**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| 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 LECs | ) | WC Docket No. 07-135 |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| Developing a Unified IC Regime | ) | CC Docket No. 01-92 |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| Lifeline and Linkup | ) | WC Docket No. 03-109 |

# FEDERAL COMMUNICATIONS COMMISSION
# AUGUST 3, 2011 PUBLIC NOTICE

# FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE-INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING

## Reply Comments of the Montana Public Service Commission

**August 31, 2011**

The Montana Public Service Commission (MPSC) after considering the initial comments submitted to the Federal Communications Commission (FCC) regarding the FCC Public Notice, as well as comments provided by telecommunications stakeholders to the MPSC in our own proceeding, respectfully files these Reply Comments.

**Summary**

The MPSC generally supports the "consensus framework" and the ABC and RLEC plans. However, as do other parties, we have the following specific concerns which the FCC should address in any final rules. These concerns are: 1) as the high-cost Universal Service fund (USF) is transitioned to the new Connect America Fund (CAF), support from the CAF must be targeted to both operations and maintenance expense of existing voice and broadband networks, and to capital expenditures to deploy additional broadband where required, 2) Right of First Refusal (ROFR) for price cap carriers as addressed in both the ABC Plan[1] and the FCC Public Notice[2]; 3) the continuing need for support for wireless competitive eligible telecommunications carriers (CETCs) in extremely rural areas; 4) the role of state commissions in identifying census blocks with unsupported carriers, using a forward-looking cost model to determine the cost of providing broadband in census blocks that do not have an unsupported carrier, determining the supported areas and the baseline support amounts, and certification of the providers awarded Connect America Fund (CAF) support, both for Rate of Return (ROR) and price cap carriers; 5) the recovery of wireline CETC access revenues from the Intercarrier Compensation (ICC) Recovery Mechanism (RM); and 6) the inadequacy of satellite broadband service for the 730,000 nationwide locations not eligible for CAF support.[3]

**1) The CAF must support the operations and maintenance of existing voice and broadband networks, not just capital expenditures for the deployment of additional broadband.**

[1] July 29, 2011 Joint Filing, Attachment 1, Page 3
[2] FCC August 3, 2011 Public Notice, Section I.C.2
[3] July 29, 2011 Joint Filing, Attachment 1, Page 5

The Rural Local Exchange Carriers (RLECS) in Montana have already deployed broadband services to almost all of their customers.[4] In addition, with the assistance of debt financing from the Rural Utilities Service (RUS) and CoBank, the majority of the RLECS are deploying fiber to the home to deploy next-generation services and ultra high-speed broadband with up to 100Mbs download speeds. These networks are dependent on the existing USF and ICC regimes, which allow the RLECs to build and operate the systems, and meet their debt obligations. The debt obligations taken on by the Montana RLECs were based on specific, predictable, and sufficient USF and ICC support mechanisms. Without a workable replacement for these mechanisms, the very financial viability of the Montana RLECs is threatened. As the high-cost USF funding is transitioned to the CAF, CAF support must first be targeted to carriers such as the Montana RLECs, not only for the deployment of additional broadband to unserved and underserved areas, but also for maintenance and operations of the existing RLEC voice and broadband networks.

## 2. Right of First Refusal (ROFR)

The FCC Public Notice[5] states as follows and asks the question underlined in bold print.

> 2. *Right of First Refusal (ROFR)* The ABC Plan would give an incumbent local exchange carrier (LEC) the opportunity to accept or decline a model-determined support amount in a wire center if the incumbent LEC has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center. We seek comment on this proposal. Would aggregating census blocks to something other than a wire center be an improvement to the proposal? Is 35 percent a reasonable threshold? Should areas that are overlapped by an unsubsidized facilities-based provider be excluded when calculating the percentage? Is the opportunity to exercise a ROFR reasonable consideration for an incumbent LEC's ongoing responsibility to serve as a voice carrier of last resort throughout its study areas, even as legacy support flows are being phased down? **Should any ROFR go to the provider with the most broadband deployment in the relevant area rather than automatically to the incumbent LEC?** Alternatively, if there are at least two providers in the relevant area that exceed the threshold, should the Commission use competitive bidding to select the support recipient?

The ABC Plan[6] for price cap carriers states the following:

[4] Northern Telephone Cooperative and Blackfoot Telephone Cooperative, for example, stated in comments to the MPSC for the MPSC July 27, 2010 roundtable on USF reform that that have deployed broadband services to 100% and 96% of their customers respectively.

[5] August 3, 2011 FCC Public Notice, Section I.C.2

*Wire centers with substantial existing broadband investment (high-speed Internet service available to more than 35 percent of service locations)*: **If the incumbent LEC that serves the wire center has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center, the incumbent LEC is given an opportunity to accept or decline the baseline support and the associated broadband service obligations in the census blocks that make up the supported area within that wire center.** If it accepts the offer of the baseline support, then the incumbent LEC assumes all of the broadband service obligations for the ten-year term of CAF support. By first offering support to an incumbent LEC that has already made substantial investments in the wire center, the CAF will accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs.

The first concern of the MPSC is the ABC plan uses the term “high-speed internet” which is undefined. The 35% threshold should be based on the availability of broadband as defined in the ABC Plan.[7] It should not be based on the availability of undefined “high-speed internet.”

Secondly, regarding the question asked by the FCC in its Public Notice as to whether the ROFR should go to the provider with the most broadband deployment in the relevant area rather than automatically to the incumbent local exchange carrier (ILEC), the MPSC answer to this question is yes. In Montana, Qwest was the major price cap carrier until it was recently acquired by CenturyLink. CenturyLink/Qwest has certain wire centers in Montana in which it has not deployed any broadband. These wire centers have been overbuilt by Competitive Eligible Telecommunications Carriers (CETCs)[8] which have made broadband available to more than 35% of the service locations. In addition, those CETCs have taken a significant portion of the CenturyLink/Qwest customer base. Thus, those wire centers have one supported carrier offering broadband; that carrier is not the ILEC, but is instead the CETC. Clearly the CAF support should go to the CETC. The CETCs in these instances have made the investment, the CETCs have the customers, and auctions or competitive bidding in such cases are not appropriate.

In addition, the MPSC is concerned about the situations where both the ILEC and the CETC may have broadband available to more than 35% of the service locations, which is possible in CenturyLink/Qwest wire centers in Montana that have been overbuilt by CETCs. In

[6] July 29, 2011 Joint Filing, Attachment 1, Page 6
[7] July 29, 2011 Joint Filing, Attachment 1, Page 2 (4Mbps downstream and 768Kbps upstream).
[8] Three Rivers, Mid-Rivers, and Range CETCs

those cases there are two supported carriers offering broadband. The FCC Public Notice suggests the use of competitive bidding for ROFR in those instances. The MPSC strongly believes that market share or net investment should be analyzed instead because it is almost certain that, in such cases, one would find the net investment and market share of the CETCs would be significantly larger than that of the ILEC. Based on that analysis, again the ROFR should go to the CETC, not the ILEC.

**3. Wireless CETC Support**

The MPSC, in its May 23, 2011 Reply Comments to the FCC, addressed the continued need for ongoing wireless CETC support. The MPSC will not repeat all of its previous comments here. However, the FCC should be aware of the following. The MPSC has designated three wireless carriers as CETCs in Montana.[9] All three wireless CETCs, in order to be designated as CETCs, were ordered to build out their wireless networks such that 98% of the population in their study areas would have access to their wireless service. All three CETCs have either complied with the coverage provision or are in the process of doing so. The result has been wireless coverage for large, sparsely populated geographic areas of Montana that the major wireless carriers had no interest in serving for obvious economic reasons. Sagebrush Wireless serves both the Fort Peck Indian Reservation and the Crow Indian Reservation. For the vast majority of the land area on those reservations, Sagebrush is the only provider of wireless service. Sagebrush has stated that without CETC support it will not be able to finish the required expansion of its network to the 98% coverage target, and in fact, it would have to abandon part of its existing network. Both CellularOne and Mid-Rivers Communications have made the same predictions as Sagebrush regarding the impact of the loss of CETC funds.[10] In the NPRM the FCC stated, “Given the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority.”[11] The MPSC strongly agrees with that statement and believes that loss of CETC funding for the wireless CETCs in Montana would dramatically reduce wireless coverage in extremely rural areas of Montana.

The following table shows the Montana counties served by Mid-Rivers Cellular, and the population of each county, and the persons per square mile.

[9] CellularOne Wireless, Sagebrush Wireless, Mid-Rivers Wireless
[10] May 4, 2011 MPSC Roundtable on USF and ICC Reform
[11] FCC 11-13 NPRM, ¶241

| Mid Rivers Cellular | | | |
|---|---|---|---|
| **County** | **Population** | **Land Area, 2000 (Square Miles)** | **People/Sq. Mile, 2010** |
| Carter | 1,160 | 3,339 | 0.3 |
| Custer | 11,699 | 3,783 | 3.1 |
| Dawson | 8,966 | 2,373 | 3.8 |
| Fallon | 2,890 | 1,620 | 1.8 |
| Fergus | 11,586 | 4,339 | 2.7 |
| Garfield | 1,206 | 4,668 | 0.3 |
| McCone | 1,734 | 2,642 | 0.7 |
| Musselshell | 4,538 | 1,867 | 2.4 |
| Petroleum | 494 | 1,653 | 0.3 |
| Powder River | 1,743 | 3,297 | 0.5 |
| Prairie | 1,179 | 1,736 | 0.7 |
| Richland | 9,746 | 2,084 | 4.7 |
| Rosebud | 9,233 | 5,012 | 1.8 |
| Wibaux | 1,017 | 889 | 1.1 |
| **Total** | **67,191** | **39,302** | **1.7** |
| | | | |
| **Source**: U.S. Census Bureau: State and County QuickFacts | | | |
| http://quickfacts.census.gov/qfd/states/30000.html | | | |

Contrast the population and people per square mile in the Mid-Rivers Cellular serving area with the populations and people per square mile of the following states that have approximately the same square miles land area as Mid-Rivers Cellular.

| United States | | | |
|---|---|---|---|
| **State** | **Population** | **Land Area, 2000 (Square Miles)** | **People/Sq. Mile, 2010** |
| Indiana | 6,483,802 | 36,420 | 178.0 |
| Kentucky | 4,339,367 | 40,411 | 107.4 |
| Virginia | 8,001,024 | 42,769 | 187.1 |
| Ohio | 11,536,504 | 44,828 | 257.4 |
| | | | |
| United States Census - 2010 | | | |

If one looked at the same the comparisons for CellularOne and Sagebrush operations in Montana, they would appear much the same. With the population densities in the states referenced above, there are obviously economic business cases that can be used to justify the deployment of multiple wireless networks that do not need any type of support. That is not the case in rural Montana. The plain truth is that without continued support for certain wireless CETCs, a vast rural area of Montana will almost certainly lose its access to wireless service.

Elimination of wireless CETC funding for the Montana rural wireless CETCs and the subsequent loss of wireless service is a possible direct violation of U.S.C. Sec. 254, (b)(3) which states as follows:

> Sec. 254. Universal service
> (b) Universal service principles
> (3) Access in rural and high cost areas
> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

The MPSC strongly supports continued support for select wireless CETCs. State commissions, such as the MPSC, based on local knowledge, should be able to designate both a wireline and wireless ETC in certain areas to draw from the CAF if the state commission believes that is necessary.

Two alternatives for continued wireless CETC funding that could be supported by the MPSC are 1) Support from the Advanced Mobility Fund (AMF). It is not clear to the MPSC what providers would be funded by the AMF, or whether the AMF will even be funded. Future wireless CETC funding must be sufficient and predictable. If funding for wireless CETCs meets those criteria, the MPSC could support funding from the AMF. 2) The MTPCS d/b/a CellularOne proposal that the FCC adopt a Small Business Exemption for CETCs meeting the U.S. Small Business Exemption definition.[12] Funding for CETCs meeting that definition would be grandfathered. CellularOne states that the amount required nationwide to continue to fund the grandfathered CETCs would be approximately $300 million on an annual basis. Again, if the proposal would provide sufficient and predictable funding for Montana's wireless CETCs, the MPSC could support it.

## 4. State Commission Roles

The MPSC has concerns regarding the proposed role of state commissions in the certification and oversight of providers who will be receiving CAF funding. The ABC Plan

[12] MTPCS d/b/a CellularOne August 24, 2011Comments to the FCC, Page 17, Section I.b

for price cap carriers would allow state commissions to elect to take responsibility for determining which census blocks in their respective states are already served by an unsupported broadband provider. All other census blocks in the state would then be either unserved or served by a supported carrier. These census blocks might or might not be eligible for CAF support. The MPSC would elect to take on this responsibility because it is in the best position to identify carriers providing broadband in the state and to collect the necessary information from those providers to make the required census block determinations.

However, the ABC plan contemplates the FCC performing the function of running a forward looking cost model to determine the cost of providing broadband in each of the identified census blocks. Based on certain benchmarks, the FCC would identify census blocks eligible for support. Providers could then apply to the FCC for CAF support for those census blocks and the FCC would perform the certification of carriers to receive CAF funds.

The MPSC believes that, in addition to performing the function of identifying the census blocks that might be eligible for support, state commissions that elect to perform that role should also administer the functions of running the cost model, determining the level of support, and the certification of CAF support providers. State commissions should not only be responsible for the certification of price cap carriers for CAF support, but should also be responsible for the certification of the ROR carriers under the RLEC plan. State commissions are in a much better position to perform these functions, rather than the FCC, because of the knowledge of state commissions regarding the telecommunications industry, networks, and providers in their state. In addition to performing the certification process for CAF support, the state commissions should also be responsible for the oversight of the CAF support providers to see the all CAF support obligations imposed on those providers are being met.

The FCC should be mindful that Section 214(e)(2) of the Telecommunications Act of 1996 provides that state commissions are responsible for the designation and oversight of ETCs. The MPSC has taken its ETC-related responsibilities seriously and has performed the required duties well. There is no reason to now transfer these duties from state commissions to the FCC; certainly no rational for such a move has been provided at this point in the proceeding..

## 5. Inclusion of CLEC Access Revenues in the ICC RM.

This issue was brought to the attention of the MPSC by Mid-Rivers CETC.[13] According to Mid-Rivers, the loss of ICC revenues would be more damaging to the financial integrity of its CETC operations than would the loss of USF support. As stated above, the MPSC believes that the ROFR should not automatically go to the ILEC in areas where the ILEC has not deployed broadband but a CETC has. In areas where both the ILEC and the CETC have deployed broadband, but the preponderance of the investment and customer base belong to the CETC, again the CETC should receive the ROFR. If the CETC accepts CAF support in those areas and the accompanying CAF obligations, it should also be the CETC, not the ILEC, that is eligible to recover ICC revenues from the proposed RM for those areas. It would be nonsensical to certify the CETC in an area for CAF support under the ROFR and then see the CETC go bankrupt because of the loss of ICC revenues.

## 6. Satellite Broadband Service Alternative

The ABC plan would use satellite broadband to service the estimated 730,000 highest cost census blocks where the cost is above a specified benchmark.[14] The MPSC has no regulatory jurisdiction with satellite service. However, there is anecdotal evidence that there can be problems with speed, reliability, and cost of satellite service. The MPSC urges the FCC to look closely at the appropriateness of satellite service as an alternative for broadband in the higher- cost census blocks. Specifically, the FCC should ensure that satellite service meets the requirement of the U.S.C. Sec. 254(b)(3), which provides that consumers in rural and high-cost areas should have access to advanced services that are reasonably comparable to the services provided in urban areas at rates that are reasonably comparable to those in urban areas.

This concludes the Reply Comments of the MPSC.

[13] August 22, 2011 Oral Comments to the MPSC
[14] July 29, 2011 Joint Filing, Attachment 1, Page 4