deployment in such locations to a higher percentage level”). Time Warner indicates that it understands the “offensive right of first refusal” proposal to mean that the qualifying service speed would be “something much less than the 4/1 Mbps broadband service the Commission seeks to deploy through the CAF” Time Warner Comments at 17. Time Warner concludes that:

Assuming ILECs would exercise their right of first refusal, it appears that cable broadband providers would be flatly ineligible for support in most areas—even if the cable provider had deployed broadband to a significantly higher number of homes in the ILECs’ defined wire centers at speeds that meet or exceed the Commission’s broadband goals. . . . [S]uch [a] naked preference[] cannot be squared with the Commission’s reform principles.

Id. at 18.

not exist but for prior subsidies to the incumbent LECs.”¹⁰⁷ “Put differently,” as NCTA explains, “the price cap incumbent LECs are suggesting that they should have first access to new money simply because they were recipients of old money. That is precisely the opposite of a market-driven approach and it should be summarily rejected.”¹⁰⁸

The ROFR proposal presents the Commission with an opportunity: Based on substantial record support, the Commission should refuse to adopt the proposal, thereby taking a step forward in its efforts to transform its universal service policies in ways that further the public interest. Instead of endorsing an incumbent LEC proposal to lock in for themselves an even greater share of universal service support than they receive today, the Commission, by refusing to adopt the ROFR mechanism, would make a greater portion of CAF support competitively available to other ETCs. Such a result—in keeping with the Commission’s overall universal service and broadband policies—would enhance the efficient use of CAF funding and help to facilitate ubiquitous broadband deployment.

F. The Incumbents’ Bid for Relief from “Legacy” Regulations Amounts to Gratuitous Overreaching That Should Be Summarily Denied by the Commission.

The Price Cap Carriers argue that “the Commission should eliminate legacy regulations that act as a barrier to the transition to IP broadband networks[,] [including] all remaining federal rate and other service regulations imposed on price cap incumbent LECs.”¹⁰⁹ This proposal, with

¹⁰⁷ Selwyn Paper at 30. *See Cox Communications, Inc.*, Comments at 23 (arguing that “granting a right of first refusal would give incumbents the advantage in obtaining access to funding for broadband simply because they received funding for legacy services[,] . . . and this would merely reinforce the advantage that incumbent carriers were granted through their decades-old monopolies”).

¹⁰⁸ NCTA Comments at 16.

¹⁰⁹ ABC Plan, Attach. 1, at 13.

good reason, has been a lightning rod for opposition by numerous commenters. U.S. Cellular agrees with their concerns.

Although Free Press may be unnecessarily dramatic in stating that the Price Cap Carriers' proposal "is the height of arrogance and hubris by an industry that clearly believes that it, not the Commission or Congress, call[s] the shots[.]"¹¹⁰ U.S. Cellular agrees with Free Press's concern that the proposal could enable price cap LECs "to raise rates on legacy monopoly services for tens of millions of captive customers who have no other viable options."¹¹¹ Moreover, as Ad Hoc observes, the Price Cap Carriers' "call for broad deregulation has nothing to do with reform of USF programs or ICC rules and would have no impact on the deployment of broadband technologies."¹¹² In other words, the ABC Plan is asking for sweeping regulatory relief that is completely extraneous to the pending proceeding.

U.S. Cellular agrees with Ad Hoc that, since "comprehensive reformation of USF and ICC does not require broad deregulation of markets that are not competitive[,] [t]he price cap carriers' proposal simply uses the current proceeding as yet another occasion to demand deregulation in markets where they maintain bottleneck control."¹¹³ As Dr. Selwyn explains:

Although the price cap LECs eagerly accept a subsidy in order to deploy broadband to customers in high-cost areas where, *by definition*, the subsidized provider will be the sole supplier of broadband service [in cases in which an ROFR has been exercised], the ABC Plan's sponsors nonetheless contend that no regulatory oversight is necessary or, indeed, in the public interest.¹¹⁴

¹¹⁰ Free Press Comments at 16.

¹¹¹ *Id.* at 17.

¹¹² Ad Hoc Comments at 30.

¹¹³ *Id.*

¹¹⁴ Selwyn Paper at 13 (emphasis in original).

For all these reasons, U.S. Cellular urges the Commission to reject the Price Cap Carriers' bid for sweeping and unwarranted regulatory relief.

G. Rate Benchmarks Should Be Used To Avoid Subsidization of Exceptionally Low Rates.

In its Comments, U.S. Cellular supports a proposal by Ad Hoc that, if a carrier's rates are below a benchmark, then the Commission should apply a "low price offset" to the carrier's high-cost support, whereby the amount of support disbursed to the carrier would be reduced by an amount equal to the difference between the revenues the carrier received pursuant to its actual rates and the revenues the carrier would have received pursuant to the benchmark rates.¹¹⁵

The New York PSC concurs in this view, arguing that:

[I]t is important to minimize eligibility for recovery of losses from the federal CAF in states that have not raised intrastate end user rates. Some companies have kept local service rates far below cost and competitive levels. While this is their prerogative, it is unfair for residents of other states to make up the difference.¹¹⁶

Ad Hoc suggests that the benchmark used to calculate the offset "could reasonably fall anywhere between: (i) the weighted nationwide average monthly charge (including fees) found in the FCC's Reference Book of Rates ('RBR'); and (ii) the highest monthly charge (including fees) being charged by other ILECs in the state for comparable service reported in the RBR."¹¹⁷

Ad Hoc has explained that the offset "would . . . recognize a carrier's higher costs but would not

¹¹⁵ U.S. Cellular Comments at 45. *See Notice* at 7 (seeking comment on the Ad Hoc proposal); Ad Hoc Comments at 23.

¹¹⁶ New York Public Service Commission ("New York PSC") Comments at 16. *See SureWest Communications Comments* at 11 (arguing that "the record in this proceeding demonstrates that use of such benchmarks could serve the public interest by moderating the size of the proposed Recovery Mechanism and incenting states to authorize more realistic local rate structures").

¹¹⁷ Ad Hoc Comments at 23. *See Gately Declaration* at 18-20.

provide subsidies at such a level that carriers are able to offer service to their ‘high cost’ customers at rates that are lower than the average paid by users throughout the rest of the country.”¹¹⁸

U.S. Cellular urges the Commission to adopt the Ad Hoc proposal as a reasonable means of eliminating subsidization of incumbent LECs, thus avoiding anti-competitive effects and making high-cost support available for other purposes.

H. The Transitional Access Replacement Mechanism Proposed by the ABC Plan Should Be Rejected.

U.S. Cellular has opposed in its Comments a proposal made in the ABC Plan for a transitional access replacement mechanism (“ARM”) for the benefit of price cap LECs, explaining that the proposal “would reserve CAF support for one class of carriers (*i.e.*, price cap incumbent LECs), thus bestowing a substantial competitive advantage upon those carriers in direct contravention of the Commission’s principle of competitive neutrality.”¹¹⁹

The ABC Plan proposal is coupled with a proposal to “lessen[] restrictions on incumbent LECs’ federal subscriber line charge (SLC) rates”¹²⁰ Under the proposal, SLCs would be cumulatively increased by \$2.50 (in the case of price cap LECs that elect ARM support), and by \$3.75 (in the case of price cap LECs that do not elect to receive ARM support).¹²¹ U.S. Cellular finds it remarkable that the Price Cap Carriers apparently have no qualms about proposing to keep their revenue streams whole on the backs of end-user customers, while at the same time advocating crippling limits on the level of funding for mobile wireless broadband, with the ostensi-

¹¹⁸ Ad Hoc Comments, WC Docket No. 10-90, *et al.* (filed Apr. 18, 2011) at 29.

¹¹⁹ U.S. Cellular Comments at 56 (footnote omitted).

¹²⁰ ABC Plan, Attach. 1, at 11.

¹²¹ The increases would be phased in from July 1, 2012, through July 1, 2016. *Id.* at 12.

ble objective of limiting increases in monthly USF surcharges which would be considerably lower than \$2.50 or \$3.75 per month.

U.S. Cellular’s opposition to the ARM proposal finds abundant support in the record. For example, Google points out that “[t]he proposed access replacement mechanism, while described as ‘transitional,’ would retain subsidies that have delayed the nation’s IP transition. Reform must be guided by forward-looking public policy for revenue recovery, and not by continued implicit subsidies that impede progress and impose inefficient costs on subscribers.”¹²² Moreover, Free Press explains that the Price Cap Carriers seem to advance their proposal as a matter of their rightful entitlement, neglecting to make any showing that their “make whole” mechanism is needed.¹²³

At the center of the proposal, Free Press indicates, “is the basic assumption that the phasing down of access rates must be completely offset with other incoming revenue.”¹²⁴ U.S. Cellular agrees with Free Press that there is no basis for “this assumption of entitlement that has framed ICC reform as a zero-sum-game”¹²⁵ The Price Cap Carriers assume “that the current above-cost access rates are an implicit but necessary subsidy to achieve universal service,”¹²⁶ but they fail to “offer[] evidence that the reduction of these rates require[s] a dollar-for-dollar offset

¹²² Google Comments at 14 (footnote omitted).

¹²³ Free Press Comments at 9.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

in order to ensure that rural rates and services are reasonably comparable to urban rates and services.”¹²⁷ In addition, T-Mobile objects to the ARM proposal because it is anti-competitive:

[A]ny universal service fund available only to ILECs, regardless of its purpose, fails to meet Section 254’s “statutory command” to ensure competitive neutrality and portability, as well as the requirement of technological neutrality. The 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.”¹²⁸

XO Communications “urges the Commission not to accommodate ILEC expectations of maintaining current revenue streams or to give RLECs or price-cap LECs carte blanche in determining their own access recovery mechanisms, as they have proposed in each of their plans.”¹²⁹ XO Communications criticizes the ARM mechanism because “would lock in current revenue levels in a declining market [and therefore] is clearly not good public policy as it will allow the ILECs to over-recover even their forecasted revenue in the coming years and without any regard for their costs, which should be declining.”¹³⁰

¹²⁷ *Id.* (footnote omitted). See T-Mobile Comments at 14 (arguing 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, and in any event, consumers today often have other competitive options”) (footnote omitted). The Virginia Corporation Commission Staff raises the same objection:

There is no accountability that . . . “access replacement” revenues are necessary to the operations of the companies. The potential “supported amount” available to a price cap company under this mechanism includes the impact of reducing intrastate access charges but does not reflect or give consideration to any intrastate universal service funding or any pricing opportunity or flexibility that a company may have in its state to increase retail rates. Furthermore, there is no requirement that the support (which is determined at the holding company level) be used for any given purpose(s) or in any area or state, such as broadband deployment in high cost areas.

Virginia Corporation Commission Staff Comments at 6-7.

¹²⁸ T-Mobile Comments at 15 (footnotes omitted) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620, 621, 622 (5th Cir. 2000)). See ACA Comments at 15 (arguing that the ARM proposal is not competitively neutral); RCA Comments at 23 (arguing that the ARM proposal is not necessary to accomplish pro-competitive access rate reforms, and instead would distort competition).

¹²⁹ XO Communications, LLC (“XO Communications”), Comments at 15 (footnote omitted).

¹³⁰ *Id.* at 15-16.

Another infirmity of the ABC Plan’s proposal is that, as Dr. Selwyn explains, the revenue that would be replaced by the ARM mechanism, as a practical matter, already has been replaced. The revenue that is the subject of the ARM proposal relates solely to the regulated aspects of the Price Cap Carriers’ incumbent LEC operations.¹³¹ But, as the Price Cap Carriers’ access revenues have declined in recent years, their non-regulated services have increased dramatically, from sources such as their wireless affiliates. Dr. Selwyn therefore concludes that “these companies have already succeeded in ‘replacing’ lost access revenue, and to now adopt a formal transitional replacement mechanism amounts to nothing short of a duplicative, ‘heads-they-win, tails-customers-lose’ policy.”¹³² At the very least, the Commission must examine the extent to which carriers have already replaced lost revenues through the successful execution of business plans, including the extent to which such carriers have used subsidized plant to expand non-regulated revenues. This analysis is missing from the Wireline Industry Proposals and accordingly the justification for any “replacement” mechanism is non-existent.

Dr. Selwyn also suggests that it would be contrary to competitive telecommunications policies to provide the revenue replacement sought by the Price Cap Carriers because many of the “investments” that the Price Cap Carriers now seek to recover were generated through existing support mechanisms that insulated price cap carriers from any risk with regard to their investments. Dr. Selwyn concludes that “[t]he notion that certain carriers should be made whole with respect to any modifications in their support mechanisms must be rejected”¹³³

¹³¹ Selwyn Paper at 32.

¹³² *Id.*

¹³³ *Id.* at 7. Dr. Selwyn further explains that, since price cap carriers’ rates for broadband service are not regulated, these carriers “are under no obligation to flow any profits earned in low-cost areas to anyone other than their own shareholders.” *Id.* at 9. Because of this, CAF support that would be given to price cap carriers pursuant to the access replacement mechanism “is . . . not a replacement for a legacy implicit sub-

For these reasons, the Commission should reject the Price Cap Carriers' access replacement mechanism, and thus avoid giving away CAF funding resources that should be applied to broadband deployment and not to the bottom line of the Price Cap Carriers.

III. CONCLUSION.

The record presents the Commission with compelling information and arguments demonstrating that the proposals that are the subject of the Commission's further inquiry in its *Public Notice* would remake the Commission's universal service program into a fiefdom for wireline incumbents.

The proposals would dramatically shift funding disbursements in favor of incumbents, would lock in more than 80 percent of funding for ten years based on the exercise of right-of-first refusal entitlements,¹³⁴ would craft Connect America Fund rules to make it prohibitively difficult for wireless competitive ETCs to qualify for funding, would extend discredited rate-of-return and embedded cost support mechanisms for rural incumbents, would use universal service funds to protect incumbents' revenue streams through access replacement mechanisms, and, into the bargain, would free incumbents from remaining federal rate and service regulations.

sity, it is a net increase of somewhere in the range of \$13-billion to \$14-billion over the next decade in the price cap ILEC draw from the larger universal service support machinery." *Id.* (footnote omitted).

¹³⁴ See ABC Plan, Attach. 1, at 6, n.7 (noting that the price cap companies "estimate that incumbent LECs would have the opportunity to accept or decline CAF support in 82.0 percent of the census blocks that are eligible for CAF support, representing 82.2 percent of the \$2.2 billion in support targeted to areas served by price cap LECs").

U.S. Cellular respectfully urges the Commission to reject the incumbents' proposals, and to pursue a transformation of its universal service and intercarrier compensation rules and programs in a manner that better meets the needs of consumers in rural America and better serves the public interest.

Respectfully submitted,

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APPENDIX A

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**THE PRICE CAP LECs' "BROADBAND
CONNECTIVITY PLAN"
Protecting Their Past, Hijacking the Nation's Future**

Prepared for United States Cellular Corporation

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THE PRICE CAP LECs' "BROADBAND CONNECTIVITY PLAN": Protecting Their Past, Hijacking the Nation's Future

Lee L. Selwyn, Helen E. Golding and Colin B. Weir

I. Introduction

More than four decades have elapsed since the Federal Communications Commission (FCC) embarked upon a mission to introduce competition into the US telecommunications market. In 1996, the US Congress enacted legislation that largely brought to an end the concept of franchised service areas and created a suite of mechanisms intended both to eliminate legal and most economic barriers to entry, as well as to affirmatively encourage and facilitate entry in virtually every telecom sector.

Throughout this 40+ year period and, as exemplified in their "America's Broadband Connectivity Plan" ("ABC Plan") under examination here, the incumbent carriers have persisted in efforts to maintain their legacy monopoly positions while simultaneously working to dismantle the regulatory mechanisms that had served to constrain their exercise of market power. In addition to numerous efforts aimed at frustrating competitive entry wherever and whenever possible, incumbent LECs have sought to carve out certain protections and, as in the case of rural and high-cost areas, subsidies to which the incumbent LECs would be given an exclusive or, at worst, a preemptive claim. The "ABC Plan" being proposed by the largest "price cap ILECs" falls squarely into this category. If implemented as proposed, the "ABC Plan" would lock in – for a decade or more – a monopoly broadband infrastructure for the supported high-cost areas that offers the barest minimum standard of *fixed location* broadband service (4 mbps download/768 kbps upload) that is even by current standards barely adequate to support existing applications and demands, and that will almost surely be woefully insufficient a decade from now. While the support mechanisms and subsidies envisioned by the ABC Plan purport to be both competitively- and technology-neutral, the process by which providers would qualify for them and the manner in which they would be awarded are heavily tilted toward wireline fixed location services furnished by the Plan's ILEC sponsors, and against mobile, wireless, and even competitive non-incumbent wireline providers.

While the Plan sponsors' desire to maintain their incumbency benefits and to protect embedded investments may be understandable, its effect is to defer for another decade or longer resolving the issue of extending into rural areas broadband that is comparable to what is already available throughout the rest of the country. Protecting and subsidizing incumbent wireline monopolies to the exclusion of entrants capable of bringing new services and innovative technologies to rural America will not achieve the goals of the National Broadband Plan or be in the public interest.

The shift from implicit to explicit support mechanisms

The use of telecommunications rate structures to flow subsidy support to meet specific “public interest” objectives has existed almost as long as there have been regulated telephone services. Under traditional rate-of-return regulation, regulators would authorize the utility to file tariffs intended to generate a specified level of revenue (the “revenue requirement”) and would in many instances either prescribe or expect that prices for what were considered to be “discretionary” or “premium” services (things like long distance toll calls, optional calling features, business exchange service lines and directory advertising) would be set sufficiently in excess of their cost so that prices for other “essential” services – principally basic residential dial tone access – could be priced at “affordable” levels, thus encouraging universal connectivity to the public switched network. The aggregate revenues expected to be generated by “discretionary” and “premium” services, based upon their above-cost rates, would be subtracted from the “revenue requirement” established by the regulator, with only the “residual” to be recovered from the remaining “essential” services.

This arrangement was the economic equivalent of a taxation and subsidy structure that was feasible precisely because virtually all services – discretionary and essential – were being provided by the same ILEC entity on a monopoly basis. The arrival of competition for services that had been subject to the implicit “tax” – along with the adoption of price cap regimes in which contribution-generating competitive and discretionary services were often walled off from “basic” offerings through classification into separate price cap “baskets” – made this arrangement increasingly unworkable. As customers migrated to competing services that were not subject to the implicit “tax,” ILEC revenues diminished, and so began their effort to replace these implicit payments with explicit contribution mechanisms to which all providers would be subject. Lest one develop too much sympathy for the ILECs’ plight, it is noteworthy that a considerable amount of that customer migration went to nonregulated services and affiliates of the ILECs themselves. In other words, the types of services that had previously been classified as “discretionary” or “premium,” with the expectation that they would subsidize affordable rates for “essential” services, were often segregated by the ILEC from its core business precisely so that it could isolate these more profitable services and claim – as to the remaining services – that “competition” was eroding the revenues required for their support. As the ILECs’ “loss” of implicit “tax” revenue was replaced by increases in revenues for nonregulated services such as wireless and broadband, the ILECs ignored the “plus side” of the equation and continued to demand that they be made whole with respect to any erosion in revenues that had previously been providing implicit support.

This is not to say that the process of replacing implicit contribution and support mechanisms with explicit arrangements is not worth pursuing. Indeed, “implicit” support is by its very nature largely invisible: Support may be accomplished through rate structure devices as described above, by the use of broadly averaged rates across services or categories of customers exhibiting widely varying costs, or via other devices that operate to distort economic choices and to conceal the true “cost” of *de facto* subsidies that are present.

These and various other related issues are being addressed by the FCC in its *Universal Service and Intercarrier Compensation Transformation Notice of Proposed Rulemaking (USF-ICC Transformation NPRM)*.¹ On July 29, 2011, six price cap ILEC holding companies, including the nation's largest ILEC/wireless/broadband providers – AT&T and Verizon – along with CenturyLink, FairPoint, Frontier, and Windstream, submitted what they described as a comprehensive plan for reform of the universal service and intercarrier compensation systems, which they've designated as their “America's Broadband Connectivity Plan” for providing support for broadband infrastructure development in high cost area explicitly through broad-based contributions to several new funds to be established for this purpose rather than implicitly through switched access charges and other intercarrier payments. In general, shifts from implicit to explicit contribution and support programs are clearly a step in the right direction. However, the devil is in the details, and in this paper we explore those details specifically with respect to the “ABC Plan.” Our overall conclusion is that the price cap ILECs’ “ABC Plan” stakes out a privileged position for price cap incumbent LECs at the expense of smaller competitors (competitive eligible telecommunications carriers) and consumers, is backward-looking in its approach to infrastructure development, and sacrifices economic efficiency in favor of measures that are designed to protect the financial interests of its sponsors.

Support mechanisms involve two separate components

Whether implicit or explicit, there are two separate and distinct components to any type of funding mechanism:

- (1) *Contributions that are generated either as implicit components of certain prices or as explicit payments.* These are the economic equivalent of excise taxes that, if not structured correctly and carefully, can operate to distort economic and technology choices, lead to mispricing of intermediate goods and services and end-products, and by favoring certain types of entities and/or technologies over others have the potential to diminish competition that might otherwise be viable.
- (2) *Subsidies that are funded by these contributions.* These can create similar distortions to the extent that the basis for their award operates to favor certain technologies or entities over others and/or results in mispricing of intermediate and final products and services.

Implicit contribution mechanisms are far more likely to create distortions and produce economically inefficient outcomes, for several reasons:

- (a) *Lack of transparency* – it is often difficult even to identify the actual amount of the implicit contribution or how it is determined and collected. For example, using broadly averaged

1. *Universal Service Reform – Mobility Fund, Notice of Proposed Rulemaking*, 25 FCC Rcd 14,716 (2010), rel. February 9, 2011.

costs calculated across low-cost and high-cost areas creates an implicit subsidy from the (overpriced) low-cost areas to the (underpriced) high-cost areas. However, it may be extremely difficult actually to quantify the dollar amounts of such implicit flows.

- (b) *Disparate applicability* – the contribution mechanism may operate so as to advantage certain segments and disadvantage others, thereby distorting technology choices, disadvantaging some competitors vis-à-vis others, affecting the demand for end-products and, to the extent those serve as inputs to other economic sectors, adversely affecting the overall economy.
- (c) *May distort consumer purchase decisions* – some implicit contribution arrangements are driven by arbitrary – and archaic – value judgments as to what types of services should be made to contribute and how much (e.g., long distance toll calls are more valuable to customers than local calls) even though those assessments may have long since been made obsolete by more recent changes in technology and lifestyle.

Economic choices made by consumers and producers are generally most efficient when the factors influencing them are subject to competitive market conditions. Unless specifically intended to influence consumer choices and other economic decisions,² an efficient taxation or, in the present context, contribution structure will be designed so as to minimally distort such free market choices. Similarly, the goal of any support arrangement should also be to rely, to the greatest extent possible, on competitive marketplace choices, stepping in only where “market failure” arises – i.e., where competitive market conditions cannot be expected to arise on their own. As we show, there are a number of aspects of the “ABC Plan” that directly violate these fundamental principles.

Competitive economies rely upon markets to set prices that accurately reflect the costs of production, thereby confronting consumers of final products and purchasers of intermediate products that are used as inputs to further production with efficient choices that maximize social welfare and allocative and productive efficiencies. Imposing artificial distortions on the pricing mechanisms requires great care and creates a considerable risk of undermining economic efficiency overall. Past efforts aimed at shifting from implicit to explicit subsidies produced considerable economic benefits and growth in GDP overall. For example, when most implicit contributions were eliminated from long distance toll and switched access charges and shifted to explicit end user charges (the Subscriber Line Charge or SLC) bringing both more closely in line with their respective costs, demand for the more price-elastic toll calls escalated with minimal negative impact upon the demand for basic local exchange service. Additionally, as basic local exchange service prices were increased so as to bring them closer to the cost of these services at the same time that competitive choices for network access became available, consumers were better able to make efficient decisions among providers and technologies.

2. For example, cigarette and alcoholic beverage taxes are intended both to generate revenue as well as to suppress demand for the taxed products.

Congress and the FCC have determined that there is considerable public benefit to bringing broadband Internet access to rural high-cost areas. However, doing so should require the sacrifice of extending the same benefits of a competitive telecommunications market into the target regions. Telecommunications and information technologies are evolving at so rapid a pace that any policy that operates to lock in a single provider, a single service arrangement, or a single technology for an extended period of time will undermine the overarching goal of providing comparable services to all parts of the country; even if at the outset rural customers are provided with what are as of that date state-of-the-art services and technology, policies that lock out competitors for a decade or more will all but guarantee that these same areas will fall behind their urban counterparts within a relatively short period of time.

II. Key principles

Adoption of explicit contribution mechanisms does not by itself assure that the infirmities of implicit contribution schemes will necessarily be eliminated

In that regard, there are several key principles the adherence to which will materially help to achieve the overarching goal of extending broadband availability to all Americans in the most efficient manner possible:

- (1) *Whether implicit or explicit, the mechanisms used to support universal broadband availability need to be competitively neutral*

Decisions as to the distribution of support for universal broadband should be driven by forward-looking considerations whose goal should be rooted in the core principle of economic regulation – i.e., to achieve a “competitive outcome” in the presence of market failure. Where the confluence of high cost and low demand (resulting from low population density) are incapable of encouraging entry by multiple firms – i.e., where market failure is present – the support mechanism should still attempt to employ market forces to the greatest extent possible, so that support flows to the most efficient and competitively responsive provider. Thus, in the presence of market failure, individual choice among competing providers may need to be replaced with a community-level choice among providers competing for support. While the community-level decision must, as a practical matter, occur at a particular point in time, the determination should nonetheless take into account the dynamic nature of market conditions and evolving technology. The decision to award support to a particular provider today should not operate to preclude future entry made possible by the evolution of technology and market conditions.

This can best be assured if the support decision is based upon *forward-looking* considerations of consumer demand, cost, technology, and competition. A proposal that would earmark support

for incumbent LECs – a core element of the “ABC Plan” – directly violates the principle of competitive neutrality by eliminating even a community-level competitive choice.

(2) *Whether implicit or explicit, the mechanisms used to support universal broadband availability need to be technology-neutral.*

Policies that favor certain technologies over others are, in effect, picking winners and losers by creating market distortions. Implicit subsidies generated through the various existing intercarrier compensation mechanisms suffer from this infirmity, both with respect to the *source* of subsidy funds and as to which providers and services *receive* the subsidies. Competing technologies – e.g., wireline vs. wireless, VoIP vs. TDM, packet-switched vs. circuit-switched – must be allowed to be tested in the marketplace. Just as no one technology should be expected to contribute a disproportionate level of implicit support (the objective of ICC reform), no technology should be favored in the receipt of subsidies (the purpose of high-cost universal service support, including, prospectively, the Connect America Fund (“CAF”)).

Support should be denominated in terms of the functional attributes of the supported service, rather than based upon its technology. For example, uplink and downlink data rates, fixed vs. mobile, error rates, latency, quality of service (QoS), are all functional attributes that transcend technology, although not all technologies are capable of supporting the full range of attributes (e.g., wireline cannot provide a *mobile* capability). The determination as to which functional attributes are to be recipients of universal service support is a legitimate exercise of regulatory authority; however, caution must be exercised so as to reflect evolving consumer needs and preferences, rather than simply retaining legacy support targets for their own sake.

For example, in the past universal service was oriented primarily toward voice telephony; it is now being redirected toward broadband. Similarly, although in the past universal services has traditionally been focused on fixed-location services, the assumption that fixed connectivity is sufficient needs now to be reevaluated in light of growing demand for and use of mobile devices. Support goals have evolved over time even within traditional voice telephony. Early on, support was aimed at providing some form of connectivity, even if on a party line basis. In later years, support was directed at replacing party lines with private lines, analog switching/transmission with digital, improving infrastructure to support DSL, etc. This historical process of periodically redefining what constitutes supported service will necessarily be ongoing, and thus the specific attributes of broadband – like any service that is to be supported by a universal service funding mechanism – should be treated as evolutionary, not revolutionary.

Wireline solutions for broadband deployment are by their nature capable of providing *fixed location* services. But consumers are increasingly demanding *mobile* broadband access, which fixed location technologies are incapable of providing. The functional specification of the service(s) to be supported must necessarily be driven by the needs and demands of the users they are intended to serve – including the expanding reliance upon mobility. Americans living in rural and high-cost areas cannot participate fully in the vision set forth in the National

Broadband Plan³ under a framework that would primarily earmark support to providers of fixed wireline broadband services.

(3) *Explicit subsidies should be aligned with present – and future – policy goals, and any mechanism designed as a dollar-for-dollar replacement for legacy implicit funding will misallocate support and impede the development of competition*

Individual carriers – rural or non-rural – should have no inherent entitlement to be “made whole” with respect to replacement of implicit funding sources. Carriers of all sizes and in all locations have been – or certainly should have been – aware of evolving technologies and changing demands taking place over an extended period of time – certainly as far back as the *1996 Act*. They have been – or should have been – well aware of the eroding revenue base of implicit contribution sources (e.g., wireline switched access charges) and should be held responsible for accommodating their own business models accordingly. Price cap ILECs that serve rural areas, and ROR-regulated rural ILECs, are all, first and foremost, *private profit-seeking enterprises* that must be made to stand or fall based upon their own business decisions. Moreover, funding for many of the “investments” that such companies now claim an entitlement to recover were provided through one or more existing support mechanisms, such that the carrier’s owners and managers were never actually “at risk” with respect to such investments. The notion that certain carriers should be made whole with respect to any modifications in their support mechanisms must be rejected as contrary to a competitive telecom policy.

III. The not-so-simple, not-so-equitable and not-so-efficient results of the so-called “ABC Plan”

A. Overview of the “ABC Plan”

The ILEC sponsors of the “ABC Plan” describe it as “a framework that ... will ensure that four million rural homes and businesses in high-cost areas served by price cap carriers will have access to broadband, two million of which will enjoy the benefits of broadband for the first time” under a plan for “meaningful, comprehensive reform of both the universal service and intercarrier compensation systems,” which they've named the “America's Broadband

3. While Goal No. 1 of the *National Broadband Plan* is to ensure the expansion of broadband service availability (i.e., through targeting unserved and underserved areas), Goal No. 2 provides that “[t]he United States should lead the world in mobile innovations, with the fastest and most extensive wireless networks of any nation.” See, *Connecting America: The National Broadband Plan*, rel. March 16, 2010, at 9. There is no conceivable way that the US can meet this wireless broadband deployment goal with the level of funding proposed in the ABC Plan.

The Price Cap LECs' "Broadband Connectivity Plan"

Connectivity Plan” (the “ABC Plan”).⁴ The ABC Plan stakes out a privileged position for price cap incumbent LECs, at the expense of smaller competitors (competitive eligible telecommunications carriers) and consumers. As presented, the Plan contains highly inconsistent levels of detail with respect to its various components, depending upon their relative importance to the price cap ILEC sponsors. Thus, intercarrier compensation and certain aspects of the proposed Connect America Fund (“CAF”) for price cap ILECs are spelled out with relative precision, but others, such as the Advanced Mobility/Satellite Fund (“AMF”), receive only cursory discussion. In this overview of the ABC Plan, we summarize key provisions of its universal service and regulatory framework recommendations (the Plan also deals extensively with intercarrier compensation reform); subsequent sections discuss the Plan’s methodological flaws and biases.

The ABC Plan proposes three distinct funds, totaling no more than \$4.5-billion annually through 2017⁵ (the same magnitude as exists for legacy high-cost voice telephony support):

- (1) the Connect America Fund (CAF) for price cap incumbent LECs, funded at \$2.2 billion;
- (2) a separate fund for rate-of-return LECs; and
- (3) the Advanced Mobility/Satellite Fund (“AMF”).

By segregating CAF support for price cap LECs (and nominally for CETCs that operate within the same geographic footprint as the ILEC) from that of smaller, rural ILECs (rate-of-return ILECs, or “RLECs”) – that they propose should continue to receive roughly half of the \$4.5 billion USF/CAF pie – Verizon, AT&T and their allies strategically avoid placing their plan in any direct competition with the politically powerful RLECs.⁶ With virtually all of the \$4.5-billion earmarked either for CAF (limited to price cap ILEC territories only) or for RLECs, any remaining funds (capped at \$300-million), are set aside for the Advanced Mobility/Satellite

4. July 29, 2011 letter from AT&T, Verizon, CenturyLink, Frontier, FairPoint and Windstream to Chairman Julius Genachowski *et al*, WC Docket No. 10-90 (“ABC Plan”), at 1.

5. The document summarizing the ABC Plan (Attachment 1, “Framework of the Proposal”) does not directly specify an end date for the \$4.5-billion cap, providing only that “[b]efore July 1, 2022, the Commission will complete a proceeding to evaluate whether to create a successor universal service fund.” ABC Plan, Attachment 1, at 2. However, a year-end 2017 date is specified in the Joint Submission from the ABC Plan sponsors and various rural LECs and their industry associations. Joint Submission of Price Cap ILECs and Rate-of-Return ILECs, July 29, 2011 (hereinafter, USTA/Consensus Letter), at 2.

6. In order to highlight their alliance, the price cap ILECs joined with the rural, rate-of-return ILECs (RLECs) to submit a letter to the FCC that summarizes their areas of consensus. The joint proposal modifies the earlier-filed (May 2, 2011) Joint Rural Association Filing; the parties attest that the ABC Plan was also modified prior to its filing on July 29, 2011 to accord with this consensus position. Under this joint proposal, the funding for RLECs would start at \$2-billion and increase by \$50-million per year, reaching \$2.3-billion in the sixth year. The CAF calculations for RLECs assume a 10 percent rate of return. USTA/Consensus Letter at 2-3.

Fund.⁷ Nearly all of the detail in the ABC Plan pertains to the CAF for price cap incumbent ILECs.

As the ABC Plan sponsors readily concede, many of the high-cost areas they presently serve do not currently receive support from legacy universal service programs.⁸ Large ILEC “study areas” that form the basis for universal service fund support typically include both low-cost and high-cost areas. In the past (i.e., under traditional rate-of-return regulation, such broad averaging would have resulted in an *implicit* subsidy flowing from the former to the latter – i.e., prices in low-cost areas would have been set in excess of cost while prices in high-cost areas would have been set below cost. However, in the case of broadband services, *rates are not regulated* either with respect to low-cost or high-cost areas. Indeed, by virtue of the FCC’s action to classify broadband Internet access as an “information service” subject to Title I of the Communications Act of 1934, as amended,⁹ price cap ILECs that provide broadband services are under no obligation to flow any profits earned in low-cost areas to anyone other than their own shareholders. The explicit CAF support that the ABC Plan would flow to price cap ILECs is thus not a replacement for a legacy implicit subsidy, it is a net increase of somewhere in the range of \$13-billion to \$14-billion over the next decade in the price cap ILEC draw from the larger universal service support machinery.¹⁰ Under the “replacement” CAF fund, the lion’s share of the available support will flow to communities within the price cap ILECs’ service territories – even though there is actually little or nothing that, from the perspective of the price cap ILECs, requires any “replacement,” let alone a net increase.

7. The USTA/Consensus Letter differs from the description in the ABC Plan, stating: “The framework proposes that, for the budget period, the Commission establish an annual funding target for its *mobility objectives* of \$300 million.” There is no mention of this fund being shared with “super-high-cost” satellite deployments. See, USTA/Consensus Plan at 2. Emphasis supplied.

8. ABC Plan, Attachment 1, at 2

9. *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) [BWIA Order].

10. Using data in USAC's 4th Quarter 2011 Appendix HC01A – *High Cost Support Projected by State by Study Area* – we identified the total quarterly support for study areas served by the six ABC Plan sponsors, and from that developed an estimate of these companies’ combined annual level of support at approximately \$825-billion. This is an estimate. Some of the operating affiliates that we have identified may still be subject to rate-of-return regulation; we may also have omitted others whose names were not immediately identifiable as affiliates of any of the ABC Plan sponsors. In its August 24 comments, Sprint states that the ABC Plan ILECs received \$893.5-million in 2010, citing its calculation based upon the 2010 Universal Service Monitoring Report, CC Docket No. 98-202, released Dec. 2010: “Federal high-cost by ILEC holding company was as follows: AT&T (\$188.0m), CenturyLink and Qwest (\$351.0m), FairPoint (\$3.2m.), Frontier (\$146.8 m), Verizon (\$125.3m), and Windstream (&79.2m). These figures do not include the hundreds of millions of high-cost USF paid to the wireless and CLEC affiliates of these six ILECs. Verizon-ILECs’ 2010 receipts are unaffected by the phase-out of Verizon-Wireless’ high-cost receipts.” Whether \$825-million or \$893-million, the current level of support being provided to these price cap ILECs is considerably less than the \$2.2-billion that the sponsors of the ABC Plan have proposed as a “replacement” for the existing funding sources. ABC Plan, Attachment 1, at 2.

Under the ABC Plan, CAF funding would be available for the provision of broadband service that provides a minimum actual downstream and upstream bandwidths of 4 mbps and 768 kbps, respectively, and can be furnished using “any wireline or wireless technology.” Importantly, the supported service need not include voice service, but only “access to” voice service. The CAF would be phased in beginning in July 2012, as legacy high-cost universal service was phased out. The transition from legacy support to CAF support would occur over a four-year period, ending July 1, 2016. The Plan provides that the selected broadband provider will receive a fixed level of support for ten years.

Initially, the ABC Plan states that CAF support “is only available in those high-cost areas in which there is no private sector business case to offer broadband,”¹¹ but it contains no actual mechanism to evaluate any such “business case,” relying instead upon a *presumption* that if at the outset (January 2012) there is no non-ILEC provider of broadband in the “high cost” census blocks, then that must mean that there is no “business case” to be made for such entry. Thus, under the ABC Plan, CAF support would be determined – on a census block basis – wherever there was no “unsupported broadband competitor ... already offering broadband service as of January 1, 2012.”¹² In other words, what the Plan deems to be a “business case” is essentially the actual presence of a competing non-ILEC provider.¹³ The ABC Plan freezes the determination of support as of a date certain (January 1, 2012); “the entry of an unsupported broadband competitor after January 1, 2012 does not affect the level of CAF support.”¹⁴

Once a census block is determined not to have at least one unsupported competitor, the next step is to determine whether it qualifies as “high-cost.” For this purpose, the ABC Plan sponsors commissioned the development of a cost model by the firm CostQuest Associates, Inc.¹⁵ This model (hereinafter, the “ILEC Cost Model”) calculates the forward-looking cost of providing broadband (and the estimated support levels) separately for each individual census block based upon the use of *wireline technology*.¹⁶ Under the ABC Plan, a high-cost census block is one

11. ABC Plan, Attachment 1, at 3.

12. *Id.*

13. It is ironic that the large ILECs should adopt such a narrow vision of a “competitor,” when, for many years, in a variety of contexts, they have maintained that CLECs had the “potential” to make economic investments at locations where those competitors could not actually manage to make a sound business case for deploying facilities.

14. ABC Plan, Attachment 1, at 3.

15. *Id.*, at 4.

16. *Id.*; Attachment 3, at 4.

where the average per-served-location monthly cost exceeds a threshold of \$80.¹⁷ While costs are modeled at the census block level, support is determined and disbursed by aggregating all of the eligible (high cost *and* unserved by an unsupported competitor) census blocks within a wire center, referred to as a “supported area” of the subject wire center.¹⁸

The wire center – a uniquely ILEC network architecture component – plays a critical role in how CAF funds are awarded. This is because the Plan proposes to grant the incumbent price cap ILEC a preemptive opportunity to be the exclusive CAF recipient in any otherwise qualifying-for-CAF-support wire center where it has already deployed broadband to 35 percent of service locations.¹⁹ By the sponsors' own estimate, this “right of first refusal” would apply in 82 percent of the eligible census blocks, accounting for 82.2 percent of the available CAF support for those areas.²⁰ Under the ABC Plan rules, any other ETC – even if it were to have equivalent initial coverage within a wire center or other technologically relevant geographic area – is simply frozen out of the process, even if it could deploy broadband more efficiently to the unserved locations.

Not only would a CETC lose the opportunity to vie for support, but the ILEC, having preempted a competitive bidding contest, is not actually obligated to deploy broadband to every location within the wire center's eligible census blocks. This complex exception is explained under “Obligations of the CAF Recipient.”²¹ Under this part of the proposal, the service obligation of the price cap ILEC (or other CAF recipient) is specified as a number of locations *per wire center* (essentially, a quota), based upon the number of locations in eligible (supported) census blocks, minus the number of locations in the wire center that the ILEC is not required to serve (i.e., those located in a census block where the average cost exceeds the so-called “Alternative Technology Threshold” (“ATT”) discussed below). However, for purposes of meeting its deployment quota in a wire center, the ILEC can choose to serve several locations in a census block it is not required to serve (e.g., a lower-cost location that happens to fall within an ATT census block) and then not serve an equivalent number of locations in one of the nominally supported census blocks.

In the unlikely event that the price cap ILEC chooses not to exercise its right of first refusal, the service obligation becomes available to another qualified provider, at the model-determined support level. If multiple providers apply, support is determined through a competitive bidding

17. *Id.*, at 5.

18. *Id.* at 4.

19. *Id.*, at 6.

20. *Id.*, at 6, note 7.

21. *Id.*, at 7.

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process, but the support level determined by the ILEC Cost Model serves as a ceiling on competitor support.²² Whether or not a CETC succeeds at capturing any CAF funding under these challenging rules, its legacy universal service funding is phased out within four years of the Plan's initiation.

Once the price cap ILEC (or other ETC) has accepted CAF funding, the ABC Plan provides that it has five years to complete deployment. Simply put, the entire first half of the ten-year support period can elapse before the support recipient provides any actual service. There are no intermediate benchmarks for deployment and no role for state or federal regulators with respect to service quality standards or pricing.

If the per-location cost of broadband deployment – using the ILECs' wireline-oriented cost model – is projected to exceed a \$256 per month Alternative Technology Threshold, the census block is excluded from the CAF mechanism and becomes the responsibility of the "Advanced Mobility/Satellite Fund" (AMF).²³ The presumption (as expressed by the Plan) is that very high cost areas will obtain broadband via satellite.²⁴ The Plan also designates the AMF as the fund that will support "the provision of mobile broadband in those high-cost areas that will not receive service as a result of planned commercial mobile broadband deployments."²⁵ Note that this standard is both more vague and, in some ways, more stringent than the standard for judging whether an area is eligible for CAF support, where the standard requires only no existing "unsupported broadband competitor." Thus, whereas an ETC can qualify for CAF support to serve a high-cost area if there is no existing competitor, for mobile support (in the unlikely event that funds even exist), the provider must also show that there is "no planned deployment." To maximize funding for the CAF and RLEC funds, while staying within the \$4.5 billion "no-growth" ceiling, the ABC Plan proposes that the AMF be capped at \$300 million. However, with \$2.2-billion being earmarked for the CAF and up to \$2.3-billion being set aside for ROR-regulated ILECs,²⁶ the effective "cap" on the AMF could drop to \$0 by the sixth year of the Plan.

Finally, similar to virtually all AT&T and Verizon proposals to the FCC in recent years, one of the key ("inextricably-linked") components of the ABC Plan is the elimination of regulation²⁷

22. If no provider is willing to provide service for the baseline support amount, the Plan provides that the FCC may adjust the baseline amount or service commitment, but here again the ABC Plan is short on specifics..

23. ABC Plan, Attachment 1, at 4-5.

24. In one scenario discussed in the ABC Plan submission, the ATT threshold is set at \$369. See ABC Plan, Att. 2, at 3.

25. *Id.*, at 8.

26. USTA letter, at 2.

27. ABC Plan, Attachment 1, at 1.

– a broad “hands-off” directive to both state and federal regulators. It works this way: First, the Plan calls for the FCC to preempt the states with respect to oversight of the CAF (by declaring both broadband and VoIP to be exclusively interstate services and preempting carrier of last resort (COLR) obligations); then, the FCC would agree to eliminate all “legacy regulations that act as a barrier to the transition to IP broadband” currently imposed on price cap incumbent LEC ETCs and CETCs” once they have transitioned from legacy high-cost USF to CAF.²⁸ Although the price cap LECs eagerly accept a subsidy in order to deploy broadband to customers in high-cost areas where, *by definition*, the subsidized provider will be the sole supplier of broadband service, the ABC Plan's sponsors nonetheless contend that no regulatory oversight is necessary or, indeed, in the public interest.

B. The Plan’s fundamentally disparate treatment of wireline and wireless.

The use of wireline-only costs results in skewed and potentially wasteful support decisions

The ABC Plan claims that “[t]he broadband service obligation is technology-neutral: providers can use any wireline or wireless technology that meets the specified bandwidth and service requirements.²⁹ Upon closer examination, however, this putative “technology-neutral” aspect of the proposal is undermined by several decidedly ILEC-oriented aspects of the Plan and the ILEC-commissioned cost model that underlies it. The sponsors of the ABC Plan have provided few details as to the specifications or instructions that were furnished to the developer of their cost model, and while there is some documentation regarding network architecture assumptions at a macro level, there are few if any details as to how costs are identified and assigned to individual census blocks within a given wire center serving area.³⁰

The one key limitation that the ILEC sponsors have readily conceded is that their model considers only *wireline* technology as the strategy for providing broadband at the level of geographic intensity contemplated in the National Broadband Plan: “All model scenarios assessed the costs for telecommunications companies to deploy *wireline broadband service* that

28. *Id.*, at 13.

29. *Id.*, at 2-3.

30. This concern regarding the precision of census block-level results is apparently conceded by the model’s developers: “Through the model design and development process certain strengths and limitations emerged with respect to the approach (and the underlying available information). ... Notably the precision of model outcomes will be impacted by the quality of available input data. In general, *these limitations will have a more significant impact on the precision of derived results for a small area (such as Census Block) than for larger areas, such as wire centers, counties, states, or the nation.*” *Id.*, Attachment 3, §2.3, at 7. Emphasis supplied.

is capable of delivering actual speeds of 4 Mbps download and 768 Kbps upload.”³¹ Implicit in these download/upload specifications is that the minimum service required is for *fixed location* broadband; while a mobile solution could obviously satisfy these specifications, no additional credit would be allowed for the incremental functionality that a mobile solution would provide. In adopting this constraint, the ILEC Cost Model thus makes no attempt to identify or assess the most efficient, least cost means of providing broadband service in unserved (typically low-density, rural) areas being specifically targeted by the National Broadband Plan – the very locations where *wireless* offers significant cost advantages over wireline. With the exception of the most extreme high-cost areas (again, as determined under the assumption of wireline deployment), the ILEC Cost Model simply *assumes* that a wireline solution is superior to wireless both with respect to cost and, apparently, in its ability to achieve the requisite 4 Mbps download/768 Kbps upload minimum service objective.

Only at the point where the per-location costs, using wireline technology, exceeds the “Alternative Technology Threshold” (set at \$256 per month.),³² does the ABC Plan concede that a non-wireline service option is required. But, here again, the ABC Plan proposes a technology-specific solution, whereby such locations – which the ILEC Cost Model estimates at totaling around 730,000 within price cap ILEC service territories³³ – are assumed to be “well within the capacity of broadband satellites”³⁴ and are assumed to be most efficiently served in that manner.³⁵ Having failed to consider the costs of wireless (both terrestrial and satellite) in their cost model, the Plan’s sponsors offer no factual or analytical basis for the specific \$256 Alternative Technology Threshold, for their assumption that broadband satellite is the appropriate technology for serving locations whose *wireline* cost-to-serve would exceed \$256 per month, or for their implicit assumption that no even lower cost “alternative technology” would be viable where the modeled *wireline* cost falls below that \$256 per month level.

In fact, wireless deployment has particular cost advantages in many low-density geographic areas. This possibility is not just theoretical; there are compelling reasons to expect precisely this condition:

- (1) Per-location costs of serving customers in low-density areas via wireline distribution networks are high due to the confluence of large distances and the small number of locations

31. *Id.*, Attachment 2, at 1, emphasis supplied.

32. *Id.*, Attachment 1, at 5. \$256 in monthly recurring costs corresponds, roughly, to a per-location capital outlay in the range of \$15,000 to \$18,000 (assuming a 10-year depreciation life and a cost of money of around 10%).

33. *Id.*

34. *Id.*, at 5-6.

35. *Id.*, at 4. The ILEC model “accounts for the impact of setting a target for the total support amount by relying on satellite broadband for extremely high-cost areas.”

to be served. The costs of wireline distribution facilities – “last mile” subscriber lines and supporting structures (poles and conduits) are primarily driven by *distance* and by terrain and, to a much lesser extent, by total capacity of the distribution facility. Holding capacity constant, a six-mile distribution facility costs roughly twice what a three-mile facility would cost; holding distance constant, a distribution facility capable of serving 1000 locations costs little more than a distribution facility capable of serving 200 locations, the principal source of difference being the cost of the coaxial or fiber cable itself. As distance increases while density becomes more sparse, the costs of serving customers via wireline broadband escalates rapidly.

- (2) Wireline drops also tend to be most costly in many rural areas where the distance from the street or road to the subscriber’s residence may often be considerably longer than in urban and suburban areas – and may be more costly to maintain on an ongoing basis.
- (3) In stark contrast, terrestrial wireless technology is often particularly well-suited to low-density rural areas. First, rural areas generally do not face the same level of spectrum constraints extant in areas of greater density. Second, in many low-density areas – particularly where the terrain is relatively flat – a single cell site can serve a considerably larger area than is typically possible in urbanized or even suburban areas. Thus, while the wireless cost per location served is still somewhat higher in rural areas than in urban/suburban communities, the differential between the two extremes is likely far smaller than for wireline. Finally, with wireless there is no need to construct a drop cable from the road to the house, since the wireless service can be received directly at the customer’s residence.

The wireline bias inherent in the ILEC Cost Model would produce technologically inefficient results even if it were merely proposed as the basis for identifying census blocks with (wireline) costs above the designated (\$80 per month) threshold. But the ABC Plan also proposes that the model’s results will establish the specific level of “baseline support,” by individual census block, throughout the price cap ILEC service territories.³⁶ The overstatement of “forward looking” costs that would result from a cost model that expressly *excludes* consideration of a potentially lower-cost technology, coupled with the presumptive incumbent LEC “right of first refusal” bias, will bloat the aggregate level of support to be provided under the CAF mechanism and, since the aggregate level of CAF support will be a major determinant of the aggregate level of explicit contribution to be made to the Fund, will result in excessive prices for all services that are to be subject to such contribution requirements, which will in turn have broad negative impacts on the economy overall. The effect can be illustrated by several examples:

- Case 1: Wireline cost (per the ILEC Cost Model) to deploy to 300 locations in the qualifying unserved census blocks in a given wire center is \$250 per month per location. Baseline

36. *Id.* “After the Commission has identified the supported area in a wire center, it will use the forward-looking cost model to calculate a baseline support amount for the supported area.”

support is set at \$170 per location (\$250 – \$80), or \$51,000 per month in total. The per-location cost for a wireless solution would be only \$150. If the baseline support were determined at the least-cost technology, the per-location CAF support would be only \$70 (\$150 – \$80), or \$21,000 per month overall. The CAF would essentially overpay by \$30,000 per month for that wire center, which means that an additional \$30,000 of contribution would need to be imposed upon other services. Moreover, if the baseline support were set at \$21,000 instead of \$51,000, the incumbent LEC would (presumably) not be in a position to exercise its right of first refusal, thus creating a bona fide competitive bidding process for However, under the ABC Plan, the competitive bidding would only arise if the ILEC did not qualify for a “right of first refusal.”

- Case 2: Wireline cost (per the ILEC Cost Model) to deploy to 500 locations in the qualifying unserved census blocks in a given wire center is \$125 per month per location. Baseline support is set at \$45 per location (\$125 – \$80), or \$22,500 per month in total. However, the per-location cost for a wireless solution would be only \$75. If the baseline support were determined at the least-cost technology, the per-location CAF support would be \$0, because the forward-looking cost falls below the \$80 threshold. By considering a wireline-only service strategy, the CAF would essentially overpay by \$22,500 per month for that wire center.

As these examples demonstrate, the ILEC Cost Model is likely to (1) include census blocks as “high-cost” in cases where full functionality – provided via wireless – could actually be offered at less than the support threshold (thus requiring no support at all) and (2) award a far higher level of support than would be necessary for the deployment of broadband were the cost model not confined to wireline technology. Each time this happens, the ILEC (particularly when it can invoke the right of first refusal) stands to pull more funds from the CAF than would be available with a technology-neutral model and mechanism.

Thus, by excluding potentially lower-cost wireless solutions from the baseline support calculation and by setting the “Alternative Technology Threshold” so high as to *include* within the basic funding mechanism areas whose costs could be up to just below the \$256 level, the ILEC Cost Model is both overinclusive in identifying census blocks that would qualify for high-cost support and, for those locations that are to be covered, is overstating and exaggerating the actual level of high-cost support that would be required in each instance. The result is an overstatement of the aggregate amount of funding that putatively qualifying service providers – in most cases ILECs – could extract from the funding mechanism.

Assumptions linked to ILEC legacy network architecture cannot fairly be used to model non-ILEC broadband deployment, on either a wired or wireless basis.

The ILEC Cost Model is integrally linked to legacy wireline – and specifically, ILEC – network architecture, i.e., the *wire center*. It employs a so-called “scorched node” network design in which legacy *ILEC* wire center buildings and serving areas are maintained as they

presently exist.³⁷ Many, perhaps most, of these wire center locations and serving areas date back to the earliest days of the telephone industry, perhaps nearly a century or even longer. Anyone designing a broadband network *from scratch* – i.e., a so-called “greenfield” build – would adopt a “scorched earth” approach with no preexisting location, configuration, technology or network architecture constraints. Past limitations on transport distances, telephone switch and inter-switch trunk capacities, and other attributes of legacy voice telephony technology were materially responsible for dictating the design of local networks. Fiber optics, packet switching, wireless and other current technologies – together with the evolving demand for increased bandwidth, mobility, and applications that go way beyond point-to-point voice telephone calls – fundamentally change the way a network would be designed from the ground up today and in the future.

CLEC, cable, and CMRS networks are not oriented around the limited geography embraced by legacy ILEC wire centers. Were a forward-looking cost model based upon geographies as small as wire centers – or worse, the even smaller individual census blocks – as a basis for modeling CLEC or CMRS costs, they might well appear to exceed the costs associated with traditional ILEC networks because they would ignore the significant efficiencies associated with modern wireline and wireless network architectures that are oriented around far more expansive geographic service areas. Thus, even if the ILEC Cost Model did not deliberately exclude wireless solutions, if wireless were costed on a census block basis – something that would literally *never happen* in the real world – the per-location costs could well appear to be higher than those developed by the ILEC Cost Model for legacy ILEC wireline network architectures.

The fallacy of the census block as a basis for awarding support

Under the terms of the proposed ABC Plan, census blocks whose modeled per-location cost exceeds the \$80 per-location benchmark (but below the “Alternative Technology Threshold”) are eligible for CAF support, whereas census blocks within the same wire center whose modeled per-location cost falls below the benchmark are not. Under this scheme, the average per-location cost across an entire wire center could fall short of the \$80 benchmark, even though it contains some number of eligible census blocks. But in that instance, the ILEC would be eligible for support with respect to those individual census blocks that exceed the \$80 threshold.

While this approach has been promoted for its “granular” focus, the purported benefit of using these small, but essentially arbitrary and, from a network engineering standpoint, utterly meaningless, geographic units is not great enough to compensate for the fact that census blocks have no consequential relationship to broadband deployment costs and the resulting investment decisions. Fundamentally, networks are not designed around – and costs are not incurred at – the

37. *Id.*, Attachment 3, at 9, §3.2.a; at 24: “Scorched Node – A cost modeling approach wherein the central office, middle mile, and service locations are based upon current locations, but the construction of the network between the serving CO and customer is modeled using forward-looking algorithms.”

census block level. While the precise manner in which the ILEC Cost Model assigns costs to individual census blocks within wire center serving areas is not apparent from the available documentation, if the model is actually calculating the stand-alone costs of serving individual census blocks, it will necessarily exaggerate these costs by ignoring scale and scope economies extent across larger geographic areas. And, if it is calculating costs across larger geographic areas than individual census blocks, there is no assurance that costs common to multiple blocks are being properly assigned and attributed to the individual census blocks that would be the unit for receipt of high-cost support.

Not only are the criteria used to define census blocks basically irrelevant to how networks are designed and cables routed, it is fair to say that the criteria can often be directly incompatible. For example, census blocks are typically bounded by streets, roads or other public ways,³⁸ such that customers on either side of any given street or road will normally not fall within the same census block. By contrast, both sides of a street will typically be served by the same wireline distribution facility. One can even imagine a situation where, under the ILEC Cost Model, the census block on the west side of the road falls below the \$80 threshold for CAF support, while the modeled per-location cost for the block on the east side of the same road is above \$80 and thus qualifies for CAF support, *even though customers on both sides of the road are served from the same common distribution cable*. And if, as a result of a competitive bidding process, the provider responsible for the “high cost” side of the road ends up not being the same as the one that serves the “low cost” side, the economic benefits of serving both sides of the road from the same distribution facility could be sacrificed. Moreover, were that to happen, the cost of serving the “low cost” side of the road is likely to escalate, perhaps even placing that census block above the \$80 support threshold.

Because networks are not designed with respect to census block boundaries, there are few costs that are unique to a single census block. A distribution cable and associated support structures (e.g., poles) may pass through a succession of census blocks. The ILEC Cost Model undertakes to optimize costs across the entire wire center rather than with respect to any specific census blocks.³⁹ This type of area-wide optimization may involve sacrificing efficiency in some census blocks in order to achieve greater offsetting efficiencies elsewhere. More generally, modeling costs at a level as granular as individual census blocks can result in the misattribution of costs that are common to the entire wire center (or, for alternative technologies and network

38. “Census blocks, the smallest geographic area for which the Bureau of the Census collects and tabulates decennial census data, are formed by streets, roads, railroads, streams and other bodies of water, other visible physical and cultural features, and the legal boundaries shown on Census Bureau maps. Census data for these areas serve as a valuable source for small-area geographic studies.” U.S. Department of Commerce, Bureau of the Census, *Geographic Areas Reference Manual*, November 1994, Chapter 11, “Census Blocks and Block Groups,” at 11-1.

39. See, generally, CostQuest Associates, Inc., “CostProLoop Loop Economic Modeling, Model Documentation,” at 12-14.

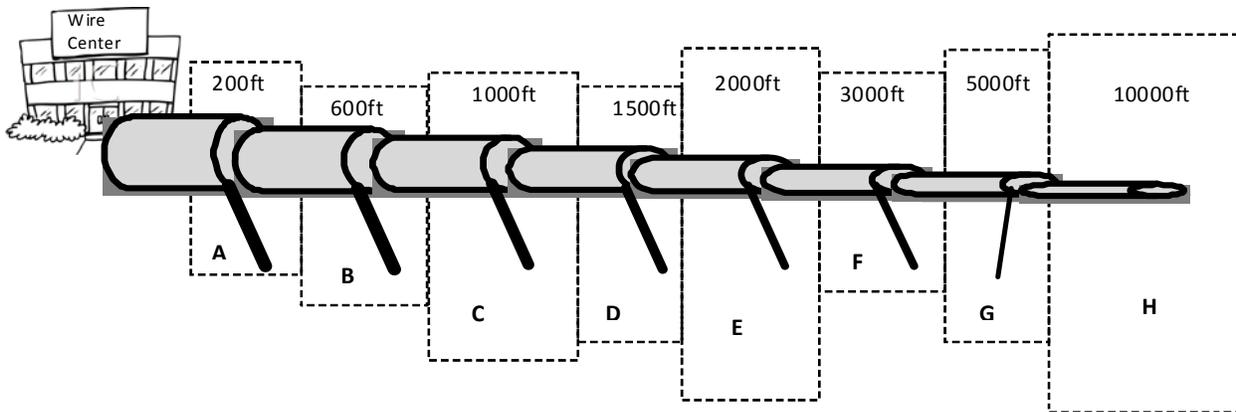
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designs that are not even being considered in the ILEC Cost Model, the costs associated with the minimum efficient geographic unit) among census blocks – or worse, duplicated and assigned – to the high-cost blocks.

If eligibility for support and the actual level of support are to be reckoned at the individual census block level – the level at which the model’s results provide the lowest level of precision⁴⁰ – then the manner by which costs that are common to multiple census blocks or to the entire wire center area are attributed or otherwise allocated to each individual census block requires a detailed and critical examination before the ILEC Cost Model can be used for its offered purposes. Unfortunately, nowhere in the documentation that has been provided by the sponsors of the ABC Plan is there any discussion of this critical step.⁴¹

Consider a simple example. Suppose a distribution cable line and its associated pole line emanates from the wire center head-end (e.g., the central office) and serves a string of contiguous census blocks of successively longer distance from the head-end:

BLOCK	A	B	C	D	E	F	G	H
Distance	200 ft.	600 ft.	1000 ft	1500 ft	200 ft	3000 ft	5000 ft	10000 ft.
Locations	100	100	80	60	40	20	10	10
Cum. locs.	420	320	220	140	80	40	20	10



40. See ABC Plan, Attachment 3, §2.3, at 7.

41. *Id.*, Attachment 2, “Summary of Model Results;” Attachment 3, “Model Description”

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Here, the first 200 ft. of cable and supporting structures from the head-end are required to serve – and hence are a “common cost” of – all 420 locations; the next 400 feet are required to serve (and are a common cost of) the remaining 320 locations, and so on. The last 5,000 feet serve only 10 locations in census block H.

There are several different ways in which costs can be attributed to each of the seven census blocks in this illustration. One way is to spread the costs of the first 200 feet across the 420 locations that benefit, then spread the costs of the next 400 feet across the 320 locations that benefit, and so on, down to the last 5,000 feet, which would be spread over only 10 locations. The costs applicable to the locations in each block would be the aggregate of the per-location costs assigned to all of the blocks from the head-end to the block containing the subject location. Another approach might be to calculate a per-foot cost across the entire seven blocks, then multiply that by distance of each location to the head-end. A third approach would be to treat each block in isolation – i.e., calculate the costs of serving that block as if the other blocks didn't exist at all. A fourth method would be to assign only the incremental costs of the next block in the sequence to that block. Thus, block B would be assigned only the additional costs of getting to it from block A; block C would bear the additional costs of getting to it from block B, and so on. We don't know how the ILEC Cost Model assigns these – and other – common costs, or if it even does. For example, if costs associated with a given census block are calculated on a “stand-alone” basis – i.e., on the assumption that the existence of adjacent or proximate census blocks has no bearing on the costs to serve any specific block – then the ILEC Cost Model would calculate the cost of census block H by taking the total cost of a 10-pair 10,000 foot cable run and dividing it up among the 10 locations in that block, effectively ignoring the fact that the same cable traverses and serves locations in census blocks A-G as well.

Even if the ILEC Cost Model makes some attempt to allocate costs that are common to multiple census blocks, by limiting support to only those blocks whose modeled cost exceeds the benchmark, the ABC Plan could operate to use the high-cost blocks to cross-subsidize the low-cost blocks. For example, suppose that the modeled costs of blocks F, G and H cross the \$80 threshold and become eligible for CAF support. Even if the costs common to multiple blocks are allocated across all blocks that benefit from them, had the 40 locations in blocks F, G and H not existed, then the per-location costs to serve the remaining A-E blocks would be greater, because the three highest-cost blocks would not share any of the costs that are common to all eight blocks.

And the foregoing example assumes that the location of the wire center relative to the individual census blocks being examined is efficient and optimal, which may well not be the case. Population of the area might over time have migrated further away from the location of the wire center building, such that absent the wire center location constraint inherent in a “scorched node” type of model, costs would be lower if the wire center building location could be shifted closer to the population center. Additionally, the model affords no consideration whatsoever to alternate network designs that take better advantage of different technologies, demand characteristics, and other factors that post-date the legacy placement of network nodes.

In sum, the ILEC Cost Model is likely to be overinclusive as to the aggregate number of census blocks qualifying for CAF support, and is also likely to overstate – perhaps by a considerable amount – the baseline support required by many, perhaps most, census blocks that the ILEC Cost Model assigns to the “qualifying for CAF support” category.

C. Providing the ILEC a right of first refusal drastically reduces the opportunity for non-ILEC wireline and wireless carriers to vie for high-cost CAF support, potentially foreclosing opportunities for significant efficiency gains

The ABC Plan proposes that those census blocks within a given wire center area whose modeled costs exceed the \$80 threshold but fall below the \$256 Alternative Technology Threshold would be grouped together into a single “supported area.” “If the incumbent LEC that serves the wire center has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center,” the ILEC would be afforded a “right of first refusal” (“ROFR”) with respect to the supported area within that wire center.⁴² The Plan’s sponsors “estimate that incumbent LECs would have the opportunity to accept or decline CAF support in 82.0 percent of the census blocks that are eligible for CAF support, representing 82.2 percent of the \$2.2 billion in support targeted to areas served by price cap LECs.”⁴³ The specific rationale they have advanced as justification for this preferential treatment is that “[b]y first offering support to an incumbent LEC that has already made substantial investments in the wire center, the CAF will accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs.”⁴⁴ The fact that by blocking rival providers’ ability to compete for some 82% of all qualifying census blocks the Plan’s sponsors are also protecting their embedded investment in broadband for ten years or more is nowhere mentioned.

To exercise its right of first refusal, the price cap ILEC must accept “the baseline support and the associated broadband service obligations in the census blocks that make up the supported area within that wire center.”⁴⁵ Note that the 35% broadband availability threshold applies with respect to the *entire wire center*, not just to the “supported area” with respect to which the CAF monies would be flowing. Thus, if in a given wire center there are 5,000 service locations of which 1,000 are within the “supported area” qualifying for CAF support, and the ILEC has already deployed broadband capable of providing high-speed Internet access to 2,000 locations, *none of which are within the “supported area,”* it will still acquire right of first refusal status

42. ABC Plan, Attachment 1, at 6.

43. ABC Plan, Attachment 1, at 6, fn. 7.

44. *Id.*

45. *Id.*, at 6.

with respect to the “supported area” without having made any investment at all to provide broadband access to those customers.

The Commission’s recent *Public Notice*⁴⁶ poses several questions that suggest a recognition that the ILECs’ ROFR proposal is likely to unreasonably exclude efficient competitors from access to CAF funding.⁴⁷ It is important to bear in mind, as well, that the ROFR mechanism would have a long-lasting impact. Once the ROFR is exercised, the ILEC is assured CAF support for a minimum of ten years – longer if its broadband build-out is accomplished in phases – and because any would-be entrant would *not* be entitled to CAF support, the ILEC’s subsidized competitive position would be protected from encroachment.

D. Competitive bidding for CAF support based on geographic units as small as census blocks, even as aggregated into “supported areas” within individual wire centers, affords significant competitive advantage to incumbent LECs

As noted, the sponsors of the ABC Plan anticipate that the incumbent LEC will qualify for a right of first refusal in some 82% of all support-eligible census blocks by virtue of having made “substantial existing broadband investment” in the given wire center serving area. For the remaining 18% of census blocks, the Plan offers two alternate mechanisms by which a qualified provider (which may include the incumbent) may obtain CAF support:

- (1) “[A]ny qualified wireless or wireline provider that can meet the specified broadband service obligations may apply for the baseline support and the obligation to serve the associated census blocks;”
- (2) “If multiple providers apply for support, the Commission will use competitive bidding to select the support recipient. Support is provided to the lowest bidder that will meet the specified buildout and service requirements. The baseline support amount functions as the reserve price, i.e., support cannot exceed that amount in the area.”⁴⁸

These same two criteria would apply to the supported portions of wire centers eligible for the ROFR but where the ILEC declines the model-determined support. At a superficial level, this arrangement would seem to offer competitive- and technology-neutral opportunities to any prospective broadband service provider willing to undertake the required broadband build-out. Upon closer examination, however, it becomes apparent that this “openness” is largely illusory,

46. FCC Public Notice DA 11-1348, WC Docket No. 10-90 *et al*, *Further Inquiry into Certain Issues in the Universal Serviceintercarrier Compensation Transformation Proceeding*, Released: August 3, 2011

47. *Id.*, at 4.

48. ABC Plan, Attachment 1, at 6.

and that the “competitive bidding” arrangement is heavily tilted in favor of the incumbent and against wireless and other non-incumbent entrants. By limiting support to just the highest-cost census blocks and by requiring separate auctions for each “supported area,” the effect would be to virtually preclude a wireless carrier from developing a business case to bid for CAF support.

This can again be traced back to the technology-biased composition of the ABC Plan’s proposed cost model and support distribution mechanism. As mismatched as the census block is for estimating forward-looking wireline deployment costs, it is even more unrealistic for wireless networks. The efficient scope of a wireless network requires that it serve a geographic area that is considerably more expansive than an individual census block and also much larger than a “supported area” within a single wire center serving area or, for that matter, the entire wire center serving area. This property of wireless networks is hardly a novel revelation. Beginning as far back as the early 1980s, when the FCC was engaged in the process of licensing first generation 800 MHz CMRS providers, it established approximately 700 license areas each based upon either a Metropolitan Statistical Area (MSA) as defined by Bureau of Economic Analysis or a Rural Service Area (RSA) as defined by the FCC itself.⁴⁹ The sizing of RSAs was a matter of considerable debate. The FCC, in resolving this issue, concluded that:

We agree that the economic viability of rural cellular service will be enhanced by protecting natural social and economic communities, but we conclude that the best mechanism for achieving this goal is the use of multi-county groupings drawn along the county boundaries proposed by United [TeleSpectrum, Inc.]. Single county units would be too small to support economically viable cellular systems and might split natural economic communities. Further, the increased number of markets should create administrative difficulties in processing the applications and might delay or thwart service altogether because applicants would be allowed to apply for smaller areas and effectively “cream-skim” the more lucrative cellular markets. The use of highway corridors as RSA boundaries also would not be in the public interest. Such a plan would often separate natural economic and social communities and would be difficult to administer. The use of multi-county groupings, on the other hand, will provide clearly defined RSA boundaries and system certainty while fostering development of a strong economically-viable rural cellular system.”⁵⁰

As such, a typical RSA covered many counties and an even larger number of ILEC wire center serving areas. When in 1993 the FCC began the process of establishing blocks of Personal

49. *In the Matter of An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, CC Docket No. 79-318, 89 F.C.C.2d 58, released March 3, 1982 (“*Cellular Reconsideration Order*”); *In the Matter of Amendment of the Commission's Rules for Rural Cellular Service*, CC Docket No. 85-388 RM 5167, released July 18, 1986 (“*Rural Cellular Order*”).

50. *Rural Cellular Order*, at para 11.

Communications Service (“PCS”) spectrum for auction,⁵¹ it defined service areas that were considerably larger than the MSAs and RSAs that had been established for the 800 MHz licenses. PCS license territories were established with respect to “Basic Trading Areas” (“BTAs”) and “Major Trading Areas” (“MTAs”) as these are defined in the Rand McNally Commercial Atlas.⁵² There are 487 BTAs and 51 MTAs. In stark contrast, there are approximately 20,500 ILEC wire centers⁵³ and the ILEC Cost Model “includes unique detail for 8.2 million census blocks”⁵⁴ nationwide.

The ABC Plan proposes that CAF support for each “supported area” be awarded through its own reverse auction, with a “supported area” typically being a subset of a wire center serving area. However, even if CAF support were auctioned off across the entire wire center, wireless service providers would find it extremely difficult to participate simply because the geographic area is so small. Electromagnetic radiation is not confined within census block or wire center boundaries. A wireless solution typically requires a geographic area considerably larger than an individual wire center, a county, or even an aggregation of several adjacent counties. Unless a bidder can be assured the ability to achieve efficient scale and scope across multiple adjacent service areas, it will not be in a position to bid for any single wire center area or, as proposed, something even smaller than that.

Under long-standing FCC practices, wireless licenses are not issued with respect to geographic areas as small as census blocks, “supported areas” within wire center districts, entire wire centers, or even entire counties. And even if spectrum could be obtained at so granular a level, it is utterly impractical for a wireless network to be designed to provide coverage within areas as small as any of these. The fact that, under the ABC Plan, a “supported area” would consist of less than a single wire center means that, realistically, only a wireless carrier that already has spectrum and deployed network assets (cell sites and backhaul facilities) covering the subject “supported area” would even be eligible to participate in the bidding process. But, even with its eligibility in place, there is no assurance that a wireless provider could bid and commit to serving so limited an area, in isolation. If required to bid for CAF support separately for each supported area, the prospective wireless provider has no assurance that, in the end, it won’t end up with a checkerboard of “supported areas” interspersed with localities where the ILEC had either exercised its ROFR or won the competitive auction as the low bidder. In this case, the wireless provider would be unable to achieve the scale and scope to construct an

51. *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, 8 FCC Rcd 7700, released October 22, 1993.

52. *Id.*, at para. 64.

53. This estimate was developed through an analysis of wire center data contained in the Local Exchange Routing Guide (“LERG”).

54. ABC Plan, Attachment 1, at 4.

efficient network. Without some assurance that it will be able to obtain support over an area significantly larger than the subset of a single wire center that constitutes the “supported area” that is up for bid, wireless carrier participation in such auctions would be, for all practical purposes, entirely precluded. Thus, even in the limited number of wire centers that might be made available for competitive bidding, the ILECs, whose legacy or broadband networks are oriented around a single wire center building, are afforded a formidable competitive advantage vis-à-vis wireless providers and most other potential bidders.

E. ROFR-eligible ILECs may have the ability to “game the system” to increase the level of CAF support above the “baseline” level as established by their Cost Model

Since the baseline support amount as determined by the ILEC Cost Model established the upper limit of CAF support in any competitive bidding situation, at first glance it would seem that there would be no reason for an ILEC to go after support in a wire center where it has declined to exercise its right of first refusal. But it appears to be somewhat more complicated than that. Under the support structure envisioned by the ABC Plan, “[i]f no provider applies for the CAF baseline support amount available in a wire center, then the Commission may adjust the broadband obligations and/or the available support, subject to the overall constraint on high-cost universal service support.”⁵⁵ Thus, if an incumbent LEC can reasonably predict that there will be no viable competitor able to commit to deploying service at or below the baseline support level (which may often be the case precisely because of the wireline ILEC biases of the Plan, as discussed above), it can effectively “game” the system by declining to exercise its right of first refusal and then seeking to claim CAF at a “adjusted” (higher) support level. There is, of course, no *a priori* means for assessing how frequently this might occur or its dollar impact upon the required level of CAF support, but the potential for this outcome must certainly be included within the range of “unintended consequences” and factored into the overall evaluation of the ABC Plan.

F. The ABC Plan is also heavily biased in favor of fixed over mobile broadband

We have reviewed several ways in which the ABC Plan makes it difficult – if not impossible – for mobile wireless providers to vie for CAF support, including the Plan’s orientation around wire centers and the wireline infrastructure that serves them, and the ROFR that, when exercised, permits wireline incumbents to block any mobile wireless solution from obtaining access to CAF support for at least ten years. More generally, while the support that would be available from the CAF is not *per se* limited to fixed services, it would appear to have precisely that effect in practice. By its very nature, any wireline broadband solution is inherently *fixed* with respect to service locations. Wireless can be either fixed or mobile or, more likely, capable of supporting

55. *Id.*, at 6.

both demands. Yet the constraints under which the ILEC plan would extend broadband availability into currently unserved and underserved areas gives almost no effect to the growing demand for *mobile* broadband access.

While the industry and the Commission acknowledge an ever-expanding demand for mobile broadband capability, the ABC Plan treats it as, at best, an afterthought. Even the Plan's "Advanced Mobility/Satellite Fund," that is nominally earmarked to support mobile broadband solutions, is ill-suited to promoting the deployment of mobile broadband solutions in unserved and underserved areas. One key limitation is immediately evident: The ILEC proposal sets aside a *maximum* of \$300-million to fund what may well be a much larger support need, consisting of both (1) fixed satellite service to census blocks with monthly per-location costs at or above the \$256 "Alternative Technology Threshold" and (2) "high-cost areas that will not receive service as a result of planned commercial mobile broadband deployments."⁵⁶

Next, the ABC Plan establishes ground rules and incorporates assumptions that further limit the availability of AMF funds as a means of expanding mobile broadband availability. The ABC Plan's sponsors start out by *assuming* that the "alternative" wireless and satellite technologies are not even feasible except where wireline broadband per-location monthly cost would exceed the \$256 threshold. It then *assumes* that these extraordinarily high-cost census blocks (those that exceed the "Alternative Technology Threshold") will be served via satellite⁵⁷ – without consideration of other technologies. Even where the AMF seems to contemplate the possibility of a terrestrial mobile solution, support could only be made available in those instances where there is no "planned deployment" of any commercial mobile broadband service. Significantly, there is no elaboration or definition of exactly what constitutes a "planned deployment," whose "plan" is to be evaluated or, for that matter, how any such "plan" would be brought to the attention of the FCC or the administrators of the AMF. Moreover, the absence of any "planned deployment" would be determined as of a date certain – January 1, 2012 – and, unless no support is awarded from that particular census block, any "planned deployment" arising after that date would, it appears, be ineligible for AMF support.

The ABC Plan purports to segregate fixed and mobile services into separate support mechanisms – the CAF and the AMF, respectively⁵⁸ – and to earmark some level of funding

56. *Id.*, at 8.

57. *Id.*, at 4. The ILEC Cost Model "accounts for the impact of setting a target for the total support amount *by relying on satellite broadband for extremely high-cost areas.*" Emphasis supplied.

58. *Id.*, at 8. The \$300 million is an absolute cap on the AMF. The ABC Plan specifically provides that other funds can eat into that amount (support designated for the AMF can be reduced by "the difference between the overall constraint on the size of the high-cost fund and the sum of support from the CAF for price cap LEC areas, support from the transitional access replacement mechanism for price cap LECs, any remaining legacy support provided to price cap incumbent LEC ETCs and CETCs, and any support provided to rate-of-return incumbent LECs).)

(\$300-million) for “mobile” broadband. But the qualifications for “mobile” support under the AMF are so limited that it will be incapable of supporting any widescale deployment of mobile broadband in rural America. That coupled with the inherent wireline bias of the proposed CAF process, operates to effectively exclude most mobile broadband from access to high cost support.

Compounding this segregation of fixed and mobile funding, the Plan provides that “[a] provider may not receive AMF support and CAF support for the same facility.” In other words, if a wireless service provider is actually successful in competing for CAF support in a particular support area, it cannot also receive AMF support for *mobile* broadband in that same location. A wireless network that is designed only to provide fixed services is less complex and less costly to construct than one that is also capable of supporting mobile applications, because the former does not need to provide for hand-offs and “follow-me” switching arrangements. Yet the AMF could not even be used to support the *incremental* cost associated with a mobile-capable network over and above the costs minimally necessary for fixed service.

The distinction between “fixed” and “mobile” is itself artificial and arbitrary. Experience in the voice world has demonstrated that for (by the latest count) some 30% of US households, “fixed” has been replaced by “mobile.”⁵⁹ Wireless broadband that is oriented toward mobile use can, as with voice services, serve as a substitute for fixed (wireline or wireless) broadband, and should not be relegated to a subordinate position with respect to broadband support. Indeed, the proliferation of “smart” mobile devices (by one recent projection smartphones will account for some 50% of all wireless devices in use in the US by the end of 2011⁶⁰) underscores the burgeoning demand for mobile broadband. There is no basis for the value judgment, implicit in the ABC Plan, that “fixed” deserves priority over “mobile” for broadband access. In fact, the overall ABC Plan all but ignores the exploding demand for mobile broadband; its extreme focus upon fixed location services is anything but forward-looking.

Even if \$300 million is a real number, it is woefully insufficient to move the needle in rural America to deliver real benefits, create jobs, provide for other economic development benefits, and provide significant and new health/safety benefits. Even without the limits placed on the AMF to apply to those situations where the CAF is not operative (very high cost and mobile broadband), capping the AMF at \$300-million (or any other specific subset of aggregate CAF funding) is directly at odds with the overarching goal of providing broadband access to all parts of the US in the most efficient manner. If wireless mobile services can bring broadband to rural areas more efficiently than wireline LECs and/or if by virtue of their *mobile* functionality mobile broadband services can better serve the needs of rural customers, support for these services

59. Blumberg, Stephen J., and Luke, Julian V., *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2010*, Center for Disease Control, Division of Health Interview Statistics, National Center for Health Statistics, released June 8, 2011.

60. <http://blog.nielsen.com/nielsenwire/consumer/smartphones-to-overtake-feature-phones-in-u-s-by-2011/>

should not be constrained by some arbitrary cap on the available funding while potentially less efficient wireline LECs are allowed to cut to the front of the line.

The technology choice (wireline vs. wireless) is, however, only part of the matter at issue here. In terms of assuring that rural areas have access to services that are fully comparable to services available in urban areas, the more important concern is assuring the widespread availability of *mobile* services in these same high cost areas. In reality, and like their urban/suburban counterparts, rural customers need access both to fixed and to mobile broadband services. If a *mobile* functionality requirement were included in the minimum broadband specification along with the upload and download speeds, wireline carriers would be locked out. For the various reasons we have explored above, the ABC Plan is so heavily tilted in favor of wireline that wireless is all but locked out of CAF support. Yet if mobile broadband access is to be offered in rural high-cost areas, the solution might be to divide the CAF into two separate funds – one directed at supporting *fixed* services (but without the inherent wireline bias and exclusion from the baseline calculation of potentially lower-cost wireless solutions), and another to support *mobile* services. Where competitive bidding is to be used, providers that are capable of providing both fixed and mobile broadband should be afforded the opportunity to bid for both services in the same area and, if successful, to receive support from both funds. Although it might be argued that such an arrangement would unduly favor wireless over wireline providers, such a bias would still be less significant than the various incumbency benefits that are available only to ILECs.

The notion that a support arrangement that is established in 2012 would extend to 2022 or beyond *demand*s that the objectives be established not based upon recent or even current service demands, but upon a realistic and informed assessment of the telecom needs of a decade or more into the future. Ten years ago (in 2001) there was no texting, no twitter, no Facebook, no point-to-point video calling via Skype and Facetime, no streaming video. A support mechanism that locked in telecom demands extant in 2001 to persist through 2011 or beyond would fail to provide for current needs. No one can say precisely what those needs and service levels will be in 2022 or beyond, except that they will undoubtedly be far different from what is viewed as sufficient by current (2011) standards. The failure of the ABC Plan to give any serious attention to *mobile* service demands is emblematic of its fundamentally *backward-looking* character. In developing a strategy to support the nation's broadband goals, the FCC needs to look to the future, not the past.

G. The structure of the ABC Plan is not competitively neutral

While the ABC Plan adopts many of the core terminology from the FCC's February 2011 NPRM, it carefully tailors the mechanisms to advance the interests of the price cap ILECs, at the expense of smaller competitors (competitive eligible telecommunications carriers) and consumers. Nowhere in the various documents submitted in support of the "ABC Plan" is there any suggestion that the Plan is "competitively neutral." And, in fact, it is anything but.

Although we have already identified some of the biases inherent in the proposal, it is useful to summarize them here, specifically in the context of competitive neutrality.

The Plan would lock in wireline technology and discourages competitive entry – for more than a decade

The FCC and Congress have invested years trying to promote innovation by making it possible for competitors to deploy disruptive technologies. The ABC Plan would stifle opportunities for competitive entry from now until 2022 and most likely some years beyond that date.⁶¹ It essentially locks up support for one technology and one set of functionalities – ILEC wireline broadband – to the exclusion of all others, for a decade or more. Such an approach is a throw-back to the precise problem that the *1996 Act* sought to solve, namely, one carrier with all the support and all the customers in rural America.

Given all that has happened and continues to happen with the evolution of broadband, ten years of protection for a single provider is unreasonably long. The determination as to eligibility for CAF support is based upon a snapshot of competitive conditions extant as of the date the funding is initially approved. If competition could otherwise develop after that specific date but still well within that ten-year time frame, it could be foreclosed by virtue of the fact that no CAF subsidy would be available to the entrant and that the entrant would be forced to compete with a subsidized incumbent.

Moreover, even though the subsidy received by the ILEC is nominally associated only with eligible (high-cost, unserved) census blocks, to the extent that such funding functions to support the ILECs' common costs in both the "town" (non-eligible) and "high-cost" portions of the wire center, it provides a cost advantage that may foreclose future competitive entry *even in unsupported areas*.

The Plan favors incumbents over entrants

The "right of first refusal" takes some 82 percent of eligible census blocks out of competitive contention by making them automatically unavailable to non-incumbents (unless the ILEC elects to turn down support). Also, the fact that the cost model uses assumptions based upon the ILEC's wireline technology and network architecture will frequently disadvantage competitors that would, using current efficient network design "best practices," require that support be available over a considerably larger geographic unit than legacy ILEC wire center serving areas.

61. Under the Plan, "Broadband providers that elect to receive support from the CAF will receive a fixed level of support for a term of ten years from the date on which support is awarded. To the extent that the Commission phases in a CAF recipient's support for an area by providing CAF support for some census blocks before it provides CAF support for other census blocks, each group of census blocks will have a separate ten-year term. A CAF recipient's support may not be reduced once awarded, provided that the recipient meets the obligations associated with CAF support."

ILECs obtain a huge advantage (not available to entrants) from having made a “substantial investment” in broadband, but this “investment” has itself been heavily subsidized and cross-subsidized

The installed base of broadband that creates the foundation for the incumbent LECs’ claim to a “right of first refusal” (a 35 percent penetration in wire centers with (at least) some high cost census blocks) might well not exist but for prior subsidies to the incumbent LECs. Indeed, the Plan’s sponsors readily concede that those existing broadband facilities were “constructed with the help of legacy high-cost universal service programs.”⁶² Moreover, the price cap incumbent LECs have also had the unique ability to subsidize these deployments with excess profits generated from deregulated services, such as special access, with respect to which the ILEC and its shareholders were never seriously “at risk.”

When an ILEC receives high-cost support to be used for a network upgrade, it typically records the payment received as a current revenue and any resulting capital expenditures are carried as fixed assets on its books. The “embedded investment” is thus exaggerated, since a significant portion thereof was actually funded through a legacy high-cost support program.⁶³ Moreover, while these programs were nominally focused upon voice services (POTS), the FCC has expressly authorized spending on network upgrades that afforded additional service capabilities, such as the ability to offer DSL.⁶⁴ Thus, the basis for the right of first refusal – the putative existence of “substantial” embedded investment – can operate to benefit a price cap ILEC not due to any “significant investment” it had made, but instead due to its receipt of high cost funding.

62. ABC Plan, Att. 1, at 6.

63. Suppose, for example, that the utility had received \$8-million in high-cost support to help offset a \$10-million infrastructure investment. In that case, the firm would have recorded the \$8-million support payment as a current revenue, and the entire \$10-million as a fixed long-term capital asset. A more accurate accounting treatment would have been to reduce the gross capital expenditure by the amount of high-cost or other support, with only the net “investment” actually being made by the utility recorded as a fixed asset on its books – i.e., to record none of the support as “revenue” and to record only the net outlay of \$2-million as a long-term capital asset.

64. As early as 1998, noting that the *Telecommunications Act of 1996* promoted the deployment of advanced services, the FCC made clear that the forward-looking high-cost support mechanism for non-rural carriers provides support should be used for plant “that does not impede the provision of access to advanced services.” See *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Fifth Report and Order, 13 FCC Rcd 21323, 21351-52 paras. 68-70 (1998). In extending this policy to RLECs in 2001, the FCC agreed with carriers who commented that “the Commission’s existing high-cost loop support mechanism for rural carriers ‘inherently provides incentives for the infrastructure investments necessary for providing access to advanced services.’” *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers* (“MAG Order”), 16 FCC Rcd 11244.

Supported vs. unsupported areas within wire center create opportunities and incentives for price cap ILEC to misallocate costs and revenues

Under the ABC Plan, eligible (supported) and non-supported areas of a single wire center are viewed as being completely independent of each other. As the Plan states, “[i]n a rural wire center, for example, the CAF might provide support for the sparsely populated outlying area while providing no support for the more densely populated ‘town’ area. A CAF recipient’s obligations apply only in the supported area.” The problem with this selective funding scheme is that the price cap ILEC may be generating significant excess profits in the “town” areas while sustaining “losses” elsewhere. Leaving aside the obviously critical question of cost allocation as between the “supported area” and the “town,” this approach operates to insulate the “supported areas” from the benefits of the larger ILECs’ scale and scope. This is not to say that the “town” areas should subsidize the “supported areas” before the latter are allowed to draw CAF or other funds, but it does create the opportunity for a geographically diverse price cap ILEC to shift costs away from “towns” and over to “supported areas.” If the ILEC were subject to ROR regulation, such shifts would be captured in the aggregate revenue requirement. But under price caps, there is no true-up between revenues and costs, allowing the price cap ILEC to generate and retain excess profits in low-cost areas while drawing USF funds to support high-cost areas. This opportunity contributed to the large-scale divestitures of rural exchanges by RBOCs over to small RLECs that would qualify for USF support, effectively allowing the RBOC to capitalize the support revenue stream that would (after a waiting period) become available to the purchaser of these exchanges.

H. The Transitional Access Replacement Mechanism represents a “make whole” revenue guarantee that protects price cap ILECs from loss while permitting them to continue to earn excess profits under their existing price cap regime

The price cap ILECs, especially AT&T and Verizon, have up to now received a relatively small share of explicit high-cost universal service funding,⁶⁵ but they have been beneficiaries of large amounts of implicit subsidy through access compensation. Thus, while they are content to see legacy explicit support phased out as it is replaced by CAF support, the large ILECs take a very different tack with respect to the implicit subsidies they have derived through above-cost access charges. The large ILECs thus propose a “Transitional Access Replacement Mechanism” (“TARM”), through which they would be enabled to recover “intercarrier revenue reductions from universal service support.” At its core, the TARM represents a “make whole” revenue guarantee that protects price cap ILECs from loss while permitting them to continue to earn excess profits under their existing price cap regime.

65. Some of the larger price cap ILECs have found indirect methods for obtaining high-cost funding by divesting themselves of individual exchanges that would qualify for high-cost support once removed from the large ILEC’s “study area.” By selling off these exchanges, the large ILECs were able to capitalize and recover, in the sales price, the stream of USF high-cost support revenue that would become available to the divestee entity going forward.

The Price Cap ILECs' "Broadband Connectivity Plan"

Under the Plan, a price cap ILEC's receipt of access "replacement" funding is conditioned on the ILEC implementing annual SLC increases.⁶⁶ After imposing these increases, subject to a \$30 rate cap for local residential rates (inclusive of federal and state SLCs, state USF, and mandatory EAS), the ILEC would then be entitled to recover 90 percent of any "revenue reduction" that exceeded its increased revenue from the imputed SLC increase. That "recovery" would come from universal service support.⁶⁷

The theory behind this revenue "replacement" for price cap ILECs is fundamentally flawed. For years, these carriers have insisted that their costs and revenues must be de-linked and be off-limits to regulatory review. Indeed, in 2007, several price cap ILECs asked the FCC to forbear from requiring them to file detailed financial and results of operations reports in the Commission's ARMIS system; the FCC granted the ILECs' petitions,⁶⁸ and no such information has been provided to the FCC after 2007. Now, when there is even a theoretical possibility that one portion of their revenue stream may diminish (even as other revenues and support opportunities expand), the price cap ILECs suddenly seek regulatory intervention.

In proposing the TARM, the price cap ILECs ask the FCC to take their claim of economic harm at face value. There is no requirement that price cap ILECs demonstrate any aggregate revenue or earnings deficiency. The "Transitional Access Replacement Mechanism" is intended simply to replace, dollar-for-dollar, the specific access revenues not received as a consequence of ICC reform, regardless of the total company earnings picture – i.e., even if the price cap ILEC would be earning excess profit (relative to the last-authorized 11.25% ROR). *without the access revenue replacements*. Moreover, the revenues to be "replaced" are confined solely to *regulated* aspects of these companies' ILEC operations. At the same time as their access charge receipts and other regulated service revenues were on the decline, their *nonregulated* revenues were growing to new heights. A major source of the decline in access charge revenue, for example, was the growth in the demand for and use of wireless services – the vast majority of which occurred in the wireless affiliates of the very same price cap ILECs. As such, these companies have already succeeded in "replacing" lost access revenue, and to now adopt a formal transitional replacement mechanism amounts to nothing short of a duplicative, "heads-they-win, tails-customers-lose" policy.

66. The increases under this SLC progression are slightly lower than the permitted SLC increases if the ILEC does not elect to receive TARM support).

67. ABC Plan, Attachment 1, at 12.

68. *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273, Memorandum Opinion and Order, 23 FCC Rcd 18483, released December 12, 2008 ("ARMIS Financial Reporting Forbearance Order").

Moreover, the idea that the FCC would be in a position to “prescribe” an ILEC “replacement revenue” structure seems at odds with the overarching notion – one that is being continuously advanced by the price cap ILECs themselves – that the local telecommunications market has become effectively competitive. SLCs exist only for ILECs, and any “replacement revenues” being contemplated by the ABC Plan are similarly available only to ILECs. To the extent that raising residential rates via SLCs causes the ILECs’ rates to increase more than those of other wireline and wireless competitors that are not required to charge the SLC, this mechanism may actually speed the migration of ILEC POTS customers over to other, non-SLC-charging carriers. In that sense, the proposed “revenue replacement” may do more than merely make the ILECs whole with respect to policy initiatives that are intended to eliminate implicit subsidies, it may also work to insulate them from competitive losses arising from the implementation of the new replacement revenues themselves. Under the ABC Plan, “[t]he impact of the reduction in access rates is calculated relative to the rates in effect on January 1, 2012, *and is recalculated each year to reflect changes in traffic volumes.*”⁶⁹ Hence, any additional lost revenue associated with customers migrating out of their ILEC service could itself, in turn, be subject to “replacement.”

Any funding pulled from the CAF simply to prevent ILECs from dealing with the financial consequences of the transition to a broadband environment – an environment in which they stand to gain innumerable advantages – is funding misspent. This is particularly true because the TARM mechanism uniquely benefits the large ILECs, whereas their competitors are provided no equivalent safety net in connection with the USF/ICC transition.

IV. Conclusion

Adoption of the price cap ILECs’ “ABC Plan” would be a serious step in the wrong direction. It would from the very outset deny rural consumer access to a broad range of mobile broadband services. It would lock in for a decade or longer a fixed-location broadband service standard that is barely adequate to support applications already on the market, and that will almost surely fail to keep up with new demands over the lock-in period. It will result in an excessive level of support by limiting its cost modeling to *legacy wireline technology and network architecture*, thus failing to base the support level upon the least-cost forward-looking technology. And, by preempting wireless (and other) providers’ ability to compete for support in nearly five-sixths of all supported locations, the ABC Plan will place an excessive economic burden upon all services and geographic areas that are being required to contribute such support. In the end, the price cap ILECs’ ABC Plan does not resolve the universal service/intercarrier compensation reform question; rather, it largely kicks it down the road for another decade – and still provides no assurance that even then we will achieve the needed outcome.

69. ABC Plan, Attachment 1, at 12.

The Price Cap LECs' "Broadband Connectivity Plan"

The price cap ILECs' proposal is critically dependent upon a support calculation model of which little is known and that has numerous and serious flaws. If it is to be pursued, the Commission will need to:

- (1) Require that the maximum support available to any area be capped at a level consistent with the least-cost forward looking technology.
- (2) Establish "supported area" geographies that offer efficient service opportunities based upon current and forward-looking network architectures and technologies.
- (3) Include broad availability of mobile as well as fixed-location broadband services in the objective minimum service standard, rather than (as the ABC Plan would do) limiting support for mobile services to areas with extraordinarily high cost.
- (4) Eliminate all "right of first refusal" or other preemptive claims on support, making every "supported area" open and available to competitive bidding.
- (5) Adopt a minimum service standard that has the flexibility to evolve with changing demands for broadband capabilities, and include a potential support recipient's ability to make ongoing adjustments in its service mix over the support period a condition for eligibility.
- (6) Eliminate "make whole" and "replacement" revenue arrangements that reward incumbent carrier inefficiencies by shifting cost burdens to areas and services facing the fewest competitive alternatives, that frustrate competitive entry, and that distort competitive choices where available.

Deploying broadband in rural and high-cost areas is a costly undertaking by any standard and, to the extent that those costs are to be borne by the rest of the economy, it is critical that this be accomplished in the most efficient manner. The ABC Plan expressly excludes a potentially lower-cost solution forecloses participation by potentially lower cost providers. In so doing, it would create an unnecessarily large funding requirement. Excessive spending in this pursuit creates a drag on the economy generally, and needs to be avoided. The ABC Plan is simply not ready for serious consideration, and any attempt by its sponsors to rush it through the Commission's decision process should not be condoned.

APPENDIX
AUTHOR QUALIFICATIONS

Statement of Qualifications

LEE L. SELWYN

Dr. Lee L. Selwyn has been actively involved in the telecommunications field for more than forty years, and is an internationally recognized authority on telecommunications regulation, economics and public policy. Dr. Selwyn founded the firm of Economics and Technology, Inc. in 1972, and has served as its President since that date. He received his Ph.D. degree from the Alfred P. Sloan School of Management at the Massachusetts Institute of Technology. He also holds a Master of Science degree in Industrial Management from MIT and a Bachelor of Arts degree with honors in Economics from Queens College of the City University of New York.

Dr. Selwyn has testified as an expert on rate design, service cost analysis, form of regulation, and other telecommunications policy issues in telecommunications regulatory proceedings before some forty state commissions, the Federal Communications Commission and the Canadian Radio-television and Telecommunications Commission, among others. He has appeared as a witness on behalf of commercial organizations, non-profit institutions, as well as local, state and federal government authorities responsible for telecommunications regulation and consumer advocacy.

He has served or is now serving as a consultant to numerous state utilities commissions including those in Arizona, Minnesota, Kansas, Kentucky, the District of Columbia, Connecticut, California, Delaware, Maine, Massachusetts, New Hampshire, Vermont, New Mexico, Wisconsin and Washington State, the Office of Telecommunications Policy (Executive Office of the President), the National Telecommunications and Information Administration, the Federal Communications Commission, the Canadian Radio-television and Telecommunications Commission, the United Kingdom Office of Telecommunications, and the Secretaria de Comunicaciones y Transportes of the Republic of Mexico. He has also served as an advisor on telecommunications regulatory matters to the International Communications Association and the Ad Hoc Telecommunications Users Committee, as well as to a number of major corporate telecommunications users, information services providers, competitive local exchange carriers, interexchange carriers, wireless services providers, and specialized access services carriers.

Dr. Selwyn has presented testimony as an invited witness before the U.S. House of Representatives Subcommittee on Telecommunications, Consumer Protection and Finance and before the U.S. Senate Judiciary Committee, on subjects dealing with restructuring and deregulation of portions of the telecommunications industry.

In 1970, he was awarded a Post-Doctoral Research Grant in Public Utility Economics under a program sponsored by the American Telephone and Telegraph Company, to conduct research on the economic effects of telephone rate structures upon the computer time sharing industry. This work was conducted at Harvard University's Program on Technology and Society, where he was appointed as a Research Associate. Dr. Selwyn was also a member of the faculty at the College of Business Administration at Boston University from 1968 until 1973, where he taught courses in economics, finance and management information systems.

Statement of Qualifications – Lee L. Selwyn

Dr. Selwyn has been an invited speaker at numerous seminars and conferences on telecommunications regulation and policy, including meetings and workshops sponsored by the National Telecommunications and Information Administration, the National Association of Regulatory Utility Commissioners, the U.S. General Services Administration, the Institute of Public Utilities at Michigan State University, the National Regulatory Research Institute, the Harvard University Program on Information Resources Policy, the Columbia University Institute for Tele-Information, the Massachusetts Institute of Technology Alfred P. Sloan School of Management, the National Association of State Utility Consumer Advocates (NASUCA), the National Conference of Regulatory Attorneys, as well as at numerous conferences and workshops sponsored by individual regulatory agencies. Dr. Selwyn is an elected Town Meeting Member for the Town of Brookline, Massachusetts, and serves on the Town's Advisory and Finance Committee and its Subcommittee on Planning and Regulation.

Publications

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Statement of Qualifications – Lee L. Selwyn

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Statement of Qualifications

HELEN E. GOLDING

Helen E. Golding has worked for thirty-five years in the field of utility regulation and public policy. For most of the past seventeen years (1994 to 2011), Ms. Golding was Vice President at Economics and Technology, Inc. (ETI), where she had a wide-ranging practice that involved traditional regulatory issues (such as rate setting, rate design, universal service, affiliate transactions, and quality of service), mergers and acquisitions, antitrust, and a host of issues arising from deregulation and the evolution of new technologies and the Internet. She is currently an independent consultant to ETI and other clients. In addition to work in state and federal regulatory proceedings in the US, Ms. Golding has also provided consulting services to AT&T Canada and MTS Allstream in proceedings before the Canadian Radio-television and Telecommunications Commission. Ms. Golding has served as an expert witness for the Pennsylvania Attorney General (representing the Department of Revenue), and for the City of Newton, Massachusetts.

Some of Ms. Golding's most recent work at ETI involved Canada's comprehensive evaluation of its regulatory frameworks for wholesale and retail telecommunications services, the FCC's evolving policies concerning broadband, Internet-related services, and service providers, including policies on Voice over Internet Protocol services, and matters involving state taxation of telecommunications and information services. During the past several years, she has also focused on economic and public policy issues related to the FCC's Triennial Review Proceeding and TRO Remand, special access competition, and market-based mechanisms for spectrum allocation.

Following the passage of the landmark *Telecommunications Act of 1996*, Ms. Golding directed work at ETI to evaluate the progress of various Bell operating companies (BOCs) toward meeting the standards of Section 271 of the *Act*. She also directed work analyzing the propriety of Ameritech's application for authorization by the Illinois and Michigan public utilities commissions to provide local exchange service through the same separate subsidiary that Ameritech proposed to employ to provide interLATA long distance services. Along with Dr. Lee L. Selwyn, Ms. Golding submitted a comprehensive statement as evidence in the Canadian Radio and Telecommunications Commission's investigation into forbearance from regulation of toll services provided by the Stentor companies, Canada's equivalent of the pre-divestiture Bell System.

Ms. Golding has done extensive work in the area of telecommunications industry mergers, and is the co-author of two affidavits to the FCC addressing the public interest concerns raised by the SBC-Ameritech and GTE-Bell Atlantic mergers, submitted on behalf of a coalition of state consumer advocates. Ms. Golding was also a key participant in ETI's participation in several state proceedings reviewing major ILEC mergers, on behalf of consumer advocates in Maine, Ohio, California and Hawaii.

Statement of Qualifications – Helen E. Golding

Ms. Golding has directed or had substantial involvement in multiple projects involving the original specification or subsequent revision of alternative regulation plans, including work for consumer advocates in Colorado, Connecticut, Indiana, Maine, and Massachusetts. Ms. Golding participated in local competition dockets in New York, New Jersey, Massachusetts, and Hawaii, and in various state proceedings focusing on universal service. She also contributed heavily to numerous submissions to the Federal-State Joint Board and FCC in CC Docket 96-45, the Universal Service proceeding, and various phases of the FCC's LEC Price Cap Review proceedings.

As Assistant General Counsel of the Massachusetts Department of Public Utilities from November 1988 to September 1992, Ms. Golding managed a staff of hearing officers who conducted adjudicatory and rulemaking proceedings for all regulated utilities. Her position required case management and policy coordination with the Department's numerous technical divisions (organized by industry sector: telecommunications, electric, gas, water, and transportation). Ms. Golding also served as the DPU's chief legal advisor on matters that spanned the Department's broad utility jurisdiction. In addition to overseeing numerous rate cases for all utilities, these proceedings included the tariffing of new services, design of conservation and load management programs, incentive and competitive rates, licensing, financing, siting and utility management practices.

Immediately prior to joining ETI, Ms. Golding was in the Regulatory Practice Group at Rubin and Rudman, a mid-sized Boston law firm, where she specialized in communications, energy, and municipal law, for clients that included communications and cable companies, municipal electric companies, independent power producers, and public authorities.

Prior to becoming Assistant General Counsel at the DPU, Ms. Golding was Regulatory Counsel and Manager of Telecommunications Public Policy for Honeywell, Inc., providing legal and strategic planning advice concerning rate and regulatory developments affecting the company as a large user of telecommunications service and as a computer manufacturer. In that position, she also provided counsel on tariff and regulatory matters to the company's alarm and customer premises equipment businesses.

Ms. Golding also worked at the Federal Communications Commission, as a General Attorney in the Common Carrier Bureau, Tariff Division, where she was responsible for tariff review and rulemaking proceedings for domestic and international telecommunications services. After interning with the Department of Public Utilities during her final year of law school, Ms. Golding joined the Department's new Telecommunications Division as a Telecommunications Specialist. Among her responsibilities were matters pertaining to the Department's regulation of radio common carriers and coordination with the CATV Commission on rates, terms, and conditions for pole attachments.

Ms. Golding is a graduate of Boston University School of Law (J.D., 1977 and Bryn Mawr College (A.B. *cum laude*, 1974).

Publications of Helen E. Golding

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Statement of Qualifications – Helen E. Golding

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Special Access Overpricing and the US Economy: How Unchecked RBOC Market Power is Costing US Jobs and Impairing US Competitiveness, with Lee L. Selwyn, Susan M. Gately, and Colin B. Weir, prepared for the AdHoc Telecommunications Users Committee, August 2007.

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“Revisiting the Regulatory Status of Broadband Internet Access: A Policy Framework for Net Neutrality and an Open Competitive Internet,” (with Lee L. Selwyn), *Federal Communications Law Journal*, Vol. 63 Num. 1, December 2010.

Statement of Qualifications

COLIN B. WEIR

Colin B. Weir is Vice President at Economics and Technology, Inc. Mr. Weir conducts economic, statistical, and regulatory research and analysis, with a primary focus on the telecommunications industry. Mr. Weir's work involves econometric and statistical analysis, multiple linear regression, statistical sampling, micro- and macroeconomic modeling and other economic analysis. Such analysis often involves analysis of databases, call detail records, and other voluminous business records. Mr. Weir is familiar with common statistical and econometric software packages such as STATA and SHAZAM. Mr. Weir assists with analysis of economic, statistical and other evidence; and preparation for depositions, trial and oral examinations. Mr. Weir has provided expert testimony before federal and state courts, the FCC, and state commissions, and has contributed research and analysis to numerous ETI publications and testimony at the state, federal, and international levels.

Mr. Weir's telecom experience includes work on a variety of issues, including: economic harm and damage calculation; Early Termination Fees (ETFs); wireless handset locking practices; determination of Federal Excise Tax burden; ISP-bound traffic studies; Area Code splits and numbering policy; Federal Universal Service; pricing and regulation of Unbundled Network Elements; analysis of special access rates-of-return and pricing trends, and development of a macroeconomic analysis quantifying the economic impact upon the US economy and job markets of overpricing special access services; wireless pricing; and wireline telecommunications tariff and contract pricing.

Mr. Weir has conducted research and analysis in numerous regulatory and litigation matters on behalf of carrier, government and individual clients, including AT&T, MTS Allstream (Canada), Broadview Networks, Cavalier Communications, Nuvox Inc., O1 Communications, Pac-West Telecomm, Inc., tw telecom inc., XO Communications, Western Wireless, The US Department of Justice, Office of the Attorney General of Illinois, Thomaset *al* (class action litigation, Superior Court, County of Alameda), Ayyad *et al* (class action litigation, Superior Court, County of Alameda), and White *et al* (class action litigation, Superior Court, County of Alameda).

Mr. Weir has researched pricing and discount rates in enterprise voice and data services contracts, maintained an extensive database of such rates, and has contributed to network priceouts and rate benchmark analyses. Additionally, Mr. Weir is responsible for the maintenance of ETI's comprehensive databases of interstate and international interexchange carrier and local telephone company tariffs. He has substantial experience with industry data resources.

Mr. Weir holds an MBA with honors from Northeastern University. He also holds a Bachelor of Arts degree *cum laude* in Business Economics from The College of Wooster.

Publications and Testimony of Colin B. Weir

Mr. Weir has co-authored the following:

Regulation, Investment and Jobs: How Regulation of Wholesale Markets Can Stimulate Private Sector Broadband Investment and Create Jobs (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of Cbeyond, Inc., Covad Communications Company, Integra Telecom, Inc., PAETEC Holding Corp, and tw telecom inc., February 2010.

Revisiting Us Broadband Policy: How Re-regulation of Wholesale Services Will Encourage Investment and Stimulate Competition and Innovation in Enterprise Broadband Markets, (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, February 2010.

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Hold the Phone! Debunking the Myth of Intermodal Alternatives for Business Telecom Users In New York (with Susan M. Gately and Lee L. Selwyn) Economics and Technology, Inc., prepared for the UNE-L CLEC Coalition, August 2005.

Statement of Qualifications – Colin B. Weir

Mr. Weir has submitted the following testimony:

United States District Court, Southern District of New York, *Bursor & Fisher P.A., v. Federal Communications Commission*, Case No. 1:11-cv-05457-LAK, on behalf of Bursor & Fisher P.A., Declaration filed August 17, 2011.

United States District Court, District of New Jersey, *In Re: Sprint Premium Data Plan Marketing and Sales Practices Litigation*, Master Case No. 10-6334 (SDW) MDL No. 2228, on behalf of Thornton, Davis, & Fein, P.A., Declaration filed August 11, 2011.

United States District Court, Northern District of California, *Patrick Hendricks, on behalf of himself and all others similarly situated, Plaintiffs, v. AT&T Mobility LLC, Defendant*, Case No. C11-00409, Class Action Complaint, on behalf of Bursor & Fisher, P.A., Declaration filed August 7, 2011.

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Mr. Weir has contributed research and analysis to numerous additional ETI publications and testimony at the state, federal, and international levels.