



The Competitive Carriers Association

Rural Cellular Association

805 15th Street NW, Suite 401

Washington, DC 20005

Office: (202) 449 -9866 • Fax: (866) 436 -1080

October 21, 2011

VIA ECFS

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

Re: 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 a 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

Dear Ms. Dortch:

On behalf of RCA – The Competitive Carriers Association and its more than 100 members, we write in response to a Commission Staff Study purporting to identify geographic areas where mobile wireless service is available only from a carrier that receives high-cost support.¹

As an initial matter, RCA is troubled that the Commission would submit a study addressing something as critical as rural consumers' access to mobile voice and broadband services on the eve of the Commission's Sunshine period. The Commission released its Notice of Proposed Rulemaking on February 9, 2011, yet the staff did not make available its study until the 252nd of 253 days leading up to the Sunshine period. Allowing such minimal time for interested parties to analyze and comment on the Staff Study raises significant due process and other legal concerns.

On the merits, there is extensive evidence already in the record establishing that the provision of wireless voice and broadband service would be significantly underfunded by proposals advanced by incumbent LECs. Record evidence shows the extraordinary popularity of wireless services in comparison with wireline services, as reflected in their respective growth rates.² Substantial evidence also establishes that wireless is the most cost-effective solution for

¹ Letter from Jennifer Prime, Wireline Competition Bureau, to Marlene H. Dortch, WC Docket No. 10-90 *et al.* (filed Oct. 19, 2011) Appendix II (“Staff Study”).

² *See, e.g.*, Letter from Steven K. Berry, RCA to Chairman Julius Genachowski, filed in WC Docket No. 10-90 *et al.* (October 19, 2011) (“October 19 RCA Letter”); Federal

deploying broadband to all Americans.³ The record further demonstrates that achieving ubiquitous broadband coverage through the increased deployment of cost-effective wireless services will require significantly more funding than the \$300 million proposed for the Phase I Mobility Fund or \$500 million for Phase II Mobility Fund, and that such proposals would underfund mobile broadband deployment by at least \$500-\$700 million annually.⁴ Those proposals would frustrate the President's goal of providing at least 98 percent of Americans with access to 4G high-speed wireless service.⁵

The Staff Study implies that only a small number of areas require high-cost support for wireless carriers. In particular, the Staff Study concludes that relatively few areas would have no service at all absent a supported wireless provider, and in turn suggests that only approximately \$45 million in support is necessary for wireless carriers going forward. The study is flatly inconsistent with the extensive record evidence described above regarding the actual cost to deploy ubiquitous wireless broadband service.

Moreover, it is readily apparent that the Staff Study contains significant methodological and logical flaws that undercut its reliability. For example, the Staff Study assumes that a Study Area is "served" by an unsubsidized carrier even where that carrier covers only a tiny sliver of the study area in question. Thus, if Verizon or AT&T serves a single customer within a census block, the Staff Study apparently would deem the entire study area to be served by an unsubsidized carrier.⁶ In other words, the Staff Study deems a broad geographic area to be "served" without any need for high-cost support even if an overwhelming majority of residents within the study area in fact have no access to service from an unsubsidized provider. To suggest that an entire study area does not need support where AT&T or Verizon serves a small portion of it is tantamount to suggesting that broadband is available within a ZIP code simply because at least one resident in the ZIP code has access to broadband. Yet this Commission has

Communications Commission, Internet Access Services Report (Oct. 2011 at 1; Letter from Steve Largent, CTIA, to Chairman Julius Genachowski, filed in WC Docket No. 10-90 *et al.* (Oct. 18, 2011) at 1; Spec It Out!, Federal Communications Commission (Oct. 19, 2011), available at <http://transition.fcc.gov/infographics/spec-it-out.pdf>.

³ October 19 RCA Letter at 4; Federal Communications Commission, Broadband Adoption and Use in America: OBI Working Paper Series No. 1 (Feb 2010) at 61.

⁴ *See, e.g.*, CTIA CostQuest Mobility Study, filed in WC Docket 10-90 *et al.* (Sept. 22, 2011); Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 1 (filed Sept. 27, 2011); RCA Reply Comments, WC Docket 10-90 *et al.* (filed Sept. 6, 2011) at 8; Comments of United States Cellular Corp., WC Docket No. 10-91, at v (filed Aug. 24, 2011); Comments of MTPCS, LLC d/b/a Cellular One, WC Docket No. 10-90 *et al.* (filed Aug. 24, 2011) at 15.

⁵ Press Release, The White House, President Obama Details Plan to Win the Future through Expanded Wireless Access (Feb. 10, 2011), <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>.

⁶ Staff Study at 5.

criticized that precise form of analysis,⁷ and the staff's use of comparable analysis here renders its conclusions unreliable and would make the Commission's adoption of such a rationale arbitrary and capricious.

While the Staff Study significantly understates the need for support in areas currently served by rural wireless providers, it entirely excludes census blocks that are not served by any wireless carrier (based on American Roamer data). Accordingly, by ignoring the underserved areas that the Mobility Fund would target, the Staff Study fails to account for the substantial cost of building out network facilities and introducing and maintaining broadband service in those areas.

In addition, the Staff Study itself recognizes the significant limitations of the roaming data on which it relies. The study is based on coverage maps provided by American Roamer, which the staff acknowledges "likely overstate[] the coverage actually experienced by consumers."⁸ Again, the Staff Study is relying on data that treats areas as having access to mobile service when in fact they may not.

More fundamentally, the Staff Study appears to be addressing a question that does not determine the need for high-cost USF funding. The relevant question under the Communications Act is not whether a broad geographic area might have some *de minimis* level of broadband availability (assuming that support for broadband is consistent with the statute), but rather whether consumers *throughout* a high-cost area have access to high-quality services that are "reasonably comparable to those services available in urban areas."⁹ That is what RCA's members are working to achieve, and that is what the Commission has identified as its goal for reform. The Staff Study accordingly does not yield any meaningful data that bears on meeting the universal service obligations set forth in the Act.

Finally, while the implication of the Staff Study is that wireless funding is not needed in study areas in which there is an unsubsidized wireless competitor, defined as an area in which there is any competition at all, that proposition contrasts starkly with what we understand to be the Commission's proposal for funding incumbent LECs that are rate-of-return carriers. RCA understands that the Commission's draft order would deny funding to such a rural carrier only if 100% of its customers can obtain service from an unsubsidized provider. In other words, as long as just one of a rural LEC's customers lacks a competitive alternative, the RLEC will remain fully eligible for support, whereas the Staff Study implies that if just one of a wireless ETC's subscribers *can* obtain service from an unsubsidized provider, the wireless carrier should be flatly ineligible for high-cost support under the Mobility Fund. Plainly, such a regime would represent the antithesis of competitive neutrality, and such unwarranted discrimination in favor of wireline carriers likely would violate the Administrative Procedure Act.

⁷ See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Notice of Inquiry, 24 FCC Rcd 10505, ¶¶ 11, 45 (2009).

⁸ Staff Study at 6.

⁹ 47 U.S.C. § 254(b)(3).

In sum, the new Staff Study, dropped into the record at the eleventh hour, is deeply flawed and unreliable and does not address the relevant question of how to provide broadband services to all Americans in a cost-effective and competitively neutral manner. It therefore should play no role in the Commission's consideration of USF reform and the Commission should not rely on it as a matter of law or policy.

Respectfully submitted,

/s/

Steven K. Berry, President and CEO
Rebecca Murphy Thompson, General Counsel
RCA – The Competitive Carriers Association