

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Reform)	WT Docket No. 10-208
)	
Mobility Fund)	

**REPLY COMMENTS
of
UNITED STATES CELLULAR CORPORATION**

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SUMMARY

Comments filed by numerous parties in response to the *Mobility Fund Notice* confirm what was already clear: The proposed Mobility Fund is fraught with problems, it would serve no useful purpose, and, therefore, it should not be adopted by the Commission.

As a general matter, the record reflects strong opposition to the Commission's apparent intention to make competitive eligible telecommunications carriers the subjects of Commission laboratory experiments, so that empirical data can be sought regarding the extent to which competition, competitive entry, and carrier investment are hindered, service quality deteriorates, auction winners increase their rates, and the Commission is forced to expand regulation in an attempt to staunch these consumer harms and anti-competitive effects.

Many commenters agree that the policy and legal problems inherent in the Commission's proposal should cause the Commission to shelve the Mobility Fund, take short-term actions that would better serve its goal of promoting mobile broadband deployment, and invest its efforts in moving forward with the longer-term objectives of the Connect America Fund rulemaking.

■ ***A Better Course.***—If the Commission proceeds with its plan to adopt a new CAF support mechanism, then the Mobility Fund proposal appears to be superfluous. Parties agree that a more productive short-term step would be for the Commission to declare that all ETCs may use existing high-cost funding to deploy networks capable of providing both voice and advanced broadband services. This confirmation by the Commission would jump start mobile broadband deployment by enabling competitive ETCs to immediately focus on network expansions and upgrades needed to bring broadband to unserved and underserved areas.

The Commission could then shift its attention to issues related to the CAF rulemaking. First, the Commission must add broadband to the list of supported services pursuant to Section

254 of the Communications Act of 1934. Second, the Commission must design a workable transition to its new broadband funding mechanisms, which ensures that legacy mobile voice networks are not stranded as funds are shifted into the new support mechanisms. And, third, the Commission must determine the structure for these new mechanisms. There is support in the record for proposals such as U.S. Cellular's plan for repurposing the support currently provided to wireline and mobile voice networks into separate funds that would support ongoing investments and operating expenses for fixed and mobile broadband infrastructure and services.

If, however, the Commission proceeds with its plan to establish the Mobility Fund, then various commenters agree with U.S. Cellular that the funding mechanism should include the use of Fund support by auction winners to improve network coverage and enhance service quality in areas in which some level of advanced broadband service is already available.

■ ***Policy Problems.***—There is widespread agreement in the record that the Mobility Fund proposal is virtually guaranteed to fail because the small amount of funding proposed, combined with the unavailability of the funding for operational expenses, make it unlikely that the Fund could appreciably boost broadband infrastructure deployment in rural and high-cost areas.

Commenters reserve their strongest criticism for the Commission's single-winner reverse auction proposal, with the record reflecting a near consensus that the reverse auction experiment contradicts the Commission's pro-consumer and pro-competitive policies, and also would be plagued by a host of intractable problems.

Commenters explain in detail that the reverse auction mechanism would reduce mobile broadband competition, would necessitate extensive and intrusive regulation, would harm consumers by reducing carriers' incentives to enhance service quality, would chill incentives for carriers' investment in broadband deployment, would not be successful in channeling Mobility

Fund support to areas with the greatest need, would not be technologically neutral, would not be effective in reducing the overall level of universal service funding, and would create incentives for anti-competitive behavior by auction participants.

The record also supports U.S. Cellular's position that the imposition of collocation and data roaming requirements would not be sufficient to offset the anti-competitive effects of a single-winner reverse auction mechanism, although parties share U.S. Cellular's view that the Commission should adopt data roaming requirements applicable to all carriers in a separate pending rulemaking proceeding. A lone commenter argues that a single-winner reverse auction mechanism would be an effective cure for purported deficiencies associated with the current high-cost support disbursement mechanism, but this view (apart from ignoring the long list of reverse auction deficiencies) overlooks a more attractive option: There is support in the record for U.S. Cellular's argument that the use of a cost model would be a much more effective and equitable replacement for existing funding mechanisms.

■ ***Legal Problems.***—In addition to the need to define mobile broadband as a supported service, the Mobility Fund faces several legal issues. The Fund mechanism is not a sufficient means for meeting the Commission's responsibilities under Section 706 of the Telecommunications Act of 1996, and also would conflict with provisions in Section 214 of the 1934 Act relating to the designation of more than one qualified ETC for a service area.

The record also presents convincing arguments that restricting Mobility Fund support to one carrier would amount to a discriminatory contribution scheme in violation of Section 254(d) of the 1934 Act, and that the Fund would violate Section 254(i) of the 1934 Act because it would inhibit the ability of consumers in rural and high-cost areas to obtain broadband services at affordable rates.

mission's National Broadband Plan stresses that "[m]obile broadband is the next great challenge and opportunity for the United States. It is a nascent market in which the United States should lead."³

In recognizing the importance of mobile broadband, the Commission also has embraced the goal of promoting mobile broadband competition, noting last year that "[m]obile data communications present great promise for the Nation for driving the economy and delivering broadband opportunities to all Americans[,]"⁴ and concluding that "[o]ur goal is for this country to lead the world in such mobile services by ensuring that consumers have access to competitive broadband data services over the fastest and most extensive competitive wireless broadband data networks."⁵

Given the Commission's awareness of the importance of mobile broadband, and its professed commitment to competition in the mobile wireless marketplace, the Mobility Fund proposal is difficult to comprehend. Concerns raised by many commenters confirm U.S. Cellular's view that the Fund proposal, instead of enhancing mobile broadband deployment and promoting mobile competition, would result in pushing these goals to the side while the Commission launches an ill-considered single-winner reverse auction experiment that is likely to produce unfavorable results.

gov/commissioners/genachowski/speeches2010.html. The Chairman noted that "[a] little more than a decade ago, there were 61 million mobile subscribers in this country. Now there are 293 million. Today, there are 61 million Americans with smartphones." *Id.*

³ Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) ("Broadband Plan" or "NBP") at 9.

⁴ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4182 (para. 1) (2010) ("*Data Roaming Order and Notice*").

⁵ *Id.*

II. DISCUSSION.

U.S. Cellular examines in the following sections numerous concerns and issues raised by commenters who document the deficiencies in the Commission's Mobility Fund proposal. These problems with the *Mobility Fund Notice* raised by commenters confirm U.S. Cellular's view that the Commission should forego its plans to establish the Fund and instead focus its attention on moving to a new, comprehensive universal service structure designed to provide support for fixed and mobile broadband deployment.

A. **The Commission Should Abandon Its Mobility Fund Experiment and Proceed with the Task of Transitioning Universal Service Support from Legacy Networks to Broadband Networks.**

There is support in the record for U.S. Cellular's view that the Fund should not be adopted as proposed, and that the Commission's focus should instead be concentrated on comprehensive universal service reform.⁶

The California PUC, for example, indicates that it "do[es] not support the creation of the Mobility Fund recommended in the NBP and now proposed by the Commission"⁷ because the temporary Fund would not meet any need, especially if the Commission proceeds with its plan to adopt a Connect America Fund ("CAF").⁸ USTelecom echoes U.S. Cellular's position that the Commission should move quickly to the main event, "urg[ing] the Commission to now quickly move to address the remainder of the key broadband action agenda items developed from the National Broadband Plan[,] including . . . initiation of the Connect America Fund . . . to support

⁶ See U.S. Cellular Comments at 4-6, 12-13.

⁷ California Public Utilities Commission ("California PUC") Comments at 6.

⁸ *Id.* at 6-7.

voice and broadband service; [and] reform of the USF [Universal Service Fund] contribution mechanism”⁹

USA Coalition explains that the Fund proposal puts the cart before the horse, and could result in a waste of time and money. U.S. Cellular agrees that, even though the Fund apparently is intended as a transition mechanism in preparation for CAF, “it is far from clear how the CAF will work in tandem with the Mobility Fund, much less whether the CAF will be adopted in a modified form, or even if the CAF will be adopted at all.”¹⁰ USA Coalition notes that, if the Commission fails to move forward with CAF, or significantly modifies its conception of how CAF should be designed and operated, “then the resources, both in terms of time and money, devoted to implementing the Mobility Fund will have been wasted.”¹¹

U.S. Cellular also agrees with USA Coalition’s conclusion that the Commission’s attempt to adopt the Fund before deciding upon its long-term reform measures is problematic. For example, “without knowing how the CAF would work in practice, it would be nearly impossible for a carrier to develop an informed bid regarding its participation in the Mobility Fund.”¹² USA Coalition concludes that, “as a transitional measure, the Mobility Fund must be considered only after the CAF has been proposed, and adopted no sooner than until after the CAF is adopted.”¹³

⁹ United States Telecom Association (“USTelecom”) Comments at 1-2. *See* CTIA-The Wireless Association® (“CTIA”) Comments at 14 (indicating that, while CTIA generally supports establishment of the Fund, it also supports the Commission’s “efforts to fundamentally reform its universal service programs to support national goals for broadband and mobility, and to derive greater efficiency from the high cost program.”). CTIA “believes that there is widespread support for a complete overhaul of the high cost system.” *Id.* at 15.

¹⁰ Universal Service for America Coalition (“USA Coalition”) Comments at 18.

¹¹ *Id.*

¹² *Id.* at 19.

¹³ *Id.* *See* Windstream Communications, Inc., Comments at 2 (arguing that “[t]he Commission should focus first on implementing the CAF before it awards support through the Mobility Fund. . . . [T]he Com-

The record makes clear that, as a threshold matter, the need for, and timing of, the Commission's Fund proposal are highly questionable. Even more tellingly, as U.S. Cellular will discuss in this Reply, the record also provides ample evidence that, on the merits, the Fund proposal is flawed and should be abandoned.

B. Regardless of Whether the Commission Establishes the Mobility Fund, It Must Take Steps To Ensure That Wireless Voice Networks Are Sufficiently Supported During the Transition of Support to Broadband Networks.

Before turning to this evidence in the record that the numerous flaws in the proposed Fund should compel the Commission not to adopt the proposal, a second threshold issue warrants discussion. U.S. Cellular explained in its Comments that a risk raised by adoption of a broadband transition mechanism “is that insufficient support will be available to enable carriers to maintain existing mobile networks while this transition takes place.”¹⁴ Several parties agree with U.S. Cellular's concern.

USTelecom, for example, endorses the general proposition that “now is the time to bring the benefits of high speed broadband to every corner of the nation while not retreating from the achievement of universal voice service[,]”¹⁵ and USA Coalition warns that “the Commission cannot simply abandon the structure and the goals of the current system in order to focus all funding and efforts solely on bringing broadband services to unserved areas.”¹⁶

mission's main goal should be to develop an efficient, technology-neutral mechanism to ensure the deployment of networks that will provide baseline broadband and telecommunications services in high-cost areas. Implementation of this mechanism—the CAF—before awarding support through the Mobility Fund would ensure the most efficient, fiscally responsible distribution of limited funding.”).

¹⁴ U.S. Cellular Comments at 7 (footnote omitted).

¹⁵ USTelecom Comments at 3-4.

¹⁶ USA Coalition Comments at 4.

USA Coalition also points out that the Commission’s Fund proposal—by suggesting that support should be provided only to areas unserved by 3G services¹⁷—would unfairly harm providers of basic mobile services. Many areas currently not receiving 3G services do have access to basic mobile services, “which are very important to consumers in such areas.”¹⁸ The Commission’s proposal would harm consumers because “[p]roviders of basic mobile services would find it difficult, if not impossible, to compete with a subsidized provider of advanced 3G services, particularly if all subsidies for basic mobile services are phased out.”¹⁹

U.S. Cellular also agrees with a critical concern raised by RCA, namely, that “the Mobility Fund must not, in any manner, be deemed a substitute for current high-cost support for competitive ETCs[,] [and] that there [should] be no phase-down of high-cost support until, and unless, the FCC implements an adequate replacement support mechanism. The Mobility Fund is not an adequate replacement.”²⁰

Verizon takes a different tack, but its arguments in favor of accelerating the phase-out of legacy competitive eligible telecommunications carrier (“ETC”) support are not persuasive. Verizon contends that the phase-down should begin “as quickly as possible”²¹ by addressing competitive ETC funding reductions on a stand-alone basis, because “[t]he Commission cannot move forward with its broadband priorities until it frees up the necessary funding.”²² This approach

¹⁷ The Commission proposes to create the Mobility Fund to provide funds for the deployment of current- and next-generation mobile broadband “in areas where these services are unavailable.” *Notice*, 25 FCC Rcd at 14719 (para. 5).

¹⁸ USA Coalition Comments at 15.

¹⁹ *Id.* at 16.

²⁰ Rural Cellular Association (“RCA”) Comments at 10-11.

²¹ Verizon and Verizon Wireless (“Verizon”) Comments at 4.

²² *Id.* at 12.

makes no sense. Nothing would prevent the Commission from synchronizing the reduction in funding for legacy mobile voice networks with its planned new funding programs to support mobile broadband deployment. To completely drain one pool before beginning to fill the new pool, as Verizon apparently suggests, would cause an unwarranted suspension of support for mobile services, with potentially dire consequences for consumers in rural and high-cost areas who rely upon the benefits provided by mobile voice services.

Verizon also argues that “[c]ompetitive parity” requires the Commission to expedite the phase-out of legacy competitive ETC support, claiming that the phase-out of Sprint’s and Verizon’s support is proceeding pursuant to the Commission’s merger orders and the *Corr Wireless Order*, and that this is inequitable because their competitors are not yet subject to any phase-out of support.²³ Verizon’s claim is unpersuasive, given that Verizon concedes that it *agreed* to the surrender of its high-cost support,²⁴ demonstrating that it has no desire to focus its business beyond profitable urban and suburban areas following its Alltel acquisition. Moreover, Verizon continues to receive high-cost support that is not being made subject to the phase-down requirements imposed by the Commission.²⁵

²³ *Id.* at 10. See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570 (2008); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 12854 (2010), *recon. pending*, (“*Corr Wireless Order*”).

²⁴ See Verizon Comments at 10.

²⁵ According to data posted by the Universal Service Administrative Company (“USAC”), Verizon is currently receiving approximately \$35.6 million (annualized) in high-cost support in Alabama (SAC

Verizon roams even further afield in its comments by suggesting that, if the Commission cannot expedite competitive ETC funding reductions, then it should act in the interim “to eliminate subsidies for multiple wireless lines in the same household or business.”²⁶ In addition to raising an extraneous issue that was not even addressed in the *Mobility Fund Notice*, Verizon’s proposal would be bad public policy. The approach advocated by Verizon would not be competitively or technologically neutral, since incumbent local exchange carriers (“LECs”) receiving high-cost support are permitted by the Commission’s current rules to receive support for each line they provide to customers.

In addition, restricting universal service support in the manner advanced by Verizon would ignore the fact that costs are incurred for wireless infrastructure to support each “line” both at a residence or business location and *throughout a carrier’s service area*. The point of *mobile* service is to enable the user of any handset to access wireless infrastructure not only where the user lives, but also where the user works, travels, and engages in other activities away from home. Multiple “lines of service” are not provisioned to a home or business—making the network costs associated with second or third lines comparable to the first line.

C. The Record Demonstrates That the Mobility Fund Proposal Is Weighted Down by Substantial Legal, Funding, and Administrative Problems.

The record provides convincing support for U.S. Cellular’s arguments that establishing the Fund would not be consistent with the requirements of the Communications Act of 1934

259029), South Dakota (SAC 399018), Virginia (SAC 199014), and Wisconsin (SACs 399023 and 399024), that is not being subjected to any phase-down. The total amount that should be phased down from those SACs through the end of 2013 is approximately \$106.7 million. See USAC First Quarter Appendices – 2011, Appendix HC01 – High Cost Support With Capped CETC Support Projected by State by Study Area – 1Q2011, available online at <http://www.usac.org/about/governance/fcc-filings/2011/quarter-1.aspx>.

²⁶ Verizon Comments at 13.

(“Act”) or with the Commission’s responsibilities pursuant to the Act, that the Commission has not proposed sufficient funding for the Fund, and that the Commission lacks legal authority for its actions in reserving high-cost support surrendered by Sprint and Verizon for subsequent use by the Fund. Numerous parties also document a range of significant problems that would be caused by the Commission’s adoption of a reverse auction mechanism.

1. Legal Issues Would Unravel the Mobility Fund.

The Fund would have no lawful basis unless the Commission determines that broadband is a supported service for purposes of Section 254 of the Act, and parties agree with U.S. Cellular that the grounds for such a determination should be examined by the Commission in its forthcoming CAF rulemaking proceeding, rather than in this proceeding. The following sections also discuss several other legal hurdles facing the Fund proposal that have been identified by commenters.

a. The Commission Is Required To Find that Mobile Broadband Is a Supported Service Pursuant to Section 254(c) of the Act.

An issue that received virtually no attention in the *Mobility Fund Notice*²⁷ in fact represents a significant barrier to adoption of the Commission’s proposal. Specifically, the Commission must find that broadband is a supported service pursuant to Section 254(c) of the Act. U.S. Cellular argued in its Comments that the Commission should confront this issue in a later rulemaking proceeding because the *Notice* failed to focus on the issue or present any proposed rationale or analysis for such a finding.²⁸ Other parties have expressed similar concerns.

The Indiana URC, for example, explains that “the FCC needs to establish, *through the proper process*, a redefinition of services supported by the USF to include broadband and what

²⁷ See U.S. Cellular Comments at 10.

²⁸ *Id.*

exactly constitutes broadband.”²⁹ The problem the Commission faces in this proceeding is that the *Notice* does not provide a “proper process” for addressing this central issue. As U.S. Cellular noted, the Commission “barely placed [the issue] on the table in this proceeding”³⁰

In addition, “[t]he Commission . . . has failed to follow the procedures mandated by the Act to amend the list of supported services.”³¹ Before the Commission may modify the definition of supported services, it must first receive a recommendation from the Federal-State Joint Board on Universal Service (“Joint Board”). Although the Joint Board did adopt a recommended decision in 2007,³² USA Coalition explains that the actions proposed in the *Mobility Fund Notice* would extend far beyond the Joint Board’s recommendation. USA Coalition notes that, while the Joint Board recommended that basic wireless voice services be treated as supported services, and did not specify required speeds or other performance characteristics, the *Notice* proposes to support only 3G mobile wireless services that include information services such as e-mail and Internet access.³³

Once the Commission does follow the proper procedures for proposing and adopting an addition to the list of supported services, there is a strong basis for concluding that the Commission may make support available for mobile broadband services. U.S. Cellular agrees with USA Coalition that “basic mobility unquestionably meets the standard for addition to the list” of sup-

²⁹ Indiana Utility Regulatory Commission (Indiana URC”) at 4 (emphasis added). See National Association of State Utility Consumer Advocates Comments at 3 (noting that “[t]he FCC’s legal authority to provide USF funding to mobility services, and especially mobility broadband services, is entirely dependent on making [the required] findings, based on the record.”).

³⁰ U.S. Cellular Comments at 10.

³¹ USA Coalition Comments at 9. See Indiana URC Comments at 4 (concluding that “the FCC should utilize the Joint Board referral process before proceeding further with the Mobility Fund”).

³² *High-Cost Universal Service Support; Federal- State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007).

³³ USA Coalition Comments at 10.

ported services.³⁴ Moreover, depending upon the manner in which the Commission ultimately chooses to define “broadband,” there will be a substantial basis for concluding that broadband services meet the criteria established in Section 254(c), including the criterion that broadband services “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers”³⁵ Once the Commission defines “broadband” as a supported service, then the Commission’s principles of competitive and technological neutrality³⁶ will support a conclusion that universal service support must be available to any carrier providing broadband services, regardless of the technology (*e.g.*, fixed or mobile) used to provide the service.

b. The Mobility Fund Proposal Faces Numerous Other Legal Issues.

In addition to the need to make a finding that broadband services should be added to the list of supported services, several other legal issues undermine the viability of the Fund proposal.

First, U.S. Cellular argued in its Comments that establishment of the Fund is not an adequate means of fulfilling the Commission’s responsibilities pursuant to Section 706 of the Telecommunications Act of 1996 (“1996 Act”)³⁷ because the Fund would not remove investment

³⁴ *Id.* at 7 (citing *Notice*, 25 FCC Rcd at 14720–21 (para. 9)). See Ex Parte Letter from Matthew F. Wood, Associate Director, Media Access Project, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 10-90, 06-122, 05-337, and 03-109, WT Docket No. 10-208 (Jan. 6, 2011) (“Public Interest Representatives Letter”) at 1-2 (arguing that “broadband is the essential telecommunications platform of the 21st Century, and thus should be considered a universal service”). The civil rights, media reform, and public interest organizations that were parties to the Letter included the American Civil Liberties Union, the Benton Foundation, the Consumers Union, the Leadership Conference on Civil and Human Rights, the Media and Democracy Coalition, the Media Access Project, the Media Action Grassroots Network, the New America Foundation, Public Knowledge, and the United Church of Christ OC Inc.

³⁵ 47 U.S.C. § 254(c)(1)(B).

³⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-02 (paras. 47-49) (1997) (“*First Report and Order*”) (subsequent history omitted).

³⁷ 47 U.S.C. § 1302.

barriers or promote competition. While the Commission generally has striven to adhere to the duties and responsibilities assigned to it by Section 706, most notably in its recent *Network Neutrality Order*,³⁸ the Fund proposal would have the effect of discouraging, rather than encouraging, deployment of broadband infrastructure, and would impair, rather than promote, competition in local telecommunications markets.

Cellular South agrees with U.S. Cellular's concern that the Fund proposal is problematic in light of the Commission's obligations under Section 706. The Commission is required to use its authority to encourage broadband deployment by removing barriers to investment, promoting local competition, and promoting access to information services in rural areas,³⁹ but that the Fund proposal would create a mechanism for unequal funding that could discourage competitive entry and hamper a competitor's ability to offer services at rates competitive with rates charges by an incumbent carrier.

Second, the Fund proposal conflicts with provisions in the Act regarding the designation of ETCs. Specifically, Section 214(e)(2) provides that a state commission may (in the case of areas served by rural LECs), and shall (in the case of all other areas) "*designate more than one common carrier as an eligible telecommunications carrier for a service area . . . so long as each additional requesting carrier meets the [Section 214] requirements . . .*"⁴⁰ The *Mobility Fund Notice*, by proposing a disbursement mechanism that would support only one broadband pro-

³⁸ The Commission noted in the *Network Neutrality Order* that Section 706 authorizes the Commission to act to meet its substantive obligation to encourage the deployment of broadband networks. *Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, FCC 10-201 (rel. Dec. 23, 2010) ("*Network Neutrality Order*") at para. 119.

³⁹ Cellular South, Inc., NE Colorado Cellular, Inc., d/b/a Viaero Wireless, RCA, Westlink Communications, LLC ("Cellular South") Comments at 17 (citing *Comcast Corp. v. FCC*, 600 F.3d 642, 658 (D.C. Cir. 2010), 47 U.S.C. § 1302(a), 47 U.S.C. § 256(b)(2)(C)).

⁴⁰ 47 U.S.C. § 214(e)(2) (emphasis added). Before designating an additional ETC for an area served by a rural LEC, the state commission must find that the designation is in the public interest. *Id.*

vider in a service area, would undercut the authority of states to make public interest findings regarding whether more than one ETC should be designated in particular service areas. The Commission has no authority to contravene this statutory mechanism for designating ETCs, and it should be developing mechanisms that permit multiple carriers to access support funds and enable consumers, to the greatest extent possible, to have choices in service providers.

Third, U.S. Cellular agrees with Cellular South that the disbursement mechanism proposed by the Commission “would be an inequitable and discriminatory contribution scheme that violates [Section] 254(d).”⁴¹ By restricting support to one carrier (*i.e.*, the reverse auction winner), the Fund proposal would place losing bidders at a competitive disadvantage, since they would be required to make universal service contributions but would receive no Fund support. This result would conflict with the Section 254(d) requirement that the Commission’s contribution mechanism must be equitable and non-discriminatory.

Finally, the Fund proposal violates the provisions of Section 254(i) of the Act⁴² because it would adversely affect the opportunity of consumers in rural and high-cost areas to obtain broadband services at affordable rates.⁴³ Cellular South explains that the increased market power that the reverse auction mechanism would bestow upon auction winners would enable these carriers (absent any regulatory intervention) to impose supra-competitive rates on consumers.⁴⁴

⁴¹ Cellular South Comments at 17.

⁴² 47 U.S.C. § 254(i).

⁴³ Section 254(i) provides that “[t]he Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.”

⁴⁴ Cellular South Comments at 20-21.

2. The Commission’s Plan for Funding the Mobility Fund Is Inadequate and Legally Flawed.

Several parties address the extraordinary mismatch between the level of funding needed to eliminate the mobile broadband gap and the proposed level of support that the Commission would provide for disbursement through the Fund, and commenters also agree with U.S. Cellular that the Commission’s efforts to shift universal service support from current mechanisms into the proposed Fund have caused the Commission to overstep its legal authority.

a. There Is Substantial Agreement in the Record That the Proposed Level of Support for the Mobility Fund Is Inadequate, and That Funding Should Be Available for Operational Expenses.

If the Commission is serious about jump starting mobile broadband deployment,⁴⁵ then many commenters agree with U.S. Cellular that the Commission would need to commit more than \$100 to \$300 million to the proposed Fund.⁴⁶

RCA, for example, observes that the proposed level of funding “is wholly insufficient to have a meaningful impact on the current mobility gap.”⁴⁷ RCA estimates that \$100 million in

⁴⁵ See *Notice*, 25 FCC Rcd at 14722 (para. 14).

⁴⁶ See U.S. Cellular Comments at 14-16.

⁴⁷ RCA Comments at 9. See AT&T Inc. (“AT&T”) Comments at 3 (footnote omitted) (pointing out that the Fund is “by no means [a] sufficient . . . first step to close the Commission-recognized ‘mobility gap.’”); New EA, d/b/a Flow Mobile (“Flow Mobile”) Comments at 6; Mobile Future Comments at 6 (noting that “the amount of funding proposed may well be insufficient to achieve the Commission’s goal” of expanding the deployment of advanced mobile broadband networks); PR Wireless, Inc., Comments at 1 (contending that “a limited, one-time Mobility Fund support mechanism would not be effective in furthering the Commission’s goals for using its universal service programs to stimulate broadband deployment”); Rural Telecommunications Group, Inc. (“RTG”) Comments at 2-3; T-Mobile USA, Inc., (“T-Mobile”) Comments at 5 (explaining that the “proposed funding amount is simply too small to make deployment of mobile broadband services economically attractive in some areas. . . . [T]he Commission has estimated the total ‘investment gap’ for providing wireless broadband to the unserved population of the United States at \$12.9 billion.”); USA Coalition Comments at 20.

Fund support “would only be sufficient to build approximately 250-400 new cell sites.”⁴⁸ In high-cost areas, that number is optimistic. The Indiana URC agrees with RCA’s assessment, concluding that “the FCC’s proposed funding of an upper limit of \$300 million does not provide sufficient funds necessary for a successful Mobility Fund trial. The FCC should seriously consider the need for additional funding.”⁴⁹

Verizon ventures to defend the Commission’s proposed level of funding, declaring it to be “sensible”⁵⁰ and contending that “the Commission cannot spend resources that it does not have, and \$300 million represents a significant portion of the amount of USF support freed up as a result of the *Corr [Wireless] Order* implementing merger conditions to phase out universal service support to Verizon Wireless and Sprint.”⁵¹ As the Ohio PUC points out, however, the Commission “proposes to use only \$100-\$300 million of the [Sprint and Verizon] surrendered support for the Mobility Fund. This range of proposed support represents only 3.8% to 11.3% of the total support which is projected to be surrendered over the five year period.”⁵²

A second problem with the Commission’s funding proposal is that support would be limited to capital expenditures.⁵³ Several parties agree with U.S. Cellular that a major flaw in the

⁴⁸ RCA Comments at 9.

⁴⁹ Indiana URC Comments at 6-7. *See* CTIA Comments at 11(emphasis in original) (arguing that the small level of support, and the one-time nature of the proposed Fund, “would render the fund inadequate to the task of ensuring the availability of mobile services to *all* Americans”).

⁵⁰ Verizon Comments at 4.

⁵¹ *Id.*

⁵² Ohio Public Utilities Commission (“Ohio PUC”) Comments at 4 (footnote omitted).

⁵³ *See* U.S. Cellular Comments at 15. In this regard, U.S. Cellular agrees with ITTA’s general formulation that:

[T]he Commission should not perpetuate presumptions that capital expenditures alone are sufficient to bring broadband to rural America, either by wired or mobile sources. Rather, the presumption should be that, in areas where a business case for broadband deployment does not exist, on-going support will be necessary to maintain networks, and that pre-

Commission’s plan is its failure to provide support for ongoing operational and maintenance expenses. The California PUC expresses concern “that the need for on-going operating support may be greater than the FCC envisions[,]”⁵⁴ and T-Mobile explains that both up-front funding and ongoing support are necessary “to sustain the viability of broadband service and ensure that customers in those areas have access to advanced communications and information services” that are reasonably comparable to those services provided in urban areas.⁵⁵ T-Mobile makes the telling point that the Commission itself “has recognized [that], of the billions of dollars required to fund a wireless network covering all unserved areas, the bulk of the cost will be incurred in on-going operational expenses.”⁵⁶

MetroPCS sounds a different note in its comments, arguing in favor of limiting the Fund to the provision of non-recurring support, because providing support for recurring costs “would reduce the incentive for bidder's to create a self-sustaining business plan.”⁵⁷ MetroPCS argues

sumption should be manifested as part of the process by which high-cost support is distributed.

Independent Telephone and Telecommunications Alliance (“ITTA”) Comments at 3.

⁵⁴ California PUC Comments at 8. *See* Alaska Telephone Association (“ATA”) Comments at 5 (arguing that “[a] one-time grant of support will not provide sustainable telecommunications operations in high-cost areas”); Mid-Rivers Telephone Cooperative, Inc., Cable & Communications Corporation d/b/a Mid-Rivers Communications Comments at 4 (contending that “[t]he size of the proposed Mobility Fund at \$100-\$300 Million in one-time dollars will have very little overall effect on the wireless broadband coverage footprint of the nation, and NO effect on carriers’ ability to maintain that coverage into the future without the on-going operating support that is vital in high-cost areas”).

⁵⁵ T-Mobile Comments at 4.

⁵⁶ *Id.* (footnote omitted) (citing *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6809 (2010) (“*CAF NOI and NPRM*”) (App. C, Omnibus Broadband Initiative, The Broadband Availability Gap) (presenting a cost breakdown for a wireless network over 20 years that shows that 67.4 percent of total costs are attributable to ongoing costs)). *See* CTIA Comments at 6 (footnote omitted) (indicating that “the Commission staff’s own analysis has shown that wireless providers typically experience a significant proportion of total costs as ongoing operating expenses”); Telecommunications Industry Association Comments at 10.

⁵⁷ MetroPCS Communications, Inc. (“MetroPCS”) Comments at 10.

that recipients of Fund support “must share in the risk and must show a willingness to commit themselves and their own resources in the long term to the service of the now-unserved.”⁵⁸

MetroPCS’s concerns regarding creating the wrong incentives would be more appropriate if rural wireless networks were more fully developed in rural areas. Wireless competitive ETCs typically invest considerably more of their own funds than they receive in universal service support, with the universal service support often providing the additional increment necessary to go forward with facility deployments, network upgrades, or service improvement projects in rural and high-cost areas. As networks mature, funding for ongoing operations and maintenance increases. Accordingly, at this early stage of wireless network development, provision of support for ongoing operational expenses will not dampen competitive ETCs’ commitment to investing their own funds to expand their service offerings. A more likely outcome is that the failure to provide support for operational expenses would undercut any chance that the proposed Fund mechanisms could significantly assist mobile broadband deployment in any meaningful way.

b. Several Parties Agree That the Commission Lacks Legal Authority for Its Action in Commandeering Funding for the Mobility Fund.

In addition to the fact that the Commission has yet to classify mobile broadband service as a supported service pursuant to Section 254 of the Act,⁵⁹ parties support U.S. Cellular’s position that the Commission’s reservation of high-cost funding surrendered by Sprint and Verizon for future use is not legally permissible.⁶⁰

⁵⁸ *Id.*

⁵⁹ See Section II.C.1.a., *supra*. MetroPCS argues that “the Commission does not have the clear authority to repurpose the USF money and to use it to finance broadband services, which qualify as information services. The statutory authority for USF support clearly omits information services from the list of eligible services.” MetroPCS Comments at 4.

⁶⁰ See U.S. Cellular Comments at 16-18.

RCA, for example, argues that there is no statutory basis for reserving a pool of funds that are held for some unspecified use in the future, that the Commission's action in reserving the funds in the *Corr Wireless Order* was arbitrary and capricious because the Commission mistakenly treated Sprint and Verizon as continuing to be eligible for USF support even after they agreed to surrender their support, and that the Commission's action was procedurally deficient because the Commission failed to give the public any prior notice of its planned action.⁶¹ Further, MTPCS explains that, in addition to the legal problems associated with the Commission's action, there are strong policy reasons for redistributing surrendered funds to other competitive ETCs.⁶²

⁶¹ RCA Comments at 11-12. *See* MTPCS, LLC, d/b/a Cellular One ("MTPCS") Comments at 8 (arguing that the Commission does not have legal authority to reserve surrendered competitive ETC funds in any case in which remaining competitive ETCs have eligibility for funding in a state in excess of the capped universal service funding amount); NTCH, Inc., Comments at 1 (footnote omitted) (arguing that "[t]he process by which the Commission has effectively expropriated monies that were plainly due and owing to CETCs under the Commission's Interim Cap Order is highly suspect"); RTG Comments at 4 (footnote omitted) (observing that "the FCC does not have the authority to use any of the surrendered Verizon and Sprint support for a 'down payment' on future broadband reform"); USA Coalition Comments at 26 (explaining that the Commission's action in reserving funds surrendered by Sprint and Verizon has the unauthorized effect of changing universal service contributions from a permissible fee to an impermissible revenue-raising tax).

⁶² MTPCS argues that:

Relinquished support was paid in by customers, in compliance with and subject to the current universal service system, which allocated that support for competitive provision of services by carriers already certificated as eligible through a legal application process, in each state or before this Commission. If funding needed for eligible CETC lines in a state exceeds the capped amount in the state, removing funding and lowering the pool ceilings not only would contravene the legally permissible use of such funds, as retroactive rulemaking aimed at already-allocated funds, but also would fail to sustain provision of basic services to high-cost-area customers.

MTPCS Comments at 7 (footnote omitted).

3. Numerous Parties Present a Legion of Problems Associated with the Commission’s Proposed Single-Winner Reverse Auction Mechanism.

A host of commenters lay bare the serious flaws in the Commission’s proposal to use a single-winner reverse auction as the mechanism for awarding Fund support. The crux of these arguments—which parallel positions taken by U.S. Cellular in its Comments⁶³—is that a reverse auction mechanism would buy more trouble than it is worth, and that the Commission should not abandon its pro-competitive policies in favor of installing dominant service providers whose anti-competitive proclivities would need to be curbed through rigorous and costly regulatory oversight. Various of these arguments are discussed in the following paragraphs.

First, the use of single-winner reverse auctions would reduce mobile broadband competition. Such an outcome, which would be the virtually inexorable result of using single-winner reverse auctions, is antithetical to the Commission’s own policies. For example, the Commission recently declared that:

broadband deployment is a key priority . . . and the deployment of mobile data networks will be essential to achieve the goals of making broadband connectivity available everywhere in the United States. We also seek to foster competition [because] competition will help to promote investment and innovation and protect consumer interests.⁶⁴

There can be little disagreement that “competition results in lower prices, greater innovation, and better services for consumers”⁶⁵ and that “environments that lack competition among providers are, by contrast, typically less beneficial to consumers and create less inherent price discipline

⁶³ See U.S. Cellular Comments at 19-24.

⁶⁴ *Data Roaming Order and Notice*, 25 FCC Rcd at 4182-83 (para. 3), cited in USA Coalition Comments at 4.

⁶⁵ CTIA Comments at 7 (footnote omitted).

without regulation”⁶⁶ Inexplicably, however, the Commission has proposed to use an auction mechanism that would produce just such an environment. As RCA explains, “[w]hile a reverse auction might bring competition within an electronic auction room, it would not have a competitively neutral effect in the marketplace.”⁶⁷

Opponents of the Commission’s proposal correctly argue that it would tend to install monopoly service providers in rural and high-cost markets, it would suppress competitive entry, and it would threaten to inflict collateral damage even beyond these markets. RCA exposes a core flaw in the Commission’s proposal, explaining that “a single winner reverse auction essentially creates a government sanctioned and government funded monopoly in the relevant service area.”⁶⁸

USA Coalition explains that “subsidizing a single provider would prevent competition from ever developing in areas where support is necessary today[,]”⁶⁹ and that, “if the conditions in a particular market are such that subsidies are necessary to bring one provider to the area, limiting subsidies to a single provider would only increase market entry barriers and insulate the subsidized provider from competition.”⁷⁰ Finally, MTPCS observes that “[a] single carrier with

⁶⁶ *Id.* at 7-8.

⁶⁷ RCA Comments at 2.

⁶⁸ *Id.* See USA Coalition Comments at 12 (arguing that “by its own terms, any mechanism that limits support to a single carrier would ultimately award a regulatory monopoly to the supported provider, which is an anti-competitive result that is fundamentally inconsistent with the letter and the spirit of the Act”).

⁶⁹ USA Coalition Comments at 11.

⁷⁰ *Id.* See ATA Comments at 2 (arguing that “[w]ith support being proposed for only one entity, we envision situations where customers might be deprived of a choice of providers because of the support”); Flow Mobile Comments at 4-5; Sprint Comments at 2.

government support could decimate the competition across a large region. The government should not essentially choose a winner and losers in the marketplace.”⁷¹

Second, several parties agree with U.S. Cellular’s assessment that, because single-winner reverse auctions would remove competition as a means of disciplining auction winners’ market behavior, regulatory action would need to fill the breach in order to mitigate consumer harm.⁷² As USA Coalition explains, to guard against the harmful incentives created by single-winner auctions, “the Commission . . . would have to monitor subsidized providers and, in some cases, engage in intrusive and burdensome regulation regarding performance characteristics, service quality, and rates.”⁷³

RCA also expresses concern that use of a single-winner reverse auction mechanism would cause pressure for increased regulation, noting that “[t]he reduction or elimination of competition within the market will require the government to substitute extensive (and expensive) regulation for marketplace competition.”⁷⁴ Cellular South explains that reverse auctions prompt the need for greater regulation that would be aimed at preserving service quality (but that may not be effective):

The quality-focused buyer is better off not using reverse auctions to purchase products. To be sure, public buyers will try to safeguard quality standards through regulations and the threat of post-auction penalties, but those efforts are counter-balanced by the economic incentives of auction winners, who seek to bolster auction-eroded profits through a variety of tactics, including cost and quality reductions, that do not yield any savings for the buyer.⁷⁵

⁷¹ MTPCS Comments at 2.

⁷² See U.S. Cellular Comments at 21.

⁷³ USA Coalition Comments at 13 (footnote omitted).

⁷⁴ RCA Comments at 4.

⁷⁵ Cellular South Comments at 12 (footnotes omitted).

Verizon attempts to brush aside these concerns by painting a picture in which competition would not be driven out by single-winner reverse auctions. Instead, Verizon’s worry is that the Commission might “use Mobility Fund support as a back-door to affirmative rate regulation of wireless carriers.”⁷⁶ Verizon is confident that such regulation would not be necessary because “[i]t is likely that winning bidders will already have sufficient incentives to offer affordable rates in unserved areas similar to their rates in other areas, which in many cases are set on a national or regional basis.”⁷⁷

Verizon’s optimism flies in the face of logic. If a carrier is placed in a dominant position in a service area as a result of the Commission’s use of a single-winner reverse auction support mechanism, there is every reason to expect that the carrier—if left unfettered—will exploit this advantage. As William P. Rogerson, Professor of Economics at Northwestern University and formerly the Commission’s Chief Economist, has explained, “there will be a significant reduction in competition *within* the market for customers. . . . [W]ireless carriers operate in markets where the prices they charge . . . are largely unregulated. It is local competition among competing carriers that creates powerful ongoing incentives for firms to charge lower prices”⁷⁸ The removal of competition in local markets would also remove this pricing incentive. As Professor

⁷⁶ Verizon Comments at 20.

⁷⁷ *Id.*

⁷⁸ Ex Parte Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337 (Jan. 28, 2010), Enclosure, William P. Rogerson, “Problems with Using Reverse Auctions To Determine Universal Service Subsidies for Wireless Carriers,” Jan. 14, 2010 (prepared for U.S. Cellular) at 6-7 (emphasis in original), *quoted in* U.S. Cellular Comments at 19.

Rogerson further explains, “[i]n the absence of . . . powerful [market-based] incentives, government would need to turn to direct regulation of . . . prices”⁷⁹

Third, the Commission’s proposed single-winner reverse auctions would harm consumers by reducing the incentives of auction winners to enhance service quality. As NECA explains, “[r]everse auctions will . . . encourage bidders to ‘race to the bottom’ in terms of service quality and sustainability, a result inconsistent with the universal service objectives of the 1996 Act.”⁸⁰ As GVNW explains, regulation would be necessary to overcome this problem. “[T]he financial incentives for the winning bidder are to perform the work at a lower cost than was bid. In order to prevent this natural incentive to cut costs resulting in a degradation of service, some form of oversight by a regulatory authority would be required.”⁸¹

MTPCS cogently summed up the problem: “Reverse auctions would allow a well funded competitor with no interest in better serving rural areas to underbid a competitor with an interest

⁷⁹ *Id.* at 7, *quoted in* U.S. Cellular Comments at 21.

⁸⁰ National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Eastern Rural Telecom Association, Western Telecommunications Alliance (“NECA”) Comments at 4 (footnote omitted). *See* ATA Comments at 3 (contending that a reverse auction mechanism “is a way to minimize funding while providing a barely adequate (or less) quality of service”); Cellular South Comments at 12-13; ITTA Comments at 6 (explaining that “auction winners may be encouraged to restrict deployment of new technology in order to avoid interference with pre-determined business models that conform to the price of their bid. This is especially true where auctions are conducted only once per area, and where only cap-ex is provided.”); Public Interest Representatives Letter at 2 (noting that “reverse auction mechanisms . . . might encourage a ‘race to the bottom’ approach”).

⁸¹ GVNW Consulting, Inc. (“GVNW”) Comments at 8. GVNW also points to a further significant problem that would result from the Commission’s use of a single-winner reverse auction mechanism:

We anticipate that the Commission would intend to define a static set of supported services. Since any services outside of this definition will not qualify as supported services, the ability to evolve services and capabilities is seriously compromised as the auction winner may have no incentive to spend beyond the current service level. This seems contradictory to the administration’s goals and Congressional support present for an evolution to broadband networks.

Id. at 7.

in providing higher quality service to a market it knows well.”⁸² U.S. Cellular agrees with MTPCS’s argument that the Commission’s economic goal of “deploying service at the lowest possible cost”⁸³ should be weighed against other considerations, such as the value of a reasonable quality of service comparable with that provided in urban areas, and the value of redundant connections and “decent quality” equipment, “in order to ensure the reliability of access to public safety communications such as 911, E911, and telemedicine”⁸⁴

Fourth, single-winner reverse auctions are likely to hinder—not promote—carrier investment in the deployment of broadband facilities in rural and high-cost areas. U.S. Cellular agrees with NECA that this is a serious policy concern because, as NECA observes, “the unpredictability associated with reverse auctions is likely to inhibit network investment, a significant problem where large investments in long-lived infrastructure are required for reliable service in areas that would otherwise not be economical to serve.”⁸⁵

Fifth, there is a risk that the reverse auction mechanism would not be successful in delivering support to areas with the greatest need for assistance. Areas that lag behind in broadband deployment do so because it is extremely costly to construct and operate facilities in these areas. As ACS explains, however, “[r]everse auctions are only useful . . . in reducing universal service

⁸² MTPCS Comments at 4.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ NECA Comments at 4 (footnote omitted) (citing, *e.g.*, Missouri Small Telephone Company Group Comments, *CAF NOI and NPRM* Proceeding, filed July 12, 2010, at 8, arguing that “[r]everse auctions would discourage future investment . . . by making full recovery of capital expenses uncertain. The telecommunications industry requires significant long-term investments coupled with rapid deployment of new technologies. Reverse auctions would increase the risk of . . . investments in rural America by making recovery of future broadband investments unpredictable.”).

support, not actually advancing universal deployment of services. Allocation of funds based on lowest per-unit cost is diametrically opposed to the concept of targeting ‘areas that lag.’”⁸⁶

Sixth, a single-winner reverse auction would not be technologically neutral, in violation of the Commission’s policies.⁸⁷ U.S. Cellular agrees with USA Coalition’s analysis that advanced wireless services funded through the reverse auction mechanism “can be provided using a variety of different technologies and spectrum bands. Subsidizing a single provider . . . places a thumb on the scale in favor of that provider’s particular technology and spectrum band, even if the subsidized solution is not the most efficient solution.”⁸⁸ If the Commission decides to adopt a single-winner reverse auction, then the Commission itself would supplant the competitive marketplace in picking technology winners in connection with mobile broadband deployment.

Seventh, even though the object of reverse auctions is to reduce the level of universal service funding,⁸⁹ it is unlikely that employment of such a mechanism for the proposed Fund would actually reduce the overall size of the Commission’s universal service support. One reason for this, as RCA explains, is that the Commission’s proposal not to include operating expenditures means that “it may well be the case that reverse auction winners will seek additional funding to support their on-going operating expenses.”⁹⁰ RCA also argues that any potential reduction

⁸⁶ Alaska Communications Systems (“ACS”) Comments at 4.

⁸⁷ See *First Report and Order*, 12 FCC Rcd at 8802 (para. 49).

⁸⁸ USA Coalition Comments at 17. See ATA Comments at 3.

⁸⁹ See *CAF NOI and NPRM*, 25 FCC Rcd at 6666 (para. 19) (indicating that the Commission is contemplating a reverse auction mechanism that will “identify the provider that will serve the area at lowest cost”) (internal quotation marks omitted) (quoting Broadband Plan at 145).

⁹⁰ RCA Comments at 7.

in the level of support would be offset, in whole or in part, by “the cost of increased regulation, made necessary by the selection of a government funded monopoly provider”⁹¹

And, eighth, the use of a single-winner auction format would create incentives for anti-competitive behavior by auction participants. RTG notes, for example, that the action mechanism would provide some bidders with an incentive to submit bids that are below cost as a means of driving out competition, and that would ultimately result in the provision of inferior services.⁹²

The Commission attempted to soften the blow that reverse auctions would deal to marketplace competition by suggesting the adoption of two measures—collocation and data roaming—that it claims would “encourage possibilities for competition in the market for 3G or better services in the geographic areas in which we provide support.”⁹³

With regard to collocation, U.S. Cellular argued in its Comments that “there is little reason to be confident that the Commission’s establishment of collocation requirements would in fact introduce competition in service areas in which auction winners receive Fund support.”⁹⁴ Most parties addressing the issue agree that the Commission should not impose collocation requirements in conjunction with establishing the Fund.

⁹¹ *Id.*

⁹² RTG Comments at 7. *See* RCA Comments at 5:

[A] low-ball bidder could win the auction, and then be unable to complete construction of its proposed facilities. Alternatively, the low-ball bidder might complete construction, but be unable to sustain the operating expenditures required to provide high-quality service to customers. At the same time, the subsidized cost of construction for the winning bidder likely would have driven other competitors out of the market, or discouraged such competitors from entering the market. The end result, in all events, will be that customers will be stuck with poor service and/or high prices, without the ability to change providers.

⁹³ *Notice*, 25 FCC Rcd at 14728 (para. 36).

⁹⁴ U.S. Cellular Comments at 22-23.

Verizon, for example, concludes that, although “[r]easonable allowances for tower collocation would likely be acceptable to most bidders[,]”⁹⁵ nonetheless, “terms and conditions of collocation should be left to marketplace negotiations just as these matters are determined in other areas.”⁹⁶ In fact, the current mechanism, pursuant to which each carrier is required to serve all customers, either through its own facilities or through resale, is a superior way to ensure that excess facilities are not deployed within any particular high-cost area. In a particularly remote area that would not support construction of a second facility, a competing carrier has the option of reselling service on the first carrier’s network.

The Commission’s proposal to condition Fund support on a bidder’s provision of data roaming is a worthy suggestion because of the obvious benefits such ubiquity provides to consumers generally,⁹⁷ however, it will not introduce any more local competition into the specific unserved area, which is the reason the Commission gives for suggesting it in the first place. Furthermore, as U.S. Cellular cautioned in its Comments, such data roaming requirements can hardly be sufficient to overcome the substantial anti-competitive effects of using Fund support to subsidize a single wireless carrier in rural and high-cost markets.⁹⁸ Moreover, there is support in the record for U.S. Cellular’s argument that the Commission should simply adopt data roaming obligations across the board for all mobile service providers independent of the creation of a Mobility Fund.⁹⁹ RCA, for example, argues that, “[r]egardless of whether the FCC adopts the

⁹⁵ Verizon Comments at 19.

⁹⁶ *Id.* See AT&T Comments at 15; ITTA Comments at 13. *But see* PCIA–The Wireless Infrastructure Association Comments at 1.

⁹⁷ See MetroPCS Comments at 5-6, 14; Sprint Comments at 7; T-Mobile Comments at 12.

⁹⁸ U.S. Cellular Comments at 23.

⁹⁹ *Id.* (citing *Data Roaming Order and Notice*).

Mobility Fund, the FCC must promptly move forward to ensure automatic data roaming for mobile service providers. . . . [D]ata roaming is the fundamental building block for bringing ubiquitous broadband to rural America.”¹⁰⁰ U.S. Cellular strongly agrees.

Verizon opposes any imposition of data roaming requirements on winning bidders in Fund auctions, asserting that information submitted in the Commission’s pending data roaming proceeding “makes clear that the market is working, and carriers that want data roaming agreements are able to negotiate acceptable terms.”¹⁰¹ Verizon’s reading of the record in the data roaming proceeding overlooks numerous instances in which carriers and other parties have advised the Commission of difficulties encountered in obtaining data roaming agreements with the large national wireless carriers.¹⁰² Notwithstanding Verizon’s blinkered reading of the data roaming record, the fact is that many small, rural, and mid-tier carriers “are not in a position to obtain roaming agreements with reasonable terms and rates from the large national carriers in the absence of a data roaming mandate.”¹⁰³

¹⁰⁰ RCA Comments at 13. *See* RTG Comments at 14.

¹⁰¹ Verizon Comments at 19-20 (footnote omitted). *See* AT&T Comments at 15.

¹⁰² *See, e.g.*, Cellular South, Inc., Comments, WT Docket No. 05-265, filed June 14, 2010, at 21; Cellular South, Inc., Reply Comments, WT Docket No. 05-265, filed July 12, 2010 (“Cellular South Reply”), at 18 & n. 68 (citing comments filed by Blooston Rural Carriers, Cincinnati Bell Wireless, MetroPCS (ex parte filing), NTELOS, Organization for the Promotion and Advancement of Small Telecommunications Companies and National Telecommunications Cooperative Association, RCA, and SouthernLINC); *id.* at 19 (indicating that both Sprint and T-Mobile are advocating the adoption of a data roaming mandate as a means of protecting and enhancing their competitive interests).

¹⁰³ Cellular South Reply at 19 (footnote omitted).

One other suggestion for promoting competitive outcomes, made in response to the *Mobility Fund Notice*, should also be addressed. Specifically, T-Mobile proposes that the Commission should cap the total amount of support that could be awarded to any single bidder. T-Mobile argues that, “in order to maximize the competitive and efficiency benefits of a reverse auction, the cap would have to be low enough to prevent one or two carriers from dominating the auction, thereby guaranteeing a wider range of bidders, but not so low as to preclude economies of scale.” T-Mobile Comments at 8 (footnote omitted). Imposition of such a cap would likely be superfluous, however, given the small amount of overall funding that

Finally, NCTA suggests that the Fund should simply be viewed as an experiment that “provides an excellent opportunity for the Commission to test the use of reverse auctions for distributing universal service support in the United States for the first time.”¹⁰⁴ NCTA would have us view the Fund as a learning experience that would “enable the Commission to learn lessons about how the market reacts to competitive bidding without the disruptive effect that these methods potentially could create if employed on a much wider scale.”¹⁰⁵

U.S. Cellular opposes NCTA’s suggestion. Competitive ETCs should not be made the subjects of Commission laboratory experiments, so that the Commission can observe the extent to which competition is harmed, competitive entry is depressed, carrier investment is curtailed, service quality deteriorates, auction winners increase their rates to consumers, and the Commission’s regulation must be expanded in an attempt to stem the tide of these consumer harms and anti-competitive outcomes.

While NCTA suggests that the potential disruptive effect of the Commission’s experiment would be minimized by the small scope of the Fund proposal, this assumption would prove to be little comfort to competitive ETCs that would be affected by this disruption. As U.S. Cellular and other parties have suggested, a better policy would be for the Commission to shelve its Fund proposal and instead directly tackle the task of transitioning universal service support from legacy voice networks to broadband networks.¹⁰⁶

the Commission contemplates for the Fund. If the level of funding were to increase, then T-Mobile’s proposal might warrant further consideration.

¹⁰⁴ National Cable and Telecommunications Association (“NCTA”) Comments at 7.

¹⁰⁵ *Id.* (footnote omitted).

¹⁰⁶ See Section II.A., *supra*.

4. The Commission Should Use a Cost Model To Disburse Mobility Fund Support.

Verizon argues that a reverse auction mechanism would be an efficient means of addressing problems purportedly associated with universal service high-cost support mechanisms currently used to disburse funding to competitive ETCs.¹⁰⁷ This argument not only ignores all the problems inherent in reverse auction mechanisms, but also overlooks the fact that there is an option better than reverse auctions for use in disbursing Fund support.

Specifically, the use of a cost model would provide numerous advantages while avoiding the long list of problems that the use of a reverse auction would introduce. Although Verizon claims that competitive bid contracts have been used by government entities to purchase “[m]any important goods and services, such as critical product development work for military equipment[,]”¹⁰⁸ this experience has little application in the context of disbursing universal service support, and U.S. Cellular agrees with RCA that “[c]ost models are the best mechanism for achieving the statutory goal of reasonably comparable services at reasonably comparable rates in rural areas.”¹⁰⁹

¹⁰⁷ See Verizon Comments at 5-6.

¹⁰⁸ *Id.* at 6.

¹⁰⁹ RCA Comments at 14. A recent Commission staff study provides a modest endorsement of reverse auctions as a mechanism for universal service support disbursements, based on a review of “minimum subsidy” auctions used in Chile and India to support universal service programs. See Irene S. Wu, *Maximum Impact for Minimum Subsidy: Reverse Auctions for Universal Access in Chile and India*, FCC Staff Working Paper 2 at ii (Oct. 2010) (“Working Paper 2”) (noting that “[w]hile there can be drawbacks to such auctions, the advantages are that they can be quicker and more transparent than other approaches”). Some of the references cited in Working Paper 2 bear out the conclusion that there are in fact significant drawbacks. Scott Wallsten, for example, indicates that low ball bidding was a serious problem in Australia, Chile, and India, with instances in which carriers submitted zero-amount bids (or even below zero bids) as a means of protecting monopolies and discouraging potential competitors from seeking to enter markets. See Cellular South Comments at 8 & nn. 42, 43 (citing Scott Wallsten, *Reverse Auctions and Universal Telecommunications Service*, 61 FED. COMM. L.J. 373, 375-84 (2008); Working Paper 2 at 14, Table 5)).

As U.S. Cellular has indicated, a cost model would promote competitive and technological neutrality, provide appropriate investment incentives, increase competition, ensure use of Fund support in a fiscally responsible manner, and eliminate the need for a regulatory regime to review costs and expenses and regulate rates.¹¹⁰ Moreover, RCA explains that the use of a cost model would avoid many of the pitfalls inherent in a reverse auction approach. “Under a cost model, in contrast to a reverse auction mechanism establishing a monopoly provider, no carrier will have a captive market. Instead, carriers will have to compete on price and service, and meet customer demands for new and improved service.”¹¹¹ RCA concludes that use of a cost model would eliminate any need for intensive government regulation, and would enable competitive markets to provide Fund recipients with incentives “to provide the best service at the lowest prices.”¹¹²

D. Instead of Establishing the Mobility Fund as Proposed, the Commission Should Take Other Steps To Promote Broadband Deployment in Rural and High-Cost Areas.

The record supports U.S. Cellular’s view that the Fund proposal is not sufficiently robust to support mobile broadband deployment, and, therefore, the Commission should devise a more appropriate plan to ensure the ubiquitous availability of mobile broadband services. U.S. Cellular has proposed the repurposing of the high-cost support currently flowing to wireline voice networks, and the support provided for mobile voice services, into separate funds that would sup-

¹¹⁰ See U.S. Cellular Comments at 26.

¹¹¹ RCA Comments at 15.

¹¹² *Id.*

port ongoing investments and operating expenses relating to fixed and mobile broadband infrastructure and services, respectively.¹¹³

AT&T and CTIA, for example, acknowledge the need for the Commission to develop a comprehensive plan to provide sufficient support for ubiquitous mobile broadband service. AT&T argues that, if the Commission adopts its Fund proposal, it will still be necessary for the Commission to have a plan for eliminating the mobility gap after the Fund has been implemented.¹¹⁴ CTIA concludes that the development of a comprehensive plan is imperative “so that the availability of mobile broadband expands and does not decrease.”¹¹⁵ U.S. Cellular shares the concerns expressed by AT&T and CTIA, and renews its request that the Commission move expeditiously to consider U.S. Cellular’s two-fund proposal.

There also is support in the comments for U.S. Cellular’s view that the Commission, instead of experimenting with an underfunded and flawed Mobility Fund proposal, should immediately confirm that high-cost support may be used to invest in networks that provide both voice and broadband services.¹¹⁶

¹¹³ See U.S. Cellular Comments at 27 (citing U.S. Cellular Comments, *CAF NOI and NPRM* Proceeding, filed July 12, 2010, at 29).

¹¹⁴ AT&T Comments at 3. AT&T “recommends that the Commission seek comment on a permanent fund to support mobile broadband service” as part of the CAF rulemaking. *Id.* See CTIA Comments at 13 (footnote omitted) (arguing that “[i]f the Commission does not intend to provide sufficient support through the Mobility Fund for ubiquitous mobile services, as the NPRM suggests, then the Commission must articulate an alternative plan for doing so”).

¹¹⁵ CTIA Comments at 15.

¹¹⁶ See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11322 (para. 200) (2001), *cited in Notice*, 25 FCC Rcd at 14729 (para. 40 n.50).

U.S. Cellular advocated in its Comments that the Commission should declare that all ETCs may use existing universal service disbursements to construct networks (specifically including fiber, fixed wireless, 3G, and 4G mobile wireless broadband networks) that may be used to provide both voice and data services.¹¹⁷ USA Coalition agrees with this approach, noting that it has been a proponent of Commission action “to facilitate mobile broadband deployment by explicitly permitting wireless carriers to use existing high cost support funds for broadband deployment.”¹¹⁸ USA Coalition contends that, “by recognizing that wireless networks are an integrated facility capable of providing *both* supported telecommunications services *as well as* information services, the Commission facilitates the evolution of wireless networks and removes an impediment to further wireless broadband deployment.”¹¹⁹

E. Support from the Proposed Fund Should Be Available To Improve Network Coverage and Service Quality in Areas Already Receiving Some Level of Advanced Broadband Service.

Although the record in this proceeding presents a convincing, fact-driven case that the Mobility Fund mechanism should not be adopted as proposed by the Commission, U.S. Cellular recognizes that the Commission may nonetheless decide to press forward with the Fund. If so, then the Commission should also decide to make funding available to enable wireless carriers to knit together networks in areas already receiving some degree of 3G broadband service, to enable these carriers to reach isolated areas and improve service quality.

Given the small amount of funding the Commission proposes to make available for the Fund, an efficient use of this funding would be to support upgrades of existing 3G services and

¹¹⁷ See U.S. Cellular Comments at 29-30.

¹¹⁸ USA Coalition Comments at 4.

¹¹⁹ *Id.* (emphasis in original).

infrastructure. If unserved areas are given funding priority, very little would be accomplished, because the level of support proposed by the Commission for the Fund is inadequate to carry out significant levels of cell site deployment.

While U.S. Cellular does not disagree with parties who point to the importance of bringing broadband to unserved areas, the fact is that the proposed Fund is not a realistic vehicle for making progress in such an endeavor. U.S. Cellular explained in its Comments that the Commission's proposed targeting of support to unserved areas is too narrow, because it would risk overlooking the need to provide support to ensure that the quality of services available in areas in which current generation services have already been deployed is maintained and enhanced.¹²⁰

Verizon does not agree with these concerns, arguing that “[u]sing targeted, one-time funding to upgrade wireless infrastructure in certain areas [*i.e.*, “a few isolated areas where the 3G (or better) market has not yet reached”] as a springboard to launch the [Commission's] larger broadband agenda . . . makes sense.”¹²¹ Verizon's argument might be more persuasive if the Commission were proposing a much higher level of support for the Fund. As USA Coalition has pointed out, however, “the Mobility Fund, as proposed, would likely increase the total number of cell sites in the United States by only 0.08 to 0.3 percent, which would have a negligible impact on the wireless broadband gap.”¹²²

Given the limited amount of funding that would be available under the Commission's Fund proposal, it would be more effective to use this funding to upgrade and extend existing fa-

¹²⁰ See U.S. Cellular Comments at 8.

¹²¹ Verizon Comments at 4. See AT&T Comments at 5 (contending that “the Commission can be assured that it will get ‘the biggest bang for the buck’ by directing support to areas where no provider has concluded that there is an economic case to deploy mobile wireless facilities absent federal funding”); NCTA Comments at 5.

¹²² USA Coalition Comments at 23-24. See the discussion in Section II.C.2.a., *supra*.

cilities in order to bring service to these remote areas, rather than to use the funding to build a limited number of new cell sites in unserved areas. U.S. Cellular agrees with MTPCS that there are advantages to be gained from targeting Fund support for use in underserved areas, including the fact that funding underserved areas “enables broadband upgrades to existing infrastructure, and minimizes the time-consuming and costly acquisition, zoning and construction process for new sites. The result will be faster deployment of upgraded services.”¹²³

MetroPCS favors limiting funding to unserved areas because doing so would avoid adverse impacts in competitive markets. Funding “should not be used to enable one competitor to gain a competitive advantage by using government money to pay for facilities that the carrier uses to compete with an existing unsubsidized service provider in an underserved market.”¹²⁴ MetroPCS need not be concerned. Service providers that operate in underserved markets, but that do not receive universal service support, typically focus their marketing and deployment of facilities in the more densely populated areas of these markets.

In contrast, U.S. Cellular and other competitive ETCs generally have an obligation (imposed by the regulatory authorities that granted their ETC designations) to utilize universal service support to deploy infrastructure throughout their service areas, including the more remote areas with lower population densities. Notwithstanding the fact that U.S. Cellular makes its own substantial capital investments to deploy network facilities in areas for which it receives universal service support, the pace of this build-out in the more remote and higher-cost areas is also affected by the level of universal service support available. It frequently is the case that additional increments of universal service support are necessary to establish a viable business case

¹²³ MTPCS Comments at 2.

¹²⁴ MetroPCS Comments at 8.

for the deployment of infrastructure in these areas. This support is not used to gain a competitive advantage over carriers that do not receive universal service support, because these carriers typically have no interest in serving these more remote, higher-cost areas.

III. CONCLUSION.

The Commission now has before it an extensive record that documents in detail the compelling reasons for concluding that the Mobility Fund proposal is subject to significant legal problems, and also would be a poor means of attempting to promote the Commission's goals for mobile broadband deployment and for the enhancement of competition in the mobile wireless marketplace.

For these reasons, U.S. Cellular respectfully urges the Commission not to adopt its proposal, and instead to focus its time and resources on developing new support mechanisms for

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fixed and mobile broadband, together with a suitable transition mechanism that avoids stranding infrastructure used to provide mobile voice services and also ensures fair and equitable treatment of competitive ETCs during the transition.

Respectfully submitted,

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