



September 28, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**RE: WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51;
CC Docket No. 01-92, 96-45 EX PARTE COMMUNICATION**

Dear Ms. Dortch:

Please be advised that on September 27, 2011 representatives of the National Association of State Utility Consumer Advocates (“NASUCA”) had a telephonic conversation with Angela Kronenberg, Wireline Legal Advisor to Commission Clyburn regarding the above-captioned dockets and the issues contained in the pending August 3, 2011 Notice of Further Inquiry into Certain Issues in the Universal Service/Intercarrier Compensation Transformation Proceeding, regarding the ABC Plan. Discussion centered around the concerns of NASUCA expressed in comments filed August 24, 2011 and September 6, 2011.

On the call for NASUCA were Earl Poucher, of the Florida Office of Public Counsel; Olivia Wein and Darlene Wong of the National Consumer Law Center (“NCLC”); David C. Bergmann, formerly of the Ohio Office of the Consumers’ Counsel, and former Chair of the NASUCA Telecommunications Committee; Barrett Sheridan of the Pennsylvania Office of Consumer Advocate; Regina Costa of The Utility Reform Network in California; and Christopher White of the New Jersey Division of Rate Counsel (“Rate Counsel”).

The concerns expressed on the call – many of which concerned both the ABC Plan and the proposals of the Federal Communications Commission (“FCC” or “Commission”) in this proceeding – included:

- There is no justification for tying the broadband program to preemption of state authority, or to the elimination of public interest obligations (COLR, ETC).
- The ABC Plan is fundamentally flawed and would create a legal quagmire that would take years to resolve, thus undermining the objective of implementing a viable broadband plan.
- Both the ABC plan and the NPRM would supply Universal Service Funding (USF) to broadband, when broadband has not been found to be a supportable service under §254 of the 1996 Act. Broadband must be found to be eligible for USF support prior to adopting such support. Furthermore, pursuant to §254(e) and §214, only Eligible Telecommunications Carriers (ETCs) can receive Universal Service funding.
- The ABC Plan would violate §254(k) because access charges would be below cost, not even covering their direct costs, and voice service would therefore be forced to pay an unreasonable share of joint and common costs.
- Under the ABC Plan, broadband would be funded with no access or interconnection obligations.
- The ABC Plan would also be unlawful because it would enact ICC reductions while using USF funds for access charge revenue recovery. There is nothing in the record that shows the ICC rate is providing an implicit subsidy.
- The FCC lacks the legal authority to preempt states on intrastate access and reciprocal compensation, as addressed in NARUC's comments.
- Under the ABC Plan, all voice over Internet protocol ("VoIP") traffic would be deemed interstate. Not only is this contrary to the facts, but it would have very severe consequences for state revenue utilized to fund universal service, and state regulation generally. Any carrier using a "softswitch" would be deemed not to be providing local service, thus there would be no intrastate revenue under ABC and no ability for states to fund universal service.
- NASUCA opposes the ABC Plan's proposal to eliminate COLR and ETC obligations. Elimination of these public interest obligations would spell the end of Universal Service. This would greatly harm all telephone customers, particularly those on low incomes. Many of these customers rely primarily or exclusively on affordable telephone service. They cannot afford bundles and they cannot afford broadband. It is imperative that any plan adopted to "reform" universal service to promote expansion of broadband also protects universal voice telephone service, and ensures that it continues to be affordable and reliable.

- NASUCA supports the goal of enacting a viable broadband program that meets the objectives of the National Broadband Plan. The ABC Plan does not accomplish this objective. The ABC broadband plan does not contain affordability requirements or address adoption; it funds substandard broadband, has no financial accountability, no mechanism for enforcing build out and would result in an unwise use of the scarce funds available to support broadband.
- The State Members Plan submitted to the FCC provides a viable approach to supporting broadband, and includes provisions for ensuring affordability, a provider of last resort obligation and financial accountability.
- By eliminating COLR obligations, preempting states and including no public interest obligations for receiving broadband funding, the ABC Plan sets the stage for discrimination in the provision of service and redlining. There would be no obligation to provide either telephone or broadband service to everyone in a service territory, and no ability of states to enforce this traditional public interest obligation (assuming the inevitable legal challenges did not prevail).
- The ABC Plan's broadband proposal relies on the use of a cost model the details of which no other parties have been able to examine, and which incorporates highly questionable assumptions (e.g., using twisted pair as the broadband technology that is modeled). Several parties, including ITTA (mid-size LECS) have pointed out that it would be unreasonable to proceed unless and until all parties have an opportunity to analyze the cost model.
- The ABC Plan would unreasonably and unlawfully preempt state authority to regulate telecommunications services. NASUCA supports the analysis presented by both NARUC and the Pennsylvania Public Utility Commission.
- The ABC Plan's access charge proposal would reduce access charges below cost and result in increases to the Subscriber Line Charge ("SLC"). There is no cost justification for SLC increases in the record. As NASUCA has pointed out, prior to determining that cost increases to the SLC are justified, the FCC must know what the costs are and this cannot be accomplished without separations reform.
- Contrary to the representations of the ABC Plan authors, there is no industry consensus in support of the ABC Plan and its proposed access charge regime. Rather, it is a consensus of the largest ILECs and some rural ILECs. Mid-size ILECs, for example, have called for changes to the plan and stated that they did not have the opportunity to participate in the negotiations that led to the development of the ABC Plan. (ITTA ex parte, September 20, 2011.)
- The USF contribution methodology must not solely rely upon voice service. The facilities that would be constructed with USF funding would be

intended primarily to provide broadband, but would also provide voice telephone and a number of other services. When considering how much public funding is necessary, the FCC must take into account all sources of revenue from services that will be offered over these networks.

NASUCA appreciates this opportunity for a discussion with Commission staff.

Respectfully submitted,

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