

**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 MTPCS, LLC D/B/A CELLULAR ONE

Julia K. Tanner
General Counsel
MTPCS, LLC D/B/A CELLULAR ONE
1170 Devon Park Drive, Suite 104
Wayne, Pennsylvania 19087

(610) 535-6900

September 6, 2011

TABLE OF CONTENTS

SUMMARY 1

I. The ABC Plan Would Increase the Size of the Fund and More Than Double Price Cap Carriers’ Support, Increasing Rates And Fund Contribution Amounts While Decreasing Service Quality and Options. 3

 A. No True Consensus Exists. 3

 B. The ABC Plan Would Diminish Rural Mobile Broadband. 4

 C. Although the US Telecom Proposals Are Still Vague, And More Details Are Needed, The Outlines Are Not Promising for Consumers. 6

 D. The ABC Plan Proposes Insufficient Mobility Support. Mobile Networks Already Cover More Area Than Wireline; Optimum Achievement of Support Potential Should Be Encouraged, Not Starved. 8

 E. Wireless Networks Do Not Require Wireline Backbones, and Backhaul Circuits Are Paid For By Wireless Carriers, Not USF. 10

II. MTPCS Filed A Cost Model That Should Be Developed for Mobile Carrier Support. 12

III. The Commission Should Adopt a Small Business Exemption, in Furtherance of Regulatory Flexibility Act Goals in Connection With This Proceeding. 14

IV. The States’ ETC Eligibility Designations Remain Valid. 15

 F. Preemption Authority Is Limited 15

 G. The Act Vests States With The Right to Designate ETCs, Including CETCs. 16

 H. Phase Downs of Support for Duly Designated ETCs, Including CETCs, Cannot Precede Replacement Mechanisms 17

V. Conclusion 18

SUMMARY

The ABC Plan would double support for the largest carriers which already send billions in dividends to their stakeholders, while reducing or eliminating support for small businesses that are the engine of the economy and drive job growth and, most relevantly, have invested in and served our nation's rural communities to a far greater extent than the largest carriers who now seek to eradicate these successful competitors via regulatory fiat. The ABC Plan, although "so inchoate as to deny participants in the docket a meaningful opportunity to comment,"¹ apparently would discourage both current and future lower-cost, good quality technologies. Rather than expanding broadband most rapidly and efficiently, keeping the Fund size reasonable, the ABC Plan instead would put a thumb on the scales for a higher-cost technology and increase the size of the Fund. As noted by an association of Montana telephone companies:²

Phasing out all CLEC and wireless CETC support unnecessarily undermines the network build-out progress that has been accomplished in rural areas since the Telecommunications Act of 1996. USF and ICC reforms must protect existing investments in high cost areas and offer future broadband support whether to a rural ILEC, a rural CLEC or a rural wireless CETC. For rural Montana consumers, it is imperative that in addition to RLEC cost and access recovery, the FCC must address the issues of rural CLEC and wireless CETC cost recovery and rural CLEC access charge recovery in their reform plans.

This observant assessment was offered in the context of one state, and applies nationwide. The ABC Plan did not include independent wireless company participation, and numerous States and consumer groups also oppose its proposals, as noted in detail *infra*. Any reform plan must be fair and reasonable to all interested parties, including most importantly the public, not favoring any particular industry.

¹ / See Comments of USA Coalition, at 25-26, discussing Administrative Procedure Act concerns.

² / Letter from Bonnie Lorang, General Manager, Montana Independent Telecommunications Systems (MITS) (August 26, 2011).

The Commission should not delegate to large carriers the regulatory authority to determine the path to future support - for price cap carriers or their competitors.³ It is critical for the agency and commenters to have sufficient time to independently examine and evaluate the assertions and proposals raised in the ABC Plan. Examination of the price cap carriers' model, and development of cost models for other industries such as the wireless cost model MTPCS proposed, must be allowed in order to assess likely impacts on states⁴ and permit analysis of the referenced cost models prior to an opportunity for public comment.⁵ The Commission should consider the costs of each industry and determine how much support participants utilizing various technologies would require in order to serve all areas where support is needed. The agency, in consultation with states, must examine the cost models presented and independently determine how to structure any new system to permit high cost area consumers to select technologies and providers that best meet their needs. Conversely, the mechanism proposed by the largest carriers would, contrary to the Act, relegate companies providing technologies increasingly demanded by consumers to the least access to support. This proposal cannot stand.

³ / *See, e.g.*, Comments of the Nebraska Public Service Commission, at [cite] (“The expectation that the Commission should simply accept a negotiated agreement of some industry representatives without edit is contrary to the Commission’s function to independently balance the interests of all stakeholders and particularly consumers.”).

⁴ / *See, e.g.*, Comments of the Virginia State Corporation Commission (“VSCC”), at 1-2 (“The VSCC Staff’s immediate concern with the FCC Further Inquiry is the limited time available for interested parties to file comments and reply comments on the numerous questions raised in the notice. This is particularly troubling in light of the complexity and jurisdictional preemption shifts that are part of the recently submitted industry proposal identified in the FCC Further Inquiry as the ‘America’s Broadband Connectivity Plan’ (‘ABC Plan’) filed by six price cap companies.”); Comments of the Tennessee Regulatory Authority (“TRA”) at 1 (“Unfortunately, the comment cycle established by the FCC provides insufficient time for substantive review and analysis”).

⁵ / *See* Comments of the VSCC, *supra*, at 2 (“Unfortunately, unlike the FCC and its Staff, other parties have not had the opportunity to evaluate and respond to the ABC Plan. In addition, we are concerned that the FCC Further Inquiry is not directed more specifically at evaluating all aspects of the ABC Plan.”).

I. The ABC Plan Would Increase the Size of the Fund and More Than Double Price Cap Carriers' Support, Increasing Rates And Fund Contribution Amounts While Decreasing Service Quality and Options.

A. No True Consensus Exists.

The "Consensus Framework" is not a broad consensus of stakeholders regarding universal service, as its label disingenuously suggests. The "Consensus Framework" had *no participation* from independent wireless companies, and we are not aware of consumer groups in favor.⁶ Moreover, numerous States oppose the ABC Plan, particularly in connection with its preemption of States' rights.⁷

As stated by U.S. Deputy Attorney General James M. Cole on Wednesday, August 31, 2011:⁸

⁶ / As noted in the Comments of the Nebraska Public Service Commission, at 4: "...Absent from this [ABC Plan] negotiation process were many competitive carriers, cable providers, smaller wireless and wireline providers, state governments, and consumer advocates."

⁷ / See, e.g., Comments of the Nebraska Public Service Commission, at 8, 9 ("We recommend the Commission independently determine sensible reform objectives within the constructs of the authority permitted by the plain meaning of the Telecommunications Act; and, as the Commission has in the past, be mindful that universal service is supposed to benefit consumers, not the industry. ... [T]he plain language of the Act and legislative history contravene the ABC Plan proponents' viewpoint and support the maintenance of a federal/state regulatory duality."); Comments of the Public Service Commission of the State of Missouri, at 3, 6, 9 ("It is not clear how a plan simply promoting 'access' to voice service satisfies the goal of 'preserving and advancing voice service'.... The MoPSC recommends the FCC maintain the requirement for an ETC receiving high-cost support to annually obtain state certification. ... Before the FCC can adopt any model and before USAC can rely on such model for support calculations, access to the model must be provided to those entities charged with ensuring accountability and sustainability of the fund."); Letter, Mississippi Public Service Commission (August 22, 2011) ("The reform proposal recently put forward by the largest wireline providers (the "ABC Plan") attempts to limit the states' authority to designate carriers as eligible to receive USF support and to distribute USF support. ... By granting ILECs this right of first refusal, the ABC Plan proposal would effectively remove a state's ability to (1) designate carriers as eligible to receive funding and (2) perform the necessary public interest analysis. The right of first refusal would give ILECs a unilateral right to exclude competitors from USF support (or the proposed 'Connect America Fund' support) without any state participation or input."); Comments of TRA, at 2 ("The TRA joins the comments of NARUC concerning the impermissibility of pre-emption of state authority over intrastate access rates"); Further Comments of the South Dakota Public Utilities Commission, at 4 ("we believe that any attempts by the Commission to preempt the states on this issue [regulation of intrastate calls] are not legally supportable").

See also, e.g., Comments of the AARP at 1 ("AARP opposes any plan that pre-empts state regulatory authority").

⁸ / Department of Justice, Remarks as Prepared for Delivery by Deputy Attorney General James M. Cole at the AT&T/T-Mobile Press Conference, at 1 (August 31, 2011).

Consumers across the country, including those in rural areas and those with lower incomes, have benefitted from competition among the nation's wireless carriers, particularly the four remaining national carriers.

* * *

Whether you are a parent using a cell phone to check up on your teenager or a working professional using a laptop or smart phone to conduct business or surf the web, mobile wireless communications plays a vital – and increasing – role in our daily lives.

We all reap the benefits of this incredible technology because there has been fierce competition in this industry, which has brought all of us innovative and affordable products and services.⁹

The Department of Justice thus brings to the fore the importance of competition in delivering innovative and affordable products and solutions to consumers. As stated by Deputy Attorney General Cole, the public increasingly relies upon wireless communications as a vital component of modern life. Competition is critical for consumers in rural as well as insular areas. The price cap carriers' Plan, however, would diminish competition in rural areas. By removing all or almost all of the support for service to high cost and insular areas by independent wireless companies, the ABC Plan violates the pro-competitive intent of the 1996 Amendments to the Act. The Plan would fail to accomplish the pro-consumer objectives underlying the Act in general and Section 254 in particular.

B. The ABC Plan Would Diminish Rural Mobile Broadband.

In fact, the price cap carriers' plan will end up rolling *back* broadband or other mobile services from households where such services are received today. The ABC Plan would remove support from small competitors that could have no option but to decommission sites and services, or to raise prices to the detriment of consumers in high cost and insular areas.

⁹ / *Id.*

The Plan would remove funding from these smaller carriers that invest in facilities devoted to strong competitive services, which spur innovation and desirable services. Simultaneously, the Plan would balloon support for large, revenue rich companies that have little if any need for additional funds, considering their generous distributions to investors.¹⁰ As noted by the Virginia State Corporation Commission, “The inclusion of a transitional access replacement mechanism in the ABC Plan for price cap companies is problematic.”¹¹ Similarly, the National Cable and Telecommunications Association observes: “In particular, there is no need for price cap incumbent LECs to receive any access replacement support. These carriers are large companies with many streams of revenue, most of which are completely unregulated.”¹² In contrast, savings to small, rural wireless companies from the ABC Plan’s access/ICC proposal would be *de minimis* in comparison to the loss of universal service supporting high cost area

¹⁰ / The price cap carriers’ plan would increase the size of the Fund primarily by adding a recovery mechanism for ILECs subject to the access/ICC rate reductions. These rate reductions should not be recompensed by changing the purpose of moneys we have contributed into the Fund for universal service. Universal service funds are specifically designated by the Act for: “specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service”. 47 U.S.C. § 254(d).

Furthermore, as stated by the Virginia State Corporation Commission (VSCC):

The ABC Plan does not reflect that its price cap company proponents (and their affiliates) will likely be the largest industry beneficiaries from lowering terminating intercarrier compensation rates, as they no doubt presently pay the bulk of terminating interstate and intrastate access charges, as well as reciprocal compensation

Comments of the VSCC, at 4. The VSCC also notes:

There is no accountability that such “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.

Id.

¹¹ / Comments of the VSCC, at 6.

¹² / Comments of NCTA, at 21 (footnote omitted). Price cap carriers’ dividends are a matter of public record.

operations: “Critically, however, the limited savings that rural wireless carriers can expect to realize as a result of reduced access charge payments would in no way compensate for the dramatic declines in USF support available for wireless carriers under the ABC Plan.”¹³

C. Although the US Telecom Proposals Are Still Vague, And More Details Are Needed, The Outlines Are Not Promising for Consumers.

Chairman Genachowski recently told Politico “his job now is to *gather facts and data to use to develop fair policy solutions — ‘and then fight like hell to get it done.’*”¹⁴ We urge the Chairman to follow his instincts and invest the time needed for development of fair policy solutions. The ABC Plan is still vague at this point, but its implications appear unfair to the public, as well as the state and private actors whose reasonable participation rights are set forth in the Act. We believe the agency must provide notice and an opportunity for comment on specific rules and policies, as well as an ability to review and test the impact of cost models proposed, in order to provide sufficient opportunity for public input pursuant to the Administrative Procedure Act.¹⁵

It appears the price cap carriers’ Plan would increase the size of the Fund, doubling support for the largest carriers which have benefited from support for years while sending billions in distributions to their investors, while virtually eradicating support for newer small businesses, wireless companies that offer consumers lower priced options, higher-rated customer service, and unthrottled data plans, increasingly including broadband.

¹³ / Comments of the Rural Cellular Association, at 4.

¹⁴ / Politico (May 8, 2011), available at http://www.politico.com/news/stories/0511/54541_Page2.html#ixzz1WNi8yqIX

¹⁵ / Even the rural incumbent carrier associations have not been able to test the CQBAT model proposed by price cap carriers. See Comments of NECA, NTCA, OPASTCO and WTA, at 16 (“...the Rural Associations have not yet been able to access and analyze the specific CQBAT model proposed in the ABC Plan...”).

As the Chairman also recently stated, “*Competition is an essential component of the FCC’s statutory public interest analysis.*”¹⁶ The ABC Plan would counteract the benefits of competition by directly removing support from competitive providers that have worked hard to attract customers (most CETCs are mobile services providers and receive support only to the extent of, and in amounts determined by, the numbers of customers that purchase their services).

The dominant carriers’ Plan would require partial sacrifice from small and mid-sized landline companies,¹⁷ potentially total sacrifice from wireless companies,¹⁸ and winner take all for price cap incumbents, more than doubling these largest carriers’ existing support. The price cap carriers’ proposal balloons their own funding from approximately \$1 billion per year to a flexible “target” of perhaps \$2.2 billion, perhaps more - there is no firm cap. Moreover, although the Plan would award support based on a landline model, there is no requirement that the support be utilized for *landline* buildout. If price cap carriers deploy wireless broadband, would they pocket the cost differential?¹⁹

¹⁶ / See *Statement of FCC Chairman Julius Genachowski*, News Release (August 31, 2011).

¹⁷ / See, e.g., Comments of TDS Telecommunications Corporation, at 3 (“The Connect America Fund (‘CAF’) envisioned by the Consensus Framework will provide less overall support to ROR carriers than under the current federal USF”). According to our calculations, the Plan provides \$2 B per year for ROR carriers, whereas they apparently receive approximately \$2.4B per year now, according to the *Notice of Proposed Rule Making, In the Matter of Connect America Fund et. al.*, WC Docket No. 10-90 et al., FCC 11-13, 76 FR 11632, at Figure 2 (rel. February 9, 2011).

¹⁸ / The Plan would bestow upon landline incumbents a right of first refusal over support for many areas both carriers serve with already-built infrastructure (and as cellular and PCS are newer technologies than landline voice, wireless carriers’ loans generally have a longer repayment period remaining). As wireless carriers do not need to replace their entire networks in order to install broadband, supporting a mobile transition to broadband is the most efficient route to reform.

¹⁹ / *Accord*, Comments of the Ad Hoc Telecommunications Users Group, at 11 (“[T]he Plan is heavily biased in favor of legacy wireline technologies. . . . [T]he wireline carriers that are awarded CAF funds under the ABC Plan will be free to use those funds for deployment of other, more efficient non-wireline broadband technology while end users funding the CAF through their purchases of telecommunications services will not be free to fund the cost of deployment based upon the actual (lower) cost of those more efficient non-wireline technologies.”).

D. The ABC Plan Proposes Insufficient Mobility Support. Mobile Networks Already Cover More Area Than Wireline; Optimum Achievement of Support Potential Should Be Encouraged, Not Starved.

The Commission must flatly reject the aspects of the Plan that result in far less support to wireless carriers in areas where they have built networks but landline carriers ask to receive all the support, or where other broadband providers build networks. The ABC Plan would enable price cap carriers to win support in their ILEC areas but deploy with wireless. Meanwhile, the plan provides small wireless carriers only with an opportunity to bid against larger companies for the few hardest-to-serve areas, and provides insufficient funding for a Mobility Fund of possibly zero, or at most a hard capped amount of \$300 million per year.²⁰ (We find it important that the RLECs, contrary to the price cap carriers, stated that all of the funding “targets,” *including the Mobility Fund \$300 million, “should not be considered ‘caps’* to be adopted and implemented by rule....”²¹)

Thus, CETC support would be slashed from \$1.2 billion per year in support to \$0 - \$300 million per year, and these companies would not have any right to continuing support in areas where they have built or leased towers, purchased and mounted equipment, hired cell technicians and engineers who build, maintain and operate the networks, and located retail stores with trained personnel who live in these areas. Simply repaying lenders for loans for networks no

²⁰ / Many mobile carriers are upgrading to broadband and providing voice services. We note that on August 16, 2011, US Telecom filed an *ex parte* letter claiming, at p. 2: “[Voice] services are not included in [ABC Plan] modeled costs because competing services, including mobile voice services, are already widely available and highly competitive.” Yet not only would the ABC Plan remove some of those mobile voice services from high cost areas by slashing support, but also, as noted by Commissioner Copps with regard to mobile voice services: “The well-accepted metric for market concentration, the Herfindahl-Hirschman Index, remains above the threshold for a ‘highly concentrated’ market. It also appears that consumers are no longer enjoying falling prices, according to the CPI for cellular services. ... If we want Americans to continue to enjoy innovation, affordability and improved mobile coverage, we must heed these facts and continue to examine areas where the Commission can act to encourage mobile competition.” Statement of Commissioner Michael J. Copps, *Fifteenth Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 10-133, FCC No. 11-103 (rel. June 27, 2011).

²¹ / See Comments of NECA, NTCA, OPASTCO and WTA, at 5.

longer receiving support could decimate small businesses and the jobs they provide, and the Plan would eradicate competition that benefits consumers.

Instead, the Commission must adopt proposals for sufficient support to permit growth of mobile networks, allocating more support than the existing capped, cramped amounts, in order to ensure that rural mobile networks will grow to reach more subscribers rather than diminishing. Even though mobile networks already cover more area than wireline, the cost of support to these networks is nevertheless less. We view this excellent coverage as helpful leveraging of the Fund, for maximum bang-for-the-buck, rather than a technology to be starved.

The Plan disserves consumers in the hardest-to-serve insular and high cost areas where buildout is necessary to meet the country's broadband deployment objectives. Although the price cap carriers assert 730,000 locations are being left to be served by the AMF fund, they note that these locations cost more than \$256 per location to serve. But 730,000 multiplied by the lowest amount of \$256 per month equals \$1.8 Billion. By providing only \$300 million for service to these customers, one-ninth of the lowest amount needed to serve them, the Plan essentially writes off the customers in the hardest to serve areas of the country.

We do not see how the ABC Plan would benefit consumers in other areas either. These consumers would end up with only a monopoly landline provider and, in some areas, perhaps also a monopoly wireless provider – often a single carrier's wireline and wireless sides – increasing the size of the Fund while decreasing competition, with little choice among rate plans for many consumers, and increased likelihood of eventual rate increases and a decline in service quality.

As the price cap carriers' Plan neither decreases the size of the Fund nor meets the country's broadband goals with least-cost technology, it fails to help consumers who are

concerned about contribution rates. As stated by Google, “Consistent 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.*, cable modem or mobile/satellite) could meet our national deployment goals.”²² NCTA agrees:

The Commission can and should establish mechanisms to ensure that the program promotes greater efficiency and expands the availability of broadband without placing any greater burden on consumers than it does today. ... In a number of significant ways, the proposals demonstrate a consistent bias in favor of incumbent LECs at the expense of all other providers. For example, they propose increasing the amount of high-cost support received by incumbent LECs and largely denying other providers the opportunity to receive such support. They propose creating an access replacement mechanism that is available only to incumbent LECs, regardless of size and with no demonstration of need, while providing no comparable support to competitors, even small companies serving rural areas. These and similar elements of the incumbent LEC proposals are relics of the past and they should have no place in a modern, market-based regime.

Comments of NCTA, at 1-2.

E. Wireless Networks Do Not Require Wireline Backbones, and Backhaul Circuits Are Paid For By Wireless Carriers, Not USF.

Although in some contexts we find common ground with small rural landline incumbents, we respectfully differ regarding the need for landline backbone. NECA *et al.* assert, “If wireline networks are not adequately supported and maintained, wireless network capabilities, especially those in rural areas, will also deteriorate” and “wireline networks offload much of the high-volume data and video traffic that can cripple wireless networks if they were required to carry it.”²³ We find these assertions astonishing. Wireless carriers not only often carry their own high-volume data and video traffic, but also pay handsomely for the wireline circuits that are used – universal service is not applied for maintaining and operating those circuits; the deployment, maintenance and operations costs for backhaul are billed to wireless carriers for payment.

²² / Comments of Google Inc. at 23.

²³ / Comments of NECA *et al.*, *op. cit.*, at 11.

Mobile carriers pay ILECs generous flat fees, transport and mileage-based (rather than per-minute) charges for use of many backhaul facilities. Backhaul circuits neither need nor receive universal service support, and our private payments amply compensate rural landline carriers for deployment and maintenance of such lines.

Moreover, more and more wireless carriers are building wireless backhaul, including for broadband, rather than the pricier, and less flexible, landline alternatives. Although the development of wireless 4G occurred several years later than the development of wireline broadband, wireless equipment manufacturers are rapidly forging ahead and offering all-wireless, high-capacity backbone solutions that support next-generation broadband. *Major manufacturers now offer microwave backbone solutions with scalable microwave platforms supporting 3G, WiMAX, and LTE.*²⁴ Perhaps the rural incumbents have not yet tested these platforms, as introduction this year, in 2011, is the norm because LTE is still the cutting edge of wireless deployments. We believe the Commission will be pleased with the throughput speeds supported by these platforms and others, and encourage examination of the cited descriptions of these technologies.

In any event, because rural areas are not generally experiencing congestion, and such new developments are unnecessary to support most rural mobile traffic, we view the rural ILECs' comments in this regard as a red herring. Even today's widely deployed microwave backbone solutions are easily capable of supporting most carriers' traffic in rural areas, including Internet access and other broadband uses. Our neighbor to the east, Viaero, operates an all-microwave

²⁴ / See, e.g., Sujata Garud, *Nokia Siemens Launches FlexiPacket Microwave Platform for Operators*, available at <http://www.mobilitytechzone.com/wimax/topics/wimax/articles/147648-nokia-siemens-launches-flexipacket-microwave-platform-operators.htm>; *Nokia Siemens Networks FlexiPacket Microwave*, available at http://www.nokiasiemensnetworks.com/sites/default/files/document/FlexiPacket_Microwave_Smart_evolution_to_All-IP_backhaul.pdf. See also, e.g., Alcatel-Lucent, *LTE Mobile Transport Evolution*, discussing Alcatel-Lucent mobile backhaul solution supporting LTE, available at http://lte.alcatel-lucent.com/locale/en_us/downloads/Alcatel-Lucent_LTE_Transport_WhitePaper.pdf.

backhaul network supporting its customers' communications. MTPCS and affiliates utilize microwave backhaul in many areas, and although of course additional microwave spectrum allocations would be helpful, we generally can supplement as needed.

II. MTPCS Filed A Cost Model That Should Be Developed for Mobile Carrier Support.

In our comments, we proposed a wireless cost model designed to ensure a reasonable transition to a new cost model-based Universal Service distribution system. Our companies have drafted this model with CostQuest, and we believe it should be considered as a beneficial support mechanism for consumers that use mobile services in high cost and insular areas.

For purposes of technological neutrality and in light of the natural decline in costs as technologies age, we believe all models should be based upon forward-looking costs. The cost model we have presented is based upon forward-looking costs and will achieve savings for the Fund by ensuring divided, rather than duplicate, funding where multiple CETCs exist. It will permit beneficial competition to give high cost area consumers options for service plans and reasonable pricing, while avoiding waste of assets or support. It will take advantage of reasonable pricing and innovations and enable construction and maintenance of mobile broadband as an increasingly desired and highly efficient method of deployment. As a necessary adjunct, sufficient mobility support is critical in order to ensure rural areas will retain access to reasonable rates and service options reasonably comparable to those in urban areas.

In the Attachment to our Comments, we filed documentation of the forward looking mobile cost model developed with CostQuest. We believe that the principals underlying its approach are important to any model the Commission ultimately adopts. More specifically:

- The model should not require adoption of nor favor any specific technology, but instead should maintain technological neutrality.

- The model should calculate and assign support appropriate to fund the construction of a single network capable of serving realistic customer loading.
- The support assigned to a geographic area may be divided among multiple CETCs to ensure competition, choice, and a robust service ecosystem.
- The model achieves awareness that on-going expenses of maintaining network are significantly higher in rural high-cost areas; do not diminish over time; and increase with increased customers and with increased broadband usage.
- In order to maintain a reasonable fund size, per-line support in the highest cost areas would be limited to a level that provides some incentive to carriers, but may not necessarily cover all costs.

The MTPCS model will avoid the elimination of support from an unpredictable patchwork of small areas. Moreover, this model would not need to rely upon carrier-provided information regarding site locations. Furthermore, it addresses deployment of low cost technology to ensure broadband is deployed across the greatest possible number of regions. This cost model would be part of a competitively neutral support mechanism that disburses adequate amounts of not less than \$1.3 Billion to mobile services providers for deployment, operation and maintenance of broadband matching or exceeding the speeds proposed by the Commission. This budget recognizes the recently skyrocketing growth in use of mobile broadband for Internet access, email, and even online video watching. This budget does not address satellite, which would be considered separately.

The plan we propose would not exclude support for any carrier based on technology, or any right of first refusal, or unpredictable service in the same area by an unsupported provider (which can be difficult to measure, as coverage changes frequently). Thus, we urge the

Commission to adopt this plan, because it avoids the necessity of determining where cell site coverage exists, encourages the adoption of efficient broadband technologies and equitably results in rural deployment of technologies preferred by consumers.

III. The Commission Should Adopt a Small Business Exemption, in Furtherance of Regulatory Flexibility Act Goals in Connection With This Proceeding.

Small businesses are vital to the economy, economic development and jobs creation in our country, including – and perhaps especially – in high cost and insular areas. The President has stated: “Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. . . . *During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.*”²⁵ Furthermore:

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation. . . . *Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility.*

The Regulatory Flexibility Act, as the President stated, “emphasizes the importance of recognizing ‘differences in the scale and resources of regulated entities’ and of considering ‘alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.’”²⁶

Small businesses in the telecommunications industry not only provide alternative service options and develop technology innovations, but also incentivize larger entities to be more

²⁵ / See Presidential Memoranda - Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>

²⁶ / *Id.*, citing the Regulatory Flexibility Act, 5 U.S.C. 601-612, 601 note.

competitive and innovative as well. It was not until PCS was licensed that large incumbents lowered their rates and started considering mobile data possibilities. It was not until small Internet service providers sprung up, adapted and developed interfaces to the web, and grew that larger companies started considering Internet service offerings.

Accordingly, we urge the Commission to adopt the small business exemption proposed in our Comments. This and other sufficient mechanisms are requisite in order to minimize the significant economic impact on small entities of proposals in this proceeding.

IV. The States' ETC Eligibility Designations Remain Valid.

F. Preemption Authority Is Limited

The ABC Plan would preempt State actions in many regards. It would have the FCC preempt state authority over all intercarrier compensation, state universal service funding mechanisms and broadband initiatives, among other measures. Yet the Commission “has no power to act, let alone preempt validly enacted legislation of a sovereign state, unless and until Congress confers power upon it.”²⁷ As stated by the Nebraska Public Service Commission,²⁸

Contrary to the arguments made by the ABC proponents, the NPSC does not agree the Commission legally can--or should as a policy matter-- preempt state authority in this regard. ...[For example,] Respectfully, § 201(b) has its limits. While the Commission may use its § 201(b) authority to carry out the provisions of the Act, it is clearly recognized that § 201(b) does not extend to intrastate traffic where Congress has expressly reserved such authority to the states.

²⁷ / Comments of the Nebraska Public Service Commission, at 8 & n. 10 (*citing Louisiana Public Service Com'n v. FCC*, 476 U.S. 355, 374, 106 S. Ct. 1890, 1901 (1986)).

²⁸ / Comments of the Nebraska Public Service Commission, at 7 (*citing Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 421 (5th Cir. 1999) (The agency has no “unambiguous or straightforward grant of authority to override the limits set by § 2(b) and, accordingly, it has no jurisdiction . . .”); *also comparing Core Communications v. FCC*, 592 F.3d 139, 143 (D.C. Cir.), *cert denied*, 131 S.Ct. 597, 626 (2010) (“the Court in *Core Communications* did not reach this issue of intrusion on intrastate jurisdiction but rather held there was no conflict between § 201 and §§ 251-252 as the dial-up internet traffic in question involved interstate communications”).

G. The Act Vests States With The Right to Designate ETCs, Including CETCs.

The Act gives States the authority to designate ETCs, including, if they deem authorized, more than one terrestrial wireless carrier in high cost and insular areas. Section 214(e)(2) of the Act provides that the right to designate ETCs, including CETCs, is vested in the States.²⁹ This mechanism is of critical interest not only to the States, but also to their consumers, who are adopting mobile broadband in exponentially increasing numbers. Consumers in high cost areas desire new products as well as existing voice services, and expect reasonable pricing and services comparable to those in urban areas, as competitive carriers provide.

Many States have already made ETC and CETC designations after extensive proceedings in accordance with the Act, often reaching a determination after one or more years of hearings and documentation. The States' previous decisions to designate more than one ETC in an area should be upheld, rather than contravened by (i) a Right of First Refusal; (ii) any decision to withdraw support from ETCs in areas where another ETC is providing broadband; or (iii) competitive bidding processes. The Act provides States with the authority to conduct public interest proceedings, and many States have done so. The Act does not bestow upon the Commission or any entity the authority to then render those eligibility determinations void or without force by withdrawing support from designated ETCs (including CETCs) in certain of the

²⁹ / The Act provides:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. 214(e)(2).

areas where the States found these ETCs eligible for support. The equitable and better solution is for the Commission to determine that all ETCs providing broadband in a high cost area will divide the support for that area. This will be less draconian than removing all support for an area from one of the carriers and giving it to another of the carriers.

States have conducted extensive proceedings, including detailed public interest analyses, in connection with ETC designations. These processes give interested persons the ability to participate and contest or support designations, and the States the ability to consider local conditions and the qualifications of the applicant, in determining whether designation is in the public interest. The detailed mechanism that the statute describes for designation of ETCs is a public interest analysis. The Act still supports the validity of those proceedings and the eligibility determinations that have already been made regarding which carriers will receive support in which areas.³⁰

H. Phase Downs of Support for Duly Designated ETCs, Including CETCs, Cannot Precede Replacement Mechanisms

Existing CETCs are eligible for support for service to their designated high cost areas. In light of their current service to subscribers in these areas, there should not be any phase-down or sunset of existing support without a new support plan already in place and phased in for these carriers at the same time. Certain proposals would seem to phase down mobility support early, rather than having a replacement mechanism ready to ramp up at the same time. Such

³⁰ / As noted by the South Dakota Public Utilities Commission:

State commissions are obviously well qualified for the role of monitoring and oversight by recipients of universal service support. State commissions have first-hand knowledge of the facilities and providers in their states, as well as the amount of competition or lack of competition throughout their states. A partnership role between the FCC and the states has already been developed in a number of areas, most notably in this context, with regards to the designation and certification of eligible telecommunications carriers ("ETCs").

Comments of the South Dakota Public Utilities Commission, at 3.

anticompetitive proposals would serve no purpose other than to leave wireless companies stranded while wireline support doubles. The purpose of the program is to ensure services in rural areas exist and are reasonably comparable to those in urban areas – yet the proposed removal of three quarters or possibly even all wireless support would instead lead to decommissioning of existing cell sites, fewer service options, and higher pricing for the public. We urge the Commission to keep the playing field level for all services provided to the residents of high cost and insular areas.

V. Conclusion

The Commission is authorized to make rules in the public interest, not in the interest of any particular carrier group. The public interest in reducing the size of the fund weighs in favor of facilitating mobile broadband buildout and small business participation. The public interest in reasonable rates and service quality, and service offerings comparable to those in urban areas, weighs in favor of adequately supporting terrestrial mobile radio services including mobile broadband. The Commission should adopt the mobile carrier cost model proposed by MTPCS in Comments, along with the accompanying forward looking mobile support framework, which avoids the necessity of determining where cell site coverage exists, encourages the adoption of efficient broadband technologies and equitably results in rural deployment of technologies preferred by consumers. The public interest in adherence to statutory requirements favors preservation of past designation decisions, including designations of more than one terrestrial wireless carrier in rural areas where landline carriers also provide service. In addition, we urge the Commission to adopt a small business exemption for CETCs as a means of meeting the requirements of the Regulatory Flexibility Act. On a technology neutral basis, furthering the deployment and maintenance of competitive offerings is fiscally responsible and legally just.

Support should be continued, rather than sunset, in order to ensure continuation of eligible services. We urge the Commission to facilitate consumers' adoption of mobile broadband from small companies as well as large, in service of the public interest.

Respectfully submitted,

MTPCS, LLC

A handwritten signature in black ink, appearing to be 'JKT', is written over a light yellow rectangular background.

By: _____

Julia K. Tanner

MTPCS, LLC D/B/A CELLULAR ONE
1170 Devon Park Drive, Suite 104
Wayne, Pennsylvania 19087

CERTIFICATE OF SERVICE

I hereby certify that, on September 6, 2011, I caused a true and correct copy of the foregoing Comments to be served by electronic mail on the following:

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Julius.Genachowski@fcc.gov

Best Copy and Printing, Inc.
fcc@bcpiweb.com

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Mignon.Clyburn@fcc.gov

Charles Tyler
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Charles.Tyler@fcc.gov

By: 

Julia K. Tanner