NCLC®

NATIONAL CONSUMER LAW CENTER®

Advancing Fairness in the Marketplace for All

www.NCLC.org

Boston Headquarters:
7 Winthrop Square
Boston, MA 02110-1245
Phone: 617/542-8010
Fax: 617/542-8028

Washington Office:
1001 Connecticut Ave. NW
Ste. 510
Washington, DC 20036-5528
Phone: 202/452-6252
Fax: 202/463-9462

October 19, 2011

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Notice
WC Docket No. 10-90 (Connect America Fund)
GN Docket No. 09-51 (National Broadband Plan)
WC Docket No. 07-135 (Establishing Just & Reasonable Rates for LECs)
WC Docket No. 05-337 (High-Cost Universal Service Support)
CC Docket No. 01-92 (Developing United ICC Regime)
CC Docket No. 96-45 (Federal-State Joint Board on Universal Service)
WC Docket No. 03-109 (Lifeline and Link-Up)

Dear Ms. Dortch:

On October 19, 2011, Dr. Mark Cooper of the Consumer Federation of America, Parul Desai of Consumers Union and Olivia Wein of the National Consumer Law Center met with Commissioner Clyburn and Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn.

Dr. Cooper offered a proposal to ensure that the elimination of implicit subsidies is complete and all costs recovered from consumers for the maintenance of the telecommunications network are justified on the basis of up-to-date cost studies.

Dr. Cooper pointed out that in the CALLS plan, Subscriber Line Charge (SLC) increases and access charge reductions went hand-in-hand. Even though the FCC is now proposing a new line item on the consumer bill to eliminate implicit subsidies in the collection of access charges, known as the Access Revenue Charge (ARC), the Commission must still address the problem of implicit subsidies in the SLC. He proposed a two-step process.

First, he pointed out that the CALLS plan included $650 million per year of cost recovery that was never cost justified and was supposed to be temporary. The failure of the Commission to eliminate this charge six years ago has resulted in a $4 billion burden on consumers, which, arguably, represents an over-recovery of costs. The FCC should eliminate this charge, by using it to offset the first year increase in the ARC. The ARC could appear on the bill as a zero in the first year, or the SLC would be reduced by an amount equal to the first year of the ARC.

Second, he proposed that in the year that the ARC begins to decrease, the SLC begins to decrease at the same rate (in percentage terms). The SLC would continue to decrease at the same rate as the ARC to a level that is justified by a cost study. Dr. Cooper pointed out that the 2002 cost study conducted under the CALLS plan revealed that with the then current level of SLC, there was an over recovery of costs for more than 80 percent of the lines in the nation. This means that there are implicit subsidies embedded in the SLC, but the FCC has failed to act on this finding. If the Commission's goal is to eliminate implicit subsidies in the recovery of costs allocated to the interstate jurisdiction, it must deal with this issue. Local exchange carriers (LECs) would have the opportunity and bear the burden of showing that the decline in the SLC slated for a given year, would drive revenues below costs.

Moreover, Dr. Cooper pointed out that in the decade since the CALLS plan went into effect, a massive high speed Internet access industry has been created, which yields revenues to the local exchange carriers of $50 billion per year. Since this service was declared an information service, the revenues are in the Interstate jurisdiction, yet the service uses much of the same telecommunications plant and infrastructure that the LECs use to provide telecommunications service to local exchange customers. The FCC has not rigorously identified LEC plant and infrastructure costs associated with high speed Internet access service that belong in the interstate jurisdiction, nor did the 2002 cost study attribute any revenues from high speed Internet access service to the pool of resources that determined whether the revenues associated with line charges are adequate to cover the cost of the line. In other words, we have a $50 billion a year service that is getting a free ride on the local loop, from the point of view of FCC interstate cost accounting. This could well constitute an illegal subsidy of a competitive service with revenues raised from local exchange service.

Dr. Cooper expressed the belief that a rigorous cost study, which included all the revenues generated by the subscriber line, would result in the elimination of the SLC for the overwhelming majority of lines in the U.S. With this type of careful cost analysis that recognizes all costs and all revenues in hand, the Commission would be in a much stronger position to accomplish the goal of universal service by delivering explicit subsidies to the small number of extremely high cost lines, that cannot cover their costs at charges that are affordable and reasonably comparable to the charges that others pay.

Ms. Desai urged the Commission to reform USF and ICC in a manner that will not increase rates for consumers. She stated that reductions in ICC payments should not be offset by increases in the rates that consumers pay. Finally, Ms. Desai stated the USF reform effort must provide actual benefits to consumers.

Ms. Wein urged the Chairman to minimize the impact of the Access Reform Charge on low-income consumers and to ensure that there will be tangible benefits to consumers from this reform. Ms. Wein also urged that the contemplated reforms to the universal service programs will soon make it possible for Lifeline consumers to have a choice between applying their Lifeline benefit to broadband or phone service.

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. §1.1206(b), this letter is being filed electronically with your office today.

Respectfully Submitted,

Olivia Wein

Olivia Wein
National Consumer Law Center
1001 Connecticut Avenue, N.W. Suite 510
Washington, D.C. 20036
202.452.6252