SNR DENTON

SNR Denton US LLP
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005-3364 USA

Todd D. Daubert
Partner
todd.daubert@snrdenton.com
D +1 202 408 6458
M +1 202 436 1819
T +1 202 408 6400
F +1 202 408 6399
snrdenton.com

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VIA ECFS

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

Re: ***Notice of Ex Parte,*** **Connect America Fund, High-Cost Universal Service Support**
WC Docket Nos. 10-90, 05-337, 03-109; GN Docket No. 09-51; CC Docket No. 96-45.

Dear Ms. Dortch:

On October 4, 2011, Holly Henderson of SouthernLINC Wireless ("SouthernLINC Wireless") and I met with Ted Burmeister of the Wireline Competition Bureau and Matt Nodine of the Wireless Telecommunications Bureau to discuss universal service fund reform and the strengths and weaknesses of various reform proposals.

During the meeting, we discussed the experiences of SouthernLINC Wireless as a regional wireless service provider that focuses on serving rural America. Having served rural areas both as an unsubsidized carrier forced to compete with Eligible Telecommunications Carrier ("ETC") that receive universal service support and as a CETC that itself receives support, SouthernLINC Wireless understands as well as any party how the reform proposals currently under consideration could impact consumers who live and work in rural America and the carriers who serve them.

SouthernLINC Wireless fully supports universal service reform and has submitted specific reform proposals in the above-referenced docket. However, SouthernLINC Wireless opposes any reform measure that would increase obstacles to serving rural America, including any distribution methodology that would support only one service provider in any area. For this reason, we urged the Commission to make support available in areas where it is necessary in a manner that, at a minimum, preserves the threat of competitive entry from any type of service provider using any type of technology.[1] Regulators simply cannot keep up with the pace of technological change, and subsidization programs that pick a single winner in a market necessarily will slow the deployment of new technology not only by potential new entrants but also by the "winner" of the subsidy. Put simply, consumers lose when the government seeks to foster broadband deployment by funding a single provider, which makes it even more difficult -- or even impossible -- for any other provider to serve the subsidized area. Although the details of the

[1] SouthernLINC Wireless opposes any reform that would permit providers of satellite services from receiving high-cost support funding -- or its equivalent -- because the costs of providing satellite services are not higher in rural, high-cost and insular areas.

Chairman's reform proposal are not yet publicly available, SouthernLINC Wireless remains deeply concerned that the net impact of the proposal will be unfairly benefit incumbent and wireline carriers at the expense of wireless carriers and their customers in a manner that is fundamentally inconsistent with the requirements of the Communications Act of 1934, as amended (the "Act").

We reiterated during the meeting that the distribution mechanism must comport with the Act's requirements by (i) ensuring that consumers throughout the nation have access to reasonably comparable services at reasonably comparable rates; (ii) using universal service funding to support services subscribed to by the substantial majority of residential consumers, rather than services to which the Commission believes consumers should be subscribing; and (iii) providing "specific, predictable, and sufficient" support to achieve the Act's universal service goals on a technologically and competitively neutral basis. Supporting a single carrier in each area based upon a single winner reverse auction would be fundamentally inconsistent with the requirements of the Act, as would determining that support in any given area is unnecessary based solely upon the presence of a single unsubsidized carrier. Moreover, the latter cannot credibly be claimed to be a factual determination of the necessity – or lack thereof – of support. The Act requires the Commission to engage in a much more thorough analysis to determine where support is necessary, as well as how much support is necessary, than a simply headcount, particularly if the agency establishes separate funds for wireline and wireless services.

We also discussed a number of major flaws in the ABC Plan that render it unviable. For instance, under the ABC Plan, core universal service mandates such as "reasonable comparability" and "affordability" are simply ignored. Indeed, the ABC Plan provides no basis or standards for the Commission to use to determine whether the requirements of Section 254 are being met. The ABC Plan also would adversely impact competitive services, and wireless services in particular, by diverting nearly all of the USF funding directly to the nation's incumbent carriers. The end result will be a delay (or halt) in the deployment of advanced wireless services, and an erosion of the rural wireless network upon which rural consumers rely.

During the meeting, we discussed the alternative reform framework created by the Universal Service for America Coalition (of which SouthernLINC is a member) that strives to achieve the policy objective of broadband deployment while at the same time remaining true to the Act's mandate of reasonable comparability of services and rates for rural areas. The proposal is designed to provide support to rural carriers based on the extra costs borne by carriers serving rural, insular and high-cost areas.[2] Under that plan, support would be distributed based upon the costs that the incumbent and competitive carriers actually incur, with every ETC serving a particular supported area being eligible for reimbursement of an identical percentage of the eligible costs it incurs. Incumbents and competitors would compete for subscribers on a level playing field and would succeed or fail based upon consumer demand for their products and services. In this way, the framework would create incentives for carriers to make wise economic decisions about deployment and to be as efficient as possible.

In response to a question about how the Commission could control costs if funding is not limited to a single provider, we explained that the agency could first determine where support is necessary, and

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[2] *See* Letter from Todd Daubert, USA Coalition, to Julius Genachowski, FCC, WC Docket No. 05-337 (Oct. 27, 2009).

then determine the total amount of support available in each of these areas. Available support could be proportioned on the basis of a model or other means to determine relative costs or population density. By capping the amount of funding available to all of the ETCs in high cost areas at certain levels, with each carrier receiving the same ratio of their eligible costs based on the capped level of support and the total amount of support requested, the Commission would create further incentives for the first carrier to enter the area, and for subsequent carriers to think carefully about the wisdom of entering a market that is already served by one ETC.[3] This proposal illustrates that the choice between either accepting the Commission's broadband-centric, single winner vision of reform or idling indefinitely in the inadequate status quo is a false choice.

We also discussed how an alternative auction system proposed by SouthernLINC Wireless in 2008 would reflect both the letter and spirit of the Act and provide consumers with the competitive service options they deserve and demand.[4] While multiple package auctions might prove more expensive at the outset, the format would provide a level playing field for bidders while reducing the amount of required support over time as carriers compete to offer faster and better service. Although SouthernLINC Wireless does not view reverse auctions as a highly desirable mechanism for distributing support, it respectfully submits that, by providing support in this manner, the Commission would better serve the goals of the Act and create incentives for winning bidders to expand service to unserved and under-served areas without creating opportunities for arbitrage that cause uneconomic fund growth.

Finally, we discussed our concern that the Commission seems to be favoring reform proposals that reflect how the agency wishes the Act were written rather than what the Act currently requires. The structure of the Act is clear. The statutory framework explicitly requires the Commission to:

1. institute a Federal-State Joint Board (47 U.S.C. § 254(a)(1));

2. work with the Joint Board to adopt, no later than May 8, 1997,

    a) a definition of services that are supported by Federal universal service support mechanisms,

    b) specific, predictable, and sufficient support mechanisms to preserve and advance universal service consistent with the principles set forth in Section 254(b), and

    c) a specific timetable for implementation of such mechanisms (47 U.S.C. § 254(a)(2)); and

3. require "[e]very telecommunications carrier that provides interstate telecommunications services to contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." (47 U.S.C. § 254(d));

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[3] This calculation could be done in a manner similar to that under which competitive carriers currently receive support under the interim cap on support to competitive ETCs.

[4] *See* SouthernLINC Wireless Comments at 17-30, WC Docket No. 05-337; CC Docket No. 96-45 (filed Apr. 17, 2008),

and, thereafter,

4. "complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations" (47 U.S.C. § 254(a)(2)), which the Joint Board may make "from time to time" on the issue of "modifications in the definition of the services that are supported" (47 U.S.C. § 254(c)(2)).

It is not clear either in the ABC Plan or from the Chairman's remarks today how the reform proposals under consideration can be squared with the procedural or substantive requirements of the Act. Any reform will undoubtedly be appealed. If the Commission adopts a reform order that cannot survive judicial scrutiny, the entire industry will be harmed by the resulting uncertainty and delay of true reform. For this reason, SouthernLINC Wireless respectfully urges the Commission to reject any reform proposal that does not reflect the Act's requirements, even if the proposal likely would achieve the goals stated for this proceeding.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter is being filed *via* ECFS with your office. Please contact the undersigned if you have any questions or need additional information.

Respectfully submitted,

Todd D. Daubert
Counsel for SouthernLINC Wireless

cc: Matt Nodine (via e-mail)
Ted Burmeister (via e-mail)
BCPI (via e-mail)