

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

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 Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**REPLY COMMENTS  
OF THE  
RURAL TELECOMMUNICATIONS GROUP, INC.**

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Date: May 23, 2011

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## SUMMARY

The Federal Communications Commission's plan to phase-out ongoing support for competitive eligible telecommunications carriers ("CETCs") without substitute support from a well developed and functioning Connect America Fund ("CAF") in place is a formula for disaster for all Americans who live, work and travel in rural America. As demonstrated by numerous initial comments in this proceeding, the Commission's proposals, if adopted in their current form, will have a devastating effect on rural communications carriers which would, in turn, eviscerate future rural economic development.

The CAF mechanisms proposed by the Commission must comply with Sections 214(e) and 254 of the Communications Act, which limit the class of entities that may receive universal service support to eligible telecommunications carriers ("ETCs"). The Communications Act requires ETCs to be "telecommunications" carriers and "common carriers," and accordingly, the FCC lacks the authority to provide high-cost support to any non-telecommunications carrier.

The Commission must continue to support the existing provision of wireless services in rural areas because mobile broadband not only contributes to economic growth and improves quality of life, but is also a key element in any public safety plan. RTG opposes the proposal to eliminate CETC support in less than ten years as a violation of the principle of competitive neutrality. Additionally, the Commission must recognize there will be situations in which exceptions or waivers of the CETC phase out rules or other reforms are warranted.

RTG and many commenters agree there are many dangers associated with the use of reverse auctions to determine high-cost support. Accordingly, if reverse auctions are adopted, they should be structured in a way that results in support being targeted to unserved areas based on qualitative factors. Specifically, the Commission should provide support to both fixed and

mobile broadband, and ensure that the CAF provides specific, predictable, and sufficient support. This includes support for ongoing costs for recipients of funding under Phase I of the CAF and under any mechanisms created within a long-term CAF. Ongoing support, based on carriers' actual costs, will ensure the continued provision of wireless service in rural areas and the ability of small, rural carriers to leverage existing 3G networks and make a jump to 4G.

Finally, the Commission must begin considering how it will shift the contribution methodology for its proposed CAF. Many commenters agree the current contribution methodology is not only unsustainable, but also outdated, and should be reformed to include a broader base of contributors. RTG implores the Commission, as it transitions to providing support for broadband services, to act in the public interest to ensure that no harm comes to rural Americans who currently rely on USF support for mobile telecommunications services.

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To: The Commission

**REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group, Inc. (“RTG”),<sup>1</sup> by its attorneys, hereby submits its reply comments in response to the comments filed in the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“USF NPRM”)<sup>2</sup> in the above-captioned proceeding.

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<sup>1</sup> RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG’s members have joined together to speed delivery of new, efficient, and innovative communications technologies to the populations of remote and underserved sections of the country. Many of RTG’s members are competitive eligible telecommunications carriers. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG’s members serves less than 100,000 subscribers.

<sup>2</sup> *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of

RTG is concerned that many of the commenters fail to understand basic rural economics. Providing wireless service in large geographic areas with a low population density costs more per person than providing wireless service in smaller highly populated geographic areas. Support beyond the revenue generated from retail pricing plans offered to rural consumers is necessary to ensure that at least one mobile wireless network is functional in rural areas. The Commission's plan to phase-out ongoing support for competitive eligible telecommunications carriers ("CETCs") without substitute support from a well developed and functioning Connect America Fund ("CAF") in place is a formula for disaster for all Americans who live, work and travel in rural America.

## **I. Introduction**

While the FCC claims that it is "not proposing to eliminate universal service support for communications services in high-cost areas of the country; rather, [it is] proposing to improve the efficiency and effectiveness of that support,"<sup>3</sup> information submitted in numerous comments shows that Commission proposals would have a devastating effect on companies operating in rural areas.<sup>4</sup> Especially disconcerting to RTG and many others is the Commission's near term proposal to eliminate support in its entirety for wireless CETCs.<sup>5</sup> Such a proposal goes beyond mere

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Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) ("USF NPRM").

<sup>3</sup> *Id.* at ¶ 15.

<sup>4</sup> *See* Comments of NECA, NTCA, OPASTCO, WTA at 3 (explaining that a number of the FCC's proposals will dramatically undermine the provision of universal service in rural areas and may cause the quality of broadband services in rural areas to fall significantly below the rest of the nation); *See also* Comments of Moss Adams, LLP at 15 (concluding that current FCC proposals will result in many rural carriers being driven out of business); Comments of Alexicon Telecommunications Consulting at 22 (stressing that if the NPRM proposals are implemented as is, billions of tax dollars loaned to rural carriers by RUS and private lenders will be lost through defaulted loans).

<sup>5</sup> *See generally* Comments of U.S. Cellular Corporation; Comments of the Rural Cellular Association (RCA); Joint Comments of Cellular One and Viaero Wireless; Comments of CTIA.

“efficiency” -- it eliminates support entirely to CETCs who continue to need the support to operate wireless businesses in high cost areas. If this support is eliminated, some RTG members will not be able to continue to operate beyond a few months. RTG’s members will also not be able to further invest in their current 2G and 2.5G networks to build 3G and beyond. Other RTG members who have already built 3G networks will not be able to advance those 3G networks to 4G networks without ongoing support.

As stated in its Comments, RTG members are extremely concerned that the radical changes proposed in the USF NPRM will have a detrimental effect on the continued availability of wireless service in rural areas, which will harm employment in rural areas and slow the economic recovery process. RTG’s members collectively employ thousands of people in rural areas and support the ongoing business operations of numerous industries that employ hundreds of thousands of people across rural America. These rural Americans will be impacted negatively if wireless services are taken away or allowed to atrophy as the rest of the country continues to receive even more advanced services.

Rural consumers rely heavily on mobile services, due to the longer distances they drive between school, work, home, medical facilities and points of purchase. For many rural consumers, it is the small, rural wireless carrier that provides the most robust coverage in high-cost rural areas. As noted by several commenters, current high-cost support has enabled many small, rural mobile operators to build out robust networks beyond the cities and highways served by nationwide carriers. Further, the agricultural industry, alternative energy industry, and oil and natural gas extraction industries all rely on robust rural wireless networks and mobile machine to machine applications to utilize our nation’s natural resources to keep the entire nation sustained. The potential harm to these industries which primarily operate in rural areas, the potential job loss in rural America and the risk of losing mobile broadband services in these areas makes the FCC’s

decision to remove ongoing support for CETCs short-sighted and untenable for rural Americans.<sup>6</sup>

These harms will have a contaminating effect on all Americans. A lack of mobile communications will increase the cost of doing business in the agriculture and energy industries, which will result in higher costs across the United States, including urban areas, for food and energy.<sup>7</sup>

As thoroughly demonstrated below, the FCC should allow for an extended transition period to a market-based mechanism that will provide support for mobile broadband using the mobile broadband carrier's actual costs on an ongoing basis.<sup>8</sup> In addition, the Commission should expand funding distributed from the CAF Phase I fast track program to cover ongoing costs. RTG continues to believe that that the use of reverse auctions to determine high-cost support is contrary to the public interest. If the Commission chooses to adopt such auctions, RTG and other

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<sup>6</sup> For example, Panhandle Telecommunication Systems, Inc. (PTSI), a wireless carrier serving roughly 6,000 square miles of rural Oklahoma, utilizes high-cost USF support to provide 3G to its subscribers using 33 cell sites. However, its competitor, Verizon Wireless, has only 8 cell sites because it refuses to commit to providing service outside of any major population centers and/or highways. PTSI stresses that a loss of high-cost USF support would cause a degradation of its network because of the economic need to shut down certain cell sites that would be rendered financially unviable. *See* Letter from Kenneth C. Johnson, Counsel for Panhandle Telecommunication Systems, Inc., to Marlene Dortch, Secretary, FCC (May 17, 2011) (*Panhandle Ex Parte*).

<sup>7</sup> Mobile broadband can improve the efficiency and productivity of a number of agricultural activities in rural areas. For example, “[f]armers, particularly those with smaller operations or in more remote locations, can materially benefit from real-time access to weather and crop reports and to databases of local and national agricultural extension services. [They] can be warned if there is a heightened risk of a plant blight, a livestock disease, or an insect infestation; examine the problem; and know immediately what they need to do to address it.” FCC, *Bringing Broadband to Rural America, Report on a Rural Broadband Strategy*, ¶ 18 (May 22, 2009); *See also Panhandle Ex Parte*.

<sup>8</sup> *See* Comments of RCA at 20 (insisting the Commission must not prematurely withdraw existing support for voice services).

commenters agree that they should be targeted to unserved areas and based on qualitative factors.<sup>9</sup> As RTG stated in its comments,<sup>10</sup> the long-term framework of the CAF must provide specific, predictable and sufficient support and the fund should be expanded through required contributions from broadband service providers.

## **II. The CAF Mechanisms Proposed by the Commission Must Comply With Sections 214(e) and 254 of the Communications Act.**

Many commenters took issue with the legality of the FCC's proposed reform measures.<sup>11</sup> The USF NPRM's proposal to eliminate current high-cost universal service support that flows to CETCs on a technology neutral basis<sup>12</sup> violates Sections 254 and 214(e) of the Communications Act of 1934, as amended (the "Act"). The FCC proposal to use such high-cost support that used to flow to both incumbent LECs and CETCs in order to fund the broadband-only CAF<sup>13</sup> is clearly beyond the FCC's authority granted in Sections 214(e) and 254 of the Act.<sup>14</sup>

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<sup>9</sup> See Comments of State Members of the Federal-State Joint Board on Universal Service at 69 (recommending a separate mobility fund where a support allocation factor might be a state's unserved mileage along state and federal highways).

<sup>10</sup> Comments of RTG at 21.

<sup>11</sup> Commenters took issue with the lawfulness of supporting broadband classified as an information service, the legality of the proposed elimination of current high-cost USF support for CETCs, and the Commission's authority to utilize reverse auctions. See generally Comments of Cellular South; Comments of RCA; Comments of the Rural Telecommunications Carriers Coalition; Comments of National Association of Regulatory Utility Commissioners (NARUC); Comments of National Association of State Utility Consumer Advocates; Comments of the Indiana Utility Regulatory Commission.

<sup>12</sup> USF NPRM at ¶ 246.

<sup>13</sup> *Id.* at ¶ 18.

<sup>14</sup> Section 254(e) of the Act limits the class of entities that may receive universal service support to eligible telecommunications carriers designated under Section 214(e). See 47 U.S.C. 254(e). Pursuant to Section 214(e) of the Act, eligible telecommunications carriers must be "telecommunications" carriers and "common carriers." See 47 U.S.C. 214(e).

Many commenters agree that Section 254(e) of the Act limits the class of entities that may receive universal service support to eligible telecommunications carriers (“ETCs”) designated under Section 214(e).<sup>15</sup> As RTG points out in its Comments, Section 214(e) of the Act requires eligible telecommunications carriers to be “telecommunications” carriers and “common carriers.”<sup>16</sup> Accordingly, the FCC lacks the authority to provide high-cost support to non-telecommunications carriers, and its proposal to provide support to non-telecommunications carriers oversteps its universal service authority outlined in Section 214(e) of the Act. Moreover, the Commission acknowledges the Communications Act limits universal service support to ETCs when it asks whether it can “forbear from applying sections 254(e) and 214(e), which restrict universal service support to ETCs.”<sup>17</sup> The Commission cannot use forbearance in this situation. The Commission’s forbearance power applies to regulatory burdens imposed on carriers and concerns the promotion of “competition in the provision of telecommunications service” and “regulatory flexibility.”<sup>18</sup> Sections 214(e)(1) and 254(e) place a limitation on the Commission’s power to distribute universal service support—it does not place a regulatory obligation on carriers that could be lifted through forbearance. Thus, the use of forbearance proposed in the NPRM would act as agency repeal of a statutory limitation on agency powers.<sup>19</sup> Therefore, the FCC should comply with the Act and ensure that support flows to eligible *telecommunications* carriers as Congress intended.

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<sup>15</sup> See Comments of State Members of the Federal-State Joint Board on Universal Service at 87; Comments of the Rural Telecommunications Carriers Coalition at 11; Comments of NARUC at 3.

<sup>16</sup> RTG Comments at 8 (citing 47 U.S.C. § 214(e)).

<sup>17</sup> USF NPRM at ¶ 72.

<sup>18</sup> 47 U.S.C. § 160.

<sup>19</sup> See Comments of the State Members of the Federal-State Joint Board on Universal Service at 87.

As pointed out by RTG and others,<sup>20</sup> the FCC's proposals also violate the long established principle of competitive neutrality.<sup>21</sup> The principle of competitive neutrality requires that CETCs be on equal footing as their incumbent ETC counterparts and that any adjustment in support for CETCs and incumbent ETCs utilize a neutral timeframe. As such, any proposal to phase-down high-cost support for CETCs at a faster rate than for incumbent ETCs would violate the principle of competitive neutrality, as would any proposal to transition incumbent ETC support faster than CETC support. Accordingly, both ETC and CETC support must transition on the same ten year time frame.

Additionally, many commenters disagree with the FCC's proposal to ratchet down CETC support over a five-year period at 20 percent a year until identical support is eliminated because it violates the principle of competitive neutrality by singling out competitive carriers, most of whom are wireless carriers, as unworthy of high-cost support.<sup>22</sup> These commenters have noted that adoption of the Commission's suggestions to presumptively reduce the current competitive ETC support cap and accelerate the phase down of competitive ETC support would further violate the

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<sup>20</sup> See Comments of RCA at 3 (arguing that the Commission must ensure any new rules are competitively and technologically neutral); See also Comments of Cellular One and Viaero Wireless at 3 (arguing that the Commission's proposals are not competitively neutral and may hinder mobile broadband); Comments of the Telecommunications Industry Association at 7 (calling for a CAF that is technology-agnostic and competitively neutral).

<sup>21</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8799-8806, ¶ 43-55 (1997).

<sup>22</sup> See Comments of United States Cellular Corporation at 7 (asserting that a unilateral phase-down of existing high-cost support received by competitive ETCs would usher in an uncertain future for the deployment of wireless broadband networks throughout rural America); See also Comments of the Rural Cellular Association at 20 (urging the Commission to not prematurely withdraw existing support for voice services in high-cost areas until an alternative funding mechanism is firmly established).

principle of competitive neutrality.<sup>23</sup> RTG and others oppose this discriminatory treatment of CETCs.<sup>24</sup>

**III. To Ensure Rural America’s Ability to Continue Receiving the Important Benefits of Mobile Broadband, the Commission Must Continue to Support the Existing Provision of Wireless Services in Rural Areas.**

**A. Mobile Broadband is not Only a Powerful Economic Tool; It Plays a Critical Role in Public Safety.**

In a speech at TIA 2011 in Dallas last week, the FCC Chairman proclaimed, “Mobile broadband drives business innovations that...grow our economy,” and “lead[s] to important and valuable social innovations.”<sup>25</sup> Mobile broadband not only contributes to economic growth and improves quality of life, mobile broadband is a key element in any public safety plan. However, if the Commission adopts its proposals to abandoning ongoing support for CETCs, most of whom are mobile providers, the FCC will be abandoning rural consumers and businesses that increasingly rely on mobile broadband.<sup>26</sup> RTG urges the Commission not to lose sight of the demonstrated economic and public safety benefits of basic mobile service and E911 location technology in rural areas. Without ongoing support for wireless carriers to build out remote rural areas, residents and urban travelers in these areas will be without even the most basic access to emergency services.<sup>27</sup> As RTG previously demonstrated, rural wireless carriers play a critical role in supporting rural

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> FCC Chairman Julius Genachowski, Prepared Remarks to Telecommunications Industry Association, Dallas, TX, p.1 (May 19, 2011) (Genachowski TIA Remarks).

<sup>26</sup> Comments of RTG at 7.

<sup>27</sup> The FCC noted in its USF NPRM that approximately half of all 911 calls today are made from mobile phones. USF NPRM at ¶ 4.

public safety officials.<sup>28</sup> The harm that will befall public safety in rural America if CETCs are denied ongoing support will be immeasurable and must not be discontinued.

**B. The Commission Should Retain CETC Support Beyond the NPRM's Proposed Transition Period.**

RTG opposes the idea of eliminating CETC support in less than ten years as suggested by several of the commenters.<sup>29</sup> Those commenters who support a longer transition understand the importance of providing for a transition over at least ten years given the highly capital intensive nature of wireless telecommunications expenditures. Those commenters who have proposed a phase-out period of five years or less typically only operate within town centers in rural areas, if at all, and simply do not understand the fact that rural carriers use wireless network equipment and infrastructure for longer time periods than their urban counterparts and plan their capital expenditures according to these sound accounting principles. Carriers have based their business plans on the current system and will require a sufficient amount of time under any staged transition to adjust to new support structures. Five years is simply not enough time.

Recipients of Phase I CAF funding will require ongoing support. Permanent, ongoing support is vital to the provision of mobile broadband in high-cost rural areas. As many commenters have noted, a one-time injection of funding through the Commission's proposed Phase I CAF fast track program is helpful, but the proposal to ultimately phase out support does not take into account the ongoing costs of capital upgrades needed to provide essential mobile

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<sup>28</sup> See RTG Comments at 7. Similarly, the FCC has stated that mobile broadband has the potential to revolutionize emergency response. FCC News Release, *New York City Unveils First-in-The Nation Public Safety System; Enabled Mobile Devices Will Receive Emergency Alerts at Critical Moments with Potentially Life-Saving Messages* (May 10, 2011).

<sup>29</sup> See Comments of the National Cable and Telecommunications Association at 5 (calling for the phase-out of competitive ETC support in three years); See also Comments of AT&T at 90 (recommending the Commission phase down all high-cost support within five years).

services in high-cost regions of the country.<sup>30</sup> Additionally, projects undertaken using funding from programs that provide one-time support for broadband infrastructure, such as the FCC's proposed mobility fund or President Obama's wireless innovation initiative, will require ongoing support to be successful.

#### **IV. For Any CAF Mechanisms Adopted, The FCC Should Anticipate Liberal Use of a Waiver and Exception Process.**

The FCC suggests a few possible situations in which an exception or a waiver of the CETC phase out rule would be warranted such as if a CETC makes an affirmative showing that "its costs and revenues would not permit provision of service to a particular service territory, absent continued competitive ETC support, and that no other wireless carrier serve[s] that territory."<sup>31</sup> RTG and others agree with the FCC's suggestion that there are situations in which an exception or a waiver of the CETC phase out rule would be warranted.<sup>32</sup> However, RTG urges the Commission to consider the same type of waiver and exception process for any CAF distribution mechanisms it may adopt. Other commenters support a broad availability of a waiver or exception process for any long-term CAF mechanisms.<sup>33</sup>

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<sup>30</sup> See Comments of CTIA at 9-10 (arguing that to meet the "reasonably comparable" provisions of Section 254, universal service funding for mobile broadband services must be sufficiently robust which requires a commitment to providing ongoing support in unserved areas and areas that would not receive service but for support); See also Comments of RICA at 15 (explaining that transitioning CETCs to cost-based support will provide ongoing support necessary to sustain broadband service in rural areas); Comments of Mobile Future at 8-9 (noting that substantial and on-going investment is needed to achieve ubiquitous mobile broadband coverage because one-time support is insufficient if the business model is not economically sustainable).

<sup>31</sup> USF NPRM at ¶ 252.

<sup>32</sup> See Comments of RTG at 11-12; See also Joint Comments of Cellular One and Viaero Wireless at 22.

<sup>33</sup> See Joint Comments of Cellular One and Viaero Wireless at 17 – 22 (supporting an exemption from any reverse auction mechanism for wireless providers that qualify as small businesses and carriers serving areas with low population densities and low income levels).

The current rural wireless environment warrants the availability of a waiver or exception. There are many areas which are served by more than one carrier – generally a rural wireless company and a Tier I national carrier. However, in these areas, the national carriers generally only serve interstate highways and large population areas. They have not committed to covering the entire surrounding rural areas which are typically high-cost areas. These situations need to be taken into consideration by the Commission through a special waiver process. RTG believes that small local wireless carriers seeking to serve or that have historically served these areas should be presumptively granted a waiver. Other commenters agree with RTG that, in addition to establishing a broad waiver process, the Commission should ensure that any elimination of CETC support allow for exceptions for Tribal lands, Alaska Native regions and fill-in license areas because such areas are extremely difficult to serve, and therefore warrant support based on a carrier’s actual costs.<sup>34</sup> Additionally, as RTG noted in its comments,<sup>35</sup> waivers and exceptions should not terminate after a set date as suggested in paragraph 255 of the USF NPRM. The FCC should not propose a specific deadline on any waiver or exception until the long term CAF mechanism is in place and those impacted can determine the effect on continuing service.

**V. Funding Distributed from the CAF Phase I Fast Track Program Should be Expanded to Cover Ongoing Costs.**

In the first phase of its proposed CAF, the FCC proposes to institute a fast track program to make available nonrecurring, targeted support to a single entity using a competitive bidding system for deployment of broadband networks in unserved areas.<sup>36</sup> RTG as well as other commenters

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<sup>34</sup> *Id.* at 22 (showing the unique circumstances of Tribal areas indicates the FCC may need to take different measures to ensure advanced services are made available).

<sup>35</sup> RTG Comments at 12.

<sup>36</sup> USF NPRM at ¶ 284.

support the use of the National Telecommunications and Information Administration's ("NTIA") broadband definition of 768k download speeds and the Commission's suggested 200k upload speeds<sup>37</sup> to determine whether an area is served or unserved. These definitions basically ensures that, for wireless service, consumers with 3G service will be treated as served while those with 2.5G or less will be treated as unserved. Areas that are unserved (*i.e.*, without 3G) should receive high-cost support to reach 3G capability. As noted by some commenters, as the country migrates from 3G to 4G, high-cost areas should receive support to obtain 4G services.<sup>38</sup> RTG anticipates that this migration to next generation services will continue and that rural areas will always lag slightly behind urban areas, but urges the Commission to recognize that the public interest is served by supporting the cost of eventually upgrading rural areas to the level of their urban counterparts over time.

While RTG does not oppose the Commission's proposal to provide funding to unserved areas, RTG and others believe support should not be limited to one-time support. Support for ongoing costs is an essential part of the provision of mobile broadband in rural high cost areas. If the wireless high-cost area is not supported on an ongoing basis, there is risk that the incentive to build will be lost. The Commission's tentative decision to ultimately eliminate CETC high-cost support on an ongoing basis does not recognize the ongoing costs associated with the provision of wireless high-cost support in rural areas. Moreover, the elimination of such support would deny

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<sup>37</sup> *Id.* at ¶ 291.

<sup>38</sup> In its comments, CTIA noted that as the USF transition occurs, the Commission must ensure there is a plan in place to guard against any erosion of 3G availability in high-cost areas because in many cases, wireless carriers will leverage existing 3G infrastructure for the rollout of 4G networks. *See* Comments of CTIA at 18 (citing the National Broadband Plan at 146); *See also* Comments of RCA at 19 (asserting that for the foreseeable future, 3G networks will bring broadband to unserved areas).

support for services that the majority of consumers enjoy today and that Congress recognized in Section 254 are worthy of support.<sup>39</sup>

**VI. The Use of Reverse Auctions to Determine High-Cost Support is Contrary to the Public Interest, But if Reverse Auctions are Adopted, They Should Be Targeted to Unserved Areas and Based on Qualitative Factors.**

**A. There are Many Dangers Associated with the Use of Reverse Auctions.**

RTG and a majority of commenters oppose the use of reverse auctions to determine support for unserved areas and support the use of actual costs to determine ongoing support amounts for wireless carriers. RTG and others believe reverse auctions will result in second-class service for wireless consumers in high-cost, rural areas.<sup>40</sup> As indicated in their comments, many small and rural carriers are justifiably concerned that reverse auctions will create an incentive for anticompetitive behavior by the largest carriers.<sup>41</sup> The largest wireless carriers will be able to make bids that are substantially lower than the actual cost of serving a rural area because they are able to spread their costs across their entire service area which typically consists of both low-cost-to-serve and higher-populated areas. There is an obvious economic incentive for a larger provider to use below cost bidding in order to put a smaller competitor out of business. For a larger carrier to do so will result in further concentration of the wireless industry and less and less choice for

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<sup>39</sup> See generally Comments of Rural Cellular Association; Comments of U.S. Cellular Corporation, Joint Comments of NECA, NTCA, OPASTCO, WTA.

<sup>40</sup> See Comments of RCA at 17-19 (using a reverse auction would harm rural consumers' ability to access mobile broadband); See also Joint Comments of Cellular One and Viaero Wireless at 30 (asserting that reverse auctions will harm consumers, reduce incentives for investment in broadband networks in rural and high-cost areas, create anti-competitive behavior, and fail to promote healthy markets).

<sup>41</sup> See Joint Comments of NECA, NTCA, OPASTCO, WTA at 87 (explaining that AT&T, Verizon, Sprint Nextel and other large wireless carriers have substantial economies of scale that give them considerable reverse auction advantages, and if the Commission uses an auction method where it "ranks bids by price per unit covered," these large national carriers will receive virtually all the initial Phase I CAF support they want).

consumers, which in turn will result in fewer checks on the prices small market consumers pay for wireless services.

The Commission should not increase the concentration of wireless network ownership through reverse auction policies that favor a few large carriers. Verizon Wireless and AT&T Wireless (a.k.a. “The Big Two”) already have the economies of scale and scope to provide services below the actual cost in a rural area. To the extent these carriers choose to actually serve rural areas,<sup>42</sup> they do not need universal service support to do so.

To the extent the Commission chooses to adopt reverse auctions for unserved areas, RTG continues to advocate for the use of cost-based, competitive bidding mechanisms for the determination of both one-time build out *and ongoing* support to unserved areas, only if such mechanisms focus on genuinely unserved areas and reflect the actual costs of providing robust broadband services in remote regions of the country. If a reverse auction is adopted for these unserved areas, only Tier II, Tier III and Tier IV wireless providers interested in serving these areas should be allowed to compete.<sup>43</sup>

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<sup>42</sup> As previously noted, large carriers have typically chosen not to serve rural areas other than along interstate highways. *See also* Universal Service Reform Mobility Fund, Comments of the Rural Telecommunications Group, Inc., WT Docket No. 10-208 (filed December 16, 2010) at p. 10 (asserting that the most obvious non-residential rural areas that lack mobile wireless coverage are transportation corridors, especially non-interstate highways and roads); *See also* Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service, Reply Comments of the Rural Telecommunications Group, Inc., WT Docket No. 09-66 (filed July 13, 2009) at p. 11 (explaining that in many cases, rural carriers are the only carriers willing to serve sparsely populated rural regions outside of the towns and highways); Applications of Atlantis Holdings LLC, Transferor, and Cellco Partnership dba Verizon Wireless, Transferee, for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed August 11, 2008) at p. 8 (noting that rural carriers are the only carriers willing to serve sparsely populated rural regions outside of the towns and highways).

<sup>43</sup> Tier I carriers should not be allowed to participate in any auction or receive any high-cost support to serve unserved areas. Both Sprint and Verizon Wireless have already willingly given

RTG supports the concept that auctions be designed with an estimate of the costs needed to provide broadband services. The FCC should establish a cost model to determine a “floor” for support levels that recognizes genuine high-costs in service of the public interest, rather than simply rewarding a carrier willing to provide cut rate service to rural consumers. Other commenters agree with this approach.<sup>44</sup>

As discussed in RTG’s comments, the reverse auction mechanism should utilize small geographic areas, such as counties, to ensure that service is targeted to the entirety of each license area.<sup>45</sup> Large auction areas will simply favor large carriers and will likely result in genuinely unserved areas remaining unserved as the auction winner concentrates solely on serving the more profitable high cost areas. By using counties, the FCC will increase the likelihood that all portions of auctioned areas actually receive service from carriers that are willing to serve them.

The FCC should consider a full range of potential public benefit factors when awarding CAF support, rather than just awarding support to the lowest cost provider. To do otherwise would violate the Act’s mandate that consumers in rural areas have access to services and rates

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up high-cost support. They should not be allowed to receive support anew having once promised to give it up in order to be allowed to acquire significant interests in other carriers. Tier I carriers are able to internally subsidize their rural networks and have the economies of scale to provide 3G services and beyond without seeking federal subsidies.

<sup>44</sup> See Joint Comments of Cellular One and Viaero Wireless at 14 (suggesting the Commission establish a bidding floor as part of any reverse auction process to guard against low ball bidding or other anti-competitive bidding practices).

<sup>45</sup> While the FCC’s license areas have varied over the years, one common denominator of all license areas is that they are made up of counties. Cellular licenses are composed of Rural Service Areas (RSAs) and Metropolitan Statistical Areas (MSAs), each of which are generally defined as Cellular Market Areas (CMAs). Broadband PCS licenses are divided into Major Trading Areas (MTAs) and Basic Trading Areas (BTAs). AWS licenses are composed of CMAs, Economic Areas (EAs) and Regional Economic Area Groupings (REAGs). 700 MHz Band licenses are composed of CMAs, REAGs, EAs and Major Economic Areas (MEAs). BTAs, MTAs, CMAs, EAs, REAGs, and MEAs each contain one or more of the 3,143 counties, boroughs or parishes in the United States.

“reasonably comparable” to those available to consumers in urban areas.<sup>46</sup> RTG agrees with those commenters who argue that in some areas such as Tribal regions, Alaskan Native areas, fill-in license areas and rural areas served by Tier IV carriers, funding should be awarded to the existing carrier based on actual costs or an industry-approved cost model because of the difficulty of serving these areas.<sup>47</sup> RTG implores the FCC to give special consideration to carriers that have already shown a commitment to provide service in rural, hard to serve areas. By incorporating into any reverse auction the additional eligibility requirements discussed below, the FCC will ensure that the most qualified carrier receives support.

**B. There Should Be Minimum Eligibility Requirements for the Receipt of Support.**

RTG and most other commenters in this proceeding support the establishment of some type of minimum eligibility requirements for carriers seeking support. Specifically, RTG proposed that a carrier seeking support must (1) be designated as an ETC pursuant to Section 214(e) of the Act in the areas it seeks to serve; (2) have access to spectrum that is capable of supporting advanced services in the areas it seeks to serve; (3) certify that it is both financially and technically capable of providing advanced services in the areas it seeks to serve; and (4) qualify as a Tier II, Tier III or Tier IV carrier.<sup>48</sup> A two-stage application process, in which carriers first submit a short-form

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<sup>46</sup> 47 U.S.C. § 254(b)(3).

<sup>47</sup> *See e.g.* Joint Comments of Cellular One and Viaero Wireless at 23; *See also* Comments of Alaska Communications Systems Group, Inc. at 16 (explaining that cost models cannot accurately predict the costs of constructing and operating broadband networks in Alaska and current USF programs should remain in effect).

<sup>48</sup> Tier IV carriers serve “rural areas” and have less than 100,000 subscribers. The USDA’s Rural Utilities Service has defined a rural area as any area outside of a city, town, or incorporated area that has a population of no more than 20,000 inhabitants provided that it is not in an urbanized area that is contiguous and adjacent to a city or town with a population of 50,000 inhabitants. *See* Rural Broadband Access Loans and Loan Guarantees, 76 Fed. Reg. 13770, 13778 (Mar. 14, 2011)

verifying they meet all minimum eligibility requirements, will ensure that carriers are qualified before participating in the auction.

As demonstrated above, the Communications Act restricts the receipt of universal service support to carriers that have been designated an ETC. Not only is restricting support to ETCs consistent with the Act, more importantly, it will ensure that support will be distributed only to carriers that have demonstrated a commitment to serving high-cost areas. Additionally, ETCs that currently hold a spectrum license should be deemed eligible for support, as well as those ETCs that have a long-term spectrum lease of at least five years.

As RTG has previously explained, Tier I carriers should not be eligible for CAF support. Tier I carriers already serve 90 percent of the United States. These carriers can internally subsidize the cost of reaching rural areas without support should they so choose. They have chosen not to do so. It would also be contrary to the public interest for large carriers that gave up support in order to merge and become even larger to now be able to reclaim such support through the new CAF mechanism. Consumers should have a choice in wireless providers beyond those carriers comprising an ever-shrinking Tier I tier.

### **C. The FCC Should Use Bidding Credits in any Reverse Auctions.**

In its Tribal Mobility Fund Public Notice, the FCC recognized the need for and suggested the use of bidding credits in certain reverse auction situations.<sup>49</sup> These bidding credits would be used to lower a carrier's bid even though the carrier's actual funding may be higher. The same

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(proposing amendments to RUS regulation of the Rural Broadband Access Loan and Loan Guarantee Program).

<sup>49</sup> *Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund*, Public Notice, WT Docket No. 10-208, DA 11-72 (Apr. 18, 2011). If it creates a Tribal Mobility Fund, the FCC has proposed the creation of some form of bidding credit for qualified Tribally-owned and controlled providers that would reduce their per unit bid amount by a designated percentage for purposes of comparing it to other bids, similar to credits used in spectrum auctions.

type of qualifying criteria should be applied to rural carriers with a history of serving rural areas. As explained in RTG’s Comments, the Commission should employ a “qualitative carrier eligibility” evaluation process that would award “bidding credits” to carriers that meet certain public interest objectives associated with delivering mobile broadband to unserved markets.<sup>50</sup> As part of any project selection or reverse auction process, a carrier’s formal bid should be augmented to reflect bidding credits earned for meeting additional stipulations that are deemed in the public interest.

RTG continues to encourage the Commission to grant carriers bidding credits that would be used to lower their bid amounts for meeting specific criteria. Bidding credits will allow small, rural carriers to outbid better-financed carriers who have not previously made a commitment with their own resources and have no “skin in the game.” For example, the Commission should grant bidding credits to carriers that (1) have been designated or meet characteristics of small businesses; (2) can show new jobs are projected to be created or retained as a result of providing advanced wireless services (the size of the credit would increase with the number of jobs created or retained); (3) provide mobile wireless service primarily or exclusively to rural communities (the size of the credit would increase with the proportion of rural coverage area); or (4) have a history of offering telecommunications services to rural markets (the size of the credit would increase with the number of years of service).<sup>51</sup> These bidding credits will spur rural economic development among those eager to serve the rural area and who have a history or nexus to the rural area and are naturally invested in serving their rural communities.

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<sup>50</sup> RTG Comments at 18-20.

<sup>51</sup> *See* RTG Comments at 18-20.

#### **D. Satellite Providers Should Not Receive Support.**

RTG supports the FCC's proposal to prohibit satellite providers from receiving any direct support from the CAF.<sup>52</sup> Comments by satellite providers in this docket do not dispel the Commission's concerns over existing and expected satellite capacity and performance. Because of these concerns, the FCC suggests allowing recipients of CAF support to partner with satellite broadband providers to help fill in any gaps in their coverage area. Because some insular areas like large portions of Alaska utilize satellite networks as their only means to connect to the greater Public Switched Telephone Network, CAF recipients require the ability to receive funding for the use of a satellite network in an insular area. However, such funding should flow through the rural terrestrial carrier and not directly to the satellite provider.

#### **VII. The Long-Term Framework of the CAF Must Provide Specific, Predictable, and Sufficient Support.**

As noted in RTG's Comments, the FCC's end goal for comprehensive USF reform is to distribute all ongoing support through the CAF, while keeping the size of the new fund equal to the level of the high-cost fund in 2010.<sup>53</sup> The FCC envisions the CAF replacing all explicit support as well as all implicit subsidies from intercarrier compensation rates, meaning all support for carriers operating in high-cost areas would come from the CAF.<sup>54</sup> The FCC lays out a few different approaches to implementing its long-term vision for support, but instead of proposing specific, predictable, and sufficient mechanisms, the FCC leaves details of all of its proposals vague. This uncertainty has rural wireless carriers worried as to their ability to operate in the future. RTG and

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<sup>52</sup> RTG Comments at 20.

<sup>53</sup> USF NPRM at ¶ 414.

<sup>54</sup> *Id.* at ¶ 400.

others commenters implore the Commission to ensure that whatever structure the long term CAF takes, it is based on the universal service principles found in Section 254(b) of the Act.<sup>55</sup>

**A. Under the Long-Term Framework of the Commission’s CAF, Wireless Services Must be Supported.**

The FCC’s National Broadband Plan (“NBP”) suggested supporting one provider per area—either fixed or mobile.<sup>56</sup> In the USF NPRM, the Commission has correctly stepped back from this approach by seeking comment on providing support to both fixed and mobile networks under the CAF, rather than funding only one carrier in any given area. RTG and other commenters are in agreement that the FCC should take all possible action to provide support to wireless carriers under the CAF.<sup>57</sup> In fact, many commenters, including RTG, advocate that the FCC should distribute CAF support for one fixed and at least one mobile provider per area, provided that, pursuant to the Act, such recipients are eligible *telecommunications* carriers.<sup>58</sup>

**B. Long-Term CAF Support Should be Based on Wireless Carriers’ Actual Costs.**

RTG and other commenters support the idea that the Commission should use actual costs for the determination of high-cost support as it works to phase-down current high-cost CETC

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<sup>55</sup> 47 U.S.C. § 254(b); *See also* Comments of T-Mobile at 16 (declaring the long-term CAF be structured to provide sufficient support for capital and operating expenses of mobile networks to enable rural customers to have access to comparable services at comparable rates).

<sup>56</sup> FCC, Omnibus Broadband Initiative, Connecting America: The National Broadband Plan, Recommendation 8.2, p.145 (2010) (“NBP”).

<sup>57</sup> *See generally* Comments of RCA; Comments of CTIA; Joint Comments of Cellular One and Viaero Wireless.

<sup>58</sup> *See* Comments of NECA, NTCA, OPASTCO, WTA, at 83; Comments of RICA at 3; Comments of TCA at 15.

support to be replaced with CAF-based support.<sup>59</sup> Support for CETCs is currently based on the identical support rule which provides USF funding that mirrors the support given to the incumbent wireline carrier in the same area but subject to the interim cap rule. As one of its near-term reforms, the FCC proposes to eliminate the identical support rule. The logical replacement for the identical support rule is a rule requiring actual cost-based support.

### **VIII. The Commission Must Expand the Base of Contributors to the CAF.**

As RTG noted in its Comments, the National Broadband Plan recognizes that communications services and technologies are converging, and the nation's communications system will soon be a broadband network which provides multiple IP-based services, including voice, data and video.<sup>60</sup> While the Commission's USF NPRM proposes modifying the USF to support broadband networks, it fails to timely consider how the FCC will shift the contribution methodology for its proposed CAF. RTG and others are concerned that if the FCC goes forward with adopting its proposals, much of the funding that supports the country's communications network will disappear. The CAF will require other sources of support – specifically, contributions from broadband providers. As RTG noted in its Comments, the Communications Act provides that “[e]very telecommunications carrier that provides interstate telecommunications services [must] contribute, on an equitable and nondiscriminatory basis, to the...mechanisms...[that] preserve and advance universal service.”<sup>61</sup> Many commenters support

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<sup>59</sup> See Comments of RICA at 9-15. RICA explains that the identical support rule bears no relationship to a CETC's actual costs of providing service. Permitting CETCs to recover actual costs based on a cost study, as the Commission provided for in the *Interim Cap Order*, would allow for support that is sufficient and consistent with the Communications Act; See also *Panhandle Ex Parte* (asserting that high-cost support should be based on a cost model or cost study in lieu of identical support).

<sup>60</sup> RTG Comments at p. 24.

<sup>61</sup> RTG Comments at p. 24 citing 47 U.S.C. § 254(d).

RTG's position that the current contribution methodology is not only unsustainable, but also outdated, and should be reformed to include a broader base of contributors.<sup>62</sup> There is an economic disconnect today between the broadband cost-causers and those who pay to support the broadband network. Application and content providers that use and benefit from broadband networks should support their fair share of the costs associated with building and sustaining those networks. Reforming high-cost support, while ignoring the contribution mechanism, only solves one side of the equation. If broadband services are to be funded, it is only natural that broadband users must be asked to support this effort.

## **IX. Conclusion**

Wireless will play a major role in the country's broadband future. In fact, according to FCC Chairman Julius Genachowski, "the world is going mobile."<sup>63</sup> To ensure that rural America also, "goes mobile," and fully participates in the country's broadband future, RTG urges the Commission to make decisions that (1) are technology neutral; (2) support at least one fixed and one wireless carrier in every area; and (3) fund only ETCs -- those carriers who have subjected themselves to regulatory scrutiny and are willing to be held accountable after receiving support.

In addition, RTG urges the Commission to find ways to target CAF support to those carriers who have historically served unserved rural areas, not to nationwide carriers that have never demonstrated a commitment to serving genuine high-cost areas. Failure to support mobile

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<sup>62</sup> See Comments of State Members of the Federal-State Joint Board on Universal Service at 118 (recommending that the Commission broaden the federal universal service contributions base to include all services that touch the public communications network); See also Comments of RICA at 8 (explaining that current rules only require contributions from a small subset of telecommunications carriers even though all communications providers benefit from a ubiquitous broadband network); Comments of Blooston Rural Carriers at 8 (advocating for the expansion of the base of contributors to universal service to include all service providers that use the existing multi-purpose broadband network).

<sup>63</sup> Genachowski TIA Remarks at 1.

broadband services in rural America will stifle rural economic development, create inefficiencies in the agricultural industry and oil and gas industry and deter the development of rural health care, public safety and educational opportunities. RTG implores the Commission to act in the public interest to ensure that no harm comes to rural Americans who currently rely on USF support for mobile telecommunications services as it transition to providing support for broadband services.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS GROUP, INC.**

By: */s/ Caressa D. Bennet*

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Date: May 23, 2011